

The New Anti-Human Trafficking & Migrant Smuggling Act of Sierra Leone: Implications for Policy and Practice



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The Center on Human Trafficking Research & Outreach (CenHTRO) at the University of Georgia is a collaborative, cross-disciplinary, and international research hub in the global effort to combat human trafficking. Through its African Programming & Research Initiative to End Slavery (APRIES), CenHTRO conducts research and programming in Sierra Leone and other countries around the world.

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INTRODUCTION

This policy brief provides an insight into the content of the new Anti-Human Trafficking and Migrant Smuggling amendment Act as an informative tool to guide policy directives, decision making, and intervention on all issues related to human trafficking by both state and non-state actors. It summarises the content of the Act with highlights of the key laws to inform advocacy, policy intervention, and programme management on anti-human trafficking in person (ATIP) activities by all stakeholders. In addition, it provides an analysis of the new Act's implications on prosecution, protection, prevention, and partnerships, as well as recommendations for policy and practice and a concluding remark. It is hoped that this brief will be valuable to ATIP advocates and policy makers across ministries, departments, and agencies within the government of Sierra Leone as well as parliamentarians, law enforcement personnel, and civil society activists. In summary, the key takeaway points from the Act are highlighted below.

KEY TAKEAWAYS

- More protection is guaranteed for children who are adopted, in foster care, or the situation of sexual and labour exploitation.
- Where there is sufficient evidence of a crime of exploitation and trafficking, perpetrators can be prosecuted without the consent of the victims.
- Women's rights are more protected in situation of sexual exploitation and their past sexual behaviour is irrelevant in the face of human trafficking.
- Migrant smuggling is a crime and prohibited in all its forms.
- There are more stringent punitive measures for both convicted traffickers and migrant smugglers.
- Organisations, groups, or family members who aid and abet offences within the Act face rigorous penalties. This directly targets illegal labour migration recruitment agencies.
- The Act provides clear guidelines and processes for comprehensive compensation to victims of crimes/offences covered in the Act.
- Witness protection services are guaranteed in the Act.

This new amendment Act is long overdue as the previous Anti-trafficking Act of 2005 is considered obsolete and disconnected from current realities and intervention needs; and failed to contextualise human trafficking in the Sierra Leonean sense. For instance, the 2005 Act did not cover issues of “Men Pikin,” which is the most commonly abused form of societal structures in the exploitation and trafficking of children in the country¹. Other gaps in the previous Act include compensation of victims, deficiencies in the Inter-ministerial committees, smuggling of migrant and laws against victims smuggling, restitutions of both physical and psychological well-being of victims of trafficking (VoTs), witness protection, stringent penalties, as well as obscure cultural practices that affected the implementation of the law².

Furthermore, in a 2022 baseline study conducted by the African Programming and Research Initiative to End Slavery (APRIES) at the University of Georgia’s Centre for Human Trafficking Research and Outreach (CenHTRO)³ on child trafficking and child labour in the Eastern Region of Sierra Leone, it was observed that prosecution is one of the most challenging areas towards ATIP efforts in the country. This is due to inconsistent enforcement of the law between local communities, lack of collaboration and trust between government authorities and community leaders as well as the culture of silence⁴. These existing gaps have affected coordination and interventions in the referral pathway for victims of human trafficking in identification, protection, rehabilitation, and reintegration; as well as their participation in the prosecution of perpetrators. Therefore, this new Act is considered a breath of fresh air in the fight to combat Trafficking in Persons (TIP) in the country.

¹Okech, D., Clay-Warner, J., Balch, A., Callands, T., Yi, H., Cody, A., & Bolton, C. (2021). Child Trafficking and the Worst Forms of Child Labor in Sierra Leone: A Mixed Methods Study. Center for Human Trafficking Research & Outreach, University of Georgia, Athens, GA, USA.

²Courtesy of Interview with National Coordinator, ATIP Task Force Secretariat, Ministry of Social Welfare Freetown.

³Okech, D., Clay-Warner, J., Balch, A., Callands, T., Yi, H., Cody, A., & Bolton, C. (2021). Child Trafficking and the Worst Forms of Child Labor in Sierra Leone: A Mixed Methods Study. Center for Human Trafficking Research & Outreach, University of Georgia, Athens, GA, USA.

⁴See more details on Bryant, H., Balch, A., Cody, A., Yi, H. (2022). New Research on Child Trafficking and Child Labour: Recommendations for Policy. Center on Human Trafficking Research and Outreach

THE CONTENT OF THE NEW ANTI-HUMAN TRAFFICKING AND MIGRANT SMUGGLING ACT OF 2022

The new amendment Act is divided into eight (8) parts and Thirty-Nine sections. Table 1 provides a summary of the Act's contents. Part 2 of the Act provides a comprehensive institutional and regulatory framework for the operations of the National Task Force on Human Trafficking attached to the Ministry of Social Welfare including its functions which covers implementation and enforcement of the Act. Other functions of the Task Force include receiving and investigating reports of activities of human trafficking from the public; monitoring the immigration and emigration patterns of Sierra Leone for evidence of human trafficking; securing prompt response from the police and other law enforcement agencies; informing and educating the public as well as collecting store and publishing data on human trafficking among others⁵. Similarly, sections 5 through 7 highlight the role of the TIPs secretariat, its administrative structure as well as functions of its executive committee including the method of funding⁶.

Furthermore, Part 3 of the Act made provision for the establishment of a fund to be called the Victims of Human Trafficking Trust Fund which shall be administered by a Board of Trustees. As stated in Section 11, subsection, 3a to 3e, the fund will be used to finance protection services for victims of human trafficking through the provision of interim care facilities or rehabilitation shelters; provision of medical and related services for VoTs; support for witness protection services as part of legal aid; support for family tracing and reunification services including rehabilitation and reintegration of VoTs⁷.

Offences related to various forms of human trafficking are stated in Part four (4), sections 12 to 16. On human trafficking, section 12 of the Act states the following:

“a person engages in human trafficking.... if for the purpose of exploitation, he undertakes the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, the abuse of power or of a position of vulnerability or of the giving or receiving of payment to obtain the consent of a person having control over another person”.

⁵See more details on GoSL (2022). 'Anti-Human Trafficking and Migrant Smuggling Act, 2022'. Freetown, Sierra Leone

⁶Ibid.

⁷Ibid.

TABLE 1: Parts and sections of the New Anti-Human Trafficking and Migrant Smuggling Act

I	Interpretations/Definition of Terms	
II	National Task Force on Human Trafficking	<ul style="list-style-type: none"> 2. The National Task Force on Human Trafficking 3. Functions 4. Meetings 5. Secretariat 6. Tenure of Executive Director 7. Funds 8. Account Audit 9. Financial Year 10. Annual Report
III	Offences of Human Trafficking	11. Victim of Human Trafficking Trust Fund
IV	Prosecution of Human Trafficking Offences	<ul style="list-style-type: none"> 12. Human Trafficking Prohibited 13. Prohibition of sexual and labour exploitation 14. Prohibition of child sexual exploitation 15. Prohibition of fraudulent adoption 16. Prohibition of unlawful withholding of identification document
V	Prosecution of Human Trafficking Offences	<ul style="list-style-type: none"> 17. Consent of Victim irrelevant 18. Victim's immunity 19. Child prostitute as victim
VI	Offences of Migrant Smuggling	<ul style="list-style-type: none"> 20. Prohibition of Migrant Smuggling 21. Prohibition of aiding migrant smuggling 22. Prohibition of the transit of smuggled migrant 23. Prohibition of harbouring non-citizen
VII	Judicial Proceedings	<ul style="list-style-type: none"> 24. Jurisdictional matter 25. Indictment and previous committal 26. Offences by body of persons 27. Admissibility of electronic evidence 28. Attempt, aiding and abetting etc 29. Application of extradition 30. Forfeiture of property to the State 31. Payment of Restitution 32. Witness Protection 33. Prohibition with interference of documents 34. Divulging information prohibited
VIII	Miscellaneous	<ul style="list-style-type: none"> 35. Measures to prevent human trafficking 36. Prevention orders 37. Regulations 38. Repeal and savings 39. Transitional provision

If a person(s) is found guilty of the crime of human trafficking, they will be convicted to a term of imprisonment of not less than 25 years. Furthermore, section 13 stipulated that cross-border trafficking for sex or labour exploitation is prohibited and is a crime liable for conviction to a term of imprisonment of not less than 15 years. Similarly, Section 14, prohibits the sexual exploitation of children through tourism and is an offence liable for conviction and imprisonment for not less than 15 years. In addition, the fraudulent adoption of a child is stated as a punishable offence with imprisonment of not less than 10 years; whilst the unlawful withholding of identification and immigration documents of another person is a crime liable for imprisonment of no less than 10 years.

However, in the prosecution of an offence of human trafficking, the Act states in section 18 that 'a victim of human trafficking is not liable for a criminal offence that was a direct result from being trafficked'. Also, the Act states that in the process of prosecution of human trafficking offences, 'the consent of an intended or realised victim is irrelevant where any of the specified means of exploitation has been used'. And, similarly, a victim's past sexual behaviour is irrelevant and inadmissible for purpose of proving that the victim was engaged in other sexual behaviour. Again, the Act states that recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation shall be regarded as human trafficking offences liable for prosecution.

Furthermore, Part 6 of the Amendment Act covers offences related to migrant smuggling which is absent in the old Act. The issue of migrant smuggling is considered a growing problem in Sierra Leone and a key driver of irregular migration beyond the shores of Sierra Leone. Therefore, in this new Act, section 20 (1) states that a person shall not engage in migrant smuggling; a person who contravenes this law commits an offence liable for conviction to a term of imprisonment of not less than seven years or 10 years if the smuggled migrant was subjected to cruel, inhuman, or degrading treatment by another person. In addition, aiding in migrant smuggling or transit of smuggled migrants are prohibited and are crimes liable for imprisonment of up to 10 years or a fine of 250,000 Leones⁸.

With reference to the above, Part 7 of the Act stipulates the execution of judicial proceedings within the Act including legal jurisdictions, indictment procedures under the Criminal Procedures Act of 1965, offences of human trafficking committed by a body of persons, extradition procedures for the offence of human trafficking under the Extradition Act of 1974, the forfeiture of the property of convicted offenders, the payment of restitution and lastly witness protection services⁹.

⁸Ibid.

⁹Ibid.

IMPLICATIONS FOR POLICY AND PRACTICE

The new Act provides fresh motivation for ATIP stakeholders in their current efforts to deal with the problem of human trafficking in and out of the country. The new Act is a recognition by all ATIP stakeholders of the existing gaps in the 2005 Act as well as lessons learnt from current intervention through advocacy, policy engagement, and activities to curb human trafficking. These activities cover issues of protection, prevention, prosecution, and institutional partnership to tackle TIPs internally including ‘men pikin’ and other socio-cultural practices. Whilst externally, it seeks to tackle the activities of traffickers and migrant smugglers operating underground networks beyond the borders of Sierra Leone.

Therefore, the new Act provides legitimacy to policy agendas by ATIP stakeholders and stimulates new thinking in the design of their interventions. Furthermore, it strengthens effective inter-ministerial engagements, its partnership with non-state actors, such as APRIES, World Hope International (WHI), etc. that involves protection and prevention measures implemented through the referral pathway process; investigation and prosecution by law enforcement agencies and partnership with the many local and national ATIP stakeholders across the country. In this regard, this section provides a brief analysis of the policy implications of the new Act within the following thematic areas.

Prosecution

Prosecution of perpetrators of trafficking has been a major challenge in the fight against human trafficking in Sierra Leone. This is because it is hard to get victims to come forward to stand as witnesses in the prosecution of traffickers who are sometimes relatives and family members. However, this new Act gives more authority to law enforcement agencies to prosecute without the consent of the victims. In this regard, based on the availability of sufficient evidence, the Sierra Leone Police (SLP) in collaboration with the Law Officer’s Department at the Ministry of Justice, Government of Sierra Leone, is now able to initiate criminal proceedings against alleged culprits in the operations of the National Referral Mechanism (NRM). Considering this, the new law enforces investigative procedures for the indictment of alleged trafficking offenders in the NRM. Furthermore, the Ministry of Social Welfare is developing a new Standard Operating Procedures (SOP) in the NRM for Sierra Leone. The development of the SOP will be guided by laws stipulated in the new Act and will inform how NRM will operate from victim identification, and support for protection and reintegration, to safe return and participation in criminal proceedings¹⁰.

¹⁰Courtesy of interview with the National Coordinator, ATIP Task Force, Ministry of Social Welfare, Freetown, 8 August 2022’.

Protection

Protection in the context of human trafficking takes various forms and it is a critical component in the referral pathway for VoTs in Sierra Leone. Protection is provided to individuals who have been identified as victims of the alleged acts of trafficking. Based on the recent TIPs report on Sierra Leone, children both boys and girls as well as women are more vulnerable to human trafficking¹¹. Section 32 in the new Act stipulates laws and procedures for the protection of victims serving as witnesses during the indictment and trial of the alleged perpetrator(s). The new procedures stated in the Act will inform current and future protection mandates in the NRM of the country as well as its implementation by ATIP implementing partners in the referral pathway. These partners have a collective role to play to protect and support the rights and needs of VoTs throughout their journey to recovery and reintegration into their communities.

Prevention

On prevention, the Act provides policy directives and strategies that will enhance economic opportunities for potential victims of human trafficking. This includes a) microcredit lending programmes, training in business development, skills training and job counselling; b) programmes to promote women's participation in economic decision making; c) programmes to keep children, especially girls in elementary and secondary schools, and to educate persons who have been victims of trafficking and d) development of educational curricula regarding the dangers of trafficking¹². These initiatives are achievable in the medium to long term. However, as captured in the National Anti-Human Trafficking Framework Strategy (2022-2026) for Sierra Leone, prevention programmes need funding for sustained implementation¹³.

Furthermore, with this newly amended Act, MOSW, ATIP Task Force and its partner institutions are in a better position to scale up public education campaigns across the country and community outreach on the use of the anti-human trafficking hotline (134 toll-free line) which has been operationalised across the three main mobile phone networks. This "Freedom Line" is for members of the public to call and report potential or actual trafficking situations to appropriate authorities 24 hours a day, 7 days a week.

¹¹ See more detail on U.S. Department of State Trafficking in Persons Report 2022. https://www.state.gov/wp-content/uploads/2022/08/22-00757-TIP-REPORT_072822-inaccessible.pdf

¹² GoSL (2022), Op. Cit.

¹³ See more details on the National Anti-Human Trafficking Framework Strategy (2022-2026), Ministry of Social Welfare, Freetown.

Partnership

Effective implementation of this Act requires institutional partnership. The Act recognizes the continued existence of the National Task Force on Human Trafficking a body consisting of ten (10) ministries of government and headed by the MOSW. Also, it includes other government departments, as well as the law enforcement and intelligence agencies of the country. Partnership across these institutions is required to ensure that they pull their resources together to coordinate and engage in a meaningful implementation of programmes around prevention, prosecution, and protection¹⁴.

The partnership is a key driving force for the effective operationalization of the country's national referral mechanism. Therefore, the new Act presents a new opportunity for ATIP partners to collaborate with local community structures such as Provincial and District Taskforce on TIPs, Child Welfare Committees (CWC), and Village Parents Groups (VPG) to undertake advocacy and community outreach for prevention of TIP as well as effective coordination of the activities of the NRM across communities.

Similarly, the Act states that members of the Task Force must cooperate with foreign governments in the investigation and prosecution of the crime of human trafficking. In this regard, MOSW in partnership with the International Centre for Migration Policy Development (ICMPD) and the Economic Community of West Africa States (ECOWAS) Commission is developing a cooperation framework agreement between Sierra Leone and Guinea to enhance bilateral cooperation towards prevention and response to incidences of human trafficking in the Mano River Basin.

¹⁴ Courtesy of Consultations and discussions with the TIP Task Force, August 8, 2022, Ministry of Social Welfare, Freetown.

WHAT NEXT FOR POLICY AND PRACTICE

First, policy guidelines for training on human trafficking for personnel of law enforcement agencies including the SLP, Republic of Sierra Leone Armed Forces (SLP), TOCU, etc are highly required. This will increase awareness about human trafficking laws and policies stated in the new Act more sustainably. As part of its current interventions in Sierra Leone, APRIES in collaboration with United Nations Office on Drug and Crime (UNODC) has commenced a project that focuses on training civil servants including staff of government ministries, departments, and agencies parliamentary staff to be able to propose/lobby anti-TIP policies or programs towards the implementation of the new Act.

Furthermore, there is a need for more consultations with victims to assess needs that should be reflected in response mechanisms for survivors at all levels of the referral pathway. This will enable appropriate interventions on the needs of VoTs, especially women and girls who are in interim care shelters operated by ATIP partners as well as effective coordination of the NRM at all levels.

Similarly, response mechanisms should develop guidelines for a comprehensive post-reintegration service for survivors and their families. This is to ensure that VoTs feel safe and secure when they return to their communities and have opportunities for economic and social livelihood so that they will not fall into a situation of getting re-trafficked.

As suggested in the ATIP framework strategy, the Task Force, and the MOSW must undertake outreach and partnership with Paramount Chiefs and other traditional leaders to develop customary regulations and Bi-laws at chieftdom and township levels that will encourage local governance of ATIP laws and policies. This will increase knowledge and awareness of trafficking prevention and response including the enhanced capacity to identify, assist and refer trafficking victims for protective services at the community level.

Furthermore, the MOSW in collaboration with the Ministry of Gender and Children's Affairs and community leaders should endeavour to develop policies and implementation plans for a record keeping system for children who are living in men-pikin arrangements. This will enable periodic monitoring of children in informal foster care to ensure that they do not fall into exploitation, domestic servitude, and eventually human trafficking.

Lastly, there is the need for more institutional consultations for a better understanding of policy guidelines that clarify and reconcile the roles, relationships, and responsibilities of the MOSW and the Ministry of Gender and Children's Affairs as they coordinate their activities in the operations of the NRM.

CONCLUSION

This new Act is the start of a new phase in the fight against human trafficking in Sierra Leone. It speaks to the commitment of Sierra Leone's government to act, respond, engaged, support, and build partnerships across sectors and institutions (local, national, and transnational) to reduce risk factors for human trafficking and migrant smuggling in all its forms. Moving beyond the passage of this new legal framework is the hard task of implementing every component stated in the Act to realise real change in perception, understanding, and local communities' response to the fight against human trafficking in the country. The new Act provides the legal tool for action, but it needs to be executed through top-down and bottom-up approaches that should be engineered by all ATIP partners across the country. At the community level, Bi-Laws can be instituted within local government structures; whilst district ATIP task forces have the responsibility to undertake extensive community outreach as a tool for prevention. Therefore, the Act provides new opportunities for sustained engagement between government agencies, ATIP stakeholders, law enforcement agencies, etc for action towards prosecution, protection, and prevention of crimes related to human trafficking and migrant smuggling in Sierra Leone.

