guidance document for police Officers

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**Guidance Document for the Revised Trafficking in Persons Act (2021) and the Light and Hazardous Work Lists**

**Purpose:** The purpose of this document is to support Liberian police as they look to understand and practically apply the changes made to the Revised Trafficking in Persons Act and recently endorsed Light and Hazardous Work Lists into their work. This document introduces the major changes to the law and new regulations and acts as a “how to” guide. Any updates to the laws are noted in *italicized font*.

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**Revised Trafficking in Persons (TIP) Act (2021)**

**Key Definitions:** Definitions recently added to the Revised TIP Act are noted in *italics*. (*Revised Trafficking in Persons Act, Art. 1 Sect. 1*)

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| **Term** | **Definition** |
| Act | Recruitment, transportation, transfer, habouring, or receipt of a person |
| Means | By means of threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person |
| Purpose | For the purpose of exploitation |
| Exploitation | Exploitation includes 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 |
| *Victim* | *Person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of crime Trafficking in Persons* |
| *Representative Victim* | *If a victim is under 18, incompetent, incapacitated, or deceased, such victim shall be represented by any of the following: a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court as Representative Victim* |
| *Sex Trafficker* | *A person who knowingly recruits, entices, harbours, transports, provides, obtains, or maintains by any means a person; knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion, or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act* |

**Trafficking of C*hildren* and Persons who are *Mentally Incompetent*:** The Revised TIP Act changes the elements that must be proven in TIP cases when the victims are children or mentally incompetent persons. For victims that are children or mentally incompetent persons, the “means” element does **not** need to be proved, only the elements of the “act” and “purpose for exploitation” must be proved. Another change is that even if the child, a mentally incompetent person, or the parent/guardian consented or agreed to the job as was advertised to them, consent does not matter, and the case could be a potential trafficking case, thus the case needs to be investigated.

Revised Trafficking in Persons Act, Art. 1, Sect. 2:

* *In the case of a child, mentally incompetent, or disabled victim:*
  + Means employed do not matter.
  + Consent of child, mentally incompetent or disabled person, or parent, or guardian, or person having legal or de facto control of victim is irrelevant.
  + Irrelevant whether mentally incompetent or disabled person, or victim’s guardian, was forced, defrauded or coerced.

What this means for police officers: Police officers will need to find evidence to show that the victim is a child, mentally incompetent, or disabled. Once the evidence is found that someone is a child or mentally incompetent, police do not need to search for evidence for the “means” element. The focus will be on finding evidence to prove the “act” and “purpose of exploitation” elements.

**Aggravating Factors:** The Revised TIP Act adds one aggravating factor which is *italicized*

Revised Trafficking in Persons Act, Art.1, Sect. 4(d):

1. Trafficking of two or more persons at the same time;
2. Permanent of life-threatening bodily injury to a victim of trafficking;
3. Trafficking in Persons involving one or more children;
4. *Trafficking in Persons involving one or mentally incompetent person(s) or disabled persons;*
5. Trafficking in Persons as part of the activity of an organized criminal group.

What this means for police officers: Police need to ensure they are considering any of the following aggravating factors when building a TIP case and collect evidence that can be used to show if any of these aggravating factors happened.

**Criminal Offence and Restitution:** The Revised TIP Act added more factors which can be considered when determining restitution for TIP victims. Additionally, restitution now can come from the value of auctioning the proceeds and assets reasonably believed to come from or used in TIP. This means that victims can receive money/restitution from either the cash or other money gained by selling other resources gained as a result of trafficking, such buildings, vehicles, art, furniture, etc. Because of this, it is important to identify, document, and/or confiscate assets that may be moved if you suspect that it is a case of human trafficking.

The scope of the criminal offence is the same, however, the section is supplemented by provisions regarding seizure of proceeds and assets derived from Trafficking in Persons, which shall be used for the purposes of payment of restitution under Section 6 of the Revised TIP Act. The Act also expands the number of costs included in the calculation of restitution. (*Revised Trafficking in Persons Act, Art.1, Sect. 3(b)*)

Revised Trafficking in Persons Act, Art.1, Sect. 6:

* Where a defendant is convicted of Trafficking in Persons under this Act, the Court shall order the defendant to pay restitution as the Court will find fit and sufficient to the victim for:
  + Costs of medical and psychological treatment
    - Bills and invoices from doctors and hospitals
    - Estimates of past and future expenses from medical professionals or hospitals
    - Bills from pharmacies/dispensaries for medicines and/or estimated costs
  + *Costs of physical and occupation therapy and rehabilitation*
    - *Bills and invoices from doctors and hospitals*
    - *Estimates of past and future expenses from medical professionals or hospitals*
  + *Costs of education and where applicable costs of loss of education*
    - *Bills or estimates of tuition and other related costs (including from publicly available materials produced by schools quoting costs)*
    - *Estimates of impact on earning potential due to reduced education (such as a child being trafficked and therefore being unable to complete primary or secondary school etc.), can be found in reports on average earning per year by people of different education levels, government reports are preferred when available*
  + *Costs for relocation, repatriation, and reintegration (where appropriate)*
    - *Travel expense receipts or quotes for buses, flights, etc.*
    - *Costs to ship belongings, deposits to secure housing, and other related expenses*
  + *Costs of temporary or permanent citizenship or visas (where appropriate)*
    - *Receipts for costs of visas or government form stating the cost*
    - *Other related costs such as for photographs, attorney’s fees etc.*
  + Costs of necessary transportation, temporary or *permanent (where appropriate) housing*
  + Lost income *and benefits and likely losses of the same in future*
  + *Attorney’s fees and other costs such as victim advocate fees*
    - *Receipts and invoices from attorneys and advocates*
  + Compensation for emotional stress and other costs, pain and suffering
  + Any other loss suffered by the victim
  + *Any other costs as may be assessed by the court*

What this means for police officers: To ensure that victims receive the restitution they are entitled to, it is essential the police make sure evidence of proceeds and assets related to TIP are properly documented and secured.

**Use of Commercial Transportation:** The Revised TIP Act makes changes to commercial transportation offenses, with it (1) no longer being required to prove the accused/suspect “knowingly” transported TIP victims, but instead cases may be brought if the accused had “reason to know”, and (2) a person who transports people and is reckless or negligent with respect to that person being trafficked into Liberia is now liable for a TIP offense. Additionally, penalties for offenses have increased and offenders are now liable for all of the medical costs of victims.

Revised Trafficking in Persons Act, Art.1, Sect. 10(a, b, d):

1. International transportation entities must verify that every passenger possesses the necessary travel documents, including passports and visas, to enter the destination country and any transit countries; it must do the same for passengers with the final destination to Liberia.
2. The requirement in paragraph (a) above shall be applied to both staff selling or issuing tickets, boarding passes or similar travel documents and to staff collecting or checking tickets prior to or subsequent boarding.
3. Any entity or person which knowingly transports victims of TIP *or which has reason to know* or suspect that a person is/are being trafficked into Liberia, *or which is reckless or negligent with respect to a person(s) being trafficked into Liberia shall be liable for a fine of $200,000 USD*, and also to pay all costs associated with providing accommodations, *medical care* and meals for the victim and any accompanying dependent for the duration of the victim(s) stay in designated facilities.

What this means for police officers: Police need to check to see if transportation staff (paragraph b) were reckless or were acting with deliberate ignorance (“reason to know”) that trafficking was taking place.

**Hazardous Work List and Light Work List**

When coming across potential situations of child labour, all labor inspectors should consider the following indicators to help determine what type of labour or work it is and thus what types of evidence they would need to collect:

|  |  |
| --- | --- |
| **Age** | * How old is the child? * Is this age permissible under law? |
| **Hours** | * How many hours per day and per week is the child working? * What time of day is the child working? * Do these hours conflict with the law? |
| **Type of Work** | * What tasks are the children doing? * Are the tasks permitted by law? |

**Hazardous Work List:** Hazardous work is work that is likely to harm the health, safety, or morals of children *(Decent Work Act Sec. 2.3(b)(iv), ILO Convention 138 Art. 3(1)).*

According to the Decent Work Act Sec. 21.4(a), hazardous work is further defined as:

1. work which exposes children to physical, psychological or sexual abuse;
2. work underground, under water, at dangerous heights or in confined spaces;
3. work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
4. work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; or
5. work under particularly difficult conditions, such as work for long hours or during the night, or work where the child is unreasonably confined to the premises of the employer

**Light Work List:** Light work is: “work or any other activity that:

1. is not likely to be harmful to a child's health or safety, moral or material welfare or development; and
2. is not such as to prejudice the child's attendance at school or their capacity to benefit from instruction." (Decent *Work Act Sec. 21.3(b))*

Light work can be performed by children who are at least 13 years of age and can only be performed for” a maximum of two hours in a day and fourteen hours in a week.” (*Decent Work Act Sec. 21.3(a))*