

**STANDARD
OPERATING
PROCEDURES
for LAW ENFORCEMENT**

**in handling HUMAN
TRAFFICKING CASES**



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**Standard Operating Procedures
(SOPs)**

for Law Enforcement

in Handling Human Trafficking

Cases in Zambia

- in accordance with

the Zambia Anti-Human

Trafficking Act No. 11 of 2008

FOREWORD

Human Trafficking or Trafficking in Persons¹ is a complex and dynamic global phenomenon involving the trade in human beings for the purpose of exploitation. While it is widely taken as a transnational crime, crossing state borders and jurisdictions, it can also occur domestically, within national borders. Every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. The offence of human trafficking is best understood as a collection of crimes bundled together rather than a single culpable act; a criminal process rather than a criminal event. Zambia is a source, transit and destination country for cross border trafficking as well as internal trafficking. In response to the problem and in line with its international obligations, Zambia has enacted the Anti-Human Trafficking Act No. 11 of 2008.

In order to effectively combat and prevent human trafficking, a holistic approach by all stakeholders entailing integrated actions on prosecution, prevention and protection is needed. Successful conviction of offenders, appropriate assistance to victims and consequent prevention of crimes of human trafficking is possible when first responders, namely law enforcement agencies, perform their tasks meticulously. In this process, investigation of crimes assumes an important role. The task includes collection of intelligence about crimes, registering crimes in the police station, prompt action and also ensuring all legal and administrative follow-up measures are taken.

This Standard Operating Procedure (SOP) is designed to provide Zambian law enforcement officers with a toolkit to enable them to benefit from the Anti-Human Trafficking Act. The SOP is intended as an easy tool of reference for systematic investigation of cases of human trafficking as well as providing necessary assistance to victims.

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¹ These two terms are used interchangeably throughout this SOP.

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ACRONYMS

ACC	Anti-Corruption Commission
FBO	Faith-Based Organization
CSO	Civil Society Organization
DEC	Drug Enforcement Commission
LE	Law Enforcement
MHA	Ministry of Home Affairs
IGO	Inter-Governmental Organization
IOM	International Organization for Migration
NGO	Non-Governmental Organization
SOP	Standard Operating Procedure
TIP	Trafficking in Persons
UNODC	United Nations Office on Drugs and Crime
VOT	Victim of Trafficking

GLOSSARY²

Abuse of vulnerability: Refers to any situation in which the person involved has no real and acceptable alternative but to submit to exploitation. This is to acknowledge that many trafficked persons are under the influence to whom they are vulnerable ; for example a person holding a position of official authority or a parent or a spouse. A vulnerable person can be any person who is in Zambia illegally or without proper documents; a pregnant person ; a person with a disability; a person addicted to a drug or other substance; or a child.

Child: A person below the age of 18 years.

Child labour: Includes all forms of slavery or practices similar to slavery trafficking a child for the purpose of engaging in work away from home and from the care of the child's family, in circumstances within which the child is exploited.

Coercion: Violent or non-violent force that makes a person believe that if they do not provide a service or labour, they or someone close to them will suffer serious harm. This may be by threatening to or actually harm or misuse of the legal process.

Debt bondage: A person forced to work because their services have been promised as a surety for a debt. The services can be promised by the person doing the work or by another person. This definition applies where the debt is one which is obviously too high; where the value of the services on reasonable assessment is not used to pay the debt or alleged debt; or where the length and nature of service are not defined or restricted.

Exploitation: Practices such as slavery and actions similar to slavery, debt bondage or forced marriage, sexual exploitation, servitude, forced labour, child labour, and removal of body parts.

Forced labour: Labour undertaken against the will of the labourer, either as a result of threats, physical violence, intimidation or physical detention.

² Section 2 of the Anti-Human Trafficking Act (No. 11 of 2008)

Immigration officer: Includes the Chief Immigration Officer and all other immigration officers.

Police officer: A person who is a member of Zambia Police.

Potential victim: An individual identified before being exploited but who showed strong signs of being in the trafficking process.

Practices similar to slavery: Debt bondage, servitude, institutionalized forced marriage on payment to parents or guardians, widow inheritance or delivery of children to third parties by a parent or guardian so that the child is exploited.

Premises: Buildings and cars or other moveable shelters.

Servitude: Forcing someone to perform labour or provide services, through any means, because they believe that if they do not then they or someone else will suffer serious harm.

Sexual exploitation: Forcing someone into prostitution and other sexual acts through coercion, intimidation and other non-voluntary methods.

Slavery: Having ownership of a person so that the person is regarded as property.

Smuggling: Facilitating the entry of a person who is not a citizen or permanent resident, into a country in exchange for payment or material benefit.

Trafficking: Recruiting, transporting, transferring, harbouring or receiving a person within or across a Zambian border by means of abduction, threats, coercion, fraud, deception or illegal adoption of children, by destroying or denying access to identity or travel documents, by threatening to abuse the legal system or some other form of power, or by giving or receiving payments to achieve consent, for the purpose of exploitation.

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.

CHAPTER I. INTRODUCTION

This Standard Operating Procedure (SOP) is intended as an easy tool of reference for systematic investigation of cases of human trafficking as well as providing necessary assistance to victims of the crime. The SOP has been prepared in accordance with the Anti-Human Trafficking Act and aims at helping law enforcement officers conduct professional investigation that strives towards:

- Expedited and effective law enforcement;
- Conviction of the offenders;
- Non-victimization of victims;
- Ensuring that appropriate protection/ care/ attention is provided to victims/ witnesses; and,
- Taking appropriate steps for the prevention of trafficking and re-trafficking.

I.1 Who is this SOP meant for?

The SOP's main aim is to empower law enforcement officers in responding to and preventing crimes of human trafficking. According to the Anti-Human Trafficking Act, these include Police officers Anti-Corruption Commission officers Drug Enforcement Commission officers Immigration officers and Customs officers designated by the Commissioner of Customs and Excise⁴.

I.2 Structure of the SOP

This SOP has been designed with chapters, which contain the background information and relevant legislative references for actions to be taken by the law enforcement officers. This resource document has been developed in an effort to ensure that investigating officers have the basic

⁴Anti-Human Trafficking Act No.11 of 2008 Section 70

knowledge, understanding and experience in the application of the Anti-Human Trafficking Act and other relevant legislation.⁵ Therefore, this SOP is a brief and quick reference material of the laws and procedures of optimal importance to officers working on human trafficking cases and is not detailed. For a detailed understanding of the law, the reader is advised to refer to the Anti-Human Trafficking Act No. 11 of 2008as well as the IOM law enforcement manual⁶

⁵ The relevant legislation include but are not limited to, the Penal Code CAP 87, Immigration and Deportation Act No. 18 of 2010, Employment Act CAP 265.

⁶ IOM Handbook for Law Enforcement Officers, *Training of Trainers on the implementation of the Zambia Anti-Human Trafficking Act (NO.11 of 2008)*, August 2011

CHAPTER 2. TRAFFICKING IN PERSONS

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 per cent of the world's population⁷. The Southern African region is no exception. Individuals move, among others, in search of opportunities for employment and education. Such migration can be both within a country (internal) and across borders. Though the prevailing view holds that migration has been a positive force in both countries of origin and of destination, unregulated migration can involve social, financial and political costs for the individuals, society and governments alike, including irregular migration, migrant smuggling and trafficking in human beings.⁸

Migration, and indeed trafficking, can take place both across borders and internally (within the borders of a single country)⁹. Trafficking that takes place without crossing international borders is called internal trafficking. Internal trafficking may take place without the victim being moved at all. It is important to take into consideration that the exploitation of trafficked persons often takes place under the following circumstances:¹⁰

- Forms of economic activity that are either illegal or informal;
- Poorly regulated or unregulated economic sectors in which it is difficult to enforce regulatory controls and where profit margins are extremely low; and,

⁷About Migration, <http://www.iom.int/jahia/Jahia/about-migration/lang/en>

⁸<http://www.iom.int>

⁹See definition of 'traffic' in the Act. Anti-Human Trafficking Act No.11 of 2008

¹⁰2002 Trafficking –a demand led problem: A multi country study Save the Children Stockholm: Bridget Anderson, Julia O'Connell Davidson p.23

- Settings that are beyond labour regulations, for instance private households.

It is therefore important that law enforcement officers pay particular attention to local economic sectors in which vulnerable persons can be targeted for exploitation.

2.1 Background to Zambia's Anti-Human Trafficking Act No. 11 of 2008

Zambia acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in April 2005, and by so doing committed itself to take effective action to prevent and combat trafficking in persons. Although human trafficking is an age-old practice, Zambia recorded its first case of trafficking in December 1999. An Australian male was arrested at the Chirundu border post while allegedly trying to transport five Zambian teenage girls to Australia for purposes of prostitution. The man was acquitted on the grounds of inadequate legal provisions to deal with such cases¹¹. Five years later, another potential case of human trafficking occurred in Zambia when a Congolese woman was apprehended at the Zambian border with Zimbabwe with 14 children aged between 5 and 17 years. She did not have documentation to prove she was the legal custodian of the children, despite claiming so. Investigations revealed that the children were recruited from different families and were promised jobs in America and South Africa, yet the legitimacy of these jobs could not be verified. Although there were indications that this could have been a trafficking case, the limited capacity of law enforcement to conduct further investigations led the case to be dropped. The Congolese woman was fined two million Zambian

¹¹ USAID, *Framework and Comprehensive legislation to Combat Human Trafficking in Zambia, Development of an effective policy*, May 2007 1

Kwacha for passport fraud and was later released¹². This propelled the need for the enactment of an anti- human trafficking law that would adequately deal with the scourge and bring it into the public spotlight.

Zambia subsequently passed amendments to the Penal Code¹³. The amendments, however, were not sufficiently comprehensive in that they did not clearly define all the elements of trafficking or prescribe specific penalties for these offences. There was therefore need for a single and comprehensive anti -human trafficking law.

As a result, in September 2008, Zambia enacted the Anti-Human Trafficking Act (Act No.11 of 2008). The law has since been tested and a number of prosecutions and convictions have been recorded under the new law.¹⁴

2.2 Definition of Trafficking in Persons (Act - Part I)

Section 2, under Part I of the Act, defines trafficking as:

Act

“To recruit, transport, transfer, harbour, receive or obtain a person, within or across the territorial boundaries of Zambia, by means of-

Means

“Any threat or use of force or other forms of coercion; abduction; fraud or deception; false or illegal adoption of a child contrary to the Adoption Act or any other written law; the destruction, concealment, removal, confiscation or possession of any passport, immigration document or other official identification document of a person; the abuse or threatened abuse of the law or legal process or any other form of abuse of power or

¹²The Times of Zambia, June 15 2005 Edition as quoted in the USAID , *Framework and Comprehensive legislation to Combat Human Trafficking in Zambia*, May 2007 1,

¹³ Amendment Act No.15 of 2005

¹⁴ U.S. State Department Trafficking in Persons Report 2011

of a position of vulnerability; or the giving or receiving of payments or benefits to achieve the consent of the person; for the purpose of exploitation".

Purpose - i.e. Exploitation

The Act defines exploitation to include¹⁵

- All forms of slavery or practices similar to slavery, including debt bondage or forced marriage;
- Sexual exploitation;
- Servitude;
- Forced labour;
- Child labour; and,
- The removal of body parts contrary to the Human Tissue Act¹⁶.

Two particular types of exploitation deserve special mention in the context of Zambia i.e. child labour and sexual exploitation.

Generally child labour is any work performed by a child which deprives him or her of his or her childhood, potential, and dignity, is detrimental to his or her health, education, physical, mental, spiritual, moral or social development¹⁷. For purposes of the Act, it includes all forms of slavery or practices similar to slavery; trafficking a child for the purpose of engaging in work away from home and from the care of the child's family, in

Child work: Consists of light work that is not dangerous and does not interfere with a child's development

Child labour: Involves hazardous work that places a child's right to survival, protection or development at risk

¹⁵ Section 2

¹⁶ Cap 306 of the Laws of Zambia

¹⁷ 2011 Glossary on Migration, IOM, Geneva 17

circumstances within which the child is exploited.¹⁸ As such a relationship can be seen between child labour and domestic labour, as domestic labour can be a form of child labour where it meets the above conditions.

Sexual exploitation is “any actual or attempted abuse of a position of vulnerability, power differential, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another”¹⁹. In addition, the Act defines it as “the participation of a person in prostitution or other sexual acts, or the production of pornographic material as a result of being subjected to threat, force, intimidation or other forms of coercion or any other practice in terms of which it cannot be said that the person participated voluntarily”²⁰. However, prostitution alone is not sexual exploitation for purposes of the Act, if it does not meet the requirements of ‘act’ and ‘means’ discussed above.

2.2.1 Differences between trafficking and smuggling

The principal difference between smuggling and trafficking is that smuggling does not include the **means** and **ends** intrinsic in trafficking in human beings. In other words human trafficking involves an act of recruiting, transporting, transferring, harbouring or receiving a person through a use of force, coercion or other means that exclude the free and informed consent of the victim, for the purpose of exploitation²¹. While in smuggling, migrants are active and willing participants in the process²², in trafficking, victims are entrapped, enslaved and held against their will.

¹⁸See Sec 2 of the Act , definition of ‘child labour’

¹⁹ 2011 Glossary on Migration, IOM, Geneva 90

²⁰ Section 2 of the Anti-Human Trafficking Act

²¹ <http://www.unodc.org/.../human-trafficking/what-is-human-trafficking.html>

²² The United Nations 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime

If the smuggling results in the migrant being sold or brokered into servitude or some other form of exploitation, or if the migrant cannot pay the smuggler for his services and is forced to work the debt off, typically in the form of compelled labour or prostitution, then the situation turns into trafficking. In the case of cross-border trafficking the relationship with the trafficker does not end upon crossing the border, instead the victim is subjected to exploitation during or after the journey.²³ Finally, smuggling always involves crossing international borders, whereas, human trafficking does not require crossing an international border. Trafficking can take place both internally and across-borders. In other words, a person can be trafficked either within a country or to a foreign country for purposes of exploitation. Internal trafficking may in fact take place without the victim being moved at all.

Trafficking in persons

- Always involves the exploitation (or intended exploitation) of the victims to generate profits for the traffickers;
- The trafficker's action – whether to recruit, transfer, harbour or receive a trafficking victim – is done with the purpose of exploitation;
- Can take place:
 - Inside the country (victims are exploited within the borders)
 - Internationally (victims are moved to another country for the purpose of exploitation)
- Cross-border trafficking can involve both legal and illegal entry into another country.

Smuggling

Article 3 (a) shows that the purpose of the undertaking is for a direct or indirect financial or material benefit.

²³ The 2000 United Nations Protocol To Prevent, Suppress and Punish The Trafficking In Persons, Especially Women And Children Supplementing U.N Convention On Transnational Organized Crime Article 3(a) shows that the purpose of trafficking is the exploitation of victims

- Is always voluntary;
- Business between the migrants and the smuggler ends with the arrival of the migrants at their destination;
- There is no exploitation, just illegal entry into another country;
- The migrant pays the agent/smuggler;
- The agent just passes the migrants across international borders, and does not care about what they will do at destination;
- Always implies crossing a border illegally between States.

2.3 Zambian Anti-Human Trafficking Act: Penalties and Defence

Zambia enacted the Anti-Human Trafficking Act (Act No.11 of 2008) in September 2008. As described in its preamble, the Act provides for the prohibition, prevention and prosecution of human trafficking. The Act specifically prohibits all forms of human trafficking, prescribing no less than 20 years in prison for trafficking an adult and a 25-year minimum sentence for child trafficking. The Act clearly defines human trafficking, outlines and criminalises the specific elements of the offence and its resultant crimes.

2.3.1 Penalties in the Act

According to Section 3 of the Anti-Human Trafficking Act of 2008, human trafficking is a prohibited and criminal offence in Zambia. The law stipulates that: "... *a person who intentionally and unlawfully traffics another person commits an offence and is liable, upon conviction, to imprisonment for a term of not less than twenty years and not exceeding thirty years*". This definition and penalty are in line with obligations state parties are required to meet under Article 3(1) of the Protocol.²⁴

²⁴ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Palermo Protocol)

2.3.2 Grounds which cannot serve as defence

Section 21 of the Anti-Human Trafficking Act provides that:

"It shall not be a defence to a charge for an offence under this Act to prove that a victim consented to act constituting the offence; that the victim had previously engaged in prostitution, or has any other history of a sexual or criminal nature; where the victim is a child, that the victim, the parent, guardian or other person who has parental responsibilities and rights in respect of the child consented to the act constituting the offence; that the exploitation of the victim did not occur; or that the act constituting the offence is a customary practice".

In many trafficking cases there is an initial consent or cooperation between victims and traffickers. This is followed by more coercive, abusive and exploitative circumstances²⁵. In Zambia however, consent of the victim is not a defence to the offence of human trafficking especially where it has been obtained through improper means or in the case of children, where their mainly vulnerable status makes it impossible for them to consent in the first place. Children especially have a special legal status; the Act alludes to the fact that a person under the age of eighteen is incapable of consenting to human trafficking. It is inconceivable and impractical that a person can consent to being exploited. In this vein, Section 21 precludes the defence of consent regardless of whether or how it has been obtained, which could otherwise have given a leeway to perpetrators to plead it, especially in cases where exploitation has not yet occurred.

Section 21 also precludes any defence pertaining to the victim's previous history of a sexual or criminal activity. Further, parental consent where a victim is a child will not serve as a defence to a charge of human trafficking. Section 21 also raises an important point regarding customary

²⁵ UNODC Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons: *Training Manual* (2006) 54

practices; it is not a defence to a charge under the Act to plead that the act constituting the offence is a customary practice.

Penalties prescribed by the Zambia Anti Human Trafficking Act

Sections in the Act	Offence	Penalties
Section 3 (1)	Trafficking an adult	20–30 years
Section 3 (2)	Trafficking a child	25–35 years
Section 12	Attempted human trafficking	10–20 years
Section 3 (4)	Trafficking for forced labour	20–35 years
Section 6 (1)	Using or obtaining the labour services of a trafficking victim	10–25 years
Section 3 (3)	Trafficking for sexual exploitation	25 years–life
Section 6 (2)	Using or obtaining the services of a victim for sexual services or child labour	15–25 years
Section 3 (11)	Trafficking for removal of the victim's body parts	25–35 years
Section 3 (6)	Trafficking resulting in serious bodily harm or death	Life
Section 3 (10)	Multiple counts (more than 5) of human trafficking	25–35 years
Section 9 (1)	Smuggling a person across a Zambian border or agreeing to be smuggled	15–20 years
Section 9 (3)	Producing, obtaining or possessing a false travel or identity document (ID)	10–15 years
Section 3 (5)	Trafficking by abduction	25–35 years
Section 7 (1)	Transporting or facilitating the transportation of a victim	20–35 years

Section 11	Harbouring, concealing or permitting the harbouring of a victim of trafficking	20–35 years
Section 7 (1)	Advertising, publishing, printing, broadcasting, distributing, including through the Internet and other communications, information that suggests human trafficking or permitting any of these actions	20–35 years
Section 3 (8)	Public officer facilitating and using authority to facilitate trafficking	25–35 years
Section 3 (9)	Individual participating in institution or criminal group facilitating trafficking	25–35 years
Section 4	Causing another person to enter a situation of debt bondage	15–25 years
Section 5	Destroying, confiscating or tampering with a victim's identity or travel documents	15–25 years

CHAPTER 3. INVESTIGATIONS

(ACT - PART VII)

Investigation of trafficking in person cases involves a meticulous process of gathering intelligence to build evidence proving all three requirements of act, means and purpose, as defined in section 2 of the Act.²⁶ It is important to note that information will need to be collated, evaluated and analysed before it can be taken to be intelligence.²⁷

3.1 Types of Intelligence²⁸

The focus of investigation, and consequently the type of intelligence sought to establish the commission of TIP, varies depending on whether a particular jurisdiction happens to be a place or country of origin, transit or destination. In countries or places of origin, investigation is likely to focus on the recruitment aspect of the crime. Intelligence on methods of coercive or deceptive recruitment of victims will need to be gathered. Places of transit are in a more suitable position to gather intelligence on modes of transport, routes used by traffickers, ‘safe house’ en route to the destination, and crimes related to the use of travel documentation. Places of destination have the unique advantage of having the most concrete component of the crime of TIP being committed in their jurisdictions. Investigation in these cases is most likely to focus on the exploitation aspect of the crime.

²⁶ Section 2 of the Anti-Human Trafficking Act No 11 of 2008

²⁷ UNODC- Global Programme On Trafficking in Persons Human Trafficking: *Reference Guide for Canadian Law Enforcement* (2005)

²⁸ UNODC Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons: (2006) 53-55

The challenges related to conducting investigations are manifest particularly in cases of cross border trafficking. The crime is taking place in as many as three or more jurisdictions and investigators in countries of origin or transit may not have much to work with unless they have a clear insight into what happens in the country of destination. Those in countries of destination may equally miss the link with the crimes committed in source or transit jurisdictions. The solution lies in cross border cooperation and joint operations, which can be complex.

What can be said with certainty is that investigations will have to gather sufficient and admissible evidence on the three constituent elements of TIP (i.e. the act, means and purpose) if they are to build a successful case against one or more traffickers. This requires not only the gathering of intelligence on a variety of trafficker activities but also operating within existing legal frameworks to ensure that the evidence is not thrown out of court during trial.

Broadly speaking, however, there are two main intelligence types: ***strategic and tactical***.

Strategic Intelligence: The objective of this type of intelligence gathering activity is to conduct an overall intelligence assessment of the various strategic factors that underpin the existence of human trafficking activities in a particular State or group of States. A large proportion of the data used to generate a strategic overview of the situation is usually derived from intelligence gathered at the operational level.

Tactical intelligence: This type of intelligence affords immediate and timely support to ongoing investigations by identifying criminals and by providing advance information on their movements. It leads to specific action, including arrests, further investigations and prosecution.

3.2 Sources of intelligence

There are several sources of information at the disposal of investigators when they set out to handle cases of TIP.

The easiest sources of information to access for law enforcement officials are their own records. These in-house resources normally consist of police reports, witness statements, interview transcripts and information available on databases of other law enforcement agents e.g. Interpol.²⁹ The following sources³⁰ can also provide valuable information for TIP investigations:

- Reports from border officials and non-governmental organizations may also be easily accessed and put to good use;
- The US State Department's annual report on Trafficking in Persons (TIP report) prepared by the Global Office to Monitor and Combat Trafficking in Persons (TIP) includes information gathered from a variety of strategic sources, and is updated on a yearly basis;
- Certain activities carried out by traffickers in the course of running their business bring them into contact with the public and make them susceptible to intelligence gathering ("The Achilles Heel' of Traffickers discussed below). Members of the public may report unusual kinds of advertisements for recruitment, which for instance, may be targeting only young women with no particular qualification; **suspicious business**

²⁹ Police Development Unit of the Organization for Security and Co-operation in Europe (OSCE) Spillover Monitor Mission to Skopje Specialized Training on the Trafficking of Human Beings: *Lesson 7 :The Application of Criminal Intelligence Gathering in Organized Crime-Trainer Notes* (2005) 8-10

³⁰ For a detailed enumeration of sources of information for investigation, refer to the *IOM Handbook for Law Enforcement Officers, Training of Trainers on the implementation of the Zambia Anti-Human Trafficking Act (NO.11 of 2008)*, August 2011

premises where only male clients are observed; or **financial transactions** that involve large sums from unclear sources. Such information from the public can be used by law enforcement officers to launch investigations;

- **Individual police officers** can also offer useful information in their **periodic reports** through making observations related to suspicious activity while patrolling. **Public records**, such as license applications as well as **print media** and **advertisements**³¹;
- **Informants**, usually someone who is closely connected to a criminal enterprise or directly involved in one, but is cooperating with law enforcement officials.³² An informant may or may not be reliable and consequently, the accuracy of his/her report should always be critically assessed³³;
- **Physical and photographic surveillance**, along with the use of **undercover operatives**, is a very reliable yet tricky source of information.³⁴ While such information is excellent, investigators should ensure that they observe all legal requirements prior to engaging in their surveillance techniques;
- **Perpetrators of other crimes** who are known to the police, suspects or persons under custody may volunteer important pieces of information.³⁵ While their motives are often not clearly known, it should be understood that they usually expect something in return. The reliability of their word is thus akin to

³¹Police Development Unit of OSCE Specialized Training on Trafficking: *Lesson 7* 9

³²*UNODC Toolkit to Combat Trafficking in Person*, Global Programme Against Trafficking in Human Beings ,UN, New York 84

³³Police Development Unit of OSCE Specialized Training on Trafficking: *Lesson 7* 9

³⁴UNODC Toolkit to Combat Trafficking in Persons 77

³⁵UNODC Reference Guide for Canadian Law Enforcement 26

those of informants. Some may attempt to ‘plea bargain’ - discussion of which should be handled only by the prosecution and not police officers³⁶;

- The value of **victims**, as the richest source of information. It suffices to say that officers, who work with victims, need to be trained on victim identification and interviewing, so as to avoid harm to the person and to understand, how trauma can affect the quantity and quality of the information got from the victim³⁷;
- Missing persons report can also be used as a source of intelligence or information to investigation officers. Given that VoTs are often unable to communicate with their friends and family due to the control by traffickers, they may be reported as missing.

In all of this it is important to remember that intelligence is only useful if it is transmitted in a timely manner, to those who are in a position to use it. Expedited transfer of intelligence between relevant agencies is often an important factor in effective investigations. Intelligence can very quickly become obsolete in the fast moving field of human trafficking. Intelligence should be centrally managed to avoid duplication and ineffective use of resources. Intelligence and information must be reported objectively without any preconceived ideas. Relevant information and intelligence must be readily available to intelligence analysts and users.

³⁶ Police Development Unit of OSCE Specialized Training on Trafficking: Lesson 7 10

³⁷ UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 3: Psychological Reactions of Victims of Trafficking in Persons (2009) 12

3.3 The ‘Achilles Heel’ of Traffickers

TIP is a highly commercial crime. As with all forms of organised criminal activity, trafficking is all about profit and gains for the traffickers.³⁸ The three principal elements behind trafficking can be stated quite simply:

- Within the origin countries, a seemingly endless supply of victims remains available for exploitation;
- Within the destination countries, constantly growing markets maintain a seemingly endless demand for the services of the victims;
- Organised criminal networks have taken control of this economic ‘supply and demand’ situation to traffic and exploit the victims in order to generate enormous profits for themselves.³⁹

It is this market driven, commercial or economic character that is the weakest point of the trafficking chain; often described as the “Achilles Heel” of traffickers.⁴⁰ Like any other marketable product, in the eyes of the trafficker, the trafficked person needs to be:

- Marketed;
- Transported;

³⁸United Nations Development Programme (UNDP) Romania Best Practice Law Enforcement Manual for Fighting Against Trafficking of Human Beings: Trafficking Methodology- An Overview - Background http://www.undp.ro/governance/Best%20Practice%20Manuals/user_manual/01_manual.html (accessed 24-09-2009)

³⁹ United Nations Development Programme (UNDP) Romania Best Practice Law Enforcement Manual for Fighting Against Trafficking of Human Beings: Trafficking Methodology- An Overview - Background http://www.undp.ro/governance/Best%20Practice%20Manuals/user_manual/01_manual.html (accessed 24-09-2009)

⁴⁰UNODC Toolkit to Combat Trafficking in Persons 71

- Rented or sold.

As a business necessity, the trafficker has to be involved in one or a combination of the following activities:

Advertising: As part of the recruitment and/or exploitation process.⁴¹ The trafficker could be using the Internet, newspapers and other print or electronic media and can include personal contacts or word of mouth.

Renting of premises: There is often paperwork or verbal arrangement for the rent of “safe houses” during transit or after arrival at the destination, or the rental of brothels, factory or sweat shop premises etc. To be used during the exploitation process.⁴²

Transportation: This may include preparation and acquisition of forged or illegal identity and travel documents to be used in transit.⁴³ The transportation process may involve purchasing air, bus or train tickets; rental of vehicles; selection of routes to be used etc.

Communications: The task of organising the recruitment and exploitation of the victim often requires phone calls, exchanges through electronic and printed form such as faxes, e-mails, etc.⁴⁴

Financial transactions: Financial transactions may be applicable to all of the above as expenses are usually incurred at each stage of the trafficking process and considered a necessary investment in the course of trafficking humans.⁴⁵ Bank deposits, transfer documents, financial records etc. are good examples in this regard.

⁴¹ UNODC ECOWAS Training Manual 52

⁴² UNODC Toolkit to Combat Trafficking in Persons 67

⁴³ *UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 7: Crime Scene and Physical Evidence Examination in Trafficking in Persons Investigations* (2009) 7

448

⁴⁵ UNODC ECOWAS Training Manual 45

In terms of financial transaction, the law allows the police, where there are suspicions of trafficking, to scrutinise financial institutions or banks for purposes of investigation. Part VII of the Anti-Human Trafficking Act empowers a police officer ranked inspector or above, in relation to a human trafficking investigation, to require a bank or financial institution to provide customer information for the purposes of the investigation. The bank or financial institution has to avail the information expeditiously unless it is not reasonably practicable for the institution to do so. However, the court only makes this order to the bank or financial institution if the court is satisfied that the order is sought for the purposes of:

- An investigation relating to a human trafficking offence;
- The tracing of property that has been used for the furtherance of an offence under the Act is desirable and
- That the order will enhance the effectiveness of the investigation.⁴⁶

Of paramount value to investigators and common in the activities above is that each:

- Brings the trafficker in contact with members of the general public; and,
- Usually leaves some form of paper trail.⁴⁷
- It is precisely these characteristics that render traffickers susceptible to intelligence gathering. These activities of the trafficker offer valuable evidential opportunities, which should fully be exploited by investigators to build their cases.⁴⁸

⁴⁶Section 63 of the Anti-Human Trafficking Act

⁴⁷UNODC Reference Guide for Canadian Law Enforcement 31

⁴⁸UNODC Reference Guide for Canadian Law Enforcement, 2005 31

3.4 Investigative Approaches

From a more strategic point of view, investigators may choose to adopt one or a combination of the three principal investigative approaches, depending on circumstances. The three counter-trafficking investigative options are:

Re-active investigation⁴⁹—victim-led: A reactive investigation is one that begins as a result of a complaint from one or more victims or members of the community. In such cases, the need for immediate intervention to protect the victims affords little time to implement a proactive investigation to obtain independent evidence. The result is that investigators are often left with suspects but limited evidence upon which to prosecute them other than victim testimonies. In all cases where the victims come to the attention of a law enforcement agency, the following responses are applicable:

- **Immediate intervention** against the trafficker(s) to prevent further potential victims from being trapped, or to secure evidence;
- Use of **statement of the victim** or third party as the basis for developing and conducting a proactive or disruptive investigation;
- Use of the victim's intelligence or statement as the basis for an **in-depth, intelligence-gathering** operation into the trafficking scenarios. In cases where the risk-assessment of victims indicates the need for immediate intervention, it is necessary to take prompt action;
- **Every suspect** against whom there is sufficient evidence to justify the action should be arrested, no matter how minor or peripheral his or her role appears to be. Experience has shown that the major players in any network will usually take every

⁴⁹ UNODC Reference Guide for Canadian Law Enforcement, 2005 21-23

precaution to conceal their part in the crime. They will be extremely unlikely to retain possession of any incriminating documentation and are likely to remain silent throughout any interview process⁵⁰;

- It is advisable to have a **skeleton arrest plan** prepared and ready to be used from the early stages of every operation. It is often necessary to proceed with an arrest at very short notice, for example, when the cover of surveillance or undercover officers has been compromised or when there is a sudden increase in the risk to victims or witnesses are exposed;
- The arrest should be **timed and coordinated**, to maximise the opportunity, to simultaneously arrest as many of the suspects as possible and to rescue as many victims as possible. In addition, the objective is to execute the plan at a time that will offer the best chance of securing all available evidence;
- If time permits, when premises are raided or searched, consider deploying an **undercover or covert officer**, before launching the raid and proceeding with the arrest of the suspects. This provides an opportunity for an inspection of the premises, to estimate the number of persons present and the layout of the premises, such as means of entry, the presence of reinforced doors, or the numbers of rooms.

Reactive investigations are often the least effective option for investigators, partly because victims often provide an initial statement and promise to testify in judicial proceedings, but then withdraw their cooperation with detrimental consequences for the ongoing investigation.

⁵⁰UNODC Reference Guide for Canadian Law Enforcement, 2005 22

Pro-active investigation⁵¹—intelligence generated, police-led: A proactive approach usually involves proceeding with the investigation, arrest, and prosecution of traffickers without relying on the active cooperation and testimony of the victims. By using a combination of intelligence, human and technical surveillance, undercover deployments - when authorised under the law and standard investigative techniques, investigators can identify the traffickers and ensure that they are prosecuted.

However, the testimony of victims will always remain one of the prime sources of quality evidence. Experience and best practice have shown that the proactive investigation is an effective method in apprehending traffickers and thus combating trafficking. This is because the crime has a commercial aspect. Traffickers regard men, women, and children as commercial commodities to be recruited, transported, and exploited for profit. It is criminal business and, as with most crime, it is ultimately about financial gain. The traffickers vary their *modus operandi*, alter routes, switch their identities, and use a range of other tactics to maximise their profits and avoid detection. This means that, provided an investigator knows where to look, the exploitative work or forced prostitution that is the basic foundation of the crime can always be identified and located – and if one can locate the victim, one can usually locate the traffickers.

Disruptive investigation⁵²—a multi-agency alternative option: In cases where neither the reactive nor the proactive approach is viable, law enforcement can use a number of tactics to disrupt human trafficking operations and force offenders to reveal themselves; disruptive investigation is thus police-led. The disruptive approach requires a flexible framework and the utilization of various agencies to cause the maximum level of

⁵¹UNODC Reference Guide for Canadian Law Enforcement, 2005 23-24

⁵²UNODC Toolkit to Combat Trafficking in Persons, 2006 74-75

discomfort to offenders. Tax authorities, labour inspectors, fire services, immigration officials, municipal authorities and the like will need to pay the offenders a visit on legitimate grounds.

The use of the disruptive approach is appropriate in a variety of circumstances:

- Where the **level of risk to the victims** demands an immediate response that precludes the proactive approach but might require an immediate intervention and disruption;
- Where the **proactive approach is not viable** for operational reasons, such as where geographical and/or topographical features make surveillance on target premises impracticable, or where it is impossible to achieve undercover penetration of the network;
- Where legislative, procedural or resource implications preclude the use of a proactive approach; and,
- Where the **disruptive approach provides a faster response** to specific complaints from local residents or other affected groups.

Irrespective of why the disruptive option may be the most appropriate response under certain circumstances, two key points should be noted:

- Although, disruption may temporarily relieve the situation, it does not usually solve it, but **displaces it to another location**;
- Displacement of the trafficking activities to another location, one that is perhaps not as well equipped to face the problem, can sometimes **aggravate the challenges** of fighting the crime.

The key to disruptive interventions is using creative and innovative multi-agency tactics to make it difficult for traffickers to continue to operate with their current methods and networks, and at their current location. A number of agencies can be mobilised to contribute to disruptive activities. These include: law enforcement

agencies, immigration services, customs agencies, ministries of foreign affairs, health service providers, environmental actors, labour officials, fire services, municipal authorities, airlines and transportation agencies.

Disruptive activity creates intelligence opportunities, so it is important to ensure that all available **intelligence is captured and properly recorded**, since it might become the basis of proactive operations at a later date.

Parallel Financial Investigations⁵³: Financial investigation is critical in the successful investigation of human trafficking. The key rule is: “Follow the money and you will find the trafficker”. The financial aspect of the crime of human trafficking presents itself in at least two important ways:

- The crime itself is about money. In addition to the initial investment to create the infrastructure and deliver people for exploitation, the ongoing management of the proceeds of the exploitation and the laundering and movement of the profits have to become part of the activities of the human traffickers;
- Trafficking is a crime that takes time to establish and develop. Therefore, it becomes a lifestyle crime. Other offender lifestyle aspects, such as the mode of travel, expenditure on luxury items such as cars and jewellery, and leisure activities will point towards illegitimate revenues of the offenders.

In transnational cases, diversity of legislation, procedure and resources can become an issue. This is especially the case with financial investigations. A proactive financial investigation can be conducted both during the pre-arrest and post-arrest investigative phases. When applied during the proactive pre-arrest phase its use must be considered against the risk of disclosing the law enforcement operation. However, most versions of asset

⁵³ Reproduced from UNODC Toolkit to Combat Trafficking in Persons (2006)

confiscation legislation contain punitive provisions for any individual or institution that discloses the fact of a financial enquiry to the account holder. This reduces the security risks that are attached to proactive enquiries in the pre-arrest stage.

3.5 Forfeiture of Proceeds (Act - Part V)

Organized criminal groups pose a significant threat to the safety and security of people. One of the primary motivators of crime is profit. Depriving criminals of wealth acquired through crime, and property utilized to facilitate crime, is an effective crime reduction strategy that has evolved as an essential element of law enforcement efforts to investigate, disrupt and dismantle criminal organizations.⁵⁴ The seizure and subsequent forfeiture of offence-related property and proceeds of crime is an effective means of disrupting organized crime, limiting the profits associated to criminal acts and discouraging traffickers from re-offending. In Zambia, according to Part V of the Act, an order by the Attorney General may be obtained in court for the temporal suspension of dealings relating to any money or property connected to a suspect charged or about to be charged with an offence under the Act(Section 49).

The Act further states that an authorised officer may seize money being imported into or exported outside Zambia or brought to Zambia for export, which the officer suspects is for use in contravening the Act. Section 52 further states that the court before which a person is convicted of trafficking may order the forfeiture of anything that the court considers was in the person's possession or control for reasons connected with the offence. Before making a forfeiture order, the court shall afford any person who is not a party to the proceedings and who claims ownership or some other

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<https://www.infosecisland.com/.../15466-National-Security-Council-on-Transnational-Organized-Crime.html>

interest in the subject property a chance to be heard. In essence, the provisions of the Act discussed above are meant to limit the profits associated to criminal acts thereby ensuring that organized crime is disrupted.

3.6 Compensation or Restitution (*Act - Parts VI*)

Human trafficking has a devastating impact on individual victims, who often suffer physical, sexual and emotional abuse, loss of property and even death.⁵⁵ In Zambia, the law empowers the courts with the authority to order convicted human traffickers to pay restitution to victims of human trafficking (Section 58). Compensation may take the form of damage to or loss of property, including money; physical, psychological or other injury or loss of income or support resulting from the commission of the offence. The Act further states in Section 59 that “the court may further upon the application of a prosecutor, make an order for payment of compensation to the state for expenses incurred for care, accommodation, transportation or repatriation of the victim”.

Where compensation is payable, the court may enforce payment by allowing the convict to pay compensation in instalments (Section 60) or recover the compensation amount by attachment and sale of property belonging to the convict (Section 61). In the event of the compensation not being paid in full, a sentencing court may warn the convict to appear before it or issue a warrant for that person to be arrested and brought before court. The court may further impose such other sentences as would have been imposed if the court were considering sentence after conviction and shall take into account part payment of the compensation (Section 62).

⁵⁵ US State Department Trafficking in Persons Report 2011

3.7 Port and Border Controls (Act – VIII and XIV)

In many States, the technical capacity of border control agencies to detect and prevent trafficking is inadequate. Criminal networks benefit from this situation and transport groups across borders where there is no effective inspection. Around the world falsification of legal documents is occurring on a large scale, facilitated by new digital data storage, retrieval, and communication and reproduction technologies. In some States, there is a possibility that corruption among immigration officials and consular service personnel in league with trafficking networks exists which often adds to the problem.⁵⁶

In order to offer effective border control mechanism, the Act in Part VIII empowers an examining officer⁵⁷ to examine persons arriving in or leaving Zambia.⁵⁸ Further the Act states in Section 71 that “*an examining officer may question a person who has arrived in or who is trying to leave Zambia for the purpose of determining whether there is reason to suspect that a person is a trafficker or involved in trafficking or whether the person is subject to a deportation order.*” The person so questioned under Section 71 is duty bound to give any information in his/her possession which is requested as well as producing on request either a valid passport which includes a photograph or another document which establishes the person’s identity and citizenship (Section 72).

The Act further empowers the examining officer to stop a person or vehicle; or detain a person in order to get information (Section 73).

⁵⁶ UNODC Reference Guide for Canadian Law Enforcement, 2005 51

⁵⁷ According to Section 70: examining officer means: a Police officer; Anti-Corruption Commission officer; Drug Enforcement Commission officer; Immigration officer and a Customs officer designated by the Commissioner of Customs and Excise.

⁵⁸ Section 69 of the Anti-Human Trafficking Act

The examining officer can also search a ship, aircraft or transport which is reasonably believed to be carrying or harbouring a trafficker or trafficked person or thing likely to be used for trafficking (Section 74). The examining officer can in addition search anything which the person has or which belongs to the person and which is on a ship or aircraft or which is reasonably believed to be or about to be on a ship or aircraft (Section 75). The Act further gives the examining officer the power to:

- Examine goods to determine whether the “goods”⁵⁹ have been used in the commission, preparation or instigation of acts of human trafficking (Section 76);
- Detain anything which may be required in any criminal proceedings or in connection with a decision by the Minister whether to deport someone or not, in order to examine it for a period not longer than three days from the day it is detained (Section 77);
- Request an owner of a ship, vehicle or aircraft which arrives or is expected to arrive in Zambia for information required for the purposes of this Act (Section 81).

Legal authority can be given through issuance of a search warrant, which can be obtained where it is proven by oath to a magistrate, that according to reasonable suspicion in respect of an investigation into the offence, it is necessary for a warrant to authorize an officer to search the premises.⁶⁰ In addition, if anything that was searched for is found, it can be seized and dealt with according to the law (in this regard the Anti-Human Trafficking Act). Furthermore, the power of search (which must be conducted by a person of the same sex)

⁵⁹ According to Sec76: “goods” include property of any description; and containers

⁶⁰ Section 118 of the Criminal Procedure Code Act

conferred by the Act includes searching a container and stopping a vehicle.⁶¹

⁶¹Section 106 of the Anti-Human Trafficking Act

CHAPTER 4. IDENTIFICATION AND PROTECTION OF VICTIMS

(ACT - PART III AND IV)

Trafficking in human beings constitutes a serious infringement of human rights. Identifying trafficked persons is vital to ensure that they are granted access to protection and support services. If a victim is not identified as such, he or she might be left without appropriate support in order to recover from the trafficking ordeal; and this is to the detriment of the trafficked victim.⁶² A vital first step to providing victim protection is determining whether an individual is in fact a victim of human trafficking. Furthermore, without access to protection and support services, trafficked persons might not have sufficient confidence and security to co-operate with law enforcement officials in criminal investigations. Without evidence and testimony from trafficked persons, it is difficult to prosecute traffickers.⁶³

4.1 Guiding Principles for Victim Identification (Section 22)

In Zambia, the provisions of Parts III and IV of the Anti-Human Trafficking Act govern the identification of victims. Part III, Section 22, of the Act provides guiding principles for deciding whether a person is a victim of trafficking.

The guiding principles for victim identification outlined in the Act include identifying:

⁶² IOM Counter-Trafficking Training Modules Victims Identification & Interviewing Techniques 15

⁶³ 15

- Whether the person is in an exploitative situation through such means as violence, force, coercion, intimidation or threats. This may include threats of violence against the person's family or friends; threats of witchcraft or threats with arrest by the police for illegal entry in the country of destination; forcing the person to be addicted to drugs as a way of controlling them; or to witness harm being done to another person or; photographing or videotaping a person indulging in illegal activities for the purpose of threatening them with exposure to family and friends;
- Whether the movement of the person is restricted by means such as keeping the person under surveillance when taken for health treatment; restricting the movement of a person unless accompanied by the trafficker; and transferring the victim between work places and living quarters under the surveillance of a guard;
- Whether the person suffers from health conditions such as signs of rape or other forms of sexual exploitation; psychological and physical abuse; forced abortions; untreated illnesses or infections or malnutrition and poor personal hygiene;
- Whether the passport, identity document or other travel document has been destroyed by or is in the possession of another person or the person is in possession of fraudulent documents; or
- Whether the person has been required to do work that is different to that originally promised, or has been forced to work whilst earning little, or no money, and/or is subjected to debt bondage and whether the person has been forced to lie to the person's family about the person's safety and whereabouts.

The Act additionally provides for the declaration of a country either as a country of origin from where persons are being trafficked to

Zambia or a country of destination to which persons present in Zambia are being trafficked.⁶⁴ This is to ensure that a victim's place of origin is determined. Such determination commences with reporting the case to the police.

4.2 Initial Indicators⁶⁵

Indicators are facts or signs that suggest a case might be one of human trafficking. There are many indicators of trafficking. Some are obvious, visible signs expressed or displayed by the victim. For example, the victim might openly express the belief that they have been working against their will or act in a manner of distrust towards the authorities. Other indicators are less obvious and might not reveal themselves until a later stage in the investigation. Every trafficking situation is different and therefore the indicators also differ.

Initial identification of indicators is important, to determine if a victim has been trafficked or if the officer suspects circumstances of human trafficking. The presence or absence of initial indicators should not mean that trafficking has been established or discounted.

It should be noted that the indicators listed below are intended to assist in the overall assessment process, are generalizations, and that exceptions exist in relation to all of them. Local circumstances and experience may indicate the need for additional indicators or adaptation of the indicators. Law enforcement officers should adapt and expand the process accordingly. All indicators should be considered cumulatively as none will provide the answer on its own.

⁶⁴ Section 23 of the Anti-Human Trafficking Act

⁶⁵ Based on the IOM (2007) The IOM Handbook on Direct Assistance for Victims of Trafficking 26-30

The following initial indicators should accordingly be taken into consideration:

Age— The older the individual is, generally, the less likely it is that the case involves trafficking. Sexual exploitation is still the principal purpose for trafficking, and a trafficker will not normally traffic victims of middle age or older, as there is little client demand for them. The same general rules can be applied in respect of labour exploitation because the older the person is the less productive they may be in conditions of arduous labour. Conversely, the younger the individual is, the more likely it is that the case involves trafficking. The number of minors drawn into the crime increases year by year and minors are particularly vulnerable because they can be exploited in a variety of ways: in the sex industry, illegal labour markets, as domestic ‘slaves’ and for their organs.

Sex— Sex trafficking predominantly affects women and girls because heterosexual prostitution remains the largest and most profitable form of exploitation. Male trafficking for the purposes of prostitution, particularly of teenage and younger boys, is beginning to increase and should not be excluded. Sex is not so strong an indicator in respect of trafficking for labour exploitation, servitude or organ donation where the impact on males and females is far less discriminatory.

Ethnicity/Nationality— The supply chain of victims relies on exploitation of a combination of factors including poverty, discrimination and lack of opportunity and it is less likely that a victim will originate from a wealthy industrialised country or region in a country. However, it is possible that specific ethnic minorities may be vulnerable/ targeted for trafficking. ‘Pull’ factors play important role in local and regional patterns, i.e. rural to city – the “bright lights” syndrome.

Documentation— Depending on regional and geographical circumstances, identity and travel documentation is usually seized

from victims of trafficking, as part of the control mechanisms of the traffickers and victims will not normally be in possession of them, although exactly the same observation could be accurately made in respect of the majority of asylum seekers and in some cases, of migrant smuggling.

Last location – The location where the victim was immediately prior to coming to the notice of law enforcement officials will always be significant; a brothel, call-girl agency or lap dancing club, place of labour exploitation such as ‘sweatshops’, restaurant kitchens or agricultural sites will all be indicators of exploitation.

Context/Circumstances– The circumstances leading up to the referral will always be a key indicator and as much information as possible should be obtained from the referee; circumstances such as removal from brothels by ‘client rescue’; identification and rescue by IGO-NGO will simplify the screening process.

Signs/Evidence of abuse – Any signs of physical injury to the individual can be a positive indicator of trafficking; victims are subjected to abuse by their traffickers and clients, which is generally not a factor in smuggling cases. Key to any decisions in this regard, is the issue of continuation of abuse after arrival at the designated location.

Assessment of a referring agency – In cases where the victim is brought to the attention of law enforcement officials by a referring agency, such as an NGO, the opinion of the referring professionals working in this area will always be relevant to the screening process and should be included in the overall assessment.

4.3 Right to Protection

Anti-trafficking legislation is not only important for the prosecution of traffickers, but is also a valuable mechanism for realising the victims' rights. In Zambia, the provisions of Parts III and IV of the Anti-Human Trafficking Act govern protection of victims. The Act

provides in Section 22 that “when deciding the question as to whether a person is a victim, regard shall be had to all the circumstances of the particular case.” The Act further provides for all victims of human trafficking to receive protective services, including safe shelter and basic material support, counselling, rehabilitation, health and educational services (ref. Part IV, Sections 40 – 47 of the Act). In addition, Section 24 (1) of the Act provides that “the decision as to whether criminal proceedings should be instituted against a victim for an offence committed as a direct result of the victim’s situation as a victim shall rest with the Director of Public Prosecutions”. In this regard, prosecution of such an offence against the victim can only be instituted with the written authority of the Director of Public Prosecutions.

A number of provisions in Part III of the Act detail the mechanisms for regularizing the stay of a victim of trafficking in Zambia, including the issuance of temporary residency (Section 34) or permanent residency (Section 35). Section 36 prohibits the repatriation of VOTs without due consideration being given to the security and safety of the individual if they were to return. The Act further expressly prohibits the summary deportation of a victim of human trafficking⁶⁶. In this regard the Chief Immigration Officer may allow a foreign victim to remain in Zambia for maximum period of sixty days (non-renewable), irrespective of his or her immigration status or willingness to cooperate with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons⁶⁷. Furthermore, a victim of trafficking may be issued with a temporary residence permit if they agree to cooperate

⁶⁶ Section 32 of the Anti-Human Trafficking Act

⁶⁷ Section 33 (1) of the Anti-Human Trafficking Act. It is necessary that such a victim is placed in the care of appropriate organization depending their age. The Period is non-renewable whether or not victim is willing to cooperate with law enforcement/prosecuting authorities.

with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons. After five years continuous residence in Zambia from the date that the victim was granted a residence permit, a victim may apply for permanent residency if there is sufficient evidence to prove that the victim may be harmed, killed, or re-trafficked if returned to country of origin.

4.4 Guiding Principles in Assisting Victims of Trafficking

The Anti-Human Trafficking Act highlights the following responsibilities of law enforcement officers with respect to victims of trafficking:

- Officials and members of the public that have reasonable ground to believe that a person is a victim of trafficking shall report to a police officer (*Section 25, 1 & 2*);
- Police officers who have reasonable grounds to believe that a person is a victim of trafficking shall... ensure the safety of the victim if the victim's safety is at risk (*Section 25, 3a*);
- If the victim is a child, the police officer shall refer the victim to a designated social worker, and if the victim is an adult, to a centre for adult victims (*Section 25, 3b*);
- A police officer shall assist the victim to obtain medical treatment, where necessary (*Section 28 d*) and shall inform the victim of their rights and any basic support that may be available to assist the victim (*Section 28, d*).

The primary guiding principle in assisting victims of trafficking by law enforcement officers is “do no harm”. Subsidiary to this principle,

law enforcement officers should be cognisant of the following approaches and issues in their assistance to victims of trafficking.⁶⁸

Human rights approach: The officer who deals with the victims should be empathetic and should understand the concerns from the victim's perspective. Decision-making about the victim should emanate from and be based on the 'best interest of the victim'. Victims have a right to be protected, consulted and informed of all actions being taken on their behalf.

Victim-centered approach: Any action initiated by the law enforcement agencies should ensure that the victim is the pivotal/focal point. This requires that the victim of trafficking is:

- Not treated as an offender;
- Not 're-victimised';
- Not branded 'as a soliciting person';
- Not arrested;
- Not stigmatised;
- Extended all help and assistance as a matter of right.

Multi-disciplinary approach: A comprehensive knowledge of trafficking requires it to be understood from a process-centric perspective. The offence of human trafficking is best understood as a collection of crimes bundled together rather than a single culpable act, a criminal process rather than a criminal event that may involve multiple offenders. Accordingly, the response to trafficking requires simultaneous attention by various agencies mandated to carry out different tasks, viz. police agencies, social services, prosecutors, counsellors, NGOs, etc. all of whom perform several functions in the process of combating human trafficking. Therefore, law

⁶⁸ UNODC (2007) Standard Operating Procedures On Investigating Crimes of Trafficking for Commercial Sexual Exploitation 6-7

enforcement agencies need to coordinate efforts with these stakeholders to develop a synergy and partnership with them.

In Zambia, law enforcement's response to trafficking is supported by the Ministry of Community Development and Social Services (in particular the Department of Social Welfare) and National Secretariat on Human Trafficking (under the Home Affairs Research and Information Department), which are two government entities that have an active role in addressing human trafficking in Zambia. Their mandates allow for coordination amongst various stakeholders in order to ensure that the various needs of victims, including but not limited to, shelter, psychosocial counselling, medical/physical care and legal assistance are met.

The Ministry of Community Development and Social Services (MCDSS) in Zambia has a wide mandate but in terms of combating human trafficking, it:

- Provides care and support to victims of trafficking, in collaboration with partners;
- Provides basic services and ensures that the human rights of victims are upheld, in collaboration with partners.

Moreover, under the Anti-Human Trafficking Act No. 11 of 2008, the MCDSS:

- Shall establish and operate centres for victims of trafficking and ensure the provision of counselling, rehabilitation and in collaboration with the Ministry of Education shall provide educational services; and
- Shall trace family members of victims in collaboration with the Zambia Police Service.

The National Secretariat on Human Trafficking, under the Home Affairs Research and Information Department in Zambia has the following mandate:

- To work with ministries and other stakeholders to design and implement counter-trafficking and victim assistance programmes and strategies, and to coordinate, monitor and evaluate the implementation of those measures;
- To work with local stakeholders to establish inter-sectoral coordinating committees on trafficking at the regional and/or district level, and/or to integrate trafficking-related concerns and strategies into existing community-based coordinating structures;
- To monitor the treatment, referral, care, legal status, and repatriation of identified victims of trafficking in Zambia, including internally-trafficked Zambians, non-Zambians, and Zambians who have returned or are still in other countries, to ensure that victims receive treatment and assistance consistent with the National Policy and implementing guidelines and protocols;
- To develop and maintain a national data base to support effective monitoring and evaluation; and
- To compile and disseminate data, informational resources, and research findings on human trafficking.

However, legislation that is not enforced does not provide victims the opportunity to access justice. Law enforcement alone without assistance from victim protection service providers is an inadequate response to the protection needs of victims of trafficking. Assistance to victims of trafficking is multi-faceted and may include support from the following actors: Police, Immigration Department, Social Welfare, health care providers, NGOs, embassies, faith based organizations, Community Based Organizations (CBOs), among others. The response to ensure that the protection and needs of victims of trafficking are adequately met requires strong social, political and legal considerations.

Protection of victims and witnesses of human trafficking, focusing on their wellbeing and justice, reflects positively on the professionalism of law enforcement officers. Given that in many trafficking cases the witness/victim is the only person who experiences the entire trafficking process, they serve as a crucial and accurate source of information.⁶⁹ As such it is important to give special attention to the conduct of law enforcement officers when they are called upon to interact with these witnesses/victims. The willingness of victims to report to the police and cooperate in criminal proceedings is strongly related to the general treatment they receive from the police and judicial authorities, the protection of their safety and privacy and the availability of assistance⁷⁰.

Most Southern African countries have not yet established tested standardized mechanisms to identify and assist trafficking victims. In Zambia, law enforcement officers work closely with IOM and civil society organizations (CSOs) to protect victims and provide them with safety, shelter, medical assistance, counselling services, and legal and vocational training. As detailed in the 2011 TIP report, much still needs to be done to ensure that the protective provisions in the legislation are adequately effected, and this will require continued collaboration among actors.⁷¹

⁶⁹ IOM Counter-Trafficking Training Modules Victims Identification & Interviewing Techniques 15.

⁷⁰ IOM Counter-Trafficking Training Modules Victims Identification & Interviewing Techniques 15.

⁷¹ IOM Counter-Trafficking Training Modules Victims Identification & Interviewing Techniques 15.

4.5 Interviewing Victims⁷²

Interviews with victims of trafficking should ultimately serve law enforcement officers as methods of gaining evidence and intelligence in order to achieve a successful prosecution. The purpose of an interview is to *establish the full facts* of the case, to use the facts to *corroborate the victim's story* and establish his/her credibility as a witness. The overall aim is to use the evidence to identify, arrest and *successfully prosecute the traffickers*. It is essential to continually *assess the risk to the victim* and those associated with the victim. Interviewing a trafficked victim requires a lot of time and careful consideration. In particular the needs, safety *and well being of the victim* should be apriority at all times. Trafficked victims are vulnerable and should be treated as such. A trained and specialised interviewer should interview them in a sensitive manner, ideally.

Pre-Interview actions

The interviewer should at all times pay particular attention to the following;

- a) Separate suspected victim (s) from suspected traffickers/smuggler(s);
- b) Separate suspected victims from other suspected victims;
- c) Explain that he/she does not intend to cause harm to the suspected victim but to help him/her;
- d) Build trust with suspected victims;
- e) Do not immediately deport/deny entry to suspected victims;
- f) Do not charge suspected victims with crimes;

⁷²This section is a reproduction of the United Nations Global Initiative to Fight Human Trafficking, UN.GIFT B.P.: 006,The Vienna Forum to fight Human Trafficking, 13-15 February 2008, Austria Center Vienna, Background Paper, 006 Workshop: Criminal Justice Responses to Human Trafficking 5

- g) Respect individuality and the different needs, concerns and wishes of the victims;
- h) Meet basic needs (e.g., food and shelter);
- i) Protect victims' identities.

During Interviews with suspected victims of trafficking

- a) Always ask for consent from the victim;
- b) Interview victims in discreet, safe, and confidential locations;
- c) Ensure that the suspected victims understand the questions;
- d) Interview one victim at a time;
- e) Remember that the purpose of the interview is not to interrogate but to get as much information as possible;
- f) If possible, have suspected female victims interviewed by female officials.

4.6 Guidelines for Interviewing Children⁷³

The following guidelines are recommended when interviewing children:

- Only staff trained in the special needs and rights of children should question potential victims. When possible and appropriate, children should be interviewed by interviewers of the same sex⁷⁴;
- Create an interview space that is age appropriate, possibly containing toys, books or games. This may not always be possible due to resource constraints but due efforts must be made;

⁷³ This section is a reproduction of the IOM (2007) Counter-Trafficking Training Modules Victim Identification and Interviewing Techniques 30

⁷⁴ However, in the event that such trained staff are not available, the staff that is present can proceed with the interview in accordance with these recommended guidelines.

- Establish a rapport by talking about, or doing things that are not related to the trafficking experience (discuss things that the child is familiar with);
- Keep the atmosphere simple and informal. Communicate with children at their eye level;
- Use appropriate and child-friendly language (pick up the terms that the child uses);
- Explain things in a manner that the child can understand. Questions should be adapted depending on the age and mental capacity of the child;
- Begin with open-ended questions, allowing the child to give their own account. Avoid leading questions, for example “did the person abuse you?”;
- Do not pursue and press for details where there are signs that the child has told everything that they know. Keep in mind that children may leave information out, or may give an answer that they believe the interviewer wishes to hear;
- Interviews should take place in the presence of a parent, guardian, or a trained social worker or psychologist;
- End the interview in a way that reassures the child that they have done well and that the interviewer will be available if they need to talk again.

CONCLUDING REMARKS

The completion of an investigation marks the end of a particular stage and the beginning of another in the criminal justice process. Investigations should ideally lead to prosecution where there is sufficient legal ground and adequate evidence exists to press charges. A thoroughly planned and well-executed anti-trafficking investigation increases the chances of a successful prosecution dramatically. Investigating officers should at all times during the investigation keep in mind that their work forms the basis for the public prosecutor to build a case against the perpetrator, i.e. the trafficker. Strict adherence to both procedural and substantive laws must be observed to avoid the case being thrown out of court on technical grounds. It is important to emphasize the primacy of the victims' rights to all investigating officers. As someone who has suffered gross violations to his or her human rights, a victim should be accorded all possible protection and assistance by law enforcement authorities. In this regard, law enforcement officers should be encouraged to identify and work with credible service providers who most likely have higher expertise in providing assistance to persons who have endured substantial suffering.

REFERENCES

Handbooks/Toolkits

- Organization for Security and Co-operation in Europe (OSCE)
Spillover Monitor Mission to Skopje
- 2005a *Training for Investigators into the Trafficking of Human Beings - Lesson 5: Proactive and Reactive Investigation into Trafficking.* OSCE, Skopje.
- 2005b *Training for Investigators into the Trafficking of Human Beings - Lesson 3: The Application of Intelligence Gathering in Organised Crime.* OSCE, Skopje.
- United Nations Office on Drugs and Crime (UNODC)
- 2005 *Global Programme on Trafficking in Persons Human Trafficking: Reference Guide for Canadian Law Enforcement.* UCFV Press, Canada.
- 2006a *Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Persons.* UN, New York.
- 2006b *Toolkit to Combat Trafficking in Persons,* Global Programme Against Trafficking in Human Beings, UN, New York.
- 2007 *Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation.* UNODC, New Delhi.
- 2009a *Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 2: Indicators of Trafficking in Persons.* UN, New York.
- 2009b *Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 3: Psychological Reactions of Victims of Trafficking in Persons.* UNODC and UNGIFT, New York.
- 2009c *Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 7: Crime Scene and Physical Evidence Examination in Trafficking in Persons Investigations.* UN, New York.
- International Organization for Migration (IOM)

- 2005 *A Counter Trafficking Handbook for Law Enforcement Officers in Southern Africa*, IOM, Pretoria.
- 2006a *The IOM Counter-Trafficking Training Module*.IOM, Washington DC.
- 2007a *The IOM Handbook on Direct Assistance to Victims of Trafficking*. IOM, Geneva.
- 2007b *Building the capacity of South African Civil Society to Combat trafficking in Persons. Training of trainers on combating Human Trafficking for South African Civil Society Organizations*. IOM, Pretoria.
- 2009 *IOM Data Protection Principles* IOM, Geneva.
- 2010 *Draft Handbook for Law Enforcement Officers on the operationalization of the Anti-Human Trafficking Act* Lusaka, Zambia
- 2011 *Draft Handbook for Law Enforcement Officers, Training of Trainers on the implementation of the Zambian Anti-Human Trafficking Act (NO.11 of 2008)* Lusaka, Zambia
- USAID
- 2007 *Framework and Comprehensive legislation to Combat Human Trafficking in Zambia, Development of an effective policy* Lusaka, Zambia

Reports

United Nations Children's Fund (UNICEF)

2006 *The State of the World's Children 2006: Excluded and Invisible*

[http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev\(1\).pdf](http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev(1).pdf)

US Department of State Office to Monitor and Combat Trafficking in Persons 2005 *Trafficking in Persons Report*
<http://www.state.gov/g/tip/rls/tiprpt/2005/46606.htm>

US Department of State Office to Monitor and Combat Trafficking in Persons, 2009 *Trafficking in Persons*

Report

<http://www.state.gov/g/tip/rls/tiprpt/2009/123126.htm>

US Department of State Office to Monitor and Combat Trafficking in Persons, 2010 *Trafficking in Persons Report*

<http://www.state.gov/g/tip/>

US Department of State Office to Monitor and Combat Trafficking in Persons, 2011 *Trafficking in Persons Report*

<http://www.state.gov/g/tip/>

International Labour Office (ILO)

2005 *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Geneva

United Nations Office on Drugs and Crime (UNODC)

2009 The United Nations Global Initiative to Fight Human Trafficking, UN GIFT B.P :006,The Vienna Forum to fight Human Trafficking, Austria Center Vienna, Background Paper,006 Workshop: Criminal Justice Responses to Human Trafficking

Save The Children

2002 Trafficking –a demand led problem: A multi country study Save the Children, Bridget Anderson, and Julia O'Connell Davidson Stockholm

Internet Sources

<http://www.state.gov/g/tip/>

<http://www.unodc.org/.../human-trafficking/what-is-human-trafficking.html>

<http://www.undp.ro/governance/Best%20Practice%20Manuals/user-Manual/01-Manual.html>(accesses 24-09-2009)

www.unodc.org/.../human-trafficking/what-is-human-trafficking.html

<https://www.infosecisland.com/.../15466-National-Security-Council-on-Transnational-Organized-Crime.html>

www.unodc.org/.../SOP_on_Investigation_of_Crimes_of_Trafficking_for_Commercial sexual exploitation

Legislation:

Penal Code CAP 87

Employment Act CAP 265

The Immigration and Deportation Act No. 18 Of 2010

Employment Act CAP 265.

International Instruments

The United Nations 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime

The United Nation 2000 Protocol To Prevent, Suppress and Punish The Trafficking In Persons, Especially Women And Children Supplementing U.N Convention on Transnational Organized Crime

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