

GENERIC MANUAL ON COMBATTING HUMAN TRAFFICKING



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FOREWORD

Trafficking in Persons (TIP) is a violation of human rights and therefore we need to prevent and combat trafficking through the application of a human rights-based approach.

When our Parliament passed the Prevention and Combatting of Trafficking in Persons Act in 2013 we knew and acknowledged that the search for work, together with a demand for the services of TIP victims, contributes to making persons more vulnerable to becoming victims of trafficking.

According to the 2018 UNODC Global Report on Trafficking in Persons, most of the victims detected across the world are female; mainly adult women, but increasingly also girls. Most of the victims detected globally are trafficked for sexual exploitation, but in sub-Saharan Africa trafficking for forced labour is the most commonly detected form. Most of the victims detected in Sub-Saharan Africa are also citizens of Sub-Saharan African countries, which means they are being trafficked within their own countries or regions.

TIP is a complex crime and Government cannot fight it alone.

Efforts to curb the crime and protect victims require the intervention of a multiplicity of stakeholders, including governmental departments and agencies, non-governmental organisations, civil society at large and international organisations. Government has put structures in place at both national and provincial level to combat TIP, with a National Inter-sectoral Committee on Trafficking in Persons (NICTIP), comprising of national government departments such as Justice, Health, Home Affairs, International Relations, Labour, Social Development, Women, the South African Police Service (SAPS), the National Prosecuting Authority (NPA) as well as civil society organisations, having been established.

Provincial Task Teams on TIP were established as well as a National and Provincial Rapid Response Teams to attend to pending TIP cases and

provide support to victims and civil society bodies represented in all these structures.

We also have a comprehensive National Policy Framework (NPF) which ensures a coordinated response among different stakeholders and addresses the four important pillars of anti-trafficking interventions, namely Prevention, Protection, Prosecution, and Partnership. A TIP Data Template was also developed to collect data and to provide us with valuable information on TIP, whilst other measures to counter trafficking include general awareness campaigns to sensitise communities on TIP issues.

The generic training manual on the TIP Act has been developed under the auspices of UNODC and is designed to complement sector specific training programmes. It sets out a comprehensive plan to achieve the training goals outlined in the National Policy Framework on the Prevention and Combatting of Trafficking in Persons.

I want to sincerely thank the UNODC and Prof Julia Sloth Nielsen for their valuable assistance in the compilation of the manual.

It is an extremely valuable tool in the fight against all forms of TIP and one which we are proud to launch.

John Jeffery, MP
Deputy Minister of Justice and Constitutional Development



CONTEXT OF HUMAN TRAFFICKING AND TO THIS MANUAL

1. Learning objectives

The learning objectives of this chapter are to

- Introduce the manual and provide a basic grounding for the material that follows;
- Introduce the methodology used in this manual and the approach to training;
- Provide some social context for the commission of the crime of trafficking in South Africa;
- Provide an outline for the modules that follow.

2. Introduction and global context

Migration is considered one of the defining global issues of the early twenty-first century, as more and more people are on the move today than at any other point in human history. There are now about 192 million people living outside their place of birth, which is about three percent of the world's population. The Southern African region is no exception. Individuals, among others, move in search of opportunities for employment and education. Such migration can be both within a country (internal) and across borders. It often reflects patterns that have been established over many generations. Within Southern Africa, patterns of internal and cross-border mobility and migration have changed considerably over the last three decades and are likely to continue to change in the future. Migrants work in various sectors including manufacturing, informal trade, agriculture, construction and domestic service. Migration has been a positive force in both countries of origin and of destination. But unregulated migration can involve social, financial and political costs for individuals, societies and governments alike, including irregular migration, migrant and trafficking in persons (TIP). Hereafter, the manual will use the abbreviation TIP for the phenomenon.

TIP is a global problem that has plagued many countries and accounts for the highest proceeds of crime after drugs, arms trafficking and prostitution without as much risk. It is a serious crime and a grave violation of human rights.

Every year, thousands of men, women and children fall into the hands of traffickers in their own countries and abroad.

South Africa is affected by TIP and has been designated as a country of origin, transit and destination of trafficking victims.

Global statistics show that just two years ago, there were about 25 million labour trafficking victims in the world – 3.8 million of whom were forced into the sex trade. In Africa, 3.4 million people had been trafficked into forced labour by 2016. Victim identification and the prosecution of offenders in Africa is extremely limited. In 2017, only 24 138 trafficking victims were identified, and 454 traffickers convicted.¹ The numbers of persons forced into the sex trade through TIP are equally unknown.

Certain challenges are commonly faced by prosecutors and law enforcement agencies throughout the world in [their efforts to combat the crime of TIP](#),¹ which is often dubbed as “modern-day slavery.” Prosecuting cases of TIP can be a difficult task for law enforcement officials due the clandestine nature of the crime. Cases are seldom reported, as victims of trafficking are often cowed into silence by the offenders, and the general public has minimal awareness of their plight. In many cases, victims are mistaken for criminals themselves, and face punishment instead of being offered help.

TIP is a transnational crime, crossing state borders and jurisdictions. It can also occur domestically, within national borders. The offence is best understood as a collection of crimes bundled together rather than a single culpable act; a criminal process rather than a criminal event. The need to conduct investigations or pursue criminals across international borders renders the work of prosecutors and law enforcement agencies particularly challenging. Substantive and procedural criminal law dispositions do not always support effective and proactive prosecutors’ responses.

Effective responses to TIP require strong cooperation among law enforcement and prosecution officials, both at the national and cross-border levels. Trafficking offences are difficult to prosecute for the same reasons that they are difficult to investigate: the clandestine nature of the crime, the need to rely on evidence collected abroad and on the services of interpreters and translators, and the potential for victims and witnesses to be intimidated. Effective cooperation with victim assistance services, and the development of stronger witness protection measures, are therefore part of the strategy to meet these challenges.

It is widely regarded that TIP is on the increase in Southern Africa, and in South Africa. Recently cited statistics include:²

- 378 potential victims of trafficking identified at four anti- trafficking stations in South Africa since 2016;
- 2132 cases of potential human trafficking reported to the South African Police Service between August 2015 and December 2017;
- In 2018, government identified 399 victims who were referred to protective services (305 were victims of forced labour, 66 who were victims of sex trafficking and 19 who were exploited in domestic servitude);
- According to the UNODC 2018 TIP report, the majority of victims were trafficked domestically;
- Government has accredited and provided partial funding to 14 NGOs who run multi- purpose shelters and 17 NGO safe houses designed to provide temporary shelter to victims.³

¹ <https://issafrica.org/iss-today/better-policing-can-help-combat-human-trafficking> (accessed 7 January 2019)

² <https://issafrica.org/iss-today/the-perplexities-of-human-trafficking-in-south-africa> (accessed 7 January 2019)

³ US Dept of State “Trafficking in Persons Report 2018: Country profile South Africa” p 389.

- In 2018, the government-initiated prosecutions of 27 cases, involving 77 alleged traffickers.⁴
- The government prosecuted eight cases in 2018 involving 14 alleged traffickers⁵
- The courts imposed eight life sentences, a sentence of 18 years imprisonment and one trafficker, in one case, awaited sentencing.
- In one case, the prosecution received 45,000 rands (3,140 US dollars) restitution for the victim through a plea deal.

As reported over the past five years, human traffickers exploit domestic and foreign victims in South Africa, and traffickers exploit victims from South Africa abroad. Traffickers recruit victims from poor countries or from rural areas within South Africa to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein, where traffickers force victims into sex trafficking, domestic servitude, criminal activities, and agriculture.

To a lesser extent, syndicates recruit South African women to Europe and Asia, where traffickers force some into prostitution, domestic servitude, or drug smuggling. Traffickers sometimes employ forced drug use to coerce sex trafficking victims. Traffickers increasingly hail from Nigeria, the Democratic Republic of the Congo, and Cameroon. Mozambican crime syndicates facilitate trafficking from the eastern border of the Kruger National park. An increase in trafficking to South Africa and within South Africa for the purposes of labour exploitation has been noted.

A trend of West African criminal elements who recruit their victims in areas such as the Eastern Cape and KwaZulu-Natal has been noted. Women and girls are then brought to residential brothels in Gauteng where they are sexually exploited and controlled with drugs. Also nationals from Thailand, Ethiopia and Ghana have been trafficked to South Africa, according to reports.

However, statistics on the real extent of the problem are hard to come by and are frequently misreported or recorded as other crimes, and thus not detected. First responders to encounter potential victims must understand complex trafficking laws and procedures, which are often not formally part of training curricula. They often fail to properly conduct and record interviews with trafficking victims and witnesses, which hampers prosecution success and how to help and protect victims is also difficult due to the nature of the crime of trafficking, which results in victims not receiving the support they require.

Information about TIP is hard to gather. However, some global statistics include:

The ILO estimated in 2014 that the annual profit from forced labour is 150 billion USD a year; it is estimated that 21 million people are victims of trafficking at any given moment; it is estimated that less than 0.25% of victims of trafficking are rescued. With regards to sex trafficking alone, the ILO estimated that there are 4.8 million people trapped in forced sexual exploitation globally.⁶

South Africa ratified the main international treaty (known as the Palermo Protocol)⁷ dealing with trafficking in persons in 2004. Legislation was thereafter introduced to Parliament in 2010, but only finalised in May 2013. This is the Prevention and Combatting of Trafficking in Persons (TIP) Act 7 of 2013. It came into operation on 9 August 2015. The contents of this Act will form the detailed subject matter of module 4 of this training manual.

Prior to 2015, traffickers could sometimes be prosecuted for another criminal offence – e.g. kidnapping or sexual abuse, if this took place in the course of the trafficking. The Children's Act 38 of 2005 also contained provisions related to child trafficking, although these have now been repealed by the TIP Act. Transitional provisions that were contained in the Sexual Offences law⁸ were also repealed with the coming into force of the TIP Act.

The current approach to combating and prosecuting traffickers includes preparing police and immigration officers (so called "frontline staff", as they often encounter situations which give rise to suspicions of trafficking first) to better spot potential trafficking victims through improved training. Another strategy is the development of training materials aimed at those who are in sectors not typically associated with trafficking as a crime, such as forced labour (i.e. labour inspectors). Strengthening the capacity of prosecutors to successfully prosecute TIP cases is a key element in the fight to combat this scourge. Equipping social welfare authorities with the means to address the vulnerabilities of victims of trafficking and provide protective services is part and parcel of the obligations incurred through ratification of the Palermo Protocol. Detecting potential victims of trafficking at border entry points needs strengthening. These will all be addressed in this manual.

4 US Dept of State "Trafficking in Persons Report 2019: Country Profile South Africa".

5 Speech of Deputy Minister J Jeffrey at the launch of the National Policy Framework on YIP 25 March 2019.

6 Speech of Deputy Minister note 5 above.

7 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. This is discussed comprehensively in module 3

8 Criminal Law (Sexual Offences and Related Matters Amendment Act) 32 of 2007.

**The four pillars of the National Policy on TIP are:
Prevention; Protection; Prosecution and Partnership.**

3. The Social Context of TIP in South Africa

South Africa is a source, destination and transit country. This means that:

- South Africans can be trafficked to other countries (e.g. Europe and Asia, where they may be used for prostitution or drug smuggling) (South Africa is the source);
- Nationals of other countries are trafficked to South Africa (South Africa is the endpoint);
- South Africa may be a country through which other country's nationals travel to reach the trafficking destination (e.g. foreign nationals who have been trafficked for forced labour have been found on fishing vessels in South Africa waters); In this case SA is a transit country.

South African has had a few successful prosecutions for trafficking. These have included cases related to forced marriage, sexual exploitation and forced labour. There is a lack of comprehensive monitoring of forced child labour, or of labour trafficking in the agricultural, mining, construction and fishing sectors.

Case Study



In a 2014 appeal case in the Gauteng High Court, the evidence was that the victims met the appellant in Mozambique where she promised them work in her hair salon in Pretoria, and an opportunity to study while working there. They were looking for a better life. She then arranged for them to come to South Africa and the appellant in person collected all three of them at or near Komatipoort. The complainants testified that they worked for the appellant at her hair salon in Pretoria for a few days and also forced to smoke cannabis and to have sexual intercourse with several men daily. They said they were not paid for doing so.

The mosaic of evidence in this case includes deception, force, threats of force and of prosecution as illegal immigrants, abuse of a position of vulnerability (the complainants were impoverished minors or impoverished young people, they were illegally in South Africa which enabled the accused to exploit them sexually), restrictions of freedom (the victims were not permitted to leave the premises unaccompanied), bad living and working conditions (little food and clothing and no money), a climate of fear with constant threats, forcing the complainants to use cannabis, which is a method of control prevalent in the region and beyond.

This case also includes a chain of trafficking, which

necessitated cooperation between South African and Mozambique police. In addition, the case includes typical defence claims: That the complainants were already prostitutes when the accused encountered them; that they themselves initiated an approach to her to take them to South Africa in order to engage in prostitution. As can be seen in module 5 (Evidential issues in trafficking in persons cases), these claims, even if substantiated, would not have led to an exoneration.

In this case, a life sentence was imposed upon the convicted trafficker. The Regional Magistrate, correctly, had concluded that the appellant committed these crimes for financial gain or, to use the words of the Magistrate, "out of pure greed". When they regarded the totality of the evidence, it was concluded that the appellant was not only instrumental in securing the presence of the complainants in South Africa, but that she was also responsible for keeping them here (harbouring them) under threat of prosecution as illegal immigrants. The sentence was upheld on appeal.

The example cited in the box illustrates several issues relevant to the social context of TIP. First, poverty is a key driver of modern day slavery. Second, traffickers often exploit particular vulnerabilities of victims, such as the fact that these women were illegal immigrants with no permission to be in South Africa. Being young, they were of tender age were desperate for work and for an income.

The victims were subjected to treatment that can only be described as inhumane. For instance, the trafficker carried an instrument that resembles a whipping chain, which she used to assault the complainants when she considered it necessary. She also forced them to watch pornographic videos.

Further, the court found facts that showed clearly the existence of an illicit infrastructure to transport young females across the border into South Africa under escort for the purposes of sexual exploitation. In this case, the migration route involved corrupt officials, who were complicit in facilitating the commission of the crime.

Key points relating to the context within which TIP takes place:

Vulnerabilities on the victims' side might be one or more of the following: poverty, social and political conflict, lack of access to education, lack of state and/or family protection, social and cultural practices, gender-based violence, gender discrimination, lack of migration options, lack of knowledge about TIP. Drug addiction is common, as traffickers use drugs to control their victims.

On the side of the traffickers: high demand for cheap labour or cheap sexual services and a low level of risk of being caught and punished for the TIP crime is an enabling factor. What is common to all situations of trafficking is the control the trafficker gains over his/her victim. The purpose of TIP is always exploitation – the trafficker's goal is to gain a benefit from the victim either by selling the victim's services, or by exploiting the victim by him/herself. Victims of trafficking are exploited, abused and may suffer the traumatic physical and emotional consequences of being trafficked for years and years. Trauma remains a hall mark/key feature of TIP cases.

An issue particular to South Africa's social context arose in *S v Jezile* (2015 Western Cape High Court). The defendant, a 28-year-old man, arranged a customary marriage with the complainant's uncle which led to her forced abduction to her "spouse's" homestead. The complainant was, at the time, 14 years old. The custom of abducting girls for the purposes of marriage, sometimes with the permission of their family, is known as ukuthwala. The victim was restrained and transported to the defendant's village. She attempted to escape two times and was successful the second time. Upon arriving back to her village she was subsequently apprehended by her uncle and returned to the defendant. She was then beaten and raped repeatedly, and was locked in the house of the accused. He was convicted of human trafficking (and of rape) and sentenced to an effective 22-year term of imprisonment. His claim that this was merely a customary practice and that the charges related to the trafficking should not succeed, was dismissed on appeal.

4. How to use this manual and approach to training

The manual includes information for trainees at several levels of knowledge and responsibility and therefore each module, topic or specific lecture theme may be presented according to the respective audience. This manual is divided into seven parts or modules, including this introduction. Each part is divided into topics and includes some relevant activities. There is a glossary of terms at the end of the manual for easy reference.

TIP is a complex crime, which requires time, discussions and examples to understand. This manual provides for this. Furthermore, the victim-centred approach, which is at the basis of the law enforcement (and other) responses to TIP, might also be a new concept for trainees, that will require some attitudes to change. Again, this manual provides a sufficient base of knowledge, exercises and room for discussion to allow trainees to assimilate this change of focus.

Instructors/trainers will provide opportunities for dialogue about issues and approaches in the field and give participants the opportunity to present the reality in which they are operating. Different opinions in the group as a whole should be acknowledged and discussions should remain respectful at all times. It is important to clearly separate acknowledgment from agreement, fact from assumption or opinion, and questions from statements.

It is hoped that each participant will get the basic knowledge contained in the manual and make it relevant and useful to themselves. Facilitators will provide opportunities for dialogue and discussion about issues and approaches in the field.

The learning plan in the manual includes practical activities, amongst them group discussions, analysis of case studies, summaries in the form of key learning points, opportunities for reflection and self-assessment, and more. The activities are designed to prompt interactive sessions and discussion among participants on the specific subjects studied.

This manual is intended to be generic in nature – not focussing on any one sector or profession. There are already

sector specific training materials for some sectors involved in combatting TIP in South Africa, such as the Department of Home Affairs and the National Prosecution Service. They are geared more towards the specialised services offered within those sectors.

The tools and exercises used in this manual are indicated by the following icons:

Self-assessment checklist:



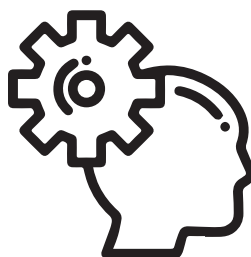
Discussion Scenarios:



Key learning points:



Discussion points:



Chat room:



Diagrams and flow charts have also been designed.

5. Division of modules

After this introduction, **Module 2** sets out the international legal framework, as well as the regional priorities (South Africa is part of the Southern African Development Community). South Africa's legal obligations regarding trafficking are founded in international obligations due to ratification of the Palermo Protocol, and regional commitments also exist due to the emphasis at regional level on co-operation between member states.

Module 3 focuses more specifically on the South African legal framework for preventing and combatting trafficking in persons, including detailing the various elements required for proving the commission of an offence under the 2013 Act on the Prevention and Combatting of Trafficking in Persons. It also reviews the reporting of TIP and deals with sentencing in TIP cases.

Module 4 chiefly concerns victims. Topics covered include victim identification, referral and support, interviewing techniques, and safeguarding of potential witnesses in order to facilitate their cooperation during criminal prosecutions.

Module 5 is aimed at improving investigation techniques and therefore is focussed on best practices leading to successful prosecutions. The target audience for this chapter is not only police and investigators: other frontline actors also need to know which elements of successful prosecution exist so that they can contribute through their own actions to this goal – or at least, not make mistakes which undermine the chances of a successful prosecution. This module will also tackle evidential issues in TIP cases, looking also at supporting evidence, issues that arise when victims of trafficking are called as witnesses, and defences that traffickers raise. Compensation to victims is also briefly covered.

Module 6 is geared towards fostering improved co-operation between agencies in trafficking matters. This relates both to domestic co-operation (e.g. between border control authorities and investigating officials) and to cross border co-operation (e.g. between social welfare services providers who offer services to victims). The modalities of extradition are briefly referred to here as well.

Module 7 provides some case studies from South African criminal justice records. An exercise is linked to these cases, should the facilitator wish to use this.

MODULE 2: THE INTERNATIONAL AND REGIONAL LEGAL AND POLICY ENVIRONMENT

1. Learning Objectives

1. To describe the international law position on human trafficking in persons.
2. To learn about the United Nations Conventions and Protocols related to Transnational Organised Crime.
3. To understand the definition of TIP, and the difference between TIP and smuggling of persons.
4. To explain the role of the Southern African Development Community as a link between international law and the SADC States Parties.
5. To begin to appreciate some of the most important challenges in dealing with cases of trafficking in persons at a regional level.

2. Introduction

The information in this chapter is foundational to the remainder of the chapters in this training manual. It forms the basis for understanding the provisions of the Prevention and Combatting of Trafficking in Persons Act, 2013 which is discussed in the next chapter. Understanding the definition of trafficking is also key to effective prosecutions, evidence collection, and the required response to victims. Participants must attempt to conclude this chapter with a clear comprehension of the elements of TIP. They should also be able to distinguish TIP from smuggling of migrants.

3. The United Nations Convention against Transnational Organized Crime 2000, and the Palermo Protocol

TIP has existed for centuries, but there was never one clear comprehensive definition explaining what it is.

However, in 2000 the United Nations drafted the United Nations Convention against Transnational Organized Crime (UNTOC), which has three supplementing protocols, one of which is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol). The Convention and the Palermo Protocol have been rapidly adopted by most of the world's nations, including South Africa and all the SADC Member States.

The other two protocols to the United Nations Convention against Transnational Organized Crime are:

- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, and Their Parts, Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime.⁹
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. This latter Protocol will assist in understanding the distinction between trafficking in persons and smuggling of migrants and is discussed in the next section.

The definition of TIP that is included in the Palermo Protocol is the basis for the definition in South African law.

The Convention¹⁰ provides a framework that requires the State Parties to criminalise conduct undertaken through the participation in organised criminal groups;¹¹ criminalisation of the laundering of proceeds of crime;¹² and the criminalisation of the obstruction of justice.¹³

The Convention extends protection to witnesses in criminal proceedings that involve transnational organised crime. The measures include physical protection of the witnesses and the use of evidentiary rules that allow the receipt of evidence in a manner that ensures eye witnesses safety.¹⁴ State parties are also required to take appropriate measures to provide assistance and protection to witnesses against threats of retaliation or intimidation.¹⁵

4. The Palermo Protocol

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (the Convention) is known as the Palermo Protocol.¹⁶

The Palermo Protocol serves three major purposes;

(a) To prevent and combat TIP, paying particular attention to women and children;

⁹ UN General Assembly, Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime, 31 May 2001, A/RES/55/255, available at: <http://www.refworld.org/docid/3dec85104.html> [accessed 21 November 2018]

¹⁰ For a party to rely on any of the provisions of any of the protocols, it has to be a party to the UNTOC. See the Legislative guides for the implementation of the United Nations Convention against Transnational Organised Crime and the Protocol thereto, 253 on the relation between Article 37 of the UNTOC and 1 of the TIPPA available at https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf

¹¹ Article 5 UNTOC. See Legislative Guides, para 48- 76.

¹² Article 6. See the Legislative Guides paras 80- 89.

¹³ Article 23. Legislative Guide paras 195-209.

¹⁴ Article 24 (2) (a)-(b) UNTOC. The physical protection extends to the protection of witnesses and their relatives and other persons that may be close to them. See the Annotated Guide to the Complete UN Trafficking Protocol (2002) 23 available at <http://www.nswp.org/sites/nswp.org/files/UN-TRAFFICK.pdf> (last accessed 21 November 2018).

¹⁵ Article 25 UNTOC.

¹⁶ See for further international law standards in this area: the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (2000) Article 3; Article 11(1), paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex); and article 4 (Prohibition of slavery and forced labour) of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms; UN Convention on the Elimination of All Forms of Discrimination Against Women, 2133 U.N.T.S. 161 Article 6; The UN Convention on the Rights of the Child (1989) Article 35, expects that "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form".

- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

The **protective** mandate of the state parties requires that they offer assistance to, and protect victims of TIP;¹⁷ they adopt legislative or other measures that allow the reception of victims of TIP their respective territories;¹⁸ and that they facilitate, with due regard to the safety of the victim, his or her safe return to the state of origin.¹⁹ These provisions have to be read along with Article 5, which states that:

Each State Party shall adopt such legislative measures and other measures as may be necessary, to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.²⁰

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of TIP, including, in appropriate cases, in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of TIP can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.²¹

Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of TIP, in particular the special needs of children, including appropriate housing, education and care.²²

Each State Party shall endeavour to provide for the physical safety of victims of TIP in persons while they are within its territory.²³

The **preventive** mandate of the State Parties requires that they establish comprehensive policies, programmes and other measures to prevent and protect victims of TIP.²⁴ These other measures include engaging border control measures which may aid the prevention and detection of TIP.²⁵

The **promotional** mandate of the State Parties requires that the relevant authorities that deal with immigration are encouraged to exchange information to detect the perpetrators of the offence of TIP.²⁶ It could also include conducting public awareness campaigns which include anti-trafficking messages. It could also include training of an array of service providers and communities to sensitize them on TIP and the phenomenon of modern-day human slavery.

Previous Conventions underscored that the trafficking problem was grounded in the sexual exploitation of women and girls. This gender-stereotyped trend was evident during the drafting process of the Palermo Convention, which was first called the "Protocol to Prevent, Suppress and Punish Trafficking in Women and Children." Failing to take account of other victims (male) was a potentially damaging position, which was cured by the recommendation by the Commission on Crime Prevention and Criminal Justice that the Protocol ought to address trafficking of all persons, but especially women and children.²⁷

¹⁷ Article 6 of the TIP Protocol.

¹⁸ Article 7 of the TIP Protocol.

¹⁹ Article 8 of the TIP Protocol.

²⁰ Article 5(1) of the TIP Protocol. See the Legislative guides for the implementation of the United Nations Convention against Transnational Organised Crime and the Protocol thereto, at 266, para 30 available at https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf (accessed 22 November 2018).

²¹ Article 6(3) of the TIP Protocol.

²² Article 6(4).

²³ Article 6(3)(4) and (5)

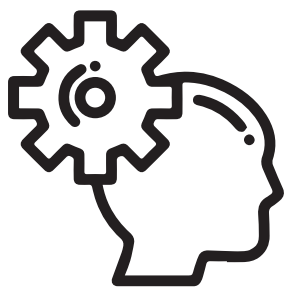
²⁴ Article 8 of the TIP Protocol.

²⁵ Articles 11-12 of the TIP Protocol.

²⁶ Article 10 of the TIP Protocol. A similar promotional mandate that requires co-operation among States Parties is evident in Article 27 of the UNCTOC.

²⁷ Shaops LL 'Room for improvement: Palermo Protocol and the Trafficking Victims Protection Act' (2013) 17(3) Lewis & Clark Law Review 932- 972 at 937. This position was preferred by most of the countries. See Revised Draft Protocol to Prevent, Suppress, and Punish Trafficking in Women and Children, Supplementing the Convention Against Transnational Organized Crime, 2d Sess., Mar. 8-12, 1999, U.N. Doc. A/AC.254/4/Add.3/Rev.1 (22 Feb 1999).

Activity 2: Discussion point: 10 minutes discussion



Why do you think it was important to broaden the definition of victims of TIP beyond women and children?

[Answer in Appendix 1 to this chapter].

5. Definition of Trafficking

Article 3 of the Palermo Protocol defines trafficking as:

“Trafficking in persons shall mean 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 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

This definition indicates that there are three aspects of the offence of Trafficking in Persons; first, the **action** of recruitment, transportation, transfer, harbouring or receipt of persons; and secondly, the **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. The third aspect is the **purpose** of exploitation, which is set at a minimum, non-exhaustive list of the forms that exploitation can take. This includes the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Elements of trafficking

Act	Means	Purpose
(What is done)	(How it is done)	(Why it is done)
Recruitment Or	Threat Or	Prostitution of others and other forms of sexual exploitation Or
Transportation Or	Use of force or other forms of coercion Or	Forced labour or services Or
Transfer Or	Abduction Or	Slavery or practices similar to slavery Or
Harbouring Or	Fraud Or	Servitude Or
Receipt of persons Or	Deception Or	Removal of organs
	Abuse of power or of a position of vulnerability Or	
	Giving or receiving of payments or benefits to achieve the consent of a person	
As long as <u>one condition</u> from each category (each column) is met, the result is TRAFFICKING		

5.1 The Act

The act of trafficking a person refers to the measures or conduct employed by traffickers (i.e. what is done) to introduce or maintain a victim in the trafficking scenario. The acts – as detailed in the Protocol above – are not criminal per se when seen in isolation. These acts become illegal when coupled with two additional elements: 1) indication that the act was committed without the consent or through the vitiated consent (implying the absence of a fully informed and freely given consent) of the victim and 2) indication that the intent of the conduct was exploitation.

Recruitment can be done in different ways. To name a few examples: Traffickers may be approaching their potential victims in person or by advertising in newspapers or online; another option is to use their personal contacts to reach out to potential victims. A trafficker may identify his victims anywhere: it might be on the city street, in the rural areas, in a school or anywhere else.

Recruitment may be done through a network of collaborators or persons working alone. Members of the victim's family, such as parents, siblings, relatives, spouses or friends, might also carry out recruitment.

The element of deception during recruitment:

Partially deceptive recruitment - victims may be aware of some details but not the full picture. For example, they may be told that they are going to work in construction, but not informed of the real working conditions they will endure or that they will not be allowed to leave the premises.

Fully deceptive recruitment - when victims are attracted by false promises such as employment or education and are fully deceived as to the true intentions of the traffickers. For example, the victims are told they will work as cleaners in a hotel and are then trafficked for commercial sexual exploitation.

Forcible recruitment – victims are forcibly taken, or abducted by the traffickers, or sold by a parent or family member. These cases are less common, but they do happen.

In many cases the victim knows the recruiter from before the departure. Maybe it is someone they knew for a long time before they were trafficked– a friend or a family member for example, or maybe it is someone that met them recently and gained their trust before trafficking them. In such cases, the trafficker has the advantage of already having gained the victim's trust which means the victim will not object at least in the first stages of the trafficking process.

Activity 3



Key learning points

Look at the elements in the first column of the Table above.
The presence (or absence) of the Act (conduct) is a factual question.

Ask:

***Was there recruitment? Was there transportation? Was there a transfer? Was the victim harboured
Was the victim received?***

5.2 The Means

The means (i.e. how) used to traffic a person refers to the manner in which a trafficker introduces or maintains an individual in the trafficking scenario. Vulnerabilities can be due to issues like one's illegal or uncertain immigration or residency status, minority status (being a child), or conditions such as illness, pregnancy, or physical or mental disability.

The phrase “use of power or of a position of vulnerability” contained in Article 3 of the Protocol “is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the exploitation involved.” This is to acknowledge that many trafficked persons are under the influence of someone to whom they are vulnerable, for example, a person holding a position of official authority or a parent or spouse. Overt or direct violence is therefore not required.

Activity 4



Key learning points

Look at the elements in the middle column which describe the possible means used to maintain the victim in a trafficking situation. Again, it is derived from the facts of the case.

Ask:

Was there a threat or threats? Was force or other forms of coercion used?

Was the victim abducted? Was the victim deceived or defrauded?

Was there an abuse of power or abuse of a position of vulnerability?

Were payments or benefits made to achieve the consent of the victim?

Remember, only one of the above needs to be present.

5.3 The Purpose

The purpose of TIP is ultimately exploitation. The definition of trafficking in the Palermo Protocol includes the following forms of exploitation: prostitution of others; sexual exploitation; forced labour; slavery or similar practices; servitude and removal of organs. According to the Protocol, exploitation covers the forms of exploitation that shall be included “at a minimum”. This means that the list provided in Article 3 is non-exhaustive. Individual states may include other forms of exploitation in their domestic criminal law, depending on national experiences with different forms of trafficking.

Sexual exploitation and prostitution were purposefully not given a definition in the Palermo Protocol, allowing states leeway to define these themselves at national level.

There is a need to balance the need to punish the perpetrators without erroneously punishing the victims where they take part in the exploitation process, leading to possible criminal liability for the victim. *In the UK Case of L and Others v The Children's Commissioner for England and Another [2013] EWCA, the appellant (victim) was given a passport by her trafficker and she tried to register for national insurance. She was charged and convicted, and sentenced to six months imprisonment for being in possession of a false identification document, namely a false passport.*

On appeal, the Court formed the opinion that a victim of trafficking should be given some degree of immunity from prosecution, because (s)he has been trafficked, and this should constitute a defence to a criminal charge related to the fraudulent documents brought against a victim of human trafficking.

5.4 The role of consent

Trafficking cannot involve the consent of the victim: trafficking per se cannot be “cured” by consent. In addition, the presence of consent of the victim at one stage of the process cannot be taken as consent at all stages of the process. If there has not been consent at every stage of the process it means that the case is one of TIP. This means that if a person consented to work abroad or to enter a country illegally, but did not consent to exploitation, an offence has been committed.

For example – a victim of TIP may know he/she would travel to South Africa to work on a farm, but - did the victim know he/she will have to work 15 hours a day? Did he/she know they will have no freedom to leave the farm even on the weekend? Did he/she know it will take them years to cover the debt for travelling before they can send their salary home? Did she/he know that their identity or travel documents would be seized and locked away? As long as the victim was not aware of all the elements of the exploitation, consent cannot be claimed as a defence to TIP charges.

5.5 The Special Case of Children

The Palermo Protocol defines a child as a person aged below 18 years, which is also now the standard definition in international children's rights law (UN on the Rights of the Child, 1989). The Palermo Protocol recognizes the special situation of children in Article 3 c, which removes the need for the means to be present for trafficking to occur. Child trafficking is defined in Article 3 c of the Palermo Protocol as: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation”. In other words, for children, it is not necessary that there be force, fraud, deception or coercion (etc.) for trafficking to occur.

In the case of children, consent is irrelevant because a child cannot voluntarily or willingly enter into an arrangement that resulted in trafficking, even if the child's parents were to give their consent. There does, however, have to be the act of recruitment, transportation, transfer (etc.), as well as the purpose(s) of exploitation.

In the case of a child, not only will consent fail as a defence, but there need be none of the prescribed means as well.

Example: A parent arranges for a child to be transported to a situation where the child is forced to work (e.g. beg on the streets). This can be considered trafficking (transportation + exploitation). This is so even if the child is a willing participant and even if the child is returned after a period of time.

Distinguishing between child labour and child work

- Child work is ‘light work’ that is not dangerous and does not interfere with a child's development or interrupt schooling.
- Child labour involves hazardous (dangerous) work that places at risk a child's right to survival, protection or development or which interferes with the child's education. South Africa has ratified the ILO Worst Forms of Child Labour Convention (2000), which covers the most hazardous forms of child labour.
- Child trafficking involves recruitment transportation, transfer, harbouring or receipt of persons under 18 years for the purposes of exploitation.



Key learning point

Where children aged below 18 are the victims, only the Act and the Purpose of exploitation need to be proved. Whether the victim's co-operation is obtained by threats, fraud, or any other means used to exploit vulnerability (refer back to the middle column of the previous Table), is not necessary to be proved.

6. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime

The purpose of this particular Protocol to the Convention Against Transnational Organised Crime is to “prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end while protecting the rights of smuggled migrants”.²⁹ This Protocol defines smuggling of persons to be:

“The 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 a permanent resident;”³⁰

From this definition, for the offence of smuggling in persons to exist, several pre-conditions must be met. First, there should be a procurement of person(s) to illegally enter another state; secondly, this procurement of a person should occur for the purpose of obtaining a financial benefit (which may accrue directly or indirectly). Thirdly, the person who is being smuggled or moved into the territory of another state should not be a legal migrant or be a person who is a national or permanent resident of the state to which he or she is being moved.

At times, there is confusion and conflation of trafficking with smuggling.³¹ While trafficking requires an action, means and a purpose, smuggling, on the other hand, refers to the procurement of the illegal entry of a person into the territory of a State Party of which he is not a national or a permanent resident for the acquisition of a financial or a material benefit. The act of smuggling concerns procurement and financial benefit derived from facilitating illegal cross border entry.

Secondly, in all cases of smuggling of persons, there should be an illegal border crossing into the final state to which the person is being smuggled. The issue of illegal (or legal) border crossing in TIP cases is not a necessary requirement, as the TIP places emphasis on the action, means and purpose of the exercise rather than the crossing of a border at all. Internal (in-country) trafficking remains an offence, e.g. trafficking from one city to another, or from a rural area to an urban area within a country. No international borders need to be crossed for TIP to have taken place.

“With the average cost of the trip from the Horn of Africa to South Africa increasing by almost 69 percent from 2009–2016, the smuggling economy remains extremely lucrative for those involved, with high profits matched by low risks. Collusion and corruption, involving state officials, are essential lubricants of the smuggling machine. For migrants, the risk of failure is low with most reaching South Africa despite abuses by smugglers or officials, and other risks. With earnings rising faster than inflation, the profits from this illicit industry appear to be higher in 2016 than in 2008/9, despite the decline in the number of migrants. In 2008/9, the illicit migrant smuggling economy was estimated to be worth at least USD 40 million per year. For 2015/16, estimates are that it was worth up to USD 47 million per annum. These estimates are based on fees paid to smugglers, but the rising prevalence of ransom demands means actual earnings are likely much higher.”³²

Smuggling is essentially a crime against the state (the contravention of immigration laws). It need not require any form of force, coercion or abuse of power, as smugglers may simply be engaged in the smuggling activity for profit motives and as a commercial transaction. The “commodity” in issue with smuggling is the service of facilitating the illegal entry into the country. Usually the relationship between the smuggler and the person gaining illegal entry ends once the border has been crossed.

²⁹ Article 2 of the Protocol against Smuggling of Migrants.

³⁰ Article 3(a).

³¹ This position has led to the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) to disseminate this information. [See http://icat.network/sites/default/files/publications/documents/UNODC-IB-01-draft4.pdf](http://icat.network/sites/default/files/publications/documents/UNODC-IB-01-draft4.pdf) (accessed 1 November 2018).

³² From “Smuggled South”, Danish Refugee Council, 2017.

Confusion and conflation may also arise from the fact that both crimes are categorised as organised crimes, they may occur along the same routes, be perpetrated by the same criminals and the rights of the trafficked persons and/or smuggled migrants may be violated (e.g. through violence perpetrated by smugglers against the people that they are “assisting” to cross borders illegally). However, as mentioned, the smuggling of persons is a crime against the State (through the violation of immigration laws), whereas trafficking is a crime against the person, that is, the victim of TIP.³³

Also, the offence of TIP involves the exploitation of an individual leading to a benefit for the traffickers through this ongoing exploitation; smuggling concerns a commercial transaction between the perpetrator and the migrant which (usually) ends in the crossing of a border.³⁴

It should be noted however that if there is exploitation after the transaction of crossing the border is complete, then the offence of TIP in persons will arise (additionally).

Activity 4: Scenario Discussion.



Setting the Scene

Loveness is a 17-year-old girl from Zimbabwe. There, she meets a man who promises her a well-paying job as a waitress in Johannesburg. She is very excited and agrees to accompany him across the border to South Africa. But when they arrive in Johannesburg, he locks her in a room and forces her to have sexual intercourse with clients. He takes all the money earned telling her that she needs to repay the costs he spent to get her a ticket to travel by bus to Johannesburg.

Questions for the small groups:

1. Do you think that this example constitutes TIP? Why?
2. Would your answer be the same if the girl had come on her own to Johannesburg after previously meeting the man in Zimbabwe. After arrival in South Africa, she then met up with him in Johannesburg where he locked her away and forced her to sell her body?
3. Would your answer be the same if she paid the man a fee to organise for her to come to Johannesburg by bus, and then when she arrived he locked her away for her to sell her body?
4. Do you think it would be an argument against trafficking that Loveness should not have been so easily misled especially since she had already completed 11 years of schooling and was quite intelligent and mature?
5. If they were stopped at the South African border, before even getting to Johannesburg, do you think the man could be prosecuted for trafficking given that no sexual exploitation had yet happened?

Groups should write their answers down to feed back to the group as a whole.

The instructor can then discuss the answers with reference to the appendix at the end of this module.

Questions to reflect upon:

What difficulties do you think the above case study might pose for frontline staff?

What investigation difficulties might crop up?

What challenges might arise in responding to the victim?

What difficulties related to evidence might arise?

What challenges might arise in any prosecution in this case?

Note: these need not be discussed in the group or in plenary now, but these issues will be taken up again in modules 4, 5, and 6.

³³ ICAT 1.

³⁴ ICAT 1.

Activity 5: Self-Assessment Checklist: The Palermo Protocol

I can give examples of the kind of acts that constitute trafficking	
I can give examples of some of the means that make up the definition of trafficking	
I can give examples of the kinds of exploitation required	
I can explain what smuggling of persons is	
I understand that once it is proved that a victim was coerced, forced, deceived etc, her "consent" to move with the trafficker is not a defence	
I understand that because children are too vulnerable to consent to their own exploitation, their "consent" is irrelevant	
I can think of a factual situation where smuggling and trafficking might overlap	

Part 2: The Role of the Southern African Development Community

1. Learning Objectives:

2. To learn about the SADC as regards its composition and the member State Parties.
3. To learn about SADC's position on TIP.
4. To appreciate SADC's role through the support of skills enhancement and capacity building.
5. To show how SADC envisages prevention and public awareness raising in the States Parties.
6. To illustrate the SADC stance on victim support and witness protection.

2. Introduction

This section looks at SADC's regional framework in combatting human trafficking. It provides an important backdrop to Module 6, which deals with co-operation, which includes cross border co-operation, including amongst SADC states.

This part gives a brief historical contextualisation of the SADC, followed by the legislative position of the treaty of SADC and the relevant protocols. The third step is an engagement on the recent SADC policy framework to establish how it adds value to give a sense of direction to the way States Parties in this region deal with trafficking in persons.

3. The background to the SADC framework and policy

In the Southern African Development Community (SADC), one unique TIP trend that stands out in the region is that TIP convictions remain low, only one hundred and one (101) over a period of 3 years, meaning an average of 2 convictions per country per year in the region.³⁵ Hence, strengthening legislation, inter-state cooperation, building and sharing of expertise in investigating, prosecuting and adjudication of TIP are crucial.

The Southern African Development Co-ordinating Conference came into force on 1 April 1980, following the adoption of the Lusaka Declaration: 'Southern Africa: Towards Economic Liberation'.³⁶

It was composed of nine states in Southern Africa which aimed at the reduction of their dependence on the then Apartheid-ruled South Africa. The founding member states were Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland,³⁷ United Republic of Tanzania, Zambia and Zimbabwe. Its member states have now expanded to include the Democratic Republic of Congo, Madagascar, Mauritius, Namibia and South Africa.

The South African Development Community is established by the Treaty of the Southern African Development Community. The treaty does not have a provision that deals with TIP. However, it allows states parties to conclude protocols to aid inter-government cooperation, with corresponding details on the objectives, scope and the institutional mechanisms for co-operation and integration.

³⁵ www.UNODC.org (accessed 8 March 2019),

³⁶ For a detail SADC history, please see www.sadc.org (last accessed 23 November 2018).

³⁷ Now Eswatini.

In this regard, SADC has adopted a number of protocols that aid the formation of a framework within which TIP may be dealt with. Some of the protocols include the SADC Gender Protocol, the Ten Year Action Plan, the SADC Protocol on Mutual Legal Assistance in Criminal Matters (2002)³⁸, the SADC Protocol on Extradition (2002)³⁹, and the SADC Protocol on Corruption (2001)⁴⁰.

This section now provides some information on the SADC Protocol on Gender and Development because it deals with issues relating to TIP in the region.

Central is the Protocol's definition of TIP as:

"... the recruitment, transportation, harbouring or receipt of persons, by means of threat, abuse of power, position of vulnerability, force or other forms of coercion, abduction, fraud or deception to achieve the consent of a person having control over another person for the purpose of amongst other things, sexual and financial exploitation;"⁴¹

This definition is similar to the definition of the Palermo Protocol, save for a few changes. First, the definition still includes all the three elements of action, means and purpose, as required under the Palermo Protocol. But the detail of the definition differs slightly. The first element excludes the action of transfer of persons. With regard to the second element of means, it omits the use of abduction and the giving or receiving of payments or benefits in the course of obtaining consent the person who has control over the victim. The purpose described in the SADC Protocol relates to the desire for sexual and financial exploitation.

38 Available at https://www.sadc.int/files/8413/5292/8366/Protocol_on_Mutual_Legal_Assistance_in_Criminal_Matters_2002.pdf (last accessed 22 November 2018).

39 Available at https://www.sadc.int/files/3513/5292/8371/Protocol_on_Extradiction.pdf (last accessed 22 November 2018).

40 Available at https://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf (last accessed 22 November 2018).

41 Article 1(2) SADC Gender Protocol.

The Palermo Protocol talks rather of a list of objective “outcomes” such as forced labour, slavery and forced servitude, The Gender Protocol dedicates efforts to the eradication of gender-based violence in the SADC regions in relation to TIP by urging States Parties to:

“put in place mechanisms by which all relevant law enforcement authorities and institutions may eradicate national, regional and international human trafficking networks;”

These mechanisms include legislative measures and other measures to curb the offence of TIP. This has led to the enactment of legislation in various States Parties following the coming into force of the treaty.⁴²

The wide policy framework of the SADC recognises the problem of TIP and uses various approaches to ameliorate the situation. It identifies skills enhancement and capacity building;⁴³

prevention and public awareness raising; victim support and witness protection; coordination and regional cooperation; research and information sharing. Other policies advocate for resource mobilisation and monitoring and evaluation. This has led to the signing of a memorandum with the International Organisation for Migration (IOM) on migration and human trafficking,⁴⁴ and the Southern African Police Chiefs Cooperation Organisation (SARPCCO).⁴⁵

This regional organisation is supported by the Sub-Regional Bureau of INTERPOL in Harare which coordinates its activities and programmes. The SARPCCO has been used by the SADC in the joint fight against cross-border crime, to review the joint crime management strategies, to ensure efficient operation and management of criminal records and to put in place more efficient monitoring of cross-border crime. The enhancement of skills has also brought to the pool the United Nations Office on Drugs and Crime (UNODC), who have commissioned this training manual, and the United States of America embassies in selected SADC Member States have supported the conduct of training of trainers (TOT) courses for law enforcement officers and key service providers on the crime of TIP.

The SADC recognises that the greatest challenge to the dealing with trafficking in persons is the lack of awareness of the practice.⁴⁶

Pursuant to increasing this awareness is the recognition that the SADC Protocol on Gender and Development obliges States Parties to employ mechanisms that may be used to adequately engage with the TIP phenomenon, using a bottom-up approach that starts at the national, regional and international level.⁴⁷

The SADC also urges States Parties with regard to TIP:

“... to ensure that TIP survivors receive appropriate and adequate support and witnesses are protected. Support to survivors of the crime is very important to reduce their risk of being re-trafficked. As such, psychosocial support, rehabilitation and reintegration into society are of utmost importance”.⁴⁸

42 For a list of countries that have legislation dealing in TIP, see the report by the SADC Secretariat ‘Preventing and Combatting Trafficking in persons: lessons from the SADC Region’ (2017)2.

43 Trafficking In Persons In The SADC Region Policy Brief, August 2016 available at https://www.sadc.int/files/8414/7505/0081/SADC_TIP_Policy_Brief_-_English_FINAL.pdf (accessed 1 November 2018), 5.

44 The Memorandum of Understanding between SADC and IOM was first signed in 2004 and revised in 2016, to engage areas of cooperation. Available at <https://www.sadc.int/news-events/news/sadc-and-iom-sign-memorandum-understanding/> (last accessed 23 November 2018). Further joint activities of cooperation that have a regional basis include the Migration

45 Dialogue for Southern Africa (MIDSA) (<https://www.iom.int/migration-dialogue-southern-africa-midsa>). See document at <https://www.africaportal.org/documents/3110/VAWCMAPUTOMAY08.pdf> (Last accessed 23 November 2018).

46 Policy Brief (2016) 5.

47 The SADC Protocol on Gender and Development, Article 20(5).

48 Policy Brief (2016) 5.

Cooperation between SADC Member States is a necessity to ensure effective investigation and prosecution of reported cases, as well as to facilitate safe repatriation of survivors of TIP. Mozambique set up the cross-border coordination working group with South Africa in 2012 and subsequently with Zimbabwe in 2015 in order to improve cooperation among key actors for enhanced protection of children, especially survivors of TIP.

The mechanism, sustained in the three countries that are constantly engaging with their relevant counterparts, has been key in identifying and agreeing on border referral mechanisms to facilitate effective and safe repatriation of children and to follow up on cases related to child trafficking.

The cross-border mechanism has also provided a platform for developing guidelines for the repatriation of children. The guidelines clearly indicate the roles and responsibilities of each stakeholder involved, making it possible for a more efficient service delivery, thus avoiding duplication of resources.

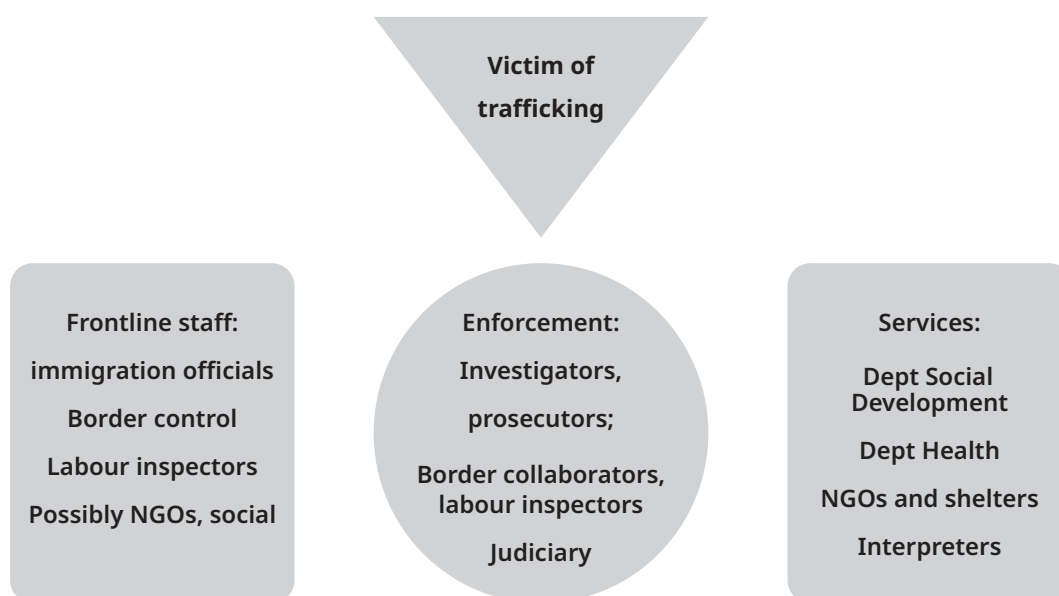
This is a good example where regional cooperation through cross-border coordination between neighbouring countries has enriched their communication and crafted guidelines to facilitate appropriate repatriation of children, including child victims of TIP.⁴⁹

4. Final comments

The convergence of international law (the Palermo Protocol), regional commitments (the SADC Gender Protocol) and domestic law form the underpinning of the fight against the crime of TIP. They set the standard for the state's response to this phenomenon: both as regards measure to be taken towards perpetrators, and as regards support to and treatment of victims. They also set the standard for awareness raising and for prevention efforts.

From the contents of this chapter, it should now be clear that a range of people might be involved in detecting and responding to TIP: these include labour inspectors, immigration officials, police, prosecutors and judicial officers. Social welfare officers and NGOs would usually be involved in providing services to victims, though they might also be “frontline staff” if they first detect the possibility of TIP or it is reported to them. Health services may also be required; again health workers could be frontline staff if they are the first to suspect TIP or it is reported to them. A basic diagram illustrating this is provided next. Before dealing with these concrete roles in more detail, however, the specifics of the South African legislation will be discussed in the next module.

Diagram illustrating role players in TIP scenarios



6. Key learning points



Key learning points from this module:

- There is now a standard definition of TIP in international law
- It has three elements: the act, the means and the purpose
- Different criteria apply when the victim is a child (because children cannot consent to exploitation and exploitation of children is per se offensive without the need to prove (e.g.) deception or fraud as inducement)
- TIP does not only involve cross border situations; it can involve domestic/national movement of persons within a country for exploitation too
- TIP differs from smuggling which always involves a cross border element because it is an offence against immigration laws (for profit)
- The SADC has begun a process of collaboration in various sectors, and with external support to foster co-operation amongst member states
- There is now a policy on TIP at SADC level; a data collection tool which has been developed by UNODC is being rolled out in SADC countries to enable the same data sets to be collected
- The SADC policies and efforts may determine priorities for South Africa to focus on.

The World Day against Trafficking in Persons was formally proclaimed by the United Nations General Assembly (UNGA) (Resolution A/RES/68/192 on 18 December 2013).

The day, commemorated every 30 July, seeks to raise “awareness of the situation of victims of human trafficking and for the promotion and protection of their rights.”



Awareness raising is now a permanent feature on the South African calendar as the first week of October every year is the designated National Trafficking in Persons Week. The National Trafficking in Persons Week is coordinated by the NPA.

Activity 6: Discussion point



Take ten minutes for group discussion on the following question:

“Why do you think SADC structures are relevant to TIP for:

- Investigators
- Prosecutors
- Victim service providers
- Immigration officers
- Social workers
- Labour inspectors?”

Further reading sources:

- ICAT, The Gender Dimensions of Human Trafficking, Issue 4, 2017.
- SADC, Trafficking in Persons in the SADC Region: A Baseline Report, SADC Secretariat, 2016.
- SADC, Preventing and Combating Trafficking in Persons: Lessons from the SADC Region, SADC Secretariat, 2017.
- SADC, Responding to Trafficking in Persons in the SADC Region: A Capacity Assessment, SADC Secretariat, 2017.
- SADC, UNODC: Trafficking in Persons in the SADC Region: A Statistical Report, 2017

MODULE 3: AN ANALYSIS OF SOUTH AFRICA'S LEGISLATIVE AND POLICY FRAMEWORK ON TRAFFICKING IN PERSONS

Part 1

1. Learning objectives

- To acquaint participants with the specific legislation developed to prevent and combat TIP in South Africa
- To acquaint participants with related legislation and offences that may arise during a TIP case
- To lay the basis for the modules on evidence collection and on investigation which follow in this manual

2. Introduction

This module and subsequent ones look at South Africa's policy and legislative framework on trafficking in persons. Thereafter, it deals with the practical aspects that aid the eventual prosecution of the suspects on one hand, and the protection of victims on the other hand. The protection of the victims involves looking at their identification, referral, support, the special needs of victims of TIP and interviewing techniques, which are discussed in more detail as regards the non-legal aspects in modules that follow.

This module covers the definition of TIP, the offences created by the Prevention and Combatting of Trafficking in Persons Act, penalties and factors to be considered in sentencing, reporting obligations and victim compensation. A separate part provides basic information about further legislation that may be connected to TIP, notably the Children's Act 38 of 2005, the Criminal Law (Sexual Offences) Amendment Act 2007, the Basic Conditions of Employment Act 75 of 1997 and, finally, an overview of some common law offences is provided.

3. The relevance of the Constitution of the Republic of South Africa, 1996

Several constitutional rights are (or may be) implicated when victims are subjected to trafficking. These include: -

- The right to dignity
- The right to freedom and security of the person⁵⁰
- The right to freedom of movement
- The prohibition on slavery, servitude or forced labour as well as the right to fair labour practices
- Children's right to be protected from abuse, neglect, maltreatment and degradation
- Children's rights to be protected from exploitative labour practices as well as their right not to be permitted to perform work which is inappropriate for their age or which places the child's well-being at risk, education, physical or mental health or spiritual, moral or social development

These constitutional rights also find direct protection in legislation enacted to give effect to them, such as the Children's Act 38 of 2005 and the Basic Conditions of Employment Act 75 of 1997. These are covered under part 2 of this module.

4. The Prevention and Combatting of Trafficking in Persons Act

South Africa's legislative framework on TIP is governed by the Prevention and Combatting Trafficking in Person Act (TIP Act).⁵¹ The Act is currently supplemented by two sets of Regulations that have been promulgated under the Act (one dealing with victims issued by the Department of Social Development, and the other dealing with the prosecutor's referral of victims for services) and one set of Directives (issued by the Director – General of Justice and Constitutional Development). These contain not only subsidiary rules and regulations, but also forms to be used at various stages in the process of responding to allegations of TIP.

The current legislative framework offers a basis for the creation of a national policy to deal with trafficking in persons. This national policy was launched in April 2019 and can be accessed on the website of the Department of Justice (www.justice.gov.za).

The overall objects of the Prevention and Combatting of Trafficking in Persons Act, 2013 can be found in section 3(f), that is to: 'combat trafficking in persons in a coordinated manner through the provision of the coordinated implementation, application and administration of this Act, including the development of a draft national policy framework.'

Prior to the coming into operation of the Act in 2015, traffickers could be prosecuted under other legislation (s 141 of the Children's Act 37 of 2005 and ss15,16, 17, 70 and 71 of the Criminal Law (Sexual Offences and Related Matters) Act, 2007), as well as for common law crimes such as kidnapping, assault and so forth.

50 S 12 of the Constitution reads as follows: (1) Everyone has the right to freedom and security of the person which includes the right –

(a) Not to be deprived of freedom arbitrarily or without just cause;

(b) Not to be detained without trial;

(c) To be free from all sources of violence from either public or private sources

(d) Not to be tortured in any way;

(e) Not to be treated or punished in a cruel, inhuman or degrading way.

51 Act 7 of 2013 (in operation from 9 August 2015).

Today, the offences created by the Children's Act have been repealed, and some relevant offences created by the Sexual Offences Act have been repealed too, as the TIP Act replaces these with the offences it creates within the confines of the Act itself. The major offences under the TIP Act are provided for under sections 4, 5, 6, 7, 8, 9 and 10. These include the offence of Trafficking in Persons (TIP), debt bondage, and the possession, destruction, confiscation, concealment or tampering with identification, passport or travel documents of a victim of TIP. Other offences include the use of the services of victims of TIP, conduct facilitating TIP, the liability of carriers, attempts, inciting and instigation, of conspiracies to commit TIP, and unauthorised access to, or disclosure of, information.⁵² In addition, the failure to report or to deal with a child or an adult victim of TIP is an offence.⁵³

4.1 The offence of Trafficking in Persons

The main offence of TIP is provided for in section 4. It extends the main definition in the Palermo Protocol (see module 2 for this discussion).

It extends to the range of acts which may constitute the commission of the offence to include the delivery, sale, exchange or lease of another person within or beyond the borders of South Africa (in addition to recruitment, transport, transfer and harbouring of a person).

The section introduces other means (how control is gained over the victim) such as kidnapping and the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person (in addition to those mentioned in article 3 of the Palermo Protocol such as threat of harm, threat or use of force or other forms of coercion, abuse of vulnerability, fraud, deception, and the abuse of power).

The Act is also clear that the recipient of the threats, or receipt of benefits etc (all of the means of control) need not be aimed at the victim directly but could be aimed at 'an immediate family member of that person or at any other person in a close relationship to that person'.

The purpose of the trafficker remains the same as that in the Palermo Protocol: namely 'any manner or form of exploitation'. Section 4(2) provides for an offence further when a person adopts a child, legally or illegally, within South Africa or across borders, for the purposes of exploitation of that child; and where someone concludes a forced marriage for the purpose of exploitation within or beyond the borders of South Africa, for the purpose of exploitation. This, too, constitutes the offence of TIP.

The role of consent is spelt out in the Act. S 11 of the Act deals with two scenarios: one where the victim of TIP is a child, and the other where the victim is an adult.

Because of the extended definition of the "means of control" as being applicable also to "an immediate family member of that person or any other person in close relationship to that person," the Act provides that it is no defence to prosecution for TIP that the child or the person having control or authority over the child who is a victim of trafficking has consented to the intended exploitation or action which was intended to constitute an offence under this Chapter of the TIP Act. It is also not a defence that the intended exploitation or action did not occur (even if none of the means referred to have been used). In the case of an adult, it is no defence to a trafficking charge that an adult person consented to the intended exploitation or the action which was intended to constitute an offence, if one or more of the means referred to in section 4(1) (a) – (j) have been used.

It is also not a defence in the case of an adult that the intended exploitation or action did not yet occur, if one or more of the means used in s 4 (1) (a) – (j) have been used.

The means specified in s 4(1)(a)-(j) are: threat of harm, the threat or use of force or other forms of coercion, the abuse of vulnerability, fraud, deception, abduction, kidnapping, the abuse of power, the direct or indirect giving or receiving of benefits to obtain the consent of the person having control or authority over another person, and the direct or indirect giving of payments, benefits, rewards, compensation or any other advantage aimed at either the person or an immediate family member of that person or another person in a close relationship to that person for the purpose of any form or manner of exploitation.

⁵² TIP Act, s 23.

⁵³ Sections 18 (1) and (9) and 19(13).

4.2 The offence of debt bondage

The offence of debt bondage is provided for in section 5 of the TIP Act, and it provides that where any person intentionally causes another person to enter into debt bondage, that person is guilty of an offence. The Act goes ahead to define debt bondage to mean the “involuntary status or condition that arises from a pledge by a person of his or her personal services or the services of another person under his or her control as security for a debt owed or claimed to be owed, including any debt incurred or claimed to be incurred after the pledge is given.” It has to be shown however, that the debt (as reasonably assessed) is manifestly excessive, that the length and nature of the services to be rendered is not limited or defined, and that the value of the services (as reasonably assessed) is not applied towards the extinction (liquidation or wiping out) of that debt. An evaluation of the debt bondage should effectively point to an intention by the perpetrator to exploit the victim.

Debt bondage

Case example 1

Buyi is persuaded to leave a rural area for a job in the city. Upon arrival the person who recruited her for the job as a domestic worker takes away her ID document (for safekeeping), and the recruiter agrees with her employer that the wages Buyi earns will be paid directly to the recruiter. Because he paid Buyi's travel costs to the city, he says she must first repay him all that at 25% per month interest rate on the debt before she can receive any money herself. After two years of working a 12-hour day, 6 days a week, Buyi is told that she has only paid off a few rands of the original debt.

Case example 2

Petrus is a farm labourer. He borrows money for groceries from the owner of a neighbouring farm every week. His debt soon mounts up. The owner of the neighbouring farm suggests that to repay the debt, he pledges his son (aged 14) to work as a herder on this farm. Petrus sends for his son from the village where he lives and tells him to work for the farmer at the neighbouring farm. His son is not paid anything for his labour as a herder, instead he must work until he is 21 years old to pay off Petrus's debt.

4.3 The possession, destruction, confiscation, concealment of or tampering with documents

This offence was introduced in the TIP Act in section 6 to address perpetrators who deal with the identification or travel documents (e.g. a passport) of the victims of TIP in a manner that includes the destruction, confiscation, concealment of or tampering with such documents. It has to be shown that the purpose of these actions is to aid (facilitate or promote) the offence of TIP. This offence, therefore, arises out of the process of the commission of the offence of TIP. The creation of the offence is to aid the prosecution of persons who further the commission of the offence of TIP.

4.4 Using the services of victims of trafficking.

This offence is provided for under section 7 of the TIP Act. This offence is not limited to a particular or closed list of services that can be elicited from a victim of TIP. The underlying rule is that the person prosecuted under this section should intentionally benefit from the services of the victim directly or intentionally aid another person to use the services of the victim. The same section makes it an offence for anyone who knows or ought reasonably to have known or suspected that a person is a victim of TIP, to benefit from the use of the services of a victim.

The benefit can be financial or otherwise (which is very broad).

4.5 Conduct that facilitates trafficking.

This offence is provided for under section 8 of the TIP Act. First, it covers certain conduct by individuals. Individuals may not:

- Intentionally lease or sublease premises or establishments for promoting TIP (or allow them to be used as such). Liability also arises where they ought reasonably to have known or suspected that premises will be used to facilitate TIP.
- They are criminally liable if, subsequent to leasing or subleasing premises, they become aware of or ought reasonably to have known or suspected that it is being used to facilitate TIP, and they then fail to report this to a police official.
- Individuals are liable when they advertise, publish, print, broadcast or distribute (or cause any of these to happen) information that facilitates or promotes TIP by any means (including on the internet or using other information technology)
- Any person who finances, controls or organises the commission of any of the offences in the TIP Act is guilty of an offence.

Second, section 8 covers specified conduct by electronic communications services providers. These providers are defined to mean a person licensed (or exempted from being licensed) to provide electronic communication services such as the emission, transmission or reception of information.⁵⁴

This information is not limited to voice, sound, data, text, video, animation, or images. It may be transmitted through many modes such as magnetism, radio or other electro-magnetic waves.⁵⁵

An electronic communications service provider operating in the Republic must take all reasonable steps to prevent the use of its service for hosting information that intentionally facilitates or promotes TIP by any means (including the internet or other information technology).

Further, an electronic service provider that becomes aware of any electronic communications which contains information which promotes or advertises (etc) TIP and which information is stored upon or transmitted over its electronic communications system must report this to the South Africa Police Service; take reasonable steps to preserve the evidence that may be required by investigative and prosecuting authorities; and prevent continued access to those electronic communications by customers or by any person if they are stored on the system of the electronic communications service provider.

4.6 Liability for carriers.

Liability under the TIP Act extends to a person who is the owner or employee of the owner, an agent, an operator, a lessor, a driver, a charterer or a master, of any means of transport.⁵⁶

The offence relates to transporting of victims of TIP within or across the borders of the Republic. The yardstick is that the carrier knew or ought reasonably to have known that person or passengers being transported were victims of TIP.⁵⁷ Once this is established, s/he must report the matter to a police official for investigation.⁵⁸

A duty to report also exists where a carrier on reasonable grounds suspects that any of its passengers are victims of trafficking. Only a High Court, however, has jurisdiction in respect of ships and aircraft used as carriers.

The provisions of section 10 of the TIP Act also criminalise attempts to commit any offences under this chapter; incitement to commit any of them, and aiding, advising, instigating and encouraging or recruiting any other person to commit any offence under this chapter.

5. Prosecution for offences committed outside of South Africa

As foreshadowed by the Convention on Transnational Crime (see module 2 above) and the Palermo Protocol, the TIP Act provides for a court in South Africa to have jurisdiction in specified instances where the crime was committed outside of the borders of South Africa (extra territorial jurisdiction). The application of the TIP Act to these criminal acts is contemplated in three scenarios. First, to occurrences outside South Africa, secondly, in situations where the occurrences start in South Africa but are concluded beyond its boundaries, or third, where the occurrences are concluded (i.e. finalized) in South Africa. The rules of extraterritorial jurisdiction apply to an act committed outside the Republic if it would have been an offence in the Republic under this Act if it had been committed here, regardless of whether it was a criminal act in the territory in which it was committed.

Section 12 provides for the jurisdiction of South African courts where:

- The person to be charged is a South African citizen
- The person to be charged is ordinarily resident in South Africa
- The person to be charged has committed the offence against a South African citizen or person who is ordinarily resident in South Africa
- If the person to be charged is, after the commission of the offence, present in the territory of South Africa⁵⁹
- If the person to be charged is for any reason not extradited by the Republic or if there is no application to extradite that person
- Is a juristic person (e.g. company) or partnership registered in terms of any law in South Africa

⁵⁴ TIP Act, s 1.

⁵⁵ TIP Act s 1.

⁵⁶ Section 9.

⁵⁷ Section 9(2).

⁵⁸ Section 9(3).

⁵⁹ Or its territorial waters or on board a ship or aircraft registered in the Republic.

The place (court) where prosecutions such as these shall take place shall be either the place where the accused person is ordinarily resident or the accused person's principal place of business, or the place designated by the National Director of Public Prosecutions if neither of the first two options apply. Only a High Court, however, has jurisdiction in respect of ships and aircraft (as mentioned above.)

6. Penalties

The penalties for the commission of the offences under the TIP Act depend on the nature of the offence. These are provided for in section 13, and they include the following options:

- A fine not exceeding ZAR 100 million or a imprisonment for life, or such imprisonment without the option of a fine, or both imprisonment and a fine, upon a conviction of TIP;⁶⁰
- A fine or imprisonment not exceeding 15 years or both with regard to the offences of debt bondage, the use of the services of victims of TIP, unauthorised access to or disclosure of information conduct facilitating TIP;⁶¹
- Contravention of the section prohibiting conduct facilitating TIP and possession, destruction, confiscation concealment of or tampering with identify and travel documents can be met with a fine or imprisonment not exceeding 10 years or both;
- A person is liable to a fine or imprisonment of a period not exceeding 5 years or both in instances of a conviction following conduct by an electronic communications services provider that facilitates TIP, or failure to report or to deal with a child or an adult victim of TIP;⁶²

7. Factors guiding sentencing discretion

The Court exercises a lot of discretion when handing down the sentences in light of the penalties identified above, but the TIP Act provides guiding factors for a sentencing judicial officer to consider. These are intended to indicate that TIP may be a very serious crime. The factors guiding sentencing are listed in section 14 and they include the following:

- the significance of role of the convicted person in the process of TIP
- whether the convicted person caused the victim to be addicted to the use of a dependence- producing substance
- the conditions under which the victim was kept, and whether the victim was held captive
- whether the victim suffered abuse (and the extent of the abuse) in the course of the captivity, and the extent of the abuse
- the physical and psychological effects of the abuse on the victim
- whether the offence formed part of organised crime
- whether victim was a child
- the nature of the relationship between the victim and the convicted person
- the state of the victim's mental health, and
- whether the victim had any physical disability.

60 TIP Act, s 13(a). This is the same for the main form of TIP (recruitment, transport, transfer etc) for the purposes of exploitation as well as adoption for the purposes of exploitation and forced marriage for the purposes of exploitation.

61 Section 23, to be discussed shortly.

62 The reporting obligation is dealt with in the next section.

Activity 7



Discussion scenario

Setting the scene

A call is received from a citizen complaining of 'suspicious activities' at a grand house in a wealthy area of Durban. The caller is a neighbour who has phoned the police station to complain that the peace in the neighbourhood is being disturbed every night by what sounds like a very loud party. From what she can see, there are only men arriving to the house at night - from her front stoep she can see everyone who arrives at the house next door, and the visitors are all men. However, she knows that there are women living next door too, because she occasionally sees them waving at her through the windows, but she has never seen them outside or spoken to them.

Based on this information, a decision is made to visit the house. An investigation team, together with uniform members conducting patrol duties in the area, arrive at the house and find that it is heavily protected with a high brick wall, electrified fence and a security camera at the gate.

The police officers are met by a man who introduces himself as the owner of the house. He explains that he works 'in import and export' and that he has to entertain often to keep up his business contacts. He also explains that his niece and some of her friends from Thailand, his home country, are visiting him for a few weeks, and they usually attend the parties as well.

When you search the premises, you find seven young women in the house. None of them speak any English and you realise that you will not be able to communicate with them directly. You next ask for travel documents for the women, to see if they have valid visitors' visas for South Africa. The owner produces a number of passports from his desk and hands over the women's passports. You notice that three of the visitors' visas have expired.

You also find a young Zulu child, who appears to be about 12 years old, in the kitchen. She explains in Zulu that she is a domestic worker in the house, and that she is originally from Empangeni. Her father, who is not at the house at the time, brought her from the family's smallholding in Empangeni to work for the home owner when he realised that they needed someone to clean the house. She then left school to come to earn some money. She complains to the police that all the women living in the house are 'very untidy' and are always tired during the day because they have so many parties at night.

Question for group discussion:

What are the indicators of trafficking in this case study?

The Instructor will write the responses from the groups these up on a flipchart.

8. The Reporting obligation

Identification of victims is the starting point for investigation and, ultimately, the prosecution of offenders involved with TIP. This section deals with the nature of the reporting obligation alleged. The TIP Act offers guiding principles. It has a two-pronged identification process: one that deals with children involved in TIP on the one hand (section 18); and adult victims, on the other hand (section 19). Where the principles intersect, they are discussed generally, but then they are also identified with due regard the particularities that may prevail where the victim is either a child or an adult. These principles are based on the guiding principle of the UNODC Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation, that require that prosecutors and law enforcement officers, in the treatment of victims of TIP, do them no harm.⁶³

⁶³ UNODC Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation (2007) 6-7.

9. Reporting and follow up where the victim is a child

The TIP Act places a duty on every person who knows or ought to have known or suspected that a child is a victim of TIP to report this immediately for investigation. Where it is a designated child organisation that has the information, the organisation has the duty to report the knowledge or suspicion to the police. It should be noted that a person can claim legal privilege (communications between lawyers and clients are confidential) as a bar to reporting the trafficking of an individual, if approached for legal advice, or if litigation is pending.⁶⁴

Secondly, where a person has reported his or her suspicion about a possible occurrence of child trafficking, he has to give the reasons for believing this, in good faith.⁶⁵ Where the report is made in good faith, the person reporting may not be subjected to civil lawsuits or disciplinary action or violation of any code of conduct on the basis of that report.⁶⁶ The reporter is entitled to have his or her identity kept confidential if his or her safety is at risk because of the report.

Thirdly, after an individual has reported to the police, the police are expected, where there is belief that the safety of an individual victim is at risk, to enter into such premises, without a warrant, and exercise reasonable force to remove the person (or child) from such premises to a place of safety.⁶⁷ The police should then report the concerns about the child to the respective child protection organisation or a social worker (using the relevant provisions of the Children's Act);⁶⁸ or report the concerns about the adult to an accredited organisation for purposes of providing support.⁶⁹

Where the victim is a child, the provincial department of social development must assess whether a child is indeed a victim of TIP without delay, taking into account the prescribed information obtained from SAPS. The child may be placed in temporary safe care pending the investigation. An adult victim may be placed in protective custody.

Where the findings reveal that the child is an illegal foreign child in need of care and protection, this is an authorisation for the child to stay in the Republic for the duration of the court order: section 18(8).

Where the victim is a child, Regulation 2 provides as follows:

"A provincial department of social development, receiving a child transferred by a police official in terms of section 18(4) or who has been referred by the prosecution in terms of section 22(2)(b) or who has been identified upon entry to the Republic in terms of section 33(b)(iv) of the Act, must;

- (a) complete the details of the child victim in a dedicated register that corresponds substantially with Form 1 in PART 2.
 - (b) enter the details of the police official reporting the victim in a dedicated register;
 - (c) make an assessment of the report as provided for in section 110(5)(b) of the Children's Act;
 - (d) consider the presence of indicators of abuse contained in the Broad Risk Assessment Framework as provided for in regulation 35 (2) of the General Regulations Regarding Children, 2010, and other indicators to guide decision-making in the provision of designated child protection services.
 - (3) If the child is suspected of being a victim of trafficking, the provincial department of social development must refer the child to a designated social worker to conduct the investigation to establish whether or not the child is a victim of trafficking and in need of care and protection in terms of section 150 of the Children's Act".
- (The full set of Regulations promulgated under the TIP Act are available on the website of the Department of Justice (www.justice.gov.za) for further perusal).

Furthermore, the designated social worker must consider, during the course of his or her investigation the following:⁷⁰ the facts surrounding the circumstances giving rise to the child being trafficked;

- where the child's guardian or parent is identified, immediately notify them, subject to safety considerations relating to the child;
- evaluate the child's parental circumstances (including parental characteristics, mental stability, maturity, physical or emotional impairment, substance and alcohol abuse, capabilities, temperament, employment status, and level of support given to the child);
- evaluate the child's family circumstances, including family violence, inappropriate discipline, dependency, marital status;
- evaluate the child's environmental circumstances, including poverty, homelessness, isolation, mobility of the parents;

⁶⁴ Section 18(2) for child trafficking and 19(3) for adult trafficking.

⁶⁵ Section 18(3) for child trafficking and 19(4) for adult trafficking.

⁶⁶ Section 18(3)(b) for child trafficking and 19(4)(b) for adult trafficking.

⁶⁷ Section 18(5) for child trafficking and 19(5) for adult trafficking. The child may be put in temporary safe care. Where it is an adult victim, the police may place him or her into protective custody

⁶⁸ Section 110(4) of the Children's Act (duties of the police upon receipt of a report) and s 155(2) of the Children's Act (investigation by a social worker of the possible factors surrounding whether a child is in need of care and protection).

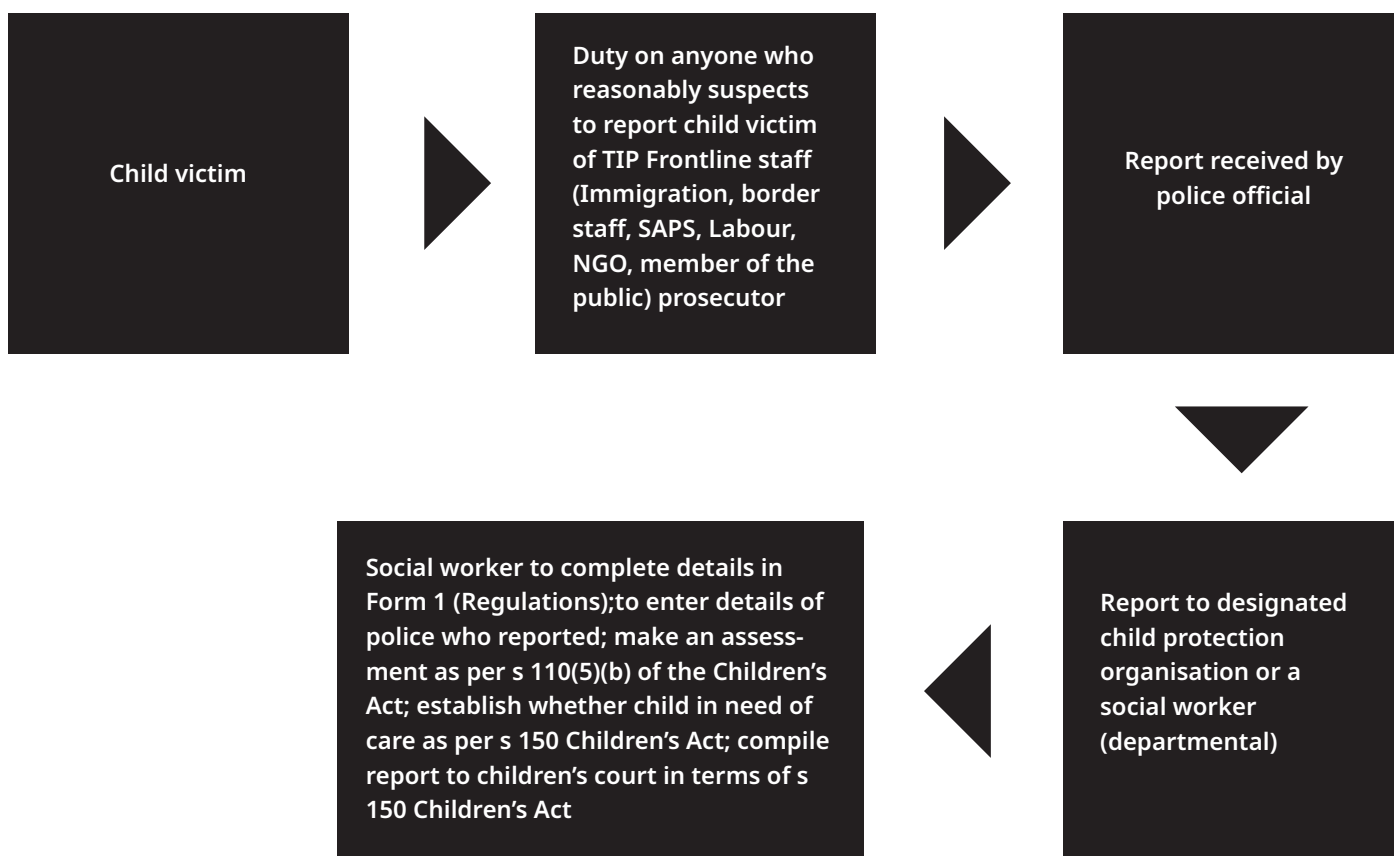
⁶⁹ Sections 18(7) for child trafficking and 19(6) for adult trafficking. Accreditation of organisations to provide services to adult victims of trafficking are so accredited in terms of section 24. Further details relating to the accreditation process are prescribed by means of Regulations: See Government Gazette no 39318 of 23 October 2015.

⁷⁰ Regulation 2(4)

- identify the level of risk that the child may be exposed to, including any
- gender-related needs;
- identify actual and potential protective and supportive factors in the home and broader environment to minimise risk to the child; and
- decide on the appropriate protective measures or intervention as provided for in the Children's Act.

Thereafter, the social worker must compile a report, to be presented to the Children's Court within 90 days. The Children's Court⁷¹ will make a determination as to whether the child is in need of care and protection, and which protective measures are required.

Diagrammatic illustration of process where victim identified is a child



10. Reporting and follow up where victim is an adult

Regulation 3 determines the response to a report concerning an adult victim. Any person who knows or ought reasonably to have known or suspected that an adult person who he or she comes into contact with in the execution of his or her duties is a victim of TIP must immediately report that knowledge or suspicion to a police official for investigation. Note that this legal duty does not rest on any member of the public, but upon those who encounter victims of TIP in the execution of their work (e.g. labour inspectors; health personnel who are treating a health condition; or immigration officials at border posts, for instance). However, any member of the public who on reasonable grounds suspects that an adult person is a victim of TIP may report that suspicion to a police official.⁷²

A duty is also placed on accredited organisations⁷³ which come into contact with adult victims of TIP to report this to a police official where it has not been reported before.

⁷¹ Children's Courts are established in terms of the Children's Act 38 of 2005, and are found at every magisterial district.

⁷² Section 19(2) of the Act,

⁷³ Accredited organisations are also discussed in the following module as part and parcel of victim support.

The police official to whom a report has been made concerning an adult victim may/must take the following steps:

- where necessary, enter premises without a warrant (in terms of the Criminal Procedure Act) if he believes that the safety of that person is at risk or the person may be removed from those premises;
- S/he may use such force as is reasonably necessary to overcome resistance to entry;
- Must where necessary, as a last resort and with the written permission of the person concerned, take him or her into protective custody if there is an immediate threat to the safety of that person; the person should be taken to the police station until the station commander is satisfied that the threat has ceased to exist;
- After this, the victim can be placed in temporary safe care;⁷⁴
Within 24 hours, the victim must be referred to an accredited organisation;
- The provincial department of social development must be notified of the details of the victim;
- The victim must be informed that he or she can apply for a visitor's visa to remain in the Republic (for a recovery and reflection period) if she or he is a foreigner;
- A police official must assist a victim to obtain such medical treatment as may be necessary in the circumstances;⁷⁵
- The police official is also responsible for transporting the victims to temporary safe care or an accredited organisation

A provincial department of social development must ensure that a social worker makes an assessment whether an adult person referred to in section 19(5) of the Act is a victim of TIP, after taking into account the information received from the South African Police Service set out in a referral form that corresponds substantially with Form 2 in PART 2 by completing the assessment tool in a form that corresponds substantially with Form 3 in PART 2.

The provincial head of social development must issue a letter of recognition, to an adult who has been found to be a victim of TIP after an assessment.⁷⁶ A Form (Form 4) is provided for this purpose. A letter of recognition is a formally written recognition that an adult person is a victim of TIP. A copy of this letter of recognition must be handed to the adult victim, as well as to the investigating police official and the prosecutor.⁷⁷

Prosecutors who encounter possible victims of TIP are also given a specific role in terms of the Act. Section 22 provides that the prosecutor must give due consideration, when deciding whether to prosecute a victim of TIP, whether the offence was committed as a direct result of the person's position as such a victim (e.g. failing to renew immigration permits: see module 1 of this manual for an example of this having occurred in the UK). If the prosecutor reasonably suspects that a person is a victim of TIP and the offence was indeed committed as a direct result of that person's position as a victim of TIP, the prosecutor must apply for a postponement and refer the matter to the provincial department of social development, who must then conduct an assessment. Prosecution cannot be instituted without written authorisation of the Director of Public Prosecutions.⁷⁸

74 Which means a shelter, private home or any other place approved by the Director General: Social Development, pending that person being accommodated at an accredited organisation.

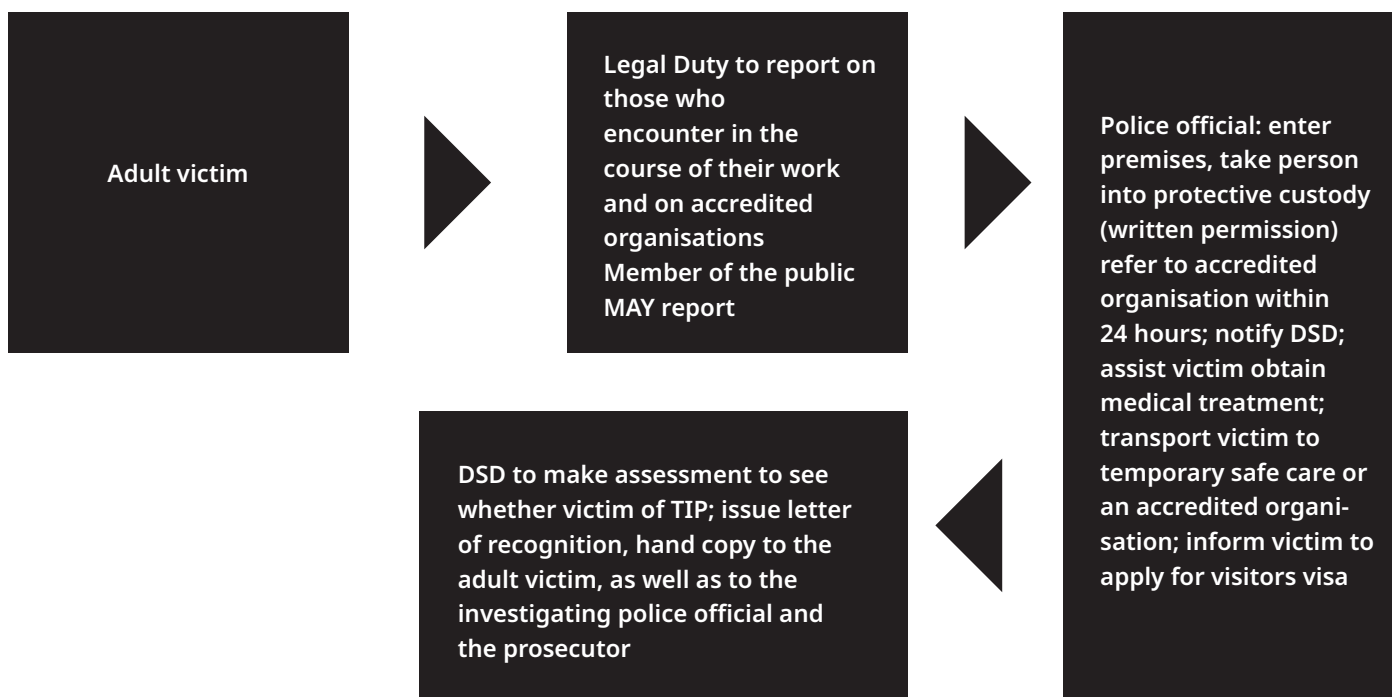
75 Section 19(7)(a) of the Act.

76 Regulation 4(1) and (2).

77 A letter of recognition can be withdrawn on certain conditions: regulation 5, and the victim has 14 days within which to appeal the notice of withdrawal. If the person is an illegal foreigner, there needs to be coordination between the department of social development and the Department of Home Affairs regarding that person: see regulation 8. Section 22(4).

78 A letter of recognition can be withdrawn on certain conditions: regulation 5, and the victim has 14 days within which to appeal the notice of withdrawal. If the person is an illegal foreigner, there needs to be coordination between the department of social development and the Department of Home Affairs regarding that person: see regulation 8. Section 22(4).

Diagrammatic illustration of process where victim identified is an adult



11. Confidentiality

It is an offence, in the absence of a court order or for the purposes of giving effect to the provisions of the TIP Act, for any person to allow an unauthorised person access to a victim or a child suspected to be a victim of TIP.⁷⁹

It is also an offence to disclose the identity of victims (or suspected victims) of trafficking or the identity of a child who is in the care of that victim. Unless authorised by court, it is also an offence to disclose the place where victims or suspected victims of TIP or a child in that victim's care is accommodated or treated. Any information which could lead to identification of a victim (or of the child in his or her care) or place where the victim is being treated or accommodated is similarly prohibited.

Disclosure of any information which undermines or compromises the investigation or prosecution of a trafficking case is also a criminal offence.

12. Compensation

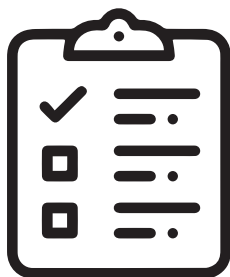
Chapter 6 of the TIP Act deal with compensation. Section 29 provides for compensation to the victim of TIP. The court may on its own accord, or at the request of the victim or prosecutor, make an order for compensation for:

- Damage to or loss of or destruction of property, including money
- Physical psychological or other injury
- Being infected with a life-threatening disease or
- Loss of income or support as a result of being a victim of TIP.

Compensation orders can also be made for compensation to be paid to the State. This is in addition to any sentence imposed by the Court and would be requested to cover the costs of care, accommodation, transportation, return or repatriation of the victim of TIP.

⁷⁹ Section 23(a) (b)(i),(ii),(iii),(iv).

Activity 8: Self-assessment checklist



I am able to find the definition of the offence of TIP in the TIP Act	Yes, section 4
I am able to define the offence of 'debt bondage'	Yes, section 5
I am able to identify the offences related to possession, destruction, confiscation etc. of documents	Yes, section 6
I am able to identify offence of using the services of victims of TIP	Yes, section 7
I am able to identify the offence of conduct facilitating TIP	Yes, section 8
I understand the relevance of the liability of carriers to anti-trafficking laws	Yes, section 9
I am able to explain what 'extra territorial jurisdiction' entails	Yes, section 12
I have familiarised myself with the procedures to be followed upon receiving a report of child victims of TIP	See part 8 of this module
I have familiarised myself with the procedures to be followed upon receiving a report of an adult victim of TIP	See part 10 of this module
I understand the confidentiality provisions applicable to victims of TIP (and any child who may be in their care)	See part 11 of this module
I am aware of the need for victims of TIP to receive specific services, from the time that the report is received.	See also the next module

Key learning points from this the first part of this module:



The TIP Act comprehensively criminalises TIP, doing away with the need to look for relevant offences in common law or other legislation; the definition expands on the definition in the Palermo protocol in several ways;

- The Act criminalises a range of offences which are related to TIP, such as debt bondage, the possession, destruction, confiscation, concealment of or tampering with documents, and using the services of victims of trafficking;
- The Act creates liability for carriers and for electronic communications service providers whose channels are used to facilitate trafficking;
- The possible defence of consent of the child and adult victim is comprehensively dealt with;
- The Act provides for extra-territorial jurisdiction in carefully defined circumstances;
- The Act prescribes severe penalties, and provides sentencing guidelines in the form of factors to be considered by the person sentencing an offender;
- The Act provides for defined processes of reporting and referral; these differ in relation to adult victims and child victims. In the case of child victims, the processes of the Children's Act are harnessed. The Regulations issued by the Department of Social Development on 23 October 2015 contain the guidelines for the information to be collected, the assessment to be carried out, and the required Forms to be completed;

- The Act provides that in the case of a victim who does not have a legal permit to be in South Africa, a letter of recognition can be issued confirming that the person is a victim of TIP;
- The Act provides for victims of TIP to be taken to temporary safe care or to accredited organisations pending further processes in terms of this Act.

Part 2: Brief overview of related statutes and common law offences

In addition to being prosecuted for the offences referred to in the preceding part of this module, it is possible that additional charges could be brought.

This part provides a brief overview of possible charges or related legal processes that may emanate from a TIP matter, in addition to the offences created by the TIP Act. Note that the Prosecution (National Prosecuting Authority) will ultimately decide on the formulation of charges. The information below is for information purposes only.

Relevant statutes

13. Children's Act 38 of 2005

In addition to setting up procedures for the reporting of child abuse and neglect (section 110), and how these reports are to be followed up upon, the Children's Act provides for the establishment of children's courts, their powers and functions, and the orders that they can make consequent upon finding that a child is in need of care and protection. The Children's Act is therefore complementary to the TIP Act.

Further, the TIP Act criminalises the adoption (legal or illegal) of a child within or across the borders of the Republic for the purposes of exploitation of that child in any form or manner. The Children's Act also provides that a child below the minimum age for marriage may not be given out in marriage and engagement, and that a child above that minimum age may not be given out in marriage or engagement without his or her consent.⁸⁰ The TIP Act criminalises forced marriages for the purposes of exploitation.⁸¹

Section 36 of the TIP Act provides that if a children's court has reason to believe that a parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child has trafficked the child, the court may suspend such responsibilities and rights and place the child in temporary safe care, pending a children's court inquiry.

Note that the provisions of section 284 and 285 of the Children's Act which related to child trafficking have been repealed by the TIP Act.

The Children's Act establishes a national register of persons who have been found unsuitable to work with children. This finding of unsuitability may be made by any court in any civil or criminal proceedings upon determining that the person's conduct in respect of a child or children renders him or her unsuitable to work with children. Such a finding must be made upon a person's conviction for murder, attempted murder, rape, indecent assault or assault with intent to do grievous bodily harm with respect to a child. The purpose of this register is to protect children in general from abuse emanating from these persons. There are a number of consequences flowing from having one's name on the register, such as that one may not manage or operate an institution providing welfare services to children or be permitted to be a foster parent or adoptive parent.

14. Sexual offences

The Criminal Law (Sexual Offences) Amendment Act 32 of 2007 constitutes the main legislation dealing with sexual offences. Amongst others, the Act repealed the common law offence of rape. It now has a statutory definition which is also gender neutral and includes all forms of sexual penetration (not just vaginal penetration). The act of rape is committed by any person (A) who unlawfully and internationally commits an act of sexual penetration with a complainant (B) without the consent of B.⁸²

For the purposes of the Act, "consent" means voluntary or uncoerced agreement. There is a significant difference between submission and consent – but if submission is obtained using actual violence, threats of violence or intimidation, that does not constitute a valid form of consent.

In order to consent, B must have the capacity in law of appreciating the nature of the sexual act. According to section 1(3) of the Act, such circumstances which render a person incapable of appreciating the nature of the act could include that B is asleep, unconscious, in an altered state of consciousness, including being under the influence of any medicine, drug, alcohol or other substance. A child below the age of 12 years cannot legally give consent to a sexual act, nor can a person who is mentally disabled.

⁸⁰ Section 12 (2) of the Children's Act.

⁸¹ Section 4(2)(b) of the TIP Act.

⁸² S2 of the Act.

Under the common law, rape could only be committed personally. Now the legislation creates an offence of “compelled rape”, which is where a perpetrator (A) unlawfully and intentionally compels a third person (C) without the consent of C, to commit an act of sexual penetration with a complainant (B) without the consent of B.

The Act also replaces the old common law crime of indecent assault. Now there is a statutory offence called sexual assault, which is committed where a person unlawfully and intentionally sexually violates a complainant.⁸³

Sexual violation includes a wide range of potential acts, including any act that causes direct or indirect contact between the genital organs or anus of one person (or in the case of a female person, her breasts) and any part of the body of another person or animal, insertion of any object resembling or representing the genital organs of a person or animal into or beyond the mouth of another person, masturbation of one person by another person, and so forth.

As regards any potential sexual offences linked to the TIP process, they include many contained in the Criminal Law (Sexual Offences) Amendment Act that are not specifically detailed here. There are also some remaining offences in the previous Sexual Offences Act (no 23 of 1957) that remain in force and which could be relevant to TIP, such as keeping a brothel. Expert guidance from the prosecution authority can be sought.

15. Prevention of Organised Crime Act No 121 of 1998 (POCA)

This Act is of relevance in TIP cases which involve criminal gangs or syndicates. It makes provision for offences related to racketeering activities as well as criminal gang activities. It also allows for the civil forfeiture of the proceeds of criminal activities (e.g. profits, bank accounts). It also provides for the forfeiture of assets that were used to commit the offence (e.g. premises used as a brothel).

POCA requires that the existence of an “enterprise” be established – this is well defined in the Act and includes a partnership, corporation, association or union or group of individuals (amongst others). In relation to TIP, structures such as brothels, strip clubs, farms and sweatshops could be implicated.

Further required is a pattern of racketeering activity. This is the planned, ongoing or continuous participation or involvement in any offence referred to in Schedule 1 of POCA. The pattern could be established by recurring recruitment, transportation, harbouring procurement and exploitation of victims of TIP.

POCA also deals with money laundering, which is frequently a phenomenon associated with organised crime and with TIP, as the proceeds of exploitation are recycled to appear as legitimate business profits.

16. Basic Conditions of Employment Act 75 of 1997 (BCEA)

The BCEA serves to regulate and give effect to the constitutional right to fair labour practices. It applies to all employees and employers (with only members of the National Defence Force, the National Intelligence Agency, the South African Secret Services and unpaid volunteers excepted). Employers must regulate the working time of employees⁸⁴ which should not exceed 45 hours in any week, should not exceed nine hours in any day if the employee works five days or less per week, or eight hours on any day where the employee works on more than five days in a week.

The BCEA prohibits all forms of forced labour and prohibits the employment of children below the minimum age of work, which is 15 years. It was amended in 2014 to criminalise forced labour and the prescribed maximum penalties of three to six years’ imprisonment are provided for. Children under the age of 18 year may not be employed in any capacity that places at risk the child’s wellbeing, education, physical or mental health, or spiritual, moral or social development.

These provisions can supplement the TIP Act where the form of exploitation was labour –related.

The Occupational Health and Safety Act 85 of 1993 (as amended) has as its objective to secure the health, safety and welfare of employees and other people at work; to protect the public from the health and safety risks of business activities; and to eliminate workplace risks at the source. It could be relevant in TIP cases where a hazardous labour environment has been encountered, e.g. in a sweatshop with no ventilation or premises with dangerous machinery and insufficient protection.

17. Drugs and Drugs Trafficking Act no 140 of 1992

This Act criminalises the possession and the supply of illicit drugs. Often, traffickers supply their victims with drugs to keep them isolated, sedated and vulnerable. The two most important crimes created in the Act are dealing in drugs and use of possession of drugs. Dealing in drugs is a more serious crime than possession of or using drugs. The drugs are listed in detail in Schedule 2 to the Act (such as coca leaf, morphine, opium and opiates, heroin and mandrax). Note that it is no longer an offence to have cannabis (dagga) in one’s possession for private use due to a Constitutional Court ruling in 2018.

⁸³ S5 of the Act.

⁸⁴ Section 7

18. Immigration Act no 13 of 2002

This Act deals with work permits, the detention and deportation of illegal foreign persons and their personal status. The enforcement of this Act therefore aims at combatting organised transnational crime, including smuggling of migrants and TIP across borders. Several sections of this Act were amended by the TIP Act. For instance a new S 5A states that if an immigration officer has reason to believe that any passenger on board of a conveyance is a victim of TIP, he or she must immediately report that matter (in terms of section 18(1) or 19(1) of the TIP Act) to the police.

There are several offences created by the Act which may be relevant to TIP situations, such as entering, remaining in or departing from the Republic in contravention of the Act. It is also an offence to destroy, confiscate, conceal or tamper with any actual or purported passport, travel document or identity document of another person in furtherance of a crime. The penalty is potential imprisonment of up to 15 years without the option of a fine. It is also an offence to assist a person to enter or remain in or depart from South Africa using (or attempting) to use any fabricated or falsified document or any document that she or he is not entitled to use.

19. Films and Publications Act No 65 of 1996

The Films and Publications Act provides for the classification of certain films and publications. The Act deals with legislation related to children in a pornographic film or publication. It stipulates that it is a criminal offence to possess, produce, create, distribute or broadcast child pornography; to import or take steps to purchase, obtain or access child pornography; not to report the commission of an offence in respect of certain persons or institutions; and to expose persons under 18 to child pornography. This Act can therefore be used in TIP cases where a child victim of TIP has been used in or exposed to child pornography. An Amendment Bill is currently In Parliament; this Bill seeks to (amongst others), align the definition of child pornography in this Act to that in the Sexual Offences Act; and to extend the authority of the Films and Publications Board to regulate online content.

20. Selected common law offences

Common law offences are crimes which are not to be found in legislation but have been established as crimes in terms of laws received here in colonial times. Well known common law offences include murder and robbery. Those relevant to TIP are explained next.

Assault

Assault consists of the unlawful and intentional act or omission which results in another person's bodily integrity being directly or indirectly impaired. Most commonly it is committed by the application of force to another person's body. Assault with intent to do grievous bodily harm is a more severe form than assault. Whether the assault was committed with this intent is a factual question, e.g. was a weapon used, how was it used, what degree of violence occurred, and what injuries were inflicted.

TIP frequently involves personal violence used by the traffickers against victims.

Kidnapping

This crime consists of unlawfully and intentionally depriving a person of his or her freedom of movement, and if the person is a child under the age of 18 years, depriving the custodians of the child of their control over the child. (Child stealing is not a separate crime, but simply a form of kidnapping). The interest violated by this crime is a person's liberty. The removal can be done by force, but forcible removal is not a requirement, as the removal can also be by reason of fraud or cunning. It does not matter for how long the period of deprivation of freedom of movement is, according to some commentators.

TIP often involves victims being deprived of their freedom of movement, such as being locked up. It is not required that a ransom be demanded for kidnapping to have occurred.

MODULE 4: VICTIM IDENTIFICATION, REFERRAL AND SUPPORT, AND INTERVIEWS

1. General Learning Objectives of this chapter:

1. To acquaint participants with the principles which guide our work when working with victims.
2. To allow participants to appreciate the concept of trauma and how it impacts victims of TIP.
3. To learn about some of the support and protection services which victims of TIP may need.
4. To understand the importance of properly identifying victims as victims of TIP and not of other crimes.
5. To gain a general understanding of some of the considerations and techniques used when interviewing victims and witnesses, including special considerations when interviewing children.
6. To inform participants of the potential need to obtain additional information to support a victim or witness's account (i.e. corroborating evidence).

2. Introduction

This module addresses important considerations when working with, identifying, and interviewing a victim of TIP. States are under an obligation to protect people from harm, without discrimination, and ensure their treatment according to internationally recognised standards. For that reason, we will first take a look at some of the guiding principles that should always steer us in all phases of work with victims of TIP. This includes making sure that we do not unintentionally harm those we intend to help along all steps of the way. The pages below will also highlight the importance that those working with victims continuously assess risks.

The TIP Act provides extensively for victim support, in line with the requirements of the Palermo Protocol. Accordingly, we will explore the wide range of support services which victims may need both immediately and in the short, medium, and long-term. Support and protection may be necessary in countries of origin, transit or destination. In that way, a victim of TIP being repatriated to his or her country of origin may also require support. This highlights the importance of working collaboratively with a wide range of actors and stakeholders. It is important to note that the Department of Social Development has also issued a directive pursuant to the Act with special reference to the identification, interviewing, treatment and referral of victims. Practitioners and those engaging with victims should be make themselves well aware of this document which also includes a protocol for referral to social services and to the health system (see pages 25-26 of the Directives).

Under the TIP Act, a victim's status as an adult or child is relevant to where he or she is referred and is the first step.⁸⁵ While children are referred to the Department of Social Development and to social workers, adults are referred to the accredited organisations that offer support. These organisations are expected to have some minimum standards in place. These include the providing as a paramount concern for the safety of victims of trafficking, access to provision of adequate health care, and the provision of separate facilities for the both male and female victims.⁸⁶

As will be stressed below, we must learn as much about the case and relevant circumstances before we ask a victim to share his or her story in an interview. It should be stressed that interviewing is not simply a conversation but requires careful planning, attention, expertise, and care. In the pages below, we will explore some of the considerations which we should keep in mind when interviewing victims and witnesses as well as some of the techniques and the additional corroborating evidence we may need to gather to support a victim's account.

3. Guiding Principles

The guiding principle in approaching victims should be "do no harm". As a result, it is the responsibility of all relevant actors to assess the potential harm of any proposed action and to ensure that any likely harm is averted. In that way, we should not expose a victim to unnecessary risk and should not leave him or her in a worse situation. According to the directive, the principles of confidentiality, children's rights and victim's rights are the baseline for intervention by officials with suspected victims of TIP.

Those working with victims should also be guided by the following principles:

- A human rights approach which entails consciously and systematically paying attention to human rights and principles in all aspects of programming and services. It should be adopted since TIP is a grave violation of human rights that deprives and demolishes the dignity of victims.
- Victim-centered approach, in which the victim has the right to be protected, consulted, and informed of all actions taken on their behalf – the victim is the pivotal or focal point. Informed consent is the basis of interviewing potential victims of TIP and necessary for all services, such as medical examinations and procedures, health assessments, assisted voluntary returns and reintegration assistance.
- Multi-disciplinary approach, given that there are a range of stakeholders and agencies. At minimum, in addition to criminal justice agencies, counsellors, health service providers, civil society organisations, immigration officials and labour officials are involved.

⁸⁵ See further Module 3.

⁸⁶ Section 25(1)(a)-(c). Other minimum standards include hygienic and adequate toilet facilities, and access to refuse disposal facilities (Section 25(1)(d)-(e)).

- Coordination approach whereby coordinating efforts is key, and structures have been set up at national and provincial level to better achieve a coordinated response.
- Trauma-informed approach takes into account the physical, social, and emotional impact of trauma on the individual. Commentators point out that trauma is one of the hallmarks of TIP, due to the ongoing subjugation and exploitation of the victim over a period of time.
- In relation to children, the best interests of the child shall be the primary consideration in all decisions, which should also take into account a child's views in accordance with his or her age and maturity.
- A participatory approach for adult and child victims which is inclusive of all children, especially for children with disabilities, children on farms and in the rural areas who are situated far from services.
- Child-focused: When it comes to children, "proceedings, actions or decisions must target the specific developmental, intellectual and physical needs of the individual child, taking into account the gender and disability of the child."

4. Understanding Trauma

In cases of TIP, traumatic experiences are often complex, can involve multiple traumatic experiences, can take place over a long period of time, and involve multiple perpetrators. It is subjective and it is known that different people can have different responses to the same experiences. Trauma inducing experiences for victims of TIP can include the restriction of movement, violence against the victim, abuse, and/or life-threatening experiences, etc. As TIP victims are at high risk of developing trauma, understanding and acknowledging the impact of violence and psychological trauma can allow a service provider to tailor the delivery of support to the needs of the victim in a way that victim's sense of safety is prioritised.

Trauma can overwhelm a victim's psychological and biological coping mechanisms. As a result, victims develop various psychological tactics to deal with the effects of an event or events. It may develop immediately, days, months, or even years after an event(s) and present itself in a variety of ways. It can also cause physical and mental health problems, fatigue, weight loss, neurological symptoms, gastrointestinal problems, exhaustion, depression, and anxiety. Anxiety can be complex as many victims of TIP continue to face dangers even after they are no longer in the place they were exploited. Some victims could present hostile behavior, fail to cooperate with authorities or organisations providing support, and or exhibit memory loss, lapses and discrepancies, outbursts and irrationality, and disorientation.

It is important to keep in mind that whether information provided by a victim or witness is reliable and credible is determined on a case-by-case basis. In that way, a victim who cannot provide sufficient details or fails to remember certain facts does not necessarily raise issues of credibility. There is no necessary correlation between trauma and credibility. A basic understanding will, however, help place relevant actors in a position to recognise signs of trauma and put in place appropriate strategies to mitigate any risk of re-traumatisation during interviews and other consequences

which may undermine the collection of information.

Trauma may be such that debriefing is not possible at first. Responding to trauma also requires professional expertise and should ideally be accomplished in a team.



Activity 9 – Understanding Trauma

Participants should be divided into three groups. Together, they should answer the following questions and present the answers in plenary:

"a) What factors do you think can contribute to how a person copes (negatively or positively) with a traumatic experience?"

- Group 1: Consider factors before the trafficking experience

- Group 2: Consider factors during the trafficking experience.

- Group 3: Consider factors following the trafficking experience.

b) What factors do you think could increase the risk of re-traumatisation during interviews and cause long-term psychological harm?

c) What do you do as a service provider to reduce trauma?"

5. Victim support and protection

Victim support is a process from the identification of the victim through to the prosecution of the perpetrators, and the offer of programmes by the designated or accredited organisations.⁸⁷ Subsequent to this, is victim support that comes after the court has heard a case to its logical conclusion. The main support offered to the victim is an order of appropriate compensation to the victim by way of damage suffered for loss of property, physical, psychological injury, infection with a life threatening disease or loss of income or support suffered due to the commission of the offence.⁸⁸ In addition, the court may require the convicted trafficker to compensate the state for the expenses incurred or reasonably expected to be incurred for the care, accommodation, transportation, return and repatriation of the victims of TIP.

Repatriation of child victims of TIP to countries of origin may also be done provided it is in their best interests,⁸⁹ provided there is no threat to their safety when they return home,⁹⁰ and the availability of suitable care arrangements,⁹¹ and no possibility that the child will be harmed or killed upon return to the country of origin.⁹² With regard to adults, repatriation to countries of origin may also be done with due regard to their safety in the process of repatriation,⁹³ their safety when they return home,⁹⁴ no possibility of harm in the country of origin.⁹⁵ The Departments involved here are the Department of Social Development (through the international social services directorate), the Department of Home Affairs (for the necessary travel documents, for instance) and the Department of International Relations and Cooperation.

The potential need for support services should be anticipated from the planning stage and implemented from the moment of contact with a presumed victim. Services often needed for victims of TIP are wide-ranging as compared to victims of other crimes. Victims may have very immediate needs and may require, for example, accommodation, medical support, counselling, translation services, clothing, and food. As noted above, the institutionalisation of children is a last resort measure, to be avoided. At the same time, and according to section 7 of the directive, the resourcefulness of victims of TIP should be promoted by providing opportunities to use and build their own capacity and support networks and to enable them to act on their own choices and sense of responsibility.

At the planning stage, it is important to address potential threats and risks. As such, when providing support to victims, relevant actors should put in place measures to prevent, mitigate or respond to potential harm through: (i) threat and risk assessments; (ii) coordination; (iii) confidentiality; and (iv) referrals. A risk assessment analyses the individual risk or likelihood that those threats could happen. It helps identify measures which could reduce the impact or likelihood of harm. When speaking of threats, it is important to think broadly and beyond physical threats to the person. Threats, for example, can include social stigma, divorce, family rejection, loss of marriage opportunities, loss of access to education or livelihood, re-traumatisation due to poorly trained service providers, among other things. In that sense, we must consider who or what could cause harm to the victim (i.e. perpetrators, family, community, practitioners, etc.)

Relevant actors must understand which support services (medical, psychological, legal and social/protection, etc.) are available to female, male and child victims of TIP so as to mitigate any such risks or threats and support needs. Services should be contextualised within the community environment and should be appropriate for the individual, the family, and the community concerned, taking into account the gender, educational, religious, cultural, dietary, health, medical and linguistic needs. Services to victims of TIP should also be holistic, inter-sectoral, and delivered by an appropriate multi-disciplinary team. If an organisation or entity which comes in contact with a victim of TIP is unable to assist or address his or her needs, best practice dictates that every effort should be made to identify and refer the individual to appropriate services and organisations able to provide the necessary assistance.

It is also important to remember that it is not the role of investigators to provide psychosocial support or treatment to victims themselves. Instead, they contribute to strengthening resilience by facilitating needs according to a trauma-informed approach and referring victims to relevant services. In that way, referring victims to service providers should not be dependent on a victim's participation in an interview or investigation process. Various principles, however, undercut the referral system. First and foremost, it recognises age considerations. The TIP Act provides for different modes of dealing with victims as either children or adults.⁹⁶

87 Section 27.

88 Section 29.

89 Section 31(a).

90 Section 31(b).

91 Section 31(c).

92 Section 31(d).

93 Section 31(2)(a)(i).

94 Section 31(2)(a)(ii).

95 Section 31(2)(a)(iii).

96 Where the accredited organisation deals with children, it has to provide for a safe environment, proper care for children, including proper storage for materials that may be harmful to children. Health services may also be required, and therefore health service providers may be involved.

As the needs of TIP victims can be wide-ranging, the coordination between various agencies and organisations is important to ensure that individuals receive support to address their holistic needs. Coordination is also important to ensure that victims are not made to repeat their traumatic stories multiple times to different people for different reasons. Repeating information can lead to “assessment fatigue” and mistrust when promises have not been fulfilled or expectations not properly managed. Lack of coordination can also create conflicting accounts and potentially negatively impact the credibility of the victim before a court at a later stage.

There are a number of protective measures which may need to be provided to victims. They can include the provision of temporary residence. In the case of ongoing court cases, it can involve police escort or the use of modern technology to provide testimony or the protection of his or her identity in the courtroom. At other times, extraordinary measures are needed to be put in place, including the resettlement of a witness to an undisclosed location and/or permanent change of identity to ensure his or her safety. In that way, protective measures available should be thought of as a continuum.



Activity 10: Planning for Services

You work for a local NGO called We Stop Trafficking. Sibulele has arrived with cuts and bruises on her arms after escaping a sweatshop where she was forced to work. She appears distraught and emaciated and is holding her stomach. Sibulele starts to cry and tells the case worker that she misses her daughter but cannot go back home as the flight is too expensive and that she owes her boss money. Her clothes are torn, and she has no known friends or relatives to call to pick her up.

- What potential threats or risks can you identify in this case?
- What immediate services might we need to plan for?
- Consider why it is important to connect with these services.

6. Screening and Identification of Victims

Identification of TIP victims typically arises as a result of direct reporting by victims and other people or through reactive or proactive investigations. When a person is suspected of being a victim of TIP, it is important to ascertain whether the person is actually a victim of TIP and not smuggled or an irregular migrant, or an individual in an abusive or vulnerable situation, who may be in need of assistance or protection. First and foremost, the victim identification process should show respect for the rights, choices and autonomy of the individual concerned. Often, many victims themselves will not be aware that they are being trafficked or in the process of being trafficked. At the same time, it is important to determine if there is an immediate threat to the victim.

Where the safety of the victim is in question, those in contact with the victim should contact relevant police officials in the province and report the case.

Proper identification is important for a number of reasons. First, when victims are properly screened and identified, protective and support services can be given to him or her and investigations can commence. Victims of TIP are may have different needs from those associated who have been victim of other crimes. Care should be handled during the process of identifying victims. For example, victims of TIP often have immediate physical and psychological needs which are not always present in cases of individuals who are irregular migrants or who have been smuggled. Second, when victims are properly identified, prosecutions can ensue. This is important as public awareness of convictions for TIP serves as an important preventive tool. Third, as victims of TIP are victims of serious crimes, it allows for the imposition of security arrangements and procedures to protect the victim.

Identifying victims poses one of the greatest challenges to dealing with TIP. This is due to various factors, including the hidden nature of the crime; the fact that victims might lack the confidence to report it; the fact that victims might fear that reporting will bring them into conflict with the law (e.g. due to their irregular immigration status); the victims might identify with their traffickers (known as ‘Stockholm syndrome’); and where victims are female, gender stereotypes and biases might come to the fore. Identifying a potential victim can be further be challenging as individuals can be easily confused with being victims of smuggling as discussed in module 2, sexual assault, or other crimes. Victims of TIP can also be mistaken for irregular migrants which could have negative consequences. As a result, the process cannot guarantee against any errors in the assessment.

The willingness of victims to report to the police and to cooperate with prosecutors and criminal justice personnel is strongly related to the general treatment they receive from these authorities. While in some cases there is an indication that TIP is taking place, in many other cases, there may be few indicators or little information or sign of trafficking.

When seeking to identify a victim, one does not commence by asking TIP-specific questions. Instead, the screening and identification process should start with gathering information concerning the circumstances of the case without interviewing the victim at the outset. The factors which may give rise to a suspicion of TIP are called indicators. Some may relate to the events surrounding the detection of the victim; some may relate to the victim’s statements; or to signs/expressions that the victim displays or ways that they act. Some may be clear at the start of the investigation, while others emerge only during the course of the investigation. The presence or absence of indicators is not the final issue as to whether TIP has been proved or discounted: further and ongoing investigation is always required.

Some examples of indicators:

- Age (the older a person is, generally, the less likely it is that the case involves trafficking). For instance, if the purposes of trafficking is sexual exploitation, an older victim will be less likely to be an attractive target.

Similarly, if the purpose is labour exploitation, younger healthier candidates are more likely to be victims.

- Sex (sex trafficking predominantly affects women and girl children, although male (boy) trafficking for the purposes of prostitution is said to be on the increase). Male and female persons are equally susceptible to trafficking for labour exploitation.
- Ethnicity or nationality (it is possible that specific ethnic minorities, or nationals from very impoverished countries are targeted as they present heightened vulnerability for the purposes of exploitation).
- Documentation (lack of, or inadequacy (e.g. expired visas)) can be an indicator of TIP, as control of the victim's ability to move around or leave the country is frequently a means by which traffickers exercise control and domination over victims.
- Last location (e.g. if the victim was previously at a brothel, erotic dance venue, call girl agency; or if the victim was previously at a "sweatshop" type location, or agricultural site (where labour exploitation could have featured)).
- Signs of abuse (ranging from physical injury to sexual trauma), since a feature of trafficking is the continuation of abuse after the trafficking (which is not a feature of smuggling; see module 2 above).
- Dependency on the accused or addiction to prohibited substances.
- The assessment of the NGO which refers the victim (they might have done a preliminary screening which has identified the possibility that this is a TIP case).
- Reports of the police or immigration authorities, travel documentation/tickets, medical reports, photographs, and the like.



Discussion scenario

Activity 11 Victim Identification

Case study 1: Sihle was referred to your office by an NGO. She is 22 years old and has run away from a local brothel. She has no identity documentation and struggles to communicate due to language barriers. She has bruise marks on her face and seems tired.

Case study 2: The NGO has also referred another individual to you. He looks about 35 years old and was found unconscious near Musina by local community members who took him to hospital. He has a passport but no visa allowing him to be in South Africa. He seems very nervous. He says he was robbed of all his money and clothes by a gang of youths.

Group discussion:

- 1) How can we tell if a person might be a victim of trafficking?
- 2) What clues or indicators may be used in determining whether a person has been trafficked?

Answers can be written on a flip chart.

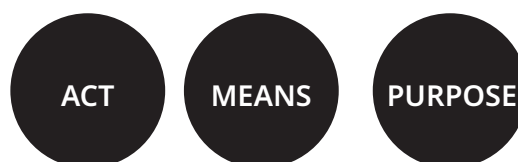
Some questions which could help in this inquiry include:

- Was the person abducted and forcibly transported to another location?
- What kind of work did he or she engage in?
- What kind of work did the victim think they were going to do or what was promised?
- Is the person's movement restricted?

In relation to children, certain indicators may help ascertain whether a child is a victim of TIP. For instance, a child victim may not have access to education or to his or her parents or guardians, might be engaged in work that is not suitable for children, have no friends his or her own age, and/or travel unaccompanied in amongst a group of adults who are not relatives.

It is important to remember that these indicators are non-exhaustive and do not by themselves prove that TIP has taken place. They should be thought of as a starting point for further enquiry.

Let us take a step back to module 2 and 3 where we learned about the so-called elements of the crime of TIP. A basic understanding of the elements of TIP is necessary to identify and interview presumed victims. The following three elements will need to be cumulatively present to constitute TIP when it comes to adults:



If any one of the three elements are missing, it cannot be a case of TIP. In relation to children, only two of the three elements (act and purpose) must be fulfilled. Therefore, the means used by the perpetrator is immaterial to the assessment when it comes to children.

Activity 12



Discussion scenario

Activity 12 – The elements and identification

Mary is from Zimbabwe and was offered a job in Johannesburg as a receptionist. She signs the contract and travels. When she arrives, her phone, passport, and all of her belongings are taken from her. She is thrown into a room where she is given little food and water. She leaves occasionally gets to leave but only escorted to a hotel where she is met by foreign businessmen.

- a) Identify the facts which could prove each of the three elements, i.e. the act, the means and the purpose.
- b) Keeping the elements in mind referred to in module 2 and 3, what other questions would you consider asking Mary when preparing for your follow-up interview?

7. Interviewing victims

Information obtained directly from victims and witnesses is a central and critical component of the investigation/documentation efforts. In that way, interviews are more than just a discussion with a victim. Interviews are meant to, among other things, establish the facts of the case and its history in a logical and sequential order, corroborate the victim's account, and establish his or her credibility. Other obvious purposes include potential investigations and prosecutions. Ideally, interviewers who are trained in working with vulnerable witnesses and TIP, in particular, should be used to interview victims of TIP.

It is important to use good practice when interviewing victims and other vulnerable witnesses. To ensure that the rights, choices and autonomy of victim's is respected in the course of interviews, there are minimum standards that should be maintained. Good practice dictates that two interviewers should be used, and they should not change throughout the interview.

Victims have rights and also in relation to how investigations unfold. For instance, the victim has the right to be informed of the procedure of police interrogation and its consequences. The purpose of this is to ensure that victims appreciate the nature of the procedure and that it is carried out in such a way as to ensure his or her safety in the long run. Obtaining informed consent should not be thought of as an exercise only when an investigator meets a presumed victim. Instead, it is an ongoing process throughout all stages of interaction and requires that consent be obtained at a number of junctures. Consent must be informed (i.e. all information should be provided so to make a decision), obtained freely and obtained in a manner whereby the victim has understood all risks involved.

At the same time, it is important that a victim's right to privacy and confidentiality is respected. According to the Directives of the Department of Social Development,⁹⁷ the place where a suspected victim of trafficking is accommodated or treated as well as any information which could lead to the identification of a suspected victim of trafficking or which undermines or compromises or could undermine or compromise the investigation or prosecution of a case of trafficking is an offence except when required by a competent court to do so (Section 23 of the Act). Maintaining a victim's confidentiality is an ethical obligation as well as an operational necessity. Confidentiality is often the basis upon which a victim or witness will agree to share information. It also helps build trust. The concept of confidentiality may mean different things to different people. It is therefore important for Investigators to clearly explain what information will be kept confidential, how it will be kept confidential, and who will have access to it, etc. In this regard, it may be advisable for an interviewer not to promise complete confidentiality. A record-keeping system may be hacked, or information may need to be shared where ordered by a court of law, for example. That said, the general rule of thumb is that a victim's confidential information should not be disclosed to anyone without the prior written and informed consent of the victim.

Ultimately, the objective of any interview is to obtain an accurate account of a victim or witness experience. While this makes interviews of potential cases of TIP similar to any other interview, there are a number of differences in cases of TIP that make obtaining a full and accurate account difficult in practice.

- **Changing stories:** It is reportedly common for victims of trafficking in persons to change their stories. Interviewers should not automatically assume that a person is lying if his or her account changes, or that everything he or she says is automatically inaccurate. Instead, every account should be verified and corroborated, as discussed below.
- **Language:** It is sometimes the case that suspected victims or witnesses do not speak the language of the interviewers, resulting in the need for interpretation. As such, it is instructive that interpreters who are experienced are present to offer a good interpretation. Fluency in the language of the suspected victim being interviewed and cultural affinity may result in greater success in obtaining information.
- **Threats and perceived threats:** Traffickers may know those related to the victim or be related to the victim. Victims may therefore be reluctant to participate in an interview and/or share information where they perceive a threat to his or her family.
- **Gender:** It is important to bear in mind the gender and its impact on the ability of an interviewer to obtain information. While women may be reluctant to share their experiences due to stigmatisation and shame, men may also be reluctant to come forward with information, especially in cases of sexual assault. Some men and women may perhaps be more willing to talk to law enforcement personnel and service providers of the same gender. Although the reasons are unclear, there is, on the other hand, evidence that some victims relate better to members of the opposite sex. Ultimately, "The gender of an interviewer does not guarantee particular qualities. Both men and women may be compassionate, motivated and professional; equally, both may be disinterested, rude and incompetent." The gender of interviewers should be appropriate to the needs of the victim and victims should have a choice, where possible.



⁹⁷ Directive C.

The PEACE model sets out five stages of a victim interview – **P**lanning and preparation, **E**ngaging (with the victim-witness, explaining the content and process), obtaining the **A**ccount, **C**losing an interview, and **E**valuating the content of the interview (PEACE). The PEACE model is a useful framework to conduct investigative interviews with adults and children alike. Each of the phases of this model will now be explored in brief.

Planning: Investigators/interviewers should undertake a considered, methodical and non-judgmental approach. Plans should be written and should set out all of the five stages of the PEACE model as well as the objectives well before an interview starts. Having written plans is also important to help sift through the complex nature of the cases and numerous details. At the same time, best practice emphasises the importance of remaining flexible as plans may need to change during interview stages as a result of information obtained.

The first step in planning is to learn as much as possible about the case and relevant circumstances before starting to plan the interview. Where there is limited information, an initial interview may be required to obtain information and develop plans for further interviews. Investigators should consider assessing the victim to establish if the person is physically and psychologically well enough to be interviewed. The interviewer should also plan the interview in a location which is clean and comfortable. Notably, it is not considered appropriate to interview a victim in his or her home.

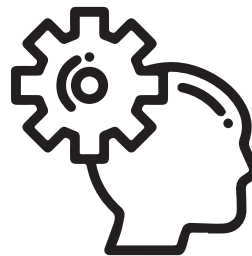
As part of planning and preparing for an interview, the range of services a presumed victim may need must also be given careful attention. In that way, planning and preparations may include arranging for interpreters, accommodation, and psychosocial support. As noted above, victims may need to be stabilised before they are interviewed in detail about their experience and referred to appropriate services to meet their physical and psychological needs.

In the context of criminal investigations, early planning meetings are advised between the police and prosecution to discuss the issues involved and whether there is a need to interview a vulnerable witness. In so doing, the need to obtain the best evidence and the best interests of the witness are to be balanced. Time spent during the planning stage will increase the chances of producing the best evidence while minimising the possibility of errors and inconsistencies at a later stage. Even where an interview is not intended to form the basis of evidence in a court case, interviewers should be prepared for every eventuality. As such, interviews should be prepared in a format that would be admissible in court. At the same time, it is important to keep in mind that some victims may never be able to serve as witnesses in court or provide information to be used to collect further evidence for a number of reasons. Others may, over time, become capable witnesses.

Engage and Explain: It is important for an interviewer to engage with the victim to establish rapport. This also includes accommodating the victim's language preference where possible. The opening stages of an interview are considered to be critical to its success. The interviewer should introduce themselves and explain, in a manner which can be

understood by the victim, about what is going to happen in the interview, how his or her information will be used, and what rights he or she has as a victim, including in relation to consent and confidentiality, as discussed above. Where an interpreter is needed, he or she must also be introduced and his or her role explained and the victim should be able to decide whether he or she feels comfortable providing the narrative to the interpreter. The interviewer should also explain how the information will be recorded. It will be important to ask whether the victim is comfortable with the manner in which the interviewer will be recorded.

Rapport should not be underestimated – establishing rapport (a connection to the victim) is a process and important. For instance, the first interview could be generally used to build rapport. In some cases, an interviewer will need to have a number of rapport-building interviews before moving onto more specific issues. In the rapport phase, the interviewer should avoid directly mentioning TIP or related topics. If an interviewer has failed to properly connect with the person being interviewed, he or she may wish to consider terminating the interview or a replacement should be considered.



Activity 13: Rapport and opening the interview

Establishing rapport is not always easy. It takes letting go but also careful consideration of the particular case. Participants should get into groups of three. Two of the individuals should play the role of the interview team while the other should play the role of victim.

Here are your facts:

1. The interviewers are investigators from the police.
2. The victim is a 38-year-old pregnant woman named Jacinda. She was recruited from a rural area as a house girl but forced to prostitute herself.
3. From preliminary research and discussion with the referring agency, the investigators are aware that Jacinda was recruited by a very powerful gang.
4. She has dreams to be a fashion designer to provide for her daughter in the future.

Participants should take a moment to consider how they will introduce themselves. Interviewers should consider what information they need to share with the victim at the outset. Groups should then reflect on the following and present to plenary: (i) whether the interviewer informed the victim of all the relevant matters; and (ii) what techniques the interviewer used to make Jacinda feel comfortable.

Account: The victim is the only person, usually, who experienced the whole trafficking process. In light of their vulnerability, interviewers should be careful, considerate, and respectful. He or she should be allowed – to the extent possible – to freely recall their experience without challenge

or interruption and to provide accounts of all relevant events in his or her own words. Interrupting a person who is being interviewed takes away a victim's power. If you do not understand something they have shared, wait until they are finished to ask for clarification, if necessary.

Interviewers should take into account the following when interviewing a victim:

- Pace (how fast you go) is important and should be established by the victim.
- When an interpreter is involved, sentences should be short and concise so to avoid misinterpretation or misunderstanding.
- Interviews should involve breaks and pauses. For instance, the opportunity could be provided to a victim to have a refreshment break. Or the interviewer can agree at the outset on a simple sign to request a break. When vulnerable witnesses pause or are silent, interviewers should avoid the temptation to interrupt.
- Interviewing victims of TIP takes longer than other cases because of the effects of trauma and the sometimes complexity of the cases. Some questions may act as triggers to release trauma. Interviewers should be sensitive to balancing the needs of achieving a full and accurate account with best practices which indicate that interviews should be kept as short as possible so that victims can recover.
- Interviewers should expect and tolerate repetition and witnesses who give irrelevant information. Patience is important. However, when a witness fails to give any information which is relevant to the investigation it may be important to consider whether proceeding to the next phase of the interview.
- Be mindful of your language when interviewing a victim. Avoid asking questions involving the word "why" which can be interpreted by a victim as attributing blame to him or her. Also avoid repeating questions soon after a victim may have told you that he or she does not know so to avoid your question as being interpreted as criticism.

It should be noted that interviewing suspected victims as part of an initial screening process differs in many respects from evidential interviews. Early interviews can indeed affect a victim's ability to remember and handle the interview. Interviewers should avoid asking challenging and direct questions too early on in the process so to ensure that victims do not feel alienated or are re-traumatised. In that way, it is important that those involved with a victim of TIP avoid secondary victimisation whereby the response of individuals and institutions are insensitive to the needs and vulnerable status of the victim. Further interviews can be used to expand and clarify the victim's account.

Not all interviews go well. Examples of when to terminate an interview include where the victim is hostile or where he or she is reluctant to share any information. Other reasons for considering terminating an interview include the physical and psychological health of the victim or risks to the victim or others.

Conclusion of interview: At the end of an interview, the interviewer should summarise the content and the victim should be given the chance to add or change anything. The victim should also be told what will happen next now

that the interview is complete. For instance, the suspected victim should be informed that the provincial head of the Department will issue a letter of recognition as being a victim of trafficking if the provincial department of social development, after having completed the assessment, is satisfied that the person is a victim of trafficking. At this stage, it is appropriate for the interviewer to give advice on about further help and assistance that is available. This includes a victim's entitlement to access a programme offered by an accredited organisation in terms of the Act. He or she should be explained what the organisation and government can offer (e.g. shelter, protective custody, witness protection programme and counselling services by a social worker or counsellor for the duration of the stay in the shelter). For children, institutionalisation should be avoided where possible. It is important however to make sure that promises are not made which cannot be kept. Finally, a victim should be given a paper or card with the written contact details of the organisation, your name and the organisation's rotating cell number and the landline number.

Evaluation of Interview: After the end of the interview, interviewers should evaluate what has occurred, identify any action that may need to be taken, and develop plans for next steps. Planning is an ongoing process and there is a need to continually determine whether the information you are receiving from the victim requires further lines of enquiry and plans and/or immediate action to protect him or her, his or her family, friends, or other victims. The evaluation phase also allows the interviewer to reflect on the physical and mental state of the victim after the interview, and whether he or she requires support. As plans would have included objectives, the evaluation phase allows an interviewer to also assess whether they have been achieved.

Styles of questioning

As discussed above, initial interviews should be free recall. While often used in the initial phase, most vulnerable people find it difficult to remember what has happened to them and tell it in a logical and clear fashion to the interviewer. As such, victim accounts could greatly benefit some direction from asking appropriate questions that assist in further recall.

When questioning a witness, interviewers should start with open-ended questions wherever possible. The benefit of open-ended questions is that they allow a victim to provide an unrestricted response, invite him or her give additional details about incomplete information they may have provided in the free narrative phase, all while allowing the victim to control the flow of information. An example of an open-ended question is as follows: "You mentioned that your mother was there. Could you describe for me where that was?" The Directive of the Department of Social Development is useful in providing examples of questions to probe each of the elements of the crime of trafficking. To learn how the victim was initially mobilised, the Directive provides a non-exhaustive list of sample questions which include, "what kind of job was promised or expected, either at another location in the home country, or abroad?", "what were the wages and conditions promised or indicated at the final destination?", and "was any money handed to the recruiter in advance?" To probe the means by which a victim was trafficked (noting that this element is not required to be proven in the case of

children though relevant to obtaining a holistic picture of the case), further questions as follows could be asked: “who paid the travel expenses?”, “were own identity documents used or false ones to gain entry?”, “(d) Where are the documents now?”, among others. To demonstrate exploitation, questions such as the following can be considered: “what activities was the victim engaged in since arriving at the final destination?”, “how soon after arrival at the final destination did this activity begin?”, “was the victim forced into the activity? If so, how?”, “how much did the victim earn through this activity?” and if so, “was the victim allowed to keep these earnings?” or “did the victim have freedom of movement?”.

Interviewers may need to ask specific questions to clarify, develop or add to the information provided by a victim. These questions should, however, be asked in a non-suggestive way. Closed questions are sometimes used by interviewers and serve to provide an interviewee with a limited number of sensible responses. Though, “yes” or “no” questions should be avoided and generally speaking, more than two options should be provided. Leading questions are those which imply or strongly suggest the answer, or assumes something is a fact. Best practice indicates that leading questions should be avoided and used only as a last resort.

Activity 14



Activity 14 – Style of questioning

Case Study 1: Jabulani was forced to work on a farm, often working 20-hour days with little food or water. His documents were taken from him and he owes his employer a lot of money. You have had four interviews with Jabulani, and you have assessed that it is appropriate to ask him about his passport. In particular, you would like to know the circumstances of how his passport was taken away.

Case Study 2: Mpho is a nine-year-old boy who was abducted from his rural home and recruited into a forced begging ring. He mentioned that the house he stayed in was near a big blue building. There are many blue buildings in the neighborhood, and you have a suspicion that this may be the building on Main Street which has a large golden bird statue out front, but want further information.

- a) Draft one open-ended question and one leading question.
- b) Consider if there are any circumstances which would call for the use of a leading question in these cases.
- c) Are there any special considerations when interviewing children?

As children make up almost a third of all TIP victims worldwide, it is important to bear in mind a few considerations. Like adults, children can provide highly credible and reliable evidence. Children are not, however, a homogeneous group. While general interviewing principles and techniques are the same with respect to children or adults, they must be adapted to the child’s age and maturity to consider how children’s memories, their understanding of concepts and how their cognitive reasoning develops. At the same time, interviewers should recognise a child’s agency and capacity – based on his or her level of maturity – to decide whether to participate in an interview. We should not make decisions about what is in a child’s best interests without taking into account his or her views and wishes. When working with children, we must also keep in mind their evolving capacity and create environments in which they feel comfortable.

While a full examination of the techniques for interviewing children is out of the scope of this chapter, it should be noted that specific training, knowledge, expertise, and resources are required for those interacting or engaging with children. When interacting with children as part of an investigation we must always ask if we can obtain get the same information or evidence from other sources so to avoid any traumatisation.

8. Corroboration

Corroborating evidence can be thought of as additional information to support a victim’s story/account of events. It is always useful to strengthen a case. Additional corroborating evidence should be sought where possible or necessary. Even where a victim’s account cannot be corroborated, one can consider corroborating the victim’s timeline of events as well as his or her movements and behavior before and after the traumatic event. In this regard, it is important to keep in mind that physical evidence should only be collected and handled by trained law enforcement investigators or health professionals complying with strict chain of custody⁹⁸ requirements to be admissible in court.

⁹⁸ This is discussed below.

In the context of TIP, victims who may have also been subject to sexual violence, it is important to remember that subjecting an individual to a physical medical examination to corroborate his or her account of rape is unnecessary, counter-productive, and serves to perpetuate myths about the reliability and credibility of victims of sexual violence. We must bear in mind that many victims are not able to immediately report the crime or see a doctor immediately after the assault. At other times, the victim may not have sustained physical injuries. The absence of such physical trauma does not mean that sexual violence did not occur. That said, in some circumstances medical assessments may be important for health reasons.

Section 29 of the TIP Act provides for a court to order victim compensation. This is usually requested by the prosecution and as it is provided for in the Act, it has been discussed more fully in module 3.

9. Key learning points

Key learning points from this module:

- “Do No Harm” means that when working with victims we need to carefully assess the potential harm of any proposed action and to ensure that any such potential harm is avoided. Also, see to it that the victims’ immediate needs are met before anything else.
- Understanding trauma and utilising a trauma-informed approach which takes into account the physical, social, and emotional impact of trauma on the individual victim ensures that appropriate protective and support services can be given.
- Victims of TIP often require a wide range of support services and protection measures, which can vary for each individual victim.
- The objective when interviewing a victim of TIP is to obtain an accurate account of his or her experience.
- The PEACE model is a useful framework to help us methodologically conduct investigative interviews. Its five stages should therefore be understood along with various considerations including the styles of questioning which can be utilised.
- When interviewing children, we must always consider the best interest of the child as a primary consideration and adapt our techniques to a child’s age and maturity while recognising his or her agency and evolving capacity.
- Corroborating evidence is additional evidence which supports a victim’s account of events and should be sought where possible or necessary to strengthen a case.

Appendix: Activity 14

a) Draft one open-ended question and one leading question.

Case Study One Example:

Open-ended: Tell me about the time your documents were taken from you.

Leading question: Your passport taken from you by the person who owns the farm, right?

Case Study Two Example:

Open-ended: You mentioned that there were blue buildings in neighbourhood, can you tell me anything else about the building you were taken to?

Leading question: I want to ask you a question about the building you stayed at. Was there a golden bird statue in front of it?

b) Consider if there are any circumstances which would call for the use of a leading question in these cases.

- Interviewers should generally avoid leading questions as they suggest an answer.
- Leading questions may be used to discover preliminary questions, or questions not really in dispute.
- To remind the victim of facts established if their memory has been affected.

c) Are there any special considerations when interviewing children?

Interviewers should always ensure that:

- the environment is comfortable for the child.
- they use language which is suitable for the age and maturity of a child.
- ensure that they consider the child’s best interest in participating in the interview.
- Always consider whether certain information which can re-traumatise a child can be credibly obtained from another source.

MODULE 5: INVESTIGATION AND PROSECUTION OF TIP

1. Learning objectives

Part 1

1. To understand the specific challenges related to evidence collection in TIP cases
2. To review the different types of evidence that may be necessary to support a successful prosecution
3. To have basic knowledge about the specific issues that arise in TIP cases of sexual exploitation, and TIP cases involving labour exploitation

Part 2

4. The participants should be aware of the full role and responsibilities of prosecutors of TIP, as well as the challenges they face in relation to these cases
5. The participants should be aware of possible corroborating and other evidence and understand their importance in TIP cases
6. The participants should be able to anticipate the possible defences that accused persons in TIP cases might raise, in order to prepare for them during the phases of investigation

2. Introduction

Because of the modus operandi employed by the traffickers, investigating officers and prosecutors have to anticipate that the victims of this type of crime will be reluctant or unwilling to avail themselves as witnesses. In TIP cases the victims are seldom prepared to come forward, provide detailed statements or testify in court because of various factors including threats of reprisals to themselves or to their loved ones. This situation creates uniquely difficult problems for the investigating officer and prosecutor who is consequently deprived of co-operation from the basic source of information about the crime, namely, the victim.

Secondly, because of the structure and sometimes international scale of TIP, the investigating officer and prosecutor must accept the fact that it may never be possible to successfully investigate and prosecute the key role players in any given network (the “kingpins”), who may reside elsewhere. Once again, this is outside of the normal, day-to-day law enforcement experience where the primary subjects of an investigation into an organised criminal network would be the organisational leaders. Investigators and other frontline staff should be aware of, and accept these hurdles posed by the challenges of prosecuting TIP cases.

Third, delays frequently characterise TIP investigations, which can do damage to victims who may be less reliable witnesses over time, and may result in traffickers escaping, or the disappearance of crucial evidence.

Fourth, responses to TIP are mostly reactive – responding to complaints or information provided by the public, rather than actively seeking information and intelligence in advance, and then using other investigative techniques such as surveillance and wiretapping. The result is that prosecutions tend to rely heavily on the cooperation of victims and the evidence that they are able to provide.

Fifth, a missing element is often an investigation of the financial aspects of TIP, bearing in mind that trafficking is a commercial crime that relies on the exploitation of persons for profit. The indicators of financial profit should routinely be investigated (bank accounts, payments, wage deductions) and the proceeds of crime identified.

3. Background considerations

Due to the fact that there are potential multi-agency stakeholders involved in identifying and investigating different aspects of a TIP chain, all those concerned should be aware of, and identify, the other stakeholders who may be or become involved the outset. These could include (but this is just a brief list):

- Interpol, where an initial investigation reveals a link with an international syndicate or organisation
- Foreign law enforcement staff, in cross border situations
- The Department of Home Affairs, border officials or immigration officers
- Diplomatic staff of the countries of affected victims
- Road traffic safety officers working for provincial departments or for municipalities
- Non-governmental organisations providing services to victims, including shelters

The evidence referred to in the remainder of this module can serve several objectives. These may include:

- Identifying a suspect or group of suspects or ring/network/gang
- Identifying a victim or further victims
- Corroborating a victim's account
- Identifying the links between suspects, victims, locations, vehicles, documents, financial transactions, premises, etc
- Identifying the authenticity of identity or travel documents
- Establishing the age of a victim or victims

4. Crime scene evidence

This section lays the basis for the collection of evidence necessary to underpin a successful TIP prosecution. This evidence may relate to the following issues: identifying a suspect; identifying a victim; establishing the age of a victim; corroborating a victim's account; identifying the links between suspects, victims, locations, vehicles, documents etc; identifying the authenticity of identity and travel documents; verifying assault, sexual assault or other trauma experienced by the victim; verifying and examining electronic communications material; and so forth.

A crime scene is a physical scene – anywhere – that contains records of past activities – locations, vehicles, activities or persons and so forth. A fundamental principle is that contact with crime scenes inevitably leaves a trace, which can then be the subject of forensic analysis to provide connections between the crime committed and the scene.

The collection, storage and analysis of crime scene evidence is dependent on available resources – sometimes, advanced technologies will be required to perform these functions. The first step is to identify what resources are available

and required to ensure that the evidence collected can be properly collected and optimally analysed for ultimate (potential) presentation in court.

Example: After extensive monitoring of a brothel which the police have been informed houses women trafficked from abroad for sexual exploitative purposes, the police conduct a raid. During this operation they seize: vehicles; allegedly forged travel documents; cell phones of the persons operating the brothel; details of bank accounts held by the alleged traffickers; and computers.

Types of physical evidence

Biological materials

Biological materials are blood, semen, skin, cells, muscle, bone, teeth, hair saliva, fingernails etc. Preliminary tests can reveal the type of body fluid or the presence of drugs. DNA is present in many traces originating from the human body. DNA carries a genetic code which is virtually unique to an individual, and some current techniques are so sensitive that they can detect DNA after very limited contact. But although DNA testing represents a huge advance in scientific and forensic analysis, it requires highly trained scientists, ultra clean and specially designated premises and expensive equipment.

DNA is fragile – this means that it can degrade rapidly if exposed to the outward environment. It must be carefully stored, and anti-contamination measures used. Blood and semen are very useful sources of DNA and if stored correctly can yield DNA evidence after many years. But semen drains very rapidly from orifices and can be degraded by enzymes and bacteria, so there is little chance of obtaining a semen sample after seven days from the vagina, two or three days from the anus, or 24 hours from the mouth. But where it has dried on clothes, it can remain for many years, sometimes even after washing.

Saliva will generally leave a DNA trace. It can be found on bodies, clothing, cups, glasses and bedding etc. In some instances, it degenerates rapidly in other cases it may remain for a considerable time. Hair is also a source of DNA, and the type of analysis and results obtained are subject to the quality of the hair especially the root. Hair is also a record of a person's exposure to drugs, chemicals and other substances. Skin cells may carry DNA. They are shed continuously by the body and may be transferred between people when they have contact, e.g. during sexual intercourse. Skin cell recovery requires specialised techniques and equipment.

Fingerprints are unique to each individual. Marks can be visible or latent. Where latent marks are concerned special optical UV, chemical or physical (powdering) treatment is needed to make them visible. Finger marks also contain DNA. Transfer of fibres (from clothing and other materials) can also be a useful source of identificatory evidence – e.g. when transferred from clothing to bedding or to the interior of cars or trucks. Although transferred fibres may remain for a considerable period, they may be lost through washing and further contact with other materials.

Teeth

It is not always possible to obtain an accurate or authentic record of a child's age. Age assessments, however, must be a measure of last resort, and children ought to be given the benefit of the doubt as to their age. Examination of teeth is a common investigative tool in assessing a person's age. Age is a critical factor in TIP where it concerns children, as that affects both the charge and the likely sentence.

Since birth certificates and other documentation may not be available, some form of forensic examination may be the only way to establish age. Because the development of teeth is relatively independent of an individual's external or nutritional status, experienced persons such as dentists can reasonably accurately estimate age based on:

- The number and quality of fillings
- Presence of plaque and other indicators (periodontitis, gingivitis)
- Type and number of teeth present
- Tooth colour
- Recessions

However, it is often cautioned that the reliability of this form of age assessment across racial and cultural boundaries is not crystal clear, and therefore that this type of testing should preferably be accompanied by a psychosocial age assessment (interviewing the victim) and possibly also physical and radiological examinations (of the wrist bones of the non-dominant hand and of the medial ends of the collarbone). When employing physical examinations to determine the age of a child, such assessments must follow the least intrusive method which upholds the dignity and physical integrity of the child. It is important to ensure that children are given relevant information regarding any age assessment procedures that affect the child. Best practice dictates that children should have the right to appeal such assessment, should they wish to contest the outcome in light of the potentially serious consequences for a child whose age is wrongly assessed.

Document evidence

Documents – written materials – can be counterfeited or forged, and as regards identity and travel documents, this is commonplace in TIP cases. Other relevant documentary evidence may relate to transportation or recruitment (e.g. advertisements, licence permits, etc). The detection of false documentation is crucial before onward sending to a forensic laboratory for expert analysis.

Information technology (IT) and communications equipment Electronic devices such as computer equipment, mobile handsets, hard drives and/or USB sticks ("IT equipment") can contain digital evidence such as stored emails and other forms of communications (i.e. online applications), photographs/videos of incidents or potential victims, details of financial transactions, and records of contacts, which can greatly aid an investigation. It is important to record all equipment found at the scene, and to identify who has what device in his or her custody. Consider photographing or videoing as property is identified. Do not allow anyone to touch the IT equipment and remember that it may also contain other forensic evidence such as fingerprints.

Shutting down equipment like computers or mobile devices may delete information or render you unable to access the interface without a password, so avoid this where possible. If equipment has to be moved, rather unplug than switch off.

Again, specialist skills are required for analysis of IT and communications data.

It is also important to mention open-source information which can be a useful source of information which can help guide investigators in their enquiry. Open-source information refers to information and sources that are generally available to the public, such as media, public reports, academic work, social media, online videos, etc. For example, a photograph found on a Facebook account can allow an investigator to identify its user, the location, date and time, and potentially the context of the photograph. Naturally, open-source information presents challenges concerning reliability. Authentication is always important and the first step when encountering open-source information. Information which is open source should be approached with care and assumptions should never be made without thorough verification. Open source information alone is not enough. Other forms of direct or indirect evidence will always be necessary.

TIP: Keep a log of everyone who enters a crime scene including all investigators and police. This can be a useful way of deflecting challenges later concerning custody of evidence and possible contamination.

Activity 15: Crime scene evidence



As a group, summarise the kinds of crime scene evidence that might prove useful in a future prosecution. Write these up on a flip chart. Then identify roles and responsibilities with relation to evidence:

- Of an NGO who is the first contact with a victim
- Of a uniformed police official who has first contact with a crime scene
- Of an immigration official who suspects forged documentation
- Of a labour inspector who suspects TIP for labour purposes
- Of an investigating police official

Point to note: Even where no prosecution eventually takes place, basic crime scene investigation can be an important tool in future anti-trafficking activities, and in supporting prevention efforts and public awareness raising around anti-trafficking.

Preservation of crime scene integrity

“Chain of custody” requirements demand that no one can be said to have interfered with the uninterrupted path of evidence from the crime scene to the time it is presented before a court. It also means that we are using a process by which we keep a chronological paper trail. It is important as without having a proper chain of custody, a court might refuse to consider the document or item as evidence.

Crime scene protection starts when the incident is first discovered and ends only when the whole examination process is completed. Access to any scene should be controlled, to ensure that it is not irrevocably compromised. If a person does not need to be there, they should not be there.

Exhibits may need to be collected. These should be carefully recorded within an established numbering system and should note where they came from, among other details. For example, if you are collecting a photo, it is important to note who took it, when, where, why and how, who provided the information and who else was present. The “chain of custody” should continue whenever exhibits are passed on for storage and future analysis. Appropriate containers must be used for storage of physical evidence. The decision as to what container or receptacle to use will depend on the type of physical evidence that is going to be stored. Containers will need to be sealed (with a tamper-proof seal) and signed by the person sealing it. This is the work of specialist investigators though. Intimate samples (e.g. swabs, semen samples) should only be obtained by properly qualified medical professionals or authorised police officials.



Activity 16: Self-assessment checklist: Crime scene basics

I understand what 'contamination of the crime scene' means	
I understand what 'chain of custody' means in relation to evidence collected for later forensic analysis	
I can identify in which situations specialists are needed for the collection or storage of evidence	
I am aware of the basic rules around reservation of IT and communications evidence, e.g. cell phones	
I can provide basic details of effective crime scene management	
I can give at least 5 examples of the types of evidence that may be collected in a TIP investigation	

6. Special features of evidence and crime scene investigation in TIP cases

- The cross-border dimension might require that ultimately, evidence be transferred to another jurisdiction; this makes the structured approach to managing exhibits more important.
- Whilst most crime is a single, once off event, trafficking ordinarily involves a series of events which may involve exploitation over a long period, and which may involve multiple suspects. Also, more than one place is almost always implicated because of the requirement of transportation, or recruitment which might have taken place in another setting.
- The scale of the enterprise may exceed what is usual for a criminal offence, e.g. wide scale TIP for labour or sexual exploitation.
- Because of the nature of the offence (which is committed over a period of time), evidence which is not usually relevant in an ordinary crime case might well be useful in TIP cases: examples include bedding, clothing which the TIP victim was not actually wearing at the time of first contact, vehicles including those in which the victim was not present at the time of first contact, and premises where the victims lived or worked, but at which he or she was not present at the time of first contact.
- Property in the possession of a suspect may indicate that he or she was in a position of authority, which can assist in the later prosecution for TIP: these could include keys for locking victims away, weapons or artefacts used to 'discipline' victims, briefcases, wage slips and so forth.
- In TIP cases it is initially sometimes unclear who the exploiters are and who the victims are – this becomes apparent only after a while.
- Initial accounts of victims and witnesses may be very confusing and far from clear cut, or may vary and change as time goes on, disrupting the clear narrative that usually underpins ordinary crimes.

6.1 Examining victims – special consideration in sexual exploitation cases

In Module 4, the basic principles relating to interviewing of victims of TIP were discussed. This section of Module 5 deals with obtaining forensic material and with physical examinations of victims, with specific focus on victims of sexual exploitation. It must be born in mind that in TIP cases, the victim may have disclosed exploitative events that occurred some time ago, and that no forensic samples remain. The victims' consent (or potentially parent(s)/legal guardian) is a necessary requirement for any invasive examination. As mentioned in Module 4, vaginal examinations should be conducted only when strictly necessary. Note that consent may be difficult to obtain because of traumatisation, difficulties relating to translation and mistrust of police and other authorities. Where the results of a physical examination are unlikely to yield useful evidence that is of practical value – e.g. because of the passage of time, and no samples remain – it must be carefully considered whether an examination is justified.

6.2 Examining victims – special considerations in labour and other exploitation cases

Injuries may reveal the involvement of victims in forced labour and other forms of TIP related to labour. For instance, children may be been required to use inappropriate equipment or machinery, may have calluses on their hands, or other signs of exploitative work. It should be recorded by the person who has first contact where the person was working (field,

factory, other premises), and other relevant details (time of day, conditions at that time (e.g. in very hot sun, in room with poor ventilation). It might well be relevant to find out where the victims were sleeping at night; for instance, where they are sleeping at work premises that should be exclusively used for work purposes. Details might also need to be recorded. The details of clothing (including presence of absence of protective clothing) could be important. Blood and urine samples might reveal that a person has been exposed to drugs or chemicals associated with agricultural or industrial processes. Photographs and video recordings of locations will assist provide a permanent record to be used for evidentiary purposes, but comprehensive contemporaneous notes should also be taken and preserved. If necessary and useful, sketch or draw a map to illustrate the location of victims and evidence noticed. Taking photographs which include the faces of TIP victims may cause problems in some cases in future, so this should be done with caution – it can comprise a victim's privacy and may reduce chances of cooperation. TIP: Keep victims and suspects separate to reduce contamination of evidence but crucially to reduce intimidation and enhance the likelihood of victim cooperation.

6.3 Examining suspects in TIP cases – what to know

The examination of suspects in TIP cases is a task only for official police personnel, and for this, dedicated training is provided by police training authorities to arresting officials and investigating officials. There is a National Instruction (No 4 of 2015) to give effect to the functions and duties of members of the SAPS in terms of the Act, and this is supplemented by Standard Operating Procedures (SOPs) developed in 2018.

It frequently happens that the victims of TIP are arrested along with their traffickers (eg girls working at a brothel). In fact, experts report that sometimes it is not immediately apparent is not immediately apparent to distinguish between victims and perpetrators of TIP. The SAPS SOPs give some tips as to how first responders should try to determine who the perpetrator is and who is the victim.⁹⁹

Consider the following:	Indicator
Who does the talking?	In many cases, a perpetrator will attempt to talk for the victim. The last thing the trafficker wants is for the victim to talk to the first responder.
Who is in possession of personal and travel documents?	Perpetrators often take control of the victims travel and other documents in order to exercise control over them.
Who has the money?	Victims rarely have money. Perpetrators often have access to money.
Who are friends with whom? What do people in a group know about each other?	In a normal relationship, people will know each other by names and will be aware of personal information about each other.
Is anyone injured?	Victims might have injuries as a result of exploitation.
How did they get there?	Perpetrators sometimes use long and roundabout routes to move victims.
Why are they there?	Find out from suspected victims what their initial expectations were and what they have been promised.

The SOPs also advise to separate victim from the perpetrator and to ensure that the perpetrator does not have access to the victim.

Part 2: Evidentiary issues relating to the prosecution of TIP

1. Introduction

Trainees should be fully aware of the role of and challenges faced by prosecutors in TIP cases. This part aims to familiarise them with this and point to good practice which can support effective prosecutions.

Activity 17: Challenges and best practice in prosecutions



Write down the challenges in the prosecution of TIP and the best practices you believe may help a successful prosecution.

See Standard operating Procedures V001/2018

Each person should write down at least one challenge and one best practice.

2. Challenges for the prosecution

TIP as a crime is necessarily clandestine (secretive) and complex because it may take place over several jurisdictions and involve several perpetrators playing different roles (recruiter, transporter, owner of premises, exploiter, for instance). Additionally victims who are usually the main witnesses are often traumatised and fearful of their exploiters, or fear that their families could be victimised. Some witnesses may not even be in the country. A victim centred approach is the preferred prosecution strategy to enable proper preparation and presentation of cases in court.

The decision to prosecute, and the nature of the charges to be brought, is the ultimate responsibility of the prosecutor, according to the South African Constitution and according to our law. This will be done after a review of the police docket, and an assessment of the nature of the evidence and its sufficiency.

Collaboration and consultation with the prosecution at early stages of the case can improve the prospects of a successful case being assembled. They can suggest lines of enquiry that have not yet been fully explored, identify further evidence that needs to be obtained, request further witness statements to be taken, and so forth. They will need to be appraised of relevant issues that may affect planning and prosecution of the case such as where witnesses are to be moved to another shelter, or have left the country. Special measures might need to be put in place to enable vulnerable witnesses of TIP to testify, for instance in sexual exploitation cases, where closed proceedings and witness support measures may be required. The prosecutor may need to arrange for specialised translators/interpreters.

Section 153 of the Criminal Procedure Act makes provision for trials to be held in camera. This may be for security reasons, or for reasons relating to the specific offence involved, eg sexual exploitation. It should be remembered that victims of TIP are particularly vulnerable to infringements of their right to privacy and that publicity may impede their chances of recovery after the trial.

In Module 3, reference was made to a letter of recognition. To recap, the provincial head of the Department of Social Development must issue a letter of recognition to an adult who has been found to be a victim of trafficking after an assessment. A Form (Form 4) is provided for this purpose. A letter of recognition is a formal written recognition that an adult person is a trafficking victim. A copy of this letter of recognition must be handed to the adult victim, as well as to the investigating police official and the prosecutor.

The prosecutor will be aware of the fact that a child victim of TIP will in all likelihood already be the subject of a children's court inquiry, and will have been placed in temporary safe care through an order of the children's court.¹⁰⁰ Liaison might be required to ensure that the whereabouts of the child is known to all necessary stakeholders.

Prosecutors who encounter possible victims of TIP are also given a specific role in terms of the Act. Section 22 provides that the prosecutor must give due consideration, when deciding whether to prosecute a victim of TIP, whether the offence was committed as a direct result of the person's position as such a victim (e.g. failing to renew immigration permits: see Module 1 of this series for an example of this). If the prosecutor reasonably suspects that a person is a victim of TIP and the offence was indeed committed as a direct result of that person's position as a victim of TIP, the prosecutor must apply for a postponement and refer the matter to the provincial Department of Social Development, who must then conduct an assessment. Prosecution cannot be instituted without written authorisation of the Director of Public Prosecutions.¹⁰¹

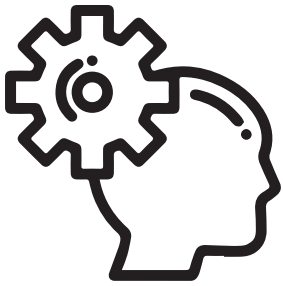
A best practice drawn from international experience is for prosecutors to get involved in TIP investigations from an early stage. This enables them to review the evidence and suggest lines of enquiry that have not yet been explored, to prepare for any defences that the accused might raise and to gauge who the witnesses are going to be and how strong their testimony might be. This will also enable an understanding of any issues that might prevent a witness from testifying,

¹⁰⁰ Section 18(7) of the TIP Act.

¹⁰¹ Section 22(4) of the TIP Act.

3. Common defences in TIP cases

Activity 18: Discussion on defences/arguments that the accused might raise



The main areas of argument raised as possible defences found globally relate to either the victim, or to the accused.

Arguments related to the witness or victim include that:

- He or she has made prior conflicting statements
- That the victim is not competent to give evidence due to mental health reasons
- That the victim cannot be believed due to their past sexual behaviour
- That the victim was romantically involved with the person accused of TIP
- That the victim was not trafficked because she or was given gifts, or money
- That the victim has a criminal record and was therefore not a victim of TIP
- That the victim consented to the exploitation

Dealing with arguments relating to the victim

a. Prior inconsistent statements

The traumatising effects of TIP mean that victims recall things differently at various times. They may not remember the order of events properly, or may be unwilling/distrustful of disclosing embarrassing or humiliating events that took place. Prior inconsistent statements may harm a case because it may seem as though the witness is not truthful or that the evidence cannot be relied upon. Collaboration in witness preparation can sometimes address these difficulties and seeking any alternative corroborating evidence is also useful: eg other witness statements, forensic evidence, documents and so forth. It may be necessary to place expert evidence before the court about the effects of trauma caused by TIP to assist support the less-than-ideal testimony of the witness concerned.

b. Lack of competence to give evidence

Port Elizabeth - A mentally disabled orphaned girl who was allegedly trafficked and forced into a marriage at the age of 13 in 2017, organised by her aunt and uncle, did not understand what it meant to take the oath in a trial underway in the Port Elizabeth High Court in 2019. The presiding officer asked the girl, who is now 15 years old, extensive simple questions to ascertain her competence in differentiating right from wrong. The matter was heard in camera with the assistance of an intermediary with the court finding the teenager competent to testify. The uncle and aunt of the girl, along with her “husband”, face charges that include human trafficking and concluding a forced marriage for the purposes of exploitation. The girl’s 61-year-old “husband” faces two additional charges of rape.

Mental health issues should be dealt with prior to any trial, if necessary after a proper assessment of the extent of it has been conducted. If the child’s mental health disability is so profound as to discount her giving evidence, corroboration of the commission of the alleged offence can probably be sought in other witness accounts, and in physical evidence such as evidence of sexual assault.

c. The witness is not credible

One allegation that frequently crops up is the past sexual experience of the victim, for instance in cases where the victim was used for forced prostitution or was sexually abused whilst in forced domestic labour. The suggestion is that the victim was somehow responsible for the behaviour in question or was immoral. These claims should, however, be resisted: TIP for the purposes of sexual exploitation is in and of itself an offence. Similarly, the fact of the victim having had a criminal history of any other nature does not mean that they now cannot be a victim of TIP.

Romantic involvement or a love relationship with the perpetrator is also something often claimed. Cases of forced marriage are also relevant here. A proper interview with the victim should have revealed behaviour that was not consistent with a non-exploitative, normal relationship, and this might be supplemented by physical evidence and by other witness accounts. It is also arguably quite common for victims in TIP to be tricked into thinking that they have a real romantic relationship with the defendant – sometimes even when they are rescued. This is commonly referred to as the “lover boy” (or blesser/blessee) phenomenon. But good investigators can establish the true circumstances of the case based on the exploitative and abusive elements of the case.

Another common phenomenon is what is known as “Stockholm Syndrome”: (or trauma bonding) where a victim will over time develop sympathy or even affection for their abuser. It might be necessary to counter these defences or assertions by calling expert evidence from a psychologist about the dynamics of Stockholm syndrome.

It could also be alleged that the victim of TIP was paid and that this is evidence of consent or arrangement of a contract – and indeed some victims do get paid. It would be needed to establish exactly what was paid or given, and what the suspects alleges it was for, as well as what the victim believes it was for. It may be that in fact the wages were completely inadequate for the work performed, or that a small gift is insignificant in relation to the other circumstances of the case. It must be remembered that TIP is about control of another person, and gifts and small payments are one way in which traffickers gain control over their victims. In fact, consent itself is not relevant if obtained using force, coercion, abduction, fraud, deception, abuse or power or vulnerability – this is the very essence of the definition of TIP.

Arguments related to the accused

a. Coercion

The accused claims that he or she was forced to commit the offence under duress. TIP investigation can be complicated by the fact that people who were originally trafficked become traffickers themselves. So, it is possible that some accused

have been threatened to assist in the trafficking crime. This defence should be thoroughly dealt with during the investigation. Questions that will arise are to what extent the suspect acted on own initiative, what form did the coercion take, and what was the relationship between the suspect and the person he or she claims coerced them before the TIP event in question? This line of questioning is best left to expert investigators, however.

b. Cultural practice

Practices such as ukuthwala (arranged marriages, often of underage girls) are not unknown in South Africa and can often involve TIP (such as in the Jezile case, discussed in Module 1). The South African courts have now decisively rejected the claim that this practice is not unlawful because it is culturally sanctioned: it remains a criminal offence.

5. Final points

Proper understanding of a victim centred approach will enable all involved to present the best possible case for prosecution eventually. The safety and well-being of victims must come first, and a safe and respected victim will make a better witness. Corroborating evidence beyond the statement of the victim of TIP can play a crucial role in supporting the case and countering any defence that the accused might raise.

Crime scenes may yield a wealth of information able to assist a prosecution, although TIP is a crime that takes place in different locations, some of which may not be available to investigators. The “chain of custody” must be strictly observed to ensure that the evidence is admissible in court.

The role of the investigating officer in TIP cases is ably spelt out in the National Instruction issued by the National Commissioner of the South Africa Police Service and should be followed by investigators. Similarly, the SOP issued in 2018 provides further details on roles and responsibilities of frontline members of SAPS (e.g. responding to a call or to a crime scene), and this supplements the National Instruction.

MODULE 6

COOPERATION: NATIONAL, REGIONAL AND INTERNATIONAL, REPATRIATION, DATA COLLECTION AND EXTRADITION

1. Learning objectives

- This module will enable participants to understand the important role of cooperation in dealing effectively with TIP, that is international, regional and national co-operation
- The participant will gain an understanding of the cooperation required in the process of any repatriation of victims
- The module will review the multi-sectoral collection of information requires by the TIP Act
- The participant will have a basic understanding of the role of extradition in TIP cases

2. Cooperation

Multi-agency cooperation and coordination are a key factor in successfully combatting and responded to TIP. This is also expressed in the Convention against Transnational Crime and in the Palermo Protocol (discussed in Module 2 of this manual). Article 2(c) of the Palermo Protocol states that one of the purposes of the Protocol is to promote cooperation among State Parties in order to meet its objectives. This co-operation can exist at national level (or lower levels, e.g. provincial), at regional level e.g. within the SADC, or it can be encapsulated in bilateral or multilateral cooperation agreements, and it can be fostered at international level.

2.1 National cooperation

A multi-sectoral national task team spearheaded the development of a national action plan to fight TIP. The National Strategic Plan for Addressing Trafficking in Persons, 2014, which acknowledges that South Africa is a lucrative market for traffickers and provides a market for the services of victims of TIP, prioritises a comprehensive response to TIP that focuses on prevention, investigation and prosecution, protection, partnership and monitoring and evaluation.

The Plan seeks to encourage partnerships between the government, non-State actors, and the community in order to monitor and address causes and contributing factors to TIP, among other crimes. The development of the National Strategic Plan was a result of the efforts of the stakeholders that are members of the national task team. These include, among others, the Departments of Justice and Constitutional Development, Home Affairs and Social Development, as well as the National Prosecuting Authority, SAPS, civil society representatives and international organisations.

The task team has also facilitated the revival of provincial and district TIP rapid response teams, in collaboration with the provincial governments. Moreover, SAPS' Organised Crime Unit has set up the "Human Trafficking Desk" for a targeted response to the crime. Meanwhile, the Child Protection and International Social Services directorates in the Department of Social Development are implementing a strategy for the prevention of child trafficking and supporting foreign child victims in the process of repatriation.

The task team has finalised a National Policy Framework on TIP, which is required by section 40 of the TIP Act. The policy framework deals with all matters dealt with in the Act, and is intended to ensure a uniform, coordinated and cooperative approach by all government departments, organs of state and institutions dealing with TIP (section 40(1)(a)), and thereby to enhance service delivery (section 40(1)(c)). The involvement of the Minister of Finance in the consultation around the National Policy Framework will ensure that resources are availed to support its implementation. The South African experience shows that multi-sectoral cooperation is critical to the development of policy documents and implementation of appropriate actions to prevent and combat TIP.

2.2 Regional level: The SADC

The SADC as the regional body is leading efforts to combat TIP. Improving coordination and regional cooperation is a key strategy in the region. An introduction to the SADC was provided in Module 2, including a discussion of the SADC Protocol on Gender and Development.

Two highly relevant SADC protocols are the SADC Protocol on Extradition (2000)¹⁰² and the SADC Protocol on Mutual Legal Assistance in Criminal Matters (2002),¹⁰³ to which South Africa is a signatory. The Mutual Legal Assistance Protocol provides common rules to support legal assistance regionally. Member states have agreed to assist each other in respect of investigations, prosecutions and proceedings in criminal matters. The Protocol indicates how such assistance will be given, which authorities are responsible, and the grounds on which assistance can be denied. Article 2(5) of the Protocol covers the following forms of assistance:

- Locating and identifying persons, property, objects and items
- Serving documents including those seeking the attendance of persons and providing returns for such service
- Providing information, documents and records
- Providing objects and temporary transfer of exhibits
- Search and seizure

¹⁰² This is discussed more fully in the section on extradition at the end of this module.

¹⁰³ The full text of this can be found on the website of the SADC (www.sadc.int).

- Taking evidence or obtaining statements
- Authorising the presence of persons from the requesting State at the execution of requests
- Ensuring the availability of detained persons to give evidence or assist in possible investigations
- Facilitating the appearance of witnesses or the assistance of persons in investigations
- Taking possible measure for location, restraint, seizure, freezing or forfeiture of the proceeds of crime

In line with article 3 of the Protocol, each State must designate a Central Authority to make and receive requests. Central Authorities of different states can communicate directly with one another. The grounds for refusal for legal assistance may be legitimately made are limited and are set out in article 6: e.g. if execution of the request would impair the sovereignty of the requested state, or its security; or threaten public order or prejudice the safety of any person; or if the request is not made in conformity with the Protocol.

The Revised SADC Strategic Plan of Action on Combating Trafficking in Persons (2016-2019) further acknowledges that the SADC “region is host to a relatively high level of trafficked children and cases of forced child labour” and calls for regional action to address this crime.

2.3 Other regional structures

There are Permanent Commissions on Defence and Security (JPCDS), which cooperate on issues that include TIP. This is in line with the SADC Protocol on Politics, Defence and Security Cooperation, which promotes regional coordination and cooperation on security and defence matters, as outlined in Article 2(2)(d). The Commissions have been used to address a number of security matters that affect concerned Member States. For example, the JPCDS involving Botswana and Zimbabwe has dealt with public security matters that include TIP, smuggling, irregular migration, and other forms of transnational organised crime. Among the existing JPCDS include the Angola/Zambia; Botswana/Namibia; Botswana/Zambia; South Africa/Zimbabwe; Zambia/Mozambique; Zambia/Zimbabwe; and the Zimbabwe/Mozambique Joint Permanent Commissions.

In addition, Bi-National Commissions (BNCs) also exist between Member States such as South Africa and Botswana, South Africa and Mozambique, and South Africa and Zimbabwe, whereby engagement is at the Head of State level to address common interests in various sectors.

A relevant body is the Southern Africa Regional Police Chiefs Cooperation Organisation (SARPCCO), which holds TIP as one of its priority crimes. SARPCCO is supported by INTERPOL through its regional office.

On 4-5 December 2018 – A Trafficking in Persons Operation (“Operation Batho”) Review Meeting was held Johannesburg, South Africa. Representatives were drawn from INTERPOL, the United Nations, civil society, and delegates from 7 countries in the region: Botswana, Eswatini, Malawi, Mozambique, South Africa, Zambia and Zimbabwe. Delegates from the countries present at the workshop included Heads of Criminal Investigation Departments (CID) and Heads of Intelligence, Immigration focal points (at director level), Prosecution focal points, and representatives from Social Services. A total of forty-eight (48) participants attended the workshop.

The workshop sought to facilitate review of Phase I of Operation Batho, a counter-trafficking in persons operation targeting human trafficking syndicates along the Malawi-South Africa route. This Operation was implemented during the period August – October 2018 following a resolution of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) and a pre-planning meeting for the Operation in Pretoria, which brought together heads of CID and crime intelligence from countries along this route on 13 June 2018.

Highlights included arrests of more than 21 suspected traffickers and the rescue of 87 victims. Most of the investigations are still pending in these cases, but one conviction has been obtained in Malawi, resulting in an 8-year conviction of three traffickers.

The SARPCCO Agreement in Respect of Cooperation and Mutual Assistance in the Field of Crime Combatting provides for police officers to travel across borders in the region to undertake investigations or the seizure of exhibits, and to question witnesses. However, the local police maintains authority in effecting the relevant police actions in each country.

Launched with UNODC assistance in 2017 is SADCTIPNet, a new regional network for combatting TIP. The network will endeavour to harmonise data collection on TIP, conduct joint awareness raising, strengthen cooperation in victim identification and assistance, and support mutual legal assistance in investigation and prosecution of human trafficking offences. 13 SADC Member States have already joined the network as fully fledged members, while the remaining two remain observer States.

3. Repatriation

The cross-border mechanism has also provided a platform for developing guidelines for the repatriation of children. The guidelines clearly indicate the roles and responsibilities of each stakeholder involved, making it possible for a more efficient service delivery, thus avoiding duplication of resources. This is a good example where regional cooperation through cross-border coordination between neighbouring countries has enriched their communication to facilitate appropriate repatriation of children, including child victims of TIP.

The TIP Act contains South African rules for repatriation of victims, be they children or adults. These were discussed in Module 4. Voluntary repatriation to the country of origin of the country from where he or she has been trafficked of an adult who is a victim of TIP is also not prohibited, provided that information on protective measures offered to victims of TIP as prescribed in this Act is given, and that the victim is given a clear explanation of the procedure to be followed in respect of repatriation.¹⁰⁴ The Department of Social Development must take reasonable steps to find suitable family members or an institution or organisation that renders assistance to victims of TIP in the country to which a victim is being repatriated. The Department of Social Development must then also without undue delay provide the Director General of Home Affairs with the information about this request made.

A citizen or permanent resident who is trafficked outside of South Africa may be repatriated back to the Republic. Then, the Director General of the Department of International Relations and Co-operation, in cooperation with the Department of Social Development, must assess the risks to the life or safety of that person if he or she is repatriated; and facilitate the repatriation; and advise the Department of Home Affairs on measures to secure the reception of that person in South Africa at a port of entry.

The Department of Home Affairs must then issue travel documents or other authorisations to enable that person to travel to South Africa; where necessary take measures to secure that person's reception in South Africa; and where the person is an adult, refer the person to the provincial Department of Social Development. Where the suspected victim is a child, the Department of Home Affairs must refer the child to a designated child protection organisation or to the provincial Department of Social Development.¹⁰⁵

If it is found to be in a child's best interests, the Department of Social Development must organise an adult at state expense to escort the child from the place where the child was found to the place within South Africa from where the child was trafficked, or to the child's country of origin or the country from where the child was trafficked.¹⁰⁶

4. Research and information sharing

While all Member States collect statistics of criminal activities committed in their jurisdictions, some countries encounter challenges in disaggregating the data and appropriately managing it. For example, in some cases, statistics on trafficking in persons are collated together with statistics on smuggling of migrants and irregular migration, without a clear demarcation of each criminal activity.

This was observed during the SADC regional research on TIP that was conducted in 2014 and 2015 with the aim of determining the nature, extent and impacts of TIP in the SADC region. The research was commissioned against the backdrop of a number of media and research reports on TIP in the SADC region whose validity and accuracy had been consistently questioned by Member States.

During that research, it was established that various agencies within the Member States collect data on TIP for divergent reasons based on their respective mandates, and in most cases, these agencies rarely communicate amongst themselves. It is, therefore, important that a centralised national TIP data management and dissemination point is established in each Member State, with a mandate to collect, validate and disseminate statistics on the crime. This is one of the objectives of the SADC regional database on TIP that was established in 2014 as a collaborative venture between SADC Secretariat and UNODC.

Inadequate capacity of first responders in identifying cases of TIP and differentiating them from associated criminal activities such as smuggling of migrants is another challenge faced in the region. This has, in some cases, resulted in statistics on TIP being confused with statistics on smuggling of migrants.

Therefore, capacity development initiatives are being implemented to ensure that the front-line officers and service providers can differentiate between TIP, smuggling of migrants, and irregular migration, and that these three aspects are appropriately documented. This manual supplements that objective.

Section 31(3) of the TIP Act.

Section 33(b)(i)-(v).

Section 34.

The TIP Act provides for the collection of an elaborate set of data. Section 41(b) provides that the Director General: Justice and Constitutional Development must establish an integrated information system to facilitate the effective monitoring and implementation of the Act with a view to determining:

- From which countries people are being trafficked to South Africa
- To which countries South African citizens and residents are being trafficked
- The nationality of victims transiting the Republic and the countries to which they are being trafficked
- The number of victims that have been repatriated to the Republic and the countries to which they were trafficked
- The areas in the Republic to and from which victims are being trafficked
- The purposes for which persons who have been identified as victims of TIP have been trafficked
- The profiles of the trafficker and their victims, including the age, gender nationality and sex of the victims
- Which routes are used by traffickers to cross the borders of the Republic
- Which routes are being used by traffickers to enter the countries to which South Africa citizens and residents were trafficked?
- The methods used by traffickers to recruit and transport their victims
- The methods used by traffickers to keep victims in exploitative situations
- The types of travel documents traffickers and their victims have used or attempted to use to cross borders of the Republic and to enter the countries to which South Africa citizens and other residents were trafficked and how these documents were obtained
- Whether there is a link between trafficking operations and those involved in other forms of organised crime
- The number of trafficking prosecutions, convictions and the form of sentences imposed on the perpetrators
- The number of victims of TIP who are awarded compensation orders
- The number of orders the Court refrained from providing for compensation orders and the reasons for doing so.

In collecting this information, however, it must be borne in mind that the identity of the victim must always be kept confidential.

The information highlighted above must be presented annually in the form of a report to Parliament, with all Ministries involved, but with the Ministry of Justice as the lead.¹⁰⁷ The national data collection tool has now been launched and initial training has taken place.

5. Extradition

Extradition is a formal process leading to the surrender by the requested State of the person who is being sought by the requesting State. It is an extreme infringement of personal freedom, and therefore strict rules govern its use. In this section, extradition in international, regional and domestic law are discussed.

Extradition is addressed by article 16 of the Convention on Transnational Organised Crime (which was discussed in Module 2). These minimum standards for the Convention provisions are designed to ensure that the Convention supports and complements existing extradition agreements for offences covered by the Convention. It sets the basic minimum standard for offences covered by the Convention. It also encourages that a variety of mechanisms be adopted to streamline the extradition process.

The extradition obligation applies among all State Parties to the Convention, to all offences covered in the Convention and its Protocols. States must consider any offences to which Article 16 applies as included in any existing extradition treaty concluded between them, and they undertake to include such offences in any future treaties to be concluded by them. According to Article 16(10), if a State does not extradite a person whose extradition is being sought on the ground that that person is one of its nationals, it then has the obligation to act in order to prosecute that person itself.

The SADC Protocol on Extradition, which was signed on October 03, 2002, and entered into force in 2006, makes provisions for State Parties to extradite to other State Parties “any person within its jurisdiction who is wanted for prosecution to another member state or for the imposition or enforcement of a sentence in the other state”. With the exception of Madagascar, all other SADC Member States are party to this Protocol.

Article 2 sets the obligation of any signatory state to extradite to any other state, in accordance with the provisions of the Protocol and of their domestic law, persons who are wanted for prosecution or the enforcement of existing sentences for an extraditable offence. It is required that the offence for which the person is sought is punishable with at least 12 months of imprisonment in both requested and requesting countries.

Article 4 provides for mandatory grounds for refusal of an extradition request (eg if the request relates to a political offence, if the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion, sex or status or that the person's position may be prejudiced for any of those reason, and so forth).

¹⁰⁷ Section 42 TIP Act.

Article 5 lists optional grounds for refusal (if the person whose extradition is requested is a national of the requested State, if a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested; if the offence for which extradition is requested carries a death penalty under the law of the requesting State, unless that State gives such assurance, as the requested State considers sufficient, that the death penalty will not be imposed or, if imposed, will not be carried out, and so forth).

In South Africa, extradition is governed by the Extradition Act 67 of 1962. South Africa's domestic law provides for extradition of persons accused of crimes which are punishable with a sentence of imprisonment or another form of deprivation of liberty for a period of six months or more.¹⁰⁸

In *President of the Republic of South Africa v Quaglini* the South African Constitutional Court pronounced on the nature of extradition, recognising that it involved more than international relations or reciprocity:

It involves three elements: acts of sovereignty on the part of two States; a request by one State to another State for the delivery to it of an alleged criminal; and the delivery of the person requested for the purposes of trial and sentencing in the territory of the requesting State. Extradition law thus straddles the divide between State sovereignty and comity between States and functions at the intersection of domestic law and international law.

Having established the nature of extradition, the applicable procedure becomes relevant. The extradition agreement between the requested state and the requesting state determines the offences in respect of which the extradition is possible and the circumstances in which extradition may be refused, whereas the domestic law as outlined in legislation prescribes the procedure to be followed in extradition proceedings and some of the circumstances in which extradition may be refused (such as where a country may impose the death penalty for that offence, as our Constitutional Court has ruled that extradition may not occur in these circumstances.)

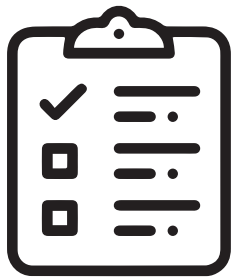
The Minister of Justice receives the extradition request from a foreign state via diplomatic channels. The Minister will then issue a notification to a magistrate who in turn will issue a warrant of arrest. The arrest and detention are aimed at conducting an extradition enquiry. An extradition enquiry is regarded as a judicial and not an administrative proceeding. Extradition proceedings cannot be described as criminal proceedings.

There is an important differentiation between judicial and executive roles in extradition proceedings. Although a magistrate fulfils an important screening role to determine whether or not there is sufficient evidence to warrant prosecution in the foreign state, the decision to extradite a person is ultimately an executive one.

Section 14 of the Act provides that an order for extradition may not be executed before the period allowed for an appeal (15 days) has expired, unless the right to appeal has been waived in writing or before such an appeal has been disposed of. South Africa currently has extradition agreements (or they have been designated by the President as states to which extradition can occur) with Argentina, Botswana, Ireland, Lesotho, Malawi, Namibia, Swaziland, United States of America, Canada, Australia, Israel, Egypt, Algeria, Nigeria, China, India, Zimbabwe and the United Arab Emirates.

¹⁰⁸ Section 1 of the Extradition Act.

Activity 19: Self-assessment checklist



I can list at least three different tools to obtain international/regional co-operation in TIP cases
I can identify at minimum which stakeholders I would need to be liaising with in the course of my dealings with TIP or victims
I am aware of the channels of communication between those identified stakeholders at local, provincial and (where appropriate) national level
I understand the scope of information that must be collected on TIP each year in order to facilitate combating and prevention of this crime
I understand the basics of cross border mutual legal assistance
I am aware of the possibility of extradition of suspects to or from South Africa for the purposes of prosecution or serving a sentence

MODULE 7: CASE STUDIES

This module is intended to wrap up the overall training and embed a knowledge of recent South African cases amongst the participants. It can be updated or supplemented with cases that are pending or have been decided, especially if these are known to the participants through personal experience.

This module need not be presented as a stand-alone module: the facilitator could simply draw on the materials presented here to illustrate points made through the presentation of the previous modules. Note that some were decided before the TIPAct came into operation, and hence involve other criminal charges being utilised, rather than the offence of TIP.

Case 1

State v. Veeran Palan and Another

Veeran Palan and Edwina Norris were charged with ten (10) counts which include the illegal and intentional trafficking in contravention of section 71(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 in addition to a number of other sexual crimes and kidnapping. The first victim was a 29-year-old married woman and mother of four young children living in Cape Town (CB was the victim). Norris had known the victim for 12 years because they had schooled together and lived on the same street. Norris offered, by telephone, CB a job as a cleaner in a Margate hotel in KZN and promised to contact her with further details. Norris informed CB that Vees (who turned out to be the first accused, Palan), her employer, would purchase a ticket for her to travel to KZN by bus. Later that day, CB was shown a photo of Norris in what appeared to be a waitress' uniform, persuading CB to contact Norris and accept the job offer despite her trepidation.

CB received a bus ticket confirmation from Palan who advised her that SN (whom she knew), the second victim also from Cape Town, would accompany her. CB and SN travelled together, arriving in Port Shepstone and called Norris. Palan picked the women up and took them to his home where they were met by Palan's wife. Palan later arrived with two scantily dressed women. The then sat the CB and SN down and disclosed to them that they were in fact not there to work in a hotel but that they would work as prostitutes and they had no option but to do it as well since they needed to pay for the R1200 bus tickets he had provided and that Norris as well as the other two women worked for him as sex workers.

The next morning, Norris took the two women to a shopping centre and bought them provocative clothing and underwear. They were later taken to a house of Dr. M, a friend of Palan, where they were told to put on the clothes and underwear bought for them made to stand in a line to be selected by four (4) men who arrived at the house. All the women but CB were selected and went to the bedrooms for sex while CB waited in the dining room. The women were then transported to a bachelor party where CB was taken to a room with a man who had paid Palan for sex with CB. In that room, CB disclosed to the man that she was not a prostitute and made it clear that she did not want him to have sex with him. The man undertook to help her but when Palan arrived, the man had to leave. The women were then taken back to Dr. M's house, where four additional men arrived.

CB went to the room with a man who this time paid R350 and again explained that she did not want to have sex. Early that same morning, the Accused's wife arrived and attended to "business", accepting R400 from a 17-year-old boy to have sex with CB. Again, CB disclosed that she did not want to engage in prostitution and did not want to have sex with him. The boy insisted and removed CB's clothes and told her to give him a condom. When she would not, he took one from a table in the room, put it on and told her to lie down. She resisted but he pushed her onto her back on the bed and proceeded to have sexual intercourse with her. Although she pushed him off her, he mounted and penetrated her once again. She managed to push him off once again and he left the room and complained to Palan who said they would address the situation in the morning.

That morning, Palan confronted CB and SN, indicating that they owed him money for advertising their bodies on the Internet and for their accommodation. CB and SN later left by taxi to a pub where two police officers arrived and took CB and SN to the police station in Port Shepstone where they made statements.

The Court found that the evidence clearly showed that Norris and Palan had deceived the two CB and SN to Port Shepstone for the purpose of getting them to engage in prostitution and provided the finances and means to get them there. It found that the women did not provide consent freely and with full knowledge of all the material facts. Both Palan and Norris were found guilty of illegal keeping of a brothel, procuring the victims to have unlawful carnal intercourse, knowingly acquire, possess or use the illegal proceeds from acts of prostitution (accused Norris was acquitted of this charge) and kidnapping.

Case 2

Ntonga and Others v. State

The case against Nokuzola Ntonga (Ntonga) and Lionel Richard Ball (Ball), a thirty-six-year-old female and forty five year old male respectively, concerned a number of charges brought forth under the Criminal Law (Sexual Offences and Related Matters) Amendment Act, including a charge of trafficking pursuant to section 71(1).

Ball had seen "groups of prostitutes" on the side of the road and asked his domestic worker and co-accused (Ntonga) to retrieve V, an 11-year-old girl who was not a prostitute, for him. V was known to Ntonga who retrieved V from a friend or relatives house after telling the caretakers of the house that she was taking V to see a social worker to get shoes and clothes. Instead, Ntonga drove V to Ball's home in East London where he allegedly raped V, forced her into the shower and locked her in his bedroom when a friend and witness in this case visited his home.

Ball was charged with sexual exploitation of children and rape. Ntonga was charged with unlawfully and intentionally trafficking V by supplying, removing, and/or transporting her by deception or false pretences to Ball for the purpose of sexual abuse or abuse of a sexual nature without her consent. Ntonga was also charged with unlawfully and intentionally offering the services of two girls (NM, a fifteen year old girl, and V) to Ball with or without their consent for financial or other reward to her for purposes of the commission of a sexual act: (i) by arranging a meeting between Ball

and the victims; (ii) by participating in, being involved in, promoting, encouraging or facilitating the commission of a sexual act with the said child by Ball; and/or (iii) making available, offering or engaging the said child complainants for purposes of the commission of a sexual act with Ball by arranging a meeting between them. She was additionally also charged with unlawfully and intentionally conspiring with, and/or abetting Ball to commit a sexual offence by arranging a meeting between Ball and V., thereby facilitating and/or enabling Ball to commit a sexual offence with V.

The Court found Ntonga guilty of all charges and sentenced her to ten years imprisonment for aiding and abetting Ball, seven years for exploitation, and ten years for trafficking, to be served concurrently. Ntonga appealed the judgment judgement of the lower court. The charges against her for sexual exploitation of children were dropped due to insufficient evidence to hold that the defendants had committed this offence against NM. The other charges and sentences against V were upheld, including the count of trafficking.

Case 3

Aldina Dos Santos v. State

Aldina Dos Santos met the three women in Mozambique, where she promised the women work in a hair salon she owned in Pretoria. Dos Santos arranged for the three women to come to South Africa and collected them at or near Komatipoort. The complainants testified that they worked for Dos Santos at her hair salon for a few days, where they were forced to smoke cannabis and to have sexual intercourse with several men daily, without pay. The women, as well as other women kept by Dos Santos, were not allowed to leave the house, received no money and little food and clothing. The three women stayed with Dos Santos in her flat in Silver Lakes, east of Pretoria. According to the Dos Santos, the flat was too small and as such she decided to rent a 3-bedroom house in Moreleta Park, a short distance from her flat. This house was, however, where a brothel was kept.

At the Moreleta Park house, the women were photographed to advertise them on the Internet. After receiving complaints from clients, Dos Santos showed them pornographic videos, demonstrated to them by performing sexual intercourse on her boyfriend and threatened them with assault should further complaints be received. Dos Santos carried a whipping chain on her belt, according to the evidence, which she used to assault the women when she considered it necessary.

Dos Santos was arrested after returning from a trip to Mozambique and some of the complainants were taken into custody. She was charged with three counts of trafficking in persons for sexual purposes in addition to sixty counts of rape and one count of living from the earnings of sexual exploitation of a child (Count 65). Dos Santos was convicted on all three counts of trafficking. The Court found, among other things, that evidence showed that the complainants were under constant threat, lived in fear and were subjected to treatment that can only be described as inhumane.

Dos Santos appealed her conviction and sentence. The High Court found that the Regional Magistrate, correctly, concluded that the appellant committed the crimes for

financial gain or “out of pure greed”. Based on the totality of the evidence, the Court concluded that the appellant was instrumental in securing the presence of the complainants in South Africa and also responsible for harbouring them under threat of prosecution as illegal immigrants. It considered that the women were vulnerable, were of a tender age and desperate for work and income, that they had no permission to be in South Africa and forced to perform sexual acts as instructed by Dos Santos. The High Court could not find any evidence that justifies a finding that the personal circumstances of the appellant constitute a mitigating factor or compelling reason to interfere with the imposed sentence noting that “crimes of this kind leave no room for maudlin sympathy in addition to the well-established principles applicable during sentencing”, all of which the Regional Magistrate had observed.

Case 4

State v. Jezile

In 2010, the case of a 14-year-old girl from Eastern Cape who fell prey to the practice of ukuthwala was brought before a Wynberg court in Western Cape - the first case of its kind. The girl, who had just finished Grade 7, found herself in situation of ‘modern-day slavery’ when she was sold for ZAR8,000 (then valued at approximately US\$1,050) in February 2010 and forced into early marriage to 32-year-old Mvumeleni Jezile.

The victim was restrained, abducted and transported to the defendant’s village. When the girl initially escaped to her village, her uncle and grandmother, who had participated in the negotiations for the marriage, took her back to Jezile at his home in Brown’s Farm, Philippi, in the Western Cape, where she was raped several times and physically abused. She later escaped again and reported the abuse to the police. After a few days, the complainant jumped over the fence and sought help from the police.

Delivering the judgement, the Wynberg Regional Court Magistrate castigated the abuse of culture, tradition and religion leading to young girls experiencing servitude and sexual exploitation. “It’s intolerable that very serious crimes such as trafficking [in persons], rape and assault are committed under the guise of culture, tradition and religion,” she said. According to the Cape Argus newspaper, the magistrate further discouraged the abuse of customs for one’s own gratification arguing that “both parties to any marriage must consent thereto.” The Jezile case brought to the fore the need for awareness and action against the abuse of cultural practices such as ukuthwala, which means ‘to carry’ in Xhosa and Zulu. The practice has been traditionally “used to bypass extensive and lengthy marriage rituals.” The Department of Justice and Constitutional Development has called the practice “a condoned albeit abnormal path to marriage targeted at certain girls or women of marriageable age.” The South African constitution makes provision for the recognition of cultural practices, “provided that persons exercising cultural rights may not do so in a manner that is inconsistent with any other provisions of the Bill of Rights.”

Moreover, the South African government has incorporated the custom of ukuthwala in various other legislative instruments to ensure that such cultural practices are not

abused by traffickers. Jezile was sentenced in February 2014 to an effective 22 years in jail for three counts of rape, TIP and assault. The NPA welcomed the sentence commenting that, at that time, it was the most severe penalty handed to someone convicted of TIP in South Africa. An appeal against conviction and sentence was not successful.

Case 5

State v. Mabuza and Chauke

This case involved five (5) girls, between the ages 10 and 16 years, who were lured from Mozambique to South Africa by a 'Aunt Juliet Chauke', through misrepresentations made to the girls and their parents about visiting family and/or with the promise of attending school and obtaining a better education. Instead, the children were smuggled into South Africa by Violet Chauke (second accused) over or through the border fence and held captive in Rhenosterhoek where they were sexually assaulted by Nambi Lloyd Mabuza, between 2009 and 2012, before they were finally rescued.

According to uncontested evidence, Violet Chauke is alleged to have been 'trafficked' to South Africa by her sister Juliet Chauke in a similar way and was sexually abused by Mabuza until he lost interest in her, when she reached her late teen years, and employed her in his timber business. On the other hand, Juliet had another job with which Ms Chauke sometimes assisted. When Mr Mabuza grew tired of his 'slaves', the term that the Magistrate used to refer to these victims, he ordered Juliet to go to Mozambique to collect younger girls, a task for which she was paid. The five who were brought to South Africa in 2008 were all very excited, as Juliet had promised them and their families a brighter future. They were deceived by promises of better education and that Juliet would take care of all the arrangements. Once the girls had been smuggled across the border and taken to Rhenosterhoek, Mpumalanga, Juliet Chauke and Ms Chauke (the accused) taught them how to participate in Mabuza's sexual rituals. This lasted for four years, until his arrest on December 18, 2012.

Violet Chauke was captured and having endured so much herself at the hands of Mr Mabuza, the court felt that a lesser sentence was justified. Her sister, Juliet, however, absconded to Mozambique and has not been arrested since. The stiff sentences given to the offenders show that TIP is considered a serious crime that requires maximum sentences possible. Despite challenges faced in the long trial, the sentence marked a victory for the State in the fight against TIP and the public was made aware of the dire effects of the scourge whereby a victim had, by virtue of her circumstances, become a perpetrator herself.

The fate of Lloyd Mabuza, a South African high-profile businessman then aged 62 years, was sealed in November 2014 when he was convicted on four counts of TIP in persons and four of rape and sentenced to eight life sentences, ordered not to be served concurrently. Mr Mabuza's appeal of his conviction was dismissed by the High Court. Mr Mabuza's co-accused, Ms Violet Chauke, aged 22, from Mozambique, was found guilty on three counts of both crimes for which she received a suspended sentence of 20 years and was ordered to be immediately deported back to Mozambique. The reason behind the great difference between the two

sentences handed to Mr Mabuza and Ms Chauke shows the pernicious effects of TIP on an individual, in this case Ms Chauke, over the longer term. Ms Chauke was in pre-school when she and her sister, Juliet, were trafficked to South Africa where Mr Mabuza turned them into sex slaves. Ms Chauke eventually gave birth to Mr Mabuza's child at the tender age of eight, after which the baby was sent to Mozambique.

Case 6

State v. Eze

According to her statements, V1 was probably 26 years old when her exposure to drugs began. Her first marriage was abusive, and she divorced her husband whilst expecting her first child. By this time, she was a full corporal working as a chef at the air force base. She turned to alcohol and stated that she was becoming an alcoholic. Her friendship with a certain sergeant, a male work colleague, led to her introduction to the sordid world of hard drugs. The sergeant took her to a Nigerian dealer in Sunnyside, Pretoria. Eventually she found herself smoking drugs every other day. Her salary of R4700.00 could not fund her addiction and the sergeant suggested that if she agreed to have sex with the dealer they would get a free supply of drugs. This exchange of sex for drugs extended to other Nigerian dealers as well. She was taken in by a certain Nigerian dealer when she found herself stranded at night as her motor bike needed repairs. Under the guise of offering to help her, she was taken to his flat and given more drugs. The person who assisted her with her motor bike had other girls living in his flat. She was given clothes and taught how to work the streets as a prostitute. Her every movement was monitored and all income she made was taken from her. Depending on how much money she made she received drugs in exchange. She was sold to another Nigerian dealer who took her off the streets and advertised her body on the internet. She stayed here for several months and made a lot of money for the dealer. When she managed to return to Sunnyside, Pretoria, she met a Nigerian who she referred to as 'Uncle'. He supplied her with drugs in exchange for her working for him as a prostitute. She thereafter was passed on and worked for another Nigerian called John during which time she realised she was pregnant. She was not allowed to leave the house and did not have many clients. Because she was not making any money, John sold her to the accused.

She occupied the accused's 2-bedroom flat with a Coloured woman and a Nigerian man. Her body was advertised in provocative poses on the internet after being photographed in skimpy underwear. Men would make appointments for sex after viewing the site. Initially she remained locked in the flat with the Nigerian keeping guard over them. She saw 4 to 5 clients a day. Her sole motivation to see clients was to make money for the accused to obtain drugs and sustain her addiction. Her movements were severely restricted, and she was effectively locked up. She was severely beaten from time to time.

Eventually, they moved to new premises. V1 and the accused occupied the bottom level of the unit. This was the address where the accused was arrested. This was also the address where the 2nd complainant (V2) came to live a few months later. V2 was an 18-year-old drug addict recruited to be a prostitute.

The Hawks' Serious Organised Crime investigating unit intervened when V1 told her story of being kept against her will to a Children's Court magistrate whilst signing papers to transfer parental responsibilities and rights of her children to her parents. The victims believed that they were unable to leave due to a number of psychological factors regarding the accused's control over them, which included their fear of their own, or their families' safety, substance addiction and lack of other viable alternatives. The victims were therefore exposed to the typical mechanisms used by traffickers to keep their victims in a web of trafficking that extended beyond the mere physical control to the expansive grip of psychological control.

Upon searching the premises, the police found a glass pipe in the bathroom cabinet, which was placed in a sealed forensic exhibit bag. On inspection, a trace of a white powder-like substance was detected on the toilet seat. Analysis determined that it contained cocaine.

There was no food in the fridge. Both complainants were taken to a safe house and were taken for medico legal examinations. A set of documents were seized, related to placement advertisements for sexual services under different names with deposit slips and receipts as proof of payment made to Sex Trader and Escort SA.

Regarding the main charge of human trafficking, the accused maintained that V1 was his girlfriend with whom he had a child and they were in love.

Although V2 was over 18, the clinical psychologist estimated her mental age to fall within the 14 to 18-year-old age range and therefore the court appointed an intermediary for V2 to assist her to testify.

Eze was convicted and sentenced in July 2019 to two life sentences and an additional 39 years on eight counts for the illegal and intentional trafficking for sexual purposes of the two female victims in Pretoria.

Case 7

Case of vulnerable child forced into marriage

The trial involving a mentally disabled 13-year-old girl living with intellectual disabilities, who was allegedly trafficked and forced into a marriage with an elderly man, was postponed in the Port Elizabeth High Court on Monday 19 March 2019. The uncle of the little girl, along with two other persons, are facing charges which include human trafficking in persons and concluding a forced marriage for the purposes of exploitation. The girl's so-called 61-year-old "husband" faces two additional charges of rape.

According to the charge sheet, it is alleged that the girl, who cannot be named, was forced to marry the elderly man, who was known to her uncle. Following the death of the girl's mother when she was just nine years old, she went to live with this uncle in Kwa Zulu/Natal in 2012. From January 2015, the girl went to live in rural Eastern Cape, where she attended school. The following year, the 61-year-old "husband" from Port Elizabeth entered into lobola negotiations with the girl's uncle and in November 2016 the victim was told she would not return to school and would be married to the elderly man. She was then allegedly board into a taxi destined for Port Elizabeth where the 61-year-old man is said to have met her there before taking her to his home where he allegedly

forcefully had sex with her.

The case is on-going.



Exercise

Allow the participants 30 minutes to read through the cases. The in breakaway groups, discuss the following questions:

1. Can you identify the elements of trafficking in respect of each of these cases?
2. What elements of the 'mosaic' of facts/evidence support the key concern that trafficking is a form of modern-day slavery?
3. Can you identify the particular vulnerability of the victim in each case?
4. Are there defences which the accused raise in one or more of these cases which are typical in trafficking cases?
5. What steps need to be taken to protect the victims in each case?
6. What challenges might arise in the investigation and/or prosecution of these cases (one or more of them)?

The groups can wrap up the training by sharing their feedback.

Day plan

Training day schedule

Day 1:

8h30 - 10h00: Module 1

10h00 - 10h30: TEA

10h30 - 12h45: Module 2

12h45 - 13h45: LUNCH

13h45 - 15h30: Module 3

15h30 - 15h45: TEA

15h45 - 16h30: Module 3 (Continued)

Day 2:

8h30 - 10h00: Module 4

10h00 - 1h30: TEA

10h30 - 12h45: Module 4 (Continued)

12h45 - 13h45: LUNCH

13h45 - 15h30: Module 5

15h30 - 15h45: TEA

15h45 - 16h30 Module 5 (Continued)

Day 3 (half day)

8h30 - 10h00: Module 6

10h00 - 10h30: TEA

10h30 - 12h45: Module 7 Discussion of cases

12h45 - 13h00: Wrap up and closure

GLOSSARY/ACRONYMS

Child	A person below the age of 18.
Child labour	Hazardous (dangerous) work that places at risk a child's right to survival, protection or development or which interferes with the child's education. South Africa has ratified the ILO Worst Forms of Child Labour Convention (2000), which covers the most hazardous forms of child labour
Child trafficking	The recruitment transportation, transfer, harbouring or receipt of persons under 18 years for the purposes of exploitation
Coercion	The threat(s) of serious harm to or physical restraint against any person; any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.
Debt bondage	Involuntary status or condition that arises from a pledge by a person of his or her personal services or the services of another person under his or her control as security for a debt owed or claimed to be owed, including any debt incurred or claimed to be incurred after the pledge is given
Exploitation	Practices such as slavery and actions like slavery, debt bondage or forced marriage, sexual exploitation, servitude, forced labour, child labour, and removal of body parts
Forced labour	Forced labour can be understood as work that is performed involuntarily and under the menace of any penalty. This can include threats, physical violence, intimidation or physical detention
Guardian	A person who oversees a child at a particular time.
ILO	International Labour Organisation
Immigration Officer	Department of Home Affairs immigration officer
Palermo Protocol	United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
TIPAct	The Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013)
PEACE	Planning and Preparation, Engage and Explain, Account, Closure, Evaluate
POCA	Prevention of Organised Crime Act, Act No 121 of 1998
Police	South African Police Service
SADC	Southern African Development Community
Servitude	Forcing someone to perform labour or provide services, through any means, because the person believes that if he/she does not, then he/she or someone else will suffer serious harm
Sexual Violence	Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work
UNCTOC	The United Nations Convention against Transnational Organized Crime

UNODC	The United Nations Office on Drugs and Crime
Victim	A person who has been exploited and has suffered loss of fundamental rights and psychological or physical harm as a result of being trafficked.
TIP	Trafficking in Persons
TIP Office	The Office to Monitor and Combat Trafficking in Persons
Trafficking in Persons	Trafficking in persons is defined as "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"
TVPA	Trafficking Victims Protection Act, United States
Ukuthwala	A form of abduction that involves kidnapping a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to agree into marriage

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