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United Nations Office on Drugs and Crime

Regional Legislative Assessment on Trafficking in Persons in Eastern Africa

Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda,
Seychelles, Somalia, Tanzania, Uganda



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United Nations

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Background and Methodology

This paper has been drafted in the context of the Regional Project on “Enhancing Effective and Victim-Centred Criminal Justice Responses to Trafficking in Persons (TIP) in Eastern Africa,” funded by the United States Department of State’s Office to Monitor and Combat Trafficking in Persons (TIP), implemented by UNODC as part of its Regional Sub-programme on “Countering Transnational Organized Crime and Illicit Trafficking in Eastern Africa.”

The project seeks to address the lack of effective regional coordination in countering TIP in Eastern Africa Region. The goal of the project is to reduce TIP in Eastern Africa by enhancing the strategic and operational capacity of States and regional organizations in Eastern Africa to prevent, suppress and punish TIP, while effectively protecting and supporting Victims of Trafficking in Persons (Victims of TIP). The ultimate result of the project is to: i) enhance regional cooperation and coordination to TIP in Eastern Africa through development and implementation of a regional Plan of Action to counter TIP; and ii) develop or/and update harmonized counter-TIP legislation which is better aligned to the United Nations Convention against Transnational Organized Crime (UNTOC) and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol) by implementing regulations clarifying rules and procedures on the ground to have more responsive and sustainable national strategic frameworks and action plans.

United Nations Office on Drugs and Crime, as the guardian of UNTOC and its supplementary Protocols, including the TIP Protocol, is mandated to promote global adherence to these instruments and to assist Member States in implementing the provisions there of. Against that background the objective of this work is to review and analyze legislation related to TIP in Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, Tanzania and Uganda in order to determine compliance with the provisions of UNTOC and its supplementary TIP Protocol. The report and recommendations will support the legislative reform process in these countries aimed at the development and regional harmonization of comprehensive legislative frameworks to effectively prevent suppress and prosecute TIP in accordance with international law. The report is drafted by an independent international consultant (Mariana Araújo Roncisvale Stark) primarily on the basis of a desk review of relevant legislation for each country.

United Nations Office on Drugs and Crime sent a questionnaire to Mauritius, Rwanda, Seychelles, Tanzania and Madagascar to gather country input into the process. However, only Seychelles, Tanzania and Madagascar submitted brief responses to the questionnaire. No country missions were conducted to interview national officials and stakeholders as part of this process. Because of these factors, this analysis is limited to the texts of existing legislation and contains information concerning the extent or effectiveness of implementation of the legislation assessed.

For consistency, the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children will be referred to as TIP Protocol and/or Trafficking in Persons Protocol.

Snapshot of legislative and policy response

Across the Eastern Africa region, the legislative framework that is in place to address TIP is uneven. Not all countries have ratified the UNTOC and its Supplementary TIP Protocol. Countries that have did not dispose a national framework fully complying with international requirements.

In order to be effective, the domestication and implementation of UNTOC and its Protocols must be strategic, in so far as they are leveraged against perpetrators of TIP crimes whose prosecution and conviction can result in some level of disruption to organized criminal groups and send effective messages to other criminals.

Table 1: States' ratification of international instruments (by year)

International Instruments	BURUNDI	COMOROS	DJIBOUTI	ERITREA	ETHIOPIA	KENYA
UNTOC	2012	2003	2005	2014	2007	2004
TIP Protocol	2012	2020	2005	2014	2012	2005
1951 Refugees Convention	1963	-	1977	-	1969	1966
1967 Protocol on the Refugees Convention	1971	-	1977	-	1969	1981
ICCPR	1990	-	2002	2002	1993	1972
ICESCR	1990	-	2002	2001	1993	1972
UNCAT	1993	2017	2002	2014	1994	1997
Optional Protocol to CRC on armed conflict	2008	-	2006	2005	2010	2000
Optional Protocol to CRC on sale of children, prostitution and pornography	2007	2007	2006	2005	2014	2000
CEDAW	1992	1994	1998	1995	1982	1984
CRC	1990	1993	1990	1994	1991	1990
ICERD, 1969	1977	2004	2011	2001	1976	2001
ICRMW, 1990	-	-	-	-	-	-
ICRPD, 2006	2014	2016	2012	-	2010	2008
Slavery Convention of 1926 amended by the Protocol of 1953	-	-	-	-	1969	-
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950	-	-	1979	-	1981	-
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	-	-	1979	-	1969	-
ILO Forced Labour Convention, 1930 (No. 29)	1963	1978	1978	2000	2003	1964
Protocol to the Forced Labour Convention, 2014	-	-	-	-	-	-
ILO Abolition of Forced Labour Convention, 1957 (No.105)	1963	1978	1978	2000	1999	1964

International Instruments	BURUNDI	COMOROS	DJIBOUTI	ERITREA	ETHIOPIA	KENYA
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	2002	2004	2005	2019	2003	2001
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	-	-	1979	-	1969	-

Table 2: States' ratification of international instruments (by year)

International Instruments	MADAGASCAR	MAURITIUS	RWANDA	SEYCHELLES	SOMALIA
UNTOC	2005	2003	2003	2003	-
TIP Protocol	2005	2003	2003	2004	-
1951 Refugees Convention	1967	-	1980	1980	1978
1967 Protocol on the Refugees Convention	-	-	1980	1980	1978
ICCPR	1971	1973	1975	1992	1990
ICESCR	1971	1973	1975	1992	1982
UNCAT	2005	1992	2008	1992	1990
Optional Protocol to CRC on armed conflict	2004	2009	2002	2010	2005
Optional Protocol to CRC on sale of children, prostitution and pornography	2004	2011	2002	2012	-
CEDAW	1989	1984	1981	1992	-
CRC	1991	1990	1991	1990	2015
ICERD 1969	1969	1972	1975	1978	1975
ICRPD 2006	2015	2010	2008	2009	2019
ICRMW 1990	2015	-	2008	1994	-
ICRPD 2006	2015	2010	2008	2009	2019
Slavery Convention of 1926 amended by the Protocol of 1953	1964	1969	-	-	-
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950	-	-	2003	1992	-
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	1972	1969	2006	1992	-
ILO Forced Labour Convention, 1930 (No. 29)	1960	1969	2001	1978	1960
Protocol to the Forced Labour Convention, 2014	2019	-	-	-	-

International Instruments	MADAGASCAR	MAURITIUS	RWANDA	SEYCHELLES	SOMALIA
ILO Abolition of Forced Labour Convention, 1957 (No.105)	2007	1969	1962	1978	1961
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	2001	2000	2000	1999	2014
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	1972	1969	2006	1992	-

Table 3: States' ratification to international instruments (by year)

International Instruments	TANZANIA	UGANDA
UNTOC	2006	2000
TIP	2006	2000
1951 Refugees Convention	1964	1976
1967 Protocol on the Refugees Convention	1968	1976
ICCPR	1976	1995
ICESCR	1976	1987
UNCAT	1985	1986
Optional Protocol to CRC on armed conflict	2004	2002
Optional Protocol to CRC on sale of children, prostitution and pornography	2003	2001
CEDAW	1985	1985
CRC		
ICERD 1969	1972	1980
ICRPD 2006	2009	2008
ICRMW 1990	-	1995
ICRPD 2006	2009	2008
Slavery Convention of 1926 amended by the Protocol of 1953	1962	1964
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950	-	-
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	1962	1964
ILO Forced Labour Convention, 1930 (No. 29)	1962	1963
Protocol to the Forced Labour Convention, 2014	-	-
ILO Abolition of Forced Labour Convention, 1957 (No.105)	1962	1963
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	2001	2001
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956	1962	1964

Table 4: Legal framework on TIP

	Burundi	Comoros	Djibouti
Title of national legislation on TIP	Criminal Code (rev. 2017) [Section 1-Art.246 to 256]; Loi N° 1/28-29 Oct. 2014 portant prévention et répression de la traite des personnes et protection des victimes de la traite.	Loi n° 14-034/AU du 22 décembre 2014 portant lutte contre le travail et la traite des enfants; Criminal Code [art. 322 and 323] aiding and abetting the prostitution of others, with stiffer penalties for prostitution of minors].	Law No. 133 (2016), On the Fight Against Trafficking in Persons and Illicit Smuggling of Migrants (Loi n. 133/AN/16/7ème sur la lutte contre la traite des personnes et le trafic illicite des migrants). Law No.111 (2011), Fight Against Terrorism and Other Serious Crimes prohibits all forms of TIP.
Title of the National Action Plan/Strategic Framework on TIP	2019-2020 Anti-trafficking National Action Plan.	Not yet in place.	The Government has not fully operationalized its national action plan to combat trafficking and, despite there being a formal mechanism in place, the government's victim identification efforts are mostly done on an ad hoc basis. During UNODC's mission to Djibouti in 2021, the government expressed that they would need UNODC's support in drafting a new national action plan to combat TIP. ¹

	Eritrea	Ethiopia	Kenya
Title of national legislation on TIP	Penal Code (2015) – art. 315 criminalizes trafficking in women and young persons for sexual exploitation; art. 297 criminalizes enslavement, and art. 299 criminalizes forced labour.	Criminal Code (2004) – art. 597. Proclamation No. 1178/2020 (Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation). Proclamation No. 923/2016 (Ethiopia's Overseas Employment Proclamation).	The Counter-Trafficking in Persons Act (act No. 8 of 2010)(cap. 61).
Title of the National Action Plan/Strategic Framework on TIP	The Government does not have a national action plan to combat TIP. Nonetheless, after participating in an UN sponsored, regional anti-trafficking workshop, the Government has committed to produce a Regional Plan of Action for Eastern Africa on Countering TIP and SOM. In 2019, the Government increased its international cooperation and outreach on trafficking and related topics with a range of multilateral and bilateral partners. Officials were reportedly active in an international organization's regional anti- trafficking project, which commenced creation of a region-wide action plan with complementary national-level plans. ²	Ethiopia currently has no national anti-trafficking action plan.	In 2021, the Government of Kenya, specifically the Counter Trafficking in Persons Secretariat, held a validation workshop, in cooperation with UNODC, to incorporate feedback from different stakeholders on the draft National Plan of Action (NPA) (2019-2021) and the NPA is expected to pass before the end of 2021. The timeline of the NPA may change.

¹ The U.S. Trafficking in Persons Report (U.S. Department of State, 2020), Country Narrative Djibouti.

² The U.S. Trafficking in Persons Report (U.S. Department of State, 2020), Country Narrative Eritrea.

	Madagascar	Mauritius	Rwanda
Title of national legislation on TIP	Loi N° 2014-040 du 20 janvier 2015 ³ [Anti-Trafficking Act] amending Anti-Trafficking Act [Loi N° 2007-038 du 14 janvier 2008]; Criminal Code of 1972 – art. 334-335 (prostitution, proxénétisme).	The Combating of Trafficking in Persons Act of 2009 criminalises sex trafficking and labour trafficking of adults and children. The Child Protection Act of 2005 criminalizes child sex and labour trafficking. Three national legislations in relation to child protection, including from trafficking, were passed by the National Assembly on 15 December, 2020, but are not yet proclaimed: Children’s Act 2020 (may repeal the Child Protection Act, 2005) Children’s Court Act, 2020 and Child Sex Offender Register Act.	Law n° 51/2018 on the Prevention, Suppression, and Punishment of Trafficking-in-Persons and Exploitation of Others.
Title of the National Action Plan/Strategic Framework on TIP	National Action Plan on TIP (2015-2019). A new national policy on countering TIP has been drafted by the Government, supported by UNODC.	UNODC provided feedback to Mauritius’ draft National Action Plan against TIP 2019 – 2024 and the Government of Mauritius, in cooperation with International Organization for Migration (IOM) and UNODC, is currently drafting the new Anti-TIP NPA.	Rwanda has no anti-trafficking national action plan in place.

	Seychelles	Somalia	Tanzania
Title of national legislation on TIP	The Prohibition of Trafficking in Persons Act of 2014.	The pre-1991 Penal Code, which is applicable at the federal and regional levels, criminalises labour trafficking and some forms of sex trafficking. Article 455 criminalizes slavery, art. 464 criminalises forced labour, and art. 457 criminalizes the transferring, disposing, taking possession or holding of a person. Article 408(1) criminalized compelled prostitution of a person through violence or threats. Article 14 of the Provisional Constitution prohibits slavery, servitude, trafficking, and forced labour. Article 29(6) prohibits the use of children in armed conflict. In November 2017, the Parliament of Puntland State of Somalia’s ratified a new TIP Legislative Framework.	The 2008 Anti-trafficking in Persons Act No. 6.

3 Official Gazette 2015-04-13, n° 3614, pp. 2080-2090.

Title of the National Action Plan/ Strategic Framework on TIP	The TIP Secretariat are still working on the development and adoption of the national action plan, with the support of IOM. ⁴	Somalia has no anti-trafficking national action plan in place.	National Action Plan on TIP (2008- 2021). ⁵ UNODC has supported the Government of Tanzania in drafting the new proposed Anti-TIP National Action Plan, which is now before the Ministry of Home Affairs for approval and signature.
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Uganda	
Title of national legislation on TIP	The 2009 Anti-Trafficking Act criminalises all forms of trafficking.
Title of the National Action Plan/Strategic Framework on TIP	In 2020, the Uganda Government launched a five-year National Action Plan (NAP) for Prevention of Trafficking in Persons, and the National Referral Guidelines for Management of Victims of Trafficking in Persons.

⁴ The *U.S. Trafficking in Persons Report (U.S. Department of State, 2020)*, Country Narrative Seychelles.

⁵ National Anti-Trafficking in Persons Action Plan (2018-2021) https://uninfo.org/sites/default/files/documents/tza/NATIONAL_ANTI_TRAFFICKING_IN_PERSON_ACTION_PLAN_2018_-2021-1536321450.pdf

Regional and Sub-Regional Instruments for Response

At the regional and sub-regional levels, there are several legislative and policy documents in place that address Trafficking in Persons either explicitly or indirectly. There are also several mechanisms in place that can be leveraged to strengthen cooperation against these crimes. As mentioned below there is a series of cooperation agreements in the region through which the countries have pledged to work together to counter Trafficking in Persons.

A. Regional legislative instruments

The African Union

1. **African Charter on Human and Peoples' Rights (the Banjul Charter)**⁶: The Charter grants civil and political rights. Though Trafficking in Persons is not explicitly mentioned, article 5 condemns all forms of exploitation and degradation particularly slavery, the slave trade, torture, cruel, inhuman or degrading treatment and punishment.
2. **Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)**⁷: The Protocol recognizes rights and special protections of women in Africa, and specifically calls in article 4(2)(g) for measures to prevent and condemn trafficking in women, prosecute the perpetrators of trafficking and protect women most at risk. Provisions in the Protocol concerning measures against violence are also relevant to efforts against trafficking. The Protocol has been signed⁸ and ratified by Comoros⁹, but only signed and not ratified by Burundi¹⁰ and Madagascar¹¹.
3. **African Charter on the Rights and Welfare of the Child (ACRWC)**¹²: Article 29(a) and (b) calls States to take measures to prevent child trafficking in all its forms. The ACRWC has been signed and ratified by Burundi¹³, Comoros¹⁴ and Madagascar¹⁵.
4. **African Youth Charter**¹⁶: Sets out provisions on development and opportunity to be created for youth (persons aged between 15 and 35 years). Article 23 addresses discrimination against women and girls and underlines the commitment that States must enact and enforce legislation that protects girls and young

6 Adopted by the OAU (in 2001, the OAU legally became the African Union) in its 18th Assembly held in Nairobi on June 27, 1981 and entered into force October 21, 1986.

7 Adopted in Maputo on July 11, 2003 and entered into force November 25, 2005.

8 Status as of December 16, 2019.

9 Signed on 26-02-2004 and ratified on 18-03-2004.

10 Signed on 03-12-2003.

11 Signed on 28-02-2004.

12 Adopted by the OAU on July 1st, 1990, and entered into force on November 29, 1999.

13 Signed on 21-05-2004 and ratified on 28-06-2004.

14 Signed on 26-02-2004 and ratified on 18-03-2004.

15 Signed on 27-02-1992 and ratified on 30-03-2005.

16 Adopted July 02, 2006, in Banjul, and entered into force on August 08, 2009.

women from trafficking, among other crimes (art. 23(g)). The Youth Charter has been only signed but not ratified by Burundi¹⁷, Comoros¹⁸ and Madagascar¹⁹.

The East Africa Community

1. **The EAC Counter-Trafficking in Persons Bill (2016)**²⁰ was enacted by the East African Assembly with the objective of providing a legal framework for cooperation to counter TIP (art. 3). The Bill is quite aligned with the Trafficking in Persons Protocol, its TIP definition is in full accordance with the international definition, confirming the irrelevance of victims' consent where means are used, and that means are not required for child victims (art. 2 and 4). The Bill also protects victims from liability under laws relating to immigration and prostitution for acts directly resulting from being trafficked (art. 8). Comprehensive provisions on prevention and cooperation (part III), protection (part IV) and prosecution (part V) are also provided, as well as the institutional arrangements to be made (part VI).
2. **The East African Community Human & Peoples Rights Bill (2011)**: Contains provisions on slavery and servitude. In particular, article 18 states that: (1) A person shall not be held in slavery or servitude. (2) A person shall not be required to perform forced labour. Article 51(b) safeguards freedom from slavery and servitude as a non-derogable right.

B. Bilateral and multilateral agreements and action plans

The Southern African Development Community (SADC) Plan of Action to Combat Trafficking in Persons, especially women and children: SADC has developed a 10 Year Strategic Plan of Action to Combat Trafficking in Persons, especially women and children (2009-2019), which serves as a blueprint for regional and national responses to TIP. A new Plan of Action to Combat TIP has not yet been published.

The harmonized SADC Regional Strategic Plan on Combating Illegal Migration, Smuggling of Migrants and Trafficking in Persons (2016–2020): The Strategic Plan of Action underwent a mid-term review to align it with emerging challenges in the region. The Revised Strategic Plan of Action covering the period from 2016 to 2019 was approved by the SADC Ministerial Committee of the Organ (MCO) on Politics, Defense and Security Cooperation in July 2017²¹. At present, SADC has not yet published a new Regional Strategy to combat Illegal Migration, TIP and SOM

The 2006 Ouagadougou Plan of Action to Combat Trafficking in Human Beings, Especially Women and Children in Africa: (between the EU and the AU) adopted by the Ministerial Conference on Migration and Development in Tripoli on 22-23 November 2006, it aimed at developing co-operation, best practices and mechanisms to prevent and combat TIP between the European Union and the African Union²².

C. Other regional initiatives

The AU Commission Initiative against Trafficking (AU.COMMIT) Campaign held in Libreville, sDecember 3, 2012 for the Economic Community of Central African States (ECCAS) and North African Member States on the operationalization of the Ouagadougou Action Plan in Libreville, Gabon on networking, coordination and cooperation among Member States and partners to address TIP in a more strategic and programmatic manner, as well as on the development of policy indicators, follow-up and monitoring mechanisms,

17 Signed on 10-11-2006.

18 Signed on 02-02-2010.

19 Signed on 31-01-2014.

20 Adopted in October 2016.

21 See, UNODC, Trafficking in Persons in the SADC Region: A Statistical Report 2014-2016.

22 The Department of Social Affairs of the African Union Commission in partnership with the UN/AU Social and Human Development Cluster (SHD) launched the 'AU Commission Initiative against Trafficking (AU.COMMIT) Campaign' in June 2009 at the AU Commission in Addis Ababa, aimed at implementing the Ouagadougou Action Plan. AU.COMMIT was launched in IGAD in December 2010.

and identification and dissemination of best practices in support of the implementation of the Ouagadougou Action Plan and the AU.COMMIT Campaign.

The Khartoum Process, a platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe created in November 2014, aims at establishing a continuous dialogue for enhanced cooperation on migration and mobility, identifying and implementing concrete projects to address TIP and SOM. Among the members who are signatories the Declaration of the Ministerial Conference of the Khartoum Process, are Djibouti, Eritrea, Ethiopia and Kenya.

Overview of International Legislative Requirements

This section summarizes the legislative requirements set forth in UNTOC and its supplementary Trafficking in Persons (TIP) Protocol.

A. Scope of application

Article 3 of the TIP Protocol states that the scope of application is prevention, investigation and prosecution of the offences, where the offences are transnational in nature and involve an organized crime group, and the protection of trafficked persons. This provision must be read in conjunction with article 34(2) of the UNTOC, providing those offences established in accordance with the UNTOC be established in domestic law independent of the transnational nature or the involvement of an organized crime group. Therefore, while international law applies to transnational cases, domestic law should be able to address TIP even where the crime is not transnational or organized crime groups are not involved or cannot be proven.

B. Jurisdiction over offences

The framework established by UNTOC and its Protocols seeks to ensure that no serious crime goes unpunished and jurisdictional gaps enabling fugitives to find safe havens are reduced or eliminated. UNTOC article 15(1) requires State parties to establish jurisdiction over the offences established in accordance with the Convention when they are committed:

- (a) in their territory (including territorial seas);
- (b) on board of vessels flying their flag or aircrafts registered under their laws.

Article 15(2) provides for additional options in relation to jurisdiction, including cases where:

- the offence is committed against a national of the State;
- the offence is committed by a national or a stateless person habitually resident in the territory of the State; or
- the offence of participation in an organized criminal group or money-laundering are committed outside the territory of the State with a view to the commission of serious crimes or money-laundering within its territory.

Another non-mandatory provision on jurisdictions is article 15(3) and article 15(4). Article 15(3) provides that, in cases where an alleged offender is in the territory of a State party and the State party does not extradite him or her solely on the ground that he or she is one of its nationals (see art. 16, para. 10), that a State party must be able to assert jurisdiction over the commission of the offence, even when committed outside its territory.

Article 15(4) grants the State party the adoption of necessary measures to establish its jurisdiction over the offences covered by the UNTOC when the alleged offender is present in its territory, and it does not who the requested State does not extradite him or her.

Article 15(6) provides that the grounds for jurisdiction listed in the article are not exhaustive and States can establish additional ones, without prejudice to the norms of international law and in accordance with the principles of their domestic law.

C. Definitions and criminalization

Table: Definitions

Source	Definition
Organized Crime UNTOC Articles 2(a) and (c)	An organized criminal group is defined by art. 2(a) of the UNTOC as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.” A structured group is defined by art. 2(c) as “a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.”
Serious Crime UNTOC article 2(b)	“Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least 4 years or a more serious penalty.
Trafficking in Persons Trafficking in Persons Protocol, article 3(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 of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Criminalization requirements under the UNTOC

The Convention sets out four specific offences that State parties are required to criminalize in their domestic laws:

- Participation in an organized criminal group (art. 5);
- Laundering of proceeds of crime (art. 6);
- Corruption (art. 8);
- Obstruction of justice (art. 23).

Criminalization requirements under the Trafficking in Persons Protocol:

Article 5 of the TIP Protocol requires State parties to criminalize the following offences:

- TIP when committed intentionally (art. 5(1));
- Attempt to commit Trafficking in Persons (art. 5(2)(a));
- Participating as an accomplice to TIP (art. 5(2)(b));
- Organizing or directing other persons to commit TIP (art. 5(2)(c)).

Criminalization of the use of work and services of the victim: Article 9 paragraph 5 of the TIP Protocol requires governments to take measures to discourage the demand for exploitation.

D. Liability of legal persons

Article 10 of UNTOC requires that liability be extended to legal persons, such as corporate entities, for participation in serious crimes involving an organized criminal group and for the offences established in accordance with UNTOC articles 5, 6, 8 and 23.

Article 10(2) allows States to choose the type of liability (civil, criminal or administrative), but offers a means of extending criminal liability for trafficking offences. Article 10(3) notes that such liability shall be without prejudice to the criminal liability of natural persons who have committed the offence. Article 10(4) states that each State shall ensure that such legal persons are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Non-liability clause: There is a principle of non-liability of victims of TIP for the illegality of entry or residence and/or crimes they commit in the course of trafficking.²³ Principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1), states that “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”

E. Investigation and prosecution

As emphasized by the 2030 Agenda for Sustainable Development, combating organized crime is a high priority. Goal 16.4 of that Agenda is to “significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime.”

The UNTOC sets out a framework for effective investigation, prosecution, adjudication and sanctioning of organized crime related offences, including by setting out provisions on:

- Protection of witnesses and victims;
- Special investigative techniques;
- Identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime.

In recent years, the use of financial investigations and disruption through asset seizure to disrupt financial flows is gaining increased attention as a means of disrupting trafficking.

Article 12 of the UNTOC provides a portion of measures relating to confiscation, freezing and seizure of proceeds of crime. Under the article, a State party should have the necessary legal framework to permit:

- (a) The confiscation of proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds (art. 12, para. 1 (a));
- (b) The confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (art. 12, para. 1 (b));
- (c) The identification, tracing, freezing and/or seizure of the proceeds and instrumentalities of crimes covered by the Convention, for the purpose of eventual confiscation (art. 12, para. 2);

²³ See art. 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series, No. 197. Also, OSCE, Action Plan to Combat Trafficking in Human Beings, decision 557/Rev.1, 7 July 2005. See also art. 10 of the UNODC Model Law on Trafficking “Non-liability [non-punishment] [non-prosecution] of victims of trafficking in persons”, UNODC (2009), Model Law against Trafficking in Persons.

- (d) The application of confiscation powers to transformed or converted property and proceeds intermingled with legitimately obtained property (to the value of the proceeds in question) and to benefits or income derived from the proceeds (art. 12, para. 3-5).

F. Protection and assistance

Protecting the rights of victims of crime, including victims of trafficking: Articles 24 to 26 of the UNTOC require that States take measures to assist and protect victims and witnesses of crime and encourage persons who have participated in an organized criminal group to cooperate with law enforcement authorities. Article 24 focuses on protection of witnesses, article 25 on assistance to and protection of victims and article 26 on measures to enhance cooperation with law enforcement authorities

Article 6(3) of the TIP Protocol obliges States to consider implementing measures for the physical, psychological and social recovery of victims of trafficking, in cooperation with non-governmental organizations. Such assistance may include housing, counseling, information (including legal information), medical and other assistance, as well as employment, training and educational opportunities.

Witness protection: Unless witnesses are protected and therefore empowered to support criminal justice processes, it is unlikely that traffickers will be convicted. The UNTOC contains provisions relevant to the protection of witnesses (art. 18, 23, 24, 26 and 29(1)) that are applicable to cases of TIP. Article 6 of the TIP Protocol also contains mandatory provisions to this respect, such as the protection of the identity and privacy of victims, including by making legal proceedings confidential (sub-section 1) and ensuring that domestic legal or administrative systems contain measures to provide victims with information on court proceedings and assistance to enable their participation (sub-section 2).

Compensation and restitution: Article 25(2) of the UNTOC provides that State parties shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention. Further, article 6(6) of the TIP Protocol requires States to ensure that their domestic legal system contains measures that offer trafficked victims the possibility of obtaining compensation for the damage suffered.

G. Prevention

UNTOC and its TIP Protocol contain several provisions relevant to prevention. Article 9 of the Protocol requires State parties to take measures to prevent and combat TIP and protect victims, including by raising awareness, alleviating poverty and discourage demand, and cooperate to these ends.²⁴

Raising awareness: Article 31 of the UNTOC refers to the establishment and promotion of best practices and policies aimed at the prevention of Transnational Organized Crime (TOC). Article 31(5) provides that where appropriate, information may be disseminated through the mass media and shall include measures to promote public participation in preventing and combating such crime.

Border controls: Article 11(1) of the Trafficking in Persons Protocol requires States to strengthen border controls to prevent and detect these crimes. Article 11(6) provides that States should also consider strengthening communication and cooperation between border control agencies.

Carrier provisions: Article 11, paragraphs 2 to 5 of the TIP Protocol requires States to implement legislative or other measures to prevent commercial carriers being used for these crimes, by ensuring that persons travelling across international borders hold the necessary documents. While carriers are required to ensure that passengers are in possession of the required travel documents, such as passports and visas (art. 11(3)), they have no obligation to assess their validity or authenticity. Article 11(4) obliges States to provide for sanctions against carriers for failing to comply with these requirements.

²⁴ The UNODC Blue Heart campaign launched since 2008 is also being launched in the Eastern African region, with the objective of engaging the private sector.

Validity and legitimacy of travel and identify documents: Article 12 of the TIP Protocol, requires States to take measures to ensure that travel or identification documents issued are of such quality that they cannot be easily misused or falsified, altered or replicated, and to prevent their unlawful creation, issuance or use. Article 13 of the TIP Protocol requires States, at the request of other States parties, to verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for TIP.

Education and training: Article 10(2) of the TIP Protocol requires that training for law enforcement, immigration and other officials be strengthened in relation to preventing trafficking, prosecuting traffickers and protecting victims of TIP. These articles also advocate for cooperation with other States, international organizations, NGOs and other relevant organizations in the development and delivery of training material. These provisions are mandatory, but allow flexibility in how they are achieved, considering that there are no specific legislative obligations.

H. Coordination and cooperation

International cooperation against organized crime is a global priority. In recent years, the international legal framework has been supported by strong political commitments, including the 2017 Political Declaration Reaffirming the United Nations Global Plan of Action to Combat Trafficking in Persons.²⁵ In 2016, the UN Security Council adopted its first resolution on trafficking in persons and its links with the use of sexual violence as a tactic of terrorism (2331), which calls upon Member States to investigate, disrupt, and dismantle criminal networks and emphasized the importance of international cooperation in law enforcement and strong partnerships with the private sector and civil society.²⁶ In 2017, the Council reiterated its condemnation of this crime by unanimously adopting resolution 2388, which strongly emphasizes its concern in particular for the heightened vulnerability of children to exploitation and abuse and the unlawful recruitment and use of children in armed conflict. Resolution 2388 emphasizes the work of UNODC and encourages the use of its Thematic Paper on Conflict Situations, 2018.

Data and information collection and exchange: Article 10 of the TIP Protocol, in combination with articles 27 and 28 of the UNTOC, requires States to cooperate, as appropriate, for the collection, exchange and analysis of information on the nature of organized crime, complying with any requests concerning the restriction for the use of such information. Information that should be collected for trafficking includes recruitment and transportation methods, routes and links and individuals involved.

International cooperation: Article 16 of the UNTOC concerns extradition. In connection to this, it is relevant to highlight that article 15(3) provides for extended jurisdiction for offences covered by the Convention committed outside the territory of a State party by one its national, requiring such State to establish jurisdiction in such instances where they do not extradite a person solely on grounds of nationality. UNTOC article 15(4), in turn, allows for the establishment of jurisdiction over persons who the requested State does not extradite for reasons other than nationality. Article 18 addresses mutual legal assistance (MLA).

I. Repatriation and reintegration

Cooperation for return and repatriation: Article 8 of the TIP Protocol makes mandatory for the States to facilitate and accept the return of trafficked victims to countries where they are nationals or permanent residents “with due regard for the safety of that person, the return of that person without undue or unreasonable delay”. States can seek the support of international organizations in carrying out returns (art. 18(6)). Best practice is to allow persons to remain in host countries to allow them to testify against traffickers or make arrangements to ensure they can testify after their return.

In carrying out returns, the TIP Protocol envisages the host State contacting the State where the victim will be returned, to establish his or her status. The country of origin must verify the status of the person without undue or unreasonable delay and provide any travel documents necessary to facilitate the return (art. 8).

²⁵ Adopted by the UN General Assembly on September 27, 2017 (24th Meeting).

²⁶ Adopted by the Security Council on December 20, 2016 (7847th Meeting).

Non-refoulement: The savings clause of the TIP Protocol (art. 14) underlines the principle of non-refoulement as contained therein. The non-refoulement obligation is provided by articles 32 and 33 of the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol thereto, which obliges State parties to provide refuge for persons who fear persecution and not expel or return them to “the frontiers of territories where their life or freedom would be threatened” (art. 33). A country contravenes this obligation if its authorities fail to properly identify and protect a person who is entitled to the benefits of refugee status. The 1951 Geneva Convention defines as refugee the person that “[...] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.”²⁷

Temporary/permanent residence: Article 7 of the TIP Protocol²⁸ obliges States to consider adopting legislative or other measures to permit trafficked victims to remain temporarily in the country, considering humanitarian and compassionate grounds. Good practice is to provide in legislation for a recovery and reflection period to victims of trafficking (of not less than 90 days) and as mentioned above, to allow them to remain in host countries in order to testify against traffickers.

27 The non-refoulement obligation is upheld by art. 7 of the International Covenant on Civil and Political Rights; art. 45 of the Geneva Convention related to the Protection of Civil Persons in Time of War; art. 3(1) of the Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment; and art. 33 of the Convention on the Rights of the Child.

28 According to art. 7 of the TIP Protocol: “1. In addition to taking measures pursuant to article 6 of this Protocol, each State party shall consider adopting legislative or other appropriate measures that permit victims of TIP to remain in its territory, temporarily or permanently, in appropriate cases. 2. In implementing the provision contained in paragraph 1 of this article, each State party shall give appropriate consideration to humanitarian and compassionate factors.”

Burundi

Overview of national legislation

Burundi has signed on December 14, 2000, both the United Nations Convention against Transnational Organized Crime (UNTOC) and the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and has ratified both on May 24, 2012. Simultaneously, Burundi has ratified several international human rights instruments²⁹, including the Optional Protocol to the Convention on the Law of the Child concerning the sale of children, child prostitution and child pornography.

Burundi has adopted an anti-trafficking act in 2014³⁰ and revised the Criminal Code to integrate formally the provisions of this Act (section 1 – art. 244 to 256). However, it has not established the Consultation and Monitoring Committee on the prevention and repression of trafficking – mandated by the above Act – to coordinate and lead anti-trafficking efforts.³¹

Article 1 of the 2014 Anti-trafficking Act provides that the objective of the law is (also) the promotion and facilitation of cooperation at both national and international levels. The Consultation and Monitoring Committee on the Prevention and Suppression of Trafficking in Persons, mandated by the 2014 Anti-trafficking Act, is intended to provide inter-ministerial coordination and cooperation with all national and international public and private organizations operating in the national territory or abroad as expressly stated in the Anti-trafficking Act (at. 9).

Jurisdiction over offences: Articles 5 and 6 of the Anti-trafficking Act provide for the application of Laws of Burundi on TIP for offences committed both inside and outside the national territory. Article 5 states that the law applies for offences committed inside the territory of Burundi, on board a vessel, ship, train or plane registered in Burundi, as well as offences committed by a national of Burundi for whom extradition is refused for reasons of nationality. Article 6 provides for the application of national law for offences outside the national territory if the offence is committed:

- a. by a national of Burundi;
- b. by a stateless person residing at the time of the commission of the offence in Burundi; and
- c. against a national of Burundi.

Scope of application: The Anti-Trafficking Act applies to the prevention, investigation and prosecution of the offences, as well as to the protection of victims of such offences (art. 1), where those offences may be national or transnational in nature and may or may not involve an organized criminal group or one or more individuals (art. 3).

²⁹ See above Table 1: States parties to international instruments.

³⁰ *Loi N° 1/28-29 Oct.2014 portant prévention et répression de la traite des personnes et protection des victimes de la traite* (Anti-trafficking Act).

³¹ The Anti-trafficking Act of 2014 provides in art. 7 for the establishment of a consultation and monitoring committee on the prevention and repression of trafficking. Article 8 assigns this committee the following main tasks: to develop a national action plan to combat TIP crimes; to monitor the problem of TIP on a regular basis and to propose solutions for the effective prevention of this crime; to provide protection and assistance to victims; and to follow up on the effective prosecution of criminals.

Non-discrimination principle: The non-discrimination principle included in article 14 of the TIP Protocol is reflected in article 2 of the Anti-trafficking Act.

Liability of legal persons: The Criminal Code prescribes the provisional or permanent closure of the establishment used for trafficking purposes (art. 248). The general provisions of the Criminal Code apply also for the responsibility of legal entities and of physical persons working for them (art. 21 to 24). However, it is not clear whether, and to what extent, these provisions have been applied in practice.

Other relevant laws: Law No. 1/13 of 2016 on Prevention, Protection of Victims and Repression of Gender-Based Violence³² contains provisions that can apply to TIP cases related to Gender-Based Violence (GBV).

Burundi Labour laws provide protection for domestic workers or employees in the informal economy in its scope (art. 2 and 3 of Law No. 1/11 of 24 November 2020 revising of Decree - Law No. 1/037 of July 7, 1993, revising the Burundian Labor Code.)

In 2019, the Government of Burundi worked on revisions to its Labor Code to align with international standards on child labor and launched a partnership with the International Organization for Migration to improve coordination between government ministries, the National Police, and civil society organizations to address TIP.³³

Definition and criminalization

Burundi's 2014 Anti-trafficking Act³⁴ criminalizes trafficking for all forms of exploitation prescribing penalties of more than 5 years of deprivation of liberty. The provisions of the Act have been integrated formally into the Criminal Code after the revision of 2017 (art. 246 to 256). The provision replicates the definition of trafficking given by the TIP Protocol.

Article 246 of the Criminal Code aligns its definition of trafficking to the TIP Protocol. While the Criminal Code doesn't specify that victims' consent is irrelevant if any of the means stipulated in article 3(a) of the TIP Protocol are used, the Anti-trafficking Act, in article 4(a) paragraph 2, clearly states that the consent of the victim to the intended exploitation is irrelevant if any of the means in the definition of trafficking is used.

In relation to the content of exploitation, the Anti-trafficking Act (art. 4(a), para. 2) includes the minimum forms of exploitation in the TIP Protocol (including exploitation of 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) and it adds in article 4(n) additional forms of exploitation (some of them are repeated in art. 4(a), para. 2³⁵), such as the exploitation of begging of others, work in conditions that are contrary to human dignity and the incitement in committing crimes or misdemeanors against a person's will.

It needs to be noted that article 4(n)(1) of the Anti-trafficking Act includes also in the concept of exploitation, the commission of offences established in the following provisions of the Criminal Code:

- Article 519 (recruitment and use of children for prostitution or production of sexually explicit material);
- article 520 (transfer of children for financial or other benefit);
- article 521 (use of children in sexual activities for financial or other benefit) and;
- article 522 (use of children in labour that may damage their health).

³² *Loi No.1/13 of 22-9-2016 portant prévention, protection des victimes et répression des violences basées sur le genre.*

³³ 2019 Findings on the worst forms of child labour: Burundi.

³⁴ *Loi No.1/28 du 29 Oct.2014 portant prévention et répression de la traite des personnes et protection des victimes de la traite.*

³⁵ The repeated forms of exploitation are forced labour or services, slavery or practices similar to slavery, servitude, sexual exploitation and the removal of organs.

The numbering of these articles refers to the previous version of the Criminal Code (of 2009). In particular, they refer to the former Title VII: *Offences Against The Family And Public Morality*; chapter I: *Offences Against The Structure Of Families*; section 2: *Offences Against Children*. However, in the new version of the Criminal Code (2017), these articles have been transferred to the Title VIII, chapter I, section 2, articles 544, 545 and 546.

The Criminal Code (revised in 2017) prescribes penalties ranging from 5 to 10 years of imprisonment which are sufficiently stringent and, with respect to sex trafficking, commensurate with those prescribed for other serious crimes, such as rape.

Aggravating circumstances: A long list is provided by the Anti-trafficking Act in articles 18 to 20, which are integrated in the Criminal Code (art. 254 and 256):

- Article 254 of the Criminal Code: prescribes an imprisonment from 10 to 15 years and a fine from 300,000 to 2,000,000 BIF for the following aggravating circumstances:
 - Offence committed by a person abusing their power or authority;
 - commission of the offence by a public agent in the framework of his functions; and
 - the offence is committed as part of the activity of an association, independently of the fact that the offender has or not managerial responsibilities.
- **Article 255 of the Criminal Code:** provides for imprisonment from 15 to 20 years and a fine from 500,000 to 10,000,000 BIF if the offence has been committed:
 - against a child³⁶;
 - by taking advantage of the vulnerable situation of a person due to:
 - irregular status as a migrant;
 - age;
 - pregnancy;
 - illness;
 - disability or
 - other physical or mental disability;
 - with the direct or indirect use of fraudulent means, violence, threat or any form of coercion;
 - by placing the victim in a situation of danger deliberately or by negligence;
 - by causing an incurable illness, a permanent physical or mental impairment, the complete loss of an organ or its use or a serious mutilation;
 - if the offence constitutes a usual activity;
 - if the offence constitutes a preparatory act to a principal or accessory activity of a criminal organization, independently of the fact that the offender has or not managerial responsibilities

³⁶ It needs to be noticed that these provisions may concur in case of sexual exploitation with those of the law of 2016 on Prevention, Protection of Victims and Repression of Gender-Based Violence (Loi No.1/13 of 22-9-2016 portant prévention, protection des victimes et répression des violences basées sur le genre). The imprisonment prescribed by this law is however higher than that of the Anti-trafficking Act. As mentioned above, "If the victim is a child or a student" art. 35 of the GBV Law prescribes an imprisonment from 15 to 30 years.

- **Article 246 of the Criminal Code:** provides for an imprisonment from 5 to 10 years and a fine of 100,000 to 500,000 BIF against the person who recruits, transports, transfers, harbors or receives a person 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. The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation is punished with the same penalties even if this does not involve any of the means set forth above.³⁷

For the forms of trafficking related to GBV, the law of 2016 on Prevention, Protection of Victims and Punishment of Gender-Based Violence is also applicable. Article 34 of the Law of 2016 on GBV prescribes life imprisonment in case of sexual slavery. Article 60 of the Criminal Code provides for supplementary penalties, which are doubled in case of recidivism. It should be noted that TIP for the purpose of slavery is punished only with imprisonment from 5 to 10 years and a fine from 100,000 to 500,000 BIF. The Gender-based Violence Law of 2016 additionally punishes other crimes such as the abduction of a girl for marriage with imprisonment from 3 months to 5 years and a fine from 50,000 to 100,000 BIF (art. 38); and if a parent authorizes the marriage of an underage child the law prescribes an imprisonment from 5 to 10 years and fine from 200,000 to 500,000 BIF (art. 44).

Another aggravating circumstance is stipulated in article 20 of the Anti-trafficking Act (integrated into art. 256 of the Criminal Code), which punishes with life imprisonment and a fine of 750,000 to 20,000,000 BIF if – as a result of the offence of TIP – it is the death of the victim, including death by suicide.

Further, article 250 of the Criminal Code punishes with imprisonment from 2 to 5 years and/or a fine from 100,000 to 500,000 BIF if the use of services and work provided by the victim from a person knowing or being recklessly unaware of the fact that the services and work were offered by a victim of TIP.

Attempt to commit trafficking in persons: no relevant provisions could be found in the Anti-trafficking Act. However, it appears that ‘attempt’ is covered by the general provisions of the Criminal Code, which is applicable to all crimes (art. 14 to 16).

Participation in an organized criminal group: as mentioned above, article 255 of the Criminal Code prescribes an imprisonment from 15 to 20 years and a fine from 500,000 to 10,000,000 Burundi Francs (BF) in case the crime constitutes a principal or secondary activity of a criminal organization, independently of the fact that the offender has or not managerial responsibilities.

Organizing or directing other persons to commit trafficking in persons: According to article 254 of the Criminal Code, No. 3, the offence of TIP is punished by imprisonment from 10 to 15 years and a fine from 300,000 to 2,000,000 BF when it constitutes an act of participation in the principal or secondary activity of an association independently whether the offender has managerial responsibilities or not.

This penalty is further aggravated by article 255 of the Criminal Code providing for an imprisonment from 15 to 20 years and fine from 500,000 to 10,000,000 BF if the offence constitutes a preparatory act to the principal or secondary activity of a criminal organization independently of the fact that the offender has a leading role or not.

Aiding and abetting: No relevant provisions could be found in the Anti-trafficking Act; however, it appears that aiding, and abetting are covered by the general provisions of the Criminal Code (aiding: art. 37, 38 and 41 to 43, abetting: art. 20, 39 and 40.).

Non-liability of victims of trafficking: There is no specific provision in the Anti-trafficking Act protecting victims from being punished for crimes committed in the course of trafficking. However, article 27 of the Criminal Code could be used as defense, as it stipulates that: “The person who acted under duress of a force to which he could not resist is not punishable”.

³⁷ Article 35 of the Law of 2016 on the Protection of Victims of GBV (Loi No 1/13 du 22 sept. 2016 portant prévention, protection des victimes et répression des violences basées sur le genre) prescribes imprisonment from 5 to 10 years for sexual exploitation and “if the victim is a child or a student” an imprisonment from 15 to 30 years.

Investigation and prosecution

According to the 2020 U.S. State Department Trafficking in Persons Report, the Government of Burundi took some steps, through its ad-hoc Inter-ministerial Anti-trafficking Committee, to address trafficking by training its immigration officials, law enforcement officers and magistrates to prevent and suppress this crime. In 2019, the Government investigated eight cases of transnational trafficking and indicted 11 suspects.

There is currently no data on investigations, prosecutions or convictions of officials/government employees allegedly complicit in trafficking crimes.³⁸

Although comprehensive statistics on TIP is difficult to obtain, the government has established a national centralized data collection mechanism on law enforcement efforts to combat TIP and has trained criminal justice practitioners on its use.³⁹

The Anti-trafficking Act does not contain specific provisions on the identification of victims other than article 9 which mentions the role of the Consultation and Monitoring Committee, referring to the exchange of information with services and organizations both public and private, national and international operating inside or outside the country for the identification of victims and of travel documents used for border crossing in view of TIP, as well as identification of means and methods used by the organized criminal groups.

Asset seizure and freezing: Article 13 of the Anti-trafficking Act and article 249 of the Criminal Code provide for confiscation of instruments or proceeds of crimes in TIP offences.

The work of the Consultation and Monitoring Committee on the Prevention and Punishment of Trafficking in Persons mandated by the Anti-trafficking Act of 2014 in article 8 to follow the prosecutions of traffickers in justice has not been undertaken since its establishment and appears to be still pending.

Protection and assistance

Protecting the rights of victims of trafficking: Despite the fact that the Anti-trafficking Act of 2014 states in article 1 that among its objectives is the protection and assistance of victims of trafficking by “fully defending their fundamental rights”, the law is not fully aligned with article 6 of the TIP Protocol, since it includes few provisions on the protection of victims (art. 21 to 31).

Regarding protection, assistance and reparation granted to victims and witnesses, the Anti-trafficking Act of 2014 provides for:

- **Access to information:** Article 22 refers to the duty of the competent authorities to provide information to the victims of TIP on the assistance available from private or public bodies, and on the progress of the judicial procedure, and reparation as well as on the progress of the case. The article does not cover assistance to the victims to “enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence”, as stated in article 2(b) of the TIP Protocol.
- **Shelter:** Article 23 provides the right of suitable accommodation to victims of TIP, as well as basic medical care and confidential psychological assistance with particular attention to the needs of vulnerable persons, especially women and children;
- **Temporary or permanent residence status:** Article 28 provides the possibility at the request of the victim of TIP and upon an expert opinion requested by him, the judge may decide on the right of the victims’ temporary or permanent stay in Burundi.

38 The U.S. Trafficking in Persons Report (U.S. Department of State, 2020), Country Narrative Burundi.

39 The U.S. Trafficking in Persons Report (U.S. Department of State, 2020), Country Narrative Burundi.

- **Protection from secondary victimization of victims through avoiding repeated testimonies during the procedure:** Article 26 gives special attention to victims by allowing them not to needlessly re-live their trauma by averting multiplication of depositions during the procedure.
- **Support to voluntary repatriation:** Article 29 provides assistance from the competent authorities with the return of a victim of TIP who is a national of Burundi or has the right to reside there permanently at the time the offence took place.
- **Assistance for non-nationals and non-residents:** Article 29 provides that “*when a victim of trafficking who is not Burundian asks to return to the country of which he is a national or in which he has the right to reside permanently at the time when he is the subject of the trafficking, the Burundian authorities are facilitating this return, in particular by obtaining the necessary travel documents, without undue delay and taking due account of his rights and security, including respect for his privacy, dignity and health*”.

The protection of and assistance to the victims is completed by the provisions included in the law of 2016 on Prevention, Protection of Victims and punishment of Gender-Based Violence (*Loi No.1/13 of 22-9-2016 portant prévention, protection des victimes et répression des violences basées sur le genre*), however, this law applies only to those forms of trafficking that also amount to GBV. The law provides for shelters and emergency social services (art. 19); medical expertise with the obligation of the offender to reimburse the State expenses for the examinations (art. 13); and legal aid (art. 30), as well as the immediate school enrolment of victims of GBV (art. 16-17). The Law also provides for the creation of special police units offering psychosocial assistance (art. 11) and establishes a special chamber of the first instance tribunal (Tribunal de Grande Instance) for the physical protection of the victims and the protection of their personal data (art. 28). Access to employment opportunities such as those mentioned in article 6, paragraph 3(d) of the TIP Protocol is not foreseen.

The Anti-trafficking Act provides for specific measures for unaccompanied minors in article 25 (appointment of guardian; search for the minors’ personal data, nationality and family).

Witness protection: Specific protection is provided to witnesses and members of their families in articles 24 and 26 of the Anti-Trafficking Act (including protection from reviving unpleasant experiences through avoiding multiple testimonies during the procedure (art. 26)).

From the above, it appears that the only mandatory provision that is not implemented is article 6 paragraph 2(b) of the TIP Protocol (assistance to and protection of victims of TIP). Despite the existence of some related provisions, the Government does not appear in practice to offer victims adequate protection. As mentioned above, it appears that the Consultation and Monitoring Committee on the Prevention and Suppression of Trafficking in Persons mandated by the Anti-trafficking Act of 2014 (art. 8 al. 3) protecting victims of TIP has not yet been activated.

According to the *2020 U.S. Department of State 2020 Trafficking in Persons Report*, Burundi does not have in place an operating procedure to identify and refer victims to services, nor a sufficient protection service available for TIP victims. There are no reports of providing or referring victims to rehabilitation services.

The civil society continues to provide assistance to victims of TIP in the vast majority of cases⁴⁰. There is a lack of dedicated funding for victim protection measures which constrains the Government’s ability to assist more victims.

The *2021 U.S. State Department Report on Trafficking in Persons*, additionally reported on the continuity of operations of the *Humura Center* in Gitega, operated by the Government of Burundi, which provides temporary shelter, medical care and guidance on engaging with law enforcement and judicial system to foreign and domestic victims of sexual, GBV and trafficking. The non-government funded, *Seruka Center*, an NGO-managed center in Bujumbura, has provided medical, psycho-social and legal assistance to victims of various abuses, including TIP. Adult and child victims received assistance in the same facilities, and adults and children, men and women, and foreign and domestic victims all received the same care. The *Seruka Center* reported providing care to 3 victims of TIP in 2017.

⁴⁰ The U.S. *Trafficking in Persons Report (U.S. Department of State 2020)*, Country Narrative Burundi.

Immigration officials at the Bujumbura International Airport, some of whom received training on preventing trafficking provided by an international organization and a local NGO, did have some success in screening for trafficking; this has resulted in the identification of potential victims of TIP and deterrence of traffickers from transiting victims through Bujumbura.⁴¹ Screening included extensive questioning regarding the purpose and final destination of travel, including address and phone number, and review of documentation; however, the Government did not provide information on the number of victims identified by immigration officials.

According to the Government of Burundi, for the safety of victims, a three year 2019-2022 project is underway to help in combating TIP and other cross-border crimes such as Smuggling of Migrants (SOM), but also improve the human security of communities affected by trafficking and provide appropriate support to victims of TIP.

Activities under this project include strengthening the national referral system for protection and providing reintegration assistance to victims of TIP.

Compensation and restitution: Article 22 of the Anti-trafficking Act suggests that the victim can receive compensation, as it requires the authorities to provide the victims with relevant information.

Prevention

The Anti-trafficking Act of 2014 (*Loi No. 1/28-29 oct. 2014 portant prévention et répression de la traite des personnes et protection des victimes de la traite*) lists ‘prevention’ among its objectives (art. 1).

Moreover, article 7 provides for the establishment of a Consultation and Monitoring Committee on the Prevention and Punishment of Trafficking in Persons with the mission to prepare a National Action Plan and propose solutions for the effective prevention of trafficking (art. 8, no. 2). The Government has not yet established the Commission for Consultation and Monitoring on the Prevention and Suppression of Trafficking in Persons, but a National Action Plan has been adopted, the 2019-2020 Burundi National Action Plan (NAP), despite limited funding.⁴²

The Government of Burundi has set up the National Women’s Forum with a mandate to act as an advisory body and an institutional forum expressing and addressing the interests of all girls and women in Burundi (Decree No. 100/306 of 21 November 2012 on the creation, mission, organization and operation of the National Women’s Forum in Burundi, art. 3), it has also created the National Children’s Forum, which is a framework for educating children to discuss sensitive issues peacefully, without resorting to violence, and contributing at all levels to the development of child-friendly policies to ensure their development and learning of community life (Decree No. 100/ 176 of 05 June 2012 on the creation, mission, organization and operation of the National Children’s Forum in Burundi, art. 1).

According to the *2020 U.S. Report on Trafficking in Persons*, in 2019, the anti-trafficking committee led the Government’s policy coordination and communication with civil society, but its ability to drive national anti-trafficking efforts continued to be limited by resource constraints.

Raising awareness: Provisions on raising awareness are not included in the Anti-trafficking Act. Only the law of 2016 on prevention, protection of victims and repression of gender-based violence contains a provision on awareness (art. 5) in relation to GBV.

According to the Government of Burundi, the Independent National Commission for Human Rights and other actors working in the field of human rights continue to support the Government through awareness campaigns against TP targeting administrative authorities, police and judicial officers, civil society officials, religious authorities and other leaders and the popularization of national and international instruments related to the fight against TIP.

⁴¹ Ibid.

⁴² The *U.S. Trafficking in Persons Report (U.S. Department of State, 2020), Country Narrative Burundi*.

Border controls: The Anti-trafficking Act foresees the possibility for the Consultation and Monitoring Committee on the Prevention and Punishment of Trafficking in Persons to exchange information at national and international levels with public and private authorities for the identification of victims and traffickers (art. 9, para. 2(a)), but also for travel documents used for trafficking (art. 9 para. 2(b)). However, the Committee does not yet exist.

Article 17 of the Anti-trafficking Act punishes the carriers that do not verify that passengers carry the identity documents required for entering or transiting in the country with a fine of 50,000 to 100,000 BIF and with the suspension or withdrawal of their carrier's license. It also obliges them to cover the expenses related to the stay, accommodation and removal caused by the illegal entry of the persons carried.

Validity and legitimacy of travel and identify documents: Article 31(b) of the Anti-trafficking Act provides that the competent authorities including diplomatic and consular authorities, shall control the legality and validity of national travel and identity documents delivered by Burundi in case of suspicion that those have been used for TIP. Article 251 CC (art. 15 of the Anti-Trafficking Act) punishes with an imprisonment from 6 months to 3 years and/or a pecuniary penalty fine from 100,000 to 500,000 BF, the violation of integrity and security of travel or identity documents and their unlawful creation, issuance and use. In particular it punishes whoever withholds, procures, destroys, dissimulates, eliminates, confiscates, modifies, replicates or holds a travel document of another person or facilitates the fraudulent use in view of committing one of the violations described under article 246 CC or facilitating its commission. Additionally, the law punishes the commercial carriers for not controlling the validity of travel documents of passengers (art. 253 CC).

The Government provided training on human rights and sexual exploitation, reportedly including also anti-trafficking issues, to its troops prior to their deployment abroad in the framework of international peacekeeping missions.

Coordination and cooperation

National level coordination and cooperation: As mentioned above, the Government has not yet established the Commission for Consultation and Monitoring on the Prevention and Suppression of Trafficking in Persons, mandated by article 7 of the 2014 Anti-trafficking Act, which would take leadership over government efforts on prosecution, prevention, and protection.

As reported in the *2020 U.S. Trafficking in Persons Report*, the Government's ad hoc inter-ministerial anti-trafficking committee did improve policy coordination and communication with civil society, however, its capacity to drive national anti-trafficking efforts remains limited due to resource constraints.

With respect to the collection and sharing of data on detected victims, according to the Government of Burundi, trafficking indicators and relevant information on physical and/or GBV cases that are within a health care setting are available in the Health Information System database (DHIS2). It should also be noted that data for all forms of violence relating to human exploitation are available within the Ministry of National Solidarity of Human Rights and Gender.

Bilateral and regional coordination and cooperation: Burundi participates in the regional cooperation activities as mentioned above. In 2019, the International Organization for Migration (IOM), in partnership with the Government of Burundi, launched a three-year project (Burundi Counter-Trafficking 2019-2022) to strengthen government capacity to combat TIP. The project aim is to help build the capacity of security agencies to effectively reduce and prevent TIP and cross-border crime, raise awareness on the basic rights of populations and create standard operating procedures for law enforcement stakeholders on handling TIP cases.⁴³ In February 2020, the Anti-trafficking Committee delivered various awareness raising activities that reached more than 2,000 people, including potential victims and first responders.⁴⁴

43 See, IOM, "IOM Partners with Burundi to Combat Human Trafficking": <https://www.iom.int/news/iom-partners-burundi-combat-human-trafficking> [accessed 05-11-2020].

44 The *U.S. Trafficking in Persons Report (U.S. Department of State 2020)*, Country Narrative Burundi.

Additionally, the Government of Burundi has a national human rights hotline with operators trained to identify trafficking victims. NGOs also funded a hotline specifically for reporting on TIP or child labour, however details regarding the number of trafficking-related calls were unavailable.⁴⁵

Repatriation and reintegration

Repatriation: According to information provided by the Government of Burundi, to discourage the flow of Burundian migrant workers crossing the border through irregularly channels, the Ministry of Foreign Affairs and Development Cooperation officially sent *notes verbales* to the Governments of Kenya, Tanzania and of Uganda to request their cooperation in detecting cases of TIP, where victims are Burundian. To this end, these measures have resulted in repatriation of more than two hundred and fifty (250) women and girls especially from Nairobi, Kampala and Dar-Es-Salaam.

The provisions of the Anti-trafficking Act try to follow those of article 8 of the TIP Protocol providing for the repatriation of victims of TIP; however, they are not very detailed. Article 29 of the Act provides for the return of nationals of Burundi and persons with permanent legal residence in Burundi; and article 30 for the repatriation of non-nationals and non-residents providing for both categories that this repatriation is done without undue delay and in respect of the security of the victims and of their rights, especially privacy, dignity and health. Repatriation is funded by NGOs; there is no evidence of efforts by the Government and its officials, including staff within its missions in destination countries, to facilitate or fund the repatriation of Burundian victims identified abroad, to collaborate with host governments, or subsequently assist victims among this population.⁴⁶ The Law provides that if the victim has no travel or identity documents the competent authorities should deliver the necessary documents for repatriation (art. 31, para. 2).

Non-refoulement: The Act provides that the repatriation is conducted on a voluntary basis, respecting the principle of non-refoulement and the prohibition of degrading and inhuman treatment (art. 30, para. 3).

Temporary/permanent residence: The Anti-trafficking Act provides for temporary or permanent residence status granted by the judicial authority upon request of the victim (art. 28).

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> • Implementation of the Advisory Commission established in the 2014 Anti-trafficking Act; • Adopt regulations to implement art. 23 of the Anti-trafficking Act on safety of victims; • Amend national legislation to criminalize the recruitment of children under the age of 18 and to criminalize forced labour; • Amend national legislation to criminalize the recruitment of children under age 18 by non-state armed group; • Adopt adequate regulation that includes provisions on labour migration and the recruitment of Burundians migrant workers abroad; • Clarify whether the Government took steps to regulate labour recruitment agencies.
Investigation and prosecution	<ul style="list-style-type: none"> • Amend the Anti-Trafficking Act to include non-punishment clause for victims of TIP; • Ensure the implementation of the activities entrusted to the “Commission de Concertation et de Suiwi sur la Prévention et la Répression de la Traite des Personnes” (Consultation and Monitoring Committee on the Prevention and Punishment of Trafficking in Persons) in relation to follow up for the effective prosecution of criminals, art. 8(4) of the Anti-Trafficking Act; • Ensure comprehensive training for law enforcement, immigration, judicial authorities, prosecutors and labour inspectors in combating TIP, with focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including victim assistance and protection; • Ensure accountability of public officials’ accomplices of traffickers; • Provide funding for law enforcement agencies to better investigate TIP cases.

⁴⁵ Ibid.

⁴⁶ The U.S. Trafficking in Persons Report (U.S. Department of State 2019), Country Narrative Burundi.

Protection and assistance	<ul style="list-style-type: none"> • Amend art. 22 of the Anti-trafficking Act of 2014, to ensure that the assistance rendered to the victims also includes “assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense in alignment with art .6 para. 2(b) of the TIP Protocol; • Establish official national victim identification mechanism and the corresponding referral system; • Provide specialized shelters for TIP victims children and adults; • Provide specialized assistance to former child soldiers (and young adults); • Establish a comprehensive and integrated protection and assistance system which can offer medical, legal, social and reintegration measures for victims of TIP.
Prevention	<ul style="list-style-type: none"> • Institutionalize anti-trafficking training to include methods of implementation of the Anti-trafficking Act for all law enforcement, prosecutors, and judges; • Draft policies on technical standards on identification of victims and technical measures to make identity documents more difficult to falsify, forge or alter in place; • Strengthen monitoring and management of labour markets, including regulation and monitoring of workplaces and recruitment processes, to avoid recruitment of children and young adult by fraud or coercion.
Coordination and cooperation	<ul style="list-style-type: none"> • Establish a system to improve coordination and cooperation among stakeholders to enhance information exchange and judicial cooperation; • Adopt bilateral cooperation agreements and arrangements with other countries regarding the establishment of joint investigation; • Establish a mutual legal assistance procedure in accordance with art. 18 of UNTOC.
Return and reintegration	<ul style="list-style-type: none"> • Collaborate with other governments for the repatriation of victims; • Facilitate the process of issuance of temporary or permanent residence permit for victims of TIP, ensuring compliance with international standards and a human rights-based approach to victim protection and assistance.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for human trafficking, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation.

COMOROS

Overview of national legislation

Comoros has acceded to the Convention on Transnational Organized Crime on September 25, 2003.

United Nations Office on Drugs and Crime (UNODC) has supported the Government in reviewing its Penal Code in 2020 to include new offences in relation to transnational organized crime, including TIP, and to align it with international legal standards. On 29 December 2020, the President of Comoros promulgated by decree law N° 020/038, the new Penal Code, which introduced new offences, including a specific provision on TIP (art. 266 (11)), removal and trafficking of human organs (art. 278), child trafficking (art. 353) and proxenetism (art. 310).

On 23 July 2020, Comoros became a State Party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and shortly afterwards requested the support of UNODC to provide technical and legislative support for the drafting committee to develop a standalone anti-trafficking legislation to effectively prevent and suppress TIP.

In 2021, the Comorian Government acceded to the other two supplementary Protocols of the United Nations Convention against Transnational Organized Crime, namely the Protocol against the Smuggling of Migrants by Sea, Land and Air and the Protocol on the illicit Manufacturing of and Trafficking in Firearms, as well as to the following Conventions:

- The Convention on the Elimination of All Forms of Discrimination against Women, ratified by the Union of Comoros by Decree No. 94/076 / PR;
- The United Nations Convention on the Rights of the Child ratified by Decree No. 91-018 / PR of 15/02/1991;
- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography ratified on April 17, 2010;
- ILO Forced Labor Convention No. 29;
- ILO Worst Forms of Child Labor Convention No. 182.

Jurisdiction over offences: The 2014 Law to Combat Child Labour and Trafficking in Children⁴⁷ covers offences committed inside or outside the territory of Comoros, however, only offences against children (persons below 18 years of age) and only those related to sexual or labour exploitation, slavery and practices similar to slavery, servitude and the removal of organs (art. 14) who are residing or staying in Comoros (art. 5).

Non-discrimination principle: Article 5 states that the 2014 Law applies to children independently of race, nationality, gender, religion, or origin, who reside or stay on the territory of Comoros.

⁴⁷ Loi No. 14-034/AU du 22 Déc. 2014 portant lutte contre le travail et la traite des enfants.

Liability of legal persons: Articles 6 and 7 of the above mentioned 2014 Law to Combat Child Labour and Trafficking in Children stipulate that they apply also to legal persons (*de jure or de facto*). The penalties prescribed are suitable only for physical persons (imprisonment and a fine of 50 000 à 1000 000 Comorian francs). The provisions of the Criminal Code (art. 325) prescribing the closure of the establishment used for prostitution from 3 months to 5 years may apply in cases labour exploitation for the purposes of TIP.

Other laws: The Labour Code contains provisions on the prohibition of forced labour (art. 2.1) and on the prohibition of child trafficking, in particular related to labour and sexual exploitation of children (art. 131).

Definition and criminalization

Definition and sentencing: Article 266-11 of the law No. 020/038 the new Penal Code, defines TIP and exploitation in accordance with the Protocol definitions. The provision corroborates that consent to exploitation is irrelevant where any of the means have been used and that means are not required in the case of child trafficking (defined as persons under the age of 18 years).

Article 310 of the law No. 020/038 the new Penal Code, punishes proxenetism with imprisonment from 6 months to 3 years, and a fine from 50,000 to 5000,000 Comorian francs. Attempting to commit proxenetism is punishable with the same penalty.

Article 353 of the law No. 020/038 the new Penal Code, defines child trafficking as “*the whole process by which a child is moved, inside or outside a country under conditions that transform him into a value merchant for at least one of the persons present, and whatever the purpose of the child’s movement: any act involving the recruitment, transport, concealment, complicity of a child; any act which results in the displacement of the child within or outside a country*”. Child trafficking is punished by imprisonment from 7 to 20 years and from 5,000,000 to 20,000,000 Comorian francs,

Article 278 of the law N° 020/038 the new Penal Code, punishes trafficking of human organs with 7 to 10 years imprisonment.

The 2014 Act to Combat Child Labour and Trafficking in Children⁴⁸ in article 6 related to the worse forms of child labour, actually equates trafficking to the worst forms of child labour⁴⁹ and prescribes imprisonment from 6 months to 10 years and a fine from 100,000 to 5,000,000 Comorian francs.

The 2014 Act on child trafficking, specifically articles 13 and 14, criminalizes child trafficking and defines it as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, for the purpose of exploitation.” Article 13, paragraph 2 defines ‘exploitation’ as follows: “Exploitation shall include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour,⁵⁰ slavery or practices similar to slavery, servitude or the removal of organs.”

The Act partially follows the definition of trafficking given by the Protocol in article 3 considering that, not only does it narrow the offence to children, but it requires the use of specific means, contrary to the Palermo Protocol where it is expressly stated that where the offence is committed against a child, trafficking is substantiated “*even if this does not involve any of the means*” described. It also appears not to punish trafficking for the purpose of forced services, as this form of exploitation, included in the definition of the TIP Protocol, is omitted in article 13, paragraph 2. However, the same Law under chapter II, section 1 (“Assimilated Practices” to worse forms of child labour) includes, within the term “exploitation” (art. 8, para. 2): “child prostitution and all forms of sexual

48 Loi No. 14-034/AU du 22 Déc. 2014 portant lutte contre le travail et la traite des enfants

49 Other than forced or compulsory labour, Art.6 (a) also equals to worse forms of labour: slavery and practices similar to slavery, selling of children, debt servitude, and force or compulsory recruitment of children for use in armed conflicts. Further, it considers as “worse form of labour” the use, recruitment or offer of children in view to be used in prostitution, production of pornographic material or spectacle [Art.6 (b)]; and the use of a child for illegal activities mainly in the production and traffic of narcotics [Art.6 (c)].

50 The legislator has not included “forced services” next to “forced labour”.

exploitation of the child, forced labour and forced services⁵¹, illegal adoption, early and forced marriage, and any other form of economic or sexual abuse detrimental to the health as well as to physical, mental, moral and social development of the child.”

The UNODC Issue Paper on “*The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol*”, highlights that although illegal adoption was not included in the minimum forms of exploitation, it can be characterized as trafficking under the TIP Protocol if the exploitative intent is shown.

Article 13 of the 2014 Law to Combat Child Labor and Trafficking in Children prescribes penalties from 10 to 20 years’ imprisonment and a fine of 30 million Comorian francs. These penalties are sufficiently stringent and, with respect to sex trafficking, more serious than those prescribed by the Criminal Code for other sexual crimes such as for:

- rape (art. 319 (CC) prescribes imprisonment from 5 to 10 years); and
- forced prostitution against a minor (art. 323 (CC) prescribes an imprisonment from 2 to 5 years and a fine from 150,000 to 2,000,000 Comorian francs).

Aggravating circumstances: Article 266-11 of the law No. 020/038 the new Penal Code provides that “trafficking in persons, when it has been committed for the purpose of exploiting minors under the age of 18, is punishable by ten to twenty years in prison and a fine of 30,000,000 Comorian francs.”

As for the 2014 Act to Combat Child Labour and Trafficking in Children, aggravating circumstances are listed in article 6, paragraph 3 punishing the offender with imprisonment of 10 to 20 years if the victim is a child below 15- years of age; if the perpetrator has used narcotic drugs or weapon; if the victim was kidnapped, deprived of food; if the victim was particularly vulnerable; or in a series of other situations covered by the provision.

Attempt to commit trafficking in persons: Article 266-11 of the law No. 020/038 the new Penal Code provides that when the offence is committed intentionally or attempted, it is punishable with 7 to 10 years imprisonment and a fine of 30,000,000 Comorian francs.

Article 14, paragraph 2 of the 2014 Act to Combat Child Labour and Trafficking in Children punishes the attempt to commit the crime of child trafficking with imprisonment of 10 to 20 years (same penalty of deprivation of liberty as for the perpetrator, but no fine).⁵²

Participation in an organized criminal group: Article 266-10 of the law No. 020/038 the new Penal Code prescribes imprisonment from 5 to 10 years with a fine of 10,000,000 Comorian francs, for anyone who agrees with one or more persons with a view to commit this offence and with the purpose to obtain financial advantage.

Organizing or directing other persons to commit trafficking in persons: Article 14, paragraph 2 of the 2014 Act to Combat Child Labour and Trafficking in Children punishes with imprisonment from 10 to 20 years the person who organizes or directs the commission of the offence.

Aiding and abetting: Article 14, paragraph 2 of the 2014 Act to Combat Child Labour and Trafficking in Children punishes this offence also with imprisonment from 10 to 20 years accomplices and whoever assists the commission of the offence.

⁵¹ While, as mentioned above, in art. 13 para. 2 the legislator had forgotten to include “forced services” next to “forced labour”, in art. 8, para. 2 it has added “forces services”, but not “slavery or practices similar to slavery and servitude”, despite the fact that it refers to labour exploitation. Furthermore, as mentioned above, art. 6(a) equals to worse forms of labour: slavery and practices similar to slavery as well as servitude (and also prostitution.....).

⁵² Normally, art. 44 of the Criminal Code provides the same penalty for the attempt as for the commission of the offence unless the law provides otherwise. Article 45(CC) provides also that are punished as accomplices to an action classified as a crime, those who, by donations, promises, threats, abuse of power, machinations or fraud, would provoke this action or give instructions to commit it.

Investigation and prosecution

There is a Police Morals and Minors Brigade competent to investigate allegations of child abuse, including child trafficking, and to refer cases for prosecution. This special Brigade operates nationwide, covering the islands of Grande Comore, Anjouan, and Mohéli and which collaborates with the Services d'Ecoute.

The National Commission for Human Rights and Freedoms (CNDHL) is mandated to receive complaints of the worst forms of child labour, investigates violations, and refer cases to the Ministry of Justice for prosecution, but no cases have been registered.

Regarding criminal justice capacity, it was reported in 2019⁵³ that the Government has established mechanisms for the enforcement of law and regulations on child labour in Comoros, however gaps exist within the operations of the Ministry of Labour that may hinder adequate enforcement of their child labour laws, including financial and human resource allocation. During the year of 2019, only 8 criminal law enforcement agents received initial training for new criminal investigators compared to 36 law enforcement agents receiving training in 2018⁵⁴. There is no information on imposed penalties for violations related to the child trafficking law. Referral mechanisms and procedures between criminal authorities and social services reportedly exist, but it is unlikely that they can identify trafficking cases.

Reports indicate that there is lack of trained staff, equipment, transportation, and funding to conduct child labour inspections and legal proceedings.⁵⁵ Due to limited financial and human resources, police are, in some cases, unable to open an investigation unless the victim can contribute a portion of the expenses associated with the investigation, including fuel and telephone fees. Thus, investigations are sometimes reactive and may depend on the victim's wealth and knowledge of the criminal justice system, making cases related to violations of the worst forms of child labour unlikely to be investigated. The capacity of labour inspectors is also reported insufficient⁵⁶ for the size of Comoros' workforce, which includes approximately 278,500 workers.

While the scale of trafficking crimes appears to be especially limited, nonetheless, the Government does not appear to investigate, prosecute, or obtain convictions for any of the trafficking or forced labour crimes, despite reports that one listening center (see below) recorded many cases that may constitute trafficking. The Government has not reported investigating trafficking case recently and has never reported convicting a trafficker.⁵⁷ The Government lacks formal procedures to identify trafficking victims.

The Government also has never reported any investigations, prosecutions, or convictions of government employees allegedly complicit in TIP offences. While discouraged by the Government, families or village elders continue to settle many allegations of sexual violence (possibly amounting to sex trafficking and child domestic servitude) informally through traditional means, without recourse to the formal court system. While many rural families still make informal arrangements with urban host families, in Anjouan, judicial officials coordinated with prosecutors and a victim care provider to address and discourage the cultural practice of sending children from rural areas to urban host families to ensure access to education, where, as mentioned above, children in these arrangements are particularly vulnerable to trafficking. In previous years, judges were known to negotiate agreements between a child's parents and his or her trafficker, often returning the child to trafficking situations. Some police reportedly returned sexually abused children to their exploiters, sometimes due to lack of shelters or alternative forms of care.⁵⁸

The police lack basic resources, including vehicles, fuel, and equipment, which limit their operations. The absence of a clear understanding of trafficking may result in the misclassification of cases as other crimes, such as child labour, abuse, and rape. The Ministry of Labour's 4 labour inspectors – responsible, among other things, for implementing the law – did not receive training either or operational resources to conduct labour inspections

53 U.S. Department of Labour, 2019 Child Labour and Forced Labour Reports – Comoros, op. cit.

54 Ibid.

55 Ibid.

56 Ibid.

57 The U.S. Trafficking in Persons Report (U.S. Department of State 2020), Country Narrative Comoros.

58 Ibid.

of informal work sites, where children were especially vulnerable to forced labour. The United Nations Office on Drugs and Crime is planning to strengthen criminal justice practitioners' capacity, including the drafting committee tasked with developing the anti-trafficking legislation, on issues related to TIP, including on the international legal framework that governs this crime.

Protection and assistance

Protecting the rights of victims of crime, including victims of trafficking: Article 20 of the 2014 Act to Combat Child Labour and Trafficking in Children, in a very laconic way, refers only to the obligation of the State to take appropriate measures for the protection of victims, but it does not specify any such measure. Article 21 provides that a decree taken by the Minister of Labour should establish a monitoring mechanism, but it appears that this has not been the case yet.

Comoros has a National Policy for the protection of Children (2016-2021), which includes components to combat child labour, with a focus on child trafficking. There are no reports which shows whether activities were undertaken to implement this policy.⁵⁹

Witness protection: No available provisions.

Compensation and restitution: Provision on restitution is included in the law No. 020/038 the new Penal Code for all crimes in article 22.

Article 12 of the 2014 Act to Combat Child Labour and Trafficking in Children provides that the persons sentenced should pay the expenses for the treatment of victims by any public or private structure or organization or private person acting in the framework of a public service.

Article 19 of the above Act provides for the establishment of a fund for support and social security for victims of trafficking, but there is no information on its functioning.

The Government funds toll-free emergency lines for all three islands for reporting crimes. The Ministry of Health, Solidarity, Social Cohesion and Gender, has opened in 2018 "two pilot listening services (*Services d'Ecoute*) to protect child victims of violence." The Government continued to provide financial support and office space to the listening centers, alongside support from an international organization. However, it appears that it lacks formal procedures to identify trafficking victims and refer them to care, and it is reported that it has not identified or referred any trafficking victims to protective services since 2013.⁶⁰ During 2019, the above-mentioned listening centers operated on three of the four islands of Comoros (Grande Comore, Anjouan, and (Moheli), and offered medical care, psycho-social counseling, and legal assistance mostly to women and children who were victims of abuse and violence, including trafficking victims⁶¹.

Further, the Government does not appear to have assisted in the repatriation of any victim, throughout 2019. Neither did the Government report having conducted inspections for potential trafficking indicators by visiting host families who had taken in children from rural areas. The Government also did not report making additional efforts to investigate, identify, or assist the 3,000 to 4,000 unaccompanied Comorian minors on the island of Mayotte, a French department, after France denied the National Commission in Comoros visas during the previous reporting period.⁶² It is also reported that, until March 2020, there were no shelters available, for short or long-term use, for adult or child victims. Government officials often returned children to their parents or guardians where they might have originally faced the abuse. A possible site for a temporary shelter was identified in 2018, but the Government did not report making any progress in implementing it.⁶³

59 2019 Findings on the Worst Forms of Child Comoros.

60 The U.S. Trafficking in Persons Report (U.S. Department of State 2020), Country Narrative Comoros.

61 Ibid.

62 Ibid.

63 Ibid.

Despite the requirements of the 2014 Law to Combat Child Labour and Trafficking in Children, the Government does not appear to have established a support fund for children victims of trafficking.⁶⁴

Prevention

Article 15 of the 2014 Law to Combat Child Labour and Trafficking in Children provides that the State is obliged to carry out activities to guarantee prevention. To this respect, the State should have strengthened institutional and human capacities of structures and organs charged with the prevention of child labour and child trafficking.

Raising awareness: Article 18 of the 2014 Law to Combat Child Labour and Trafficking in Children provides for information campaigns, training and awareness raising in place for all socio-professional layers to prevent trafficking. According to the U.S. 2020 Report on Trafficking in Persons, from April 2019 through March 2020, the Government did not conduct anti-trafficking public awareness campaigns.

Validity and legitimacy of travel and identify documents: The 2014 Act to Combat Child Labour and Trafficking in Children does not contain such provisions. Only article 136 of the Criminal Code punishes the forgery, falsification and alteration of passports and other public documents with imprisonment from 6 months to 3 years and a fine from 15,000 to 300,000 CF. The use of the above forged, falsified or altered documents results in the same penalties.

As mentioned above, in addition to article 18 of the 2014 Act to Combat Child Labour and Trafficking in Children, which provides for training for all socio-professional layers to prevent trafficking, there is also article 17 which provides for universities and schools integrating the worst forms of child labour and child trafficking into their curricula modules on dangerous labour. However, authorities lack understanding of trafficking, and the Government does not provide adequate resources or training to law enforcement officials, including the offices charged with identifying trafficking victims and investigating the crime. The Government does not provide initial training for new criminal investigators or any other training for law enforcement officials on how to recognize, investigate, and prosecute trafficking and related crimes. The Ministry of Labour's labour inspectors additionally need training.⁶⁵

It is reported that the Government has increased its efforts to prevent trafficking on one island, but maintained inadequate efforts to prevent trafficking overall.⁶⁶ The interagency Anti-Trafficking Task Force, composed of representatives of relevant government agencies, the listening centers, and international organizations, convened in December 2019 after being inactive during the previous reporting period. The listening centers supposedly assisting in the identification of victims of abuse and exploitation do not report the use of these emergency lines for the identification of trafficking victims.

In 2019, the interagency Anti-Trafficking Task Force, reported having started drafting an anti-trafficking national action plan.⁶⁷

The Government does not appear to have effective policies or laws to govern labour recruitment and to hold recruiters civilly or criminally liable for fraudulent recruitment.⁶⁸ In 2016, the Labour Ministry signed an agreement with several labour recruitment agencies to facilitate review of the transnational recruitment processes and to monitor job advertisements in an effort to identify recruitment activities that might endanger Comorians seeking overseas employment; however, the Government made no efforts to regulate labour recruitment agencies since then. The Government has not provided anti-trafficking training to its diplomatic personnel and it did not make efforts to reduce demand for commercial sex acts or forced labour.⁶⁹

64 Ibid.

65 The U.S. Trafficking in Persons Report (U.S. Department of State 2020), Country Narrative Comoros.

66 Ibid.

67 Ibid.

68 Ibid.

69 Ibid.

It is reported⁷⁰ that although the Government has programs that target child labour, their scope is insufficient to fully address the extent of the problem, particularly in agriculture and domestic work. Comoros additionally lacks a specific program to assist children exploited by religious instructors.

Coordination and cooperation

National level coordination and cooperation: The Government has established mechanisms to coordinate its efforts to address child labour. The Monitoring Group for the Fight Against Trafficking in Persons coordinates actions against TIP. It is headed by the Secretary General of the Government, and includes representatives from the MoL, MoJ, CNDHL, Police, international organizations, and NGOs.

The Government does not have a system on collection of data. It is reported that it only created a database to harmonize the collection of information from the listening services.

Bilateral and regional coordination and cooperation: Provisions on extradition and mutual legal assistance are not included in the 2014 Act to Combat Child Labour and Trafficking in Children.

In 2020, Comoros started to draft a bilateral agreement with Madagascar on migrants' workers' rights.

Repatriation and reintegration

Repatriation: Article 14, paragraph 3, of the 2014 Law to Combat Child Labour and Trafficking in Children provides that the carriers ("companies de transport") by air or sea or any other entity as well as individuals that engaged in the transportation of the victim of trafficking are obliged to cover the charges related to his/her repatriation. However, there is no available information on repatriations of victims of trafficking.

Non-refoulement: Provisions on non-refoulement are not included in the 2014 Act to Combat Child Labour and Trafficking in Children.

Temporary/permanent residence: Provisions on temporary/permanent residence are not included in the 2014 Act to Combat Child Labour and Trafficking in Children.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> • Include provisions following the Palermo Protocol to expressly state that when the offence of TIP is committed against a child, the "means" element is not required when the "act" and "purpose" are proven; • Criminalize the use of work and services of a victim of TIP; • Include provision on confiscation and seizure of assets and proceeds of crime (art. 12 and 14, UNTOC) to ensure that traffickers and exploiters (natural and/or legal persons) are deprived of the proceeds of the crime; • Adopt adequate regulation that includes provisions on labour migration and the recruitment of Comorians migrant workers abroad; • Clarify whether activities were undertaken to implement the National Policy for the Protection of Children; • Consider drafting specific policies to make identification documents more difficult to falsify, forge or alter in place.
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⁷⁰ Ibid.

Investigation and prosecution	<ul style="list-style-type: none"> • Include non-punishment clause for victims of TIP for offences committed as a result of their trafficking experience. • Standardize procedures for effective identification of trafficked victims; • Establish data collection mechanism to capture information on investigations, prosecutions, and convictions of TIP; • Strengthen criminal justice capacity to proactively identify situations of TIP in progress, and to work with the community to identify individuals at risk of being trafficked; • Ensure a common understanding of and approach to TIP and its constituent elements that would form the basis of domestic criminal offence; • Ensure accountability of public officials and religious instructors' accomplices of traffickers.
Protection and assistance	<ul style="list-style-type: none"> • Under art. 20 of the 2014 Act, include provisions establishing a comprehensive and integrated protection and assistance to victims of TIP, such as medical, psychological, social support, as well as legal support and reintegration measure; • Establish effective victim identification process, including identification guidelines, and the corresponding referral mechanism; • Improve protective services to trafficking victims, including through partnerships with NGOs; • Provide specialized shelters for TIP victims children and adults (separated); • Consider drafting legislation on witness protection, to ensure the physical protection of the victim and/or witnesses before, during and until the end of judicial proceedings or trials; • Implement a support fund for victims.
Prevention	<ul style="list-style-type: none"> • Adopt and implement a National Action Plan on TIP; • Implement awareness-raising campaigns in all the countries to raise awareness on the risks of TIP; • Institutionalize anti-trafficking trainings to law enforcement and judiciary authorities; • Strengthen efforts to prevent trafficking of unaccompanied children; • Expand public awareness campaigns against trafficking in the Union of the Comoros; • Strengthen the role of labour inspectors to improve identification and protection of trafficked victims.
Coordination and cooperation	<ul style="list-style-type: none"> • Incorporate legislation to allow the creation of a regional framework for cooperation; • Improve coordination amid the Anti-Trafficking Task Force by providing funding and sharing data; • Establish a system or mechanism of cooperation to exchange information between law enforcement, immigration and other relevant authorities, in accordance with art. 10, para.1, Palermo Protocol; • Consider drafting a mutual legal assistance agreement between two or more countries, using UNTOC as the legal foundation; • Include provisions on extradition and mutual legal assistance in the 2014 Act to Combat Child Labor and Trafficking in Children.
Return and reintegration	<ul style="list-style-type: none"> • Facilitate the repatriation and reintegration of victims (of both Comorian nationals and third country nationals); • Develop national capacities for the identification, return, and reintegration of victims of trafficking, with special consideration to the best interest of the child; • Establish a comprehensive and integrated protection and assistance system offering legal, administrative support, medical, psychological, as well as integration/reintegration measures to victims of TIP, in accordance with art. 6(3), Palermo Protocol.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for human trafficking, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

DJIBOUTI

Overview of national legislation

The Government of Djibouti has signed and ratified UNTOC and its Protocol against Trafficking in Persons and is party to several human rights instruments. The Djibouti Government has made efforts to implement the Palermo Protocol through domestic law. In 2011, it passed Law No. 111, Regarding the Fight Against Terrorism and Other Serious Crimes. Its most recent Law No. 133, On the Fight Against Trafficking in Persons and Illicit Smuggling of Migrants, promulgated on the 24 March 2016, specifically focuses on TIP and Smuggling of Migrants (SOM), and has been drafted with the intention of defining both laws as in line with UNTOC and its supplementary Protocols, and with clearly defined purposes including to protect and assist people in accordance with human rights.⁷¹

The 2016 Law No. 133, On the Fight Against Trafficking in Persons and Illicit Smuggling of Migrants criminalizes TIP. The previous law on TIP was adopted in 2007. The sentences attaching to trafficking offences therein are sufficiently stringent. Law No. 111, Regarding the Fight Against Terrorism and Other Serious Crimes of 2011, remains in effect and also prohibits all forms of trafficking. The two laws both remain in effect, resulting in some contradictions (including in relating to penalties) and implementation challenges.

Articles 16 and 17 of the 2015 Code on the Protection of Minors is also of relevance to child sexual exploitation, child labour and child begging. The Constitution (15 September 1992) the Penal Code and the Labour Code (26 January 2006) also include relevant provisions. Slavery is not mentioned in the Constitution.

Jurisdiction over offences: Articles 23 and 24 of the 2016 Law No. 133⁷² provide for the application of the TIP law committed by any foreigner on and outside the territory of the Republic of Djibouti:

Article 23: “Any foreigner who, on the territory of the Republic of Djibouti, is guilty either as an author or as an accomplice of a crime or offense referred to by this law committed in whole or in part in the Republic of Djibouti will be prosecuted and judged according to Djiboutian laws if he is arrested on the territory of the Republic of Djibouti or if the Government obtains his extradition.”

Article 24: “Any foreigner who, outside the territory of the Republic of Djibouti is guilty either as an author or as an accomplice in the offenses referred to in this law may be prosecuted and tried according to the provisions of Djiboutian laws, when the victim of these offenses is of Djiboutian nationality and if the culprit is arrested on Djiboutian territory or if the Government obtains his extradition.”

Scope of offences: Article 4 of the 2016 Law No. 133, provides that this Law applies to the prevention, investigation and prosecution of offenses established in accordance with the provisions of this law.

Liability over legal persons: Article 14 of 2016 Law No. 133 states that: “If the crime is committed by a legal entity, and if it can be proved that the activities were undertaken with the consent, complicity or attributable to the negligence of a person holding a position of an manager, director or secretary or any other leader of the legal entity or a person who is supposed to exercise any of these functions, both the person and the legal entity are punishable under this law.” This provision is not limited to TIP offences (as several other provisions are) but to all offences created by the law.

⁷¹ On World Day against Trafficking in Persons, 30 July 2018, a Representative speaking on behalf of H. E. Mr. Yacin Elmi Bouh, Ambassador of the Republic of Djibouti.

⁷² *Loi n° 133 du 24 mars 2016 sur la lutte contre la traite des personnes et le trafic illicite de migrants.*

Definition and criminalization

Definition and sentencing: Article 5 of the 2016 Law No. 133 makes trafficking, as defined in articles 1 and 5, an offence, and defines TIP in accordance with the Protocol definition. Both article 1 and article 6 confirm that consent to exploitation is irrelevant where any of the means have been used and that means are not required in the case of trafficking of children (defined as persons under the age of 18 years). The fact that the means at issue are described slightly differently between those articles may be problematic in implementation. Forms of exploitation also align with those set out in international law. Sexual exploitation is broadly defined also to include the use of pedophilic acts.

Aggravating circumstances: Article 7 of the 2016 Law No. 133 sets out that the base offence is punishable by 5 to 10 years imprisonment. Article 8 sets out detailed circumstances that can result in the aggravation of the crime to 10 to 20 years imprisonment, including in relation to the status of the victim (where the victim is a minor or is disabled); in relation to the acts and means used (fraud, violence, documentation falsification, use of drugs on the victim, use of weapons), the relationship between the victim and the perpetrator (where the perpetrator has authority over the victim); treatment of the victim (sequestration, deprivation of food, sexual abuse), or the type of exploitation (slavery, forced labour, instigating acts of prostitution, obscenity, removal of organs).

Given that almost all these factors may overlap with the acts, means and/or exploitative purposes captured by the definition of TIP, the result would be that almost all cases identified as being trafficked would be aggravated. Indeed, it is difficult to consider a case of TIP that would not feature at least one of these forms of aggravation. Drafters are invited to consider and clarify what value, if any, there is in aggravating sentences in light of this significant overlap between aggravations and the elements of the trafficking offence.

Article 9 sets out further aggravations, escalating the sentence to the death penalty, where the crime results in the victim's death, his or her mutilation or permanent disability, where the purpose is the removal of organs. It is unclear from the drafting of this provision, whether all three of these factors are required, or whether the aggravation can result from only one. The fact that removal of organs is also an aggravating circumstance specified in article 8, could suggest that the intention is for all three of these conditions to be fulfilled. Further credence is lent to that interpretation on the basis that in the absence of a definition, "permanent disability" could be construed broadly to include all situations where the victim suffers from long-term impacts, including owing to mental conditions such as trauma. Drafters are considered to clarify article 9 both by including the provision and considering offering a definition of 'permanent disability' to the Law.

Article 10 aggravates sentences to 10 to 15 years where a person has been subject to forced labour or services under certain conditions. The detailed provision is phrased broadly, for instance, to include situations where such forced labour or services cause financial harm to the victim or his/her family, or such harm is threatened. In the absence of a definition of financial harm, it is difficult to identify a scenario in which a person who is exploited in forced labour would not be financially harmed, or where the other circumstances specified in this provision are not met by the mere definition of forced labour. Consequently, overlap is found in both the circumstances provided with the elements of what constitutes the base offence. The provision overlaps with article 8 that aggravates the sentence to 10 to 20 years where trafficking is for forced labour, raising the question of when this more complicated article 10 provision would be applied to achieve a lesser sentence than the simpler aggravation achieved by article 8. Drafters are invited to consider and clarify the purpose of article 10 and its relationship with other aggravating offences.

Attempt to commit trafficking in persons: Article 12 of the 2016 Law No. 133 criminalizes attempt to commit a trafficking offence and imposes the same penalty as if the offence had been committed. Article 26 clarifies that the penalty applicable to attempt is that of the offence itself.

Aiding and abetting: Article 13 of Law No. 133 states that "Anyone who knowingly receives, in whole or in part things, objects or goods obtained by means of a crime related to trafficking in persons will be recognized as an accomplice of the crime and punished for human trafficking." This provision can be interpreted as both in

fulfilment of the requirement to address accomplices to the crime type, and also as a measure to address demand for trafficking.⁷³

Non-liability of victims of trafficking: Perpetrators may have recourse to article 30 of the 2016 Law No. 113, that allows for exemption from punishment for any person who took part in an association or conspiracy to commit any of the offences if they disclosed the existence of such actions to the authorities and it allowed for the identification of other persons involved and/or avoidance of the offence.

Investigation and prosecution

In 2019, it was reported that the Djibouti Government prosecuted 80 suspected traffickers in 33 cases under the 2016 anti-trafficking law, however, officials did not achieve any trafficking convictions due to judges' determination of insufficient evidence to prove trafficking, the majority of prosecutions resulted in smuggling convictions, and the Government acquitted 16 and separately ordered 48 defendants to pay fines.⁷⁴

According to the *2020 U.S. State Department Trafficking in Persons Report*, the national police of Djibouti created a unit focused on vulnerable minors with a mandate to investigate and arrest traffickers and refer children to a local NGO-run shelter.⁷⁵ As nominated in 2018 as the entity officially responsible for migration issues, TIP included, the Ministry of Interior continued to allow international partners and NGOs to more adequately coordinate and focus anti-trafficking initiatives in Djibouti. In 2019, the Government of Djibouti, in partnership with an international organization, co-chaired a mixed-migration task force for close coordination on migration, smuggling, and TIP. The Djibouti Ministry of Justice sent an unspecified number of judges, prosecutors, and advisors to training seminars on general trafficking topics, and coordinated with an international organization to lead a series of workshops in the rural regions of the country.⁷⁶ Additionally, the National Police worked with an international organization to revise and reform its process for screening for trafficking indicators, as consequence the entity implemented the new curriculum in all police academies in Djibouti City and in the rural areas of the country.

Finally, the Djibouti National Gendarmerie (police force) created a unit with a mandate to protect women and children against sexual and gender-based violence.⁷⁷

Asset seizure and freezing: Article 17 of 2016 Law No. 113 allows the courts, officials or agents responsible for the detection and repression of crimes related to TIP to seize property in relation to a trafficking offence which are the object of an investigation as well as any other relevant elements. It also allows for the judicial authorities to take precautionary ex officio measures or, at the request of a public prosecutor or competent authority order measures such as freezing of funds and financial transactions likely to be seized or confiscated. These measures may be lifted at any time at the request of the public prosecutor or by a competent authority who has sought the advice of a public prosecutor. Article 29 also allows for the seizure or confiscation of assets that served directly or indirectly to commit a crime regardless of whom the assets belong to. Costs of transport and removal will be borne by the accused.

Article 18 of the 2016 Law No. 113 allows for extraordinary surveillance measures, for a period of 3 months, such as surveillance of bank accounts; access to systems, networks and servers; surveillance of phones, faxes or any other means of transmission or communication; audio or video recording of actions or conversations; transmission of certified documents or private banking, financial or commercial documents; seizure of the above-mentioned documents.

⁷³ However, Google Translate offers a different translation, being: "Anyone who knowingly conceals all or part of things, objects and property abducted or obtained with a crime relating to trafficking in persons will be recognized as an accomplice to the crime and punished for human trafficking."

⁷⁴ The *U.S. Trafficking in Persons Report (U.S. Department of State 2020)*, Country Narrative Djibouti.

⁷⁵ The *U.S. Trafficking in Persons Report (U.S. Department of State 2020)*, Country Narrative Djibouti.

⁷⁶ The *U.S. Trafficking in Persons Report (U.S. Department of State 2020)*, Country Narrative Djibouti.

⁷⁷ Ibid.

Protection and assistance

Protecting the rights of victims of trafficking: Djibouti's 2016 law provides for the establishment of a victim assistance program for trafficked victims, funded through asset seizure. Article 15 of the 2016 Law No. 133 provides that profit from the forfeitures ordered by the Court can be used to contribute to the emergency relief fund established for victims of trafficking. Article 31 of the 2016 Law No. 113 provides for psychological, medical and social assistance and accommodations appropriate to the condition of victims of trafficking will be provided to meet their needs. Article 31 of the 2016 Law No. 113 states that translation services and legal aid, if necessary, will be provided to victims of trafficking. The law arguably does not sufficiently take into account the special needs of children. While Article 33 of the 2016 Law No. 113 concerns special assistance for children it does not refer to appointing of a guardian for the criminal proceedings, ensuring that direct contact with the suspect and child is avoided, specific effective protection of child witnesses, etc.

According to the *2020 U.S. State Department Trafficking in Persons Report*, the Government of Djibouti without assistance from international organizations, identified 33 potential trafficking victims and referred them all to care, with an increase compared with the 28 they independently identified and assisted the previous year.

Witness protection: Article 31 of Law No. 113 provides that courts may decide, if in the interest of the victim, to close the court hearing to the public and only announce the final decision publicly. Such measures will be observed for the whole process and in certain causes after the judgment as well. Article 34 provides that to protect the identity and privacy of victims and their witnesses, the Court may order the hearings to be in camera. According to article 35, the court may relieve victims or witnesses from appearing at a hearing or can take special measures to protect their identity or privacy. Article 33 of Law No. 113 sets out special assistance for children, in the context of court proceedings. Where children are involved that article states that: "the court proceedings shall not be public. Children shall benefit from the same protections that are accorded to all victims of trafficking. Finally, parties, representatives, lawyers and other persons whose presence is considered necessary by the tribunal may attend the court hearing and all steps of the judicial procedure." Article 37 states that "victims of crimes under this law who have a particular vulnerability or are minors will have assistance before the investigating or trial judge by a lawyer of their choice or appointed ex officio." And according to Article 38, "In civil actions, the public prosecutor may request the guardianship or legal supervision of minor victims whose legal representation is unknown or does not guarantee the safeguarding of the rights and wellbeing of the child."

Compensation and restitution: Article 29 of the 2016 Law No. 113 allows the Court to provide compensation, interest for moral damages, payment for services provided by the victim as well as reimbursement of any costs for repatriation for the victim. Article 15 states that profits from confiscation orders can be used to contribute to the fund for victims of trafficking. It is not clear what the effect of these provisions have been on achieving compensation for victims of trafficking.

Prevention

Raising awareness: Throughout 2019, Djibouti's Ministry of Justice's website featured the Government's anti-trafficking efforts and publicized articles on TIP in addition to Djibouti's anti-trafficking law. In partnership with the Government of Germany, the Ministry of Justice, focused on the logistics and methodology of the trafficking referral mechanism for those living along the migrant corridor, led an awareness and training campaign throughout Djibouti's interior regions.⁷⁸ In late 2019, Djibouti labour authorities published a series of articles to bring attention to child labour laws, including child trafficking. During 2019, the Djibouti Government continued revisions to its 2015–2022 national action plan but still did not fully operationalize it.

The Government's diplomatic institute provided, in English and Amharic language, training to Djiboutian diplomatic personnel on human rights and trafficking issues and domestic servitude before they departed on overseas missions.⁷⁹

⁷⁸ The U.S. *Trafficking in Persons Report (U.S. Department of State 2020)*, Country Narrative Djibouti.

⁷⁹ Ibid.

Border control: There is no provision in the law addressing strengthening of border measures and carrier provisions as required under article 11 of the TIP Protocol.

Validity and legitimacy of travel and identity documents: There is no provision in the legislation relevant strengthening the security and control of documents in accordance with articles 12 and 13 of the TIP Protocol.

Coordination and cooperation

National level coordination and cooperation: Article 39 of Law No. 113 establishes a national body to fight against trafficking and similar practices. The 2014–2020 National Plan of Action contains provisions to establish an inter-ministerial committee on TIP, a regional secretariat to address both trafficking and smuggling.⁸⁰ A National Coordinator for Anti-Trafficking and Anti-Smuggling has been appointed, with the Anti-Trafficking Working Group falling under the direction of the National Coordinator. While the Working Group reportedly meets monthly, general lack of capacity and coordination among government agencies reportedly hampers response. The Government of Djibouti has acknowledged that notwithstanding the appointment of a Coordinator, insufficient capacity has delayed progress in operationalizing the National Action Plan.⁸¹ Some cooperation between the Government and civil society organizations has been noted in respect of awareness raising events.

Bilateral and regional coordination and cooperation: In 2009, the Governments of Djibouti and Ethiopia signed a Memorandum of Understanding (MoU) to collaborate on irregular movements related to trafficking, providing for judicial cooperation. There is no provision in the 2016 Law No. 113 that allows for international cooperation activities as required under article 10 of the TIP Protocol.

Repatriation and reintegration

Repatriation: Article 32 of the 2016 Law No. 113 provides that victims cannot be repatriated except in conditions of dignity and security. The provision also confirms that competent authorities shall notify persons who are victims of trafficking of their rights and services available as described above as soon as possible.

Non-refoulement: Article 32 of the 2016 Law No. 113 provides that victims cannot be subject to expulsion if there is no guarantee in their country of origin. It is not clear (from the translated version of the law) what ‘guarantee’ is required and whether this condition amounts to protection against refoulement.

Temporary/permanent residence: The 2016 law provides for temporary residence during criminal justice proceedings, and permanent residency where a person would be removed to countries where they face hardship or retribution. In relation to residency, Article 31 of Law No. 113 states that: “Foreign victims of trafficking are granted the right of residence during the judicial proceedings against the perpetrators and/or accomplices. Victims can also benefit from a permanent residence if necessary and for access to education for their children.” Article 36 states that victims of crimes under this law can apply to stay in Djibouti temporarily or permanently.

⁸⁰ Human Trafficking and Smuggling of Migrants in the Context of Mixed Migration Flows: State of play in the IGAD region, Background Paper (Sixth IGAD Regional Consultative Process on Migration (IGAD RCP, October 2015) 26.

⁸¹ On World Day against Trafficking in Persons, 30 July 2018, a Representative speaking on behalf of H. E. Mr. Yacin Elmi Bouh, Ambassador of the Republic of Djibouti.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> Align the ‘means’ provided in Law 133 with those set out in the TIP Protocol and consider whether the irrelevance of consent may be problematic in relation to the means specified; Consider amending the sentence prescribed under art. 20 of the 2016 Law No. 133 to attract a minimum deprivation of liberty of 4 years, in line with the UNTOC understanding of ‘serious crime’; Clarify the purpose of art. 21 concerning the same penalty applying where fraud, forgery, countering of documents to facilitate a person’s entry or stay; Consider amending the aggravating circumstances provided for trafficking crimes so that they do not overlap with the elements of the trafficking offence; Clarify whether art. 9 of Law No. 133 by adding ‘and/or’ to the provision and consider offering a definition of ‘permanent disability’ to clarify whether it includes both physical and mental disability; Consider and clarify the purpose of art. 10 and its relationship with other aggravating circumstances, so that aggravations do not overlap with the elements of the offence, particularly in relation to ‘financial harm’ and forced labour, and to reconcile the overlap with art. 8 that also aggravates the sentence where trafficking is for forced labour; Consider amending legislation to provide explicit protections from criminalization, for victims of trafficking who have perpetrated crimes as a direct result of being trafficked.
Investigation and prosecution	<ul style="list-style-type: none"> Clarify whether art. 17 and 18 of Law No. 113 concerning asset seizure and special investigative techniques respectively are intended to only apply to TIP crimes; Standardize of procedures for effective identification of trafficked victims.
Protection and assistance	<ul style="list-style-type: none"> Strengthen art. 33 of Law No. 113 (concerning special assistance for children) to allow for guardians to be appointed, to ensure that direct contact with the suspect and child is avoided, specific effective protection of child witnesses, etc.; Consider implementing standardized procedures for government personnel to identify potential victims and transfer them to NGOs or specialized shelters.
Prevention	<ul style="list-style-type: none"> Clarify what legislation or other measures, if any, are in place to strengthening border control and carrier sanctions under art. 11 of the TIP Protocol, and whether the conditions of those articles are met; Clarify what legislation or other measures if any are in place to strengthen security and control of travel and identity documents in accordance with art. 12 and 13 of the TIP Protocol.
Coordination and cooperation	<ul style="list-style-type: none"> Clarify whether national coordination and cooperation mechanisms are effective in responding to TIP, including through implementation of the 2014-2020 National Action Plan; Clarify the role of the National Coordinator for Anti-Trafficking; Clarify which legislation, if any, is relevant to entering into and effecting bilateral cooperation against TIP; Clarify which legislation, if any is relevant to international cooperation against TIP; Consider drafting a mutual legal assistance agreement between two or more countries, using UNTOC as legal basis.
Return and reintegration	<ul style="list-style-type: none"> Clarify what laws and procedures are in place to return victims of TIP, and to receive victims of trafficking who are being returned to Djibouti; Clarify what bilateral relationships if any, are in place to support return and reintegration of trafficked victims and whether they have been effectively implemented; Clarify whether the ‘guarantee’ in country of origin required before a person is repatriated to their home country, as per art. 32 of the 2016 Law No. 113 and whether this amounts to protection against non-refoulement; Clarify whether there is an infrastructure in place to give efficiency to the residency rights of victims of TIP set out in art. 31 and 36 of the 2016 Law No. 113.
Data collection	<ul style="list-style-type: none"> Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

ERITREA

Overview of national legislation

The Government of Eritrea has not ratified the UNTOC or its Supplementary Protocol on TIP. The Constitution of Eritrea ratified by Constituent Assembly on 23 May 1997 is the supreme law of the country and the source of all other laws. Any other laws that contradict the Constitution are null and void (art. 2(3)). The Constitution further reinforces its basis for protecting “rights, freedoms and dignity of citizens” (art. 2(2)). Article 26 limits fundamental rights freedoms (in accordance with international law) “only in so far as is in the interests of national security, public safety or the economic well-being of the country, health or morals, for the prevention of public disorder or crime or for the protection of the rights and freedoms of others.”

The Penal Code of the State of Eritrea promulgated in 2015, provides some provisions relevant to trafficking (art. 297 and 315-318). Several provisions contained in Book III concerning ‘Offences against the Person, Public Decency and the Family’ are relevant to crimes perpetrated against trafficked victims, including bodily injury and assault (art. 284-285); kidnapping and abduction and illegal restraint (article 288-290); endangerment (art. 291-292); threats (art. 294), coercion (art. 295); enslavement (art. 297) and sexual offences (art. 303 to 311). It is not clear whether any of these provisions have been applied in cases of trafficking.

The labour framework is also relevant to trafficking in persons. Labour Proclamation No. 118/2001 (repealing Proclamation No. 8/1991) prohibits forced labour, but explicitly excludes from that definition “compulsory national service, normal civil obligations, and forced labour as provided for in the Penal Code, communal services and services rendered during emergency” (art. 3(17)). Forced labour is defined as “any service which a person performed involuntarily due to the coercion of another person” and includes work performed by a young person contrary to the proclamation, and involuntary work performed because of someone’s influence as a result of public office or traditional status of chieftaincy.” Employers who engage in forced labour are punishable under the Penal Code (art. 9(6)). Young person is not defined in the proclamation, and ‘children’ are not mentioned in the proclamation, however, children 14 years and older may enter into employment contracts, and persons below 18 are not liable for damages arising from such contracts (art. 9). Proclamation No. 118/2001 also governs issuance of work permits for non-nationals (art. 8).⁸²

Contrary to the right to leave protected by article 12 of the ICCPR, there are onerous restrictions on people wishing to leave the country, both in terms of border control and issuance of documents. According to Proclamation No. 24/1992 Issued to Regulate the Issuing Of Travel Documents, Entry And Exit Visa From Eritrea, And To Control Residence Permits Of Foreigners In Eritrea, Eritreans must obtain an exit visa to leave the country, which can be denied by a competent court. The penalty for attempting or helping someone to enter or leave Eritrea illegally is up to 5 years imprisonment and/or fine of 10,000 Nakfa, though the actual length of sentences is being reported as being the discretion of zonal commanders, and the punishments meted out.⁸³ Proclamation 164/2011 to amend Proclamation 24/1992, makes no substantive changes to these provisions.

82 Also see Regulations to Issue Work Permits to Non-Nationals (Legal Notice No. 80/2003); Proclamation to provide for the requirement of registration of foreigners who reside, work or engage in business in Eritrea (No. 127/2002).

83 Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, UN Doc. A/HRC/29/CRP.1, 5 June 2015 [420, 423].

In addition to those instruments mentioned above, the following instruments may be relevant to TIP:

The Constitution of Eritrea, 1997

- Right not to be deprived of liberty: article 15(2);
- Freedom from torture, cruel, inhuman or degrading treatment or punishment: article 15(1);
- Right not to be held in slavery or servitude, nor perform forced labour not authorised by law: article 16(3).

Penal Code of the State of Eritrea, 2015

- Traffic of women, Infants and Young persons: articles 315, 316, 317, 318. However, the definition captures only sexual exploitation, and the definition of child trafficking is not in line with the TIP Protocol;
- Enslavement, sexual slavery, enforced prostitution: as crimes against humanity at (art. 108); as war crime (art. 109);
- Enslavement and abetting traffic: article 297;
- Child prostitution: article 305;
- Child soldiers: article 109. However, children above 15 years of age can be enrolled in armed conflict;
- Child marriage is legal (according to UNODC); however, this law is contradictory to article 22(2) of the Constitution that states that men and women “of full legal age” may marry upon their consent.

Criminal Procedure Code of the State of Eritrea, 2015

- Right to an interpreter: article 7 provides the right to an interpreter for both accused persons and witnesses;
- Jurisdiction: article 17-18. Proceedings are to take place in the territorial jurisdiction where the defendant was arrested or resides.

Other relevant labour-related instruments, include:

- Proclamation of National Service No. 11/199;
- Labour Proclamation of Eritrea, No. 118/2001;
- Proclamation No. 24/1992 Issued To Regulate The Issuing Of Travel Documents, Entry And Exit Visa From Eritrea, And To Control Residence Permits Of Foreigners In Eritrea;
- Mining Proclamation No. 68/1995;
- Regulations on mining operations (L.N. No. 19/1995);
- Proclamation No. 7/1997 Transition Maritime Code of Eritrea;
- Fisheries Proclamation (No. 176/2004).
- Regulations to amend the Foreign Fishing Vessel Regulations L.N. No. 38/1998 (L.N. No. 70/2003);
- Factory Vessel Regulations (L.N. No. 67/2003);
- Heavy Metals Regulations (L.N. No. 66/2003);

- Foreign Fishing Vessel Regulations (L.N. No. 38/1998);
- National Fishing Vessel Regulations (L.N. No. 39/1998);

Jurisdiction over offences: No provisions could be found that establish jurisdiction over TIP offences in accordance with article 15 of the UNTOC.

Liability of legal person: Article 6(1)(r) of the Penal Code defines a ‘person’ as “a natural or legal person” as the context dictates.

Definition and criminalization

There are significant gaps in the law in relation to non-sexual forms of exploitation and trafficking of adult male victims of trafficking. The definition of trafficking as set out in international law is not captured by the Eritrean Penal Code, which refers only to ‘traffic in women, infants and young persons’ who are trafficked for the purpose of sexual exploitation. Trafficking in the context of article 315 of the Penal Code provision appears to only refer to prostitution and production of pornography. Article 316 sets out aggravated traffic in women, infants and young persons (which concerns only trafficking for the purpose of sexual exploitation). Additionally, the general aggravating and mitigation provisions (art. 37-38 of the Penal Code) may also be relevant.

Other related offences include enslavement and abetting trafficking, which are collapsed into a single provision. However, ‘enslavement’ as a crime against humanity and/or a war crime could be read to capture non-sexual forms.

Article 30 states that “A public official or person selected to be a public official who, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept any undue advantage, or anything of value personally or for any other person or entity, in return for being influenced in the performance of any official act, or for doing or not doing anything in his official capacity in respect of any matter or transaction is guilty of corruption.” Article 131 establishes the crime of corrupting a public official.

Those offences are aggravated where they are related to criminal acts (art. 132). The offence of trafficking in unlawful influence (i.e. to get a public official to act illegally or corruptly) is established by art. 133. It is not clear in practice how the offences of ‘trafficking in unlawful influence (art. 133) and corrupting a public official (art. 131) would be differentiated.

Articles 139-141 establish public corruption and bribery offences, and offences relating to violation of official duties are established by articles 142 and 152.

Proclamation No. 85/1996 established a Special Court with general jurisdiction over certain cases, including corruption. Article 96 of the Penal Code provides for additional punishment for offences of public corruption, requiring the person to surrender anything obtained and forfeit public office.

Obstruction of justice (UNTOC, art. 23): Chapter 7 of the Penal Code sets out offences against administration of justice (164-185). Obstruction of Justice is a Class 2 petty offence captured by article 169, prescribing a penalty of 1 to 6 months imprisonment or a fine of 5001-20000 Nakfas. Obstruction of a corruption investigation is prohibited by article 136 as a Class 9 serious offence, punishable by 1 to 3 years imprisonment.

Participation in an organized criminal group: No definition of criminal society or criminal group is provided for in the Penal Code. However, ‘participation in a criminal society’ is criminalized by Article 191 of the Penal Code that states that “a person who knowingly participates in a group or society whose primary aims or activities are the commission of criminal offences, or that has been specifically and lawfully banned or prohibited from meeting, is punishable by imprisonment of 1 to 6 months or a fine of 5001-20,000 Nakfas. This penalty is aggravated by article 192 (6-12 months and 20,001-50,000 Nakfas) for organizers or ringleaders or where weapons are involved.”

Non-liability of victims of trafficking: There is no legislation protecting victims and their families from being punished for crimes committed as a result of being subjected to trafficking or for fleeing government-sponsored forced labour. Some of the provisions set out in chapter 4 of the Penal Code, on the absence of criminal responsibility could theoretically be applied as defenses. In practice, Eritreans fleeing the country are especially vulnerable to the Government indiscriminately arresting, detaining, harassing, or forcibly recalling them into national service, as it remains unknown if the Government has formal procedures to proactively identify trafficking victims among vulnerable groups.⁸⁴

Investigation and prosecution

The Constitution of Eritrea guarantees an independent and competent justice system capable of producing quick and equitable judgments, by judges free from corruption or discrimination (art. 10), and free from direction and control of any person or authority (art. 48). The Criminal Procedure Code of 2015 sets out investigative and prosecutorial provisions, including powers and duties of investigators and prosecutions in chapter 1 (art. 23-25). No special investigative techniques are provided for in the Penal Code.

Due process rights are not guaranteed for all persons in custody, as many are not allowed access to legal counsel, judicial review, family visits or medical attention. Indefinite and arbitrary detention are still recurring practices in Eritrea.⁸⁵ According to the May 2020, Report of the Special Rapporteur on the situation of human rights in Eritrea⁸⁶ submitted to the Human Rights Council 40th session, in early April 2020, amid the coronavirus disease (COVID-19) pandemic, despite an urgent request from Special Rapporteur urging the authorities to release those held without legal basis and low risk offenders because of the risk of the disease spreading inside the country's overcrowded prison system, the authorities have not yet implemented this measure. Accordingly, in 2019 the Government of Eritrea did not report investigating, prosecuting, or convicting suspected traffickers nor Government officials complicit in TIP under relevant provisions of the Penal Code.⁸⁷

Notwithstanding the inadequacy of the legislative and institutional criminal justice framework to investigate and prosecute trafficking and smuggling, 'cross-border crimes' are considered to be serious and constitute a threat to the nation's security, resulting in draconian punishments of suspected perpetrators.⁸⁸ Those persons who are suspected by authorities to have engaged in 'cross-border' crimes' (particularly in smuggling people out of Eritrea) have been subject to inhuman conditions in indefinite detention, subject to solitary confinement, or even tortured.⁸⁹

The Eritrean judicial system is partly staffed by national service conscripts subject to military control and has no independence, public defense lawyers don't exist⁹⁰.

In November 2017, a Canadian court confirmed that a lawsuit against Nevsun Resources Limited could proceed in British Columbia, Canada (*Araya v. Nevsun Resources Ltd.*, 2017 BCCA 401). The lawsuit had been filed by Eritrean plaintiffs claiming that they had been forced to work at the Bisha mine as conscripts. In January 2018, *Nevsun* appealed to the Supreme Court of Canada against the ruling of November 2017 (SCC, Case No. 37919, *Nevsun Resources Ltd. v. Gize Yebeyo Araya, et al.*) that on 14 June 2018, granted leave to appeal. In September 2020, the appeal was closed, and the case is currently ongoing.⁹¹

84 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Eritrea.

85 The Commission of Inquiry into on human rights in Eritrea, UN Doc. A/HRC/44/23, 11 May 2020 [6-7].

86 Ibid.

87 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Eritrea.

88 Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, UN Doc. A/HRC/29/CRP.1, 5 June 2015 [727].

89 Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, UN Doc. A/HRC/29/CRP.1, 5 June 2015 [890, 1048].

90 World Report 2020, Eritrea, Human Rights Watch.

91 <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=37919>

Protection and assistance

Protecting the rights of victims of crime, including victims of trafficking: The Penal Code does not include any provisions on protection of victims. Article 7 of Labour Proclamation No. 118/2001 states that the Eritrean Government through its embassies and consulates, shall ensure the rights and dignity of Eritreans working abroad are protected. In 2019, there were no reports of any efforts to identify, protect and assist victims of TIP.⁹²

In relation to the right to privacy (captured by art. 6(1) of the TIP Protocol), article 18(1) of the Eritrean Constitution reads; “Every person shall have the right to privacy.” This right refers to ‘everyone’ and therefore can this provision be read as not limited only to Eritrean citizens, but also applying to non-citizens including those in the country irregularly. In relation to access to information (as captured by art. 6(2) of the TIP Protocol), article 19 of the Constitution states that “Every citizen shall have the right of access to information.” Unlike the right to privacy, this right refers only to citizens.

Witness protection: The Criminal Procedure Code of 2015 does not set out a strong framework for victim/witness protection, with the exception of provisions protecting witnesses who are escorted from prison or jail to court (art. 102(3)). Otherwise, the protection focus of that instrument, and indeed the Penal Code of 2015, is on balancing the interests and rights of accused persons with protection of society. However, according to the Constitution, any law that abolishes or abridges the fundamental rights and freedoms conferred by the Constitution is null and void (art. 28(1)) and “any aggrieved person” is entitled to petition a competent court for redress (art. 28(2)). Article 7 of the Criminal Procedure Code provides the right to an interpreter to any accused or witness.

Compensation and restitution: Article 78 of the Penal Code concerns restitution of persons, requiring that the Court sentencing an offender to order restitution to be paid to the person injured by the offence, unless the injured person prefers to institute a separate civil action, or unless the offender has fully paid for any damages caused by the offence. Article 78(2) sets out that restitution may include the replacement value of any property damaged and loss of income and medical expenses suffered by the person injured, as well as other reasonable expenses and costs directly attributable to the injury caused by the criminal action. While it is positive that such redress is provided for in the law, concerns can also be raised that allowing for offenders to pay for damages extra-judicially may be tantamount to reducing criminal liability for trafficking.

Prevention

The Criminal Procedure Code discusses crime prevention as a principle under article 160 in specific relation to ‘young offenders’, recognizing that “crime prevention is essential to the protection of society and requires addressing the underlying causes of crime by young offenders and developing approaches to identifying and responding to young offenders at risk of committing criminal offences in the future.” It is not clear what measures are in place to implement this principle. The Government of Eritrea has not yet adopted a national action plan to combat TIP.⁹³

Raising awareness: In recent years, through the National Union of Eritrean Women, National Union of Eritrean Youth and Students, and National Confederation of Eritrean Workers, the Eritrea Government educated its citizens on the dangers of irregular migration and trafficking through awareness-raising events, poster campaigns, and mass convocations.⁹⁴ However, the Government did not report on its efforts to reduce the demand for commercial sex acts, or its provision of anti-trafficking training for its diplomatic personnel.⁹⁵ It is not known what development programmes are being implemented to directly or indirectly prevent TIP in Eritrea.

⁹² The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Eritrea.

⁹³ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Eritrea.

⁹⁴ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Eritrea.

⁹⁵ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Eritrea.

In 2018, UNODC delivered a training to 30 law enforcement officers on both Trafficking in Persons and Smuggling of Migrants, funded by the UK, and the Better Migration Management (BMM) programme of the European Union and GIZ, in Asmara.⁹⁶

Border controls: The Penal Code does not mention the term ‘border’. The Constitution of Eritrea may be a useful tool to counter many of the practices that increase vulnerability to TIP, particularly concerning the limited options Eritreans have to move regularly. Restrictions posed on movement both from the country and within it, may be contrary to 19 of the Constitution that state that “Every citizen shall have the right to move freely throughout Eritrea and reside or settle in any part thereof” (art. 19(8)) and “Every citizen shall have the right to leave and return to Eritrea and to be provided with passport or any other travel documents” (art. 19(9)).

Validity and legitimacy of travel and identify documents: No provisions relevant to document control could be identified.

Coordination and cooperation

National level coordination and cooperation: The Special Rapporteur on the situation of human rights in Eritrea, Ms. Sheila B. Keetharuth, expressed concern at the 41st session of the Human Rights Council on 16th May 2019 that the Government has not yet put in place a comprehensive legal framework and policy to address TIP. She encouraged the Government, among other initiatives, to enhance its efforts to combat TIP by strengthening cooperation with authorities in neighbouring States.⁹⁷

As of July 2018, relations between Eritrea and Ethiopia are normalizing, signified by the visit of Ethiopian leader Abiy Ahmed to Asmara, welcomed by Eritrea’s Isaias Afwerki (Eritrea’s president since its independence in 1993), following a visit by an Eritrean delegation to Addis Ababa in July. This visit resulted in a declaration that the war between the two countries is over, signed on 9 July 2018. These efforts may diffuse conflict over the disputed Badme border region.⁹⁸ This situation in turn may have an impact - both positive and negative - on TIP to and from the country. Notably by stemming conscription into the conflict, and reducing the period of national service, the number of Eritreans fleeing the country in unsafe conditions and potentially falling into the hands of smugglers and traffickers may be significantly reduced. It is also hoped that the peace achieved between the two countries and may offer opportunities for bilateral cooperation to combat these crimes.

Bilateral and regional coordination and cooperation: It was reported by the *2020 U.S. State Department Trafficking in Persons Report*, that the Eritrea Government increased its international cooperation and outreach on trafficking and related topics with a range of multilateral and bilateral partners. Eritrea’s Officials were reportedly active in an international organization’s regional anti-trafficking project, which commenced creation of a region-wide action plan with complementary national-level plans. In addition to that, the Government also signed a separate partnership framework agreement with the same international organization on a migration and criminal justice reform program and capacity building measures to include trafficking. In 2019, the Government chaired the “Khartoum Process” mechanism, which is a cooperation and dialogue forum organized between the EU and East African countries aimed at addressing migration, migrant smuggling, and TIP. The Government also partnered with a Western donor country on anti-trafficking and capacity building initiatives, but further details remained unknown.

Since the Joint Declaration of Peace and Friendship between Eritrea and Ethiopia was signed in 2018, the two countries have continued to work towards improving their diplomatic ties and strengthened their efforts to achieve sustainable peace. Eritrea has also improved its relations with Djibouti and Somalia, and Eritrean officials have participated in efforts to boost regional integration and increase economic ties in the wider East Africa region. The Government of Eritrea has shown an increased willingness to normalize its bilateral relations with a number of other countries.⁹⁹

⁹⁶ <http://www.unodc.org/easternfrica/en/unodc-presents-fist-training-for-law-enforcement-officials-in-eritrea-on-counter-traffic-in-persons-and-smuggling-of-migrants.html>

⁹⁷ Report on the Special Rapporteur on the situation of human rights in Eritrea, UN Doc. A/HRC/41/53, 19 May 2019.

⁹⁸ See for instance, Matina Stevis-Gridnell, Ethiopia and Eritrea move to end 20-year conflict in historic breakthrough, *The Wall Street Journal*, 8 July 2018.

⁹⁹ Report on the Special Rapporteur on the situation of human rights in Eritrea, UN Doc. A/HRC/41/53, 19 May 2019.

Repatriation and reintegration

There is no procedure to identify victims of trafficking among vulnerable groups, including Eritreans deported from other countries and those fleeing (primarily to Sudan, Ethiopia and Djibouti). Rather, those individuals are vulnerable to arrest, detention, harassment and forcible recruitment into national service. The treatment of citizens who are returned to Eritrea has been documented to involve arbitrary arrest, detention, torture and other abuse.¹⁰⁰

In addition to article 28 of the Constitution (mentioned above), concerning fundamental rights and freedoms, article 17 may come into play in situations of pre-return detention, which includes the right to petition a court. To the extent that there are administrative issues involved in such decisions, article 24 is relevant by providing “any person” with an administrative question with the right to be heard by administrative officials and receive quick and equitable answers, and to see administrative redress. Further, the 2015 Criminal Procedure Code, protects the right of habeas corpus (art. 191). It is not clear whether trafficked persons have ever asserted these rights.

Non-refoulement: Article 97 of the Penal Code concerns expulsion of aliens in the context of convicted persons and allows Courts to make an order detaining person until such expulsion. Article 97(2) states that nothing in this provision shall affect the provisions of international conventions to which Eritrea is party. Eritrea is not a party to the Refugees Convention or the 1967 Protocol thereto. There are no provisions relevant to the return, repatriation and reintegration of victims of TIP. Additionally, article 22 of Proclamation No. 24/1992 states that any foreigner who enters Eritrea illegally or is found in possession of a document not renewed or in possession of an expired permit or defined as “persona non grata” shall be expelled from Eritrea.

Temporary/permanent residence: There is no provision in the national legislation addressing temporary/permanent residence.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> • Consider ratifying UNTOC and the Supplementing Protocols; • Draft legislation to criminalize TIP in accordance with the TIP Protocol to include the possibility of trafficking of men as well as women, and for any form of exploitation, including those that are not sexual in nature; • Clarify which offences, if any are relevant to attempt, participating as an accomplice and organizing or directing of TIP crimes, or amend legislation if need be, to criminalize these acts in accordance with art. 5 of the TIP Protocol; • Amend art. 315, 316, 317, 318 of the Penal Code to ensure that the definition of trafficking captures non-sexual forms of exploitation alongside sexual forms of trafficking and to define ‘child’ in line with art. 3(d) of the TIP Protocol which states ‘any person under 18 years of age’; • Amend the Penal Code to include non-liability of victims of TIP; • Clarify whether there is any legislation concerning abuse of power and/or corruption that may be applicable in situations of exploitation of people in citizen militia or national service, have ever been used in relation to TIP; • Clarify the role that the Constitution plays in informing the legislative response to TIP; • Reconcile the inconsistency between the Constitution (e.g. art. 15 and 16 on the right to liberty and human dignity, and article 19 concerning freedom of movement) and Proclamations concerning civil military and national service practice; • Define organized criminal group in the Penal Code in accordance with the definition provided in art. 2(a) of UNTOC, and criminalize participation in such a group, in accordance with article 5; • Criminalize money laundering in the Penal Code in accordance with art. 6 of the UNTOC; • Clarify whether the offences relevant to corruption set out in the Penal Code (art. 30; 131-133; 139-141) have been applied in practice in general and in specific relation to TIP; • Amend legislation to provide specific protections for trafficked persons (principle of non-liability); • Clarify whether habeas corpus rights have ever been asserted by victims of trafficking under the Constitution.
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¹⁰⁰ Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, UN Doc. A/HRC/29/CRP.1, 5 June 2015.

Investigation and prosecution	<ul style="list-style-type: none"> • Strengthen collection of data relating to the investigations, prosecutions, convictions and sentences for crimes of TIP; • Consider amending the Criminal Procedure Code of 2015 to provide for special investigative techniques to be used in relation to TIP; • Clarify which legislation, if any, is used to prosecute human traffickers; • Confirm whether the punishments meted out against human traffickers have followed from charges been laid against them, and clarify which legislation was used; • Confirm whether there have been prosecutions of trafficking of male victims, and if so, under which provisions of the Penal Code or other instrument; • Confirm whether there have been prosecutions of trafficking for non-sexual forms of exploitation, and if so, under which provisions of the Penal Code or other instrument; • Clarify what are the key challenges of implementing the Criminal Procedure Code of 2015 in relation to investigations and prosecutions of trafficking and what resource requirements are needed to address those challenges.
Protection and assistance	<ul style="list-style-type: none"> • Clarify which laws, if any, are relevant to the protection of victims of TIP; • Strengthen legislation to explicitly protect the rights of victims of trafficking including Eritreans and non-Eritreans present in Eritrea, as well as Eritreans who have been trafficked abroad; • Strengthen legislation, whether by amending the Criminal Procedure Code or the Penal Code, or by making amendments to both, to strengthen protection of witnesses, including those who have witnessed TIP and may face risks of retaliation from organized crime groups; • Clarify whether art. 78 of the Penal Code concerning compensation and restitution has been applied in cases of harm suffered by victims of trafficking, and how the risk of civil procedures resulting in payment of damages reducing criminal liability has been addressed; • Clarify what legislative or other mechanisms are in place to provide Government assistance to victims of TIP and how the effectiveness of those mechanisms could be improved.
Prevention	<ul style="list-style-type: none"> • Adopt and implement a National Action Plan on TIP; • Clarify what legislative and other measures are in place to prevent TIP, and how effectively those measures are being implemented in practice; • Clarify what measures are in place to implement art. 160 of the Criminal Procedure Code to reduce the risk of young people committing criminal offences; • Reconcile the conflicting provisions concerning restrictions of movement both within and from Eritrea, with art. 19(8) and (9) of the Constitution granting Eritreans the right to leave and return and be provided with appropriate documentation to do so; • Clarify which laws, if any, are relevant to carrier provisions and document security; • Clarify what resources are available to deliver information campaigns to prevent TIP; • Clarify what measures are in place to address root causes of TIP.
Coordination and cooperation	<ul style="list-style-type: none"> • Clarify what data, if any, is collected on TIP, and what mechanisms are in place to collect data on TIP from, to, through and within Eritrea; • Consider becoming party to the United Nations Convention on the Law of the Sea; • Clarify what mechanisms are in place to support bilateral, regional and international cooperation on TIP, and how effective those mechanisms are in practice; • Conduct an assessment of the implications that the peace agreement between Ethiopia and Eritrea will have on TIP between the two countries in order to strengthen preparedness to mitigate identified risks and identify opportunities for bilateral cooperation.
Return and reintegration	<ul style="list-style-type: none"> • Implement a mechanism by which victims of trafficking can be identified among persons returning to Eritrea and those being removed from Eritrea, following the recommendations described by art. 8 of UNTOC; • Clarify the relevance and role of the fundamental rights and freedoms set forth in the Constitution, on return and reintegration processes for both victims of TIP; • Consider becoming party to the 1951 Refugees Convention and the 1967 Protocol thereto.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

ETHIOPIA

Overview of national legislation

The Federal Democratic Republic Ethiopia (Ethiopia) ratified the UNTOC on 23 July 2007 and acceded to the Trafficking in Persons and Smuggling of Migrants Protocol on 22 June 2012. In 2015, the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015 entered into force, confirming in its preamble that the Criminal Code “was not adequately tuned with the depth of the problem” and specifically drafted the Proclamation to be consistent with the Constitution as well as the UNTOC and its Protocols. Prior to enactment of the Proclamation No. 909/2015, both smuggling and trafficking offences were captured in the Criminal Code of the Republic of Ethiopia, Proclamation No. 414/2004.

Ethiopia’s new anti-trafficking in persons law the “Proclamation No. 1178/2020 Prevention and Suppression of Trafficking in Persons and Smuggling of Persons” (Proclamation No. 1178/2020), entered into force on 1 April 2020, replacing Proclamation No. 909/2015.

Article 45 of the Proclamation No. 1178/2020 specifies inapplicable laws, being the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015, the provisions of article 243(2) and (3), from article 596 to 599 and from article 634 to 638 of the Criminal Code.

In addition to those instruments mentioned above, the following instruments are also relevant to the crime of TIP:

- The Constitution of the Federal Democratic Republic of Ethiopia, 1994 (see art. 18 prohibiting TIP and forced labour);
- Refugee Proclamation No. 409/2004;
- The 1996 Criminal Code: Article 243(2) Facilitation of illegal entry or stay for financial or material benefit; article 596 Enslavement; article 597 Trafficking of women and children; article 598 Unlawful sending of persons for work abroad; article 599 Participation of illegal associations and juridical persons in crimes specified in this chapter; and article 635 Traffic in women and minors.

There is also a strong framework for combating labour exploitation,¹⁰¹ through:

- The Civil Code, defining minors in article 189 as persons who have not attained the full age of 18 years;
- Forced Labour Proclamation No. 336/2003 serving to ratify the ILO Convention No. 29.
- Labour Proclamation No. 377/2003 (and amendments thereto). While in broad compliance with international standards, some provisions of the labour proclamation fall short, including article 79 that prohibits children from being employed in any work harmful to their health and life; article 89(2) sets 14 as the minimum age of work, falling below minimum international standard of 16. Articles 89(1) and (3) adhere to the minimum age of 18 as the minimum age for hazardous work. Article 89(5) allowing children between 14 to 16 to perform hazardous work in specified circumstances, in contradiction to the ILO Convention 138,

¹⁰¹ The labour framework has not been addressed extensively in this legislative report. However, see some comments in Annex II.

which specifies 16 years as the minimum age. Furthermore, weaving is not classified as hazardous work notwithstanding the danger posed to those involved in it. Sentences for violations of child labour have also been criticized for being too low to have any deterrent effect.¹⁰² There is also a Directive on Prohibited Occupations for Young Workers.

- The Employment Exchanges Services Proclamation No. 632/2009¹⁰³ governs the work of licensed labour recruitment agencies. Section 2, article 7 bans those that have been involved in TIP.¹⁰⁴ Proclamation No. 632/2009 repealed the Private Agency Employment Proclamation No. 104/1998¹⁰⁵ to protect Ethiopians going abroad for work and strengthen the monitoring and regulation of domestic and overseas employment exchange services. It relates to any Ethiopians going abroad for employment through a private employment agency or a public employment service (art. 3(1)).
- The Overseas Employment Proclamation enacted in 2016 restricts overseas employment to Ethiopians 18 years of age and over and allows the Government to rescind the license of any employment agency that is in violation of the law. The revised Employment Exchange Proclamation places labour attaches in Ethiopian embassies abroad and imposes penalties on employment agencies that contravene the previous proclamation. It also requires that employment agencies deposit insurance of 1 million birr into an account as insurance, to be used to assist and repatriate victims of TIP.¹⁰⁶
- Article 7 of the revised Family Code Proclamation No. 213/2000 prohibits child marriage.
- The Ethiopian Civil Code does not directly prohibit child prostitution; however, several clauses protect children from joining prostitution (articles 198, 199 concerning the definition of children as being those not legally able to enter contract on their own, falling under protection of legal guardians, and articles 267-269 setting out protecting obligations). Some provisions explicitly aim to ensure that female children do not fall into prostitution. Marriage is prohibited before children attain the age of 15 also to protect children falling into prostitution owing to marital problems.
- Articles 546-548, 549 and 596 of the Penal Code state that it is illegal to have sex with a girl below 18 years. Articles 605 and 613 state that it is illegal to gain from hiring female children and any employment contract to this effect is null and void.

Other potentially relevant legislation includes:

- Proclamation No. 699/2010: Protection of Witnesses and Whistleblowers of Criminal Offences, which is currently undergoing review by the Witness Protection and Legal Drafting Directorates of the Federal Attorney General Office, Federal High Court, Advisory Committee and Technical Working Group, in cooperation with UNODC, to align it with international legal standards;
- Proclamation 652/2009: Anti-Terrorism Proclamation (except for pending cases, it is not the legislation currently in force, as it has been repealed by the new Anti-terrorism law, Proclamation 1176/2020 enacted as part of the Government legislative reform measures).
- Proclamation 780/2013: Anti-Money Laundering and Financing of Terrorism;
- Proclamation 882/2015: The Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment).

¹⁰² 2016 Findings on the Worst Forms of Child Labor (United States Department of Labor, 2016)

¹⁰³ On hold pending amendments.

¹⁰⁴ The 2017 *U.S. Trafficking in Persons Report* states that the Employment Exchange Services Proclamation No. 632/2009 remained unimplemented during the year.

¹⁰⁵ The now-repealed Private Employment Agency Proclamation No.104/1998 was one of the key instruments intended to combat trafficking of Ethiopians both within Ethiopia and abroad, through the regulation of private employment agencies including through licensing and registration. Any agency facilitating the employment of Ethiopians abroad was required by this act to secure a license to provide employment services, issued by regional authorities and the Ministry of Labour and Social Affairs. The issuance of a license also bestowed obligations on private agents in respect of protecting workers rights.

¹⁰⁶ The *U.S. Trafficking in Persons Report (U.S. State Department 2020), Country Narrative Ethiopia*.

International treaties are self-executing in Ethiopia. According to article 9(4) of the Federal Democratic Republic of Ethiopia Constitution (the Constitution), “All international agreements ratified by Ethiopia are an integral part of the law of the land” meaning they can be directly applied by prosecutors and judges. The Constitution is the fundamental law of Ethiopia, from which all laws in Ethiopia derive their validity and has primacy over all other laws. According to article 9(1) of the Constitution, any law, practice or decision that contravenes the Constitution shall have no effect.

Jurisdiction over offences: Article 42 of Proclamation No. 1178/2020 gives the Federal First Instance Court jurisdiction over matters stipulated under the provisions of the Proclamation, and states that cases involving matters stipulated under article 4(2) (TIP Aggravating Circumstances) and article 8(3). General principles in the Ethiopian Criminal Code result in criminalization provisions applying not only to offences committed in Ethiopia (art. 11) but also to offences that occur outside of Ethiopia where directed against Ethiopians (art. 13 on Crimes Committed against Ethiopia outside its territory). Article 11 establishes the national territory as being land, air and bodies of water. Where a criminal has taken refuge elsewhere, article 11(3) allows extradition requests to be made so he or she can be tried under Ethiopian law. Where document-related offences are committed under articles 355-374 of the Criminal Code outside of Ethiopia with a view to committing an offence in Ethiopia, the Criminal Code will be applied to try the person under Ethiopian law (art. 13). These provisions generally satisfy the requirements of the UNTOC in respect to jurisdictional coverage.

Scope of offences: The text of the Proclamation No. 1178/2020 supports the prevention, suppressing and punishment of TIP and exploitation of others, as well as the protection of and assistance to the victims of TIP.

Liability over legal persons: Article 18 of Proclamation No. 1178/2020, provides the Criminal Liability of a Juridical Person. Where any offence under the Proclamation is committed by a juridical person, the penalty shall be a fine: (a) not exceeding 500,000 Birr for a crime punishable with simple imprisonment or rigorous imprisonment of up to 5 years; (b) from 500,000 Birr to 1,000,000 Birr for a crime punishable rigorous imprisonment of 5 to 15 years; (c) from 1,000,000 Birr to 2,000,000 Birr for a crime punishable with rigorous imprisonment of 15 to 20 years; (d) from 2,000,000 Birr to 3,000,000 Birr for a crime punishable with rigorous imprisonment exceeding 20 years or with death. (2) In addition to the penalty stipulated under sub article 1 of this article, the court may, at the request of the prosecution or on its own initiative, decide to dissolve the organization or confiscations of its properties. (3) The punishment stipulated under sub-article (1) of this article may not preclude the individual criminal liability of the owner, manager, employee or other person having participated in the commission of the crime on behalf and for the benefit of the organization.

Earlier Proclamation 909/2015 differed from that provision. Article 13 concerning ‘Criminal liability of legal persons’ stated that where an offence “is committed by a direct or indirect participation of juridical person, or the crime is committed in cooperation with organized criminal group or through an illegal association or juridical person established for trafficking or smuggling” and set out lower penalties, that do not include the possibility of death.

Article 34 of the Ethiopian Criminal Code makes juridical persons liable where one of its employees or officials commits a crime as a principle offender, instigator or accomplice where expressly provided for in law. Article 34(4) defines a juridical person as “a body which has governmental or non-governmental, public or private structure and includes any legally recognized institution or association set up for commercial, industrial, political, religious or any other purpose”. In accordance with UNTOC article 10(3), article 46(2) of the Criminal Code states that “no juridical person shall escape criminal liability either alone or jointly with any criminal listed in the order fixed by law”.

Definition and criminalization

In Ethiopia, the focus on TIP is on transnational labour trafficking involving Ethiopians as victims. There is little understanding of trafficking as an internal phenomenon, or as a phenomenon that involves trafficking of non-Ethiopians into or through Ethiopia. There is some challenge of reconciling the three-element offence of trafficking as it is prescribed in international law, with the three components required in Ethiopian law (the moral, material and legal elements).

It is proposed that the following framework may offer some guidance in how to understand the elements of the trafficking offence in line with this approach:

Elements to prove in Ethiopian law	Relevant element in international definition
Moral element	Satisfied by the INTENT to exploit a person
Material element	Satisfied by the ACT and the MEANS element (adults) Satisfied by the ACT element (children)
Legal element	Satisfied by the criminalization of the offence

Definition and sentencing: The new Proclamation No. 1178/2020 seeks to remedy some of the errors introduced by Proclamation 909/2015 (including the confusion between the means of trafficking and the purpose of trafficking). However, there are some conceptual issues in the new Proclamation No. 1178/2020, for example, the definition of Trafficking in Persons does not completely align with the Palermo Protocol. Article 3(1) defines acts of TIP as “Any person who holds another person in slavery or practices similar to slavery, servitude or debt bondages; exploited in removing organs or prostitution or other forms of sexual activities of another person; engages another person in forced labor or service, begging or criminal act, forced marriage, surrogacy, or exploited children in labor, or commit exploitation similar to these acts shall be punishable with seven years to fifteen years of rigorous imprisonment and fine from twenty thousand to one hundred thousand Birr.” This provision created a broader offence that requires only fulfilled exploitation, without acts or means. This article essentially reduces the three-element crime established in article 3(a) of the Palermo Protocol to only one element, the purpose, hence creating a legislative gap in the definition of trafficking in persons. The crime of TIP requires three elements (the act, mean and purpose); the purpose (herein viewed as exploitation) alone does not amount to trafficking.

In the absence of a clear threshold for what constitutes serious exploitation, article 3(1) is tantamount to creating a new offence of serious forms of exploitation, for which acts and means are not required. The result of this is to denature the trafficking offence, which may also create inconsistencies with cases of child trafficking, for who means need not be established. Accordingly, trafficking in adults and trafficking in children are equivalent offences established by the same elements. The intention of the legislators in capturing a range of exploitation-related offences that are broader than trafficking, is to reduce overlap with the Criminal Code by capturing all forms of exploitation in the Proclamation No. 1178/2020.

Article 3(2), as it currently stands in the Proclamation, provides that a person who passes through a criminal process stipulated under sub-article (1) of this article, whether the exploitation materializes or not, the perpetrator as well as his collaborator shall be punishable with rigorous imprisonment from 7 to 12 years. It is considered that capturing such forms of exploitation in the Proclamation No. 1178/2020 instead of the Criminal Code can reduce overlap between the instruments. However, the result may be that the capacity to address TIP as a serious crime, is diluted.

United Nations Office on Drugs and Crime has provided support to the Government of Ethiopia to issue a proclamation that is aligned with international standards. In the draft Proclamation 1178/2020, article 3(2) criminalizes TIP in line with the Palermo Protocol. It initially contained a definition of TIP that included the three elements of the crime (the act, mean and purpose), however, this article was changed before passing the Proclamation, thereby changing the meaning of article 3(1) which was intended to be a stand-alone offence. The Government of Ethiopia recognized this oversight and held a joint forum with UNODC and the National Partnership Coalition in October 2020, and provided language to remediate this oversight. Both houses of Parliament approved the new language in late 2020 as a corrigendum to Proclamation 1178/2020, which is now before the Council of Ministers for enactment.

Article 3(3) in accordance with the Palermo Protocol, deals with children as victims of TIP but stipulates that the “mean” element is not required in child trafficking cases as mentioned above. Article 3(4) makes consent irrelevant from criminal liability and article 3(5) describes the ‘means mentioned’ in the previous sub-articles, which are the same means brought by the Palermo Protocol. The reference to sub-article (2) is irrelevant in articles 3(3), 3(4) and 3(5) after the draft provision was changed in the final version of the proclamation.

The implications of the law when trafficked persons are non-Ethiopians have not been comprehensively considered and may result in discriminatory application of the law on the basis of a person's nationality and migration status. In addition to the offences created for TIP, Proclamation No. 1178/2020 also created offences related to "Unlawful sending of Person Abroad for work" at article 11(1) any person who sends person abroad for work without having obtained a license or while the license has been suspended, canceled or sent to a country where permission is not granted under the license is punishable with rigorous imprisonment from 7 to 12 years and fined from 20,000 to 100,000 Birr. That offence is aggravated where the crime is committed with the pretext of visit, medical, educational, or similar visas, to 7 to 15 years and up to 100,000 Birr fine (art. 11(2)); or where the person sent abroad suffers harm to his human rights, body or psychological makeup, from 15 to 25 years, or life imprisonment and up to 200,000 Birr fine (art. 11(3)).

Aggravating circumstance: The aggravating circumstances are provided in article 4 of the Proclamation No. 1178/2020 are divided in two parts. Section 1 applies when the crime of TIP is committed against a child or mentally ill or physically disabled; by using drugs, medicine or weapons; by a public official or civil servant or by an organization licensed to conduct domestic or foreign employment services by abusing its license (imprisonment from 10 to 20 years and up to 100,000 Birr fine). Section 2 applies when the crime of TIP was committed by a member, a leader or coordinator or an organized criminal group; resulted in chronic disease on the victim or endangered the life of safety of the victim or caused grave bodily injury to the victim or subjected for human treatment (imprisonment from 15 to 25 years and up to 200,00 Birr fine).

Attempting to commit trafficking in persons: Article 27 of the Criminal Code concerns attempt, and article 26 concerns preparatory acts. Offences of 'attempt', 'participating as an accomplice to trafficking' and 'organizing or directing other persons to commit trafficking in persons' are not captured as offences in the Proclamation No. 1178/2020 as is required by article 5(2) of the TIP Protocol, however, article 3 of the Ethiopian Criminal Code provides that its General Principles are applicable to other penal legislations, including Proclamation 1178/2020.

The drafters of legislation have expressed considerable concern about the 'purpose of exploitation' and approach the acts and the means elements as prosecutable preparatory acts to avoid the need to prove exploitation or the intent to exploit. However, this betrays a misunderstanding of the purpose of exploitation as the required mens rea of the trafficking offence.

Participation in an organized criminal group: There is no distinct legislation in Ethiopia, governing organized crime in general. Organized crime is instead captured in distinct legislative proclamations, including that concerning trafficking and smuggling. The Proclamation No. 1178/2020 provides the definition of an organized criminal group as a structured group of 3 or more persons living and operating in Ethiopia or elsewhere, existing for a limited or unlimited period of time and acting in concert with the aim of committing one or more offences stipulated under the Proclamation, in order to obtain, directly or indirectly a financial or other material benefit, which is in line with UNTOC.

Aiding and abetting: Article 5 of the Proclamation No. 1178/2020 concerns 'assisting the act of human trafficking', stating that "any person knowing that it is to be used for purpose of human trafficking permit or rent house, building or premises of his own or in his control or provide transport service or transport the victims shall be punishable with rigorous imprisonment from three years to seven years and fine from 10,000 to 50,000 Birr; produced, give, provide or holds fraudulent, falsified or illegal identity card or travel document shall be punishable with rigorous imprisonment from five years to fifteen years and fine from 10,000 to 50,000 Birr."

Non-liability of victims of trafficking: Article 30 of the Proclamation No. 1178/2020 states that "Any person victim of trafficking in persons or smuggling of migrants shall not be legally prosecuted on the facts of being a victim of the crime". The provision applies to 'victims' defined in the Proclamation No. 1178/2020 under article 2(7), which includes a person who suffered physical, psychological, or economic harm, or those who though not suffered such harm, were vulnerable or exposed to the crime of TIP.

Investigation and prosecution

For the past two years, the Government of Ethiopia continued to focus its prosecution on transnational labour trafficking versus internal sex trafficking and forced labour cases. In 2019, in terms of transnational law enforcement efforts, authorities investigated 699 potential trafficking cases, prosecuted 30 suspects, and convicted 1,042 traffickers under the 2015 Anti-trafficking Proclamation No. 909/2015.¹⁰⁷ Likewise, throughout 2019, the Ethiopian Attorney General's Office reported that authorities investigated 2,119 cases involving sexual exploitation, convicting 558 of those traffickers. Additionally, officials investigated and convicted 153 traffickers who exploited victims in forced labour within the country.¹⁰⁸

The effectiveness of criminal intelligence mechanisms used by police is not known,¹⁰⁹ though the capacity of investigators, prosecutors and judges to manage complex trafficking cases was noted as being deficient, with poor understanding of serious crimes including TIP, and lack of resources to investigate them. No information was obtained in relation to actual investigations, prosecutions and convictions of traffickers, though it has been reported that smugglers have been prosecuted.¹¹⁰

Seizure and freezing of assets: Proclamation No. 1178/2020 addresses freezing and seizure of property associated with a crime (art. 20); concerns confiscation of crime related property (art. 21); appointment of property administrator (art. 22). These provisions are contained in the Proclamation No. 1178/2020 owing to the absence of other law dedicated to criminal procedure or organised crime in general.

Protection and assistance

Protecting the rights of victims of trafficking: Section 4 of the Proclamation No. 1178/2020 provides for the protection of victims, rehabilitation and compensation. Article 23 prescribes the duties of the Ministry of Foreign Affairs, Ministry of Labour and Social Affairs during the process of repatriation of Ethiopian nationals found in foreign country. Article 24 (protection and rehabilitation of victims) sets out the rights of trafficked victims, among others, the victims shall receive the necessary protection taken into account their vulnerability; be treated in a manner protective of their privacy and dignity; receive temporary shelter; health, legal, and psychological services; have the right to information on the nature of protection and not be placed in a police station, detention center or prison facility under any circumstances. Section 5, article 27 establishes the Fund for rehabilitation of trafficked victims and article 28 the sources of income for the Fund. The objective of the Fund is to cover the costs of medical, psychological and legal counsel, transportation and other services for victims; to provide material support to victims, technical training and support for the economic empowerment of victims; to provide support for an effort to locate families and reintegrate victims with their families and communities; for the construction of temporary shelters to victims; and to pay compensation determined by the court in accordance with Regulations to be issued by the Council of Ministers (art. 29). The fund is to be managed through regulations determined by the council of ministers (art. 30). The financial records of the fund are to be audited with audit reports submitted within four months following the end of the budget year.

It is not clear whether there is an adequate institutional framework in place and sufficient resources to support meaningful protection and assistance as set out in section 4 and 5 of the Proclamation No. 1178/2020. Furthermore, the protection mechanisms and stakeholders that are in place, do not have strong relationships with criminal justice practitioners, meaning that their work is not necessarily harmonized to bring about justice for victims. It is also not clear whether the frameworks in place are sufficient to cater for the needs of men and women and children, and for people in rural as well as urban areas. It is also not clear whether existing protection frameworks are able to support recovery and reduce re-victimization of victims.

¹⁰⁷ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Ethiopia.

¹⁰⁸ Ibid.

¹⁰⁹ Response to questionnaire received from FOAG, June 2018.

¹¹⁰ Response to questionnaire received from FOAG, June 2018.

The Anti-Trafficking Task Force is the lead agency under the National Referral Mechanism for coordinating referral and assistance. The referral mechanism has reportedly been created in Tigray and Southern Nations, Nationalities, and People's Region (SNNPR).¹¹¹ In practice, experts described the referral mechanism as effective with robust victim protection measures, however, there has been no reports on disseminating or using the referral mechanism throughout 2019 until March 2020.¹¹² Ethiopian authorities reported having identified 27,877 potential victims of transnational trafficking (14,770 men and 13,107 women) in 2019, with the majority intending to depart Ethiopia for overseas work, and it was unclear if traffickers had exploited them through sex trafficking or forced labor.¹¹³

Beneficiaries of the work of NGOs are primarily Ethiopian returnees and Ethiopian victims of internal trafficking, or children. According to the *2020 U.S. State Department Trafficking in Persons Report*, shelters for adult male victims, remains scarce. The beneficiaries of protection in existing facilities are primarily Ethiopians who have been repatriated to Ethiopia. It is not clear what access to protection and assistance foreigners in the country have. In terms of the implications of the Proclamation No. 1178/2020, it is not known whether existing shelters would be sufficient to cater to the increased number of persons who may be identified as in need of protection following the implementation of the broadly phrased legislation.¹¹⁴

There is no explicit protection in Ethiopian legislation to protect the rights of children and ensure that they are handled in a child-friendly way. Relevant provisions could be considered for inclusion by drafters (e.g. specialized court procedures children, appointment of a guardian, best interest determinations, connections with the child protection services and ensuring that there is no contact with the suspect, etc.) to ensure that children are protected in accordance with international law and best practice, to address their special needs. Effective and child-appropriate response is necessary not only to fulfil protection obligations but also strengthens investigative and prosecutorial response.

Witness protection: Proclamation No. 1178/2020, article 25 entitles victims of TIP to protections stipulated under Witness and Whistleblowers Protection Proclamation No. 699/2010. A series of protection measures are also contained in article 4 of Proclamation 699. It includes, but is not limited to, protection of witness identity, provision of secure residence, change of identity, immunity from prosecution for a case in which a witness renders information, hearing testimonies in camera or behind screen, provision of medical treatment, etc.

There are no witness protection provisions in the Criminal Procedure Code No. 185/1961. However, article 444 of the Criminal Code concerns crimes against whistleblowers or witnesses, prohibiting assault, suppression or harm of any person who gives information or evidence or is a witness in a criminal case. The penalty is simple imprisonment or fine (no stipulation of duration). Where the crime entails grave harm to the body or health of the victim or his death, provisions relevant to those offences apply concurrently. It is not clear whether any of these provisions have been applied in practice to protect trafficked persons who are victims of crime. The Government indicates that Proclamation 1178, and specifically article 4, which affords protection to whistle blowers and witnesses, supersedes the Criminal Code in this regard¹¹⁵. However, there's a need to harmonize legislation on the same. Legislation could also be amended to include specific obligations not to disclose information about the identity or location of such witnesses.

Compensation and restitution: Proclamation No. 1178/2020 provides for compensation at article 26, allowing the court to order the convicted person to pay compensation to the victim or other persons who suffered loss (art. 26(1)), to set off medical, transport, moral damages and other relevant cost incurred by the victim as well as by other parties to rescue and care the victim, but, the compensation shall not be less than the amount paid by the victim to the perpetrator, income gained by the actor or income lost or future lose by the victim due to the offence committed (art. 26(3)). When the victim cannot obtain compensation under this article it shall be paid from the fund (art. 26(5)) being that established in accordance with sub-article (5) of article 26.

111 The *U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018)*, Country Narrative Ethiopia.

112 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020)*, Country Narrative Ethiopia.

113 Ibid.

114 The provision of support by NGOs may be hampered by the requirements set out in the 2009 Charities and Societies Proclamation including the rule that they may not receive more than 10% of their funding from foreign sources, and no more than 10% of funding can go to administration. *The Trafficking in Persons Report 2018 (U.S. State Department, 2018)*, Country Narrative Ethiopia.

115 Ethiopia input on Regional Legislative Assessment. 30 Sep 2021.

The Ethiopian Criminal Code also provides for compensation of victims who have suffered ‘considerable damage’ as a result of crime in accordance with articles 101 and 102. Article 102 provides that victims who suffer damage shall be entitled to claim that the criminal be ordered to make good the damage. It is arguable that these and other laws in Ethiopia apply to non-nationals in light of the constitutionally protected principle of non-discrimination, meaning that these provisions also apply to foreign trafficked victims and smuggled migrants who have suffered considerable harm. It is not clear however, what the meaning of ‘considerable harm’ is. Furthermore, several articles of the Civil Code also specify how victims of criminal acts are to be compensated, including for intentional offences causing moral injury (art. 2016 to 2117) that include physical injury, and set out other forms of compensation including restitution (art. 2118 to 2123). The extent to which victims of TIP have received compensation in practice is unclear.

Prevention

Raising awareness: The 2019 U.S. State Department Trafficking in Persons Report noted some raising awareness activities provided by the Ethiopia Attorney General’s Office in a partnership with an international organization, such as training for task force members on best practices in public awareness raising, a trafficking manual and an anti-trafficking movie that was screened in various districts in Amhara. Additionally, officials around the country produced public service announcements and interviews on television and radio to elevate the public’s awareness of the dangers of trafficking.¹¹⁶ The 2020 U.S. State Department TIP Report pointed out that the Attorney General’s Office task force continued to raise awareness of trafficking risks in rural communities.¹¹⁷ Nevertheless, there is a clear need to increase the capacity of criminal justice practitioners to identify, investigate, prosecute and adjudicate TIP.

In 2016, Parliament approved a second National Human Rights Action Plan, spanning 2016–2020, which included various activities to curb trafficking, including a media campaign and increased efforts in urban centers to assist women and child victims. However, the Government did not report allocating specific funding for the action plan.

Border control: The legislation which governs the work of licensed labour recruitment agencies, is the Employment Exchange Services Proclamation No. 923/2016, it contains various penalties for an employment agency’s failure to comply with its provisions and provided that furnishing falsified evidence or documents, or advertisements used to recruit or deploy a worker, entail criminal liability.

The Ethiopian Immigration Proclamation No. 345/2003 states that immigration officers can detain for investigation, any person attempting to enter or leave Ethiopia, or any foreigner residing in Ethiopia who is in violation of the Proclamation or the Regulations issued thereunder (art. 16(2)). Article 34 of the Immigration Council of Ministers Regulation No. 114/2004 designates airports (Addis Ababa and Diredawa) and land ports (Moyale, Dewole, Galafi, Metemma, Humera, Omorate, Togochale and Dolo Odo) as ports of entry and exit. By virtue of article 35, immigration officers appointed under article 16 of the *Immigration Proclamation* are required to control persons entering into or departing from Ethiopia to ensure they have fulfilled requirements under articles 3 or 6.

Article 17 of the Immigration Proclamation No. 354/2003 sets out carrier provisions, requiring carriers to verify that passengers have the necessary travel documents to enter Ethiopia. Carriers are also responsible to bear the cost of returning persons who are found not to have the requisite documents.¹¹⁸ It is not clear whether this article is implemented in specific relation to countering human trafficking.

Article 12 of Immigration Regulation No. 114/2004, on ‘Preparation of Travel Documents’ states that 1) The Authority shall be responsible for the determination of the form and content of all travel documents and for their production; provided, however, that it shall conduct prior consultation with the Ministry with regard to diplomatic and service passports, and 2) Notwithstanding the power of the Ministry to issue diplomatic and service passports, the passport to be issued to each applicant shall be prepared by the Authority.

¹¹⁶ The U.S. Trafficking in Persons Report 2019 (U.S. State Department 2019), Country Narrative Ethiopia.

¹¹⁷ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Ethiopia

¹¹⁸ This requirement is in accord with standards supplementing the Convention on International Civil Aviation.

Coordination and cooperation

National level coordination and cooperation: Ethiopia has a National Plan of Action to Combat Trafficking in Persons (2015-2020) which is aimed to align counter-trafficking response with international best practice and standards. However, the extent to which this National Plan of Action has been implemented in practice is not clear.

Replicating the framework provided for in Proclamation 909/2015, article 33 of Proclamation No. 1178/2020 establishes a National Council responsible for addressing the crimes of TIP, smuggling of migrants and unlawful sending of person abroad for work; to be accountable to the Prime Minister and to be led by the Deputy Prime Minister, and composed of the Federal General Attorney, Ministry of Foreign Affairs, the Ministry of Peace, the Ministry of Labor and Social Affairs, the Refugees and Returnees Affairs Agency, the Ministry of Women's, Children's and Youth Affairs, the Commission of Job Creation, the Ministry of Health, the Federal Police Commission, the National Bank, the Central Statistics Agency, the National Intelligence and Security Services, Regional Governments, the Civil Societies Agency, Religious Institutions, and other concerned bodies to be nominated by the Deputy Prime Minister.

A National Partnership Coalition for the Prevention of the crimes of trafficking in persons, smuggling of persons and unlawful sending of person abroad for work is established by article 35 of Proclamation No. 1178/2020, to be accountable to the National Council, and lead by Federal Attorney General's office and is comprised of stakeholders as included in the National Council. The function of the National Partnership Council is to undertake research, prepare policies, national action plan, strategies and laws that enables the prevention and control of the crimes of TIP, develop directives of national referral system on rehabilitation and support of victims, and coordinate bodies for the development policies procedures regarding internal displacement.

In 2019, the Government signed bilateral agreements with Kuwait, Oman, and the United Arab Emirates on employment treaties, Ethiopia also had existing agreements in place with Jordan, Qatar, and Saudi Arabia. These agreements required signatories to commit to ethical recruitment, legal remedies against those who violated the law, and equal protection of Ethiopian workers, to include equal wages for equal work, reasonable working hours, and leave time. Authorities did not report fully implementing the bilateral agreement with Saudi Arabia finalized during the year of 2018, although the Government did train officials to protect workers' rights abroad.¹¹⁹

Bilateral and regional coordination and cooperation: Proclamation No. 1178/2020 tasks the Ministry of Foreign Affairs, in collaboration with the National Intelligence and Security Service, and other bodies, to collect and disseminate data, on the country where the victim was found, conditions they were in and other related issues of victims who are Ethiopian nationals living in foreign country (art. 39). Article 43 of the Proclamation No. 1178/2020 explicitly addresses international cooperation, stating that the Attorney General, shall cooperate with the competent authority of another country in the investigation, extradition of criminals, exchange information and mutual legal cooperation in relation to crimes stipulated under this proclamation based on the principle of reciprocity, agreements to which Ethiopia is a party and in line with the country's legal system; and serves as a central authority.

Article 11 of the Ethiopian Criminal Code allows for the extradition of offenders so they may be tried under Ethiopian Law. Article 12 notes that where a foreigner has committed a crime in Ethiopia, Ethiopia can request that he be tried in the country where he has taken refuge. According to article 13, where a person has committed a crime against the State of Ethiopia (including smuggling of migrants as defined in article 243), then the Criminal Code applies to them. In relation to crimes committed outside of Ethiopia against an Ethiopian, and to Ethiopians who have committed crimes outside of Ethiopia against others, extradition may occur providing that there is dual criminality, and the crime is of sufficient gravity to warrant extradition. Article 18(2) states that crimes committed outside Ethiopia by a foreign national may, failing extradition, be prosecuted and tried if the crime is punishable under Ethiopian law with death or with rigorous punishment of not less than 10 years. Article 21 allows for extradition of a foreigner (art. 21(1)) and prohibits extradition of Ethiopian nationals from Ethiopia (art. 21(2)).

¹¹⁹ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Ethiopia.

Article 15 of the Ethiopian Nationality Proclamation No. 378/2003 also does not allow extradition of Ethiopian nationals. That article simply reads that “No Ethiopian national may be extradited to another State.” However, IGAD Ministers adopted the IGAD Convention on Mutual Legal Assistance (2009) and IGAD Convention on Extradition, in December 2009 (2010) incorporated domestically in Ethiopia through Proclamation No. 732/2012 (mutual legal assistance) and Proclamation No. 733/2012 (on extradition) respectively on 20 February 2012.¹²⁰ It is not clear how these different legislative positions accord with each other.

According to the Ethiopian Government, the Federal Attorney General has prosecuted crimes of TIP committed outside of Ethiopia by Ethiopian nationals. This information has not been corroborated.

Repatriation and reintegration

Repatriation: Article 23 of the Proclamation No. 1178/2020 provides that the Ministry of Foreign Affairs shall have the responsibility, in collaboration with the appropriate governmental and non-governmental organizations, to repatriate to Ethiopian victims who are Ethiopian nationals found in foreign countries. Where the victim has been detained or arrested in foreign country, the Ethiopian diplomatic mission in the country the victim located or works close to the location shall, in collaboration with concerned bodies, exert all possible efforts to have the victim released and repatriated to Ethiopia (art. 23 (2)). The Ministry of Labour and Social Affairs and respective offices, shall provide the necessary support as the situation they hold as well as repatriated from abroad to their respective localities (art. 23 (3)).

Article 23 (4) takes care of foreign nationals found in Ethiopia, who should receive assistance with their repatriation process to their country of origin. Article 32(2) of the Constitution states that “Any Ethiopian national has the right to return to his country.” The Immigration Regulation No. 114/2004 provides for the issuance of laissez-passer to Ethiopians who do not hold passports and are returning from abroad (art. 8), to stateless persons departing from Ethiopia (art. 9), and to recognized refugees for entry and exit (art. 10).

Non-refoulement: Article 23.6 of the Proclamation No. 1178/2020 states that ‘where a victim who is a foreign national found in Ethiopia not having permanent residence permit shall receive the appropriate support’.

Article 150 of the Criminal Code allows for expulsion of convicted non-nationals who are considered ‘undesirable’ or dangerous. According to Ethiopian Government this is subject to:

1. Specific court ruling or order and measure to be taken when the court is satisfied that it is deemed necessary (art. 134 provides the principle).
2. It is not a primary/principal punishment measure to be imposed against convicted persons, but rather it is of secondary importance and to be effective only when it is necessary.
3. The court will consider facts as well as substantive laws allowing or prohibiting such measures, among which the principle of *non-refoulement* could be considered.

Ethiopia is a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol thereto, as well as the OAU Convention Governing the Specific Aspects of Refugee Problem in Africa (1969). Article 9 of the Refugee Proclamation No. 409/2004 states that no person may be refused entry to, expelled or returned from Ethiopia, where doing so would amount to refoulement. Article 10 states that refugees lawfully resident in Ethiopia shall not be expelled except on grounds of national security and public order. According to article 24 of the Refugees Proclamation, any other proclamation, regulation, order or directive in conflict with the Refugees Proclamation shall not apply to matters applicable to this law. Presumably then, protection considerations that arise under that instrument would override any provisions in the Draft Proclamation and the Immigration Proclamation. In the absence of trafficking and smuggling data, it is not possible to confirm whether foreign nationals who are trafficked or smuggled to Ethiopia have been sufficiently protected from refoulement.

¹²⁰ On extradition, also see section 9 on Information, Training and Cooperation.

Temporary/permanent residence: Article 24(6) of Proclamation No. 1178/2020 specifies that foreign national found in Ethiopia not having permanent residence permit shall receive the appropriate support and as appropriate, be provided with a temporary residence permit.

Summary of recommendations

<p>Definition and criminalization</p>	<ul style="list-style-type: none"> • Amend the Proclamation No. 1178/2020 to define the crime types in line with the TIP Protocol, notably to avoid conflation of TIP with exploitation more generally by ensuring that the three elements of the crime (act, mean and purpose) are stipulated explicitly within art. 3 of the Proclamation; human trafficking with human smuggling; and human trafficking with labour migration; • Amend legislation to capture TIP and Smuggling of Migrants in separate instruments; • Consider whether severe sentences imposed for offences are reasonable and appropriate; • Amend Proclamation No. 1178/2020 to establish jurisdiction for TIP beyond Ethiopia, for instance where Ethiopians are trafficked between other countries, so that crimes committed by Ethiopians or to Ethiopians elsewhere may be addressed; • Clarify whether the meaning of ‘band or group’ and ‘band or association’ used in the Criminal Code 2004, is in line with the meaning of organised criminal group set out in UNTOC art. 2. • Consider whether art. 13 of the Proclamation No. 1178/2020 concerning failure to report an offence, and 16 concerning aiding a suspect raises any risk that victims of trafficking themselves, as well as their friends and family members may be captured by the provision, particularly in light of the broad framing of the offence; • Clarify the interplay and the distinction between transnational trafficking and the offence of ‘unlawful sending of person abroad for work’; • Define TIP in accordance with the Trafficking in Persons Protocol, to require the act and means in the case of adult victims, and no means to be required in the case of child victims; • Amend legislation so that the ‘acts’ and the ‘means’ elements are approached as being elements of the trafficking offence, where done for the purpose of exploitation, and not merely as preparatory acts. • Consider whether the new crime types (forms of exploitation) fulfil the drafters’ intention of avoiding overlap with the Criminal Code; • Consider whether creating criminal offences for wide forms of exploitation will dilute trafficking offences, and result in fewer prosecutions of trafficking where prosecutors opt to change offences that are easier to prove with equally high sentences; • Consider whether the creation of new offences involving only exploitation, should be included in labour-related proclamations rather than trafficking-related legislation; • Consider amending the definition to include ‘forced labour’ as a form of exploitation rather than the broader form of ‘labour exploitation’ which has no definition in international or national law; • Sensitize criminal justice practitioners to the fact that the legislation criminalizes trafficking of any person, irrespective of age or gender, to understand that children, women and men can be victims of this crime; • Strengthen non-criminalization of trafficked persons by flagging article 634 of the Criminal Code as irrelevant, to avoid the risk of persons trafficked into sex work being prosecuted rather than identified as victims; • Consider providing exemptions for criminal liability for humanitarian actors and
<p>Investigation and prosecution</p>	<ul style="list-style-type: none"> • Collect criminal justice data including on the number of investigations, prosecutions, charges laid and convictions achieved for crimes of TIP; • Consider enacting a Criminal Procedure Code to provide for investigative powers of police and limitations thereto; • Assess the capacity of police to use the powers provided to them to freeze, seize and confiscate property under art. 20 to 22 of the Proclamation No. 1178/2020 in order to identify and mitigate risks of their practical implementation.

Protection and assistance	<ul style="list-style-type: none"> • Ensure that the protection provisions of the Proclamation No. 1178/2020 are not, interpreted or implemented in a way that is discriminatory on the basis of nationality, migration status or other ground, contrary to Ethiopian and international law; • Establishment of a national referral mechanisms for TIP victim protection and assistance; • Carry out a mapping exercise to assess the institutional framework and availability of resources with which to implement the protection and assistance requirements in section 4 and section 5 of the Proclamation No. 1178/2020, and to determine the effectiveness of existing protection mechanisms; • Carry out a scoping exercise to assess the capacity of State and non-state actors to provide shelter and related services to all victims of TIP in the country, including males and females, adults and children, and non-Ethiopians as well as Ethiopians; • Consider including explicit child-protection provisions in the Proclamation, to both strengthen protection in accordance with international norms and standards and to strengthen criminal justice response to TIP; • Clarify what role, if any, the provisions of the Ethiopian Nationality Proclamation No. 378/2003 (concerning the protection of Ethiopians abroad) play in the protection of Ethiopians who have been trafficked abroad; • Clarify how victims of trafficking, including non-Ethiopians access their Constitutionally-protected right to access justice;
Prevention	<ul style="list-style-type: none"> • Clarify the role that the implementation the carrier provisions set out in art. 17 of the Immigration Proclamation play in identifying and combating TIP; • Ensure comprehensive training for law enforcement, immigration and judicial authorities, towards the implementation of the Proclamation No. 1178/2020.
Cooperation	<ul style="list-style-type: none"> • Clarify the role of the National Steering Committee on the Worst Forms of Child Labour; the National Forum to Eliminate the Worst Forms of Child Labour; and the National Steering Committee Against Sexual Exploitation of Women and Children, in countering TIP; • Conduct an assessment of the implications that the peace agreement between Ethiopia and Eritrea will have on TIP between the two countries in order to strengthen preparedness to mitigate identified risks, and identify opportunities for bilateral cooperation; • Clarify how article 15 of the Ethiopian Nationality Proclamation No. 378/2003 prohibiting extradition of Ethiopian nationals can be reconciled with the Proclamation No. 733/2012 (on extradition) implementing the IGAD Convention on Extradition providing for extradition; • Assess the impact of broadly construed offences under the Proclamation No. 1178/2020 potentially failing to meet the dual criminality requirement and the possibility of the death penalty serving as potential hindrances for extradition and mutual legal assistance; • Assess the risk of non-extradition of Ethiopians potentially resulting in Ethiopia serving as a safe haven for persons involved in transnational organized trafficking.
Return and reintegration	<ul style="list-style-type: none"> • Clarify the legislative and other mechanisms in place to facilitate the return of non- Ethiopians in Ethiopia to their country of origin in accordance with the TIP Protocol; • Implement a framework for providing protection to persons who may need to remain in Ethiopia for protection outside of the refugee and asylum framework; • Clarify the circumstances under which a victim of trafficking could be removed from Ethiopia on the basis of being ‘undesirable’ under art. 150 of the Criminal Code, or on the basis of grounds set out in art. 5 of the Immigration Proclamation No. 354/2003 and the protection risks that are raised in such situations; • Clarify the circumstances under which art. 8 of the Immigration Proclamation No. 354/2003 would be used to deport trafficked people from Ethiopia; • Consider including an explicit non-refoulement provision in the Proclamation No. 1178/2020.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

KENYA

Overview of national legislation

There are several legislative provisions that are relevant to Trafficking in Persons, the main anti-trafficking legislation in Kenya is the Counter Trafficking in Persons Act 2010 entered into force in 2012 to combat trafficking. The Act makes provisions for prosecution of traffickers, provides remedies for victims and establishes the Counter- Trafficking in Persons Advisory Committee as well as a National Assistance Fund for Victims of Trafficking. The 2018-2022 National Action Plan on trafficking is currently being updated.

The following instruments are additionally relevant to TIP:

- The Constitution of Kenya, 2010: Slavery or servitude, section 25 and 30;
- The Prevention of Organized Crime Act, 2010 (amended 2012);
- The Counter Trafficking in Persons Act, 2010; entered into force in 2012;
- The Penal Code, 2014: Section 151 to 156 and sections 260, 264, 265; and
- The Criminal Procedure Code: Chapter 75, section 42A, 364, 379A;
- The Sexual Offences Act No. 3 of 2006: trafficking for sexual exploitation (section 18, maximum 10 years imprisonment); prostitution of persons with mental disabilities (section 19); child trafficking (section 13); child sex tourism (section 14); child prostitution (section 15); child pornography (section 16); exploitation of child pornography (section 17);
- The Employment Act, 2007: Part II criminalizes child labour and trafficking for purposes of labour;
- The Children Act, 2007: Section 13;
- The Victim Protection Act, 2014;
- The *Guidelines - National Referral Mechanism* for assisting victims of TIP in Kenya: Kenya developed the identification Guidelines to help the key actors in the public when well sensitized to be able to assist in reporting. The key factors, such as the police and authorized officers such as probation officers, chiefs, and children's officers, can be able to identify, screen and interview victims ethically and with professionalism. Through identifying the victims early enough, they assist in the arrest of perpetrators, the rescue of the victims and also ensure that there is evidence available in court that will contribute to deterrence of further TIP. The *Guidelines* clearly stipulate the process of identification of trafficked victims as follows:
 - a. Definitions of TIP and smuggling;
 - b. Who can identify a victim of trafficking;
 - c. Indicators for assessing victims;
 - d. Steps of identification;

- e. Risk assessment and protection;
- f. Screening interviews;
- g. Best practices for children and adult interviews;
- h. Who should be contacted first after ascertaining that the person or child is a victim of trafficking.

Jurisdiction over offences: Section 6 of the Penal Code establishes jurisdiction for transnational offences, where part of the offence is committed within the jurisdiction of the court, in which case any offender within the jurisdiction may be charged as if the act had been done wholly within the jurisdiction. Section 25, of the Counter-Trafficking in Persons Act of 2010 sets out extra-territorial jurisdiction, for acts committed by Kenyans or permanent residents of Kenya outside the country.

Non-discrimination principle: Article 15, of the Counter-Trafficking in Persons Act of 2010 provides the guarantee of support services for victims of TIP, regardless of their nationality.

Definition and criminalization

Definition and sentencing: The definition of trafficking in the Counter-Trafficking in Persons Act of 2010 is in line with the TIP Protocol definition; it makes consent irrelevant (section 3(2)), captures internal and transnational trafficking (art. 3(4)), and excludes the means element requirement for child trafficking (section 3(3)). However, the understanding of trafficking where the purpose is sexual exploitation is broader than envisaged by the Protocol. Kenyan legislation additionally includes removal of body parts in addition to organs; forcible or fraudulent use of a person in armed conflict; child labour; child marriage and forced marriage. The only form of exploitation included in the Protocol that is not included here is ‘exploitation of the prostitution of others.’ The definition of “forced labour” differs from the definition set out in article 2 of the ILO Convention of 1930, No. 29 “the term forced or compulsory labour shall mean 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 voluntarily”. Section 3(5) of the Counter Trafficking in Persons Act of 2010 prescribes a sufficiently stringent punishment of no less than 30 years imprisonment or a fine of not less than 30 million shillings (\$ 292,826). When allowing for a fine in lieu of imprisonment, the prescribed punishment is not commensurate with those for other serious crimes, such as rape.

The definition of trafficking provided for in section 18 of the Sexual Offences Act (repealed by the Counter-Trafficking in Persons Act) was broader than that provided in the Protocol and the act, and the means are limited to ‘facilitate travel’. The broad nature of the result (being any crime under the Act) could result in conflation of smuggling and trafficking offences. Under the Sexual Offences Act a ‘vulnerable person’ is a child, person with mental disabilities or an elderly person (section 2). It is not clear whether this may have a narrowing effect on abuse of a position of vulnerability.

In October 2021, United Nations Office on Drugs and Crime supported and continues to support the Government of Kenya, and specifically its Counter Trafficking in Persons Secretariat and Technical Working Group, in amending the Counter Trafficking in Persons Act in order to align it with international legal standards.

In relation to the Penal Code of 2009, it is unclear what the distinction is between kidnapping or abduction in order to subject to grievous harm, slavery etc. (section 260) and trafficking for the purpose of slavery. Further, it is unclear how the section 266 offense would differ from that of forced labour, set out in section 2 of the Employment Act 2007. Section 264 and section 265 of the Penal Code are both repealed by the Counter Trafficking in Persons Act.

In relation to child trafficking, the definition of the “worst form of child labour” also comprises trafficking of children (section 2), in accordance with article 3 of the ILO Convention No. 182.

It was reported that the Government of Kenya, when drafting anti-trafficking regulation, policies and initiatives, included inputs from survivors into these legal provisions.¹²¹

Participation in an organized criminal group (UNTOC, art. 5): The Prevention of Organized Crime Act No. 8 of 2010 defines organized crime group as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of (a) committing one or more serious crimes; or (b) committing one or more serious crimes in order to obtain, directly or indirectly, financial or other material benefit, other advantage for the organized criminal group or any of the members of organized criminal group, and includes a group declared an organized criminal group under section 22 of this Act.” The definition of organized crime group is in accordance with the definition provided for in the UNTOC. The Counter Trafficking in Persons Act No. 8 of 2010 provides a simplified definition of organized crime group, being a structured group of three or more persons, acting in concert with the aim of committing one or more serious crimes or offences under this Act, in order to obtain directly or indirectly, a financial or other material benefit. It is not clear what the impact of these two different definitions is and which definition prevails in situations where organized criminals are involved in trafficking.

The definition of ‘structured group’ aligns with the UNTOC definition verbatim, being “a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure”. The definition of ‘serious crime’ is broader than stipulated in the UNTOC, being provided in the Prevention of Organized Crime Act No. 8 of 2010 as “conduct constituting an offence against a provision of any law in Kenya punishable by a term of imprisonment of at least six months, or an offence against a provision of any law in a foreign state for conduct which, if it occurred in Kenya, would constitute an offence against a provision of any law in Kenya”. Accordingly, a very broad range of offences is classified as being ‘serious’.

Obstruction of justice (UNTOC, article 23): section 8 of the *Organized Crime Act* concerns obstruction of justice, outlining several situations including: (1) A person who willfully attempts in any way to obstruct, pervert or defeat the cause of justice under this Act commits an offence. (2) A person who, in relation to a witness or a public officer in any proceedings to which this Act applies—(a) uses physical force or threats; (b) intimidates or attempts to intimidate; or (c) dissuades or attempts to dissuade a person from giving evidence: (d) induces false evidence; (e) interferes with the giving of evidence; (f) interferes with the production of evidence for the purpose of interfering with the judicial process; or (g) promises or offers a benefit, commits an offence. Chapter XI of the Penal Code sets out offences relates to the administration of justice.

It is unclear whether any of these provisions has been used in relation to trafficking offences.

Document fraud offences: The Counter Trafficking in Persons Act of 2010 criminalizes document offences (section 6, and where public officials are involved, section 26(2)) and facilitation of illegal entry and exit (section 7) for the purpose of trafficking.

Aiding and abetting: Section 7 of the Counter-Trafficking in Persons Act of 2010, states that “A person who facilitates, aids or abets the exit or entry of persons from or to the country at international and local airports, territorial boundaries and seaports for the purpose of promoting trafficking in persons 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 a term of not less than thirty years without the option of a fine”.

Non-liability of victims of trafficking in legislation: Section 14 of the Counter-Trafficking in Persons Act of 2010 states that “Notwithstanding the provisions of any other law, a victim of trafficking in persons shall not be criminally liable for any offence related to being in Kenya illegally or for any criminal act that was a direct result of being trafficked.” Section 154 of the Penal Code (making an offence of a woman living on earnings of prostitution) could potentially criminalize victims of trafficking where victims are not appropriately identified.

¹²¹ The U.S. *Trafficking in Persons Report 2020* (U.S. State Department, 2020), Country Narrative Kenya.

Investigation and prosecution

In 2018, the Government has begun tracking law enforcement data from the 47 counties of Kenya, resulting in some partial data. Key sources of data on TIP were noted as being media and research reports as well as surveys, key informants, observations and spending time with affected communities.

According to the 2020 *U.S. Department of State Trafficking in Persons Report*, the Kenyan Government's overall data collection and reporting on anti-trafficking law enforcement efforts remained weak. In 2019, the Government reported 6 new trafficking cases for investigation, including one sex trafficking case and 5 forced labour cases, involving at least 128 individuals, compared with at least 33 trafficking cases and 25 trafficking-related cases in 2018. Courts convicted at least 3 defendants under the Counter Trafficking in Persons Act 2010 and sentenced them to 1.3 million shillings (\$ 12,840) fine or 15 years' imprisonment, 2.3 million shillings (\$ 22,720) fine or 30 years' imprisonment, and 3.4 million shillings (\$ 33,580) fine or 30 years' imprisonment. This was a decrease from courts convicting 7 defendants for trafficking and 12 defendants for trafficking-related crimes in 2018.

Community policing through the 'Nyumba Kumi' initiative: One initiative flagged as a means of preventing both Smuggling of Migrants (SOM) and TIP persons is the 'Nyumba Kumi' initiative, which is described as a policing approach that is proactively used to address crime through partnerships between police and the community.¹²² It is not clear whether Nyumba Kumi focuses on trafficking directly or incidentally to its work, or what its impact has been on addressing these crimes.

Lack of understanding of trafficking in persons: Investigation of TIP is the responsibility of the Directorate of Criminal Investigations (DCI), which is responsible for all criminal investigations. While understanding of TIP is increasing, there remains inconsistent capacity among police to identify trafficking, particularly where it occurs internally, and to differentiate offences of TIP from SOM. The two crime types are often conflated to such an extent that the terms may be used interchangeably. Both offences are considered to be transnational, migration-related phenomena, with little understanding of the fact that TIP, including of Kenyans, also occurs within the country. Notably, where internal trafficking occurs as a result of cultural practices (for instance, children being given to others with a view to increasing their opportunities, resulting in their subsequent exploitation) such situations are unlikely to be considered by authorities to be situations of trafficking. Such cultural practices may have caused some resistance to acknowledging internal forms of trafficking. Nuanced understanding of the linkages between TIP and terrorism is also lacking, with more research needed to understand how they intersect.

Prosecution of trafficking in persons through alternative offences: Prosecutors are not specialized on trafficking crimes, and so often charge alternative lesser offences that they are more familiar with under the Penal Code or other instruments. With respect to trafficking for the purpose of sexual exploitation, the Sexual Offences Act is applied, and the Labour Laws are applied in the cases of trafficking for the purpose of forced labour, with the Immigration Act sometimes playing a role in transnational cases. Where victims are children, the *Children Act* may come into play. In practice, the offence of trafficking in persons is considered to be harder to prove, notably owing to the evidentiary challenges of proving the means element.

The essential evidence to convict cases of TIP is victim testimony, with other evidence often not available. Even where alternative evidence is available, from a procedural point of view, sometimes victim testimony must be brought first. Where victims are children or infants, it is procedurally easier to avoid their testimony, but in the case of adults, victim testimony will constitute the primary evidence. Evidentiary challenges are exacerbated where victims are unwilling to cooperate with authorities, and do not consider themselves to have been victimised but rather see their situation as having improved as a result of their experiences. These realities speak to the need to strengthen capacity of law enforcers to proactively investigate trafficking and gather alternative and corroborative evidence.

The use of special investigative techniques has been noted as procedurally difficult owing to Constitutional protections. It is possible for court orders to be obtained to allow the use of covert techniques, but the extent to which these possibilities have been explored in approaching trafficking investigations is not clear. Similarly, the extent to which financial investigations have been undertaken in relation to trafficking (or smuggling) offences is not known.

¹²² For more information, see: <http://www.communitypolicing.go.ke/about.html>

Asset seizure and freezing: The Counter-Trafficking in Persons Act includes provisions concerning the confiscation of proceeds of crime (section 17). Though not often, these provisions have been used.

Protection and assistance

Protecting the rights of victims of trafficking: Protection provisions are set out primarily in the Counter-Trafficking in Persons Act of 2010. Section 11 of the Act makes it an offence to violate the privacy of a trafficked person. Section 15(1) of the Counter-Trafficking in Persons Act of 2010 sets out the requirement to provide (d) appropriate shelter and other basic needs, (e) psychosocial support and (f) appropriate medical assistance. Section 15(1)(g) sets out that victims are to be provided with “legal assistance or legal information, including information on the relevant judicial and administrative proceedings.” The ‘or’ as opposed to ‘and’ in this provision is curious, and is presumably an error that should read ‘and’. Section 15(2) of the Counter-Trafficking in Persons Act requires that support and protection be provided in accordance with special needs, age, gender and the special needs of children and persons with disabilities. Section 15(5) states that all communication with the victim shall be in a language the person understands. And, as mentioned before, section 15(6), the support services provided under the provision are to be provided to victims of trafficking regardless of their nationality.

The Victim Protection Act of 2014 includes provisions on the place of safety, food, medical treatment, psychosocial care and police protection, and establishes a victim assistance fund. It is unclear what the relationship is between the Victim Protection Act and the Counter-Trafficking in Persons Act.

Protection of children: In the case of child victims, the Children’s Act No. 8 of 2001 offers psychosocial and medical support and other assistance and is so far more operable than the Counter-Trafficking in Persons Act of 2010 making it the primary framework used in the case of child trafficking. The Children Act No. 8 of 2001, entitles children to protection from abuse, including from any form of exploitation including trafficking (section 13); and from sexual exploitation (section 15), and from torture and deprivation of liberty (section 18). Children – including those who are not Kenyans – may be appointed a guardian under section 102 of the *Children Act No. 8 of 2001*. In practice, owing to the lack of facilities there are reportedly cases of child victims being accommodated in inappropriate places; for instance Children Remand Homes are intended for child offenders rather than victims or witnesses.

Victim Fund: Section 22 of the Counter-Trafficking in Persons Act of 2010 provides for the establishment of the National Assistance Trust Fund for Victims of Trafficking to be funded by Parliamentary allocation of budget, confiscated or forfeited proceeds of crime, income generated by investments of its Board of Trustees and donations. It is not clear how victims access the fund and whether they have ready access to legal assistance to support them in doing so. It is also not clear what resources the fund has and how it distributes those to victims who need it.

In recent years, the Government relied on NGOs to run all safe houses and shelters used to house trafficking victims, with the exception of 5 government-run child rescue centers to facilitate the support for children who are victims of crimes, including trafficking.¹²³

By the end of 2017, the Kenyan Government has implemented the National Referral Mechanism (NRM) for Assisting Victims of TIP in Kenya¹²⁴ and trained relevant stakeholders on its identification and referral provisions. The Mechanism provides a system for identification, referral, holistic support and assistance to the victims of TIP. In 2019, the national referral mechanism authorized foreign national victims to stay in a shelter up to 90 days.¹²⁵ The majority of local officials and civil society that received training on the NRM in coastal counties reported better skills in victim identification and referral, and the government reported an increase in referrals between partners.¹²⁶

¹²³ The U.S. *Trafficking in Persons Report (U.S. State Department, 2020) Country Narrative Kenya*.

¹²⁴ <https://www.socialprotection.go.ke/wp-content/uploads/2019/07/NRM-Guidelines-for-Kenya-law-res.pdf>

¹²⁵ The U.S. *Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Kenya*.

¹²⁶ Ibid.

The Kenyan NGO, ‘Awareness Against Human Trafficking (HAART), a trafficking-specific NGO in the country, operates a shelter for trafficked girls and provides psychosocial and legal support for adults (male and female) and child victims of trafficking.¹²⁷ Currently, in the absence of designated facilities to accommodate persons who are intercepted and found to be in need of assistance and protection, ad hoc solutions must be found. In the case of children, police may liaise with children’s homes. Otherwise, police stations or holding facilities may be used, raising the risk that victims may be detained rather than accommodated. In practical terms, because there is no budget to accommodate non-prisoners in such accommodation, there may be limited capacity to feed and otherwise take care of victims at such facilities.

During the 2019–2020 fiscal year, the National Treasury allocated 20 million Kenyan shillings (\$197,530) to the National Assistance Trust Fund for Assisting Victims of Trafficking; however, stakeholders expressed concerns regarding the lack of framework for the fund’s disbursement and that the first disbursement to victims was the outcome of a lawsuit.¹²⁸

Witness protection: The Counter-Trafficking in Persons Act and the National Referral Mechanism provide a mechanism for victims of TIP assistance. The Witness Protection Framework may play a role, though only in cases of prosecutorial value. There is no evidence to suggest that the Witness Protection Act has been applied in cases of trafficking as yet.

Compensation and restitution: Section 13 of the Counter-Trafficking in Persons Act of 2010 allows the Court to order that the convicted person pay restitution or compensation in addition to any other punishment prescribed. Section 16 exempts trafficked persons from court fees where they institute civil actions for damages. Section 31 of the Penal Code also allows for compensation orders to be made against convicted persons for any person injured by the offence, in addition to or in substitution for other punishment. It is not known how effective this mechanism is for obtaining compensation for victims of TIP. In practice, alternative dispute resolution may be used in cases of domestic trafficking for non-sexual forms of labour exploitation.

Prevention

Raising awareness: The 2020 U.S. Department of State Trafficking in Persons Report pointed out that the Government and civil society organization continued to promote anti-trafficking awareness at high-levels events, emphasizing the prevention of child sex trafficking, labour trafficking, and migrant workers’ rights. The report also indicated that the Counter-Trafficking in Persons Advisory Committee, had not published its annual report on functions relating to the Counter-Trafficking in Persons Act of 2010 until the end of the reporting period.

NGOs and international organizations have reportedly delivered training on differentiating between trafficking and smuggling. A post-graduate diploma on migration was developed under the Better Migration Management (BMM) project, envisaged for the Kenya Institute of Migration Studies, with the view to improving border management capacity of immigration officials. The first course was launched in May 2019 with the purpose of improving their capacity in migration and border management.¹²⁹ Respondents noted that targeted training of specialized units on investigation and protection of smuggled and trafficked persons has resulted in reduced trafficking and smuggling. In the absence of data this decline is difficult to verify.

In 2019, the Government of Kenya continued to implement its 2018–2022 National Plan of Action Against Sexual Exploitation of Children.¹³⁰

Information campaigns: In 2018, resource limitations have constrained awareness raising efforts, so the Government used highway billboards and community outreach and NGOs have also conducted campaigns with local governments in coastal regions.¹³¹ The need to raise public awareness of these phenomenon has also been flagged in the context of sensitizing people to what they see, to place them in a better situation of reporting

¹²⁷ <https://haartkenya.org>

¹²⁸ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Kenya.

¹²⁹ Better Migration Management (BMM) in Kenya, (GIZ, Brussels, 2020).

¹³⁰ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Kenya.

¹³¹ The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Kenya.

possible smuggling and trafficking to authorities. It is not known whether information campaigns have effectively served that purpose.

Border controls: Instances of trafficking are reportedly found at roadblocks and check points at the external borders of the country as well as in the interior, with no proactive investigations mounted against organised criminal groups engaged in trafficking and smuggling.¹³² As the perception of trafficking is that these are migration-related phenomena, there is a perception that using regular channels for migration reduces these crime types. The Border Management Committee is a Kenyan multi-sectorial entity established to improve efficiency at border points and to strengthen capacity to respond to issues including smuggling of migrants. The Kenya National Commission of Human Rights (KNCHR) is also involved in providing practical advice on human rights-based approaches at border points.¹³³ Strategic check points put in place to verify travel documents, have also been reported as a prevention measure, as has the ban of night travel to and from some destinations along the borders.

In 2019, the Better Migration Management (BMM) programme provided training for relevant government officials on integrated border management, document security, and fraud detection.¹³⁴

Coordination and cooperation

National level coordination and cooperation: At the national level, human trafficking are addressed by the Ministry of Interior, the Kenyan Police Department and its Directorate of Criminal Investigations, the Director of Public Prosecutions, the Kenyan Immigration Department, the Ministry of Labour and the Kenyan Military (KDF). Additionally, in respect of trafficking, section 19 the Counter-Trafficking in Persons Act establishes the Counter-Trafficking in Persons Advisory Committee, which in addition to Government members includes two representatives from civil society and other members. The Committee is responsible for advice on inter-agency activities and implementation of preventative, protective and rehabilitative programmes for trafficked persons (section 20) and reports to the Minister and the National Assembly (section 21). The Advisory Committee meets quarterly and launched the National Action Plan in May 2015. The Government is reportedly receptive to civil society engagement, signaling the potential there is to coordinate response to strengthen capacity.

Bilateral and regional coordination and cooperation: In 2019, the Government of Kenya collaborated with several NGOs and international organizations, to provide training and technical support, under the anti-trafficking legal framework, for investigators, prosecutors, judges, immigration officers, and other Government officials.

To address the exploitation of Kenyan nationals abroad, the Government maintained bilateral labour agreements with UAE, Saudi Arabia, and Qatar to coordinate efforts to reduce cases of exploitative labour and other abuses against Kenyans abroad, including trafficking.¹³⁵ In 2018, the government also signed a bilateral labour agreement with the United Arab Emirates to coordinate efforts to reduce cases of exploitative labour and other abuses against Kenyans abroad, to include trafficking.¹³⁶ In 2019, the Government began negotiations on a bilateral labour agreement with Uganda, adding to pending negotiations with Bahrain, Lebanon, Oman, Jordan, and Kuwait.¹³⁷

The Prevention of Organized Crime Act 2010 provides for mutual legal assistance at section 21, allowing the Attorney-General or other official designated by him to initiative mutual legal assistance and sharing of information.

¹³² On the limits of border control to identify trafficking in persons, see Marika McAdam, 'Who's who at the border? A rights-based approach to identifying human trafficking at international borders', *Anti-Human Trafficking Review*, Issue 2, (2013), 33-49, www.antitraffickingreview.org

¹³³ Better Migration Management (BMM) programme in Kenya, (GIZ, Brussels, 2018).

¹³⁴ Better Migration Management (BMM) programme in Kenya, (GIZ, Brussels, 2020).

¹³⁵ *The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020) Country Narrative Kenya.*

¹³⁶ *The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Kenya.*

¹³⁷ *The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Kenya.*

Repatriation and reintegration

Repatriation: Section 15(1) of the Counter-Trafficking in Persons Act sets out that victims are to be provided with assistance to (a) return to and from Kenya, (b) resettlement and (c) reintegration. Section 18 further provides repatriation provisions (1) to be arranged by the Minister responsible for immigration, (2) by issuing necessary documents to allow the person to re-enter the country and (3) allows a person to remain in Kenya where repatriation would expose them to danger. It is not known whether and how often this provision has been used. There is a risk that persons who are not effectively identified as victims of trafficking may be treated as irregular or smuggled migrants, potentially being detained and deported. In the case victims of trafficking being returned to Kenya, oftentimes, those who are returned are reluctant to report on their experiences of exploitation, owing to fears of stigmatization.

Non-refoulement: Under the Counter-Trafficking in Persons Act, officials may grant permission for foreign trafficking victims to remain indefinitely in Kenya if it is believed they would face hardship or retribution upon repatriation. The Government did not report using this provision during the past year, instead, as reported by an NGO, the Government requests victims to apply for asylum instead.¹³⁸

In practice, it has been reported that the only opportunity a foreign victim of TIP would have to remain in Kenya is by being recognized as a refugee. There is reportedly a tension between the two systems, whereby it is not possible to be both a refugee and a trafficked person. In reality, the infrastructure in place to support victims of TIP is such that from a protection and assistance point of view, and in the interests of remaining in Kenya, it is more advantageous for a non-national to be recognized as a refugee than a victim of TIP.

Victims of trafficking may be repatriated to their countries through the work of IOM in cooperation with NGOs. The CTIP Secretariat also facilitates repatriation of victims using the Trust Fund resources or IOM.

Temporary residence: Section 15 of the Counter-Trafficking in Persons Act states that victims of TIP may be (3) eligible to work for gain for the duration of their necessary presence in Kenya and that (4) notwithstanding the provisions of any other law, the victims of TIP 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. Section 18(3) further provides that the Immigration Minister may allow a person to remain in Kenya where repatriation would expose them to danger. While officials may grant permission for foreign trafficking victims to remain indefinitely in Kenya under the Counter-Trafficking in Persons Act, the Government has not reported using this provision.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> • Amend the Counter-Trafficking in Persons Act of 2010 to clarify that the sexual exploitation at issue is the exploitation of the prostitution of others, to avoid the broad understanding of what can constitute sexual exploitation; • Amend the definition of “forced labour” to align with the definition set out in article 2 of the ILO Convention No. 29; • Clarify what the distinction is between Penal Code offences of kidnapping or abduction in order to subject to grievous harm, slavery etc. (section 260) and trafficking for the purpose of slavery; and section 266 of the Penal Code and forced labour as set out in section 2 of the Employment Act 2007; • Clarify which legislative definition of organized crime group applies in cases where organized criminals are involved in trafficking; • Clarify the impact in combating TIP, of broadly defining serious crime as that punishable by imprisonment of at least 6 months; • Amend or otherwise clarify that section 154 of the Penal Code (concerning living on the earnings of prostitution) is not intended to apply to the person him or herself who may have been trafficked into such situations; • Assess whether victims of trafficking have been subject to criminalization and/or punishment in law or in fact, and identify the reasons why this has occurred, with a view to strengthening implementation of non-criminalization provisions.
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¹³⁸ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Kenya.

Investigation and prosecution	<ul style="list-style-type: none"> • Gather data on investigations, charges laid in prosecutions and under which legislative instrument, convictions achieved for TIP, disaggregated according to the nationality of persons involved, and the form of exploitation; • Strengthen capacity of criminal justice practitioners to differentiate between TIP and SOM, and sensitize stakeholders to internal trafficking; • Clarify when TIP is confronted with the Counter-Trafficking Act, the Penal Code, Sexual Offences Act, Labour Laws, Immigration Act and the Children Act with a view to understanding the challenges involved in applying the Counter-Trafficking in Persons Act; • Strengthen capacity of law enforcers to proactively investigate trafficking and gather alternative and corroborative evidence for the purpose of reducing reliance on victim testimony; • Clarify opportunities for special/covert investigative techniques to be used, and financial investigations, with a view to informing investigators of the investigative opportunities available to them.
Protection and assistance	<ul style="list-style-type: none"> • Assess state and non-state capacity to provide shelter to victims of TIP outside of detention facilities; • Identify what challenges there have been in applying the Children’s Act No. 8 of 2001 for the benefit of both Kenyan and foreign children who have fallen victim to TIP; • Assess capacity to implement the protection and assistance provisions set out in the Counter-Trafficking in Persons Act and clarify the relationship between that Act and the Victim Protection Act; • Clarify what resources the National Assistance Trust Fund for Victims of TIP has at its disposal and how victims of trafficking are supported to access the fund; • Assess how effective the witness protection framework has been in protecting witnesses of trafficking in persons, with a view to strengthening the role of that framework in addressing this crime; • Assess the effectiveness of the frameworks for providing compensation Counter- Trafficking in Persons Act and the Penal Code for victims of TIP with a view to ensuring that victims of trafficking have access to compensation and restitution. • Rectify section 15(1)(g) of the Counter Trafficking in Persons Act of 2010 when sets out that victims are to be provided with “legal assistance or legal information, including information on the relevant judicial and administrative proceedings.” The ‘or’ as opposed to ‘and’ in this provision is presumably an error that should read ‘and’.
Prevention	<ul style="list-style-type: none"> • Assess the effectiveness of border controls to identify potential situations of transnational trafficking, with a view to strengthening control; • Assess the impact of criminal justice training on identifying and disrupting TIP; • Assess the effectiveness of information campaigns in raising awareness of target audiences, with a view to strengthening the messages conveyed through such programs and the impact of those messages in preventing TIP; • Carry out a study to identify which communities and regions are most susceptible to TIP.
Coordination and cooperation	<ul style="list-style-type: none"> • Identify what legislation, bilateral and other agreements are in place to address issues of TIP, with a view to assessing how coordination in response to this crime can be strengthened.
Return and reintegration	<ul style="list-style-type: none"> • Assess whether the implementation of section 26A of the Penal Code and section 43(5) of the Citizenship and Immigration Act No. 12 of 2011 (concerning removal of persons from Kenya) may have impacted on rights of victims of TIP , and undermined investigative capacity; • Clarify whether sections 15 and 18 of the Counter-Trafficking in Persons Act have been implemented in the return and reintegration of victims of TIP with a view to identifying barriers to the effective application of those provisions; • Describe whether and under what circumstances leave has been given for a foreign victim of TIP to remain in Kenya; • Assess and clarify the interplay between the system in place to allow foreign victims of trafficking leave to remain in Kenya, and the refugee protection framework in place to grant asylum to remain in the country.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

MADAGASCAR

Overview of national legislation

Madagascar signed on December 14, 2000, and ratified on September 15, 2005, both the United Nations Convention against Transnational Organized Crime Convention and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. In 2015, Madagascar has adopted an Anti-trafficking Act, Law 2014.040.¹³⁹

Until 2019, the implementation of the Anti-trafficking Act was guided by the National Plan 2015-2019 to Combat Human Trafficking (of March 5, 2015), which expired in March 2019 and was evaluated in June of that year. Since July 2019, the *Bureau National de Lutte contre la Traite des Etres Humains* (BNLTEH), has been drafting a new national anti-trafficking policy to replace the expired national action plan.¹⁴⁰

Jurisdiction over offences: The Anti-trafficking Act provides jurisdiction to the courts of Madagascar if the offence has been committed inside the national territory or on board of a vessel, or an aircraft registered or rented in Madagascar (art. 37) and outside the territory if the victim is a citizen of Madagascar or the offender is in Madagascar after the commission of the offence or resides in Madagascar (art. 38).

Additionally, article 33 of the Law 2014-005 on Terrorism and Transnational Organized Crime provides for the jurisdiction of the courts of Madagascar for offences committed both inside and outside the national territory. The law applies to offences committed inside the territory of Madagascar, on board of a vessel, ship, on an aircraft registered in Madagascar, on a fixed platform (plate-forme fixe) on its continental shelf, or on board of a rented aircraft without crew, against a person who has the principal place of business or permanent residence in Madagascar. Article 6 provides for the application of national law for offences outside the national territory if the offence is committed:

- by a citizen of Madagascar or a legal person registered in Madagascar;
- against a citizen of Madagascar or a legal person registered in Madagascar;
- in the case of an offence involving aircraft, as mentioned above, and if the said aircraft lands on the territory of the Republic of Madagascar with the alleged offender still on board.¹⁴¹

Scope of offences: Article 2 of the Anti-trafficking Act¹⁴² provides that the offences are punished whether they are national or transnational in nature and involve or not an organized criminal group.¹⁴³ The same article provides that the law sets out the legal regime for prosecution and punishment of TIP in all its forms, as well as the reparation of harm caused to victims, the protection of victims and witnesses, prevention and cooperation.

¹³⁹ Loi n° 2014-40 du 20 janvier 2015 sur la lutte contre la traite des êtres humains (adopted on 16-12-2014).

¹⁴⁰ See <https://mg.usembassy.gov/madagascar-trafficking-in-persons-report-2020-fr/>

¹⁴¹ This provision refers mainly to terrorist attacks.

¹⁴² Loi n° 2014-40 du 20 janvier 2015 sur la lutte contre la traite des êtres humains (adopted on 16-12-2014).

¹⁴³ For the offences committed in the framework of a transnational organized crime and in particular for human trafficking, Art. 24 of the Law No. 2014-005 against terrorism and transnational organized crime is of specific application.

Liability of legal persons: Article 30 of the Anti-trafficking Act prescribes the following penalties against legal persons implicated in trafficking offences:

1. permanent or 5-year prohibition to exercise directly or indirectly some professional activities;
2. permanent closure or for a period of up to 5 years of the establishment used to commit the offence;
3. dissolution of the legal persons if they were created to commit the offences;
4. dissemination of the decision by the press or by any other means of audiovisual communication.

The law also prescribes a fine from 100 to 500 million Malagasy ariary (MGA). Additionally, it provides that the criminal liability of legal persons does not exclude that of individuals who may be perpetrators or accomplices of the same acts.

Article 35 of the Law No. 2014-005 on Terrorism and Transnational Organized Crime prescribes the same penalties for legal persons in trafficking offences committed in the framework of the activities of a transnational organized criminal group.

Other relevant laws: Other relevant provisions include the following:

- The Labour Code (Law No. 2003-044) that prohibits forced labour (art. 4);¹⁴⁴
- The Decree No. 2007-563 regulating child labour and strengthening the ban on forced labour and the employment of children for domestic work;
- Articles 4 and 67 of the Law No. 2007-023 of August 20, 2007, on the rights and protection of children¹⁴⁵ that prohibit exploitation of children;
- Article 3 of the Law No. 2007-022 relating to Marriage and Marital Regimes¹⁴⁶ contributing to the prohibition of early marriage [and art. 356 of the Malagasy Penal Code related to abduction and forced marriage of children];¹⁴⁷
- Law No. 2014-005 against terrorism and transnational organized crime¹⁴⁸ (art. 24 punishes TIP committed in the framework of transnational organized groups);
- The Anti-Money Laundering Act No. 2018-043, of February 13, 2019,¹⁴⁹ which criminalizes the laundering of the proceeds of criminal activities and the financing of terrorism (suppressing the Law No. 2004-020 of August 19, 2004¹⁵⁰ related to money laundering and seizure of proceeds of crime);
- Law No. 2016-020 of August 22, 2016, on countering Corruption, and Law No. 2016-021, of same date, on the Anti-Corruption Poles;
- Law of March 10, 1927, relating to the extradition of foreigners;

¹⁴⁴ The U.S. Department of State 2019 Trafficking in Persons Report, (Country Narrative Madagascar), op. cit. p. 302.

¹⁴⁵ Loi N° 2007-023 du 20 août 2007 sur les droits et la protection des enfants, Journal Officiel n° 3 163 du 28-01-2008, p. 158.

¹⁴⁶ Loi N° 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux, Journal Officiel n° 3 163 du 28-01-2008, p. 131.

¹⁴⁷ With UNICEF's support, a National Strategy to Combat Child Marriage for 2017 to 2024 is adopted. See, Ministère de la Population, de la Protection Sociale et de la Promotion de la Femme de la République de Madagascar (2019): Rapport de la République de Madagascar dans le cadre du vingt-cinquième anniversaire de la quatrième conférence mondiale sur les femmes et de l'adoption de la Déclaration et du programme d'action de Beijing en 2015.

¹⁴⁸ Loi n° 2014-005 contre le terrorisme et la criminalité transnationale organisée, Journal Officiel, 01-09-2014, n° 3572, pp. 3401-3414.

¹⁴⁹ Loi N° 2018- 043 du 13 février 2019 sur la lutte contre le blanchiment de capitaux et le financement du terrorisme, Journal Officiel, 28-03- 2019, n° 3876, pp. 1307-1310. It is reported that this Act is not used yet in the context of trafficking, because the Anti-Trafficking Act 2014-040, provides already for the possibility of forfeiture of property and the freezing of the assets of the perpetrators of trafficking.

¹⁵⁰ Loi n° 2004-020 du 19 août 2004 sur le blanchiment, le dépiage, la confiscation et la coopération internationale en matière de produits du crime, Journal Officiel, 08-11-2004, n° 2939, pp. 4349-4364.

- The following provisions of the Malagasy Criminal Code of June 17, 1972 (updated June 30, 1998):
 - a. offences that violate the physical integrity of a woman, including sexual offences (Criminal Code art. 331-332);
 - b. Articles 354, 355 and 355 relates to abduction of children and article 356 relates to abduction and forced marriage of children;
 - c. Article 334 relates to forced prostitution and article 335 relates to directing or managing a place of prostitution;
 - d. Articles 265 to 268 relates to criminal association (organized criminal groups);
 - e. Articles 153 to 165 relates to falsification of passports and other public documents (and art.166 to 168 if the crime is committed by a public officer);
 - f. Articles 177 to 183 relates to corruption of public officers; and
 - g. Articles 184 to 191 relates to the abuse of power.

Definition and criminalization

Definition and sentencing: Article 5 of the Anti-trafficking Act (Law No. 2014-040 of January 20, 2015 completing and suppressing some provisions of Law No. 2007-038 of January 14, 2008 that has amended and supplemented certain provisions of the Criminal Code on combating human trafficking and sex tourism), criminalizes trafficking for exploitation of the prostitution or domestic labor of others and prescribes imprisonment from 2 to 5 years and a fine from 1 to 10 million MGA for offences involving an adult victim. This is considered a short penalty if compared to article 24 of the Law 2014-005, which punishes TIP, for the purposes of exploitation, including that of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs, with 5 to 10 years imprisonment.

Article 6 repeats exactly the same provisions of article 5, paragraph 1 only for the domestic labor.

In order to bring its national legislation into conformity with international legal instruments, the explanatory statement of the Act states that, one of the purposes of the law is to extend the scope of the anti-trafficking law to cover to the following forms of sexual exploitation: forced labour, civil debt slavery, the exploitation of begging from others, sale of a person, illegal adoption, forced marriage and organ trafficking.

Articles 10, 13, and 14 of the Law No. 2014-040 also contain the act and the means of protocol, and three different exploitative purpose (forced marriage, debt bondage, and begging), while article 15 addresses trafficking in organs, and not TIP for the purpose of organ removal.

The penalties vary, depending on the form of exploitation. Thus:

- The Act prescribes an imprisonment from 2 to 5 years and a fine from 1 to 5 million Malagasy ariary
- Loi n° 2004-020 du 19 août 2004 sur le blanchiment, le dépistage, la confiscation et la coopération internationale en matière de produits du crime, Journal Officiel, 08-11-2004, n° 2939, pp. 4349-4364.
- (MGA) for forced labor and practices similar to slavery (art. 8); and for servitude for debt (art. 13).
- Article 9 equates to trafficking the submission to working or accommodation conditions incompatible with the human dignity of a person whose vulnerability or state of dependence are apparent or known to the perpetrator and punishes it with the same as above penalties.
- Article 11 punishes TIP for the purpose of forced marriage with the same penalties as above or one of these two penalties only.

- Article 12 punishes the selling of persons with 5 to 10 years imprisonment and a fine from 4 to 20 million MGA.
- Article 14 punishes the exploitation of begging with imprisonment from 2 to 5 years and a fine from one to 10 million MGA.
- Article 15 prescribes for trafficking of human organs an imprisonment from 5 to 10 years together with a fine from 4 to 20 million MGA (1,104 to 5,520 USD). With the same penalties is punished whoever provides assistance in order to obtain an organ in return for payment or other benefit, or to transfer such organ of the body of others for a fee (art. 15, para. 2).

The implementation of this law relied on the National Plan to Combat Human Trafficking (2015-2019), but there's lack of information on its implementation. The Government of Madagascar reported that since July 2019 it is developing a new policy.¹⁵¹

Aggravating circumstances: Articles 7 and 9 prescribe an imprisonment from 5 to 10 years, if the offences established in articles 5, 6 and 8 are committed in the framework of the activity of a transnational organized criminal group which coincides with the penalties prescribed by article 24 of the Law No. 2014-005 on terrorism and transnational organized crime applying to specific forms of trafficking. However, it needs to be noted that the forms of trafficking provided by article 24 of this Law are not quite the same as those provided by the Anti-trafficking Act, since it refers to “prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or organ removal”. Thus, it does not include: exploitation of begging of others, sale of persons, illegal adoption and forced marriage, as the Anti-trafficking Act.

As previously mentioned, according to the prevailing interpretation of the Protocol, for cases involving illegal adoption, the exploitative intent should be shown in order to be characterized as trafficking under the Protocol.

Article 17 of the Anti-trafficking Act punishes with imprisonment from 5 to 10 years, and a fine from 4 to 20 million MGA trafficking for domestic work involving a child victim. The Anti-trafficking Act provides that the consent of the child victim, that of his/her parents or that of the person having de jure or de facto authority over this child in exploitation is indifferent. It needs to be noticed that the Law No. 2014-005 on terrorism and transnational organized crime punishes trafficking committed against a child (below 18 years of age) in the framework of a transnational organized criminal group with an imprisonment from 5 to 20 years with hard labor. Forced labor, servitude and practices similar to slavery against a child (art. 18, 19 and 24) are punished with imprisonment from 5 to 10 years and a fine from 2 to 10 million MGA. With the same penalties are punished the forced marriage of a child as a result of trafficking (art. 21), the exploitation of begging against a child (art. 25) and the removal of organs of a child (art. 26).

The trafficking offences are punishable by imprisonment with hard labour, if they are committed against a group of persons or a victim with physical or mental disability, or against a pregnant woman or if they have caused a serious and/or disabling illness (art. 9, para. 2; art. 11, para. 2; art. 15, para. 4; art. 27, 28 and 29).

The Anti-trafficking Act prescribes a sentence of life imprisonment with hard labour if the offence resulted in the death of the trafficked victim (art. 9, para. 3; art. 11, para. 3; art. 12, para. 2 and art. 22, para. 3).

In article 33, the Anti-trafficking Act clarifies that no mitigating circumstances are acceptable in the framework of this Act.

Attempt to commit trafficking in persons: Article 32 of the Anti-trafficking Act prescribes the same penalties for an attempt of trafficking as for the offence.

Article 32 (also) of the Law No. 2014-005 on terrorism and transnational organized crime provides the same penalties as the offence for an attempt of trafficking committed in the framework of transnational organized criminal group.

¹⁵¹ According to the reply received to the UNODC questionnaire.

Participating in an organized criminal group: Article 23 of the Law No. 2014-005 on Terrorism and Transnational Organized Crime punishes the participation in an organized criminal group with 5 to 20 years of imprisonment with hard labour.

Article 35 prescribes a fine from 100 to 500 million MGA if the offence was committed in the framework of an organized criminal group on behalf of a legal entity by its organs, officers or representatives.

Organizing or directing other person to commit trafficking in persons: Article 31, paragraph 2 of the Law No. 2014-005 on terrorism and transnational organized crime provides that organizing, directing, facilitating, encouraging or advising the commission of an offence established in accordance with this Act is punishable by the same sentence as the one applicable to the main offence.

Aiding and abetting: There are no such provisions in the law on trafficking. However, article 59 of the Criminal Code provides that the accomplices in a crime or misdemeanor will be punished with the same penalty as the perpetrators of that crime or misdemeanor, except in cases where the law provides otherwise. Also, article 31, paragraph 1 of the Law No. 2014-005 on terrorism and transnational organized crime prescribes for the accomplices the same penalty as the perpetrators.

Obstruction of justice: Article 41 of the Anti-Trafficking Act No. 2014-040, can apply in this respect if obstruction of justice has occurred through any act of intimidation, threat of retaliation against victims of TIP, witnesses, the investigator, or family members. In this case, the law prescribes an imprisonment and a fine.

Additionally, article 34 of the Law No. 2014-005 on Terrorism and Transnational Organized Crime provides that anyone who uses physical force, threats or intimidation, or promises to offer or grant an unfair advantage to obtain false testimony or prevent testimony or evidence in a proceeding related to the commission of an offence under this Act, or uses physical force, threats or intimidation to prevent a law enforcement officer or law enforcement officer from carrying out the duties of their office during the commission of an offence covered by this Act, is punishable by an imprisonment from 5 to 10 years.

Non-liability of victims of trafficking: Article 43 of the Anti-trafficking Act provides clearly that the victim of trafficking is exempt from prosecution or punishment for offences related to his or her status as a victim (“La victime de traite est exemptée de toute poursuite ou sanction pour les infractions liées à son statut de victime”).

Investigation and prosecution

In 2019, there were no reports of investigations, prosecutions, or convictions of government officials involved in trafficking offences. Internal government procedures prohibit the arrest of a government official without an authorization from the official’s supervisor impeding holding complicit officials accountable for trafficking crimes.¹⁵²

In 2018, the Government operationalized an Anti-Corruption Court (PAC) whose mandate included TIP cases that were transnational or involved criminal networks¹⁵³. In 2019, PAC convicted six of the seven alleged traffickers.¹⁵⁴ The Government also adopted a national identification and referral mechanism, although implementation outside of Antananarivo was limited.

Asset seizure and freezing: The Anti-trafficking Act in article 36 provides that any conviction, taken in accordance with the provisions of this Act, may also order the confiscation of all or part of the instrument, assets and proceeds of crime.

¹⁵² The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Madagascar.

¹⁵³ The U.S. Trafficking in Persons Report 2019 (U.S. State Department 2019), Country Narrative Madagascar

¹⁵⁴ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Madagascar

Article 36 of the Law No. 2014-005 on Terrorism and Transnational Organized Crime provides for the asset seizure and freezing only in cases of terrorism.¹⁵⁵ However the Law No. 2004-020 of August 19, 2004¹⁵⁶ relating to money laundering and seizure of proceeds of crime provides for asset seizure and freezing in all crimes committed in the framework of the activity of a transnational organized criminal groups.

Furthermore, article 55b of the Criminal Code provides for the confiscation of all assets of offenders, co-offenders or accomplices of any crime or misdemeanor, who have left the country evading Malagasy Justice.

According to the *2019 U.S. Trafficking in Persons Report* and the 2018 UNODC, Global Report on Trafficking in Persons, the convictions are very low in Madagascar despite efforts of the Government to investigate and prosecute more suspected traffickers.¹⁵⁷

Protection and assistance

Protecting the rights of victims of trafficking: According to the 2020 U.S. Trafficking in Persons Report, the Malagasy Government still lacks a national database for trafficking crimes, remaining challenging to obtain and verify national statistics on trafficking prosecution and convictions in the country. In 2019, the Government reported having initiated 16 trafficking investigations, however the Government did not report initiating prosecutions of any other investigated cases or provided updates on ongoing cases.

Article 40 of the Anti-trafficking Act provides that at all stages of the proceedings, the victim receives, if necessary, legal aid and free assistance from interpreters appointed by the public prosecutor. Article 41 protects the physical safety of victims and witnesses and prescribes a penalty of imprisonment from 6 months to 2 years and a fine of 100,000 to 1,000,000 MGA for any act of intimidation, threat of retaliation or retaliation against victims of TIP, witnesses of trafficking, investigators, and their family members.

Article 42 protects the privacy and identity of victims of trafficking and witnesses from retaliation. To this respect the trial is held *in camera* (the decision is pronounced in a public hearing).

No other provisions on specific measures of protection are contained in the Anti-trafficking Act.

In 2018, it was reported that with the support of IOM, the Government of Madagascar was able to set up its first emergency reception centre for women victims of TIP. Also, through the assistance rendered by IOM, in the first 6 months of 2019 alone, more than 200 victims of trafficking received assistance for their repatriation to Madagascar.¹⁵⁸

According to the *2020 U.S. Trafficking in Persons Report*, the Malagasy Government still lacks a national database for trafficking crimes, remaining challenging to obtain and verify national statistics on trafficking prosecution and convictions in the country. In 2019, the Government reported having initiated 16 trafficking investigations, however the Government did not report initiating prosecutions of any other investigated cases or provided updates on ongoing cases.

Throughout the year of 2019, the Government reported identifying at least 111 victims of trafficking and provided various forms of assistance to at least 103 trafficking victims. NGOs and international organizations reported identifying and assisting at least 1,808 victims, providing various victims with protective services, including medical care, social reintegration assistance, and hotel accommodations.¹⁵⁹

¹⁵⁵ There is a specific Law on money laundering and financing of terrorism: Loi N° 2018-043 du 13 février 2019 sur la lutte contre le blanchiment de capitaux et le financement du terrorisme.

¹⁵⁶ Loi n°2004-020 du 19 août 2004 sur le blanchiment, le dépistage, la confiscation et la coopération internationale en matière de produits du crime, Journal officiel, 08-11-2004, n° 2939, pp. 4349-4364.

¹⁵⁷ "Not a single country among those where the criminal justice response was assessed recorded more than 50 convictions in any of the years considered (2014-2017)". See, UNODC, Global Report on Trafficking in Persons, December 2018, p. 83.

¹⁵⁸ COMMUNIQUE DE PRESSE CONJOINT du Gouvernement de Madagascar – Organisation internationale des migrations (OIM) – Ravinala Airports du 30 juillet 2019, « Le secteur privé s'engage dans la lutte contre la traite des personnes à Madagascar » : <http://mg.one.un.org/content/unct/madagascar/fr/home/presscenter/actualites-et-communiques-de-presse/le-secteur-prive-sengage-dans-la-lutte-contre-la-traite-des-pers.html>

¹⁵⁹ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Madagascar.

Witness protection: To prevent retaliation from suspected traffickers, trafficking trials are held in camera – as mentioned above – not only for the sake of the victim, but also for the protection of witnesses’ confidentiality and privacy (art. 42); however, the Government did not report doing so recently.¹⁶⁰

The victim can file a complaint on condition of anonymity and article 41 of the Act states that any act of intimidation, threat of retaliation or retaliation against victims of trafficking, witnesses, investigators, and family members is an offence punishable by imprisonment from 6 months to 2 years and a fine from 100,000 to 1,000,000 Ar. The judicial authorities report that all these provisions have already been used in the prosecution of trafficking cases in Madagascar.¹⁶¹

Compensation and restitution: According to article 44 of the Anti-trafficking Act the State guarantees the victim of trafficking the right to appeal for redress: “The victim is compensated fairly and adequately, including medical care and the means necessary for social rehabilitation. The child victim of the offences under this Act can, at any time, report and refer the acts against him to the Public Prosecutor’s Office and the competent authorities and seek compensation for the damages suffered.”

The Government demonstrated overall increasing efforts by operationalizing, staffing, and providing a dedicated budget to the National Office to Combat Human Trafficking (BNLTEH) and opening a shelter dedicated to assisting trafficking victims.¹⁶² Despite the establishment of the reception centre for women victims of TIP (domestic and transnational), it is reported that the Government did not systematically provide services to victims.¹⁶³

It was also reported¹⁶⁴ that the main difficulties in implementing anti-trafficking legislation are:

- Inadequate training for all criminal justice actors;
- Inadequate awareness of the Anti-Trafficking Act among the public at large and the authorities;
- Inadequate measures to support the new Anti-Trafficking Act 2014-040;
- Lack of material and financial resources.

Prevention

Article 48 of the *Anti-trafficking Act* establishes a National Office to Combat Trafficking in Persons (*Bureau National de Lutte contre la Traite des Etres Humains*), mandated to ensure the prevention and monitoring of the TIP. The organization, operation and responsibilities of this Office are determined by decree. This Office is mandated, among others, to support detection, enforcement, immigration and labor agencies. The National Office also ensures the harmonization and coordination of the actions of relevant services in order to prevent TIP and the sale of persons, as well as the protection of victims.

For anti-trafficking programs for 2020, the National Office to Combat Human Trafficking (BNLTEH), which has the mandate to lead Madagascar’s national anti-trafficking efforts, received a dedicated budget of 410.9 million ariary or administrative expenses and 90 million ariary.¹⁶⁵

¹⁶⁰ The U.S. *Trafficking in Persons Report 2020* (U.S. State Department 2020), Country Narrative Madagascar.

¹⁶¹ According to the reply to the UNODC questionnaire.

¹⁶² The U.S. *Trafficking in Persons Report 2019* (U.S. State Department 2019), Country Narrative Madagascar.

¹⁶³ The U.S. *Trafficking in Persons Report 2019* (U.S. State Department 2019), Country Narrative Madagascar.

¹⁶⁴ According to the reply to the UNODC questionnaire.

¹⁶⁵ The U.S. *Trafficking in Persons Report 2020* (U.S. State Department 2020), Country Narrative Madagascar.

The measures the Government has initiated since 2013 to prevent trafficking have not given the expected results. The ban on migrant worker travel to unspecified countries the Government considered high-risk remains in place; however, illicit recruitment agencies circumvent the ban by sending workers through Mauritius, Kenya, Comoros, Ethiopia, and the Seychelles. In an attempt to address this issue and identify agencies involved in fraudulent recruitment, the government continued the suspension of all existing accreditations for placement agencies and, thus, its prohibition of recruitment of workers for employment abroad. These prohibitions on migrant workers continued to leave them with no legal means to travel abroad for work, and therefore without access to protection mechanisms available through authorized travel, increasing their vulnerability to trafficking.¹⁶⁶

The strategy on Gender Equality 2015-2019 included actions on trafficking. An attempt to update the National Gender and Development Action Plan (PANAGED) in July 2015 resulted in a new action plan that included actions on trafficking.¹⁶⁷

Raising awareness: In 2019, the *Bureau National de Lutte contre la Traite des Êtres Humains* (the National Office to Combat Human Trafficking - BNLTEH), in partnership with IOM, developed and launched an awareness raising campaign on risks associated to irregular labour migration and human trafficking at the Ivato International Airport.¹⁶⁸ Similarly, the Ministry of Civil Service, Administrative Reform, Labour, Employment, and Social Law conducted awareness campaigns on child domestic work in several low- income areas, which included training 80 community leaders.¹⁶⁹

On the other hand, the Government did not institutionalize anti-trafficking training and some police, immigration officers, prosecutors, and judges continued to lack a clear understanding of TIP, which curbed law enforcement and victim identification efforts.¹⁷⁰ The Government does not appear to provide anti-trafficking training to diplomats.

Validity and legitimacy of travel and identify documents: The Malagasy Penal Code, in article 153 and following, criminalizes the production and use of fraudulent passports or travel documents. Also, article 26 of Law No. 2014-005 on terrorism and transnational organized crime address falsification of travel documents with regard to Smuggling of Migrants (SOM) solely and prescribes imprisonment from 5 to 10 years to persons who fabricate, procure, or possess a fraudulent travel or identity document in view “to enable the smuggling of migrants”.

Coordination and cooperation

National level coordination and cooperation: Article 49 of the Anti-trafficking Act states that for the development and implementation of policies, programs and measures to prevent and combat TIP and to provide assistance and protection to victims, public bodies cooperate with non-governmental organizations, government agencies, national and international agencies.

The Ministry of Population, in collaboration with an international organization, coordinates approximately 700 child protection networks across the country.

However, the BNLTEH has the main role in coordination of all actions in the fight against TIP and in developing a national anti-trafficking policy and finally to facilitate inter-ministerial actions and agreements. It coordinates in particular the actions of the key ministries related to the fight against TIP, among others the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Public Security, the Ministry of Public Health, the Ministry of Labor, the Ministry of transport, the Ministry of social welfare and the promotion of women, and the Secretariat of State in charge of the Gendarmerie.

¹⁶⁶ The U.S. *Trafficking in Persons Report 2019* (U.S. State Department 2019), *Country Narrative Madagascar*.

¹⁶⁷ Ministère de la Population, de la Protection Sociale et de la Promotion de la Femme de la République de Madagascar (2019): *Rapport de la République de Madagascar dans le cadre du vingt-cinquième anniversaire de la quatrième conférence mondiale sur les femmes et de l'adoption de la Déclaration et du programme d'action de Beijing en 2015*.

¹⁶⁸ IOM Madagascar Annual Report 2019 [https://www.iom.int/sites/default/files/situation_reports/file/iom_madagascar_annual_report_2019.pdf]

¹⁶⁹ The U.S. *Trafficking in Persons Report 2020* (U.S. State Department 2020), *Country Narrative Madagascar*.

¹⁷⁰ Ibid.

The BNLTEH, established by the Decree 2018-1581 of November 27, 2018, consists of a Board of Directors including representatives of each key ministry in the fight against trafficking, a representative of the Bar Association, representatives of employers, as well as NGOs and CSOs working in the field of protection of women, children and human trafficking, as well as of an Executive Secretariat that ensures the implementation of crime policy.

It is reported that there is a lack of coordination between law enforcement agencies in combating TIP hindering thus cases progression.¹⁷¹ Further, it has been noticed a lack of effort from the Government to set up a tripartite agreement between the Government, placement agencies, and vocational training centers to prevent trafficking.¹⁷²

Bilateral and regional coordination and cooperation: In 2016, the Antananarivo Declaration, at the end of the 16th Summit of Heads of State of the Francophonie, undertook a commitment to protect women, girls and young people from TIP. In January 2020, the Ministries of Foreign Affairs and Labor finalized the bilateral labour agreements but still did not sign them with Comoros, Kuwait, Lebanon, Mauritius, and Saudi Arabia.¹⁷³

According to a 50 of the Anti-trafficking Act, and without prejudice to any bilateral Convention or multilateral Treaty on cooperation and mutual legal assistance, mutual legal assistance and extradition are governed by the provisions of the Law of March 10, 1927, relating to the extradition of foreigners and the provisions of the articles 41-63 of Law No. 2004-020 of August 19, 2004, on money laundering, screening, forfeiture and international cooperation in the area of proceeds of crime.

As mentioned above, the Government does not maintain a national database for trafficking crimes, thus national statistics especially on prosecutions and convictions on trafficking are challenging to be obtained.

However, it is reported that the Government has set up focal points (responsible persons) at the level of each key Ministry, who collect all the data and information about TIP in Madagascar using the files (reporting sheets, fact sheets, records, etc.), registers (complaint register, special register for TIP files, etc.) at the level of each service concerned with cases of trafficking.¹⁷⁴

BNLTEH was established by the Government under the Prime Minister's Office with a mandate to coordinate the national counter-TIP response is also responsible to centralize all data from each competent ministry. With the support of an international organization, the Government had access to the national centralized anti-trafficking data collection and reporting tools since 2016; however, it is reported that it has never utilized it.¹⁷⁵

United Nations Office on Drugs and Crime in its Trafficking in Persons in the SADC Region: A Statistical Report 2014-2016 stated that although Madagascar is part of the Regional TIP Data Collection System for SADC Member States, the country has not yet begun uploading data onto the system.¹⁷⁶

Repatriation and reintegration

Repatriation: The Anti-trafficking Act provides in article 45 that the competent Malagasy authorities should facilitate and accept "without unjustified or unreasonable delay" the return to Madagascar, or to its place of residence, of a citizen or person having legal permanent residence and who is victim of trafficking. Article 46 states that if the victim does not have the necessary documents, the competent diplomatic and consular authorities of Madagascar shall issue, at the request of the victim or the competent authorities of the State of destination of the victim, the travel documents and/or legal identity necessary to allow the victim to travel and return to his/her country of origin.

The Government opened a new trafficking specific shelter for repatriated adult victims, the Mitsinho Center, as a temporary public shelter.

¹⁷¹ The U.S. Trafficking in Persons Report 2019 (U.S. State Department 2019), Country Narrative Madagascar.

¹⁷² The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Madagascar.

¹⁷³ Ibid.

¹⁷⁴ According to the replies to the UNODC questionnaire.

¹⁷⁵ The U.S. Trafficking in Persons Report 2019 (U.S. State Department 2019), Country Narrative Madagascar.

¹⁷⁶ UNODC, Trafficking in Persons in the SADC Region: A Statistical Report 2014-2016, p. 30.

In March 2019, a national delegation was also sent to Kuwait to repatriate Malagasy victims in the best possible conditions.¹⁷⁷

The Ministry of Foreign Affairs has the responsibility to systematically inform the Ministry of Population when victims are in the process of repatriation. The Ministry of Population contact victims upon their return and offer assistance, but reports indicates that some victims are reluctant to work with the Government. It was reported that most of the time, upon their return to Madagascar, the victims of trafficking are left to fend for themselves, as social workers lack basic options to provide a safe space and assistance services that are catered to the particular needs of victims (including first response to emotional distress and the effects of physical abuses and trauma).¹⁷⁸

The 2014 Anti-Trafficking Act required authorities to consider legal alternatives for foreign trafficking victims who believe they may face hardship or retribution if returned to their country of origin, however, according to the 2020 *U.S. Trafficking in Persons Report*, the Government did not report providing this protection to victims during the reporting period.

Non-refoulement: According to article 47 of the Anti-trafficking Act, any decision to return a victim of trafficking to his/her country of origin should take into account the principle of non-refoulement if there is a risk of: a) retaliation against the victim or his/her family; b) prosecution in his/her country for trafficking-related offences; c) being trafficked again, tortured or being subject to inhuman or degrading treatment.

Temporary/permanent residence: Any application for permanent or long-term resident status by the victim of trafficking on humanitarian and personal grounds should take into account the above-mentioned circumstances. When a victim of trafficking makes serious allegations that his or her life, health or personal freedom, or those of his or her family, could be threatened if returned to their country of origin, the competent authorities carry out an objective risk and safety assessment before returning the victim.

Summary of recommendations

<p>Definition and criminalization</p>	<ul style="list-style-type: none"> • Amend the Anti-trafficking Act to ensure that the penalties prescribed for art. 5 (TIP for the purpose of exploiting the prostitution of a person and the domestic work of others), art. 9 (forced labour and slavery), art. 10 and 11 (forced marriage), art. 13 (bondage for civil debt), and art. 14 (exploitation of begging from others) should be proportional with those prescribed for serious crimes, in accordance with art. 2 (b) of UNTOC; • Include provisions to effectively criminalize Child Sexual Exploitation for the purpose of trafficking; • Adopt and implement a new National Action Plan (NAP) on TIP; • Adopt effective by-laws and policies to effectively regulate labour recruitment agencies in accordance with International Labour Standards; • Amend the Anti-trafficking Act to include provision of “non-discrimination of victims of trafficking in persons” to ensure the assistance rendered the Act, will be applied regardless of race, religion, belief, age, family status, culture, language, nationality or gender; • Harmonize provisions of Anti-trafficking Act with provisions of Law No 2014-005 on terrorism and TOC.
<p>Investigation and prosecution</p>	<ul style="list-style-type: none"> • Implement the non-punishment clause for victims of TIP for offences conducted under duress; • Strengthen national identification of trafficked victims and of referral mechanism especially for victims outside Antananarivo; • Strengthen and accelerate investigation, prosecution, and conviction of traffickers and corruption cases; • Prosecute and convict accomplices of traffickers, especially public officials; • Provide initial and continuous education and training to all implicated officials of law enforcement and the judiciary; • Provide funding to law enforcement agencies to improve investigation of TIP cases.

177 As replied in the questionnaire of UNODC.

178 IOM, “Nippon Foundation Provide Protection for Victims of Trafficking in Madagascar”, 18-09-2018: <https://www.iom.int/news/iom-nippon-foundation-provide-protection-victims-trafficking-madagascar>

Protection and assistance	<ul style="list-style-type: none"> • Strengthen legislation on protection victims of TIP, to include the creation of a national identification system and a national referral mechanism; • Provide specialized shelters for TIP victims, children and adults (separated); • Assess how effective the witness protection framework has been in protecting witnesses of TIP, with a view to strengthening the role of that framework in addressing this crime; • Implement a support fund for victims; • Establish appropriate procedures to allow victims to obtain compensation and restitution through criminal, civil and/or administrative proceedings, as prescribed by art. 25 of UNTOC;
Prevention	<ul style="list-style-type: none"> • Institutionalize anti-trafficking training to law enforcement and judiciary authorities, including social workers, health service providers, and civil society; • Allocate funding to implement a new National Action Plan on TIP; • Strengthen efforts to prevent trafficking of unaccompanied children; • Start operating the official national level data collection system on TIP linked to the SADC Regional Trafficking in Persons Data Collection System¹⁷⁹; • Improve data collection by distinguishing between TIP and other crimes and disaggregating by form of TIP, profile of victims identified, traffickers, cases investigated and prosecuted, and the number of convictions; • Increase migrant workers protection by withdrawing prohibitions for travelling abroad; prohibiting recruitment fees charged to migrant workers; requiring minimum salaries, pre-departure training; standardize contracts; establish complaints mechanism for returning workers; and a public blacklist of abusive employers.
Coordination and cooperation	<ul style="list-style-type: none"> • Improve coordination between law enforcement and the judiciary; • Establish a system or mechanism of cooperation and coordination among relevant national stakeholders; • Create legal basis for international cooperation; • Conclude bilateral agreements with destination countries to protect Malagasy migrant workers from trafficking.
Return and reintegration	<ul style="list-style-type: none"> • Facilitate the repatriation and reintegration of victims (of both Malagasy nationals and third country nationals); • Conclude bilateral agreements with other governments to facilitate repatriation of victims; • Strengthen reintegration measures for TIP victims.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation; • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

179 According to UNODC recommendations. See, UNODC, *Trafficking in Persons in the SADC Region: A Statistical Report 2014-2016*, p. 30.

MAURITIUS

Overview of national legislation

The Republic of Mauritius (Mauritius) signed the UNTOC in December 2000 and ratified it in April 2003. Mauritius acceded to the TIP Protocol in September 2003. In addition, Mauritius is a party to most of the major multilateral human rights treaties, including, inter alia, the Convention Against Torture (CAT), the International Labor Organization's Minimum Age Convention, Worst Forms of Child Labour Convention, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), including its protocols on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.¹⁸⁰

The leading anti-Trafficking in Persons legislation is known as the Combating of Trafficking in Persons Act 2009 (2009 Act), assented to by the President of Mauritius on 8 May 2009.¹⁸¹ Other pertinent laws include: the Child Protection Act (Act 30 of 1994, effective April 1995); the Worker's Right Act (2019); and provisions of the Constitution of Mauritius (1968), the Criminal Code (1838) and the Criminal Procedure Act (1853).

On 15 December 2020, three legislations in favour of children's protection, were passed by the National Assembly:

i) the Children's Act 2020; (ii) the Children's Court Act 2020; and (iii) the Child Sex Offender Register Act 2020. These Acts are not yet in operation but are expected to be proclaimed shortly.

The Children's Act, 2020, will repeal the Child Protection Act and will be interpreted insofar as they don't derogate from provisions of the Combating of Trafficking in Persons Act. A Ministerial Committee has been set up to facilitate the implementation of the Children's Act, 2020. The Child Sex Offender Register Act, 2020, aims to establish a Child Sex Offender Register with a view to prevent and suppress child sexual exploitation.

The Workers' Rights Act defines a child as a person below the age of 16 and, under section 8, provides that no person shall employ a child for employment or work in any occupation.

Jurisdiction over offences: In addition, to establish jurisdiction over TIP; conduct committed within Mauritius, section 15 of the 2009 Act provides for extra-territorial jurisdiction over prohibited conduct committed by citizens and residents of Mauritius, by legal persons under the laws of Mauritius, and by persons arrested in Mauritius, its territorial waters, or on board a ship or aircraft registered or required to be registered in Mauritius. Jurisdiction also exists over legal persons.

¹⁸⁰ See, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=111&Lang=EN, last checked on 17 November 2019.

¹⁸¹ See, https://sherloc.unodc.org/res/cld/document/the-combating-of-trafficking-in-persons-act-2009_html/mauritius_TiP_legislation.pdf.

Definition and criminalization

Definition and sentencing: the combination of definitions of “trafficking” and “exploitation” in section 2 of the 2009 Act largely mirrors article 3 of the TIP Protocol. In addition to the “act” elements found in article 3 of the Trafficking in Persons Protocol, i.e., recruitment, transportation, transfer, harbouring or receipt of persons, the 2009 Act adds “sale, supply, procurement [and] capture....” The illustrative list of types of exploitation, and the means of trafficking described in article 3, are reflected in the 2009 Act, almost verbatim. The exception found in the TIP Protocol pertaining to child trafficking, i.e., the specification that recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation constitutes trafficking even in the absence of means such as coercion, abduction, fraud, etc., does not appear in the 2009 Act. However, section 3 of the 2009 Act makes it clear that the 2009 Act “shall be in addition to, and not in derogation from, the Child Protection Act.” In turn, section 13A of the Child Protection Act defines child trafficking in conformity with article 3 of the TIP Protocol, with one exception. The TIP Protocol defines “child” as “any” person under the age of 18 years, but the Child Protection Act limits the definition to “any unmarried person under the age of 18,” creating a small implementation gap by treating married victims of trafficking who are under the age of 18 years as adults.

The Children’s Act, 2020, which has not yet been enacted, includes a provision under section 73 to provide for an amendment of the Combatting of Trafficking in Persons Act, to add the following in article 11(1) – “(c) Where the trafficked person is a child, an offence shall be committed notwithstanding that none of the means referred to in the definition of “trafficking” have been employed.” This Act additionally defines “child” as “a person under the age of 18,” which is in line with the Convention on the Rights of the Child, however, the Government needs to consider harmonizing the definition across different legislations, including the Worker’s Right Act (2019).

Finally, the definition of trafficking in the 2009 Act is slightly broader than the TIP Protocol’s definition in that the Mauritian legislation adds illegal adoptions for the purpose of exploitation.

The Children’s Act 2020 also makes provision in section 73 (transitional provisions) for the amendment of the Combatting of Trafficking in Persons Act in section 2, in the definition of “trafficking”, by replacing the existing paragraph (b) which prohibited the adoption of a person facilitated or secured through illegal means, for the purpose of exploitation, with the following paragraph: “(b) the adoption or custody of a person, including any act done by another person as intermediary for the purpose of an adoption or a custody, where such adoption or custody has been facilitated or secured through illegal means;”. The definition of “illegal means” is added and “includes through payment or other form of consideration.” In the new legislation, the reference to the exploitative purpose of the illegal adoption was removed.

In the United Nations office on Drugs and Crime paper “The Concept of Exploitation in the Trafficking in Persons Protocol” illegal adoption can fall within the scope of the TIP Protocol only when it amounts to a practice similar to slavery as defined in the Supplementary Convention on the Abolition of Slavery as well as the exploitative intent is evidenced.

Article 5 of the Trafficking in Persons Protocol requires that a State Party criminalize TIP, including participating as an accomplice, ordering or directing others to commit a trafficking offence, and, if its legal system allows, attempting to commit a trafficking offence. Section 11 of the 2009 Act criminalizes conduct of “[a]ny person who traffics another person or allows another person to be trafficked” section 11 also criminalizes knowingly leasing property for the purpose of harboring trafficking victims, as well as advertising, publishing, or otherwise disseminating information “which suggests or alludes to trafficking....” Section 11 prohibits knowingly benefiting from the services of trafficking victims, financially or otherwise, as well. Section 12 of the 2009 Act criminalizes conduct related to destruction or confiscation of identity or travel documents of TIP victims. The 2009 Act also criminalizes allowing a person to be trafficked.

Regarding attempted conduct, the laws of Mauritius do recognise attempted criminal conduct as an offence. Section 45 of the Interpretation and General Clauses Act provides as follows: “Accomplices and attempts: Every accomplice and any person who attempts to commit an offence shall commit an offence and shall, on conviction, be liable to the penalty provided for the principal or completed offence, as the case may be.”

Section 2 of the Interpretation and General Clauses Act defines “attempt” as follows:

“attempt”, in relation to an offence, means a commencement of execution which has been suspended or has failed in its effect through circumstances independent of the will of the person making the attempt;”

Sections 120(1) and 120(2) of the Criminal Procedure Act provides as follows:

Where, on the trial of a person charged with a crime or misdemeanour, it appears to the jury upon the evidence that he did not commit the offence charged, but only attempted to commit the offence, that person shall not for that reason be entitled to be acquitted, but the jury may return as their verdict that he is not guilty of the crime or misdemeanour charged, but is guilty of an attempt to commit the crime or misdemeanour.

The accused shall be liable to be punished in the same manner as if he had been convicted upon an information for attempting to commit the particular crime or misdemeanour charged in the information.

The maximum penalty for violations of section 11 of the 2009 Act is 15 years imprisonment. The maximum penalty for section 12 offences related to confiscation or destruction of documents is 5 years and a fine of up to 100,000 rupees. Child trafficking is punished under section 13A of the Child Protection Act and carries a maximum sentence of 15 years imprisonment.¹⁸² These penalties are sufficient to comply with the TIP Protocol. Neither the 2009 Act nor the Child Protection Act appears to provide for aggravating circumstances.

However, section 13A of the Child Protection Act was amended by the Judicial Provisions Act 2008 (Act No. 36 of 2008)¹⁸³ in respect of penalties (and in 2009 by consequential amendments in the Combating of Trafficking in Persons Act on other issues) and now reads as follow:

13A. Child trafficking

(1) Any person who willfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(2) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child—

(a) outside Mauritius for the purpose of exploitation in Mauritius;

(b) in Mauritius for the purpose of exploitation outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(3) Any person who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under sub-section (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(4)(a) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

¹⁸² See, [https://supremecourt.govmu.org/HighlightDoc/No_034-CHILD PROTECTION \(AMENDMENT\) ACT 2005.pdf](https://supremecourt.govmu.org/HighlightDoc/No_034-CHILD PROTECTION (AMENDMENT) ACT 2005.pdf)

¹⁸³ https://supremecourt.govmu.org/system/files/legislation/29202/no-036-judicial-provisions-act-200820160528030822884_8.pdf

(5) (a) No press report of any Court proceedings relating to an offence under this section shall include any particulars calculated to lead to the identification of any child who is the victim of that offence, nor shall any photograph or picture be published in any newspaper or broadcast as being or including a photograph or picture of that child.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 2 years.

(6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

(7) Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may—

(a) suspend the parental responsibilities and rights of that person; and

(b) order the minor to be admitted to a place of safety for such period as fitting;

(8) In this section, “exploitation” has the same meaning as in the Combating of Trafficking in Persons Act.

(b) Neither the 2009 Act nor the Child Protection Act appears to provide for aggravating circumstances.

Section 73(5) of the Children’s Act 2020 (not in operation) seeks to amend the Combating of Trafficking in Persons Act by the addition of the following provision in relation to aggravating circumstances:

13A. Aggravating circumstances

For the purpose of section 14(2A), aggravating circumstances shall exist where –

(a) the offence involves a victim who is particularly vulnerable, including a pregnant woman;

(b) the offence exposed the victim to a life threatening illness;

(c) the victim is physically or mentally handicapped;

(d) the victim is a child;

(e) drugs, medications or weapons were used in the commission of the offence;

(f) a child has been adopted for the purpose of trafficking;

(g) the offender has been previously convicted for the same or similar offences;

(h) the offender is the spouse or partner of the victim;

(i) the offender is in a position of responsibility or trust in relation to the victim; or

(j) the offender is in a position of authority concerning the child victim.

A new sub-section is therefore added by the Children’s Act 2020 (not in operation), at section 14 of the Combating of Trafficking in Persons Act to cover the circumstance where any person who is convicted of an offence under section 11 or 12 and an aggravating circumstance specified in the new section 13A exists. That person will be liable on conviction to penal servitude for a term not exceeding 20 years.

Section 29 of the Children’s Act 2020 (not in operation) also provide for aggravating circumstances and harsher penalties when these circumstances exist.

The article 21 of the Law No. 68/2018 of 30/08/2018 determining offences and penalties in general provides for punishment of the attempt to commit the offence; it is equally applicable to the offence of TIP.

Aiding and abetting: Section 37 of the Penal Code of Mauritius establishes criminal culpability of accomplices. section 38 criminalizes aiding and abetting the commission of an offence, as well as instigating or giving instruction for commission of an offence.

Investigation and prosecution

Article 4 of the TIP Protocol mandates that the Protocol applies, except as otherwise stated in Protocol itself, to the prevention, investigation and prosecution of TIP conduct, and to the protection of TIP victims. The 2009 Act appears to emphasize prosecution of traffickers and victim protection, with some provisions that may promote investigations.

Since 2019, the prosecution has lodged 8 cases regarding the trafficking of persons before the Courts in Mauritius. Five of these cases await charges on TIP, including child trafficking; three cases are still pending before the courts; 1 one case was discontinued, and one case resulted in a conviction in 2021.

The Government of Mauritius reported an increase in case conferencing and coordination between prosecutors and law enforcement officers.¹⁸⁴ On the other hand, the judicial process continued to be slow, with cases often taking many years to complete, discouraging victims from pursuing legal options.¹⁸⁵

Regarding special investigative techniques to be used in relation to seizure and freezing of the assets used to commit the crime of TIP, the Asset Recovery Act (2011) contains provisions which empower the authorities to seize and freeze assets used in the commission of a crime (which includes the crime of TIP). Section 3 of this Act applies to “any proceeds, benefit, instrumentality or terrorist property derived or used or intended to be used.” The Financial Intelligence Unit (FIU) is additionally tasked under the Act with conviction-based asset recovery and civil asset recovery.

Protection and assistance

Protecting the rights of victims of trafficking: Section 4 of the 2009 Act provides that the Minister for Home Affairs shall set up one or more centres to provide “temporary accommodation suited for the needs of victims of trafficking admitted to them.” According to the *2020 U.S. Trafficking in Persons Report*, the Government of Mauritius established and allocated funds for its first shelter for adult trafficking victims. Persons admitted to a TIP victim centre are referred to in the 2009 Act as “inmates” in the English version of the legislation.

Section 2 of the Combatting of Trafficking in Persons Act defines “inmate” and “Centre” as follows: “inmate” means a person admitted to a Centre; “Centre” means a Centre for victims of trafficking set up under section 4. The Government indicates that the term “inmate”, refers to a victim of trafficking and does not connote criminalisation of the victims under the laws of Mauritius nor in the Mauritian society.

Sections 4(1) and 4(2) of the Act provide that:

1. The Minister shall –
 - (a) cause to be set up one or more Centres which shall be premises for the provision of temporary accommodation suited for the needs of victims of trafficking admitted to them;
 - (b) designate an investigating officer to be in charge of each Centre.

¹⁸⁴ The *U.S. Trafficking in Persons Report 2019* (U.S. State Department 2019), *Country Narrative Mauritius*.

¹⁸⁵ The *U.S. Trafficking in Persons Report 2020* (U.S. State Department 2020), *Country Narrative Mauritius*.

(2) Every Centre –

- (a) shall secure the safety of its inmates against any risk of retaliation;
- (b) shall provide counselling and rehabilitation services to its inmates;
- (c) shall facilitate the integration of its inmates into their families;
- (d) may offer facilities aimed at providing education, skills development and training;

shall, where necessary, provide reception, care and other facilities for a child who is in the care and custody of an inmate.

Section 4 requires that TIP victim centres provide safety, counseling and rehabilitation services, family integration, childcare, and contemplates discretionary education, skills development and training for TIP victims. Despite this, the *2019 U.S. Trafficking in Persons Report* cites a lack of available protection services “with neither specialized shelters nor systematic provision of care” for adult victims.¹⁸⁶

The 2009 Act has provisions for delayed deportation and temporary residence. Section 6 grants the Minister for Home Affairs discretion to suspend deportation of a TIP victim for one, non-renewable period of up to 42 days, irrespective of whether the victim is willing to cooperate with investigators and prosecutors. Section 7 authorizes the Minister to issue a visitor’s permit to TIP victims who are present in Mauritius and agreed to cooperate in a trafficking investigation and prosecution. In that instance, the TIP victim may be placed in a victim centre or in the care of an authorized organization, institution or person. The Minister for Home Affairs also may extend a visitor’s permit on humanitarian grounds, considering whether the victim is likely to be harmed, killed or trafficked again if sent to either the victim’s country of origin or country from which the victim was trafficked.

In 2019, the Government identified and provided medical assistance to six trafficking victims, a decrease compared with 11 victims identified in 2018. The 6 victims included one adult female Malagasy victim of sex trafficking one adult male Bangladeshi victim of labor trafficking, one minor female Mauritian victim of sex trafficking, and three potential victims of child sex trafficking. The Government provided shelter or referral to an NGO-run shelter to four victims.¹⁸⁷

Compensation and restitution: Mauritian law provides for compensation to TIP victims. Section 16 of the 2009 Act authorizes courts to impose compensation orders on convicted traffickers in addition to penal sanctions set forth in section 14 of the 2009 Act. Courts can order compensation for loss of property, including money, loss of income or support resulting from the trafficking offence, and physical, psychological or other injury. No court orders for compensation were issued in 2018.¹⁸⁸

There is no data available as to any order being made under section 16 of the Combating of Trafficking in Persons Act in connection with a prosecution under the Act.

Prevention

Preventive measures largely fall outside the scope of the 2009 Act, they are scattered among other Mauritian laws and regulations. For example, the Ministry of Labor issued regulations in 1994 to flesh out the Recruitment of Workers Act (1993). Under the regulations, various schedules apply to employment contracts that mandate a degree of transparency concerning terms and conditions of employment, the individual contract of employment must contain, among other things, worker and employer detailed information, occupational category, remuneration, contract’s duration and conditions.¹⁸⁹

¹⁸⁶ The *U.S. Trafficking in Persons Report 2019* (U.S. State Department 2019), *Country Narrative Mauritius*.

¹⁸⁷ The *U.S. Trafficking in Persons Report 2019* (U.S. State Department 2019), *Country Narrative Mauritius*.

¹⁸⁸ See <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/mauritius/>.

¹⁸⁹ See, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=38743&p_classification=08

The Recruitment of Workers Act deals with the manner in which workers may be recruited for employment abroad or in Mauritius. It is important to note that under section 4(1) of the Act a person may not be recruited unless he has attained the age of 18; and he has given his consent to the recruitment. It is also important to note that someone who wishes to recruit needs to apply for a licence from the licencing authority (the Permanent Secretary of the Ministry), and that pursuant to section 8 of the Act the licensee must submit to the licensing authority the name and address in Mauritius of the nearest relative of every recruited worker within 7 days of the worker's departure from Mauritius.

Other legislation relating the employment of non-citizens in Mauritius include the following:

a. Non-Citizens (Employment Restriction) Act

Section 3 of the Non-Citizens (Employment Restriction) Act prohibits a person from employing a non-citizen in Mauritius without there being in force a valid permit in relation to that employment.

Section 8 of the Act makes it a criminal offence where a person makes a statement which he knows to be false for the purpose of procuring for himself or any other person the grant of a permit. It also prohibits a person from unlawfully using a permit or causing or permitting it to be so used. A person convicted of an offence under this section, is liable, on conviction, to a fine not exceeding 10,000 rupees (Rs) and to imprisonment for a term not exceeding 12 months.

The Non-Citizens (Employment Restriction) Act has been amended in 2021 to –

(a) Increase the fine and imprisonment term for illegal employment from a minimum of Rs 25, 000 to Rs 100, 000 and the maximum from Rs 50,000 to Rs 500,000, and imprisonment from 2 to 5 years.

(b) provide for the issue of a special permit, on humanitarian grounds, to a victim or presumed victim of trafficking or a foreign worker in a stranded situation; and

(c) indicate that the term “victim of trafficking” has the same meaning as in the Combating of Trafficking in Persons Act.

b. Non-Citizens (Employment Restriction) (Work Permit) Regulations 2017

Section 6 of the aforementioned regulation puts a legal obligation on the employer of a non-citizen, in respect of whom a permit is in force, to notify the immigration officer and Permanent Secretary in writing where the non-citizen is:

(a) absent from work for more than 5 consecutive working days without authorization and without the employer being aware of his whereabouts; or

(b) missing for more than 5 consecutive working days from the lodging accommodation provided by the employer without the employer being aware of his whereabouts.

Under section 7 of the regulation, the Permanent Secretary must keep at the Ministry a register of persons to whom or in respect of whom permits have been issued.

c. Immigration Act

Section 9E of the Immigration Act puts a legal obligation on the immigration officer to keep and maintain an electronic register of certain categories of non-citizens who enter Mauritius. Every person who arrives in or leaves Mauritius needs to report to the immigration officer (section 22).

Notwithstanding that preventive measures which are found in different pieces of legislation forming part of the law of Mauritius, they can be used by the authorities for the prevention of TIP to and from Mauritius.

Raising awareness: In 2019, the Ministry of Gender Equality, Child Development and Family Welfare's (MOGE) created a program to educate the public on preventing commercial sexual exploitation of children

and human trafficking.¹⁹⁰ The MOGE conducted 282 awareness campaigns in schools, children’s clubs, and child protection clubs that covered various crimes against children, including child sex trafficking, that reached approximately 5,000 children and parents.¹⁹¹ According to the 2020 *U.S. Trafficking in Persons Report*, for the second consecutive reporting period, the Government distributed approximately 10,000 anti-trafficking posters in schools and other official buildings.

The Government of Mauritius created a ministerial-level coordination committee, as well as a subsidiary working level entity, the National Steering Committee on Trafficking in Persons (NSCTIP). The NSCTIP is drafting a national action plan, which Mauritius currently lacks.¹⁹²

A first draft of the National Plan Action has been prepared with assistance of the International Organization of Migration.

Coordination and cooperation

National level coordination and cooperation: The Mauritius Police Force maintains a “TIP desk” staffed by two officers who whose primary focus is on TIP. These officers serve as liaisons with other parts of the Mauritius Police Force. The police also operate an internal committee to coordinate anti- trafficking efforts.¹⁹³ The Ministry of Gender Equality, Child Development, and Family Welfare maintains a Child Development Unit, that deals with trafficking issues in the broader context of child protection issues.¹⁹⁴

Article 16 of UNTOC creates obligations regarding extradition. Article 16(1) establishes that extradition applies to the four UNTOC offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice) and to “serious crime” as defined in article 2 (offences punishable by at least 4 years imprisonment), if the offences involve an organized criminal group and the fugitive is located in the territory of a requested State Party. Article 1(3) of the TIP Protocol extends this coverage to offences established under the TIP Protocol. Under Article 16(3) any existing bilateral extradition treaties between States Parties are deemed to be amended to include offences created under UNTOC or its Protocols.

Validity and legitimacy of travel and identify documents: Section 10 of the 2009 Act provides for cooperation on TIP cases whereby the Minister can, at the request of another State Party, verify the legitimacy and validity of travel and identity documents issued by Mauritian authorities and suspected of being used for TIP.

Bilateral and regional coordination and cooperation: UNTOC article 18 establishes a detailed regime for mutual legal assistance, although article 18(6) makes it clear that article 18 “shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.”

The Mauritian Extradition Act (2017), which came into force on 03 May 2018, allows that a person, at the request of a foreign State, be extradited pursuant to the extradition treaty for the purpose of prosecuting that person for an extraditable offence, or imposing or executing a sentence of an extraditable offence against that person. Under section 5 of this Act, an offence shall be an extraditable offence where i) it is punishable under the laws of the requesting State by imprisonment or other deprivation of liberty for a term of not less than 2 years; and ii) the act which constitutes the offence would, if committed in Mauritius, constitute an offence which is punishable

Under the laws of Mauritius by imprisonment or any other deprivation of liberty for a term of not less than 2 years.

190 2019 Findings on the worst forms of child labour: Mauritius.

191 The *U.S. Trafficking in Persons Report 2020* (U.S. State Department 2020), *Country Narrative Mauritius*.

192 The *U.S. Trafficking in Persons Report 2020* (U.S. State Department 2020), *Country Narrative Mauritius*.

193 The *U.S. Trafficking in Persons Report 2019* (U.S. State Department 2019), *Country Narrative Mauritius*.

194 The *U.S. Trafficking in Persons Report 2019* (U.S. State Department 2019), *Country Narrative Mauritius*.

Mutual legal assistance in Mauritius is governed by the Mutual Assistance in Criminal and Related Matters Act 2003 (Act 35 of 2003).¹⁹⁵ Mauritius also has concluded Mutual Legal Assistance Treaties (MLATs).¹⁹⁶ Mauritius has not yet received nor made any requests for mutual legal assistance or extradition in respect of cases reported as TIP.

The Government has initiated discussions for bilateral agreements in the field of labor with India, Madagascar and Myanmar. A Memorandum of Understanding (MOU) with Nepal has already been signed in 2019.

Repatriation and reintegration

Repatriation: The 2009 Act contains provisions governing the repatriation of TIP victims to other countries and the return of TIP victims to Mauritius. Section 8 incorporates the concept of non-refoulement, but only insofar as it requires “due consideration” to a TIP victim’s safety during the repatriation process and after return, together with the possibility of the victim being harmed, killed, or trafficked again if they are repatriated. The Government deals with these cases on a case-by-case basis.

Section 9 of the 2009 Act covers the repatriation of Mauritian citizens or permanent residents trafficking victims to Mauritius, implementing article 8 of the TIP Protocol. Section 9 requires the Minister of Home Affairs to facilitate and accept the return of Mauritian TIP victims, verify citizenship or permanent residence, and issue travel documents if necessary. Section 9 also provides for victim referral to a centre, if an adult, or the Child Development Unit, if the victim is a minor. Section 9 also provides for designation of an adult escort for child victims during the repatriation.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> Consider whether section 2 of the Combating of Trafficking in Persons Act (2009) needs to be amended to conform to the UNTOC TIP Protocol requirement that recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation constitutes trafficking even in the absence of means such as coercion, abduction, fraud, et al; Consider characterizing illegal or fraudulent adoption as TIP, only when the exploitative intent is shown; Amend section 13A of the Child Protection Act (expected to be repealed after the passing of the Children’s Act, 2020) to eliminate the gap in implementation of art. 3 of the TIP Protocol caused by excluding married persons under the age of 18 years from the definition of “child”; Clarify whether the criminal laws of Mauritius reach attempted conduct; Confirm the maximum penalties for violation of section 11 of the Combating of Trafficking in Persons Act (2009). The source provided to UNODC indicates 15 years maximum imprisonment, but open-source reports refer to a recent increase to a 30 year maximum term.
Investigation and prosecution	<ul style="list-style-type: none"> Strengthen collection of data relating to the investigations, prosecutions, convictions and sentences for crimes of TIP.
Protection and assistance	<ul style="list-style-type: none"> Clarify whether Mauritius operates specialized shelters and systematic care for trafficking victims; Clarify the term “inmates” on section 4 of the 2009 Act, it is unclear whether the term “inmates” connotes criminalization of victims under the laws of Mauritius or in Mauritian society, but the use of this term to describe trafficking victims may be likely to cause confusion. Inform UNODC whether section 16 of the Combating of Trafficking in Persons Act 2009 concerning compensation to victims of trafficking has been used in practice.
Prevention	<ul style="list-style-type: none"> Consider finalizing the Anti-TIP National Plan of Action and Operationalizing it; Assess the effectiveness of border control to identify potential situations of transnational trafficking, with a view to strengthening control in relation to this crime.

¹⁹⁵ Mutual Assistance in Criminal and Related Matters Act 2003 (Act 35 of 2003); http://www.vertic.org/media/National%20Legislation/Mauritius/MU_Mutual_Assistance_Criminal_Matters_Act.pdf

¹⁹⁶ See, e.g., the Mauritius –India MLAT, <http://www.cbi.gov.in/interpol/mlat/Maritius.pdf>

Coordination and cooperation	<ul style="list-style-type: none"> • Provide information about whether Mauritius has made or received any requests for international cooperation (extradition or mutual legal assistance) pursuant to UNTOC and the TIP Protocol. • Clarify which bilateral, regional and international agreements and other mechanisms are in place and are needed, to support Mauritius's efforts to cooperate internationally to combat TIP.
Return and reintegration	<ul style="list-style-type: none"> • Clarify which laws of Mauritius are used to ensure compliance with non-refoulement obligations in the context of repatriation of trafficking victims.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

RWANDA

Overview of national legislation

The Republic of Rwanda (Rwanda) signed both the UNTOC and Trafficking in Persons Protocol in December 2000 and ratified both in September 2003. In addition, Rwanda is a party to most of the major multilateral human rights treaties, including, inter alia, the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), including its protocols on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.¹⁹⁷

The leading anti-Trafficking in Persons legislation is known as Law No. 51/2018 of Relating to the Prevention, Suppression and Punishment of Trafficking in Persons and Exploitation of Others (hereinafter, Law No.

51/2018). Along with two implementing orders: i) The Ministerial Order No. 013/MOJ/AG/21 of 29/08/2021 providing for other particular means for supporting the victim of the crime of Trafficking in Persons; ii) The Prime Minister's Order No. 019/03 of 29/08/2021 determining the organ responsible for providing necessary means for repatriation of the victim of crime of TIP.

Law No. 51/2018 comprises four chapters. Chapter I states the purpose and scope of the legislation and defines pertinent terms. Chapter II deals with prevention of TIP, as well as protection of and assistance to victims. Chapter III establishes penalties for TIP offences and related conduct, and contains provisions concerning the irrelevance of victim consent, non-criminalization of victim conduct, liability of carriers, etc. Chapter IV includes articles regarding international cooperation, a particularly important provision concerning the repeal of prior legislative provisions that conflict with Law 51/2018, and effective dates for the legislation.

Jurisdiction over offences: The Law No. 51/2018 provides jurisdiction to the courts of Rwanda, whether or not connected with organized crime, if the offence has been committed inside the national territory of Rwanda or by a Rwandan national, a stateless person or a foreign citizen residing in Rwanda at the time of the commission of the offence (art. 2) and outside the territory by a Rwandan national or any other person who permanently resides in Rwanda at the time of the commission of the offence, and where the offence is committed by any person of any nationality or any stateless person against a Rwandan national.

Scope of offences: Article 1 of the Law No. 51/2018 provides that the law sets out the legal regime for prevention, suppressing, and punishment of TIP and exploitation of others, as well as the protection and assistance to the victims of TIP.

Non-discrimination principle: Article 7 of the Law No. 51/2018 provides the guarantee of assistance and support services for victims of TIP, without any discrimination.

Liability of legal persons: Article 28 of the of the Law No. 51/2018 provides a fine, if convicted of TIP to public or private companies, institutions, organizations and associations with legal personality, of not less than 50 million and not more than 100 million Rwandan francs.

¹⁹⁷ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=111&Lang=EN, last checked on 2 February 2020.

Other pertinent laws include:

- Law No. 66/2018 of 30/08/2018 Regulating Labor in Rwanda
- Article 7 prohibits the imposition and/or acceptance of forced labour, with exceptions for mandatory military service, civic or patriotic service training, court-imposed, government-supervised labour, and labour imposed in connection with disasters, emergencies or states of siege. However, Law No. 66/2018 of 30/08/2018 does not include any corresponding penalty section for violation of article 7. Article 6 prohibits various forms of child labour, defining a child as a person under 18 years of age. Article 117 imposes a maximum penalty of 5 years imprisonment and/or a fine for violation of article 6. The possibility of a fine in lieu of imprisonment falls short of UNTOC TIP Protocol standards, with regard to the exploitation of trafficked minors for labour. Imposition of penalty is left to the appreciation of the Judge within the limit of the law, basing on the circumstance surrounding the offense and its gravity.
- Law No. 68/2018 of 30/08/2018 Determining Offences and Penalties in General article 94 includes enslavement as a crime against humanity. Article 99 includes enslavement, slavery-like practices and forced labour as categories of war crimes.
- Law No. 71/2018 of 31/08/2018 Relating to the Protection of the Child. “Child” is defined as “any person under eighteen (18) years of age.”
- Law No. 59/2008 On Prevention and Punishment of Gender-based Violence – Article 28 imposes a penalty of 15 to 20 years imprisonment and a fine upon conviction of gender-based trafficking, which is not further defined in Law 59/2008. This law is currently under review to make it clearer and more understandable.
- Law No. 027/2019 Relating to the Code of Criminal Procedure
- The Criminal Procedure Code contains many pertinent articles regarding domestic investigation, detention and trial procedures, jurisdictional issues pertaining to crimes committed extraterritorially by Rwandans, etc.
- The Constitution of The Republic of Rwanda, 2003
- The current Constitution was drafted in the wake of the 1994 genocide, but it was revised in 2015. Constitutional guarantees include the right to physical and mental integrity (art. 14), free choice of employment (art. 30), and a child’s right to specific mechanisms of protection by the family, society and State (art. 19).

Definition and criminalization

Definition and sentencing: Article 3 of Law No. 51/2018 defines 23 terms, ranging from “trafficking in persons” and other offences to UNTOC-related terms such as “organized criminal group.” The Rwandan legislation includes separate definitions of “trafficking in persons” and “transnational trafficking in persons.” The definition of “trafficking in persons” found in article 3 of Law No. 51/2018 closely follows the definition set forth in article 3 of the TIP Protocol. In addition to covering the acts of recruiting, transporting, transferring, harbouring or receiving persons, the Rwandan definition adds the word “hires” to the list of punishable acts. The Rwandan definition also replicates the TIP Protocol’s approach to trafficking of a child, found in article 3(c) of the TIP Protocol, which establishes that recruiting, transporting, transferring, harbouring or receiving a child for the purpose of exploitation qualifies as trafficking, even if the conduct does not involve any of the means that would be required if the victim were an adult. Curiously, this part of the Rwandan definition omits the additional term “hires,” which is likely a drafting oversight.

Law No. 51/2018, article 3 defines certain terms that are used without definition in the TIP Protocol, including “coercion,” “deception,” and “abuse of a position of vulnerability,” doing so without distorting the definition of trafficking found in the TIP Protocol. The Rwandan legislation also expands the non-exhaustive list of examples of exploitation found in the TIP Protocol, adding, e.g., “forced or coerced begging,” for-profit adoptions, fostering or guardianships, and “use or offering of a child for illicit activities” for the purpose of exploitation.

Article 3 of Law No. 51/2018 also defines “transnational trafficking in persons.” The Rwandan definition borrows from the general concept of transnational offences, found in article 3(2) of UNTOC (i.e., the main Convention), and applies it specifically to TIP. Under Rwandan law, TIP is transnational in nature if it is committed in more than one State, committed in one State but with substantial preparation, planning, direction or control in another State, committed in one State by an organized criminal group that operates across borders, or committed in one State but with substantial effects in another. Article 3 of Law No. 51/2018 also defines forms of conduct related to TIP, including “debt bondage,” “coercion,” “sexual exploitation,” and “exploitation of another”.

An analysis of Rwanda’s implementation of the criminalization requirements under UNTOC and the Trafficking in Persons Protocol requires that definitions found in chapter I, article 3 of Law No. 51/2018 be read together with chapter III (Penalties for Offences of Trafficking in Persons and Exploitation of Others). The analysis is supplemented by references to other pertinent Rwandan laws, as needed.

Article 18 of Law No. 51/2018 prescribes the basic penalties for TIP. If the offence is purely domestic, a person convicted of TIP is subject to imprisonment for at least 10, but not more than 15 years and a fine. If the offence is transnational, the term of imprisonment is between 20 and 25 years, in addition to a fine. The penalties enacted under Rwandan law are sufficient to comport with the requirements of UNTOC and the TIP Protocol.

Article 19 of Law No. 51/2018 defines the offence of “Promoting and facilitating trafficking in persons.” Article 19 proscribes 8 categories of conduct when done in connection with the promotion or facilitation of trafficking, including: leasing or subleasing buildings, using or permitting the use of a building or residence, advertising, publishing or distributing promotional material, tampering with or falsifying documents in connection with trafficking, managing, running or financing recruiting agencies, confiscating, concealing or destroying travel or other personal documents, facilitating or assisting entry into or exit from Rwanda of a person in possession of fraudulent travel documents, and any other means of promoting TIP. The penalties for violation of article 19 are between 7 and 10 years imprisonment and a fine, which are sufficiently stringent.

Aggravating circumstances: Article 20 of Law No. 51/2018 establishes 9 categories of aggravating circumstances that increase the penalty for violations of article 18 or article 19 to life imprisonment. Aggravating circumstances apply where: the offence results in a victim’s serious injury, disability, incurable disease, death or suicide; where the victim is particularly vulnerable, e.g., pregnant, physically or mentally disabled; there is more than one victim; the offence is connected with “an organized criminal association”; the offence involved use of drugs, medications or weapons; the offender has previous convictions for the same or similar offences; the offender is the victim’s spouse or conjugal partner; the offender exercises control over the victim; or the offender is in a position of trust or responsibility regarding the victim. Where the victim is a child, the punishment for violations of articles 18 or 19, or under article 22 (Forced labor, slavery or related services, discussed below), is life imprisonment and a significant fine.

Article 29 of Law No. 51/2018 makes failure to report the offence of TIP a crime punishable by 1 to 3 years imprisonment. Recognizing that criminalization of failure to report the offence of TIP is not required under UNTOC or the TIP Protocol, the penalties imposed would not raise the offence to the level of a “serious crime” as defined in UNTOC article 2.

Non-liability of victims of trafficking: Article 17 of Law No. 51/2018 provides that a victim of TIP won’t be detained, charged, or prosecuted for his/her illegal entry into or residence in Rwanda, or for his/her involvement in any unlawful activity that was a direct consequence of his/her situation as a trafficked person. Nonetheless, it was reported in the *2020 U.S. Trafficking in Persons Report*, that authorities continued to

detain thousands of vulnerable persons, including adults and children in commercial sex, and children exploited in forced begging at the ‘transit centers’, facilities created and run by the government which also refers victims of TIP to other services.

Investigation and prosecution

Asset seizure and freezing: Article 257 of Law No. 51/2018 provides temporary seizure and confiscation of buildings or any other venues used for TIP by the competent authorities, until the final court decision on their restitution to the owner.

The Constitution of the Republic of Rwanda, 2003 establishes a National Public Prosecution Authority, under the authority of the Ministry of Justice. The Office of the Prosecutor General, within the National Prosecution Authority, is staffed by the Prosecutor General, Deputy Prosecutor General, and National Prosecutors.¹⁹⁸ The Constitution also establishes the National Police, which has national jurisdiction to investigate crimes.¹⁹⁹ Under the Rwandan criminal procedure law, criminal prosecutions are to be instituted by the Public Prosecutor but can also be brought as private prosecutions by aggrieved persons.²⁰⁰ Law No. 12/2017 of 07/04/2017 establishes the Rwanda Investigation Bureau which is responsible for investigating crimes in Rwanda

According to the *2020 U.S. Trafficking in Persons Report*, the National Public Prosecution Authority prosecuted nine alleged traffickers in 11 cases during 2019, compared to 53 cases in 2018.²⁰¹ Rwanda Courts convicted two traffickers for forced labour crimes and imposed them a penalty of 20 years of imprisonment and a fine of 20 million Rwandan francs (\$21,620 each). There are no reports on prosecutions and convictions of sex traffickers, although there is documented presence of sex trafficking in the country.²⁰² The Ministry of Justice, however, maintains that criminal justice practitioners report on number of investigations, prosecutions and convictions achieved for TIP as well as the information relating to the victims rescued but this information was not corroborated.

Protection and assistance

Protecting the rights of victims of trafficking: Three articles of chapter II of Law No. 51/2018 are devoted specifically to the protection of victims. In addition, chapter III includes an article focused on non-criminalization of victims.

Article 7 (Non-discrimination against the victim) reads simply “[t]he protection of and assistance and support to the victim are carried out without discrimination.” Presumably, this language is intended as a mandate that victims receive the same protections and assistance, regardless of nationality, circumstances (e.g., victims rescued from forced prostitution), etc. However, this interpretation should be confirmed with the Rwandan Ministry of Justice and UNODC should inquire how article 7 is applied in practice.

Article 8 (Protection of the victim and the victim’s accompanying dependents) requires the Ministry of Justice to take “all appropriate measures to ensure that the victim and the victim’s accompanying dependents have access to adequate protection if their safety is at risk.” It explains the criteria used in risk assessment or guidance concerning the nature and extent of protection provided to victims. Risk assessment is done in accordance with the Standard Operating Procedures (SOPs) and guidelines document and tool for ISANGE One Stop Center (IOSC), an initiative by the Rwanda National Police to support victims, adopted in 2016. This One Stop Center mechanism that offers short-term supports in terms of medical, rehabilitation and legal services at no cost for victims. The one-stop centers are located in hospitals and district capitals. In 2019, the Government continued to operate its network of 44 one-stop centers in the country. One-stop centers typically have “safe rooms” available that victims may use as temporary shelter for a few days²⁰³. Due to a lack of shelter, Rwanda Government does not have long term facilities for the majority of TIP victims.²⁰⁴ In 2019, Rwanda officials identified 96 trafficking victims and referred 30 for assistance to shelters. Law enforcement, immigration officials, and social workers in one-stop centers had victim identification guidelines, but implementation remained limited.²⁰⁵

198 Constitution of The Republic of Rwanda, Articles 161-162.

199 Constitution of The Republic of Rwanda, Articles 10-171.

200 Law No. 30/2013 of 24/5/2013, Article 3.

201 *The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Rwanda.*

202 *The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Rwanda.*

203 *The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Rwanda.*

204 IOM, In Rwanda, Research on Understanding Human Trafficking Validated. See <https://www.iom.int/news/rwanda-research-understanding-human-trafficking-validated>

205 *The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Rwanda.*

Article 9 (Protection of the identity of the victim during court proceedings) authorizes judges to order various forms of protection during court proceedings, including: conducting proceedings in camera, sealing records of court proceedings, taking victim evidence via video link or alternative technology, permitting the use of pseudonyms by victims, and the admission into evidence of a victim's pre-trial statements. The judge may do so on his or her own accord or at the request of a victim. It would be instructive to know whether article 9 of Law No. 51/2018 has been used in practice. So far one case was tried in camera to protect the identity of the victim/ witness.

Article 17 (Non-liability of the victim) is found in chapter III of Law No. 51/2018. The goal behind article 17 is to ensure that trafficking victims are not charged, detained or prosecuted either for illegal entry or residence in Rwanda, or for criminal activities engaged in by the victim as "a direct consequence of his/her situation as a trafficked person." This provision complies with the TIP Protocol on paper. However, compliance with this legislative provision is extremely difficult to appreciate in the absence of proof of adequate screening for and identification of trafficking victims. Screening to identify victims of trafficking in order to comply with the non-liability of victims is done through elaborated investigation and deep analysis of available evidence.

Four articles of chapter II of Law 51/2018 focus specifically on victim assistance, particularly with regard to victim participation in investigations and legal proceedings. In addition to provisions that apply to all trafficking victims, one article establishes additional assistance to which child victims of trafficking are entitled.

Article 10 (Basic assistance services to the victim) designates the Ministry of Justice as the Government entity to cooperate with other public agencies, international organizations, civil society and private institutions to ensure that trafficking victims receive "basic assistance services," regardless of immigration status or participation in the trafficking investigation or prosecution. Assistance provided pursuant to article 10 is intended for persons trafficked within or to Rwanda, as well as for trafficking victims who are repatriated to Rwanda. This legislation does not define "basic assistance services," however the definition is provided for under the Ministerial Order No. 013/MOJ/AG/21 which includes provision of shelters, medical services, confidentiality and right of privacy, reintegration, education and vocational training and access to job opportunities for victims.

The difference between the "basic assistance services" mentioned in article 10 and the "special treatment" in article 11, especially concerning the "social services, health care and security" treatment to which victims are entitled by law, needs to be ascertained by the Rwandan authorities. Article 11 also provides that "[a]n Order of the Minister provides for other particular means for support to the victim and services made available to him/her." This "special treatment" includes access to information, legal assistance and support in presenting victims' views in legal proceedings, in a language understood by the victim, as well as any "protection, assistance and support" to which the person is entitled, whether from governmental or non-governmental sources.

Article 12 (Special assistance to the child victim) adds an additional four categories of "special treatment" available to child victims, in addition to the aforementioned assistance to be provided to any trafficking victim. These 4 types of "special treatment" include: i) the presumption that the victim is a child, pending verification of age, if the age is unknown "and there are reasons to believe that the victim may be a child"; ii) assistance from "specially trained professionals" according to the victim's needs; iii) legal guardianship for unaccompanied child victims; and iv) efforts by the responsible child protection entity to establish the child's identity and nationality and to locate the child's family, if locating the family is in the best interest of the child.

Article 13 (Permission for a non-Rwandan victim to remain in Rwanda) establishes bifurcated assistance with regard to delayed removal of non-national trafficking victims. The first form of assistance is intended to ensure that victims are not removed from Rwanda prior to verification of their identity by a competent authority. The second permits foreign nationals to remain in Rwanda for at least 6 months, and throughout the course of legal proceedings, without prejudice to any other Rwandan laws. Particularly with regard to immigration enforcement, in practice, the victim is given choice to stay or go back; when they choose to stay, they can get refugee status or residence visa free of charge.

Article 112 of the Law No. 027/2019 of 19/09/2019 relating to the criminal procedure provides that a person aggrieved by an offence who intends to apply for damages may either file an action in a criminal court or a civil court. Additionally, Article 11 of the law No. 51/2018 provides that the victim is provided with the legal assistance throughout the entire proceedings, and he/she is exempted from payment of any filing fees required under civil procedure laws when bringing a civil suit in compensation for damages caused by the crime of TIP committed against him/her.

As for long-term facilities, the Ministerial Order No. 013/MOJ/AG/21 of 29/08/2021 providing for other particular means for supporting the victim of the crime of TIP provides under article 3 that the victim is sheltered for a period not exceeding 6 months in consideration of his or her age, sex or the category of trafficking undergone. If the victim of crime of TIP has recovered and is being prepared for reintegration, he/she referred to the District administration for reintegration (art. 8).

A 2019 study conducted by IOM on TIP revealed that despite efforts to protect and assist victims of TIP, Rwanda lacked a sufficient number of shelters, and assistance was typically short-term. Additionally, the One-Stop centers tended to lack services for male victims. The study also revealed that service providers lacked sufficient training to properly identify and categorize victims of TIP.²⁰⁶

Prevention

Law No. 51/2018, chapter 1 includes 3 articles aimed at the prevention of TIP. Article 4 (Policies and strategies for the prevention of Trafficking in Persons) assigns responsibility to the Ministry of Justice to make and implement policies and strategies regarding prevention of Trafficking in Persons. Article 4 anticipates cooperation between the Ministry of Justice and “public and private institutions, civil society and international organizations” in prevention efforts.

Article 5 of Law No. 51/2018 (Duty to report the offence of Trafficking in Persons) creates an obligation on the part of “[a]ny person who obtains information about the victim, the commission of or the intention to commit” a trafficking offence to criminal investigators or other competent authorities. As noted above, article 29 imposes criminal penalties for violations of article 5.

Article 6 of Law No. 51/2018 (Duties of carrier) requires commercial carriers to verify identity or travel documents needed for entry into destination countries or through transit countries. Commercial carriers also are required to report attempted travel without proper identity or travel documents.

Raising awareness: According to the 2020 U.S. Trafficking in Persons Report, the Rwanda Government conducted national and local awareness campaigns at police departments, government celebrations and community events. Between July and December 2019, the Ministry of Gender and Family Promotion in partnership with local-level child labor steering committees, conducted 187 awareness campaigns. It was also reported that the Government provided logistical support in partnership with international organizations when conducted cross-border community dialogue meetings, live radio talk shows, awareness messaging and campaigns on national news broadcasts and social media across seven districts, involving community leaders, civil society representatives, school teachers and TIP victims. In March 2019, the Government in collaboration the International Organization for Migration (IOM), provided a training for 33 law enforcement officers on identification, investigation and referral of victims of TIP.²⁰⁷

Border Control Measures: According to the Rwandan Government, there is a specific Division within the Directorate of Immigration and Emigration which is responsible for detecting TIP cases at the border. This division allegedly has an IT system containing all information provided to the Directorate of Immigration and Emigration while applying for any travel documents.

Validity and legitimacy of travel and identify documents: Article 19, 4° of Law No. 51/2018 provides that whoever tampers with or falsify a document for the purpose of committing or facilitating TIP; will commit the offence of promoting and facilitating TIP, with a penalty of not less than 7 years and not more than 10 years of imprisonment and a fine of not less than 7 million and not more than 10 million Rwandan francs.

Article 6 of the of Law No. 51/2018 also provides for duties of commercial carriers which include to verify that each passenger possesses the identity or travel documents required to enter the destination country or any transit country; and to report to the competent authority that a person has attempted to or has travelled on that carrier without the identity or travel documents required to enter the destination country or any transit country.

²⁰⁶ 2019 Finding on the worst forms of child labour: Rwanda

²⁰⁷ See [https://reliefweb.int/sites/reliefweb.int/files/resources/IOM Trains Rwanda Law Enforcement Officers to Adress Human Trafficking.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/IOM%20Trains%20Rwanda%20Law%20Enforcement%20Officers%20to%20Address%20Human%20Trafficking.pdf)

Coordination and cooperation

National level coordination and cooperation: As noted in the previous section on prevention, the Ministry of Justice is responsible for policies and strategies for the prevention of trafficking, in coordination with the public and private sectors, civil society and international organizations. However, according to the *2019 U.S. Trafficking in Persons Report*, the Government failed to cooperate with civil society regarding provision of assistance to trafficking victims. According to the Rwandan government, the National Action Plan for Combating Trafficking in Persons is being developed.

Article 16 of UNTOC creates obligations regarding extradition. Article 16(1) establishes that extradition applies to the four UNTOC offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice) and to “serious crime” as defined in article 2 (offences punishable by at least 4 years imprisonment), if the offences involve an organized criminal group and the fugitive is located in the territory of a requested State Party. Article 1(3) of the TIP Protocol extends this coverage to offences established under the TIP Protocol. Under Article 16(3) any existing bilateral extradition treaties between States Parties are deemed to be amended to include offences created under UNTOC or its Protocols.

Under Article 190 of the Constitution of The Republic of Rwanda, 2003, treaties that have been published in the official Gazette “shall be more binding” than domestic laws. However, article 25 of the Constitution bans the extradition of Rwandan nationals. Article 207 of Law No. 30/2013, the criminal procedure law, establishes nationality jurisdiction over Rwandans who commit felony offenses outside of Rwanda, which should comply with Rwanda’s extradite-or-prosecute obligation under UNTOC article 16. However, it is unlikely that this has been tested in the context of TIP, and UNTOC should seek confirmation from Rwandan authorities that they would prosecute Rwandan nationals in lieu of extradition, including for any of the UNTOC or Trafficking in Persons Protocol offences. The *2020 U.S. Trafficking in Persons Report*, reported that, during the reporting period, the Government of Rwanda negotiated extradition treaties with Ghana and Angola and collaborated with other Governments to extradite suspected traffickers and engaged in joint investigations by facilitating the exchange of information, knowledge, and capacity building.

Bilateral and regional coordination and cooperation: Provisions on Mutual legal assistance is not included in the Law No. 51/2018, however, Rwanda has enacted a law No. 005/2021 of 05/02/2021 governing mutual legal assistance in criminal matters to address matters on international cooperation.

Article 11 of the Law No. 68/2018 of 30/08/2018 determining offences and penalties in general provides that a Rwandan citizen who commits a felony or a misdemeanour outside the territory of Rwanda may be punished in accordance with the Rwandan law as if the offence was committed in Rwanda, provided that such an offence is punishable by the Rwandan law.

Repatriation and reintegration

Repatriation: Chapter II, articles 14 and 15 of Law No. 51/2018 cover the repatriation of victims of trafficking. Article 14 (Repatriation of the foreign victim to his/her country) reads as follows: “Without prejudice to other legal provisions, the Ministry, in collaboration with the authority in charge of immigration and emigration, may repatriate the victim to his/her country of origin.” In accordance with article 3 of Law No. 51/2018, “the Ministry” refers to “the Ministry in charge of justice.” The Rwandan Government reported funding and repatriating three trafficking victims to Burundi in 2018.²⁰⁸ In 2019, the Government repatriated Rwandan victims identified abroad, however, the Government lacked capacity and support to reintegrate trafficking victims into their respective communities.²⁰⁹

²⁰⁸ The *U.S. Trafficking in Persons Report 2019* (U.S. State Department 2019), Country Narrative Rwanda.

²⁰⁹ The *U.S. Trafficking in Persons Report 2020* (U.S. State Department 2020), Country Narrative Rwanda.

Article 15 (Return of the victim to Rwanda) is more detailed than its repatriation of foreign victims' counterpart provision. Article 15 applies to victims who are Rwandan or who had the right to permanent residence in Rwanda when the trafficking occurred. Article 15 requires the competent authority – defined in article 3 as “a person, group of people, institution or agency entitled to exercise powers by virtue of law” – to facilitate and accept a victim’s return to Rwanda “without unreasonable delay.” The competent authority is also responsible for protecting the victim’s “rights and safety, privacy, dignity and health” during the repatriation process. If a trafficked Rwandan victim lacks proper travel documents to return to Rwanda, the relevant competent authority is responsible for issuing travel documents. The Prime Minister has the authority to direct the proper authorities to provide resources to cover repatriation costs, including transportation.

The Prime Minister’s Order No. 019/03 of 29/08/2021 gives the Ministry of Foreign Affairs responsibilities for covering the cost of transportation and other necessary means for repatriation of a victim of the crime of TIP to Rwanda. So far, this authority has not yet covered any costs for repatriating victims to Rwanda.

The *Non-refoulement* principle is provided under article 13, 14 of Law No. 51/2018 as well as in the Ministerial Order No. 013/MOJ/AG/21 of 29/08/2021 providing for other particular means for supporting the victim of the crime of TIP whereby a victim who is a foreigner and is unable or does not wish to return to his or her country, he or she is assisted to obtain a residence permit or asylum in Rwanda.

Temporary/permanent residence: Provisions on temporary/permanent residence are not included in the Law No. 51/2018.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> Clarify whether the Government intends the punishment for violation of art. 29 of Law No. 51/2018 (failure to report trafficking) to fall below the minimum threshold for “serious crime” as defined in UNTOC art. 2.
Investigation and prosecution	<ul style="list-style-type: none"> Clarify how disaggregated data on detection, investigation and prosecution of TIP cases is gathered.
Protection and assistance	<ul style="list-style-type: none"> With regard to art. 8 of Law No. 51/2018, explain the criteria used in risk assessment or guidance concerning the nature and extent of protection provided to victims; Explain whether art. 8 is implemented through regulations, official guidance, or another manner to ensure compliance; Consider amending Law No. 51/2018 to provide a definition of “basic assistance services” as used in art. 10; Clarify how the Government cooperates with civil society and the private sector in providing services to victims of TIP; Clarify the differences between “basic assistance services” mentioned in art. 10 and “special treatment” used in art. 11 of Law No. 51/2018. Indicate whether the Minister of Justice has issued orders under art. 11 and, if so, describe the nature of the services and support provided to victims; Explain whether “special treatment” under art. 12 of Law No. 51/2018 or other provisions of Rwandan law were provided to child soldiers rescued by Rwandan authorities;
Prevention	<ul style="list-style-type: none"> Consider adopting and implementing an Anti-TIP National Plan of Action.
Coordination and cooperation	<ul style="list-style-type: none"> Consider cooperating with Civil Society Organizations to operate long-term shelters for victims of TIP.
Return and reintegration	<ul style="list-style-type: none"> Amend Law No. 51/2018 to include an explicit non-refoulement provision and prohibition of degrading and inhuman treatment to ensure safety during repatriation of victims of TIP, according to art. 32 and 33 of the 1951 Geneva Convention and art. 33 the 1967 TIP Protocol;
Data collection	<ul style="list-style-type: none"> Consider strengthening ongoing data collection efforts through having a centralized data collection mechanism on TIP and relevant disaggregated information.

SEYCHELLES

Overview of national legislation

The Republic of Seychelles (Seychelles) became a State Party to the UNTOC in 2003 and ratified both the Trafficking in Persons Protocol and Smuggling of Migrants Protocol in 2004. In addition, Seychelles is a party to most of the major multilateral human rights treaties, including, *inter alia*, the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), including its protocols on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.²¹⁰

The leading anti-Trafficking in Persons legislation is the Prohibition of Trafficking in Persons Act, 2014 (2014 TIP Act).²¹¹ Other pertinent legislation includes the Penal Code (1955, updated through 2012); the Employment Act (1995); and selected articles of the Constitution of the Republic of Seychelles (1993). In 2019, Seychelles was in the process of finalizing its labour migrant policy to better address migrants' vulnerability to human trafficking.²¹²

The penalties established under the 2014 TIP Act are sufficient under the requirements of the TIP Protocol. Unfortunately, there are conflicting legislative provisions in the Penal Code that could undermine the trafficking legislation in Seychelles, potentially resulting in uneven enforcement and non-compliance with Seychelles' obligations under the UNTOC and TIP Protocol.

The Penal Code, the Misuse of Drugs Act, 2016, the Anti-Money Laundering Act, the Proceeds of Crime Act and the Prohibition of Trafficking in Persons Act, 2014, criminalizes participation in an organized criminal group.²¹³

The following, non-exhaustive list of examples illustrates the problem of conflicting laws in Seychelles, however, Seychelles authorities, after a Scenario Based Exercise was conducted with the support of UNODC to identify gaps in legislation and needs for harmonization, have made recommendations for next steps in order to harmonize relevant legislation:

- **Penal Code Section 134**
 - **Abduction of girls under sixteen:** Under the Penal Code, this conduct is a misdemeanor offence. According to Seychelles authorities, the Child Law Reform Committee has included provision in the proposed Sexual Offence Bill which is yet to be brought to Cabinet of Ministers for consideration. It is anticipated that same will be presented before the National Assembly early next year.
- **Penal Code Section 135**
 - **Sexual interference with a child:** The belief that a child was above the age of 15 years is a defense to commission of "an act of indecency." According to Seychelles authorities, the proposed Sexual Offence Bill seeks to address this gap in the protection of children from sexual exploitation.

210 See, <https://indicators.ohchr.org>, last checked on 18 November 2019.

211 See, <https://seylil.org/sc/legislation/act/2014/9>, last checked on 18 November 2019.

212 See, <http://www.nation.sc//articles/1009/vice-president-addresses-parliament-on-world-trafficking-in-persons-day>

213 Trafficking in Persons, Questionnaire for Legislative Assessment, returned 4 November 2019; Seychelles.

- **Penal Code Section 139**
 - **Procuring defilements by threats, etc.:** This is a misdemeanour offence that requires more than one witness to convict, absent corroborating evidence. According to Seychelles authorities, the proposed Sexual Offence Bill seeks to address this gap.
- **Penal Code Section 141**
 - **Detention of female in brothel and elsewhere:** This is a misdemeanour offence.
- **Penal Code Section 233**
 - **Unsafe or overloaded vessel:** This is a misdemeanour offence that undercuts the aggravating circumstances provisions of the 2014 TIP Act.
- **Penal Code Section 240**
 - **Kidnapping from lawful guardianship:** This offence carries maximum penalty of 10 years imprisonment if victim is a male below the age of 14 or a female below the age of 16, excluding boys between the ages of 14-18 and girls between the ages of 16-18. According to Seychelles authorities, harmonization of the age and an amendment is currently being considered in order to ensure adequate protection for children under the age of 18 years.
- **Penal Code Section 249**
 - **Buying or disposing of a person as a slave:** This is a felony punishable by a maximum of 10 years imprisonment, below the penalties under the 2014 TIP Act.
- **Penal Code Section 251**
 - **Forced labour:** Under the Penal Code, forced labour is a misdemeanour offence, punishable by a maximum of 3 years imprisonment, below the UNTOC threshold for serious crime and well below the penalties established under the 2014 TIP Act.

Jurisdiction over offences: The 2014 TIP Act does not include jurisdictional provisions. Guidance concerning jurisdiction is found in the Penal Code. Section 6 of the Penal Code establishes territorial jurisdiction within Seychelles “and any place over which the Republic has jurisdiction.” Section 7 creates jurisdiction over persons in Seychelles concerning offences that are committed partly within and partly outside Seychelles.

Scope of offences: The Prohibition of Trafficking in Persons Act, 2014, supports investigations and prosecutions, in addition to provisions aimed at prevention and protection of victims.

Definition and criminalization

Definition and sentencing: The offence of “trafficking in persons” is set forth in section 3 of the 2014 TIP Act. The description and elements of the crime are taken straight from the TIP Protocol’s definition. The acts: recruiting, transporting, transferring, harbouring or receiving are covered by the Seychelles legislation. Likewise, the means used: threat, use of force, coercion, abduction, fraud, deception, abuse of power or of another person’s vulnerability, or giving or receiving payments or benefits to gain consent of a person having control over another person, are all included in the 2014 TIP Act. The definition of TIP is well understood by criminal justice actors in Seychelles.²¹⁴ The challenge of applying this legislation in practice, according to UNODC questionnaire responses, is the reluctance of the victims to report and cooperate for effective investigation and prosecution. The victims prefer to treat it as labour dispute and settle the case by mediation with payment of wages and compensation.

²¹⁴ Trafficking in Persons, Questionnaire for Legislative Assessment, returned 4 November 2019; Seychelles.

Child trafficking is criminalized in section 4 of the 2014 TIP Act. Seychelles' legislation is in accord with article 3(c) of the TIP Protocol, which specifies that the recruitment, transportation, transfer, harbouring or receipt of a child for purposes of exploitation is deemed to be trafficking even in the absence of any of the aforementioned means.²¹⁵ Article 5 of the TIP Protocol requires that a State Party criminalize TIP, including participating as an accomplice, ordering or directing others to commit a trafficking offence, and, if its legal system allows, attempting to commit a trafficking offence. Section 6 of the 2014 TIP Act criminalizes the intentional benefiting from the exploitation of trafficked persons.

Article 5 of the TIP Protocol requires that a State Party criminalize TIP, including participating as an accomplice, ordering or directing others to commit a trafficking offence, and, if its legal system allows, attempting to commit a trafficking offence. Section 6 of the 2014 TIP Act criminalizes the intentional benefiting from the exploitation of trafficked persons.

The maximum penalty for violation of section 3 of the 2014 TIP Act is 14 years imprisonment. Child trafficking is punished under section 4 of the 2014 TIP Act and carries a maximum sentence of 25 years, and the same maximum penalty applies to adoptions, fostering or guardianship of a child with the intention of exploitation.

Aiding, abetting, attempting, or counseling the commission of a trafficking offence is punishable under section 7 by a maximum sentence of 25 years imprisonment, while promoting trafficking, as defined in section 8 of the 2014 TIP Act, carries a maximum penalty of 5 years imprisonment.

Aggravating circumstances: Section 5 of the Seychelles legislation lists aggravating circumstances, pertaining to injuries to victims, numbers of victims, use of drugs or weapons, violence or threats of violence, commission by an organized criminal group or by a public servant, etc. Aggravating circumstances increase the maximum penalty to 25 years imprisonment. The maximum penalty for intentionally benefiting from trafficking (section 6) is 25 years.

Aiding and abetting: Aiding, abetting, attempting or counseling the commission of a trafficking offence is criminalized in section 7 of the 2014 TIP Act. Section 8 criminalizes a broad range of conduct under the umbrella of "promotion of trafficking in persons," including leasing premises, advertising, facilitating exit from or entry into Seychelles, confiscating, withholding or destroying travel documents, or preventing a trafficking victim from seeking assistance from law enforcement.

Non-liability of victims of trafficking: Section 17 of the 2014 TIP Act provides that victims of trafficking shall not be detained, charged or prosecuted for the illegal entry into Seychelles. The *2020 U.S. Trafficking in Persons Report*, indicated that there were no reports that the Government inappropriately detained or penalized trafficking victims for crimes traffickers compelled them to commit.²¹⁶

Investigation and prosecution

Section 10 of the 2014 TIP Act requires immigration officers, customs officers, labour inspectors, coast guard personnel, National Drug Enforcement Agency officials, social workers, medical practitioners, or anyone else who has reasonable grounds to believe that another person is being trafficked to report the matter to a police officer. The police will accept anonymous reports and the identity of any person who makes a report will be kept confidential. In responding to the UNODC questionnaire in connection with this assessment, the Government of Seychelles reported initiating two TIP investigations during 2018.²¹⁷ The *2020 U.S. Trafficking in Persons Report* reported that Government of Seychelles did not convict any traffickers in 2019, compared with one conviction in 2018.²¹⁸

²¹⁵ Section 4 of the 2014 TIP Act does not include the word "transportation," but does refer to "transfers." It may be that Seychelles drafters did not see the need for both terms.

²¹⁶ The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Seychelles*.

²¹⁷ Trafficking in Persons, Questionnaire for Legislative Assessment, returned 4 November 2019; Seychelles.

²¹⁸ The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Seychelles*.

In its questionnaire response to UNODC, Seychelles reported initiating two prosecutions in 2018. Seychelles' first TIP prosecution was commenced in 2016 and completed in October 2018, resulting in the country's first conviction. The convicted trafficker was a national of Bangladesh, who was sentenced to 3 years imprisonment on four counts of trafficking. Three additional TIP cases are pending before the Supreme Court.²¹⁹

The *2020 U.S. Trafficking in Persons Report*, reported that the Government investigated 18 cases of forced labor in 2019, 9 investigations found insufficient evidence of trafficking, while agencies closed the remaining 5 cases, reportedly due to lack of victim participation. In 2019, the Government did not report initiating any prosecutions, and did not convict any traffickers.²²⁰

Since 2015, with the support from an international organization, the Government has had access to a national centralized anti-trafficking data collection and reporting tool, however, despite receiving training, the Government has never used this tool.²²¹

Asset seizure and freezing: Provisions on asset seizure and freezing are not included in the 2014 TIP Act. Seychelles authorities agreed to amend the 2014 TIP Act to include such provisions.

A centralized data collection mechanism on identified victims, investigation and prosecution of trafficking cases does not exist, partially due to lack of adequate resource. UNODC received a request of assistance to support the Government of Seychelles with the development of a national database on TIP and the request is currently being considered.

Protection and assistance

Protecting the rights of victims of trafficking: The 2014 TIP Act contains various provisions aimed at protection of and assistance to presumed victims of TIP. Section 10(6) requires police officers to take immediate action to ensure the safety of presumed victims of TIP. If the victim is a child, the child is deemed to need compulsory measures of protection in accordance with section 79 the Children's Act. If the victim is an adult who consents to a referral, the victim will be referred to a "safe and secure designated shelter." In response to the UNODC questionnaire, Seychelles reported that 11 identified victims were provided with shelter (no further information on the shelter has been given).²²² Section 11 of the 2014 TIP Act requires the relevant Minister, in consultation with the Commissioner of Police, to decide whether to permit trafficking suspects or presumed victims to enter Seychelles. Section 12 authorized the Attorney General to apply to the court for an order of witness protection if there are issues of personal safety, obstruction, witness intimidation, or if protection is otherwise in the interests of administration of justice. The Government of Seychelles reported that section 12 has been used and that victim/witnesses were sheltered in safe houses.²²³ However, the 2020 U.S. Trafficking in Persons Report noted that there was no separate shelter for trafficking victims and no comprehensive care facilities in the country. Instead, Seychelles authorities reportedly used private guesthouses, homeless shelters, or a facility formerly used to hold criminal suspects.²²⁴

In an effort to assist forced labour victims, in June 2019, the Government passed regulations outlining the conditions of employment for domestic workers.²²⁵ Also in 2019, it was reported that the Government started to develop work permit cards for all citizens and foreign workers which included anti-trafficking information and contact information for assistance.²²⁶

219 Trafficking in Persons, Questionnaire for Legislative Assessment, returned 4 November 2019; Seychelles.

220 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020)*, Country Narrative Seychelles.

221 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020)*, Country Narrative Seychelles.

222 Trafficking in Persons, Questionnaire for Legislative Assessment, returned 4 November 2019; Seychelles.

223 Trafficking in Persons, Questionnaire for Legislative Assessment, returned 4 November 2019; Seychelles.

224 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020)*, Country Narrative Seychelles.

225 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department, 2020)*, Country Narrative Seychelles.

226 Ibid.

Seychelles' response to the UNODC questionnaire noted that the coordinating body to address TIP in Seychelles are the Ministry of Home Affairs through the police, a task force under the responsibility of the Department of Immigration which conduct joint inspection on various accommodation and work sites and the National Coordinating Committee on TIP (NCCTIP). The Counter Trafficking in Persons Secretariat, which was recently developed and operates under the Ministry of Internal Affairs, currently also coordinates on matters related to TIP. The Government of Seychelles stipulated the need for an amendment to clarify the roles of both bodies.

Seychelles currently lacks a centralized victim identification procedure and a referral tool. In 2019, the Government did not report identifying any victims of trafficking. Currently, the Counter Trafficking in Persons Secretariat, refers individual victims of TIP to comprehensive care facilities, including shelters. In prior years, the Social Affairs Department of the Ministry of Health and Social Affairs provided nine victims who were waiting to give testimony in court with accommodation in private guesthouses, homeless shelters, or a facility previously used to hold suspected criminals.²²⁷

Section 15 of the 2014 TIP Act protects trafficked victims of immediate deportation by asserting that the relevant Minister may determine whether to allow a presumed victim who is not a Seychelles citizen, to remain in the country for a period of 30 days for purposes of recovery, without prejudice to their immigration status.

Compensation and restitution: Section 18 of the 2014 TIP Act provides that, in case of a conviction, the court may order the payment of compensation for the victim of trafficking to be paid out of the fine imposed on the accused; in addition to any penalty; or from the Trafficking in Persons Fund. Nonetheless, the Government of Seychelles has never allotted resources to the Trafficking in Persons Funds. Depending on other relevant legislation, the government could consider allocating proceeds of this crime towards the Fund.²²⁸

Prevention

Raising awareness: Seychelles' response to the UNODC questionnaire noted that the country's Action Plan lapsed, but that the country was in the process of identifying a consultant to assist in revision and adoption of a new plan.²²⁹ The *2020 Trafficking in Persons Report* observed that the Seychelles Government did not conduct any national public awareness campaigns in the previous year but the Coordinating Committee organized media sensitization for a week before the international day against TIP. The Government operated two hotlines – one by the police and the other by the Immigration Department – for reporting trafficking and other crimes but did not provide statistics on calls received.²³⁰

Part IV of the *2014 TIP Act*, provides the establishment of the National Coordinating Committee on Trafficking in Persons, aimed to direct anti-trafficking efforts across government agencies and drive national policy. The Government recently established the TIP Secretariat to support NCCTIP as required under part IV of the 2014 TIP Act. According to the TIP Secretariat, a draft Anti-TIP National Plan of Action is currently underway with the support of the International Organization for Migration.

Coordination and cooperation

National coordination and cooperation: Article 16 of UNTOC creates obligations regarding extradition. Article 16(1) establishes that extradition applies to the four UNTOC offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice) and to “serious crime” as defined in article 2 (offences punishable by at least four years imprisonment), if the offences involve an organized criminal group and the fugitive is located in the territory of a requested State Party. Article 1(3) of the TIP Protocol extends this coverage to offences established under the TIP Protocol. Under Article 16(3), existing bilateral extradition treaties between States Parties are deemed to be amended to include offences created under UNTOC or its Protocols.

227 Ibid.

228 Ibid.

229 Trafficking in Persons, Questionnaire for Legislative Assessment, returned 4 November 2019; Seychelles.

230 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Seychelles.

In Seychelles, extradition is governed by the Extradition Act (1995). The Extradition Act contains provisions applicable to extraditions between Seychelles and other Commonwealth countries, and provisions applicable to non-Commonwealth countries with which Seychelles has an extradition treaty.

There is a need to strengthen cooperation and coordination amongst criminal justice practitioners who work on TIP cases. Based on the Scenario-based exercise that UNODC facilitated with the support of the Government of Seychelles in 2021, there was a need highlighted to operationalize the TIP task force which is provided for under the legislation and to establish Standard Operating Procedures and/or Guidelines for criminal justice practitioners and first line responders to harmonize the approach in identifying, investigating and prosecuting TIP cases.

Bilateral and regional coordination and cooperation: UNTOC Article 18 establishes a detailed regime for mutual legal assistance, although article 18(6) makes it clear that Article 18 “shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.”

Seychelles has the Mutual Legal Assistance in Criminal Matters Act, 1995 (MLA Act).

The MLA Act governs mutual legal assistance between Seychelles and other Commonwealth countries. The MLA Act also acts as implementing legislation for bilateral Mutual Legal Assistance Treaties (MLATs) and multilateral treaties, such as UNTOC, to which Seychelles is a party.

In November 2019, the Government of Seychelles signed a bilateral agreement with the Government of Bangladesh that created a framework for the recruitment of Bangladeshi workers for employment in various sectors in Seychelles. The agreement reportedly outlined procedures for employment and repatriation of such migrant workers, protections for and rights of migrant workers, and the prevention of trafficking of migrant workers; however, the government did not report any instances of its implementation.²³¹

Repatriation and reintegration

Repatriation and temporary residence: In accordance with section 16(a) and (b) of the 2014 TIP Act, the relevant Minister can, upon a recommendation from the National Coordinating Committee on Trafficking in Persons, issue a permit for a period until the completion of any relevant legal proceedings in accordance with the Immigration Decree; or decide to repatriate a non-citizen of Seychelles to his or her country of origin. Victims of TIP are allowed to work for an employer in Seychelles under a Gainful Occupation Permit (GOP).

Non-refoulement: There is no provision in the 2014 TIP Act addressing non-refoulement principle. UNODC recommends including this provision to protect victims of TIP.

²³¹ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Seychelles.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> • New legislation is needed to adequately define and criminalize conduct prohibited under UNTOC; • Assisting in the drafting of appropriate regulations to support Prohibition of the Trafficking in Persons Act, 2014; • Amend or repeal multiple sections of the Penal Code that establish penalties that conflict with the penalties established by the Prohibition of the Trafficking in Persons Act, 2014, including, for example, the following sections of the Penal Code: <ul style="list-style-type: none"> • Penal Code Section 134 Abduction of girls under sixteen. Under the Penal Code, this conduct is a misdemeanour offence. • Penal Code Section 135 Sexual interference with a child. The belief that a child was over age 15 years is a defense to commission of “an act of indecency.” • Penal Code Section 139 Procuring defilements by threats, etc. This is a misdemeanour offence that requires more than one witness to convict, absent corroborating evidence. • Penal Code Section 141 Detention of female in brothel and elsewhere: This is a misdemeanor offence. • Penal Code Section 155 Brothel. Managing or leasing premises to operate a brothel is punishable by a maximum of 3 years imprisonment; below the UNTOC definition of serious crime. • Penal Code Section 233 Unsafe or overloaded vessel. This is a misdemeanor offence that undercuts the aggravating circumstances provisions of the 2014 TIP Act. Consider excluding this provision of the Penal Code. • Penal Code Section 240 Kidnapping from lawful guardianship. This offence carries maximum penalty of 10 years imprisonment if the victim is a male under the age of 14 or a female under the age of 16 years, excluding boys between the ages of 14-18 years and girls between the ages of 16-18 years. • Penal Code Section 249 Buying or disposing of a person as a slave. This is a felony punishable by a maximum of 10 years imprisonment, below the penalties under the 2014 TIP Act. • Penal Code Section 251 Forced labour. Under the Penal Code, forced labour is a misdemeanor offence, punishable by a maximum of 3 years imprisonment, below the UNTOC threshold for serious crime and well below the penalties established under the 2014 TIP Act.
Investigation and prosecution	<ul style="list-style-type: none"> • Amend the 2014 TIP Act to include provision on ‘Asset seizure and freezing’ to enable confiscation of instruments or proceeds of crimes in TIP offences, in accordance with art. 12 of the UNOTC; • Establish official national level data collection mechanism on identified victims, investigation and prosecution of TIP cases; • Provide initial and continuous education and training to all relevant officials of law enforcement, the judiciary and to the National Coordinating Committee of Trafficking in Persons staff. • Consider establishing Standard Operating Procedures and/or Guidelines for first line responders and criminal justice practitioners to effectively detect, investigate and prosecute TIP cases.
Protection and assistance	<ul style="list-style-type: none"> • Allocate funds to the Trafficking in Persons Fund in order to fully implement section 18 of the 2014 TIP Act, which provides compensation for the victim of trafficking;
Prevention	<ul style="list-style-type: none"> • Finalize and adopt the draft national action plan to drive national efforts to combat TIP; • Amend the 2014 TIP Act to include relevant provisions on strengthening the security and control of documents (and criminalize its altering or falsification) in accordance with art. 12 and 13 of the TIP Protocol.
Coordination and cooperation	<ul style="list-style-type: none"> • Operationalize the TIP task force that is provided for under the 2014 TIP Act, and consider having the TIP Secretariat coordinate with all the relevant first line responders and criminal justice practitioners to harmonize and strengthen national cooperation and coordination on TIP cases.

Return and reintegration	<ul style="list-style-type: none">• Amend 2014 TIP Act to include an explicit non-refoulement provision and prohibition of degrading and inhuman resources to cover repatriation costs, including transportation.• Facilitate the process of issuance of temporary or permanent residence permit for victims of TIP.
Data collection	<ul style="list-style-type: none">• Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for human trafficking, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation.• Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

SOMALIA

Overview of the national legislation

The Federal Republic of Somalia is composed by the Federal Government, based in Mogadishu, and five Federal Member State (FMS) governments. The five FMS of Somalia are bound by the Provisional Constitution of the Federal Republic of Somalia, however, there is lack of clarity on the distribution of competencies as provided for in article 54 of the Constitution. Accordingly, they cannot adopt legislation that is inconsistent with federal laws but they may still legislate and approve policies separately. Somaliland is a self-declared state that is not recognized by the international community. Accordingly, and for the purposes of this assessment, Somalia does not have effective sovereignty over Somaliland in terms of legislation. The al-Shabaab insurgency has control of certain areas of the country which, in addition to causing lack of law and order as well as insufficient capacity, pose obstacles to mounting effective response to Trafficking in Persons, and related crimes.²³²

Somalia is not yet a state party to the UNTOC or its Supplementary Protocols. Although the current Ministry of Justice has expressed the willingness to develop a legislative response to TIP, there is currently no national legislation that governs TIP. In practice, alternative offences such as abduction and money laundering, as well as other offences provided for in the Penal Code are used in combination to tackle counter-trafficking.

The following legislation is relevant to TIP:

- Provisional Constitution of the Federal Republic of Somalia (2012):
 - Slavery servitude, trafficking and forced labour (art. 14)
 - Prohibition of use of children in armed conflict (art. 29(6))
 - Right of access to information (art. 32)
 - Refugees and asylum (art. 37)
 - International obligations (art. 140)
- The pre-1991 Penal Code of The Somali Democratic Republic (applicable at Federal and Regional Levels). Articles 47 to 60 concern liability, but do not flag liability of legal persons. The Penal Code prohibits:
 - Instigating or facilitating prostitution or exploiting the proceeds thereof, imprisonment of 2 months to 2 years and fine of 100-2000 Somali shillings, increased where against person(s) incapable of consent; a relative or against a person in care of perpetrator (art. 407)
 - Compelled prostitution of a person through violence or threats, prescribing penalties of 2 to 6 years imprisonment and a fine of 5000-15,000 Somali shillings (art. 408(1)).
 - Forced labor and other forms of TIP, prohibiting and penalizes slavery and practices similar to slavery, prescribing penalties of 5 to 20 years imprisonment (art. 455)

²³² The U.S. Trafficking in Persons Report 2017 (U.S. State Department 2017), Country Narrative Somalia.

- Dealing or trading in slaves; 5 to 20 years (art. 456)
- Sale and purchase of slaves; 3 to 12 years (art. 457)
- Compelling another to submit to his own power, reducing him to a state of subjection; 5 to 15 years (art. 458)
- Compulsory labour prescribing penalties of 6 months to 5 years imprisonment and a fine of 5000-20,000 Somali shillings (art. 464)²³³
- The Criminal Procedure Code of Somali, 1963:
 - Slavery and trafficking (art. 35)
- Labour Code, Law No. 65, 1972:
 - Forced labour (art. 6)
 - Child labour prohibited for children under 15 (art. 93)
- Child Protection Act, 2014
- Anti-Money Laundering and Countering the Financing of Terrorism Act, 2016 Marriage is regulated by Sharia law, meaning that child and early marriage is allowed.

Somaliland: The Somaliland Constitution and Penal Code only indirectly address TIP but contain no specific provisions.²³⁴ UNODC has supported the Government of Somaliland in drafting a comprehensive Anti-Trafficking in Persons and Smuggling of Migrants bill, which was passed by the Parliament of Somaliland, signed by the President and published in the Gazette. The draft law effectively criminalizes both crimes and provides for adequate offences as in line with UNTOC and the Supplementary Protocols. Currently, existing national laws prohibit forced labor, involuntary servitude, and slavery that may be relevant to trafficking, and immigration offences may be relevant in smuggling contexts.

- Constitution of the Republic of Somaliland (2000) captures basic rights of people including commitment to international human rights (art. 10(2), 21(2), 24) based on Islamic principles (art. 5, 128); prohibition of forced labour (art. 20(3))²³⁵
- The Somaliland Government has adopted a ruling that extends application of the Penal Code of Somalia (1962) in Somaliland.²³⁶
- The Civil Code (1973) concerns contracts for labour.
- Private Sector Employees Law, Law No. 31/2004 (amended 2010) governs all aspects of employment and prohibiting employment of foreigners illegally residing in Somaliland.
- Labour Law (2010) outlines procedures for employing foreign workers
- Citizenship Law (2002) sets out how citizenship can be gained or lost and has been criticized for potentially creating statelessness.²³⁷ Rules pertaining to nationality may create some interpretative issues.

²³³ The U.S. Trafficking in Persons Report finds this penalty sufficiently stringent but not commensurate with those prescribed for other serious crimes, such as rape. The Trafficking in Persons Report 2017 (U.S. State Department, 2017), Country Narrative Somalia.

²³⁴ Kitty Hamilton and Mebratu Gebeyehu, Fight or flight: The challenge of building sustainable livelihoods for youth in Somaliland amidst the explosion in human trafficking (Danish Refugee Council / European Union, 2014) 10

²³⁵ http://somalilandlaw.com/somaliland_constitution.htm

²³⁶ http://somalilandlaw.com/criminal_law.html

²³⁷ See: Mapping of the Existing Framework, Capacity and Interventions in Managing Mixed Migration Flows in Somalia (Altai Consulting for the Regional Mixed Migration Secretariat, April 2017) 68.

Puntland: In November 2017, Puntland ratified a legislative framework for TIP, comprising a new Penal Code and Criminal Procedures Code, as well as the Law against Trafficking in Persons.

- Constitution (2001): recognizes international human rights in so far as they are not inconsistent with Islamic Shariah and Puntland Laws (art. 11); prohibits any form of slave trading (art.32(2)); defines children as being under 15 years old (art. 19(1)) and prevents children from labour of any kind that can endanger, hurt the life, behavior, upbringing, care and education (art. 19(3)). Forced labour is forbidden, “unless other special regulations of law are provided and shall specify by specific law (art. 92(2)).
- Sexual Offences Law (2016): criminalizes acts including sexual exploitation
- Labour Law (2011)
- Law against Trafficking in Persons (2017) criminalizes TIP, provides a framework for protection and assistance, and emphasizes international cooperation.

Definition and criminalization

There is significant confusion between Trafficking in Persons and Smuggling of Migrants. The Somali term ‘*Tahriib*’ infers the movement of people in search of a better life and so captures both regular and irregular migration journeys, and can connote smuggling or trafficking, depending on the context the word is used.²³⁸ To ‘go on *Tahriib*’ has negative connotations.

Definition and sentencing: Given the current lack of a comprehensive Anti-TIP legislation in Somalia, the crime of TIP is not defined, but rather is criminalized in the Provisional Constitution of 2012, the Somali Criminal Procedure Code, concerning slavery and Law Code Law No. 65 of 1972 concerning forced or compulsory labour. The Labour Code does not define the term ‘forced or compulsory labour’ in its article 1 definition section. The scope of application of the Labour Code is limited by article 2 to exclude armed forces, police forces and paramilitary forces, meaning that the situation of child soldiers could not be captured by it. It is unclear in practice, which exceptional types of work fall within article 93(2) of the Labour Code, and whether any of those work forms may amount to exploitation of the type envisaged to be captured by the TIP Protocol.

In practice, the offence of abduction is primarily relied on, as well as money laundering and other offences that appear in the Penal Code (notably including art. 455 and 457 on slavery) are used in combination to tackle trafficking offences, calling upon skilled prosecutors to be proactive and creative in piecing together cases.

The Somali word ‘*Tahriib*’ and its understanding that people consent to move in search of better opportunities raises confusion about the role that consent plays in smuggling and trafficking.²³⁹

In Puntland, the Law against Trafficking in Persons creates offences of (a) Trafficking in Persons; (b) child trafficking; promoting Trafficking in Persons; (d) aggravated forms of trafficking; (e) responsibility of legal persons, and (f) illegal deprivation or misuse of identification documents.

Non-liability: According to article 71 of the Penal Code, a person who participates in an offence is to be punished, except where the person was caused to participate, in which case he or she is not liable. It is not clear whether this provision has ever been applied to exempt victims of trafficking for liability for acts they committed as a result of being trafficked.

²³⁸ Kitty Hamilton and Mebratu Gebeyehu, Fight or flight: The challenge of building sustainable livelihoods for youth in Somaliland amidst the explosion in human trafficking (Danish Refugee Council / European Union, 2014) 9, 15, 23-24, 55.

²³⁹ Kitty Hamilton and Mebratu Gebeyehu, Fight or flight: The challenge of building sustainable livelihoods for youth in Somaliland amidst the explosion in human trafficking (Danish Refugee Council / European Union, 2014) 23-24.

Criminalization of ‘undesirable foreigners’: The offences specified under article 37(1) of the Immigration Act primarily target the actions of the migrant him or herself. Furthermore, the term ‘undesirable person’ or ‘undesirable foreigner’ as it attaches to smuggled or trafficked people, introduce a range of measures that could serve to effectively criminalize migrants, and stigmatize a broad range of individuals, including migrants in irregular situations, who may be trafficked or smuggled. Article 30 of the Immigration Act states that a person can be declared an ‘undesirable foreigner’ by a decision of the Minister of Internal Affairs (a) If he/she is served with a deportation order in accordance with the law, (b) If he/she has insufficient means to support himself/herself, (c) If a medical certificate confirms that he/she suffers from an infectious disease or from a physical disease and, for health purposes and having due regard to the current health conditions in the country, his/her entry and stay in the territory of Somalia cannot be approved, (d) If he/she enters the territory of Somalia unlawfully without possession of legal travel documents and a permit as required by law, (e) If the presence or the activities of the (foreign) person in the territory of Somalia are contrary to the public order, national security, the morals of the nation and religion.

Investigation and prosecution

Insufficient understanding of Trafficking in Persons as an internal phenomenon: In addition to the confusion between trafficking and smuggling, there continues to be a lack of understanding that TIP may wholly occur inside the country, with no borders being crossed, and may involve Somali perpetrators. This lack of understanding may raise significant challenges in identifying and addressing cases of internal trafficking.

Insufficient capacity to investigate and prosecute trafficking: There continues to be a lack of criminal justice capacity in Somalia in general, with a lack of structure to the Federal Government police force.

Lack of criminal justice data on trafficking: There are no reliable statistics on the number of investigations, prosecutions or convictions of trafficking at the federal or regional level. Complaints are often resolved through informal, community-based alternative dispute resolution. The *2020 U.S. Trafficking in Persons Report* reported that in January 2020, authorities detained one Somali man outside the Aden Abdulle International Airport on suspicion of TIP, the investigation remains ongoing. The report also observed that Somali authorities did not report efforts to investigate, prosecute, or convict any official for involvement in trafficking or criminal activities related to trafficking during the reporting period.²⁴⁰ The 2018 report notes that the Somali Police Force investigated one potential case involving South Sudanese traffickers in 2017, but no prosecutions or convictions were reported. No law enforcement efforts were reported for that year in Somaliland or Puntland.²⁴¹

The Counter-Trafficking and Organized Crime Unit of the Somali Police Force has the key responsibility to respond to trafficking and smuggling crimes, led by the head of the Criminal Investigation Division. Identification of the crimes of trafficked persons generally takes place after the incident has taken place, when people return to the country. At the point that potential victims are recruited, young people are very often approached by criminal networks and told that they do not have to pay until they reach Europe. During their journey, ransoms may be demanded from migrants’ families which they pay before the person carries on with the journey. Families in these situations will rarely report to authorities because the victim and his or her family do not necessarily view the situation as victimization but still as a means to an end that they have an interest in achieving. There is a lack of proactive identification of trafficking, with reliance on the support of NGOs or the assumption that victims will identify themselves. They remain reluctant to do so owing to fear of retaliation.

Currently, investigative priority is given to investigation of terrorism, signifying the need to build up awareness of TIP and migrant smuggling as criminal phenomena that intersect with terrorism. There is a lack of understanding of the distinction between the crime types, as well as their overlaps. At present, foreign fighters who are trafficked into Somalia are not seen to be victims of TIP. Rather, these crime types are considered as related to migration issues (or ‘*Tahriib*’). There is a lack of understanding of victimization of children by terrorist groups including Al-Shabaab, including of children being recruited in Tanzania or Kenya. The trafficking of children into armed conflict is particularly acute: it is estimated that in Somalia more than half of Al-Shabaab may comprise children.²⁴²

²⁴⁰ The *U.S. Trafficking in Persons Report 2020* (U.S. State Department 2020), *Country Narrative Somalia*.

²⁴¹ The *U.S. Trafficking in Persons Report 2018* (U.S. State Department 2018), *Country Narrative Somalia*

²⁴² Report of the Secretary-General on children and armed conflict in Somalia (22 December 2016) UN Doc S/2016/1098 [17].

Law No. 2 of 23 December 1972 concerns the organization of the Somali Police Force, establishing it as an integral part of the Armed Forces (art. 2(1)). There are no legislative provisions relevant to special investigative techniques and it is unclear what capacity and resources authorities have to apply them in practice to complex crimes, including Smuggling of Migrants and Trafficking in Persons.

As a maritime State with more than 3,300 km of coastline, Somali waterways are critical to the country's economic development. However, lack of capacity to control the maritime environment creates significant opportunities for transnational crime, including TIP, and related phenomena. These realities point to the need to integrate counter-trafficking capacity building into ongoing efforts (including those supported by UNODC and the EU Capacity Building Mission in Somalia) to strengthen maritime security capacity and implement the Somali Maritime Code (finalized in 2017 with support from UNSOM and the International Maritime Organization) in accordance with international law, including the TIP Protocol as well as UNCLOS.²⁴³

Protection and assistance

According to the Provisional Constitution (2012), “Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment” (art. 15(2)). Article 32 protects the right of access to information, which may be relevant to the exercise of protection and assistance rights of all trafficked persons. The phrasing of the Constitution in so far as provisions apply to ‘every’ or ‘any’ persons suggest that both Somalis and non-Somalis alike fall within its ambit of protection.

Protecting the rights of victims of trafficking: Currently, there is no legislation on protection of TIP victims' rights in Somaliland.

The Federal Government of Somalia nor authorities in Somaliland provide protective services to victims of TIP. Instead, the Governments fully rely on international organizations and NGOs to provide victim assistance, protective provisions, and reintegration services. In 2019, Trafficking victims in Somaliland received assistance at an international organization-run Migration Response Center (MRC) in Hargeisa and another MRC in Bosasso in Puntland until the MRC could reunite them with their respective families. Neither facility was dedicated solely to trafficking victims and instead provided services broadly for the vulnerable transiting migrant population.²⁴⁴

Witness protection: Persons returning to Somalia often need significant protection, though resource limitations mean that very often it is only those who are witnesses to very high-level crimes (for instance involving terrorist groups) who may receive it. No legislative framework for witness protection could be identified. In practice, persons in need of protection – notably those who are returned to Somalia – face significant protection risks. The dangers such persons may face are acute; accordingly, the media has been noted as needing to be sensitized to the risks that they may create for individuals. Victims remain reluctant to report to authorities in fear of retaliation.

Compensation and restitution: No legislative provisions or other framework for providing compensation or restitution for victims of TIP could be found in Somali law.

In **Puntland**, the Law against Trafficking in Persons includes statutory support and assistance provisions including on (a) legal protection; (b) services; (c) confidentiality; (d) witness protection; (e) migrants and foreigners; (f) repatriation; (g) compensation; and (h) trust fund. It is not known how effectively those provisions are implemented in practice.

²⁴³ Simon Baker, Training Needs Assessment and Baseline Assessment: Investigation and Prosecution of human trafficking offences, Somalia and Puntland Region (UNODC, 2018) 13-17.

²⁴⁴ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Somalia.

Prevention

Raising awareness: In 2019, the Government of Somalia held multiple campaigns across Somalia to elevate awareness and promote the roles of first responders in identifying and referring victims to relevant authorities.²⁴⁵ The Somali Government held several trafficking-related awareness campaigns in 2018, including one entitled “Telling the Truth”, which aimed to engage returnees and TIP survivors to tell their stories at universities and through dialogue with community leaders.²⁴⁶ The Federal Government of Somalia reportedly also launched a public awareness campaign with UN support, to discourage recruitment of children into armed conflict, throughout Mogadishu, Puntland, Southwest, Hirshabelle, Galmudug and Jubaland.²⁴⁷ The need to raise awareness of civil society and the public at large has been flagged, notably to with a view to increasing understanding that TIP is a crime.

In response to the crisis of young people going on *tahriib*, awareness raising about the dangers were stepped up in Somaliland through schools and universities, and some mosques attempting to portray the practice as being haram.²⁴⁸

Speaking in Nairobi on the World Day against Trafficking in Persons on 30 July 2018, Somali Ambassador, Mariam Yassin Hagi Yussuf, Special Envoy for Children and Migrants’ Rights, noted that young people who are educated are the most susceptible to leaving and potentially being trafficked, for want of opportunity at home. In that context, she emphasized that the opportunities they are looking for outside of Somalia need to be provided to them at home.

In Somaliland, the president issued a decree in June 2013 to create the Committee on Illegal Migration and Unemployment, mandating it to generate employment to prevent *tahriib*.²⁴⁹ It is not known how effective this measure has been, and whether it relates directly or indirectly to trafficking.

Border control: Prevention measures that are legislatively permitted in relation to preventing ‘undesirable foreigners’ from entering the country, may contravene international law instruments. The powers that immigration officers are given under article 31 of the Immigration Act are broad and may be implemented in a way that could compromise the protection and assistance of potential victims of TIP. That article gives immigration and police officers the power: (a) To stop the undesirable foreigner and, if necessary, use force so that he/she does not enter the territory of the Republic; (b) to prevent the undesirable foreigner from disembarking a vessel, airplane or vehicle in the territory of the Republic; (c) to detain, without a warrant of arrest, any such undesirable foreigner who is found, in contravention of the provisions of this Law, in the territory of the Somali Republic; and to inform the competent court in accordance with the Criminal Procedure Code. The removal of undesirable foreigners is set out in article 32 of the Immigration Act (see section F below).

The Border Management Information System across Somalia is operating to process the approximate half a million migrants travelling through Somalia annually via its ports of entry.²⁵⁰ In practice, given how vast the borders of the country are, the military also plays a significant role in border control and accordingly need to be engaged as a counter-trafficking stakeholders.

²⁴⁵ The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Somalia.

²⁴⁶ The U.S. Trafficking in Persons Report 2019 (U.S. State Department 2019), Country Narrative Somalia.

²⁴⁷ The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Somalia.

²⁴⁸ See Nimo-ilhan Ali, Going on *Tahriib*: The causes and consequences of Somali Youth Migration to Europe (Rift Valley Forum Research Paper, 2016), 7.

²⁴⁹ See Nimo-ilhan Ali, Going on *Tahriib*: The causes and consequences of Somali Youth Migration to Europe (Rift Valley Forum Research Paper, 2016), 7.

²⁵⁰ Human Trafficking and Smuggling of Migrants in the Context of Mixed Migration Flows: State of play in the IGAD region, Background Paper (Sixth IGAD Regional Consultative Process on Migration (IGAD RCP, October 2015) 40

In 2019, an International NGO provided the Somaliland Immigration and Border Control agency with two buses to transport migrants and victims of TIP from remote to more populated areas where they could be provided with services.²⁵¹

Document control: It is unclear what legislation or other frameworks, if any, are in place to strengthen quality and control of documents with a view to prevent TIP.

Capacity of police, prosecutors and judges to investigate, prosecute and adjudicate TIP and other crimes needs to be built, beginning with basic sensitization of criminal justice practitioners to issues of TIP, Smuggling of Migrants and the intersections between those crimes and terrorism. Such efforts need to be anchored on a solid basis of basic criminal justice training and involve government, local NGOs, religious and tribal leaders who encounter crimes and may be involved in alternative dispute resolution in addressing them. Lawyers in Somalia have often been trained abroad, in both common law countries (for instance, the United Kingdom) or in civil law countries (primarily Italy) or in Mogadishu, but their number remains limited.

Coordination and cooperation

National level coordination and cooperation: The Federal Government's anti-trafficking coordinating body is the Inter-ministerial Trafficking and Smuggling Taskforce. It includes representation from the Ministry of Internal Security, Ministry of Foreign Affairs, Ministry of Justice, Somali Police Force, Ministry of Interior and Federal Affairs, led by the permanent secretary of the Ministry of Interior and Federal Affairs. In May 2016, the Prime Minister issued a decree to specify the membership and mandate of the taskforce and in the same year, the taskforce commenced its elaboration of a national action plan on trafficking. Members of the taskforce liaised with state-level Puntland authorities. The criminal investigations division of the Somali Police Force has a Counter-Trafficking and Organized Crime Unit.

Bilateral and regional coordination and cooperation: Speaking in Nairobi on the World Day against Trafficking in Persons on 30 July 2018, Somali Ambassador, Mariam Yassin Hagi Yussuf, Special Envoy for Children and Migrants' Rights (and coordinator of the Taskforce) and H. E. Mr. Ali Mohamed Sheikh, Charge d'affaires of the Federal Republic of Somalia, emphasised the commitment of the Federal Government of Somalia to work on counter-trafficking within the region and beyond. Amb. Yussuf noted the role of the Joint Action Plan to bring African countries together.

Extradition and mutual legal assistance: Article 36 of the Provisional Constitution (2012) allows for extradition in a manner prescribed by law and on the basis of an international treaty which the Federal Republic of Somalia is party to obligating it to extradite, and on the basis of legislation passed by Parliament.

In Puntland, at the national level, the Puntland Counter-Trafficking Board (PCTB) is chaired by the Office of the Attorney General and Co-Chaired by the Ministry of Women Development and Family Members. Other Members are the Ministry of Security Disarmament, Demobilization and Reintegration; the Ministry of Health as well as a civil society organization and health professional. In 2013 the PCTB established a referral mechanism to coordinate trafficking and irregular migration issues and provided direct assistance to victims.²⁵² The Attorney General reportedly plans to establish a unit responsible for investigating TIP crimes. At the international level, the 2017 Law against Trafficking in Persons states includes provisions on international cooperation, underlining the obligation of the Puntland Government to seek out international cooperation, whether bilateral or regional, to be affected through mutual assistance agreements and/or technical cooperation.

²⁵¹ The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Somalia.

²⁵² The U.S. Trafficking in Persons Report 2019 (U.S. State Department 2019), Country Narrative Somalia.

In Somaliland the Government established the Counter Human Trafficking Agency of Somaliland in 2016, including representatives from immigration, police, coast guard, the attorney general's office and ministries of commerce, finance and civil aviation. The agency is mandated to coordinate counter-trafficking efforts, including developing legislation.²⁵³ A National Committee against Human Trafficking was established in 2013 by direct order of the President, which is chaired by the Ministry of Labour and Social Affairs and includes members of 8 ministries being the Ministry of Interior, Ministry of Justice, Ministry of Resettlement, Rehabilitation and Reconstruction, Ministry of Labour and Social Affairs, Ministry of Religion, Ministry of Youth, Ministry of Planning and Ministry of Education.²⁵⁴ At the bilateral level, there is reportedly close cooperation between Somaliland and Ethiopia and Djibouti, including with police in relation to repatriation.²⁵⁵ At the regional level, Somaliland joined the IOM-supported Mixed Migration Taskforce in 2007.²⁵⁶

In practice, the need to increase the capacity of all relevant stakeholders to play their specific and interrelated roles is a priority for increasing coordination at the Federal level. Currently, there remains a lack of capacity to investigate trafficking, and related crimes, and there are no mechanisms or strategies in place to identify and investigate these and other crimes.

There have been counter-trafficking trainings delivered in Somalia, Somaliland and Puntland by different UN agencies and other actors, notably including UNODC, IOM and the U.S. State Department International Narcotics Law Enforcement (INL) Agency. Concern has been expressed that UN agencies and other actors do not effectively coordinate their efforts to build capacity, resulting in inconsistency, duplication and haphazard approaches that are less effective than they could be.

Repatriation and reintegration

Repatriation: According to the 2019 *U.S. Trafficking in Persons Report*, the Federal Government of Somalia, with support from an international organization facilitated repatriation of 585 Somali migrants who wanted to return from Libya.²⁵⁷ In 2019, the immigration officials in Somaliland claimed to have identified more than 300 Ethiopian migrants who were potential trafficking victims, however it was unclear if the regional government provided any with care or repatriation.²⁵⁸

There are no provisions in the *Immigration Act* concerning Somalia's acceptance of returned Somali nationals, however, under article 21 of the Federal Constitution, Somalia has a legal obligation to accept the returned Somali nationals without any pre-conditions. Somalia has a National Action Plan on Return and Reintegration supported by a Terms of Reference, and a Task Force on Return and Reintegration has been established.

Non-refoulement: The principle of *non-refoulement* is protected by article 37 of the Provisional Constitution (2012) stating that: (1) Every person who has sought refuge in the Federal Republic of Somalia has the right not to be returned or taken to any country in which that person has a well-founded fear of persecution; (2) The Federal Parliament shall enact legislation in compliance with international law, regulating refugees and asylum seekers. However, notwithstanding this provision, article 32 of the Immigration Act allows for the removal of returning 'undesirable foreigners' (defined broadly by art. 30, as discussed above in section A, to include those who have entered Somalia illegally, or even those persons who have regularly entered Somalia but suffer from an infectious disease, lacks means to support himself or if his presence is considered contrary to the morals of the nation and religion).

253 Kitty Hamilton and Mebratu Gebeyehu, *Fight or flight: The challenge of building sustainable livelihoods for youth in Somaliland amidst the explosion in human trafficking* (Danish Refugee Council / European Union, 2014) 10

254 Kitty Hamilton and Mebratu Gebeyehu, *Fight or flight: The challenge of building sustainable livelihoods for youth in Somaliland amidst the explosion in human trafficking* (Danish Refugee Council / European Union, 2014) 20

255 Kitty Hamilton and Mebratu Gebeyehu, *Fight or flight: The challenge of building sustainable livelihoods for youth in Somaliland amidst the explosion in human trafficking* (Danish Refugee Council / European Union, 2014) 20

256 *The U.S. Trafficking in Persons Report 2019* (U.S. State Department 2019), *Country Narrative Somalia*.

257 *The U.S. Trafficking in Persons Report 2020* (U.S. State Department 2020), *Country Narrative Somalia*.

258 *The U.S. Trafficking in Persons Report 2018* (U.S. State Department 2018), *Country Narrative Somalia*.

Article 32: Removal of returning undesirable foreigners

Where an undesirable foreigner returns to the territory of the Republic, an immigration officer has the power to order the captain or the person in charge of a vessel, airplane or vehicle conveying the undesirable foreigner or its agent in Somalia, to take him, without any arguments, to a place outside the territory of the Republic and the foreigner shall be put on board the same vessel, airplane or vehicle at the earliest opportunity. The costs shall be borne by the person or by the transport. Where the captain, proprietor or the agent of the vessel, airplane or vehicle facilitates the entry of an undesirable foreigner into the territory of the Republic, the vessel, airplane or vehicle shall pay the costs incurred by the Government.

Articles 33 and 34 allow persons to be deported following an order by a competent judge, or a decision of the Minister of Internal Affairs. According to the *U.S. Trafficking in Persons Report*, there are no legal alternatives to the removal of foreign victims of TIP from Somalia to countries where they may face hardship or retribution.²⁵⁹ It is not known how these provisions are reconciled with Constitutional protections.

Summary of recommendations

<p>Definition and criminalization</p>	<ul style="list-style-type: none"> • Ratify/Accede the Relevant UN Conventions related to “Trafficking in Persons” and other transnational organized crime including, but not limited to, the UNTOC and Supplementary TIP and SOM Protocols. • Draft a comprehensive Anti-TIP legislation that clearly defines “Trafficking in Persons” and provides for relevant offences and provisions on investigation, prosecution and protection of victims. • Amend the Penal Code to include a definition of organized crime group in accordance with art. 2 of the UNTOC; • Clarify which provisions, if any, of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2016 have been or can be used in relation to TIP; • Clarify which provisions, if any, of the Penal Code concerning corruption have been or can be in relation to TIP crimes; • Amend legislation to incorporate a definition of TIP that accords with the 3 element offence provided for in the TIP Protocol (or two element offence in the case of child victims); • Amend art. 1 of the Labour Code to define the term ‘forced or compulsory labour’ in accordance with international law; • Amend art. 2 of the Labour Code concerning the scope of application to ensure that situations in which children may be exploited in armed services or other exploitative forms of labour are captured; • Clarify which exceptional types of work fall within art. 93(2) of the Labour Code; • Assess criminal justice practitioners’ understanding of the irrelevance of consent in TIP, to determine the practical challenges of interpreting and applying art. 3(b) of the TIP Protocol in practice, with a view to strengthening capacity to effectively identify and prosecute TIP. • On non-criminalization of victims of TIP, consider clarifying whether art. 71 of the Penal Code concerning non-liability of a person caused to commit an offence has ever been used in relation to trafficked persons, with a view to exploring this article as a mechanism to ensure objects of this crime (both Somali and non-Somali) are not unduly criminalized; • Assess the impact of art. 37(1) of the Immigration Act on victims of trafficking, to determine whether there is any risk of their criminalization contrary to international law, norms and standards; • Assess the impact of article 30 of the Immigration Act concerning ‘undesirable foreigners’, with a view to determining whether amendments need to be made in order to avoid criminalizing victims of TIP or otherwise undermining their protections contrary to international law, norms and standards.
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²⁵⁹ The *U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018)*, Country Narrative Somalia.

Investigation and prosecution	<ul style="list-style-type: none"> • Clarify which legislative instruments are currently used to prosecute TIP, (e.g. the Constitution, the Penal Code, Labour Code, Immigration Act); • Clarify the role and assess the capacity of the Counter-Trafficking and Organized Crime Unit of the Somali Police Force to investigate trafficking, as well as organized crime more generally; • Sensitize criminal justice practitioners to the fact that TIP may occur internationally and domestically with no borders being crossed in the commission of the crime; • Sensitize criminal justice practitioners to the fact that traffickers and their victims may be foreigners or Somali nationals, with a view to strengthening identification of potential trafficking situations; • Strengthen data collection on TIP of investigations, prosecutions, convictions and sentences; • Strengthen criminal justice capacity to proactively identify situations of trafficking in progress, and to work with the community to identify individuals and communities at risk of being trafficked, specifically, raise awareness of the reasons that victims of trafficking and their family members may not want to be identified; • Strengthen understanding of the fact that crimes of TIP intersect with terrorism, with a view to strengthening incentive to prioritize investigation and prosecution of these crime types, and to strengthen understanding of how terrorists use of trafficked persons to carry out terrorist activities; • Assess existing capacity of the Somali Police Force to use special investigative techniques in relation to organized crime, with a view to identifying the legislative frameworks that govern police investigative powers, and building capacity in relation to trafficking crimes and organized crime in general;
Protection and assistance	<ul style="list-style-type: none"> • Clarify which provisions of the Constitution are relevant to the protection and assistance of victims of TIP, including foreign and stateless persons, and the framework in place to give effect to those provisions; • Clarify whether trafficked persons who are also classified as ‘undesirable foreigners’ are entitled to protection and assistance, and if so, what the barriers to their access to those entitlements are; • Clarify what mechanisms or procedures are in place to identify and refer potential victims of TIP for protection and assistance; • Clarify what the framework for witness protection is in place in Somalia, whether victims of trafficking may access that framework, and if so, under what circumstances and conditions; • Clarify what mechanism, if any, is in place to provide compensation and restitution to victims of serious crime, including TIP.
Prevention	<ul style="list-style-type: none"> • Review and scrutinize art. 31 of the Immigration Act concerning undesirable foreigners in accordance with international law; • Assess the current and potential capacity of the Border Management Information System to be leveraged to prevent cross-border TIP; • Assess the current and potential role that military can play in identifying and potentially preventing potential human trafficking, with a view to determining their training and capacity building needs as a counter-trafficking stakeholder; • Clarify whether art. 39 and 40 of the Immigration Act have been applied in relation to TIP cases, and if so, to what effect; • Clarify what legislative or other mechanisms, if any, are in place to strengthen quality and control of documents with a view to preventing TIP; • Assess training needs of counter-trafficking stakeholders, and the impact that criminal justice training has had on identifying and disrupting TIP; • Assess the effectiveness of information campaigns in raising awareness of target audiences, with a view to strengthening the messages conveyed through such programs and the impact of those messages in preventing TIP; • Carry out a mapping exercise to determine the role of development programmes to target communities and regions susceptible to TIP.
Coordination and cooperation	<ul style="list-style-type: none"> • Clarify the role of the Inter-ministerial Trafficking Taskforce, the specifying mandates of its member agencies, and progress made on elaborating and implementing a National Plan of Action; • Clarify which bilateral, regional and international agreements and other mechanisms are in place and are needed, to support Somalia’s efforts to cooperate internationally to combat TIP.

Return and reintegration	<ul style="list-style-type: none"> • Clarify what legislative and/or other frameworks are in place to govern the return and repatriation of Somali nationals who have been trafficked; • Clarify the mandate of the Task Force on Return and Reintegration and progress made in elaborating and implementation the National Action Plan on Return and Reintegration; • Clarify how art. 37 of the Provisional Constitution concerning non-refoulement is implemented in responding to transnational TIP; • Clarify what legislation has been implemented to give effect to art. 37 of the Provisional Constitution; • Clarify how art. 37 of the Provisional Constitution is protected in the implementation of art. 32 of the Immigration Act (concerning removal of undesirable foreigners); • Clarify whether art. 37 of the Provisional Constitution has ever been used in relation to trafficked persons; • Clarify the circumstances, if any, under which an ‘undesirable foreigner’ could be entitled to remain in Somalia on the basis of being a victim of TIP; • Clarify what the process is for deciding to return an ‘undesirable foreigner’ and whether an appeal process is in place.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

TANZANIA

Overview of national legislation

The United Republic of Tanzania (Tanzania) ratified both the UNTOC and the Trafficking in Persons Protocol in 2006. Tanzania is a party to most of the major multilateral human rights treaties, including, inter alia, the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), including its protocols on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.²⁶⁰

The leading anti-Trafficking in Persons legislation is the Anti-Trafficking in Persons Act, 2008 (2008 Anti-TIP Act).²⁶¹ The 2008 Anti-TIP Act is organized into 8 parts: part I (Preliminary Provisions); part II (Prohibition of Trafficking in Persons); part III (Investigations and Judicial Proceedings); part IV (Rescue, Rehabilitation, Protection and Assistance to Victims); part V (The Anti-Trafficking Fund); part VI (Anti-Trafficking Committee); part VII (Miscellaneous Provisions); and Part VIII (Consequential Amendments). Significant features of each Part of the 2008 Anti-TIP Act will be discussed herein.

Other pertinent legislation includes the Penal Code (1945); the Law of the Child Act (2009); the Employment and Labor Relations Act (2004); the Sexual Offences Special Provisions Act, (1998); the Children's Act (2011) (Zanzibar); the Penal Decree Act (2004) (Zanzibar) and selected articles of the Constitution of the United Republic of Tanzania (1977).

Jurisdiction over offences: Section 2 of the 2008 Anti-TIP Act specifies that the Act “shall apply to Mainland Tanzania as well as to Tanzania Zanzibar. There are no explicit references to extraterritorial jurisdiction, including conduct by Tanzanian nationals outside of the country. However, under section 7 of the Penal Code, if an offence is committed “partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.”

The Government of Tanzania submitted an amendment of the Anti-trafficking in Persons Act to the Attorney General Office, which has not progressed for over a year, yet the proposed draft includes a specific section that accounts for extra-territorial jurisdiction.

Scope of offences: Article 4 of the Trafficking in Persons Protocol mandates that the Protocol applies, except as otherwise stated in the TIP Protocol itself, to the prevention, investigation and prosecution of TIP conduct, and to the protection of TIP victims. The text of the 2008 TIP Act supports investigations and prosecutions, in addition to providing for the protection of and assistance to victims.

Definition and criminalization

Definition and sentencing: Section 3 of part I of the 2008 Anti-TIP Act defines 26 terms used in the legislation, some of which are more pertinent than others to this analysis. Section 3 defines “child” as “a person below the age of 18 years,” which comports with the TIP Protocol. Section 3 defines various forms of criminal conduct

²⁶⁰ See, <https://indicators.ohchr.org>, last checked on 18 November 2019.

²⁶¹ See, https://sherloc.unodc.org/cld/document/tza/2008/anti-trafficking_in_persons_act_2008.html

related to trafficking in persons, e.g., “abduction,” “debt bondage,” “forced labour and slavery,” “pornography,” “prostitution,” “sex tourism,” and “sexual exploitation” in a straightforward manner.

On the opposite side, the definition of “exploitation” is circular and unnecessarily conflates Trafficking in Persons with Smuggling of Migrants (SOM). “[E]xploitation’ in relation to trafficking in persons, means people smuggling, prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Listing “people smuggling” as a form of continuing exploitation undermines one of the clear legal distinctions between TIP and SOM, as understood in UNTOC and its Protocols. Although SOM is beyond the scope of this legislative analysis, the interchangeable use of “trafficking in persons” and “people smuggling” contributes to conflation of two distinct crimes, which has proven to be a continuing problem in various parts of Eastern Africa. Tanzania should amend the definition of “exploitation” to eliminate confusion.

The term “trafficking in persons” is not defined with the aforementioned terms in section 3 of the 2008 Anti-TIP Act but is defined separately in the criminalization portion of the legislation, discussed below. According to Tanzanian authorities, SOM, which was originally included as a form of exploitation under the 2008 Anti-TIP Act, has been removed and replaced with the minimum forms of exploitation as stipulated in the Trafficking in Persons Protocol, in the draft legislation that is still pending with the Attorney General Office. United Nations Office on Drugs and Crime does not have information on the status of the legislation and/or when is it expected to be passed.

Article 5 of the TIP Protocol requires that a State Party criminalize TIP, including participating as an accomplice, ordering or directing others to commit a trafficking offence, and, if its legal system allows, attempting to commit a trafficking offence.

Part II (Prohibition of Trafficking in Persons) of the 2008 Anti-TIP Act establishes 5 offences: Trafficking in Persons; acts that promote or facilitate TIP; severe TIP; TIP by intermediary; and use of trafficked persons.

Section 4 (Trafficking in Persons) defines the basic offence of TIP in 7 sub-sections, some of which capture the elements of TIP as defined in article 3 of the Trafficking in Persons Protocol (i.e., the act, the means and the purpose of exploitation) and others that clearly do not.

For example, section 4 (1)(a) reads “recruits, transports, transfers, harbours, provides or receives a person by any means, including those done under the pretext of domestic or overseas employment, training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage.” However, the expression “any means” is very broad and the provision does not specify what are the ‘means’ utilized when committing the offence of TIP. Removal of organs is mentioned in the provision under letter (i) as a form of exploitation by “a person by means of threat or use of force, fraud, deceit, violence, coercion or intimidation for the purpose of removal or sale of organs of the person”.

However, a person also commits TIP under section 4 (1)(e) if he or she simply “maintains or hires a person to engage in prostitution or pornography.” Beyond just expanding the TIP Protocol’s definition of trafficking, this sub-section of the Tanzanian 2008 Anti-TIP Act appears to eliminate the ‘means’ element, criminalizing as trafficking the consensual hiring of an adult for purposes of engaging in prostitution or pornography.

In addition to trafficking in relation to domestic or overseas employment and to hiring a person to engage in prostitution or pornography, the remaining five sub-categories of the basic TIP offence are as follows: matching a person to a foreign national for marriage with the intention of various forms of exploitation; offering or contracting real or simulated marriage for the purpose of exploitation; organizing sex tourism or sexual exploitation; adopting or facilitating an adoption for purposes of exploitation; and recruiting, hiring, adopting, transporting or abducting a person by means of threat or use of force, etc., for the purpose of organ removal, or recruiting, hiring, adopting, transporting or abducting a child or disabled person to engage “in armed activities.”

Section 4(2) criminalizes “placement for sale, bonded placement, temporary placement or placement as service where exploitation by some other person is the motive.

Section 4(3) eliminates consent of a child, a parent or guardian of the child as a defense even in the absence of evidence of abuse of power, fraud, deception or vulnerability (i.e, the means of trafficking).

Section 4(4) makes a victim's consent immaterial where any of the means referred to under sub-section (1) of trafficking have been used. As mentioned earlier, section 4(1), does not define what are the "means" that once used, will be placed within the definition of TIP of the legal norm.

Section 4(5) specifies the punishment for the basic offence of TIP, which is discussed separately, below.

Section 5 (Acts that Promote or Facilitate Trafficking in Persons) criminalizes conduct that "promotes, procures or facilitates the commission of trafficking in persons", describing 8 categories of conduct: knowingly leasing or subleasing property; producing, printing issuing or distributing fake or altered documents; advertising, publishing, printing, broadcasting or distributing brochures, etc., fraudulently procuring exit documents; facilitating or assisting exit or entry, confiscating, concealing or destroying travel documents; preventing trafficking victims from leaving Tanzania or seeking help from authorities; and knowingly benefiting from forced labour, and slavery, etc.

Section 6 (Severe Trafficking in Persons) incorporates what are normally thought of as "aggravated circumstances" as elements of a separate criminal offence. Section 6 lists 8 types of "severe trafficking in persons": if the victim is a child or disabled person; if an adoption is for the purpose of various types of exploitation;²⁶² if trafficking is committed "by a syndicate or in large scale"; if the offender is a parent, sibling, guardian or person exercising authority over the victim; if the offender is a public officer, employee or religious leader; if the person is trafficked to engage in prostitution with members or the military or law enforcement; if the offender is a member of the military or law enforcement; or the victim dies, becomes infected with HIV or various diseases, etc.

Section 7 (Trafficking in Persons by Intermediary) criminalizes conduct that resembles the concepts of conspiracy or aiding and abetting under the laws of many countries. It should be noted that the Tanzanian Penal Code has separate provisions relating to conspiracy (sections 384-386), solicitation and incitement (section 390) and attempt (sections 380-382), but the drafters of the 2008 Anti-TIP Act took a different approach. Section 7(1) reads "[a] person who acts as an intermediary for the purpose of trafficking in persons commits an offence." Section 7(2) defines "an intermediary" as "a person who knowingly participates in or is concerned with any aspect of trafficking in persons under this Act..." In turn, "to be concerned with" includes submitting or taking a person to be trafficked; consenting to a person being trafficked; receiving a person for the purpose or subjecting the person to being trafficked; or entering into a written or oral agreement for trafficking purposes or to subject a person to trafficking.

Section 8 (Use of Trafficked Persons) criminalizes buying or engaging the services of trafficked persons for prostitution. The Government of Tanzania has confirmed that the use of trafficked person as stipulated in section 8 is intended to be strict liability crime.

The maximum penalties for violations of section 4 of the 2008 Anti-TIP Act (trafficking) are a fine of one 1,000,000 shillings or 10 years imprisonment or both.²⁶³ (emphasis added). Section 5 (Acts that Promote or Facilitate Trafficking in Persons) carries a maximum sentence of 7 years imprisonment or a fine or both. Section 6 (Severe Trafficking in Persons) is punishable by 10-20 years imprisonment or a fine or both. Section 7 (Trafficking in Persons by Intermediary) is punishable by 7 to 15 years imprisonment or a fine or both. The punishment for violation of section 8 (Use of Trafficked Persons) is 1 to 7 years imprisonment or a fine or both.

Permitting a convicted trafficker to pay a fine and avoid imprisonment falls short of the requirements of the TIP Protocol. According to the *2019 U.S. Trafficking in Persons Report*, Tanzania's "Anti-Trafficking Secretariat (ATS) submitted a proposal to eliminate the alternative sentence of fines, which remained pending in Parliament..."²⁶⁴ It is noteworthy that enactment of the 2008 Anti-TIP Act had the effect of repealing a prior trafficking law, section 139A of the Penal Code, which carried a mandatory prison penalty up to 20 years.

The Government of Tanzania submitted an amendment of the Anti-trafficking in Persons Act to the Attorney General Office and confirmed that they proposed to remove the option of fine as a sentence, which is instead to be used as a supplementary punishment to imprisonment.

²⁶² This category overlaps with one of the types of the basic offence found in section 4.

²⁶³ Anti-Trafficking in Persons Act, 2008, section 4(5).

²⁶⁴ The *U.S. Trafficking in Persons Report 2019 (U.S. State Department 2019)*, Country Narrative Tanzania.

Investigation and prosecution

Part III of the 2008 Anti-TIP Act is labeled “Investigations and Judicial Proceedings.” In actuality, few of the provisions concern investigations, and those that do, arguably could impede criminal investigations. Section 10 requires victims of TIP who have information about ongoing trafficking offences in a different location are required to report that information to the police. Section 11 requires a police officer who receives information pursuant to section 10 to “interrogate the persons alleged to be in commission of the offence.” Although this approach may, in fact, interrupt or prevent a crime, section 11 also seems to preclude an investigating officer from choosing another means of investigation, e.g., surveillance, even if an alternative to direct interrogation would be more prudent. Section 12 requires police to obtain a warrant prior to making an arrest for trafficking, unless the crime is committed in the officer’s presence, or the suspect has obstructed an investigation or is about to commit a trafficking offence. The *2020 U.S. Trafficking in Persons Report* observes that the warrant requirement “creates a higher threshold for law enforcement that does not exist for other similarly serious crimes, which may hinder prosecution efforts.”²⁶⁵ The *2020 U.S. Trafficking in Persons Report* also reported that Tanzania Government investigated 19 trafficking cases during the reporting period, compared with zero investigations during the previous reporting period. The Government prosecuted at least 13 defendants and convicted at least 5 traffickers under the 2008 Anti-TIP Act for sex trafficking. The Government also sentenced one sex trafficker to 3 years’ imprisonment for exploiting two girls in the Singida region and sentenced two other traffickers to 2 years’ imprisonment each.²⁶⁶ In contrast, two unidentified Tanzanian Government agencies provided partial responses to a UNODC questionnaire, submitting conflicting statistics regarding investigations. One source reported 2 trafficking investigations in 2016, none in 2017, and 2 in 2018. The other Tanzanian Government source reported 15 investigations in 2016, 12 in 2017 and 11 in 2018.²⁶⁷

Section 9 of the 2008 Anti-TIP Act aims at protecting the privacy of victims during prosecutions. Police, judges, court personnel and medical practitioners are required to recognize and protect privacy rights of both the victim and the accused. Section 9 imposes confidentiality with respect to names and personal information of victims, prohibiting publication or broadcasting of information about trafficking prosecutions. Section 9(5) provides that where prosecution is conducted in camera, it will be unlawful for: (a) an editor, publisher, reporter or columnist; (b) announcer or producer; (c) producer or director of a film; or (d) any person utilizing tri-media facilities or information technology, to cause publicity of that prosecution. Under section 13, courts may impose more severe penalties on repeat offenders. Section 24 permits the court to issue confiscation and forfeiture orders against “all proceeds and properties derived from the offence of trafficking in persons.” Courts can order convicted offenders to pay damages from substitute assets if the proceeds, properties or instruments of the offence have been destroyed or diminished. Section 15 mandates issuance of court orders against convicted persons to pay compensation to victims. It is not known whether such orders have been issued in practice. In its response to the UNODC Questionnaire, the Tanzanian Government reported initiating and completing two prosecutions in 2018, resulting in 1 conviction, and 5 prosecutions completed in 2017, with two convictions.²⁶⁸

The Government of Tanzania reported that the Secretariat has been collecting disaggregated data on TIP and disseminating to the public, however there’s a clear need to establish a centralized national database on TIP, which the Government currently lacks fund to establish and operationalize.

Asset seizure and freezing: Section 14(1) provides that the court may order the confiscation and forfeiture, to the Government of all proceeds and properties derived from the offence of TIP. In case the proceeds, properties and instruments in respect of the TIP offence were destroyed, the offender will be ordered to pay the amount equal to the value of the proceeds, property and instruments of the offence (section 13 (3)).

²⁶⁵ The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Tanzania*.

²⁶⁶ The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Tanzania*.

²⁶⁷ 2019 Trafficking in Persons: Questionnaire for legislative assessment partial responses recorded by two unidentified Tanzanian Government entities.

²⁶⁸ 2019 Trafficking in Persons: Questionnaire for legislative assessment, Tanzania.

Protection and assistance

Protecting the rights of victims of trafficking: Part IV of the 2008 Anti-TIP Act, “Rescue, Rehabilitation, Protection and Assistance to Victims” contains 8 articles. Section 17 tasks “public officers in the security services” with rescuing trafficking victims and providing temporary care and protection. The Commissioner of Social Welfare is responsible for providing counseling services to victims of TIP. Under section 18, the Minister of Home Affairs is supposed to coordinate with the Minister for Social Welfare to protect, rehabilitate and provide assistance to victims. Protection services are not conditioned on witness cooperation but are “subject to availability of resources.” According to the *2020 U.S. Trafficking in Persons Report*, the Tanzania Government reported identifying 161 potential victims of TIP and referred all of them to assistance. The 2008 Anti-TIP Act requires police and immigration authorities to use standardized procedures and forms for case investigation and victim identification and referral. The Government drafted standardized forms for identification and referral in a previous reporting period, however, the procedures were not fully implemented because the government did not fund their dissemination.²⁶⁹

Part IV, 18(3) provides that the Government shall provide temporary safe housing, psychological services, medical and social welfare as may be necessary. Currently, Tanzania continues to rely on government-vetted NGOs to provide the vast majority of victim assistance, the Government does not operate any domestic trafficking shelter. In 2019, the Government accredited new shelters run by NGOs, bringing the number of government-vetted and accredited shelters to 8.²⁷⁰

In September 2020, the International Organization for Migration (IOM), the United Nations Migration Agency in partnership with the Government of Tanzania, Ministry of Health, Community Development, Gender, Elderly and Children launched “the National Guidelines for the Establishment and Management of Safe Houses for Victims of Trafficking in Persons and Survivors of Violence”. The guidelines provided a clear checklist for the requirements of establishing and managing Safe Houses and offering services for the victims. According to the Government, the guidelines are aligned with the National Plan of Action to End Violence against Women and Children in Tanzania (2017-2022), and the National Anti-Trafficking in Persons (TIP) Plan of Action (2018 - 2021).²⁷¹

Section 34 of the 2008 Anti-TIP Act provide protection to victims of TIP from prosecution of offences they committed as a direct result of being trafficked.

Witness protection: In 2015, the Government of Tanzania adopted the Whistleblower and Witness Protection Act²⁷² to promote and facilitate reporting of organized crimes. The Act provides protection of whistleblowers and witness against potential retaliation and victimization. The 2015 Act and the 2008 Anti-TIP Act gave the option to victims of TIP to refuse to participate in prosecution efforts. According to the UNODC questionnaire, the 2015 Act hasn’t been used yet in relation to TIP.²⁷³

The Government of Tanzania reported the development of Standard Operational Procedures (SOPs) for Protecting Assisting and Referring Trafficked Children as well as Safe Family Reunification Guidelines for Child Victims of Trafficking. This information has not been corroborated.

Compensation and restitution: Section 15(1), (2) and (3) entitled victims of TIP to restitution from convicted traffickers. The payment of compensation shall be in addition to any other punishment. However, the Government did not report awarding restitution during the year of 2019 but have indicated that this section is allegedly operational.²⁷⁴

269 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Tanzania*.

270 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Tanzania*.

271 See <https://tanzania.iom.int/press-releases/national-guidelines-establishment-and-management-safe-houses-victims-trafficking-and>

272 See <http://www.parliament.go.tz/polis/uploads/bills/acts/1563887322-THE WHISTLEBLOWER AND WITNESS PROTECTION ACT, NO. 20-2015.pdf>

273 2019 Trafficking in Persons: Questionnaire for legislative assessment, Tanzania.

274 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Tanzania*.

Prevention

Part VI of the 2008 Anti-TIP Act concerns the Anti-Trafficking Committee (ATC). Section 30 establishes the ATC for the purpose of “defining, promoting and coordinating the policy of the Government for prevention and control of trafficking in persons.” Pursuant to section 31, the ATC is an interagency group with representatives from immigration, police, intelligence and security services, the Attorney General’s Office, the Ministries of Foreign Affairs, Labour, Local governments, Social Welfare and others. One of the responsibilities of the ATC, pursuant to section 32 of the 2008 Anti-TIP Act, is to “make recommendations for a national plan of action against trafficking in persons.”

Raising awareness: According to the *2019 U.S. Trafficking in Persons Report*, the ATC had a budget of 100.5 million TZS (approx. \$ 44,000), which was inadequate to conduct public awareness campaigns. In 2019, Tanzania Government continued to fund and publicize a national hotline operated by a local NGO to report child abuse, including child trafficking. The Government did adopt a new national action plan²⁷⁵ (2018-2021), but failed to allocate resources to implement it through the Anti-Trafficking Secretariat and other government entities.²⁷⁶ During the same year and as a result of a partnership with an international organization and with foreign donor support, the Tanzania Government provided training to 181 police officers, immigration officials, prosecutors, social welfare professionals, community leaders, and NGOs on TIP, including victim identification, and separately supported and facilitated workshops for 70 police, immigration officials, prosecutors, social welfare, community leaders, and NGOs.²⁷⁷ The *2020 U.S. Department of State Trafficking in Persons Report* reported that the Government co-organized and offered support and resources for a public awareness event, which was broadcast on national television, that over 500 members of the Government and public attended.

The Tanzanian response to the UNODC Questionnaire describes the ATC but acknowledges that there are no mechanisms in place to collect criminal intelligence on TIP, for the reason that they haven’t developed the specific tools for that. The Tanzanian Questionnaire response also indicates that domestic laws on money laundering, corruption, obstruction of justice, fraudulent travel documents, whistleblower protection, etc., have not been used in trafficking cases.²⁷⁸

Coordination and cooperation

National level coordination and cooperation: The Anti-Trafficking Committee (ATC), as discussed above in the context of trafficking prevention, is the national coordinating entity in Tanzania regarding anti-trafficking efforts. A small secretariat office established under the 2008 Anti-TIP Act serves the ATC. Stakeholders that are key sources of data concerning TIP in Tanzania include the Anti-Trafficking Secretariat, the Police Department, the Immigration Department, the National Office of the Director of Public Prosecutions, the Case Management Unit of the Judiciary, the Social Welfare Department, the Ministry responsible for Local Government, IOM and various NGOs that provide services to victims of TIP.²⁷⁹ The recently adopted “Anti-Trafficking in Persons National Plan (2018-2021) provides the framework for domestic coordination. However, UNODC....

Bilateral and regional coordination and cooperation: UNTOC, article 18, establishes a detailed regime for mutual legal assistance, although article 18(6) makes it clear that article 18 “shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.”

275 See https://www.unodc.org/documents/southernafrica//Publications/CriminalJusticeIntegrity/TraffickinginPersons/Tanzania_THE_NATIONAL_ACTION_PLAN_20182021.pdf

276 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020)*, Country Narrative Tanzania.

277 The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020)*, Country Narrative Tanzania.

278 2019 Trafficking in Persons: Questionnaire for legislative assessment, Tanzania.

279 2019 Trafficking in Persons: Questionnaire for legislative assessment, Tanzania.

International cooperation in the form of mutual legal assistance is governed by Tanzania's Mutual Legal Assistance in Criminal Matters Act (1991).²⁸⁰ Any request by Tanzania for assistance in any criminal matter shall be made by the Attorney-General, subject to purpose, description of the nature of the criminal matter, the name of the authority concerned, details of the procedure that the foreign country wishes to be followed by Tanzania in giving effect to the request including details of the manner and form in which any information, document or thing is to be supplied to the foreign country pursuant to the request.²⁸¹ The United Republic of Tanzania has signed two treaties on mutual legal assistance in civil and criminal matters. Assistance can be provided in the absence of a treaty on the basis of reciprocity, and under the (Harare) Scheme Relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth. The Convention may be directly applied, and the United Republic of Tanzania has had experience using the Convention as a legal basis for international cooperation.²⁸²

Article 16 of UNTOC creates obligations regarding extradition. Article 16(1) establishes that extradition applies to the four UNTOC offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice) and to "serious crime" as defined in article 2 (offences punishable by at least 4 years imprisonment), if the offences involve an organized criminal group and the fugitive is located in the territory of a requested State Party. Article 1(3) of the Trafficking in Persons Protocol extends this coverage to offences established under the TIP Protocol. Under article 16(3), existing bilateral extradition treaties between States Parties are deemed to be amended to include offences created under UNTOC or its Protocols.

Article 36(1) of the 2008 Anti-TIP Act provides for extradition to a non-citizen of Tanzania who commits the offence of TIP to be conducted under the Extradition Act. The Extradition Act (1965) governs extraditions to and from Tanzania.²⁸³ Under section 3, the Extradition Act applies to extraditions between Tanzania and other countries with which Tanzania has an agreement after the Minister in charge of legal affairs has published a notification in the Gazette.

Repatriation and reintegration

Repatriation: Section 21 of the 2008 Anti-TIP Act requires the Government to "ensure repatriation and reception of victims of Trafficking in Persons who are Tanzanians or stateless persons who were entitled to permanent residence in the United Republic upon entry into the territory of another state." Section 21 also permits the Government to facilitate repatriation of Tanzanian victims through issuance of any needed travel documents or other authorizations. In 2019, the Government of Tanzania assisted in the repatriation of 7 Tanzanian victims and 3 foreign victims, 2 of the foreign victims were repatriated to Mozambique and 1 to South Africa.²⁸⁴

Section 22 of the 2008 Anti-TIP Act provides for the repatriation of a victim of TIP who is a child or disabled person to the country of origin, if two conditions are met. The first is that a parent, relative or legal guardian gives consent to receiving the trafficking victim. The second condition is that a government agency (or child protection agency) in the country of origin agrees to take responsibility for the child and provide "adequate assistance and protection." There is no mention of a disabled person in the second condition, however, the Government indicated that the omission of the words "disabled person" from the second condition may have been a drafting oversight and that this section applies to both, child victims and disabled persons.

Part V (sections 25–29) of the 2008 Anti-TIP Act focus on the creation, funding and oversight of an "Anti-Trafficking Fund." The expected sources of funding listed in section 26 include, inter alia, appropriations by the Tanzanian Parliament, voluntary donations from the private sector, individuals and NGOs, and bilateral or multilateral organizations. Section 27 directs that the funds be used for a variety of purposes, including material needs of victims, training of victims, tracing of families, and "any matter connected with the rehabilitation and re-integration of victims of TIP to countries of origin to their best interest." Section 28 requires audits of the Fund under the Public Finance Act.

²⁸⁰ https://sherloc.unodc.org/res/cld/document/tza/1991/mutual_assistance_in_criminal_matters_act_1991_html/Tanzania_Mutual_Assistance_in_Criminal_Matters_Act_1991.pdf

²⁸¹ See <https://www.fiu.go.tz/MutualAssistanceInCriminalMattersAct.pdf>

²⁸² United Nations Office on Drugs and Crime (2019 Review), Country Review Report of the United Republic of Tanzania.

²⁸³ See https://www.tanzania.go.tz/egov_uploads/documents/EXTRADITION%20ACT.pdf

²⁸⁴ The U.S. Trafficking in Persons Report 2020 (U.S. State Department, 2020), Country Narrative Tanzania.

Non-refoulement: Article 23(2) of the 2008 Anti-TIP Act provides that a victims of TIP may not be repatriated or expelled to his/her country of origin or a third state if there is ground to believe that the repatriation or expulsion may expose the victim to a risk of his/her life or that his/her safety or safety of his/her family may be endangered. However, according to the *2020 U.S. Trafficking in Persons Report*, the Government did not grant residency or temporary stay to any victims of TIP, during the reporting period. The Government reported it was able to provide assistance to foreign victims, by facilitating travel documents, providing secure passage to a border, and resettling victims to a third country.

Summary of recommendations

Definition and criminalization	<ul style="list-style-type: none"> • Amend section 3 of the 2008 Anti-TIP Act, to change the definition of “exploitation” in a manner that does not conflate TIP with SOM, which are distinct offences under UNTOC and its Protocols; • Consider amending section 4(1) (a) and (e) of the 2008 Anti-TIP Act, to include the “means” element of TIP. In the case of the provision section 4(1) (e), if the legislative intent is to criminalize consensual hiring of an adult for purposes of engaging in prostitution or pornography, consider do so as a separate offence that is not categorized as “Trafficking in Persons,” in order to avoid confusion over the required elements of TIP with regard to adult victims; • Amend the 2008 Anti-TIP Act, to include Extra-territorial application of this law, to include provision which provides the application of the law when TIP is committed outside the territory of Tanzania, specifically when the offence is committed by a national of Tanzania; when the offence is committed against a victim who is a national of Tanzania, and when the offence is committed by a stateless person who has habitual residence in Tanzania at the time of the commission of the offence; • Clarify whether section 8 (Use of trafficked persons) is intended to be a strict liability crime, with no requirement of knowledge that the person whose services were engaged for prostitution was actually a victim of TIP; • Amend section 4 of the 2008 Anti-TIP Act, that currently permits convicted traffickers to pay a fine in lieu of imprisonment. The current legislation does not comport with the requirements of the TIP Protocol; • Amend legislation to provide provision of non-liability for victims of TIP.
Investigation and prosecution	<ul style="list-style-type: none"> • Amend section 11 of the 2008 Anti-TIP Act, to permit police officers to use investigative techniques other than mandatory interrogation, if immediately confronting a suspect may actually impede an investigation or create unnecessary risks to victims; • Amend section 12 of the 2008 Anti-TIP Act, to eliminate the warrant requirement, which can impede effective investigations and prosecution; • Use domestic laws on money laundering, corruption, obstruction of justice, fraudulent travel documents, and whistleblower protection, as appropriate, in the investigation and prosecution of TIP.
Protection and assistance	<ul style="list-style-type: none"> • Clarify whether section 15 of the 2008 Anti-TIP Act, has been used to issue court orders for payment of compensation by convicted offenders to victims; • Clarify what mechanism, if any, are in place to identify victims of trafficking and to refer them for protection and assistance.
Prevention	<ul style="list-style-type: none"> • Amend the 2008 Anti-TIP Act to include provision on “validity and legitimacy of travel and identity documents” in accordance with art. 12 of the Trafficking in Persons Protocol, which requires States to take measures to ensure that travel or identity documents issued are of such quality that they cannot be easily misused or falsified, altered or replicated, and to prevent their unlawful creation, issuance or use; • Put mechanisms in place to collect criminal intelligence on trafficking operations affecting Tanzania.
Coordination and cooperation	<ul style="list-style-type: none"> • Clarify what mechanisms are in place to give effect to extradition and mutual legal assistance in relation to TIP; • Ensure the application of art. 23(2) of the 2008 Anti-TIP Act, facilitating the issuance of residence permits to victims of trafficking if there is ground to believe that the repatriation or expulsion may expose the victim to a risk of his/her life or that his/her safety or safety of his/her family may be endangered.

Return and reintegration	<ul style="list-style-type: none"> • Provide updated information on part V of the 2008 Anti-TIP Act (Anti-Trafficking Fund), including whether the Fund has received resources, and if and how money has been spent for the purposes specified in the 2008 Anti-TIP Act; • Clarify whether the two conditions set forth in section 22 of the 2008 Anti-TIP Act apply to both child victims and disabled persons. If the omission of “disabled person” from section 22(b) was inadvertent, amend section 22 to include it.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for human trafficking, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

UGANDA

Overview of national legislation

Uganda signed the UNTOC and two of the Protocols (which ones?) in December of 2000. While it ratified the UNTOC March of 2005, it has not yet ratified neither the Trafficking in Persons nor Smuggling of Migrant Protocols.

Forms of exploitation relevant to TIP are captured in the Constitution, and explicitly in the Prevention of Trafficking in Persons Act (2009), which also provides for additional forms of exploitation.

The following provisions are relevant to TIP:

- The Constitution of the Republic of Uganda (1995): The Constitution is the supreme law that prevails in the event of conflict with other legislation (chapter 1(2)). The Constitution sets out fundamental human rights and freedoms (chapter V; attaching to ‘all persons’ by virtue of article 20; limitations thereto at art. 43-45); right to life (art. 22); personal liberty (art. 23); respect for human dignity and protection from inhuman treatment (art. 24); protection from slavery, servitude and forced labour (section 25); freedom of movement, including the right to enter, leave and return to Uganda (art. 29(2)); economic rights (for ‘every person in Uganda’, art. 40); just and fair treatment in administrative decisions (art. 42).
- The Prevention of Trafficking in Persons Act (2009) (2009 Anti-TIP Act): In 2019, The Minister of Justice approved and published the implementing regulations for the 2009 Anti-TIP Act, these regulations provided responsibilities for relevant stakeholders including law enforcement, medical professionals, and civil society members to combat trafficking and went into effect only in March 2020. The regulations also established a trafficking-specific desk in the Directorate of Public Prosecutions (DPP).
- The Children Amendment Act (2016): The May 2016 amendment (art. 8) prohibits unlawful use of children in prostitution, subject to a fine not exceeding one hundred currency points or imprisonment for 5 years, being well below the trafficking of children for sexual exploitation prescribed by the Prevention of the 2009 Anti-TIP Act. Another amendment to article 8 also prohibits the “harmful or hazardous employment” of children under 16 years of age, which includes slavery, TIP, debt bondage, and other forms of forced labor, forced recruitment for use in armed conflict, prostitution, pornography, and illegal activities. As these terms remain undefined, it is unclear how they relate to the provisions of the 2009 Anti-TIP Act.
- The Penal Code Act (1950); corruption and abuse of office (chapter IX, art. 85-93); offences relating to administration of justice (chapter X, art. 94-107); offences against morality (including sexual offences, prostitution-related offences chapter XIV art. 123-151); offences endangering life or health (chapter XXI, art. 214-226); offences against liberty (chapter XXIV, art. 239-252), including kidnapping or abducting in order to subject a person to slavery (art. 245); buying a person as a slave (art. 249); habitual dealing in slaves (art. 250); inducing a person to give up himself or herself as a slave (art. 251) and unlawful compulsory labour (art. 252)); forgery, coining, counterfeiting chapter XXXIII, art. 342-361) including of documents; attempts (chapter XL, art. 386-389); conspiracies (chapter XLI, art. 390-392).
- The Sexual Offences Act, No. 12 of 2009 (as amended in 2011); children defined for the purposes of the act as being persons under the age of 18 years (art. 2).

Other instruments of potential relevance to TIP include:

- Employment Regulations (Recruitment of Ugandan Migrant Workers Abroad), 2005, that includes provisions relevant to labour migration.
- Guidelines on the Recruitment and Placement of Ugandan Migrant Workers Abroad. The Ministry of Gender, Labor, and Social Development (MGLSD).

Jurisdiction over offences: In the Prevention of Trafficking in Persons Act 2009, article 18 on jurisdiction, clarifies that the case shall be tried where the act or any of its components were committed, or where any of its components occurred or where the trafficked person resided when the offence was committed. Article 19 establishes extraterritorial jurisdiction a) where the perpetrator is a citizen or permanent resident of Uganda; b) where the victim was a citizen at the time of the offence; and c) where the offence was committed partly in Uganda and d) where a substantial proportion of the effects of the offence occurred or took place in Uganda.

Article 4 of the Penal Code extends jurisdiction of the Courts to every place in Uganda, and to certain offences (art. 23-28, primarily treason and terrorism) committed outside Uganda by Ugandan citizens or permanent residents. Article 5 concerns offences committed partly within and partly beyond Ugandan jurisdiction, which can be treated as though wholly committed in Uganda.

Scope of offences: The Prevention of Trafficking in Persons Act, 2009, provides for the prohibition of TIP, creation of offences, prosecution and punishment of offenders, prevention of TIP, protection of victims of TIP, and other related matters.

Liability of legal persons: Prevention of Trafficking in Persons Act, 2009: article 3(2) creates an offence where the offender is a legal person; “where the offender is a legal person, it shall be liable to a fine of 1,000 currency points, and temporary or permanent closure, deregistration, dissolution, or disqualification from practice of certain activities.”

Other offences relevant to Trafficking in Persons: Article 25 of the Constitution concerns ‘protection from slavery, servitude or forced labour’. The Penal Code Act also contains relevant felonies, including article 245 (kidnap or abduction putting person(s) in danger of harm or slavery, ‘unnatural lust of any person’); article 250 (importing, exporting, removing, buying, selling, trafficking or felling in slaves); article 251(1) inducing a person to give himself up as a slave or (2) attempting or aspiring to. Further, article 252, contains the misdemeanour of unlawfully compelling a person to labour against his/her will. Article 8 of the Prevention of Trafficking in Persons Act 2009 also makes it an offence to: recruit, transport, transfer, harbour, provide or receive a person for domestic or overseas employment; recruit a person below 16 years of age in any form of employment for the purposes of exploitation; introduce or match any person to another for the purposes of sexual exploitation; confiscate, conceal, destroy a passport, travel documents or other personal documents or belongings for the purpose of unlawfully denying that person freedom of movement, or access to any public services; or adopt or facilitate the adoption of a person for illicit purposes. The sentence for these offences is imprisonment for 5 years or a fine of 120 currency points. It is not clear which provisions are relied upon in the event that more than one is applicable.

The Anti-Slavery Bill, 2018: Late 2018, A Member of Uganda Parliament, has filed a Private Member’s Bill titled “The Anti-Slavery Bill, 2018.”²⁸⁵ As of 31 January 2020, the Clerk to Parliament has applied to the Ministry of Finance for a Certificate of Financial Implication, a prerequisite for the Bill to receive its first reading in Parliament.

Among other things, the Anti-Slavery Bill, 2018, would repeal and replace the Prevention of Trafficking in Persons Act, 2009. The stated rationale for introducing the new bill is that current Ugandan law, “including the Constitution of Uganda, 1995, the Penal Code Act chapter 120 and the Prevention of Trafficking in Persons Act, 2009, all consider the traditional forms of slavery, being, the buying and selling of human beings and do not deal with the modern forms of slavery that are prevalent today”²⁸⁶

285 See <https://www.parliament.go.ug/news/2184/parliament-consider-bill-modern-slavery>

286 Motion Seeking Leave of Parliament to Introduce a Private Member’s Bill entitled “The Anti-Slavery Bill, 2018”.

The Memorandum attached to the Motion to Parliament (“Memorandum”) considers TIP to be simply one form of “modern” slavery and that the Prevention of Trafficking in Persons Act, 2009, fails to criminalize “other practices of slavery, servitude or compulsory labour, forced marriage, sexual exploitation, trade in human organs and debt bondage except where they are committed as part of the offence of TIP.”²⁸⁷ The Memorandum also claims that the existing trafficking legislation “does not punish persons who actually carry out the exploitation of the trafficked person” punishing only “persons who recruit, transport, transfer or harbour a person for purposes of exploitation.”

The position taken by the Office of the Director of Public Prosecutions (ODPP) and other Ugandan Government agencies tasked with countering TIP, is that the existing Prevention of Trafficking in Persons Act, 2009, can be strengthened through amendment, but should not be repealed and replaced.²⁸⁸ Moreover, the ODPP has informed UNODC that the Ugandan Government’s interagency Task Force on Human Trafficking has drafted amendments to the Prevention of Trafficking in Persons Act, 2009, as an alternative to passage of the Anti-Slavery Bill, 2018.²⁸⁹

Both the rationale contained in the private member’s memorandum and the text of the Anti-Slavery Bill, 2018, itself appear to misunderstand the breadth and scope of the Prevention of Trafficking in Persons Act, 2009. In particular, the rationale offered for the proposed bill claims that existing law “doesn’t punish or create offences against a person being forced or required to perform work involuntarily at the destination” outside of Uganda. However, section 19 of the Prevention of Trafficking in Persons Act, 2009, clearly establishes extra-territorial jurisdiction in 4 instances: 1) over Ugandan citizens or permanent residents who commit acts outside Uganda that would constitute offences if committed in Uganda; 2) where victims are Ugandan citizens; 3) where acts are committed partly within Uganda and partly outside the country; and 4) the offence’s effects occur in “substantial proportion” within Uganda.

The Anti-Slavery Bill, 2018, is structured in 6 parts, plus a schedule of “currency points.” Part I contains the scope of application (including jurisdiction) and definitions.

Part II would create eight free-standing categories of offences: 1) Trafficking in Persons; 2) slavery and servitude; 3) forced or compulsory labour; 4) smuggling of migrants; 5) forced marriage; 6) sexual exploitation; 7) bonded labour or debt bondage; and 8) removal of body parts.

Part III contains provisions for protection of victims of offences created in part II. Protections include non-discrimination provisions, assistance and support to victims, confidentiality, the right to information, the use of victim impact reports and repatriation of victims.

Part IV focuses on recruiters, recruitment agencies and transporters. This part includes a variety of provisions, including prohibition of deceptive recruitment practices, a duty to monitor overseas working conditions and contract terms, and the burden of proof regarding offences by employment agencies.

Part V focuses on permissible court orders, including restitution, compensation, confiscation and production orders.

Part VI contains miscellaneous provisions, ranging from witness protection to extradition. This part also would repeal the Prevention of Trafficking in Persons Act, 2009. It should be noted that the section numbers listed in the Anti-Slavery Bill, 2018’s table of contents are not consistent with the actual numbers in the text of the Bill itself.

A detailed analysis of this draft bill is yet to receive a first reading in Parliament. However, at this juncture, it should be noted that the Anti-Slavery Bill, 2018, would likely dilute and introduce further confusion into Uganda’s implementation of the UNTOC Trafficking in Persons Protocol. The proposed bill contains sections

²⁸⁷ Memorandum attached to Motion Seeking Leave of Parliament to Introduce a Private Member’s Bill entitled “The Anti-Slavery Bill, 2018”.

²⁸⁸ This position was expressed to a UNODC delegation by various Ugandan Government Agencies during a June 2019 visit to Kampala, and subsequently reaffirmed in an email message, dated 31 January 2020, from Rachel Bikhole, Assistant Director of Public Prosecutions to UNODC Consultant Michael Surgalla.

²⁸⁹ Email message, dated 31 January 2020, from Rachel Bikhole, Assistant Director of Public Prosecutions to UNODC Consultant Michael Surgalla.

that may lead to the prosecution of victims of TIP.²⁹⁰ Committing an offence as an activity of an organized criminal group is considered to be “aggravated trafficking in persons,” despite the fact that Uganda has not defined nor criminalized participation in an organized criminal group, as required by UNTOC. These are but two illustrative examples of significant flaws in the proposed Anti-Slavery Bill, 2018.

Definition and criminalization

Definition and sentencing: The Prevention of Trafficking in Persons Act, 2008, defines TIP in accordance with the Trafficking in Persons Protocol. Article 2(r) defines TIP to 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, 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.”²⁹¹ The offence is established at article 3(1), which prescribes a sentence of imprisonment for 15 years. Sub-section (a) of that provision aligns with the Trafficking in Persons Protocol, whereas sub-section (b) adds ‘acts’ to those captured in the Protocol, being ‘hires’, ‘maintains’, ‘confines’ and ‘facilitates’ and adds additional forms of exploitation, including pornography,²⁹² debt bondage, forced or arranged marriage.

Additionally, article 6 criminalizes ‘Engaging the labour or services of a victim of trafficking’ while knowing or having reason to believe that a person is a victim of TIP, making the offence subject to imprisonment for 10 years. Article 7 sets out offences relating to ‘promoting human trafficking’ which results in a fine not exceeding one 120 currency points or imprisonment for 5 years, or both, and 7 years imprisonment for any subsequent offence.

A child is a person below the age of 18 according to the Prevention of Trafficking in Persons Act, 2009, as well as the Sexual Offences Act 2009. However, the Constitutional definition of child does not comply with that set out in article 3(d) of the Trafficking in Persons Protocol, leaving children between 15 and 18 years of age not protected from social or economic exploitation. Similarly, while article 34 of the Constitution protects children from social or economic exploitation, prohibiting them from being employed in hazardous work or work that may interfere with their education or be harmful to them, article 34(5) defines children in relation to this article, as being children under the age of 16 years.

In relation to trafficking of children, there is some legislative inconsistency. The Children (Amendment Act), 2016, specifies that ‘means’ must be used in the case of trafficking in children. This requirement is in contravention of the Trafficking in Persons Protocol as well as Uganda’s Prevention of Trafficking in Persons Act, 2009, which specifies at article 3(3) that means are not required.

The definition of ‘harmful or hazardous employment’ at article 8(3) of the Children (Amendment) Act is circular in including child trafficking, as well as slavery, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution, pornography and illicit activities (art. 8(3)). This provision also may be problematic and narrow the protection of children, by specifying only ‘forced’ recruitment into armed conflict, prostitution, pornography and illicit activities, potentially meaning that non-forced recruitment into those activities would not be prohibited. Further, the definition of ‘child exploitation’ in the Children (Amendment) Act, 2016, is circular in so far as it includes child trafficking as an example of child exploitation. Furthermore, the use of the term ‘employment’ may have a narrowing effect, where children are used but not ‘employed’ per se as may often be the case.

²⁹⁰ Uganda Legislative Update/Legislative assessment, Surgalla, January 2020

²⁹¹ Exploitation is defined in art. 2 to include at a minimum “sexual exploitation, forced marriage, child marriage, forced labor, harmful child labor, use of a child in armed conflict, use of a person in illegal activities, debt bondage, slavery or practices similar to slavery or servitude, human sacrifice, the removal of organs or body parts for sale or for purposes of witchcraft, harmful rituals or practices.”

²⁹² Pornography is defined in art. 2 as “any representation, through publication, exhibition, cinematography, indecent show, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities, or any representation of the sexual parts of a person for primarily sexual excitement.”

Other provisions relevant to trafficking in children are contained in the Children (Amendment) Act, 2016, concerning protecting children from ‘harmful customary or cultural practices’ (art. 7), defined at article 7(2) as “any activity that is mentally, physically, socially or morally harmful to a child and includes an activity that interferes with a child’s education and social development.” Article 8A(1) prohibits children from being engaged in work of a sexual nature. The Uganda People’s Defence Forces Act, 2005, states that no person under the age of 18 is to be enrolled in the Defence Forces (art. 52(c)).

The Prevention of Trafficking in Persons Act, 2009, includes forms of exploitation that are not included in the Trafficking in Persons Protocol, including forced marriage, child marriage, harmful child labour, use of a child in armed conflict, use of a person in illegal activities, human sacrifice, removal of body parts in addition to organs, and harmful rituals or practices. Definitions are also offered of sexual exploitation (art. 2(o)); slavery (art. 2(p)); slave trade (art. 2(q)). Furthermore, article 44(b) of the Constitution makes ‘freedom from slavery or servitude’ a non-derogable freedom. However, forced labour is excluded from this provision, and exceptions to the protection from forced labour are specifically set out in article 25(3) including (a) that required as a result of a court sentence or order; (b) that reasonably required in a place of detention; and (c) that required as part of a naval, military or air force; (d) during war and at times of emergency; (e) that reasonably required as part of civic obligations.

In relation to child trafficking, exploitation is defined in article 2 of the Children (Amendment) Act, 2016, “the employment of a child in activities from which other people derive a benefit, whether financial, sexual or political and includes activities such as child trafficking, child prostitution, child pornography and involvement of children in armed conflict.”

The irrelevance of consent is explicit in the Prevention of Trafficking in Persons Act, 2009, but veers from that irrelevance as it is captured in the Trafficking in Persons Protocol. While the Protocol states that a victim’s consent to exploitation is irrelevant in the case of adults where any means are used, and always in the case of children, Ugandan legislation makes consent of the victim (or if the victim is a child, his/her parents) ‘to the acts of exploitation’ irrelevant. It is not sure whether the consent to the acts is irrelevant or whether the consent to exploitation is irrelevant. Furthermore, where the victim is a child, Ugandan law makes the consent of the victim’s parents irrelevant. It is not certain in practice, what the implication of this provision would be, but a reading of the legislation creates a loophole in that it does not make explicit that a child victim’s consent is always irrelevant.

Other relevant consent provisions are contained in the Penal Code that states that a person who consents to his or her own death or maiming does not alter the criminal responsibility of a person who caused it (art. 226). Article 14 of the Sexual Offences Act No. 12 of 2009 (as amended in 2011) states that a young person’s consent is no defense to indecent assault.

Aggravating circumstances: The Prevention of Trafficking in Persons Act, 2009, sets out a range of aggravating factors in article 4, that can result in life imprisonment. These include where the victim is a child, where a syndicate is involved, where vulnerable victims are involved, where the perpetrator is a relative or public official, military personnel or law enforcement, or where it is committed for harmful rituals or practices including human sacrifice and witchcraft, and where the victim suffers harm including HIV/AIDS infection or dies.

Additionally, in relation to child trafficking, certain forms of exploitation are liable to aggravation that may include death. Article 5 of the Prevention of Trafficking in Persons Act, 2009, sets out aggravation for using a child in armed conflict, removing any part, organ or tissue of a child for human sacrifice, using a child in the commission of a crime, abandoning a child outside the country, and using a child or any body part for witchcraft, rituals or related practices.

Given that both articles 4 and 5 may come into play in some cases, it is unclear which would apply. For instance, in the case of a child trafficked to commit a crime, both articles apply suggesting that some of the aggravations listed are redundant.

Depending on the skill of practitioners involved, some of these aggravations may involve erroneous outcomes. Notably, where aggravations are made on the basis of the type of exploitation, the result may not be that sentences are aggravated for crimes that are less severe than those perpetrated for other forms of exploitation. For instance, where cultural practices amount to TIP, a death sentence may seem inappropriate and will do little to curtail a

culturally entrenched practice. Similarly, a person may be trafficked into the commission of a crime by his or her family members as a survival technique, and amount to less severe harm than may be the case in another situation that is not listed for aggravation.

Concerning criminalization of money laundering, Uganda has its Anti-Money Laundering Act (Amendment Act), 2017²⁹³ which was enacted to amend the Anti-Money Laundering Act, 2013, by harmonising the definitions used in the Act, provide for the carrying out of risk assessments by accountable persons and other procedures relating to suspicious transactions, record keeping, and other related obligations.

Attempt to commit trafficking in persons: Article 8(a) of the Prevention of Trafficking in Persons Act, 2009, makes it an offence to attempt to commit TIP, imposing a penalty of imprisonment for 5 years or a fine of 120 points or to both such imprisonment and fine, and on subsequent conviction for the same offence, is liable to imprisonment of 7 years without the option of a fine.

Additionally, article 386(1) of the Penal Code states that “When a person, intending to commit an offence, begins to put his or her intention into execution by means adapted to its fulfillment, and manifests his or her intention by some overt act, but does not fulfill his or her intention to such an extent as to commit the offence, he or she is deemed to attempt to commit the offence.” Article 387 clarifies that attempt to commit a felony or misdemeanour is a misdemeanour, and article 388 states that any person who attempts to commit a felony for which the punishment of death or imprisonment for 14 years or more, commits a felony and is liable to 7 years imprisonment.

Participating in an organized criminal group: There is no definition of ‘organized criminal group’ in Ugandan legislation, nor has participation in such groups been criminalized. However, article 52 of the Penal Code defines “unlawful society” as “any combination of two or more persons whether the society is known by any name or not.” Being part of an unlawful society is punishable by a period not exceeding 3 years imprisonment.

Aiding or abetting: Article 19 of the Penal Code concerns principal offenders and makes liable any persons who have taken part in the offence, enables the offence or aids and abets another to do so. Article 8(b) of the Prevention of Trafficking in Persons Act, 2009, makes it an offence to conspire with another person to do an act of TIP.

Non-liability of victims of trafficking: Article 12(1) of the Prevention of Trafficking in Persons Act, 2009, sets out that: “a victim of trafficking shall not be penalized for any crime committed as a direct result of his/her trafficking.” Notwithstanding this provision, some victims have reported that the Government detained and placed on bond some victims of TIP, including children, in an attempt to compel them to cooperate with and periodically report to law enforcement in support of criminal investigations. It has also been reported that child victims in need of shelter have instead been accommodated at police stations, vehicles, or at juvenile justice centres before placement in shelters.²⁹⁴ More information is needed to ascertain whether victims of trafficking may be punished in fact if not in law.

Investigation and prosecution

In 2019, the Uganda Government investigated 120 suspected trafficking cases, 30 domestic and 90 transnational cases, prosecuting 50 suspected trafficking cases for trafficking-related crimes. Uganda Courts convicted 15 traffickers in 2019, an increase compared with six traffickers convicted in 2018.²⁹⁵ In July 2019, the Uganda Police Force (UPF) announced the formation of the Anti-Trafficking in Persons Department, the UPF will have approximately 250 officers across the country working on anti-trafficking efforts, including at border posts, and will be headed by the Deputy Assistant Superintendent of Police.²⁹⁶

293 See <https://chapterfouruganda.org/sites/default/files/downloads/The-Anti-Money-Laundering-%28Amendment%29-Act-2017.pdf>

294 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

295 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

296 Ibid.

Throughout 2019, the Uganda Government maintained a trafficking-specific desk in the Director of Public Prosecutions' (DPP) office responsible for prosecuting trafficking crimes. The Government did not report training front-line officials on anti-trafficking.²⁹⁷

Asset seizure and freezing: Article 22 of the Prevention of Trafficking in Persons Act, 2009, concerns 'Confiscation and Forfeiture of Proceeds of Trafficking'. "In addition to any penalty, the court shall order the confiscation and forfeiture of all the established proceeds and properties derived from the commission of the crime. If the proceeds or properties have been destroyed, diminished in value or otherwise rendered worthless or has been concealed, removed, converted or transferred to prevent being found, the offender shall be ordered to pay the amount equal to the value of the proceeds or property. Where they fail to pay it shall be recovered like a civil debt."

Protection and assistance

Protecting the rights of victims of trafficking: Several provisions of the Prevention of Trafficking in Persons Act, 2009, concern the protection of victims of TIP. Article 11 concerns 'Non-discrimination of victims of Trafficking in Persons' and requires measures for protection, assistance and support to victims of TIP to be interpreted in a way that is not discriminatory on the basis of race, religion, belief, age, family status, culture, language, nationality or gender. Discriminatory application of such measures is an offence.

Article 12 of the Prevention of Trafficking in Persons Act, 2009, concerns protection and assistance, including the right of victims to be informed in a language they understand of their rights, duties and proceedings and to be assisted to participate in those proceedings. Additionally, article 12 sets out a robust range of protection and assistance that Government and other agencies are to provide to victims, including health and social services, medical and psychological care, safe and appropriate accommodation, referral to appropriate institutions, protection of children in accordance with their special needs, as well as information about their entitlements to protection and assistance. Article 21(2)(c) designates the Prevention of Trafficking Persons Office as the responsible entity to develop measures, in accordance with the age, gender and special needs of victims. It is not known in practice how effectively victims are assisted and protected. According to the *2020 U.S. Department of State Trafficking in Persons Report*, the Uganda Government did not track or report how many victims it referred to care or directly assisted. The great majority of victim services is provided through partnerships with NGOs and international organizations via referrals to NGO-operated shelters, which provides psychological counseling, medical treatment, family tracing, resettlement support, and vocational education without contributing in-kind or financial support. Victim care, although high quality, remained inadequate in quantity, and available services were primarily for children and women.²⁹⁸

In addition to the protection TIP victims receive under the Prevention of Trafficking in Persons Act, 2009, children also have the benefit of the Children (Amendment) Act 2016, article 42A of which protects children from "all forms of violence, including sexual abuse and exploitation, child sacrifice, child labour, child marriage, child trafficking, institutional abuse, female genital mutilation, and any other form of physical or emotional abuse." That article further sets out measures in place to protect the child and designates responsibilities accordingly. Article 42C gives every child the right to access protective services.

Witness protection: The reluctance of witnesses to provide information to investigative authorities has been noted.²⁹⁹ This is the result of threats by traffickers, and also the consequences that victims may face if they step forward to participate in criminal justice processes. Insufficient access to protection and assistance services for identified victims may also act to discourage participation of victims in criminal justice proceedings. Article 13(1) of the Prevention of Trafficking in Persons Act, 2009, provided for privacy and confidentiality for victims, with

²⁹⁷ Ibid.

²⁹⁸ The *U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020)*, Country Narrative Uganda.

²⁹⁹ The Deputy High Commissioner of the Federal Republic of Uganda, speaking on World Day against Trafficking in Persons, 30 July 2018 in Nairobi, Kenya

obligations to protect privacy imposed on law enforcers, prosecutors, judicial officers and medical practitioners. Article 13(2) provides for video-link for testimony and article 13(3) imposes obligations on the media to not publicize any identifying information about victims or their experiences. However, the 2020 U.S. Trafficking in Persons Report, indicated that due to an absence of victim-witness protection legislation and a protection program, some investigations and prosecution have been precluded, perpetrators would threaten and blackmail victims and witnesses to discourage their participations in trials. There is no formal policy to provide victims and witness with assistance, or safety, such as transportation, interpretation services, physical protection in a systematic way.³⁰⁰

Compensation and restitution: Compensation is provided in article 16 of the Prevention of Trafficking in Persons Act, 2009, allowing courts to additionally order compensation to victims of trafficking (art. 16). It is not known whether any victims have received compensation under an order made pursuant to article 16. Article 15 provides for restitution, stating that “Where a person is convicted of trafficking, the court shall, in addition to any other punishment, order that the person pay restitution to the victim or other person or organization which may have incurred expenses on the victim’s behalf for – costs of medical, psychological treatment, physical therapy, occupational therapy and rehabilitation, necessary transport, temporary housing, child care, re-integration in society and any other costs the court may deem fit.” Article 17 clarifies that the return of a person or the absence of a victim from Uganda shall not prejudice the victim’s right to receive restitution or compensation.

Prevention

Raising awareness: Article 21(2)(f) of the Prevention of Trafficking in Persons Act, 2009, requires the Prevention of Trafficking in Persons Office is “to initiate the training and awareness of government personnel, law enforcement officials and the public, particularly among risk groups and communities, of the dangers of trafficking and protections that are available for victims of trafficking.” There have been several counter-trafficking trainings of criminal justice practitioners in Uganda in recent years, though misclassification of crime types reportedly remains a problem among Ugandan police and immigration officers, potentially resulting in victims accepting financial compensation rather than pursuing cases against traffickers.³⁰¹

In 2019, the Government of Uganda did not report training front-line officials on anti-trafficking, compared with reporting training to 303 front-line officials on the Prevention of Trafficking in Persons Act, 2009, and other laws related to illegal labor recruitment and training immigration officials on investigations and prosecutions during 2018.³⁰² In February 2020, an NGO trained 31 police officers, officers selected represented regions throughout the country, including border posts. An NGO reported the Government improved its ability to identify minors as victims and not file criminal charges against them due to increased awareness.³⁰³

In March 2020, the Ministry of Internal Affairs has launched the second Uganda National Action Plan for Prevention of Trafficking in Persons, which is valid for 5 years, and the National Referral Guidelines for Management of Victims of Trafficking.³⁰⁴ Uganda’s first National Action Plan on Prevention of Trafficking in Persons, which expired in December 2018, was based on 5 strategic objectives, including: enhancing national policies and legal frameworks, increasing successful prosecutions, reducing vulnerability to TIP, improving victim protection and assistance mechanisms, as well as developing well-coordinated systems and structures to manage the crime.

300 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

301 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

302 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

303 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

304 See https://ec.europa.eu/trustfundforafrica/all-news-and-stories/eu-and-bmz-uganda-has-taken-another-step-forward-counter-human-trafficking_en - :~:text=Uganda’s first National Action Plan,human trafficking, improving victim protection

Border controls: In January of 2016, the Government banned Ugandans from travelling abroad for domestic work, though licensed and unlicensed agencies circumvented this ban by sending people via Kenya and Tanzania before moving them on to destinations in the Middle East.³⁰⁵ That ban has since been lifted for Saudi Arabia and Jordan (both of which having entered into agreements with Uganda), and an online External Employment Management System has been launched whereby Ugandans can apply for vetted employment opportunities abroad, though unlicensed companies continue to operate.³⁰⁶ It is not clear whether the introduction of this system has served to reduce incidents of trafficking from Uganda or has otherwise had an impact on trafficking. No provisions could be found of direct relevance to strengthening quality and control of documents with a view to preventing TIP in the national legislation.

Coordination and cooperation

National level coordination and cooperation: Article 21 of the Prevention of Trafficking in Persons Act, 2009, designates a ‘prevention of trafficking in persons office’ that (1) requires the Minister to designate an office to be responsible for the coordination, monitoring and overseeing of the implementation of the Act and (2) has functions to: (a) formulate a comprehensive and integrated program to suppress and prevent Trafficking in Persons; (b) prepare annual National Plan of Action on Prohibition of Trafficking in Persons; (c) develop measures and policies to protect, assist and support victims of TIP taking into consideration age, gender and special needs; (d) to establish a databank on cases of TIP and conduct continuing research and study on the pattern and scheme of TIP; (e) engage in consultation, coordination, cooperation and advocacy with governmental and NGOs; (f) initiate training and awareness of government personnel, law enforcement officials and the public, particularly at risk groups and communities, of the dangers of trafficking and protections that are available for victims of TIP; (g) to propose rules and regulations to the Minister as may be necessary for effective implementation of the Act; and (h) carry out any other activities that are necessary or expedient for full discharge of any or all functions.

The Coordination Office to Combat Trafficking in Persons (COCTIP) is an official Government department that serves as the Secretariat of the National Task Force. The National Task Force is led by the Ministry of Internal Affairs. The COCTIP and National Task Force coordinate cooperation with NGOs and international organizations. The COCTIP has been reportedly lacking fund which inhibited efforts to coordinate and combat trafficking nationally.³⁰⁷ Other relevant actors include the National Children Authority established by Part IIA of the Children (Amendment) Act 2016.

Bilateral and regional coordination and cooperation: In 2019, the Government of Uganda continued to implement its agreement with the Government of Kenya to share information on traffickers and facilitate the repatriation of potential trafficking victims, as requested in article 10 of the TIP Protocol, in combination with articles 27 and 28 of the UNTOC.³⁰⁸

By virtue of article 20 of the Prevention of Trafficking in Persons Act, 2009, a person charged with an offence under the Act is liable to extradition under extradition law. The Extradition Act (1964) chapter 117 governs extraditions to Uganda.³⁰⁹ The Extradition Act allows the process to commence for both accused and convicted persons.³¹⁰

305 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

306 The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Uganda.

307 The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Uganda.

308 The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Uganda.

309 See https://www.tanzania.go.tz/egov_uploads/documents/EXTRADITION%20ACT.pdf

310 See <https://ulii.org/ug/legislation/consolidated-act/117>

Bilateral and regional coordination and cooperation: The Ugandan Constitution emphasizes international cooperation as a key component of the country’s foreign policy. Notably, part XXVIII (ii) states that “Uganda shall actively participate in international and regional organisations that stand for peace and for the well-being and progress of humanity” and at (iii) “The State shall promote regional and pan-African cultural, economic and political cooperation and integration.”

Uganda has no statute on Mutual Legal Assistance (MLA). However, being a member of the Commonwealth, the country is relied on whenever there is a request within the commonwealth. In the absence of statute, Uganda receives and responds to requests using the Commonwealth scheme on MLA.³¹¹

In January 2020, 200 Ugandan and Kenyan officers jointly identified and referred 96 Ugandan female victims in Nairobi, including 41 minors, and separately on the same day intercepted 96 Ugandan victims at Jomo Kenyatta International Airport in Kenya as they prepared to board a flight to the United Arab Emirates. The operation resulted in the largest number of victims of TIP assisted at one time since the Governments of Kenya and Uganda commenced cooperation efforts.³¹²

Repatriation and reintegration

Repatriation: Article 14 of the Prevention of Trafficking in Persons Act, 2009, concerns ‘Repatriation of Victims of Trafficking in Persons’ by which, (1) The Minister in cooperation with appropriate government agencies shall be responsible for the facilitation of repatriation of victims of TIP to and from Uganda. Where the victim is in a foreign country, the minister shall verify whether the victim is a citizen or a permanent resident of Uganda and shall; where a victim is proved to be a Ugandan or permanent resident without proper documentation, issue the relevant documents and other relevant authorization to facilitate the repatriation of the victim to or from Uganda (art. 14(4)).

It has been reported that the lack of embassies in many destination countries hindered repatriation efforts of Ugandan victims abroad. During some repatriation processes, the government provided replacement travel documents to facilitate the repatriation of its citizens and ad hoc assistance including shelter and food in embassies, however, some trafficking victims continued to allege officials denied them temporary travel documents in order to return to Uganda.³¹³

Non-refoulement: Uganda is a signatory to the 1951 Refugees Convention and the 1967 Protocol thereto. It is unclear which legislation gives effect to this obligation and whether this obligation has come into play in relation to TIP.

Temporary/permanent residence: According to article 14 of the Prevention of Trafficking in Persons Act, 2009: (2) “Where repatriation of a Ugandan victim is likely to expose the victim to greater risks or compromise his or her safety, the Minister may through the relevant office negotiate with the host government for the extension of appropriate residency permits, work permits, and maintenance as may be necessary to protect the victim. (3) Where repatriation of a foreign victim is likely to expose the victim to greater risks, to compromise his or her safety, or where the presence of the victim is necessary for court proceedings, the Minister may facilitate the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect, assist and support the victim. Ugandan law reportedly permits foreign trafficking victims to remain in Uganda during the investigation of their case and to apply for residence and work permits.³¹⁴

311 See <https://ungreatlakes.unmissions.org/sites/default/files/uganda.pdf>

312 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

313 The U.S. Trafficking in Persons Report 2020 (U.S. State Department 2020), Country Narrative Uganda.

314 The U.S. Trafficking in Persons Report 2018 (U.S. State Department 2018), Country Narrative Uganda.

Summary of recommendations

<p>Definition and criminalization</p>	<ul style="list-style-type: none"> • Clarify which legislative instruments (including the Penal Code, the Children Amendment Act, the Prevention of Trafficking in Persons Act, the Sexual Offences Act or others) are used in relation to TIP, and with what result; • Clarify how the provisions of the Children Amendment Act, 2016, and the Prevention of Trafficking in Persons Act, 2009, concerning exploitation of children relate to each other and are to be interpreted in the event that they conflict; • Clarify the standard of proof required to convict a person under art.10 of the Prevention of Trafficking in Persons Act, 2009, for failing to report TIP, and what knowledge would be required in order to establish culpability; • Clarify whether the inclusion of additional acts and forms of exploitation to those prescribed at a minimum in the TIP Protocol, have supported the investigation and prosecution of TIP in Uganda; • Amend legislation to ensure that the definition of a child is consistent across all instruments, and accords with international law, referring to a person below the age of 18, with a view to ensuring that there are no legislative loopholes; • Clarify which legislative instruments (e.g. the Prevention of Trafficking in Persons Act, the Children (Amendment) Act, the Penal Code) are used in relation to trafficking of children, and with what result; • Address legislative inconsistencies between the Children (Amendment Act), 2016, requiring use of ‘means’ in the case of children, and , 2009, that specifies (in line with the TIP Protocol) that means are not required; • Amend the definition of ‘harmful or hazardous employment’ art. 8(3) of the Children (Amendment) Act so that it does not overlap with other forms of exploitation, and to remove the requirement that recruitment into such situations be ‘forced’; • Clarify the definition of ‘child exploitation’ in the Children (Amendment) Act, 2016, so it is not circular, and so as to avoid the term ‘employment’ which may exclude some forms of exploitation; • Clarify whether the broad definition of ‘harmful customary or cultural practice’ provided at 7(2) of the Children (Amendment) Act, 2016, is appropriate and fit for purpose, and includes practices that drafters intend it to, while excluding others; • Consider whether art. 44(b) of the Constitution excluding forms of forced labour from the ambit of protection complies with international law; • Amend the Prevention of Trafficking in Persons Act, 2009, to ensure that the victim’s consent is irrelevant on the same basis as set forth in the Protocol, namely, to ensure that his or her consent to the intended exploitation is irrelevant, rather than to ‘the acts of exploitation’. This phrasing raises ambiguity as to whether it is consent to the ‘acts’ or to the ‘exploitation’ being referred to and should be clarified; • Amend the Prevention of Trafficking in Persons Act, 2009, to make explicit that the consent of a child victim of TIP is always irrelevant; • Amend art. 4 and/or art. 5 of the Prevention of Trafficking in Persons Act, 2009, to remove redundant provisions and reconsider attaching aggravations to specific forms of exploitation; • Clarify which provisions from the Prevention of Trafficking in Persons Act, 2009, the Constitution and the Penal Code would apply in the event that all could be
<p>Investigation and prosecution</p>	<ul style="list-style-type: none"> • Clarify the capacity of law enforcers to proactively identify and investigate cases of potential TIP; • Clarify what legislation or other mechanism, if any, are in place to support the application of special investigative techniques to TIP; • Gather criminal justice data including on the investigation, prosecution, conviction and sentencing of TIP, disaggregated including on the basis of the charge laid.

Protection and assistance	<ul style="list-style-type: none"> • Clarify what mechanism, if any, are in place to identify victims of TIP and to refer them for protection and assistance; • Clarify what legislative and other frameworks are in place to protect victims and witnesses of TIP and support them to participate in criminal justice processes; • Clarify what resources are available to effectively implement art. 11 and 12 of the Prevention of Trafficking in Persons Act, 2009, (concerning non-discriminatory protection and assistance support) with a view to identifying and addressing barriers to providing/accessing that support; • Clarify whether victims of TIP have received restitution and compensation under art. 15 and 16 of the Prevention of Trafficking in Persons Act, 2009, and if not, identify barriers to fulfilment of these provisions; • Clarify the role of the Prevention of Trafficking in Persons Office in providing protection and assistance for victims of TIP.
Prevention	<ul style="list-style-type: none"> • Clarify what border control measures are in place to specifically identify and cross- border trafficking from, to or through Uganda; • Clarify what impact travel bans have had on preventing TIP; • Clarify the role that the External Employment Management System does or could play in reducing TIP from Uganda and how its impact in these respects is measured; • Clarify which legislation, if any, is in place to require commercial carriers to ensure that passengers have appropriate documentation, and to strengthen travel and identity documentation against TIP; • Clarify what training has been provided to criminal justice practitioners by the Prevention of Trafficking in Persons Office in accordance with art. 21(2)(f) of the Prevention of Trafficking in Persons Act, 2009, and what the impact of this training has been; • Clarify what development programs have been mounted specifically with a view to preventing TIP.
Coordination and cooperation	<ul style="list-style-type: none"> • Clarify the implementation resources available for the Prevention of Trafficking in Persons Office to fulfill its mandate under art. 21(1) of the Prevention of Trafficking in Persons Act, 2009, and confirm its progress; • Clarify which Government agencies serves as the lead for the Coordination Office to Combat Trafficking in Persons (COCTIP) and the National Task Force, and clarify what the mandates of these two entities are; • Clarify what role, if any, is played by the National Children Authority in relation trafficking of children; • Clarify what bilateral and regional cooperation mechanisms are in place or are being developed to address TIP from, to and through Uganda; • Clarify what cooperation arrangements are in place to protect the blue borders with Kenya and Tanzania from abuse by traffickers; • Clarify what mechanisms are in place to give effect to extradition and mutual legal assistance in relation to TIP and what barriers have been encountered in this respect.
Return and reintegration	<ul style="list-style-type: none"> • Clarify what mechanisms are in place to operationalize art. 14 of the Prevention of Trafficking in Persons Act, 2009 concerning 'Repatriation of Victims of Trafficking in Persons' and how effective such mechanisms are; • Describe the procedure in place to arrange for the safe return of a Ugandan national in situations that fall under art. 14(2) of the Prevention of Trafficking in Persons Act, 2009, for which no alternative arrangements can be made with the host country; • Clarify which legislation, if any, protects victims of TIP from refoulement in accordance with Uganda's commitments under international law.
Data collection	<ul style="list-style-type: none"> • Gather and publicly disseminate data on investigations, prosecutions and convictions achieved for TIP, disaggregated according to the sex and age, citizenship of persons involved, and the form of exploitation. • Collect and share data on victims detected, disaggregated by sex, age, citizenship and forms of exploitation.

ANNEX

Since the publication of the Regional Legislative Assessment in 2021, the following developments have occurred:

1. Comoros: Drafted its National Anti-TIP law which is expected to be passed by parliament in October 2022
2. Ethiopia: Passed the Corrigendum to Proclamation 1178, aligning the definition of TIP under Article (3) with the TIP Protocol
3. Madagascar: Drafted its Anti-TIP National Plan of Action in July 2022
4. Kenya: Drafted the Counter-trafficking in Persons Bill – 2022. The Bill is due for stakeholder validation and later for subjection to public participation requirements under the Constitution prior to tabling in Parliament for enactment. The Counter-trafficking in Persons Secretariat prepared the National Plan of Action for Combating Trafficking in Persons (2018 – 2024). The Plan is due for launch anytime.
5. Somaliland: Parliament passed the Counter-TIP & SOM bill, the President of Somaliland signed the Bill and it was published in the Gazette
6. Uganda: Convicted one trafficker for life for counts of child trafficking and defilement and initiated action on the revision of the Prevention of Trafficking in Persons Act – 2009 & as well as a debate on the need for a Law covering other facets of migration
7. Tanzania: Developed & launched its Anti-TIP National Plan of Action

UNODC resources for strengthening legislative response

United Nations Convention against Transnational Organized Crime and the Trafficking in Persons Protocol

Travaux Préparatoires of the negotiations for the elaboration of the UNTOC and the Protocols thereto: \Official records of the negotiations of the TOC Convention and the supplementing Protocols

Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto The guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, and drafted to accommodate different legal traditions.

Model Laws against Trafficking in Persons and Smuggling of Migrants (year)

Developed to assist States in implementing the provisions contained in the Trafficking in Persons Protocol, and the Smuggling of Migrants Protocol with model provisions and commentary thereto.

Combating Trafficking in Persons: A Handbook for Parliamentarians (year)

The Handbook is intended to support Parliamentarians to enact sound laws and adopt good practices that will strengthen national responses to human trafficking.

Assessment Guide to the Criminal Justice Response to Smuggling of Migrants (year)

The Assessment Guide provides an inventory of measures for assessing the legislative, investigative, prosecutorial, judicial, and administrative responses to the smuggling of migrants by land, air, and sea, for deterring and combating such crime, and for integrating the information and experience gained from such assessment into successful national, regional, and international strategies.

Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking - Tools to assist governments, the civil society, the international community, and other relevant actors to conduct a comprehensive or specific assessment of selected aspects of a country's criminal justice response to Trafficking in Persons.

Evidential Issues in Trafficking in Persons Cases (year)

A case digest analyzing 135 cases from 31 jurisdictions to showcase options and possibilities for addressing evidential challenges in prosecution on trafficking cases.

Recommended Principles and Guidelines on Human Rights and Human Trafficking Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council on Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), and the Commentary thereto

United Nations Office on Drugs and Crime Toolkit to Combat Trafficking in Persons (2008)

The 123 tools contained in the Toolkit offer guidance, recommended resources, and promising practices to policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society working in interrelated spheres towards preventing trafficking, protecting and assisting victims and promoting international cooperation.

United Nations Office on Drugs and Crime Toolkit to Combat Smuggling of Migrants (2010)

Provides guidance, promising practices and recommended resources across different issue areas to assist policymakers, law enforcers, judges, prosecutors and service providers as well as other members of civil society in combat migrant smuggling and protecting the rights of migrants.

Anti-Human Trafficking Manual for Criminal Justice Practitioners (2008)

Addresses each phase of the criminal justice response to Trafficking in Persons, from identification of victims through investigations and prosecutions of trafficking, to the protection of victims. The 14 modules each stand alone and serve as a practical guide towards a more effective criminal justice response to Trafficking in Persons.

In-depth Training Manual on Investigating and Prosecuting Smuggling of Migrants (year)

Offered to investigators, examining judges, investigating judges, prosecutors, magistrates, law enforcement officers, border agents, and all other professionals who are involved in the criminal justice system.

International Framework for Action to Implement the Smuggling of Migrants Protocol (year)

A technical assistance tool to support effective implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Assists state and non-state actors to identify and address gaps in their responses to migrant smuggling, by recommending practical measures in accordance with international standards.

Mutual Legal Assistance Tool (year)

Assists States to draft MLA requests. The Tool requires almost no prior knowledge or experience with drafting mutual legal assistance requests and is adjustable to any country's substantive and procedural law. It guides users step by step through a series of templates and consolidates data to automatically generate a request for final editing and signature.



UNODC

United Nations Office on Drugs and Crime

