

TRAFFICKING IN PERSONS IN SOUTH AFRICA

The definition of trafficking in persons ('TIP') is central in guiding actions by counter-trafficking stakeholders. It provides direction on which cases to prosecute as TIP crimes and determines which individuals receive services. In South Africa, the Prevention and Combating of Trafficking in Persons ('PACOTIP') Act No. 7 of 2013 sets forth the law governing the crime of TIP.

DEFINITION OF TIP (THE PACOTIP ACT, SECTION 4¹)

TIP is defined as 'Any person who delivers, recruits, transports, transfers, harbours, sells exchanges, leases or receives another person within or across the borders of the Republic, by means of (a) a threat of harm; (b) the threat or use of force or other forms of coercion; (c) the abuse of vulnerability; (d) fraud; (e) deception; (f) abduction; (g) kidnapping; (h) the abuse of power; (i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation.

It also includes 'Any person who (a) adopts a child, facilitated or secured through legal or illegal means; or (b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person.'

ACT, MEANS & PURPOSE

It is important that the lengthy definition is not truncated as this can lead to the mis-categorisation and underreporting of the crime. However, a simpler way to understand the definition is by breaking it down into three main categories: the act, the means and the purpose.²

At a minimum, one element from each category must be present to establish the crime of TIP. However, in the case of minors, the means category does not need to be established (though it is often present).

It is also important to note that whilst the various elements of the definition can be split between these three categories, it is often the case that an element can be a part of more than one category. For example, the act of harbouring can be in the 'act' category but harbouring someone by physically limiting someone's freedom, can also be in the 'means' category. Further, sexual exploitation can be in the 'purpose' category, but sexual exploitation may also be a way of controlling someone through abuse, and therefore fall into the 'means' category. The aim in splitting the definition is not to create three rigid categories, but to be aware that these various categories can constitute the crime of TIP and distinguish it from other crimes such as intimate partner violence.

1. The Prevention and Combating of Trafficking in Persons Act No 7. of 2013, S 4.

2. Department of Justice and Constitutional Development [2023] Prevention and Combating of Trafficking in Persons National Policy Framework, 28.

ACT: WHAT IS DONE?

Recruitment Methods

It is important to note that many victims of TIP are *recruited* by a trafficker before they are delivered, transported, harboured, sold, exchanged, leased or received by the trafficker. The most common types of recruitment methods are listed below:

► FALSE JOB ADVERTISING

Many victims are recruited through a job advertisement that turns out to be false or exploitative.

EXAMPLE *A person is contacted on social media and offered a job opportunity abroad. This job offers high wages and the travel is stated to be 'covered' in the agency fees. However, once accepted, the job is not what was advertised.*

► PROMISE OF A BETTER LIFE

Some victims are coerced or deceived into a situation of exploitation simply through the promise of a better standard of living or higher pay. The trafficker, who may be a stranger, acquaintance, or family member, usually promotes the fantasy of a lavish lifestyle, dream job, or opportunity that seems too good to be true. The victim, persuaded by this alluring picture, will agree to the opportunity on the basis of this false promise.

EXAMPLE *A friend shares about an opportunity to earn triple their income working on a fishing vessel. The promise of higher wages means that the person and their family can have a much better standard of living. Once the person starts the job, they realise that the salary is not what was advertised, and the promise of a 'better life' was false.*

► SOLD BY FAMILY OR FRIENDS

In some situations, friends or family members themselves recruit and sell victims. This might be due to chronic poverty, cultural practices, financial hardship or substance abuse.

EXAMPLE *A mother agrees to sell her daughter for sex to a local drug dealer in exchange for 'free' drugs and protection from harm in the community.*

Victims may also be recruited through perceived 'friends' who befriend them with the sole purpose of exploiting them.

EXAMPLE *A 14 year old boy receives a message from someone he has known for a long time, offering him an opportunity to go to soccer trials in another province. Due to the trust the boy has in that 'friend' neither he nor his family check the credibility of the offer. When the boy travels to the 'soccer trials' he finds out that he is going to be forced to work in a factory for no pay instead.*

► LOVER BOY METHOD/FALSE RELATIONSHIPS

The 'Lover Boy' recruitment method involves traffickers who seduce or manipulate someone with the intention of exploiting them at a later date. Victims form emotional attachments to their traffickers through these falsified 'relationships'. Whilst the traffickers may shower the victims with love and affection at the start of the relationship, as trust is built, they often become volatile and violent to coerce their victims into exploitation. Often, victims are forced into sexual exploitation.

EXAMPLE *A young girl meets a man online, and they soon enter a romantic relationship. Once they meet in real life, her 'boyfriend' puts pressure on her by saying if she loves him, she will agree to have sex with men for money. When she refuses, her 'boyfriend' threatens to hurt her and her family. Because she is fearful for her and her family's safety, she 'agrees'.*

► ABDUCTION OR KIDNAPPING

It is an often misconceived stereotype that those who are trafficked are always abducted or kidnapped. While abduction or kidnapping into exploitation can happen, it is much more likely that victims will be recruited.

According to South African Common Law, abduction is defined as 'unlawfully taking a minor out of the control of his or her custodian with the intention of enabling someone to marry or have sexual intercourse with that minor'.³ Kidnapping is defined as 'unlawfully and intentionally depriving a person of his or her freedom of movement and/or, if such person is a child, the custodians of their control over the child'.⁴

In South Africa, the cultural practice of Ukuthwala⁵ can sometimes be abused and subsequently constitute a crime of abduction or kidnapping. If this leads to sexual exploitation, forced labour, and/or forced marriage, it can be categorised as the crime of TIP.⁶

► RECRUITMENT AND GROOMING

Traffickers utilise a variety of recruitment methods, as listed above, to deceive and coerce victims into exploitative situations. These methods, particularly false relationships, may involve a trafficker profiling and targeting an emotionally vulnerable youth to engage in a 'romantic relationship' with the ultimate goal of trafficking them for the purpose of sexual exploitation. As the 'romantic relationship' doesn't happen immediately, the trafficker will set aside time to 'groom' the victim - that is, to build a relationship and establish rapport for the sole purpose of manipulating and exploiting the victim at a later time. The grooming process in that 'romantic relationship' situation, also known as the 'Lover Boy' scenario, may involve the trafficker/'boyfriend' showering the targeted victim with gifts and building a fast emotional connection. The trafficker may also isolate the targeted victim from friends and family so the trafficker soon becomes their sole emotional support.

While the grooming process can happen quite quickly, it can also take place over long periods. The trafficker builds trust during this critical grooming period, so that at a later date, the trafficker can create a future situation where the targeted victim will be trapped with minimal-to-no opportunity to seek assistance. They use deception and manipulation to make their victims feel ashamed or responsible for their own exploitation, and in the process, create the perception of a 'willing' victim. After a victim has been groomed, traffickers are able to control their every movement.

Grooming and recruitment can also take place online. The prevalence of the online world has increased the ease at which vulnerable people can be manipulated and exploited and has created other avenues to facilitate the crime of TIP. As a result of the development of information and communication technologies, victims of TIP no longer need to be recruited and exploited in person; social media expands the reach of perpetrators from local to global. For example, a young man could be offered a job opportunity in another country through an online job advertisement that turns out to be false, or a new friend request on social media could lead to a young person being groomed and trafficked for sexual exploitation.

3. South African Police Service, Department of Police [2024 8 January] Common Law Offences-Definitions <https://www.saps.gov.za/faqdetail.php?fid=9>
4. Ibid.

5. Ukuthwala is a cultural method of opening marriage negotiations, largely practised in the Eastern Cape and areas of KwaZulu Natal. It involves the consensual kidnapping of the woman in the relationship in order to force two families into marriage negotiations. The practice is done with the consent of all parties and the marriage is consensual.

6. The Prevention and Combating of Trafficking in Persons Act, No. 7 of 2013, S 4.

FOR MORE INFORMATION

For information about how to safeguard against online child sexual exploitation please see the [Can You See Me? Adult Guide and Youth Guide](#).

Movement & Isolation

It is often the case that the crime of TIP is misunderstood as a crime that must involve the movement of a person. This is not necessarily the case; the acts of selling, leasing, harbouring, receiving and recruitment can all take place without the movement of a person.

The legislation makes it clear that physical movement is not required. However, traffickers often move victims in an effort to isolate them from familiar surroundings and support systems. Notwithstanding the application of this tactic to both foreign national and South African victims, traffickers often have more control over foreign national victims through confiscation of identification documents or the use of unfamiliar surroundings in a different country. This includes language barriers and a lack of support. Through such tactics, the trafficker increases control over the victim and decreases the likelihood of escape.

MEANS: HOW IS IT DONE?

*'By means of a threat of harm; the threat or use of force or other forms of coercion; the abuse of vulnerability; fraud; deception; abduction; kidnapping; the abuse of power; the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage.'*⁷

Any of the means elements can be aimed at either:

- ▶ The person (being trafficked)
- ▶ An immediate family member of that person
- ▶ Any other person in close relationship to that person

Consent

Often, victims of trafficking may appear to have consented to be in their situation or have agreed to the intended exploitation. For example, a person may have willingly travelled to another country to accept a job offer that turned out to be exploitative and seemingly 'chose' to remain there. In these situations, it is important to note that the perceived 'consent' of the victim is irrelevant if obtained by improper means (force, fraud or coercion).

Furthermore, an individual may independently engage in consensual sex work, but after entering into a supposed romantic relationship with a trafficker, the trafficker takes all of the income and the individual continues to stay in that 'relationship'. While this may appear to be consensual, a deeper dive will usually reveal elements of force, fraud or coercion. In another common example, a victim may seemingly have consented to engage in prostitution as her pimp provides her with cocaine for engaging in commercial sex acts; however, upon closer inspection, it may be revealed that the trafficker is coercing the victim to engage in commercial sex by manipulating the victim's substance use disorder.

Debt Bondage

Debt bondage happens when a victim is forced to enter into or stay in a situation in order to repay a debt owed to the trafficker. The debt may accumulate from rent, travel or other expenses incurred when recruiting the individual. This debt often increases over time so that the victim is never able to pay off the debt owed.

EXAMPLE A person may be offered a job opportunity abroad, and the trafficker will offer to pay for the travel costs. However, these travel costs are often exorbitant and will then be leveraged as a debt that the person is forced to pay off once in the destination country.

7. The Prevention and Combating of Trafficking in Persons Act, No. 7 of 2013, S 4.

PURPOSE: WHY IS IT DONE?

*For the purpose of any form or manner of exploitation, including (but not limited to) 'all forms of slavery of practices similar to slavery, sexual exploitation, servitude, forced labour, child labour, removal of body parts or the impregnation of a female against her will for the purpose of selling the child when the child is born.'*⁸

Types of trafficking

TIP takes place for the purpose of any form or manner of exploitation. The most common exploitation types are listed below:

► SEXUAL EXPLOITATION⁹

According to the PACOTIP Act, sexual exploitation means 'the commission of any sexual offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007 or any other offence of a sexual nature in any other law.'¹⁰

While the law does not require payments or benefits to be provided to the victim or someone in a close relationship to the victim (like a friend or family member), for a situation to be classified as trafficking for the purpose of sexual exploitation, payments and benefits are often present. Victims or people in close connection with victims can be provided with non-tangible benefits such as protection or status within the community, as well as money and other gifts.

Women, men and children can be victims of trafficking for the purposes of sexual exploitation. Coercive control is a very common tactic used to control victims. This is where traffickers use power and control to dominate their victims through physical or emotional violence, manipulation, isolation and threats.

Traffickers commonly recruit victims in two primary ways. Firstly, traffickers may recruit victims via the 'Lover Boy' method, where a romantic relationship is formed with victims to exploit them sexually. This is most common in a domestic setting, where victims are trafficked within the borders of South Africa. Adult and minor victims may knowingly engage in sex work before being approached by a 'Lover Boy' who convinces them to work for him and offers his protection. Eventually, the trafficker takes all the victim's money and uses coercive methods, both overt and covert, to continue exploiting the victim. Covert methods of control are more subtle, but are often more manipulative and just as powerful. For example, the trafficker may make light of the situation so the victim doesn't comprehend the reality of the situation. They also may give the victim a large amount of attention and affection in an attempt to control and build codependency. This usually occurs in a short period of time. Through falsified relationships, victims feel an emotional attachment to the exploiter. They can appear to be a 'willing victim' by 'agreeing' to do anything that is asked in an attempt to please the 'romantic partner'.

Alternatively, foreign national victims do not typically enter sex work situations knowingly, and fraud is a more prevalent recruitment tactic. For example, a recruiter may deceive a victim with immigration promises or a job opportunity that turns out to be false. Upon arriving at the perceived valid job, the victim is forced into sex work. For an example of what TIP for the purpose of sexual exploitation looks like, see the *Can You See Me?* video resources.

8. The Prevention and Combating of Trafficking in Persons Act, No. 7 of 2013, S 4.

9. Note that trafficking in persons for the purpose of sexual exploitation can also be referred to as 'sex trafficking'.

10. The Prevention and Combating of Trafficking in Persons Act, No. 7 of 2013, S 1.

► FORCED LABOUR¹¹

Forced labour refers to situations where a person is forced, coerced, or tricked and manipulated to work against their will for little or no pay. Forced labour can occur in many different industries and sectors. The most common industries for forced labour in South Africa are domestic services, mining, food services, construction, criminal activities, agriculture and the fishing sector.¹²

Victims are typically recruited through seemingly legitimate job opportunities. Despite being aware of their exploitative situations, victims of forced labour are often restricted from leaving due to threats, violence, or simply because their income and livelihoods are at stake. Other methods of control might also be present, such as isolation or the withholding of payments or confiscation of identification documents. Exploiters retain a power imbalance through imposing accumulating debts, known as 'debt bondage', as a means of control to force the victim to stay in the situation.

Further, sometimes victims are 'paid' in the form of alcohol or illicit substances. This creates a powerful control dynamic in the relationship between 'employer' and 'employee' because the victim feels that they need to work for little to no pay in order to meet the demands of their alcohol or substance addiction.

For an example of what TIP for the purpose of forced labour looks like, see the *Can You See Me?* video resources.

► DOMESTIC SERVITUDE

Domestic servitude is a form of forced labour that occurs when a worker is exploited while working in a private residential home.

Workers might be coerced or forced to work as nannies, domestic workers, caregivers, or other roles. These situations are notoriously difficult to detect as residential homes are private, which isolates victims and reduces their opportunities to seek help. In addition, domestic work is a common legitimate form of labour in traditional suburban South African households. Moreover, as victims of domestic servitude are often foreign nationals, language barriers may also significantly impede their ability to access assistance. At first, a job offer might seem legitimate, but after travelling to the destination, it turns out to be exploitative. Victims may be controlled and forced to stay in the situation through physical or emotional violence, manipulation, isolation, or other threats.

Exploiters often confiscate victims' passports or other identification documents to prevent escape. Workers in this sector are more susceptible to exploitation because it can be poorly regulated. Those working in private residences often lack access to the same labour protections as other workers. Victims of domestic servitude may also be subjected to sexual abuse by their trafficker.

For an example of what TIP for the purpose of domestic servitude looks like, see the *Can You See Me?* video resources.

11. Also referred to as 'labour exploitation' or 'labour trafficking'.

12. U.S. Department of State "Trafficking in Persons Report" June 2023.

► EXPLOITATION OF A CHILD

The trafficking of children differs from the trafficking of adults because due to the power dynamics involved in a child's relationship with an adult, trafficking can technically occur without the presence of force, fraud or coercion (or any of the other **means** listed above). However, traffickers still typically utilise these same means with children. Children often have higher levels of vulnerability simply due to their age which lends itself to being more impressionable, trusting and easily manipulated or deceived by traffickers.

Children are trafficked within South Africa and to South Africa from other countries. Children may be forced into child labour¹³ in agriculture, factories, construction, hospitality or in private homes. Children may be sold by their families, or groomed into exploitation by acquaintances or individuals they meet online. Children are also forced into criminal exploits including begging, drug dealing and petty crime.

Children are also trafficked for sexual exploitation. Sexual exploitation of children is a form of child abuse which can include engaging in a sexual act with a child, offering the sexual services of a child and even receiving financial or other reward, favour or compensation from the commission of a sexual act with a child.¹⁴

Sexual exploitation of children can also happen online and covers a range of illicit activities, including the creation, distribution, and possession of child sexual abuse images (CSAM), sexual extortion, and enticing a child to engage in sexually prohibited activity, among others.¹⁵

Online Sexual Extortion of a Minor is a fairly new phenomenon. Within the last decade, perpetrators have been using the internet to coerce, persuade, and threaten children. They use tactics to persuade or coerce minors to engage in sexual activity through the use of preexisting, incriminating sexual content, or with new materials created during their manipulative scheme. For example, a perpetrator may have accessed a sexual image of a child and is now threatening to distribute it to others if they refuse to create more explicit content.

Other types of trafficking

► FORCED ORGAN HARVESTING

Forcibly removing an organ without consent; this type of trafficking usually involves the sale of organs for use in transplants.

► CHILD SOLDIERS

Unlawful recruitment or use of children as combatants, or for labour or sexual exploitation by armed forces.

► ADOPTION FOR EXPLOITATION

Any person who adopts a child, through legal or illegal means, for the purpose of exploitation of that child.

13. As defined in the Children's Act No. 32 of 2005, s 1.

14. Criminal Law (Sexual Offences and Related Offences) Amendment Act No. 32 of 2007, S 17.

15. Note that the crime of sexual exploitation of children is a stand alone offence and can take place without the presence of trafficking.

► FORCED MARRIAGE

A marriage concluded without the consent of one of the parties to the marriage.¹⁶ It is sometimes the case that forced marriage presents itself as domestic servitude if the person forced into the marriage is also being forced, deceived or coerced into domestic work for little to no pay. Not all cases of forced marriage constitute TIP.

FOR MORE INFORMATION

For more information about the specific forms of exploitation, see the [*Can You See Me?* video resources](#) which depict everyday situations where modern slavery exists, either as forced labour, sexual exploitation, domestic servitude or online child sexual exploitation.

16. The Prevention and Combating of Trafficking in Persons Act, No 7 of 2013, S 1.

© A21 USA, Inc. 2023. All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of A21 USA, Inc.