



LEGAL HANDBOOK FOR SUPPORTING VICTIMS OF HUMAN TRAFFICKING IN KENYA

AWARENESS AGAINST HUMAN TRAFFICKING-HAART





This handbook was produced by HAART Kenya with funding from the Global Fund to End Modern Slavery (GFEMS) through a gift of the United States Government

This publication was made possible through support provided by the Global Fund to End Modern Slavery under a grant from the U.S. Department of State. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of GFEMS or the U.S. Department of State.

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Introduction

The purpose of this handbook is for use in training caseworkers and other persons providing direct assistance to victims of trafficking (for ease of reference, this handbook will use the term ‘caseworker(s)’) on the law related to counter trafficking. The handbook will build clarity for caseworkers on some of the basic concepts related to human trafficking and to clarify some common misconceptions associated with human trafficking. The handbook will also help caseworkers identify and understand the processes involved in trafficking and to distinguish between human trafficking and human smuggling.

The objectives of the handbook are to:

- Give caseworkers an overview of what human trafficking is and the international and national legal frameworks on human trafficking
- Identify victims of human trafficking
- Equip caseworkers with the capacity to understand and inform victims of trafficking of the legal processes.

Definitions

Sexual exploitation - a commercial sex act that is induced by force, fraud or coercion, or in which the person induced to perform such an act has not attained the age of 18.

Forced labour - all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [herself] voluntarily - Convention No. 29 concerning Forced or Compulsory Labour of the International Labour Organization (ILO).

Debt bondage - the pledging of personal services as security for a debt where the value of those services is not applied towards the liquidation of the debt, or their length or nature is not limited and defined. Domestic servitude can also be a form on debt bondage.

Slavery - the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised - UN Slavery Convention, Art. 1(1)

Migration - a situation in which a person moves from one country to another or within one country. Migration can take place by legal or illegal means and it can either be voluntary (with the consent of the person migrating) or forced (without their consent).

Smuggling – the transport of a person (with their consent) to another country through illegal means. Smuggling has to include the crossing of an international border.

Caseworker – for the purposes of this handbook, caseworker is an all-encompassing term that refers to individuals in organizations who directly interact with victims of trafficking while offering services. This includes, but is not limited to, a social worker, first responder, frontline worker, psycho-social worker, monitor, program manager, programme manager, and case monitor.

Trafficking – involves the following

- Recruitment, transportation, transfer, harbouring, receipt of a person
- with force, fraud, deception or coercion
- into a situation of forced labor, prostitution, sexual exploitation, servitude or slavery-like practices.

SECTION I: WHAT IS HUMAN TRAFFICKING?

1. Human trafficking

Human trafficking is a form of modern-day slavery and is a gross violation of human rights. It is a form of exploitation that involves the practice of people being tricked, coerced or otherwise removed from their home or country and forced into highly exploitative situations, typically for forced labour or sexual exploitation. Trafficking in persons is a crime under Kenya's Counter Trafficking in Persons Act (CTIP) and carries severe penalties.¹ Human trafficking is largely underreported because the victims rarely self-identify as victims of trafficking and when they do, they may be unable to contact law enforcement because they are held against their will, are traumatized and are fearful of for their safety and the safety of their families due to threats made against them by their traffickers. Victims also fear that they will be accused of criminal activity related to their situations.

Human trafficking in Kenya continues to be prevalent. Kenya is known as a source, transit and destination country for the purposes of trafficking in persons.

Although Kenya has enacted national legislation criminalizing human trafficking and has also created a framework to provide direct assistance to victims, human trafficking continues unabated and assistance to victims of trafficking is still inadequate.

2. Definition of human trafficking

The U.S. government defines trafficking in persons as the act of recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud or coercion. Under the Trafficking Victims Protection Act (TVPA) and consistent with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol), individuals may be trafficking victims regardless of whether they once consented, participated in a crime as a direct result of being trafficked, were transported into the exploitative situation, or were simply born into a state of servitude. Despite a term that seems to connote movement, at the heart of the phenomenon of trafficking in persons are the many forms of enslavement, not the activities involved in international transportation. Notably, elements of trafficking can include, but do not require movement.

¹ Imprisonment for a term of not less than 30 years or to a fine of not less than Kshs. 30 million or to both and upon subsequent conviction, to imprisonment for life. See also Appendix - Penalties imposed under the Counter- Trafficking in Persons Act.

Human trafficking is putting or keeping someone in an exploitative situation for profit. It is defined as **the recruitment, harbouring, transportation, or provision, or obtaining of a person for labour or services through the use of force, or fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage or slavery**. Trafficking can occur within a country or may involve movement across borders. The international and domestic legal frameworks regarding human trafficking are discussed in detail in Section II.²

The three elements required to meet the definition of human trafficking:

Act - the recruitment, transportation, transfer, harbouring, or receipt of persons

Means - by means of the threat or used of force or other forms of coercion, or abduction, or fraud, or deception or the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person.

Purpose - the reason why any of the acts have taken place - for the purpose of exploitation.

Some common practices that illustrate the elements of trafficking defined above are:

- **Act** = e.g., employment advertisements, housing women in a brothel.
- **Means** = e.g., false employment contracts, threatening retaliation against the victim or family members, physically assaulting victims.
- **Purpose** = e.g., domestic service, forced agricultural labour, forced prostitution.

There are many forms of exploitation that may result in human trafficking including: forced labour, child labour, sexual exploitation, forced marriage, begging, organ trafficking, debt bondage, adoption rackets, to name a few. The three most common forms of human trafficking are *sex trafficking*, *forced labour*, and *debt bondage*.

(a) Sex Trafficking

The majority of people (women, girls, men, boys, LGBTQ+ persons) who are trafficked for sexual exploitation have been victims of physical or sexual abuse. Here are some things to look out for that may indicate that a person has been trafficked for sexual exploitation:

² The applicable international legal framework that governs human trafficking is set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children ("**Palermo protocol**"), which came into force in 2003 and was ratified by Kenya in 2005. The Protocol supplements the United Nations Convention

| Persons may be trafficked for sexual exploitation if they: | |
|--|---|
| Are not allowed to travel on their own; are escorted by someone whenever they go to and return from work or other outside activities | Work long hours or have few if any days off |
| Perform sexual services against their will | Perform sexual services under different circumstances than previously agreed |
| Sleep where they work | Live or travel in a group, sometimes with others who do not speak the same language |
| Have few items of clothing | Are not able to keep their earnings |
| Do not have identity documents | Are part of a group of people in a similar situation who appear to be under the control of others |

against Transnational Organised Crime (UNOTC) which came into force in 2003 and was ratified by Kenya in 2004. The domestic legal framework that governs trafficking in persons is the Counter Trafficking in Persons Act (CTIP) which was signed into law in September 2010 and came into effect in October 2012.

(b) Labour/Employment Trafficking

Trafficking in persons is often linked to exploitation in labour—many people who become victims of trafficking start as someone searching for work. If someone is trafficked for sexual exploitation in prostitution, forced labour as a domestic servant, or bonded labour in construction work, then it is more likely than not that left home searching for a job.

Victims of trafficking are often promised legitimate employment either in their own country or in other countries, only to find that they have been deceived. Their identity and travel documents are kept by their traffickers under the guise of safekeeping or obtaining the relevant work permits. They are often isolated from friends and family and their movement is restricted.

Kenya has many private employment agencies, and the extensive competition for clients has given rise to unethical practices. Employment agencies advertise online and in newspapers for non-existent jobs with high salaries and good benefits to lure clients. Caseworkers should be alert to signs of trafficking at employment agencies and should provide assistance and make referrals to agencies with expertise.

(i) *Signs of trafficking related to employment*

● Recruitment Agencies

Many human trafficking victims are lured (in Kenya or abroad) by employment agencies that lie about the kind of work they will be doing, the amount of money they will make, and the conditions under which they will work. Upon arriving at the place of employment, they realise that the job they were promised does not exist, and they are trapped in jobs with exploitative conditions with very little pay.

When recruiters intentionally misrepresent the nature of the job and place victims in exploitative conditions that they know are difficult to escape, the recruiters are abusing the victims' position of vulnerability and are therefore guilty of trafficking.

When caseworkers encounter a victim, they should look into the activities of recruiters and recruitment agencies and the terms of the victims' contract to determine if the recruiter or the agency is legitimate or exploitative. To determine whether a recruitment agency is legitimate the caseworker should make the determination through the National Employment Authority website. Agencies that are not registered by the NEA are suspect and should be reported. However, the fact that an agency is registered does not mean that they are an ethical agency. Due diligence on agencies must be carried out.

● Debt

Sometimes victims borrow money or sell property to pay a recruiter or recruitment agency. However, once they discover the actual conditions of employment, they are unable to leave. In some situations, they are charged for accommodation, food, transportation etc. and therefore end up owing a lot of money to the recruiter/trafficker.

- The presence of a large amount of debt can be an important indicator of trafficking.
- Other indicators:
 - Does the victim have a return ticket?
 - Does the victim have to reimburse the cost of the ticket?
 - If victims are travelling in a group, do they know the other members of the group?
 - What is the educational background of the victim and other members of the group they are travelling with?

People who have been trafficked for labour exploitation (e.g., in agriculture, construction, entertainment, or factories) may:

| | |
|---|--|
| Live in a group in the same place where they work | Have no access to their earnings |
| Have no labour contract or have a contract which is in a language that they do not understand | Work excessively long hours |
| Depend on the employer for several services, including work, transportation and accommodation | Have no choice of accommodation |
| Do not leave the work premises without the employer | Be subject to security measures designed to keep them on the work premises |
| Be subjected to insults, abuse, threats or violence | Have the cost of accommodation or food deducted from their wages |

Example: Florence is 14 years old. She was working as a house girl in Busia. One day the homeowner told Florence that she was going to get her a better paying position as a house girl so that she could better support her parents and siblings whom she left behind in the village. Florence was sold to a brothel in Kilifi and forced into prostitution. She was never paid any money. All she received was her meals and a place to sleep. The elements of trafficking from this example are:

- *Recruitment* – many trafficking cases involve a process of recruitment through deceit. In this case, Florence’s boss recruited her.
- *Transportation* – movement is not necessary within the context of trafficking. In this scenario, Florence was transported from Busia to Kilifi.
- *Sale, transfer, receipt or harbouring of a person* – traffickers use one or more of these actions when they move the trafficked person from the place of origin to the place of destination. In this case, Florence was sold by her boss in Busia.
- *Deception* – Trafficked persons are usually tricked into their vulnerable situation. In this case, Florence was deceived about a well-paying job in Kilifi.
- *Coercion* – this includes the use of threat of force or the abuse of authority. Trafficked persons usually depend on their traffickers for food, housing clothing etc. Abuse of authority involves dependency

situations in which a person who has power over another person (e.g., an employer or relative) denies the rights of the dependent person. In this case, Florence is only given meals and a place to sleep.

- Family-focused

Family-focused trafficking involves domestic servants who are isolated, threatened, and often do not have legal status. The victims face abuse, including working long hours, physical and verbal abuse, restriction of movement and communication, lack of medical attention, and food deprivation.

General indicators of people who have been trafficked for domestic servitude:

| A person who has been trafficked for domestic servitude may: | |
|--|---|
| Live with a family | Not eat with the rest of the family |
| Have no private space | Sleep in a shared or inappropriate space |
| Never or rarely leave the house for social reasons | Never leave the house without their employer |
| Be given only leftovers to eat | Be subjected to insults, abuse, threats or violence |
| Have no access to their earnings | Work excessively long hours |

Example: Lucy is 14 years old and lives in Meru with her mother and seven siblings. Lucy's father abandoned the family five years ago, and her mother can barely take care of the family. A relative approaches Lucy's mother and says she can take Lucy to Nairobi and help her find work to support the family. Lucy is taken to a restaurant in Nairobi, where she lives in a back room and works as a waitress. Lucy's salary is sent directly to her mother. Lucy is a victim of trafficking. Lucy has been taken away from her family, has been transported to Nairobi (act), suffers an abuse of power from her family (means), and is in a state of forced labour (exploitation).

3. Human trafficking as a crime

- (a) Trafficking in persons is a crime committed when a person recruits, transports, transfers, harbours, or receives another person for the purpose of exploitation by means of threat or use of force or other forms of coercion, abduction, kidnapping, fraud.

Counter Trafficking in Persons Act - Section 3(1)(d)(5)

A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of –

(d) Deception

(5) A person who traffics another person, for the purpose of exploitation, commits an offense and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.

(b) An offender in trafficking crimes includes all persons, agencies, or institutions:

- Involved in any act in the process of trafficking
- Who gains/makes profits/exploits
 - As the trafficked person passes through a chain
 - From the point of recruitment, while in transit to the final destination
 - From any act involved in the process of exploitation of the trafficked person

(c) A person is guilty of the offence of trafficking if they are knowingly involved in any act of commission in the process of human trafficking.

Example: Samuel, an elderly man living in a village near Nyeri town. He noticed that his neighbour's daughters, aged 13, had returned home early from school and did not attend school for several weeks. When he asked her why she was home, she replied that she was sent home because she had not paid her school fees. He told her that he was able to secure a job for her in Nairobi as a house girl. He told her to pack her clothes and meet him at the bus station the next morning. At the bus station, he gave her Kshs. 100, wrote down the name and number of a woman in Nairobi who would give her work as a house girl once she arrived. A relative saw the young girl (carrying a small suitcase) with Samuel at the bus station, confronted them and alerted the police. Samuel's actions show that he intended to traffic the 13-year-old for the purposes of child labour and exploitation under Section 3(1)(d)(5). He is therefore guilty of the offence of trafficking.

(d) Traffickers use various methods to their victims under their control. Some methods they use to do this include:

Debt bondage – financial obligations, honour-bound to satisfy debt

Isolation from the public – limiting contact with outsiders and making sure that any contact is monitored

Isolation from family members – and members of their ethnic or religious community

Confiscation – of passports, visas, or identification documents

Use or threat of violence – towards victims or families of victims

Threat of shaming – victims by exposing their circumstances to family members

Telling victims, they will be imprisoned – or deported for immigration violations if they contact the authorities

(e) Traffickers can be the following persons (this list is not exhaustive):

- Recruiter or recruitment agent
- Receiver/buyer of the trafficked person
- Transporter
- Parents, guardians who knowingly avail their children for the purpose of exploitation

4. Common myths about human trafficking

There are numerous commonly held myths and misconceptions about human trafficking and the types of human trafficking operations carried out. The table below lists some of the common myths and counters them with the facts.

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|---|---|
| <p>Myth 1: All victims of human trafficking are either women or children</p> | <p>Fact: Anyone can become a victim of human trafficking. Although it is true that women and children are the most vulnerable to trafficking due to their gender and age, men living in unfavourable or poor circumstances can also be targeted for trafficking. Traffickers prey on the vulnerable people, promising a better life such as a well-paying job, further education, or opportunities that offer a way out of poverty and desperate situations.</p> |
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| Myth 2: Only foreign nationals or immigrants are victims of trafficking | Fact: Human trafficking involves transnational/cross border as well as domestic/internal trafficking and victims are both foreigners and Kenyan nationals. |
| Myth 3: Trafficking involves travel, transportation, or movement of victims across national borders | Fact: the legal definition of trafficking does not require transportation. |
| Myth 4: Human trafficking and human smuggling are the same | Fact: Human trafficking and human smuggling are fundamentally different. Trafficking is based on exploitation and does not require movement across borders. Smuggling is based on movement and involves moving a person across a country's borders with the consent of that person and in violation of immigration laws. <i>*Human smuggling can turn into trafficking if the smuggler uses force, fraud, or coercion to hold people against their will for the purposes of labour or sexual exploitation.</i> |
| Myth 5: Human trafficking always involves the use of physical force | Fact: Trafficking does not require physical restraint, force or bodily harm. Psychological means of control like threats or coercion or withholding of documents are sufficient ingredients of the crime of human trafficking. |
| Myth 6: Trafficking victims always come from situations of poverty or from rural areas | Fact: Although poverty may be a factor since it is an indicator of vulnerability, poverty alone is not a single factor or indicator of human trafficking victims. Trafficking victims come from different income levels. |
| Myth 7: If a trafficking victim consented to their initial situation or was informed about the type of work they would be doing, then it cannot be trafficking against their will. | Fact: A victim of trafficking cannot consent to a situation of human trafficking. |

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| Myth 8: Foreign victims of trafficking are always immigrants who are in the country illegally | Fact: Not all foreign victims of trafficking are undocumented. |
| Myth 9: Victims of human trafficking will attempt to seek help when in public | Fact: Victims are often afraid to come forward and get help. They fear revenge from their traffickers and most likely are not in possession of their identification documents |
| Myth 10: Human trafficking is only sex trafficking | Fact: There are other types of human trafficking such as forced labour in restaurants, hotels, agriculture and domestic service |

5. Human trafficking and human smuggling

- (a) Trafficking in persons and migrant smuggling are often confused. Both are crimes but are very different from each other and it is critical to understand the difference between the two. Human trafficking involves exploiting persons for the purposes of forced labour or commercial sexual exploitation. Human smuggling involves the provision of a service – typically, transportation or fraudulent documents – to an individual who voluntarily seeks to gain illegal entry into a foreign country.

The UN Protocol to the UN Convention against Organized Crime; the Protocol against Smuggling of Migrants by Land, Sea, and Air (also known as the Smuggling Protocol) defines smuggling of persons:

Smuggling of migrants – the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state of which the person is not a national or a permanent resident

Illegal entry – means crossing borders without complying with the necessary requirements for legal entry into the receiving State.

Distinction between human trafficking and human smuggling:

Human trafficking must contain an element of force, fraud or coercion whether it is real, perceived or implied while human smuggling occurs with the consent of the individual being smuggled.

Human trafficking does not need to involve the actual movement of the victim and there is no requirement to cross an international border while human smuggling always involves crossing an illegal border or harbouring someone who crossed the border illegally.

Human trafficking generates ongoing criminal proceeds while human smuggling results in one-time criminal proceeds.

Human trafficking involves forced labour and/or exploitation while there is no actual or implied coercion in human smuggling.

In human trafficking, the persons being trafficked are victims, whereas in human smuggling, the persons smuggled are violating the law.

- (b) The crime of human smuggling can quickly turn into a human trafficking case if the victims are exploited, for example by being held for ransom, or to pay off a smuggling debt through forced labour or sex work. This occurs for a large number of people who have secured the services of a smuggler and paid a fee (or part of it) in order to be smuggled to another country. If they are unable to fulfil the debt, it can turn into a situation of exploitation, debt bondage, confiscation of the migrant's documents and at that point, it becomes a situation of human trafficking. It is not always easy to identify whether a case is one of human smuggling or trafficking. The distinction is not always obvious, but key components will always distinguish trafficking from smuggling, i.e., the elements of fraud, force, or coercion.

Example: Mwanawasi is 18 years old, is unemployed and lives in a low-income area in Arusha, Tanzania. She was invited to come to Kenya by her distant cousin and told she could work for a Kenyan family as a house help, and they would pay her Kshs. 10,000 a month. Mwanawasi met a woman who provided her with fraudulent documents and brought her across the border into Kenya. She knew this was illegal, but she needed the money, and was willing to take the risk. Was Mwanawasi smuggled or trafficked? – Mwanawasi was smuggled into Kenya. She left willingly with the full knowledge that she was entering Kenya illegally.

Upon arriving in Kenya, Mwanawasi was kept in isolation by the family she went to work for. She was told to sleep in the storage room at the back of the house and told not to speak to anyone otherwise she would be turned over to the immigration department and deported.

She was never paid for her work, and she felt that she had no one to turn to for help. Was Mwanawasi smuggled or trafficked? – At this point, Mwanawasi was restricted from leaving the house, threatened with deportation if she tried to talk to anyone and was forced into involuntary servitude. She is a victim of trafficking.

Example: A recruiting agency in India is looking for welders to work at a factory in Industrial Area in Nairobi. They pay is Kshs. 50,000 per week. The agency charged each worker an application fee of USD 10,000 (Kshs. 1 million). On the plane to Kenya the workers were given contracts to sign. The contracts stated that the workers would be paid Kshs. 10,000 per week for the first six months of their employment. They were told to sign the contracts, or they would be returned back to India upon arrival at the airport in Nairobi. The workers felt that they could not back out because they had borrowed money and taken loans to pay the application fee, and they were already on their way to Kenya. Once they arrived, they were confined to the factory grounds and the owner of the factory kept their passports. Were the workers smuggled or trafficked? – The workers were victims of trafficking in persons. They were transported for the purposes of labour through the use of fraud and coercion, which resulted in the workers being subjected to involuntary servitude. The confiscation of the workers' passports by the employer caused the workers to believe that they were forced to stay with the company.

6. Human trafficking as human rights violation

Trafficking is a violation of human rights

Human rights are the basic rights and freedoms to which everyone is entitled. These rights include civil and political rights, as well as economic, social, and cultural rights. Civil and political rights include the right to life and liberty and protection from torture and economic, social and cultural rights, include the right to adequate housing, education and health. Human rights violations are either directly or indirectly committed by the state against a person or persons or occur when the state fails to protect when there is a conflict between an individual or group of people.

Human trafficking violates several essential entitlements that are protected under the Universal Declaration of Human Rights, including the right to life, liberty, and security of person; the right to be free from slavery or servitude; freedom from torture or to cruel or degrading treatment; and the right to work in just and favourable conditions. Human trafficking also violates numerous laws, including laws against kidnapping, slavery, false imprisonment, assault, fraud, and extortion which are crimes under national laws. Countries like Kenya have ratified international declarations and developed policies and legislation to criminalize violations of human rights

associated with human trafficking. See *Section II*.

The violations of human rights are both a cause and a consequence of trafficking in persons, making the promotion and protection of human rights particularly relevant to the fight against it.

Human rights most relevant to trafficking

The prohibition of discrimination on the basis of race, colour, sex, language, religion political or other opinion, national or social origin, property, birth or other status

The right to life

The right not to be submitted to slavery, servitude, force labour or bonded labour

The right not to be subjected to torture and/or cruel, inhuman, degrading treatment or punishment The right to freedom of movement

The right to freedom of association The right to liberty and security

The right to just and favourable conditions of work The right to an adequate standard of living

The right to be free from gendered violence The right of children to special protection The right to an effective remedy

The right to seek asylum

The right to be protected from non-refoulement The right to social security

(a) The human rights of trafficked persons

Victims of trafficking are entitled to the full range of human rights – the Charter of the United Nations and the Universal Declaration of Human Rights apply to everyone, irrespective of their race, sex, ethnic origin or other distinction. International human rights law applies to everyone within a state's territory or jurisdiction, regardless of the nationality or citizenship and of how they came to be within the territory. *Thus, even if they are outside their country of residence, trafficked persons cannot be discriminated against simply because they are non-nationals/foreigners.*

Aliens....

have a right to life, protected by law, and may not be arbitrarily deprived of life

may not be subjected to torture or to cruel, inhuman or degrading treatment or punishment may not be held in slavery or servitude

have the full right to liberty and security of the person

may not be imprisoned for failure to fulfil a contractual obligation

have the right to liberty of movement and free choice of residence – and are free to leave the country

shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law

are entitled to equal protection by the law

The rights of aliens under the Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant, paragraph 7.

(b) Common violations of victim's rights and remedies

(ii) *The Counter Trafficking in Persons Act entitles victims of trafficking to:*

Confidentiality - Section 11(1):

Law enforcement officers or the court or any other person involved in the investigation or trial of an offence under this Act, shall throughout the investigation or trial observe the right to privacy of the victim of trafficking in persons and of the witnesses.

Officers of the Court and others involved in the investigation and trial are required to observe the right to privacy of the victim and witnesses. (CTIP section 11) It is an offence to disclose the name and personal circumstances of a victim of trafficking or any information tending to establish the identity of the victim and the circumstances of the trafficking (section 11(3)). *The VPA (section 8(2)(a)-(b) allows for the disclosure of details of a victim only in some specific circumstances.

Example: Law enforcement officers were tipped off that a particular club in an upscale part of town was in effect a brothel. Seeking to gain publicity, they alerted the media of their plans to raid the club. The faces of the victims were publicly displayed on camera and their names and

nationalities publicly revealed during subsequent interviews with workers at the club. Remedy

– measures should be taken to ensure that victim information is not publicly shared. Additionally, law enforcement and court documents. A request should be made to the court that proceedings remain confidential; request documents to be sealed.

Immunity from Prosecution - Section 14:

A victim shall not be held criminally liable for any offence related to their illegal presence in Kenya or any criminal act which is a direct result of their trafficking experience.

Example: When the club (mentioned in the above example) was raided by law enforcement, the police officers found most of the victims engaged in acts of prostitution with patrons of the club. They arrested the victims and charged them with the offence of prostitution. Remedy

– the charges should be dropped because the women arrested were victims of trafficking. Law enforcement should be assisted in identifying the women as victims of trafficking.

Section 15 of the Counter Trafficking in Persons Act provides for the Support and protection of victims of trafficking

(1) The Minister shall in consultation with the Advisory Committee formulate plans for the provision of appropriate services for victims of trafficking in persons and children accompanying the victims, including

- return to and from Kenya; resettlement;
- re-integration;
- appropriate shelter and other basic needs; psychosocial support;
- appropriate medical assistance;
- legal assistance or legal information, including information on the relevant judicial and administrative proceedings; or
- any other necessary assistance that a victim may require.

(4) Notwithstanding the provisions of any other law, the victims of trafficking in persons shall be permitted to remain in Kenya until legal proceedings are concluded and may by order of court in such proceedings be allowed to bring their children

(6) The support services provided under this section shall be available to victims of trafficking in persons regardless of their nationality.

Victims of trafficking are entitled to services which are accessed through the National Assistance Trust Fund for Victims of Trafficking in Persons (Trust Fund). The Trust Fund is operational, however because guidelines have not been developed the Fund is used only in two situations:

- (a) For repatriation of victims of trafficking who have court orders which state that they should be repatriated; and**
- (b) For the support of victims of trafficking who have been placed in shelters that do not have adequate supplies.**

These expenditures are usually approved by the Board of Trustees and the Principal Secretary.

Victims of trafficking should be repatriated in a safe and expeditious manner, particularly when they are unwilling to testify in a case. Undue delay or refusal to do so violates their right to freedom of movement.

(iii) The Witness Protection Act

- The Witness Protection Act is the statute that provides for the protection of witnesses in criminal cases and other proceedings. It also establishes the Witness Protection Agency, provides for its powers, functions, management, administration and other functions of the Agency. Under the Act, the decision to admit into or exclude any person from the programme, is the responsibility of the Director of the Witness Protection Agency. A person may be included in the programme only if the Director has decided that the witness be so included; the person agrees to be included; and a memorandum of understanding in is signed by the witness or by—(i) a parent or guardian of the person if the person is under the age of eighteen years; or (ii) a guardian or other person who is usually responsible for the care and control of the person if the person otherwise lacks legal capacity to sign it.
- In case a person has not been offered protection under the programme, a written request for their inclusion in the programme may be made to the Director by the witness; or a law enforcement agency; a public prosecutor; or a legal representative or any other intermediary. An application for the protection of a person below the age of eighteen may, in circumstances as the Minister may specify in Regulations, be made without the consent of the person's parent or guardian. Where a parent or guardian of a witness signs a memorandum of understanding because the witness was under the age of eighteen and the memorandum is still in force after the witness turns eighteen, the Agency may require the witness to sign the memorandum.

SECTION II: THE LAW ON HUMAN TRAFFICKING

1. International Law on Trafficking in Persons

To respond to human trafficking, several international and legal instruments have been adopted. Article 25(6) of the Constitution of Kenya and the general rules of international law or any treaty or convention ratified by Kenya form part of the laws of Kenya. Thus, international laws on human trafficking are considered part and parcel of Kenyan law.

(a) **The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol)**

The Palermo Protocol, which entered into force in 2003, is a protocol to the UN Convention against Transnational Organised Crime. The Palermo Protocol is an international benchmark on trafficking in human beings.

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

Exploitation shall include, at a minimum, the exploitation or 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.

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if it does not involve any of the means set forth in subparagraph (a) of this article.
- (d) “Child” shall mean any person under eighteen years of age.

- The three elements are therefore required to meet the definition of trafficking: (i)

activity, (ii) means, and (iii) purpose.

- All three elements must be present to breach the Protocol. If one element is missing, then the necessary conditions for the crime of trafficking have not been met.
- Children - Regardless of the means employed by the traffickers, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons.' A child is defined as anyone under the age of eighteen.
- Movement of the victim is not a requirement - "recruiting" or "harbouring" a victim for the purpose of exploitation is enough to constitute trafficking.
- Sex Trafficking - Sex trafficking is not limited to trafficking for purposes of prostitution. The Protocol defines it as the exploitation of the prostitution of others or other forms of sexual exploitation.
- Consent - The consent of a victim of trafficking in persons is irrelevant where any of the **means** are used, i.e., a person can't consent to be exploited in situations of abuse. Once it is established that deception, coercion, force or other prohibited means were used, consent is irrelevant and cannot be used as a defence.

(b) United Nations Convention against Transnational Organized Crime (UNTOC)

- Deals with the fight against organised crime and other major activities in which transnational organised crime is commonly involved, such as money laundering, corruption and the obstruction of investigations and prosecutions. Two protocols supplement the UNTOC (trafficking in persons and smuggling of migrants)

(c) United National Protocol against the Smuggling of Migrants by Land, Air and Sea

- Supplements the UNTOC and deals with the smuggling of migrants.

(d) Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)

- Calls on States to take appropriate measures to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.

(e) African Charter on the Rights and Welfare of the Child

- Calls on States to take appropriate measures to prevent the sale or trafficking in children for any purpose or in any form.
- Calls on States to protect children against all forms of exploitation or sexual abuse, including commercial sexual exploitation.

2. National Legal and Policy Framework

(a) Laws

(i) *The Constitution of Kenya, 2010*

- Article 2 (5) and (6) of the Constitution provide that any treaty or convention ratified by Kenya shall form part of the Law of Kenya under the Constitution.
- Chapter 4 of the Constitution on the Bill of Rights contains fundamental rights and freedoms, some of which can be the basis for protecting the victims of trafficking in persons, including the **right to human dignity** (Article 28), **freedom of the person** (Article 29), **freedom from slavery, servitude and force of labour**, (Article 30).
- The Constitution of Kenya advocates for fair labour relations, including fair income, reasonable working conditions, freely chosen productive employment, fundamental rights at work, the right to form a trade union, and social protection for workers.

(ii) *The Counter Trafficking in Persons Act, 2010*

- The ingredients of the offence of trafficking in persons under *section 3* of the Counter- Trafficking in Persons Act (CTIP) are that the accused person has:
 - a) recruited, transported, transferred, received, held, concealed, or harboured the victim, or exercised control, direction or influence over the movements of the victim; and
 - b) by means of threat or use of force or other forms coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and
 - c) done this to exploit the victims or facilitate their exploitation

Three elements of the crime of trafficking under section 3(1) of the Act: the act, the means, the purpose. To trafficking in persons, the prosecution must show that the accused person did the following:

- a) committed at least one act against another person
- b) by using at least one of the means
- c) to exploit that person

Under section 3(2) of the Act, the consent of the victim of human trafficking is irrelevant where any of the means in section 3(1)(d) - 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 giving or receiving of payments or benefits to achieve the consent of a person having control over another person- have been used.

- *Section 2* of the CTIP defines *exploitation* to include
 - a) keeping a person in a state of slavery;
 - b) subjecting a person to practices similar to slavery;
 - c) involuntary servitude;
 - d) forcible or fraudulent use of any human being for removal of organs or body parts;
 - e) forcible or fraudulent use of any human being to take part in armed conflict;
 - f) forced labour;
 - g) child labour;
 - h) sexual exploitation;
 - i) child marriage;
 - j) forced marriage.
- *Section 4* - Acts that promote child trafficking - offering guardianship to a child or offering a child for guardianship for the purpose of trafficking
- *Section 5* - leasing premises to promote trafficking, publishing materials that promote trafficking, or managing or running a job recruitment agency to promote trafficking

- *Section 7* – facilitating and aiding entry into Kenya to promote trafficking of the victim
- *Section 8* – interference with travel documents – by confiscating the victims travel documents (usually passports) in furtherance of trafficking in persons
- Under the Counter-Trafficking in Persons Act, the Government of Kenya, through various agencies, has clear obligations to ensure that the rights and wellbeing of victims of human trafficking are respected, protected, promoted and fulfilled.

The Bill of Rights in the Constitution of Kenya protects individuals from slavery, whereas the CTIP references human trafficking. As mentioned above, human trafficking is a form of modern-day slavery.

(b) Legislative Framework

- The Witness Protection Act - Kenya enacted the Witness Protection Act, which established the Witness Protection Programme in December 2006.
 - The witness protection programme aims to protect and assist those who have witnessed a crime from being threatened, intimidated and even harmed by criminals for cooperating with law enforcement and prosecution authorities. Witnesses under threat are rescued and placed in safehouses and are also given security to Court and back.
- National Employment Authority Act, 2016
 - Section 56 of the Employment Act makes it illegal to employ children under the age of 13. However, children between the age of 13-16 can be employed for light work (the Act does not define light work)
- Employment Act, 2007
 - Section 4 – no person shall use or assist any other person in recruiting, trafficking or using forced labour.
 - Section 53.1 – prohibits child trafficking and forced labour
 - Forced or compulsory labour is any work or services that a person does under the threat of any penalty or work that a person does involuntarily.

- The Sexual Offences Act, 2007
 - Article 13 of the Sexual Offences Act prohibits child trafficking and forced labour
 - Sections 14 and 15 of the Sexual Offences Act of 2006 criminalises the facilitation of child sex tourism and “child prostitution” and prescribed punishment of no less than ten years imprisonment and a fine of Kshs. 2 million.
- Children Act, 2022
 - Protects against child labour. Section 18 states that every child must be protected from
 - Economic exploitation
 - Any work that interferes with the child’s education or is harmful to the child’s health or physical, mental, spiritual, moral or social development
 - Section 22(b) prohibits child abuse which includes child trafficking (as defined by the Act)
- Victim Protection Act (VPA)
 - The VPA is one way to protect the rights of victims and accused persons during the prosecution of their cases – right to privacy, right to protection, right to security.
 - This Act stipulates various means by which victims in criminal cases cope, for instance, through restorative justice, restitution, rehabilitation, psychological treatment and protection from victimisation, among others.
- Witness Protection Act (WPA)
 - The Witness Protection Act:
 - Establishes the Witness Protection Agency which provides protection to people who have salient information and run the potential risk of endangering their lives if they provide the information to the necessary authorities.
 - Establishes the Victims Compensation Fund – which provides restitution to a victim, or to the family of a victim of a crime committed.

(c) Policy Framework

- National Referral Mechanism Guidelines

- Articulates the standardised operating procedures for assisting victims of trafficking. It provides a system for identification, referral, holistic support and assistance to victims of human trafficking. The NRM provides guiding principles for the return and reintegration process.
- The National Plan of Action for Combating Human Trafficking
 - Provide a national framework to promote cooperation between different Government agencies and stakeholders from all sectors in Kenya on human trafficking and lay the groundwork for closer regional and international cooperation.
- Police Standards of Operations (SOPS)
 - The SOPs were developed by a working group of Kenyan law enforcers and civil society service providers to establish best practices for handling trafficking victims at the pre-trial stage. The SOPs provide police officers with a series of steps and procedures they should take from the point a crime is reported to the trial. The SOPs also discuss regional differences and current best practices.
- Prosecutors' Manual
 - The Manual discusses the Counter-Trafficking in Persons Act; it explains how to categorise offences under the Act, how to charge an offender, and what factors to consider when imposing an appropriate penalty for each offence. By providing this information, the Manual helps avoid discrimination and ensure fair trials.
- Guidelines for Identification of Victims of Human Trafficking
 - The CTIP, which implements Kenya's obligation under the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), sets out the components that constitute the offence of trafficking in persons.
 - Kenya has developed the identification Guidelines to help the key actors in the public when well sensitised to assist in reporting. Key factors, such as the police and authorised officers – including probation officers, chiefs and children's officers – can identify, screen and interview victims ethically and professionally. By identifying the victims early, they assist in

the arrest of perpetrators, the rescue of the victims, and ensure that there is evidence available in Court that will deter further human trafficking.

- The Guidelines stipulate the process of identification of trafficked victims as follows:
 - Definitions of human trafficking and smuggling;
 - Who can identify a victim of trafficking;
 - Indicators for assessing victims;
 - Steps of identification;
 - Risk assessment and protection;
 - Screening interviews;
 - Best practices for children and adult interviews;
 - Who should be contacted first after ascertaining that the person or child is a victim of trafficking.

SECTION III: ASSISTANCE TO VICTIMS OF TRAFFICKING

1. Introduction

Victims of trafficking have had their rights violated and require assistance to facilitate their recovery and empowerment. They are entitled to assistance from the government as well as other stakeholders. Assistance provided to victims of trafficking usually includes **shelter, medical care, psychosocial support, legal assistance, vocational/economic empowerment training and education, safe migration training and reintegration.**

The table below highlights some key aspects of the assistance provided:

| | |
|-----------------------------|--|
| Shelter | <p>should be provided to victims who cannot or do not wish to immediately returned to their families the shelter should have basic provisions at a minimum such as food, water, clothing, toiletries and medical care</p> <p>In the current National plan of action, the government aims to keep an up-to- date list of shelters operating in Kenya. CSOs and other government bodies and departments should contact the counter trafficking in person's secretariat when in need of referral of cases.</p> <p>Every police Station should have a Child Protection Unit (CPU). When a person takes a child to the police station to report a case, the police should provide advice on where the child should be placed.</p> |
| Medical care | <p>a medical check-up must be conducted even if the victim does not show any outward signs of stress, bodily trauma, or illness informed and voluntary written consent from the victim is required unless it is an emergency situation</p> |
| Psychosocial support | <p>pre-trafficking events and the trafficking trauma should be taken into consideration when providing psychosocial support this support may include counselling and trauma therapy, psychiatric care</p> |

| | |
|--|--|
| Legal assistance | <p>victims of trafficking should be informed of their legal rights and the remedies available to them as soon as possible</p> <p>the provision of legal assistance should not be premised on the victim's cooperation with law enforcement</p> <p>legal assistance should be provided for both criminal and civil cases victims and their families should be kept safe</p> |
| Vocational training and education | <p>education and vocational training are important elements of reintegration for victims of trafficking the training should focus on skills that will enable the victim to find employment</p> |
| Reintegration/repatriation | <p>the return of victims to their home-country should be the preferred option</p> <p>the aim of reintegration should be to provide victims with a safe and sustainable return to their community or country of origin and to live a normal life</p> <p>there should be follow-up with the victims once they have been repatriated or reintegrated because they are still vulnerable to being re-trafficked or exploited</p> <p>for minors, reunification with their family members should be pursued only after a thorough investigation</p> |

Because of their relationship with the victims, caseworkers can be very useful in the pre-trial, trial and post-trial phases of a case. A case is considered a success if the accused is convicted. Whether a case succeeds depends on several factors, including the strength of the evidence presented at trial.

The protection of the victim must be paramount and caseworkers as well as other stakeholders such as law enforcement, therapists etc, should ensure that victims are removed from a position of vulnerability and are under the care of social services or NGO's who work with victims of human trafficking. A needs assessment should be carried out to ensure that the victim's needs – basic, psychosocial, and legal – are met and referrals made to the appropriate entities. Case workers play additional roles such as:

- scan/screen the victim to determine if they are a victim of human trafficking

- facilitate activities that assist in the rehabilitation of the victim – they work closely with victim to ensure that they are given holistic care through a trauma informed approach and where possible work towards reintegrating the victim into their community
- serve as an interlink between the victim of trafficking and the necessary support they need e.g., offering advice on where to get good healthcare, where to get legal advice
- ensure that the victim is fully reintegrated back into their community by empowering them economically and educationally
- assist victim of trafficking through the legal process – follow the case with the DCI
- in the case of child trafficking the case worker will trace the minor's family

The roles and mandates of caseworkers may vary from one organization to another based on their scope of work.

2. Identification of victims of trafficking

Identification of a victim of trafficking is the process of verifying, ascertaining, and/or proving that a person is a victim of human trafficking. It is important because it enables a victim of trafficking to seek redress as well as prevents the re-victimization of a survivor of human trafficking by law enforcement or other stakeholders. Sometimes, victims or potential victims of trafficking are not aware that they have been trafficked, so they are unlikely to seek help, e.g., persons working as domestic servants for little or no pay.

- Ideally, the identification/scanning process should be carried out by a caseworker due to their expertise and the vulnerability of the victim.
 - Once the individual is identified as a victim of trafficking, the case worker can make a report to the nearest police station or call DCI 0800722203-toll free hotline. Reports can also be made to the Anti Human Trafficking, Child Protection Unit (AHTCPU) in cases where the victim of trafficking is below the age of 18.
- (a) The elements necessary for identifying adult victims of human trafficking are:

| ACT | | MEANS | | PURPOSE OF EXPLOITATION | |
|--------------------|---|---|---|---|-------|
| Recruitment | | Threat or use of force or other forms of coercion | | Keeping a person in a state of slavery | |
| Transportation | | Abduction | | Subjecting a person to practices similar to slavery | |
| Transfer | | Fraud | | Involuntary servitude | |
| Harbouring | | Deception | | Forcible or fraudulent use of any human being for removal of organs or body parts | |
| Receipt of persons | | Abuse of power or position of vulnerability | | Forcible or fraudulent use of any human being to take part in armed conflict | |
| | + | | + | | = TIP |
| | | Giving payments or benefits to obtain the consent of a victim of trafficking | | Forced labour | |
| | | Giving or receiving payments or benefits to obtain the consent of the person having control over another person | | Child labour | |
| | | | | Sexual exploitation | |
| | | | | Child marriage | |
| | | | | Forced marriage | |

If one condition from each of the categories above is met, the result is trafficking. When it comes to adult victims, consent is irrelevant if one of the **means** is employed by the trafficker. For children, consent is irrelevant with or without the **means** category.

(b) The elements necessary for identifying **child** victims of human trafficking are:

| ACT | | PURPOSE | | |
|--------------------|---|------------------------------|---|------------------------------|
| Recruitment | + | Exploitation including: | = | CHILD TRAFFICKING |
| Transport | | Prostitution of others | | |
| Transfer | | Sexual exploitation | | |
| Harbouring | | Forced labour | | |
| Receipt of persons | | Slavery or similar practices | | |
| | | Removal of organs | | |
| | | Other types of exploitation | | |

(c) Indicators of human trafficking

Victims of trafficking are not often identified and when they are, they are frequently misidentified as illegal or smuggled immigrants. The failure to correctly identify a trafficked person can likely result in further harm or denial of their rights. Misidentification directly affects the trafficking victim's ability to access justice and the rights to which they are entitled. Recognizing key indicators of human trafficking is the first step in identifying victims.

Human Trafficking Indicators

Some general indicators that show that a person has likely been trafficked include:

Age – This is a significant factor, particularly in labour and sex trafficking cases. An exception to this is begging, where older victims are used. Children are particularly vulnerable to trafficking and can be exploited in various ways, including in the sex industry, illegal labour markets, begging, and domestic servants.

Gender – Sex trafficking predominantly affects females, but studies have shown that boys and young men are also exploited and forced into prostitution. Trafficking in persons for forced labour exploitation affects both males and females.

Location of origin – Many victims of trafficking come from particular parts of the country.

Documentation – Many victims lack proper documentation or do not have any documentation at all. In addition, the lack of documentation or travel documents on a suspected victim and fraudulent identity or travel documentation are also strong indicators of trafficking.

Last location – The place where the victim was found may indicate potential exploitation. Some locations are more likely to rely on trafficked persons, including brothels, dance clubs, or places where labour may be exploited – such as restaurants, hotels, agricultural sites, or homes (in the case of domestic servants).

Evidence of abuse – Any signs of physical injury to the victim can be an indicator of trafficking. However, signs of physical abuse may not be immediately apparent; do not assume that a person is not a trafficking victim merely because there are no signs of physical abuse.

Transport – How a person has been or is being transported may be an indicator of trafficking. Trafficking victims are usually not allowed to move independently but are transported by an escort.

Child victims

Article 6(4) of the Trafficking in Persons Protocol states that the special needs of child victims of trafficking must be taken into account. In order to accommodate their special needs, caseworkers should work closely with social workers and child welfare authorities to ensure that their needs are met. In addition to the key indicators of human trafficking mentioned above, there are additional indicators of a child victim of trafficking.³

Indicators of a child victim of trafficking

Child has no access to their parents or guardians

Look intimidated and behave in a way that does not correspond with behaviour typical of children their age

Have no access to education Have no time for playing

Live apart from other children in substandard accommodations Kept apart from other members of the “family”

Engage in work that is not suitable for children Travel unaccompanied by adults

Travel in groups and with persons who are not relatives

Meeting the needs of child victims of trafficking:

Children who are victims of human trafficking have often suffered abuse and neglect. Once removed from the trafficking situation, it is important to have their needs met.

- Physical health – child victims have often suffered physical, mental and sexual abuse. Social workers should ensure that they have access to medical screening and care as well as psycho- social support.
- Housing support – child victims often need a safe place to live, and it is therefore important for caseworkers to ensure that they are housed in safe spaces where there is an understanding of their situation. They should never be placed in police cells as this will traumatize them further.
- Legal services – child victims may need legal assistance in instances, for example, where they have been accused of a crime, where they are required to appear as witnesses in a trafficking case, or if they are not legally present in the country and maybe facing deportation. In situations where lawyers are involved in the case, the case worker should ensure that the best interests of the child are paramount.

Victims of human trafficking are at constant risk for engagement with law enforcement, particularly the police. While the police can sometimes help to protect trafficked individuals, this is not always the case. Due to misidentification as illegal immigrants - most victims of trafficking do not have a visa or valid immigration documents, or identity papers - they are mostly categorized as illegal immigrants and charged with immigration offenses. The U.S. Department of State Trafficking in Persons Report (2021) states that, “...because of the lack of screening among migrants, authorities reportedly detained and deported potential trafficking victims for suspected

violation of immigration laws.”⁴ The report further states that trafficking cases are often tried as immigration or labour law violations rather than crimes under the anti-trafficking law, which resulted in suspected traffickers receiving less stringent sentences.

Section 14

Notwithstanding the provisions of any other law, a victim of trafficking in persons shall not be criminally liable for any offense related to being in Kenya illegally or for any criminal act that was a direct result of being trafficked.

3. Criminal trial

Caseworkers play an essential part in a successful case. By developing a rapport with the victim, they can gain the victim's trust and help them understand the legal process. Human trafficking cases are rarely successful without victim cooperation and testimony.

Victims of trafficking have a right to seek redress through the judicial system. However, they need to know how the process works before they can make an informed choice on whether to seek redress.

A victim of trafficking can choose to (i) remain silent and not cooperate with law enforcement, (ii) provide information to law enforcement but decline to participate as a witness in the case, (iii) agree to become a witness in the case, or (iv) seek compensation for the crimes committed against them. Victims of trafficking should not be compelled to testify in a case

The police (investigating officers) are responsible for investigating cases and gathering evidence. The prosecutor (i) advises on and prepares the criminal charges, (ii) institutes criminal proceedings against accused persons, (iii) conducts the trials. Most human trafficking cases are tried at the Magistrates Courts, but appeals go to the High Court and the Court of Appeal.

Caseworkers can play an essential role in the criminal justice system. Their foremost role is to support the victim throughout the process. Additionally, because of their close relationship with the victims of trafficking, they may be privy to crucial information about the case.

(a) Pre-trial processes

The pre-trial process involves the following – (i) making a complaint, (ii) investigation of the case, and (iii) preferring charges.

The following events occur once a suspect has been arrested and taken to the police station:

- An Occurrence Book (OB) report is prepared by the reporting officer (the police officer at the OB desk).
- The matter is referred to the Directorate of Criminal Investigation (DCI), and an officer at the DCI opens an investigation. The investigation will include, among other things, taking witness statements, visiting the locations where the victim was held or worked, and taking photographs.
- Once the DCI has completed the investigation, the case is forwarded to the Office of the Director of Public Prosecutions (ODPP).
- The ODPP then decides whether to prosecute the case. The decision to prosecute will be based on whether (i) there is evidence to prove that a crime has occurred and (ii) a prosecution is in the public interest.
 - To convict an accused for trafficking in persons, a prosecutor must prove at least three separate things: under section 3(1) of the Act: **act**, **means** and **exploitation**. These three things are often called the elements of the offence. An **act** is the physical conduct of the accused – what the accused did. The **means** includes evidence of the process by which the accused trafficked the person. In trafficking in persons' cases, the means includes threats or use of force, taking advantage of a position of vulnerability. The **exploitation** could be for the purpose of sexual or labour exploitation, domestic servitude etc. For each trafficking in persons charge, a prosecutor must prove that the accused
 1. committed at least one **act** against another person;
 2. by using at least one of the **means**;
 3. to **exploit** that person.
 - When assessing the public interest, the prosecutor must ensure that there is enough evidence to prove to the Court that a crime has been committed.

Once the ODPP decides to prosecute the case, the accused is arraigned in Court, and a plea is taken. All accused persons have a right to bail and bond.

(b) Trial processes

A criminal prosecution includes several different stages: (i) plea taking, and (ii) the prosecution of the case (which includes defence, judgement, and

sentencing). The most important stages from the perspective of the victim and the caseworker include the decision on whether to grant bail or bond, the process by which evidence is presented to court and victims testify, and the ability of the victim to provide a 'victim impact statement' to the court. A caseworker plays an important role at each of these stages.

During trial:

Witnesses must be informed well in advance of the trial date to ensure that they appear in court. Court cases are often delayed due to the non-appearance of witnesses.

As part of the witness care, caseworkers should ensure that logistics such as transport are taken care of.

Ensure that publicity is avoided – e.g., by asking the court for a closed hearing; requesting that the victim testify in camera

(i) Plea taking

The Constitution of Kenya (Article 49(1)) gives an arrested person the right “to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

The table below describes the difference between **bail** and **bond**:

| | | |
|---|-----------|--|
| Bail – an agreement between an accused person or his/her sureties and the court that the accused person will attend court when required, and that should the accused person abscond, in | | Bond – an undertaking with or without sureties or security, entered into by an accused person in custody under which he or she binds himself or herself to comply with the conditions of the undertaking and if |
| addition to the court issuing warrants of arrest, a sum of money or property directed by the court to be deposited, will be forfeited to the court. | VS | in default of such compliance to pay the amount of bail or other sum fixed in the bond. |
| Surety – a person who undertakes to ensure that an accused person will appear in court and abide by bail conditions. The surety puts up security such as money or a title deed to a property, which can be forfeited to the court if the accused person fails to appear in court. | | |

A bail/bond hearing is a proceeding in which the court determines whether an accused person should be released or held in custody pending trial.

Often the prosecutor will request that bail or bond be denied, and that the accused remain in custody while awaiting trial. The prosecutor will base her request on information gathered by the investigating officer. The investigating officer puts that information in an affidavit that is filed with the court.

Some factors the judge considers include:

| | |
|---|---|
| The nature of the charge or offence and the seriousness of the punishment | The accused person is a flight risk – where the accused is a foreigner and is likely to flee the country and not return to attend trial if granted bond |
| The character of the accused – the accused person is likely to commit, or abet the commission of, a serious offence | The likelihood that the accused will interfere with the witness e.g., where the accused knows the identity of the witnesses and it is likely that he/she may contact and intimidate the witness |
| The need to protect the victim(s) of the crime from the accused person | It is in the public interest to detain the accused person in custody; also, in high profile cases, bail may be denied to protect the accused from the community, i.e. for his/her own safety |
| The accused person is likely to fail to attend court proceedings | The relationship between the accused and the victim |

(ii) Bail/Bond determination

Every person has the right to be released from jail while awaiting trial, including those charged with trafficking in persons. That right, however, is not absolute; the Court can impose conditions that an accused must meet before being released. As seen in the table above, there are types of conditions a court can set: cash bail, which is a requirement that an accused provide money to the Court that will only be returned if the accused shows up for scheduled hearings; bond, which is a requirement that a person provides property or other collateral to the Court that will only be returned if the accused shows up for scheduled hearings; and behavioural conditions, which are limitations on what the accused can do or who the accused can talk to once out of custody.

When deciding on the conditions to impose, the Court must balance the rights of the victim and the community against the rights of the accused. The prosecutor will have to present compelling reasons to the Court when opposing bail. Where an accused has applied for bail or bond, the caseworker can provide helpful information to the investigating officer or

the prosecutor that would affect the outcome of that application. Because caseworkers develop a close relationship and establish trust with the victims, caseworkers may have information that the investigating officer or the prosecutor may not have.

Example: A victim may tell the caseworker that he is being threatened or intimidated. If the caseworker provides this information to the prosecutor, the prosecutor can then present it to the Court when arguing for bond instead of cash bail. If the case is already in process, the prosecutor could use the information to argue that the bond should be cancelled, and that the accused be placed back into custody.

Example: The caseworker may have information about the accused, e.g., if the caseworker has heard that the identification documents or title deed presented by the accused to secure the bond is fake, the prosecutor can order an investigation.

Example: In the case of a very vulnerable victim, the caseworker can let the prosecutor know of the victim's vulnerability and ask the prosecutor to allow the victim to testify as soon as possible before the Court considers the accused application for bond. Such information would enable the Court to deny the bond or hold off on giving a bond due to the vulnerability of the victim.

(iii) Giving of evidence - Trauma

Most successful cases require a victim to give evidence to the Court. Testifying can be a very stressful and traumatic experience for anyone, especially for vulnerable victims and children. There are ways, however, that a caseworker can help reduce the stress and trauma of testifying:

- Where a victim is required to testify, they should receive counselling sessions before and after their testimony
- If the victim does not want to testify, Article 50(7) of the Constitution gives the court discretion to allow an intermediary to assist a victim in communicating with the Court in the interest of justice. Similarly, the Victim Protection Act (the VPA) allows a victim to be declared a “vulnerable victim” that is entitled to have evidence presented through an intermediary.

Some of the key triggers to re-traumatization include—

- Feeling a lack of control
- Experiencing unexpected change
- Feeling threatened or attacked
- Feeling vulnerable or frightened

- Feeling shame

During testimony, the case worker or the legal representative of the victim can request video, closed hearings and witness concealment, preliminary or accelerated hearings to protect the victim.

Additionally, there are situations in which it is not in the best interest of the victim to testify. In such cases, the prosecutor and the court should be consistently appraised of the victim's status and psychological well-being and a determination should be made as to whether it is in the best interests of the victim to testify.

- (iv) Secondary victimization during the trial process

Secondary victimization is the negative responses from actors – such as law enforcement, judges, prosecutors, lawyers – within the criminal justice system towards the victim of trafficking, which may lead to the further infliction of harm alongside the harm that victim already suffered. During the trial process, victims of trafficking often face the possibility of secondary victimization in court. Victims of trafficking are seen as potential witnesses for the prosecution and therefore tools for the law enforcement. They are pressed to give their testimonies, sometimes they must testify in the presence of the trafficker, they have to repeat their history several times in detail, they may be asked intimidating questions, and their privacy is not guaranteed. Thus, the criminal justice system can unintentionally re-victimize a victim of human trafficking.

Victims are mostly disappointed in:

- the general response of law enforcement towards their victimization due to lengthy proceedings,
- a lack of information about their cases
- the fact that the defendant has the same rights as the victim.

Secondary victimization by law enforcement can be prevented by approaching victims in a personal manner, making them feel at ease during interviews, and providing them a choice between questioning by female or male police officers. Lawyers should inform victims of developments in the case to prevent secondary victimization. Case workers should ensure that victims receive adequate access to assistance and support during and after the criminal proceedings.

- (v) Personal safety and security

Victims are mostly afraid and pre-occupied with basic matters of self-protection and survival. The safety and security of victims of trafficking is paramount. Some of the ways in which a victim can be protected during trial are:

- Developing safety plans for the victim e.g., with the caseworker, law enforcement and the victim
- The prosecutor can request the pre-trial detention of the suspect (however, this has to be consistent with the defendants' rights to bail and bond)
 - this protects the victims and their families from retaliation
 - reduces the opportunities for the suspect to influence and intimidate the victim
 - increases the chances of a fair trial by reducing the number of opportunities for the suspect(s) to create a false account or tamper with evidence
- Enrol the victim into the witness protection plan. See Section I(6)(c)(ii) – Human trafficking as human rights violations
- Allowing victims to give evidence by closed circuit television or video link, or alternatively from behind a screen, rather than in open court
- Imposing limits on the ability of defendants and members of the public to have contact or communicate with victims, including clearing the court of the public when sensitive or embarrassing testimony is given
- Having the caseworker present and sitting close to the victim when they are giving evidence
- Allowing evidence given in one trial to be admitted as evidence in later trials to minimize the risk of re-traumatization
- Allowing victims who are residing overseas to give evidence by video link rather than incur the risks and costs of travelling to the country in which the trial is conducted and where security is a greater issue
- Protecting the identity of victims and their families by prohibiting and creating offences for the unauthorized publication of their names and identifying details
- Where victims or survivors are from out of the country, the court gives them reprieve to testify and then leave the country

(vi) Victim Impact Statements

Probation officers prepare a victim impact statement at the request of the prosecutor. The Court uses the statement for sentencing purposes.

Caseworkers can assist probation officers by providing them with information about the impact of the offence and the extent of the harm it caused to the victim. The victim impact statement should include:

- the steps taken towards the commission of the offence;
- the history of the exploitation and emotional and physical suffering sustained by the victim because of the offence;
- the health and medical issues that the victim has as a result and that require attention;
- the type of support or protection that the victim may need;
- in cases dealing with child victims, the statement should establish who consented to their transportation.

(vii) Ways in which caseworkers can provide assistance during the legal process

- During trial - ensure that the trafficking victim is aware of the case, is informed well in advance of the trial date, has transport to and from the court.
- Where possible, caseworkers should update the prosecutor on how a victim is doing. Prosecutors should also incorporate caseworkers in case preparation and keep them informed.
- Caseworkers can and should introduce themselves to judicial officers who handle human trafficking cases in their area. If judicial officers know the caseworkers before a trial begins, they will not be seen as strangers during the judicial proceedings.
- Corroborating evidence - Corroborating evidence is evidence that supports a case. There can never be too much corroboration in a human trafficking case. Victims of trafficking, however, may not know that the information they have could be valuable corroborating evidence for the prosecutors. Often, victims are too intimidated to provide the information to investigators or prosecutors. Because a caseworker has a close relationship with the victim, they may feel more comfortable speaking about their experience to the caseworker. As a result, a caseworker may have, or know of, evidence that the victim has not shared with the investigating officer or the prosecutor. Some types of corroborating evidence include (i) other witnesses such as neighbours, customers, (ii) passports, birth certificates and government-issued identification; (iii) diaries; (iv) the victims' postings on social media; (v) the victims' medical reports and other evidence regarding injuries or treatment of the victim.

Summary:

Trafficked persons as victims of crime and as witnesses:

Victims should be informed of their role and the scope, timing and progress of the proceedings and of the disposition of their cases

The views and concerns of victims should be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system

Victims should be provided with proper assistance throughout the legal process

Measures should be taken to minimize inconveniences to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation

Unnecessary delay in the disposition of cases should be avoided as well as the execution of orders or decrees granting awards to victims

Example: *Republic v. Shaikh Furqan Hussein & Another* (CM Crim No. 1359 of 2018)

The two accused recruited women from Nepal and Pakistan to work as dancers at a club in Nairobi. The women were introduced to an individual in their home countries and offered work as dances in Nairobi. They arrived in Kenya on various dates and were picked up from the airport, driven to a house and immediately began work as dancers in the club. They did not sign any contracts with the owner of the club, did not get any days off and were always transported to and from the club by a driver. They were told to give their passports to the accused, who was going to get them work visas. They were never paid their monthly salary directly; it was always sent to a relative in their home country. Additionally, they never received any tips that the patrons of the dance club left for them. That money went directly to the accused. The club was raided by the police and the accused were arrested. The victims were placed in a safe house.

The accused were charged with offenses under the Counter-Trafficking in Persons Act No. 8 of 2010, namely: recruiting the victims, harbouring the victims, interfering with the victims travel documents, and facilitating and aiding entry into Kenya. The 2nd accused person was acquitted on all the charges. The Court analysed the case of the 1st accused.

- The Court found that the victims were vulnerable because:
 - their passports had been confiscated by the accused and not of them understood the reason why the passports were taken away;

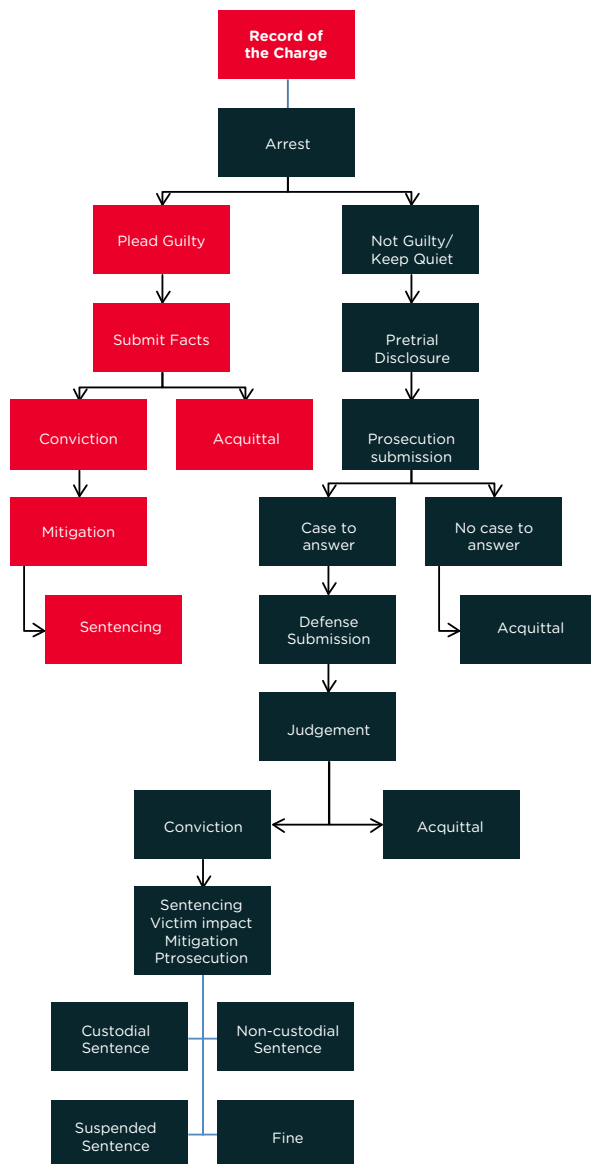
- the confiscation of their passports curtailed their freedom of movement within and outside the country;
 - their dues were sent back home to their relatives thereby keeping them in a state of bondage;
 - engaged in employment without work permits making them vulnerable to exploitation
- The Court also found that the victims were exploited because:
 - they had to pay for their recruiters to come and work in Kenya, yet they did not get work permits;
 - they worked seven days a week with no compensation for overtime work – a violation of Kenya’s employment laws;
- The Court found the 1st accused facilitated and aided entry into Kenya and interfered with travel documents because:
 - money was sent to pay for their air tickets to Kenya;
 - their visas at the airport were paid for;
 - they were picked up at the airport and taken to a house; and
 - their passports were confiscated.

The Court found the 1st accused guilty and convicted him of harbouring the victims, interfering with their travel documents, and facilitating and aiding entry into Kenya. He was found not guilty of recruiting the victims.

(c) Post-Trial Processes

Once the trial is over, the caseworker and other stakeholders such as counsellors and therapists should continue to assist the victim, e.g., understanding the judgment of the court and what options are available to the victim. Additionally, once the trial is over, the survivors are still vulnerable, and caseworkers and others involved in the case should ensure that the victims are not re-trafficked and traumatized. Victims are still vulnerable to social pressures and the influence of their traffickers

The Trial Process



4. **Civil suits**

Civil cases are private prosecutions where an individual prosecutes the case, unlike in criminal cases where the prosecutor is the State. Under the Employment Act and the CTIP, trafficking victims can file civil suits against traffickers seeking their unpaid wages. Employment claims are filed with the Employment and Labour Relations Court.

Section 2 of the Employment Act conversely defines an “employee” to be a person employed for wages or salary and includes an apprentice and indentured learner. Both the Constitution of Kenya (Article 41(2)) and the Employment Act (Section 26) state that an employee is entitled to fair remuneration and reasonable working conditions. The Employment Act also entitles employees to leave, maximum working hours of 52 hours a week (Sections 27-30), medical attention (Section 34), and reasonable housing or a house allowance (Section 31).

If the monetary value sought in the case is more than twenty million Kenya shillings, then the case should be filed at the High Court. If it is less than twenty million it should be filed at the Chief Magistrates Court.

Civil cases are less adversarial than criminal cases, they have procedures and timelines that have to be followed and the parties are allowed to settle the case by consent, at any time before the court delivers its judgment. If the parties agree to settle the matter, the agreement has to be recorded in court, and has the same effect as the judgment.

(See Annexure for the process on how to file a case)

5. **Reintegration**

Reintegration

Reintegration is the transitioning of the victim of trafficking to their community. The aim of reintegration is to foster, nurture and strengthen the rehabilitation process into their community or host community to live a normal life. Section 15(1) of the CTIP states that plans for the provision of services to victims of trafficking and accompanying children are to be formulated at a ministerial level in consultation with the Advisory Committee. The services include reintegration. Victims of trafficking who are provided with reintegration assistance are much less likely to be re-trafficked.

However, it is important to note that a person may still be re-victimized even after receiving reintegration assistance. Supported reintegration is a right owed to victims of trafficking by virtue of their status as victims of a crime and of human rights violations. Successful reintegration requires cooperation between repatriating and receiving countries.

Victims of trafficking return home in the hopes of rebuilding their relationships with their family and community. It is important to note that

returning to one's home country can be just as difficult, if not more so, than leaving it in the first place. (Bearing in mind the social and economic disruption that naturally takes place when a person emigrates).

It is important to note that many victims of trafficking who return to their countries tend to seek personal solutions to solve their problems and reintegrate without the assistance of organizations.

The concept of reintegration is defined as: "the process of inclusion and re-building relationships within a community in their home country from a physical, socio-economic, socio-political, and cultural perspective.

Factors that influence the reintegration process

The reintegration of victims of trafficking is a complex issue. It is important to note that when the factors that led to the victim being trafficked in the first place have not been resolved there is a high risk of the victim being re-trafficked or returning to the environment of exploitation.

Successful reintegration of a victim of trafficking depends on a wide range of factors and situations, including the victim's individual profile, the environment into which she/he is to reintegrate and the different support mechanisms for reintegration in the home country.

Factors influencing reintegration include:

- Family situation
 - It is important to ensure that the victims' family did not play a role in the trafficking otherwise the victim will face a high risk of being trafficked again.
 - The family situation should also be evaluated to ensure that the victim does not face rejection by her/his family
- The home country
 - Whether the home country recognizes victims of trafficking and provides services for them
- Economic factors in the home country
 - Poverty is a major factor that leads to trafficking, and it is therefore important to consider the impact of poverty on the success of reintegration
- Health services
 - This is particular in cases where victims of trafficking endured sexual exploitation and suffer serious health problems as a result. Caseworkers should ensure that they are unable to access adequate medical treatment after reintegration.

In planning for the reintegration of a victim of trafficking, caseworkers should work closely with a partner organization as well as law enforcement in the home country. Some of the things the caseworkers can do to prepare for the victims' reintegration are:

- (i) Develop a reintegration plan – which includes information about what to expect and how the victim will reintegrate into their community
- (ii) Work with a partner organization in the home country to trace the family of the victim who will prepare that family for the return of the victim.

Repatriation is whereby a victim of trafficking is to be returned their home country. Caseworkers work with a partner organization in the victim's home country to ensure that the victim is integrated into their community. Sometimes survivors do not have proper documentation and it is important to work with the embassy and high commissions of the survivors.

Below is a summary of factors need to be considered before reintegration takes place including:

- the best interests of the victim – age, sex, disability etc. need to be taken into account
- the cultural and religious values of the victim
- cultural practices of the community
- medical condition of the victim
- family and community preparedness to receive the victim
- availability of services and resources in the location where the victim is going
- developing an individual reintegration plan for the victim

Note: During the trial proceedings, victims who are witnesses and have testified, should be allowed to leave and travel back to their home countries (if they want to). Because victims of trafficking often lack identification documents, the immigration service plays a key role. The immigration service can assist through:

- issuing residency certificates and permits to victims who cannot return to their country of origin. These documents will help them regularize their stay in the host country
- facilitating the return of victims to their own country if they are able to do so.

Appendix

Counter Trafficking in Persons Act

| Definitions under the Counter-Trafficking in Persons Act | |
|---|---|
| Forced labour | The extraction of work or services from any person for the purpose of exploitation |
| Slavery | The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised |
| Trafficking for sexual exploitation | <p>Trafficking</p> <p>with the intention of doing anything to or in respect of a particular person during or after a journey within Kenya or in any part of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006; or</p> <p>in the belief that another person is likely to do something to or in respect of the person trafficked, during or after the journey in any part</p> <p>of the world, which if done will involve the commission of an offence under the Sexual Offences Act, 2006</p> |

Penalties imposed under the Counter-Trafficking in Persons Act

Section 3 – Trafficking in Persons

- 1 A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours, or receives another person for the purpose of exploitation by means of—(a) threat or use of force or other forms of coercion; (b) abduction;(c) fraud;(d) deception;(e) abuse of power or of a position of vulnerability;(f) giving payments or benefits to obtain the consent of the victim of trafficking in persons; or (g) giving or receiving payments or benefits to obtain the consent of a person having control over another person.
- 2 The consent of a victim of trafficking in persons to the intended exploitation shall not be relevant where any of the means set out in subsection (1) have been used.
- 3 The recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set out in subsection (1) of this Act.
- 4 An act of trafficking in persons may be committed internally within the borders of Kenya or internationally across the borders of Kenya.
- 5 A person who traffics another person for the purpose of exploitation commits an offence and is liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.

Accused is liable to imprisonment for a term of not less than 30 years or to a fine of not less than Kshs. 30million or to both and upon subsequent conviction, to imprisonment for life.

| | |
|--|---|
| Section 4 - Acts that promote child trafficking | Accused is liable to imprisonment for a term of |
| <ol style="list-style-type: none"> 1 A person who for the purpose of trafficking in persons—(a) adopts a child or offers a child for adoption; (b) fosters a child or offers a child for fostering; or (c) Offers guardianship to a child or offers a child for guardianship, commits an offence. 2 A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of subsection (1) commits an offence. | not less than 30 years or to a fine of not less than Kshs. 20million or to both and upon subsequent conviction, to imprisonment for life |
| Section 5 - Promotion of trafficking in persons A person who—(a) knowingly leases, or being the occupier thereof, permits to be used any house, building, or other premises for the purpose of promoting trafficking in persons; (b) publishes, exports or imports, any material for purposes of promoting trafficking in persons; or (c) manages, runs or finances any job recruitment agency for the purposes of promoting trafficking in persons; (d) by any other means promotes trafficking in persons. | Accused is liable to imprisonment for a term of not less than 20 years or to a fine of not less than Kshs. 20million or to both and upon subsequent conviction, to imprisonment for life. |

| | |
|---|--|
| <p>Section 6 - Acquisition of travel documents by fraud or misrepresentation A person who knowingly misrepresents any fact for purposes of facilitating the acquisition of travel documents or fraudulently obtains any document from Government agencies in order to assist in the commission of an offence of trafficking in persons.</p> | <p>Accused is liable to imprisonment for a term of not less than 10 years or to a fine of not less than Kshs. 10 million or to both and upon subsequent conviction, to imprisonment for a term of not less than 10 years without the option of a fine.</p> |
| <p>Section 7 - Facilitating entry into or exit out of the country</p> <p>A person who facilitates, aids or abets the exit or entry of persons from or into the country at international and local airports, territorial boundaries and seaports for the purpose of promoting trafficking in persons.</p> | <p>The accused is liable to imprisonment for a term of not less than 30 years or to a fine of not less than Kshs. 30 million or to both and upon subsequent conviction, to imprisonment for a term of not less than thirty years without the option of a fine.</p> |
| <p>Section 8 - Interfering with travel documents and personal effects</p> <p>A person who—(a) confiscates, conceals, alters, destroys or in any other manner deals with any identification or travel documents of another person in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies; or (b) confiscates, conceals, destroys or in any other manner deals with personal effects of another person or threatens to do so in furtherance of trafficking in persons or in order to prevent that other person from leaving the country or seeking redress from the Government or appropriate agencies.</p> | <p>Accused is liable to imprisonment for a term of not less than 10 years or to a fine of not less than Kshs. 10 million or to both and upon subsequent conviction, to imprisonment for a term of not less than ten years without the option of a fine.</p> |

| | |
|--|--|
| <p>Section 9 - Life-threatening circumstances or death</p> <p>Where in the course of the commission of an offence under this Act—(a) a victim of trafficking in persons suffers any permanent or life-threatening bodily harm; or (b) by reason of the act of trafficking in persons, the victim of trafficking in persons dies or is afflicted with any other life-threatening or terminal health condition.</p> | <p>Accused is liable to a sentence of imprisonment for life.</p> |
| <p>Section 10 - Trafficking in persons for organised crime</p> <p>Where in the course of the prosecution of a person under this Act, it emerges that the person being prosecuted engaged in trafficking in persons as part of the activities of an organised criminal group or that person organised or directed other persons to commit an offence as an activity of an organised group.</p> | <p>Accused is liable to a sentence of imprisonment for life.</p> |

Annex

1. **Charge sheet**
2. **P3 Form**
3. **PRC Form**
4. **How to File a Case in Court**

CONSOLIDATED CHARGE SHEET**POLICE CASE NO:****DATE TO COURT****COURT FILE NUMBER****KENYA POLICE
CHARGE SHEET****O.B No**

| | | | | | | |
|--------------------------|--------------------------|-----------------------------|--------------------------------------|----------------------|--|---------|
| Christian Names in full | Surname or father's name | Identity certificate number | Sex | Nationality or tribe | Approximate age | Address |
| CHARGE | | | | | | |
| PARTICULARS OF OFFENCE | | | | | | |
| If accused arrested | Date of arrest | With or without warrant | Date of apprehension report to court | Bond and Bail amount | If application made for summons to issue | |
| | | | | | | |
| Remanded or adjourned to | | | | | | |
| Complainant and Address | | | | | | |
| Witnesses | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| SENTENCE | | | | | | |
| | | | | | | |
| COURT AND DATE | | | | | | |
| | | | | | | |

PARTICULARS OF THE OFFENCE:**Officer in Charge**



MINISTRY OF HEALTH

POST RAPE CARE FORM (PRC) MOH 363 PART A & B

County: _____

Sub-County: _____

Facility: _____

Start Date: _____

End Date: _____

Filing a case in court process



THE KENYA POLICE
MEDICAL EXAMINATION REPORT

P3

PART 1-(To be completed by the Police Officer Requesting Examination)

From.....Ref.....
.....Date.....
To the.....Hospital/Dispensary
I have to request the favour of your examination of:-
Name.....Age.....(If known)
Address.....Date and Time of the alleged offence.....
.....
Sent to you/Hospital on the.....20.....under escort of.....
.....and of your furnishing me with a report of the nature and
extent of bodily injury sustained by him/her.
Date and time report to police.....
Brief details of the alleged offence.....
.....
.....
Name of Officer Commanding Station.....Signature of the Officer Commanding Station

PART 11-MEDICAL DETAILS - (To be completed by Medical Officer or Practitioner carrying out examination)

(Please type **four** copies from the original manuscript)

SECTION 'A'-THIS SECTION MUST BE COMPLETED IN ALL EXAMINATIONS

- Medical Officer's Ref.NO.....
1. State of clothing including presence of tears, stains (wet or dry) blood, etc.
.....
.....
.....
 2. General medical history (including details relevant to offence).....
.....
.....
 3. General physical examination (including general appearance, use of drugs or Alcohol and demeanour)
.....
.....

**SECTION “B”. TO BE COMPLETED IN ALL CASES OF ASSAULT,
INCLUDING SEXUAL ASSAULTS, AFTER THE
COMPLETION OF SECTION “A”**

1. Details of site, situation, shape and depth of injuries sustained:-
 - a) Head and neck.....
 - b) Thorax and Abdomen.....
 - c) Upper limbs.....
 - d) Lower limbs
2. Approximate age of injuries (hours, days, weeks).....
3. Probable type of weapon(s) causing injury.....
4. Treatment, if any, received prior to examination.....
5. What were the immediate clinical results of the injury sustained and the assessed degree, i.e. “harm”, or ‘grievous harm’.*

DEFINITIONS:-

“Harm” Means any bodily hurt, disease or disorder whether permanent or temporary.

“Maim” means the destruction or permanent disabling of any external or organ, member or sense

“Grievous Harm” Means any harm which amounts to maim, or endangers life, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent, or serious injury to external or organ.

.....
Name & Signature of Medical Officer/Practitioner

Date.....

SECTION "C"-TO BE COMPLETED IN ALLEGED SEXUAL OFFENCES AFTER THE COMPLETION OF SECTIONS "A" AND "B"

1. Nature of offence.....Estimated age of person examined.....
2. **FEMALE COMPLAINANT**
 - a) Describe in detail the physical state of and any injuries to genitalia with special reference to labia majora, labia minora, vagina, cervix and conclusion.....
 - b) Note presence of discharge, blood or venereal infection, from genitalia or on body externally.....
3. **MALE COMPLAINANT**
 - b) Describe in detail the physical state of and any injuries to genitalia.....
 - c) Describe in detail injuries to anus.....
 - d) Note presence of discharge around anus, or/ on thighs, etc.; whether recent or of long standing.....

SECTION “D”**4. MALE ACCUSED OF ANY SEXUAL OFFENCE**

- a) Describe in detail the physical state of and any injuries to genitalia especially penis.....
.....
.....
.....
- b) Describe in detail any injuries around anus and whether recent or of long standing.....
.....
.....
.....
5. Details of specimens or smears collected in examinations 2 ,3 or 4 of section “C” including pubic hairs and vaginal hairs.....
.....
.....
6. Any additional remarks by the doctor.....
.....
.....
.....

.....
Name & Signature of Medical Officer/Practitioner

Date.....



MINISTRY OF HEALTH

POST RAPE CARE FORM (PRC)

MOH 363

PART A & B

County: _____

Sub-County: _____

Facility: _____

Start Date: _____ **End Date:** _____

POST RAPE CARE FORM (PRC)

PRC FORM IS NOT FOR SALE

PART A

MOH 363

Ministry of Health National Rape Management Guidelines: Examination documentation form for survivors of rape/sexual violence (to be used as clinical notes to guide filling in of the P3 form)

PRC

Post Rape Care Form

MOH 363

| | | | | | | |
|-----------------------|-------|------|---------------|-----------------|-----------|----------------|
| Day | Month | Year | County Code | Sub-county Code | OP/IP No. | MFL Code |
| Name(s) (Three Names) | | | Facility Name | | MFL Code | |
| Date of birth | | | Day | Month | Year | Male Female |

Contacts (Residence and Phone number)

| | |
|--|--------------------------|
| Disabilities (Specify) | Marital Status (specify) |
| Orphaned vulnerable child (OVC) <input type="checkbox"/> Yes <input type="checkbox"/> No | Citizenship |

| | | |
|------------------------------|-----------------------------|---------------------|
| Date and time of Examination | Date and Time of Incident | No. of perpetrators |
| Day Month Year Hr Min AM/PM | Day Month Year Hr Min AM/PM | |

| | | |
|--|---|---------------|
| Alleged perpetrators | Male <input type="checkbox"/> Female <input type="checkbox"/> | Estimated Age |
| <input type="checkbox"/> Unknown <input type="checkbox"/> Known (specify the relationship) | | |

| | | | |
|-------------------------|---------------------------------|------------|----------|
| Where incident occurred | Administrative location: County | Sub-county | Landmark |
|-------------------------|---------------------------------|------------|----------|

| | |
|---|---------------------------|
| Chief complaints: Indicate what is observed | Indicate what is reported |
|---|---------------------------|


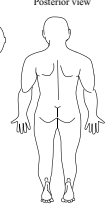
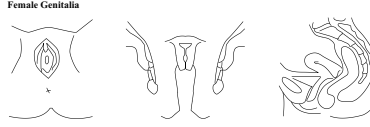
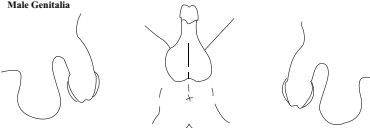
Circumstances surrounding the incident (survivor account) remember to record penetration (how, where, what was used? Indication of struggle?)

| | | |
|--|---|--|
| Type of Sexual Violence | Use of condom? | Incident already reported to police? |
| <input type="checkbox"/> Oral <input type="checkbox"/> Vaginal <input type="checkbox"/> Anal <input type="checkbox"/> Other (specify) | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown | <input type="checkbox"/> No <input type="checkbox"/> Yes (indicate name of police station) |
| Date and time of report | | Date and time of police station |
| Day Month Year Hr Min AM/PM | | Day Month Year Hr Min AM/PM |
| Attended a health facility before this one? | | Were you treated? |
| <input type="checkbox"/> No <input type="checkbox"/> Yes (Indicate name of facility) | | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Were you given referral notes? | | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | |

Significant medical and/or surgical history

Comments: Indicate additional information provided by the client or observed by clinician

PHYSICAL EXAMINATION [indicates sites and nature of injuries bruises and marks outside the genitalia]
Please use the body map below to indicate injuries, inflammations, marks on various body parts of the survivor

| | |
|--|---|
| BODY MAP | Comments |
| <div>Anterior View</div>  <div>Posterior view</div>  | <div>Female Genitalia</div>  <div>Male Genitalia</div>  |

| | | | | | |
|-------------------|--------|--------------------|-----|------------------|---|
| OB / GYN History | Parity | Contraception type | LMP | Known Pregnancy? | Date of last consensual sexual intercourse |
| General Condition | BP | Pulse Rate | RR | Temp | Demeanor /Level of anxiety (calm, not calm) |

FORENSIC

| | |
|--|--|
| Did the survivor change clothes? | State of clothes (stains, torn, color, where were the worn clothes taken?) |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |

| | |
|--|---|
| How were the clothes transported? | <input type="checkbox"/> a) Plastic Bag <input type="checkbox"/> b) Non Plastic Bag |
| <input type="checkbox"/> c) Other (Give details) | |

| | |
|--|--|
| Were the clothes handed to the police? | Did the survivor go to the toilet? |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Long call? <input type="checkbox"/> Short call? |

| | |
|---|---|
| Did the survivor have a bath or clean themselves? | <input type="checkbox"/> No <input type="checkbox"/> Yes (Give details) |
|---|---|

| | |
|--|---|
| Did the survivor leave any marks on the perpetrator? | <input type="checkbox"/> No <input type="checkbox"/> Yes (Give details) |
|--|---|

GENITAL EXAMINATION OF THE SURVIVOR-indicate discharges, inflammation, bleeding

| | |
|--|--|
| Describe in detail the physical status | Physical injuries (mark in the body map) |
| Outer genitalia | |
| Vagina | |
| Hymen | |
| Anus | |
| Other significant orifices | |
| Comments | |

| | | | | |
|--|--|--|--|--|
| Immediate Management | PEP 1st dose | ECP given | Stitching /surgical toilet done | STI treatment given |
| <input type="checkbox"/> No <input type="checkbox"/> Yes (No of tablets) | <input type="checkbox"/> No <input type="checkbox"/> Yes | <input type="checkbox"/> No <input type="checkbox"/> Yes (Comment) | <input type="checkbox"/> No <input type="checkbox"/> Yes (Comment) | <input type="checkbox"/> No <input type="checkbox"/> Yes (Comment) |

Any other treatment / Medication given /management?

| | | | |
|--|---|------------------------------|----------|
| Referrals to | <input type="checkbox"/> Police Station <input type="checkbox"/> HIV Test <input type="checkbox"/> Laboratory <input type="checkbox"/> Legal <input type="checkbox"/> Trauma Counseling | | |
| <input type="checkbox"/> Safe Shelter <input type="checkbox"/> OPD/CCC/HIV Clinic <input type="checkbox"/> Other (specify) | | | |
| L Sample Type | Test | Please tick as is applicable | Comments |
| A | | National government Lab | |
| B | Outer Genital swab | Wet Prep Microscopy | |
| O | Anal swab | DNA | |
| R | Skin swab | Culture and sensitivity | |
| A | Oral swab | Other | |
| T | Specify | | |
| O | High vaginal swab | Wet Prep Microscopy | |
| U | Urine | Pregnancy Test | |
| R | | Microscopy | |
| Y | | Drugs and alcohol | |
| | | Other | |
| Blood | Haemoglobin | | |
| S | HIV Test | | |
| A | SGPT/GOT | | |
| M | VDRL | | |
| P | DNA | | |
| L | Pubic Hair | DNA | |
| E | Nail clippings | DNA | |
| S | Foreign bodies | DNA | |
| | Other (specify) | | |

CHAIN OF CUSTODY

| | | | | |
|--|---|-----------|-----|-------|
| These / All / Some of the samples packed and issued (please specify) | | | | |
| By | Name of Examining Officer (Doctor/Nurse/Clinical officer) | Signature | Day | Month |
| To | Police Officer's Name | Signature | Day | Month |

PSYCHOLOGICAL ASSESSMENT Complete psychological assessment section in Part B

POST RAPE CARE FORM (PRC)PRC FORM IS **NOT** FOR SALE**PSYCHOLOGICAL ASSESSMENT****PART B**

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Part B is intended to assess the mental status of a client in order to be able to offer holistic care. This should inform the management and subsequent follow up of the client and hence should be filled in at presentation.

Psychological assessment should be done by trained health care providers including Medical Officers, Nurses, Clinical Officers, Psychiatrists, Psychological Counselors and Medical Social Workers duly recognized by the Ministry of Health.

The Medical Officers and other persons designated by law as expert witnesses in court (Nurses and Clinical Officers) should be the ones to sign off both the Part A and B of the PRC form.

General appearance and behavior

Note appearance (appear older or younger than stated age), gait, dressing, grooming (neat or unkempt) and posture.

Rapport

Easy to establish, initially difficult but easier over time, difficult to establish.

Mood

How he/she feels most days (happy, sad, hopeless, euphoric, elevated, depressed, irritable, anxious, angry, easily upset).

Affect

Physical manifestation of the mood e.g. labile (emotions that are freely expressed and tend to alter quickly and spontaneously like sobbing and laughing at the same time), blunt/ flat, appropriate/ inappropriate to content.

Speech

Rate, volume, speed, pressured (tends to speak rapidly and frenziedly), quality (clear or mumbling), impoverished (monosyllables, hesitant).

Perception

Disturbances e.g. Hallucination, feeling of unreality (corroborative history may be needed to ascertain details)

Thought content

Suicidal and Homicidal Ideation (Ideas but no plan or intent; clear/unclear plan but no intent; ideas coupled with clear plan and intent to carry it out); any preoccupying thoughts.

Thought process

Goal-directed/ logical ideas, loosened associations/ flight of ideas/ illogical, relevant, circumstantial (drifting but often coming back to the point), ability to abstract, perseveration (constant repetition, lacking ability to switch ideas).

(For children use wishes and dreams, and art/ play therapy to assess the thought process and content.

-Through drawing and play (e.g. use of toys). Allow the child to comment on the drawing and report verbatim.

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-Assess the unconscious world of the child by asking about feelings e.g. ask the child to report the feeling that he/she commonly experiences and ask what makes him/her feel that way

Cognitive function-

a. Memory: Recent memory, long-term and short term memory (past several days, months, years).

b. Orientation: to time, place, person i.e. ability to recognize time, where they are, people around e.t.c.

c. Concentration: ability to pay attention e.g. counting or spelling backwards, small tasks

d. Intelligence: Use of vocabulary (compare level of education with case presentation; above average, average, below average).

e. Judgment: Ability to understand relations between facts and to draw conclusions; responses in social situations.

Insight level: Realizing that there are physical or mental problems; denial of illness, ascribing blame to outside factors; recognizing need for treatment (Indicate whether insight level is; present, fair, not present)

| Recommendation following assessment | Referral point/s |
|-------------------------------------|------------------|
| | |
| | |

Referral uptake since last visit e.g. other medical services, children's department, police, legal aid, shelter e.t.c.




| | | | | | |
|----|---|-----------|-----|-------|------|
| By | Name of Examining Officer (Doctor/Nurse/Clinical officer) | Signature | Day | Month | Year |
| To | Police Officer's Name | Signature | Day | Month | Year |



This publication was made possible through support provided by the Global Fund to End Modern Slavery under a grant from the U.S. Department of State. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of GFEMS or the U.S. Department of State.



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