

***Directives issued in terms of section 44(8) of the Prevention and Combating of Trafficking
in Persons Act, 2013 (Act No. 7 of 2013)***

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TRAFFICKING IN PERSONS DIRECTIVES

A. General

1. These directives are issued in terms of the provisions of section 44(8) of the *Prevention and Combating of Trafficking in Persons Act, 7 of 2013* (the Act).
2. The Act came into operation on 9 August 2015, except sections 15, 16 and 31(2)(b)(ii).
3. The objectives of the Act, in particular, are the protection of and assistance to victims of trafficking, and the recognition of their needs through a well-coordinated implementation of the provisions of the Act.
4. Note should be taken of the general principles of the *Children's Act, 38 of 2005*, where children are involved, since it guides the implementation of all legislation dealing with children.
5. These directives must be read in conjunction with other policy directives issued by the National Director.

B. Victim Identification

1. Prosecutors must take cognisance of the fact that the offence relating to trafficking in persons (TiP) may not be reported as such, as it is usually the underlying offences that are reported.
2. It is essential that prosecutors familiarise themselves with the Act, and national instructions and directives issued by the other departments in terms of the Act.
3. Prosecutors must pay specific attention to the victim identification form in the SAPS National Instructions when screening cases to identify matters relating to TiP.

C. The manner in which trafficking in persons cases are to be dealt with

1. A prosecutor shall be assigned in each Director of Public Prosecutions (DPP) Division as a nodal point for the purposes of providing guidance and assistance in the investigations, decisions on dockets, collating statistics and providing reports.
2. All TiP matters referred to the prosecution, irrespective of whether there are suspects or not, must be referred to the nodal point immediately after it comes to the attention of the prosecutor. The docket must be accompanied by a report from the prosecutor.
3. Trafficking in persons is often organised in nature, therefore suitably trained prosecutors should handle these cases. The nodal point must coordinate the distribution of these cases to such prosecutors. The same prosecutor should guide the investigation and prosecute the case from the beginning to end.

4. Prosecutors dealing with TiP matters should have received training in respect of TiP, including social context training in terms of the NPA training manual developed for TiP.
5. Prosecutors must adopt a sensitive victim centred approach when dealing with TiP cases due to the nature of TiP and the trauma suffered by the victims.
6. The safety of the victim(s) must be of paramount importance and the prosecutors must consider their views and concerns.
7. Prosecutors must familiarise themselves with the provisions of section 7(1) of the *Witness Protection Act, 112 of 1998*, which relate to witness protection.
8. Prosecutors should to keep victims informed of the status of their cases.
9. In cases of child victims, their individual age, developmental stage and level of maturity should be taken into account.
10. The investigation and prosecution of TiP cases should follow a coordinated, multi-disciplinary approach with relevant stakeholders.
11. Prosecutors must keep TiP dockets in a secure place and shall provide access to the information in the docket only to persons who, by reason of their participation in the proceedings, are legally entitled to such access.
12. Information regarding the witnesses' address, work details and telephone number should not be disclosed to the defence and should be removed from copies of statements prior to handing these over. Should the defence wish to have access to this information they must bring a substantial application to court for such details to be disclosed and show cause why this information is necessary for the defence of the accused.

D. Pre-Trial Phase

1. The investigation of the case should be closely guided from receipt of the docket and all decisions should be made without delay. Special attention should be given to aspects which require immediate attention, such as crime scene inspection, forensic evidence collection, collection of any other possible corroborative evidence including securing of cameras, computers and the evidence relating to injuries of the victim.
2. A thorough and comprehensive consultation should be held with the victim once the decision to prosecute has been made. Initial decisions concerning further investigations, referrals and withdrawals should be made immediately following the consultation.
3. Prosecutors should inform the victim of the possible protective measures available in terms of existing legislation. These include but not limited to sections 153, 154, 158, 227 and 170A of the *Criminal Procedure Act, 51 of 1977* (CPA).

4. During the pre-trial phase the prosecutor should advise the victim to consider having a support person.
5. Prosecutors should refer victims to the relevant service providers for counselling to assist them with the trauma experienced as a result of the offence. The information and records relating to counselling should not form part of the evidence and, should it be introduced as evidence, prosecutors should object. These reports must be filed in the B section of the docket.
6. All relevant information should be obtained prior to the bail hearing. This may include but is not limited to—
 - (a) previous convictions in respect of the accused;
 - (b) the victim's views on the issue of bail; and
 - (c) whether the victim requires protection, including witness protection.
7. Prosecutors should determine whether any expert evidence will be required. This may include medical evidence, psychological evidence or evidence regarding the dynamics of violence and the effect of TiP on the victim and others. Prosecutors should ensure that the victims and witnesses are not subjected to repetitive consultations or unnecessary interventions.
8. The prosecutor should arrange an initial case planning session or telephonic contact with the relevant stakeholders as soon as possible after the decision to prosecute. These stakeholders may include, inter alia, the Asset Forfeiture Unit, Office for Witness Protection, investigating officer, medical officer, social worker, probation officer, and the Department of Home Affairs, depending on the circumstances of the case.
9. In the absence of a court preparation officer, the prosecutor should assist the victim by familiarising the victim with the court environment and the procedure.
10. Charge sheets should include reference to other relevant legislation where applicable.

E. Decision to Prosecute

1. The decision to prosecute should not be influenced by race, nationality, gender, sexual orientation, character, addictions or employment history.
2. Where prosecutions for offences committed prior to the commencement of the Act have been instituted, they must be continued and concluded as if the Act had not been passed.
3. Where prosecutions for offences committed prior to the commencement of the Act are instituted after the date of commencement of the Act, the provisions of this Act relating to compensation, witness protection, etc., shall apply, if such conduct would have constituted an offence in terms of chapter 2 of this Act.

F. Trial

1. Prosecutors should ensure that TiP matters are expedited.
2. The prosecutor must request the Presiding Officer to warn the accused of competent verdicts, minimum sentences and/or other consequences that may follow a conviction, where applicable.
3. Prosecutors should make use of the most suitable victim friendly environment available for victims and other witnesses in TiP matters.
4. Prosecutors should apply their mind to the provisions of section 227 of the CPA when dealing with evidence of character and previous sexual experience of the victim.
5. The victim should be informed of the outcome of the trial in a manner enabling him or her to understand the reason for the judgement and, in the case of a conviction, the sentence.

G. Withdrawal or stopping of proceedings

1. In the event of the victim wishing to withdraw a case, prosecutors must exercise extreme care and only withdraw in exceptional circumstances, after consultation with the nodal point, and where the interests of justice so demand.
2. Should the stopping of a prosecution be considered, the matter must be referred to the nodal point to facilitate the DPP's authorisation.

H. Application of sections 153 and 154 of the *Criminal Procedure Act, 1977*

1. The prosecutor should make an application to the court for the testimony of the victim or witness in a trafficking prosecution to be held in camera in terms of section 153 of the CPA, unless the victim indicates in consultation that he or she wants to testify in open court.
2. The criteria to be used and circumstances that should be considered when bringing an application in terms of section 153 of the CPA include but are not limited to—
 - (a) the sensitive nature of evidence,
 - (b) where the dignity of the victim or witness would be compromised, and
 - (c) to prevent the details of the offence becoming public knowledge.
3. Prosecutors should take note that section 153 of the CPA is not only applicable to victims, but also to the evidence of other key witnesses who are not comfortable to testify in an open court due to safety concerns.
4. Prosecutors must, in accordance with section 154 of the CPA, ensure that no information regarding the identity of the victim or that of the victim's family, or information of the victim which may lead to the identification of the victim or the victim's family, is provided to anyone which may result in publication. Prosecutors

should therefore, object to any application to publish the particulars and identity of the victim.

5. If information which leads to the identification of the victim is unlawfully published, the prosecutor should bring that to the attention of the court and request the SAPS to investigate the matter.

I. Application of section 158 of the *Criminal Procedure Act, 1977*

1. In terms of section 158 of the CPA, the use of closed-circuit television or similar electronic media in court is not limited to child victims or witnesses, but available to assist any traumatized victim or witness to give evidence, regardless of his or her age. The prosecutor should consider this measure timeously in all TiP matters, and should bring such an application where the victims or witnesses are under the age of 14 years.
2. The circumstances to be considered when bringing an application in terms of section 158 of the CPA include, but are not limited to –
 - (a) where the victim or witness is unwilling or unable to testify in the presence of the accused due to fear of the accused;
 - (b) where the offence involved violence;
 - (c) when the victim is acquainted or related to the accused;
 - (d) where the court room environment intimidates the victim or witness;
 - (e) fear of being intimidated as a witness by the accused and or members of the public;
 - (f) where the witness may be on a witness protection programme;
 - (g) where the impact of the offence is so severe on the victim or witness that he/she is unable to testify in open court;
 - (h) that the quality of the testimony of the witness would be compromised should he/she testify in the presence of the accused; and
 - (i) the mental age of the witness.
3. If the court refuses an application by the prosecutor for the giving of the evidence by a child victim below the age of 14 years by means of a closed circuit television or similar electronic media, the prosecutor should inform the court to provide reasons for the refusal of an application and such reasons should be part of the record of the proceedings.
4. The views of the witnesses should be taken into account and given due weight. Applications need not be made where a witness does not wish for the measure to be applied and where this will not be in the interest of justice.
5. If the application of the measure will cause unnecessary delay, for instance, due to unavailability of intermediaries or CCTV equipment, careful consideration should be given to proceeding without such protective measures.
6. If the required CCTV equipment is not available or not in working order, the prosecutor must take immediate steps to report the situation to the court manager. If it cannot be resolved at court level it should be reported to Regional Office of the Department of Justice and Constitutional Development as well as to the DPP.

J. Application of section 170A of the *Criminal Procedure Act, 1977*

1. In terms of section 170A of the CPA, the court may appoint a competent person as an intermediary in order to enable a victim or witness under the biological or mental age of 18 years to give evidence through the intermediary. The prosecutor must consider the application of this measure timeously in all trafficking in person's matters involving victims or witnesses under the biological or mental age of 18 years, and should bring such application where the victim or witnesses are under the age of 14 years.
2. If the court refuses an application by the prosecutor for the giving of the evidence by a child victim below the age of 14 years through an intermediary, the prosecutor should request the court to provide reasons for the refusal of an application and such reasons should be part of the record of the proceedings.
3. The circumstances to be considered when bringing an application in terms of section 170A of the CPA, include but are not limited to those reasons set out under paragraph I 2 above, as well as the youthfulness of the witness.

K. Sentencing

1. In respect of section 4(1) and section 10 of the Act, Prosecutors must address the court on the applicable minimum sentences.
2. Prosecutors should obtain all relevant information from the victim that may have a bearing on sentence. Prosecutors must place all evidence and factors before court of the impact the offence had on the victim and his / her family.
3. Prosecutors should obtain, where necessary, prior authorization before the utilization of an expert witness who is not a government employee.
4. Prosecutors must address the court on all of the factors mentioned in section 14 of the Act and, where necessary, lead evidence thereon.

L. Compensation

1. Prosecutors must inform victims of trafficking about their right to and the process to claim compensation in terms of section 29 of the Act.
2. Prosecutors may, in addition to any sentence that the court may be impose, apply for an order for an appropriate compensation in to a victim of trafficking against a person convicted of trafficking in persons.
3. Prosecutors must obtain the following information from a victim of trafficking in order to determine a quantum—
 - (a) information relating to damage, loss and destruction of property, including money;

- (b) whether the victim suffered any physical, psychological or other injury;
 - (c) whether the victim has been infected with a life-threatening disease; and
 - (d) whether the victim incurred loss of income or support.
4. Prosecutors should take note that appropriate compensation includes expenses reasonably expected to be incurred by the victims.
 5. Prosecutors must inform the victim of trafficking that he/she may institute civil action against the trafficker for the recovery of the excess, where the damage, injury or loss suffered exceeds an order for compensation made by the magistrate's court.
 6. Prosecutors should apply to the court for an order compelling the convicted persons or the carriers to make payment to the Criminal Asset Recovery Account, of an amount in compensation for expenses incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation, return and repatriation of the victim of the offence.

M. Prosecution of victims of trafficking in persons

1. Prosecutors should take note that a victim of trafficking may not be prosecuted for any offence committed as a direct result of being trafficked, without the written authorization of the DPP, in whose jurisdiction the offence was committed.
2. If a prosecutor, during a criminal prosecution suspects on reasonable grounds that the accused person is a victim of trafficking and that the offence was committed as a direct result of being trafficked, the prosecutor must apply to the court for a postponement and refer the person to the provincial department of social development by completing the prescribed form issued in terms of the regulations. The prosecutor must inform the nodal point immediately.
3. A letter of recognition that an adult person is a victim of trafficking or a finding by the department of social development that a child is a victim of trafficking, serves as a ground for withdrawal of the criminal prosecution or the discharge of the victim of trafficking.

N. Collection and Analysis of information

1. Prosecutors dealing with TiP matters must provide statistics on the prescribed template on a monthly basis to the nodal point.
2. The nodal point must forward these statistics to Head Office.

O. Defences to trafficking in persons

1. The prosecutor should note that it is not a defence to a charge of contravening sections 4, 5, 6, 7, 8, 9(1) or 10 of the Act that a child has consented to the intended exploitation or to the action which was intended to constitute an offence or that the

exploitation or action did not occur, even if none of the means referred to in section 4 have been used.

2. Prosecutors should further note that it is no defence that an adult person has consented to the intended exploitation or action which was intended to constitute an offence or that the exploitation or action did not occur, if one or more of the means referred to in section 4 have been used.

P. Extra - territorial jurisdiction

1. Prosecutors should note that section 12 of the Act gives the courts in the Republic extra-territorial jurisdiction in respect of an act committed outside the Republic which would have constituted an offence if committed in the Republic.
2. Prosecutors should note that the National Director of Public Prosecutions (National Director) must, in writing, designate an appropriate court in which to conduct a prosecution against any person accused of having committed an offence under Chapter 2 of the Act in a country outside the Republic.
3. Prosecutors should note that the institution of a prosecution in terms of section 12 of the Act must be authorized in writing by the National Director.
4. Prosecutors must further note that only a High Court has jurisdiction in respect of a person referred to in section 12(1) (d) of the Act.

Q. Facilitation of prosecution in case of foreign witnesses

Prosecutors should comply with the provisions of section 16 of the Act when dealing with the facilitation of foreign witnesses.

R. Application in terms of section 120 of the Children’s Act, 2005

Prosecutors must apply in terms of section 120 of the Children’s Act, 2005, to the court for an order that a person is unsuitable to work with children in appropriate circumstances so that the name of the accused can be entered in the Child Protection Register.

S. Disciplinary steps

Prosecutors who fail to comply with the duties imposed by the Act or these directives will be dealt with in accordance with the applicable policies and procedures for disciplinary measures against prosecutors.