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DEUTSCHE ZUSAMMENARBEIT

Better Migration Management
Horn of Africa



Trafficking in Persons and Smuggling of Migrants in Peace Support Operations

(Somalia)

Trainers Manual

Implemented by

giz Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH



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Trafficking in Persons and Smuggling of Migrants in Peace Support Operations

(Somalia)

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Written By: Radoslaw L. Malinowski (Haart Kenya)



Implemented by



Awareness Against Human Trafficking (HAART) is a Kenyan non-governmental organisation dedicated to fighting human trafficking in Eastern Africa. HAART was founded on the backdrop of the growing crisis of human trafficking that has seen Kenya becoming the main hub for trafficking in the region. HAART works exclusively on eradication of human trafficking and all forms of modern slavery in Eastern Africa.

International Peace Support Training Centre (IPSTC) is a regional Centre of Excellence. It trains for the African Standby Force (ASF) in Eastern Africa among other clients. It is a Peace Support Operations (PSO) research and training institution focusing on capacity building at the strategic, operational and tactical levels within the framework of the African Peace and Security Architecture (APSA).

The Better Migration Management Programme (BMM) aims to improve migration management in the Horn of Africa and to address human trafficking and smuggling of migrants with and from the Horn of Africa. The Programme works through a consortium of international and European organisations (British Council, CIVIPOL, Expertise France, GIZ, IOM, Italian Department of Public Safety and UNODC). It is funded by the European Union (EU) and the German Federal Ministry for Economic Cooperation and Development (BMZ) and coordinated by GIZ.

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Abbreviations

4 Ps – Protection, Prevention, Prosecution, Policy and Cooperation Paradigm

AMISOM - African Union Mission to Somalia

APSA – The African Peace and Security Architecture

BMM - The Better Migration Management Programme

FGS – Federal Government of Somalia

GIZ - Gesellschaft für Internationale Zusammenarbeit (German Society for International Cooperation)

HAART – Awareness against Human Trafficking

IDP – Internally Displaced Person

IPSTC – International Peace Support Training Centre

SoM – Smuggling of Migrants.

TiP – Trafficking in Persons...

VOT – Victim of Trafficking

Rationale

Trafficking in Persons and Smuggling of Migrants have been concerns for policy makers, human rights institutions and activists around the world. According to several international reports both TiP and SoM have been growing and pose a threat to stability, rule of law, human and state security in virtually every country. The situation of TiP and SoM are worse in countries affected by armed conflict and without efficient government as armed groups tend to exploit the migrating citizens and use trafficking and smuggling as means of income. In addition, countries like Somalia lack effective legal frameworks together with effective institutions to address TiP and SoM. They often are yet to ratify relevant international laws and have no national policy to tackle irregular migration. The aim of this course is to enhance participants' knowledge and skills on identification, prevention and response to TiP and SoM in PSO in order to cascade it to law enforcement agencies and communities in Somalia.

Objectives And Aims

This manual is developed for key stakeholders involved in PSO with an aim of providing them with skills and knowledge on TIP and MS in PSO environment. The overall intention is to enhance the capacity of various institutions and organisations on tackling the issue of TIP and MS in PSO environment.

Objective 1: To enhance participants' understanding of the conceptual and theoretical framework for TiP and SoM.

Objective 2: To enhance participants' knowledge of the legal basis and authority applicable to TiP and SoM concerns.

Objective 3: To raise participants' awareness on prevention of TiP and SoM and protection of victims of trafficking and vulnerable migrants in Somalia.

Structure (Modules)

This course comprises 3 Learning Outcomes to be delivered in 5 days of instruction. There are a total of 31 periods of instruction, 8 periods of administration and 5 periods of course evaluation allocated in the optimum timetable. Each period covers 45 minutes.

Modules Under Objective 1 :

Module 1.1 – Introduction to Migration. At the end of this module the participant will be able to discuss migration and associated concepts as a basis for understanding trafficking of persons and smuggling of migrants in a PSO environment. (3x45 periods)

Module 1.2 – Trafficking in Persons. At the end of this module the participant will be able to discuss the phenomenon of trafficking in persons. (3x45 periods)

Module 1.3 – Trafficking in Persons in Somalia. At the end of this module the participant will be able to discuss intricacies of trafficking in persons within an armed conflict context such as Somalia. (2x45 periods)

Module 1.4 – Smuggling of Migrants. At the end of this module the participant will be able to discuss the phenomenon of smuggling of migrants with a view to establishing any differences and overlaps with trafficking in persons. (3x45 periods)

Modules Under Objective 2 :

Module 2.1 – Legal and Normative Framework. At the end of this module the participant will be able to outline relevant legal and normative frameworks on trafficking in persons and smuggling of migrants at the international, regional and national Levels. (3x45 periods)

Module 2.2 – UN Framework for Action. At the end of this module the participant will be able to describe UN framework for action and its application in addressing trafficking in persons and smuggling of migrations in Somalia. (3x45 periods)

Modules Under Objective 3 :

Module 3.1 – Prevention of TiP and SoM. At the end of this module the participant will be able to discuss strategies for preventing trafficking in persons and smuggling of migrants. (3x45 periods)

Module 3.2 – Protection of Victims of Trafficking and Vulnerable Migrants. At the end of this module the participant will be able to discuss procedures and measures for protecting victims of trafficking and vulnerable migrants. (5x45 periods)

Important Considerations

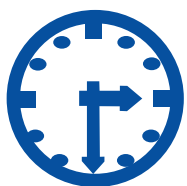
This manual is designed for training in for Somalia but can be tailored to suit specific region, country or organization upon request (especially where TiP and SoM is present in situation of dysfunctional rule of law).

A gendered approach should be adopted throughout the training.

As TiP and SoM emanations are not constant and are likely to change this manual should be updated regularly (at least on annual basis).

Corresponding to the learning outcomes above, this course is structured such that there are theoretical lessons followed by a number of practical sessions.

Symbols



Time allocated for this module



Group Activity



Objectives



Questions



Key Terms



References



Training Methodology



Case Study Exercise



Training Aid

Learning Objective 1

Conceptualisation of TiP and SoM

To enhance participants' understanding of the conceptual and theoretical framework of TiP and SoM in Somalia

Modules:

Mod 1.1: Introduction to Migration

Mod 1.2: Trafficking in Persons

Mod 1.3: Trafficking in Persons in Somalia

Mod 1.4: Smuggling of Migrants

Concept of TiP & SoM

Mod 1.1: Introduction to Migration



Time Allocation: 3x45



Objectives: At the end of this module the participant will be able to discuss migration and associated concepts as a basis for understanding trafficking of persons and smuggling of migrants in PSO environment



Training Methodology: This module is introduced through lecture method combined with participatory approaches such as brainstorming, Q&A, syndicate or small group exercises, plenary discussions and experience sharing. Training aids will include video clips and maps showing migration routes.



Training Aid: Video Clip – Why do people migrate (5 mins)

Objective: To provide participants with an overview of factors that contribute to migration.

Guidance: The video clip describes reasons why people migrate from one place to another. It concludes that it is a balance between push and pull factors on social, economic and political levels. After watching the clip, a short plenary discussion is held to highlight key aspects.

Source: <https://www.youtube.com/watch?v=54xM8VlgP7s>



Buzz Group: Is migration good or bad phenomenon? Discuss in small groups.



Syndicate Based Exercise on the different types of Migrants

1. Push and Pull factors : Why do people move from / to / through Somalia?

Objective: To reinforce participant's understanding of pull and push factors in migration and types of migrants.

Guidance: In small groups, the participants are tasked with the following exercises and asked to present their findings in the plenary:

- a. Discuss why people move from, to and through Somalia.
- b. Using the data provided about Country A explain why a person living in this country may wish to leave?

Push and Pull factors

Country A is a small country with a population of around 10.6 million.

The table below provides statistical data on Country A:

Push Factor	Indicator	Data
Poverty	Gross National Income (per year)	\$780 (£600 approx.)
	Population rate below poverty line	60%
Unemployment	Population rate	41%
Education	Access to education	Limited access to education (average age 25 years or older has less than 5 years of schooling)
Corruption	Corruption Perception Index	159 (out of 179) (0=low 179=high)
Institutional efficiency	Fragile states index	112.3 (out of 120) (0 = Very Sustainable 120 = Very High Alert)
	Earthquake	3.5 million affected
	Hurricane	2.1 million affected
	Drought	4.5 million affected

c. Review the scenario provided and identify the different types of migrants in country A.



Key Terms:

Country of Origin

The country that is a source of migratory flows (regular or irregular).

Country of Destination

The country that is a destination for migratory flows (regular or irregular).

Country of Transit

The country through which migratory flows (regular or irregular) move.

Economic migration

The movement of a person or a group of persons, either across an international border, or within a State motivated solely or primarily by economic opportunities.

Emigration

The act of departing or exiting from one State with a view to settling in another.

Environmental migration

The movement of persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are forced to leave their places of habitual residence, or choose to do so, either temporarily or permanently, and who move within or outside their country of origin or habitual residence.

Forced migration

A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons).

Immigration

A process by which non-nationals move into a country for the purpose of settlement.

Internally Displaced Persons

Persons or groups of persons who have been forced or IDPs obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

Irregular migration

Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination. (specifically: TiP and SoM)

Migration

The movement of a person or a group of persons, either across an international border, or within a State.

Push and Pull factors

Push factors are a set of variables (conditions) that drive emigrants to leave their country while pull factors are a set of variables (conditions) that attract immigrants to the country of destination.

Refugee

A person who, owing to a well-founded fear of persecution 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 or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Regular migration

Migration that occurs through recognized, authorized channels.

Teaching Points:

1. Migration Terminology (see the Key Terms)
2. Push and Pull Factors:

Migration is a complex phenomenon that varies according to region and circumstances. Globally, migration happens in every country and while some countries are predominantly countries of origin, others are countries of transit or destinations. The factors that drive human beings to migrate are complex and multidimensional but can be grouped into either push or pull factors. Push factors are the circumstances that make a person want to leave their town, region or country, while Pull factors are the perceived advantages a country or region has that makes a person want to live and work there. This concept is largely based on disparity, or the known or perceived differences between one place and another (e.g. Economical difference, job opportunities difference, peace vs war difference).

Examples of Push factors:

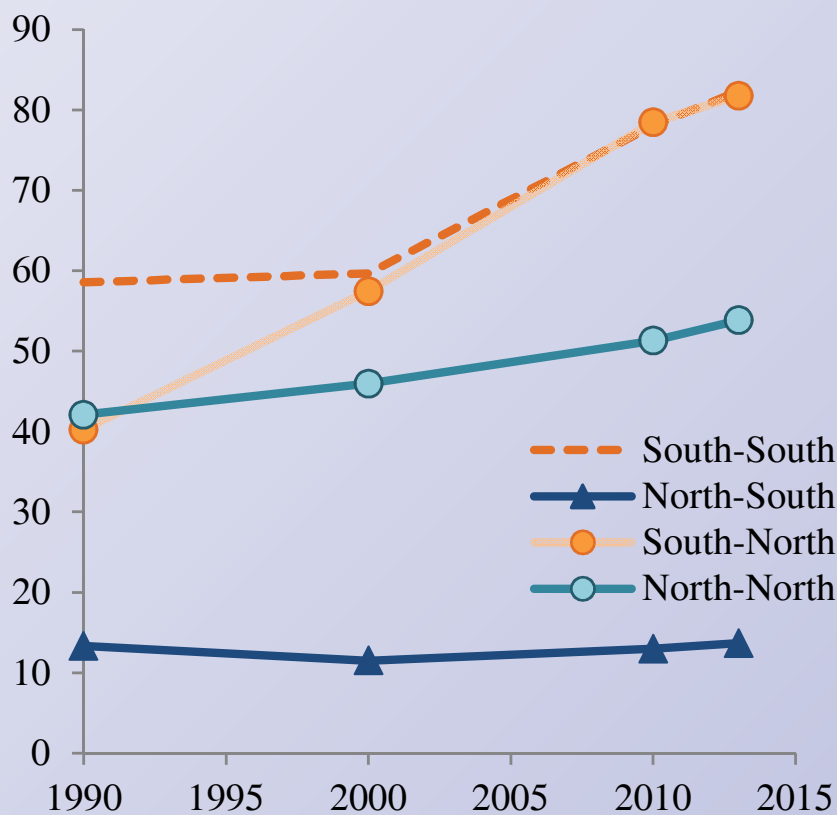
- Poverty
- Gap between the rich and the poor
- High unemployment
- Forced migration
- Conflict
- Natural disasters
- Political instability
- Corruption
- Lack of human rights
- Gender inequality

Examples of pull factors:

- Perceptions of a 'better life' abroad (often based on anecdotal stories of past or actual migrants)
- More opportunity for work and higher earning potential
- Improved social position
- Education opportunities
- Expatriate populations in the country of destination

3. Migration Trends (Global, Regional and National i.e. Routes and Actors)

(a) Migration has been part of human experience since the beginning of humankind, and played a key role in shaping human history. Contemporary studies of migration place migration in the centre of globalization processes, as the number of migrants around the world is constantly on the rise. Migration can be categorized into many groups according to destination, nature, internationality, willingness and other criteria. Some of the most common types of migration are: Internal Migration, External Migration, Forced migration, Mixed Migration, Irregular Migration, Economic Migration, Environmental migration, rural-urban migration etc.



Number of international migrant flows by origins and destinations from 1990 to 2015

Note

South: countries located in the northern hemisphere

North: countries located in the southern hemisphere

Source: United Nations, Department of Economic and Social Affairs (2013). Trends in International Migrant Stock: The 2013 Revision-Migrants by Destination and Origin

Source: Migration Data Portal (2019) https://migrationdataportal.org/sites/default/files/2019-06/2205_Key%20Global%20Migration%20Figures%202017-2019%20%281%29.pdf

(b) Regional trends.

The Eastern Africa region experiences several patterns of migration which the population is involved in. Key migration types in Eastern Africa (both domestic and cross border) include:

- Forced Migration
- Irregular Migration (Migrant smuggling and human Trafficking)
- Economic migration
- Rural – Urban migration

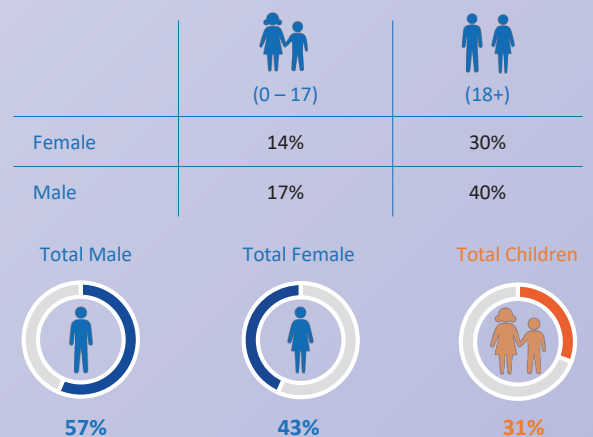
(c) National trends (including routes and actors).

Somalia continues to experience several migration patterns although limited data does not allow to actual establishment of statistical information about migration. The situation is better with the cross border migration as several reports from international bodies register some cross border migration patterns: 60% of migrant are Somalis while 38% were Ethiopians, and 2% Djiboutian. 69% of migrants were adults and 31% were minors. 57% were male and 43% were female. Main countries of intended destination for outgoing flows in January 2019 were Yemen

REASONS FOR MOVEMENT

Reasons for Movement	%
Forced movement - Conflict	34%
Seasonal	24%
Economic Migration	12%
Forced movement - Natural Disaster	9%
Unknown	8%
Short term local movement	7%
Tourism	5%

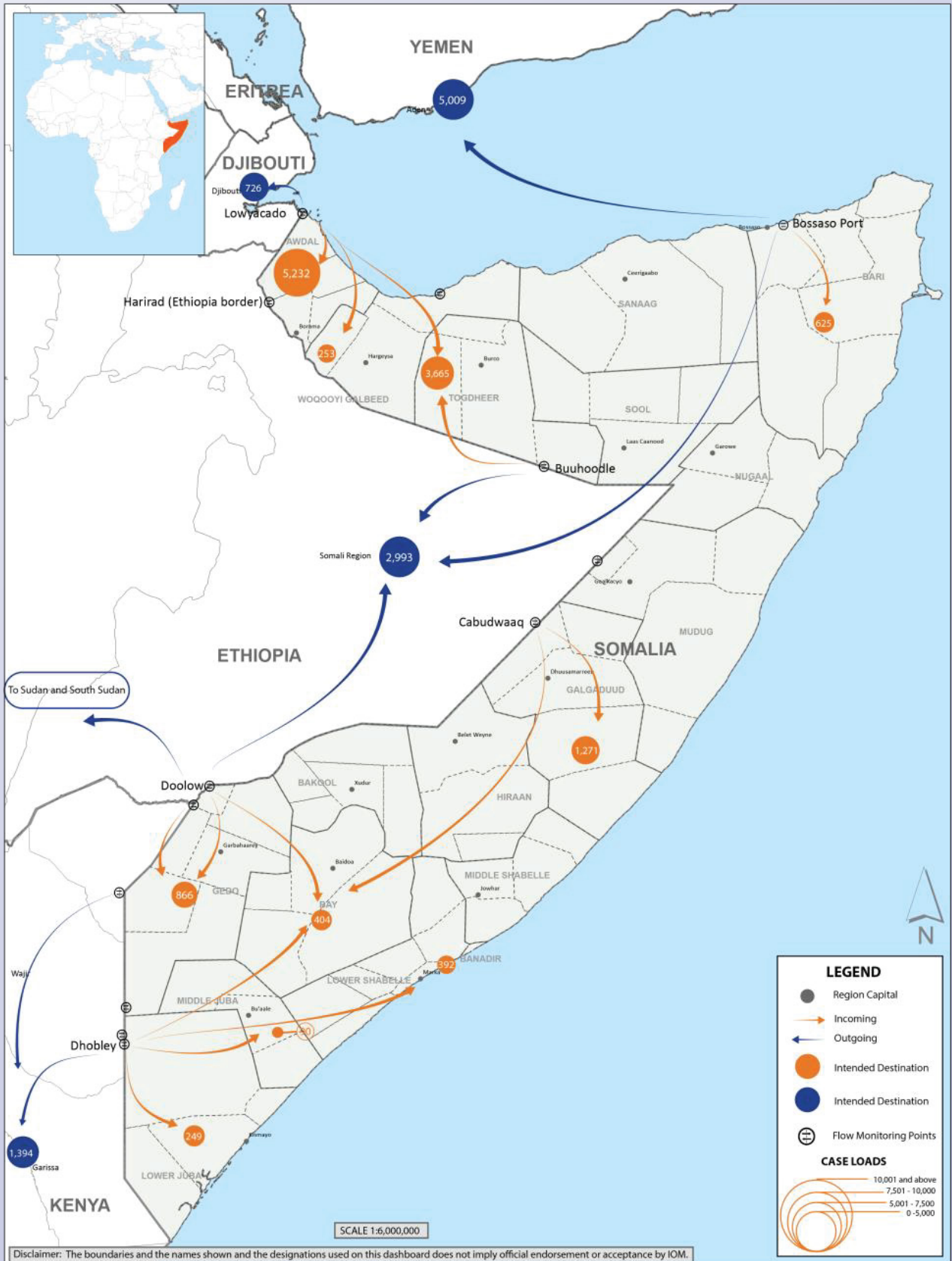
AGE AND SEX DISTRIBUTION



Source: IOM: Cross Border Movements – Somalia (2019)

Concept of TiP & SoM

Some Patterns of Movement for Somalia



Source: IOM: Cross Border Movements – Somalia (2019)



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Concept of TiP & SoM

Mod 1.2: Trafficking in Persons



Time Allocation: 3x45



Objectives: At the end of this module the participant will be able to discuss the phenomenon of trafficking in persons.



Training Methodology: This module will be introduced through lecture method combined with participatory approaches such as brainstorming, Q&A, syndicate or buzz group exercises, plenary discussions and experience sharing.

Training aids include use of Scenarios, Images on TiP, Videos on TiP –
1. Deceived (4mins); 2. The Promise (3 mins); Flip Chart



Exercises: Syndicate Based Small Group Exercises & Discussions on TiP - On the difference between Adult and Child Trafficking,

Objective: To allow the participants to share their views on the differences between adult and child trafficking

Guidance: In small groups (2-3 people), the participants will be tasked to:

1. Draw a table with two columns named 'adult trafficking' and 'child trafficking';
2. Indicate the differences between adult and child trafficking (facilitator may choose to provide the participants with a scenario to aid them in doing this exercise); and
3. Share findings in the plenary



Training Aid: Video Clip – Deceived (4mins)

Guidance: The video clip describes “acted” experiences of a victim of trafficking. It highlights the lies and deceptions that traffickers use to lure victims into “modern day slavery”. A plenary discussion is held after the clip to highlight key elements of TiP in the story.

Source: <https://www.youtube.com/watch?v=lvHoj8MKBOA>



Case Study: Story of Jiva

Objective: To enable the participants to apply the knowledge on trafficking in persons in defining a practical case scenario.

Guidance: *In small groups, the participants will review a provided scenario 'Jiva's story' and present their findings on the following questions in the plenary:*

Jiva was a 4 years old girl, coming from a very poor family. Due to poverty her father decides that Jiva and her sister should stay and help with home chores while her brothers should continue with their education. One day a distant relative from Nairobi– Aunt Fatuma – paid a visit to Jiva family and brought them several gifts such as clothes and food. Aunt also proposed that she can take Jiva with her as she needed an assistant in her restaurant business. In exchange for helping Jiva would attend evening classes, paid for by Fatuma.

However, once Jiva arrived in Nairobi, the whole arrangement has changed. Jiva was working in the Fatumas' restaurant, but instead of going to school, as promised, Fatuma would arrange clients from the same restaurant who would have sex with her. Jiva tried to protest but Fatuma used her family position to force Jiva obey. To prevent Jiva from escaping from the restaurant Fatuma ordered restaurant guards always watch over her during the day, while at night Jiva was kept in a locked facility behind the restaurant.



Questions:

1. Is this a case of trafficking in persons?
2. What was the act, means and purpose?
3. Do you think Jiva gave true consent of the process?
4. What control tactics were used to keep Jiva?



Training Aid: Video Clip – The Promise (3mins)

Guidance: The video clip describes “acted” experiences of a child - victim of trafficking. It outlines the promises e.g. education opportunities used by traffickers to lure victims. A plenary discussion is held after the clip to highlight key aspects of child trafficking.

Concept of TiP & SoM



Case study: The difference between child and adult trafficking - Story of Mary and Joyce

Mary and Joyce were two unemployed females living in Nairobi. One day they were approached by Frank - a man who claimed to be a club owner from Mombasa. Frank claimed that his business is very successful however he needs new female employees such as Mary and Joyce. He proposed that both females travel to Mombasa and work in his club. The job was to work as waitresses in his club. Frank proposed a minimum wage salary plus food and accommodation in exchange for the services. Additionally, patrons from this club used to request waitresses to perform a private strip dance and other sexual services, for which they would be paid separately. Joyce and Mary agreed to take the job offer and even received small amount of money to buy tickets to Mombasa. Upon arrival they were received in Frank's club and started working in his premises. The working arrangement was exactly as described by Frank: they used to receive minimum wage salary for being waitresses plus extra fee for private strip dance (if they wanted to perform it). Frank also provided food and accommodation, as promised initially.



Questions:

Scenario A: Mary and Joyce are 20 years old:

- Is this a TiP case?
- If yes - What were the act, means and purpose?

Scenario B: Mary and Joyce are 17 years of age:

- Is this a TiP case?
- If yes - What were the act and purpose?



Key Terms:

Trafficking in Persons: "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.

Consent

A voluntary agreement of the complainant to engage in the activity in question.

Exploitation

The act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit.

Minor (child)

Every human being below the age of eighteen years.

Adult:

Every human being of 18 years and above.

Teaching Points:

1. The concept of Trafficking in Persons (TiP).

Trafficking in Persons is one of the growing concerns around the world and is often referred as modern slavery due to several similarities to slavery and slave trade that happened in the past. According to UN approximately up to 40 million people become victims of TiP on annual basis and TiP is the third source of income for Organised Criminal Groups after illegal arms trade and drug trade. The scale of TiP and dangers it poses on individuals and the whole society led the international community to develop international legal instruments that provide a standard definition of TiP.

Based on the Palermo Protocol definition there are several characteristics of TiP:

a) TiP is a process

Human trafficking is usually (but not always) a process that can happen in different locations. A victim can be recruited in one location, transported to another location and exploited in a third location. Trafficking does not start in the place of exploitation; it starts when the victim is recruited.

b) TiP can be both cross border and internal

Human trafficking can be both internal and cross-border. Internal human trafficking involves victims being recruited and exploited without crossing any international border (e.g. a victim is recruited in Kismayo, then taken and exploited in Mogadishu). When the victim is recruited and then moved from one country to another, he/she is subjected to cross-border (or international) trafficking.

c) Multi-purpose and multi profile

Human trafficking always happens for the purpose of exploitation. However, the exploitation can be in different forms such as through forced labour, sexual exploitation, and organ removal among others.

Concept of TiP & SoM

d) Movement

Most cases of trafficking involve movement, but physical movement is not always the only indicator of human trafficking.

e) Consent

The consent of a victim plays a key role in identifying human trafficking. In some situations, an adult victim may 'consent' to human trafficking. However, the consent may be obtained through force, blackmail, deception, use of power or vulnerability of the victim. In such situations, victim's consent is nullified. The consent, in order to be valid, must be informed and expressed freely in all stages of trafficking. A child, on the other hand, can never consent to human trafficking. It is irrelevant therefore whether or not a child 'consented' to TIP.

f) VOTs as offenders

In some situations, victims find themselves in conflict with the law e.g. being in a foreign country without necessary documents such as passports and visas or arrested for violating the laws on prostitution. They are therefore termed illegal aliens in that country. Being victims of TiP they should however be immune to prosecution and receive protection as victims of crime.

2. Definition of TiP in international law

The widely used definition of TiP is derived from Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol, 2000). It is through this protocol that the definition of human trafficking is adapted by most countries in the world.

Trafficking in Persons as defined by the Palermo Protocol:

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

The definition contains three main elements:

■ Act (what is done):

Recruitment: an activity that aims at convincing VOT to accept the trafficking offer. Typical ways of recruitment are to offer a good job, educational opportunity, beneficial relationship, and other benefits.

Transportation: whether financed by trafficker or by VOT or third party (e.g. VOT family).

Transfer: e.g. from one to another branch / sector.

Harbouring or receipt of persons: especially when the process of TiP requires long journey.

■ Means (how it is done)

Threat or use of force: use of physical force, or threat of use of such force.

Coercion: to persuade someone who is unwilling to do something by using force, threat or similar methods. Coercion can be both physical and psychological.

Abduction; e.g. kidnapping (a child or an adult with the use of force)

Fraud and deception: This is one of the prevalent methods of manipulating a victim's consent. Traffickers manage to deceive the victim, especially when the victim is hoping to get an attractive job. There are numerous methods of deceiving the victims; promising a good job opportunity or good education being the most common.

Abuse of power and vulnerability: when the VOT is in a relation that entails power play (job supervisor, relative, power linked to cultural patterns).

Giving payments or benefits to a person in control of the victim: apply to a situation where the trafficking involves a child (or a relative) and a parent. For example, where traffickers are making payments to parents in exchange of benefits from child exploitation.

■ Purpose

The purpose of TiP is always EXPLOITATION. Below are the most common types of exploitation:

Forced Labour: which means all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily but with the use of means as explained above. Victims are abused through forced labour in domestic sector (e.g. maids, cooks, au pairs), in agriculture, in fisheries, construction sector and in other types of industry. Forced labour occurs when the labour is of economic nature.

Child Labour: According to the Convention on the Rights of the Child, a child is defined as every human being below the age of 18 years. State parties which are signatories to the Convention recognise that every child shall be protected from economic exploitation and any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Child soldiers: Forcing children to become child soldiers is a form of internal trafficking and contravenes the Convention on the Rights of the Child which states that no child shall take part in hostilities or be recruited in armed conflicts in order to be a soldier, member of terrorist group, rebel or member of army support units.

Concept of TiP & SoM

Sexual exploitation: Sexual exploitation of victims is one of the most common reasons why people are trafficked as there is huge demand for commercial sex and pornography. Victims of human trafficking for the purpose of sexual exploitation are both adults and children. Although most of the VoTs for sexual exploitation are women, men are also victims of this heinous act. The number of male victims of human trafficking for sexual exploitation is in fact growing internationally.

Sexual exploitation is broader than engaging in commercial sex. It can be defined as the participation of a person in prostitution, sexual servitude, or the production of pornographic materials as a result of means mentioned above (for adult), or regardless of means where the person is below 18 years of age.

Child marriage: Child marriage is another form of TiP. Often child marriage is closely interlinked with Female Genital Mutilation (FGM) – a practice that enables girl child for child marriage.

Organ Removal: Trafficking for the purpose of organ trade is another common purpose for trafficking people and it could occur with persons of any age. Trafficking for the purpose of organ removal is not however the same as trading in organs (which is also an illegal activity but different from TiP).

Begging: Victims can also be subjected to trafficking for the purpose of begging. This type of exploitation involves especially children and persons living with disabilities.

Illegal or undesired adoption: Adopting children with the intention of exploitation (e.g. child labour) can constitute TiP.

Trafficking for the purpose of extremism: Traffickers can also traffic their victims in order to make them join extremist groups such as terrorist group Al Shabaab. They usually use any of the aforementioned means to force individuals into violent extremism.

3. Consent

The concept of consent is key for TiP especially when the victim is a child. Victims cannot consent to TiP and child never consents to TiP (therefore if child consents to TiP the consent is irrelevant).

As for the case that is involving adult victim, consent is irrelevant if any of the means explained above is applied. A person has not been trafficked if they freely consent to their exploitation. But a person's ability to consent freely will be lost if they are not in a position to exercise free will. A person may initially give their consent but this consent will be rendered meaningless if it was obtained by coercion, deception or abusive actions of the trafficker. The issue of consent is complex since consent can take many forms. If the age of the person cannot be ascertained at the time, then they are to be treated as if they were a child (under 18) until their age can be verified.

4. How to distinguish the case of TiP?

The definition of TiP as captured by the Palermo Protocol provides elements necessary for identification of TiP case.

Step 1: Identify whether the suspected VOT is a child or adult

Step 2: If the suspected VOT is an adult use the table A

ACTIVITY	MEANS	PURPOSE = Exploitation such as:
Recruitment	Threat	Prostitution of others
Transport	Use of Force	Sexual exploitation
Transfer	Coercion Abduction	Forced labour
Harbouring	Fraud Deception	Slavery or similar practices
Receipt of persons	Abuse of Power or vulnerability	Removal of organs
	Giving Payments or benefits	Other types of exploitation

NB: For adult trafficking to occur at least ONE element from each of the three columns must occur in a narrated story (there can be more elements each column)

If the suspected victim is a child: use the table B

ACTIVITY	PURPOSE = Exploitation such as:
Recruitment	Prostitution of others
Transport	Sexual exploitation
Transfer	
Harbouring	Slavery or similar practices
Receipt of persons	Removal of organs
	Other types of exploitation

NB: For child trafficking to occur at least ONE element from each of the two columns must occur in a narrated story (there can be more elements from each column)



References:

UNODC. (2004). United Nations Convention Against Transnational Organized Crime and the Protocols Thereto. Retrieved 5 of June 2019 from https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/United_Nations_Convention_Against_Transnational_Organized_Crime_and_the_Protocols_Thereto.pdf

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Mod 1.3: Trafficking In Persons In Somalia



Time Allocation: 2x45



Objectives: At the end of this module, the participant will be able to:

At the end of this module the participant will be able to discuss intricacies of trafficking in persons within an armed conflict context such as Somalia.



Training Methodology: This module is introduced through lecture method combined with participatory approaches such as syndicate exercises, role play, Q&A, plenary discussions and experience sharing. Training aids will include videos and case studies from the region.



Training Aid: Video – Combating HT & GBV in Somalia (15 mins).

Objective: To strengthen participant's understanding of trafficking in persons within an armed conflict environment such as Somalia.

Guidance: The film presents the achievements of IOM/EU project on countering human trafficking and GBV in Somalia (Puntland). It documents that protracted armed conflict, drought, poor living conditions and other factors make individuals vulnerable to trafficking and smuggling. It further outlines the importance of enhancing capacity of law enforcement agencies, providing assistance to victims and creating public awareness on trafficking in persons and smuggling of migrants.

Source: <https://www.youtube.com/watch?v=bwsRSf90pZs>



Exercise: Role play -Thinking like a trafficker

Objective: To enable the participants to relate with mind-sets of traffickers so as to be able to identify and employ the best countering intervention approaches.

Guidance: Engage the participants in a role play as follows:

1. Divide the participants into 3 groups;
2. Allocate each group with a typology of trafficking i.e. trafficking for sexual exploitation, trafficking for forced labour, and trafficking for organ removal;
3. Ask each group to form an organised criminal group that is going to traffic a victim for their respective exploitations. They must outline how they will recruit, transport, and exploit the victim in a way that avoids detection by law enforcement;
4. Ask each group to present their 'business model';
5. After the presentations, conduct a plenary discussion session on how law enforcement would investigate each 'business' i.e. where are the weaknesses?



Key Terms:

Armed Conflict: An 'armed conflict' is characterized by protracted armed confrontations between two or more States or between governmental armed forces and the forces of one or more armed groups within a State.

Armed group in conflict: Actors engaged in armed hostilities in the context of armed conflict. These groups have some level of organizational coherence and are usually under some form of command and control reflecting internal hierarchies.

Slavery: The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

Concept of TiP & SoM

Teaching Points:

1. Understanding TiP in armed conflict¹

Trafficking in persons in the context of armed conflict has received increased attention by the international community. In November 2017, the United Nations Security Council addressed the topic in Resolution 2388 and reiterated its deep concern that trafficking in persons in areas affected by armed conflict continues to occur. It also underscored that certain offences associated with trafficking in persons in the context of armed conflict may constitute war crimes.

A combination of different elements characterizing armed conflicts increases the risks of trafficking. Armed conflicts amplify the social and economic vulnerabilities of the people affected. In addition, the erosion of the rule of law, which safeguards and protects individuals in peacetime, is one common consequence of armed conflict. The breakdown of State institutions that results in corruption and impunity contributes to generating an environment where trafficking in persons can thrive. In addition, displacement and marginalisation (or discrimination) of minority groups, breakdown of social ties and diminishing level of economic opportunities fuel TiP. In conflict situations, traffickers can operate with even less fear of consequences than in peacetime.

Armed conflict has two levels of impact on TiP: direct or indirect. Direct impact of armed conflict TiP occurs when human trafficking is part of the violence and hostilities perpetrated by parties to the conflict, especially armed groups involved in conflict.

Indirect impact is on the other hand when traffickers (not necessary involved in the conflict) take opportunity of the vulnerability of population affected by conflict (e.g. IDPs, population affected through loss of income etc.). In this context armed conflict might impact TiP outside specific conflict areas – e.g. IDPs and refugees who fled the conflict area and thus are vulnerable to TiP.

The most common forms of trafficking in a situation of armed conflict:

- Sexual exploitation

Trafficking for the purpose of sexual exploitation is one of the most detected form of trafficking in a situation of armed conflict. TiP for the purpose of sexual exploitation is a part of gender based violence that characterizes conflict areas with women and girls being exposed to increased risk of sexual abuse. This is due to demand for sexual services (bought or obtained by members of armed groups), combined with reduced economic opportunities and lack of social services in conflict area.

- Trafficking in persons for sexual slavery (also using sex slaves as “reward” for members of armed groups. This happens when victims are abducted, held in captivity, and exposed to many forms of sexual abuse, including rape and sexual slavery, during which victims are raped and forced to perform domestic chores.

¹ Based on the UNODC (2018) A. Countering Trafficking in Persons in Conflict Situations, Thematic Paper

■ Recruitment and use of children by armed groups and armed forces

Children are used for armed combat in several ways, often depending on their age and sex. As a general pattern, older children are recruited into armed units to take active part in hostilities, while younger children are used for other tasks. In some cases, younger children are used as body guards or in other supporting roles. Recruitment may involve families or communities handing over their children, particularly boys, to join armed groups that share ethnic, religious or territorial ties with these communities. In some circumstances children join armed groups due to lack of other options

■ Forced labour (including child labour)

TIP for forced labour is often orchestrated by armed groups to generate illicit income. Also, people living in conflict zones or close to conflict zones are at risk of exploitation in this way. Forced labour, most often, happens in agriculture, extractive industries, in services and domestic sector and finally through use VOTs (notably children) as porters.

■ Abduction of women and girls for forced marriages

This type of trafficking mainly targets women and girls, and the type of exploitation leverages on stereotypical gender roles where the wife carries out household duties while experiencing severe forms of violence, abuse and coercion including rape and non-consensual sexual intercourse. Often victims are “assigned” to members of armed groups as a reward.

Victims exploited in Conflict

Various reports establish that victims are exploited for various purposes. Girls and women are mostly victims of sexual slavery, forced marriage and sexual slavery while boys are mainly recruited into armed groups. Men are trafficked mainly for the purpose of forced labour in services, industries, extractive industries and agriculture while women are also recruited for domestic work.

Victims exploited while fleeing conflict

Armed conflicts typically result with displacement as population affected flees the area of conflict. Displaced population (whether refugees or IDPs) is particularly vulnerable to trafficking and smuggling. Within the displaced groups, unaccompanied children and young women are more at risk of being trafficked or smuggled.

Perpetrators, Interests and Strategies

In the armed conflict traffickers can be categorized into two main groups:

- Armed groups
- Opportunists

Armed groups traffic people for various purposes such as to generate income, increase the unit's number, and inflict fear on the controlled population and support group's operations. They also traffic people in order to reward their members with slaves.

Armed groups use different methods to recruit children into their ranks. In some cases, they put pressure on local communities, promising security from external threats in

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exchange for child recruits. Forced recruitment into armed groups may also take the form of 'military conscription', as part of greater 'governance' these groups set up in the territories they control. Finally, they use kidnaping and abduction as well as false promises (e.g. a fake job offers) to recruit VOTs.

Opportunists. Under this category there is a range of individuals, organised groups and trafficking syndicates that take the opportunity caused by armed conflict. A typical modus operandi for a trafficker in conflict settings is to exploit the urgency for refugees to move to safe countries. Another way of deceiving victims is by promising marriage. Traffickers may take advantage of conflict and insecurity to deceive families into committing their daughters to marriage. Some of these marriages are arranged by traffickers to facilitate sexual exploitation.

Reported forms of trafficking in persons directly and indirectly related to armed conflict



2.. Nature – Manifestation of TiP in Somalia ²

Overview

Somalia is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. Information regarding trafficking in Somalia remains extremely difficult to obtain or verify. Trafficking routes within the country are particularly opaque, but anecdotally, victims are more likely to be subjected to trafficking from south-central Somalia to the regions of Puntland and Somaliland in the north. In Somaliland, women act as recruiters and intermediaries who transport victims to Puntland, Djibouti, and Ethiopia for the purposes of domestic servitude or sex trafficking. A majority of victims originate in south-central Somalia, with the main destinations being Europe (primarily Italy), Yemen, Gulf States (primarily Saudi Arabia), South Africa, and Kenya. Three cross-border trafficking routes are most commonly used by traffickers:

² Based on the US government report (2018)

- (1) South-Central Somalia to Yemen via Puntland;
- (2) Somalia to Europe via Kenya or Ethiopia and onward to Libya or Egypt;
- (3) Somalia to South Africa via Kenya and Tanzania.

Al-Shabaab continues to facilitate human trafficking crimes, using deception to recruit victims in south-central Somalia and Kenya and subsequently forcing them into sexual slavery, support roles, and marriages to al-Shabaab militants. Youths aged 18 to 35 from south-central Somalia, driven by pressure to seek employment opportunities abroad, are the most vulnerable to trafficking.

Child soldiers

Somali National Army (in the past), Ahlu Sunna Wal Jama'a, clan militia, and al-Shabaab were reportedly using child soldiers. The efforts of the FGS to end the recruitment and use of child soldiers were focused solely on the SNA. The government's implementation of the 2012 action plan to end the recruitment and use of children by the SNA remained incomplete. Nevertheless, in 2016, the SNA's Child Protection Unit reported that it conducted awareness campaigns in Mogadishu, Guul Wadaysha, and at the Siyad Army Base on the importance of preventing child recruitment into the security forces. Authorities handed over children separated from armed groups to an international organization for care.

In 2018 al-Shabaab reportedly conducted numerous "handing-over" ceremonies in the presence of village and clan elders, during which the terrorists forced communities to "volunteer" hundreds of their children to fight among its ranks. It is reported that Al-Shabaab militants have subjected children in military camps to weapons and bomb making training, malnutrition, severe physical punishment, and compulsory religious education and used them on the front-lines as direct participants in hostilities. The terrorist organization also enslaved an indeterminate number of young girls and exploited them in sexual servitude. Al-Shabaab also forcibly recruited young girls and exploited them in sexual servitude. UN officials documented the recruitment and use of more than 2,100 children in 2017.

No children have been reported to be abducted, recruited, or used by peacekeeping forces of the African Union Mission in Somalia (AMISOM) during the past years. In 2017, al-Shabaab continued to involve children in conflict through recruitment and participation in direct hostilities, such as planting explosives and carrying out attacks, in addition to support roles such as carrying ammunition, water, and food; removing injured and deceased militants; gathering intelligence; and serving as guards. The terrorist organization also enslaved an indeterminate number of young girls and exploited them in sexual servitude.

Throughout areas beyond State control, al-Shabaab frequently recruited children for use by its militias, typically through abduction, deception, or compelling elders to hand over minors.

Trafficking among displaced and marginalized groups

Certain marginalized ethnic minorities—Somali Bantus and Midgaan—continue to face greater risk of sex and labour trafficking, as do IDPs and people living in areas under al-Shabaab control. Traffickers and smugglers reportedly take advantage of the vulnerability of IDP women and children, mostly from southern and central Somalia, at times using false promises of lucrative jobs in Europe and North

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America. Self-identified administrators of some IDP camps reportedly force girls and women to provide sex acts in exchange for food and services; some Somali officials are alleged to be complicit in such exploitation. These camp administrators continue to charge rent or fees for otherwise-free basic services and sell the area they control within a camp to other administrators, establishing a cycle of debt for IDPs that makes them vulnerable to trafficking, including inherited bondage. Authorities in Somaliland report an increase in the transporting or kidnapping of children and unemployed university graduates, who later transit to Ethiopia and Sudan and are sometimes held hostage by networks in Libya en route to Europe and the Middle East. Some members of the Somali diaspora use false offers of marriage to lure unsuspecting victims, many of whom include relatives, to Europe or the United States, where they force them into prostitution or domestic servitude.

Traffickers reportedly subject Somali children fleeing al-Shabaab and seeking refuge in Kenya to forced labour or sexual exploitation. Trucks transporting goods from Kenya to Somalia sometimes return to Kenya with young girls and women; traffickers procure these young girls and women and exploit them in brothels in Nairobi or Mombasa or send them to destinations outside Kenya. Undocumented Ethiopians in northern Somalia also remain vulnerable to trafficking as they seek employment in Puntland and Somaliland to fund subsequent travel to the Middle East. Ethiopian children who travel to Somaliland to seek employment have ended up being forced to beg on the streets. Some traffickers reportedly compel community elders, particularly in coastal regions, to convince community members to travel to Europe for employment opportunities; some individuals are subjected to forced labour in Europe.

Trend – Routes and Actors in Somalia

There are three main destinations for migrants from Eastern Africa, which are Europe, the Middle East and Southern Africa. The routes taken depend on the mode of transport used by the smuggled migrant

- EUROPE via the Sudan to Libya or Egypt where they access Europe from West Balkans via the former Yugoslav Republic of Macedonia and the Central Mediterranean route to Italy. Most of the migrants are Somalis, Eritreans, Sudanese and Ethiopians.
- MIDDLE EAST to Yemen via the Somali regions' cites of Hargeisa and Bossaso.
- SOUTHERN AFRICA via Kenya, Malawi, Mozambique and the United Republic of Tanzania, to South Africa where majority of the irregular migrants are destined.



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Mod 1.4: Smuggling Of Migrants



Time Allocation: 3x45



Objectives: At the end of this module the participant will be able to discuss the phenomenon of smuggling of migrants with a view to establishing any differences and overlaps with trafficking in persons.



Training Methodology: This module is introduced through lecture method combined with participatory approaches such as Q&A, brainstorming, role play, syndicate or small group exercises, plenary discussions and experience sharing. Training aids includes videos and scenarios.



Exercise: Defining Smuggling of Migrants

Guidance: The term '*smuggling of migrants*' is defined in international law under Article 3(a) of the Smuggling of Migrants (SoM) Protocol. Read through the definitions below and circle the number next to the correct definition.

Hint: There is only one correct answer.

1. "Smuggling of migrants" shall mean the procurement, in order to obtain, directly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.
2. "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.
3. "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.
4. "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is a national or permanent resident.



Exercise: There are several actors who may be involved in the trafficking of persons and smuggling of migrants, performing various functions to facilitate the process. Using the list of potential actors below, give an example of how they may facilitate the process in the context of both TiP and SoM.

	TiP	SoM
Forgers of travel and identity documents		
Family and / or Friends		
Airline Staff		
Boat owners or owners of other vehicles		
Financiers or cashiers		
Corrupt public officials		
Organized Criminal Groups (including terrorists)		

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Exercise: Identifying whether trafficking in persons or smuggling of migrants has taken place.

Please read through the example below and decide if this is a case of TiP or SoM?

An advert is placed by a recruitment agency in a local newspaper in a town. It promises good wages for cleaners and domestic servants in another country. All visa and other migration requirements will be taken care of.

A young woman applies. She is worried because she thinks she may have to pay a fee. She is told not to worry because all fees will be taken care of when she arrives at the destination. Reassured, she agrees to be flown to the developed country for the promised work. She is taken to the airport, provided with a passport and given instructions that she will be met at the other end by the agency's staff.

When she arrives, she is met by a man and a woman. She is told she must hand over her passport as security. She is driven to a large house where she is told she must work as a servant. Money is exchanged between the "staff" from the "agency" and her new "employer".

Before they leave, she asks the "agency staff" about her wages. She is told she will be paid a wage but will have to pay for accommodation and food. She asks about when she will get her passport back. She is told she will get her passport back once she has reimbursed the employer for the costs of recruitment. She is further told it will be possible to save money from her wages to pay back the fee the "employer" has paid and the transport costs. As the weeks go by the amount "owed" increases because she is paid little and the cost of food and accommodation is high. For every small mistake she receives a slap. She has no alternative but to work for 14 hours per day, seven days per week.



Exercise: Story of Abeba

Objective: To enhance participant's knowledge on the differences and overlaps between smuggling of migrants and trafficking of persons.

Guidance: In small groups, the participants will review a provided scenario 'Abeba's story' and discuss whether it is a case of smuggling or trafficking as well as identify any overlaps. They will then present their findings in the plenary, followed by a short discussion on emerging issues.

Distinguish between TiP and SoM - Case Studies.

Identification: How difficult is it? Abeba's Story (1 of 5)

Abeba is the oldest of 5 children. She helps her father and mother in a little grocery shop they own. While the family manages to make a living for the moment, they are concerned about the future. The family decides that Abeba should travel to London to try and find a job and make some money. **Is Abeba trafficked?**

Identification: How difficult is it? Abeba's Story (2 of 5)

Abeba doesn't have much money to travel and doesn't even have a passport. She doesn't have any contacts to help her find work until her friend, Fatma, introduces her to a man named Dula, who works for a travel agency. Dula helps Abeba get to London. **Is Abeba trafficked?**

Dula buys her a air ticket, and helps her procure a visa to enter the UK. Dula also gives Abeba the name of a friend of his, Joseph, who manages a restaurant. Joseph gives Abeba a job as a waitress, and a small apartment above the restaurant. She does not earn a salary but works for tips. On some nights, Abeba can earn as much as £30, and in her first month, she earns £600. **Is Abeba trafficked?**

This is almost enough to cover her rent (£500) and the food she eats at the restaurant (£150). After 2 months, Abeba owes a debt of £100 to Joseph. **Is Abeba trafficked?**

Identification: How difficult is it? Abeba's Story (3 of 5)

After 6 months, Abeba realizes that she has overstayed her visitor's visa, and she has still not made any money. She tells Joseph that she intends to return home. Joseph tells her that he's sorry to hear this, but that she will need to pay him the £600 she owes him. Joseph confiscates Abeba's passport. **Is Abeba trafficked?**

Identification: How difficult is it? Abeba's Story (4 of 5)

Abeba is desperate to return home. She is now £5000 in debt to Joseph since he decided to raise the rent. Abeba tried to find cheaper accommodation and a better paying job, but Joseph said that if she left him, he would tell the police that she was an illegal immigrant and that she would be arrested and jailed. **Is Abeba trafficked?**

Joseph tells Abeba that if she really wants to go home, she can pay off her debt quickly as a prostitute. Abeba is shocked at first, but as her debt continues to grow, she believes that she has no other way out. **Is Abeba trafficked?**

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Identification: How difficult is it? Abeba's Story (5 of 5)

Abeba begins working for Joseph as a prostitute. He keeps the money she earns and subtracts it from her debt. He also keeps about 50% for himself as payment for the 'security' that he provides her. He also raises the rent on the apartment. **Is Abeba trafficked?**



Training Aid: Video – The story of Amani

Objective: To reinforce participant's understanding of key elements of smuggling of persons.

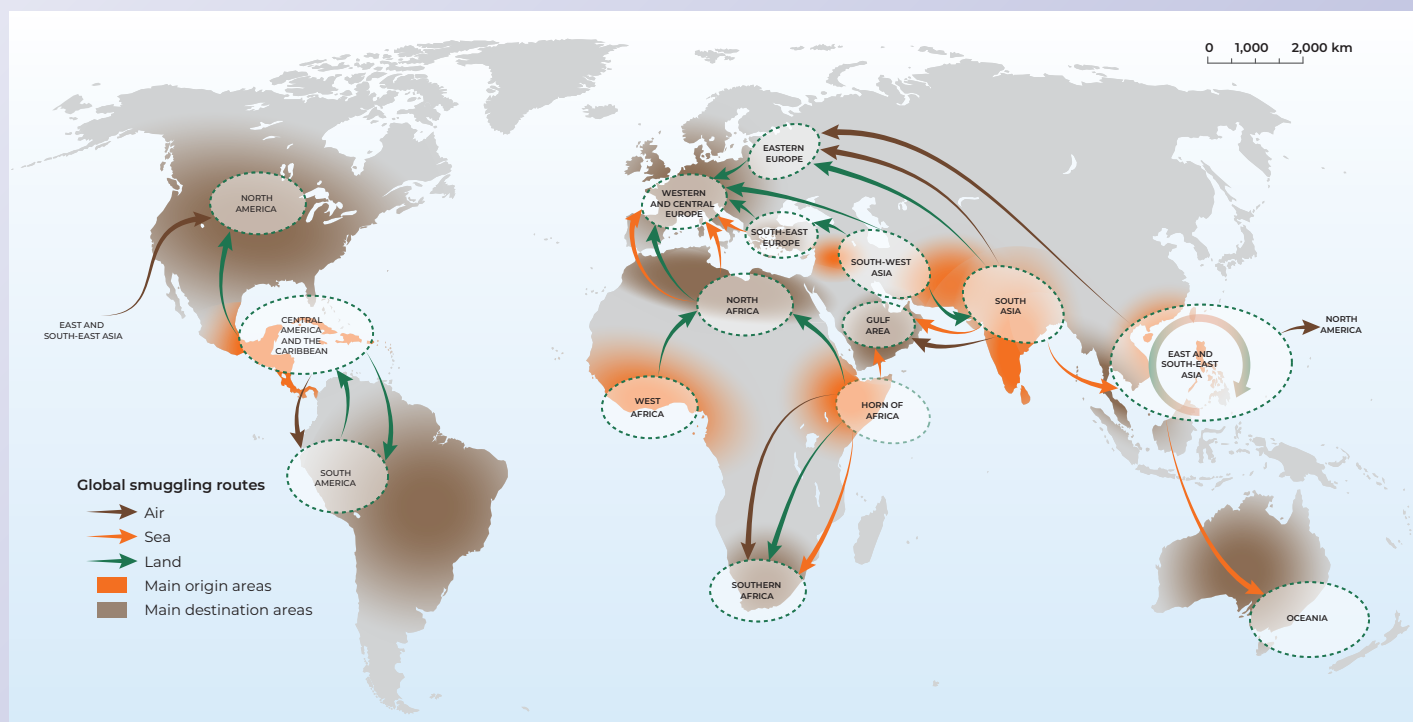
Guidance: The video clip involves "acted" scenes describing the story of Amani who sought to be smuggled to South Africa. It indicates key elements of SoM and conditions to which smuggled persons are exposed to during transport. After watching the clip, a short plenary discussion is held to highlight key aspects of smuggling.

Teaching Points:

1. Definition of SoM

The definition of Smuggling of Migrants derives from the United Nations Convention against Transnational Organized Crime (UNTOC) Annex II: The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004. It deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process. According to the Protocol *"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident*

Smuggling of migrants: Global picture



Source: UNODC (2018). *Global Study on smuggling of Migrants*

Smuggling of migrants is a global business that attracts big profits. Smugglers are often connected ethnically to smuggled people and while they are flexible in changing the routes they tend to maintain the same smuggling hubs. SoM is ruled by the demand and supply dynamics.

2. Elements of SoM³

The definition establishes four main elements of smuggling – points to prove for SOM:

Procurement - In the case of migrant smuggling, procuring could include the actions of the smuggler organizing, recruiting, and arranging the illegal entry of the migrant. In this manner, the smuggler has “caused the result” which was the illegal entry of the migrant, “by effort” which was the organizing and arranging.

Illegal entry - Article 3(b) of the SoM Protocol defines “Illegal entry” as, ‘crossing borders without complying with the necessary requirements for legal entry into the receiving State.’

Fraudulent travel and/or identity documents - In order to establish this point the following need to be established:

1. Demonstrate that the smuggled migrant is not a national or permanent resident of the country.

³ Based on UNODC (2018) *Global Study on Smuggling of Migrants*

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2. Identify the domestic requirements of the State to obtain the requisite travel and identity documents to lawfully enter or remain in that State.
3. Demonstrate that the migrant did not meet necessary requirements because he or she did not have the requisite travel documents, visas or passports to enter or remain in that country.
4. The migrant may have:
 - Fraudulent documents that were provided by the smuggler; or
 - No documents at all

Financial or other material benefit - 2 key points:

1. Financial or other material benefit' should be interpreted broadly to include any type of financial or non-financial inducement, payment, bribe, reward, advantage, privilege or service (including sexual or other services).
2. The smugglers may actually receive the money or material benefit, but simply agreeing or intended to receive it is sufficient to satisfy this element.

3. Vulnerability of Smuggled persons to Abuse ⁴

From a legal point of view, smuggling of migrants is a criminal offence that relates to facilitating the passage of irregular migrants across an international border for profit. However, in all smuggling routes migrants are vulnerable to abuse from the hands of smugglers and others actors who take advantage of vulnerable migrants. There are three groups of risks that influence vulnerability of migrants during smuggling:

Risk of death: Dangerous transportation modes along with difficult terrain and unfavourable weather are key factors contributing to the high human costs of smuggling. Smugglers may force migrants to use overcrowded, cramped or faulty transportation, often without sufficient fuel, safety equipment or water. In some instances, smugglers deliberately kill or endanger the lives of migrants. There are reports of migrants having been pushed out of boats to avoid interception by enforcement authorities. Those smuggled in trucks face suffocation and overheating while being locked inside for hours or even days. In some situations, when trucks or pick-ups break down, migrants are abandoned and left in an unknown environment.

Risk of violence and crime: Throughout their journeys, smuggled migrants are often vulnerable to violence and robbery. According to several studies more than 65% of smuggled Somalis face robbery. Another way of violence against migrants is extortion for ransom: sometimes, migrants are held hostage for ransom by the smugglers themselves, however, more frequently, smugglers hand over or sell migrants and refugees to criminal groups upon crossing the border or arrival at major transit hubs (e.g. Libya). Extreme brutality and starvation may also be used to put further pressure on families to make payments.

⁴Based on UNODC (2018) Global Study on Smuggling of Migrants

Sexual Violence: Smuggled migrants, particularly females are specifically targeted by criminal groups and smugglers for this type of abuse. Sexual abuse has been reported on all smuggling routes.

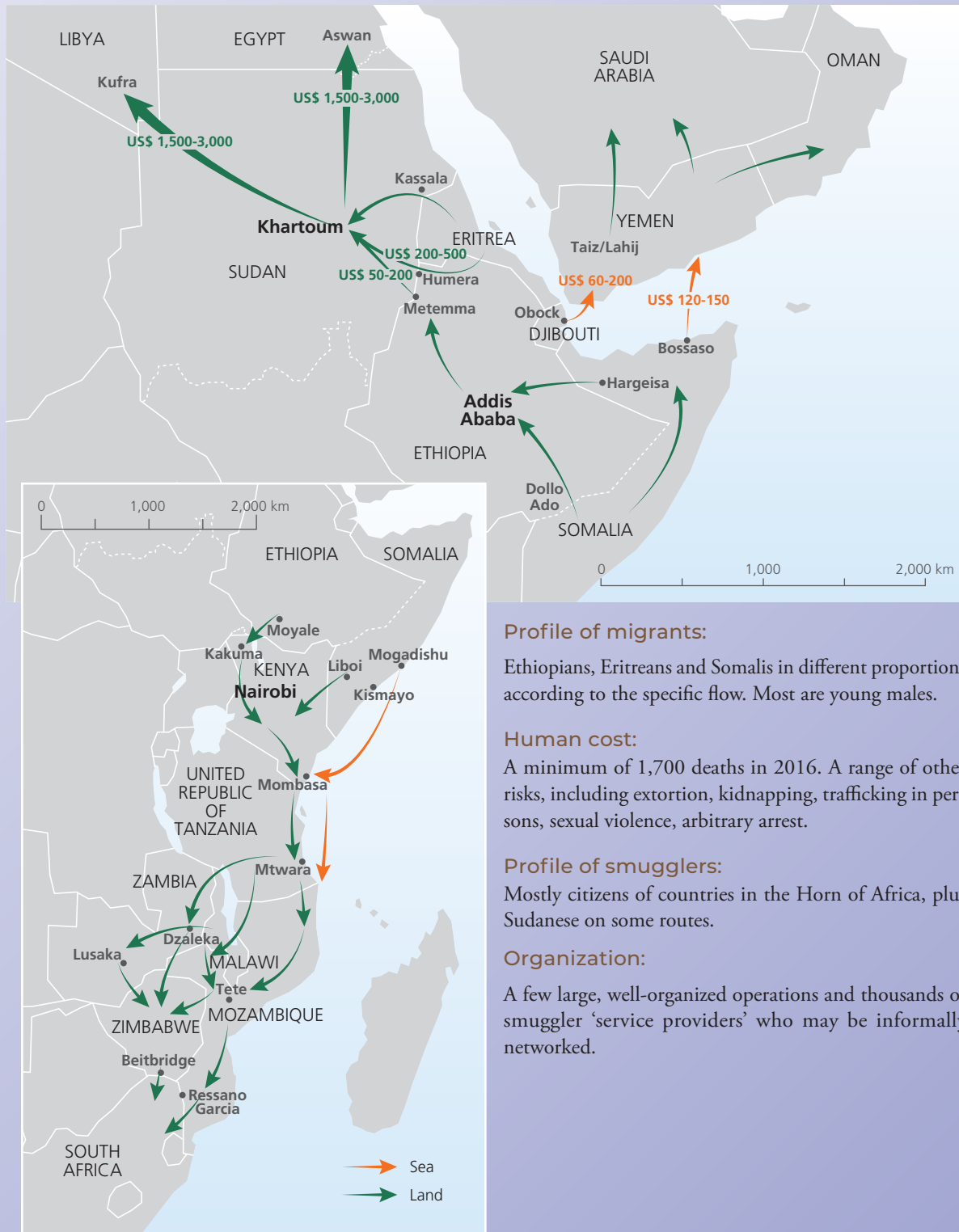
Human trafficking: Smuggled migrants are also vulnerable to being trafficked and exploited for forced labour or sexual exploitation, along the route or at destination. During their journeys, which are often long, smuggled migrants may run out of money to pay for the next smuggling passage. This urgent need for financial resources might force them into exploitation through trafficking. Migrants may also be tricked into human trafficking at the early stages of their journey. They can be made to believe that they are engaging smugglers who will facilitate their journey, but instead, they become victims of trafficking in persons. Human traffickers in the countries of origin may offer a smuggling package to a desirable destination for a certain fee. The package is said to include land, sea or air transportation, sometimes making use of counterfeit documents or other means. The targeted person accepts the smuggling package, with the idea of paying it back by working in the country of destination. Once at the destination, however, the victim is informed that the debt has drastically increased and can only be repaid by working under exploitative conditions. What in the eyes of the migrant was smuggling of migrants was actually human trafficking from the very beginning?

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4. SoM actors: The Horn of Africa⁵

Smuggling of Migrants: The Horn of Africa

THE HORN OF AFRICA



Profile of migrants:

Ethiopians, Eritreans and Somalis in different proportions according to the specific flow. Most are young males.

Human cost:

A minimum of 1,700 deaths in 2016. A range of other risks, including extortion, kidnapping, trafficking in persons, sexual violence, arbitrary arrest.

Profile of smugglers:

Mostly citizens of countries in the Horn of Africa, plus Sudanese on some routes.

Organization:

A few large, well-organized operations and thousands of smuggler 'service providers' who may be informally networked.

Source: UNODC (2018). *Global Study on smuggling of Migrants*

⁵Based on UNODC (2018) *Global Study on Smuggling of Migrants*

Smuggled

The vast majority of migrants moving from the Horn of Africa to North Africa are males between the ages of 20 and 35 as well as unaccompanied minors. As for the Red Sea Route, majority of those smuggled are men with 20-30% of the total number of smuggled being women. For the Southward route most migrants smuggled to South Africa from the Horn of Africa are young men, between the ages of 18 and 35. The share of females might be higher among Somalis than Ethiopians and there is also a growing presence of unaccompanied minors.

Smugglers

A range of different actors are involved in the smuggling of migrants: 'professional' smugglers working in organized groups, amateur smugglers working independently, former smuggled migrants and travel agents.

Amateur smugglers are ordinary men and women of varying ages and occupations who provide smuggling services. These smugglers usually provide transportation or work as guides through ad-hoc arrangements. Amateur smugglers who function as transport operators and guides do not necessarily offer smuggling services on their own, but could work as employees for well-organized 'professional' smugglers or in groups that connect migrants to other amateur smugglers. In some cases, these individual guides and drivers are engaged by different professional smugglers. Members of local communities along migrant smuggling routes may also be involved in smuggling.

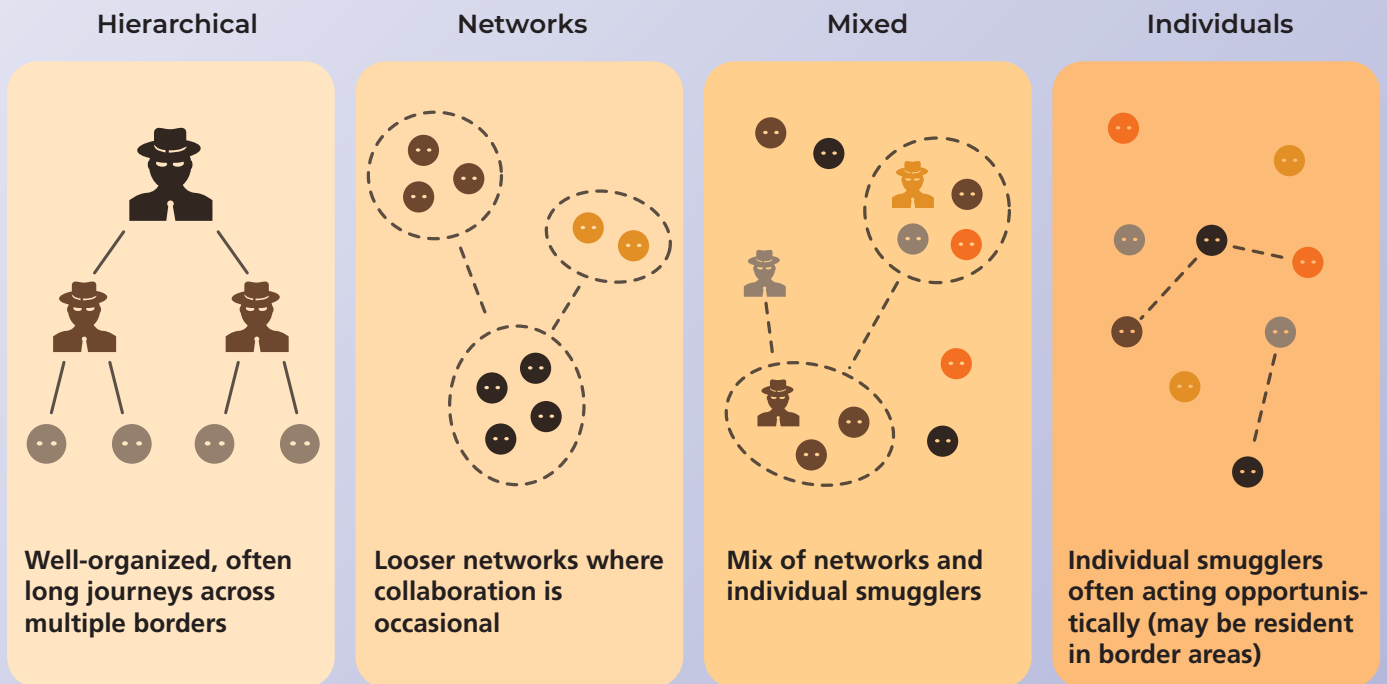
Regarding the gender profiles of smugglers, a large majority of migrant smugglers are men. Women smugglers may be involved in the recruitment of migrants, and they may receive and/or escort migrants to their temporary accommodation between different stages of the route. Women also carry out 'support' functions, such as caring for children, preparing food and arranging for 'safe houses.'

Often smugglers are former migrants who, successfully or not, were smuggled along the same route on which they later operate. In some cases, they are returnees or have chosen to settle in countries they transited along a smuggling route.

It is also possible to find more sophisticated and highly professional organizations – structured hierarchically or vertically (with no boss managing the structure).

Concept of TiP & SoM

Different models of smuggling networks:



Source: UNODC (2018). *Global Study on smuggling of Migrants*

- Typical roles for smuggler are:
 - Coordinator or organizer
 - Recruiters
 - Transporters or guides
 - Spotters, drivers, messengers, enforcers
 - Service providers and suppliers

5. Difference and overlap between TiP and SoM

While trafficking in persons and smuggling of migrants are often conflated, they are different crimes that require different responses with regard to the protection and assistance entitlements of trafficking victims and smuggled migrants. Below are key differences between TiP and SoM:

Concept of TiP & SoM

	Human trafficking	Human Smuggling
Activity	Trafficker's transport and transfer people from one place to another, internally or across borders.	Smugglers facilitate the transportation, attempted transportation or irregular crossing of a person(s) across an international border.
Means	Traffickers use the means listed in article 3, i.e. deception, force, fraud, abuse of power or coercion in the execution of one or more activities.	There is no element of distortion of the free will of the person through force, deception, coercion or other means.
Consent	Migrants are willing to migrate	There is no consent or consent is irrelevant (due to use of means as stipulated in the Palermo Protocol)
Purpose	Always exploitation. There is no element of distortion of the free will of the person through force, deception, coercion or other means	Smugglers often do not transport migrants with the intention of exploiting them, and even though they sometimes abuse the position of vulnerability of the persons in their charge
Ending the relationship	Trafficking victims are not free to end the relationship with the trafficker without risking serious consequences	The smuggler's relationship with the smuggled migrant normally ends once the fee is paid and the illegal entry has been achieved
Trans nationality	Human trafficking can either be internal / domestic	ALways transnational
Legal entry	Legal or illegal	Always illegal

Note: Please remember that the difference between TiP and SoM can be very thin with some migrants starting the journey as smuggled only to end up as trafficked.

Concept of TiP & SoM



References:

1. UNODC. (2004). United Nations Convention Against Transnational Organized Crime and the Protocols Thereto. Retrieved from https://www.unodc.org/documents/middleeastand-northafrica/organised-crime/United_Nations_Convention_Against_Transnational_Organized_Crime_and_the_Protocols_Thereto.pdf
2. UNODC (2018) Global Study on Smuggling of Migrants. Retrieved 17 of June from https://www.unodc.org/documents/data-and-analysis/glosom/GLO-SOM_2018_web_small.pdf

Learning Objective 2

Legal Basis and Authority

To enhance participants' knowledge on legal and normative framework on TiP and SoM for application in their various contexts.

Modules:

Mod 2.1: Legal and Normative Framework

Mod 2.2: UN Framework of Intervention

Legal Basis & Authority

Mod 2.1: Legal and Normative Framework



Time Allocation: 3x45



Objectives: At the end of this module the participant will be able to outline relevant legal and normative frameworks on trafficking in persons and smuggling of migrants at the international, regional and national Levels.



Training Methodology: This module is introduced through lecture method combined with participatory approaches such as brainstorming, Q&A, syndicate or small group exercises, plenary discussions and experience sharing. Training aids include hand-outs of key frameworks.



Exercise: National frameworks (identify articles that address TiP and SoM)

Objective: To familiarize the participants with key provisions in national (Somali) frameworks addressing TiP and SoM.

Guidance: Facilitator will give out the following task on Somali Penal Code:

1. Hand out 2 cards i.e. one with an article and another one with matching definition.
2. Place all cards on the table and ask participants in groups to match the articles with their definition.
3. Hold plenary discussion to elicit emerging issues.

Legal Basis & Authority

Article		Definition
Art. 408. (Compulsion to Prostitution)		Whoever, by violence or threats, compels another to commit prostitution shall be punished with imprisonment [96 P.C.] from two to six years and with fine [97 P.C.] from Sh. So. 5,000 to 15,000.
Art. 455. (Reduction to Slavery)		Whoever reduces a person to slavery [17 Const.] or to a similar condition; shall be punished with imprisonment [96 P.C.] from five to twenty years.
Art. 456. (Dealing and Trading in Slaves)		Whoever deals or in any manner trades in slaves [17 Const.] or persons in a condition similar to slavery, shall be punished with imprisonment [96 P.C.] from five to twenty years.
Art. 457. (Sale and Purchase of Slaves)		Whoever, other than in the cases referred to in the preceding article, disposes of or transfers a person who is in a state of slavery [17 Cons.] or a similar condition, or takes possession of or purchases or holds such person in such state, shall be punished with imprisonment [96 P.C.] from three to twelve years.

Legal Basis & Authority

Article		Definition
Art. 458. (Enforced Subjection)		Whoever compels another to submit to his own power, so as to reduce him to a total state of subjection, shall be punished with imprisonment [96 P.C.] from five to fifteen years.
Art. 460. (Seizure of a Person)		Whoever deprives another of personal liberty shall be punished with imprisonment [96 P.C.] from six months to eight years.
Art. 464. (Compulsory Labour)		Apart from the cases of military or civil emergency, or the cases in which compulsory labour is expressly provided for by law [2 Labour Code], whoever forces another to compulsory labour [36 Const.] or avails himself of the services of persons forced to compulsory labour, shall be punished, where the act does not constitute a more serious offence, with imprisonment [96 P.c.] from six months to five years and fine [97 P.C.] from Sh.So. 5,000 to 20,000.

Teaching Points:

1. International framework

TiP and SoM being international crimes are regulated by several international conventions. The most comprehensive treaties are two Protocols supplementing United Nations Convention against Transnational Organized Crime:

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
- The Protocol Against the Smuggling of Migrants by Land, Sea and Air.

Somalia is not a signatory State to either Protocol.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting of cases of trafficking in persons. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

The Protocol Against the Smuggling of Migrants by Land, Sea and Air was adopted by General Assembly resolution 55/25. It entered into force on 20 January 2004. The Protocol attempts to address the problem of smuggling while protecting the rights of migrants. It requires from State Parties criminalisation of migrant smuggling and address the abuse of migrants particularly by organised criminal groups through focus on providing humane treatment for migrants and addressing the root causes of migration through socio economic measures.

Other International treaties on SoM and TiP

Besides the two Protocols, TiP and SoM is also regulated by other international legal instruments:

- ◆ Universal Declaration of Human Rights (1948) – especially Art 4, 5,6, 9.
- ◆ International Covenant on Civil and Political Rights (1966) – especially Art 8.
- ◆ The Slavery Convention (1926): defines slavery, and its Supplementary Convention describes “practices similar to slavery,” including debt bondage, and institutions and practices that discriminate against women in the context of marriage.

Legal Basis & Authority

- ◆ Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) that reinforces the 1926 Slavery Convention and introduces “practices similar to slavery” term.

The Convention on the Rights of the Child (1989), and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000) prohibit trafficking in children for any purpose, including for exploitive and forced labour. Article 39 of the CRC requires States to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse.” The CRC also requires States to recognize the right of every child to education (Article 28) and “to facilities for the treatment of illness and rehabilitation of health” (Article 24). The Optional Protocol to the Convention on the Sale of Children specifies particular forms of protection and assistance to be made available to child victims.

The Convention on the Elimination of All Forms of Discrimination Against Women (1979) which requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. General recommendation No. 19 identifies trafficking as a form of violence against women because it puts women at special risk of violence and abuse. Trafficking is incompatible with equal enjoyment of rights by women and with respect for their rights and dignity.

Other International documents on TiP:

- International Convention for the Suppression of the Traffic in Women and Children (1921)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1951).

International Labour Organization (ILO) legislations also address the issue of TiP and SoM especially in relation to labour such as forced labour, child labour and domestic work.

- Forced Labour Convention (1930)
- Protocol to the Forced Labour Convention (2014)
- Abolition of Forced Labour Convention (1957)
- Worst Forms of Child Labour Convention (1999)
- Migration for Employment Convention (1949)
- Migrant Workers Convention (1975)
- Convention concerning Decent work for Domestic Workers (2011)

UN Security Council Resolution 2388 (2017)

In its resolution 2388 (2017), the Security Council reiterated its deep concern that, despite its condemnation of acts of trafficking in persons in areas affected by armed conflict, such acts continued to occur. The Council also expressed grave concern over the high number of women and children subjected to trafficking in areas affected by armed conflict and the abduction of children in conflict situations. In the resolution, the Council called upon Member States to, among other things, improve their implementation of applicable legal obligations to criminalize, prevent and otherwise combat trafficking in persons and to step up their efforts to investigate, disrupt and dismantle networks engaging in trafficking in persons in areas of PSO.

UNSC foresees that peacekeepers can take an active role in preventing human trafficking through:

- Identifying and protecting its victims
- Building capacity of local law enforcement institutions on combating trafficking
- Sensitising local population on trafficking

Regional Framework (Human Rights Regime in Africa, AU at inception phase on TIP & SoM instruments, Khartoum Process)

Human Rights Regime in Africa under African Union

The African Union is established to allow Africa to become “an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.” The African Union has among its aims to encourage international cooperation; taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; to promote peace, security, and stability on the continent; to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments; and to promote co-operation in all fields of human activity to raise the living standards of African peoples.

The African Commission on Human and Peoples' Rights, which is an organ of the African Union, was established in October 1986 and is responsible for ensuring the promotion and protection of Human and Peoples' Rights throughout the African Continent. The African Commission is a quasi-judicial body.

In June 1998 the Organization of African Unity's Heads of State signed the Protocol to establish the African Court on Human and Peoples' Rights. The Court has the competence to make final and binding decisions on human rights violations perpetrated by African Union Member States.

Legal Basis & Authority

The Court has jurisdiction over cases regarding the interpretation and application of the African Charter on Human and Peoples' Rights (Charter), the Protocol to the Charter on the Establishment of the African Court on Human and Peoples' Rights (Court's Protocol) and any other relevant human rights instrument ratified by States that are party to a case.

African Court of Justice: Principal judicial organ of the African Union to settle disputes over interpretation of African Union treaties. The African Court of Justice and the African Court of Human and People's Right merged in July 2008 to become what is now known as the African Court of Justice and Human Rights.

Khartoum Process

The Khartoum Process is a platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe. It aims at establishing a continuous dialogue for enhanced cooperation on migration and mobility. The process also seeks to identify and implement concrete projects to address trafficking in human beings and the smuggling of migrants. Additionally, the Khartoum Process gives a new impetus to the regional collaboration between countries of origin, transit and destination regarding the migration route between the Horn of Africa and Europe.

Khartoum Process aims at:

- Establishing a continuous dialogue for enhanced cooperation on migration and mobility.
- Identifying and implementing concrete projects to address trafficking in human beings and the smuggling of migrants.
- Giving a new impetus to the regional collaboration between countries of origin, transit and destination regarding the migration route between the Horn of Africa and Europe.

The main focus of Khartoum Process is to tackle TiP and SoM through creation a common understanding of human trafficking and smuggling of migrants, opportunities for balanced partnership and spirit of shared responsibility and enhanced cooperation.

National legal framework.

- The Federal Republic of Somalia Provisional Constitution has several provisions on TiP and SoM:

Art 14 - A person may not be subjected to slavery, servitude, trafficking, or forced labour for any purpose.

Art 28 (5) - A marriage shall not be legal without the free consent of both the man and the woman, or if either party has not reached the age of maturity.

Art 29 (3) - No child may perform work or provide services that are not suitable for the child's age or create a risk to the child's health or development in any way.

Art 29 (6) - Every child has the right to be protected from armed conflict, and not to be used in armed conflict.

■ Penal code – (article 455, 464, 457, 408(1))

The pre 1991 Penal Code addresses issues related to slavery, forced labour, prostitution and taking position or holding of a person.

Art. 407. (Instigation, Aiding and Exploitation of Prostitution).

1. Whoever instigates another to commit prostitution, or aids or in any manner facilitates prostitution, or exploits, wholly or in part, the proceeds of prostitution shall be liable to the punishment provided for in paragraph 1 of article 405.

2. The punishment shall be increased [118 P.C.] where: a. the act is committed against a person who is incapable of giving consent [47 P.C.]; b. the offender is an ascendant, spouse, brother, sister or guardian of the person; c. the act is committed against a person entrusted to the offender for care, education, instruction, supervision or custody.

Art. 408. (Compulsion to Prostitution).

1. Whoever, by violence or threats, compels another to commit prostitution shall be punished with imprisonment [96 P.C.] from two to six years and with fine [97 P.C.] from Sh. So. 5,000 to 15,000.

2. Where any of the conditions referred to in paragraph 2 of the preceding article exists, the punishment shall be increased [118 P.C.].

Art. 455. (Reduction to Slavery).

Whoever reduces a person to slavery [17 Const.] or to a similar condition; shall be punished with imprisonment [96 P.C.] from five to twenty years.

Legal Basis & Authority

Art. 456. (Dealing and Trading in Slaves).

Whoever deals or in any manner trades in slaves [17 Const.] or persons in a condition similar to slavery, shall be punished with imprisonment [96 P.C.] from five to twenty years.

Art. 457. (Sale and Purchase of Slaves).

Whoever, other than in the cases referred to in the preceding article, disposes of or transfers a person who is in a state of slavery [17 Cons.] or a similar condition, or takes possession of or purchases or holds such person in such state, shall be punished with imprisonment [96 P.C.] from three to twelve years.

Art. 464. (Compulsory Labour).

Apart from the cases of military or civil emergency, or the cases in which compulsory labour is expressly provided for by law [2 Labour Code], whoever forces another to compulsory labour [36 Const.] or avails himself of the services of persons forced to compulsory labour, shall be punished, where the act does not constitute a more serious offence, with imprisonment [96 P.c.] from six months to five years and fine [97 P.C.] from Sh. So. 5,000 to 20,000.

The Proposed Trafficking in Persons and Smuggling of Migrants Offences Bill (2016)

The proposed Bill is an attempts to regulate TiP and SoM through defining both TiP and SoM, providing penalties for engaging in acts of trafficking and smuggling and establishing national bodies (technical taskforce and victim's assistance fund) that are to address the problem of TiP and SoM as well as assist victims of human trafficking.



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Legal Basis & Authority

Mod 2.2: UN Framework of Intervention



Time Allocation: 3x45 mins



Objectives: At the end of this module the participant will be able to describe UN framework for action and its application in addressing trafficking in persons and smuggling of migrations in Somalia.



Training Methodology: This module will be introduced through lecture method combined with participatory approaches such as brainstorming, Q&A, syndicate or small group exercises, plenary discussions and experience sharing. Training aids will include hand-outs on the 4Ps.



Exercise: Application of the Framework in Somalia

Objective: To enable the participants to examine application of the UN framework for action in Somali context.

Guidance: Divide the participants into 4 groups and task them as follows:

1. Allocate each group a 'P' from the framework.
2. Give each group a table with 'Protocol Requirements' and 'Specific Objectives' under the framework.

For each of the five pillars, the Framework is subdivided into Protocol requirements, specific objectives, framework indicators, implementation measures, operational indicators and resources.

The Protocol requirements list the provisions set out in the United Nations Trafficking Protocol. The specific objectives describe the intent of the provisions. The framework indicators are the minimum standards required, mainly legal and institutional indicators, for the implementation of the Protocol provisions.

The implementation measures specify practical recommended actions to achieve an effective implementation of the United Nations Trafficking Protocol.

The operational indicators refer to the implementation measures. They measure the implementation and help monitor change over time.

The resources refer to relevant documents, existing guidance, tools and good practices that can assist Member States in the implementation of the specific objectives outlined in the Framework for Action.

The tables are available: (pp.17 – 52)

https://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

3. Ask each group to discuss and write down how to implement the 'P' in the Somali context.
4. Ask the participants to share their views in the plenary.

Teaching Points:

The UN framework of Intervention is a method that aims comprehensive approach to the problem of TiP (and also SoM). Within the framework there are four components: Prevention, Protection, Prosecution and Policy & Cooperation (also called 4 Ps Paradigm). In order to tackle the problems of both TiP and SoM all components are expected to be implemented simultaneously. Also, implementation of one component has effects on other components. For example engagement in Prevention component increases chances of better identification of victims of trafficking and vulnerable migrants, which falls under Protection component. Under the UN framework of Intervention UNODC developed a technical assistance tool that assists United Nations Member States in the effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations Trafficking Protocol), supplementing the United Nations Convention against Transnational Organized Crime (UNTOC). The Framework is based on the objectives of the United Nations Trafficking Protocol 1 and its provisions, following the three internationally recognized themes of prevention, protection and prosecution (the 3Ps) and national and international cooperation and coordination (the last P). It recommends operational measures for each of the Protocol's provisions. These measures draw on other international instruments, political commitments, guidelines and good practices to enable the implementation of a comprehensive anti-human trafficking response.

Guiding Principles of effective counter TiP response⁶:

Human rights-based approach -

The human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.

⁶UNODC. (2009). "International Framework for Action to Implement the Trafficking in Persons Protocol

Legal Basis & Authority

Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, unaccompanied and separated children, internally displaced persons, refugees and asylum-seekers.

Principle of non-discrimination.

The measures set out in the United Nations Trafficking Protocol should be interpreted and applied in a way that is not discriminatory to persons on the ground who are victims of trafficking in persons. The interpretation and application of those measures should be consistent with internationally recognized principles of non-discrimination.

Gender-sensitive approach.

Trafficking in both men and women, boys and girls should be acknowledged and the similarities and differences in the trafficking experience of women and men, in relation to vulnerabilities and violations should be addressed. The differential impacts of policies on men and women should also be taken into account. A gender-sensitive approach empowers potential and actual victims to access information and remedies, and to claim their human rights. It includes ensuring that anti-trafficking strategies address gender-based discrimination and violence, and promote gender equality and the realization of human rights for both women and men.

Child-Rights approach and child participation.

All actions undertaken in relation to child victims and children at risk should be guided by applicable human rights standards and in particular by the principles of protection and respect for children's rights as set out in the United Nations Convention on the Rights of the Child (CRC) and in its Optional Protocol on the sale of children, child prostitution and child pornography. Child victims are entitled to special protection measures, irrespective of their legal status both as victims and as children, in accordance with their special rights and needs. In all actions concerning children at risk and child victims, the best interest of the child shall be the primary consideration.

Comprehensive international approach.

Effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.

Interdisciplinary, coordinated, integrated approach.

As a multidisciplinary problem, trafficking in persons requires that policies on a variety of issues are coordinated and consistent with the objective of preventing and combating trafficking in persons. Member States must ensure coordination among the various governmental agencies involved in anti-trafficking activities, among those agencies and NGOs, and

and among the agencies in one Member State and those in others.

Evidence-based approach.

]Policies and measures to prevent and combat trafficking in persons should be developed and implemented based on data collection and research and regular monitoring and evaluation of the anti-trafficking response.

Sustainability.

A sustainable anti-trafficking response is one that endures over time and is able to adapt creatively to changing conditions. Sustainability refers to coherence of practices in both time and efficiency.

Four Components⁷

Prevention

Prevention is one of the most important aspects of an effective anti-human trafficking response. However, not all prevention strategies are integrated into broader policies related to trafficking in persons and many lack evidence-based research and planning as well as impact evaluations. In order to improve prevention strategies and programmes, the following measures are required:

(a) Amend or adopt the necessary legislative measures and establish comprehensive policies and programmes to prevent trafficking in persons and to protect victims from revictimization, including measures to promote/support lawful migration for decent work and for youth of working age.

(b) Ensure effective national child protection systems and the active participation of children in the development of preventive measures.

(c) Ensure coherence among public policies related to trafficking in persons (migration, crime prevention, education, employment, health, security, non-discrimination, economic development, protection of human rights, child protection and gender equality, among others).

(d) Develop or strengthen measures to reduce vulnerability to trafficking by addressing its root causes including the demand that fosters all forms of trafficking in persons, and social indifference to exploitation.

⁷UNODC. (2009). "International Framework for Action to Implement the Trafficking in Persons Protocol

Legal Basis & Authority

Protection

Many victims of trafficking are not identified and therefore remain unprotected. The identification of trafficked persons is a prerequisite for their access to assistance and protection. Many countries still need to establish or improve victim identification processes and the corresponding referral mechanisms. In order to improve the protection of victims, the following measures are required:

- (a) Adopt or amend the necessary legislative measures for comprehensive protection of and assistance to victims of trafficking and their empowerment and protection from re-victimization.
- (b) Develop or strengthen the identification process, including through identification guidelines and procedures and other effective identification techniques.
- (c) Ensure the enforcement of legislation measures including by issuing regulations, circulars and/or administrative guidelines.
- (d) Establish or strengthen national referral mechanisms for victim protection and assistance, including referral to the asylum-system where appropriate.
- (e) Ensure the application of international standards and a human rights-based approach to victim protection and assistance irrespective of their cooperation with law enforcement, taking into account the special needs of children. Such an approach includes access to a range of assistance services, granting a reflection period, access to compensation, possibility of temporary or permanent residency and non-liability of victims for their involvement in unlawful activities as a result for being trafficked.
- (f) Adopt the necessary measures to ensure that the return of a trafficked person is undertaken on a voluntary basis and that any decision to return is preceded by a risk assessment and with due regard for his/her safety.

Prosecution

Trafficking in persons remains largely under-prosecuted and punished. Although many countries have a specific offence criminalizing trafficking in persons in all or most of its forms, many countries still do not have a legal framework covering all provisions of the Protocol in a comprehensive manner. Conviction rates under the specific offence of trafficking remain low. In order to improve prosecution efforts, the following measures are required:

- (a) Develop or strengthen national legal frameworks so that they are comprehensive and in compliance with the United Nations Trafficking Protocol and ensure their implementation in line with the Protocol and other international standards, prioritizing the rights of victims:
 - i. Ensure that trafficking in persons is a criminal offence as defined in the United Nations

Trafficking Protocol and prioritize the prosecution of trafficking in persons rather than related offences.

ii. Ensure criminalization of crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group.

iii. Ensure that penalties and sanctions are appropriate and proportionate to the gravity of the crime and that proceeds of trafficking in persons are confiscated.

iv. Ensure the rights of victims, including the rights of victims and witnesses to protection before, during and after the prosecution of the crime, as well as effective collaboration between law enforcement and social welfare, and civil society.

v. Develop proactive, intelligence led investigative techniques without reliance on the testimony of victims, 18 and establish and ensure implementation of judicial procedures to avoid the re-victimization of trafficked persons, in particular children, during the judicial process.

(b) Ensure the enforcement of national anti-human trafficking legislation including by issuing regulations, circulars and / or administrative guidelines and by strengthening the capacity of criminal justice practitioners.

(c) Ensure the establishment of relevant institutions, such as specialized police units and judicial structures.

Policy & Cooperation

Trafficking in persons is a complex multifaceted crime. The fight against trafficking requires the involvement of all sectors of society and a wide array of national institutions. This can lead to duplication of efforts, inefficient use of resources, incoherent or contradictory interventions and it can result in a less effective response. In order to improve national cooperation and coordination, the following measures are required:

(a) Ensure the development and implementation of comprehensive and evidence-based policies on trafficking in persons and ensure coherence with other related policies.

(b) Establish a system or mechanism of multidisciplinary cooperation and coordination among relevant stakeholders, such as governmental institutions (including law enforcement agencies, judicial authorities, labour inspectorates, immigration and asylum authorities), non-governmental organizations, victim service providers, health institutions, child protection institutions, trade unions, workers' and employers' organizations, and the private sector.

(c) Ensure monitoring and evaluation of national strategies and/or plans of action to assess progress and impact in order to enable course-corrective actions, additional measures and/or changes in national policies.

Legal Basis & Authority

In addition, since TiP is an international crime it requires international and regional cooperation. Specifically, the following measures are required:

(a) Create the legal basis for international cooperation, including the promotion of cooperation agreements.

(b) Develop or strengthen national capacity in extradition, mutual legal assistance, transfer of sentenced persons, joint investigations and international cooperation for purposes of confiscation.

(c) Develop or strengthen national capacities for the identification, return, risk assessment and reintegration of victims of trafficking, with special consideration to the best interest of the child, and establish cooperation between countries of destination, transit and origin.

(d) Promote formal and informal cooperation, such as establishing communications procedures, and information and data exchange.

(e) Ensure coherence in policy recommendations and technical assistance provided by international and regional organizations.

(f) Ensure division of labour based on organizations' mandates and core competencies in order to avoid unnecessary duplication of efforts and to rationalize activities to make them cost-effective.

(g) Promote cooperation and joint programming among international and regional organizations for the development and implementation of common strategies and programmes.



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Learning Objective 3

Prevention and Protection Measures

To raise participants' awareness on prevention of TiP and SoM and protection of VOTs and vulnerable migrants in Somalia

MODULES:

MOD 3.1: Prevention of TiP and SoM

**MOD 3.2: Protection of victims of
trafficking and vulnerable migrants**



Prevention & Protection

Prevention & Protection

Mod 3.1: Prevention of Tip and SoM



Time Allocation: 3x45 mins



Objectives: At the end of this module the participant will be able to discuss strategies for preventing trafficking in persons and smuggling of migrants.



Training Methodology: : This module is introduced through lecture method combined with participatory approaches such as Q&A, brainstorming, syndicate or small group exercises, plenary discussions and experience sharing. Training aids will include scenarios and videos.



Exercise: Safe migration

Objective: To raise participant's awareness of proposed procedures for safe migration.

Guidance: In syndicates, the participants are provided with scenarios and tasked to:

1. Analyse what can go wrong before, during and after migration.
2. Explain what can be done to prevent the above situations.
3. Share their findings in the plenary.
4. Followed by discussions on key issues.

Scenario 1

Joy is a young women looking for work. Due to high unemployment she stays at home and is unable to secure a decent stable job. One-day Joy meets an old friend who mentions there is a company offering jobs abroad. Joy has some doubts but the friend is urging Joy to hurry up as the number of vacancies is limited. Without informing anyone, even her own parents, Joy rushes to meet the recruiters. A brief interview is conducted and Joy is offered a position as a receptionist in Saudi Arabia. The company offers assistance to help with travel arrangements and even agrees to provide a small loan so Joy is able to purchase a ticket. Only then she informs her family that she decided to take this job. Unfortunately, once Joy departs the family never hears from her and when they try to investigate the company it appears there is no entity operating under this name.

Scenario 2

Victor is a young man and a desperate unemployed teenager. He is tired of doing casual jobs for little pay yet he knows due to his incomplete education he cannot find a decent job that would give him a salary. One day his old friend calls him from Italy saying that there are plenty of opportunities for people like Victor. Victor decides to take the risk and join his friend abroad. He is connected with a network of smugglers who promise Victor to take him to Libya from where he will be able to find a way to Italy. Victor is scared but decides to take the risk and travel to Libya. He takes all his savings to smuggler who agrees to assist Victor with transport. They are to leave by next morning using a small pickup. They will be traveling through several countries using illegal entry points.

Scenario 3

Miriam is a third child in a family of seven. Since her father died recently her mother has been struggling to raise the children and provide food and education for all of them. One day a distant relative pays a visit and offers to take Miriam with him to his place. He is ready to pay for Miriam's education in school in exchange for help with domestic chores. Miriam's mother agrees and sends her together with the relative. --Unfortunately the relative does not keep the promise as he makes Miriam a full time domestic servant. The mother calls Miriam several times but the conversation is always supervised by the relative and Miriam is too afraid to start complaining about her work.



Training Aid: Video - Maid in Hell (58 mins)

Objective: To reinforce participant's awareness of atrocities faced by domestic workers in Middle East and gaps in interventions.

Guidance: The film describes the inhumane conditions to which domestic workers are subjected to in the Middle East under Kafala system. This includes torture, mistreatment, bonded labour, sexual abuse and physical brutality among others. It also highlights challenges in policy and intervention at the prevention and response levels. After watching the film, a short plenary discussion is held to highlight key aspects.

Teaching Points:

1. State obligation towards prevention of TiP and SoM -

The prevention of trafficking in persons and smuggling of migrants requires creative and coordinated responses. Efforts to prevent both TiP and SoM should focus on victims of trafficking and people smuggled as well as on traffickers and smugglers. They should be implemented for supply and demand factors at each stage of trafficking and smuggling (supply, transit and destination stage).

Prevention & Protection

The efforts in combating TiP and SoM can be distributed among the following actors: State, non – state actors and citizens

The State - State and its institution plays a leading role in preventing TiP and SoM. States are particularly required in the context of preventing TiP and SoM to consider:

1. Analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.
2. Developing programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.
3. Improving children's access to educational opportunities and increasing the level of school attendance, in particular by girls.
4. Strengthen borders controls and adopt measures that require commercial transportation carriers to ascertain that all passengers have the requisite travel documents, and sanctions for failure to do so.
5. Ensure that travel and identity documents are of high quality such that they cannot be altered or misused and issued unlawfully.
6. Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, no exploitative migration.
7. Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking and smuggling. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and smuggling and the reasons why individuals may make potentially dangerous migration decisions.
8. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws.
9. Examining ways of increasing opportunities for legal, gainful and no exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.

10. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking and smuggling as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations.

11. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

12. Gather data that can help develop statistics on national and regional scale.

Non-State Actors obligation - Non state actors such as civil society, international organisations and faith based groups play a subsidiary role to state institutions. In particular, they are called to:

a. Support the State Counter TiP and counter SoM programs by:

- I. Promoting safe migration through awareness and support programs
- II. Providing protection to victims of trafficking and vulnerable migrants
- III. Assist in training members of key institutions responsible for TiP and SoM

b. Advocacy and Oversight (Check and balance)

- i. Providing platform for collaboration and exchange of policies
- ii. Engage in research and evidence collection to document existing and emerging streams of TiP and SoM
- iii. Developing Policies and Best Practices on TiP and SoM
- iv. Lobby for development and implementation of:
 1. National and international laws and regulations on TiP and SoM;
 2. Policies and referral mechanisms.

2. Citizen obligation

- a. Safe migration
- b. Creation of awareness
- c. Reporting of suspected cases of TiP and SoM to authorities

Prevention & Protection

Safe migration principles

Safe migration is one way of preventing TiP and SoM. Migrants who successfully migrate to another destination typically improve their quality of life. They are often able to gain experience, increase their savings and support the families through money transfers. In order to engage in safe migration following steps are to be undertaken:

Before travel:

- Investigate the job/ educating offer. If abroad make an effort to contact authorities (i.e. embassy)
- Engage legally operation authority (job agency)
- Avoid taking debts before travelling
- Arrange all necessary documents
- Ensure your family and friends know your destination and expected time of arrival
- Check for police contacts, embassy etc. if travelling abroad
- Insist on having all permits and requirements before travel
- Leave a recent photo before departure
- Keep a photocopy of your passport and travel documents

In case of danger of being traffic

- Do not lose hope and do not panic.
- Try to identify your location. Look for spots that are easy to identify.
- If you are in position of making calls (or online messages) try to call local authorities, if abroad – embassy and in your own country, family, relatives or anybody who can provide help.
- If it is possible attempt to alert the authorities. Try to alert them and request assistance providing your location.
- Do not trust the traffickers and people who are helping them.



References:

UNODC (2010). Toolkit to Combat Smuggling of Migrants. Retrieved 17 of June from https://www.unodc.org/documents/human-trafficking/SOM_Toolkit_E-book_english_Combined.pdf

UNODC (2008). Toolkit to Combat Trafficking in Persons. Retrieved 17 of June from https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf

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Prevention & Protection

Mod 3.2: Protection Of Victims Of Trafficking And Vulnerable Migrants



Time Allocation: 5x45 mins



Objectives: At the end of this module the participant will be able to discuss procedures and measures for protecting victims of trafficking and vulnerable migrants.



Training Methodology: This module will be introduced through lecture method combined with participatory approaches such as Q&A, brainstorming, syndicate or small group exercises, plenary discussions and experience sharing. Training aids will include videos.



Training Aid: Video- IOM movie- interviewing victims of trafficking (5 mins).

Objective: To reinforce participant's understanding of does and don't while interviewing VOTs and vulnerable migrants.

Guidance: The video clip involves "acted" scenes describing both appropriate and inappropriate methods of interviewing victim of trafficking and vulnerable migrant.



Exercise: Role play on Interviewing Victims of Trafficking (First Responder and Potential victim of Trafficking)

Role Play – Interviewing Victims of Trafficking

Objective: To strengthen participant's skills and techniques for interviewing victims of trafficking.

Guidance: Engage the participants in a role play as follows:

1. Divide the participants into 2 groups of equal numbers i.e. first responders and victims.
2. Pair a responder with a victim.
3. Allocate time (10 minutes) for each responder to interview a victim.
4. Conduct a plenary session for critiques and further discussions.



Key Terms:

Identification

The process of screening and verification to determine whether the individual/group is a victim of human trafficking, vulnerable migrant or not.

Direct Assistance

Once the status is determined through screening (identification), the victim/vulnerable migrant is referred for appropriate assistance. As best practice, both state and non-state actors should complement each other's role.

Reintegration

The process of facilitating the VoT's/vulnerable migrant's safe, dignified and sustainable return back to his/her family, community, or country of origin, and to live a normal life thereafter. It also includes the process of facilitating the VoT's/ vulnerable migrants stay in the host country or an alternative country when return is not possible.

Psychosocial support

The process of meeting a victim's emotional, social, mental and spiritual needs that supports recovery from the traumatic experience of human trafficking.

Teaching Points:

Victim Identification

Behavioural and physical indicators

General:

- ✓ Shows fear or anxiety;
- ✓ Accompanied by someone who appears controlling, who insists on giving information and speaking for them;
- ✓ Withdrawn and submissive, seems afraid to speak to anyone;
- ✓ Appearance suggests general physical neglect and/or abuse;
- ✓ May struggle to speak the local language/ is unfamiliar with the local language/culture where he/she is working;
- ✓ Has no official means of identification or has suspicious looking documents;
- ✓ Seem afraid of revealing their immigration status;
- ✓ When questioned provides vague and inconsistent explanations of where they live, employment or schooling;

- ✓ Does not know his/her home or work address;
- ✓ Suffers injuries that appear to be the result of the application of control measures;
- ✓ Is sick and has had no access to medical attention for a prolonged time;
- ✓ Has limited or no social interaction because he/she is restricted by someone else;
- ✓ Has limited or no contact with family or with people outside of his/ her immediate environment;
- ✓ Seems fearful, not confident, and prefers others to speak on his/ her behalf when addressed directly;
- ✓ Is under the perception that he/she is bonded by debt or cultural bondage (e.g. witchcraft bond).

In the case of children, possible indicators that should raise suspicion of child trafficking include when a child:

- ✓ Has no or limited access to his/her parents or guardians;
- ✓ Travels unaccompanied, depending on age;
- ✓ Travels in groups with persons who are not relatives;
- ✓ Travels accompanied by suspicious individuals;
- ✓ Is unable to speak fluently in the local language;
- ✓ Has no friends of his/her own age elsewhere, except in his/her area of work;
- ✓ Is engaged in work that is not suitable for children;
- ✓ Performs works of a certain nature (e.g. begging on the streets);
- ✓ Has no access to education;
- ✓ Has no time for play;
- ✓ Lives apart from other children in an unhealthy environment, with substandard accommodation;
- ✓ Looks intimidated and behaves in a way that does not correspond with behaviour typical of children his/her age;
- ✓ Eats apart from other members of the “family”;
- ✓ Is given only leftovers to eat;
- ✓ Has scars or injuries on his/her body suggestive of abuse

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Sexual exploitation:

- ✓ Have tattoos or other marks indicating “ownership” by their exploiters;
- ✓ Live or travel in a group, sometimes with other women who do not speak the same language;
- ✓ Only know how to say sex-related words in the local language or in the language of the client group;
- ✓ Shows signs of injuries that appear to be the result of assault or sexual abuse and it is revealed that such injuries are inflicted frequently;

Labour exploitation:

- ✓ Live in groups in the same place where they work and leave those premises infrequently, if at all;
- ✓ Be given only leftovers to eat;
- ✓ Have no access to their earnings;
- ✓ Be subject to security measures designed to keep them on the work premises;
- ✓ Works excessively long hours over long periods without compensation; does not have any days off;
- ✓ Be subjected to insults, abuse, threats or violence;
- ✓ Is unable to freely leave his/her work environment;

SoM

- ✓ The smuggled person and/or (potential) victim:
- ✓ Does not know in which country he or she is;
- ✓ Does not know through what countries he or she has travelled;
- ✓ Does not give a credible explanation about the purpose of his or her trip;
- ✓ Does not know a specific address where he or she is due to stay;
- ✓ Does not have the name or phone number of the person or place where he or she is going to stay;
- ✓ Indicates that he or she, at some point in time, should be at a particular location (in order to make contact with his or her supervisor);
- ✓ Has distinctive clothing or hairstyle (small groups of smuggled persons often have the same characteristics, such as clothing or bags of the same colour);
- ✓ Is often equipped with physical marks (text written on the arm, for example);

- ✓ Does not know how long he or she will stay at his or her next address;
- ✓ Carries no money with him or her;
- ✓ Is not in possession of his or her own travel documents or residence permit;
- ✓ Is often in possession of false or forged travel documents or residence permit;
- ✓ Often travels together with the smuggler or trafficker (possibly provable by plane, bus or train tickets);
- ✓ Has little or no luggage;
- ✓ Has no personal belongings (family photos, address books);
- ✓ Does not know the people who he or she is travelling with;

Who is likely to come across identify VOT/Vulnerable migrant:

- ✓ AMISOM staff;
- ✓ Law enforcement agencies (police, prosecution, immigration, children officers);
- ✓ Judicial officers;
- ✓ Social workers;
- ✓ Local administration/leaders such as chiefs;
- ✓ Labour inspectors/labour officers;
- ✓ Recruitment firms/agencies;
- ✓ Workers' unions;
- ✓ Medical staff;
- ✓ Embassy and consulate workers;
- ✓ Civil society organizations;
- ✓ Church/religious leaders;
- ✓ International CSOs;
- ✓ Community members such as siblings, friends/peers, and relatives.

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*Screening guidelines for migrants*⁸

When a person is suspected of being a victim of human trafficking/ vulnerable migrant, it is important to carry out an interview to ascertain whether or not the person is indeed a victim and thus requires direct assistance.

The person's emergency needs should be identified and addressed before an interview can be arranged and conducted. If, after the interview, the person is not identified to be a VOT/vulnerable migrant, then that person should be referred to other service providers for appropriate assistance.

Before the interview:

- ✓ Consult and obtain the victim's informed consent.
- ✓ Consult with the VOT/vulnerable migrant on the convenient date and time of interview (but do the interview as soon as possible).
- ✓ Ensure the safety of both the interviewer and VOT/vulnerable migrant.
- ✓ Explain to the VOT/vulnerable migrant his/her rights and obligations, especially the right to confidentiality and the right not to answer any question should he/she feel uncomfortable.
- ✓ Interviews should be in a language easily understood by the VOT/vulnerable migrant. Ensure that an interpreter is present, including for those who need sign language.
- ✓ Ensure that interviews are conducted privately and in a victim friendly environment, with no interruptions from mobile phones, pictures/filming, or third parties.
- ✓ Ensure that the interviewee understands the purpose of the exercise.
- ✓ Explain to the VOT/vulnerable migrant that he/she can ask questions.
- ✓ Ensure that the cultural/religious values of the VOT/vulnerable migrant are not infringed upon by the interviewer.
- ✓ Provide basic necessities like food, water, clothing, medicine, and shelter as may be required.
- ✓ Without making false promises, as best practice the service provider should explain possible options available to the individual.

Interview phase:

This is the point where the interviewer takes a full account of occurrence from the potential victim (i.e. allows the person to tell his or her story). The interviewer may use an interview form (see annex I) to document the information provided. It is important at this stage to mention to the potential VOT the likelihood of involving law enforcement and the risks associated with

⁸Odera & Malinowski (2011) Guidelines for Assisting Victims of Human Trafficking in the East Africa Region

reporting the crime, including possible threats from the trafficker. The potential VOT/vulnerable migrant should be given an opportunity to make an informed decision once all the risks have been assessed.

Trauma informed care ⁹

It is important to acknowledge the plausibility of trauma. While it is a normal reaction to abnormal situation it has potential to overwhelm a person. It is important therefore to make an effort of assisting the person who is likely to be traumatised.

Symptoms of Trauma ¹⁰ :

- Irritability (especially for children)
- Difficulties sleeping- nightmares
- Flashbacks
- Emotional distress after reminders of the traumatic event
- Physical distress after reminders of the traumatic event
- Avoidance of reminders of the event and trauma related thoughts or feelings
- Feelings of isolation
- Difficulty feeling positive emotions
- Exaggerated self-blame or blaming others for causing the trauma

If interviewee is showing the signs of trauma it is mandatory to ensure his/her safety and stability. In some cases it might be necessary to arrange further specialized assistance that will re-establish mental health for the interviewee.

Post Interview Phase:

This is crucial for the future of the VOT. The interviewer must ensure that there is a clear basis for making decisions about future procedures (recommendations) with the VOT/vulnerable migrant's consent. The information collected during the interview should be documented and a case file opened. Nevertheless, it is recommended that the interviewer endeavour to corroborate the VOT/vulnerable migrant's story as this information could be helpful during investigations at a later stage.

⁹ Otiende, S. & Manji, Y. (2018). No Longer a Victim: A Best Practice Manual for Assisting Victims of Trafficking. Nairobi

¹⁰ Otiende, S. & Manji, Y. (2018).

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■ Interviewing techniques

Steps in interviewing VOTs/ vulnerable migrant:

- Step 1: Identify the age of interviewee
- Step 2: If a child use Table B, If Adult: Use the table A

Use the tables provided. If there is one component from each column then the interviewee is a VOT/vulnerable migrant

■ Direct assistance ¹¹

Direct Assistance is a process of assisting VOTs/vulnerable migrant's through:

- Physical support
- Psychosocial support
- Medical support
- Legal support
- Shelter

Principles of direct assistance:

Respect for and protection of human rights - As trafficking itself constitutes a serious human rights violation and often leads to further violations of the rights of the VOT/vulnerable migrant, all assistance and protection efforts should seek to restore the VOT/vulnerable migrant' rights and prevent further violations without discrimination.

Informed consent - All assistance to VOT/vulnerable migrant should proceed on the basis of the victim's full and informed consent from the time the service provider comes into contact with the victim up to the time that the victim is fully reintegrated. The service provider should explain relevant actions, policies, and procedures to the VOT/vulnerable migrant in a way that he/she understands before seeking consent to any action or proposal.

Non-discrimination - All service providers should provide the best suitable assistance to the VOT/vulnerable migrant without discrimination on the basis of sex, sexual orientation, age, disability, colour, social class, race, religion, language, political beliefs or any other status.

Confidentiality and right to privacy - All information and communication regarding the victim must be treated with due regard for the victim's right to confidentiality and privacy. From the first meeting with the victim up to the completion of the assistance process, the service providers should ensure that all personal information regarding the victim and the particular case are confidentially kept. Confidential information includes, but is not limited to, information provided by the victim, and information regarding the VOT/vulnerable migrant' legal and health status. Sharing of information should only be on a "need-to-know" basis, with the victim's informed consent.

¹¹Odera & Malinowski (2011) Guidelines for Assisting Victims of Human Trafficking in the East Africa Region

Self-determination and participation - In recognition of the right and need of VOT/vulnerable migrant to make their own informed choices and decisions, service providers should encourage them to participate as much as possible in the decision-making process.

Individualised treatment and care - While recognizing that VOT/vulnerable migrant share common experiences and circumstances, service providers should acknowledge the individuality of the VOT/vulnerable migrant, including their culture, sex, age, and experiences, and, to the extent possible, provide personalized care and assistance.

Comprehensive approach to direct assistance - The service providers should be part of a holistic approach to assisting VOT/vulnerable migrant by cooperating with others and offering assistance that ensures many of the victim's needs are met.

Best interest of the VOT/vulnerable migrant - All assistance and protection provided to VOT / vulnerable migrant should be based on the principle that the best interest of the victim will always be paramount. This means that action should only be taken when it is beneficial to the victims and is safe and legal to so act.

Reintegration ¹²

Reintegration is not a single event but a process involving various steps. It is advisable to start the reintegration process as early as possible, preferably as soon as a VOT/vulnerable migrant is identified. The actual return of the victim to his/her community should, however, only take place after the victim has undergone a reflection period. The aim of reintegration is to foster, nurture and strengthen the rehabilitation process of the VOT/vulnerable migrant into his/her community or host community to live a normal life. Accordingly, reintegration assistance may include a full range of services, from temporary shelter in a halfway house or other safe accommodation, to medical care, psychosocial support, and education and eventual return to the country/community of origin.

Factors to consider before reintegration is undertaken include:

- the best interest of the VOT/vulnerable migrant, taking into account his/her age, sex, security and disability;
- respect for the VOT/vulnerable migrant human rights and dignity throughout the process;
- obtaining the VOT/vulnerable migrant informed consent before reintegration;
- maintaining confidentiality at all times and disclosing information only on a need-to-know basis;
- the cultural/religious values of the VOT/vulnerable migrant;
- developing an individual reintegration plan for each VOT/vulnerable migrant;
- the medical condition of the VOT/vulnerable migrant;

¹² Odera & Malinowski (2011) Guidelines for Assisting Victims of Human Trafficking in the East Africa Region

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- family tracing;
- family and community preparedness to receive the VOT/vulnerable migrant;
- availability of other service providers in the area that can assist the returned VOT/vulnerable migrant.

Barriers to effective protection

□ Communication challenges

Language barrier can be effective obstacle to successful protection. Always ensure that the assisted VOT/vulnerable migrant can comfortably express himself/herself.

□ Cultural factors

Culture plays important role in people's lives and cultural patterns of behaviour must be taken into account during the protection. If possible protection should be offered by someone coming from the same cultural background.

□ Gender blind/neutral approaches

It is also important to ensure that the protection is done with gender blind/neutral approach. This does not mean that gender issue should not consider gender of the migrant – rather gender blind approach ensures assisted migrant is treated with the principle of equality regardless of gender.

□ Resources


In normal circumstances Protecting victims require resources. In PSO scenario resources are likely to be limited. In such situation the Do Not Harm principle is applied. Service providing agent should never make promises that are impossible to fulfil. If effective protection is impossible due to lack of resources it is better to abstain from engaging in Protection efforts as the possibility of doing harm is very high. This should not however be an excuse for service providers (especially state agencies) to neglect Protection.



References:

Odera & Malinowski (2011) Guidelines for Assisting Victims of Human Trafficking in the East Africa Region. Retrieved 20 of June from http://kenya.iom.int/sites/default/files/Guidelines_for_Assisting_Victims_VY.pdf

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Final Exercise

Final Exercise

Prevention & Protection

Mod 3.2: Protection of Victims of Trafficking and Vulnerable Migrants



Time allocation: 7 x 45 mins



Objectives: At the end of this module the participant should be able to apply knowledge and skills acquired throughout the course to respond to issues of trafficking in persons and smuggling of migrants as outlined in provided scenarios. This module will be introduced through exercise briefing followed by syndicate breakouts, plenary presentations and critique.



Training Methodology: This module is introduced through exercise briefing followed by syndicate breakouts, plenary presentations and critique.



Exercise Description: In their syndicates, participants are issued with one of the following scenarios (A, B or C) and tasked to respond to the outlined questions.

Case Study A

Fatma, a female minor aged 14, from a large family residing in Saahil, has just concluded her primary level examinations with dismal results. Fatma's father, Mr Ali has no funds to further her schooling. Upon hearing this, Asha a family friend from the Hargeisa informs Mr Ali can obtain a trainee position for Fatma with a tailor in the city and that she would host Fatma during her stay in Hargeisa. Mr Ali agrees to this arrangement providing that Asha sends him \$20 per month which would go towards the upkeep of the remaining family.

When Fatma arrives in the city, she is taken to Asha's house where she is immediately put to work as a domestic servant and nanny. She begins work at 04.30 every day to make breakfast for the two older children of the family, during the rest of the day she cares for a baby of eight months and in addition carries out the bulk of the household chores. Due to the amount of work she is required to do she does not work for the tailor as promised and neither is she paid any money by Asha. However, Mr. Ali receives the \$ 20 per month as promised.

Fatma rarely manages to get to bed before midnight and in addition Asha's husband, Mr. Hassan has taken to visiting Fatma's room at night and has sexually assaulted her.

Final Exercise

Fatma is suffering from lack of sleep and she is beaten by Asha when she breaks something. She sleeps in a dingy, dirty room, she is only given left overs to eat and is constantly hungry. Asha is unable to contact her father, she has tried to leave but Asha has prevented her from leaving the premises.

Points for discussion:

- a) Identify the push and the pull factors that have necessitated Asha's migration from her rural area to the city.
- b) Identify how we can classify this type of migration.
- c) Assuming Asha is in Somalia, what avenues of assistance are available to her?
- d) Is this a case of Trafficking in Persons (TiP)?
- e) Who has potentially committed an offence of TiP? Consider the position of Ali, Asha and Hassan?
- f) Which acts have been carried out? By whom? Which means have been used? By whom? What is the relevance of the means used to proof of the offence?
- g) What is the form of exploitation here? Who has benefitted?
- h) What is the impact of Ali's consent? Or of Asha's own willingness to go to the city?
- i) In conclusion, which of the 3 adults in the scenario would you proceed against for trafficking? Explain the basis of your decision with reference to act, means and exploitation in each case. If your decision is not to proceed against any of the four adults for trafficking, explain the reasoning upon which this decision is based.

Case Study B

The headline of an advertisement placed in the back pages of "Mareeg Media" a Somalia newspaper, states simply "Help wanted" with an indication that a local agency was recruiting women aged 18 – 30 for cleaning and domestic service positions in a Middle Eastern (Gulf) state. Only a cell phone contact number was provided. The advertisement further indicated that all visa and immigration matters would be taken care of by the agency but was silent on the duration of employment however "good pay" was promised.

Halima, a Somalia national and resident of Mogadishu, was interested in the positions but was concerned about her lack of educational qualifications, lack of passport and money to pay any fees due to the agency or travel to the Gulf state. Halima calls the cell phone number given and is told that all costs will be taken care of by the employer and the agency will also assist her to obtain a passport. Halima then submits her application and is shortly informed that she is successful. She is asked to come to Mogadishu International Airport on a given date when all her papers will be given to her.

Final Exercise

Halima travels to Mogadishu International Airport, she is given her documents and passport and travels to the Gulf state. On arrival she is met by a man who introduces himself as her employer, he immediately takes possession of her passport and cell phone “for clearance”. Halima is then taken to her employers’ house, she is told that her job is “home help” and that in addition she is required to offer her services to any guests to the house.

Over a period of time Halima is subjected to physical, mental and sexual abuse and sustains scars all over her body. She is forced to live in a small room with five other women from the Horn of Africa and is provided with only one meal per day. Halima has never seen nor signed a contract of employment and has not been paid during the five months she has been with her employer. Upon being asked about this her employer informs her that the local labour law makes provision for bi-annual payments for immigrant workers. Halima is not able to communicate with family and friends in Mogadishu. She does not know what to do.

Points for discussion

- a) Identify the push and pull factors for Halima’s Migration
- b) Identify the negative impact of this kind of migration
- c) Identify if Halima is a regular or an irregular migrant?
- d) What is the impact of Halima’s consent to the whole process?

Topic 2.2

- e) Assuming that Halima manages to return to Mogadishu and registers a compliant with the authorities detailing her abuse at the hands of her employer, consider what appropriate action – if any – could be taken against the agent, employer being a national and resident of the Gulf state concerned. What laws, policies and procedures would you consider?
- f) As an AMISOM officer discuss advice you would provide to the FGoS to prevent such cases in future.

Case Study C:

Meles Bekele, an Ethiopian male and long term resident of Nairobi regularly travels back to his country of origin. Following one visit in early 2019, he returns to Nairobi by road, driving a lorry containing a group of 30 individuals (male and female of various ages) originating from Ethiopia and parts of the Horn of Africa. Each of these persons has paid Bekele 5,000 US dollars to take them to Yemen and ultimately to the South Africa where they hope to find work and make new lives for themselves. Bekele successfully crosses the border and once in Nairobi takes care to drive on country roads so as to escape the attention of the police who tend to patrol the busier main roads and highways. On their way Bekele informs them that there is a problem with the vehicle and that they must break their journey to allow for certain repairs to be undertaken. However, he assures the group that they will continue their journey to Yemen once the repairs have been carried out.

Final Exercise

The next day Bekele and his associates inform the group that the amount they have paid is no longer sufficient to finance their passage to South Africa and that they will have to remain in Kenya for a time and that jobs will be found for them so that they can earn the additional money needed. The group resists at first but to no avail, the men and women are forcibly separated. The women and girls are then taken to an apartment in Westlands in Nairobi where they are forced into prostitution and the men are taken to a private coffee estate in the vicinity where they are made to do arduous work for 12 to 14 hours each day. Bekele drives the men back and forth between the houses in on a daily basis. There is no escape as Bekele is accompanied by armed guards and the coffee estate is patrolled by dogs and security guards at all times. Needless to say neither the men nor the women are paid, however Bekele receives significant amounts of money from the brothel in Westlands and is also paid for providing labour to coffee estate.

This state of affairs continues for almost six months, eventually one of the women talks to a sympathetic client about her plight who then informs the police. As a consequence, the premises at Westlands are raided and the women are taken to the police station under suspicion of having committed immigration offences. Thereafter, the house in harbouring the immigrants is identified and is similarly the object of a police raid during which the group of males is arrested and detained. The whole group is later charged with offences contrary to the immigration act and for working in Kenya without permits, they appear in court within 24 hours of charge and plead guilty, thereafter they are detained pending their deportation to Ethiopia.

Points for discussion

- a) Does this scenario amount to TiP or is it migrant smuggling? Explain your reasoning.
- b) Consider the actions of Bekele, what offences has he committed? Explain your reasoning. Bekele has not been arrested by the police, how would you advise the police to proceed in relation to Bekele?
- c) Based on the international, regional and national laws what are the rights of the persons that Bekele was transporting?
- d) As an officer of the Human Rights Commission which institution would you liaise with to make sure the group goes back home safely?
- e) Given the scenario as explained above and that the group was “in transit” in Kenya, did the police institute the correct charges under the immigration act? How would you have advised them in this situation? Would your advice have resulted in different charges?



Annexes

Victim of Trafficking in Persons: Screening Interview Form ¹³

Confidential Case No: _____

Informed Consent

Has the individual been informed that (name of organization) reserves the right to share her/ his individual case data for assistance purposes and only with (name of organization) and partnering organizations involved in direct assistance?

(Yes/ No)

Has the individual further been informed that (name of organization) reserves the right to make a limited disclosure of non-personal data based on the information collected at the interview to law enforcement for the purpose of rescuing other victims that remain under the control of traffickers or preventing other potential victims from being trafficked?

(Yes/ No)

Has the individual further been informed that (name of organization) reserves the right to use (only anonymous, aggregate) data for research purposes?

(Yes/ No)

Has the individual's full and informed consent been obtained to conduct the screening interview based on information given regarding the role of the organization, the voluntary nature of the interview and the use of the information provided by the individual as outlined above?

Note: Informed consent is necessary for all services, such as medical examination and procedure, health assessments, assisted voluntary returns and reintegration assistance.

(Yes/ No)

If the individual is a minor, has the consent of the parent(s)/ guardian(s) been obtained?

(Yes/ No)

Signature of interviewer: _____

Date: _____

¹³Tool developed by HAART Kenya. Source: Otiende, S. & Manji, Y. (2018). No Longer a Victim: A Best Practice Manual for Assisting Victims of Trafficking. Nairobi: Awareness Against Human Trafficking

Annexes

Registration Data

First name(s): _____

Country of birth: _____

Family name(s): _____ Place of birth: _____

Sex: _____ Last place of residence in country of origin: _____

Date of birth: _____

Identity Document

Type: _____ Country: _____

Number: _____ Expiry date: _____

Is date of birth an estimate? (Yes/ No) Age (In number of years): _____

Client Contact Information: _____

Citizenship: _____ Ethnicity: _____

Next of Kin (name): _____

Relation (family, friend, etc.) _____

next Of Kin Contact Information: _____

Highest education: _____

Latest Job/activity: _____

Case And Interview Data

Type of referring organization / individual: (NGO / International organization / Law enforcement/ Immigration / Government/ Embassy / IOM Mission / Hotline / Self-referral-walk-in / Family / Friend / Client / Other / NA / NK)

Specify - Name: _____

- Location: _____

Screening date: _____ Screening location: _____

First name and family name of Interviewer: _____

Name of Organization/ Institution: _____

First name and family name of Interviewer: _____

Name of Organization/ Institution: _____

Contact Details of interviewer: _____

Address and telephone number of referring organization: _____

Interviewee's language: _____

Interpreter? (Yes/ No)

First name and surname of interpreter: _____

If Minor, first name and family name(s) address(es) and telephone number of parent(s)
or guardian(s):

Process / Entry to Trafficking

1.0. How did the individual enter the process (Indicate multiple options if necessary)? (Kidnapping/ Sold by member of family/ Sold by non-family member/ Adoption/ Educational opportunity/ Family visit/ Friend visit/ Labor migration/ Marriage/ Tourism/ Other/ NA/ NK)

1.1. If OTHER, please specify: _____

2.0 Did entry in to the process involve recruitment? (Yes/ No)

2.1 If YES, how was contact initiated between the individual and her/his recruiter?

(Personal contact/ Employment agency/ Travel agency/ Internet advertisement/ Newspaper advertisement/ Radio advertisement/ Television advertisement/ Other/ NA/ NK)

2.1.1. If OTHER, please specify: _____

Annexes

First name and family name of Interviewer: _____

Name of Organization/ Institution: _____

Contact Details of interviewer: _____

Address and telephone number of referring organization: _____

Interviewee's language: _____

Interpreter? (Yes/ No)

First name and surname of interpreter: _____

If Minor, first name and family name(s) address(es) and telephone number of parent(s) or guardian(s):

Process / Entry to Trafficking

1.0. How did the individual enter the process (Indicate multiple options if necessary)? (Kidnapping/ Sold by member of family/ Sold by non-family member/ Adoption/ Educational opportunity/ Family visit/ Friend visit/ Labor migration/ Marriage/ Tourism/ Other/ NA/ NK)

1.1. If OTHER, please specify: _____

2.0 Did entry in to the process involve recruitment? (Yes/ No)

2.1 If YES, how was contact initiated between the individual and her/his recruiter?

(Personal contact/ Employment agency/ Travel agency/ Internet advertisement/ Newspaper advertisement/ Radio advertisement/ Television advertisement/ Other/ NA/ NK)

2.1.1. If OTHER, please specify: _____

3.0. If labour migration, what activity did the individual believe s/he was going to be engaged in following arrival at the final destination (indicate multiple options if necessary)? (Agricultural work/ Begging/ Child care/ Construction/ Domestic work/ Factory work/ Fishing/ Low-level criminal activities/ Military service/ Mining/ Prostitution/ Restaurants and hotel work/ Study/ Small street commerce/ Trade/ Transport sector/ Other/ NA/ NK)

3.1. If OTHER, please specify: _____

3.2. If FACTORY WORK, please specify manufacturing sector: _____

4.0. What was the individual told would be their benefits following arrival at final destination?

4.1. Salary (Equivalent in USD per month) _____

4.2. Other benefits: _____

5.0. In which month/year did the individual enter into the process? _____

6.0. Minor at time of entry into the process: (Yes/ No) _____

7.0. From which place/country did the individual enter into the process? _____

8.0. What place/country is the last (or intended) destination? _____

9.0. Did the individual travel alone? (Yes/ No)

9.1. If NO, who did the individual travel with (indicate multiple options if necessary)?

(Husband/ Wife/ Partner/ Relative/ Friend/ Recruiter/ Transporter/ Unknown

Persons/ Other/ NA/ NK)

9.1.1. If OTHER, please specify: _____

10.0. Did the individual spend any time in transit place(s)/ country(ies)? (Yes/ No)

10.1. If YES, please specify in chronological order: _____

10.2. Did s/he engage in any activity in this place(s) country(ies)? (Yes/ No)

10.3. If YES, which activity in first/only transit place/ country: _____

(Agricultural work/ Begging/ Child care/ Construction/ Domestic work/ Factory work/ Fishing/ Low-level criminal activities/ Marriage/ Military Service/ Mining/

Prostitution/ Restaurants and hotel work/ Study/ Small street commerce/ Trade/ Transport sector/

Unemployed/ Other/ NA/ NK)

Annexes

10.3.1. If OTHER, please specify: _____

10.3.2. If FACTORY WORK, please specify manufacturing sector: _____

10.4. If MORE PLACES/COUNTRIES in which individual engaged in activity, please add respective places/country(ies)/activity(ies) below:

11.0 Were any of the following means used to control the individual?

Physical abuse	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Psychological abuse	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Sexual abuse	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Threats to individual	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Threat of action by law enforcement	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Threats to family	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
False promises/deception	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Denied freedom of movement	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Giving of drugs	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Giving of alcohol	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)

Denied medical treatment	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Denied food/drink	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Withholding of wages	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Withholding of identity documents	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Withholding of travel documents	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Debt bondage	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
Excessive working hours	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter/ Transporter/Harboured/Receiver/ Other-specify)
If OTHER means please specify		

The Exploitation Phase

12.0. What activity has the individual undertaken since her/his arrival in the last destination (Indicate multiple answers if necessary)?

(Agricultural work/ Begging/ Child care/ Construction/ Domestic work/ Factory work/ Fishing/ Low-level criminal activities/ Marriage/ Military service/ Mining/ Prostitution/ Restaurants and hotel work/ Study/ Small street commerce/ Trade/ Transport sector/ Unemployed/ Other/ NA/ NK)

12.1. If OTHER, please specify:

Annexes

12.2. If FACTORY WORK, please specify manufacturing sector:

13.0. How old was the individual when the activity began?

13.1 How long did the only/ most significant activity occur? (Years/ Months/ Weeks/ Days and/or hours)

14.0. Were any of the following means used to control the individual during the activity?

Physical abuse	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Psychological abuse	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Sexual abuse	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Threats to individual	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Threat of action by law enforcement	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Threats to family	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
False promises/deception	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Denied freedom of movement	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Giving of drugs	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)

Giving of alcohol	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Denied medical treatment	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Denied food/drink	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Withholding of wages	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Withholding of identity documents	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Withholding of travel documents	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Debt bondage	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Excessive working hours	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
If exploited for Prostitution (sexual exploitation):		
Denial of freedom to refuse client	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Denial of freedom to refuse certain acts	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
Denial of freedom to use condom	(Yes/ No/ NA/ NK)	If YES, who by? (Recruiter / Exploiter / Client / Other-specify)
If Other means of control, specify		

15.0. Did the individual experience exploitation? (If NO, proceed to 16.0) (Yes/ No)

16.0. If NO exploitation took place, was there any indication of a real and substantial threat of exploitation? (Yes/ No/ NA/ NK)

16.1. If YES, what were the reasons that exploitation never took place? (Rescue/ Escape/ Other/ NA/ NK)

16.1.1. If OTHER, please specify:

Corroborative materials

17.0. Additional corroborative materials

Police or other official reports (Yes/ No/ NA/ NK)

Identity documents (Yes/ No/ NA/ NK) _____

Travel documents (Yes/ No/ NA/ NK) _____

Medical reports (Yes/ No/ NA/ NK) _____

Copies of employment contract or recruitment offer (Yes/ No/ NA/ NK)

Personal writings by the individual (Yes/ No/ NA/ NK)

Hotline reports (Yes/ No/ NA/ NK) _____

Other (Yes/ No/ NA/ NK) _____

If OTHER, please specify: _____

Decision

18.0. Is the individual a VICTIM of TRAFFICKING? (Yes/ No) _____

18.1. Please justify the decision made in 18.0: _____

19.0. Decision made by whom (Specify name(s)): _____

20.0. If the individual is a victim of trafficking, was the type of trafficking in-country or transnational?

(In-country/ Transnational/ Both)

21.0. If the individual is a victim of trafficking, is s/he eligible for the (organisation name) VoT assistance Programme? (Yes/ No)

21.1. If NO, why? (Does not meet project criteria/ has deportation order/ suspected infiltrator/ other)

21.1.1. If OTHER, please specify:

22.0. If the individual is eligible for the (organisation name) VoT assistance programme, is s/he willing and able to accept assistance? (Yes/ No)

22.1. If NO, what are the reasons? (Please specify all that apply)

(Does not trust (organisation name) or partnering organization/ Is afraid/ Is self-sufficient/ Wants to apply for asylum/ Wants to stay in the country/ Other)

22.1.1. If OTHER, please specify:

23.0. If the individual is NOT a victim of trafficking, is s/he in need of assistance?

(Yes/ No)

23.1. If YES, what is the individual's situation? (Please specify all that apply)

(In need of emergency medical assistance/ Irregular status/ Victim of sexual or gender-based violence/ Other)

23.1.1. If OTHER, please specify: _____

If YES, please refer the individual to the appropriate service agency.

24.0. Additional Remarks:

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) [“Anti-Trafficking Protocol”]¹⁴

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000 Entered into force on 25 December 2003 – 124 State Parties as of December 2008

Preamble

The States Parties to this Protocol, Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights, Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons, Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected, Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children, Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime, have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

¹⁴ UNHCR, (2008). Refugee Protection and Human Trafficking Selected Legal Reference Materials First Edition – December 2008. Retrieved from <https://www.unhcr.org/4986fd6b2.pdf>

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

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

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) 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 defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;

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

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

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

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States Palermo MS Identification Tool

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 trafficking in persons 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.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State-Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from re-victimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, 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 trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one Member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its Member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000) ["Anti Smuggling Protocol"]¹⁵

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

Entered into force on 28 January 2004 – 117 State Parties as of December 2008

Preamble

The States Parties to this Protocol, Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels, Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and sub regional mechanisms to continue to address the question of migration and development, Convinced of the need to provide migrants with humane treatment and full protection of their rights, Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues, Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned, Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved, Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea, Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,
Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

¹⁵UNHCR, (2008). Refugee Protection and Human Trafficking Selected Legal Reference Materials First Edition – December 2008. Retrieved from <https://www.unhcr.org/4986fd6b2.pdf>

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3

Use of terms

For the purposes of this Protocol:

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4**Scope of application**

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5**Criminal liability of migrants**

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6**Criminalization**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

- (a) The smuggling of migrants;
- (b) When committed for the purpose of enabling the smuggling of migrants:
 - (i) Producing a fraudulent travel or identity document;
 - (ii) Procuring, providing or possessing such a document;
- (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
- (b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:

- (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
- (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. Smuggling of migrants by sea

Article 7

Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8

Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel.

The flag State may authorize the requesting State, inter alia:

- (a) To board the vessel;
- (b) To search the vessel; and
- (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9

Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

- (a) Ensure the safety and humane treatment of the persons on board;
- (b) Take due account of the need not to endanger the security of the vessel or its cargo

- (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
- (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

- (a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
- (b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10

Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

- (a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;
- (b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
- (c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;
- (d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

- (e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
- (f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, 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 purposes of conduct set forth in article 6 of this Protocol.

Article 14

Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.
2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:
 - (a) Improving the security and quality of travel documents;
 - (b) Recognizing and detecting fraudulent travel or identity documents;
 - (c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;
 - (d) Improving procedures for detecting smuggled persons at conventional and nonconventional points of entry and exit; and
 - (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15

Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16

Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17

Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

Article 18

Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19

Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 20

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one Member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority votes of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.



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