

# **POLICY GUIDELINES**

## **MANAGEMENT OF THE TRANSNATIONAL CRIMES OF TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS**

**A DOCUMENT PREPARED FOR THE GOVERNMENT OF SAMOA**

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**Disclaimer.**

These guidelines have been developed in the context of a Technical Assistance Intervention by ACP EU Migration Action at the invitation of the Government of Samoa.

The content of these guidelines includes substantial input from Samoan Government officials who have responsibility for implementing law and policy relating to Trafficking in Human Beings and Smuggling of Migrants.

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The Guidelines are not binding and may be subject to amendment and updating. They supplement training materials developed for the Government of Samoa as part of the same technical assistance intervention.

Primary author : Greg Mills - independent consultant contracted to ACP EU.

Views expressed in these guidelines do not necessarily reflect the views of the Government of Samoa or of ACP EU

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## **ABBREVIATIONS**

|               |   |
|---------------|---|
| <b>ACP EU</b> | <b>African Caribbean and Pacific - European Union</b>     |
| <b>IOM</b>    | <b>International Organisation for Migration</b>           |
| <b>MCIL</b>   | <b>Ministry of Commerce Industry and Labour</b>           |
| <b>MFAT</b>   | <b>Ministry of Foreign Affairs and Trade</b>              |
| <b>MPMC</b>   | <b>Ministry of Prime Minister and Cabinet</b>             |
| <b>MWCSD</b>  | <b>Ministry of Women Community and Social Development</b> |
| <b>NBC</b>    | <b>National Border Committee</b>                          |
| <b>SoM</b>    | <b>Smuggling of Migrants</b>                              |
| <b>SVSG</b>   | <b>Samoa Victim Support Group</b>                         |
| <b>TCU</b>    | <b>Transnational Crime Unit</b>                           |
| <b>TFP</b>    | <b>Trafficking Focal Point</b>                            |
| <b>THB</b>    | <b>Trafficking in Human Beings</b>                        |
| <b>TVIR</b>   | <b>Trafficking Victim Incident Report</b>                 |
| <b>UNODC</b>  | <b>United Nations Office on Drugs and Crime</b>           |
| <b>VoT</b>    | <b>Victim of Trafficking</b>                              |

## PART 1 : INTRODUCTION

1.1 Trafficking in Human Beings (THB) and Smuggling of Migrants (SoM) are transnational crimes which are proscribed under international law and under Samoan law. The Government of Samoa requested technical support in advancing its counter trafficking agenda and this document is one of the outputs of that technical support. The Technical Assistance Intervention was funded by ACP EU Migration Action – a Brussels based entity through which the European Union supports progressive policy review and migration related capacity building efforts in African, Caribbean and Pacific countries.

1.2. All countries are affected by the reach of transnational crime. While the incidence of THB and SoM in Samoa is low relative to some other parts of the world, the Samoan Government is well aware that it needs forward strategies to address these crimes for multiple reasons. Samoa can be a country of origin, a country of transit or a destination country for THB and SoM.

1.3. The consequences of trafficking for victims are devastating and traumatic and smuggled persons risk their lives because smuggling syndicates have no regard for their safety. The activities of criminals and/or criminal organisations undermine the integrity of Samoa's borders and place at risk the broader well being of the Samoan community.

1.4. Officers from a range of Samoan Government agencies may encounter instances of trafficking or smuggling as part of their portfolio activities. Trafficking can be detected at Samoa's borders but can also occur in the wider community so the issue goes well beyond the confines of a border protection issue. Government officers need appropriate training so that they:

- understand the characteristics of trafficking in human beings and smuggling of migrants; and
- can respond appropriately when situations arise which involve smuggling and trafficking.

1.5 These guidelines represent a significant step towards establishing an operational framework for the management of smuggling and trafficking incidents and an overall strategic framework for combating these transnational crimes. The two most important elements of that framework are:

- a reliable mechanism for coordinating Government responses – the National Border Committee (NBC) will logically take this role;
- the capacity to effectively protect and support victims of trafficking; and
- the effective management of information.

1.6 A comprehensive strategic response to trafficking and smuggling also demands engagement with civil society particularly in the areas of:

- providing protection to victims of trafficking;
- alerting the broader community to the dangers of trafficking; and
- building on that awareness, capturing intelligence which can come from the broader community.

1.7 THB and SoM incidents are diverse in their characteristics and the challenges which they pose to Government. These guidelines set out the basic principles and processes which should guide Samoa's response to such incidents. Procedures are likely to evolve over time as the Government moves towards a comprehensive national strategy.

## PART 2.

### DEFINING TRAFFICKING IN HUMAN BEINGS (THB) AND SMUGGLING OF MIGRANTS (SOM) AND THE LEGAL FRAMEWORK

2.1 Trafficking in human beings and smuggling of migrants are transnational crimes which occur to a greater or lesser extent in all countries. The UN system and the international community more broadly recognise that addressing these transnational crimes requires cooperative multilateral approaches and close cooperation between state and non state actors.

2.2. There are certain key international instruments which relate to transnational crime and more specifically to trafficking in human beings and smuggling of migrants. The primary international instrument designed to combat Transnational Crime is the **United Nations Convention Against Transnational Organised Crime** which was done in Palermo, Italy in 2000. The UN agency which implements and has oversight of the Convention is the United Nations Office on Drugs and Crime (UNODC).

2.3. Complementing the Convention are a number of protocols known as the Palermo Protocols which address specific aspects of transnational crime. These include :

- the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (which we will refer to as the Trafficking protocol).
- The Protocol against the Smuggling of Migrants by Land, Sea and Air (which we will refer to as the Smuggling protocol).

2.4. Some 172 countries have acceded to the first protocol and some 146 countries have acceded to the second protocol. Samoa is a party to the Convention but has not at this point acceded to the protocols.

2.5. The Trafficking protocol defines the crime of trafficking as follows ;

*“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*

2.6 The definition of trafficking in the Protocol is often presented and explained in terms of its three constituent elements which can be seen in the following diagram :

| ACTION   | MEANS  | PURPOSE  |
|--|--|--|
| Recruitment<br>Transportation<br>Transfer<br>Harbouring<br>Receiving | Threat or use of force<br>Coercion<br>Deception<br>Abduction<br>Fraud<br>Abuse of power<br>Payments / benefits | Exploitation including prostitution<br>Other forms of sexual exploitation<br>Forced labour or services<br>Slavery or similar practices<br>Servitude<br>Removal of organs |

2.7 Where some combination of these three elements is present then the action or event in question is classified as trafficking.

2.8 In the trafficking Protocol there are two important qualifications to the primary definition. The first relates to the question of consent. The relevant text is quoted below:

*The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used*

2.9 The issue of consent most commonly arises when a victim of trafficking (VoT) is recruited by means of deception or fraud (or possibly abuse of power). At a point of time the VoT can be said to consent to the recruitment but the fact of that consent has no relevance – it does not provide a defence.

2.10 The second qualifying clause is as follows :

*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;*

*“Child” shall mean any person under eighteen years of age*

This means that the “means” of recruitment has no relevance in establishing the crime where the subject is under the age of 18.

## International legal definition of smuggling of migrants

2.11 Smuggling of migrants is defined in the relevant Palermo protocol as follows :

*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*

## Current Samoan law on THB and SoM

2.12 Samoan legislation relating to trafficking and smuggling draws on some of the language of the protocols but is structurally quite different. It does not directly define the terms “trafficking” and “smuggling”. A copy of Sections 154 to 157 of the Crimes Act is appended at **Attachment 1**.

2.13 The key provisions of the Samoan legislation relating to trafficking (section 155) is as follows

*(1) A person is liable to imprisonment for a term not exceeding 14 years who:*

*(a) arranges the entry of a person into Samoa or any other country by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both; or*

*(b) arranges, organises, or procures the reception, concealment, or harbouring in Samoa or any other country of a person, knowing that the person’s entry into Samoa or that other country was arranged by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both.*

2.14 Under the Samoan legislation the fact of **exploitation** is treated as an “Aggravating Factor” to the core offence - Section 156 (2) (a).

2.15 The core elements of the Samoan provisions relating to SoM are as follows (Section 154) :

*(1) A person is liable to imprisonment for a term not exceeding 10 years who arranges for an unauthorised migrant to enter Samoa or any other country, if the person*

*(a) does so for a material benefit; and*

*(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.*

*(2) A person is liable to imprisonment for a term not exceeding 10 years who arranges for an unauthorised migrant to be brought to Samoa or any other country, if the person:*



*(a) does so for a material benefit; and*

*(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and*

*(c) either—*

*(i) knows that the person intends to try to enter that other country; or*

*(ii) is reckless as to whether the person intends to try to enter that other country.*

2.16 Whether the divergence between Samoan law and the international provisions will have any implications in effecting prosecutions has yet to be tested. This is an issue which the Government of Samoa can consider and evaluate.

### **Understanding the difference between THB and SoM**

2.17 There is often confusion in the media and in the broader community about the difference between THB and SoM. While they have some common characteristics, there are fundamental differences.

2.18 The most important difference is that THB involves the exploitation of the trafficked person whereas SoM does not. Smuggling can be described as a transaction where the objective of the smuggler and of the smuggled person is to get the smuggled person into another country. This generally involves the avoidance of normal immigration controls or the abuse of normal immigration controls through the use of false documents or other forms of fraud and misrepresentation. The outcome of smuggling is that (if the smuggling attempt succeeds) the smuggled person gains entry to the destination country.

2.19 The outcome of trafficking by contrast is that the trafficked person finds himself (herself) in a situation of serious exploitation – generally in the form of sexual servitude or labour servitude.

2.20 It should be noted that trafficking (unlike smuggling ) can occur within a country – it does not necessarily involve the crossing of borders. Thus a person could be trafficked from one part of Samoa to another. This is known as internal trafficking or domestic trafficking. A victim of internal trafficking in Samoa would most likely be a Samoan citizen but this is not necessarily the case.

2.21 To further clarify the difference between trafficking and smuggling two examples are given below. Scenario A is an example to trafficking while Scenario B is an example of smuggling

#### **Scenario A**

Two PRC females are trafficked into the Samoa where they have been promised well paid work in the hospitality industry. From Shanghai they transit through the Philippines and Nadi before arriving in Samoa by air. They pass through immigration

control as visitors. After arrival in Apia their documents are confiscated by their “employer”, their movement and communication are controlled and they are forced to engage in prostitution in order to repay an alleged debt.

### Scenario B

Two men from West Africa who are currently in Indonesia pay a Bali based people smuggler to get them into Australia. The smuggler arranges to fly them to Jayapura and they then cross the land border illegally into PNG. Once in PNG, they are escorted to Daru which is on the Torres Strait. Here the smuggling syndicate arranges a small boat to take them through Torres Strait to Australia. They are intercepted by Australian authorities and returned to PNG under the terms of a bilateral MOU .

2.22 The Table below elaborates some of the similarities and differences between THB and SoM.

### SUMMARY CHARACTERISTICS OF SMUGGLING AND TRAFFICKING

| SMUGGLING  | TRAFFICKING   |
|--|---|
| Normally involves organised networks               | Normally involves organised networks                |
| Illegal under Samoan and international law         | Illegal under Samoan and international law          |
| Normally involves irregular or fraudulent entry    | May involve irregular or fraudulent entry           |
| Informed consent about end objective               | Real nature of transaction usually concealed        |
| Smuggled person becomes a free agent on “delivery” | Trafficked person is exploited and often indebted   |
| Intended outcome is entry to destination country   | Outcome is sexual or labour servitude               |
| Involves crossing borders                          | Often involves crossing borders but may be internal |

### Why does trafficking occur

2.23 At the most basic level it occurs because the traffickers who organise it or who receive the victims can make lots of money through the exploitation of the victim.

2.24 Most cases of trafficking occur because people with limited educational, employment and other opportunities are trying to improve their prospects and are therefore vulnerable to the promises made by recruiters. Sometimes trafficking occurs by coercion or abduction or because the victims has effectively been bought and in these cases the motivation of the victim is not at issue..

## **PART 3**

### **ROLES OF AGENCIES AND ORGANISATIONS**

3.1 The National Border Committee<sup>1</sup> was established in 2004 with the objective of bringing together all the border security agencies so as to have a coordinated approach to managing border security issues. The NBC is chaired by the Chief Executive Officer of MPMC.

3.2 Set out below are the various agencies and entities which participate in the NBC as well as some additional agencies which may play a role in Samoa's developing counter trafficking strategy.

#### **Ministry of the Prime Minister and Cabinet (MPMC)**

3.3 MPMC is the primary driver of policy development and therefore plays a key role in shaping Samoa's response to emerging policy issues such as THB. MPMC chairs the NBC which is the central coordination mechanism for all matters relating to Samoa's borders. MPMC also administratively hosts the Immigration Service and the Transnational Crime Unit (TCU)

#### **Samoan Police Service**

3.4 The role of the police in combating trafficking has several dimensions :

- police are likely to be engaged in responding to trafficking situations which emerge;
- police will play the key role in intelligence driven enforcement action (sometimes in concert with other agencies).
- CID plays the primary role in investigating trafficking incidents and putting together briefs of evidence for consideration by the prosecution service.

#### **TCU**

3.5 Transnational Crime Unit is a composite body drawing staff from several border agencies. Administratively is part of MPMC. TCU plays the central role in the accumulation and dissemination of intelligence relating to all forms of transnational crime including trafficking and smuggling of migrants. TCU is a first point of contact for all information relating to trafficking and smuggling.

3.6 TCU also engages with international partners in the Pacific Transnational Crime Coordination Centre (PTCCC). Intelligence exchange with international partners has been a crucial component of efforts to combat trafficking throughout the world.

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<sup>1</sup> This information on the NBC was extracted from the Technical Assistance Fiche document prepared for this intervention

## **Immigration**

3.7 The immigration service is the key agency for managing Samoa's borders and determining the status of non citizens in Samoa. Immigration works closely with TCU and police in relation to managing threats to Samoa's border integrity.

3.8 Immigration also has the primary role in managing issues such as the voluntary repatriation of non citizen VoTs as well, potentially, as the removal of non citizen traffickers.

3.9 Immigration also has important liaison relationships with:

- regional bodies/fora including PIDC, PIF and the Bali Process;
- neighbouring countries including Australia and NZ and other Pacific states; and
- international organisations including IOM, ACP EU, UNHCR

## **Attorney General's Office**

3.10 AG's is responsible for the administration of the justice system and for the prosecution service and for upholding Samoa's human rights laws and commitments

3.11 AGs would play a role in reviewing Samoa's legislation relating to trafficking to ensure that it functions as an effective tool to suppress and punish trafficking and smuggling.

3.12 The prosecution service within AGs works with CID to :

- assess the evidentiary integrity of particular cases, and
- prosecute cases in the courts.

## **Customs**

3.13 The Customs Service has a frontline presence on Samoa's borders – seaports and airports - and therefore potentially would play a key role in identifying trafficking situations and supporting initial responses.

3.14 Through its relationship with regional and international customs bodies it also has access to networks which support the broader battle against transnational crime.

## **Ministry of Foreign Affairs and Trade**

3.15 MFAT has oversight of Samoa's bilateral and multilateral relationships engagements and commitments and its relationships with the UN. It can both promote and support Samoa's strategies to combat trafficking and smuggling.

## **Quarantine**

3.16 As a frontline border agency, Samoa Quarantine Service participates in the NBC and may play a role in the identification and management of trafficking and/or smuggling incidents.

## **Ministry of Health**

3.17 The Ministry of Health has a responsibility for public health which makes it a part of the border agency group.

## **Samoa Airport Authority**

3.18 The Airport Authority does not have direct passenger screening responsibilities (except in the area of aviation security) but it needs to be part of a broader dialogue on how Samoa's air border is managed.

It also needs to cooperate with primary border control agencies such as immigration and customs in managing situations which are outside the norm including trafficking and smuggling.

## **Samoa Port Authority**

3.19 The Port Authority is an obvious component of the border management group. Seaports are by their nature more porous and difficult to monitor and police than airports which have strict point to point controls. There is therefore a higher degree of probability that Port Authority staff might have direct encounters with smuggling and/or trafficking incidents.

## **Ministry of Women Community and Social Development**

3.20 MWCSO (while not represented on the NBC) may have an important role in the formulation and implementation of future strategies to combat trafficking in human beings. Many of the victims of trafficking are women and girls and they often experience forms of sexual violence. Those victims include Samoan nationals and non nationals. There may be scope for integration of counter trafficking strategies within broader strategies to address gender based violence.

3.21 MWCSO should participate in any exchanges between Government and civil society relating to the provision of protection to victims of trafficking.

3.22 MWCSO's community networks may provide opportunities for raising community awareness of trafficking issues and may also function as a conduit for information relating to trafficking situations.

## **Ministry of Commerce Industry and Labour MCIL**

3.23 MCIL (while not represented on the NBC) has an interest in trafficking issues because of its role in the oversight of labour market standards and laws. Trafficking often involves labour servitude which could affect both Samoan citizens and non citizens. MCIL monitors work places and is best placed to detect any systemic breaches of labour law (whether or not related to trafficking).

3.24 Officers involved in monitoring workplace practices need to be trained to be alert to indicators and trafficking and need to have the tools to respond appropriately when trafficking incidents come to light.

## PART 4

### IDENTIFYING TRAFFICKING AND SMUGGLING SITUATIONS

4.1 There are various situations in which THB or SOM can be detected or become apparent including :

- at the border; or
- as part of immigration or law enforcement monitoring or activity; or
- through media, community reporting or NGO reporting; or
- through intelligence received or an accumulated intelligence picture; or
- as a result of self-identification by victims.

4.2 Trafficking normally proceeds in three phases : recruitment, transportation and exploitation and trafficking can be detected during any of these phases. For the purposes of trafficking or smuggling, Samoa (like most other countries) may be a country of origin, a country of transit or a destination country. Probably the most likely scenarios for detection of trafficking by Samoan authorities are where :

- there is an instance of internal trafficking; or
- Samoa is the destination country; or
- in the case of SoM, Samoa is a country of transit.

4.3 When trafficked persons are crossing a border they may do so through normal entry channels (regular migration channels) or by irregular entry methods – in the Samoan context the only feasible **irregular** entry scenario would be maritime entry where the person (or persons) avoids the required port entry formalities. In Samoa it is likely that most victims of trafficking would enter through the airport (regular migration channels) but traffickers or smugglers could also exploit the more porous maritime border.

4.4 There are certain characteristics which can alert immigration, customs or other officials to a THB situation. At the time a trafficked person crosses your border they are normally in the transportation or pre-exploitation phase – in other words they have not yet experienced exploitation. If you interview a trafficked person in the airport when they are being trafficked into Samoa, they will probably not tell you stories of abuse since (in most cases) they are not aware of the abuse which awaits them at the destination location.

4.5 There are two broad scenarios for detecting trafficking or smuggling at the airport ;

- in response to advance intelligence; or
- where a passenger is referred and officers recognise characteristics of trafficking.

4.6 Where border officials have advance intelligence about a trafficking event, it is more likely that they will be able to intervene and take action. The identification details of an individual or the availability of a precise profile will greatly increase the chances of interception at the entry barrier.

4.7 International experience suggests that detecting THB at the border (in the absence of specific intelligence) requires training and experience. There are certain characteristics

which can act as flags – particularly when there is a combination of these characteristics rather than just one. These characteristics include :

- arriving passenger(s) who have little or no knowledge of their intended destination or activities;
- arriving passengers who defer all questions to another passenger or to someone that they claim to be meeting on arrival;
- arrivals who claim to be tourists but have no obvious travel history and/or have no knowledge of local tourism attractions;
- arrivals who don't know how, where and when their passport was obtained and how their travel arrangements were made;
- arrivals who claim they have been promised a job, particularly in hospitality or agriculture (Trafficked person are far more likely to be travelling on a tourist visa than on a work visa so claims of this nature may only become apparent if there is some more intensive primary or secondary line inquiry).
- arrivals who refuse to answer any questions (although there may be language barriers)
- arrivals who claim that their travel was arranged by other parties
- arrivals who claim that their stay arrangements have been arranged by others
- arrivals who appear to have extreme fear of authority
- arrivals who are uncertain about their own biodata.

4.8 Some of these characteristics may also relate to non bona fide arrivals who are not being trafficked or smuggled. **It is important that officers handling entry processes keep an open mind about the possibility of trafficking or smuggling.** The reality of a person's situation will probably only become apparent after an interviewing process.

4.9 In order to detect a trafficked or smuggled person at the border (without advance intelligence), the first pre-condition is that there is some anomaly or trigger which is recognised by the entry officer and which results in a questioning of the passenger. Often this means that a passenger is referred to the secondary line for a more intensive interview. Primary line officers have very limited time to evaluate each arriving passenger so it is not surprising that passengers who are being trafficked or smuggled may pass through the primary line without being detected.

### **Identifying Trafficking at the Post Exploitation Phase**

4.10 Often trafficking situations come to attention when the VoT is already in the community and in a situation of exploitation. Trafficking situations can come to attention in different ways including :

- A a situation where the victim identifies himself/herself as a victim
- B in the context of an intelligence driven enforcement action
- C as an adjunct to some other kind of Government intervention

4.11 Following is an example of each :

- A A 16 year old Thai national female approaches a Catholic church claiming that she has been locked up behind a nightclub for the last 6 months and has been forced to provide sexual services;
- B Police have received a number of reports that a particular bar has been offering sexual services and that a number of Samoan nationals and foreign nationals are being held there against their will. Police place the establishment under surveillance and the evidence they gather through this surveillance suggests that the reports may be correct. They arrange to raid the premises in a joint operation with immigration.
- C MCIL officers are conducting a site visit of a large construction site where there are a number of non citizen workers. They discover that some of these staff are being held in abusive conditions and have not been paid for many months.

4.12 When incidents of this nature occur, one of the early actions will be to interview the people involved whether they are victims of trafficking or suspected perpetrators. In these initial interactions officers should be alert to a number of characteristics of trafficking which relate to VoTs who have experienced various types of servitude. Commonly victims may make claims that :

- they have been forced to provide sexual services often for little or no pay;
- their travel documents have been confiscated by their employers/managers/labour brokers;
- they have been raped or otherwise sexually abused;
- their freedom of movement has been restricted (this can vary from restrictions/curfews to outright imprisonment);
- they have not received payments originally promised to them;
- they have been forced to do a job entirely different to the job they were recruited for;
- they have experienced debt bondage
- they are required to work excessive hours;
- they have experienced physical abuse / beatings;
- they are required to live in very sub-standard living conditions;
- most or all of their “pay” is cut to pay for their food and shelter;
- they have been denied medical care – for example workplace accidents go untreated.

4.13 VoTs may not give all facts to officials at the first interview for some or all of the following reasons:

- they have been trained not to speak to officials or to tell officials a cover story;
- they have been threatened
- they are traumatised
- they fear dealing with authorities and/or do not trust them.

4.14 When an apparent trafficking situation occurs it is possible that a person originally suspected to be a VoT may be found not to be a VoT. However, such a determination should only be made after careful investigation and consideration by a senior decision maker.



## PART 5

### RESPONDING TO TRAFFICKING OR SMUGGLING INCIDENTS

5.1 The core focus of these guidelines is on how various Samoan agencies should respond individually and collectively to smuggling or trafficking issues which arise.

5.2 The role of the NBC is to coordinate the government response to border control issues and manage relevant policy issues. Note that trafficking in human beings is not simply a border related issue though it has obvious implications for border management. THB is also a law enforcement issue and a human rights issue.

5.3 There are certain institutional decisions which have to be made in order to implement these guidelines. One institutional issue is whether trafficking situations should be managed by the NBC as a whole or whether elements of that ongoing management task should be undertaken by a sub-group of the NBC. The answer to this may depend on :

- the scale of a particular trafficking or smuggling incident; and
- the period of time involved, noting that end to end management of a single incident may take many months with periods of intense activity and periods of inactivity.

5.4 In identifying the challenges faced by Government in responding to trafficking incidents, it is useful to make a distinction between a planned apprehension and an unplanned apprehension. Example B at Para 4.11 above is an example of a planned apprehension. We use this term because authorities (before undertaking the enforcement action) have the capacity to put some measures in place in advance. In the context of a planned apprehension, relevant officials :

- know that they are likely to apprehend some victims and possibly some perpetrators
- have the advantage of some advance intelligence
- can arrange victim protection measures in advance
- may be conscious that they need an interpreter.

5.5 Example C at para 4.11 above is an example of an unplanned apprehension – there was no advance knowledge of a likely trafficking situation so there was no capacity for advance planning.

5.6 Responding effectively to an unplanned apprehension is more challenging but Government must be able to cope effectively with both planned and unplanned apprehensions. Some of the decisions and requirements which might apply in a particular trafficking situation include:

- coping with language difficulties - whether interpreters are required;
- immediate accommodation and support arrangements for VoTs
- ongoing accommodation and support arrangements for VoTs
- who will conduct initial interviews;
- timing of subsequent interviews;
- consideration of intelligence implications;
- consideration of evidence gathering including witness statements;

- whether any arrests are warranted;
- consideration of investigation or prosecution pathways;
- obtaining travel documentation for non citizens
- appropriate voluntary return arrangements for non citizens (in some cases)

5.7 In the international experience of counter-trafficking, a common problem has been a tendency for authorities to remove non citizen victims of trafficking as soon as possible after the trafficking incident comes to light. Often this is justified on cost grounds or because proper management of the case is considered too resource intensive.

5.8 While managed voluntary repatriation of victims (usually to re-join their families) may be the appropriate outcome in some cases and at some stage, this should not be an immediate priority. Where repatriations do occur, authorities need to have confidence that :

- repatriation arrangements are in the interest of the victim;
- reception measures are in place – this is often arranged with the involvement of the International Organization for Migration (IOM) ;
- there is no reason to extend the stay of the VoT in Samoa for the purposes of court proceedings.

5.9 The rushed removal of VoTs can be a dangerous and counterproductive approach. Some countries have a legislated “reflection period” to ensure that any repatriation arrangements are considered and appropriate. If VoTs are immediately removed from countries (for example at the border), there is significant risk that this action exposes the VoT to further trafficking - such action is a failure to offer appropriate protection.

5.10 Noting the various challenges and decision making processes involved with managing a trafficking incident; the following matrix has been developed as a means of setting out the required principles and approaches.

**TABLE 5.1: INCIDENT RESPONSE MATRIX**

|             |  |
|-------------|--|
| INFORM      | Ensure trafficking focal points notified as soon as possible after case initiated<br>Ensure information is updated incrementally<br>Communicate to key decision makers   |
| PROTECT     | Extend protection to victims by referral to agreed support networks  |
| INVESTIGATE | Apprehend or monitor traffickers and smugglers (where relevant)<br>Obtain information from VoTs using standard reporting template<br>Obtain information from other parties<br>Consolidate intel and evidence<br>Where achievable, build a case for prosecution |
| COORDINATE  | Measures should be coordinated by NBC or whatever sub-group is appointed for this purpose<br>The strategy may change as the case develops.<br>If there is an intelligence driven enforcement action the first strategy discussion will occur before the action |

5.11 These activities do not necessarily take place in any set order. The tasks associated with a trafficking incident occur incrementally – there are certain decisions and actions which should take place immediately when a trafficking situation comes to attention while other decision points occur at a later time.

## **INFORM**

5.12 Controlling the flow of information is a critical part of managing a trafficking incident. In the case of an unplanned intervention, the first step is informing people that the incident has occurred.

5.13 In the matrix above, we have used the terminology “trafficking focal point”. It is recommended that in each agency there should be a person or persons who is designated to act as the primary conduit for information. For example if a trafficking matter comes to the attention of an immigration officer or officers, they should inform the trafficking focal point in their own agency as soon as possible after the matter comes to attention. Each agency should have at least two (and possibly three TFPs). The primary TFP for immigration would be the head of immigration. The reason for having more than one TFP for each agency is to allow for situations where senior staff are absent or on leave or are otherwise uncontactable.

The NBC should identify and publish the list of TFPs (the NBC can elect to use other terminology for this role if it chooses).. Revalidating that list should be a standard (or quarterly) agenda item for NBC meetings to ensure that the list remains up to date.

5.14 Once information is given to a TFP, he or she is then responsible for informing the TCU and the chair of the NBC. Note that most of the TFPs will be represented on the NBC.

5.15 For front line officers dealing with an unplanned apprehension relating to trafficking or smuggling, there are three key first response actions :

- contain the VoTs – this does not mean they should be held in a place of detention but simply that they are isolated from traffickers – ideally if Samoa has an agreed set of protection arrangements, suspected VoTs should be placed in a safe house as soon as possible;
- record information about the circumstances of the apprehension;
- notify the TFP for your agency as soon as possible.

5.16 As soon as possible after TFPs are notified of a trafficking or smuggling incident, there should be an urgent meeting of the NBC or of a subgroup of the NBC which at a minimum must include TCU, immigration, police and MPMC to develop a forward strategy to manage the response. The key initial considerations for the NBC or sub-committee are :

- meeting the protection needs of the VoT in the short to medium term;
- continuing the information gathering process in a tactically sound way;
- considering the options for identifying and acting against the trafficker.

5.17 If agency heads are not included in this meeting, then they should be briefed as soon as possible afterwards.

5.18 The task of managing information flows is an ongoing one and we should think of trafficking event as an **end to end process** and not as a point in time event. Once the trafficking or smuggling incident has been drawn to the attention of the NBC or a subgroup it appoints, then that body needs to coordinate the ongoing elements of the process including investigation, protection and where appropriate prosecution. Each THB case will have its own unique characteristics. The role of TCU is important in coordinating the information discovery process and in liaising with international counterparts - (TCU may be less engaged in cases of internal trafficking).

5.19 Information derived from investigation of a trafficking or smuggling incident may be useful to TCU's international partners and they in turn may provide information relating to the activities of syndicates in the region which will assist the domestic investigation.

5.20 TCU will liaise with CID (police) in matters relating to :

- the identification , monitoring, surveillance, arrest or interrogation of suspected traffickers and smugglers; and
- the accumulation of evidence for potential prosecutions.

5.21 CID will in turn liaise with AGs on the matter of whether charges will be laid. As these bodies are all party to the NBC (or the coordinating sub-group), this liaison should occur organically as part of the overall management process.

### **Interviewing VoTs**

5.22 VoTs are a primary source of information on trafficking situations and methods. It is unlikely that VoTs will give a comprehensive account of their circumstances at the time of the initial contact with authorities. Authorities need to build up a relationship of trust over time and it is likely that the information picture will develop over the course of successive interview processes. VoTs can provide information relating to:

- where and how they were recruited and by whom;
- various arrangements made for their transportation and border crossing and who was involved in those processes;
- their experiences of exploitation and abuse at the point of destination.

5.23 This information will not always be as specific and detailed as investigators might like. Many of the parties involved in trafficking and smuggling are likely, for example, to use false or multiple identities. Despite this, the information provided by VoTs is very valuable in building up the picture of criminal activity.

5.24 Information derived from each suspected VoT should be recorded on a standard template known as a Trafficking Victim Incident Report (TVIR). A draft of this template is at **Attachment 2**. The primary purpose of the TVIR is to capture victim related data in a consistent way – that data will have relevance to the outcome of particular trafficking cases but it will also have a broader function in:

- supporting the systematic accumulation of data;
- allowing analysts to determine trends and commonalities; and
- informing future policy development.

5.25 The TVIR should be completed as soon as possible after a trafficking incident comes to light. Note that the term “data” in relation to trafficking needs to be qualified. Unlike data in relation to (for example) visitor entry, data on trafficking is not comprehensive. The data that can be captured on THB and SoM is data relating to those cases which come to official attention and are recorded. Inevitably many cases go unrecorded and this reflects the covert nature of these crimes.

5.26 There are different types of information relevant to the ongoing management of a THB case including:

- VoT sourced information of evidentiary and/or intelligence value
- information relating to a VoTs personal circumstances and support needs
- information of evidentiary and/or intelligence value from non-VoT sources including from traffickers, third parties, NGPs and international liaison;
- information relating to residence and repatriation issues.

5.27 Some of this information should be restricted in its circulation for both privacy reasons and to ensure the integrity of investigation processes. It can be shared with NBC partners for the purposes of managing trafficking cases and combating transnational crime but it is not publicly available information and should be protected accordingly.

## **PROTECTION**

5.28 Management of the VoT (or VoTs) should be guided by the principle that the person is the victim of a crime and requires support and possibly medical and other attention. VoTs have often experienced violence and incarceration and may be psychologically fragile as a consequence.

5.29 There needs to be an initial point of referral for the protection of VoTs in the early stages of a trafficking incident. At present Samoa does not have any agreed set of arrangements to care for VoTs and this is a situation which should be addressed through dialogue between relevant agencies including MWCSO, NGOs (including SVSG), churches and possibly also external donors.

5.30 There are various practical issues which need to be considered including :

- meeting the physical needs of the VoT(s) for food, shelter and other forms of care;
- providing interpreters (where required)
- continuing the process of accumulating information – when VoTs are assessed as highly traumatised, the information gathering agenda should take account of this factor;
- facilitating contact between VoTs and their families where that contact is desired by the VoTs.

## **INVESTIGATE**

5.31 The NBC or coordinating sub-group should meet as soon as possible after the trafficking or smuggling incident is identified and should discuss the forward investigation strategy which would include the following elements :

- an understanding of the information currently available about the trafficking or smuggling incident (likely to be limited);
- gaps in the information picture;
- tasking for next stage of investigation – most likely to involve TCU, Police and immigration but may involve other agencies depending on the circumstances;
- further actions to be taken in relation to alleged perpetrators which may include, surveillance, arrest, evidence gathering, enforcement actions;
- status of and scope for international liaison.

5.32 The coordinating group would then continue to meet **as required** in order to address significant developments in the case as the scenario below illustrates :

**Scenario :** Two apparent VoTs of Fijian and Indonesian nationality have sought protection in a village from a situation of labour servitude on a fishing vessel. Police become aware of this situation following a report from village leaders. At the time the authorities have contact with the VoTs, the vessel is outside territorial waters.

The NBC meets to consider the issues and task relevant agencies. Investigation of the claims made by the two men suggests that (a) their claims are well founded (b) there are other people on the vessel who are being exploited and (c) the vessel is also involved in smuggling of narcotics. Complementary intel is received from international police liaison sources.

10 days after the initial contact with authorities, advice is received that the vessel is about to re-enter Samoan waters. **NBC meets again to consider how this situation should be managed.**

## COORDINATE

5.33 Coordination of the handling of each trafficking incident is the function of the NBC or its appointed sub-group. Much of the detail of the response tasks is set out above – tasks that relate to VoT protection, investigation, prosecution, information gathering and sharing and the ongoing status of VoTs. The coordinating body would also have a role in :

- managing any media interest (should it arise)
- briefing senior political leaders (as deemed necessary)
- managing any bilateral implications or issues in conjunction with MFAT.

5.34 The benefits of this coordinated approach are :

- it supports the “no surprises” principle – key agencies and key figures in Government are controlling the agenda rather than the agenda controlling them;
- it provides for “holistic” management of the case where the interests of victim protection and law enforcement are kept in appropriate balance;
- it is the most efficient approach – each agency knows its tasks and responsibilities and there is no duplication;
- it promotes the sharing of information which supports case management and has wider intel value and implications.

5.35 The precise institutional arrangements for this coordination task are a matter for the NBC to discuss and resolve. The table below shows a series of meetings held to consider and manage a particular (fictional) trafficking incident. Each meeting results in the allocation of tasks to specific agencies. There is an ongoing flow of intel and case specific information. The example below shows a series of decisions made over time in the management of a fictitious THB incident (self-evidently each case will have different dynamics) :

**RECORD OF MEETINGS TO DEAL WITH TRAFFICKING INCIDENT A2017-3**

| <b>Date of Meeting</b> | <b>Decision Issues</b>   | <b>Agencies attending</b> | <b>Tasking</b>   |
|------------------------|--|---------------------------|--|
| <b>20/11</b>           | <b>Initial meeting to discuss incident – three suspected Fijian VoTs approached police claiming they had been forced into prostitution</b> | <b>NBC</b>                | <b>TCU and CID to do follow-up interview with VoTs<br/>Short term protection arrangements approved<br/>Ministers briefed</b> |
| <b>22/11</b>           | <b>Follow up meeting to discuss (a) investigation issues and (b) protection arrangements<br/>TCU provide intel briefing</b>                | <b>NBC sub committee</b>  | <b>Preliminary protection arrangements extended</b>  |
| <b>28/11</b>           | <b>Meeting to discuss possible arrest of nightclub owner</b>   | <b>NBC sub committee</b>  | <b>Arrest to proceed<br/>Ministers briefed</b>   |
| <b>3/12</b>            | <b>Meeting to consider implications of intel provided by PTCCC</b>   | <b>NBC sub committee</b>  | <b>Investigation widened</b>   |
| <b>6/12</b>            | <b>Meeting to discuss progress with investigation and review protection arrangements</b>   | <b>NBC sub committee</b>  | <b>Revised protection arrangements agreed.<br/>Witness statements taken</b>  |
| <b>20/12</b>           | <b>Meeting to discuss voluntary repatriation logistics for VoTs</b>  | <b>NBC sub committee</b>  | <b>Contact with foreign missions and IOM</b>   |
| <b>15/1/18</b>         | <b>Briefing on final repatriation arrangements</b>   | <b>NBC sub committee</b>  | <b>Immigration to manage</b>   |
| <b>30/1/18</b>         | <b>Status of investigation/prosecution</b>   | <b>NBC</b>                | <b>AGs to progress prosecution of nightclub owner</b>  |
| <b>12/3/18</b>         | <b>Briefing on case outcomes</b>   | <b>NBC</b>                |  |
|                        |  |                           |  |

5.36. The matrix below shows the type of actions and decisions which need to be made within a time line.

| <b>Time frame</b>                               | <b>Action</b>   |
|---|---|
| <b>First 24 hours after THB or SoM incident</b> | <b>Action officer(s) inform Trafficking Focal Points</b><br><b>Isolate VoTs from traffickers</b><br><b>Manage issues of shelter/food/medical attention</b><br><b>Record information on nature of apprehension – first draft of TVIR</b>   |
| <b>24-72 hours</b>                              | <b>Convene meeting of NBC or sub-committee</b><br><b>Consolidate short term protection arrangements including medical or counselling needs</b><br><b>Notify Ministers</b><br><b>Task follow-up VoT interviews</b><br><b>Consider forward investigation steps</b>                          |
| <b>72 hours to 14 days</b>                      | <b>Evaluate intel picture</b><br><b>Explore scope for prosecution (AGs)</b><br><b>Consider international liaison prospects</b><br><b>Possibly engage with IOM</b><br><b>Consolidate protection arrangements</b><br><b>Explore best interests of VoTs</b><br><b>Evaluate evidence base</b> |
| <b>14 days onwards</b>                          | <b>Manage repatriation as and if required</b><br><b>Pursue options for prosecution</b><br><b>Ensure intel leads are pursued</b>   |



## PART 6

### THE ROLE OF INTEL

6.1 Intelligence can be defined as information which has been evaluated and is potentially relevant to addressing a particular situation – in this case the objective of combating THB.

6.2 Intelligence about THB or SoM activity can come from a wide range of sources including:

- overseas liaison sources
- analysis of immigration data
- immigration casework
- trafficked or smuggled persons
- traffickers
- media
- input from the community
- NGOs
- Police investigations
- Other agencies (eg MCIL).

6.3 The TCU is the central repository of intelligence on THB (as well as other forms of transnational crime). TCU therefore plays a crucial role in the process of managing THB and SoM cases. They manage the flow of information and also analyse the relevance of information. Their linkages with international police liaison sources enable intel exchange which can be vital in identifying and suppressing transnational criminal activity.

6.4 In addition to their role in analysing information TCU can play a proactive role in expanding the information that they capture to include the sources listed in Para 6.2 and “operationalising” the intelligence that they accumulate. This means using intel to:

- initiate investigations; and
- keep frontline operational staff aware of any profiles, patterns or incidents which are relevant to their roles (for example as immigration or customs officers).

6.5 These data sharing practices contribute to building a stronger “radar” in relation to THB and SoM across Government – in other words it increases the prospect that incidents of THB and SoM will be prevented or detected and addressed. This broad objective also requires other agencies to (a) be conscious of recording information which might point to THB and SoM and (b) ensure that TCU gets that information promptly.

## CONCLUSION

7.1. To summarise the key points in these guidelines

- THB scenarios are very diverse - trafficking may be internal or transnational and may involve Samoan citizens or non-citizens. Samoa can be a country of origin, a country of transit or a destination country for THB and SoM purposes
- Both operational and senior staff of NBC (and some other) agencies need regular training in order to understand and identify THB and SoM situations
- Samoa needs to initiate a national discussion to develop victim protection strategies and arrangements
- Trafficking incidents need end to end management by the NBC or a sub-group of the NBC using the principles in the incident response matrix.
- Improved capacity to identify THB and SoM incidents should be accompanied by disciplined data collection arrangements using a standard template to capture information and build up data over time.

### Comments on Smuggling of Migrants

7.2. Most of the material in these policy guidelines focuses on the management of THB cases. The original Technical Assistance Fiche (request from Samoan Government for technical assistance) mentions both THB and SoM but gives more focus to discussion of THB. The differences between THB and SoM have been addressed in these guidelines.

7.3. Samoa is unlikely to be a major destination country for smuggling syndicates as most SoM targets developed countries with (a) large diaspora communities and (b) high wage structures and advanced social welfare and educational infrastructure. Samoa could have some vulnerability as a country of transit for SoM purposes.

7.4 Most of the principles and approaches set out in these guidelines for the management of THB cases would also apply to the identification of smuggling (SoM) situations. While smuggled persons may not have the same high level of need for psychological and social support as VoTs, they are the subjects of a crime **and not the criminals** and should be treated accordingly.

7.5 Many of the same practical issues we have documented in relation to THB also apply to SoM.. When a Government intervenes, smuggled persons need shelter and food in the same way as VoTs. They are also a valuable source of information relating to smuggling activity. If identified, smuggled persons are normally repatriated – preferably on a voluntary basis. In some cases smuggled persons may make refugee claims in which case those claims need to be evaluated in line with international obligations.

**EXTRACT FROM CRIMES ACT 2013**

**PART 13  
SMUGGLING AND TRAFFICKING  
IN PEOPLE**

**153. Interpretation** – In this Part, unless the context otherwise requires:

“act of coercion against the person” includes:

- (a) abducting the person;
- (b) using force in respect of the person;
- (c) harming the person; or
- (d) threatening the person (expressly or by implication) with the use of force in respect of, or the harming of, the person or some other person;

“act of deception” includes fraudulent action;

“arranges for an unauthorised migrant to be brought to another country” includes:

- (a) organises or procures the bringing to a another country;
- (b) recruits for bringing to that or other country; or
- (c) carries to that or other country;

“arranges for an unauthorised migrant to enter another country” includes:

- (a) organises or procures the entry into another country;
- (b) recruits for entry into that or other country;
- (c) carries into that or other country;

“document” includes a thing that is or is intended to be:

- (a) attached to a document; or
- (b) stamped or otherwise signified on a document.

“harming of a person” means causing harm of any kind to the person; and (in particular) includes:

- (a) causing physical, psychological, or financial harm to the person;

(b) sexually mistreating the person;

(c) causing harm to the person's reputation, status, or prospects;

“unauthorised migrant”, in relation to another country, means a person who is neither a citizen of the other country nor in possession of all the documents required by or under the law of that or other country for the person's lawful entry into that or other country.

#### **154. Smuggling migrants**

(1) A person is liable to imprisonment for a term not exceeding 10 years who arranges for an unauthorised migrant to enter Samoa or any other country, if the person:

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.

(2) A person is liable to imprisonment for a term not exceeding 10 years who arranges for an unauthorised migrant to be brought to Samoa or any other country, if the person:

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and

(c) either—

(i) knows that the person intends to try to enter that other country; or

(ii) is reckless as to whether the person intends to try to enter that other country.

(3) Proceedings may be brought under subsection (1) or subsection (2) even if the unauthorised migrant did not in fact enter or was not brought to the country concerned.

(4) A person is liable to imprisonment for a term not exceeding 10 years or to a fine not exceeding 100 penalty units or to both, who knowingly facilitates the continued presence or an unauthorised person in a receiving country in order to obtain a material benefit.

#### **155. Trafficking in people by means of coercion or deception**

(1) A person is liable to imprisonment for a term not exceeding 14 years who:

(a) arranges the entry of a person into Samoa or any other country by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both; or

(b) arranges, organises, or procures the reception, concealment, or harbouring in Samoa or any other country of a person, knowing that the person's entry into Samoa or that other country was arranged by one (1) or more acts of coercion against the person, one (1) or more acts of deception of the person, or both.

(2) Proceedings may be brought under this section even if the person coerced or deceived:

(a) did not in fact enter the state concerned; or (as the case may be);

(b) was not in fact received, concealed, or harboured in the state concerned.

(3) Proceedings may be brought under this section even if parts of the process by which the person coerced or deceived was brought or came to or towards the state concerned were accomplished without an act of coercion or deception.

**156. Aggravating factors** – (1) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 154 or 155, a court must take into account:

(a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or to or of any other person) occurred during the commission of the offence; or

(b) whether the offence was committed for the benefit of, at the direction of, or in association with, an organised criminal group (within the meaning of section 146); or

(c) whether a person in respect of whom the offence was committed was subjected to inhuman or degrading treatment as a result of the commission of the offence; or

(d) if during the proceedings concerned the person was convicted of the same offence in respect of two (2) or more people, the number of people in respect of whom the offence was committed.

(2) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 155, a court must also take into account:

(a) whether a person in respect of whom the offence was committed was subjected to exploitation (for example, sexual exploitation, a requirement to undertake forced labour, or the removal of organs) as a result of the commission of the offence;

(b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years;

(c) whether the person convicted committed the offence, or took actions that were part of it, for a material benefit.

(3) The examples in subsection (2)(a) do not limit the generality of that paragraph.

(4) This section does not limit the matters that a court may take into account when determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 154 or 155.

**157. Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour** – (1) A person is liable to imprisonment for a term not exceeding 14 years who:

(a) sells, buys, transfers, barter, rents, hires, or in any other way enters into a dealing involving a person under the age of 18 years for the purpose of—

- (i) the sexual exploitation of the person; or
  - (ii) the removal of body parts from the person; or
  - (iii) the engagement of the person in forced labour; or
- (b) engages a person under the age of 18 years in forced labour; or
- (c) permits a person under the age of 18 years to be engaged in forced labour; or
- (d) detains, confines, imprisons, or carries away a person under the age of 18 years for the purpose of—
- (i) the sexual exploitation of the person; or
  - (ii) the removal of body parts from the person; or
  - (iii) the engagement of the person in forced labour; or
- (e) removes, receives, transports, imports, or brings into any place a person under the age of 18 years for the purpose of—
- (i) the sexual exploitation of the person; or
  - (ii) the removal of body parts from the person for a material benefit; or
  - (iii) the engagement of the person in forced labour; or
- (f) induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose of—
- (i) the sexual exploitation of the person; or
  - (ii) the removal of body parts from the person for a material benefit; or
  - (iii) the engagement of the person in forced labour; or
- (g) induces a person to sell, rent, or give another person (being a person who is under the age of 18 years and who is dependent on him or her or in his or her charge) for the purpose of—
- (i) the sexual exploitation of the other person; or
  - (ii) the removal of body parts from the other person; or
  - (iii) the engagement of the other person in forced labour; or
- (h) builds, fits out, sells, buys, transfers, rents, hires, uses, provides with personnel, navigates, or serves on board a ship, aircraft, or other vehicle for the purpose of doing an act stated in any of paragraphs (a) to (g); or

- (i) agrees or offers to do an act stated in any of paragraphs (a) to (h).
- (2) It is a defence to a charge under this section if the person charged proves that he or she believed on reasonable grounds that the person under the age of 18 years concerned was of or over the age of 18 years.
- (3) For the purposes of subsection (1), sexual exploitation, in relation to a person, includes the following acts:
- (a) the taking by any means, or transmission by any means, of still or moving images of the person engaged in explicit sexual activities (whether real or simulated);
- (b) the taking by any means or transmission by any means, for a material benefit, of still or moving images of the person's genitalia, anus, or breasts (not being an act described in subsection (4) or (5));
- (c) the person's participation in a performance or display (not being an act described in subsection (4)) that—
- (i) is undertaken for a material benefit; and
- (ii) involves the exposure of the person's genitalia, anus, or breasts;
- (d) the person's undertaking of an activity (such as, employment in a restaurant) that—
- (i) is undertaken for a material benefit; and
- (ii) involves the exposure of the person's genitalia, anus, or breasts.
- (4) For the purposes of subsection (3)(b) and (c), sexual exploitation, in relation to a person, does not include the recording or transmission of an artistic or cultural performance or display honestly undertaken primarily for purposes other than the exposure of body parts for the sexual gratification of viewers.
- (5) In subsection (3)(b), "sexual exploitation", in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts for the purpose of depicting a medical condition, or a surgical or medical technique, for the instruction or information of health professionals.
- (6) In subsection (3)(b), "sexual exploitation", in relation to a person, does not include the taking or transmission of images of the person's genitalia, anus, or breasts if the images are honestly intended:
- (a) to provide medical or health education; or
- (b) to provide information relating to medical or health matters; or
- (c) to advertise a product, instrument, or service intended to be used for medical or health purposes.
- (7) The person under the age of 18 years in respect of whom an offence against this section was committed cannot be charged as a party to the offence.
- (8) This section does not limit or affect section 154 and 155.

**158. Attorney General's consent to prosecutions required** – (1) Proceedings for an offence against this Part cannot be brought in a court in Samoa without the Director of Public Prosecutions consent.

(2) A person alleged to have committed an offence against section 154, 155 or 157 may be arrested, or a warrant for the person's arrest may be issued and executed, and the person be remanded in custody or on bail, even though the Director of Public Prosecutions consent to the bringing of proceedings against the person has not been obtained.



## TRAFFICKING VICTIM INCIDENT REPORT (TVIR)

**CLASIFICACION :      A    SUSPECTED TRANSNATIONAL TRAFFICKING**

**B    SUSPECTED INTERNAL TRAFFICKING**

*(Note that this report can be progressively updated as further interviews / events occur. Each time an update is made, the narrative in the relevant field should commence with the date of the data entry and the update should be recorded at Annex B. An updating entry does not remove any previous entries)*

|  |  |
|--|--|
| <b>Date TVIR created</b>                             |  |
| <b>First contact date</b>                            |  |
| <b>First interview date</b>                          |  |
| <b>Phase of trafficking<sup>2</sup></b>              |  |
| <b>First contact location</b>                        |  |
| <b>First contact circumstance<sup>3</sup></b>        |  |
| <b>Number of suspected victims</b>                   |  |
|  |  |
| <b>Victim ID<sup>4</sup></b>                         |  |
| <b>Victim gender</b>                                 |  |
| <b>Victim age</b>                                    |  |
| <b>Victim nationality</b>                            |  |
| <b>Travel doc status<sup>5</sup></b>                 |  |
| <b>Place of recruitment /abduction</b>               |  |
| <b>Occupation prior to recruitment</b>               |  |
| <b>Recruitment narrative<sup>6</sup></b>             |  |
| <b>Agent of recruitment or abduction<sup>7</sup></b> |  |
| <b>Agent and means of transportation</b>             |  |
| <b>Route<sup>8</sup> and entry details</b>           |  |

<sup>2</sup> Was first contact during recruitment phase / transportation phase / exploitation phase / post exploitation phase

<sup>3</sup> This should include details of agency involved in first contact as well as general circumstances

<sup>4</sup> Each victim should have an ID consisting of Classification (A or B) plus date of first contact (format dd/mm/yy) plus a sequence number. Note that biodata for victim is at ANNEX A

<sup>5</sup> Whether victim holds a travel document / whether valid / whether genuine / whereabouts

<sup>6</sup> where relevant includes details of any proposed employment/pay

<sup>7</sup> Should include any known details of agents involved including names, roles of individuals, names of companies where known

|  |  |
|--|--|
| <b>Contacts on/after entry<sup>9</sup></b> |  |
| <b>THB destination</b>                     |  |
| <b>Type of exploitation<sup>10</sup></b>   |  |
| <b>Place of exploitation</b>               |  |
| <b>Exploitation narrative<sup>11</sup></b> |  |
| <b>Agent or agents of exploitation</b>     |  |
|  |  |
| <b>Intervention Narrative<sup>12</sup></b> |  |
|  |  |
| <b>Repatriation narrative<sup>13</sup></b> |  |
|  |  |
| <b>Prosecution narrative<sup>14</sup></b>  |  |
|  |  |
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<sup>8</sup> For transnational cases include details of all countries transited and borders crossed (and whether crossed legally or illegally)

<sup>9</sup> Whether escorted/ whether met on arrival / other contacts or agents

<sup>10</sup> Sexual servitude / Labour servitude / both / Other – provide details

<sup>11</sup> Brief account of exploitation experienced by the victim

<sup>12</sup> Records actions taken by Government agents after initial contact – eg data referred to TCU, victim referred to shelter, victim interviewed , victim provides witness statements etc

<sup>13</sup> Records any actions taken to support repatriation

<sup>14</sup> Records any actions taken by way of legal process

## PERSONAL DETAILS

|  |  |
|--|--|
| <b>FULL NAME</b>                                 |  |
| <b>Victim ID</b>                                 |  |
| <b>Gender</b>                                    |  |
| <b>Date of Birth</b>                             |  |
| <b>Nationality</b>                               |  |
| <b>Marital status</b>                            |  |
| <b>Passport no.</b>                              |  |
| <b>Validity date</b>                             |  |
| <b>Identity and location of immediate family</b> |  |
| <b>Repatriation Narrative (where relevant)</b>   |  |
| <b>Counselling status</b>                        |  |
| <b>Witness status</b>                            |  |
|  |  |
|  |  |

**RECORD OF ENTRIES\***

| <b>DATE OF RECORD</b> | <b>PERSON MAKING RECORD</b> | <b>AGENCY</b> |
|-----------------------|-----------------------------|---------------|
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\* Includes initial entry