

Thematic Report: Access to Justice¹



I. Introduction

Overview

States are ultimately responsible for investigating TIP, apprehending traffickers and smugglers, and prosecuting them rigorously and successfully. In order for this to occur, justice systems must function effectively and fairly, to ensure that no malfeasance occurs during the prosecutorial process. However, states are also responsible for ensuring that the rights of victims are adequately protected, particularly in countries where TIP victims may run the risk of prosecution for crimes they engaged in during the course of their victimization. A strong justice system that both effectively addresses the prosecution of perpetrators and the protection of victims is thus important to reducing TIP risks within a country.

This Report first discusses the extent to which the countries guarantee access to justice. In particular, it addresses whether access to justice is limited on the basis of individuals' personal status, and whether access to legal aid is available for those who cannot afford the services of a lawyer. It should be noted that while access to legal aid is authorized in many of the countries listed in this Report, there may be barriers related to finance that prevent legal aid from being universally available.

Part III discusses the extent to which criminal laws and procedures help to address TIP. They may do so by allowing victims to bring prosecutions where the state declines to do so, by guaranteeing victims a right to participate in criminal proceedings, or by immunizing victims from prosecution for crimes committed during the course of their victimization. This Part also discusses the extent to which criminal justice institutions have specialized bodies that deal with TIP or gender- or youth-based crimes, which may help to ensure that victims are adequately supported during criminal justice proceedings.

Finally, Part IV discusses the extent to which the justice system encourages international cooperation in combatting TIP. It discusses whether the countries render TIP or TIP-related crimes extraditable offenses, and where possible it discusses whether the country has entered into mutual legal assistance schemes that may help them to combat TIP more effectively.

The statements and analysis contained herein are the work of the American Bar Association's Rule of Law Initiative (ABA ROLI). They address, by and large, the *de jure* legal framework in Eritrea, Ethiopia, Ghana, Lesotho, Malawi, Namibia, Uganda, and Zambia. This Report is based primarily on desk review of freely and publicly-available laws and reports, supplemented in portions by the knowledge of ABA ROLI's local affiliates. Please note that the materials discussed in this Report

¹ The statements and analysis contained within this report are the work of the American Bar Association Rule of Law Initiative, which is solely responsible for its content. The views expressed herein should not be construed as representing the policy of the ABA. This report was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State.

capture only the legislative and policy framework of the relevant countries; *de facto* implementation of these laws may be at issue in some, if not all, of these states.

II. Access to Justice

Equality and Non-Discrimination Provisions

Eritrea

Eritrea does not appear to restrict access to the courts on the basis of gender or minority group membership; the Constitution of 1997 (Ratified Constitution) provides that all persons are equal under the law, and that discrimination may not occur on the basis of “race, ethnic origin, language, colour, gender, religion, disability, age, political view, or social or economic status or any other improper factors.”² However, whether foreigners are entitled to the same treatment is unclear; for example, non-citizens require special Presidential permission to acquire land rights,³ and there may be other restrictions of which ABA ROLI is currently unaware.

However, ABA ROLI has not identified any legislation specifically granting or restricting access to the courts by stateless persons.

Ethiopia

The Constitution of Ethiopia guarantees that all individuals shall be equal before the law, and that all are entitled to the equal protection of the law.⁴ Discrimination may not occur on the basis of “race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth, or other status.”⁵

Ghana

Ghana does not appear to restrict marginalized groups’ legal standing or access to justice institutions. The Constitution of Ghana recognizes that all persons are equal before the law, and discrimination on the basis of gender, race, color, ethnic origin, religion, creed, or social or economic status is prohibited.⁶ Further, it enables a person whose fundamental human rights and freedoms have been, are being, or are likely to be contravened to apply to the High Court for redress.⁷

Victims’ rights to pursue civil claims against traffickers are not contingent upon the existence of criminal charges.⁸

² Constitution of Eritrea (1997), arts. 14(1)-(2), *available at* <http://confinder.richmond.edu/admin/docs/Eritrea1997English.pdf> (last visited July 22, 2017).

³ *Id.* at art. 8.

⁴ A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, no. 1 of 1995, art. 25, *available at* https://www.constituteproject.org/constitution/Ethiopia_1994.pdf?lang=en (last visited July 21, 2017) [hereinafter ETHIOPIA CONST.].

⁵ *Id.*

⁶ GHANA CONST. art 17(1).

⁷ *Id.*, art. 33.

⁸ Human Trafficking Act 694 of 2005 (as amended 2009) § 39 (Ghana), *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/human+trafficking+act.pdf> (last visited July 17, 2017) [hereinafter HTA].

Lesotho

The Constitution of Lesotho provides that all people, regardless of race, religion, sex, color, language, political or other opinion, national or social origin, birth or other status are entitled to equal justice under the law.⁹

Malawi

Malawi does not restrict legal standing or access to justice institutions for women, minorities, foreign citizens, stateless persons, or other marginalized groups.¹⁰

Namibia

The Constitution of Namibia provides that all persons shall be equal before the law, and that discrimination may not occur on the grounds of sex, race, color, ethnic origin, religion, creed, or social or economic status.¹¹

ABA ROLI researchers did not identify any other laws restricting legal standing for women, minorities, foreign citizens, or stateless persons.

Uganda

The Constitution guarantees equal protection to all persons regardless of gender or minority status;¹² there appears to be no express bar on access to the courts.¹³

In particular, the Constitution expressly recognizes that “[w]omen shall be accorded full and equal dignity of the person with men,” and “women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.”¹⁴ Similarly, the Constitution provides that “[n]o child shall be deprived by any person of medical treatment,

⁹ Lesotho, Constitution of 1993, §§ 4, 19, *available at*

https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017) [hereinafter LESOTHO CONST.].

¹⁰ Constitution of Malawi, 1994, *available at*

https://www.constituteproject.org/constitution/Malawi_1999.pdf (last visited July 23, 2017) [hereinafter MALAWI CONST.]; Gender Equality Act of 2013, *available at*

<http://srsg.violenceagainstchildren.org/sites/default/files/2016/malawi/Malawi%20Gender%20Equality%20Act%202013.pdf> (last visited July 23, 2017); JOINT CEDAW MALAWI CIVIL SOCIETY ORGANIZATIONS SHADOW REPORT 2015, *available at*

tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MWI/INT_CEDAW_NGO_MWI_21948_E.pdf

(last visited July 23, 2017); OSISA, MALAWI: JUSTICE SECTOR AND RULE OF LAW 18-24, 131-150 (2006), *available at* www.opensocietyfoundations.org/sites/default/files/malawi_20060912.pdf (last visited July 23, 2017).

¹¹ Namibia, Constitution of 1990, art. 10, *available at*

https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en (last visited July 31, 2017) [hereinafter NAMIBIA CONST.].

¹² UGANDA CONST., art. 21(1), *available at*

https://www.constituteproject.org/constitution/Uganda_2005.pdf?lang=en Constitution (last visited July 19, 2017) [hereinafter UGANDA CONST.] (“All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”).

¹³ *Id.* at art. 127.

¹⁴ *Id.* at arts. 33(1), (5).

education or any other social or economic benefit by reason of religious or other beliefs.”¹⁵

The existence of criminal proceedings does not undermine a victim’s right to pursue civil cases against their abusers; if victims do choose to pursue such claims, the Prevention of Trafficking in Persons Act (PTIP Act) permits the waiver of civil filing fees.¹⁶

Zambia

Every person in Zambia is entitled to a number of fundamental rights, without regard to their race, place of origin, political opinion, color, creed, sex or marital status.¹⁷ It does not appear that Zambia restricts legal standing or access to justice on any other basis.

Access to Legal Aid

Eritrea

Eritrea provides some protections for indigent persons. Court fees can be waived upon a showing of indigent status.¹⁸ Indigent criminal defendants who are charged with serious offenses, under the age of 18, or otherwise mentally or physically incapable of mounting their own defense have a right to free counsel,¹⁹ though civil and administrative claimants and defendants do not.

Ethiopia

Ethiopia does not restrict legal standing or access to justice institutions for women, minority groups, foreign citizens, or stateless persons. Additionally, the law in Ethiopia provides subsidies for persons who do not possess sufficient means to pay all or part of a prescribed court fee.²⁰ Such assistance can be obtained in both criminal and civil cases.

Ghana

At least as written, the Legal Aid Scheme of Ghana creates a right to counsel for those who earn the government minimum wage or less and desire legal representation in criminal and certain civil matters.²¹ Persons who are party to constitutional claims also have the right to legal

¹⁵ *Id.* at art. 34(3).

¹⁶ The Prevention of Trafficking in Persons Act of 2009, §§ 12(4)-(5) (Uganda), *available at* <https://www.ulii.org/ug/legislation/act/2015/7> (last visited July 19, 2017) [hereinafter PTIP Act].

¹⁷ Zambia Constitution of 1991, art. 11, *available at* https://www.constituteproject.org/constitution/Zambia_2009.pdf?lang=en (last visited Aug. 5, 2017).

¹⁸ Civil Procedure Code of the State of Eritrea, art. 282, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101052/121588/F882481615/ERI101052.pdf> (last visited July 22, 2017).

¹⁹ Criminal Procedure Code of the State of Eritrea, art. 27(1), *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101053/121589/F-308052584/ERI101053%20Eng.pdf> (last visited July 22, 2017) [hereinafter Criminal Procedure Code].

²⁰ The Criminal Procedure Code Proclamation, Proclamation No. 185 of 1961, § 467 (Ethiopia), *available at* <http://ilo.org/dyn/natlex/docs/ELECTRONIC/82480/90332/F700418419/ETH82480.pdf> (last visited July 21, 2017) [hereinafter Criminal Procedure Code].

²¹ Legal Aid Scheme Act 542 of 1997 § 2 (Ghana), *available at* <http://www.legalaidghana.org/web/index.php/about-us/legal-aid-scheme-act-1997> (last visited July 17,

representation.²² However, unless the applicant is indicted for an offense punishable by death or life imprisonment, they must submit an application to the Selection Committee, and their ability to gain access to counsel is subject to the decision of the Committee. This process may involve the payment of certain fees.²³

Lesotho

The Lesotho Constitution does not provide for legal aid for indigent parties.²⁴ However, a legal aid board was established in 1978; since then, Lesotho does offer legal aid in both civil and criminal matters.²⁵ In addition, the Federation of Women Lawyers and Women and Law in Southern Africa Trust provide legal aid to indigent women in cases related to gender equality and non-discrimination, including cases related to domestic violence, child maintenance, divorce and property belonging to divorced and/or widowed wives as well as orphaned and vulnerable children.²⁶ Finally, the Faculty of Law of the National University of Lesotho has also established a Legal Aid Clinic that provides professional legal services to the indigent parties while developing future legal aid and civil rights lawyers.²⁷

Malawi

The Legal Aid Act establishes a Legal Aid Bureau, which represents indigent and vulnerable persons in legal proceedings.²⁸

The Legal Aid act entitles individuals to the assistance of counsel in criminal matters provided that it is “in the interests of justice that such [a] person should have legal aid . . . and he has insufficient means to enable him to obtain the services of a private legal practitioner.”²⁹ The “interests of justice” requirement appears statutorily to require a review of a number of factors, including: (1) whether the individual faces a deprivation of liberty, loss of livelihood, or serious reputational loss as a result of conviction; (2) whether the case involves the consideration of a substantial question of law, and the provision of adequate counsel would make a material difference to whether the accused receives a fair trial; (3) whether the accused lacks sufficient knowledge of English, or otherwise has a physical or mental disability (or any other cause) that would inhibit their understanding of the proceedings; (4) whether the nature of the defense involves witness interviews or expert cross-examination; (5) whether it is in the interests of another that an accused obtain counsel; and (6) whether the accused, if convicted, would be unable to pay a fine for longer than a month after the imposition of sentence.³⁰ This determination must be made by a “competent authority.”³¹

2017).

²² *Id.*

²³ *Id.* at §§ 24-25.

²⁴ LESOTHO CONST., *supra* note 9, at § 12(13).

²⁵ See Itumeleng Shale, *UPDATE: The Law and Legal Research in Lesotho*, § 35, GlobaLex (Nov./Dec. 2014), <http://www.nyulawglobal.org/globalex/Lesotho1.html> (last visited Aug. 2, 2017).

²⁶ *See id.* at § 36.

²⁷ *See generally id.*

²⁸ Legal Aid Bill No. 28 of 2010, arts. 3-6 (Malawi), *available at* https://namati.org/wp-content/uploads/2013/01/Malawi-2010_Legal-Aid-Act.pdf (last visited July 23, 2017).

²⁹ *Id.* at art. 18(1).

³⁰ *Id.* at art. 18(2).

³¹ *Id.* at art. 18(1)(b).

The Legal Aid Act also gives individuals to civil legal aid on the basis of an application to the Legal Aid Bureau.³² Assistance may be provided, subject to the discretion of the Director of the Bureau, provided that applicants have reasonable grounds to institute or defend the matter, and lack sufficient means to obtain the services of private counsel.³³ Civil legal aid will not be available for a number of causes of action listed in the First Schedule of the Act;³⁴ however, ABA ROLI has not been able to obtain a copy of the First Schedule for review.

Namibia

ABA ROLI researchers did not identify any laws on legal aid for indigent persons.

The United Nations Human Right Committee cited concern that access to free legal aid in Namibia is limited to persons with a monthly income below the low amount of N\$2,000, and that legal aid provision has been further impeded due to budgetary constraints.³⁵

Uganda

The Constitution only guarantees state-provided legal counsel where a person is charged with a death penalty-eligible offense.³⁶ The state has no other legal aid laws or policies, and there is “no national legal aid body to manage legal aid service provision.”³⁷ Access to justice is further limited by a lack of access to lawyers, particularly in rural areas of the country.³⁸

With limited state-provided services, the majority of legal aid is provided and funded by non-state organizations,³⁹ including the Legal Aid Project, which was established in 1992 by the Uganda Law Society.⁴⁰

Zambia

Access to legal aid in Zambia is governed by the Legal Aid Act.⁴¹ The Act establishes a legal aid

³² *Id.* at art. 20.

³³ *Id.* at art. 20.

³⁴ *Id.* at art. 19(2).

³⁵ United Nations Human Rights Committee, Concluding Observations on the Second Report of Namibia § 31, U.N. Doc. CCPR/C/NAM/CO/2, *available at* http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NAM&Lang=EN (navigate to Reporting Cycle II, then Concluding Observations, to download a copy of the document) (last visited July 31, 2017).

³⁶ UGANDA CONST., *supra* note 12, at art. 28(3)(e).

³⁷ National Legal Aid Policy Draft 6 (Final) – 4 (June 2012), <http://www.laspnet.org> (follow “Resources” hyperlink; then follow “Policy Documents” hyperlink; then follow “National Policies” hyperlink; then follow “Draft national legal aid policy draft 6” hyperlink).

³⁸ *Id.*

³⁹ LEGAL AID PROJECT OF THE UGANDA LAW SOCIETY, ANNUAL REPORT 35 (2016), https://www.uls.or.ug/site/assets/files/1205/lap_annual_report-2016.pdf (last visited July 19, 2017).

⁴⁰ *Id.* at 8.

⁴¹ Legal Aid Act, No. 30 of 1967 (*as amended, 1972*) (Zambia), *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/Legal%20Aid%20Act.pdf> (last visited Aug. 5, 2017).

board, and is mandated with providing both criminal and legal services to indigent persons.⁴²

⁴² *See About Us*, LEGAL AID BOARD, <http://www.legalaidboard.org.zm/> (last visited Aug. 5, 2017).
ABA Rule of Law Initiative

III. Criminal Law and Procedure

Eritrea

All crimes are investigated and prosecuted by the Eritrean Police Force and the Attorney General, which maintain special units to address organized crime and sexual/gender-based violence. There is no avenue for private prosecution; only the state may bring criminal charges.⁴³

Ethiopia

Ethiopia has several criminal justice institutions with procedures designed to assist TIP victims. The Federal Ethics and Anti-Corruption Commission (FEACC) delegates to federal and regional investigatory bodies, prosecution offices, and regional anti-corruption institutions the authority to investigate, prosecute, and punish corruption-related crimes.⁴⁴ The police, the public prosecutor, and specialized agencies like FEACC have investigatory powers in these areas.⁴⁵

Ethiopia also has specialized units within its criminal justice system that deal with transnational crime,⁴⁶ financial crime,⁴⁷ sexual or gender-based violence,⁴⁸ and crimes against children and other special victims.⁴⁹ Ethiopia also allows for private prosecution, in certain circumstances, if the responsible government institution declines to prosecute a crime.⁵⁰

Criminal and civil cases are heard, in the first instance, by federal or regional courts and subsequently by the High Court and Supreme Court.⁵¹ Administrative cases are heard by administrative tribunals.⁵² The law in Ethiopia does not provide for trial by jury in criminal cases, but criminal defendants and the prosecutors each have the right to an appeal.⁵³

⁴³ Criminal Procedure Code, *supra* note 19, at art. 86.

⁴⁴ See generally THE FEDERAL ETHICS AND ANTI-CORRUPTION COMMISSION OF ETHIOPIA, <http://www.feac.gov.et/index.php> (last visited July 21, 2017).

⁴⁵ *Id.*; see also Revised Proclamation for the Establishment of the Federal Ethics and Anti-Corruption, Proclamation No. 433 of 2005, available at <https://acauthorities.org/sites/aca/files/countrydoc/Proclamation%20No%20433-2005.pdf> (last visited July 21, 2017).

⁴⁶ *Ethiopia Federal Police*, INTERPOL, <https://www.interpol.int/Member-countries/Africa/Ethiopia> (last visited July 21, 2017).

⁴⁷ A Proclamation on Prevention and Suppression of Money Laundering and Financing of Terrorism, Proclamation No. 780 of 2013, available at <http://www.ethcriminalawnetwork.com/system/files/Prevention%20and%20suppression%20of%20Money%20Laundering%20and%20Financing%20of%20Terrorism%20Proclamation-%202013.pdf> (last visited July 21, 2017).

⁴⁸ *Women and Children Coordination Office*, FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, MINISTRY OF JUSTICE, <http://www.moj.gov.et/MinistryOfJustice/CommonPage.aspx?Id=24> (last visited July 21, 2017).

⁴⁹ *Id.*

⁵⁰ Criminal Procedure Code, *supra* note 20, at § 44.

⁵¹ Federal Courts Proclamation, Proclamation No. 25 of 1996, available at <http://www.asu.edu.et/negarit/Gazeta-1988/Proclamation%20No.%2025-1996.pdf> (ast visited July 21, 2017).

⁵² Abate Ayana, *The Law and Practice of Administrative Courts in Ethiopia: The Case of Addis Ababa City Administrative Tribunal*, OALIB (2011), available at <http://www.jourlib.org/paper/2569828#.V6TIxvmAOk> (last visited July 21, 2017).

⁵³ ETHIOPIA CONST., *supra* note 4, at art. 20(6).

With respect to criminal jurisdiction, in accordance with Article 19(1), the Criminal Code applies where: (1) the complaint is a condition for prosecution under the law of the place of commission of the crime or under Ethiopian law; (2) the criminal is within the territory of Ethiopia and has not been extradited; or (3) extradition to Ethiopia was obtained by reason of the crime committed or the crime was not legally pardoned in the country of commission and that prosecution is not barred either under the law of the country where the crime was committed or under Ethiopian law.⁵⁴

Furthermore, trafficking in arms is illegal, with violators facing fines and imprisonment for up to ten years.⁵⁵ The cross-border transportation of poisonous, narcotic, or psychotropic drugs or plants is also criminalized in Ethiopia.⁵⁶ Drug traffickers face imprisonment for at least five years and fines of up to 100,000 Ethiopian birr.⁵⁷

Ghana

ABA ROLI was unable to locate the Ghanaian judiciary, prosecutorial services, police, armed/security forces, intelligence agencies, and border control agencies' standard operating procedures (SOPs); thus, it is unable to confirm whether any of these documents contain anti-TIP provisions or guidelines.

Under the HTA, any government agency may rescue a victim,⁵⁸ and TIP cases may be filed with the GPS or other security services.⁵⁹ As noted in Section III above, the GIS' Border Patrol Unit and the GPS' AHTU have specific anti-TIP responsibilities. The HTA lays out complaint and arrest procedures, and provides that private individuals may also conduct warrantless arrests of perpetrators under certain circumstances.⁶⁰ However, in such circumstances perpetrators must immediately be transferred to police custody.⁶¹

Lesotho

The Child and Gender Protection Unit within the Lesotho Mounted Police Service is one criminal justice institution that has a mandate that encompasses TIP. This unit deals mainly with protection of children, women, and men who have suffered from gender-based violence by investigating and prosecuting cases, as well as sensitizing the communities on issues of gender based violence.⁶² A second institution is the Financial Intelligence Unit, which is a national agency charged with receiving, requesting, analyzing and disseminating to law enforcement authorities financial information concerning suspected proceeds of crime and alleged money laundering.⁶³

⁵⁴ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414 of 2004, § 19(1), available at <http://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf> (last visited July 21, 2017) [hereinafter Criminal Code].

⁵⁵ *Id.* at § 481.

⁵⁶ *Id.* at § 525.

⁵⁷ *Id.* at § 525.

⁵⁸ HTA, *supra* note 8, at § 14.

⁵⁹ *Id.* at § 9.

⁶⁰ *Id.* at § 13.

⁶¹ *Id.*

⁶² MAMOSEBI PHOLO, LESOTHO: JUSTICE SECTOR AND THE RULE OF LAW 95 (Mar. 2013), available at http://www.osisa.org/sites/default/files/afriamap_lesotho_justice.pdf (last visited Aug. 2, 2017).

⁶³ See *Financial Intelligence Unit*, KINGDOM OF LESOTHO, <http://www.fiu.org.ls/home/> (last visited Aug. 3, 2017).

Responsibility for the prosecution of cases on behalf of the state lies with the Office of the Director of Public Prosecutions (DPP).⁶⁴ The DPP manages prosecutions at every level of the court system, including the magistrates' and local courts; as a result, it is authorized to delegate the task of prosecution to 'public prosecutors'. Prosecutions need not necessarily be conducted by those who hold law degrees; it is sufficient to hold a Diploma in Law for cases in the magistrates' courts, and in local and central courts it is sufficient to have a matriculation certificate as a lay person.⁶⁵ Lesotho does not appear to confer a right to private prosecution.

ABA ROLI has not identified any publicly-available standard operating procedures (SOPs) for these institutions.

Malawi

There are no binding professional codes of conduct or standard operating procedures for Malawi's judiciary or its prosecutorial services.⁶⁶ While there is a code of conduct for the police force, it does not address TIP.⁶⁷ ABA ROLI was unable to identify any codes of conduct for Malawi's border control agency, customs agency, citizenship and immigration agency, customs agency, armed forces, or foreign service.

Generally, the Malawi Police Service has the authority to receive information related to crime, investigate crime, and arrest perpetrators.⁶⁸ The Directorate of Public Prosecutions is responsible for prosecuting crimes.⁶⁹ However, authority for both of these functions is vested in the Anti-Corruption Bureau for offences under the Corrupt Practices Act.⁷⁰

Malawi does not have specialized units within its criminal justice system for sexual and/or gender based violence or crimes against children. However, Victim Support Units and Community Victim Support Units have been established throughout Malawi. The aim of these units is "to assist victims who have suffered harm requiring special care and attention to restore their normal being, including cases that require victims to be assisted in private in order to respect their dignity."⁷¹

⁶⁴ LESOTHO CONST., *supra* note 9, at § 141.

⁶⁵ PHOLO, *supra* note 62, at 85.

⁶⁶ INT'L BAR ASS'N, RULE OF LAW IN MALAWI: THE ROAD TO RECOVERY 40-42 (2012), *available at* http://www.osisa.org/sites/default/files/malawi_report_august_2012.pdf (last visited July 23, 2017) [hereinafter IBA, RULE OF LAW IN MALAWI]; *see also* RACHEL ELLET, POLITICS OF JUDICIAL INDEPENDENCE IN MALAWI, *available at* https://freedomhouse.org/sites/default/files/inline_images/Politics%20of%20Judicial%20Independence%20in%20Malawi_1.pdf (last visited July 23, 2017).

⁶⁷ See Malawi Police Act No. 12 of 2012, at Schedule 2 [hereinafter Police Act].

⁶⁸ Criminal Procedure and Evidence Code of 1968, arts. 20, 33, 38 (Malawi), *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90376/104138/F-2103641943/MWI90376.pdf> (last visited July 23, 2017) [hereinafter Criminal Procedure Code]; Police Act, *supra* note 67, at art. 4(1)(a).

⁶⁹ MALAWI CONST., *supra* note 10, at art. 99; Criminal Procedure Code, *supra* note 68, at art. 76; Police Act, *supra* note 67, at art. 4(1)(b); IBA, RULE OF LAW IN MALAWI, *supra* note 66, at 22-26.

⁷⁰ Corrupt Practices Act of 1996, Ch. 7:04, art. 10(1)(f), *available at* https://www.malawilii.org/mw/consolidatedlegislation/704/corrupt_practices_act_pdf_90548.pdf (last visited July 23, 2017).

⁷¹ OSISA, *supra* note *supra* note 10, at 116-117; Sellah Singini-Mana, *Mangochi get victim support units funded by UNICEF*, NYASA TIMES (May 7, 2016), <http://www.nyasatimes.com/mangochi-get-victim-support-units-funded-by-unicef/> (last visited July 23, 2017).

Malawi law does allow for private prosecution if the responsible government institution declines to prosecute a particular crime.⁷²

Namibia

ABA ROLI has not identified whether Namibia has TIP-specific court, investigative, or prosecutorial units, nor has it identified any publicly-available standard operating procedures (SOPs) for similar units.

With respect to investigative units, the Namibian Police Force (NamPol) does have Serious Crime Investigations Units, Women and Child Protection Units, and Gender Based Violence Protection Units, all of whose mandates may cover TIP investigations.⁷³

With respect to court systems, it does appear that some Namibian courts have taken efforts to become more victim-friendly. According to the U.S. Department of State Human Rights Report of 2016, some magistrate courts have provided special courtrooms with a cubicle constructed of one-way glass, as well as child-friendly waiting rooms, to protect vulnerable witnesses from having to testify in open court.⁷⁴

Uganda

Although COCTIP has been charged with developing standard operating procedures (SOPs) for various entities, and while it is reported that a reference guide has been created,⁷⁵ ABA ROLI has been unable to locate a publicly-available copy of this document. As such, it is unable to confirm whether the general SOPs for the Counter Human Trafficking National Task Force provide direction and guidance to the Ugandan judiciary, prosecutorial services, police, armed/security forces, intelligence agencies, or border control agencies.

As noted, the Ministry of Internal Affairs and the Ministry of Justice and Constitutional Affairs are generally charged with the enforcement of Ugandan criminal law.⁷⁶ However, it does not appear that either of these institutions, or the Ugandan Police Force (UPF), contain divisions that are specifically designed to address TIP-related matters.

⁷² Criminal Procedure Code, *supra* note 68, at art. 82(2).

⁷³ See *Namibian Police Force*, THE REPUBLIC OF NAMIBIA, <http://www.nampol.gov.na/crime-investigations> (last visited July 31, 2017); UNICEF ANNUAL REPORT: NAMIBIA (2016) 50, *available at* https://www.unicef.org/about/annualreport/files/Namibia_2016_COAR.pdf (last visited July 31, 2017).

⁷⁴ U.S. DEP'T OF STATE, NAMIBIA 2016 HUMAN RIGHTS REPORT 13, <https://www.state.gov/documents/organization/265496.pdf> (last visited July 31, 2017).

⁷⁵ COORDINATION OFFICE TO COMBAT TRAFFICKING IN PERSONS (COCTIP), ANNUAL REPORT ON THE TREND OF TRAFFICKING IN PERSONS IN UGANDA: 2013 § 6 (2014), *available at* [http://www.upf.go.ug/download/publications\(2\)/tip_annual_report_final.pdf](http://www.upf.go.ug/download/publications(2)/tip_annual_report_final.pdf) (last visited July 19, 2017) [hereinafter COCTIP, ANNUAL REPORT: 2013].

⁷⁶ U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFF., 2015 FINDINGS OF THE WORST FORMS OF CHILD LABOR: UGANDA 1052, *available at* <https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA.pdf> (last visited July 19, 2017).

The Uganda Criminal Procedure Code Act lays out the rules and standards that govern complaint, arrest, trial, and appeal procedures.⁷⁷ This law does not appear to have any TIP-specific references, and the PTIP Act does not expand upon the Criminal Procedure Code Act to create any special arrest or detention procedures in TIP cases. The PTIP Act does provide that trafficking victims are entitled to remain informed about and present their views during trafficking proceedings, and also mandates that in-court TIP proceedings in cases involving children, sexual exploitation, and “other cases where the court considers this appropriate” proceed *in camera*.⁷⁸

Both the Prevention of Trafficking in Persons Act (PTIP Act) and the Children (Amendment) Act impose duties towards victims on officials who encounter TIP and TIP-related offenses. Under the PTIP Act, individuals who apply victim protection measures in unequal or nondiscriminatory ways may be punished by a fine of five hundred currency points or six months’ imprisonment.⁷⁹ ABA ROLI has been unable to confirm whether Ugandan security forces or employees of the DPP are protected by qualified immunity laws; in the absence of such provisions, it would appear that the discriminatory application of victim protection measures would subject such law enforcement agents, in theory, to the penalties provided in the PTIP Act.

The PTIP Act further provides that “public officers and any other person involved in the detection, investigation, prosecution or trial of offences under this Act shall[,] whenever necessary, refer victims to appropriate organizations and institutions for assistance and support,” and that trafficking victims are to be provided with information about support services.⁸⁰ Similarly, the Children (Amendment) Act requires that a police officer, or any other person who receives a report about child trafficking, must at minimum: (i) pursue measures to ensure the child’s safety and well-being; (ii) assess the report; (iii) conduct an investigation, unless the report is “frivolous or obviously unfounded,” and (iv) initiate child protection proceedings under the authority of the Children’s Act.⁸¹

Zambia

Zambia has several criminal justice institutions that carry TIP-related mandates, including the police, the prosecutorial services, and the border control agency; however, ABA ROLI has not been able to locate standard operating procedures (SOPs) for these agencies and thus cannot confirm whether any of these documents contain anti-TIP provisions or guidelines.

The Zambia Police Force (ZPF) appears to have both a Gender unit and a Victim Support Unit, both of which may carry mandates to intervene in TIP-related matters.⁸² The U.S. Department of State reports that the National Police Academy conducts trainings on the Anti-Human Trafficking Act (AHTA), which include both case investigation techniques and procedures for the identification and

⁷⁷ COCTIP, ANNUAL REPORT: 2013, *supra* note 75, at § 11.

⁷⁸ PTIP Act, *supra* note 16, at §§ 12(2)-(3), 13(1)-(2).

⁷⁹ *Id.* at § 8.

⁸⁰ *Id.* at §§ 12(8), (10).

⁸¹ The Children’s (Amendment) Act of 2016, § 42A(4), *available at* <https://www.ulii.org/ug/legislation/act/2016/2016/Children%20%28Amendment%29%20Act%202016.pdf> (last visited July 19, 2017).

⁸² *See Gender Unit*, ZAMBIA POLICE SERVICE, <http://www.zambiapolice.gov.zm/index.php/2012-11-23-08-17-17/directorates/administration/human-resource-management/registry> (last visited Aug. 5, 2017); *Zambia Police Victim Support Unit Responds*, ZAMBIA DAILY MAIL (Apr. 28, 2016), <https://www.daily-mail.co.zm/zambia-police-victim-support-unit-responds/> (last visited Aug. 5, 2017).

protection of victims.⁸³

Zambia's Directorate of Public Prosecutions (DPP) is responsible for making charging decisions and prosecuting TIP and TIP-related cases; this includes making decisions as to whether TIP victims should be prosecuted for offenses that directly result from their victimization.⁸⁴

At Zambian borders, officers of the ZPS, the Anti-Corruption Commission, the Drug Enforcement Commission, immigration officers, and Customs and Excise Officers are all authorized to question individuals who they reasonably believe may be involved in TIP.⁸⁵ They may also search any relevant ships, aircrafts, or conveyances that they reasonably suspect may carry or harbor traffickers or TIP-related effects, and are authorized to board such conveyances in order to do so.⁸⁶

⁸³ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 401, *available at* <https://www.state.gov/documents/organization/258882.pdf> (last visited Aug. 5, 2017).

⁸⁴ The Anti-Human Trafficking Act, No. 11 of 2008, art. 24 (Zambia), *available at* <http://ilo.org/dyn/natlex/docs/MONOGRAPH/79940/86184/F202769530/ZMB79940.pdf> (last visited Aug. 5, 2017) [hereinafter AHTA].

⁸⁵ *Id.* at arts. 70-71.

⁸⁶ *Id.* at arts. 73, 76.

IV. Extradition

Eritrea

ABA ROLI has been unable to identify the existence of mutual legal assistance treaties or agreements with other countries or regions.

Ethiopia

Ethiopia has laws to facilitate the extradition of criminals between Ethiopia and various other countries, although the laws do not specifically reference TIP.⁸⁷ Ethiopia may extradite individuals upon the request of another state, on the basis of either treaties or customary practices.⁸⁸

Ghana

The Extradition Act of 1960 governs extradition.⁸⁹ Ghana has bilateral extradition treaties with other states, such as the United Kingdom and the United States. Ghana is also party to the Economic Community of West African States (ECOWAS) and to its Convention on Extradition, which grants extradition “under certain circumstances in respect of offences punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a minimum period of two years.”⁹⁰

Lesotho

Lesotho has ratified the Southern Africa Development Community Protocol on Mutual Legal Assistance in Criminal Matters,⁹¹ which governs all extraditions.

ABA has not been able to determine whether Lesotho has passed more detailed extradition laws than this; nor has it been able to determine whether Lesotho has signed any other bilateral or multilateral extradition agreements.

⁸⁷ *Id.* at §§ 11-12, 16, 18-19, 21.

⁸⁸ *Id.* at § 21.

⁸⁹ Extradition Act 22 of 1960 (Ghana), *available at* [https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/EXTRADITION+ACT,+1960+\(Act+22\).pdf](https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/EXTRADITION+ACT,+1960+(Act+22).pdf) (last visited July 17, 2017).

⁹⁰ Convention on Extradition art. 3(1), Aug. 6, 1994, A/P.1/8/94, *available at* [http://documentation.ecowas.int/download/en/legal_documents/protocols/Convention%20on%20Extradition\(2\).pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/Convention%20on%20Extradition(2).pdf) (last visited July 17, 2017).

⁹¹ See Protocol on Mutual Legal Assistance in Criminal Matters, Southern Africa Development Community, Oct. 3, 2002, *available at* https://www.unodc.org/tldb/pdf/Lesotho/MLW_MLA_Protocol.pdf (last visited Aug. 3, 2017).

Malawi

Extradition in Malawi is governed by the Extradition Act.⁹² This law permits the government of Malawi to extradite individuals upon the request of another state,⁹³ provided that an extradition treaty exists between the two states.⁹⁴ The extradition law makes no reference to TIP as an extraditable offense.⁹⁵

Namibia

The Extradition Act of 1996 allows for the extradition of persons upon the request of another state. However, an extradition agreement must be in place for such extraditions to occur.⁹⁶

Uganda

Uganda does have an Extradition Act, which governs the general procedures surrounding extradition.⁹⁷ The PTIP Act also provides that TIP offenders may be subject to extradition.⁹⁸

Uganda has entered into a tripartite extradition treaty with Rwanda and the Democratic Republic of the Congo (DRC). While this extradition treaty primarily concerns “militia leaders [and] terrorists”, it may also cover the extradition of human traffickers.⁹⁹ Furthermore, to the extent that children are trafficked across borders between the three countries for the purposes of engaging in armed conflict, anti-TIP and laws against child labor may nonetheless be implicated by the treaty.

Uganda has no mutual legal assistance (MLA) law; however, as a member of the Commonwealth of Nations, it generally uses the Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth (the Harare Scheme).¹⁰⁰ ABA ROLI has not been able to confirm whether Uganda has used or relied on MLA to investigate, prosecute, or convict any TIP perpetrators.

Zambia

⁹² Extradition Act No. 9 of 1968 (as amended, 2000), *available at* https://www.malawilii.org/mw/legislation/num-act/1968/9/num_act_1968_9.pdf (last visited July 23, 2017).

⁹³ *Id.* at art. 4.

⁹⁴ *Id.* at art. 3.

⁹⁵ *Id.*

⁹⁶ Extradition Act, No. 11 of 1996, § 2, *available at* https://laws.parliament.na/cms_documents/extradition-2c1ab7b91f.pdf (last visited July 31, 2017).

⁹⁷ Extradition Act of 1964, *available at* <http://www.refworld.org/docid/3ae6b4d238.html> (last visited July 19, 2017).

⁹⁸ PTIP Act, *supra* note 16, at § 20.

⁹⁹ *Uganda, Rwanda, Congo Agree on Extradition Treaty*, RELIEFWEB (Aug. 26, 2005), <http://reliefweb.int/report/uganda/uganda-rwanda-congo-agree-extradition-treaty> (last visited July 19, 2017).

¹⁰⁰ Charles Richard Kaamuli, Head, Int’l Crimes Dep’t, Uganda Directorate of Public Prosecutions, Presentation on Strengthening Judicial Cooperation in the Great Lakes Region: National Frameworks in Light of ICGLR Protocol: ‘Uganda’s Procedure on Extradition and Mutual Legal Assistance’ (Apr. 19-20, 2016), *available at* <https://ungreatlakes.unmissions.org/sites/default/files/uganda.pdf> (last visited July 19, 2017); Scheme Relating to Mutual Assistance in Criminal Matters (1999), *available at* <http://ondcp.gov.ag/wp-content/uploads/2014/05/Harare-Scheme.pdf> (last visited July 19, 2017).

Zambia is not a party to any mutual legal assistance treaty; Zambia has negotiated but not yet signed a mutual legal assistance treaty with South Africa.¹⁰¹

Under the terms of the Extradition Act, Zambia will grant extradition for offenses that are punishable both under Zambian and the requesting country's laws with imprisonment of at least one year.¹⁰² The law does not make extradition conditional on the existence of a treaty.¹⁰³ The AHTA specifically provides that TIP and TIP-related offenses may give rise to extradition.¹⁰⁴

¹⁰¹ *Extradition and Mutual Legal Assistance in criminal matters treaties*, REPUBLIC OF SOUTH AFRICA DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT, <http://www.justice.gov.za/ilr/mla.html#sthash.2sL6RlP1.dpuf> (last visited Aug. 5, 2017).

¹⁰² Extradition Act, No. 8 of 1983, art. 4 (Zambia), available at <http://www.parliament.gov.zm/sites/default/files/documents/acts/Extradition%20Act.pdf> (last visited Aug. 5, 2017).

¹⁰³ *Id.*

¹⁰⁴ AHTA, *supra* note 84, at art. 95.