

**U.S. Department of State
Office of Language Services
Translating Division**

Republic of Equatorial Guinea

Office of the President

**Law No. 1/2004 of September 14, 2004
on the Smuggling of Migrants and Trafficking in Persons**

Explanatory Note

The worldwide phenomenon of illicit trafficking in human beings and the illegal movements of persons through the territories of various countries throughout the world demand from our government a pro-active, preventive response to practices that undermine the dignity of economically weak societies and prevent the free development of persons and access to social welfare programs offered by the government to all persons without discrimination.

It is the ever-present desire of the Government of the Republic of Equatorial Guinea for the country to become a member of international organizations and agencies, to conclude agreements, to ratify international conventions, and to honor its commitments in a manner consistent with its national reality.

With this in mind, the national territory cannot be used as the point of origin, destination, or transit for illicit trafficking in persons or for the smuggling of migrants; and

Having regard to the Constitution of Equatorial Guinea, the Penal Code, and the Law on Criminal Prosecution in effect in the Republic of Equatorial Guinea, and

Considering:

The United Nations Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, together with the Protocol Against the Smuggling of Migrants by Land, Sea, and Air;

Article 4 of the Convention on the Rights of the Child; and

Decree No. 100/1997 of September 30, 1997, establishing the National Committee for the Rights of the Child in the Republic of Equatorial Guinea,

I hereby ratify, as duly approved by the Chamber of Representatives meeting during its regular session in Malabo from September 2 to October 3, 2004, the following

Law on the Smuggling of Migrants and Trafficking in Persons

Article 1. Definitions. For the purposes of this Law, the following definitions shall apply:

(a) **Trafficking in persons:** the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, so that said person can engage in any type of sexual exploitation, pornography, debt servitude, forced labor or services, forced marriage, unlawful adoption, slavery or practices similar to slavery, or the removal of organs;

(b) **Child:** any person ten years of age or younger;

- (c) **Adolescent:** any person from 11 to 18 years of age;
- (d) **Sexual offers:** publication, utilization, exploitation of the mail, media, press, television, global information networks, Internet, digital communication, objects, photographs, images, and any other similar pornographic element;
- (e) **Sexual tourism:** tourist activity that includes any form of sexual exploitation;
- (f) **Smuggling of migrants:** facilitating the entry, departure, transit, or illegal passage of a person in or out of the country, without complying with the legal requirements in order to obtain, directly or indirectly, a financial or other material benefit;
- (g) **Illegal entry:** movement through the country or across the border without complying with the necessary requirements for legally entering or departing the country;
- (h) **Organized criminal group:** a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing one or more of the offenses established in accordance with this Law, in order to obtain, directly or indirectly, a financial or other material benefit;
- (i) **Offense:** the conduct described in this Law, the consummation of which is punished under the provisions thereof;
- (j) **Property:** assets of every kind, whether movable or immovable, tangible or intangible, and illegal [sic--legal] documents evidencing title to, or other rights in, such assets;

(k) **Proceeds from the offense:** any property derived from or obtained, directly or indirectly, through the commission of an offense;

(l) **Freezing or seizure:** temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a competent court;

(m) **Confiscation:** the permanent deprivation of property by order of a competent court;

Article 2. Offense of Smuggling Migrants. This offense shall be incurred by anyone who promotes, induces, constrains, finances, transports by land, sea, or air, or cooperates in any way in the illegal entry into or departure of persons from the country, as the point of origin, destination, or transit, without complying with the legal requirements, in order to obtain, directly or indirectly, some financial benefit for oneself or others. Such action shall be punishable by imprisonment of 5 to 10 years and a fine ranging between 7 and 77 million CFA francs.

Article 3. Offense of Trafficking in Persons. This offense shall be incurred by anyone who engages in the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, so that said person will engage in begging, or in any type of sexual exploitation, pornography, debt servitude, forced marriage, irregular adoption, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs, even with the consent of

the victim; such action shall be punishable by imprisonment of 10 to 15 years and a fine of at least 50 million CFA francs.

Article 4. Offense of Parental Abuse of Minors. This offense consists of the use of children by their parents for the itinerant sale of goods or other work during the school day or at night. This offense shall be punished by imprisonment of one month to one year and a fine of between 50,000 and 500,000 CFA francs.

Article 5. Offense of Child Labor. This offense shall be incurred by anyone who employs, offers work to, or accepts a minor for work on his own behalf or that of another, in the formal or informal market, and shall be punished by imprisonment of one year and a maximum fine of 250,000 CFA francs.

Article 6. Confiscation of the Proceeds from Child Labor. The proceeds from child labor shall be confiscated immediately by any law enforcement agent and surrendered, for destruction or charitable use, to the inter-Ministerial Committee to Combat Trafficking in Women and Children.

Article 7. Criminal Liability of Legal Entities. Legal entities shall be criminally liable and may be prosecuted for the smuggling of migrants and trafficking in persons committed by any managerial, administrative, or oversight agency, by any agency having general or collective social-welfare responsibility, or by any representatives acting for or on behalf of such legal entities, and shall be punished by any or all of the following penalties:

- (a) A fine of five times the amount stipulated for natural persons;

(b) Dissolution of the entity, if the offense prosecuted under the provisions of this Law would have been punished by imprisonment of over 15 years had it been committed by a natural person;

(c) Prohibition to engage, either directly or indirectly, in one or more of its professional or social activities, either permanently or for a period of at least ten years;

(d) Monitoring by the courts for a period of no less than five years;

(e) Prohibition by one or more of the principal places of business, headquarters, branches, or locations belonging the company used in the commission of the offense to engage in any activities, either permanently or for a period of at least ten years;

(f) Prohibition, for a period not to exceed five years, to use credit cards or to issue commercial instruments, such as checks, bills of exchange, or promissory notes, except those that allow funds to be withdrawn by their issuer when the latter is the beneficiary thereof, or those that are certified;

(g) Confiscation of the objects used or intended to be used to commit the offense, or of the proceeds from the offense; and

(h) Publication of the sentence [sic]. The liability of legal entities shall not exclude the liability of any natural person who is the author or accomplice of the above-mentioned offenses.

The penalties listed under (a) to (i) of this Article shall apply to legal entities established under public law, political parties, legally established legal movements or groups, unions or professional associations, NGOs, and religious organizations recognized as such under law when these entities commit such offenses.

Article 8. Attempt to Commit the Offenses. Any attempt to commit the offense of smuggling migrants or trafficking in persons shall be punished as if the actual offense had been committed.

Article 9. Complicity. Those who participate as accomplices in the commission of the offense of smuggling migrants and trafficking in persons shall be subject to the same punishment as that imposed on the actual perpetrators of the offense.

Article 10. Aggravating Circumstances. The following shall be considered circumstances aggravating the offense of smuggling migrants or trafficking in persons:

(a) When the death of the person who is the victim of the smuggling or trafficking results, or when the victim suffers physical or psychological harm, either temporarily or permanently;

(b) When one or more perpetrators of the offense are officials, elected or otherwise, of the central government or of local associations, or are members of the Armed Forces or of the State Security Forces;

(c) When a criminal group is involved and said group can be defined as a national or transnational organized criminal group, or one that has participated in the smuggling of migrants or the trafficking in persons;

(d) When the commission of the offense results in more than one victim;

(e) When the offense has been committed against persons suffering from mental distress or illness, either temporary or permanent, or persons under the age of 18;

(f) When the person responsible is the spouse, partner, or relative to the third degree of consanguinity or first degree of affinity of the victim of the offense;

(g) When the perpetrator or perpetrators commit the offense of smuggling migrants or trafficking in persons more than once;

(h) When a person creates, alters, produces, or falsifies travel or identification documents, supplies or facilitates the possession of such documents or any others, or illegally obtains a visa for himself or another, or encourages another to do so.

The penalty for offenses committed with the aggravating circumstances described in this Article shall be imprisonment of five years, added to the principal penalty for said offenses.

Article 11. Extenuating Circumstances. If the perpetrator of the offense of smuggling migrants or trafficking in persons or his accomplice cooperates or identifies with certainty the organizers of such activities or provides information leading to their arrest, such persons may, under a well-founded order issued by the Public Prosecutor, be exempted from criminal prosecution.

Article 12. Protection. The State shall, through the appropriate institutions, protect the privacy and identity of the victims of trafficking, and shall guarantee the confidentiality of the judicial proceedings in question.

Moreover, legal assistance shall be extended to the victims of trafficking to ensure that their views and concerns are presented and reviewed during the criminal proceedings brought against the offenders or traffickers.

Article 13. Assistance. The victims of trafficking shall receive medical and psychological care, and social welfare assistance such as counseling and information with respect to their rights. Such assistance shall be provided by government agencies and other civil society entities.

In addition, victims of trafficking shall be ensured of appropriate lodging, food, medical care, and access to education, training, and employment opportunities.

Victims of trafficking, especially women, children, and adolescents, shall undergo psychological or other evaluations needed to ensure their protection based on their age and gender.

Article 14. Forward-looking Policies. The appropriate institutions shall be required to draft policies, plans, and programs aimed at preventing and assisting the victims of trafficking and protecting, in particular, vulnerable groups, women, children, and adolescents against any new risk of victimization.

Government institutions, acting in concert with the pertinent organizations, shall undertake activities geared towards research, publicity campaigns, and economic and social initiatives aimed at preventing and combating trafficking in persons.

The monies collected from the fines set forth in this Law for the offense of trafficking in persons shall be used to compensate victims for the physical, moral, psychological, and material harm they have suffered and to implement the plans and projects established herein, without prejudice to the law instituting, throughout the national territory, homes used as temporary shelters for women, children, adolescents, and victims of inter-family or domestic violence.

Article 15. Cooperation. The institutions responsible for implementing this Law and other relevant authorities shall cooperate in sharing information with a view to determining the accuracy of travel documents, and investigating documents belonging to third parties, undocumented individuals, types of documents, means and methods used by

traffickers or groups of traffickers, ties with groups and means of detecting them, to ensure their viability, safety, and validity.

Article 16. Prevention. In developing policies, programs, and other plans aimed at preventing and combating trafficking in persons, international cooperation may be elicited, as well as the cooperation of civil society and migration-related organizations

Article 17. Training. Public officials responsible for implementing this Law, diplomatic officers, consuls, immigration officials, police officers, and others working in this field shall receive training and refresher courses on preventing and combating trafficking in persons, protecting its victims, and punishing the perpetrators thereof. Under the pertinent law, they shall also ensure strict compliance with the measures established with regard to immigration control at the country's borders with a view to combating trafficking in persons.

Article 18. Joint Action. The Ministries of the Interior and Local Government; National Security; Social Affairs and the Status of Women; Foreign Affairs, International Cooperation, and Francophone Affairs; and the Attorney General of the Republic shall, through agencies specializing in combating trafficking in persons and the smuggling of migrants, seek to ensure full compliance with the provisions of this Law, and shall be authorized to establish the pertinent rules to ensure their proper application.

Article 19. Inter-Agency Committee. A permanent inter-agency committee under the Ministry of Justice, Worship, and Correctional Institutions shall be established to combat the smuggling of migrants, trafficking in persons, and the exploitation of children. This committee shall serve as an advisory body to the government and a

coordinating entity for the activities undertaken by government authorities to combat trafficking in women and children and the exploitation and sexual abuse thereof.

Revocatory Provision

All provisions of equal or lesser rank that are inconsistent with the provisions of this Law are hereby repealed.

Final Provision

This Law shall enter into force upon publication in the *Boletín Oficial* [Official Gazette] of the State.

Done at Malabo on September 14, 2004

For a Better Guinea

[Signature]

Obiang Nguema Mbasogo
President of the Republic

[Signature]

Miguel Abia Biteo Boriko
Prime Minister, Head of Government