

ANTITRAFFICKING LAW



REPUBLIC OF HAITI

Ministry of Social Affairs and Labor (MAST)

Institute for Social Welfare and Research (IBESR)

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SUMMARY

- Antitrafficking Law
- Notice authorizing the operations of the limited liability company known as: **ISDS HAITI S.A.**
 - Articles of incorporation and bylaws appended.
- Notice authorizing the amendment to the bylaws of the limited liability company known as: **RONA S.A.**
 - Minutes appended hereto.
- Excerpts from the registry of the trademark.

LIBERTY

EQUALITY

FRATERNITY

REPUBLIC OF HAITI

LEGISLATURE

LAW No. CL/2014-0010

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ANTITRAFFICKING LAW

In consideration of the 1987 Constitution and, in particular, articles 19, 22, 24, 24.1, 27, 35, 35.1, 35.2, 35.3, 35.5, 35.6, 36, 111.1, 133, 136, 144, 145, 156, 159, 173.1, and 260, 261, 276.2;

In consideration of the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others **ratified** by the decree of September 2, 1952;

In consideration of the Convention concerning the Night Work of Young Persons Employed in Industry, revised in San Francisco, and **ratified** by the decree of July 13, 1956;

In consideration of the Convention Fixing the Minimum Age for the Admission of Children to Employment in Industry **ratified** by the decree of July 13, 1956;

In consideration of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery **ratified** by the decree of July 31, 1957;

In consideration of the Convention concerning the Abolition of Forced or Compulsory Labor **ratified** by the decree of September 26, 1957;

In consideration of the Convention on the Elimination of All Forms of Discrimination against Women **ratified** by the decree of April 7, 1981;

In consideration of the Convention on the Rights of the Child **ratified** by the decree of December 23, 1994;

In consideration of the United Nations Convention against Transnational Organized Crime **ratified** by the decree of March 12, 2009;

In consideration of the International Covenant on Civil and Political Rights **ratified** by the decree of November 23, 1990;

In consideration of the Convention on the Worst Forms of Child Labor **ratified** by the decree of May 14, 2007;

In consideration of the Minimum Age Convention **ratified** by the decree of May 14, 2007;

In consideration of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention on Transnational Organized Crime, **ratified** by the decree of March 12, 2009;

In consideration of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women **ratified** by the decree of April 3, 1996;

In consideration of the Inter-American Convention on International Traffic in Minors **ratified** by the decree of November 26, 2003;

In consideration of the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption **ratified** by the decree of June 11, 2012;

In consideration of the International Covenant on Economic, Social, and Cultural Rights **ratified** by the decree of June 11, 2012;

In consideration of the Civil Code and, in particular, articles 1, 4, 5, 7, 10, 11.68, 11.69, and 11.70;

In consideration of the Civil Procedure Code;

In consideration of the Penal Code and, in particular, articles 115, 289–93, 297, 300–303, and 311;

In consideration of the Code of Criminal Investigation;

In consideration of the Labor Code and, in particular, articles 2, and 254–65;

In consideration of the law of **September 7, 1961, establishing and organizing the Special Court for Children**;

In consideration of the law of December 26, 1978, on immigration and emigration;

In consideration of the law of September 6, 2001, prohibiting corporal punishment of children;

In consideration of the law of May 7, 2003, on the prohibition and elimination of all kind of abuse, violence, ill-treatment, and inhuman treatment of children;

In consideration of the law of **August 29, 2013, reforming adoption**;

In consideration of the decree-law of May 20, 1940, prohibiting the entry of minors of both sexes under 16 years of age into movie theaters, cinema and theater performances, rooms where games of chance are played, dance halls, cafés or other places where alcohol is served;

In consideration of the decree of November 20, 1961, establishing in the Civil Court of Port-au-Prince a special section called Children’s Court;

In consideration of the decree of December 3, 1973, governing the status of minors in children’s homes;

In consideration of the decree of November 17, 1980, punishing illegal tour operators;

In consideration of the decree of November 4, 1983, **on the organization** of the Ministry of Social Affairs;

In consideration of the decree of March 30, 1984, governing the Ministry of Justice;

In consideration of the decree of August 17, 1987, governing the Ministry of Foreign Affairs;

In consideration of the decree of March 27, 1995, creating the National Office for Migration;

In consideration of the decree of July 6, 2005, amending the rules on sexual assault and eliminating all forms of discrimination against women in this regard;

In consideration of the order of December 22, 1971, on children’s homes;

Considering that human trafficking is a major national and international issue that threatens the dignity and integrity of the human being and constitutes an abuse of fundamental human rights;

Considering that legislative measures are required to implement these international instruments domestically and to increase government involvement in the protection of the victims of human trafficking;

Considering that all actions or initiatives against trafficking in persons must be nondiscriminatory and take gender equality into account, as well as a child-sensitive approach;

Considering that mobilization, advocacy, education, research, training, counseling, and other measures are needed to help families, local communities, government agencies, and civil society organizations discharge their responsibilities with regard to the prevention of human trafficking, the protection of and assistance to victims of trafficking, and law enforcement;

Considering that child victims and child witnesses are particularly vulnerable and need special protection, assistance, and support appropriate to their age, gender, level of maturity, and specific needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process;

Considering that it is appropriate to lay down rules to prevent, punish, and combat trafficking in persons, to punish offenders who are responsible or have been found guilty of trafficking in persons, and to protect victims of human trafficking without distinction.

Based on the report of the Commission on Social Affairs and on Women's Rights, Deputy Malherbe François has proposed and the legislature has voted on the following law:

GENERAL PROVISIONS

Article 1. Definitions, purpose, and scope of application

Article 1.1 Definitions

Under the present law:

1.1.1

“Trafficking in persons” (or “human trafficking”) means the recruitment, transport, harboring, or receipt of persons by means of a threat or use of force or other forms of coercion, by **kidnapping**, by fraud, by deception, by abuse of power or of a position of vulnerability or by **giving and receiving payments or benefits to obtain the consent of a person having control over another person**, for the purpose of exploitation.

Exploitation includes, at a minimum, forced labor or servitude, exploitation or prostitution of others or pimping, pornography, or other forms of sexual exploitation, forced marriage or marriage for exploitation, **forced begging**, removal of organs or tissues, and adoption for the purpose of exploitation as defined in the present law.

Any consent given by a person under the conditions listed above, which led to purposes of exploitation mentioned above, shall never be valid when any of the means set forth **in the first paragraph** is involved.

The recruitment, transport, transfer, harboring, or receipt of a child or the hosting of a child for the purpose of exploitation shall be considered “trafficking in persons,” even if this does not involve any of the means set forth **in the first paragraph**.

1.1.2

“Kidnapping” or “abduction” means leading, diverting, or moving a person, or causing that person to be led, diverted, or moved, by fraud, threat, or violence, from his or her natural environment or premises in which the person has been placed by those with authority over him or her.

1.1.3

“Extradition” means the process for international mutual judicial assistance to suppress crime by which a requested state surrenders to another state, called a requesting state, at the request of the latter, an individual present within the requested state’s territory so that the requesting state can judge the individual or, if it has already convicted him or her, compel the individual to serve his or her sentence. The extradition regime is based on a combination of national legislation, bilateral agreements, or, if applicable, a multilateral treaty.

1.1.4

“Extraterritoriality” means the right of the Convention’s member states to criminally prosecute exploitive individuals or agencies accused of criminal activities in other countries, in cooperation with the latter.

1.1.5

The expression “severe forms of trafficking in persons” applies to human trafficking for purposes of sexual exploitation, when this involves the performance of a sexual act for commercial purposes obtained by use of force, fraud, or coercion, or when the person performing the act has not reached the age of majority.

1.1.6

The term “victim” means any physical person who is subjected to trafficking in persons as defined in the present law.

1.1.7

The term “vulnerable victim” means a person with a particular vulnerability resulting from his or her minor or advanced age, physical or mental impairment, or particular exposure to criminal behavior.

1.1.8

“Child” means any person under the age of 18 years.

1.1.9

The term “**document retention**” means the intentional retention of the passport or identity documents or any other property of the victim by the author or coauthor and/or accomplice of human trafficking.

1.1.10

The term “organized criminal group” is defined as a structured group of three or more persons, existing for some period of time or not and acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with the present law, in order to obtain, directly or indirectly, a financial or other material benefit.

1.1.11

The term “forced labor” includes any work or service that a person is obliged to perform under the threat of reprisal of any kind and for which he or she has not freely consented. Forced labor may involve the offer and conclusion of an employment contract, which can be used for trafficking purposes and intend to generate illicit profits for the traffickers.

1.1.12

The term “coercion” is defined as the threat of serious injury to another person or his or her exposition to physical or **psychological** pressure; or as any ploy or plan intended to cause a person to believe that he or she or any other person would suffer serious harm or physical duress if an act is not performed.

1.1.13

The term “servitude” is the state of subordination or condition of dependency of a person who is **unlawfully forced or compelled** by another person to render any service to him or her or to any other person, **and who has no other alternative but to perform the service**. Servitude may also include domestic services.

1.1.14

The term “debt bondage” is defined as the status or condition arising from a debtor’s pledge of his or her personal services or of those of a person under the debtor’s control as security for a debt, without time limits.

1.1.15

The term “vulnerability” is used to characterize the condition of a person who, by reason of his or her age, physical or mental impairment, or situation of economic dependence, becomes easily exposed to exploitation.

1.1.16

The term “smuggling of migrants” means the organization and facilitation—in order to obtain, directly or indirectly, a financial or other material benefit—of the illegal entry of a person into the territory of a state of which the person is not a national or a permanent resident.

1.1.17

The term “sexual exploitation” means the use of any person in prostitution, pedophilia, sexual servitude, or in the **forced** production of pornographic material, **the production of child pornography, the offer or acceptance of anything of value resulting from the prostitution of others, or the offer or acceptance of any payment for a sexual act performed by another person** as a result of being subjected to a threat or a constraint of any kind.

1.1.18

The term “safe refuge or appropriate shelter” refers to the place where the victim is provided with a safe shelter and basic material support including food, clothing, and access to psychological, social, educational, and medical services.

1.1.19

The term “laundering of proceeds of crime” means the conversion or transfer of assets or property derived directly or indirectly from trafficking in persons for the purpose of concealing or disguising the origin of the assets or property, or of assisting any person involved in the commission of the crime at the root of such assets or property to evade the legal consequences of these actions.

1.1.20

The term “appropriate measures” to ensure the protection of witnesses may refer to the judge’s decision to take testimony outside of a courtroom, or behind a screen, or in any other form he or she deems necessary to establish the facts and in the interest of justice to ensure the integrity of the proceedings.

1.1.21

The term “forced begging” is the compulsory, forced, or voluntary conscription or incorporation of children into any group or association in order to force them to beg and in order to recover the fruits of their begging.

Article 1.2 Purpose

The present law is intended to

- a. Prevent and combat trafficking in persons;
- b. Set forth the rules governing the investigation, prosecution, and punishment of trafficking in persons in all its forms;
- c. Protect and assist the victims of such trafficking by maintaining full respect for and protecting their human rights;
- d. Prosecute and ensure just and effective punishment of traffickers; and
- e. Promote and facilitate national and international cooperation in order to meet these objectives.

Article 1.3 Scope of application

The present law shall apply, except as otherwise stated herein, to the prevention, to the security of investigations, and to the prosecution of **perpetrators** of offenses established in accordance with articles 11, 12, 13, 14, 14.1, 15, 16, 16.3, 17, 18, 19, 20, 21, 22, 25, 29, 30, 31, and 32 of this law, and whether a criminal group, organized or not, is implicated in the **commission of the offense**.

TITLE I: PREVENTION, PROTECTION, AND COORDINATION PROGRAM AGAINST TRAFFICKING IN PERSONS

CHAPTER I: THE NATIONAL ANTITRAFFICKING COMMITTEE

Article 2

An interministerial and sectoral body called the “National Antitrafficking Committee,” hereinafter referred to as “the Committee,” shall be established. The Committee shall be tasked with coordinating operative activities against human trafficking, preventing and combating human trafficking in all its forms and ensuring the protection of victims. It is part of the Ministry of Social Affairs and Labor.

Article 3

The Committee is composed of the following members:

- A representative of the Ministry of Social Affairs and Labor, president;
- A representative of the Ministry of Justice and Public Security, first vice president;
- A representative of the Ministry of Women’s Affairs and Rights, second vice president;
- A representative of the Ministry of the Interior and Local Authorities, secretary;
- A representative of the Ministry of Foreign Affairs and Religions, member;
- A representative of the Ministry of Public Health and Population, member;
- **A representative of the Ministry of National Education and Vocational Training, member;**
- A representative of the Institute for Social Welfare and Research (IBESR), member;
- A representative of the National Office for Migration (ONM), member;

- Two representatives of **human rights** organizations combating trafficking in persons, advisors; and
- A representative of the **Office of Citizen Protection (OPC)**, observer.

3.1

Members of the Committee shall be appointed by an order of the president of the Republic.

Article 4

To carry out its mission, the Committee performs the following duties:

- Developing and proposing public policies against trafficking in persons.
- Ensuring that programs involving psychological and physical health services, accommodation centers or emergency shelters, legal assistance, and rehabilitation and reintegration are implemented for victims of trafficking in persons.
- Mobilizing resources to implement policies and programs against trafficking in persons in accordance with the terms of article 7 of the present law.
- Intensifying cooperation efforts with the countries of origin, transit, and destination of victims of trafficking in order to facilitate the protection and reintegration of victims.
- Establishing national guidelines and procedures to identify victims of trafficking; preparing and disseminating a procedure manual on the identification and orientation of victims of trafficking, as well as information and materials concerning trafficking; ensuring appropriate training for professionals from the public and private sectors who are likely to be in contact with victims of trafficking.
- Initiating awareness-raising programs in order to inform the public, especially potential victims of trafficking, about the dangers of practices leading to trafficking in persons.
- Consulting relevant authorities and nongovernmental organizations (NGOs) and other experts on the issue of trafficking in persons about the functions assigned to them.
- Implementing and enforcing the present law; in this context, the Committee may make recommendations and/or report violations to the competent authorities in order to facilitate the prosecution of perpetrators and accomplices in trafficking; it must also submit an annual report on the situation of trafficking in persons to the Ministry of Social Affairs and Labor (MAST).

Article 5

The Committee has an executive secretariat. This secretariat is headed by a public official with the title of executive secretary, supervised by the body the Committee is attached to, which is the Ministry of Social Affairs and Labor (MAST).

The Committee's rules of procedure shall be prepared by the **executive secretary, who shall submit them to the Committee for discussion and validation. After validation, the Committee shall forward the rules of procedure to the minister for approval.**

The Committee may ask the competent authority to recruit consultants or other categories of staff.

Article 6

The Committee may establish, in all the Republic's geographic departments, ad hoc subcommittees to assist it in prevention, monitoring of its decisions, and combating trafficking in persons.

The Committee's operating procedures, its executive secretariat, and the subcommittees shall be specified by the Committee's internal rules of procedure mentioned in article 5 of the present law.

Article 7

There shall be a special fund established under this law to combat trafficking in persons. This fund shall be used to finance antitrafficking activities, with particular emphasis on assistance to victims of trafficking in persons.

The fund shall be administered by the Ministry of Social Affairs **and Labor** based on requisitions from the Committee. This fund shall be maintained by

- An allocation entered in the operations budget of the Republic;
- Donations and grants provided for this fund;
- Income generated from the auction of **movable and immovable** property derived from activities associated with trafficking in persons and which have been subject to seizure and confiscation; and
- Three-quarters (75%) of income from the sale of seized real properties as defined in article 49.2 of the present law.

The terms and conditions under which the fund shall be operated and administered shall be specified in the decree setting out the organization and operation of the national committee on combating trafficking in persons.

CHAPTER II: PROTECTION OF AND ASSISTANCE TO VICTIMS AND WITNESSES OF TRAFFICKING IN PERSONS

Article 8

The present law protects the privacy and identity of victims **and witnesses** of human trafficking in order to preserve them from retaliation, persecution, and/or intimidation. To this end, a system of protection for witnesses and victims, taking into account the status of vulnerable people, especially **vulnerable victims such as children and women**, must be established.

Therefore, all measures undertaken in connection with child victims and child witnesses shall be based on the principles of the Convention on the Rights of the Child and the guidelines on justice, including the primacy of the child's best interests and the principle that the child's views should be taken into account in all proceedings affecting him or her.

To this end, the measures outlined below must be followed throughout the procedure. In some cases, they will need to continue beyond the trial stage.

Section 1: Protection of and assistance to victims

8.1

Psychological, medical, and social support **shall be** provided to victims of human trafficking in order to meet their needs, **including those of their dependents**, notwithstanding the compensation to which said victims would be entitled under a civil action. **The special educational needs of children shall be met.**

8.2

If need be, victims of human trafficking **shall be** provided with legal assistance and the services of an interpreter.

This legal assistance shall ensure that victims' views and concerns are presented and taken into consideration at appropriate stages of the investigation and proceedings against offenders, without prejudice to the rights of the defense.

8.3

An alleged foreign victim of human trafficking shall enjoy the right to reside temporarily in Haiti for the duration of any legal proceedings against the perpetrators of offenses covered by the present law and/or their accomplices. Alleged victims can later obtain permanent residency if required by conditions that arise regarding their physical safety and social well-being upon return to their country of origin or of legal permanent residence, as stated in article 8.6 of the present law.

8.4

Alleged victims of human trafficking are not criminally responsible for their illegal entry, stay, or work in Haitian territory or for illegal acts performed because of their status as victims.

8.5

In addition to the provisions under Article 8.1, a program **shall be** developed to implement measures adopted with regard to the physical, psychological, and social recovery of victims of human trafficking, including, if necessary and in partnership with the relevant **authorities**, the provision of an appropriate place of refuge. If these victims are vulnerable children or women, it is appropriate to provide for the specific needs of their condition.

8.6

Action **shall be** taken to provide for the physical safety of foreign victims of trafficking in persons while they are within the national territory. These victims cannot, therefore, be subject to forced removal from said territory when there is no guarantee that they will be safe in their home country or country of origin. They can be subject to voluntary repatriation only under conditions of dignity and safety.

8.7

Under no circumstances can a person's status as a victim of trafficking or his or her situation in relation to emigration legislation justify his or her detention in any center.

Section 2: Special assistance to children

Article 9

When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age; assistance to child victims shall be provided by specially trained professionals and in accordance with children's special needs, especially with regard to accommodation, education, medical care, and so on.

Where the victim is an unaccompanied minor, the Committee shall ensure that social services will implement emergency care, family research, and reintegration in the best interest of the child.

Child victims shall be provided with information on the procedure and measures taken in a language that they use and understand and in a manner appropriate to their age.

9.1

In cases of human trafficking involving children, hearings shall not be public. Parties, representatives, legal advisors, and any other persons whose presence is considered necessary by the court may attend all hearings and stages of the judicial process in cases relating to the previous paragraph.

9.2

The Committee may, at any time, inspect any private establishment intended for children and about which corroborative evidence may exist concerning activities relating to human trafficking. It may audit financial statements, accounting books and records, or any other relevant document **involving the computer equipment** of that establishment and set forth in the general rules. It may ensure the collection of grants, the filing of annual tax returns provided in tax legislation, and the conformity of all transactions carried out by the said establishment. The Committee uses the powers conferred on it by article 4.7 for the implementation and follow-up of the present law.

Section 3: Special witness protection

Article 10

Special protection and assistance **shall be** granted to witnesses in order to ensure their physical integrity and their appearance in court at all judicial stages, subject to relevant specific rules of evidence provided for in article 32 of the present law.

10.1

Appropriate measures shall be taken, without prejudice to any penalties imposed for the bribery of witnesses in article 311 of the Penal Code, for the monitoring of and to ensure compliance with the provisions related to witness protection in the present law, including the following:

- The provision of safe shelter.
- The restricted disclosure, for the conduct of proceedings, of witnesses' identity, together with any information pertaining to them.

TITLE II: CHARGES, SANCTIONS, AND LIABILITY

CHAPTER III: MAIN CHARGES AND PENALTIES

Article 11

Any person found guilty of trafficking in persons as defined in article 1.1 commits a crime and **shall be** liable to imprisonment for a term of 7 to 15 years and a fine of between 200,000 and 1,500,000 gourdes.

Article 12

Any person who obtains or attempts to obtain sexual services from another person with the knowledge that the person is a victim of human trafficking commits a crime punishable by imprisonment and a fine of between 50,000 and 100,000 gourdes.

CHAPTER IV: ADDITIONAL OR RELATED OFFENSES

Article 13

Any person who, acting or purporting to act as employer of another person, manager, entrepreneur, or employment officer, intentionally withholds that person's identification document or passport for the purpose of perpetrating one of the offenses related to human trafficking commits a crime punishable by imprisonment of between 7 and 15 years and a fine of between 200,000 and 1,500,000 gourdes.

Article 14

For any natural or legal person to launder money or the proceeds of trafficking in persons is regarded under the present law as an offense that, in accordance with the circumstances set forth below, shall be designated as a crime and be punishable by one of the penalties set forth in the provisions of the present law.

14.1

It is therefore prohibited for any natural person, company, or corporation to take part in any of the following acts:

- a. The conversion or transfer of property, **knowing** it to be the proceeds of trafficking in persons, for the purpose of concealing or disguising the illicit origin of such property or of assisting any person involved in the commission of the main offense to evade the legal consequences of his or her actions.
- b. The concealment or disguising of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property, knowing that such property is the proceeds of the crimes referred to in the present law.
- c. The acquisition, possession, or use of property, knowing, at the time of receipt, that such property was derived from crimes related to trafficking in persons.

PARTICULAR PROVISIONS

Article 15

The penalties stipulated in articles 11, 13, 17, 20, 30, and 31 **of the present law** may be imposed, even when some of the acts constituting the offense were committed abroad.

15.1

In order to provide a basis for the prosecution of perpetrators of offenses related to trafficking in persons and their accomplices and accessories, the acts committed abroad must be of a criminal nature in the country where they were committed, as well as within Haitian territory. Extraditions shall be carried out in accordance with the procedure established by the present law.

CHAPTER V: ATTEMPTED OFFENSES, COMPLICITY, PREPARATORY ACTS, REPEATED OFFENSES, POSSESSION OF STOLEN PROPERTY, AGGRAVATING CIRCUMSTANCES, AND EXEMPTION FROM PENALTIES

Article 16

Attempts to commit an offense under articles 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 27, 28, and 29 shall be punished by imprisonment for a term of three to eight years and, where appropriate, a fine from 50,000 to 200,000 gourdes.

Article 17

Association or conspiracy to commit one or more of the offenses under articles 11, 12, 13, 14, 20, 28, and 29 **shall be** punished by the penalties provided for the most severely penalized offense.

Article 18

Collusion by knowingly providing means, assistance, or help with a view to committing one of the offenses under the present law shall be punished by the penalties provided for the commission of the offense.

Article 19

The repetition of one of the offenses related to trafficking in persons and referred to in the present law shall be punished by life imprisonment and hard labor.

Article 20

Any person who knowingly conceals, entirely or partly, things, objects, and assets removed, diverted, or obtained thanks to a crime related to trafficking in persons shall be punished as an accomplice to the crime of human trafficking.

Section 1: Aggravating circumstances

Article 21

The offenses set forth in articles 11, 13, 14, 15, 16, 17, 18, 19, and 20 are punishable by a sentence of life imprisonment where they are committed in any of the following circumstances

- a. Against a child.
- b. Against more than one person.
- c. When the victim has been raped or has suffered a similar violation during the period in which he or she has been trafficked, whether by one or more persons.
- d. Against a person who was outside the territory of the Republic and who has been brought there for that purpose or upon his or her arrival on the territory of the Republic.
- e. Against a person particularly vulnerable because of age, illness, physical or mental disability, pregnancy, or any other similar case that is apparent or known to its author.
- f. When the person has been put in contact with the perpetrator through a network for the dissemination of public messages.
- g. By kidnapping, using threats, coercion, violence, or fraud against the person concerned or against the person's family or any person having a habitual relationship with him or her.

- h. In circumstances that directly place **the victim** against whom the offense is committed in immediate or nonimmediate danger of death or of serious personal injury that can lead to mutilation or permanent disability, or of long-term illness.
- i. By a legitimate, natural, or foster ascendant of the trafficked person or by any other person with authority over **him or her**, or by a person having abused his or her authority or the facilities conferred on this person by his or her office.
- j. By a public official or civil servant, a custodian or agent of a governmental authority or law enforcement officer, or any person using the prerogatives associated with his or her office.
- k. By a person who has forged false identification papers, false travel documents, or false passports for the transit of trafficked persons through a foreign territory or their entry into Haitian territory.

21.1

The offenses set forth in articles 11, 12, 29, and 33 committed by more than one person or by any organized group using torture and acts of barbarity shall be punished by a sentence of life imprisonment.

Section 2: Extenuating circumstances, penalty reduction, and exemption

Article 22

Persons involved as accomplices or who participated in the preparation of the commission of the offenses covered by the present law and who have enabled or assisted in the identification or arrest of primarily the perpetrators of such offenses, shall have their penalty reduced by half, calculated based on the minimum time prescribed for the penalty.

22.1

A person found guilty of participating in an association or conspiracy under **article 17** may be eligible for a reduced sentence if, by informing the administrative and/or judicial authority about the association or conspiracy, he or she made it possible to end the latter and arrest its members before they could act.

22.2

Victims of trafficking shall be exempted from all prosecution for illicit acts related to trafficking, committed while they were under the duress of the actual perpetrators of the offenses referred to in the present law.

22.3

Victims of trafficking in persons who allegedly committed a homicide under the same conditions as stipulated in the previous paragraph may be eligible for extenuating circumstances.

CHAPTER VI: OFFENSES COMMITTED BY LEGAL PERSONS OR ENTITIES

Article 23

If an offense under the present law has been committed by a legal person or entity and if it has been proved that this has occurred with the legal person or entity's consent or connivance, or has been the result of negligence on the part of a person performing the tasks of manager, director, secretary, or any other leader of the legal entity or that of a person supposed to act in any such capacity, the legal entity shall be guilty of an offense and may be subject to legal action, without prejudice to the criminal liability of the natural persons who have committed the offenses.

Article 24

If it is presumed that an establishment is knowingly involved or engaged in the perpetration of offenses related to trafficking in persons or in any other criminal act under the present law, the investigating judge may, at the request of the public prosecutor, order the justice of the peace concerned to put such establishment into receivership.

24.1

An establishment that has facilitated the commission of an offense referred to in the present law can be confiscated for the benefit of the state by the court having jurisdiction, in compliance with the relevant laws in each case.

24.2

Profits from the sale of property confiscated, in accordance with article 23, can be allocated to the special fund set up to **combat** trafficking in persons.

CHAPTER VII: ADDITIONAL MEASURES AND PENALTIES

Article 25

In the cases provided for in articles 23 and 24, courts shall order the definitive closure of any establishment open to the public, if such offenses were committed by the operator or in collusion with him or her.

The withdrawal of the authorization or license to operate may also be ordered definitively by the competent authorities.

25.1

In the cases provided for in articles 11, 13, 14, 14.1, 16, 17, 18, 19, 20, and 21, courts may order

1. The definitive exclusion from the Haitian territory of any alien convicted of one of the offenses related to trafficking in persons; and
2. The full or partial confiscation of the convicted person's property of any kind whatever, whether real or personal, whether money or assets, for the benefit of the **antitrafficking** fund described in article 7.

CHAPTER VIII: REGARDING OBSTRUCTION OF JUSTICE

Section 1: Regarding obstacles to bringing matters before the court

Article 26

Anyone who shall be aware of a crime of human trafficking whose effects may still be prevented or limited, or whose perpetrators are likely to commit another crime that could be prevented, and who, out of indulgence, does not inform the judicial or administrative authorities thereof, shall be subject to imprisonment for a term of 1 to 3 years and a fine of between 20,000 and 75,000 gourdes.

Article 27

Any person who threatens or intimidates another in order to force the victim of a crime of human trafficking not to press charges against him or her or to retract accusations shall be subject to imprisonment for a term of 5 to 10 years and a fine of between 150,000 and 300,000 gourdes.

Section 2: Regarding obstruction of the course of justice

Article 28

Any judge or other member of a judicial panel who refuses to deliver justice, after being required to do so, and who perseveres in such refusal after having received a warning or order from his or her superiors, shall be punished according to the law governing that case.

Article 29

Any person who threatens or commits an act of intimidation against a judge, a juror, or any other member of a judicial panel, an arbiter, an interpreter, a party's expert or counsel, the representative of a human rights organization, or any other person involved in the defense of victims in order to influence their behavior in the performance of their duties shall be subject to imprisonment for a term of 5 to 10 years and a fine of between 150,000 and 300,000 gourdes.

CHAPTER IX: MEASURES REGARDING STATUTES OF LIMITATIONS FOR OFFENSES AND CONVICTION IN ABSENTIA

Article 30

No proceedings in respect of one of the offenses established by articles 11, 13, 14, 15, 16, 17, 18, 19, 20, and 21 may be instituted more than 30 years after the fact.

The proceedings in respect of the offenses established under the present law and committed in aggravating circumstances shall not be subject to any statute of limitations.

The sentences pronounced in absentia for one of these offenses shall not be subject to any statute of limitations.

TITLE III: PREVENTIVE SEIZURE, CONFISCATION, EVIDENCE, AND SPECIAL PROCEDURAL PROVISIONS

CHAPTER X: PREVENTIVE SEIZURE

Article 31

The judicial authorities, agents, and competent officials in charge of the detection and suppression of offenses related to trafficking in persons can, pursuant to articles 14 and 14.1, seize assets in connection with the offenses committed, as well as any information that might allow such assets to be identified.

31.1

The judicial authority having jurisdiction to order protective measures may, as a matter of course or upon request from the public prosecutor's office or its representative, order such measures at the state's expense, including the freezing of assets and financial transactions on property, of any kind, that is subject to seizure or confiscation.

CHAPTER XI: EVIDENCE AND SPECIAL PROCEDURAL PROVISIONS

Article 32

In order to obtain evidence relating to the original offense and to additional offenses under the present law, the investigating judge in the matter may, by a reasoned decision, on his or her own initiative or at the request of the government commissioner, and notwithstanding any objection based on professional or bank secrecy, order that the following steps be taken for a maximum period of three months, which can only be renewed once:

- Monitoring of bank accounts and similar accounts.
- Accessing of computer systems, networks, and servers.
- Wire-tapping or surveillance of telephone, fax, and all electronic means of transmittal and communication.
- Audio and video recordings of actions and conversations.
- Transmission of certified documents or private deeds and banking, financial, and commercial documents.
- Seizure of the documents mentioned above.

However, such interventions are possible only when there are solid and serious indications verifying that these telephone lines, computer systems, and networks or documents are being used or might be used by individuals suspected of involvement in offenses described in articles 11, 13, 14, 25, and 26 of the present law.

The investigating judge's decision is based on these criteria.

Article 33

Except in cases of **abuse** of authority or offenses referred to in **Article 21 (h)**, officials or civil servants responsible for detecting original and additional offenses are not punishable when, with the sole aim of obtaining evidence related to offenses referred to in the present law and under the conditions set out in the following paragraph, they commit actions that can be construed as the elements of an offense under the present law.

The authorization of the chief justice of the court of first instance competent for the geographical area concerned shall be obtained before any intervention mentioned in the first paragraph. A detailed transcript shall be forwarded to this judge once the interventions have been completed.

Article 34

Bank secrecy cannot be used to refuse to provide information referred to in articles 11, 13, 14, 14.1, 15, 25, 26, and 37 or requested for purposes of an investigation into facts relating to trafficking in persons that has been ordered by the chief justice of the court of first instance or that is being carried out under the supervision of the investigating judge or government commissioner in the case.

CHAPTER XII: SPECIAL PROCEDURAL PROVISIONS

Article 35

In the event of a prosecution for one of the offenses referred to in articles 11, 13, 14, and 29 to 33, temporary release shall never be granted to the accused, according to article 95 of the Code of Criminal Procedure, when he or she is charged with a crime related to human trafficking.

35.1

Competent immigration and customs officers are authorized to search individuals, luggage, and vehicles at border controls when there are reasonable grounds to believe that such individuals are involved in human trafficking or transporting objects that can serve as clues for detecting cases of human trafficking.

35.2

National police officers are authorized to search individuals anywhere else within the national territory only on orders from the chief justice of the court of first instance, upon the decision of an investigating judge, or at the request of the public prosecutor or the competent justice of the peace.

35.3

Individuals shall be searched by a person of their own gender.

TITLE IV: INTERNATIONAL COOPERATION: EXTRATERRITORIALITY, EXTRADITION, AND MUTUAL LEGAL ASSISTANCE

CHAPTER XIII: PRELIMINARY PROVISIONS

Article 36

The Republic of Haiti shall work with foreign states for purposes of extradition, cooperation, and mutual technical assistance in information exchange, investigation, and prosecution for the offenses referred to in the present law.

Article 37

Haitian embassies, consulates, and consular offices overseas shall provide support for Haitian victims of trafficking in persons and shall, in cooperation, through authorized diplomatic channels, with the competent services within the Ministry of the Interior and Local Authorities, assist expeditious and timely issuance of identity papers and travel documents to such Haitian nationals who are victims of trafficking in persons.

CHAPTER XIV: REQUESTS FOR MUTUAL LEGAL ASSISTANCE

Article 38

Upon request by a foreign state, mutual legal assistance in connection with offenses stipulated in articles 11, 13, 14, 14.1, 23, 24, and 29 of the present law shall be extended in accordance with the principles set out in this chapter.

38.1

Requests for mutual legal assistance received from a foreign state shall be processed by the Ministry of Justice and Public Security as the central authority for mutual assistance. The central authority is responsible for answering requests for mutual assistance, complying with such requests or, if necessary, transmitting them to the authorities competent to do so.

38.2

The central authority of **each state** shall communicate directly with the others.

38.3

Mutual legal assistance may include, in particular

- a. Taking evidence or statements from witnesses;
- b. Assisting in making detained persons, voluntary witnesses, or others available to the judicial authorities of the requesting state in order to give evidence or assist in investigations;
- c. Serving court documents;
- d. Executing searches and seizures;
- e. Examining objects and sites;
- f. Providing information and evidentiary items; and
- g. Providing originals or certified copies of relevant documents and records, including bank, financial, corporate, or business records.

Article 39

A request for mutual legal assistance may be refused only if

- a. It was not made by a competent authority according to the legislation of the requesting country, or if it was not transmitted in accordance with applicable laws;
- b. Its execution is likely to prejudice the public order, the sovereignty, the security, or other essential interests of Haitian law;
- c. The offense to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment;
- d. Under the Haitian legislation, the measures requested, or any other measures having similar effects, are not permitted by Haitian law or if they may not be used with respect to the offense referred to in the request;
- e. The decision rendered abroad was issued under conditions that did not afford sufficient protections with respect to the rights of the defendant;
- f. There are substantial grounds to believe that the measures or order being sought are directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, gender, or status;
- g. The request is politically motivated; or
- h. The importance of the case to which the requests relates does not justify taking the action sought or the execution of the decision rendered abroad.

Article 40

Bank secrecy cannot be invoked as grounds for refusal to comply with a request for mutual legal assistance.

The public prosecutor may appeal a refusal of the request for mutual legal assistance within 10 clear days after the issuance of this decision by the court.

The Haitian government shall promptly inform the foreign competent authority of the grounds for refusal to execute the request.

Article 41

Investigative measures in relation to requests for mutual legal assistance shall be undertaken in conformity with Haitian law.

A judge or public official authorized by the competent foreign authority may attend the execution of the measures depending on whether these are carried out by a Haitian judge or public official.

41.1

Where the court is asked by a foreign competent authority to issue protective measures, it shall order the requested measures in accordance with the legislation in force. If the request is worded in general terms, the court shall order the most appropriate measures provided by law.

Where the court receives a request for the execution of protective measures issued abroad, it may substitute those measures provided for in the law whose effects correspond most closely to the requested measures.

Article 42

In the case of a request for mutual legal assistance seeking a confiscation order, the court shall give its decision by means of a letter of request, by referral to prosecuting authorities. The confiscation order shall apply to an item of property that is the proceeds of an offense or has been used to commit this offense, and that exists in Haitian territory, or shall consist of the obligation to pay a sum of money that corresponds to the value of such property.

Article 43

Where the court receives a request for the enforcement of a confiscation order issued abroad, it shall be bound by the findings of fact on which the order is based and shall reject the request only on grounds mentioned in article 44 of the present law.

43.1

The Haitian state shall have power to dispose of property confiscated on its territory at the request of foreign authorities unless otherwise provided by an agreement concluded with the requesting state.

CHAPTER XV: EXTRATERRITORIALITY AND EXTRADITION

Article 44

Requests to extradite wanted persons in a proceeding in a foreign state and to enforce a foreign sentence for an offense of trafficking in persons shall be executed in accordance with the procedures and principles set forth in the extradition treaties in force between the requesting state and the Haitian

state. In the absence of an extradition treaty or arrangements between the requesting state and the requested state, the provisions of the present law on mutual legal assistance and extradition shall apply.

Article 45

Extradition shall be carried out only if the offense giving rise to the request for extradition or a similar offense is provided for under the legislation of the requesting state.

Article 46

Extradition shall be not granted if

- a. The offense for which it is requested is regarded by the Republic of Haiti as a political offense or if the request is politically motivated;
- b. The request is considered to have been made for the purpose of prosecuting or punishing a person on account of race, religion, nationality, ethnic origin, political opinions, gender, or status, or if the person's situation could be prejudiced for one of these reasons;
- c. A final judgment was delivered by Haitian courts for the offense for which extradition is sought;
- d. The person whose extradition is requested can no longer, under the legislation of either country, be prosecuted or punished, as a consequence of the statute of limitations for the offense or an amnesty or any other measure of clemency; or
- e. The person whose extradition is requested has been or likely would be subjected in the requesting state to torture and cruel, inhuman, or degrading treatment or punishment or if that person has not received the minimum guarantees stipulated in article 14 of the International Covenant on Civil and Political Rights; and if the person whose extradition is sought could face the death penalty.

Article 47

Extradition may be refused if

- a. The offense in respect of which it is requested is being prosecuted in Haiti;
- b. The person whose extradition is requested was tried or is liable to be tried or sentenced in the requesting state by an ad hoc court or tribunal;
- c. The Haitian authorities, while also taking into account the nature of the offense and the interests of the requesting state, consider that, in the circumstances of the case, extradition of the person in question would be incompatible with humanitarian considerations in view of age, health, or other personal circumstances making that person particularly vulnerable; or
- d. The offense in respect of which it is requested is regarded by Haitian legislation as having been committed wholly or partly within its territory.

Article 48

If the Haitian authorities refuse extradition on one of the grounds referred to in articles 52.3 and 52.4, they shall submit the case, if the requesting state so requests, to its competent authorities, in order that proceedings may be instituted against the person concerned for the offense that gave rise to the request for extradition.

Article 49

Within the limits authorized under national legislation and without prejudice to the rights of third parties, all assets and property of foreign nationals found in the territory of Haiti that have been acquired as a

result of the offense committed or that may be required as evidence shall be surrendered to the requesting state if extradition is granted.

49.1

The property so surrendered shall be returned to Haiti without customs fees following the completion of proceedings, unless an agreement with the requesting state requires otherwise, and without prejudice to the rights of third parties.

49.2

Real property shall be confiscated and forfeited to the Haitian state in accordance with the conditions set forth in article 41. The proceeds from the sale of such property shall be administered as required by article 7.

CHAPTER XVI: PROVISIONS COMMON TO REQUESTS FOR MUTUAL LEGAL ASSISTANCE AND REQUESTS FOR EXTRADITION

Article 50

Requests submitted by the competent foreign authorities for establishing the facts on human trafficking, in order to enforce or order protective measures or a confiscation, or for the purpose of extradition, shall be transmitted through diplomatic channels.

In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol).

50.1

Requests from foreign countries and their annexes shall be accompanied by a translation in French or Creole, certified by a sworn translator and regarded as an authentic reference document.

Article 51

Requests shall be submitted in writing, specifying

- a. The identity of the authority requesting the measure;
- b. The requested authority;
- c. The purpose of the request and any relevant contextual remarks or notices;
- d. The facts in support of the request;
- e. Any known details that may facilitate identification of the persons concerned, in particular marital status, nationality, address, and occupation; and
- f. The text of the statutory provision establishing the offense or, where applicable, a statement of the law applicable to the offense and an indication of the penalty that can be imposed for the offense.

51.1

In addition, requests for protective measures and for the issuance of a confiscation order shall include the following particulars:

- a. A description of the measures sought.
- b. A certified copy of the order, and a statement of the grounds permitting judicial authorities to pronounce the decision.

- c. A document certifying that the order is binding and not subject to ordinary means of appeal.
- d. An indication of the timeframe within which the order must be enforced and, where applicable, the sum to be recovered from the property.
- e. Where necessary and if possible, any information concerning third-party rights of claim on the instrumentalities, proceeds, property, or other things in question.

51.2

Requests for extradition, if applicable, shall include the original or a certified copy of the judgment or any other document establishing the conviction of the person concerned and the sentence imposed.

51.3

The minister of Justice and Public Security, after the request submitted has been checked and found in order, shall send it to the office of the public prosecutor of the place where the investigations are to be conducted, or the place where facilities or property cited are located, or the place where the person(s) whose extradition is requested are located.

51.4

The public prosecutor shall refer the matter to the competent court concerning the requests for protective measures, confiscations, and extradition.

Article 52

The minister of Justice and Public Security, at the request of the public prosecutor or the court in which the matter is brought, may ask the competent foreign authority, through diplomatic channels or directly, to supply any additional information needed to execute or facilitate the execution of the request.

52.1

The public prosecutor may delay referral to the police authorities, the judge, or the court only if the requested measures or decision could impact negatively on criminal investigations and prosecutions. The public prosecutor shall immediately inform the requesting authority of this fact, through diplomatic channels or directly.

Article 53. Confidentiality and limitation on use with regard to proceedings

The requesting party may request that the requested party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the **competent** authority of the requested party cannot comply with the request for confidentiality, it shall promptly inform the requesting party, which shall then determine whether the request should nevertheless be executed.

53.1

When the requesting state asks for the existence and content of its request to be kept confidential, it shall be granted, except to the extent required to give effect to it. If that is impossible, the requesting authorities shall be immediately informed thereof.

The Haitian government may make the supply of information or material in response to a request dependent on the condition that

- a. The information and material be kept confidential when the request for mutual legal assistance cannot be complied with in the absence of such condition; and

- b. They are not used for investigations or proceedings other than those stated in the request.

TITLE V: GENERAL, IMPLEMENTING, INTERPRETATIVE, AND FINAL PROVISIONS

CHAPTER XVII: GENERAL PROVISIONS

Article 54

In regard to all matters not governed by the present law but connected to the offenses outlined in the present text and subject to particular laws and regulations, the courts and tribunals will continue to comply with these laws and regulations.

CHAPTER XVIII: IMPLEMENTING AND INTERPRETATIVE PROVISIONS

Section 1: Implementing and interpretative provisions

Article 55

Under the present law, the provisions contained herein shall be implemented in ways described below:

- a. The present law shall be applied to exclude or restrict enjoyment or exercise of a right or freedom of the victim that is not enshrined in the law.
- b. The present law shall not be applied to extend, limit, or change the scope of a provision of law.

Section 2: Procedures for the implementation of certain penalties

Article 56

Decisions ordering the dissolution of a legal entity shall include referral of the case to the competent court for the purpose of carrying out the liquidation.

56.1

The decisions ordering the confiscation of property, as referred to in articles 35 and 36 of the present law, shall take into account, in each case, the relevant common law rules.

56.2

Court decisions ordering, under the present law, the dissolution or closure of a business or facility, the prohibition from carrying out one or more professional or social activities, shall include the appointment of a legal representative whose mission is defined by the court.

56.3

The liquidator appointed by the court shall periodically report to the judge on the fulfillment of his or her duties. At the end of the mission, the liquidator shall submit a final report to the competent judge.

Section 3: Interpretative provisions to enforce additional penalties and fines

Article 57

When an offense is punishable by one or more of the complementary penalties set forth in articles 28 and following, the court can only impose the complementary penalty or applicable complementary penalties.

57.1

In the case of a sentence involving only a fine, the total amount is due at the expiry of the time period imposed and set by the judge.

CHAPTER XIX: FINAL PROVISIONS

Article 58

This law repeals all laws or provisions of laws, all decrees or provisions of decrees, and all decree-laws or provisions of decree-laws that are inconsistent with it. It shall be published and enforced upon the request of the minister of Social Affairs and Labor, the minister of Justice and Public Security, the minister of Foreign Affairs, the minister of the Interior and Local Authorities, the minister of Women's Affairs and Rights, the minister of National Education and Vocational Training, each in those matters that concern him or her.

Signed in the Senate of the Republic, on Wednesday, April 23, 2014, the 211th year of independence

Steven Irvenson BENOIT
Premier Secrétaire

Steven Irvenson BENOIT
First Secretary

Simon Dieuseul DESRAS
Président du Sénat

Simon Dieuseul DESRAS
President of the Senate



Joseph Joël JOHN
Deuxième Secrétaire

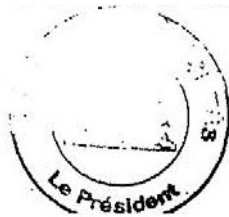
Joseph Joël JOHN
Second Secretary

Signed in the Chamber of Deputies, on Wednesday, April 30, 2014, the 211th year of independence.

Gluck THEOPHILE
Premier Secrétaire
Gluck THEOPHILE
First Secretary

Jean Tholbert ALEXIS
Président de la Chambre des Députés

Jean Tholbert ALEXIS
President of the Chamber of Deputies



Ogline PIERRE
Deuxième Secrétaire
Ogline PIERRE
Second Secretary

LIBERTY

EQUALITY

FRATERNITY

ON BEHALF OF THE REPUBLIC

The President of the Republic hereby orders that the above Law on Trafficking in Persons, voted upon by the Senate on April 23, 2014 and by the Chamber of Deputies on April 30, 2014, be stamped with the seal of the Republic, printed, published, and enforced.

Signed at the National Palace, Port-au-Prince, on May 28, 2014, the 211th year of independence.

A handwritten signature in black ink, appearing to read 'Michel Joseph Martelly', with a large, stylized flourish above it.

Michel Joseph Martelly



Institute for Social Welfare and Research (IBESR)

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