STANDARD OPERATING PROCEDURES
FOR IDENTIFICATION AND ASSISTANCE TO VICTIMS OF TRAFFICKING IN PERSONS AND NATIONAL REFERRAL MECHANISM IN MALAWI
2019
TRAFFICKING IN PERSONS ACT

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2019

MINISTRY OF HOMELAND SECURITY
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FOREWORD

The government of Malawi enacted the Trafficking in persons Act (No. 3 of 2015) (TIP) to fulfill commitment and undertaking as a member state to the United Nations Convention against Transnational Organized Crimes and its protocols. The Act provide a comprehensive legislative framework for combating and preventing trafficking in persons using a human rights approach. The Act has appointed all police, immigration and labour Officers as enforcement officers with the mandate to identify and certified victims while Social Workers have been appointed as Protection Officers with the mandate to assist, care and protect the victims. This therefore requires adoption of very effective national system for coordination, communication and cooperation among all stakeholders and agencies.

The Standard Operation Procedure (SOPs) and National Referral Mechanism (NRM)s therefore provide law enforcement agencies and other stakeholders involved in the assistance of trafficking in persons victims with international standards, taking into consideration their basic human rights. The SOPs and NRM provide the minimum standard to which stakeholders ought to adhere whilst assisting Victims of Trafficking on a case-by-case basis and in accordance with section 8 of the Trafficking in Persons Act (No. 3 of 2015) (TIP).

The secretariat of the National Coordinating Committee Against Trafficking in Persons has prepared these standard operating procedures for identification and assistance to victims of trafficking in persons and national referral mechanism. They are intended to be easy to follow, and describe systematically the roles of different stakeholders and service providers. It is anticipated that users of these SOPs and NRM will be provided with clear guidance for the identification of trafficked persons. Furthermore, it is hoped that this guideline and referral mechanism will serve as a basis for multi-agency co-operation among law enforcement agencies, non-governmental organizations (NGOs) and other public institutions in identifying potential and presumed victims of trafficking in persons.

Through these SOPs and NRM, Law enforcement agencies and other front-line professionals will be provided with guidance on how to recognize potential and presumed victims based on agreed indicators, where to forward information on suspected traffickers and where to refer presumed victims.

Honourable Nicholas Dausi, MP
MINISTER OF HOMELAND SECURITY
ACKNOWLEDGEMENTS

The Standard Operating Procedure (SOPs) and National Referral Mechanism (NRM) was prepared by Ministry for Homeland Security and Malawi Human Rights Commission (MHRC) as a member of the National Coordination Committee against trafficking in persons in corroboration with governmental and Non-governmental Organization agencies.

The Ministry of Homeland Security wishes to express its sincere gratitude to various sectoral ministries including Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW); Ministry of Justice and Constitutional Affairs (MoJCA) and Ministry of Labour, Sports, Youth and Manpower Development (MoLSYMD).

The Ministry further extends its appreciations to the Malawi Human Rights Commission, Civil Society Organizations and individuals for their inputs towards these SOPs and NRM.

Appreciation should also extend to the National Stakeholder Consultation and Validation taskforce members who worked tirelessly in coordinating and developing these SOPs and NRM. Special thanks are also extended to the SOPs and NRMs drafting team which comprised of Chifundo Harawa Njolomole (MHRC) and Maxwell Matewere, National Programme Officer on Trafficking in Persons (UNODC).

Finally, thanks the UNODC and its Global Programme on Trafficking in Persons, as well as the Government of the United Kingdom (CSSF) for the technical and generous financial support toward the development of the SOPs and NRM.

Samuel Madula
SECRETARY FOR HOME AFFAIRS AND INTERNAL SECURITY
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<tr>
<th>ACRONYMS</th>
<th>Description</th>
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<tr>
<td>ACB</td>
<td>Anti-Corruption Bureau</td>
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<td>FBO</td>
<td>Faith-Based Organization</td>
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<td>CSO</td>
<td>Civil Society Organization</td>
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<tr>
<td>MoH</td>
<td>Ministry of Health</td>
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<td>MHRC</td>
<td>Malawi Human Rights Commission</td>
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<tr>
<td>NCCATIP</td>
<td>National Coordination Committee against Trafficking in Persons</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>SOP</td>
<td>Standard Operating Procedure</td>
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<td>TPR</td>
<td>Temporary Residence Permit</td>
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<td>TPR</td>
<td>Trafficking in Person Register</td>
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<td>TIP</td>
<td>Trafficking in Persons</td>
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<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<td>VOT</td>
<td>Victim of Trafficking</td>
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<tr>
<td>VRAF</td>
<td>Victim Referral Assistance Form</td>
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</tbody>
</table>
GLOSSARY

**Child:** A person below the age of eighteen years; **Committee:** National Coordination Committee against Trafficking In Persons

**Exploitation:** includes
- Forced labor or any extraction of work or services from a person;
- The forced participation of a person in all forms of commercial sexual activity such as prostitution, sexually explicit performance, or in the production of pornography;
- The removal of body parts or the extraction of organs or tissue;
- Any other practice in terms of which it cannot be said that the person participated willingly.

**Fund:** The Anti-Trafficking Fund

**Organized Criminal Group:** A group of two or more persons, existing for a period of time and acting in concert with the aim of committing an offence.

**Relative:**
- A parent, step parent, foster parent, grand parent, sibling, Guardian or any person who has legal custody over the child or to whom the child is a dependent; or
- At the time the offence is committed, a person who is living with the child as a member of that person’s family or was under the person’s family care and protection.

**Substantial Health Risk:**
- Infection with HIV, sexually transmitted disease or any other contagious or infectious disease.
- Any medical condition, occasioned as a result of the exploitation.

**Trafficked person:** A person or child who has suffered harm, including Mental and physical injury, emotional suffering, economic loss or substantial impairment of the persons fundamental human rights through acts.

**Trafficking In Persons:** Recruiting, transporting, transferring, harboring, receiving or obtaining a person, within or beyond the territory of Malawi through: threats or use of force or coercion, abduction, fraud or deception, abuse or threats of abuse of position of vulnerability, abuse or threats of abuse of the law or legal process; or giving or receiving of payments to obtain consent of a person having control of the trafficked person for the purpose of exploitation for that person.

1 Part 1, Section 2 of the Trafficking In Persons Act, 2015.
CHAPTER 1: INTRODUCTION

Standard Operating Procedures (SOPs) are envisioned as easy instruments of reference for systematic investigation of cases of human trafficking as well as providing necessary assistance to victims of the crime. These SOPs have been prepared in accordance with the Trafficking In Persons Act (TIPA) of 2015 pointing at assisting law enforcement officers and other stakeholders to respond and conduct professional investigation that strives towards: providing immediate and appropriate psychosocial and legal assistance; offering reintegration and after care assistance for victims and their families and increasing the efficiency of all stakeholders to protect victims of human trafficking.

These SOPs are also a guide for law enforcement officers, all stakeholders and relevant persons responsible for combating human trafficking on how to conduct their duties. The SOPs ensure that role players work in a cooperative and complementary manner and also complement the TIPA.

1.1 STRUCTURE OF THE SOPs

These SOPs have been designed with chapters, which contain the relevant information for actions to be taken by the law enforcers and other relevant stakeholders in providing assistance to victims of trafficking in persons.

These SOPs are divided into six chapters. Chapter 1 provides for the introduction and the structure of the SOPs; Chapter 2 defines trafficking in persons according to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2002 and the Malawi Trafficking in Persons Act of 2015, penalties for various acts of trafficking; Chapter 3 provides for procedures for identifying and interviewing victims of trafficking in persons; Chapter 4 provides for investigation and reporting the crime of trafficking in persons; Chapter 5 provides for Direct Assistance for Victims of Trafficking and Chapter 6 provides for National Referral Mechanism and Monitoring.
1.2. WHO ARE THESE SOPs MEANT FOR

The SOPs have been developed in an effort to ensure that investigating officers and relevant stakeholders have basic knowledge and understanding on the application of the Trafficking in Persons Act 2015. The SOPs are quick reference materials on the procedures for assisting victims of trafficking in persons. The SOPs also map out an effective way of referring victims of trafficking to services and defining the roles and functions of actors involved such as:

a. Malawi Police Service
b. Ministry responsible for Homeland Security
c. Ministry responsible for Social Welfare
d. Ministry responsible for Health
e. Ministry responsible for Labour
f. Ministry responsible for Justice
g. Ministry responsible for Foreign Affairs
h. Malawi Prison Service
i. The Immigration Department
j. The Legal Aid Department
k. The Judiciary
l. The Malawi Human Rights Commission
m. Civil Society Organizations
n. The Media
o. All Embassies
p. Anti-Corruption Bureau
q. Office of the Ombudsman
r. United Nation Agencies and
s. Faith Based Organizations

The Ministry of Homeland Security is the custodian of the Trafficking in Persons Act, 2015. The Ministry is the primary authority responsible to implement the law through all Labour, Immigration and Police Officers who are appointed as enforcement Officers under the trafficking in person Act (2015). It also houses the Secretariat of the National Coordinating Committee against Trafficking in Persons.

The Malawi Police Service is the main actor responsible for investigation of the crime of trafficking in persons as well as for the initial certification of victims as appointed law enforcement Officers.

The Immigration Department is the authority responsible for ensuring that the victims receive temporary resident permit and appropriate documentation to stay legally in the country as well as for the detection of possible victims at the ports of entry and referring these cases for investigation to the Malawi Police Department.
Social Welfare Department is the authority responsible for the provision of social services to the VoTs, including, but not limited to, shelters and psychosocial counseling. The social workers who are appointed as Protection Officers under the TIP Act are also responsible for the protection and security of victims.

Ministry of Labour plays a crucial role in identifying possible forms and potential victims of trafficking for forced labour, for example, through labour inspections.

Ministry of Foreign Affairs assists with coordinating international cooperation and communication with foreign countries (e.g. related to verification of the identity of foreign victims and repatriation).

The Ministry of Health is the body responsible for the provision of health services to the victims. Personnel of the Ministry, especially nurses and doctors, may come into contact with potential victims and be able to effectively identify them.

Legal Aid Bureau is responsible for the provision of legal aid to eligible and deserving persons who cannot afford the cost of private legal representation including Victims of Trafficking in Persons. The department derives its powers and responsibilities from the Legal Aid Act, Chapter 4:01 of the Laws of Malawi.

Civil Society Organizations may provide specified services and are equally bound by this SOP.

The Malawi Human Rights Commission (MHRC) can inquire into any written complaint from any person alleging a violation of human rights, review safeguards provided by enactments for the protection of human rights, recommend actions to alleviate factors that inhibit the full enjoyment of a person’s human rights, as well visit shelters and safe homes under the control of the State.

Broadly, the SOPs aim to provide guidance to the primary role players in provision of assistance to VoTs in a human rights-based manner. It maps out an effective way of referring VoTs to services and defining the roles and functions of actors involved. For a coordinated response to be effective, it is crucial that all coordination is done through the Secretariat of the Committee which is bestowed with a general coordination role by the Act.
CHAPTER 2: UNDERSTANDING TRAFFICKING IN PERSONS

2.1 DEFINITION OF TRAFFICKING IN PERSONS

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2002 (hereinafter referred to as the UN Protocol) supplementing the United Nations Convention Against Transnational Organized Crime, 2000 provides for a specific definition of trafficking in persons. This definition has also been domesticated into Malawian context as defined hereunder.

2.1.1. Trafficking in persons as defined under Article 3 of the UN Protocol, 2002

“Trafficking in Persons” means;
the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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”.

2.1.2. Trafficking in Persons Act, 2015

Section 2, under Part I of the Act, defines trafficking as: Recruiting, transporting, transferring, harbouring, receiving or obtaining a person, within or beyond the territorial boundaries of Malawi, by means of- Means “Any threat or use of force or other forms of coercion; abduction; fraud or deception; the abuse or threats of abuse of the law or legal process or any other form of abuse of position of vulnerability; or the giving or receiving of payments or benefits to obtain consent of the person having control of the trafficked person; for the purpose of exploitation”.

Purpose - i.e. Exploitation. The Act defines exploitation to include:

a. Sexual exploitation;
b. Servitude;
c. Forced labour;
d. Child labour; and,
e. The removal of body parts or the extraction of organs or tissue;
f. Any other practice in terms of which cannot be said that the person participated willingly.
Two particular types of exploitation deserve special mention in the context of Malawi i.e. child labour and sexual exploitation.

Article 3 (a) and (d)² describe the worst forms of child labour as all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict. Furthermore, work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

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 development.

According to Section 22³, it states that no person between the age of fourteen and eighteen years shall work or be employed in any occupation or activity that is likely to be—
(a) harmful to the health, safely, education, morals or development of such a person; or
(b) prejudicial to his attendance at school or any other vocational or training programme.

**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 circumstances within which the child is exploited.

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” In addition, the Act defines it as “the forced participation of a person in all forms of commercial sexual activity such as prostitution, sexually –explicit performance, or in the production of pornography⁴. However, prostitution alone is not sexual exploitation for purposes of the Act, if it does not meet the requirements of ‘act’ and ‘means’ discussed below.
2.2 ELEMENTS OF TRAFFICKING

It is evident that there are three elements of human trafficking namely; Act, Means and Purpose on the basis of the definition given in Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2002.

The Act (What is done)
Recruitment, transportation, transfer, harbouring or receipt of persons

The Means (How it is done)
Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim

The Purpose (Why it is done)
For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.
ELEMENTS OF TRAFFICKING

**ACTS**
Recruitment, Transportation, Transfer, Harboring or Receipt

**MEANS**
Threat, Use of Force, Abduction, Fraud, Deception or Taking Advantage of the Vulnerability

**PURPOSE**
Exploitation ( Forced Labor, Slavery, Servitude, etc.)
2.3 BASIC PRINCIPLES

Based on a human rights paradigm, these SOPs underscore the following principles in the response to trafficking in persons:

a. Human Rights Approach
Trafficking in persons is a grave violation of human rights, which requires a “rights-based approach” to ensure that victims are assisted and perpetrators are punished. Officials who deal with the victims should be empathetic and understand the issues from the perspective of the victim. Decision making on and about the victim should be from the paradigm of the “best interest of the victim”. The victim has a right to be protected, consulted and informed of all actions being taken on his/her behalf.

b. Victim Friendly Procedures
Response to trafficking in persons needs to be victim - centered. Any action being initiated by the law enforcement agencies and other relevant stakeholders should keep the victim as the focal point. This requires that:
   i. Victim is aware that she/he is a victim of a crime and is being assisted by law enforcers and other service providers;
   ii. Victim is not arrested, the exposure to police and stay at police station should be minimal, based on the principle of non-criminalization of victims;
   iii. Victim is extended with all necessary help and assistance.
   iv. Victim is consulted, informed and empowered as much as possible.

c. Multi-Disciplinary Approach
Response to trafficking requires simultaneous attention by various agencies mandated to carry out the diverse tasks. Therefore, law enforcement agencies need to coordinate themselves along with other stakeholders such as Social Welfare, Civil Society Organizations (CSOs), Malawi Human Rights Commission (MHRC), media, government hospitals and others.

d. Child Rights Approach
Though the victim could be any person, a large number of trafficked victims are children. They are more vulnerable and therefore, subject to extreme violations during and after trafficking. Improper response can aggravate the harm caused to them. Therefore, any assistance and response provided has to be child rights oriented (refer to Guidelines on interviewing children).
e. Gender Based Approach
Women and girls are more vulnerable than men because of patriarchal society, where they often face structural discriminations. They are also more exposed to harmful practices, sexual violence and gender-specific abuses, such as sexual harassment. They therefore need special care and protection. Hence, gender sensitivity is an essential requirement in addressing trafficking in persons. The procedures and steps undertaken by the responders should conform to gender equality and equity.

f. Organized Crime Approach
 Trafficking is an organized crime both within and beyond the country’s boundaries and is multidimensional in nature, because:

i. It involves in itself the elements of several crimes, such as selling, buying, physical and sexual abuse, harassment, wrongful confinement, kidnapping and abduction, assault, threat, bonded labour, child labour, cruelty to children, etc;

ii. The scene of crime extends through the source, transit and destination areas and is thus a continuing offence, starting with recruitment and procurement and continuing until the victim is rescued;

iii. It involves abuses and abusers, who are networked and organized.

2.4 BURDEN OF PROOF
On human trafficking cases, the burden of proof lies in the hands of the prosecution to prove for example that the accused person lived with the victim, was habitually in the company of the victim and had knowledge about the whereabouts of the trafficked person.

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5 Trafficking In Persons Act, 2015; Section 36 (a, b, c)
## 2.5 PENALTIES FOR TRAFFICKING IN PERSONS

Below are the penalties for Trafficking in Persons offences:

<table>
<thead>
<tr>
<th>Section In the Act</th>
<th>Offence</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 (1)</td>
<td>Trafficking in Persons</td>
<td>14 years without the option of a fine</td>
</tr>
<tr>
<td>15 (1)</td>
<td>Trafficking in Children</td>
<td>21 years without the option of a fine</td>
</tr>
<tr>
<td>16 (1) [a]</td>
<td>The judicial processes of adoption, fosterage, guardianship or wardship used to recruit a child</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>16 (1) [b]</td>
<td>The accused being a relative of the trafficked person</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>16 (1) [c]</td>
<td>The trafficked person being of unsound mind</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>16 (1) [d]</td>
<td>The offence being committed by an organized criminal group</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>16 (1) [e]</td>
<td>Offence committed by a public servant, a religious leader, a traditional leader or any person acting in an official capacity in the exercise of his duties</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>16 (1) [f]</td>
<td>Purporting to act in the exercise of an official duty whereby such official acts in abuse of authority or moral ascendancy</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>16 (1) [g]</td>
<td>The offence being committed for the purpose of removing body parts or extracting, tissue or organs</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>16 (1) [h]</td>
<td>As a consequence of the commission of the offence the trafficked person:</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td></td>
<td>i. Dies</td>
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<td></td>
<td>ii. Develops a medical condition</td>
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<td></td>
<td>iii. Becomes pregnant or is forced to terminate a pregnancy</td>
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<td></td>
<td>iv. Suffers mutilation, disfigurement or permanent bodily injury</td>
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<td></td>
<td>v. Is exposed to any other substantial health risk.</td>
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<tr>
<td>Section in the Act</td>
<td>Offence</td>
<td>Penalties</td>
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<tr>
<td>18</td>
<td>Prohibition against working with children for a convicted person of the</td>
<td>7 years of not working with children</td>
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<tr>
<td></td>
<td>offence of trafficking in persons or trafficking in children</td>
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<tr>
<td>19</td>
<td>Offence of trafficking in persons or trafficking in children being</td>
<td>Closure of the Organization</td>
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<td></td>
<td>committed by a person acting in an official capacity for a non-</td>
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<td></td>
<td>governmental organization or any other body</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Benefiting from exploitation of trafficked persons</td>
<td>5 years Imprisonment</td>
</tr>
<tr>
<td>21 (1) [a, b, c,</td>
<td>Attempts, aiding or abetting to commit an offence</td>
<td>Convicted with the actual commission of the</td>
</tr>
<tr>
<td></td>
<td>d, e]</td>
<td>offence</td>
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<tr>
<td>22 (2)</td>
<td>Failure to report to police on any suspected trafficking in persons</td>
<td>Fine of K500,000 or 1 year Imprisonment</td>
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<td></td>
<td>activity</td>
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<tr>
<td>24 (1, 2, 3)</td>
<td>Carrier Liability for International transporters</td>
<td>Fine of K5,000,000 or 5 years Imprisonment</td>
</tr>
<tr>
<td>25 (a, b, c, d, e, f)</td>
<td>Other acts that promote or facilitates trafficking in persons</td>
<td>14 years Imprisonment</td>
</tr>
<tr>
<td>32 (a)</td>
<td>Breaking, tampering with, damages or alters the sealed premises</td>
<td>Fine of K1,000,000 or 2 years imprisonment</td>
</tr>
<tr>
<td>32 (c)</td>
<td>Attempts, Aids or abets in breaking, tampering with, damaging or altering</td>
<td>Fine of K1,000,000 or 2 years imprisonment</td>
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<td></td>
<td>the seal</td>
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<td>35 (3)</td>
<td>Obstructing an enforcement officer to access electronic data</td>
<td>Fine of K1,000,000 or 2 years imprisonment</td>
</tr>
<tr>
<td>41</td>
<td>Obstructing, impeding, interfering with or fails to comply with a</td>
<td>5 years Imprisonment</td>
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<tr>
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<td>lawful demand of an enforcement officer in the performance of powers</td>
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<td>conferred under this Act</td>
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<td>45 (4)</td>
<td>Operating a shelter illegally</td>
<td>Fine of K5,000,000 or 5 years Imprisonment</td>
</tr>
<tr>
<td>46 (1a, b; 2 &amp; 3)</td>
<td>Disclosure of victim, information to public media</td>
<td>Fine of K1,000,000 or 2 years Imprisonment</td>
</tr>
<tr>
<td>47 (a), (b) i, ii,</td>
<td>Allowing any unauthorized person to gain access to any witness, trafficked</td>
<td>7 years without an option of fine</td>
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<td></td>
<td>person or child and disclosure</td>
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CHAPTER 3: IDENTIFICATION OF VICTIMS OF TRAFFICKING IN PERSONS

Trafficking in persons establishes a grave violation 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.

A vital step to providing victim protection is determining whether an individual is in fact a victim of trafficking in persons. 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.

3.1 IDENTIFICATION
Identification can be done by integrated evaluation of the information gained through observation of indicators, screening and interviewing.

3.2 OBSERVATION OF INDICATORS
The indicators are the signs that can be read by interpretation of observations, facts, statements and other information acquired concerning a person. Indicators in trafficking cases vary from case to case. They do not constitute a proof in themselves and need to be corroborated.

AGE: The older the individual is, generally, the less likely it is that the case involves human trafficking. Sexual exploitation is still the principal purpose for TIP, 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 s/he may be in conditions of arduous labour.

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. Whether a person is male or female is not so strong an indicator in respect of trafficking for labour exploitation, servitude or organ removal, as both sexes appear to be equally susceptible to these forms of trafficking.
ETHNICITY/NATIONALITY: The supply chain of victims relies on the exploitation of a combination of factors, including poverty, discrimination and lack of opportunity. However, it is possible that specific ethnic minorities may be vulnerable/targeted for trafficking. ‘Pull’ factors play an important role in local and regional patterns, i.e. rural to city – the “bright light” syndrome.

DOCUMENTATION: In the context of transnational trafficking cases, identity and travel documentation is often seized from victims of trafficking, as part of the control mechanisms of the traffickers and victims will not normally be in possession of their identity and travel documents.

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, and places of labour exploitation such as commercial kitchens, agricultural, industrial and commercial business sites, private homes and private islands can 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’, or identification and rescue by non-governmental organizations (NGOs) and CSOs, will simplify the screening process.

SIGNS/EVIDENCE OF ABUSE: Any signs of physical injury to the individual can be a positive indicator of human trafficking. Victims are subjected to physical and psychological abuses by their traffickers and clients. Other signs of abuse include deep fear, withdrawal, intimidation when talking to law enforcement officials and support services, memory loss and other signs of trauma.

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 a CSO, 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.

The UNODC ToolKit to Combat Trafficking in Persons has compiled some general ‘tell-tale signs’ to look out for in identifying cases of trafficking in persons. It is relevant to note that these tell-tale signs should raise suspicion that a case of trafficking in persons may be at hand, although suspicion alone is not conclusive. A thorough investigation must be conducted to confirm whether or not there truly is a case of trafficking in persons.
COMMON INDICATORS OF TRAFFICKING IN PERSONS

The following are common indicators which are experienced by victims of TIP:

The person
a. Is made to work against his/her will;
b. Is unable to freely leave the work environment;
c. Is unfamiliar with the local language/culture where he/she is working;
d. Does not know his/her residential address;
e. Is forced to work under inhumane conditions (often exploitative), has no or only partial access to her earnings; and
f. Works excessively long hours over long periods without compensation, does not have any days off.

Common Indicators of Child Trafficking

Child trafficking cases that have been encountered in Malawi are characterized by some of the following indicators:

a. No or limited access to his/her parents or guardians;
b. Travels unaccompanied, depending on age;
c. Travels in groups with persons who are not relatives without formal documentation signed by parents or guardians;
d. Is unable to speak fluently in the local language;
e. No friends of his/her own age elsewhere, except in his/her area of work;
f. Is engaged in work that is not suitable for children;
g. Performs works of a certain nature (e.g. begging on the streets);
h. No time for play;
i. Lives apart from other children in an unhealthy environment, with sub-standard accommodation;
j. Looks intimidated and behaves in a way that does not correspond with behaviour typical of children his/her age;
k. Is given only leftovers to eat;
l. Has a scar/s or injuries on his/her body suggestive of abuse; and
m. Is a victim of child marriage?

3.3 CASE MANAGEMENT PROCEDURE

SCREENING OF VICTIMS

Purpose of screening in this context is to establish rapport with the individual and also determine whether the person is a victim of trafficking or not.
Although the individual might be confused, scared and/or distracted, engaging in casual conversation before the screening helps to build trust and set the tone for effective, non-defensive communication.

The initial screening and certification of a client as victim of trafficking are done by the appointed Enforcement Officers.

The Officer refers the victim to the Social Worker (Protection Officer) who screens the victim using screening forms\(^7\) as certified by the police to determine needs and required services.

Listed below are general tips for conducting screening with a potential victim of trafficking in persons:

a. In the initial screening, try to focus predominantly on a determination of his/her service needs, if applicable, but incorporate other questions naturally and when appropriate;

b. Keep in mind that many victims do not self-identify as “trafficking in persons victims” due to lack of knowledge about the crime itself, the power and control dynamics involved in trafficking in persons;

c. Be conscious of the fact that an individual in a trafficking situation has typically been conditioned by their traffickers not to trust law enforcement and/or service providers;

d. Be aware of power dynamics when a third party is accompanying or interpreting for a potential victim. Try to speak to the potential victim alone or secure an outside interpreter;

e. Be aware that canned stories are common and that the true story may not emerge until trust has been built with the potential victims after multiple meetings;

f. Each individual is going to tell his/her story differently and no individual will present all of the elements of his or her trafficking situation in a neat package;

g. It is imperative that the screener remains flexible and prioritizes the individual’s needs and safety as the primary reason for the screening.

**Ask the person the following questions:**

i. Did the person move out of his/her community because he/she was:

a) Offered an opportunity to improve his/her family’s condition of life?
   YES / NO

b) Forced to leave his/her community against his/her will?
   YES / NO

c) Told lies about the place or nature of work he/she was going to do?
   YES / NO

\(^7\) Trafficking In Persons Act, 2015; Section 44 (b)
d. Was the person exploited and not able to leave the situation of exploitation?
   YES/NO

e. Was freedom of movement denied?
   YES/NO

a. Did s/he know his/her whereabouts or How to get back to his/her home?
   YES/NO

ii. If both answers are YES, please inform the person that what happened to him/her is
called trafficking in persons and that you would like to interview him/her to understand
the situation better in order to help him/her. If both answers are NO, refer the client for
appropriate assistance

3.4 INTERVIEWING VICTIMS

This process follows soon after the screening and when the victim has given consent to be
interviewed. Use the special victim interview form as prescribed in the Regulations. The
overarching principle in any interview of victims and witnesses is the Do No Harm principle, which
should guide the actions of any stakeholder involved in interviews (also in the pre and post
interview phases). This process involves the following phases:

a. Pre-Interview Phase

This is a preparatory phase. The following actions should be undertaken when preparing to
interview a suspected victim of trafficking in persons:

i. Separate suspected victim(s) from suspected traffickers/smuggler(s);

ii. Separate suspected victims from other suspected victims;

iii. Build trust with suspected victims;

iv. Do not immediately deport/deny entry to suspected victims;

v. Do not charge suspected victims with crimes;

vi. Consult and obtain the victim’s informed consent;

vii. Respect individuality and the different needs, concerns and wishes of the victims;

viii. Protect victims’ identities;

ix. Consult with the victim of trafficking on the convenient date and time of interview before
    the interview is scheduled and build rapport;

x. Ensure the safety of both the interviewer and victim of trafficking;

xi. Interviews should be in a language easily understood by the victim of trafficking;

xii. Ensure that an interpreter from within the system is present, including for those who need
     sign language;

xiv. Ensure that interviews are conducted privately and in a victim-friendly and accessible
    environment, with no interruptions from mobile phones, pictures/filming, or third parties;

xv. Ensure that the interviewee understands the purpose of the interview;

xvi. Ensure that the cultural/religious values of the victim of trafficking are not
     infringed upon by the interviewer;
xvii. Be prepared for emergency intervention in case there will raise a need to provide the victims with basic necessities like food, water, clothing, medicine, and shelter as may be required;

xix. Explain that he/she does not intend to cause harm to the suspected victim but to help him/her, without making false promises, as best practice, explain possible options available to the individual.

b. **Introduction phase**

Before starting an interview ask yourself the following:

i. Whether you are capable of conducting a good interview;

ii. Whether you need guidance from an expert in advance;

iii. Whether you ought to refer the person to other individuals who can conduct the interview;

iv. If the person is thought to be under age, notify the Department of Social Welfare and other institutions;

v. Explain to the victim who you are, the purpose of the interview and his/her rights and obligations, especially the right to confidentiality and the right not to answer any question should he/she feel uncomfortable;

vi. Ensure that the victim is comfortable and that there are no obstacles to the interview.

**When conducting an interview:**

i. Take a full account of occurrence from the victim (i.e. allow the person to tell his or her story). Use an interview form to document the information provided;

ii. Mention to the victim of trafficking the likelihood of involving law enforcement and the risks associated with reporting the crime, including possible threats from the trafficker;

iii. Give the victim of trafficking in persons an opportunity to make an informed decision once all the risks have been assessed.

iv. Show empathy, respect, understanding, and take time as this might be a painful process for the victims;

v. Beware of re-traumatization and do not ask unnecessary questions or do not cause harm by insisting on some aspects if the victim shows signs of distress.

vi. Only leave the victims at the end of the interview if he or she is in a quiet state of mind.

c. **Post-interview phase**

This is a stage for making decision and determination of future procedures on the basis of information collected during the interview. The interviewer should endeavor to corroborate the victim’s story as this information could be helpful during investigations at a later stage.

**Guidelines for Interviewing Children**

The following guidelines are recommended when interviewing children:
i. Notify the child the aim and importance of the interview;
ii. 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 sex;
iii. Create an interview space that is child friendly environment, possibly containing toys, books or games. This may not always be possible due to resource constraints but due efforts must be made; 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);
iv. Keep the atmosphere simple and informal. Communicate with children at their eye level;
v. Use appropriate and child-friendly language (pick up the terms that the child uses);
vi. Explain to the child that referrals will be done to the right people who can handle e.g. cases of rape / defilement.

vii. Explain things in a manner that the child can understand. Questions should be adapted depending on the age and mental capacity of the child;
viii. Begin with open-ended questions, allowing the child to give their own account. Avoid leading questions, for example “did the person abuse you?”;
ix. 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;
x. Interviews should take place in the presence of a parent, guardian, or a trained social worker or psychologist;
xi. 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.

3.5 **RIGHT TO PROTECTION**

The Trafficking in Person Act is not only important for the prosecution of traffickers, but is also a valuable mechanism for realizing the victims’ rights. Section 45 of The Act provides for all victims of human trafficking to receive protective services such as safe shelter. In Malawi, the provisions of Part VI of the Act govern protection of victims. The Act in Sections 46 and 47 provide for all victims of human trafficking protection and penalties for disclosing information to the public media.

In addition, Section 48 of the Act provides that “a witness who reasonably believes that his or her safety of any member of his family, is or may be threatened... report such to the investigation officer, Officer In-charge Police or Prison, and Director of Public Prosecution but also apply to the court requesting that the application or any family member be placed under protection.”

The employers who recruit tenants and laborers should be sourcing a letter from the District Commissioner when employing people from the District and another letter from the District of destination.
COMPENSATION AND RESTITUTION

Human trafficking has a devastating impact on individual victims, who often suffer physical, sexual and emotional abuse, loss of property and even death.

In Malawi, the law empowers the courts with the authority to order convicted human traffickers to pay restitution to victims of human trafficking (Section 40 ©). 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. Section 51 (c) of Trafficking In Persons Act (2015) established Anti-Trafficking Fund which stipulates that it shall consist of such amount of money as may be realized from proceeds of confiscation, seizure, or sale of property connected with trafficking in persons after conviction of the offence committed.
CHAPTER 4: INVESTIGATION OF TRAFFICKING IN PERSONS CASES

Investigations of human trafficking networks and offences can be complex, particularly given that they must often be conducted across borders. Ensuring effective cooperation between law enforcement agencies in different States must therefore be part of any strategy to address the problem of human trafficking.

4.1 SOURCES OF INFORMATION

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.

The following sources can also provide valuable information for TIP Investigations:

a. Reports from border officials and non-governmental organizations may also be easily accessed and put to good use;

b. The UNODC SADC Statistical report, GLOTIP and 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;

c. 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. 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 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;

d. 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;

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12 IOM Handbook for Law Enforcement Officers, Training of Trainers on the implementation of the Zambia Anti-Human Trafficking Act (NO.11 of 2008), 21-23

13 Police Development Unit of OSCE Specialized Training on Trafficking: Lesson 7 9
e. Informants, usually someone who is closely connected to a criminal enterprise or directly involved in one, but is cooperating with law enforcement officials. An informant may or may not be reliable and consequently, the accuracy of his/her report should always be critically assessed;

f. Physical and photographic surveillance, along with the use of undercover operatives, is a very reliable yet tricky source of information. While such information is excellent, investigators should ensure that they observe all legal requirements prior to engaging in their surveillance techniques;

g. Perpetrators of other crimes who are known to the police, suspects or persons under custody may volunteer important pieces of information. 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 those of informants. Some may attempt to ‘plea bargain’ discussion of which should be handled only by the prosecution and not police officers.

h. 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 victim;

i. 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.

j. The media report can also be a best tool for source of information.

k. Members of Community Policing also due to the nature of their work, they can be tipped of possible human traffickers.

l. Labour Officers when conducting labour inspections, can also come across with VoTs.

m. CSOs can also be another vital source of information.

n. Social media (Facebook, LinkedIn, etc.) are increasingly valuable to collect information.

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. Expeditious 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.

4.2 FORFEITURE OF PROCEEDS
In Malawi, Section 37 of TIPA orders that “Where an arrested person is convicted of an offence, an enforcement officer shall apply to court for an order to confiscate and disposal of the convicted
person’s assets and properties acquired, obtained or associated with the offence. 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.
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.

4.3 IMMIGRATION AND BORDER CONTROL

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. 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.

In order to offer effective immigration and border control mechanism, Section 9 (e) of TIPA states
that “Is granted a temporary residence permit pending completion of any matter before court or
tribunal in Malawi.” Therefore, issuing of Temporary Residence Permit (TRP) to VoT which is valid
for 6 months should be strictly followed. If the Social Welfare has finished helping the victim
within 6 months, the VoT should be sent back to Immigration Office for Repatriation. However, if
the 6 months have ended but not yet done with the processes of investigation and recovery, the
Social Welfare should still report to Immigration department for extension of the TRP.

The Immigration Department can ensure that all foreigners are undergoing health screening
exercise. Section 4 (1) states that “Any examination or test required by an immigration officer
under section 13 of the Act may be conducted on any train, vessel, aircraft, vehicle or other
conveyance or at any other place which such officer considers to be convenient for the purpose,
and if necessary, affords sufficient privacy.”

The Immigration Officer and Border Control Officers 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. The Immigration officer and Border Control 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.

The Immigration Department should be conducting screening of applicants before issuing of
Express Passports. The things to be screened are age, Sex and aims of having an Express Passport.

The Labour Officers and Immigration Officers to be conducting labour inspections together.
CHAPTER 5: DIRECT ASSISTANCE FOR VICTIMS OF TRAFFICKING

5.1 ASSESSMENT OF THE ASSISTANCE NEEDS

The procedure for provision of urgent basic needs
What are urgent basic needs? These are immediate physical, medical, psycho-social and other assistance provided to victims of trafficking to facilitate their recovery and empowerment.

The following basic needs should be met first:
a. Food
b. Water
c. Toilet and basic hygiene
d. Clean clothing
e. Rest
f. Safety
g. Some privacy Shelter
h. Legal assistance
i. Urgent medical and psychological care
j. Other emergency care

This assistance should be provided to all victims of human trafficking without discrimination. Individuals who refuse assistance should be provided with information and contact details for support services in case they decide to seek assistance at a later stage.

When are urgent basic needs provided?
Urgent basic needs are provided immediately after the victim has been provided with information on the steps to be taken in the rendering of assistance as detailed in previous sections. However, sometimes victims may be found in a bad physical or psychological state and urgent basic needs must be provided even before initial screening and provision of information.

Who provides urgent basic needs?
The Protection Officer provides urgent basic needs in consultation with the relevant stakeholders depending on the nature of the service required. These stakeholders include social workers and non-governmental organisations for shelter and other social assistance, health service providers for medical assistance, and, when the victim is not a national of Malawi, immigration officials for regularization of the victim’s status in the country and prevention of summary deportation.
regularization of the victim’s status in the country and prevention of summary deportation.

**How are urgent basic needs provided?**
The Protection Officer is required to place a victim of trafficking in a place of refuge with sufficient safety and security standards to protect the victim from threats and recriminations from the traffickers. The victim must be provided with food and clothing to facilitate a dignified existence.

Victims must be taken to hospital for a medical assessment in order to verify and attend to any urgent health needs requiring immediate attention. Where the victim is not a citizen of Malawi, the Protection Officer must verify their legal status in the country, and where required, consult the Department of Immigration on the issuance of a relevant permit in order to regularize the presence of the victim in the country.

It is critical to meet urgent basic needs because during the process of trafficking victims may suffer one or more of the following:

a. Bodily harm such as bruises and broken limbs;
b. Infectious diseases, including sexually transmitted diseases and HIV/AIDS;
c. Low self-esteem;
d. Depression;
e. Post Traumatic Stress Disorder and related psychological issues;
f. Malnutrition;
g. Lack of adequate clothing;
h. Fear, insecurity and anxiety;
i. Mistrust of self and others;
j. Shame;
k. Lack of shelter or appropriate accommodation;
l. Alcohol, drugs and substance abuse.
CHAPTER 6: NATIONAL REFERRAL MECHANISM AND MONITORING

6.1 NATIONAL REFERRAL MECHANISM

The National Referral Mechanism (NRM) is a collaborative framework for identifying victims of human trafficking through which the government fulfills its obligations to protect and safeguard the rights of these victims by ensuring that they receive appropriate care.

A lot of stakeholders may be involved in a trafficking case such as the Labour Office, the Immigration Department, the police, Social Welfare, Malawi Human Rights Commission, local authorities, CSOs and Faith Based Organizations. The NRM makes it easier for these stakeholders to work closely, share information and facilitate access to basic needs to the victims of trafficking.

The general principle of the NRM is to ensure that every victim of trafficking is effectively rehabilitated and reintegrated by empowering, supporting and protecting them.

The basic principles of the NRM are:

1. Human Rights Approach – the rights of the victims shall be respected and protected at all times and decisions to be in the best interest of the victim;
2. All services are to be provided within a victim-centered approach based on discussions with the victim and other relevant stakeholders;
3. Multi-Disciplinary Approach – the stakeholders to work simultaneously in providing assistance to the victims of trafficking in persons;
4. Child Rights Approach - where children are involved, the best interest of the child shall be the overriding factor.
5. The principles of confidentiality and non-discrimination shall apply at all times;
6. Integrity and Professionalism - cooperation with law enforcement shall not constitute a condition for providing assistance and
7. Gender Based Approach - responsiveness in all programming are to be gender sensitive.

The NRM also define the roles and responsibilities of the NRM partners, and the programs and services that should be available to the victims of trafficking in persons. The NRM is designed to enhance service delivery to Tps.

The key elements of an NRM include: Identification Stage, Immediate Needs, Mid/Long term needs, Repatriation and Reintegration regularization of the victim’s status in the country and prevention of summary deportation.
6.2 COORDINATION OF THE REFERRAL MECHANISM

Coordination and Management
The TIP Act Sections 8 and 9 mandate the NCCATIP to coordinate all the activities in the fight against human trafficking and all interventions in response to human trafficking in Malawi. In accordance to Section 5 of TIP Act, the Committee is comprised of the Secretaries from Homeland Security, Ministry of Justice and Ministry of Gender; Inspector General of Police; Chief Immigration Officer; Executive Secretary for MHRC, representative from FBOs and CSOs which deals with issues of trafficking in persons.

Government
The Government through its different departments shall engage in support services including rescue, referral, provision of security, legal, awareness raising, advocacy, family tracing and reunion, victim referral, psycho-social support, rehabilitation, sheltering, health care, literacy and education, vocational and economic skills building.

At the national level, government through the NCCATIP shall be involved in policy formulation and making budgetary provisions that will enable implementation of the TIP activities.

Civil Society Organizations and Faith Based Organizations
These include NGOs at the grassroots relevant to providing assistance to victims of TIP. These government partners shall inform and refer victims of TIP to law enforcement officers and other service providers in all the districts in Malawi.

These CSOs and FBOs shall provide services which include; rescue, referral, legal support, awareness raising, advocacy, family tracing and reunion, victim referral, psycho-social support, rehabilitation, prevention, sheltering, health care, literacy and education, vocational and economic skills building.
6.3 Below is the National Referral Mechanism in summary.

<table>
<thead>
<tr>
<th>Assistance Stage (What)</th>
<th>When</th>
<th>Actors (Who)</th>
<th>Procedure (How)</th>
<th>Consideration</th>
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<tr>
<td><strong>IDENTIFICATION STAGE</strong></td>
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<tr>
<td>Initial Referral</td>
<td>Promptly after report of identification of victim</td>
<td>Police, in consultation with Social Welfare</td>
<td>Complete police intake form and open file in specially designated Trafficking in person Register (TPR) Preliminary information collected by the Police Refer to Social Welfare – complete Victim Referral Assistance Form (VRAF) and forward to Social Welfare indicating action required If appropriate, take written statement (in the presence of a person designated by the Director of Social Welfare if victim is a child or a woman (if necessary in the case of a woman)</td>
<td>Due consideration to safety, privacy and security of trafficked person Due consideration to health condition of trafficked person, including signs of posttraumatic stress disorder Victim may be unwilling or unable to fully cooperate at this stage and must not be forced to recount details of their trafficking experience at this stage if they are not ready to</td>
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<td><strong>IDENTIFICATION STAGE</strong></td>
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<td>Provision of information to the victim (Information as to rights and obligations, services, protection systems, next steps)</td>
<td>Immediately on referral to Social Welfare</td>
<td>Social Welfare CSOs</td>
<td>To be communicated verbally &amp; Standardized information sheet to be provided to victim</td>
<td>Information to be provided - In clear, professional, yet sympathetic manner</td>
</tr>
<tr>
<td>Risk assessment: assess any risks that pose threat to the victim (external and internal threats) or to the support personnel providing services to the victim</td>
<td>Immediately on referral to Social Welfare</td>
<td>Investigating Officer and Social Welfare Officer in consultation with: Prosecutor &amp; CSOs</td>
<td>Based on level of risk, a risk management plan should be developed</td>
<td>Using simple language, and where foreign victim speaks different language, with the assistance of a vetted interpreter</td>
</tr>
<tr>
<td>Reflection and recovery</td>
<td>For 180 days after placement in designated shelter</td>
<td>Social Welfare Officer, in consultation with CSOs</td>
<td>Secure placement in shelter for 180 days Provide counselling and any other support as necessary</td>
<td>The risk management plan should be continuously reviewed Clear information to victim on aims, duration, benefit and restrictions No deportation of victim No interrogation of victim</td>
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</table>
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<td>Interview</td>
<td>During or on expiry of reflection and recovery period.</td>
<td>Investigating Officer, Social Welfare in consultation with relevant partners</td>
<td>Use the screening interview form to establish trafficking; look into any corroborative evidence before reaching a decision.</td>
<td>Victim’s decision to cooperate with law enforcement to be taken afterwards</td>
</tr>
<tr>
<td>Post Identification information sharing</td>
<td>After determination of status as victim</td>
<td>Social Welfare &amp; relevant partners</td>
<td>As necessary verbally or in writing, in clear and simple language</td>
<td>Beware of the state of the victims physical and psychological needs; this is not an interrogation; Do No Harm principle; children should be interviewed by specially trained personnel</td>
</tr>
<tr>
<td>IMMEDIATE NEEDS</td>
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</tr>
<tr>
<td>Immediate needs (Attend to urgent needs including shelter, food, water, clean clothing, urgent medical and psychological care, rest, other emergency)</td>
<td>Immediately after the provision of information (at the initial referral stage) Within 24 hours of receiving report of</td>
<td>Social worker, in consultation with: Relevant partners Ministry of Health Police in consultation with other law enforcement</td>
<td>Organise placement in designated shelter &amp; Contact designated focal person (as per Directory of Service Providers) to facilitate urgent provision of other services</td>
<td>Close cooperation between investigation and prosecution</td>
</tr>
<tr>
<td>Assistance Stage (What)</td>
<td>When</td>
<td>Actors (Who)</td>
<td>Procedure (How)</td>
<td>Consideration</td>
</tr>
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<td>-------------------------</td>
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<tr>
<td><strong>IMMEDIATE NEEDS</strong></td>
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<tr>
<td>Investigation</td>
<td>Within 24 hours of receiving report of suspected TiP case</td>
<td>Police in consultation with other law enforcement agencies, e.g. Immigration, Malawi Human Rights Commission, Labour Department as well as international partners</td>
<td>Plan and conduct a rescue operation if needed Identify possible victims and perpetrators and separate them Collect evidence during rescue or immediately thereafter Interview the suspects Examine the modus operandi of the crime Collate evidence from other jurisdictions</td>
<td>Close cooperation between investigation and prosecution</td>
</tr>
<tr>
<td><strong>MID/LONG TERM NEEDS</strong></td>
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<tr>
<td>Victim needs assessment (Assessment aimed at ascertaining holistically the social, psychological, physiological)</td>
<td>As soon as possible after attending to urgent needs</td>
<td>Investigating Officer and Social worker in consultation with relevant partners</td>
<td>The Investigating Officer and Social worker will convene a case conference with other partners</td>
<td>Confidentiality and ethical considerations</td>
</tr>
</tbody>
</table>
### 6.3 Below is the National Referral Mechanism in summary.

<table>
<thead>
<tr>
<th>Assistance Stage (What)</th>
<th>When</th>
<th>Actors (Who)</th>
<th>Procedure (How)</th>
<th>Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MID/LONG TERM NEEDS</strong></td>
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<td></td>
<td>Based on the outcome of this case conference, a care and safety plan will be agreed upon and implemented by the parties involved</td>
<td></td>
</tr>
<tr>
<td>Court preparation</td>
<td>At close of investigation if victim has agreed to cooperate with prosecution</td>
<td>Investigating Officer and Social Welfare (if the victim is a child)</td>
<td>Provide information about court process</td>
<td>Investigating Officer to apply for treatment of the victim as a vulnerable witness</td>
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<td></td>
<td>Help victim prepare for court proceedings</td>
<td>Protection of witness from re-victimization</td>
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<td></td>
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<td></td>
<td>Familiarize victim with court room and set-up</td>
<td></td>
</tr>
<tr>
<td><strong>REPATRIATION</strong></td>
<td></td>
<td>Immigration Ministry of Foreign Affairs, Ministry of Labour and Social Welfare Department and Embassies</td>
<td>Social Welfare to conduct risk assessment and produce report with a recommendation on whether or not to repatriate. Immigration to conduct repatriation in terms</td>
<td>Best interests of the child</td>
</tr>
<tr>
<td>Repatriation (of foreign national)</td>
<td>At the close of legal proceedings Or In terms of a decision by the Minister</td>
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<td>Humanitarian and compassionate considerations</td>
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<td>Risk to safety and life (the right to non-refoulement)</td>
</tr>
<tr>
<td>Assistance Stage (What)</td>
<td>When</td>
<td>Actors (Who)</td>
<td>Procedure (How)</td>
<td>Consideration</td>
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<td>------------------------</td>
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</tr>
<tr>
<td><strong>REPATRIATION</strong></td>
<td></td>
<td></td>
<td>procedures where appropriate</td>
<td>Due regard to safety of victim</td>
</tr>
<tr>
<td>Repatriation (of Malawian citizens and permanent residents)</td>
<td>To be guided by domestic law at country of destination</td>
<td>Ministry of Foreign Affairs, Immigration Department and Ministry of Labour (Consulates)</td>
<td>Verify nationality</td>
<td>Avoid unreasonable delay</td>
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<td>Issue relevant travel documents Facilitate return to Malawi (purchase air ticket back to Malawi)</td>
<td>Consent of the victim</td>
</tr>
<tr>
<td><strong>RE-INTEGRATION</strong></td>
<td></td>
<td></td>
<td>Provide financial support for trip back home</td>
<td>Family reunification may sometimes not be appropriate due to stigma, shame, or risk of trafficking It may be more appropriate at times to assist victim to set up a new life in a new environment</td>
</tr>
<tr>
<td>Integration/Re-integration (i.e. Incorporation/renewed incorporation with a social unity) or relocation</td>
<td>After legal proceedings Or After reflection and recovery if victim has decided not to participate in legal proceedings as a witness</td>
<td>Ministry of Homeland Security in Consultation with NCCATIP and partners including CSOs</td>
<td>Provide counselling, skills training, guidance in seeking employment, and guidance in reestablishing relations with family and community</td>
<td></td>
</tr>
</tbody>
</table>
6.3 MONITORING

Monitoring is a continuing function that uses systematic collection of data on specific indicators to provide the management and the main stakeholders of an ongoing intervention with indications of the extent of achievement of objectives and progress in the use of allocated funds.  

Monitoring should be fundamental aspect of the activities being carried out by all the stakeholders, both for accountability purposes and to judge whether aims have been achieved. This may present the challenges faced in terms of capacity to engage in data collection and analysis, adequate systems to record data, and understanding what data needs to be collected for different purposes. Measuring inputs in relation to prevention, victim protection or investigations may be the easiest information to collect and record, but it can be insufficient to measure outcomes or the change brought about by interventions.

DATA COLLECTION

The Government of Malawi through the Ministry of Homeland Security adopted the data collection and management system on trafficking in persons that was developed by UNODC and SADC Secretariat. The system consists of national data hubs housed at the Ministry of Homeland Security, into which different stakeholders in the response to TIP input data periodically.

The National Coordination Committee against Trafficking in Persons whose function, among others, is to coordinate and oversee training of relevant Law Enforcement and Judicial Officers is also mandated to coordinate and oversee TIP data collection.

All enforcement agencies including the Ministry responsible for Social Welfare, Malawi Police Service, Department of Immigration and the Ministry responsible for Labour are required to provide all victims data and the Judiciary is required to share copies of Judgements to the NCCATIP through the Ministry of Homeland Security.

20 unhrc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_10-1.pdf; accessed 22nd February, 2019
CONCLUDING REMARKS

In order to have a successful prosecution of trafficking in persons cases, there is need to have a thoroughly calculated and well –performed investigation. It is paramount to strictly adhere to both procedural and substantive laws to avoid the cases being thrown out of court on technical grounds. Investigations should preferably lead to prosecution where there is sufficient legal ground and adequate evidence exists to press charges. 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. It is vital to emphasize the importance 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 given 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

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999.


Police Development Unit of OSCE Specialized Training on Trafficking: Lesson 79


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


Trafficking In Persons Act, 2015

unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_10-1.pdf; accessed 22nd February, 2019

UNODC Reference Guide for Canadian Law Enforcement 2005


UN Convention against Transnational Crime (UNTOC) and its Protocol on Trafficking in persons

For additional reference material on trafficking in persons please consult www.unodc.org