



# STANDARD OPERATING PROCEDURES FOR INVESTIGATING AND PROSECUTING TRAFFICKING IN PERSONS IN KENYA

*IN ACCORDANCE WITH THE KENYA COUNTER TRAFFICKING IN  
PERSONS ACT, ACT NO. 8 OF 2010*





# CONTENTS

Preamble.....	vi
Foreword.....	viii
Acknowledgements.....	X
Preface.....	xli
Drafting Committee formed by the representatives of the criminal justice system and immigration authorities in Kenya.....	xiv
Acronyms and Abbreviations.....	xv
Definitions and Terms.....	xvii
<b>1. Introduction to the SOPs.....</b>	<b>1</b>
1.1. Objectives of the SOPs.....	2
1.2. Who are these SOPs meant for?.....	2
1.3. Structure of the SOPs.....	2
<b>2. Trafficking in persons in Kenya.....</b>	<b>4</b>
2.1. Background to the Counter Trafficking in Persons Act. in Kenya, Act 8 2010.....	4
2.2. Elements of Trafficking in Persons (TiP).....	4
2.3. Difference and similarities between trafficking in persons and smuggling of migrants.....	8
<b>3. Key Roles of Police, Prosecutors and Other Stakeholders in Investigating and Prosecuting Trafficking in Persons Cases.....</b>	<b>12</b>
3.1. Introduction.....	12
3.2. The role of the police in TiP cases.....	13
3.3. The Role of The Prosecutor in TiP Cases.....	13
3.4. Other Agencies that Complement the Investigation and Prosecution Process.....	13
3.5. Best Practices for Regular Coordination Between the Police and Prosecutors Handling Trafficking Cases.....	14
<b>4. Standard Operation Procedures for Investigating and Prosecuting Trafficking in Persons in Kenya.....</b>	<b>15</b>
ACTION 1 - Receiving/ obtaining information on trafficking in persons cases (pre-investigation).....	15
Direct Reporting.....	15
Pro-active assessment of indicators and intelligence.....	16
Reporting via 'hotlines' either by victims or others.....	16
Linked Actions.....	16
ACTION 2 - Assess information / define investigation strategy/planning.....	17
Assessing information.....	17
Defining an investigative strategy.....	17
Multi agency teams.....	18
Linked Actions.....	18

<a href="#">ACTION 3 - Identification and Protection of Victims of Tip</a>	<a href="#">19</a>
<a href="#">Introduction</a>	<a href="#">19</a>
<a href="#">Definition of a victim of trafficking</a>	<a href="#">19</a>
<a href="#">Challenges in identifying victims of TIP</a>	<a href="#">19</a>
<a href="#">Investigation options in TIP cases</a>	<a href="#">20</a>
<a href="#">Victim Identification Process</a>	<a href="#">21</a>
<a href="#">Common Signs or Indicators by Forms of Exploitation</a>	<a href="#">22</a>
<a href="#">Identification and Referral</a>	<a href="#">23</a>
<a href="#">Linked Actions</a>	<a href="#">23</a>
<a href="#">ACTION 4 - Information Sufficient to Start Investigation</a>	<a href="#">24</a>
<a href="#">Linked Actions</a>	<a href="#">24</a>
<a href="#">ACTION 5 - Information not sufficient to start investigation</a>	<a href="#">25</a>
<a href="#">Linked Actions</a>	<a href="#">26</a>
<a href="#">ACTION 6 - Investigations where Immediate Raid/ Rescue not Required</a>	<a href="#">26</a>
<a href="#">Investigative Evaluation</a>	<a href="#">26</a>
<a href="#">Investigative Options</a>	<a href="#">26</a>
<a href="#">Linked Actions</a>	<a href="#">27</a>
<a href="#">ACTION 7- Risk Assessment</a>	<a href="#">27</a>
<a href="#">Introduction</a>	<a href="#">27</a>
<a href="#">Risk Assessment and Raid/Rescues</a>	<a href="#">28</a>
<a href="#">Other applications of risk assessment in TIP investigations</a>	<a href="#">29</a>
<a href="#">Linked Actions</a>	<a href="#">29</a>
<a href="#">ACTION 8 - Planning a Raid/Rescue</a>	<a href="#">29</a>
<a href="#">Linked Actions</a>	<a href="#">30</a>
<a href="#">ACTION 9 - Carrying out a raid/rescue</a>	<a href="#">31</a>
<a href="#">Linked Actions</a>	<a href="#">33</a>
<a href="#">ACTION 10 – Crime Scene Investigation (CSI)</a>	<a href="#">33</a>
<a href="#">Crime Scene Investigation (CSI)</a>	<a href="#">33</a>
<a href="#">CSI Objectives</a>	<a href="#">33</a>
<a href="#">Linked Actions</a>	<a href="#">34</a>
<a href="#">ACTION 11 - Interviews</a>	<a href="#">35</a>
<a href="#">Introduction to the PEACE model</a>	<a href="#">35</a>
<a href="#">Interviewing the Child Victims</a>	<a href="#">38</a>
<a href="#">Linked Actions</a>	<a href="#">39</a>
<a href="#">ACTION 12 – Presumed victim and victim/witness protection</a>	<a href="#">40</a>
<a href="#">Practical Actions in Victims and Witness protection</a>	<a href="#">40</a>
<a href="#">Linked Actions</a>	<a href="#">41</a>
<a href="#">ACTION 13 - Financial Investigations</a>	<a href="#">41</a>
<a href="#">Financial Investigation Actions</a>	<a href="#">41</a>
<a href="#">Proactive Operations</a>	<a href="#">43</a>
<a href="#">Reactive Operations</a>	<a href="#">43</a>
<a href="#">Linked Actions</a>	<a href="#">44</a>

<a href="#">ACTION 14 - International cooperation</a>	<a href="#">45</a>
<a href="#">Introduction</a>	<a href="#">45</a>
<a href="#">Domestic Legislation</a>	<a href="#">45</a>
<a href="#">Forms of International Cooperation (IC)</a>	<a href="#">45</a>
<a href="#">Interpol Network</a>	<a href="#">46</a>
<a href="#">Joint Investigative Teams</a>	<a href="#">46</a>
<a href="#">Informal IC Requests and Central Authority</a>	<a href="#">47</a>
<a href="#">Parallel Requests</a>	<a href="#">47</a>
<a href="#">Practical Guidance</a>	<a href="#">48</a>
<a href="#">Linked Actions</a>	<a href="#">48</a>
<a href="#">ACTION 15 - Preparing for Court</a>	<a href="#">49</a>
<a href="#">Introduction</a>	<a href="#">49</a>
<a href="#">Convene Matter in the Pre-trial stage</a>	<a href="#">49</a>
<a href="#">Bail/Bond</a>	<a href="#">50</a>
<a href="#">Interlocutory Application</a>	<a href="#">50</a>
<a href="#">Pre-Trial Conference</a>	<a href="#">50</a>
<a href="#">Handling Vulnerable and Intimidated Victims and Witnesses</a>	<a href="#">50</a>
<a href="#">Investigations Should remain engaged in the trial stage</a>	<a href="#">51</a>
<a href="#">Orders Post Conviction</a>	<a href="#">51</a>
<a href="#">Linked Actions</a>	<a href="#">52</a>
<a href="#">ACTION 16 - Support During and After Court Proceedings</a>	<a href="#">52</a>
<a href="#">Linked Actions</a>	<a href="#">52</a>

<b><a href="#">5. Key References</a></b>	<b><a href="#">53</a></b>
<a href="#">5.1. National legislation</a>	<a href="#">53</a>
<a href="#">5.2. Policies, Handbooks and Toolkits</a>	<a href="#">53</a>
<a href="#">5.3. Reports</a>	<a href="#">53</a>
<a href="#">5.4. International Instruments</a>	<a href="#">55</a>

<b><a href="#">Annexes</a></b>	<b><a href="#">.ii</a></b>
<a href="#">List of Annexes:</a>	<a href="#">iii</a>
<a href="#">Annex 1 – Terms of Reference for the Multi-Agency Technical Working Group for the Implementation of the SOPs</a>	<a href="#">iv</a>
<a href="#">Annex 2 – Indicators of Trafficking in Persons</a>	<a href="#">xi</a>
<a href="#">Annex 3 – Interviewing: the PEACE model</a>	<a href="#">xix</a>
<a href="#">Annex 4 – Interview check list</a>	<a href="#">xxiv</a>
<a href="#">Annex 5 - Vulnerability Assessment Tool</a>	<a href="#">xxviii</a>
<a href="#">Annex 6 - Crime Scene Example with Guidance</a>	<a href="#">xxxii</a>
<a href="#">Annex 7 – Hawala and Financial Investigations (FI)</a>	<a href="#">xxxviii</a>
<a href="#">Annex 8 – Mutual Legal Assistance (MLA)</a>	<a href="#">xlii</a>
<a href="#">Annex 9 – Short description of the ROCK Project</a>	<a href="#">xlvi</a>
<a href="#">Annex 10 – SOPs Chart</a>	<a href="#">xlix</a>
<a href="#">Annex 11 – SOPs Check List</a>	<a href="#">l</a>



## PREAMBLE



Trafficking in Persons (TiP), also known as trafficking in persons, is a grave violation of human rights and a crime as per international and domestic laws. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, requires States take effective action to prevent and combat trafficking in persons. Further, the Sustainable Development Goals' Targets 5.2, 8.7 and 16.2 promote the eradication of forced labour, modern slavery and trafficking in persons. States, therefore, have the primary obligation to protect their citizens, prevent and combat trafficking in persons.

Every country is affected by trafficking in persons; either as one or a combination of source, transit or destination. Our country, unfortunately, has been identified by various reports as a source, transit and destination for trafficking in persons. Kenya's counter trafficking in persons efforts are premised on the 4 Ps pillars - Prevention, Protection, Prosecution and Partnerships. These Standard Operating Procedures respond to the third Pillar, Prosecution.

We have to take deliberate steps to eradicate the business of trading in human beings, therefore, cooperation among actors involved as defined in these Standard Operating Procedures is a great step in the right direction. Coordinated collaboration in detection, investigation and prosecution of trafficking in persons is of paramount importance. The SOPs trigger an effective system that will yield punitive sentences for traffickers by providing a step by step guidance to investigators, prosecutors and other stakeholders involved in investigating trafficking in persons matters. The SOPs will enable all relevant stakeholders to be better equipped to fight traffickers.

I extend my appreciation to the Counter Trafficking in Persons Advisory Committee & Secretariat, the Multi-Agency Technical Working Group on Prosecution, UNODC and CIVIPOL for developing the Standard Operating Procedures. I highly recommend that it is disseminated for immediate use by the actors.



As the Cabinet Secretary for the Ministry in charge of leading the fight against trafficking in persons, I express the commitment of the Government in combating trafficking in persons and the implementation of the Standard Operating Procedures for Investigating and Prosecuting Trafficking in Persons in Kenya.

A handwritten signature in black ink, appearing to read 'Florence Bore'.

**Hon. Florence Bore**  
*Cabinet Secretary*  
**Ministry of Labour and Social Protection**



## FOREWORD



Trafficking in persons is known as modern-day slavery and a serious human rights violation. It affects most of the countries in Sub-Saharan Africa. Women and children are the most affected by the scourge at all levels which manifests in different forms such as sexual exploitation, prostitution, forced labour, debt bondage and child sex tourism.

Kenya has been identified as a source, transit and destination country for victims of trafficking in persons. In response to the growing trends of trafficking in persons syndicates and their global impact, different countries have enacted laws for the prevention, detection, protection and

prosecution of the vice which significantly poses a challenge and a threat to National Security.

Despite having a well-established and progressive normative framework, conviction rates remain low. This can be attributed to factors such as the capacity of the prosecutors, investigators and other criminal justice players in the subject and the lack of proper mechanisms to protect the victims.

The Counter Trafficking in Persons Act, of 2010 was enacted to provide a comprehensive legislative framework to combat and prevent trafficking in persons in Kenya. Whereas the Act provides for the place of the victim in the Criminal Justice chain, there is a need to improve investigations and prosecution of trafficking in persons cases in Kenya. Similarly, the country has been rated at tier 2, which means that it has made significant efforts to deal with trafficking in persons cases but a lot remains to be done to improve the rating.

To improve investigation and prosecution of Trafficking in Person cases, the Office of the Director of Public Prosecutions (ODPP) and the Directorate of Criminal Investigations (DCI) with the support of the UNODC and CIVIPOL under the Better Migration Management (BMM) project have developed Standard Operating Procedures for investigation and prosecution of trafficking in persons cases in Kenya. These will enhance close collaboration and cooperation between the two agencies and other critical stakeholders.

The Standard Operating Procedures (SOPs) will ensure standardization of the investigation and prosecution of trafficking in persons cases, reduce revictimization of victims, ensure protection, care and attention are provided





to victims and witnesses and take appropriate steps to prevent trafficking and re-trafficking of victims. Further, the SOPs are intended to provide procedures on how the ODPP and NPS will investigate and prosecute trafficking in persons offences.

I take this opportunity to thank the Drafting Committee, from the Office of the Director of Public Prosecutions (ODPP), the Directorate of Criminal Investigations (DCI), the Counter Trafficking in Persons (CTIP) Secretariat, and other stakeholders. I hope that the SOPs will be a useful tool for Prosecutors and Investigators in dealing with trafficking in persons crimes and that they will enhance the capacity of other criminal justice stakeholders.

**Renson Mulele Ingonga, OGW**  
**Director of Public Prosecutions**



## ACKNOWLEDGMENTS



Trafficking in persons continues to be a great issue globally with an estimated 27.6 million victims. People of all ages, backgrounds, and nationalities are vulnerable to this profit-driven vice. Kenya's response has been edified over the years with great strides such as the enactment of the Counter Trafficking in Persons Act (2010), the launch of the National Referral Mechanism, and now, these SOPs on the Investigation and Prosecution of Trafficking in Persons Cases.

The National Police Service (NPS) joined this fight by establishing the Transnational Organized Crime Unit (TOCU) and the Anti-Trafficking in persons Child Protection Unit (AHTCPU) domiciled at the DCI. Through these units, NPS has grown its response to various forms of exploitation that face both adults and children within the Kenyan borders. It has also collaborated with international partners such as INTERPOL and ROCK in order to support the fight against transnational cartels.

These SOPs are therefore the next logical and strategic step in ensuring a collaborative and protection-centred response to trafficking in persons. Collaboration between investigators and prosecutors has always been essential in the response to the effective response to crime. These SOPs, which were drafted by a multi-agency committee, provide step-by-step guidance to stakeholders who interact with victims of trafficking. They provide a clear guide on the important role played by each player as well as the critical role of cooperation at every step of intervention.

We are grateful to all of those who have worked to ensure these SOPs were drafted at this time; the representatives from DCI, ODPP, the Counter-Trafficking Secretariat, Kenya National Commission on Human Rights (KNCHR), and Civil Society Organizations. Each of the members provided



insights into this comprehensive tool based on their expertise and recognition of the important role played in our continued collaboration. We also offer our gratitude to UNODC and CIVIPOL for their support in this process under the Better Migration Management Programme.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**MOHAMED I. AMIN, EBS, OGW, 'ndc' (K)**  
**DIRECTOR OF CRIMINAL INVESTIGATION**



## PREFACE

Based on a previous needs assessment and consequent recommendations by the ODPP and the National Police Service – DCI, the authorities of Kenya agreed in the planning consultations with the Better Migration Management Programme (BMM), co-funded by the European Union and the German Federal Ministry for Economic Cooperation and Development (BMZ), that BMM would support the development of Standard Operating Procedures for Investigating and Prosecuting Trafficking in Persons. BMM aims to improve migration management in the region, and in particular to address the trafficking and smuggling of migrants within and from the Horn of Africa. BMM covers Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda.

The BMM Implementing Partners UNODC (United Nations Office on Drugs and Crime) and CIVIPOL (the technical international co-operation operator of the French Ministry of the Interior), have as a consequence supported, with the criminal justice system agencies of Kenya and other relevant actors, the design of the SOPs for a coordinated approach in the criminal proceedings against trafficking in persons. The SOPs are meant to be widely disseminated for their systematic use in the field by police officers and prosecutors, immigration officers and other first responders.

The SOPs have been developed through a multi-stakeholder process in which the criminal justice system actors of Kenya have focused on designing practical anti-trafficking guidelines, with reference to the Kenyan legal and procedural framework. Initial consultative workshops led to the set-up of a Drafting Committee that worked in dedicated workshops with the support of UNODC and CIVIPOL experts and the participation of the ODPP and DCI, as well as the Counter Trafficking in Persons Secretariat. An advanced draft of the SOPs was discussed in a broad multi-agency workshop in Naivasha in October 2021, that saw the participation of representatives of the Kenya National Commission on Human Rights and specialized Civil Society Organisations of Kenya. In June 2023, the SOPs that were validated in the final workshop were officially endorsed and shared with the senior management of involved institutions. In order to promote and oversee the dissemination and implementation of the SOPs and monitor their use, a Multi-agency Technical Working Group led by the Office of Director of Public Prosecution and National Police Service Directorate of Criminal Investigations was established under the Counter Trafficking in Persons Advisory Committee (see ToRs in the Annexes).



A human rights-based and victim/vulnerability-centred approach, as well as gender-sensitive and child-focused attention, along with multi-agency strategies and practices are adopted as structural elements of the SOPs. The SOPs are conceived as a practical tool, that bring together reactive and proactive investigative approaches and are based on intelligence-led and prosecution-guided investigations in which also international police cooperation and financial investigations are comprised.

The Drafting Committee for the SOPs was formed by representatives of the following agencies: ODPP, DCI, Counter Trafficking in Persons Secretariat and joined for the broad validation workshop by the representatives of other organisations, as follows: ANPPCAN-RO, HAART Kenya, CDTD, Stop The Traffik Kenya, KNCHR and Lawyers without Borders. The draft was presented to the Counter Trafficking in Persons Advisory Committee for input and approval in June 2023.

The drafting process was guided by Pieter Cronje, UNODC consultant, Paul David Newton, CIVIPOL expert and by Marco Bufo, CIVIPOL BMM Regional Coordinator and Team Leader. The guidance and monitoring check list was developed by CIVIPOL Monitoring Evaluation and Learning experts Phil Marshall and Martina Melis.

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with the support by UNODC and CIVIPOL

in the framework of BMM – Better Migration Management Programme co-funded by the European Union and the German Federal Ministry for Economic Cooperation and Development (BMZ)



## ACRONYMS AND ABBREVIATIONS

AC	Counter Trafficking in Persons Advisory Committee established under Sec 19 of the CTIP Act 2010
ADR	Alternative Dispute Resolution
AHTCPU	Anti-Trafficking in persons and Child Protection Unit
ANPPCAN	African Network for the Prevention and Protection of Child Abuse and Neglect
ARA	Assets Recovery Agency
CIVIPOL	International technical cooperation operator of the French Ministry of the Interior
CM	Case Manager
CMO	Chief Medical Officer
CPC	Criminal Procedure Code
CSI	Crime Scene Investigations
CSO	Civil Society Organisations
CTIP Act	Counter Trafficking in Persons act (2010)
DCI	Directorate of Criminal Investigation
DCS	Directorate of Children Services
DIS	Directorate of Immigration Services
DNA	Deoxyribonucleic Acid
DSW	Directorate of Social Welfare
EACC	Kenya Ethics and Anti-Corruption Commission
EAPCCO	Eastern Africa Police Chiefs Cooperation Organisation
FI	Financial Investigation
FIU	Financial Investigation Unit
FBOs	Faith Based Organizations
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GVRC	Gender Violence Recovery Centre
IC	International co-operation
ILO	International Labour Organization
IO	Investigating Officer
IOM	International Organization for Migration
INTERPOL	International Criminal Police Organization
JIT	Joint Investigation Teams
KRCS	Kenya Red Cross Society



KNCHR	Kenya National Commission on Human Rights
LG	Legal Guardians
LR	Letters Rogatory or Letter of Request
NA	Not Applicable
NIS	Kenya National Intelligence Service
MAT	Multi-Agency Team
MLA	Mutual legal assistance
MOU	Memorandum of Understanding
NGO	Non-Governmental Organisation
NPA	National Plan of Action
NPS	National Police Service
NRM	National Referral Mechanism
OCN	Organized Crime Network
ODPP	Office of the Director of Public Prosecution
OB	Occurrence book
PEACE	Plan and prepare, Engage and explain, Account, Closure, Evaluate
PC	Penal Code of Kenya
PP	Public Prosecutor
PS	Police Station
ROCK	Regional Operational Centre in support of the Khartoum Process and the AU Horn of Africa Initiative
SCCIO	Sub-County Criminal Investigating Officer
SCU	Serious Crimes Unit within the Directorate of Criminal Investigation
SOC	Scene of Crime
SoM	Smuggling of Migrants
SW	Social Worker
TiP	Trafficking in Persons
TOCU	DCI Transnational Organised Crime Unit
UNODC	United Nations Office on Drugs and Crime
VoT	Victims of Trafficking
WPC	Ward Police Commander (OCS)





## DEFINITION AND TERMS

The following definitions and terms will apply to these Standard Operational Procedures.

<b>Abuse of vulnerability</b>	Refers to any situation in which the person involved has no real and acceptable alternative but to submit to exploitation. This is to acknowledge that many trafficked persons are under the influence to whom they are vulnerable, for example a person holding a position of official authority or a parent or a spouse. A vulnerable person can be any person who is in Kenya illegally or without proper documents: a pregnant person, a person with a disability, a person addicted to a drug or other substance or a child.
<b>Advisory Committee</b>	The Kenya Counter Trafficking in Persons Advisory Committee established under section 19 of the CTIP Act no 8 of 2010.
<b>Alternatives to prosecution</b>	Cases where a prosecutor has sufficient evidence to charge an offender, but prosecution may not be the best course of action. In such cases a prosecutor may decide not to charge and instead refer the offender to a different institution or form of penalty. For example, diversion.
<b>Child</b>	Means an individual who has not attained the age of eighteen years as described by the Children Act, 2022 'Children' has a corresponding meaning.
<b>Child labour</b>	Includes all forms of slavery or practices similar to slavery, trafficking a child for the purpose of engaging in work away from home and from the care of the child's family, in circumstances within which the child is exploited.
<b>Coercion</b>	Use or threatening to use physical violence, or use of psychological violence that makes a person believe that if they do not provide a service or labour, they or someone close to them will suffer serious harm.
<b>Compensation</b>	Means an award granted to a victim who has suffered economic or emotional loss, damage of property, or physical injury or harm as a result of an offence after claim has been justified.
<b>Competent Agency</b>	Any institution, organization or person that has legally and professionally delegated or vested authority, capacity and power to perform identification, prevention, protection, prosecution.
<b>Consent</b>	Means an agreement by two parties to the same thing in the same sense or where parties concur with a proposal.
<b>Debt bondage</b>	The status or condition arising from a pledge by the debtor of his or her personal services or labour, or those of a person under his or her control as security or payment for debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied towards the liquidation of the debt.



<b>Diversion</b>	Means a process for resolving criminal cases without resort to full judicial proceedings. Diversion can take the form of a simple caution or warning, an apology to the victim, payment for damage done, or it may involve referral to a structured diversion programme, restorative justice process or similar scheme. This enables Offenders to be dealt with by non-judicial bodies and thereby avoiding the negative effects of formal judicial proceedings, a criminal conviction and a criminal record.
<b>Evidential test</b>	Means the test used to ensure that there is sufficient evidence to provide a realistic prospect of conviction against a suspect on each charge.
<b>Exploitation</b>	“Exploitation” includes at a minimum, sexual exploitation, forced marriage, child marriage, forced labour, harmful child labour, use of a child in armed conflict, use of a person in illegal activities, debt bondage, slavery or practices similar to slavery or servitude, human sacrifice, the removal of organs or body parts for sale or for purposes of witchcraft, harmful rituals or practices.
<b>Forced labour</b>	Means the extraction of work or services from any person for the purpose of exploitation.
<b>Human Rights</b>	Liberties and benefits that all human beings should be able to claim “as of right” in the society in which they live. These rights are contained in the Universal Declaration of Human Rights and Chapter Four of the Constitution of Kenya.
<b>Investigation Officer</b>	Means a police officer, or any other person formally mandated by statute, who is in charge of a criminal investigation.
<b>Investigative agency</b>	Means the National Police Service, Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, Commission on Administration of Justice, Kenya Revenue Authority, Anti-Counterfeit Agency or any other Government entity mandated with criminal investigation role under any written law.
<b>Identity Document</b>	A piece of documentation designed to prove the identity of the person as prescribed by any written law carrying it. (For example, passports and national identity cards.)
<b>Informed Consent</b>	An agreement to do something or to allow something to happen- made with complete knowledge of all relevant facts, such as the risks involved.
<b>Law enforcement officials</b>	According to the Kenya Counter Trafficking in Persons Act, these include Police officers, Immigration officers, Customs officers
<b>Letters Rogatory</b>	Letters rogatory or letters of request are a formal request from a court to a foreign court for some type of judicial assistance. The most common remedies sought by letters rogatory are service of process and taking of evidence.
<b>National Referral Mechanism (NRM) Coordinator</b>	This is the coordinating agency of the referral network (the Ministry responsible for CTIP matters). The NRM Coordinator serves as the focal point for coordinating referrals to service providers, for directing service provision, convening regular meetings of service providers etc.



<b>MAT NRM Network</b>	A group of agencies/organizations that provide comprehensive services to meet the needs of the people affected by TIP (Referral Network).
<b>Non-State Actors</b>	Organizations not linked to the State for example International Organizations, NGO's, NPO's, FBO's
<b>Presumed Victim of Trafficking</b>	A person who is perceived to be a victim of trafficking subject to confirmation through a victim identification and screening process.
<b>PEACE model</b>	The PEACE Model of investigative interviewing was developed in the early 90's as a collaborative effort between law enforcement and psychologists in England and Wales. This model takes a conversational, non-confrontational approach to getting information from an investigation interview subject.
<b>Servitude</b>	Forcing someone to perform labour or provide services, through any means, because they believe that if they do not then they or someone else will suffer serious harm.
<b>Sexual exploitation</b>	Forcing someone into prostitution and other sexual acts through coercion, intimidation, and other non-voluntary methods.
<b>Slavery</b>	Is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Having ownership of a person so that the person is regarded as property.
<b>Smuggling</b>	Facilitating the entry of a person who is not a citizen or permanent resident, into a country in exchange for payment or material benefit.
<b>Organized Criminal Group</b>	A structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences, in order to obtain, directly or indirectly, a financial or other material benefit.
<b>Offence</b>	Means an act, attempt or omission punishable by law, and includes a regulatory offence.
<b>Offender</b>	For the purpose of the SOPs means a Suspect, Subject, Accused person or any other person who has been arrested for a criminal offence.
<b>Presumed victim of trafficking</b>	Presumed victim of trafficking (also referred to as "presumed trafficked person"): A person who is presumed to be a victim of trafficking based on a number of trafficking indicators and/or an initial screening interview. Though the indicators and/or the elements of the initial screening interview still have to be scrutinized (e.g. through an in-depth or evidence interview; or by gathering further intelligence/evidence).
<b>Prosecutor</b>	For the purpose of the guidelines, has the meaning assigned in the Office of the Director of Public Prosecutors Act 2013 and includes any other person exercising delegated powers of the DPP under Article 157(9) of the Constitution.
<b>Public Interest test</b>	Means the test applied by prosecutors to decide whether charging a suspect is in the interest of the wider administration of justice.



<b>Restitution</b>	Means the act of restoring the victim, to the extent possible, to the same position they were in prior to the offence, which resulted in loss or injury.
<b>The Threshold test</b>	Means the test applied by prosecutors in order to charge a suspect upon reasonable suspicion and where there is a reasonable prospect of additional evidence being available.
<b>The Ministry</b>	The Ministry responsible for CTIP as provided for in the CTIP Act 2010.
<b>Trafficking for sexual exploitation</b>	Means trafficking — (a) with the intention of doing anything to or in respect of a particular person during or after a journey within Kenya or in any part of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006; or (b) in the belief that another person is likely to do something to or in respect of the person trafficked, during or after the journey in any part of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006 (No. 3 of 2006).
<b>Trafficking in Persons</b>	The recruitment, transportation, transfer, harbouring 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 (TiP Protocol).
<b>Travel Documents</b>	All documents, which are acceptable as proof of identity for the purpose of travel and entry into another country. They include passports, visas, identity cards or other relevant documents.
<b>Two- stage test</b>	Comprises of both the Evidential test and Public Interest test.
<b>United Nations Convention against Transnational Organized Crime (UNTOC)</b>	The treaty that deals with the fight against organized crime in general and some of the major activities in which transnational organized crime is commonly involved, such as money laundering, trafficking, corruption and the obstruction of investigations or prosecution.
<b>Victim of Trafficking</b>	Means a person who is trafficked or has been trafficked as defined in the PTIP Act 2009.
<b>Vulnerability</b>	Refers to any situation in which the person in-volved has no real and acceptable alternative but to submit to exploitation.
<b>Vulnerable Victim</b>	Means a natural person who suffers injury, loss or damage as a consequence of an offence, and who, due to age, gender, disability or other special characteristics may require the provision of special justice and support.
<b>Vulnerable Witness</b>	Means a person who has made a statement or has given or agreed to give evidence in relation to an offence or criminal proceedings in Kenya or outside Kenya, and requires protection on the basis of an existing threat or risk



## **1. INTRODUCTION TO THE STANDARD OPERATING PROCEDURES (SOPS)**

Trafficking in Persons and Smuggling of Migrants are crimes that have a huge impact on societies all over the world including in Kenya. Organized criminal groups are making millions by exploiting people. The foundation of the fight against trafficking in Kenya is the Counter Trafficking in Persons Act 8 of 2010 (Revised in 2012). Section 20 of the Act establishes the Advisory Committee which coordinates the overall anti-trafficking in persons response in the country in terms of prevention, protection, prosecution and partnership.

The key role players in investigation and prosecution of TiP cases in Kenya are the Kenya National Police Service (NPS), especially the Transnational Organised Crime Unit (TOCU), the Anti-Trafficking in persons and Child Protection Unit (AHTCPU) under the Directorate of Criminal Investigation (DCI), together with the Office of the Director of Public Prosecution (ODPP). They are mandated to address the offences of Trafficking in Persons (TiP). Due to complexities and need for specialized investigation and prosecution, there is need to develop Standard Operating Procedures. These Standard Operating Procedures (SOPs) are therefore intended as an easy tool of reference for police and prosecutors in Kenya on how to cooperate during the investigation and prosecution of cases of TiP and sets out professional standards and guidelines. The SOPs are a reference tool for other stakeholders in different ways relevant to the investigation and prosecution of TiP cases: Counter Trafficking in Persons Secretariat, Judiciary, Immigration, Customs, Kenya National Commission on Human Rights, financial intelligence entities, labour inspection and occupational safety and health services, as well as specialised NGOs/ CSOs.

Through the ODPP, the National Police Service and other relevant stakeholders, the SOPs support the Advisory Committee's mandates defined in Section 20 (2) in particular in the following parts:

- (a) formulation of a comprehensive and integrated program to prevent and suppress the trafficking in persons;
- (b) coordination of policies and programmes of the agencies to effectively address the issues and problems attendant to trafficking in persons;
- (c) coordination of the dissemination of information on the law and the issues relating to trafficking in persons through concerned agencies and non-governmental organizations;
- (e) monitoring and evaluation of the progress of Kenya with respect to prevention, protection and prosecution efforts relating to trafficking in persons;
- (h) development of mechanisms to ensure the timely, coordinated, and effective response to cases of trafficking in persons;



### **1.1. Objectives of the SOPs**

The SOPs aim at supporting and guiding law enforcement officers and prosecutors to conduct professional investigation and prosecution on trafficking in persons that strive towards:

- i. Standardization of the investigation and prosecution process when dealing with TiP cases in a professional way;
- ii. Ensuring timely, coordinated, and effective response to cases of trafficking in persons;
- iii. Expeditious law enforcement and prosecution using common methods when completing the various stages of the investigative process;
- iv. Non-victimization or re-victimization of victims;
- v. Enhanced appropriate protection/ care/ attention to victims/ witnesses

### **1.2. Who are these SOPs meant for?**

The SOPs are a tool for law enforcement officials, prosecutors and other stakeholders involved in investigating and prosecuting crimes of trafficking in persons. According to the Kenya Counter Trafficking in Persons Act, these include Police officers, Immigration officers, Customs officers as well as Prosecutors. (list not exhaustive)

### **1.3. Structure of the SOPs**

These SOPs have been designed with chapters, which contain the background information and relevant legislative references for actions to be taken by the law enforcement officers. There are however certain processes and procedures that follow a golden thread throughout the SOPs. This resource document has been developed in an effort to ensure that law enforcement officials including investigating officers and prosecutors and other relevant role players have the basic knowledge, understanding and experience in the application of the Kenya Counter Trafficking in Persons Act and other relevant legislation<sup>1</sup>. Therefore, this SOP is a brief and quick step by step reference document which briefly explain of the laws and procedures of optimal importance to law enforcement officers working on investigating and prosecuting trafficking cases and how to cooperate in this process. These are only basic guidelines. For a detailed understanding of the law, the reader is advised to refer to the Kenya Counter Trafficking in Persons Act 8 of 2010 CAP. 61 (Revised in 2012)

The SOPs map out a route for conducting TiP investigations and prosecutions. The basic concept is rather similar to a 'flow chart' where

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<sup>1</sup> Relevant legislation includes, but is not limited to, the Kenya Penal Code

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you are asked to make decisions based on the information you have and then go to the next appropriate stage of an investigation.

This process might not follow the linear sequence of the SOPs listed below, since the SOPs should be used on a case by case basis. Therefore, at the end of each Action, guidance is given on the further Action or Actions you should consider taking.

The investigation actions are set out in the following order:

1. Receiving/obtaining information on trafficking in persons cases
2. Assess information / define investigation strategy/planning
3. Identification and protection of victims of TiP
4. Information sufficient to start investigation
5. Information not sufficient to start investigation
6. Investigations where immediate raid/rescue not required
7. Risk Assessment
8. Planning a raid/rescue
9. Carrying out a raid/rescue
10. Crime Scene Investigation (CSI)
11. Interviews
12. Presumed victims and victim/witness protection
13. Financial Investigations
14. International cooperation
15. Preparing for court
16. Support during and after court proceedings



## 2. TRAFFICKING IN PERSONS IN KENYA

### 2.1. Background to the Counter Trafficking in Persons Act. in Kenya, Act 8 2010

The CTIP Act 2010 (revised 2012), which implements Kenya’s obligation under the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (TIP Protocol) sets out the components that constitute the offence of trafficking in persons.

### 2.2. Elements of Trafficking in Persons (TiP)

It is vital for both the prosecutors and investigators to know and understand the elements and ingredients of the crime of trafficking in persons. Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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.

KEY ELEMENTS WHEN TRAFFICKING ADULTS	Section 3 of the Counter-Trafficking in Person Act No. 8 of 2010 (The Act)
<p><b>1. ACT (Actus reus)</b> An action - What traffickers do?</p>	<p>The <b>ACT</b> may consist of one or more of the following:</p> <ul style="list-style-type: none"> <li>■ recruitment,</li> <li>■ transportation,</li> <li>■ transfer,</li> <li>■ harbouring or</li> <li>■ receipt of persons.</li> </ul> <p>These terms are taken from the UNTOC Protocol. They are not defined further in the Protocol and should be taken to have their natural meaning. Further guidance on interpretation in the context of The Act is given below.</p> <p>All interpretation remains ultimately with the Kenyan Judiciary.</p>





<p><b>Recruitment</b></p>	<p><b>Recruitment Not defined in the Act</b>  <b>Recruitment</b> pre-supposes involvement of persons by selecting them for trafficking. It can be said to be the act of 'drawing people into a process'. There are many ways in which it can be carried out but the precise circumstances are irrelevant; in places of leisure, by offering jobs or training, by illegal or quasi legal agencies, by closing a fictitious marriage.</p>
<p><b>Harbouring</b></p>	<p><b>Harbouring of the victim Not defined in Act</b>  Harbouring should be understood as the placement of the victim to a secret place as to avoid disclosure thereof by law enforcement, or the third persons able to report the trafficker in persons.</p>
<p><b>Transfer and transportation</b></p>	<p><b>Transfer and transportation Not defined in the Act</b>  <b>Transfer</b> To move from one place to another.  <b>Transportation</b></p>
<p><b>Receipt</b></p>	<p><b>Receipt Not defined in the Act</b>  A common meaning of 'receipt' is to take delivery of something.</p>
<p><b>2. MEANS (Actus reus)</b>  <b>By means of - How they do it?</b></p>	<p>The <b>MEANS</b> may be consisting of one or more of the following:</p> <ul style="list-style-type: none"> <li>■ Threat or use of force or other forms of coercion,</li> <li>■ abduction,</li> <li>■ fraud,</li> <li>■ deception,</li> <li>■ abuse of power or position of vulnerability</li> <li>■ giving or receiving payments or benefits to achieve consent of a person having control over another.</li> </ul>



<p><b>Threats violence or other forms of physical coercion</b></p>	<p><b>Using threats or actual violence</b> against the victim or against the victim's family. This may include assault, kidnapping, rape and even murder.</p> <p><b>Section 3(1)a of the Counter-Trafficking in Person Act No. 8 of 2010</b> Threat or use of force or other forms of coercion;</p> <p><b>Force</b></p> <p>The intimidation of victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats.</p>
<p><b>Abduction</b></p>	<p><b>Section 3(1)b</b> of the Counter-Trafficking in Person Act No. 8 of 2010 (b) abduction</p> <p>Abduction can be defined as the wrongful, and usually forcible, carrying off of a human being.</p>
<p><b>Fraud</b></p>	<p><b>Section 3(1)c</b> of the Counter-Trafficking in Person Act No. 8 of 2010 (c) fraud;</p> <p>A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.</p> <p>A false representation of a matter off act— whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed —that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury.</p>
<p><b>Deception</b></p>	<p><b>Section 3(1)d</b> of the Counter-Trafficking in Person Act No. 8 of 2010 (d) deception;</p> <p>Deception should include giving false information about certain circumstances or deeds, also concealment, secretion of real facts and false promises. The person may be either fully deceived or partially deceived (half- truths are told)</p>



<p><b>Abuse of power or of position of vulnerability</b></p>	<p><b>Section 3(1)e</b> of the Counter-Trafficking in Person Act No. 8 of 2010 (e) abuse of power or of position of vulnerability  <b>Abuse of power</b>                  Improper use of authority by someone who has that authority because he or she holds a public office. Abusing your position as for example a police official, customs officer government officials, etc.  <b>Exploiting the vulnerability of another</b>                  Taking the advantage of someone's vulnerability</p>
<p><b>Giving payments or benefits to obtain the consent of the victim of trafficking in persons</b></p>	<p><b>Section 3(1)f</b> of the Counter-Trafficking in Person Act No. 8 of 2010 giving payments or benefits to obtain the consent of the victim of trafficking in persons, for example paying a parent or family member.</p>
<p><b>3.PURPOSE (Mens rea)</b>  <b>For the purpose of - Why they do it</b></p>	<p>Exploitation includes but is not limited to - keeping a person in a state of slavery; subjecting a person to practices similar to slavery; involuntary servitude; forcible or fraudulent use of any human being for removal of organs or body parts; forcible or fraudulent use of any human being to take part in armed conflict; forced labour; child labour; sexual exploitation; child marriage; forced marriage.</p>
<p><b>Buying or Selling</b></p>	<p><b>Buying or Selling of a person</b>  <b>Not defined in Kenya Penal Code</b>  <b>To buy</b> - To obtain by means of money or the like  <b>To sell</b> - To exchange the ownership of someone in exchange for money                  Both assume the ownership of someone thus enforcing slavery like conditions</p>
<p><b>Bartering</b></p>	<p><b>Bartering not defined in the Penal Code</b> To trade by exchanging goods or services without the use of money currency.</p>



It is critical that prosecutors prove all three elements of the crime and it is therefore critical for investigators to collect the evidence to prove these elements. This means that at least one part of each element must be proven to successfully prosecute a perpetrator of trafficking. It is also important to realize that more than one person can be prosecuted on trafficking case as it consists of many different parts. This is one of the most important reasons for the police and prosecuting authority to cooperate on the case as soon as possible.



**When you deal with children you do not need to prove means!**

### **2.3. Difference and similarities between trafficking in persons and smuggling of migrants**

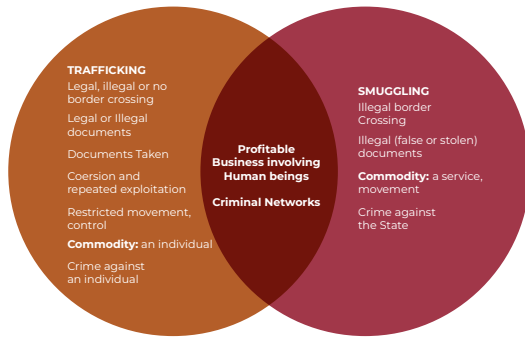
Currently there are no legislation in Kenya that deal with Smuggling of Migrants. It is however important to understand the difference. TiP is distinguished from smuggling of migrants since the constituent elements of the respective offences differ and so do the responses. Smuggling of migrants is defined in Article 3 of the Smuggling Protocol as the procurement in order to obtain, directly or indirectly, a financial or material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

It is important to recognise the following points:

- There are a number of similarities between trafficking and smuggling, especially in the movement phase.
- Distinguishing between them is often a very difficult challenge for any law enforcement official.
- The task is made harder because there is evidence that traffickers and smugglers increasingly co-operate closely with each other.
- This means that it is now even more likely that “shipments” of persons may include both smuggled migrants and trafficked victims
- In many cases, during the movement phase, individuals may not know themselves what is intended for them and therefore be unaware that they are trafficked victims
- It is the intention to exploit victims after they have arrived at the new location that distinguishes a trafficker from a smuggler but it is very difficult to make this distinction during the recruitment and movement phases and it is often the case that it is only possible to make an accurate distinction after the exploitation has started.



## Trafficking & Smuggling: Similarities and Differences



Notwithstanding the difficulties, it is possible to analyse the differences and similarities between trafficking in persons and migrant smuggling in order to improve the ability to make the distinction. Consider the contents of the table set out below:

Feature	Trafficking in Persons	Migrant Smuggling
<b>Legal definition</b>	Recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve consent of a person having control over another person for the purposes of exploitation	Procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or permanent resident
<b>Purpose of the movement</b>	Exploitation of the individual's sexuality or labour for profit	Movement for profit
<b>Nature and quality of the consent</b>	Consent for movement may be present but true consent is nullified by force, coercion, deception, fraud etc	Consent for movement is clearly present
<b>Nature of the relationship between the individual and criminal</b>	<b>Victim-Exploiter</b> Long-term relationship extending beyond the movement phase (although initial facilitator may be only a link in the chain, there is continuity in the individual's relationship with the traffickers)	<b>Buyer – Supplier</b> Short-term relationship that terminates upon completion of the movement



<b>Profit element</b>	Major profit source is the exploitation of the individual	Sole profit source is the movement of the individual
<b>Violence and intimidation</b>	This is a characteristic of trafficking and is necessary to maintain the victim in the exploitative situation	Incidental to the movement
<b>Autonomy and freedom</b>	Severely compromised	Generally, not severely compromised except to the extent necessary for successful movement

**Migrant smuggling:** Facilitating the illegal entry of a person who is not a citizen or resident, into a country in exchange for payment or material benefit. The definitions make it clear that smuggling of migrants is the act of assisting with an illegal border crossing and illegal entry. Smuggling, therefore, always has a transnational element, and is primarily directed against the interests of a state, and not against an individual, i.e. the smuggled person.

**Trafficking in persons:** Modern-day slavery using force, fraud or coercion to exploit a person. In the case of trafficking in persons, the key element is the exploitative purpose. Trafficking involves the intent to exploit a person, in principle irrespective of how the victim comes to the location where the exploitation takes place. Trafficking can involve, in cases where borders are crossed, legal as well as illegal entry into the country of destination, but it can also occur without any border crossing at all.

<b>TRAFFICKING IN PERSONS</b>	<b>SMUGGLING OF MIGRANTS</b>
Trafficking is exploitation-based. Individuals who are smuggled may, however, become trafficking victims if they subsequently experience compelled service.	Smuggling is transportation-based. Migrant smuggling requires transporting others to evade immigration laws.
The crime of trafficking in persons is committed against an individual.	The crime of migrant smuggling is committed against a state
In the case of cross-border trafficking, the relationship with the trafficker does not end upon crossing the border; instead the victim is subjected to continued exploitation	Once a migrant has been smuggled into a country of destination and has paid the required fee, his relationship with the smuggler ends
The person is engaged in forced prostitution or forced labour.	The person must have entered a country illegally.



The person is being physically or psychologically coerced to work, or is under the age of 18 years.	The person being smuggled is generally cooperating. There is no actual or implied coercion.
A trafficked person is a victim.	A person smuggled across an international border is violating the law. He/she is not a victim.
A trafficked person is enslaved, sometimes subjected to restricted movement or isolation, and often has personal documents confiscated.	A smuggled person is free to move, change jobs.
Need not involve the actual movement of the victim.	Smuggling requires movement; it is the facilitation of the illegal crossing of an international border.
No requirement to cross an international border. Trafficking in persons can be internal and cross-border.	Facilitates the illegal entry of a person from one country into another.



### **3. KEY ROLES OF POLICE, PROSECUTORS AND OTHER STAKEHOLDERS IN INVESTIGATING AND PROSECUTING TRAFFICKING IN PERSONS CASES**

#### **3.1. Introduction**

Currently police and prosecutors have very distinct roles in the investigation and prosecuting of trafficking in persons cases in Kenya. There is however a strong move to improve the cooperation between police and prosecutors and even to move towards a prosecutor led investigation process when dealing with trafficking in persons and organized crime. Good cooperation between the prosecutor and the investigators also prevents duplication of efforts and allow for greater efficiency and effectiveness during the investigative process especially in fact gathering and the corroboration of evidence. This will also ensure a more successful prosecution.

#### **3.2. The role of the police in TiP cases**

The police officer is normally one of the first responders when dealing with a trafficking in persons case. The police officer will receive the case and will initiate and process the investigation process. There are different police officers involved in a case and they each play different roles.

- **First Responder**

- Look for TiP indicators and report to supervisors.
- Take reports of TiP during general duties.
- Take immediate action to preserve evidence when reports are made
- Undertake actions to support investigations as directed.

- **Report office personnel**

First person in contact with the victim or party who reports the crime at the police station is the report office personnel. They are responsible to record the details of the crime.

- **General Duty Officer**

Assigned police officer at every police station who is on call or present at a police station 24 hours of the day managing the effective running of the police station. (normally with the rank of Inspector and above).

- **Ward Police Commander (OCS)**

Officer Commanding Police Station (OCS) is in overall command of the local policing area and the police station and is responsible for all policing activity in that jurisdiction.





- **Sub-County Criminal Investigation Officer (SCCIO)**

This is the officer in charge of all investigations within the sub-county level.

- **Investigator**

Normally an experienced police officer who will be instructed to investigate the crime. This person will be tasked to investigate the crime and will be the link to the prosecutor.

### **3.3. The Role of The Prosecutor in TiP Cases**

In TiP cases where there might be the involvement of organized crime groups and where there are complicated issues such as:

- Complex and serious financial crimes
- Private and public sector corruption
- Money laundering

it is critical to involve the prosecutor from the start of the investigation as prescribed under section 5(3) of the ODDP act.

In such serious cases a prosecutor-guided investigation should take place.

The role of the prosecutor in a prosecutor-guided investigation includes but not limited to:

- Develop an investigation plan and assisting the police officer from the beginning to end
- Being available to advise and assist the police officer
- Participate in victim and witness interviews
- Reviewing evidence as soon as possible to determine appropriate charging decision as per the ODPP Decision to Charge Guidelines, 2019.
- Notifying investigating officers when more evidence (including additional witness and victim interviews) is necessary to the offence.
- Point out potential legal loop holes and how to overcome them.
- The prosecutor will present the case during the criminal Proceedings in court.

### **3.4. Other Agencies that Complement the Investigation and Prosecution Process**

Other agencies can directly contribute to the investigations and prosecutions of trafficking in persons cases:

- Immigration
- Customs
- Labour Inspector and Occupational Safety and Health Services
- Financial intelligence entities
- Kenya National Commission on Human Rights (KNCHR)



In addition, the governmental and non-governmental agencies specialised in providing support services to the victims of the crime of TiP, can support them in contributing to the criminal proceedings against the perpetrators:

- The CTiP Secretariat (since they have an operational role in direct assistance and referrals, in addition to their coordination role)
- The specialised service provider NGOs/CSOs

### **3.5. Best Practices for Regular Coordination Between the Police and Prosecutors Handling Trafficking Cases**

The ultimate success of a prosecution depends on the cooperation between all the parties involved in the trafficking case.

- Coordination and communication between the investigators and prosecutor from the initial stages of investigation for legal advice is vital for a successful prosecution.
- It is also important to involve other stakeholders that may include non-state actors where necessary. A good practice will be to have multi-disciplinary meetings when needed. A Multi-Agency Team (MAT) may consist of a group of trained professionals that may include other government departments who may ensure that the investigation and prosecutions are victim-centred and trauma informed where information is shared on new and ongoing TiP cases, potential TiP cases, pro-active investigations and law enforcement operations, key personnel changes, status and condition of identified or newly referred victims, challenges and needs, etc.
- All members of Multi-Agency Teams should sign Non-Disclosure Agreements (NDA) where they agree not to discuss any cases or investigations outside of the MAT or their own agencies.
- When specialized trafficking investigators or prosecutors are transferred it will be important to replace them with another specialized investigator or prosecutor.

Stakeholders should follow the National Referral Mechanism (NRM) Guidelines for assisting victims of trafficking in persons.



## 4. STANDARD OPERATION PROCEDURES FOR INVESTIGATING AND PROSECUTING TRAFFICKING IN PERSONS IN KENYA

### **ACTION 1: Receiving/obtaining information on trafficking in persons cases (pre-investigation)**

Information on TiP, is usually reported to the police by a complainant who can be a victim or someone else on his or her behalf. However, information can also be pro-actively sought or developed by police from primary or secondary sources. Police can receive information about trafficking in persons from many sources. This information would normally initiate reactive investigations in response to specific complaints that were received. **Information may be received in a number of ways including (not an exhaustive list):**

**Direct reporting - General information about trafficking in persons or smuggling of migrants is normally brought forward by the following sources.**

- Parents/guardians/relatives of the victim
- Victim (upon returning or escaping from captivity)
- Adult persons involved in commercial sexual work
- NGOs and other bodies working within the jurisdictional or outside (areas from where the victim have been trafficked)
- Social media<sup>2</sup>
- Traditional media
- Employees or agents of employers in labour employment situations
- Placement/recruitment agents/ agents
- Any person who witnesses or hear about a victim of trafficking
- Government functionaries (judicial officers, prosecutors, revenue department officials, officials of the Directorate of Children Services, CTiP Secretariat, Children Advisory Committee members, prison wardens, probation officers, social Development officers, Labour Department officials, officials from other government departments.)
- Institutions/Agencies such as commissions (Kenya National Commission on Human Rights (KNCHR) National Gender and Equality Commission (NGEC), Commission on Administrative Justice (CAJ) etc.
- County governments
- Resident welfare associations
- Unions/bodies of workers (domestic workers or overseas workers, labour unions, etc.
- County governments
- Anonymous calls and letters
- Media reports

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2 'Social media' may not report TiP in precisely direct terms but will contain information that leaves little doubt TiP has taken place



Information is received from source areas, destination areas and sometimes at transit points such as railway police posts, border towns and port posts. In Some source areas, information may initially come in relation to the missing person, though it is good to note that not every missing person is a victim of trafficking. All sources of information should be treated with equal importance. The police officer receiving the information should initiate necessary investigations and also forward the information to immediate supervisor.

### **Pro-active assessment of indicators and intelligence**

The police could also seek and develop information about TiP from various sources. Police might also initiate proactive investigations into possible cases of trafficking in persons. As TiP mostly form part of organised crime and international organised-crime networks, these criminals might operate in the country as well as across international borders. Therefore, the proactive collection of evidence and information maybe the first thing to initiate proactive investigation into cases of TiP. The sources include **but are not limited to:**

- Individual sources
- Institutional sources
- Information from intelligence agencies
- Police data base
- Media reports
- Surveys

### **Reporting via ‘hotlines’ either by victims or others**

A toll-free crime reporting hotline – 0800722203 -- has been launched for use by Kenyans anonymously. This is also supported by an SMS hotline. where people can enter the SMS number 988 and type in your report starting with your County Name, Sub County Name, Location and Village then your report in detail.

Other methods to receive information:

- Pro-active operations such as road checks and other activities targeted at TiP
- Routine police activity which uncovers suspected TiP
- Direct reporting by clients/customers and other members of the public
- Reports from partner government agencies and various departments with social service functions
- Non-Governmental Organisation (NGO) and civil society reports
- Media information, articles and videos
- Reports from diplomatic sources including Kenyan and missions overseas
- Enquiries and reports from foreign criminal justice agencies.
- Covert operations

### **Linked Actions**

On receipt of information go to → **Action 2** – Assess information.

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## **ACTION 2 - Assess information / define investigation strategy/planning**

### **Assessing information**

A decision is taken on whether the information received is sufficient to start a formal investigation. It's difficult to say exactly what information would be sufficient and what would be insufficient.

It would certainly be sufficient in the case of:

- A direct report by a presumed victim of TiP
- A report of TiP from an independent source
- The discovery of a situation with a number of TiP indicators
- Direct information from a foreign criminal justice agency

Please note these are only illustrative examples – there are more. Also, only one of the above is required to start an investigation – you don't need all of them.

It may not be sufficient to start an investigation where:

- There is an uncorroborated media report
- There is a single indicator of TiP
- There is an unspecific and general rumour of TiP

However, it is very important to note that information should not be ignored even if there isn't enough to start a formal investigation.

### **Defining an Investigative Strategy**

If there is reason to believe that there is a TiP crime happening, it will be important to set the process in motion.

It will also be important to develop an investigation strategy. This is an ongoing process and will change as the investigation continues. It will be important to get the prosecutor involved as soon as possible.

Form a multi-agency approach. Create a multi-agency team (MAT). Here are examples of agencies that can form part of the multi-agency approach.

- National Police Service (KPS)
  - a) Kenya Police Force
  - b) Directorate of Criminal Investigation (DCI)
    - TOCU - DCI Transnational Organised Crime Unit
    - AHTCPU - DCI Anti Trafficking in persons and Child Protection Unit
    - SCU - Serious Crimes Unit
- EACC – Kenya Ethics and Anti-Corruption Commission
- ARA – Kenya Asset Recovery Agency
- INTERPOL – International Criminal Police Organization
- NIS – Kenya National Intelligence Service
- DIS – Directorate of Immigration Services



- ODPP – Office of the Director of Public Prosecutions
- DCS – Directorate of Children Services
- CTiP Secretariat – Counter Trafficking in Persons Secretariat
- KPA – Kenya Psychologists Association
- Forensic services
- CSI - Community Safety Initiative (Nyumba Kumi Initiative)
- CSOs and NGOs – Civil Society Organizations and Non-Governmental Organizations
- KNCHR – Kenya National Commission on Human Rights

### **Multi Agency Teams**

- Multi agency team should be case based depending on the specific case there may be a need to involve specialized persons from other agencies
- The main focus can be on a specific phase of the investigations or it could cover the whole process from pre-investigation, investigation up to the trial.
- There should be flexibility. Each case that need a multi-agency approach should be dealt with on its own merit and needs

### **Linked Actions**

If the information is considered sufficient **go to →Action 4** – Information sufficient to start an investigation.

If the information is not considered sufficient **go to →Action 5** – Information not sufficient to start an investigation.



## **ACTION 3 - Identification and Protection of Victims of Tip**

### **Introduction**

Trafficking in human beings constitutes a serious infringement of human rights. Identifying trafficked persons is vital to ensure that they are granted access to protection and support services. If a victim is not identified as such, he or she might be left without appropriate support in order to recover from the trafficking ordeal; and this is to the detriment of the trafficked victim. Victim identification comprises all the processes undertaken to assess whether a person or a group of persons are VoT and are not merely irregular migrants, smuggled migrants or persons involved in other cases. Law Enforcement officials by virtue of their work get in contact with VoT. The process of identifying TiP is complex. Like all criminal activities, traffickers go to considerable lengths to make sure their activities are difficult to detect and victims are subdued. Equally, VoT rarely identify themselves due to the nature of the trafficking experience and exploitation.

### **Definition of a Victim of Trafficking**

A victim of trafficking (VoT) is a person who is being or has been trafficked as defined in Section 3 of the Counter Trafficking in Persons Act 2010.

#### **The Importance of Victim Identification**

It is critical to identify victims of TiP for the following reasons:

- It will ensure that victims are rescued
- Victims will receive timely protection and assistance
- Restoring victim's rights
- Disrupting the trafficking process and preventing the exploitation of individuals
- Prosecuting perpetrators

### **Challenges in Identifying Victims of TiP**

Unlike other crimes, VoT seldom identify themselves as VoT and almost never report the matter to law enforcement agencies. Lack of reporting is due to multiple factors, including the following but not limited to:

- Fear of the traffickers using force or threat of violence on the victim, victim's family or loved ones
- In order to survive, victims will adopt negative coping strategies, such as numbing (blanking out experiences from one's mind), taking on adult roles in cases of children, avoiding talking about the experience or emulating the behaviour of the abuser
- May not see themselves as victims
- May suffer from Stockholm Syndrome, whereby over time, they have developed a misguided attachment/relationship to the trafficker



- May suffer from post-traumatic stress disorder and memory loss – a very common complaint within trafficking – whereby the victim has suffered severely in the hands of the traffickers from rape, beatings, abuse and others
- Language barrier and lack of trust in law enforcement agencies
- Lack of documentation
- Stigma and community ostracization
- Fear of deportation, arrest or imprisonment

## Investigation options in TiP cases

### i. Hidden in plain sight

Often, human traffickers operate in plain sight, but victims may look normal and engage with communities such that it is difficult to identify a crime of TiP. Unlike other crimes, VoT rarely report the crimes that has been committed against them because of multitude of reasons. Lack of trust of law enforcement agencies, fear of the traffickers, the violence and trauma experienced and fear of deportation or imprisonment act as barriers to reporting.

Victims are often found when law enforcement officers respond to other reported crimes or during a raid. Frequently, law enforcement officers fail to identify victims of TiP, and consequently they are arrested, charged with crimes – such as irregular/unlawful migration or prostitution – and prosecuted, deported or imprisoned. This, in turn, perpetuates the lack of trust between victims and law enforcement<sup>3</sup>. Adopting a right based approach and ensuring proper screening of all persons involved and thorough investigations will enable the investigators to uphold the rights of the victims of trafficking leading to arrest and prosecution of the right perpetrators.

Therefore, it is critical that NPS effectively utilize the various investigative techniques in identifying, rescuing, protecting, assisting VoT and prosecuting actual perpetrators. There are three counter-trafficking investigation approaches utilized by law enforcement officers: (a) **reactive**; (b) **proactive**; and (c) **disruptive**.

### ii. Reactive approach

This refers to situations where the victim directly reports the trafficking case or is identified through other means, for example, through other routine law enforcement activities (patrol). **This approach is reliant on the victim's testimony and cooperation.**

A victim may directly disclose a trafficking case to NPS, or be referred

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<sup>3</sup> KNCHR Report: Status of Migrants in the Detention Places, 2019





by a third party, an individual, an organization, non-governmental organization (NGO) or UN agencies to the station. An investigation can then commence, and assessment, investigation, evidence collection and collaboration measures will be undertaken to determine, identify, arrest, rescue and prosecute accordingly.

### iii. Proactive approach

This is an intelligence-generated or police-led approach. Due to the criminal nature and effects of trafficking on victims, self-disclosure by victims to law enforcement agencies rarely occurs. Therefore, it is vital that law enforcement personnel opt for a proactive approach led by intelligence and investigation in the identification of the victims of this serious crime and the prosecution of the perpetrators. The proactive approach **does not only** depend on the victim's testimony, rather, it relies on a combination of law enforcement tools (intelligence gathering, surveillance, undercover agents and standard investigative techniques) to identify trafficking victims, collect evidence and build a prosecution case against the traffickers.

This approach should be used by law enforcement when there is no immediate risk to the victim if arrest is delayed. It is the most effective counter-trafficking approach.

### iv. Disruptive approach

This is a multi-agency alternative approach that is generally used in the process of stopping trafficking and other criminal activities. The disruptive method usually involves collaboration between law enforcement officers with other government agencies—such as the DCI Transnational Organised Crime Unit (TOCU), Serious Crimes Unit (SCU) working with Ministry of Labour, Directorate of Immigration Services, County Government Offices, Municipal licensing authorities, Fire departments and health and safety officers – to disrupt and dismantle a trafficking network and rescue victims. Due to the risk of driving the criminal and suspected trafficking activities underground or relocating to other areas, law enforcement officers should use this option only when the assessment and level of risk demands an immediate response.

## Victim Identification Process

When can a victim of trafficking be spotted?

- At the recruitment stage
- During movement and transfer stage
- During harbouring stage
- During exploitative stage
- During resettlement/returning home stage



The overall process of victim identification is based on attempting to link victims' characteristics with the key elements in the trafficking in persons definition. The process of identifying a VoT is a twofold process:

- Assessing observational trafficking in persons indicators; and
- Conducting a screening interview using available tools such as the CTiP Vulnerability Tool, form D Screening Interview Form of the NRM (see annexes), and other tools.

Traffickers go to great lengths to conceal their crimes; however, law enforcement agencies can detect presumed victims or VoTs during the different stages of the trafficking process by observing the **common indicators** associated with trafficking.

The following indicators assist law enforcement agencies to identify a person **who is or could be a VoT**.

- Age of the victim
- Gender of the victim
- Specific interest groups
- Working and living conditions
- Abuse
- Location of origin/ethnicity
- Documentation
- Last location
- Transportation

### **Common Signs or Indicators by Forms of Exploitation**

There are different forms of trafficking but the most common ones are the following:

- Sexual exploitation
- Exploitation of forced labour or service
- Domestic servitude
- Child labour
- Forced or fraudulent use in armed groups (e.g. children in armed conflicts, or adults exploited in work needed by the armed group etc.)
- Child marriages and forced marriages
- Exploitation of children
- Begging or for committing petty crimes
- Use of a person for transplanting an organ, part of an organ or tissue of a human body otherwise utilising the victim

There are common signs and observations for officers to keep an eye out for when trying to identify these crimes. These are called indicators and there is a list of possible indicators attached "Annex 1". Remember these are only indicators that may prompt an investigation.



## Identification and Referral

When a person is presumed to be a victim of trafficking it is crucial that the identification actions are followed by prompt referral to support services (Counter Trafficking in Persons Secretariat or specialised NGOs/CSOs). A contact list of Service Providers is available at Annex 1 of the NRM Guidelines. A digital Service Provider Directory is available on the KNCHR Website.

It is a process detailed in the **National Referral Mechanism Guidelines** that entails a multi-agency approach, in which in particular the law enforcement agencies and service providers closely interact.<sup>4</sup> The first page of the Identification and Referral SOP of the NRM Guidelines reads<sup>5</sup>:

- “The presumed victim is referred to or is identified by the first responders for initial referral to appropriate services;
- Conducting an interview in a language understandable to the presumed VOT, including those living with disability. This includes translation to a language that the presumed victim understands;
- Identifying immediate needs of the presumed VOT and if the victim faces any health and safety risks;
- Conducting interviews so as to ascertain whether the presumed victim is indeed a victim of trafficking;
- Obtaining informed consent from the victim of his/her willingness to benefit from the victim assistance program. The rules regarding consent apply to minors;
- Subjecting the VOT to a period of reflection and recovery. This is the time, required for the victim to recover from the shock and trauma of his/her experience and begin to determine their next course of action. It also allows for the obtaining of temporary residence permits for victims who are foreign nationals.

Presumed victims should be an integral part of the overall referral process. This ensures that the referrals are voluntary and accompanied by the informed consent of the victim. Informed consent is not a requirement for the referral of minors. However, the best interests of the child should always be taken into account”.

## Linked Actions

Action 1 – Receiving/ obtaining information on trafficking in persons cases

Action 2 – Assess information/ define investigation strategy/ planning

Action 7 – Risk Assessment

Action 11 – Interviews

Action 12 – Presumed victims and victim/witness protection

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4 NRM, 4.1 SOP 1 – Identification and Referral (from page 29 to page 44)

5 NRM, page 29



## **ACTION 4 - Information Sufficient to Start Investigation**

If the information is considered sufficient the next decision is whether an immediate raid/rescue is needed or is it possible to gather evidence before a raid/rescue.

It is generally desirable to gather as much evidence as possible before carrying out a 'raid/rescue'. The reasons for this include:

- Such evidence proves a 'crime in action' rather than past crime; proof of crime in action is much stronger in court
- Such evidence is difficult to challenge
- It is difficult to tamper with/intimidate
- It takes the burden from victim witnesses
- Raid/rescues do obtain evidence but they may also destroy other evidence by alerting TiP networks to law enforcement activity.

### **Linked Actions**

Go to →**Action 7** – Risk Assessment to make a decision on whether or not an immediate raid/ rescue is required

If the Risk Assessment decides an **immediate raid/rescue is required** go to →**Action 8** – Planning a raid/rescue

If the Risk Assessment decides an immediate **raid/rescue is not required** go to →**Action 6** – Investigations where immediate raid/rescue is not required.



## **ACTION 5 - Information not sufficient to start investigation**

If the information is not considered sufficient to start an investigation it should be further analysed and researched to:

- Develop it to the point it is sufficient to start an investigation.
  - If still not sufficient to start an investigation record it as accurately and comprehensively as possible and store it in a way that can easily be accessed for future reference, in other words to develop it as intelligence. Source of information (if confidential an officer to contact for details of source)
  - Times, dates, locations etc. the information relates to
  - Details of any people referred to in the information - Name, date and place of birth, identity/ criminal record number etc.(In the case of victims or informants it may be necessary to 'anonymise' this information)
  - An account of the 'story', or what the information is
  - Details of any enquiries or analysis carried out
  - Details of person completing report
  - Details of anyone the person who is completing feels should see the report.
- Investigators have to be able to use all possible methods to counter the traffickers
- In circumstances where no usable evidence is available to use to arrest and prosecute them, to do nothing in the face of trafficking crime is not an option that should ever be acceptable to counter-trafficking investigators.
- Where an investigation is not possible even after analysis you should consider what prevention and disruption activities might be practicable and desirable.
- The objective of the investigator must always be to use all possible methods to successfully identify and investigate the traffickers and;
- Disruption techniques should never be used as an alternative to launching a proper reactive investigation based upon victim-witness co-operation when such investigation is possible.
- One of the most effective disruptive techniques is to use a multi-agency approach for example the tax office, health and safety, labour inspectors, building inspectors, etc.
- Use of powers to summon and enforce attendance of any person for examination or require the discovery and production of any documents or requisition of any public record.



## Linked Actions

If, after further development, the information is considered sufficient to start an investigation **go to →Action 4** – Information sufficient to start an investigation.

**If still not considered sufficient, record the information and consider prevention/ disruption** as described above.

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## **ACTION 6 - Investigations where Immediate Raid/ Rescue not Required**

### Investigative Evaluation

- Evaluate the information already gathered by asking the following questions:
  - Has a crime been committed?
  - Who is the victim?
  - Are there any witnesses?
  - Where or what is the scene?
  - Can a suspect be identified?
  - What evidence and material can be gathered?

### Investigative Options

Where an immediate raid/rescue is not required you have a number of investigation options.

These include (but are not limited to)

- Inform the DCI and relevant stakeholders
- Obtain relevant court orders to enter and search properties and seize evidence
- Communications data analysis e.g. records of phone numbers used, contact between phones, locations calls are made from, email addresses and usage etc
- Deployment of undercover agents or recruitment of informants
- Physical surveillance from static points, on foot or using vehicles
- Electronic surveillance including video/ audio recording both of public and private places, electronic vehicle tracking etc
- Financial investigations
- Consider informing support agencies – Government or NGO – that you may require their assistance at some point, explain what those requirements may be and for whom, plan what is possible and identify



alternative support where necessary. For example:

- International organisations that may be able to repatriate presumed victims of TiP
- Government departments that provide shelter services
- NGOs that may be able to provide shelter services or emergency food, clothing etc
- Medical facilities to provide first aid treatment.

## Linked Actions

Throughout an investigation consider the content of:

- Action 7 – Risk Assessment
- Action 12 – Presumed victim and victim/witness protection
- Action 15 – Preparing for court.

On completion of an investigation, if applicable, go to:

- Action 8 – Planning a raid/rescue.

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## ACTION 7- Risk Assessment

### Introduction

There are many types of risks during a trafficking in persons case. There may be risks to the victim, the witness, the investigating officer, support services, interpreters and even the perpetrator or the family members of the persons involved or even that evidence may be destroyed.

Risk assessment is an activity that needs to be constantly repeated throughout the criminal justice process when dealing with trafficking in persons cases.

Risk Assessment is a process of identifying potential risks, deciding how likely it is that something will happen, how severe it will be if it does happen and determining the level of risk and identify potential methods to control, reduce or avoid the risks.

For example, if something:

- Is unlikely to happen and even if it does, the outcome is not severe, then the risk level is assessed as 'Low'
- Is likely to happen but the outcome is not severe the risk level would be assessed as 'Low to Medium'.
- Is likely to happen and the outcome is of medium severity the risk level would be assessed as 'Medium'
- Is unlikely to happen but the outcome is severe the level of risk would probably also be assessed as 'Medium', but depending on how unlikely it could be assessed as 'Low to Medium'



- Is likely to happen and the outcome is severe the risk level could be assessed as 'High'

		CONSEQUENCES					
		1	2	3	4	5	
L I K E L I H O O D	1	1	2	3	4	5	Low Risk
	2	2	4	6	8	10	
	3	3	6	9	12	15	Medium Risk
	4	4	8	12	16	20	
	5	5	10	15	20	25	High Risk

If you multiply the likelihood with severity, you will be able to establish the level of risk.

### Risk Assessment and Raid/Rescues

Perhaps the most common and difficult decision in a TiP case that requires risk assessing is whether to raid/ rescue victims or to wait and gather evidence. These two situations describe how the risk assessment matrix can be used to help make that assessment.

A woman has been trafficked to a brothel where she is forced to have unprotected sex with many men – High Risk because the likelihood she will catch a disease is very high and that disease (HIV, Hepatitis or other sexually transmitted disease) will be severe. On the table it would score above 20 and be in the red area.

An adult man has been trafficked to work on a farm. He is not fed well but he is not starving. He sleeps outside but the weather is warm. He uses standard farm machinery that he is experienced in using – Low Risk. There is some risk of him catching an illness or injuring himself with equipment but it is not high. On the information given if he was injured it doesn't seem the injuries would be that severe. On the table above it would score round 4 – 6 and be in the green area.

There will be very many variations between these two examples which will give an infinite variety of risk 'scores'





## Other applications of risk assessment in TiP investigations

In addition to using risk assessment when deciding on raid/rescues there is an almost infinite range of situations where risk assessment can and should be used in TiP investigations. The more common ones include (but are not limited to):

- Deciding if it is safe to deploy undercover agents in an investigation
- Assessing if a person is fit to be interviewed
- Determining if it is safe to return a presumed victim to their home address
- Considering how likely it is that the use of a specialist technique (electronic surveillance for example) will be discovered and thereby compromised
- Deciding whether or not to tell a child's parent the child has been trafficked – it might be they were involved and telling them could compromise the investigation
- Deciding on media involvement in a specific case

### Linked Actions

Using risk assessment is a constant cycle and the next action you take depends on where you came into the cycle (again, this is not an exhaustive list).

If it was a decision on raid/rescue, you would go to **Action 6** - Investigations where immediate rescue was not required if you had decided an immediate **raid/ rescue was not required, Action 8** – Planning a raid rescue **if you decided** it was.

If it was a decision on using a **particular technique in an investigation** you would **return to Action 6** – Investigations where a raid/ rescue is not required.

If it was a decision on whether or not a person was fit to interview you would to **Action 11** – Interviews.

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## **ACTION 8 - Planning a Raid/Rescue**

Where you decide an immediate raid/ rescue is required it is important to plan and prepare properly. Part of the planning is to decide on the operational approach to be followed and to pay attention to the following steps to ensure a successful operation, especially when dealing with women and children:

- Obtain necessary court orders to enter/ search etc.
- Try to identify the potential victims. Consider the profile of likely victims – this could include their ages, gender, languages spoken, migration status, county in Kenya/country of origin, form of exploitation.
- When planning a raid, you have to decide who has to be informed. DCI must certainly be informed. Others may include government and non-governmental organisations who can offer support such as interpreters, medical aid, shelters, etc.



- When planning a raid in a work place, consider asking the collaboration of labour and occupational safety and health (OSH) inspectors, and in case determine roles and phases of their intervention
- Clarify what support you need and what realistically the agencies you are addressing can offer – always remember this may change as you continually conduct risk assessment
- Consider if and how to apply the non-punishment provision contained in Section 14 of the Counter Trafficking in Persons Act, no 8 of 2010 that provides for victim immunity from prosecution. migration, commercial sex work or minor crime as a consequence of being trafficked or where they have committed an offence that has made them vulnerable to TiP
- Do a risk assessment of the planned intervention. This may include looking at the likelihood of resistance and severity of that resistance (are people armed for example), health and safety risks likely to be found on the site and risks in the vicinity of the location e.g. extreme remoteness, areas with record of hostility to the police
- Identify appropriate resources. This will include numbers of personnel, the skills they need, vehicles and other equipment required etc
- Only disclose information on need to know basis (confidentiality).
- Consider briefing those involved some distance from the target location, even outside the district and not on police premises if required
- Identify a meeting point near the target location to make sure all resources are ready to go at the same time
- Work with practitioners from other disciplines to plan a coherent and multi-agency approach
- Identify the likely profile of TiP victims you may encounter Plan to provide protection to the (presumed) victim/witness and (where appropriate) their family.

### **Linked Actions**

When planning consider the content of the following actions:

- **Action 7** – Risk Assessment
- **Action 10** – Crime Scene Investigation (CSI)
- **Action 11** – Interviews
- **Action 12** – Presumed victim and victim/witness protection

On completion of planning a raid go to Action 9. Carrying out a raid/rescue Note that when planning a raid/rescue you are likely to have to risk assess various decisions. In this case you should return to the risk assessment matrix shown in **Action 7** (Risk assessment), then return to this planning for other aspects of the raid/ rescue as required.



## **ACTION 9 - Carrying out a raid/rescue**

The basic principles of dealing with situations where you suspect TiP are the same regardless of the stage of the TiP, the type of TiP or the situation (checking people in buildings, in the open or while being transported). They are:

- Always consider your safety first and conduct a risk assessment
- Secure perimeter of location
- When raiding a work place, if you have involved labour and occupational safety and health inspectors, ensure proper coordination as for timing and action
- Entry team and additional officers secure the scene of crime – telling everybody to stay where they are, stop working etc. and explaining the purpose of the raid in a language people understand. They should understand the actual language used (Swahili, Amharic, Somali etc.) and the words and phrases used
- If interpreters are needed, at least one of them may go into the premises with the first entry teams to explain to the occupants what's happening. You may wish to consider engaging police officers who speak the language in question. Generally, best practice is to introduce interpreters and other support workers once the premises are secure
- Explain who you are and what your role is. Do the same for any other people involved in the process
- Initial CSI images are taken to show where everybody is – best practice is to have a quick 'walk through' video
- Intelligence may have already identified suspects – if so, as long as you have authority and grounds, they should be detained/arrested immediately
- Everybody on the premises should be searched in accordance with authorities and legislation. The purpose of this is first for the personal safety of officers and others and second to secure evidence
- The purpose of these searches should be explained in words people can understand
- Ideally such searches should be video recorded
- Observe on initial encounter to see who appears to be in charge e.g. giving orders, in a 'managerial' role, in control of documents etc. (For example, note who initially speaks when encountered – this may indicate who is in charge)
- Don't allow responses on behalf of others to continue for long – this should be no more than two or three sentences before you intervene
- Take control of the situation. Don't allow others to interfere with the potential evidence
- Wherever possible speak to people discretely, away from those who may be controlling them



- Ideally, try to split groups up entirely i.e. to the point where each person is standing alone
- Do not take one person out at a time as this may allow traffickers to identify who is talking to you
- Even if a trafficker is not present, some people may communicate with traffickers. Leaving people in groups allows intimidation
- If there are more people in the group than officers available (which is generally the case) you may have split the team with some officers watching the group while other officers take individuals out and talk to them
- Take individuals out one by one and talk to them separately. Only take action once you have spoken to them all – this prevents traffickers identifying who has given information to the police
- Presumed victims need support when they are spoken to. Do not use people who appear to be ‘friends’ of the victim or volunteer to interpret without very careful consideration - they may be traffickers
- DO NOT arrest presumed victims unless it is unavoidable
- Take a neutral, non-aggressive approach
- Use clear, simple language and follow to check if victims understand.
- On planned operations take interpreters with you. Don’t use the interpreter as a support person: different skills are required for this role
- Screening interviews should then be conducted (see Action 11. Interviews). As far as possible people should be interviewed individually and out of sight and hearing of others
- Explain to the people you are interviewing what their rights are
- On conclusion of screening interviews the occupants should be removed, those identified as possible TiP victims to an initial place of safety.
- Take care of the basics – decent clothing, food, drink etc
- Only search or medically examine presumed victims with their informed consent
- Conduct searches only in accordance with the law.
- Do not make promises you cannot keep
- Work with appropriate professionals to assess presumed victims physical and psychological health and get treatment for them as soon as you can
- Even if there is no specific ‘right’ to social support consider providing it
- Use PEACE interview techniques when interviewing vulnerable victims (Action 11. Interviews)
- Consider having a de-brief meeting where as many of those involved in the raid are present. A de-brief can help identify information/ evidence you are not aware of and can help drawn lessons for future raids.



## Linked Actions

When carrying out a raid rescue consider the content of the following actions:

- Action 3 – Identification and protection of victims of TiP
  - Action 7 – Risk Assessment
  - Action 10 – Crime Scene Investigation (CSI)
  - Action 11 – Interviews
- 

## **ACTION 10 – Crime Scene Investigation (CSI)**

### **Crime Scene Investigation (CSI)**

There are likely to be multiple crime scenes in a TiP case. These may include:

- Locations where recruiters operate from e.g. employment agencies
- Locations where recruitment has taken place e.g. houses where children have been taken from for domestic exploitation
- Transit locations such as airports, land border areas, bus and railway stations
- Places where TiP victims have been harboured during transit
- Places where TiP victims have been harboured at point of exploitation e.g. dwellings where children used in forced begging have been kept
- Points of exploitation (in transit or in final destination areas) e.g.
  - Brothels, bars, clubs, massage parlours, hotels, streets, (for sexual exploitation)
  - Construction sites
  - Farms
  - Factories
  - Mines
  - Restaurants
  - Street areas where forced begging/ petty crime has taken place
  - Households (for domestic servitude)

### **CSI Objectives**

You should first identify the following objectives.

- Establish if TiP has taken place and its nature
  - Identify victims of TiP
  - Identify the suspects
  - Collect, preserve and document evidence that may link the victims to locations and the suspect
  - Link victims to equipment used in their exploitation
  - Demonstrate the conditions under which victims are exploited
-



In TiP cases the points of evidence are likely to be much more delicate and may not look like evidence of a crime at all. Investigators are encouraged to:

- Establish, as far as possible, a 'single path' for CSI officers to access and work (see Annex 4)
- Walk through the location and identify the action you want CSI officers to take in support of objectives
- Brief the CSI officers on what you need – this will probably be different to what is needed in general crime scenes. What doesn't appear significant in general crime – living conditions, food at a location for example – may be highly significant in a TiP enquiry
- Allow CSI officers to do their work but stay on site for guidance
- It is recommended you at least briefly explain to CSI officer what the differences are between TiP and 'regular' crime scenes
- Discuss with them what is practical given the situation and circumstances of the case (e.g., is it practical to obtain samples for DNA analysis?)
- Ask them if they have any additional suggestions, now they know about the case
- When examining a work place, consider asking the collaboration of labour and occupational safety and health inspectors (to be in case involved since Action 8 – Planning raid/rescue and in Action 9 – Carrying out raid/rescue)

### **Linked Actions**

On completion of CSI consider how the evidence collected may be used in

- **Action 2** – Assess information
- **Action 4** – Information sufficient to start an investigation
- **Action 11** – Interviews
- **Action 12** – Presumed victim and victim/witness protection
- **Action 15** – Preparing for court



## **ACTION 11 - Interviews**

### **Introduction to the PEACE model**

Investigative interviewing is the major fact-finding method law enforcement officers have at their disposal when investigating crime. The ultimate objective of all interviews is to obtain accurate, relevant and complete accounts from the persons who are interviewed. The interview is central to many aspects of the work of law enforcers who investigate and prosecute cases of TiP and can involve four quite distinct groups of people:

- complainants
- victims
- suspects
- witnesses

With such a diverse range of persons, interviews will differ greatly in terms of purpose, scope and subject matter. However, all categories of interview will share the common objective of gathering information and can be expected to focus upon descriptions of events or behaviour.

The PEACE Model to Conduct an Interview with Suspects, Witnesses and Victims

The PEACE Model of investigative interviewing was developed in the early 90s as a collaborative effort between law enforcement and psychologists in England and Wales. This model takes a conversational, non-confrontational approach to getting information from an investigation interview subject.

The PEACE model is a good method to use when conducting interviews. PEACE is an acronym that stands for the different stages of an interview.

PEACE stands for:

<b>P</b>	<b>Preparation and planning</b>
<b>E</b>	<b>Engage and explain</b>
<b>A</b>	<b>Account</b>
<b>C</b>	<b>Closure</b>
<b>E</b>	<b>Evaluate</b>

Some of the key points to remember when conducting interviews include

- TiP victims are likely to be traumatised
- TiP victims may be traumatised to the extent they are psychologically ill
- They may also be physically ill and/ or injured
- The combination of traumatisation and the often-prolonged nature of exploitation means that many TiP victim witnesses will either not be able to recall details of the crime or recall them in a chaotic and confused way



- As a result of that traumatisation interviews are likely to last a lot longer than victim-witnesses in many other types of case
- Statements of victim-witnesses are key elements of a prosecution – but they should never be seen as the only evidence

Therefore:

- Use the PEACE model to plan and conduct interviews
- When planning for an interview don't just plan for the immediate interview – start thinking about what support will be needed after the interview
- Risk assess whether a presumed TiP victim-witness is fit to interview
- This assessment should consider the persons psychological and physical condition
- Consider using professionals to assist in assessing if a person is fit for interview (e.g. staff from the service provider NGO/CSO, or the CTIP Secretariat, if the person is already assisted, or if they can intervene to support the law enforcement officers on site)
- Consider proposing the involvement of professionals (e.g. staff from the service providers) in jointly conducting the interview when needed and appropriate
- Note that there may be some rare circumstances where a person may not be fit for interview but an interview is necessary. An example is where there are other victims at serious risk at an unknown location. If such an interview is required it should be confined to obtaining only the absolutely necessary information, it should be as brief as possible and all possible support should be given to the interviewee
- Interviews of children (person under 18) should take place in the presence of a parent or trusted guardian. If the parent is suspected of being involved in the trafficking, then the child should be interviewed in the presence of a trusted guardian, Children Officer, psychologist or social worker<sup>6</sup>.
- If the victim is a child (person under 18) wherever possible use video to record the interview
- Where interviewing adults question verbally, then summarise in writing. Where there are changes in the 'Account' given by TiP victim/witnesses don't dismiss it as untrue. Remember, this is normal due to traumatisation and long-term exploitation
- Avoid multiple interviews to the extent possible and avoid repeated questions (unless specifically required) in order not to re-traumatise/re-victimise the trafficked person, and ensure in person or documentary

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<sup>6</sup> Taken from National Referral Mechanism for assisting victims of trafficking in persons in Kenya – Page 17, Para 3





coordination among interviewers (e.g. passage from screening to evidential interviews – see box below)

- At the Evaluation stage of the interview always look at ways to corroborate the witness account

## Different types of interviews and PEACE

The two main types of interviews relevant to TiP are:

- Screening interviews.
- Evidential interviews.

A screening interview is a brief interview carried out in the field to decide if it is more likely than not that a person has been trafficked – and then decide what to do about it.

An evidential interview is a much more detailed, longer interview to obtain evidence for presentation in court hearings.

### **PEACE is applicable to both – but, of course with differences.**

In a **screening interview** you often have little time to Plan for the specific interview – although you can make general preparations. The opportunity to Engage and Explain is often limited and likely to take place in difficult circumstances such as presence of many people present, some of whom may be traffickers. The Account also will be limited and should be targeted on a small number of specific questions. Closure is must be brief and to the point – but keep the ‘door open’ to positive future interactions with the person. Evaluation will probably be required very quickly indeed – again, in frequently in difficult circumstances.

In an **evidential interview** you generally have time to plan in some detail for the interview with that individual – finding out what the ‘story so far’ is, establishing who the individual is and who other related persons are, determining the interview objective and consequent questions to be asked, providing health support etc. Similarly, you have time to build a relationship in Engage and Explain – and probably providing practical support such as food, medical treatment and at least temporary shelter, if needed and not provided yet. The Account will be detailed and may take a number of interviews to obtain: always ensure coordination in that case to avoid asking the same questions unless specifically needed. Closure will include details of what is likely to happen next and any support the interviewee may receive. There is likely to be a lot of information to consider at the Evaluation stage – and lines of enquiry to follow.



## Interviewing Child Victims

There are a few special considerations when police or prosecutors interview children.

- Take some time to first build rapport with the child and make them feel comfortable before asking questions about the incident
- Assure the child that they are not in trouble because they are talking to the police, and that they will not get anybody in trouble
- Assure the child that police officers talk with lots of children about things like this
- Assure the child that he or she is not alone
- Be respectful, attentive, sympathetic, calm and patient
- Show your encouragement through body language, facial expression and voice
- Sit at their level, make eye contact
- Use their name frequently, and introduce yourself by name, not title or rank
- Keep questions short and simple, with age-appropriate language
- Never assume that the child understands the question and language that you use
- Remember that children may not be used to giving free-narrative accounts
- Conduct the interview in a place where the child feels comfortable and safe
- Police interviews of victims may be conducted in the home, at a shelter or in a hospital, or at a police station. Regardless of the location, police are required to conduct all such interviews in a manner that respects the privacy and confidentiality of the victim
- Be aware of the cognitive and socio-emotional development of children. When interviewing children, remember to use short and simple sentences, explain terms and make sure the child has understood you correctly. Start with open ended questions and then ask for more details. Keep interviews short, and have enough breaks. Remember children need more time to formulate their answers. Use different methods to collect information with children, e.g. let the child draw what has happened on the crime scene
- When interviewing traumatized children, remember that it might take time for the child to tell what has happened, especially related to violence they or their family members have encountered. It might be good to introduce the topic first and let the child know that when s/he is ready to talk about what happened you are interested to hear, and then later come back to the topic. Normalization of the child's experiences is important as the child needs to understand that the same thing has happened to many other children and that help is available. In the beginning of the interview you can explain to the child that you are asking these questions



since you need to know what happened in order to help the child and his/her family. It is also important that the interviewer shows empathy towards the child but is also able to deal with the information the child tells without getting upset

- Know that barriers such as culture, language and emotional well-being can influence effective communication, thus making it difficult to obtain important information. Display empathy during the interview and show patience and tolerance as replies are awaited
- Be alert and do not be distracted
- Be non-judgemental. It is not the police officer's duty to decide on the character or behaviour of the child
- Open ended questions help elicit more information
- Thoroughly consider the type of questions to be asked

### **Linked Actions**

- Action 2 – Assess information
- Action 7 – Risk Assessment
- Action 10 – Crime Scene Investigation (CSI)
- Action 12 – Presumed victim and victim/witness protection



## **ACTION 12 – Presumed victim and victim/witness protection**

### **Practical Actions In Victim And Witness Protection<sup>7</sup>**

- Ensure identity confidentiality of victims
- Recognise victims of trafficking are the people with the greatest interest in the successful prosecution of offenders
- Treat trafficked persons as victims of crime, not criminals
- Consider trafficked persons might not perceive themselves as victims of a crime and might not be aware of their rights
- Refer victims to relevant service providers guided by the NRM guidelines
- Treat non-cooperating victims in the same way as cooperating victims
- Consider what the likely witness protection issues will be right from the start of any investigation
- Risk-assess those issues, even before you have located the victim witness and spoken to them
- Continue to risk-assess threats to potential victim witnesses, and their significant others, throughout the investigation and during any subsequent judicial proceedings
- Co-operate with government and non-state actors who can provide resources such as clothing, food, shelters etc.
- Where possible use legal powers to provide witness protection, for example where there is a legal duty to provide accommodation and other support for children and adults
- Not all victims are in the position to, or are willing to cooperate with the authorities in the criminal proceedings, but this does not diminish their victim status
- Take what measures you can as the police to (where appropriate) remand suspects in custody who may intimidate or threaten witnesses within the Constitutional mandates
- Inform prosecutors of any witness protection issues present or likely to arise
- Maintain communication with witnesses, prosecutors etc. to identify and deal with any emerging witness protection needs and consequent measures
- Keep the victim informed of what is happening and why – do not treat them as a source of evidence alone

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<sup>7</sup> This action entails a series of activities aimed at protecting trafficked persons at different levels and in many ways. The broad and varied protection needs of trafficked persons can be met by practical measures, coordinated among law enforcement and service providers. Only in exceptional cases there might be a need to apply the measures foreseen in the Witness Protection Act and as guided by the Witness Protection Agency.



## Linked Actions

When looking at victim/witness protection issues consider the content of the following actions:

- **Action 3** – Identification and protection of victims of TiP
- **Action 7** – Risk Assessment
- **Action 11** – Interviews
- **Action 15** – Preparing for court
- **Action 16** – Support during and after court proceedings

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## ACTION 13 - Financial Investigations

Financial investigation is the collection, collation and analysis of all available information to assist in prosecutions and deprive the criminals of the proceeds of crime.

A financial investigation in trafficking in persons investigations helps prevent crime and corruption, removes access by criminals to “capital” to finance further crime, targets the managers of crime and supports the rule of law.

- Dismantle organized crime groups involved in TIP
- Proceeds of crime, if seized and confiscated, can contribute to the national funds for victims of trafficking and compensation of the victims.

Wherever possible, trafficking in persons investigators should contact existing financial investigators for support and advice.

Financial investigations should start at the same time as the criminal investigation. If specialist financial investigative analysis is not available, trafficking in persons investigators should, at a minimum, recover records enabling a more comprehensive investigation and analysis.

Criminal assets must be assessed from the outset of an investigation. If they are not, it may not be possible for a judicial confiscation order to be made at the end of an investigation. Trafficking in persons is a cash-rich crime.

It is important that the volume of the cash generated be established.

Financial profiling of individual or entity targets is a key technique in financial investigation.

## Financial Investigation Actions

- Include financial intelligence as an objective in all intelligence gathering
- Identify assets, who holds them and their value
- If not done as part of intelligence gathering identify and assess all assets as soon as an investigation starts



- Contact FIU for advice as soon as the intelligence gathering/ investigation starts
- If specialist FIs aren't available, recover all records for investigation/analysis later
- Note that TiP investigations may start when FI or Intelligence staff notify TiP investigators of a suspect transaction that suggests TiP is taking place
- From the start set an investigation policy to identify anything that could assist FI
- Think broadly about what holds FI information. Examples include (not exhaustive):
  - Receipts
  - Bills and invoices
  - Bank account records
  - Tickets/ used ticket stubs
  - Hand written notes containing figures
  - Notes on mobile phones or computers
  - Electronic records such as spreadsheets, accounting software
  - Coded message exchanges (e.g. on social media)
  - Records of payments for utility, phone bills etc
  - Cash.
- Make sure surveillance/search authorities cover recording/ seizure of FI evidence
- Look for cash – record it in accordance with your legal requirements
- Look for goods that may have been bought with illegal cash
- If portable, seize them in accordance with your legal requirements
- Carefully record all recovered financial evidence
- Handle all FI evidence in a 'forensic aware' way i.e. in a way that will allow fingerprints etc. to be obtained later
- When necessary, you should involve the Asset Recovery Agency
- Review all recovered FI evidence for evidential and investigation purposes. Examples include (not exhaustive):
  - Names and IDs of Organized Crime Network (OCN) members
  - Contact details of OCN members
  - Locations of recruitment, transit or exploitation
  - Details of transit routes
  - Links to other criminal 'businesses'
  - Links to legitimate businesses (and money laundering mechanisms)

Remember that a significant objective of FI is to recover proceeds of crime as well as identify evidence for investigations and prosecutions



## Proactive Operations

Consider the following actions:

- Use intelligence to identify those financial operators most likely to be linked to TiP and linked crimes such as kidnapping
- Use communications data analysis to establish who suspicious financial transaction operators are communicating with, how often, where links are, what form the communication takes
- Use standard FI techniques used to investigate 'formal' transactions to identify accounts suspected hawala operators hold – these should then be monitored to identify 'consolidation' flows and storage of profits
- Deploy undercover agents as 'test purchasers' to establish how the transactions are made
- Deploy surveillance to establish how many people are visiting premises suspected of being used for suspicious financial transactions
- Deploy covert surveillance within premises suspected of being used for suspicious financial transactions to record those transactions and identify how they are carried out
- Work with tax and other authorities to identify suspected financial operators and use their operations (e.g. tax investigations) to investigate suspicious financial transactions

## Reactive Operations

Consider the following actions:

- Look for records when intervening/ raiding suspected hawala operators. These records could include:
  - Paper 'slips' with phone numbers and other figures on them
  - Ledgers, large books, folders or similar with numbers recorded
  - Anything that appears to be records of deposit or withdrawal via 'formal' accounts such as those from banks and formal money transfer operators
  - Copies of passports and identity documents
- Examples of financial transactions are HAWALA Western Union, Mpesa, Crypto Currency and others.
- Identify all electronic equipment at location. Remember, almost any electronic equipment could be used in transactions, including:
  - Landline phones
  - Mobile phones
  - Laptop computers
  - Personal computers
  - Tablet computers
  - External IT storage equipment and associated discs



- Document copiers/ scanners
- Cash registers
- Cash counters
- Cameras
- Security cameras
- SIM cards
- Identify other potentially relevant evidence. Examples (not exhaustive) include:
  - Cash – all denominations
  - Cash storage equipment – safes, cash boxes, strong boxes etc
  - Travel documents
  - Identity documents
  - Credit/ debit cards
  - Used carbon copy paper
  - Trash – potentially contains discarded records of all types described here
  - Paper shredding machines including the ‘trash’ output
- Examine the scene in accordance with ‘Crime Scene Investigations’ outlined in these SOPs
- Seize evidence in accordance with ‘Crime Scene Investigations’ outlined in these SOPs
- When examining financial crime scenes bear the following in mind in particular:
  - All equipment, documents etc. should be handled in a way that preserves physical evidence (e.g. fingerprints) of those who have touched it previously – remember we are not just interested in the information the document/ equipment holds – we want to know who has entered/ been using it
  - Always take advice from forensic electronic specialists before handling/ switching on or off/ removing electronic equipment.

### **Linked Actions**

- Action 2 – Assess information
- Action 6 – Investigations where immediate raid/rescue not required
- Action 9 – Carrying out a raid/ rescue
- Action 10 – Crime Scene Investigation (CSI)
- Action 11 – Interviews





## **ACTION 14 - International cooperation**

### **Introduction**

In many TiP cases there are various role players involved from different countries. These may be the victims or perpetrators. International cooperation is an essential prerequisite to combat trafficking in persons – particularly in the Kenyan context where most cases have an international aspect as Kenya is a country of origin or source country, transit and destination for transnational crime that include trafficking in persons. Kenya has entered into a number of bilateral, regional and multilateral MLA treaties.

### **Domestic Legislation**

The Mutual Legal Assistance Act, (MLA) no 36 of 2011 was enacted in the year 2011 to provide guidelines to Kenya investigations, prosecutions and judicial proceedings in relation to criminal matters, and for connected purposes.

The Central Authority is tasked to facilitate MLA requests to other countries and the receipt of similar requests from other countries for the purpose of ensuring expeditious, smooth and lawful provision of mutual legal assistance. The act defines MLA and lays on the framework for receiving and processing requests. It also contains provisions for tracking and confiscation of proceeds of crime.

### **Forms of International Cooperation (IC)**

There are two main types of international co-operation (IC). These are:

- Formal
- Informal – Sometimes called ‘police to police’  
Even though they are called ‘formal’ and ‘informal’ there is some cross over between the two.  
Formal IC is governed by treaties – these can be multilateral (covering a large number of countries), regional (covering a region such as East Africa) or bilateral (a treaty between two countries).

The main means of IC that formal treaties cover are:

- Extradition
- Mutual legal assistance (MLA)

Mutual Legal Assistance (MLA) refers to the process by which a State provides assistance to another State in gathering evidence for use in criminal investigations and proceedings.<sup>8</sup>

An MLA request can be based on a Mutual Legal Assistance Treaty (MLAT), though this is not the only basis (for example, MLA can occur based on reciprocity or national legislation). MLATs can be bilateral (country to country),

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<sup>8</sup> This definition of MLA comes from the UNODC Manual on International Cooperation in Criminal Matters Related to Terrorism (2009).



multilateral (based on conventions such as UNTOC or UNCAC), or regional/country-regional (for example, between the United States with all the members of the European Union). For details on the different types of MLA and how to undertake MLA, please refer to Annex 6.

## **INTERPOL Network**

Kenya is a member of INTERPOL and hosts an INTERPOL National Central Bureau (NCB) at the Directorate of Criminal Investigations (DCI) at the National Police Service. The NCB connects their national law enforcement with other countries and with the INTERPOL General Secretariat via the secure global police communications network called I-24/7

The services provided/obtained through Interpol include:

- Issuance of notices for the tracing off fugitives by the General Secretariat of Interpol on the request of Kenyan authorities
- Round the clock secured network access to the General Secretariat for exchange of information about crime and criminals such as identity, addresses and antecedents of persons, properties, etc.
- Access to data bases maintained by the General Secretariat including databases for wanted persons, fingerprints, DNA profiles, Lost or stolen travel documents and stolen motor vehicles.

Therefore, for Kenya, within the existing international and national legal framework, three operational channels are available to police for cross-border investigations.

1. Interpol network amongst member states
2. Letters Rogatory (LR's) or letters of request under domestic legislation of Kenya, for a country that has a treaty/ agreement/MOU Kenya for MLA in criminal matters, and for any country on the principle of reciprocity on a case by case basis.
3. Kenyan Missions in foreign countries: In selected cases, and the investigator or a team of investigators may have to visit foreign country along with that LR's. Such a request should be forwarded through that Interpol wing of DCI, after seeking permission of the concerned state government.

## **Joint Investigative Teams**

A joint investigative team (JIT) refers to a team composed of law enforcement officers from different countries which is set up for a fixed period of time to investigate a specific transnational case together.

The concept of joint investigation was first established in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) Article 9(1)(c) encourages State parties "in appropriate cases and if not contrary to domestic law, [to] establish joint teams, taking into account the need to protect the security of persons and of operations, to conduct enquiries having an international character."

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A number of subsequent international instruments have reiterated the call for competent countries' authorities to establish "joint investigative bodies" through bilateral or multilateral agreements or arrangements in relation to matters that are the subject of investigations, prosecutions, or judicial proceedings in one or more States.<sup>9</sup>

The legal basis for establishing such a team and enabling foreign law enforcement officers to conduct investigations in a different country is a bilateral or multilateral agreement or arrangement setting. A good example of this is the ASEAN Declaration on Transnational Crime and the ASEAN Declaration against Trafficking in Persons Particularly Women and Children sets out the terms and conditions of joint investigations. The ability of a country to participate in a JIT depends on their domestic legislation and procedure.<sup>10</sup> The process to be followed to set up JITs is that it should be for a specific purpose, with an agreed composition, for a limited period, which may be extended by mutual consent.

### **Informal IC Requests and Central Authority**

In most countries even if an IC request is 'Informal' it will be passed through the Central Authority. When they receive this type of request the Central Authority staff do not follow the Formal route described above. Commonly, they will make immediate phone calls or send emails.

The advantages of using Central Authorities are that they know what to do in a legally compliant way and they have the contacts.

In recent years there have been some extremely rapid actions taken in the region this way in the TIP field. In at least two cases presumed victims were recovered within hours of information being received in one country about ongoing crime in another.

### **Parallel Requests**

Many police and prosecutors experienced in international co-operation use what are known as 'parallel requests. This means Formal and Informal IC requests are made at the same time.

The advantage is that action is taken quickly through the 'Informal' channels but that evidence from the actions is admissible because the 'Formal' channel is also used.

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<sup>9</sup> From Article 19 of UNTOC; Article 49 of UNCAC.

<sup>10</sup> A good model for the structure of setting up JITs comes from the Act on Mutual Assistance in Criminal Matters between the Member States of the European Union, European Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.



## **Practical Guidance**

- Ensure that you know about the 'Central Authority' and how they can be contacted
- If you are part of a specialist anti TiP team consider speaking to the Central Authority before you have a case to find out how they can assist you and what they need from you
- From the moment you start an investigation think about possible international aspects of the case
- Always consider submitting parallel Formal and Informal IC requests
- Talk to the Central Bureau when you have a case with international aspects to see how they can help you
- Make yourself familiar with the information required in a Formal IC – this reduces the chances of delays
- The need for this familiarity applies to investigators and prosecutors – the better the quality of the information the investigator provides the prosecutor the better the quality of the request he/ she will submit to the Central Bureau.

## **Linked Actions**

- Action 2 - Assess information
- Action 4 - Information sufficient to start investigation
- Action 5 - Information not sufficient to start investigation
- Action 6 - Investigations where immediate raid/rescue not required



## **ACTION 15 - Preparing for Court**

### **Introduction**

The basic elements of successful Prosecution are:

- Identify and develop corroboration for the victim's account
- Secure truthful cooperation of victim witness
- Anticipate and effectively respond to possible defences
- Deliver an effective persuasive opening and closing summation to the court

As important as it is for prosecutors to become involved in trafficking investigations from the beginning, it is equally important for investigators to remain engaged throughout the entire legal process. This includes the process during pre-trial, trial and sentencing phases. Efficient co-operation between investigators and prosecutors is therefore a key element in achieving successful outcomes in TiP cases.

Preparation for court starts during the first stages of the investigation process. Investigating officer is required to:

- Inform and co-operate with prosecutors from the earliest stages of an investigation, as it offers more chances to lead to a successful prosecution. Prosecutors can offer advice and suggestions on legal tactics and how to avoid potential problems
- Ensure that prosecutors are informed of the challenges in obtaining evidence in TIP cases, for example that taking statements from TiP victims is likely to take much longer than in other cases
- To achieve the first two points consider having a case conference with prosecutors at the outset of a case
- Compile files and submit the files to prosecutors very promptly (this reduces delays) with as much evidence as possible included and where there are gaps an explanation of when / if those are likely to be filled
- Share risk assessment and risk management plan proposals with prosecutors
- Inform prosecutors promptly of any witness protection issues you become aware of
- Maintain regular contact with the prosecutor during the course of the prosecution from the time of initial charge of suspects to final conclusion of the court case

### **Convene Matter in the Pre-Trial Stage**

Since investigators who initiated the case have built rapport with the victims and cooperating witnesses, and have good knowledge of the case, they must all be available during trial preparation to ensure continuity of the anticipated testimony.



Pre-trial interviews frequently result in the discovery of new and additional evidence (or witnesses) that the prosecutor may need an investigator to pursue and investigate prior to the court date.

### **Bail / Bond**

- The Investigating Officer and Prosecutor must be guided by the Bail and Bond Policy in deciding as to whether to object to a bail/bond application.
- Investigating Officer should disclose any information that will guide the prosecutor during the bail/bond hearing.
- Where a prosecutor intends to oppose bail/bond the Investigating Officer must swear an affidavit to oppose the bail/bond before plea taking.
- The Prosecutor and the Investigating Officer shall take the views of the victim into consideration and shall inform the victim of their right to present their views to court

### **Interlocutory Application**

The prosecutor may upon the accused person taking plea make any necessary application for a special hearing date within two weeks for purposes of hearing the victims of trafficking to enable them reintegrate back home.

### **Pre-Trial Conference**

Following a plea of 'not guilty', the prosecutor of the case shall request a pre-trial mention/conference with the court, with prosecution and defence to attend. This will be in order to:

- Set a timetable for service of evidence not already supplied to defence and notify if any further evidence is to be obtained and served
- Confirm witness availability
- Inform the court of any special arrangements that would need to be made with regard to taking evidence from particular witnesses
- Inform the court where a court visit is required to view an exhibit
- Inform the court where photographs will be used for bulky exhibits and ascertain if there is any objection

Confirm the requirement for expert witnesses and seek admission/agreement if possible

### **Handling Vulnerable and Intimidated Victims and Witnesses**

The Investigative officer shall work with prosecutors to accommodate as much as is reasonably possible the special needs of potential witnesses especially those who are vulnerable and intimidated and accord them psychosocial support.



When dealing with a vulnerable and intimidated witnesses the Public Prosecutor shall:

- Make an application before the court to have proceedings heard in camera, or for the use of a witness protection box depending on the circumstances surrounding the case
- Alter the sitting arrangement to safeguard vulnerable and intimidated witnesses
- Examine the witness through an intermediary, an intermediary may be appointed by the court to assist the witness to give their evidence at court. They can also provide communication assistance in the investigation stage approval for admission of evidence so taken is then sought retrospectively
- The intermediary is appointed by the court to explain questions or answers so far as is necessary to enable them to be understood by the witness or the questioner but without changing the substance of the evidence

### **Investigators should remain engaged at the trial stage**

Whether an investigating officer will be a testifying witness or not, it is important that the officer be present during the trial to support the process, the prosecutor, and the victim/witnesses. There is always the possibility during the trial that an officer may need to help locate a missing witness or find an outstanding piece of evidence to refute a challenge made during the defence's case presentation.

### **Investigators Should Remain Engaged at the Sentencing Stage**

The law enforcement officers' presence throughout all phases of the case is incredibly vital to the most successful outcome of the case, and it illustrates the seriousness with which trafficking cases are investigated and prosecuted. The continued presence of the law enforcements at the sentencing phase also indicates a continued commitment to the victims centred approach. An officer who remains engaged during the traffickers' sentencing, signals an ongoing investment in the trafficking survivor's well-being, even at the case conclusion.

### **Orders Post Conviction**

Upon conviction the prosecutor shall apply for;

- Release of exhibits to the owners or the relevant government agency where applicable
- compensation under the Victim Protection Act, where appropriate
- Where forfeiture is sought the prosecutor shall liaise with relevant government agency to apply for forfeiture of assets.
- Upon sentence of a foreign national to a term of imprisonment, the prosecutor shall be responsible for informing the immigration point of contact as to the anticipated date of release.



## Linked Actions

- Action 7 – Risk Assessment
  - Action 12 – Presumed victim and victim/witness protection
  - Action 16 – Support during and after court proceedings
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## **ACTION 16 - Support During and After Court Proceedings**

- If needed, encourage the victim/witness not to look at the defendant (except when directly identifying the defendant on the record), as this may deter them from testifying
- Encourage the witness to report any attempts to intimidate them from within the courtroom and address any such reports immediately
- Avoid repetition of testimony, which can add to victim trauma
- Restrict questioning of the victim to what is absolutely indispensable. Forbid questions on the previous private (and sex) life of the victim, unless absolutely necessary to ascertain the facts (Criminal Procedures Act, Article 156). For child victims and witnesses, adapt the proceedings to recognize their special needs, including phrasing questions to children in language they understand
- Ensure witnesses are able to leave the courtroom safely, with an escort if necessary
- Additional security measures may have to be implemented after the trial, if the safety of the victim is at risk (also in cooperation with service providers and local police, if for instance the witness needs protection returning to her/his community)
- An early warning and action procedure has to be adopted in case of escape or unforeseen early release of the convicted perpetrator/s or any other event that might undermine the victim/witness' safety

## Linked Actions

- Action 7 – Risk Assessment
- Action 12 – Presumed victim and victim/witness protection
- Action 15 – Preparing for court





## 5. KEY REFERENCES

### 5.1. National legislation

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- The Counter Trafficking In Persons Act 8 of 2010
- National Police Service CAP 84 Laws of Kenya
- National Police Service Standing Orders
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- The Criminal Procedure Code, CAP 75, Laws Kenya
- The Penal Code, Kenya CAP 63, Laws of Kenya
- The Evidence Act, CAP 80, Laws of Kenya
- Employment Act, CAP 266, Laws of Kenya
- The Sexual Offences Act, no 3 of 2006
- The Children Act no 29 of 2022
- The Citizenship and Immigration Act, No. 12 of 2011
- Mutual Legal Assistance Act, no 36 of 2011.
- The Witness Protection Act, No 16 of 2006

### 5.2. Policies, Handbooks and Toolkits

#### **ODPP Decision to Charge Guideline, 2019.**

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- Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation. UNODC, New Delhi. 2009
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- United Nations Children’s Fund (UNICEF) 2006 The State of the World’s Children 2006: Excluded and Invisible [http://www.unicef.org/publications/files/SOWC\\_2006\\_English\\_Report\\_rev\(1\).pdf](http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev(1).pdf) US Department of State Office to Monitor and Combat Trafficking in Persons 2005 Trafficking in Persons Report <http://www.state.gov/g/TiP/rls/TiPrpt/2005/46606.htm>
- US Department of State Office to Monitor and Combat Trafficking in Persons, 2009 Trafficking in Persons
- Report <http://www.state.gov/g/TiP/rls/TiPrpt/2009/123126.htm> US Department of State Office to Monitor and Combat Trafficking in Persons, 2010 Trafficking in Persons Report <http://www.state.gov/g/TiP/> US Department of State Office to Monitor and Combat Trafficking in Persons, 2011 Trafficking in Persons Report <http://www.state.gov/g/TiP/> International Labour Office (ILO) 2005 A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva United Nations Office on Drugs and Crime (UNODC)
- Report <https://www.state.gov/reports/2020-trafficking-in-persons-report/kenya/> US Department of State Office to Monitor and Combat Trafficking in Persons, 2020 Trafficking in Persons Report <http://www.state.gov/g/TiP/> US Department of State Office to Monitor and Combat Trafficking in Persons: Kenya



## **5.4. International Instruments**

- The United Nations 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime the United Nation 2000 Protocol To Prevent, Suppress and Punish The Trafficking In Persons, Especially Women And Children Supplementing U.N Convention on Transnational Organized Crime

# ANNEXES

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## Annexes

A series of documents are **annexed to the SOPs** in order to provide **practical tools** for the implementation of the SOPs. These offer guidance suggestions and propose examples and details on different Actions, such as Interviewing, Crime Scene Management, Mutual Legal Assistance etc.

**The Annexes also include the SOPs Check-list**, which serves three linked purposes:

- Offer guidance to police and prosecutors to ensure they do not overlook any of the SOPs steps
- Allow case supervisors to monitor in real time whether, and to what extent, the SOPs are being followed
- Provide an end-of-case record on whether, and to what extent, the SOPs were followed, for both case review and to contribute to the collection of aggregated data

In addition to the SOPs Annexes, the tools (forms, templates etc.) **already in use by the SOPs implementing agencies are supposed to be utilised** whenever appropriate and applicable.

Furthermore, involved practitioners are encouraged to **use the tools provided by the** “Guidelines - National Referral Mechanism for assisting victims of trafficking in persons in Kenya” (**NRM**). The following are some relevant examples:

- Initial Risk Assessment Form (page 35 of the NRM): for Action 7 of the SOPs
- Step-by-Step Guide to Identification and Referral Process (page 37 of the NRM): for Actions 3, 6, 10, 12
- Screening Interview Form (page 39 of the NRM): for Action 10 (*note: in fact, it is detailed enough to also or better serve an in-depth interview*)
- Annex 2 of the NRM “Interview and screening tools” (starting from page 62), in which the above-mentioned tools are comprised, complemented by: Consent Form (p. 62), Referral Form (p. 64)



## **List of Annexes:**

- Annex 1 – Indicators of Trafficking in Persons
- Annex 2 – Interviewing: the PEACE model
- Annex 3 – Interviewing questions (check list)
- Annex 4 – Crime scene example with guidance
- Annex 5 – Hawala and Financial Investigations
- Annex 6 – Mutual Legal Assistance
- Annex 7 – Short description of the ROCK Project
- Annex 8 – SOPs Check List



## **Annex 1 – Terms of Reference for the Multi-Agency Technical Working Group for the Implementation of the SOPs**

### **1. Overview of the Multi-agency Technical Working Group on Prosecution of Trafficking in Persons (TiP) and for the Implementation of the SOPs**

The Counter Trafficking in Persons Advisory Committee (AC) is defined in Part IV Section 19, 20 and 21 of the Counter Trafficking in Persons Act (2010). The AC recognizes the key role played by stakeholders in the fight against TiP and envisions Multi-Agency Technical Working Groups (MATWGs) as the strategic approach to ensure effective collaboration across all 4 pillars: prevention, protection, prosecution and partnership. The establishment of the Technical Working Groups is based on functions ascribed to the AC, specifically Section 20, (b), (c), (e) of the Act. The AC therefore relies on the above sections of the Act to define the Terms of Reference for this first Multi-Agency Technical Working Group.

This Multi-agency Technical Working Group on Prosecution of Trafficking in Persons (TiP) and for the Implementation of the SOPs for investigations and prosecutions provides guidance for the coordination of all the actors needed for the effective investigation and prosecution of TiP cases. This MATWG recognizes the important role played by the law enforcement agencies, prosecutors and service providers in order to increase the conviction of the perpetrators and ensure the protection of the victims.

The Standard Operating Procedures for Investigation and Prosecution of Trafficking in Persons, which is the first tool under this MATWG, provides structure to make the investigations and prosecution in the framework of the fight against trafficking in persons more efficient. The SOPs were designed to be a practical guide, highlighting the investigation and prosecution paths on trafficking in persons cases, a flexible and needs-based itinerary with critical questioning on the procedure, about the steps to follow reacting to the field reality.

### **2) Members**

- Office of the Director of Public Prosecutions
  - Sexual Gender Based Violence Division and Anti-Trafficking Unit
  - Children's Division
- National Police Service
  - Representative of the Director, Directorate of Criminal Investigations
  - Transnational Organised Crime Unit (TOCU)
  - Anti-Trafficking in persons and Child Protection Unit (AHTCPU)



- Directorate of Immigration Services (DIS)
  - Legal Representative of DIS
  - Border Management Secretariat (BMS)
- Counter Trafficking in Persons Secretariat
- The Judiciary

### 3) Multi-Agency Technical Working Group on Prosecution of Trafficking in Persons and for the Implementation of the SOPs

#### a) Name of the Technical Working Group

“Multi-Agency Technical Working Group on Prosecution of Trafficking in Persons and for the Implementation of the SOPs”,  
In brief “MATWG on Prosecution of TiP”

#### b) Mandate and Tasks of the MATWG on Prosecution of TiP

The mandate of the MATWG on Prosecution of TiP is to:

- **Promote and undertake actions for enhanced criminal proceedings to combat Trafficking in Persons**, with a multi-agency approach and a rights- and victim-centred approach;
- **Promote and Oversee** the dissemination and implementation of the SOPs on Investigating and Prosecuting Trafficking in Persons;
- **Coordinate** the monitoring and evaluation process of the SOPs.

#### Strategic tasks:

- Define and carry out a dissemination and implementation plan of the SOPs, so that they are used throughout the country, and provide for regular cyclic assessment of follow-up dissemination actions and support actions for their consequent implementation;
- Link dissemination of the SOPs to awareness raising initiatives on trafficking in persons addressing local communities, first responders, other stakeholders;
- Ensure systematic involvement of relevant actors in the implementation of the SOPs, considering both the primary actors in charge of investigating and prosecuting TiP and the actors that can contribute to investigating and prosecuting TiP at different levels and in diverse ways and ensure support and access to justice to the victims (such as first responders including immigration officers, police officers; labour officers; children officers; specialised CSOs/NGOs; financial intelligence entities; international organisations);





- Promote the systematic and coordinated use of the SOPs by all relevant actors across the country in the Pre-investigation, Investigation, Court proceedings phases, including proper referral to assistance of trafficked persons or at risk or in the process of being trafficked;
- Promote the protection of victims' rights during the Pre-investigation, Investigation, Court proceedings phases, including their safety, and the possibility to access justice and to participate in criminal and court proceedings.
- Contribute to the design of a Monitoring, Evaluation and Learning (MEL) System on the implementation of the SOPs;
- Assess the implementation of the SOPs by managing and using the above-mentioned MEL System, including by analysing the progress in the structuring of the investigations in the field, estimate the quality and the quantity of the investigations, if they are more efficient, if they have an impact on the conviction rate of the perpetrators of TiP crimes, if support to victims is granted appropriately also allowing them to access justice and to contribute to investigations and court proceedings;
- Identify training needs for the proper implementation of the SOPs by relevant stakeholders and convey them to respective training institutions, and at the same time collect information on the regular and specific trainings on the SOPs provided to the personnel of relevant stakeholders;
- Promote delivery of training on the SOPs to public prosecutors, investigation police officers and other relevant stakeholders;
- Analyse needs in terms of tools and equipment by relevant stakeholders for the implementation of the SOPs, and promote procurement of tools and equipment accordingly;
- Identify and propose possible amendments to the SOPs.

#### **Possible operational tasks of the MATWG on Prosecution of TiP:**

The MATWG on Prosecution of TiP, in TiP cases of particular relevance and complexity might provide guidance, encourage and facilitate coordination among relevant actors, and recommend the undertaking of specific actions or advise about the set-up of a specific investigation team, or the coordination of referral activities in line with the SOPs.

#### **c) Composition**

The MATWG on Prosecution of TiP will work under the Advisory Committee, taking lead on implementing the NPA's Prosecution Pillar.



The composition of the MATWG on Prosecution of TiP is as follows:

- Office of the Director of Public Prosecutions
  - Sexual Gender Based Violence Division and Anti-Trafficking Unit
  - Children’s Division
- National Police Service
  - Representative of the Director, Directorate of Criminal Investigations
  - Transnational Organised Crime Unit (TOCU)
  - Anti-Trafficking in persons and Child Protection Unit (AHTCPU)
- Directorate of Immigration Services
  - Legal Representative of DIS
  - Border Management Secretariat (BMS)
- Counter Trafficking in Persons Secretariat
- The Judiciary

***Each stakeholder nominates 1 representative and 1 substitute.***

It is each member’s responsibility to inform their agency and in particular their substitutes of the activities of the MATWG on Prosecution of TiP.

The Point of Contact of the National Police Service and/or the Liaison Officer of the National Police Service for the ROCK Project (Regional Operational Centre in support of the Khartoum Process and the African Union Horn of Africa Initiative) will take part in the MATWG on Prosecution of TiP meetings, either in person or online.

The MATWG on Prosecution of TiP can co-opt other relevant agencies in any meeting depending on the need, among which it is worth mentioning:

- Other relevant Divisions or Units of the ODPP
- Prosecution Training Institute
- Judiciary Training Academy
- Other relevant Departments or Units of the National Police Service
- DCI Training Academy
- Directorate of Children Services
- Other relevant government agencies
- CSOs/NGOs specialised in providing services to victims of trafficking in persons
- International Organisations

The MATWG on Prosecution of TiP will endeavour to convene biannual/annual meetings incorporating all relevant agencies working on combating trafficking in persons.



#### d) Coordinating Structure for the MATWG on Prosecution of TiP

- i. The Advisory Committee as the statutory establishment under the CTIP Act, will offer overall leadership to the MATWG which is one of the main technical working group leading the prosecution pillar as outlined in the National plan of action for combating TIP in Kenya (2022-2027).
- ii. The **leading coordinating agencies of the MATWG** on Prosecution of TiP will consist of the **ODPP (Sexual Gender Based Violence Division and Anti-Trafficking Unit)** and of the **National Police Service, Directorate of Criminal Investigations (Transnational Organised Crime Unit and Anti Trafficking in persons and Child Protection Unit)**.
- iii. Each of the above agencies shall appoint one representative to serve in the Core Team of the MATWG on Prosecution of TiP
- iv. The Core Team shall alternate chairing of their meetings within their offices and shall guide on and convene the biannual meetings of the MATWG on Prosecution of TiP.
- v. The Core Team will provide biannual reports about the activities of the MATWG on Prosecution of TiP to the Counter Trafficking in Persons Advisory Committee through the CTIP Secretariat.

#### e) Monitoring and Reporting

As mentioned in the strategic tasks, a **Monitoring, Evaluation and Learning System** in qualitative and quantitative terms of the SOPs on investigations/prosecution of TiP will be designed and implemented.

The representatives of the MATWG on Prosecution of TiP will regularly organise and participate in the monitoring and evaluation meetings in order to estimate the impact of the SOPs on the investigations and on the conviction rate of the perpetrators of TiP.

An **annual evaluation and planning meeting will be held.**

A **focal point for monitoring and evaluation within the Core Team of the MATWG** will be appointed in order to record, store and process the qualitative and quantitative data collected in the country.

An annual report on the implementation progress of the SOPs in the field will be produced, with a section detailing the difficulties encountered



in the execution of the engagements, successes and challenges in the fight against TiP, additions and modification proposals in the SOPs, other inputs in order to improve the counter-trafficking responses and the protection of victims of TiP. The core team will provide bi-annual reports about the activities of the MATWG on Prosecution of TiP to the Counter Trafficking in Persons Advisory Committee through the CTiP Secretariat. Additional external evaluation actions might be undertaken under the initiative of the MATWG on Prosecution of TiP.

#### f) Resources

The running costs of the MATWG on Prosecution of TiP will be covered within the current budgets of each agency. The MATWG on Prosecution of TiP may mobilise additional internal or external financial resources for relevant activities.

### Annex

#### Appointment of the members of the MATWG on Prosecution of TiP and for the implementation of the Standard Operating Procedures (SOPs) for investigating and prosecuting trafficking in persons in Kenya

- Representatives from the **Office of the Director of Public Prosecution**
  - ..... (Sexual Gender Based Violence Division and Anti-Trafficking Unit)
  - ..... (name)
  - ..... (name of substitute)
  - ..... (Children's Division)
  - ..... (name)
  - ..... (name of substitute)
- Representatives of the **Directorate of Criminal Investigations**
  - **Representative of the Director, Directorate of Criminal Investigations**
    - a) ..... (name of specific department)
    - b) ..... (name)
    - c) ..... (name of substitute)
  - **Anti- Trafficking in persons and Child Protection Unit of the Directorate of Criminal Investigations:**
    - a) ..... (name)
    - b) ..... (name of substitute)
  - **Transnational Organised Crime Unit of the Directorate of Criminal Investigations:**
    - a) ..... (name)
    - b) ..... (name of substitute)



- Representatives of the **Directorate of Immigration Services**
  - Legal Representative of DIS
    - a) ..... (name)
    - b) ..... (name of substitute)
  - Border Management Secretariat (BMS)
    - a) ..... (name)
    - b) ..... (name of substitute)
- Representatives of the **Counter Trafficking in Persons Secretariat:**
  - ..... (name)
  - ..... (name of substitute)
- Representatives of the **Judiciary:**
  - ..... (name)
  - ..... (name of substitute)



## **Annex 2 – Indicators of Trafficking in Persons<sup>11</sup>**

The following are common signs and observations for officers to keep an eye out for. Remember these are only indicators that may prompt an investigation:

### **Possible indicators of trafficking**

If you can tick one or more statements in at least four sections, this might be a case of trafficking.

#### **a) Recruitment**

- The person or their family owe money or other benefits to their employer or others who helped them to get a job.
- The recruiter or employer provided false or misleading information to induce or coerce the victim to comply with their wishes.

#### **b) Personal documents and belongings**

- The person's passport, travel or identity documents were confiscated.
- The person's personal belongings were confiscated.
- The person has a false identity, work or travel document.

#### **c) Freedom of movement**

- The person is not allowed to move freely without permission or control.
- The person is physically confined to his/her place of work or housing.
- There are signs of control/surveillance (e.g. fences, cameras, weapons).
- The person has been prevented from contacting anyone outside their place of work or housing.

#### **d) Violence or threat of violence**

- The person suffered rape or other forms of sexual abuse and/or harassment.
- The person faced other forms of physical abuse, and/or forced drug consumption (he/she has bruises or other signs of physical abuse).
- The person faced threats of violence or abuse, including threats to others, for example family at home.
- The person shows signs of fear/distress / depression / psychological abuse / poor physical health.
- The person feels scared or unsafe.
- Have tattoos or other marks indicating "ownership" by their exploiters.

#### **e) Working conditions/exploitation**

- The age / status of the person is inappropriate (e.g. unaccompanied children; persons appearing to be under minimum legal age for situation / place of work).

<sup>11</sup> Worked out by Marco Bufo based on texts proposed by Phil Marshall, CIVIPOL consultant and Pieter Cronje, UNODC consultant.



- The person is in a job / situation different than he/she expected or was promised.
- The person is working excessive hours, and is deprived of breaks or time off.
- The working environment appears unusually dangerous, particularly considering the person's age/condition.
- The person is not paid for the work or is underpaid compared to wages promised.
- The person must pay excessive fees for recruitment, transportation, accommodation, food that are deducted directly from the person's earnings.
- Living conditions appear to be very poor (e.g. food, sleeping arrangements, large numbers living at the place of work).
- The person has been pressured to have sexual contact with someone.

#### **f) Other**

- The person is unable or unwilling to communicate (foreign language, no mobile phone, etc., instructed on what to say).
- The person demonstrates lack of familiarity with their environment/situation.
- The person has no cash of their own.
- Tells his/her story with obvious errors or untruths. The story seems artificial/ learnt by rote.
- The person has been tricked or forced to do something they did not want to do, e.g. marry a stranger, commit a crime etc.
- The person has been coerced to sell an organ.
- The person or their family were required to pay a ransom.

### **Additional possible indicators by forms of exploitation**

The following are some additional possible indicators, specific to different forms of exploitation which are the purpose of trafficking in persons. Some are valid for more than one form of exploitation (e.g. Domestic Servitude and Child Labour) and they are not repeated in both boxes. So, when checking about similar forms of exploitation, or child trafficking, related boxes should be scrutinized.

#### **Sexual exploitation**

- Have clothes that are mostly the kind typically worn for doing sex work.
- Only know how to say sex-related words in the local language or in the language of the client group.
- It is reported by clients that sex workers do not smile.
- Has little or no ability to decide which and how many customers he or she wishes to service.



- Has little or no ability to decide what kind of sexual services he or she can offer.
- Have little or no ability to refuse requests for unprotected and/or violent sex.
- Advertised on websites or in magazines without the person's knowledge or direct action.
- Is not allowed to be alone with health personnel, refuses or is denied medical assistance.
- Makes frequent visits to emergency centres for injuries, STDs, abortion.

### **Exploitation of forced labour or service**

- The person has no employment contract, the terms and conditions are poorly defined, or the employment contract is written in a language that the person does not understand.
- The person is in an irregular administrative situation and does not hold residence permit or work permits.
- The employer or manager is unable to show the documents required for employing workers from other countries.
- The employer or manager is unable to show records of wages paid to workers.
- The health and safety equipment/clothing are of poor quality or is missing.
- There is evidence that labour laws are being breached.
- Lack basic training and professional licences.
- There is evidence that workers must pay for tools, food or accommodation or that those costs are being deducted from their wages.
- Depend on their employer for a number of services, including work, transportation and accommodation.

### **Domestic servitude**

- May live with a family in their house.
- Not eat with the rest of the family.
- Given left overs to eat.
- Have no private space.
- Sleep in a shared or inappropriate space e.g. kitchen floor.
- Never or rarely leave the house or place of work for social reasons.

### **Child labour**

- Have no access to their parents or guardians.
- Have no friends of their own age outside of work.
- Have no access to education.
- Have no time for playing.
- Equipment is designed or has been modified so that it can be operated by children.





### **Forced use in armed conflict/groups**

- May be aggressive.
- Be in presence of, or engaged in activities with persons or groups known for being part of militias or terrorist groups (activities might also collateral, such as work, cooking for the group, or providing sexual services).
- Carry weapons.

### **Child marriages and forced marriages**

Forced marriage can assume various forms and may occur in situations involving mail order marriages; arranged, traditional and customary marriages; expedient marriage; marriages as dispute settlement; fictitious marriages; kidnapping or marriage to acquire citizenship.

#### **Possible indicators**

- Not allowed to work.
- Domestic violence.
- Unreasonable restrictions (e.g. not allowed to leave the house).
- Running away from home.
- Family disputes.

### **Further cross-cutting indicators for Exploitation of children**

#### **Possible indicators**

- The presence of child-sized clothing typically worn for doing manual or sex work.
- The presence of toys, beds and children's clothing in inappropriate places such as brothels and factories.
- The claim made by an adult that he or she has "found" an unaccompanied child.
- The finding of unaccompanied children carrying telephone numbers for calling taxis.
- Travelling without parents or caregivers.
- Travelling in groups with people who are not related, or only distantly so.

### **Begging or for committing petty crimes**

People who may be trafficked for purposes of begging or committing petty crimes may:

- Be children, elderly persons or disabled migrants who tend to beg in public places and on public transport.
- Have physical impairments that appear to be the result of mutilation.
- Parents received a payment in return for their child to come with the traffickers.
- There is evidence that the group of suspected victims has moved, over a period of time, through a number of localities/countries.



- The group is dropped at their “work” place and then picked up at the end of the day.
- Be part of large groups of children who have the same adult guardian/controller.
- Move daily in large groups and over considerable distances.
- Be punished if they do not collect or steal enough.
- Be children carrying and/or selling illicit drugs.
- Participate in the activities of organized criminal gangs.
- Live, as gang members, with adults who are not their parents.

### **Use of a person for transplanting an organ, part of an organ or tissue of a human body otherwise utilising the victim**

Organ trafficking can take a number of forms- there are cases in which organs are harvested from prisoners, those where an individual is tricked into donating an organ, cases where victims are paid for an organ, or where a person is treated for a real or imagined health problem and organs are removed without their knowledge or consent.

A host of offenders is involved no matter which method is used – the recruiter who identifies the potential victim, the staff of the hospital or medical clinic where the surgery is taking place, the doctors who are performing the surgery, the middlemen and contractors, the buyers of the organs, and the banks where the organs are stored.

#### **Possible indicators:**

- Scars on the victims where the organ was removed (especially vulnerable groups such as refugees and poor people).
- Health problems (A person whose organs were removed may have health problems and need medical attention).

### **Important elements to consider:**

- **Age of the victim:** Depending on the purpose of trafficking, the age of the victim is important. In sexual exploitation due to client demands, traffickers usually prefer young victims. Children are also a target in armed conflicts as child soldiers and brides, as they can easily be brainwashed and controlled. In labour exploitation cases, the demand is for young and strong victims who are productive and can withstand the challenges of hard labour. For begging and peddling, the elderly, disabled and young children are more able to elicit compassion and are therefore more vulnerable to the traffickers.



- **Gender of the victim:** Due to entrenched gender inequalities, position within the society and negative norms and attitudes, women and girls are more vulnerable and prone to trafficking. Boys and men are more vulnerable to being forcefully recruited into armed conflict and targeted for particular forms of labour exploitation. Male trafficking for the purposes of prostitution, particularly of teenage and younger boys, is beginning to increase and should not be ignored.
- **Specific interest groups:** People with albinism, people living with disabilities and displaced persons.
- **Working and living conditions:** Victims often work and are often housed in crowded and poor conditions with restricted movement.
- **Abuse:** Observational signs of physical abuse on a person can be an indicator of trafficking. However, officers should not assume a person has not been trafficked if there are no signs of injuries or physical abuse.
- **Location of origin/ethnicity:** The supply chain of trafficking victims relies on the traffickers tapping into people's vulnerabilities, hopes and dreams for a better life from their current plights (such as poverty, conflict, humanitarian crisis, gender discrimination, lack of opportunities and economic betterment). It is however possible that specific ethnic groups may be more vulnerable to trafficking. Pull factors play an important role in local and regional patterns for example rural to the city or work in specific countries.
- **Documentation:** Often, victim(s) of trafficking use another person's identity or travel document. Lack of travel documentations and fraudulent identity cards or travel documents are strong indicators of trafficking. Depending on regional and geographical circumstances, identity and travel documentation is usually seized from victims of trafficking, as part of the control mechanisms of the traffickers and victims will not normally be in possession of them, although exactly the same observation could be accurately made in respect of the majority of asylum seekers and in some cases, of migrant smuggling.
- **Last location:** The last location of the victim(s) before coming in contact with law enforcement is important. If victims are originating from the same source or a known endemic trafficking location or transit point, this should act as a trigger for law enforcement to investigate whether the person fits the profile of Victims of trafficking and can be considered a presumed victim of trafficking.



- Transportation:** How a person is being transported may indicate trafficking; for example, if children are being transported by a non-family member for “schooling” in a distant place, or “returning home”, or if young village girls have been recruited and are being transported for “employment in the city/town”. This should trigger further questions to eliminate potential trafficking in persons (or to detect further trafficking indicators). Law enforcement officers – by virtue of their role and regular activities– come in contact with trafficked persons during transportation, and they should be aware of trafficking indicators and use these indicators as part of their daily police activities.

### Trafficking indicators chart

(to be filled during the detection phase, in the initial screening, as well as in/ after the evidential interview)

ACTION		0. No signs	1. Presence of signs	2. Evidence	3. More info required
	Recruitment				
	Transport / transfer				
	Harbouring / receipt				
<b>MEANS</b>	Threats				
	Use of force				
	Restriction of movement				
	Isolation				
	Retention of documents				
	Withholding of wages				
	Fraud / deception				
	Abuse of power / vulnerability				



<b>PURPOSE</b>	Labour exploitation				
	Sexual exploitation				
	Domestic servitude				
	Exploitation in begging				
	Exploitation in forced illicit activities				
	Child marriage				
	Forced marriage				
	Use in armed groups				
	Removal of organs / tissues				
	Other				



## Annex 3 – Interviewing: the PEACE model<sup>12</sup>

Interviews, particularly of presumed victims, are an essential component of TiP investigations.

It is important to remember; however, they are not the only ones. TiP investigations should from the very beginning or after initiation have a proactive, intelligence-led dimension, also in order not to rely solely on victims' testimony.

### The PEACE Model

The recommended approach for conducting interviews in TiP cases, for victim-witness, witness and suspect interviews is the PEACE model. This is the standard adopted in the UNODC global manual on the Investigation and Prosecution of TiP.

PEACE is an acronym that stands for the different stages of an interview. These are:

- Planning and preparation.
- Engage and explain.
- Account, clarification and challenge.
- Closure.
- Evaluation.

Some of the key points to remember when conducting interviews include:

- TiP victims are likely to be traumatised.
- TiP victims may be traumatised to the extent that they are psychologically ill.
- They may also be physically ill and/ or injured.
- The combination of traumatisation and the often-prolonged nature of exploitation means that many TiP victim witnesses will either not be able to recall details of the crime or recall them in a chaotic and confused way.
- As a result of that traumatisation, interviews are likely to last a lot longer.
- Statements of victim-witnesses are key elements of prosecution evidence, but they should never be seen as the only evidence.
- The CPA allows that the content of what was said in the verbal exchange shall then be written down, the interviewee be given the opportunity to read it/ have it read to them and (if they wish to add or change anything) they should be interviewed in a question answer format which is then recorded in writing. Finally, the whole statement including any additions recorded by question answer should be signed by the interviewee.

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<sup>12</sup> Worked out by Paul David Newton, CIVIPOL consultant, with final table worked out by Pieter Cronje, UNODC consultant.



Therefore:

- Use the PEACE model to plan and conduct interviews.
- When planning for an interview don't just plan for the immediate interview – start thinking about what support will be needed after the interview.
- Risk-assess whether a presumed TiP victim-witness is fit to interview.
- This assessment should consider the persons psychological and physical condition.
- Consider using professionals to assist in assessing if a person is fit for interview.
- Note that there may be some rare circumstances where a person may not be fit for interview but an interview is necessary. An example is where there are other victims at serious risk at an unknown location. If such an interview is required it should be confined to obtaining only the absolutely necessary information, it should be as brief as possible and all possible support should be given to the interviewee.
- If the victim is a child (person under 18) wherever possible use video to record the interview.
- Where interviewing adults question verbally, then summarise in writing. Where there are changes in the 'Account' given by TiP victim witnesses don't dismiss it as untrue. Remember, this is normal due to traumatisation and long-term exploitation.
- At the Evaluation stage of the interview always look at ways to corroborate the witness account.

### **Different types of interviews and PEACE**

The two main types of interviews relevant to TiP are:

- Screening interviews.
- Evidential interviews.

A screening interview is a brief interview carried out in the field to decide if it is more likely than not that a person has been trafficked – and then decide what to do about it.

An evidential interview is a much more detailed, longer interview to obtain evidence for presentation in court hearings.

PEACE is applicable to both – but, of course with differences.

In a screening interview you often have little time to Plan for the specific interview – although you can make general preparations. The opportunity to Engage and Explain is often limited and likely to take place in difficult circumstances such as many people present, some of whom may be traffickers. The Account also will be limited and should be targeted on a small number of specific questions. Closure must be brief and to the point – but keep the 'door



open' to positive future interactions with the person. Evaluation will probably be required very quickly indeed; – again, frequently in difficult circumstances. In an evidential, you generally have time to Plan in some detail for the interview with that individual, – finding out what the 'story so far' is, establishing who they are, providing referral to health support etc. Similarly, you have time to build a relationship in Engage and Explain – and probably ensure the provision of practical support such as food, medical treatment and at least temporary shelter. The Account will be detailed and may take a number of interviews to obtain. Closure will include details of what is likely to happen next and any support the interviewee may receive. There is likely to be a lot of information to consider at the Evaluation stage – and lines of enquiry to follow.

### Recording interviews

Global best practice is that interviews of TiP victims, with their prior informed consent, should be recorded electronically – ideally on video.

The elements of the PEACE model are briefly described below.

#### **P** Planning and Preparation

- Understanding the purpose of the interview.
- Defining the aims and objectives of the interview.
- Understanding and recognising the points to prove.
- How will the interview assist the investigation?
- What is known about the interviewee and what needs to be established?
- What are the legal requirements for this interview?
- What offences are being investigated and what are the points to prove. Not only the one behind the reason for arrest, but other possible ones.
- What practical arrangements need to be made for this interview e.g.:
  - i) Do you need to visit the scene of the crime?
  - ii) Do you need to search any premises?
  - iii) Where will the interview take place?
  - iv) How many interviewers are necessary?
  - v) What role will each interviewer take?
  - vi) When will the interview take place?
  - vii) What equipment do you need and does it work?
  - viii) Do you need any exhibits/property?
- What has been disclosed in the pre-interview?
- Preparing the mechanics of the interview (stationery, exhibits, location, recording equipment e.g. video recorder or tape recorder, etc)





## **E Engage and Explain**

- An introduction appropriate to the circumstances of the interview.
- First impressions are important.
- It is desirable that a proper relationship is formed between the interviewer and interviewee. This requires, for example, that the officer develops an awareness of, and is able to respond to, the welfare needs of the interviewee and any particular fears and expectations.
- The engage phase is followed by the explanation phase in which the officer should outline the reasons for the interview and explain what kinds of action will be followed during the interview, particularly the routines.
- Give common courtesy and treat every person with dignity and respect.
- Establish what the interviewee would like to be called.
- Reassure person that they are a witness not a suspect.
- Consider welfare and refreshment.

## **A Account, Clarification and Challenge**

- This term describes the stage in which the interviewee's recollection of the events of interest is obtained.
- There are two accepted approaches of inducing recollection known as:
  - The cognitive approach and
  - The conversation management approach
- The 'Conversation Management' approach is when the interviewee is asked first to say what happened and the officer then subdivides the account into a number of individual parts which are enquired about in turn for further details.
- With the cognitive method, the interviewee is asked to think back and mentally relive the event, initially with minimal interference from the interviewing officer. This is termed free recall. The officer does not interrupt, makes effective use of pauses and avoids leading questions. The interviewee is then encouraged to recall the event again using a different chronological order, or from a different perspective.



## **C** Closure

Be prepared for the closure. Closure should also include elements such as

- Summary.
- Check comprehension, e.g. has the interviewee understood the questions?
- Invite questions or feedback.
- Give appreciation for their hard work.
- Indicate the value you place on their assistance.
- Consider victim and witness care.

It is crucial that the officer responsible always ensures that there is a planned closure, rather than an impromptu end, to the interview.

## **E** Evaluation

After each interview is completed, the event and the material that came from it should be evaluated fully.

- Evaluate information obtained.
- Consider whether the objectives of the interview were achieved.
- Evaluate the whole investigation in the light of information obtained.
- Decide whether any further interview is required or whether other inquiries need to be made as corroboration, confirmation or as preparation for further investigation.
- An important element of the evaluation is to put the interview in the context of the whole investigation and to review the information obtained along with that already available. Consideration should be given to the following:
  - The points to prove of any offence.
  - Evidence of a defence to the offence.
  - What other areas need to be addressed during the investigation.
  - Evaluate interviewer's performance.



## Annex 4 – Interview Check List<sup>13</sup>

‘When’ – Ideally, obtain dates and times. If this isn’t possible get general times e.g. ‘It was March I think’, descriptive times ‘It was very cold for days’ or comparative times ‘It was after we arrived but before X was injured’

Always ask if the interviewee has kept any documentary records of their story i.e. tickets, contracts, letters, even diaries.

### Recruitment

First contact/ ‘advertising’:

- How did you hear about the opportunity?
- How did you get more information about the opportunity?
- What types of communication were used (face to face, mobile phones, social media physical letters)?

### People ‘recruiting’:

- Who made the offers of work?
- What (if any) was your prior relationship with the people offering work etc.?
- How old are you/ were you when the opportunity was offered?
- Did the person offering you the opportunity know how old you are/ were?
- Can you give us phone numbers, social media addresses etc. of the people who made you the offers?
- When did you speak to the people making the offers?

### Work/ opportunity offered:

- What exactly did they say? In particular:
  - What work did they say you would be doing?
  - What pay was offered?
  - What expenses did they say you would have to pay?
  - Where did they say you would be working?
  - Where were you told you would be living?
  - How did they say you would get to the place you were going to work?
  - What (if anything) did they tell you to tell your family?

### Contracts:

- Did you have any contract – written or verbal?
- If written what language (if known) was it in?
- Who did you make that contract with?
- If written, did you sign it?
- If verbal what was said?
- Did you pay any money to anyone before you set off?

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13 Worked out by Paul David Newton, CIVIPOL consultant



- If so, how much, to whom and how was it paid?
- What travel documents did you have before you set off?
- How did you get those documents?

### Family:

- What, if anything, did you tell your family about the opportunity offered?<sup>9</sup>
- Before you set off what did the traffickers know/ claim to know (if anything) about your family and/ or loved ones?

### Sexual exploitation:

When you were told about the opportunity were you aware:

- Prostitution was intended?
- If so, what form of prostitution was it:
  - Street? Brothel? Apartment? Bar/Club? Massage parlour?
  - Call girl agencies? Videos and/or online sexual services?

### Transportation

Please describe the journey you took from your home to the place you were found/ working. In particular:

#### Payment:

- Who paid for the transport?
- What arrangements were made for you to pay for the journey? (if interviewee paid)
- Who made transport arrangements i.e. obtained tickets, provided vehicles, checked in on flights etc.?

#### Type of transport and routes:

- What types of transport were used?
- What route was taken (names of towns etc. if possible, description of features etc. in all cases)?
- How long did the journey take?

#### People:

- Who was with you?
- Who was in charge of the journey/ making arrangements/ telling you where to go etc.?

#### Documents:

- What identification documents did you have on the journey?
- Did you have your identity documents all the time on the journey?
- If not, who had them and when?
- What check points/ document controls did you pass through on the journey?



### **Treatment:**

- Please describe how you were treated during the journey.
- Who saw the things that happened to you on the journey?

### **Exploitation**

Questions you may consider regarding destination locations include:

#### **All victims:**

##### **Documents:**

- Who had your identification documents?
- What contracts did you have?

##### **Living locations and conditions:**

- Which address/ place were you first taken to when you arrived?
- Who took you there?
- Which other address/places did you live/work?
- Who else was at the places you lived/ worked?
- What were their roles?
- Describe your living conditions.
- How did your living conditions differ from what you had been told?

##### **Working locations and conditions:**

- Please describe the work you did
- What hours did you work?.
- Describe how you were treated at all times.
- How did your work differ from what you had been told?
- When did you start the work?
- Were you living and working in the same place?
- Who else were you working with?

##### **Freedom of movement:**

- How 'free' did you feel?
- Were you ever alone?
- What could you do when you were alone?
- How often did you call/ communicate with home and family?

##### **Money:**

- How much were you paid?
- How were your wages paid?
- Who paid you?
- Did you have to pay any money?
- If so, what were you told the money was for?
- How much did you pay?
- Who did you pay it to?

##### **Punishments:**



- What happened if you didn't work fast enough, hard enough etc. (or it was claimed you weren't working fast enough etc.)?

#### **Food:**

- How often did you eat?
- What did you eat?
- Who provided the food?

#### **Language:**

- Which languages can you speak?
- In each language how well can you:
  - Speak it?
  - Understand speech?
  - Read it?
  - Write it?

#### **Contact with agencies (Government and Non-government):**

- Which official agencies (if any) did you come into contact with?
- Please describe what those contacts were.
- What identity did you use in those contacts?
- Who dealt with you from those agencies?

#### **Sexual exploitation:**

- How and when did you discover you were going to do sex work?
- Who told you?
- Where did you work?
- What type of sex work was it?
  - Street?
  - Brothel?
  - Apartment?
  - Sauna or massage parlours?
  - Hostess or lap-dancing bars?
  - Call girl' escort agencies?
  - Videos and/or online sexual services?
- How were you supervised when working?
- Who supervised you?
- What hours did you work?
- What choice did you have about which clients you could have, what they could do to you etc.?
- How (if known) were your services 'advertised'?



## Annex 5 - Vulnerability Assessment Tool

MINISTRY OF LABOUR AND SOCIAL PROTECTION  
STATE DEPARTMENT FOR SOCIAL PROTECTION AND SENIOR CITIZEN  
AFFAIRS  
COUNTER TRAFFICKING IN PERSONS SECRETARIAT  
VULNERABILITY ASSESSMENT TOOL

Case No \_\_\_\_\_.

Next of kin contact \_\_\_\_\_ ID No/ Passport \_\_\_\_\_

### INFORMED CONSENT

Has the individual been informed that CTiP Secretariat and/ or (name of partnering organization) reserves the right to share her/ his individual case data for assistance purposes and only with CTIP and partnering organizations involved in direct assistance? **(Yes/ No)**

Has the individual further been informed that CTiP Secretariat reserves the right to make a limited disclosure of non-personal data based on the information collected at the interview to law enforcement for the purpose of rescuing other victims that remain under the control of traffickers or preventing other potential victims from being trafficked? **(Yes/ No)**

Has the individual further been informed that CTIP Secretariat reserves the right to use (only anonymous, aggregate) data for research purposes? **(Yes/ No)**

Has the individual's full and informed consent been obtained to conduct the screening interview based on information given regarding the role of the organization, the voluntary nature of the interview and the use of the information provided by the individual as outlined above?

**Note:** Informed consent is necessary for all services, such as medical examination and procedure, health assessments, assisted voluntary returns and reintegration assistance. **(Yes/ No)**

If the individual is a minor, has the consent of the parent(s)/ guardian(s) been obtained? **(Yes/ No)**

Signature of interviewer \_\_\_\_\_ Date \_\_\_\_\_



**I. Personal Information**

- Full Name: \_\_\_\_\_
- Date of Birth \_\_\_\_\_
- Place of birth \_\_\_\_\_
- Sex:  Male  Female
- Marital Status \_\_\_\_\_
- Place of origin \_\_\_\_\_
- Region/County \_\_\_\_\_ Village \_\_\_\_\_
- Education \_\_\_\_\_
- When did you live? \_\_\_\_\_
- Travel route taken \_\_\_\_\_
- Anticipated destination \_\_\_\_\_
- Returned from Country City \_\_\_\_\_
- Date returned to Kenya \_\_\_\_\_
- Was the migrant detained along the journey? \_\_\_\_\_
- If yes, state name of the detention centre, location and country \_\_\_\_\_
- Time spent in detention \_\_\_\_\_

**II. General Health Condition**

- Does the migrant have any illnesses which requires medical attention? If yes, elaborate the type of illness.
- Does the migrant suffer from chronically illness? If yes, state the illness and medication required
- Does the migrant have any form of disability/impairment? ( specify)
- Any other medical conditions the migrant would like to share?

**III. Has the migrant been subjected to any type of abuse? If yes, choose from the list below.**

- a. Victims Of Exploitation
- b. Domestic Servitude
- c. Labour Exploited
- d. Emotionall Exploited
- e. Sexually Exploited
- f. Organ Harvesting
- g. Forced Marriage
- h. Child Soldiers
- i. Others (Specify)





### IV. Vulnerability Assessment

Types of general vulnerable groups	Medical	Disability	Elderly (> 60)
	<ul style="list-style-type: none"> <li>■ Aged-out UAMs</li> <li>■ Children At Risk (UMC, Separated Child, Abused Children)'</li> <li>■ Sexual and Gender Based Violence    []Exploitation</li> <li>■ Persons at Risk (Single Woman, Single Parent, Pregnant, Man At Risk, Family in detention setting)*</li> </ul> <p>Needs.....</p> <p>Potential Risks.....</p> <p>Referrals</p>		

### V. Indicate reasons for referral:

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Name of interviewer \_\_\_\_\_

Signature\_\_\_\_\_

Interview date \_\_\_\_\_

Place of interview \_\_\_\_\_

**Note: This tool is adapted from IOM Vulnerability Assessment Tool**

**NOTE: If the answer to question IV is yes, please refer the migrant for VOT screening at;**

Counter Trafficking in Persons Secretariat  
National Social Security Fund (NSSF) Annex (Silo) Building 7th Floor  
P.O Box 46205-00100, Nairobi  
Mob No: 0733721566 (8.00am-5.00pm Working Days)



## Annex 6 - Crime Scene Example with Guidance<sup>15</sup>

This guidance is intended for situations where you can't get a Crime Scene Examiner (CSE) to a location.

It describes the actions required and objectives you should try to achieve. It is based on location where people have been exploited for their labour but the basic principles can be transferred to a range of TiP situations including:

- Vehicles suspected of transporting victims.
- Locations where people have been kept in kidnap type situations.
- Other types of TiP – Domestic servitude, Sexual exploitation, Criminal activity etc.

The main tool you are likely to have, is a mobile phone camera – you are not likely to be able to obtain finger-marks at the scene. Good mobile phone images that 'tell the story' of a location are likely to significantly improve the quality of your case.

Even if you can't take finger-prints at the location, you may be able to seize items for finger-mark examination later. This should be done in a way that prevents contamination of the item and recorded, packaged, and stored in accordance with your practice and procedures.

This is a general outline of basic appropriate actions at TiP crime scenes. It is not intended to be a full, detailed list of all aspects of required procedures:

### Protect

- Don't do any of the actions below without thinking about your own safety and those of your colleagues – your safety is the first priority – obtaining the evidence is the second.
- Secure the area to prevent people entering.
- Identify a 'single path' for you and others to enter the scene.
- Mark this with tape or similar if you have it – if you don't you can improvise by marking it with things like stones.
- Note or record by camera or video where people are when you arrive.
- Consider if you need to search people.

### Search

- Search people (As your law allows, considering privacy and dignity)
  - Record what they have.
  - Preserve and package it accordingly.
  - Identify items of interest for further examination.
- Once you have searched people, consider removing them from the scene of crime.

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<sup>15</sup> This material, both text and images, are Paul David Newton's copyright, reproduced here with his permission.



- If possible, use a separate group of people to examine the people found and to examine the scene itself – this prevents cross contamination.

### **Examine**

- ‘Walk’ the scene of crime (subject to not disturbing and damaging it) noting what you see to allow you to collect your thoughts about objectives.
- Do this slowly, in a relaxed way – you are in control, nothing is going anywhere.
- Objectives could include:
  - Showing the general living/ working conditions.
  - Identifying who has been working on what equipment.
  - Identifying who has slept where.
  - Establishing how long a person has worked/ slept at location.
  - Recording any injuries.
  - Establishing what roles people have – management or worker? This helps identify exploiter/exploited.
- Return to the scene of crime, walk it again, now taking photographs that achieve the objectives you have identified.
- Check your photographs as you go to ensure they are as good as possible.
- Identify items you want to seize for future finger- prints or other examination – you are probably only going to be able to take a small number of things so you need to be selective.
- Seize them in accordance with your practices and procedures.

### **Package**

- Bodily fluids on it (blood, semen, urine etc.) be packaged in plastic bags/ containers etc.
- Naturally dry (no external heat) bodily fluids wet/ damp before you package them
- Bodily fluids should be packaged in strong paper envelopes, bags or wrapping paper.

### **Transport**

- Put a label on the packaging of each exhibit showing a unique reference number.
- Record the movement of the exhibit using a ‘chain of custody’ record.

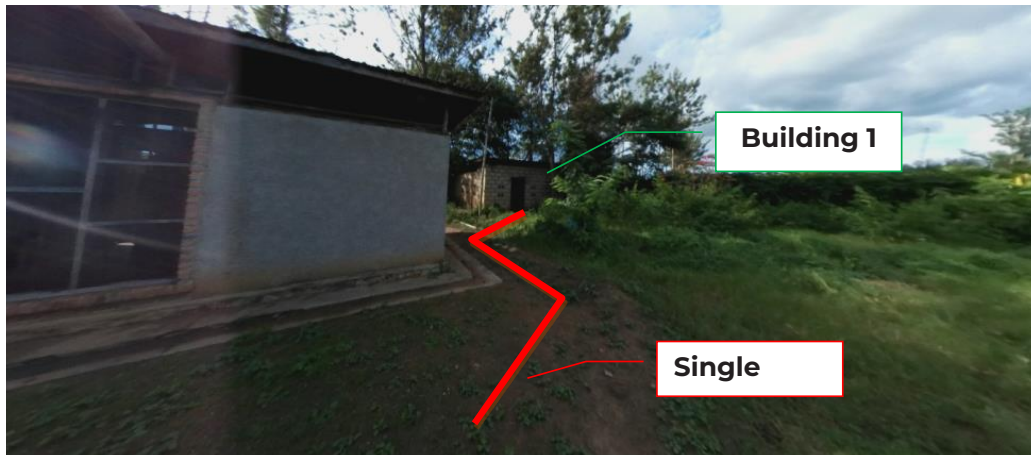


### The scenario

In this location the place of the interest is marked as 'Building 1'.

This image<sup>16</sup> is an example of the type of photograph that should be taken to show the general situation of a crime scene.

You will also see that the 'single path' is marked. The single path is the route you (and if available) examiners should take in and out of the location. It reduces the chance of cross contamination and disturbance of the scene.



The following images show the general layout of the interior of the building with the key points of evidential interest marked.

These general images show how parts of the scene of crime relate to each other – which 'bed' is where, where the 'cooking facilities' are etc. This helps corroborate and strengthen the value of the accounts of witnesses.

<sup>16</sup> The images in this document are all the copyright of Paul David Newton. Mr Newton grants permission for their use solely in the Standard Operating Procedures for Investigating and Prosecuting Trafficking in Persons in Kenya created by CIVIPOL / UNODC 2023. They should not be reproduced anywhere else without the prior and express permission of Mr Newton.



General images also help continue the 'story' of the scene of crime as it will be presented in court. It leads down to specific items and gives courts a better chance of understanding the circumstances of a case. The relevance of the specific items is described later.

It's also important to remember that what's not there is as significant as what is. General photographs can show the absence of water supply, food or proper security.

The images used here were taken using a specialised 360 Panoramic camera and mobile phone but a good quality mobile phone camera will be adequate for most uses.





The images on the following pages are examples of specific images that should be taken, why they are useful, how other crime scene examination techniques might be applied and some of challenges using these techniques presents.

Sleeping area – used with interviews the photo there. It also provides evidence of conditions.

### If you have an examiner

Fingerprint examination corroborates claims of presence and can give an indication of how long they have been there. In many circumstances though (as here) surfaces can be difficult to obtain marks from.





Cooking facilities – used with interviews corroborates claims of presence and provides evidence of conditions.

**If you have an examiner**

The same comments for fingerprint (above) apply here; additionally, marks on things like cooking equipment can show roles within groups.

Water facilities - similar comments to those above apply here.

It might be practical to seize this for later fingerprint examination.

Work tools – used with interviews the photo can corroborate a person’s claim to have carried out particular work.

The condition of work tools and equipment can provide evidence of exploitation.

It is sometimes possible to link injuries and chronic disability to work tools by comparing the physical shape, size etc with the injuries seen.

It might be practical to seize these for later fingerprint examination.



### **If you have an examiner**

They may be able to take fingerprints from tools. This is reasonably simple but will be complicated by the tools' overall conditions, the nature of surfaces and numbers of people who have handled it.

If there are blood and other samples on the tools DNA analysis is obviously a possibility. However, the expense of the process and its lack of availability in many cases suggests it will be rarely done.





## **Annex 7 – Hawala and Financial Investigations (F.I.)<sup>16</sup>**

### **Hawala**

Hawala is an informal system of money transfer, although it may have links to the formal sector (banks, formal money transfer bureaus) at some points. It works on trust and communication. Records are essential as hawala operators need to keep a check on who owes what to whom. Hawala is not in itself illegal – but it is often used for illegal money flows because it is outside regulation and it makes it easier to hide those flows.

In reactive operations the main sources of evidence are the records held of the transactions – these can be in many forms. The advice given above to general FI applies here – speak to FI officers and if you can't do that recover anything that looks like a record or that may hold a record.

In proactive operations various specialist techniques can allow you to monitor and follow flows of money – surveillance, communications data/records monitoring, undercover agents etc.

Proactive operations can also be combined with a 'reactive' phase, in other words when suspected hawala operators are arrested and searches are made etc.

### **How Hawala works**

Hawala is an informal system of money transfer, although it may have links to the formal sector (banks, formal money transfer bureaus) at some points. In most jurisdictions it is not, in itself, illegal –however, as it is widely available, informal and unregulated it is often the preferred money transfer system for criminals.

It works like this.

Person A is in Redland. He wishes to send USD 100 to his friend, B, in Blueland. A goes to hawala operator C. He pays C USD 100, plus a commission. C gives A a code. C also sends this code to D, a hawala operator in Blueland. A sends the code to his friend B with instructions to go to hawala operator D. B goes to D and shows him the code. D compares the code with the one he has received from C. If the codes match D gives B the USD 100 – minus a commission.

As you see, C now has USD in Blueland, while D is owed USD in Redland – and this debt has to be paid.

It can be paid in various ways – a transfer through 'formal' systems, sending cash with a trusted courier, exporting goods to the value of the debt etc (these are not exclusive).

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<sup>17</sup> Worked out by Paul David Newton, CIVIPOL consultant



In many cases the debts are 'consolidated' at set periods. Money may have 'flowed' each way. This is added up and a calculation made as to who owes who what at, say, the end of each month.

Third party hawala operators may be involved – so in the case above the transaction between BlueLand and RedLand may go via another hawala operator in YellowLand.

Transactions are made on trust between hawala operators. However, in almost all cases, records of some kind have to be kept to track who owes who what. These records are traditionally hand written but may nowadays be kept on mobile and other devices.

### **Investigating hawala**

The primary investigation route of hawala is through the records of the transactions.

Secondary routes of investigation include:

- Communication flows.
- Movement of consolidation funds.
- Suspect formal financial transactions.
- Presence of large amounts of cash.

These investigations can be conducted in either reactive or proactive investigations.

### **Interviews**

Always start the interview by informing the interviewee about the reasons for the interview.

In interviews ask questions about how money transferred.

Be specific. Ask:

- When did the interviewee hear about the hawala operator?
- How did interviewee hear of a hawala operator?
- How often do they use hawala?
- Why do they use hawala instead of other mainstream options like banking and Mpesa?
- Did the interviewee find the hawala operator by him/herself or was s/he introduced by people such as people smugglers/ traffickers/ kidnappers?
- Where hawala operators work from e.g. shops, other businesses, private homes?
- Exactly how the transaction was made e.g. Were records kept on paper? On phones or other devices? What were the transaction codes?
- What phone numbers were used by the hawala operators?
- Were other means used e.g. Email, WhatsApp? Facetime etc?
- Which countries does the hawala operator 'advertise' as sending money to/ receiving money from?



## **Proactive operations**

Consider the following actions:

- Use intelligence to identify those hawala operators most likely to be linked to TiP and linked crimes such as kidnapping.
- Use communication data/records analysis to establish who suspected hawala operators are communicating with, how often, where links are, what form the communication takes.
- Use standard FI techniques used to investigate 'formal' transactions to identify accounts suspected hawala operators hold – these should then be monitored to identify 'consolidation' flows and storage of profits.
- Deploy undercover agents as 'test purchasers' to establish how the transactions are made.
- Deploy surveillance to establish how many people are visiting premises suspected of being used for hawala.
- Deploy covert surveillance within premises suspected of being used for hawala transactions to record those transactions and identify how they are carried out.
- Working with tax and other authorities to identify suspected hawala transactions and use their operations (e.g. tax investigations) to investigate hawala.

## **Reactive operations**

Consider the following actions:

- Look for records when intervening/ raiding suspected hawala operators. These records could include:
  - Paper 'slips' with phone numbers and other figures on them.
  - Paper 'slips' currently blank.
  - Ledgers, large books, folders or similar with numbers recorded.
  - Anything that appears to be records of deposit or withdrawal via 'formal' accounts such as those from banks and formal money transfer operators.
  - Copies of passports and identification documents.
- Identify all electronic equipment at location. Remember, almost any electronic equipment could be used in hawala transactions, including:
  - Landline phones.
  - Mobile phones.
  - Laptop computers.
  - Desktop computers.
  - Tablet computers.
  - External IT storage equipment and associated discs.



- o Document copiers/ scanners.
- o Cash registers.
- o Cash counters.
- o Cameras.
- o Security cameras.
- o SIM cards.
- Identify other potentially relevant evidence. Examples (not exhaustive) include:
  - o Cash – all denominations.
  - o Cash storage equipment – safes, cash boxes, strong boxes etc.
  - o Travel documents.
  - o Identification documents.
  - o Credit/ debit cards.
  - o Used carbon copy paper.
  - o Trash – potentially contains discarded records of all types described here.
  - o Paper shredding machines including the ‘trash’ output.
- Examine the scene in accordance with Action 9 ‘Crime Scene Examinations’.
- Seize evidence in accordance with Action 8 ‘Crime Scene Examinations’.
- When examining hawala crime scenes bear following in mind in particular:
  - o All equipment, documents etc should be handled in a way that preserves physical evidence (e.g. fingerprints) of those who have touched it previously – remember we are not just interested in the information in the document/ equipment holds – we want to know who has entered/ been using it.
  - o Always take advice from forensic electronic specialists before handling/ switching on or off/ removing electronic equipment.



## Annex 8 – Mutual Legal Assistance (MLA)<sup>18</sup>

### Mutual Legal Assistance and transnational cooperation

<p>What is MLA?</p>	<ul style="list-style-type: none"><li>■ MLA refers to the process by which a State provides assistance to another State in gathering evidence for use in criminal investigations and proceedings.<sup>19</sup></li><li>■ An MLA request can be based on a Mutual Legal Assistance Treaty (MLAT), though this is not the only basis (for example, MLA can occur based on reciprocity or national legislation).</li><li>■ MLATs can be bilateral (country to country), multilateral (based on conventions such as UNTOC or UNCAC), or regional/country-regional (for example, between the United States with all the members of the European Union).</li></ul>
<p>When to request MLA?</p>	<p>Generally, States are not obliged to wait for formal criminal proceedings to have commenced to trigger the MLA procedure and can invoke the procedure during the early stages of an investigation.</p>
<p>What to consider before making a formal MLA request.<sup>20</sup></p>	<ul style="list-style-type: none"><li>■ Will the information or evidence be admissible as evidence in court if it is not obtained through formal channels?</li><li>■ Could the same result be achieved through informal cooperation (for example, through ringing up a colleague in foreign police service or financial intelligence unit)?</li><li>■ Would obtaining background information through informal channels help to improve any subsequent MLA request?</li><li>■ Could relevant information be obtained from public records or another open source information?</li><li>■ Could the same result be achieved, without compromising the process or results, through other means such as asking the witness to come to the Requesting State to give evidence?</li></ul>

18 By UNODC

19 This definition of MLA comes from the UNODC Manual on International Cooperation in Criminal Matters Related to Terrorism (2009).

20 UNODC (2010) Trafficking in Persons & Smuggling of Migrants: Guidelines on International Cooperation, 26.



<p>How to draft an MLA letter of request?</p>	<p>The MLA letter of request should be drafted based on the requirements of the applicable treaty and any specific requirements under the national laws of the requesting and requested countries.</p> <p>For example, UNTOC Article 18 is often referred to as a “mini-treaty” on MLA. It permits State parties to provide one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences under the Convention.</p> <p>Article 18 also establishes the procedure to follow when making a request for assistance, such as the content of the request, the circumstances when an MLA request may be refused, the conditions for transfer of a person, the giving of evidence by video conference, refusal of requests, execution of requests, postponements of assistance, safe conduct of witnesses, experts, and other persons giving evidence, costs associated with executing requests, and the obligations of the requested State to provide information to the requesting State (Paragraphs 9 to 29).</p> <p>Some tools to facilitate drafting of MLA requests are available to practitioners, such as the <b>UNODC Mutual Legal Assistance Request Writer Tool</b>.<sup>21</sup></p>
<p>Types of legal assistance which can be requested</p>	<p>A broad range of cooperative measures that assist in the enforcement of laws and prosecution of relevant offences established under different domestic legal regimes can be requested, such as:</p> <ul style="list-style-type: none"> <li>Collecting evidence or statements from persons.</li> <li>Effecting service of judicial documents.</li> <li>Locating and identifying witnesses and suspects.</li> <li>Executing searches, seizures of property and asset freezing.</li> <li>Examining objects and sites.</li> <li>Requesting investigative actions such as surveillance.</li> <li>Providing information, evidentiary items and expert evaluation.</li> </ul>

21 Available at: <https://www.unodc.org/mla/>



Types of legal assistance which can be requested	Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records.
	Identifying or tracing proceeds of crime, property.
	Identifying and locating persons.
	Providing information such as communications data.
	Facilitating the voluntary appearance of persons in the requesting State.
	Transferring prisoners to give evidence.
	Any other type of assistance that is not contrary to the domestic law of the requested State Party. <sup>22</sup>
What should be included in an MLA request?	The legal basis for the request.
	Purpose of the request and the types of assistance you are requesting for, case details for each type of assistance sought.
	Name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates.
	Any prior case-related contact between you and the requested State's authorities.
	Description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and related provisions in national laws.
	Description of the offence to which the request is made including its maximum penalty.
	Description of the information or other assistance sought;
	All available details of suspects/alleged offenders and entities/organisations.
	A short summary of the facts and procedural history of the case.
	Reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed.

22 Organized Crime Convention, article 18



What should be included in an MLA request?	Specification of any time limit within which compliance with the request is desired; any special requirements for confidentiality and the reasons for it.
	Requests for assistance may also, to the extent necessary, contain the following information:
	Identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings.
	Identity and location of any person from whom evidence is sought.
	Identity and location of a person to be served, his or her relationship to the criminal proceedings, and the manner in which service is to be made.
	Description of the manner in which any testimony or statement is to be taken and recorded.
	List of questions to ask the witness.
	A description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated.
	A statement as to whether sworn or affirmed evidence or statements are required.
	A description of the property, asset or article to which the request relates, including its identity and location; and any court order relating to the assistance requested and a statement relating to the finality of that order.
How to receive Assistance?	MLA has to be received through diplomatic channels.
Advantage of MLA process	It is likely that any evidence obtained will be admissible in the country that made the original request because it has followed agreed procedure set out in treaties.
	Where the response to an MLA is unsatisfactory there is the possibility, the originating country can seek redress under the terms of the treaty used.
Disadvantage of MLA process	It can take a very long time indeed to complete.
	When 'real time' urgent action is required, it doesn't work.

INTERPOL<sup>23</sup>

23 INTERPOL (Feb 2018) International Law Enforcement Cooperation in the Fisheries Sector: A Guide for Law Enforcement Practitioners, 92-92.





## **Annex 9 – Short description of the ROCK Project**

### **THE REGIONAL OPERATIONAL CENTER IN SUPPORT OF THE KHARTOUM PROCESS AND THE HORN OF AFRICA INITIATIVE ROCK**

#### **-A- ROCK PRESENTATION**

The Regional Operational Centre in support of the Khartoum process and AU Horn of Africa Initiative (ROCK) project is a regional project to combat criminal networks involved in trafficking in persons and smuggling, funded by the Trust Fund of the European Union for Africa and launched as part of the Khartoum process at the request of the countries of the Horn of Africa. It is implemented by the French Agency CIVIPOL for the benefit of a consortium of Member States of the European Union made up of France, United Kingdom, Italy and Spain as associated partners, and Germany as an observer, in partnership with INTERPOL and the African Union.

Initially planned for a period of 3 years, the project was granted an extension, entering after that in its second three-year phase, from 1st of May 2022 to 30th of April 2025.

Dedicated to the fight against criminal networks of smuggling of migrants and trafficking in human beings in the Horn of Africa, ROCK is a unique regional platform intended for the collection and analysis of operational information between source, transit and destination countries.

The ROCK centre is headed by a director, a regional coordinator and a technical advisor who daily support the work of the 9 liaison officers in the region (Sudan, South Sudan, Somalia, Ethiopia, Djibouti, Egypt, Kenya, Democratic Republic of Congo and Uganda). Other countries in the zone are in the process of joining ROCK, while others are considering joining the centre.

The Horn of Africa is home to many refugees and other vulnerable populations who represent an important source of intra-continental migration via the southern route (Kenya, Tanzania, Zambia, Zimbabwe and South Africa), via the eastern route (Djibouti, Red Sea, Gulf of Aden, Yemen to the Gulf States) via the western route (Chad, Niger) and via the northern route (Sudan, Libya). Small and large-scale smuggling networks thrive and feed on the hope of migrant populations to benefit from more favourable living conditions. These criminal organizations feed transnational networks of irregular immigration and trafficking in persons. Playing against national immigration laws, these networks usually resort to false promises, confiscation of documents, inhumane transportation and lodging, to the use of weapons, intimidation and kidnapping.

Since 2018, more than 350 ROCK briefing notes have been shared using



Interpol's exchange channels, the organization having officially become a project partner in December 2020. Synergies have also been put in place with 2 others European projects (Better Migration Management and AML / THB - Anti-Money Laundering / Countering Trafficking in Human Beings in the Greater Horn of Africa) dedicated to the fight against organized crime in the region.

The ROCK thus contributes to improving the effectiveness of the fight against criminal networks by strengthening the penal chain and integrated border management, the protection of vulnerable populations, as well as the processes of collecting and exploiting information between countries of origin, transit and destination.

Finally, ROCK has demonstrated the relevance of its operational approach by contributing to concrete results, in strict compliance with international standards in terms of fundamental human rights.

As a result of the information collected and analysed within ROCK, the Sudanese police was able to apprehend the leaders of one of the most active criminal networks in the Horn of Africa in the area of trafficking in persons.

This arrest highlighted a South-North route, crossing the Horn of Africa to the Mediterranean Sea and Europe.

A few months before the end of the project, CIVIPOL, DCI and its partners are already working with the European Union on a "ROCK 2" which would make it possible to consolidate the operational achievements of phase 1 and to develop cooperation with Europol and Fronted agencies. It would also involve strengthening the major issue of protecting victims of trafficking and establishing a partnership with the African Union to ensure, ultimately, a serene and lasting transition from ROCK to beneficiary countries under the auspices of the AU.

## **-B- ROCK OPERATION**

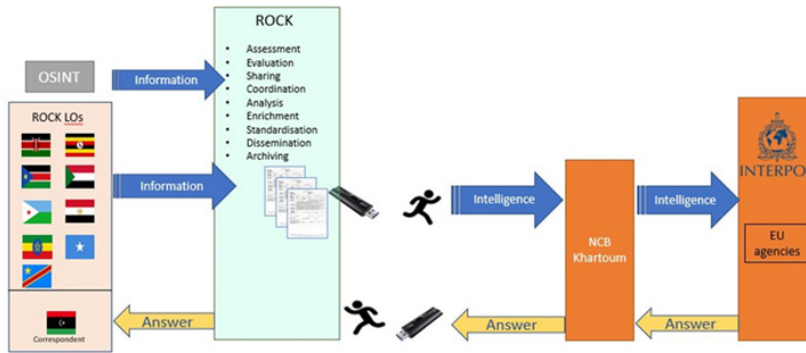
Liaison Officers (LO) in contact with the services of their country through their National Focal Point called Point of Contact (PoC) collect information in all forms from various sources.

Within the platform itself, the LOs with the support of ROCK's technical advisers verify, analyse, cross-check and enrich the information received, before drafting an Information Note on the basis of the elements collected, called Intelligence Report (IR). This IR is transmitted through the National Central Office of Interpol Khartoum (NCB) to other potentially affected NCBs, to INTERPOL Lyon and to Europol's Clearing House in The Hague.

The countries receiving the IRs concerning them remain the sole judges of the follow-up to be given to them.



## Information collection



### **-C- CONTACT THE ROCK**

The centre remains reachable 24/7 by e-mail, and collects all information relating to networks of trafficking and exploitation of human beings, as well as any victim testimony.

**Philippe CRESPO**

**Technical Director**

philippe.crespo@rock-center.eu

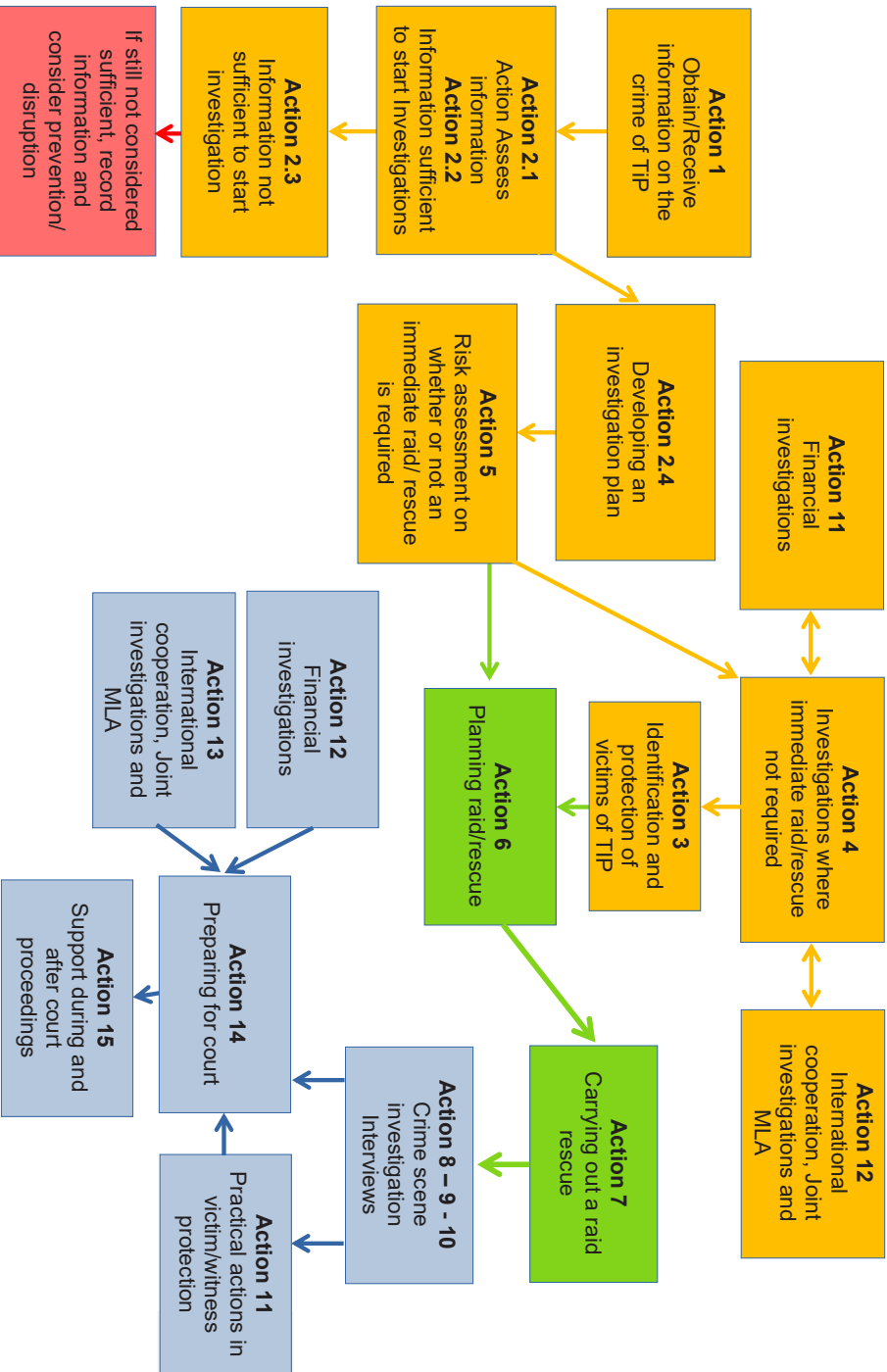
**Anne-Sophie SANDOR**

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# Annex 10 – SOPs Chart





## Annex 11 – SOPs Check List

### Standard Operating Procedures for Investigating and Prosecuting Trafficking in Persons in Kenya in accordance with the Kenya Counter Trafficking in Persons Act (Act 8 of 2010)

#### Check List

The below checklist has been developed to assist in the implementation and monitoring of the above SOPs. A copy of this checklist may be attached to each TiP case file; components of the checklist can also be integrated into existing case management and data collection systems.

The checklist follows processes outlined in the SOPs and provides cross-references to the relevant SOPs sections, as well as the applicable legal provisions. In doing so, it:

1. Acts as a prompt to police and prosecutors to ensure they do not overlook any of the SOPs steps.
2. Allows case supervisors to monitor in real time whether, and to what extent, the SOPs are being followed.
3. Provides an end-of-case record on whether, and to what extent, the SOPs were followed, for both case review and to contribute to the collection of aggregated data.

The checklist will also support the work of the SOPs Technical Working Group in reviewing progress on SOPs implementation and analysing any challenges or gaps. While the checklist follows the numerical steps of the SOPs, many cases will not proceed by moving step to step in order. Cases may move back and forth between steps or jump from one step to a later step and skip some, returning to those steps later.

#### SOPs Standard Operating Procedures for Investigation of Crimes of TiP

Step 1	Information/complaint received
Step 2	Complaint Report Assessment
Step 3	Insufficient evidence to continue investigation
Step 4	Information gathered for investigation
Step 5	Raid/Rescue planned
Step 6	Raid/Rescue conducted
Step 6.1	Crime Scene Examined
Step 6.2	Screening performed
Step 7	Presumed victims interviewed
Step 8	Security of victims/witnesses ensured
Step 9	Court preparation and support



## Standard Operating Procedures Check List – KENYA

Tick if done	Steps and Actions	Responsibility
Standard Operating Procedures for Investigation of Crimes of TiP		
<b>Step 1 – Information/complaint received (Ref: SOPs Action 1)</b>		
By:		POLICE
Source of complaint (directly from complainant or another source?):		
Date:		
Information forwarded to immediate supervisor		
Additional comments/actions taken:		
Additional documents attached to file:		
<b>Step 2 – Complaint Report Assessment (Ref: SOPs Action 2)</b>		
By:		POLICE
Date:		
Risk Assessment conducted (See Risk Assessment form)		
Risk Assessment Score:		
Decision made after assessment of initial information:		
2.1 Conduct immediate raid/ rescue (Go to Step 5)		
2.2 Gather additional evidence (Go to Step 4)		
2.3 Insufficient evidence to start investigation (Go to Step 3)		
Additional comments/actions taken:		
Additional documents attached to file:		
<b>Step 3 – Insufficient evidence to continue investigation (Ref: SOPs Action 5)</b>		
Information recorded and stored		ODPP & POLICE
(Joint assessment of the case to determine way forward)		
Officer contact details for confidential sources of information included		
By:		
Date:		
Location:		



<b>Step 4 – Information gathered for investigation (Ref: SOPs Action 4; Action 6; Action 13; Action 14)</b>		
Investigative evaluation done		POLICE & ODPP
(Police lead investigative field work in consultation with ODPP)		
Investigation plan developed		
Financial investigation required?		
Yes – financial investigation initiated		
No		
Internal cooperation required?		POLICE & ODPP
Yes – internal cooperation procedures initiated		
No		
Multi-agency approach required?		
Yes – multi-agency team created	ODPP leads multiagency team	
	No	
Sufficient evidence for raid/rescue planning ( <b>Go to Step 5</b> )		POLICE (lead raid planning in consultation with multi-agency)
Insufficient evidence to continue investigation (Go to Step 3)		ODPP & POLICE
(Joint assessment of the case to determine way forward)		
Additional comments/actions taken:		
Additional documents attached to file:		
<b>Step 5– Raid/rescue planned (Ref: SOPs Action 8)</b>		
Raid/rescue plan defined		POLICE (coordination and planning with CTIP Secretariat and relevant service providers)
Risk Assessment conducted (See Risk Assessment form)		
Risk Assessment Score:		
Information on planned raid shared with other agencies on need-to-know and when-to-know basis		
	Team formed	



Team briefed	
Equipment and resources arranged	
Legal authority to conduct raid/rescue obtained	
Legal authority to enter/seize evidence obtained (if required)	
Protection plan for presumed victims and family done	
Additional comments/actions taken:	
Additional documents attached to file:	
<b>Step 6 – Raid/Rescue conducted (Ref: SOPs Action 9)</b>	
Crime scene secured	POLICE (coordinated action with CTIP Secretariat and relevant service providers)
Purpose and personnel involved in the raid explained	
Presumed victims rescued	
Known suspects arrested	
All persons present at the scene searched	
Urgent medical needs addressed	
<b>Step 6.1 – Crime Scene Investigation conducted (Ref: SOPs Action 10)</b>	
CSI Plan defined	POLICE
Team briefed on objectives of CSI	
Photographs of crime scene taken	
Crime scene searched	
Evidence found	
Evidence recorded	
Evidence seized	
Search certificate signed by witnesses	
Additional comments/actions taken:	
Additional documents attached to file:	
<b>Step 6.2 &amp; 7 – Screening &amp; Interviewing (Ref: SOPs Action 3; Action 9 &amp; 11)</b>	





Screening conducted	Coordinated by the CTiP Secretariat with support from First Responders (police, immigration officers, local authorities and/ non-governmental entities.)
Screening interviews conducted	
Information on rights and obligations provided to all interviewee	
Indicators of presumed victims / perpetrators applied	
Potential victims identified and separated from alleged perpetrators	
Victims interview planned	Coordinated by the CTiP Secretariat with support from First Responders (police, immigration officers, local authorities and/ non-governmental entities.)
PEACE Interview Model used:	
Planning and preparation	
Engaging with the presumed victim and explaining the process and content of the interview	
Obtaining the account of the presumed victim	
Closing the interview appropriately	
Evaluating the content of the interview themselves	
Interviewee informed about his/her rights and obligations	
Interviews recorded	
Details (audio/video/note-taker):	
Record of interview read by interviewee	
Additional comments/actions taken:	
Additional documents attached to file:	



<b>Step 8 – Protection of victims/witnesses ensured (Ref: SOPs Action 12)</b>	
Victim/witness risk assessment done (including security, privacy, confidentiality)	
<b>Date:</b>	CTIP Secretariat (in coordination with Service Providers, Police and/or multiagency team)
Victim/witness risk management plan developed	
Date:	
Basic support to victims/witness needed?	
Yes: type of support	
By which organization/service:	
No:	
Information of case progress provided to victims/witness	
Additional comments/actions taken:	
Additional documents attached to file:	

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