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Global Initiative to Fight Human Trafficking



Anti-human trafficking manual for criminal justice practitioners



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Introduction

The crime of trafficking in persons is clandestine and complex. Where the elements of the crime, as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol) are misunderstood, criminal justice responses may be inappropriate and ineffective. The crime thrives mostly underground and sometimes spans over several States' jurisdictions, making detection and enforcement difficult.

Beyond this, the multiple approaches to combating trafficking in persons are relatively new to criminal justice practice. Consequently, the criminal justice response to trafficking in persons can be slow, and place more emphasis on punishing its culprits than on protecting its victims. In some instances, this has led to mishandling of trafficking cases, with the victims of the crime being arrested and treated as criminals. Not only does this destroy the trust needed for effective collaboration in the investigation and prosecution of the offence, but it also revictimizes and stigmatizes victims in the process.

The Anti-Human Trafficking Manual for Criminal Justice Practitioners is offered in response to these various challenges. It aims to address capacity gaps of criminal justice practitioners working to prevent and combat trafficking in persons, protect and assist its victims, and effectively cooperate with others in doing so. The manual elaborates promising practices in every phase of criminal justice response to trafficking in persons, and stands as a practical guide and training tool for criminal justice practitioners.

The Anti-Human Trafficking Manual for Criminal Justice Practitioners is the product of broad-based expertise gathered in the course of a series of expert group meetings of judges, prosecutors and law enforcement officers who are practitioners in the field of human trafficking. Each of the modules in the Manual is designed to equip criminal justice practitioners to appropriately respond to the challenges of trafficking in persons. The promising practices offered in each module are intended to reveal the complexities of the subject matter, and enable practitioners to apply lessons learned by other practitioners to their own experiences in the field.

The modules address each phase of criminal justice response to trafficking in persons, from identification of victims through investigations and prosecutions of traffickers to the protection of victims. Each module is designed to stand alone in meeting the specific needs of the particular phase of criminal justice response it seeks to address. The manual should not be viewed as an academic treatise, but as a practical guide for criminal justice practitioners.

Overview of modules

Module 1: Definition of trafficking in persons and smuggling of migrants

The first module serves as a key to some of the terms used throughout the Manual. It defines terms within the ambit of United Nations instruments, particularly the United Nations Convention against Transnational Organized Crime and its supplementary Trafficking in Persons Protocol. There is emphasis within this module on the definition of trafficking in persons as offered by the Trafficking in Persons Protocol, the smuggling of migrants, as defined by the Migrants Protocol, and the key differences between the two.

Module 2: Indicators of trafficking in persons

This module outlines some of the basic tell-tale signs that may flag potential trafficking situations to first responders. Such signs are explained in this module as indicators that trafficking may have taken place (rather than proof that it has), which should trigger further inquiry. The module catalogues indicators for different types of trafficking situations to offer guidance for border police and other actors who may come into contact with victims of trafficking in persons.

Module 3: Psychological reaction of victims of trafficking in persons

This module primarily considers the impact of sexual abuse and exploitation on victims of trafficking in persons. It explores how the trafficking in persons process affects the physical and mental health of a victim. The module also explains how the impaired health of a victim may be detrimental to the investigation and prosecution of the crime of trafficking in persons and discusses appropriate criminal justice strategies to enable victims to cooperate with the criminal justice process. Finally, the module offers guidance on minimizing the psychological impact that investigations may have on victims of trafficking in persons.

Module 4: Control methods in trafficking in persons

This module explains the main forms of control used by traffickers, describes how a combination of control measures may be used throughout the trafficking process, and explores the options for responding to the main forms of control when investigating trafficking in persons cases.

Module 5: Risk assessment in trafficking in persons investigations

This module outlines the need for continuous risk assessment and the key questions to be considered when conducting risk assessments in trafficking in persons investigations. It explains the concept of risk and the persons likely to be at risk in the context of trafficking in persons. The module also describes what the risks are, how to determine the level and severity of risk, and actions to be considered in response to an identified risk.

Module 6: International cooperation in trafficking in persons cases

Given many trafficking in persons cases take place transnationally, international cooperation is necessary for the effective investigation of trafficking in persons. This module explains why international cooperation is required in trafficking cases, recalls the different forms and principles of international cooperation, discusses types of international cooperation beyond traditional forms of extradition and mutual legal assistance as defined by the UNTOC, and discusses the impact of different legal systems on international cooperation amongst States. The module further offers insight into the process of making formal requests for mutual legal assistance, the contents of the request letter, and considerations when making requests. The module also explores possibilities of “officer-to-officer” contact in making requests of another jurisdiction and the cooperative actions required when repatriating victims of trafficking in persons.

Module 7: Crime scene and physical evidence examinations in trafficking in persons investigations

This module explains the relevance of “crime scene” investigations in trafficking in persons offences. It describes the types of physical evidence most commonly encountered in trafficking in persons investigations and outlines basic actions required to preserve and document the crime scene and recover traces of physical evidence from it. The module also addresses key considerations and possible actions in trafficking in persons investigations when examining:

- Victims and suspects;
- Locations;
- Vehicles;
- Documents found at the scene, on victims or suspects and in vehicles;
- Information technology and communications equipment found at the scene, on victims or suspects and in vehicles.

Module 8: Interviewing victims of trafficking in persons who are potential witnesses

This module identifies the overall objective of all law enforcement interviews with victims of trafficking in persons who are potential witnesses. It identifies five stages of the “PEACE” model for interviewing crime victims:

- Planning and preparing for the interview;
- Engaging with the victim witness and explaining the process and content;
- Obtaining the Account of the victim-witness,
- Closing an interview appropriately;
- Evaluating the content of the interview.

The module catalogues the practical steps of planning such an interview and the elements required to engage with a trafficking in persons victim-witness in an evidential interview. The module also outlines special interview techniques and explains the differences between open, specific, closed and leading questions in the interview.

Module 9: Interviewing child victims of trafficking in persons

This module identifies a child as a person below the age of 18 as provided in the Trafficking in Persons Protocol. It establishes that the underlining principle guiding interviews of children must be conducted with the best interest of the child in mind. The module recognizes that children who are suspected victims of trafficking in persons may be more vulnerable than a suspected adult victim, and adapts each of the five stages of the PEACE Model for interviewing victims accordingly.

Module 10: Interpreters in trafficking in persons investigations

This module lists situations in which interpreters may be required in the course of investigations and explains why it is important to retain one throughout a trafficking in persons investigation. The module explains relevant considerations when planning interpreting services and actions required when preparing to conduct an interview. It also identifies the information that interpreters should and should not be privy to in the course of offering interpretation services.

Module 11: Victims' needs in criminal justice proceedings in trafficking in persons cases

The victimizing impact of the trafficking process must be recognized and addressed at every phase of criminal justice response. The Trafficking in Persons Protocol provides for support of and assistance to victims. This module details the requisite support and assistance at every phase of the criminal justice process and outlines the benefits of supporting and assisting victims not only for victims, but also for criminal justice objectives. The module also demonstrates the challenges of respecting victims' rights irrespective of their level of collaboration with the criminal justice system.

Module 12: Protections and assistance to victims-witnesses in trafficking in persons cases

This module defines and explains the concept of witness protection in general, the necessity for it and its limitations with respect to trafficking in persons cases. The module recognizes the vulnerability of victims-witness of trafficking in persons, and the risk that victims-witnesses are exposed to in the criminal justice process. The module elaborates the roles of various criminal justice practitioners at different phases of the criminal justice response and the measures to put in place to protect the victims-witnesses. The protection required for a victim-witness is recognized as potentially starting at the point of identification and continuing through investigation to prosecution and beyond.

Module 13: Compensation for victims of trafficking in persons

This module describes the international legal framework for compensation in trafficking in persons to be the United Nations Convention against Transnational Organized Crime and its supplementary Trafficking in Persons Protocol as implemented within the domestic legislations of the States parties. The module also underlines jurisdictional differences in the administering, funding, claiming and paying of compensation. It further explores the likely basis for compensation claims by victims and the different courts that may adjudicate compensation claims.

Module 14: Considerations in sentencing in trafficking in persons cases

This module explores theories of punishment, provides practical suggestions and explores the role of the judiciary in sentencing. It recalls the common aggravating as well as mitigating factors to be considered in sentencing traffickers and addresses ways in which information may be used to inform sentencing decisions in trafficking in persons cases.

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Glossary*

Active listening

Active listening means letting the person to whom you are speaking know that you have heard what she/he has said. This can be done by reflecting back to them what they have just communicated. For example, if they said, “I didn’t like it when he did that” you might say, “You didn’t like it.” It is important not to subconsciously or consciously indicate approval or disapproval of the information just given.

Actus reus

In criminal law terms the *actus reus*—the material or physical element(s)—and the *mens rea*—the mental element—are required for an accused to be found liable for a criminal offence in criminal systems around the world.

Actus reus refers to the physical component of a crime, the act of committing the crime.

Aut dedere aut judicare

Aut dedere aut judicare refers to a general principle in international law whereby States are obliged to prosecute or extradite perpetrators of universally condemnable crimes.

Change perspective

A technique used in interviewing, “changing perspective” means asking a person to imagine they are viewing a scene from a different position.

Changing the order of recall

Another interviewing technique. An example of changing the order of recall would be to ask a person to give an account from most distant to most recent event and then changing it from most recent to most distant.

Cognitive interviewing

Cognitive interviewing is based on good communication skills, as well as a number of procedures specifically designed to assist witnesses in accessing their memories: “mental context reinstatement (MCR)”, “changing the order of recall” and “changing perspective”.

* This glossary does not attempt to act as a legal dictionary and, while every endeavour has been made to ensure that the explanation for terms in this glossary are accurate, the definition of some legal terms may differ from jurisdiction to jurisdiction.

Communications monitoring

Communications monitoring means using various techniques to identify telephone numbers, email addresses etc used by traffickers in their communications.

Crime scene

A crime scene can be any physical scene, anywhere that may provide potential evidence to an investigator. It may include a person's body, any type of building, vehicles, open-air locations or objects found at a location. Crime scene examination refers to an examination where forensic or scientific techniques are used to preserve and gather physical evidence of a crime.

CROP (Covert Rural Surveillance)

Covert Rural Surveillance is a variation on static surveillance but is carried out by staff in the open air. Although the term uses the word "rural" it can take place in any open air location. Some forms and stages of trafficking, due to their location, will not be suited to CROP surveillance.

Culpability

Culpability refers to the degree to which an offender is to blame or is responsible for an offence. Culpability denotes that an offender has the intention to cause harm, the offender is reckless as to whether harm is caused and he/she has knowledge of the specific risks entailed by his/her actions.

Delict

Delict is a civil law concept in which a willful wrong or an act of negligence gives rise to a legal obligation between parties even though there has been no contract between the parties.

Disruptive investigations

Disruptive investigations may be used if, though it may not be possible to secure the evidence required to prosecute those involved in trafficking, opportunities may exist to disrupt the activities of individual traffickers or trafficking networks. Examples of tactics that can be used include prosecution for other offences, seizure of assets, confiscation of profits, or the creation of a hostile environment resulting in displacement of the traffickers.

Double jeopardy

Double jeopardy or *ne bis in idem* refers to the principle that a person should not be prosecuted more than once for the same criminal conduct. This applies even where a person has been acquitted of a charge relating to that conduct in another jurisdiction.

Electronic tracking/tagging

This technique is most commonly used to track the movement of vehicles and involves attaching a tracking device to the vehicle. It offers the advantages that it may be more cost effective and carry less risk to staff than mobile surveillance and may be used in very dangerous or surveillance-conscious situations.

Its main disadvantages are the limited information it can provide (it only reveals where a vehicle is, not what is happening in or around it), and its cost.

Foot surveillance

Foot surveillance involves following people on foot noting what they do, where they go and whom they speak to, how they communicate and what spending patterns they have. It generally requires specific information or intelligence to be effective. It is not likely to be the first technique deployed, but rather is usually used in conjunction with other techniques.

Harm

Harm to victims can take various forms. It includes physical injury, sexual violation, financial loss, damage to health, or psychological distress. Levels of harm can vary within each of these categories. Harm depends on the personal characteristics and circumstances of the victim as well as the nature of the case.

Informant

In this material, the term “informant” is given a very wide meaning and denotes any person who provides information to the police about a crime.

Intelligence

Intelligence, in the context of law enforcement, is information that has been through the intelligence process of collection, evaluation, collation, analysis and dissemination. The purpose of intelligence is to provide knowledge and understanding upon which operational decisions can be made.

Intelligence development

Intelligence can be developed for a number of reasons, including as part of a general initiative or through the receipt of a piece of information from a police officer, an informant or from an intelligence report outside the country.

Intrusive surveillance

Refers to any form of covert listening or viewing of activity in a situation that would normally be regarded as private. It can be deployed in premises of any kind, vehicles or locations in

the open air. It may involve live monitoring of what happens either with or without a recording device or can be a recording system that is only monitored when tapes etc. are accessed. Intrusive surveillance equipment may be part of a fixed installation at a location or in a vehicle, or may be carried by a person. It is a highly specialized technique requiring considerable technical expertise and planning.

Jurisdiction

In law, jurisdiction can be either territorial or legal. Territorial jurisdiction refers to areas where a given legal authority can be exercised, while legal jurisdiction refers to the extent of legal power, e.g. the power of a court to adjudicate over certain cases.

Memorandum of Understanding (MOU)

An MOU is an agreement between parties. Different rules may apply in trafficking in persons investigations in different agencies and in different jurisdictions. Therefore, where information is to be shared between jurisdictions, agencies or organisations it is strongly recommended that an MOU be established to define roles and responsibilities and how information will be exchanged and used.

Mens Rea

In criminal law terms both the *actus reus*—the material or physical element(s)—and the *mens rea*—the mental element – are required for an accused to be found liable for a criminal offence in criminal systems around the world.

Mens rea refers to the state of mind and intent of the person charged with an offence. Only those with a sufficiently “guilty mind”, that is, who acted with criminal intent or knowledge that their actions were wrong, can be found liable for a criminal offence. In certain jurisdictions and in certain cases, criminal liability may be imposed in “strict liability” offences even in the absence of *mens rea*.

Mental Context Reinstatement (MCR)

MCR is based on the theory that if you put someone back into the context where an event occurred, it will enhance the person’s memory of that event. People can be physically taken back to a scene, or asked to remember things about the scene. An example of MCR might be saying to them: “You are sitting in the room now. Describe what you are hearing”; perhaps followed by “You can hear music? Describe the music you are hearing”.

Mobile surveillance

Mobile surveillance is conducted using a vehicle. It allows for long-range surveillance and may be used to follow people on foot or other vehicles. It is limited when people are travelling where vehicles cannot go. It can be used as an alternative to a static vehicle for surveillance, which may be obvious. It is frequently combined with foot surveillance and static surveillance.

Mutatis Mutandis

The phrase *mutatis mutandis* is clarified in the interpretative notes (A/55/383/Add.1, para. 62) as meaning “with such modifications as circumstances require” or “with the necessary modifications”.

Non-governmental organization (NGO)

A non-governmental organization (NGO) is a not-for-profit, voluntary citizens' group, which is organized on a local, national or international level to address issues in support of the public good. Task-oriented and made up of people with common interests, NGOs perform a variety of services and humanitarian functions including, bringing citizens' concerns to governments, monitoring policy and programme implementation, and encouraging participation of civil society stakeholders at the community level.

Palermo Protocols

The Palermo Protocols are three protocols adopted by the United Nations in 2000 in Palermo, Italy, together with the Convention against Transnational Organised Crime.

The two Palermo Protocols referred to in this training material are the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children” and the “Protocol against the Smuggling of Migrants by Land, Sea and Air”.

PEACE

PEACE is an interview model used in a number of countries around the world that is applicable to interviewing suspects, witnesses, and victims. The PEACE acronym stands for: Planning and Preparation – Engage and Explain – Account – Closure – Evaluate.

Post-traumatic stress disorder (PTSD)

PTSD can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened. It is a severe and ongoing emotional reaction to an extreme psychological trauma, to a degree that usual psychological defenses are incapable of coping. The symptoms of PTSD usually develop within three months of a traumatic event, although they can take up to a year to appear. The symptoms can include intrusion (the event is constantly revisited in the victim's mind, including through flashbacks or nightmares), painful emotions, avoidance (avoiding symptoms by ‘self-medicating’ with alcohol or drugs, avoiding dealing with grief and anger), hyperarousal (insomnia, jumpiness, fear), depression and retreat from relationships, etc.

Proactive investigation

A proactive investigation is one that is started by the investigators on their own initiative, often as a result of intelligence obtained. In these cases a number of techniques and tactics can be used to build up evidence before moving to activities such as arrests of suspects and victim rescue.

Reactive investigation

A reactive investigation is one that is initiated when information that an offence has been committed is received unexpectedly and an immediate response is required, such as the rescue of a victim.

Risk assessment

Risk is the likelihood of a potential hazard becoming reality and the consequences if it does. Risk assessment is an attempt to decide how likely it is that a hazard will become reality.

Risk Rating Matrix

A Risk Rating Matrix is a table to illustrate different levels of risk. A commonly used method to assess levels of risk is to consider the severity of the risk and the likelihood of the risk occurring. Both severity and likelihood are ranked as high, medium or low. Each of the rankings is given a score (Low being 1, medium being 2 and high being 3). The overall risk rating is calculated by multiplying severity by likelihood.

Secondary victimization

Secondary victimisation occurs, not as a direct result of the criminal act, but through the response of institutions and individuals to the victim. The process of criminal investigation and trial may cause secondary victimisation because of difficulties in balancing the rights of the victim against the rights of the accused or the offender, or even because the perspective of the victim is entirely ignored.

Smuggling of Migrants

According to Article 3(a) of the “Protocol against the Smuggling of Migrants by Land, Sea and Air”, ‘smuggling of migrants’ means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Source

Used in some jurisdictions to describe an informant.

Specialist techniques

A specialist technique is one that may not be found in day-to-day policing. Generally covert, the targets of the technique should certainly not be aware of their use. These techniques intrude into areas of people’s lives that are normally regarded as private. Because of this their use is closely regulated in many jurisdictions.

Static observation points

Static observation points can be in premises, in vehicles or on the street. They may be staffed by observers or use automatic equipment such as video cameras. Observation points may be one of the first surveillance techniques used in an investigation where criminal activity is suspected but its exact nature or who is doing it is not known. However, they can also be used at any stage of an investigation.

Stockholm syndrome

Stockholm syndrome, also known as capture bonding, is a condition sometimes suffered by victims of trafficking in persons, where they come to associate themselves with their captors and exploiters regardless of the exploitative situation they may be subject to.

Surveillance

Surveillance is the monitoring or observation of behaviour during an investigation. It is generally undertaken at a distance either directly, such as by binoculars or postal interception, or by electronic means such as telephone tapping.

Tasking

Giving an informant a task to obtain specific information.

UN TOC

UN TOC refers to the United Nations Convention against Transnational Organized Crime. The Convention includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Air and Sea and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

Trafficking in Persons (TIP)

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, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at minimum, the exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Trauma

The essence of trauma is that it overwhelms the victim's psychological and biological coping mechanisms. This occurs when internal and external coping mechanisms are unable to deal with an external threat.

Undercover (UC) operations

Undercover operations may be used during police investigations of trafficking cases. Undercover operations are carried out by the police in secret and can range from a simple test purchasing visit to a location, to a large scale operation involving many UC agents. An undercover agent must disguise his/her own identity or use an assumed identity for the purposes of gaining the trust of an individual or organization to learn secret information or to gain the trust of targeted individuals in order to gain information or evidence.

Victim

The term “victim” has different definitions in different jurisdictions. In some jurisdictions a person is declared a “victim” after a judicial process. Official “victim” status in these cases brings a number of privileges and protections. In other jurisdictions, the term victim has a very general interpretation and no specific legal status.

Victim personal statements (VPS)

A victim personal statement differs from an evidential statement or written deposition of evidence in that it does not relate to the facts of the case, but instead to the impact the case has had on the victim.



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Anti-human trafficking manual for criminal justice practitioners

Module 1

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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Module 1:

Definitions of trafficking in persons and smuggling of migrants



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Module 1:

Definitions of trafficking in persons and smuggling of migrants

Objectives

On completing this module users will be able to:

- Recall the elements of trafficking in persons and smuggling of migrants as defined by the relevant United Nations protocols;
- Contrast the elements of the definitions of trafficking in persons and the smuggling of migrants;
- Explain the meaning of the elements “act, “means” and purpose” in trafficking in persons cases;
- Understand the issue of consent in a trafficking in persons case and how consent is vitiated;
- List some of the underlying offences to trafficking in persons;
- Recall factors on deciding the jurisdiction for prosecution of trafficking in persons cases.

Introduction

It is important to distinguish between trafficking in persons and smuggling of migrants for two reasons:

- The constituent elements of the respective offences are different; and
- The response required of your authorities will vary, depending on the offence.

The definitions for trafficking in persons and migrant smuggling are found in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol) respectively.

Trafficking Protocol, article 3(a)

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduc-

tion, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Smuggling Protocol, article 3(a)

“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Table 1. Definitions of trafficking in persons and smuggling of migrants

	<i>Trafficking in persons (adults)</i>	<i>Trafficking in persons (children)</i>	<i>Migrant smuggling</i>
Victim's age	Over 18	Below 18	Irrelevant
Mental element	Intention	Intention	Intention
Material element	<ul style="list-style-type: none"> • Act • Means • Exploitative purpose 	<ul style="list-style-type: none"> • Act • Exploitative purpose 	<ul style="list-style-type: none"> • Act: Procurement of illegal entry • Purpose: For financial or other material benefit
Consent of the trafficked or smuggled person	Irrelevant once the means are established	Irrelevant. Means do not need to be established	The smuggled person consents to the smuggling
Transnationality	Not required	Not required	Required
Involvement of an organized crime group	Not required	Not required	Not required

Trafficking in persons

Article 3 of the Trafficking Protocol clarifies that trafficking in persons has three constituent elements:

- (1) An act (what is done);
- (2) The means (how it is done); and
- (3) Exploitative purpose (why it is done).

Article 5 further requires countries to ensure that the conduct contained in article 3 is criminalized in their domestic legislation. It is important to remember that the definition contained in the Trafficking Protocol is meant to provide a level of consistency and consensus around the world on the phenomenon of trafficking in persons; domestic legislation, however,

need not follow the precise language of the Trafficking Protocol. Rather, domestic legislation should be adapted in accordance with domestic legal systems and give effect to the meaning and concepts contained in the Trafficking Protocol.

Examples of criminal legislation

Criminal Code of Canada

279.01: Every person who recruits, transports, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable:

- (a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or
- (b) to imprisonment for a term of not more than fourteen years in any other case.

279.04: For the purpose of the trafficking in persons offences, a person exploits another person if they:

Cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or

Cause them by means of deception or the use or threat of force or of any other form of coercion to have an organ or tissue removed

Criminal Code of Italy

600: (Placing or holding persons in conditions of slavery or servitude). – Whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way, shall be punished with imprisonment from eight to twenty years.

Placement or maintenance in a position of slavery occur when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question.

The aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in the first paragraph above are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”.

601: (*Trafficking in human beings*). – Whoever carries out trafficking in persons who are in the conditions referred to in article 600, that is, with a view to perpetrating the crimes referred to in the first paragraph of said article; or whoever leads any of the aforesaid persons through deceit or obliges such person by making use of violence, threats, or abuse of power; by taking advantage of a situation of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits to those who are responsible for the person in question, to enter the national territory, stay, leave it or migrate to said territory, shall be punished with imprisonment from eight to twenty years.

The aforesaid penalty becomes harsher, increasing by one third to 50 per cent, if the offences referred to in this present article are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”.

602: (Sale and purchase of slaves). – Whoever, in cases other than the ones referred to in article 601, purchases or sells or transfers any person who is in any of the conditions referred to in article 600, shall be punished with imprisonment from eight to twenty years.

The aforesaid penalty becomes harsher, increasing by one third to 50 per cent, if the offences referred to in this present article are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes”.

Elements of a case of human trafficking

The Trafficking Protocol requires that the crime of trafficking be defined through a combination of the three constituent elements and not the individual components, though in some cases these individual elements will constitute criminal offences independently. For example, the act of abduction or the non-consensual application of force (assault) will likely constitute separate criminal offences under domestic criminal legislation.

In criminal law terms, these three constituent elements can also be identified as the *actus reus*—the material or physical element(s)—and the *mens rea*—the mental element. No conviction may be rendered in the absence of these two criminal law concepts, fundamental to criminal systems around the world.

Actus reus requirements

The *actus reus* or material elements of trafficking in persons vary depending on the legislation of your country. In the case of the crime of trafficking as defined in the Trafficking Protocol, the *actus reus* requirement is split into two parts.

Actus reus requirement (1):

The offence must include any one of the following:

- Recruiting
- Transporting

- Transferring
- Harboursing
- Receiving a person

Some or all of these terms are likely to have a clearly defined meaning in your domestic legal system.

Actus reus requirement (2):

It must also contain at least one of the following means:

- Use of force
- Threat of force
- Coercion
- Abduction
- Fraud
- Deception
- Abuse of power or of a position of vulnerability
- Giving or receiving of benefits

Mens rea requirement

The mens rea requirement reflects the state of mind of the person charged with an offence. Only those with a sufficient “guilty mind” can be found liable for a criminal offence. In certain jurisdictions and in certain cases, criminal liability may be “strict” (“strict liability” offences).

The requisite mental element required in a trafficking in persons case is that the person committed the material act(s) with the intention that the victim be “exploited” (as defined by a country’s domestic anti-trafficking legislation).¹

The Trafficking Protocol does not define exploitation but gives a non-exhaustive list of forms of exploitation:

“Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or the removal of organs.”

Again, it is important to remember that the Trafficking Protocol obligation to criminalize trafficking in persons does not require that domestic legislation use the precise language

¹ The “purpose of exploitation” is a *dolus specialis* mental element: *Dolus specialis* can be defined as the purpose aimed at by the perpetrator when committing the material acts of the offence. It is the purpose that matters, not the practical result attained by the perpetrator. Thus, the fulfilment of the *dolus specialis* element does not require that the aim be actually achieved. In other words, the “acts” and “means” of the perpetrator must *aim* to exploit the victim. It is not therefore necessary that the perpetrator actually exploits the victim.

contained in the definition of trafficking in persons. Rather, domestic legislation should be drafted in a way that is consistent with your domestic legal framework, provided it contains a combination of the constituent elements contained in the definition.

An offence of trafficking in persons should not require that actual exploitation take place. As is clear from the Trafficking Protocol, actual exploitation need not occur provided there is a manifestation of intention to exploit the individual. All that is required is that the accused committed one of the constituent acts, employing one of the listed means for the purpose or, put another way, with the intention that the individual be exploited.

The mental element can be proven in a number of ways. It should be noted that the Trafficking Protocol requires that countries only criminalize trafficking in persons when conducted intentionally as per Article 5(1). This speaks to the mental element. However, countries are not precluded from allowing the mens rea requirement to be established on a lesser standard, i.e. via recklessness, wilful blindness or even criminal negligence, subject to the requirements of the domestic legal system.



Practical guidance

Many trafficking cases may be obvious. A scenario in which persons are recruited, transported to another country, never allowed to leave a factory, and work around the clock clearly fall within the definition of trafficking in persons and such conduct must be criminalized as such.

Similarly, cases involving women recruited or harboured and forced to provide sexual services unmistakably meet the definition of trafficking in persons. Some cases, however, may be more complicated. When in doubt as to whether a particular circumstance meets the definition of trafficking in persons, attention should be paid to both the definition contained in the Trafficking Protocol and the constituent elements of trafficking in persons as defined in your domestic legislation. Where possible, police officers and other law enforcement authorities may wish to consult with prosecutors to assess whether a particular set of facts meets the definition of trafficking in persons, as reflected in your domestic legislation.

Other examples of trafficking in persons, as contemplated by the Trafficking Protocol

- Forced marriages may involve an act, means and purpose that fit the definition of trafficking as defined in the Protocol. The act may be transfer or receipt of a person; the means will include force, threats, coercion or abduction; the purpose may be sexual exploitation and/or servitude.
- In some societies where a member of a family commits a crime, a young female from the offenders' family may be sent to live in servitude with a priest or with the victim's family to "repay" the crime. The act may be receipt or harbouring; the means may be coercion, abuse of power or of a position of vulnerability; the purpose may be sexual or labour exploitation, servitude or slavery.

- Diplomatic staff frequently employ servants. In a number of cases around the world some of these servants have been recruited and forced to provide labour within the households.
- Forcible abduction and conscription of children and adults into armed forces during times of conflict can also be prosecuted as a trafficking crime. Children are especially vulnerable to military recruitment due to their emotional and physical immaturity. The act may be recruitment, transporting, or receiving a child or adult, the means (in the case of adults) may be the use or threat of use of force, or the abuse of a position of vulnerability and the purpose may be servitude, forced labour, or sexual exploitation.
- In some countries, particularly those with an already established adoption market, illicit adoption practices are becoming more common and can be prosecuted under the umbrella of trafficking crimes. Children may be forcibly separated from their mothers who were coerced into signing blank documents that were later made into illegal contracts. The act may be transporting or receiving a child and the purpose may be slavery or sexual exploitation. It is unnecessary to establish a means when the trafficking victim is under 18 years of age, however coercion, fraud and deception are commonly used on the mother to provide signatures, blood samples and birth certificates.
- Peacekeeping and post-conflict operations create circumstances in which trafficking in persons, mainly women for sexual exploitation, has flourished in the past. The act may be recruiting, transferring or receiving, the means may be coercion, deception or abuse of power or of a position of vulnerability and the purpose may be sexual exploitation, servitude, or forced labour.

Table 2. Trafficking in Persons (TIP)—matrix of the elements of the offence

Recruitment	+	Threat or use of force	+	Exploitation of the prostitution of others	= TIP
Transportation		Other forms of coercion		Sexual exploitation	
Transfer		Abduction		Labour exploitation	
Harbouring		Fraud		Slavery or other slavery like situations	
Receipt of persons		Deception		Organ removal	
		Abuse of power		Etc.	
		Abuse of a position of vulnerability			
		Giving or receiving of payments or benefits to achieve the consent of a person having control over another person			



Self-assessment

What are the constituent elements of trafficking in persons?

List some offences that may be committed along with the trafficking in persons offence in your jurisdiction.

The issue of consent

Article 3(b) of the Trafficking Protocol states that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant once it is demonstrated that deception, coercion, force or other prohibited means have been used. Consent, therefore, cannot be used as a defence to absolve a person from criminal responsibility. Please see module 13: “Common defence strategies” for more detail.

In trafficking cases involving children, the Trafficking Protocol states that trafficking in persons is made out regardless of the use of prohibited means.

Both of these instances reflect the simple fact that no person can consent to being exploited, because in the case of adults, consent has been negated through the use of improper means and, in the case of children, their vulnerable position makes it impossible for them to provide consent in the first place.

If consent is obtained through any of the prohibited means, that is threats, force, deception, coercion or through abuse of power or of position of vulnerability, the consent is negated.

A child is not capable of consenting to such conduct, regardless of whether it was obtained improperly because the law affords them special status due to their unique position as vulnerable persons.

The issue of consent is complex since consent can take many forms. The following examples illustrate the question of consent.

Example of negated consent

Twenty-three-year-old Anita lives in Central Asia. She wants to live and work abroad and one day answers a newspaper advertisement for waitressing work abroad that specifically requires the ability to speak her native language. Anna answers the ad and when her plane lands, a man takes her to an apartment where she meets a dozen other women. She asks them if they all work at the restaurant as waitresses. They laugh at her and one says: “Restaurant? You’re not going to work at a restaurant! You’ll find out tonight where you are working!”

Anna is held for six months and prostituted by her traffickers, who claim to have purchased her for several hundred dollars. They say she owes them money for her plane ticket, accommodation and food. They beat her when she refuses a client.

Example of deceit regarding the conditions of work

Bela lives in a South American country and works as a prostitute. One day, a regular client who visits her periodically when conducting business in her city, tells her that she could make much more money in the North American city where he lives. This client, called Nick, tells her that the prostitutes in his city go out to the clubs all the time, make a lot of money, and have a lot of fun. Nick tells her he will buy her plane ticket, so Bela agrees and gets a visa to travel to the new city.

Nick meets Bela at the airport and she stays at his house for a few days. One day, a group of men come to the house to take her to her new place of work. The men give Nick \$US 10,000 and take Bela to a town outside the city. There she is put to work in three brothels and has to have sex with up to nine customers a day. If she refuses, her debt is increased. All of the money paid for her services goes either to the brothel owners or to the men who bought her. She is told that she cannot leave before her debt is reimbursed. She sees violence used against some of her friends.



Self-assessment

When is consent not relevant in the commission of the offence of trafficking in persons?



Discussion

Do you think the following case is one of trafficking in persons? Is there an act, a means and a purpose? Can you identify them?

A runs a factory that weaves silk for dresses. The work is very delicate, the thread is very fine, requiring nimble fingers and good eyes.

Silk weaving is very competitive, with cloth suppliers constantly offering lower and lower prices to the dress manufacturers. A decides to get a labour force that can do the fine work and do it cheaply: he decides to get some children to work in his factory.

A asks around and hears about a middleman, B, who has a good reputation for supplying weavers with young boys who learn quickly and cost little. A approaches B and asks him to find about a dozen boys to work in his factory.

B travels to the country, to a village he knows is very poor and the families are large. Many of the men are working away, often out of the country.

He tells C, the mother of D (a nine-year-old boy), that he has work for D in the town. He will be apprenticed to a weaver and taught all there is to know about the job. D will have a bed, be paid a small wage and will be fed. B pays C about \$US20 for D. B takes D to the town and to A's factory.

D is put to work with two older boys who show him what to do. He is fed on a weak stew most of the time. He sleeps on straw under the machinery. He is paid a coin a week.

Migrant smuggling

Article 3 of the Smuggling Protocol establishes that migrant smuggling is comprised of the following elements:

- procuring the illegal entry of another person;
- into another state;
- for the purpose of financial or material gain.

Article 3(b) further defines “illegal entry” as the crossing of (international) borders without complying with the necessary requirements for legal entry into the receiving State.

Article 6 of the Smuggling Protocol requires, amongst other things, the criminalization of the offence of migrant smuggling.

Examples of criminal legislation

Belgium

Article 77 of the Immigration Law criminalizes smuggling in persons, and article 77bis penalizes involvement in the entry into Belgium of a foreigner if violence, intimidation, coercion or deception were used, or abusing the vulnerability of a foreigner in terms of his or her illegal status, precarious situation, pregnancy, disease or disability. Both laws are used to prosecute smuggling in persons, with the difference that violations of 77bis carry a harsher sentence. Aggravating circumstances include violations conducted on a “regular” basis or carried out by an organized association (consisting of two or more persons) and the penalties increase to 10 to 15 years and a fine.

Colombia

Colombia's broad trafficking law includes smuggling offences and states that “anyone who promotes, induces, constrains, enables, finances, cooperates or participates in a person's transfer within the national territory or abroad by resorting to any form of violence, ruse or

deception, for exploitation purposes, to lead such person to work in prostitution, pornography, debt bondage, begging, forced labour, servile marriage, slavery for purposes of obtaining financial profit or any other benefit either for himself or for another person, shall incur 10 to 15 years' imprisonment and a fine..." The law criminalizes facilitation of illegal migration for the purpose of profit and has provisions regarding obtaining profit or property from smuggling punishable by six to eight years' imprisonment.

Elements of a case of migrant smuggling

The actus reus or material elements of migrant smuggling vary depending on the legislation of your country. In the case of the crime of smuggling, as defined in the Smuggling Protocol, the actus reus requirement includes the following:

- Procurement of an illegal entry of another person;
- Entry into another country by the other person, a smuggled migrant who is neither a national nor permanent resident of that country;
- Agreement to receive a financial or other material benefit.

The Smuggling Protocol does not define "procurement". Generally speaking, this refers to the act of bringing about a specific thing; in the case of migrant smuggling, the illegal entry of another person into a country.

The mens rea requirement reflects the state of mind of the person charged with an offence. Only those with a sufficient "guilty mind" can be found liable for a criminal offence. In certain jurisdictions and in certain cases, criminal liability may be imposed in "strict liability" offences even in the absence of mens rea.

The requisite mental element required in a smuggling of migrants case is that the person committed the material act(s) intentionally and in order to obtain a financial or other material benefit, directly or indirectly. Hence, smuggling for non-profit purposes does not fall under the scope of the Smuggling Protocol.

The mental element can be proven in a number of ways. It should be noted that the Smuggling Protocol requires that countries only criminalize smuggling of migrants when conducted intentionally as per article 6(1). This speaks to the mental element. However, countries are not precluded from allowing the mens rea requirement to be established on a lesser standard, i.e. via recklessness, wilful blindness or even criminal negligence, subject to the requirements of the domestic legal system.

Again, it is important to remember that the Smuggling Protocol obligation to criminalize smuggling of migrants does not require that domestic legislation use the precise language contained in the definition of smuggling of migrants. Rather, domestic legislation should be drafted in a way that is consistent with your domestic legal framework, provided it contains a combination of the constituent elements contained in the definition. It is also important to note that migrants are not to be made liable to criminal prosecution under the Smuggling Protocol for the fact of having been the object of smuggling as per article 6 of the Smuggling Protocol.

Key differences between trafficking in persons and migrant smuggling

In practice, it may be difficult to distinguish between these two crimes in the first instance. In many cases, victims of trafficking may first start out as smuggled migrants. Consequently, in investigating trafficking in persons cases, it may sometimes be necessary to rely on measures against smuggling. It is critical, however, that those investigating smuggling cases be familiar with the crime of trafficking in persons as the consequences of treating a trafficking case as one of migrant smuggling can be severe for the victim.

Identifying the differences

In some cases it may be difficult to quickly ascertain whether a case is one of human smuggling or trafficking. The distinctions between smuggling and trafficking are often very subtle and there are overlaps. Identifying whether a case is one of trafficking in persons or people smuggling can be very difficult for a number of reasons:

- Some trafficked persons might start their journey by agreeing to be smuggled into a country illegally, but find themselves deceived, coerced or forced into an exploitative situation later in the process (by e.g. being forced to work for extraordinary low wages to pay for the transportation).
- Traffickers may present an opportunity that sounds more like smuggling to potential victims. They could be asked to pay a fee in common with other people who are smuggled. However, the intention of the trafficker from the outset is the exploitation of the victim. The fee was part of the fraud and deception and a way to make a bit more money.
- Smuggling may be the planned intention at the outset but a too-good-to-miss opportunity to traffic people presents itself to the smugglers/traffickers at some point in the process.
- Criminals may both smuggle and traffic people, employing the same routes.
- Conditions for a smuggled person along the journey may be so bad it is difficult to believe a person could have consented to this.

Having said this, there are a number of key differences between migrant smuggling and trafficking in persons:

Consent

Migrant smuggling generally involves the consent of those being smuggled. Victims of trafficking, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the improper means of the traffickers.

Transnationality

To smuggle a person means to facilitate the person's illegal border crossing and entry into another country. Trafficking in persons, on the other hand, need not involve the crossing of any border. Where it does, the legality or illegality of the border crossing is irrelevant. Thus, while migrant smuggling is always, by definition, transnational, trafficking in persons need not be.

Exploitation

The relationship between smuggler and smuggled migrant usually ends after the facilitation of the border crossing. Smuggling fees are paid up front or upon arrival. The smuggler has no intention to exploit the smuggled person after arrival. Smuggler and migrant are partners, albeit disparate, in a commercial operation that the migrant enters willingly. Trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers. It is the intention of the trafficker that the relationship with the exploited victims will be a continuous one and extend beyond the crossing of the border in the final destination. Smuggling can become trafficking, e.g. when the smuggler sells the person and the accumulated debt, or deceives/coerces/forces the person to work off transportation costs under exploitative conditions.

Source of the profit

One important indicator of whether a case is one of smuggling or of trafficking in persons is how the offenders generate their income. Smugglers generate their income from fees to move people. The trafficker in contrast continues to exert control over the trafficked victim in order to achieve additional profits through the ongoing exploitation of the victim.

Appropriate charges

As explained above, the offence of trafficking in persons may involve many different acts and many different actors. The offence is committed by acts of recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Trafficking cases, by their nature, are very likely to involve other offences. These offences may be an integral part of the trafficking process, and can be used to prove that an element of the trafficking in persons offence has been committed. They can also be charged separately or utilized as alternative charges, depending on the legal system. They can also be called underlying offences to trafficking.

Other offences may be committed against the trafficking victim or others, but would not be an integral part of the trafficking offence. These should be charged separately.




Self-assessment


What is smuggling of migrants?

What are the basic differences between trafficking in persons and smuggling of migrants?

Examples

Identifying whether trafficking in persons or smuggling of migrants has taken place can be difficult in practice. Please look at these examples which illustrate the basic differences between the two. Please note that cases have to be seen in the context of domestic law and local circumstances. In this module we examine cases in light of the Trafficking in Persons and Smuggling of Migrants Protocols.

	Case example
	<p>An advert is placed by a recruitment agency in a local newspaper in a town. It promises good wages for cleaners and domestic servants in another country. All visa and other migration requirements will be taken care of.</p> <p>A young woman applies. She is worried because she thinks she may have to pay a fee. She is told not to worry because all fees will be taken care of when she arrives at the destination. Reassured, she agrees to be flown to the developed country for the promised work. She is taken to the airport, provided with a passport and given instructions that she will be met at the other end by the agency's staff.</p> <p>When she arrives, she is met by a man and a woman. She is told she must hand over her passport as security. She is driven to a large house where she is told she must work as a servant. Money is exchanged between the "staff" from the "agency" and her new "employer".</p> <p>Before they leave, she asks the "agency staff" about her wages. She is told she will be paid a wage but will have to pay for accommodation and food. She asks about when she will get her passport back. She is told she will get her passport back once she has reimbursed the employer for the costs of recruitment. She is further told it will be possible to save money from her wages to pay back the fee the "employer" has paid and the transport costs. As the weeks go by the amount "owed" increases because she is paid little and the cost of food and accommodation is high. For every small mistake she receives a slap. She has no alternative but to work for 14 hours per day, seven days per week.</p> <p>Is this a case of TIP or smuggling of migrants?</p>

	Case example
	<p>An advert is place in a local paper that says that an agency can arrange travel to another country where there are good opportunities for agricultural labourers, factory workers, waiters and chefs.</p>

A man sees this advert and makes contact. He is told the fee will be \$US 10,000. He will be transported by truck to a neighbouring country from where he will be flown directly to the destination country. All immigration documents will be provided. He takes loans from his family, works hard at three jobs and after 18 months gets the money together. He pays this to the agency and sets off on his journey.

Travelling by truck with ten other people at first, he is surprised to find they go to a sea port and not an airport. He and the rest of the group are told to leave the truck and hide in scrub land at the edge of the port until someone comes for them. Two days later, having lived on scraps of food from trash bins, a man contacts them and they are smuggled aboard a ship.

Over the next 12 months similar methods of transport are used. The group stays together, but one man dies and has to be left at the roadside in country they pass through.

Eventually, the group are in a truck when it stops. The back doors are opened and they see they are in the middle of a city. They are told they have arrived and must get out. The man asks about the passport he was promised. He is told not to make trouble and he now has to find his own way. The truck leaves, and the group disperses quickly into the city.

Three days later, together with two other men from the group, he finds work picking potatoes. He is allowed to live in farm buildings with other workers. He is paid very low wages by the standard of the destination country.

Is this a case of TIP or smuggling of migrants?



Case studies: Case 1.

Pedro lives in South America. He is 35 years old and does not have a permanent job. He earns some money in seasonal construction work but it is not enough to sustain him, his wife and their two small children. While working on a construction site in his city, he hears about a man who is looking for people interested in selling one of their kidneys for organ transplant purposes. This man organizes trips to another country where the kidney is removed by medical professionals. The recipients pay up to \$US60,000 for a healthy kidney.

Although Pedro is worried about having one kidney, he agrees to have his kidney removed. He is promised \$US30,000 for his kidney, as well as payment of all his travel expenses and accommodation for recovery in a nice, comfortable environment. The organizer assists Pedro in applying for a passport and visa and makes all the travel arrangements for him. Upon arrival at his destination, he is questioned by the immigration officials, but since he can show that he has a return ticket, he is allowed entry. He is met at the airport by a man named Luis and is taken to a small apartment which is far from the luxury accommodation he was promised by the

organizers. After a couple of days' rest, during which he is not allowed to leave the apartment, he is taken to a small dirty room, where the operation takes place. Before the operation, Pedro signs a paper in English but as his English is very limited, he does not quite understand what he signs.

After the operation, Pedro is taken back to the apartment, where he recovers for one week. Luis gives him only \$US500 instead of the \$US30,000 he was promised. Pedro gets angry with Luis and demands the rest of his money. Luis tells him that the trade of organs, tissues and other body parts is strictly prohibited by law and if Pedro wants to approach the police, he will himself end up being arrested and deported, without having received any money. Luis also points out that since Pedro signed a paper stating that the donor and recipient of the organ were relatives and that no money was being exchanged, Pedro cannot prove that he in fact is to be paid anything. Pedro decides that it is after all better to receive \$US500 than nothing, so he agrees and goes home. A week later Pedro falls ill with a serious infection.

Points for discussion

- Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.
- On the basis of the Trafficking and Smuggling Protocols, can it be stated that this is a case of human trafficking and not people smuggling?
- On the basis of your domestic laws, is this a case of migrant smuggling or trafficking in persons?
- Are the three elements of trafficking present?
- What is the act in the current case? What are the means used to commit the act? What is the goal of the whole process?
- What other crimes exist in your legislation that could be used to prosecute the case (main/alternative charges)? What associated crimes took place?



Case studies: Case 2.

Krasimir lives in Eastern Europe and is 10 years old. He lives with his parents, two older brothers, one younger sister and his grandparents. His father, Nikolay, is unemployed and an alcoholic. His mother is sick and also unable to work. Krasimir's older brothers are also unemployed. The family has constant struggles with money and Krasimir and his siblings are beaten by their father regularly.

One day, Nikolay's old army friend, Iliya, comes over. He promises Nikolay € 150 a month if he will "rent" Krasimir to him to beg in a Western European capital city. Iliya promises to pay for Krasimir's accommodation and food and promises to take care of him. Nikolay agrees.

One week later, Iliya comes to pick up Krasimir and gives his father EU 100 in cash. There are three other boys in the van with Krasimir. First they stop to get passports from the passport authority. With the passports, they cross the border, but the border guards don't stop Iliya, they just wave him through with a smile.

The next morning, the five of them arrive at their destination. Iliya takes them to an apartment where the three boys share one room and Iliya has another room. Iliya gives the boys each a copy of their passports and holds onto the originals. The next morning they "start work." Each day, they go to a different place to beg, Iliya tells them where and escorts them there. They have to beg from 9am to 6pm every day and then find their ways home. If they earn less than € 40 per day, they get beaten by Iliya. They are given enough food by Iliya and there is no sexual abuse.

Krasimir is not allowed to phone his family and does not know how long he must stay. Iliya tells them if they are picked up by police to say that they are tourists and waiting for their father. Iliya threatens that if they gave any information to the police, he would injure the whole family.

Points for discussion

- Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.
- On the basis of the Trafficking and Smuggling Protocols, can it be stated that this is a case of human trafficking and not people smuggling?
- On the basis of your domestic laws, is this a case of migrant smuggling or trafficking in persons?
- Are the three elements of trafficking present?
- What is the act in the current case? What are the means used to commit the act? What is the goal of the whole process?
- What if Krasimir was 18 years old?
- What other crimes exist in your legislation that could be used to prosecute the case (main/alternative charges)? What associated crimes took place?



Case studies: Case 3.

Lisa lives in a small city in Southeast Asia and is 18 years old. Her parents and younger siblings depend on her for support and she struggles to find work that will feed all of them. One day, she hears about an agency in her city that exports labour to factories abroad. At home, the monthly minimum wage is \$US 40, but in these factories, the pay is \$US 2.25 per hour and the company also provides food and housing. Lisa knows that she will have to work illegally but thinks that the money she will be able to send home to her family will be worth it.

She goes to the agency and learns that they charge \$US 2,000 for an employment contract. She does not have the money, but knows that other people are borrowing from money lenders in the area. She also goes to a money lender and uses her family's house as collateral on the loan. Now she has to send monthly payments to the money lender as well as to her family. She is nervous but also believes she is doing the right thing. She signs the employment contract and leaves home.

After working for a month in the factory and not being paid, she and her fellow workers ask for their wages due. They are informed that they will be paid \$US 100 each for the month. Lisa and some other workers protest and are not given any work for the next month. Meanwhile, they are forced to live in a dorm with 36 beds, only four toilets, and often fed inedible or spoiled food. The living quarters are always locked between 9pm and 6am and are infested with cockroaches and rats.

Lisa becomes desperate and decides to go to the manager to apologize and try to get some work. She knows that he withholds work as a punishment to those who complain, even though there is enough to do. Instead of listening to her apology, the manager propositions her for sex and tells her she could have a comfortable desk job if she agrees. Lisa declines. The manager orders her back to work and indicates that he will report her to immigration authorities if she does not comply.

Points for discussion

- Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.
- On the basis of the Trafficking and Smuggling Protocols, can it be stated that this is a case of human trafficking and not people smuggling?
- On the basis of your domestic laws, is this a case of migrant smuggling or trafficking in persons?
- Are the three elements of trafficking present?
- What is the act in the current case? What are the means used to commit the act? What is the goal of the whole process?
- What other crimes exist in your legislation that could be used to prosecute the case (main/alternative charges)? What associated crimes took place?



Case studies: Case 4.

Anna is from an Eastern European country. She has worked in a factory since leaving school, but recently lost her job. She has two small children to support and has recently divorced her husband. She knows it will be very difficult to find a new job in her country. One day, the brother of a friend tells her that she can make good money in a Western European hotel as a cleaning lady. She agrees and he promises to call his friend and make the arrangements.

A few days later, she leaves her children with her mother, promising to send money home, and drives with her friend's brother over an unmarked border, where she is transferred into a waiting van with six other women and girls and two men. Over a journey of several days, the women and girls switch repeatedly from vans into small boats and back again to move from one country to the next, always avoiding official border crossings. At times, the women and girls are locked in apartments or houses and are constantly guarded. They are disoriented and start to become suspicious and afraid.

Finally, the women and girls reach a house and are ordered to strip naked in front of a group of men. Anna does as she is told and is sold to the owner of a bar. The owner tells her that she is in the country illegally and must now work as a prostitute to pay off her travel and transportation debt. He tells her that she will be arrested if she leaves the premises of the bar and if she does not do what she is told, she will be beaten or sold to other "more dangerous" people who will treat her worse.

She is forced to work every day, from 6pm to 6am, and is only given food once a day. She is fined for any infraction and forced to buy lingerie and the food she eats, which are added to her debt.

Points for discussion

- Please note that, as will always be the situation in real life cases, cases can only be considered in the light of the information available.
- On the basis of the Trafficking and Smuggling Protocols, can it be stated that this is a case of human trafficking and not people smuggling?
- On the basis of your domestic laws, is this a case of migrant smuggling or trafficking in persons?
- Are the three elements of trafficking present?
- What is the act in the current case? What are the means used to commit the act? What is the goal of the whole process?
- What other crimes exist in your legislation that could be used to prosecute the case (main/alternative charges)? What associated crimes took place?

Appropriate charges

As explained above, the offence of trafficking in persons may involve many different acts and many different actors. The offence is committed by acts of recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Trafficking cases, by their nature, are very likely to involve other offences. These offences may be an integral part of the trafficking process, and can be used to prove that an element of the trafficking in persons offence has been committed. They can also be charged separately or utilized as alternative charges, depending on the legal system. They can also be called underlying offences to trafficking.

Other offences may be committed against the trafficking victim or others, but would not be an integral part of the trafficking offence. These should be charged separately.

Underlying offences to trafficking may include but are not limited to:

- Slavery
- Slavery-like practices
- Servitude
- Forced or compulsory labour
- Debt bondage
- Forced marriage
- Forced abortion
- Extortion
- Torture
- Cruel, inhumane or degrading treatment
- Rape
- Sexual assault
- Assault
- Bodily injury
- Murder
- Kidnapping
- Abduction
- Unlawful confinement
- Labour exploitation
- Withholding identity papers
- Violations of immigration law
- Money-laundering
- Corruption
- Abuse of office
- Smuggling of migrants

Investigation and prosecution of the individual acts mentioned above can be particularly useful in situations and in countries where:

- A distinct criminal offence of trafficking does not yet exist;
- The penalties for trafficking do not sufficiently reflect the nature of the crime and do not have any deterrent effects; or

- In cases where the existing evidence is not sufficient in order to prosecute for trafficking but may be sufficient to prosecute for such underlying offences. In systems that allow plea bargains, in general it would be recommended to charge for all possible offences, so that in the case of a plea bargain, some charges may be crossed out.

Where the evidence is there, for a number of reasons, you should aim at prosecuting perpetrators under the offence of trafficking in persons. If possible in your legal system, utilize underlying offences as alternative charges to increase chances for a conviction.

If the criminal offence of trafficking exists in your jurisdiction, the underlying offences are particularly useful in situations where you do not find sufficient evidence for the prosecution of trafficking. The evidence may still be sufficient for prosecution of the individual criminal acts, the underlying offences to trafficking such as unlawful confinement, sexual assault, bodily injury, withholding of identity documents, etc. In these situations your only option may be to prosecute for the individual criminal acts.

Even if you initially choose to prosecute traffickers under the offence of trafficking in persons but the evidence does not support your case beyond reasonable doubt, the evidence may suffice for conviction for the underlying offences. Hence, the underlying offences can also be invoked in addition to prosecuting under the offence of trafficking in persons. The provisions can also be invoked as additional or overlapping offences to demonstrate the seriousness of a particular trafficking operation.

As a practitioner you know that investigating suspects and prosecuting defendants with trafficking offences can be very complex, time consuming and costly. It is therefore not surprising that there are a number of examples of cases where trafficking in persons is present, indeed is the driving force—may be the *raison d'être* of a case—but the only charges laid are for the underlying offences such as unlawful confinement, sexual assault, bodily injury, withholding of identity documents, etc.

Failing to prosecute for trafficking offences may be appealing in the short term, but has a number of potentially significant long term consequences. In many occasions a trafficking charge may give a victim access to victim support services, protection, and assistance that would not otherwise be available. These victim support services can include the possibility of a reflection period, temporary or even permanent residence status in the destination country, and support services at various levels, including accommodation, health care, legal and psychological counselling and access to resettlement packages. This is of importance to you for a number of reasons.

Trauma can affect the quality of the testimony of trafficking victims. Providing support, protection and assistance to victims of trafficking helps the victim overcome the most severe consequences of trauma and helps you to build the trust of a trafficking victim. You are not likely to get that trust if you cannot provide proper support for victims. Without trust you are unlikely to get the quality of testimony you require.

In many jurisdictions the laying of a charge for trafficking in persons will trigger various protection and assistance measures for victims. It may also mean that the victim is not prosecuted for offences he or she may have committed in the process of trafficking. Prosecuting

the victim for offences he or she may have committed as a direct consequence of being trafficking may destroy the relationship that you have to build in order to gain the best possible witness testimony for your case. It may directly significantly weaken the witness testimony and contribute to the victim's decision not to cooperate with the criminal justice system. Please see also module 13: "Common defence strategies".

Failing to prosecute for trafficking in persons offences may also mean that the wider trafficking networks are left to operate without any disruptions.



Self-assessment

What are some of the underlying offences to trafficking in persons?

When is it useful to investigate and prosecute a trafficker for those underlying offences?

Jurisdiction

The Convention against Transnational Crime (TOC Convention) requires States Parties to establish jurisdiction to investigate, prosecute and punish all offences established by the Convention and any Protocols to which the country in question is a State Party.

Jurisdiction must be established over all offences committed within the territorial jurisdiction of the country, including its marine vessels and aircraft. This is called the principle of territorial jurisdiction.

If the national legislation prohibits the extradition of its own nationals, jurisdiction must also be established over offences committed by such nationals anywhere in the world. This allows the country to meet its Convention obligation to prosecute offenders who cannot be extradited on request because of their nationality. Jurisdiction established over offences committed by nationals of the State are called the active personality jurisdiction.

The Convention also encourages, but does not require, the establishment of jurisdiction in other circumstances, such as all cases where the nationals of a State are either victims or offenders.^a Jurisdiction established over offences committed against nationals of the State is called the passive personality jurisdiction.

^a 33Convention Art.15, para.(1) (mandatory jurisdiction); Art.15, para.(2) (optional jurisdiction); and Art.16,para.(10) (obligation to prosecute where no extradition due to nationality of offender). See also the discussion of jurisdictional issues in chapter 9 of the Legislative Guide to the Convention.

Trafficking in persons cases may involve a number of jurisdictions. Where this is the case a decision has to be taken about which jurisdiction the prosecution should take place in. There are a number of principles that should guide this decision.

It is very important to identify as soon as you can that it is possible a case can be prosecuted in more than one jurisdiction.

Once this possibility is identified the next consideration is where it is most feasible to prosecute. Any decision made on which jurisdiction is best placed to prosecute should be made on a case-by-case basis taking into account all the relevant factors.

The basic principle underlying any decision is that a person should not be prosecuted more than once for the same criminal conduct. This applies even where a person has been acquitted of a charge relating to that conduct in another jurisdiction. This is known as the principle of *ne bis in idem* or double jeopardy.

Prosecutions should take place in the jurisdiction where the majority of criminality took place or where the majority of the loss took place. In trafficking cases, this is often, but not automatically, the destination location where exploitation took place. The following factors should be considered:

Existence of legislation

Does the legislation of the jurisdiction include the offence of trafficking in persons?

Is the legislation comprehensive and include all forms of exploitation?

Sentencing powers

Although not the primary consideration, sentencing should reflect the gravity of the offence.

Location of the accused

Is it possible to prosecute in that jurisdiction?

Are transfer or extradition proceedings possible? A general principle *aut dedere aut judicare* (extradite or prosecute) applies here.

Division of prosecution

Cases may be complex and cross borders. Prosecution in more than one jurisdiction is not desirable.

What measures (realistically and practically) can be taken to allow a prosecution to take place in one jurisdiction?

Witness attendance

The attendance of victims as witnesses is often unavoidable in trafficking cases.

Ensure measures are being taken to give the best possible support to those witnesses.

In transnational trafficking cases witnesses may be required from other jurisdictions. Consider which parts of evidence may be received in other forms such as in writing or via a video link.

There have been some very simple lessons here such as giving a witness a mobile phone and paying for some credit on it. Checking if a person is e-mail “savvy” might mean you can set up an account you can maintain contact on.

Witness assistance/protection

What assistance can a witness be given in a particular jurisdiction?

Do they have a legal framework that allows witness protection or assistance?

Even if there is no official legal framework is there a “de-facto” witness assistance programme, or is there the possibility of such assistance or protection on a case by case basis?

What evidence is there that a stated witness assistance programme is actually effective in practice? Are there any indicators that show it is not?

Is there a capability of the trafficking offenders to strike the witnesses within a particular jurisdiction?

Are there any general issues, for example existing or emerging conflicts that may affect the ability to protect witnesses?

Delay

Although time should not be a leading factor it should be considered. Are there backlogs which would delay the case? Delays should be minimized.

What is the potential time scale for a case to come to trial in a particular jurisdiction?

Interests of the victim

Would the interests of the victim be prejudiced by changing jurisdiction?

Is compensation for victims possible within a jurisdiction?

What levels of compensation may be expected in different jurisdictions?

Evidential issues

Cases should proceed on the best possible evidence. Admissibility of evidence varies from jurisdiction to jurisdiction.

Given the evidence available and the rules of admissibility which jurisdiction would offer the best chance of successful prosecution?

Legal requirements

Decisions on where to hear cases cannot be taken to avoid complying with legal requirements in one or another jurisdiction.

Proceeds of crime

Again, not a primary consideration but factors for consideration include:

- Where assets are held;
- Where there is the best chance of securing asset seizure;
- Will jurisdictions share recovered assets with law enforcement/prosecutors/victims in other jurisdictions?
- Do victims have access to any recovered assets as compensation?

Resources and costs of prosecuting

This should only be a consideration when all other factors are equally balanced.



Self-assessment

What are the factors determining the preferred jurisdiction in a particular case?

Summary

Trafficking in persons, as defined by the Trafficking in Persons Protocol requires an act, means and a purpose.

- Consent is vitiated if obtained through the use of improper means.
- Trafficking in persons can take place within and outside the borders of a country.
- Smuggling of migrants must take place across international borders.

When a decision has to be taken about which jurisdiction the prosecution should take place in, the following factors should guide this decision:

- Existence of legislation
- Sentencing powers
- Location of the accused
- Division of prosecution
- Witness attendance
- Witness assistance/protection
- Delay
- Interests of the victim
- Evidential issues
- Legal requirements
- Proceeds of crime
- Resources and costs of prosecuting



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Anti-human trafficking manual for criminal justice practitioners

Module 2

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Anti-human trafficking manual for criminal justice practitioners

Module 2:
Indicators of trafficking in persons



UNITED NATIONS
New York, 2009

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This publication has not been formally edited.

Module 2:

Indicators of trafficking in persons

Objectives

On completing this module users will be able to:

- Explain how trafficking in persons may be identified by criminal justice practitioners;
- List the general indicators of trafficking in persons;
- State why corroboration of trafficking in persons indicators is required.

Introduction

This module is intended for use by those who by virtue of their work first come in contact with victims of trafficking and need to know the indicators of trafficking in persons and what kind of actions may help uncover those indicators to allow victims to be rescued and investigations to be started.

The first part outlines some methods that may be used to identify trafficking in persons. The second part of the document explains some of the general indicators found that are associated with victims of trafficking. The third part gives details of some specific indicators that can be printed as an information leaflet or used as the basis of your own information leaflet for frontline criminal justice practitioners and those of partner organizations and agencies.

To be effective, identification must be multidisciplinary in approach. Organizations must share as much information as possible if they are to maximize identification, corroborate accounts and ultimately, discern trafficking with a view to rescuing the victims and punish the offenders. Many organizations involved have different objectives in performing their respective roles. For example, non-governmental organizations (NGOs) may only wish to rescue victims and provide safe housing, counselling and other support. They may have no objective to support law enforcement investigations. To achieve the required cooperation there must be an acknowledgement of the objectives of each other's role, ideally through the establishment of some form of written agreement e.g Memorandum of Understanding (MoU), Terms of Reference or NGO-Law Enforcement cooperative guidelines.

Identifying trafficking in persons is not a simple process. Traffickers go to considerable lengths to make sure their activities are difficult to detect. It is not possible that all trafficking cases are the same. Indicators of trafficking will most likely be different from case to case.

United Nations Convention against Transnational Organized Crime (UNTOC)

Using effective identification measures helps States satisfy the requirement of article 27 (1)(b) (i) which states:

“States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a)...

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned”

Indicators—not proof

It is important to remember that the indicators referred to in this module are only indicators. They are not by themselves proof that trafficking in persons has taken place. Observing an indicator should be the starting point for further enquiries.

Situations where one is likely to encounter trafficking in persons

Identification of trafficking in persons may be a long-term process. An incident could give a direct immediate indication that trafficking in persons is taking place, but in many cases there may just be one or two indicators of trafficking. Commonly, there is very little concrete information or obvious sign of human trafficking. Often, there is little more than a nagging feeling that you are seeing trafficking. Trafficking in persons can easily be confused with other forms of criminality such as smuggling of migrants, sexual or simple assaults. The effect of traumatization on trafficking victims is such that they may not make any kind of disclosure of their situation for weeks or even months.

Direct reporting by victims and other people

A victim may directly approach a police patrol or police station to report his/her situation. Other organizations may and have referred large numbers of victims to law enforcement agencies throughout the world. Many of these referrals have come from NGOs, often those with a specific anti-human trafficking remit.

In cases of trafficking in persons for sexual exploitation, “client rescues” have been seen. An example of a client rescue is where a man pays for sex with a woman and she tells him she has been trafficked. The client may take the woman with him to the police or other agency or leave by himself and report the matter.

Other members of the public who are not clients have also “rescued” victims and brought them to the attention of the police or other agencies.

Routine police activity

Routine police activities such as attending incidents that are not directly related to trafficking e.g., burglaries, road traffic accidents and reports of public order disturbances are opportunities to identify trafficking in persons. Specific examples include:

- Routine activity at border crossings and standing checkpoints;
- Reports where trafficking victims are potential witnesses;
- Reports where trafficking victims have committed a crime;
- Reports where trafficking victims are the victim of another crime;
- Police and other law enforcement activity, such as stopping people and vehicles to check documents or for general inquiries;
- Routine visits to premises where victims are likely to be exploited, for example brothels, factories or agricultural locations;
- Routine scan of adverts in the media, including the Internet;
- Community policing;
- Routine activity in embassies and consuls;
- Enquiries into missing children.

Impact of routine activity on traffickers’ behaviour

In a number of jurisdictions it has been found that traffickers do not necessarily change their methods, locations or transport used because of routine law enforcement activity (or what appears to be routine activity), even where that activity leads to arrests.

Proactive activity

Proactive operations, often led by intelligence, have proved successful in the identification and recovery of victims of trafficking. Examples include:

- Targeted raids on suspected premises and locations such as factories, mines, brothels and agricultural operations;
- Accompanying other agencies such as labour and health and safety inspectors on their proactive operations to observe conditions and identify who is present;
- Identification of routes used and planning operations at transport facilities and other suspected “nexus” points;

- Test purchasing operations (where permissible under your legislation) to determine what is happening and who is involved in a particular activity;
- Surveillance and other proactive investigation techniques;
- Planned border operations.



Case example

Indian law enforcement became aware that a significant number of people were being trafficked across its borders from a neighbouring country. The border crossing involved leaving a bus on one side of the border, crossing through control on foot and getting in another bus on the other side.

Police and other agencies, including NGOs, established a joint advice centre at the border crossing. Advice was given on issues such as labour rights and entitlements in India. Going into the centre was entirely voluntary.

Staff of the centre were given guidance on identifying possible victims of trafficking and how to conduct screening interviews of suspected victims.

Corroborating indicators of trafficking

Corroborating the indicators can be done in a number of ways according to the circumstances of the case. It may involve specific enquiries, overt or covert. It could be as simple as asking a person questions.

The result of those enquiries should lead to a decision about what further action will be taken. Actions will vary according to the nature of the trafficking, risks to victims and others and the information available.

The same basic process applies whether it is a large-scale intelligence-led case or a simple routine check by an officer.

The time this process takes will vary according to the circumstances. Large-scale operations may take weeks, although they could uncover information that requires immediate action. A routine check may start with one indicator, quickly find more indicators and move to a decision on action within minutes. In some cases, for example a victim presenting him or her to a police station or patrol, a decision on action will be required immediately.



Self-assessment

Why is corroboration of indicators required in trafficking in persons cases?

General indicators that a person may have been trafficked

These indicators outline some of the factors that may make it more likely that a person is a victim of trafficking. It must be emphasised that they are general in nature and may not all apply in every case of trafficking.

Different types of trafficking in persons produce different victim profiles. Even the same general type of trafficking in persons activity will have significant differences between locations.

These indicators should be used with the best available intelligence to create a profile specific to your local context. If you do not have any information/intelligence on trafficking in persons, some of these indicators may help identify a new or emerging trafficking problem.

Age

The typical age range of persons suspected to be victims in a given location depends on the nature of trafficking and demands at the point of exploitation. With some exceptions, the older the person is, the less likely it is that the case involves trafficking. This is particularly so in sexual exploitation cases. Traffickers will not normally traffic older people for sexual exploitation because there is little “client demand” for them. Exceptions have been seen where older people of a particular ethnicity are regarded as looking young by the “client” market.

The same general rule can be applied to labour exploitation because the older the person is the less productive they may be in conditions of arduous or slave labour. There are exceptions to this; trafficking older people to beg is an example.

Children are particularly vulnerable to trafficking as they may be compliant and can be exploited in a variety of ways: in the sex industry, illegal labour markets, including begging and pickpocketing, as domestic “slaves” and for their organs.

Gender

Sex trafficking predominantly affects females. There is substantial evidence of trafficking for heterosexual exploitation in some form in virtually every country in the world.

Male trafficking for the purposes of prostitution, particularly of teenage and younger boys, has been found to exist, but research and knowledge in this area is limited.

Trafficking in persons for forced labour exploitation affects both males and females. The proportions vary according to the form of the labour and prevailing gender roles at the location.

Location of origin

The supply chain of victims relies on exploitation of a combination of factors including relative poverty, discrimination and lack of opportunity. Many victims come from developing countries or countries in transition where opportunities are limited.

Trafficking takes place in developed countries for various purposes. For example girls are groomed for sex by “boyfriends” and then moved within the country or between countries for sexual exploitation. Recent research and cases have shown that victims from developed countries are trafficked also for purposes of labour exploitation. However, even in these cases victims tend to come from the disadvantaged and vulnerable populations.



Case example

In the recent North European case, the defendant was an EU citizen. He was indicted and convicted for subjecting four victims, including two EU nationals, to forced labour. The indictment was that, prior to August 2007, the defendant together with his brother recruited several persons in the EU. These people were in a vulnerable situation because they were either homeless, mentally disabled, without work or income. The defendant exploited them through the use of a very strict regime and utilized violence and threats to force the victims to perform work in the form of asphaltting and stone laying. The victims did not have any real and acceptable opportunity to terminate the employment relationship. The work was exceedingly badly paid, wherein the victims received less pay than originally agreed, were obliged to live under wretched conditions, had sometimes extremely long workdays, and were under constant surveillance and told or given the impression that if they failed to perform the work or ran away, they would be fetched back, beaten or killed.

Documentation

A person presenting another person’s identity and travel documentation at a border crossing or other checkpoint is a general indicator of trafficking in persons at all phases/locations in the process. In addition, the lack of documentation or travel documents on a suspected victim and fraudulent identity or travel documentation are also strong indicators of trafficking.

Last location

The location where the victim was found immediately prior to coming to the attention of law enforcement officers will always be significant: a brothel, call-girl agency or lap dancing club, place of labour exploitation such as a “sweatshop”, restaurant kitchens, mines, quarries or agricultural sites may all be indicators of potential exploitation.

In origin or transit locations the last locations that victims were found, including premises such as bars where recruiting takes place or transport hubs associated previously with trafficking in persons, may be significant.

The last location could also be the country or district the suspected victim came from, where existing intelligence suggests that the particular location is a endemic origin or transit location for trafficking in persons.

Transport

How a person has been (or is being) transported may indicate trafficking. Some characteristics of transport in trafficking cases are very similar to those found in smuggling of migrants but there are a number of potential differences.

For example, traffickers will often attempt to control all aspects of transport from origin location through transit to destination because they will only realize their investment at the destination location/exploitation phase. Smugglers, by contrast, may have received at least part of their fees from the smuggled migrants before they leave the origin location.

Other indicators of trafficking transport include evidence that an individual being moved across borders is constantly under escort; a small number of victims are being led by a relatively large numbers of escorts and increasing levels of supervision the nearer they get to an identified destination/exploitation location. This increasing supervision may be required in cases where it was relatively easy to deceive potential victims in a location of origin and traffickers fear that as the group nears the destination, the victims will realize they are to be exploited. The increasing supervision acts as a control mechanism in situations such as this.

Law enforcement officers in some locations around the world have observed that traffickers frequently stay with one transport route for a prolonged period of time. The reason for this may be that arranging transport over a number of countries can be complex, particularly if the main traffickers have limited local contacts. It is therefore important for regular or known transport routes to be continuously and routinely monitored.

Circumstances of referral

Trafficked victims may come to the attention of law enforcement officers through a referral from NGOs or clients who have used their services (client rescue).

The circumstances leading up to the referral will always be a key indicator; circumstances such as removal from brothels by police, client rescue or identification and rescue by NGO partners.

Evidence of abuse

Any signs of physical injury to the victim can be an indicator of trafficking; victims are subjected to abuse by their traffickers and clients.

However, do not assume a person has not been trafficked if there is no sign of injury or physical abuse. Other equally or more effective control measures may have been used including the threat of abuse or confiscation of documentation.

Assessment of the referring agency

If the case has been referred to the law enforcement agency from an NGO, the opinion of the referring persons working in this area will always be relevant to the identification process and should be included in the overall assessment.

Current knowledge

Compare all of the indicators above with what your intelligence is telling you about the current trafficking situation in your area of responsibility. Do the above categories of indicators apply to the situation in your area of responsibility? What is the trafficking modus operandi in your area?

A word of warning

You may not have any intelligence about trafficking at all or you may not have intelligence about the particular form of trafficking a certain victim has been subject to. Be particularly aware of circumstances where there are a number of indicators present, but they don't fit into a known pattern. This should trigger further enquiries to establish a possible trafficking problem you were not aware of.



Self-assessment

What are the general indicators of trafficking in persons?



Self-assessment

Read the indicators of different types of exploitation.

Which of these are relevant to your work?

How might you use these lists of indicators in a practical way where you work?

Are you aware of any more indicators of trafficking in persons from previous experience?

Human trafficking indicators

Not all the indicators listed below are present in all situations involving trafficking in persons. Although the presence or absence of any of the indicators neither proves nor disproves that human trafficking is taking place, their presence should lead to further enquiries or investigation.

Victims of trafficking in persons can be found in a variety of situations. You can play a role in identifying such victims.

People who have been trafficked may:

- Believe that they must work against their will;
- Be unable to leave their work environment;
- Show signs that their movements are being controlled;
- Feel that they cannot leave;
- Show fear or anxiety;
- Be subjected to violence or threats of violence against themselves or against their family members and loved ones;
- Suffer injuries that appear to be the result of an assault;
- Suffer injuries or impairments typical of certain jobs or control measures;
- Suffer injuries that appear to be the result of the application of control measures;
- Be distrustful of the authorities;
- Be threatened with being handed over to the authorities;
- Be afraid of revealing their immigration status;
- Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else;
- Have false identity or travel documents;
- Be found in or connected to a type of location likely to be used for exploiting people;
- Be unfamiliar with the local language;
- Not know their home or work address;
- Allow others to speak for them when addressed directly;
- Act as if they were instructed by someone else;
- Be forced to work under certain conditions;
- Be disciplined through punishment;
- Be unable to negotiate working conditions;
- Receive little or no payment;
- Have no access to their earnings;
- Work excessively long hours over long periods;
- Not have any days off;

- Live in poor or substandard accommodation;
- Have no access to medical care;
- Have limited or no social interaction;
- Have limited contact with their families or with people outside of their immediate environment;
- Be unable to communicate freely with others;
- Be under the perception that they are bonded by debt;
- Be in a situation of dependence;
- Come from a place known to be a source of human trafficking;
- Have had the fees for their transport to the country of destination paid for by facilitators, whom they must pay back by working or providing services in the destination;
- Have acted on the basis of false promises.

Children who have been trafficked may:

- Have no access to their parents or guardians;
- Look intimidated and behave in a way that does not correspond with behaviour typical of children their age;
- Have no friends of their own age outside of work;
- Have no access to education;
- Have no time for playing;
- Live apart from other children and in substandard accommodations;
- Eat apart from other members of the “family”;
- Be given only leftovers to eat;
- Be engaged in work that is not suitable for children;
- Travel unaccompanied by adults;
- Travel in groups with persons who are not relatives.

The following might also indicate that children have been trafficked:

- The presence of child-sized clothing typically worn for doing manual or sex work;
- The presence of toys, beds and children’s clothing in inappropriate places such as brothels and factories;
- The claim made by an adult that he or she has “found” an unaccompanied child;
- The finding of unaccompanied children carrying telephone numbers for calling taxis;
- The discovery of cases involving illegal adoption.

People who have been trafficked for the purpose of domestic servitude may:

- Live with a family;
- Not eat with the rest of the family;

- Have no private space;
- Sleep in a shared or inappropriate space;
- Be reported missing by their employer even though they are still living in their employer's house;
- Never or rarely leave the house for social reasons;
- Never leave the house without their employer;
- Be given only leftovers to eat;
- Be subjected to insults, abuse, threats or violence.

People who have been trafficked for the purpose of sexual exploitation may:

- Be of any age, although the age may vary according to the location and the market;
- Move from one brothel to the next or work in various locations;
- Be escorted whenever they go to and return from work and other outside activities;
- Have tattoos or other marks indicating "ownership" by their exploiters;
- Work long hours or have few if any days off;
- Sleep where they work;
- Live or travel in a group, sometimes with other women who do not speak the same language;
- Have very few items of clothing;
- Have clothes that are mostly the kind typically worn for doing sex work;
- Only know how to say sex-related words in the local language or in the language of the client group;
- Have no cash of their own;
- Be unable to show an identity document.
- There is evidence that suspected victims have had unprotected and/or violent sex;
- There is evidence that suspected victims cannot refuse unprotected and/or violent sex;
- There is evidence that a person has been bought and sold;
- There is evidence that groups of women are under the control of others;
- Advertisements are placed for brothels or similar places offering the services of women of a particular ethnicity or nationality;
- It is reported that sex workers provide services to a clientele of a particular ethnicity or nationality;
- It is reported by clients that sex workers do not smile.

People who have been trafficked for the purpose of labour exploitation are typically made to work in sectors such as the following: agriculture, construction, entertainment, service industry and manufacturing (in sweatshops). People who have been trafficked for labour exploitation may:

- Live in groups in the same place where they work and leave those premises infrequently, if at all;
- Live in degraded, unsuitable places, such as in agricultural or industrial buildings;
- Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing;
- Be given only leftovers to eat;
- Have no access to their earnings;
- Have no labour contract;
- Work excessively long hours;
- Depend on their employer for a number of services, including work, transportation and accommodation;
- Have no choice of accommodation;
- Never leave the work premises without their employer;
- Be unable to move freely;
- Be subject to security measures designed to keep them on the work premises;
- Be disciplined through fines;
- Be subjected to insults, abuse, threats or violence;
- Lack basic training and professional licences.

The following might also indicate that people have been trafficked for labour exploitation:

- Notices have been posted in languages other than the local language;
- There are no health and safety notices;
- The employer or manager is unable to show the documents required for employing workers from other countries;
- The employer or manager is unable to show records of wages paid to workers;
- The health and safety equipment is of poor quality or is missing;
- Equipment is designed or has been modified so that it can be operated by children;
- There is evidence that labour laws are being breached;
- There is evidence that workers must pay for tools, food or accommodation or that those costs are being deducted from their wages.

People who have been trafficked for the purpose of begging or committing petty crimes may:

- Be children, elderly persons or disabled migrants who tend to beg in public places and on public transport;
- Be children carrying and/or selling illicit drugs;
- Have physical impairments that appear to be the result of mutilation;
- Be children of the same nationality or ethnicity who move in large groups with only a few adults;
- Be unaccompanied minors who have been “found” by an adult of the same nationality or ethnicity;
- Move in groups while traveling on public transport: for example, they may walk up and down the length of trains;
- Participate in the activities of organized criminal gangs;
- Be part of large groups of children who have the same adult guardian;
- Be punished if they do not collect or steal enough;
- Live with members of their gang;
- Travel with members of their gang to the country of destination;
- Live, as gang members, with adults who are not their parents;
- Move daily in large groups and over considerable distances.

The following might also indicate that people have been trafficked for begging or for committing petty crimes:

- New forms of gang-related crime appear;
- There is evidence that the group of suspected victims has moved, over a period of time, through a number of countries;
- There is evidence that suspected victims have been involved in begging or in committing petty crimes in another country.

Summary

Indicators are not proof of trafficking in persons; they are the starting point for investigation.

Trafficking in persons may be identified by:

- Direct reporting by victims and other people;
- Reactive investigations;
- Proactive investigations.

Efforts should be made to corroborate indicators of trafficking by looking beneath the surface.

General indicators that a person may be a victim of trafficking include:

- Age—generally younger people of both genders are prone to be trafficked for all purposes;
- Gender—in sexual exploitation mainly female. In other forms of trafficking, victim types vary according to nature of exploitation etc.;
- Location of origin—developing economies, locations in crisis or transition;
- Documentation—travel or identity documents held by others;
- Last location—location associated with exploitation of commercial trafficking processes;
- Transport—escorted travel even for short distances;
- Circumstances of referral—referred after recovery by NGO, client rescue, self-referral, etc.;
- Evidence of abuse—physical signs, but look for more subtle forms of control;
- Assessment of the referring agency—any information supplied to agency that indicates trafficking in persons;
- Current knowledge—existing information intelligence about trafficking in persons but do not forget you may be seeing indicators of something you have no previous information/intelligence about.



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Anti-human trafficking manual for criminal justice practitioners

Module 3

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Anti-human trafficking manual for criminal justice practitioners

Module 3:

Psychological reactions of victims of
trafficking in persons



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This publication has not been formally edited.

Module 3:

Psychological reactions of victims of trafficking in persons

Objectives

On completing this module, users will be able to:

- Understand how the process of trafficking in persons affects the health of its victim;
- Recall the nature of health problems suffered by a victim as a result of exploitation;
- Know how the impaired health situation of a victim may affect investigation and prosecution of the crime of trafficking in persons;
- Determine appropriate strategies to be adopted by criminal justice practitioners to enable a victim to assist the criminal justice process.

Introduction

This module focuses primarily on the effects of sexual abuse and exploitation on victims of trafficking in persons. It starts with a general overview of psychological reactions and then outlines some of common trauma-inducing experiences of victims before and during the trafficking process. The effects of these experiences are then listed and explained.

Finally, this chapter explores the implications that these reactions may have for investigators and suggests methods to avoid re-traumatizing victims and to help them begin the recovery process. This chapter also provides guidance on how to minimize the impact that psychological reactions may have on investigations.

There is very little information on the physical or psychological health of victims of trafficking. Much of this chapter is based on or adapted from research reports by the London School of Hygiene and Tropical Medicine in conjunction with NGOs.¹

¹ See: Zimmerman, C, Hossain, M, et. al. 2006 *Stolen Smiles. The physical and psychological health consequences of trafficking in women* at www.lshtm.ac.uk/genderviolence.

Psychological reactions on victims of trafficking

Most victims of trafficking will have suffered one or more traumatic events and will have adopted psychological tactics to cope with the effects of these events. To begin to understand these reactions, it is important to first understand a bit about “trauma”.

What is trauma? According to experts on trauma:

“The essence of trauma is that it overwhelms the victim’s psychological and biological coping mechanisms. This occurs when internal and external resources are inadequate to cope with the external threat.”²

Traumatic experiences suffered by victims of trafficking in persons are often complex, multiple and can occur over a long period of time. For many individuals who are trafficked, abuse or other trauma-inducing events may have started long before the trafficking process.

Studies of trauma in cases of trafficking in persons have been conducted, but there are few of them. Studies so far tend to focus on trafficking for sexual exploitation but yet to cover victims from every origin location. However, they offer some guidance and conclusions, especially when they are considered in conjunction with what is generally known about trauma and anecdotal evidence from around the world. It is essential you are aware of these conclusions and to you are able to identify how they might affect your work as a criminal justice practitioner.

No two victims of trafficking are the same and the impact trafficking has upon each individual varies. You cannot make assumptions about how individuals might or should react. You must treat each person as an individual and on his or her own merit.

Individuals will react to you in different ways. Do not expect a victim of trafficking to see you as their rescuer or saviour: Some might, but many may see you as an unwelcome interlocutor, which may further compound what is already a very complex situation.

If a victim reacts in a hostile or aggressive way, it may have nothing to do with you as a person, your role or the organization you work for. Victims may have adopted these tactics and emotions to cope with or to survive their ordeal. It is likely that they would react to anyone in the same way.

Not every victim will react to the investigation with hostility, but many will. Do not see this as your fault or that of the victim and do not respond to any hostility in a negative way. If you do, it is very unlikely you will be able to build up the necessary rapport with the victim.

Challenging and direct questioning too early is very likely to alienate the victim and may re-traumatize the victim. Challenging a victim’s veracity, treating the victim as a suspect or

² Saporta, J. and B.A. van der Kolk, *Psychobiological consequences of trauma*, in *Torture and its consequences: Current treatment approaches*, M. Basoglu, Editor. 1992, Cambridge University Press: Cambridge.

showing doubt or signs of disbelief are likely to remind him or her of the defensive position they held during the trafficking ordeal. This is likely to destroy any chance of cooperation. Avoid this approach at all costs. A considered, methodical and non-judgmental approach has the best chance of revealing the truth whatever it may be. In most cases, you will have an opportunity to express your concerns or doubts at a later date.

You are unlikely to have encountered people who have suffered the range of chronic abuses found in trafficking victims. Nonetheless, there might be some similarities with cases you have dealt with previously. Victims of chronic domestic violence have often suffered similar levels of assault, abuse and control to those experienced by victims of trafficking for sexual exploitation.

Levels of psychological trauma experienced by some victims (either before or during the trafficking process) may be so high that they are never going to be able to serve as witnesses in court or even give an account that can be used as the basis of intelligence. You should always be prepared to terminate an interview if necessary and seek immediate assistance for the individual. On the other hand, it is also possible that some individuals who initially present strong emotional reactions, may, with time and professional support or counselling, become perfectly capable witnesses.



Case example^a

At the time that Elena was lured to a provincial city, imprisoned and gang-raped, she lived in a Central European country and was 20 years old. When her captors decided that she was sufficiently broken down, they began pressuring her to prostitute herself. Soon, Elena found out that they were preparing false documents, so they could take her abroad. In her desperation and desire to run away, she jumped from the second floor of the building in which she was locked up. The police found her helpless and in shock and took her to hospital, where she was diagnosed as suffering from post-traumatic stress disorder.

Elena was an energetic young woman with many interests and a good education. There was no violence or abuse in her family. Her life changed completely after the brutal violence and the attempt to lure her into prostitution. She decided that she would fight in order to help stop the traffickers from abusing other young women. She immediately filed a complaint with the police. This happened more than eight years ago. None of the accused have been sentenced to this day.

Elena dedicated her life to the lawsuit, spending her money on paying lawyers fees and other legal expenses. She suffers from perpetual anxiety. What worries her most is that her memory has begun to erase the traumatic event. After eight years, she remembers almost none of the concrete details of the horrors she lived through, yet she has to be a witness in court. What is more, if the case is not prosecuted soon, the legal time limit (statute of limitations) will run out. At the moment Elena receives support from NGOs.

Is this a case of trafficking in persons or smuggling of migrants?

^a Violation of Women's Rights A cause and consequence of trafficking women La Strada International 2008



Self-assessment

What kind of psychological reactions do you think would be present here?

What are the affects of psychological reactions to the criminal justice system?

Common traumatizing experiences of victims of trafficking

There are two factors that are said to be most predictive of a strong reaction to ongoing trauma:

- Unpredictability of events
- Uncontrollability of events³

These two characteristics are perhaps defining features of a trafficking situation, particularly the latter.

The following list describes the forms of control very commonly used by those in possession of a trafficked person.

Restriction of movement

By definition the trafficking process involves removing control from victims. This applies to all forms of trafficking. Control has been found to cover all aspects of life, even the most intimate: when a victim eats, goes to the toilet, works, sleep, where they go, who they are with. In some cases, victims may have been controlled from the outset, for example if they have been abducted. In other cases, control may have been relatively weak in the early stages but increased as the victim went through the trafficking process, becoming strongest as they near and reach the destination location/exploitation phase

Control may be subtle, involving direct or implied threats or making the victim feel responsible for their own behaviour. Sexual exploitation victims may be given a small amount of money for what they do; others may be involved in petty crime such as stealing from shops, street begging or working in illegal industries, for example drug trafficking. This can lead to feelings of guilt and revulsion, which makes it even more difficult to tell anyone what has happened.

Levels of control may differ according to the type and perpetrator of trafficking in persons. In trafficking for sexual exploitation, studies have shown that in some locations only 3 per cent of victims reported that they were “always free”. Some comments by this 3 per cent

³ Basoglu, M. and S. Mineka, *The role of uncontrollable and unpredictable stress in post-traumatic stress responses in torture survivors*, in *Torture and its consequences: Current treatment approaches*, M. Basoglu, Editor. 1992]

revealed a different story however, for example “I was always (free) I could go out when I wanted to, but only with someone”.²

Controls of this breadth and intensity mean that victims can become fearful or incapable of taking decisions, even the smallest decisions.

Violence

Victims may have been subject to violence before and during the trafficking process.

Violence before trafficking has been seen in a substantial number of victims of trafficking for sexual exploitation, with around 60 per cent reporting experiencing some form of violence before trafficking in one study.⁴ Pre-trafficking violence in other forms of trafficking has not been researched.

Once engaged in the trafficking process, victims may be subjected to a range of violent acts from threats to serious assaults. Again, the intensity of violence varies. In sexual exploitation cases, up to 70 per cent of women have reported physical violence and 90 per cent sexual violence while being trafficked.⁵ Children recruited/abducted to fight as soldiers have been controlled by beatings and rape.⁶ The picture in domestic servitude cases is not clear, but anecdotal evidence suggests that assault is commonly used by “employers” to control victims.

Threats of various kinds are used frequently by traffickers to control victims and can target the victim, their family or friends. The threats may be of direct violence to a particular person or a threat to expose the victim to the authorities, for instance, where they are in a location illegally or have been involved in criminal activity. Threats may be implied, for example, arranging that the victim witness the abuse of another individual in the same circumstances or simply making the victim aware that the trafficker is part of a very violent gang.

The power of these threats should not be underestimated. Even where the traffickers are not in a position to carry out the threats, the victim may believe they are. Victims may have been brought across many miles and territories by a gang who appears powerful, sophisticated and organized with links in many locations; these links may include law enforcement and other officials. Traffickers may have demonstrated they are capable of violence.

Eighty-nine per cent of women interviewed in one study of trafficking for sexual exploitation said they had been threatened while being trafficked. In a significant number of cases, the families of victims or people they knew had been involved in their trafficking.⁷

⁴ Zimmerman, C., M. Hossain, et al. (2008). “The health of trafficked women: A survey of women entering posttrafficking services in Europe.” *American Journal of Public Health* 98: 55-59.

⁵ Zimmerman, C., M. Hossain, K. Yun, B. Roche, L. Morison, and C. Watts, 2006. *Stolen smiles. The physical and psychological health consequences of trafficking in women*. London School of Hygiene & Tropical Medicine: London.

⁶ Anderson, B 2005 *Doing the dirty work* Assoziation A.

⁷ Zimmerman C, Hossain M, 2006. Pearson, E., 2002. *Human traffic, human rights: Redefining victim protection*. London: Anti-slavery International.

Abuse

Victims may have experienced abuse falling short of direct physical violence before and during trafficking. Abuse should be understood widely, for example, to include verbal or psychological abuse, deprivation or other controlling or harmful behaviours that negatively affect an individual.

In some locations, victims of trafficking have been found to come from dysfunctional backgrounds before they were trafficked. Examples include victims whose parents were addicted to alcohol or drugs, experienced or witnessed domestic violence, were orphaned as children, were homeless, or whose health and safety have been affected by dire conditions, war, civil unrest, poor diet or lack of access to education.

During the trafficking process, victims may have been forced to work very long hours with limited breaks. They may not have had access to nutritional food, protective equipment, adequate amounts of fluids or clean clothing and the means to wash themselves or medical care.

Multiple trauma

As you read throughout these modules you begin to understand how trafficking in persons investigations differ from other types of investigation. One significant difference between the trauma in these cases and many others is that victims have suffered multiple, often ongoing traumatic events during numerous periods of their lives, perhaps by multiple perpetrators. While this should not be seen as minimizing the trauma found in other cases, experiencing multiple or chronic traumatic or abusive events has been found to have more negative effects than a single trauma.⁸

A victim's anxiety can be complex to unravel, as many victims still face real dangers related to their trafficking experience even after removal from the site of exploitation. It is necessary here to recall that in one study on trafficking in women, 89 per cent of the women were threatened while in the trafficking situation, and 36 per cent reported that traffickers threatened their families.⁹ In addition, many were trafficked by family members or someone from their place of origin. Studies have shown that trafficked women continue to receive threats by phone and in-person, both against themselves and their families, and that protection by authorities has been extremely limited.¹⁰ For this reason, when a person exhibits fear and anxiety, it is necessary to consider that this may very well be the victim's sensible response to actual danger.



Self-assessment

What are the common trauma inducing experiences in trafficking in persons cases?

⁸ Green, B.L. , Goodman, L. A, Krupnick, J.L., Corcoran, C.B., Petty, R.M. , Stockton, P., and Stern, N.M., *Outcomes of single versus multiple trauma exposure in a screening sample*. Journal of Traumatic Stress, 2000. 13(2): p. 271-286.

⁹ Zimmerman C, Hossain M, et. al. 2006.

¹⁰ Pearson, E., 2002. *Human traffic, human rights: Redefining victim protection*. London: Anti-slavery International.

What symptoms does traumatization produce in victims of trafficking in persons?

The next part of this module looks at the effect traumatization may have on the health of victims. Investigators have a general duty of care for victims, but that is not the main reason the health of victims is explored here. You are required to investigate trafficking in persons offences as efficiently and effectively as possible. You will not be able to do this unless you are aware of how victims' health may be affected and what you should do to ensure your investigation takes account of the issues this poses for you

Current evidence of the health effects of physical and sexual violence highlights that when such abuse is frequent and severe, it is likely to result in a host of health problems, including physical injury, sexual health problems, chronic somatic health consequences, and poor long-term mental health.

Concurrent symptoms¹¹

Immediately following a trafficking experience most women have numerous simultaneous physical and mental health problems. In one study conducted among trafficking victims in Europe, 0 to 14 days after the trafficking experience, over 57 per cent of women were experiencing 12 or more physical health symptoms that caused them pain or discomfort.

After 28 days, 7 per cent were still experiencing eleven or more symptoms a figure which remained at 6 per cent after 90 days.

Multiple mental health symptoms endured much longer. Over 70 per cent of the women reported ten or more mental health symptoms associated with depression, anxiety and hostility within the first 14 days. After 28 days, 52 per cent still suffered ten or more concurrent mental health symptoms, and not until after 90 or more days did this symptom level seem to subside.

In this study, women's psychological reactions were multiple and severe, and compare to, or exceed symptoms experienced by torture victims.

Physical symptoms¹²

Fatigue and weight loss, neurological symptoms, and gastrointestinal problems were most commonly reported. Generally, the proportion of women reporting various problems decreased between each interview.

A significant majority of victims (82 per cent) reported feeling "easily tired" at the first interview. Fatigue symptoms remained common and severely felt. Even 90 days after the trafficking event fatigue was still reported by 41 per cent of victims.

¹¹ Zimmerman C, Hossain M, 2006.

¹² Zimmerman C, Hossain M, 2006.

Many victims of trafficking have had little sleep due to being forced to do gruelling activities for long periods of time. Chronic or prolonged sleep loss not only affects an individual's ability to concentrate and think clearly, but also weakens the body's immune system and ability to endure pain.

Mental health symptoms

Depression, anxiety and hostility are symptoms frequently detected among torture victims and victims of other traumatic events and were also identified as prominent psychological reactions in an earlier study on the health of trafficked women.

Again, in the study on women who were assisted in Europe, their levels of mental ill health were found to be much higher than those in a general female population. While in the care of NGOs, women's symptom levels did decrease—but this decrease happened very slowly and not very much. Even after three months of care, women's reported depression levels were still at the level of the top 10 per cent of the most depressed women in an average female population. Anxiety and hostility levels were not quite as high, but still well above the average. This is likely to inhibit trafficking victims from re-engaging in normal daily activities, such as caring for family, employment, or education.¹³

For the investigator, these strong symptoms levels suggest the need for extremely sensitive and timely approaches to questioning a victim.

Real danger may remain after a woman is removed from a trafficking situation; removal in itself will not necessarily reduce levels of well-founded and symptomatic anxiety.

A victim's expression of hostility may be surprising for some investigators, who are more likely to expect victims to appear broken, tearful and/or fearful. Yet, hostility is a well-documented response to trauma. It will not be uncommon for a victim to be "annoyed or easily irritated", "easily upset" and "irritated by everything", have "temper outbursts".¹⁴ Again, while these feelings may subside, they are likely to ebb and re-emerge depending on the stresses the victim faces.

It is not uncommon for victims who have been aggressive to be regretful, baffled, and embarrassed by their own behaviour. Women in the study in Europe described their irritability and related acts of aggression, such as punching walls, throwing items and hitting others.

Post-traumatic stress disorder

Post-traumatic stress disorder (PTSD) is a term that describes a mental health disorder caused, in part, by exposure to one or more traumatic events. This disorder manifests in a number of severe psychological symptoms experienced by those who have been exposed to a life-threatening experience that has had a traumatic effect on them.

¹³ Zimmerman C, Hossain M, 2006.

¹⁴ Ibid.

PTSD was first formally identified among Vietnam war veterans, but had been previously detected and labelled with a variety of terms, most often terms associated with warfare, for example “shell shock” found in soldiers of the First World War or “combat fatigue” in the Second World War.

Various measures of PTSD have been devised. Examples of common symptoms measured include recurrent thoughts/memories of terrifying events, trouble sleeping, and inability to feel emotions.

PTSD is commonly identified in persons in occupations such as the police and army and as a consequence of experiences such as rape and serious accidents. These are often single traumatic events.

Almost everyone who has a traumatic experience will have feelings of shock, grief and adjustment; not everyone who experiences a traumatic event will develop PTSD. PTSD should not be confused with the normal response to a disturbing episode.

For victims of trafficking, the traumatic events they experience are often repetitive and prolonged—which can sometimes distinguish their reactions from those who have survived a single life-threatening event. For many who have worked with victims of chronic trauma, such as domestic violence victims, this type of repetitive abuse/fear is considered a separate syndrome: complex post-traumatic stress disorder.

The distinction between PTSD and complex post-traumatic stress disorder is important to investigators because it emphasizes that the reaction to ongoing trauma is actually a physiological re-organizing of the individual's natural responses or instincts that makes them hyper-prepared to respond to stressful events.

A common characteristic of PTSD is the tendency of symptoms to decline over time in most people—although they can linger and lead to long-term psychiatric conditions in some, and may re-emerge at stress-filled times.

Studies of trafficking victims (particularly for sexual exploitation) have found that victims display many PTSD symptoms. The pattern of a steady decline in symptoms was also found in the trafficking victims, although rates of decline varied between symptoms. Another common feature of PTSD reflected in studies on trafficking in persons was that some victims still have symptoms some time after the trafficking or removal from the site of exploitation. In the study conducted in Europe, a more significant reduction of symptoms occurred after the women were in post-trafficking care for approximately 90 days.¹⁵

The impact of PTSD on victims of other forms of trafficking has not been extensively documented, but anecdotal information suggests it is found in all types of trafficking. Some types of trafficking (child soldiers for example) carry obvious trauma that may be prolonged and intense which are highly likely to lead to PTSD.

¹⁵ Ibid.

Consequences for criminal justice practitioners

This section will discuss issues around obtaining an account from a person suffering from the range of symptoms experienced by victims of trafficking who have been sexually abused or sexually exploited.

Behaviour of the victim

The behaviour of the victim could include:

- Hostility towards the investigator or prosecutor. The victim may have learnt that anything jeopardizing the dominance of the traffickers could lead to immediate violence. S/he may thus avoid any cooperation with law enforcement or judicial authorities;
- Failure to cooperate with the investigation or prosecution;
- Memory loss, lapses, discrepancies, resulting in:
 - Changes in the account at different times
 - Inability to recall details
 - Ability to recall central details of a traumatic incident, but not peripheral details such as descriptions of clothing, rooms or vehicles
 - Blocking out events that were most life threatening (e.g., dissociation)
- Outbursts that appear to be irrational;
- Disorientation after leaving the situation of ongoing trauma and control;
- Continuing anxiety despite apparently being “safe”;
- Needing more breaks, rest and sleep than might be expected;
- Reconstruction and remembering. For many victims, there is a period of re-construction as they process what has happened to them. Victims re-interpret events and try to come to terms with their experience, to possibly find an explanation for what has happened, or to evaluate the event.

What you should do (and not do)

- Take the victim to a secure environment away from traffickers or those associated with traffickers.
- Avoid early interviews wherever possible. An early interview of the victim will in many cases overstrain the victim's capacity to remember and to cope with the overwhelming memories and may jeopardize the consistency of the statement you obtain.
- Victims should be stabilized before they are interviewed in detail about what happened to them.
- This stabilization may involve working with health care professionals (medical assessment and treatment for both and psychological symptoms), social support workers and those who provide accommodation and counselling services.

- When you interview the victim, organize a comfortable and safe interview setting, including plain clothing. Where an initial account is required this should be free recall and (wherever possible) without challenge. Keep in mind though that the victim may say something that needs corroboration and/or clarifying to prevent harm coming to them or others.
- During the interview, use simple measures such as choice in food to help return a sense of control.
- Start planning for accommodation and support as soon as you can. Contact and coordinate with local organizations or state agencies to establish working relationships and plans for accommodation and support before you become involved in a trafficking investigation. In this way, you will have options available through organizations who have tentatively agreed to assist. If you are involved in a proactive investigation, do this from the outset; if it is a reactive investigation make early plans as soon as you realize you may need to accommodate a victim.
- If you can, take measures to prevent harm on those under threat such as family members or other loved ones of the victim.
- Avoid secondary victimization. Secondary victimization refers to the victimization that occurs, not as a direct result of the criminal act, but through the response of institutions and individuals who are insensitive to the needs and vulnerable status of the victim. The whole process of criminal investigation and trial may cause secondary victimization, because of difficulties in balancing the rights of the victim against the rights of the accused or the offender, or even because the needs and perspective of the victim is entirely ignored.



Self-assessment

What are the consequences of psychological reactions to trafficking investigations and prosecution?

How can you try to minimize the impact of psychological reactions to investigations and prosecution?

Summary

- Victims of trafficking are generally exposed to traumatic experience as a result of their inability to predict and control events during the trafficking process;
- Trauma occurs when the victims' psychological and biological coping mechanism is unable to cope with the external threat;
- Trauma inducing experiences include:
 - Restriction of movement
 - Violence against the victim
 - Abuse

- The effect of trauma on the health of victims include:
 - Physical and mental health problems
 - Fatigue and weight loss, neurological symptoms and gastrointestinal problems
 - Tiredness
 - Depression, anxiety and hostility
- Post traumatic stress disorder (PTSD) occurs more in victims of trafficking than other victims because of their exposure to one or more traumatic event over a long period of time.
- The behaviour of victims towards criminal justice practitioners could include:
 - Hostility and failure to cooperate
 - Memory loss, lapses and discrepancies in story line
 - Outburst and irrationality
 - Continuing anxiety and disorientation, etc.
- You may be able to minimize the impact that psychological reactions may have on investigation and prosecution through the following means:
 - Address immediate needs before you start
 - Give more breaks during interviews
 - Do not press on issues but the interview time
 - Give medical assessment and assistance.
 - Arrange for comfortable shelter or safe houses and other support services
 - If you can, assure the victim that measures are being taken to prevent harm against the victim's family members or other loved ones
 - Never make promises you cannot keep!



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Anti-human trafficking manual for criminal justice practitioners

Module 4

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Anti-human trafficking manual for criminal justice practitioners

Module 4:
Control methods in trafficking in persons



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This publication has not been formally edited.

Module 4:

Control methods in trafficking in persons

Objectives

On completing this module users will be able to:

- Recall the main forms of control of victims in trafficking in persons cases;
- Describe how a blend of control measures may be used throughout the trafficking process;
- Explain the options for dealing with the main forms of control when investigating trafficking cases.

Introduction

Success for traffickers only comes if they can control their victims, as by definition, a victim of trafficking does not consent to what is happening to them. In some cases it may appear that the victim consents but closer investigation shows that the consent was rendered irrelevant through the use of coercion, fraud, deception or other improper means.

Control is maintained in a number of ways. This module outlines some of the commonly found control mechanisms. In each case it describes how it is used by the traffickers and suggests some ways that will help you deal with it.

The methods described are:

- Violence and threats of violence
- Deception
- Imprisonment
- Collusion
- Debt bondage
- Isolation
- Religion, culture and belief

Traffickers will frequently use a blend of control measures. This blend will vary according to the individual victim, the type of trafficking, the stage of the trafficking process, the nature of the location, and opportunities presented by circumstances. It is important to remember that just because a victim has not been assaulted it does not mean that they are not being controlled.

Deception might be used when recruiting or obtaining victims (“It’s bar work. It is really well paid over there and it’s easy”). This might be blended with collusion (“Don’t tell anyone where you are going because we have to bribe someone to get a work permit”) and debt bondage (“Don’t worry about the permit. You can pay us back when you get paid”).

As the trafficking progresses, some control measures will no longer work or traffickers may need to change the approach and emphasis. At a destination location it may not be possible to deceive a victim anymore (“There is no bar work. You must work in the fields”). Control could become more threatening or violent (“You are not grateful. We do not like people who are not grateful” or ‘Work or my friend will beat you’) Debt bondage may change (“We paid for the permit. Now we give you a place to eat and sleep. You owe us more money”).

Traffickers may make “concessions” to help maintain control or reduce the chances of victims trying to escape. Examples are small amounts of freedom, allowing victims to keep a small amount of money or “privileges” such as making a phone call. Where concessions are made there is often some kind of powerful threat, implied or direct, in the background.



Case example

Aksana grew up in a situation of violence in a small village in a country in transition. Her mother, an alcoholic, pushed her out of the window from the second floor when she was 10. Assaults and physical battering were the rule rather than the exception. The family was poor, as the only steady income was the pension of the grandmother. Aksana got acquainted with a female friend of her mother’s. This woman lent Aksana some money and invited her to live in her flat for a while. She later forced Aksana into prostitution at the age of 15. Once Aksana was even locked in a basement in wintertime, wearing only her underwear. Aksana was afraid to refuse, as she was told that everyone in her hometown would know that she had been a prostitute. Moreover, Aksana was threatened that her little brother would be killed. Aksana had to work to pay off a “debt” she had allegedly acquired. Although her mother knew of the situation her daughter was in, she did nothing to help her.

Violation of Women’s Rights. A cause and consequence of trafficking women. La Strada International 2008.



Self-assessment

What were the control mechanisms used in the above case?

How is a blend of control method used throughout the trafficking process?

For what reasons do you think traffickers may change the type of control method used?

The control methods and dealing with them

Violence and threats of violence

Violence or the threat of violence can be used at any stage of the trafficking process to control a victim. Victims, or their friends and/or relatives, may be the subject and targets of the threats and violence.

Direct violence at the early stages of the trafficking in persons process may vary according to local conditions at the source location and the type of trafficking involved. For example, in cases of sexual exploitation, victims may be initially obtained through deception; violence and threats may only become apparent if a victim tries to escape or to achieve compliance when being exploited. Trafficking in persons for the purposes of warfare by contrast may involve violent abduction at the outset followed by long-term conditioning.

Victims may not be directly threatened but still live in great fear of violence. Simply suggesting the traffickers know where a victim's family live or by telling stories about victims who have not complied in the past can imply threats. Traffickers may make an example of one person to encourage others to conform: the message does not have to be stated if someone else you have seen being exploited is severely beaten or even killed.

Traffickers may have a long reach in their ability to inflict injury. The victim may be aware a gang has members or associates where their own family lives. Again, the criminals may only have to imply a threat: it is only important that the victim believes it can be carried out, not that it actually can or will be.

Dealing with violence and threats

Violence and threats in trafficking cases may be very obvious, but in many cases they can be subtle and concealed. Do not assume a person has not been subject to violence just because they do not have injuries or do not allege they have been assaulted.

Use vulnerable witness interview techniques to help assess whether a victim has been subjected to violence or threats. Victims may not be willing to tell you they have been assaulted or threatened because they are in great fear. See module 8: "Interviewing victims of trafficking in persons who are potential witnesses".

Do not introduce the issue of violence in the free recall stage of the account. Note any indicators of possible violence or threats and develop these at a later stage of the interview.

Indicators that violence or threats may be present include:

- Symptoms of traumatization as outlined in module 3: "Psychological reactions of victims of trafficking in persons";
- Accounts of stories of violence by traffickers;
- Witnessing violence against others.

Look for injuries when you first encounter a suspected trafficking victim. Either photograph or note injuries on suspected victims as soon as you can. Where these can be seen without removing clothing these may be obtained by investigators; where they cannot, a specialist (often a doctor or nurse) should be used in accordance with your domestic legislation and procedures.

See module 7: “Crime scenes and physical evidence examinations in trafficking in persons investigations” for more information.

Deception control

Many trafficking in person cases start with the victim being deceived. This may be complete deception, for example someone who was told they would work in a bar who is then forced to work in a brothel. It may be partial deception, for example a person who was told they would work as a domestic servant with reasonable conditions finds in fact they are not paid and are kept as virtual slaves.

Deception tends to take place in the early stages of the trafficking process. At some point the victim may either be told or realize they have been trafficked. When this happens the trafficker may have to rely on a different control mechanism such as violence or isolation.

In some origin locations, deception as a control tactic may be particularly common. These include locations where there is significant migration. In such situations potential victims may know or have heard of others who have successfully migrated, even if that migration was not lawful. They may be aware of remittances sent back to their families by migrants. Even some trafficking victims are able to send small remittances, allowed to do so by the traffickers to make them more compliant and to avoid raising suspicion. In these circumstances various organizations can flourish that facilitate lawful or unlawful migration. It is difficult for an individual to judge whether they are dealing with people who intend to traffic them.

Expectations at an origin location may make it particularly easy for traffickers to use deception. People in developing areas often have an unrealistic expectation of what life is like in more developed areas and are willing to believe stories of how good life elsewhere is.

Traffickers may tell stories at all stages of the trafficking process that suggest the authorities are always corrupt and not to be trusted. Victims may be told they will be arrested and either sent back or prosecuted if they are discovered or go to the authorities. This may be direct deception in some circumstances, but unfortunately may be correct (or at least partially correct) in others. Victims may have seen corruption by officials or be aware of other victims who have been prosecuted for illegal entry or for offences they may have been forced to commit as victims of trafficking.

Dealing with deception control

Be aware of the signs that deception may be taking place or may have taken place. Examples include adverts which offer jobs in countries where it is very difficult to migrate lawfully,

adverts which are targeted at specific groups such as young women, those which offer very generous conditions and anything that suggests no money is required to migrate or travel. You may come across these if you work in an origin location or when interviewing victims in transit or destination locations.

Recover any adverts or other physical evidence such as letters that you believe show traffickers have or are attempting to deceive a victim. Recover these items lawfully in accordance with your domestic legislation. In some circumstance such recovery may alert criminals you are investigating them so care should be taken. Consider using photographs and other techniques if appropriate.

Plan questions in interviews to discover if deception has taken place. Where a victim confirms deception probe their account to obtain as much detail as possible that will support prosecutions or intelligence development.

Victims may feel embarrassed that they have been deceived. Do what you can to reassure them that they should not be ashamed. Do not judge. Avoid comments such as “How could you have believed that?” and “Didn’t you think it was a bit suspicious?”

Information campaigns should cover areas typically exploited by traffickers. Where a location has substantial migration, campaigns should make potential migrants aware of the correct process for legal migration. Make people aware that they should be suspicious of any offers of migration or transport assistance that is “free”. If you have legitimate agencies that arrange work or migration, tell people what signs to look for that suggest such organizations are genuine.

Share information and intelligence where appropriate. For example adverts that deceive may have implications outside your area of responsibility: an advert offering work abroad would be of interest to law enforcement in a potential destination location; similarly, an interview of a victim at a destination location would be of interest at the origin location.

Identify common deception techniques used in your area of responsibility and raise potential victims’ awareness of these methods. Think about using appropriate NGOs or other local networks, faith-based groups or State organizations outside law enforcement.

Imprisonment control

Traffickers may use direct imprisonment or something very similar to imprisonment, as a method of control. Again, this may vary according to the form of trafficking, the location and the stage in the trafficking process.

Examples of imprisonment that have been seen include brothels where victims were held in locked buildings, agricultural workers kept in secure compounds under guard and domestic servants who are not allowed to leave houses.

Even where a person may appear to have been given some liberty this may be an illusion. There have been cases where victims are only allowed out under the close supervision of a “guard”.

Dealing with imprisonment control

Module 2: “Indicators of trafficking in persons” gives more detailed suggestions about what might indicate imprisonment is involved in a trafficking case. These include:

- Fences designed to prevent people from leaving premises;
- Locks on the outside of doors;
- Guards that prevent people from leaving premises;
- People living at places that would normally only be work places;
- Evidence of any form of personal physical restraint such as handcuffs, rope and/or tape;
- Evidence of guards’ escorts at all times.

Look for this type of evidence on visits to premises whether they are routine or specifically intended to be anti-human trafficking operations.

Brief law enforcement and other agencies, such as health and safety and fire inspectors, on what to look for on routine visits to premises that might indicate imprisonment.

Plan interviews to identify if imprisonment has been involved. Use the indicators above to help plan the interview.

Collusion control

Victims are likely to be easier to control if the traffickers involve them in colluding with what they are being forced to do. For instance, traffickers involved in sexual exploitation may give victims a little money. Accepting the money can have the psychological impact on the victim of making them feel they are getting benefit from their exploitation making them “guilty”. The victim may accept the money because they feel it gives them some benefit at least from their exploitation and it may allow them to support their families.

Victims who have been partially deceived may be particularly vulnerable to collusion control. A woman who knew she was going to work as a prostitute may feel she can do nothing about the fact she did not consent to sex every time, or without a condom and/or to a certain sexual act.

Collusion in criminal acts frequently features in trafficking cases. Where a person is trafficked across international borders, they may have entered a state illegally or entered legally but broken immigration laws by overstaying or working outside the terms of their visa.

Victims of trafficking in persons may have committed acts that are illegal, e.g. pickpocketing, theft, credit card and cheque fraud or transport of drugs. Victims may have committed acts that are illegal in some jurisdictions: begging, prostitution, or some forms of it. Such acts may not be illegal in the destination State, but they may be illegal in their country of origin or vice versa.

Trafficking victims may have taken illegal drugs for a number of reasons: when administered by traffickers, to “escape” from their situation or because they were addicted before they were trafficked.

Anyone who has committed a crime (or believes what they have done is a crime) is vulnerable to blackmail to ensure his or her compliance.

“Promotion” to membership has been seen in a number of cases, particularly those involving sexual exploitation. People who were originally trafficked, may become recruiters, escorts or may act as enforcers, “maids” or “kitchen mamas” in brothels. Collusion of this type is complex in its origins and difficult to investigate. On one hand, law enforcement agencies are faced with a person at the heart of the trafficking, on the other a possible victim who has been exploited.

Dealing with collusion control

Find out what your domestic policy is on non-prosecution or non-punishment of offences committed by victims of trafficking. Offences committed in the process of being trafficked, such as illegal entry to a country, may be exempt from prosecution in some circumstances. Establish what processes you need to follow to allow non-liability.

Non-liability provisions ensure that victims of trafficking are not prosecuted or punished for offences committed by them. Countries follow two main models when establishing the principle of non-criminalization of the illegal acts committed by victims of trafficking: the duress model and the causation model. In the duress model, the person was compelled to commit the offences. In the causation model, the offence is directly connected or related to the trafficking.

Where collusion control is present, other forms of control may have been applied prior to collusion such as deception, violence or imprisonment. Look for any evidence that other forms of control may have been used. Use both witness and suspect interviews to help obtain such evidence.

Never make promises you cannot keep to people you suspect may have been controlled through collusion.

If you suspect collusion, probe precise details of what, how, when and where it happened, and who was involved. Both witness and suspect interviews may reveal information that leads you to suspect collusion.

Corroborate what you are being told as much as you can.

Consider using expert witnesses in court if allowed in your jurisdiction. Psychologists may be able to explain to a court how the processes of collusion work.

Liaise with lawyers when deciding how to deal with a person you suspect may have been controlled through collusion.



Practical guidance

Be very careful not to ask questions that could help a criminal build a defence when probing suspected collusion. Allow victims to give an account, ask open questions to develop that account and probe for more detail.

Debt bondage control

Debt bondage involves charging fees to victims for transport, accommodation, food and a range of other “expenses” that have allegedly been incurred by the traffickers. These expenses are often completely fictitious or greatly exaggerated.

Interest charged on the “debt” is frequently very high and further charges are often added to the bill, for example rent on rooms in brothels or deductions for costs of living for domestic servants. Fines may be imposed for a range of “offences” that are devised by the traffickers.

It is often impossible for the victim to pay off the debt due to the combination of high interest rates and constant additions to what are “owed”.

Victims may be told that they will only have to pay for their travel etc. when they are working but are not told how much this will be or what they will have to do to earn the money. In some cases the victim may pay cash up front believing they are to be smuggled, only to be asked for more money en route; the reality is that they have been trafficked and the “debt” will be used to control and exploit them.

In some cases victims have been able to pay off a debt bond. In such cases, traffickers may need to remove the victim as she or he presents independent competition to their operations. In other cases, such victims may be promoted and become part of the trafficking network. The psychology behind such “promotions” is explained in module 2 on “Psychological reaction to trafficking in persons”.



Case example

A woman from a West African country had been trafficked to Europe to work as a prostitute. She paid approximately 40,000 euros to her traffickers to clear a debt bond: this was in addition to other earnings she had handed over to them.

She decided to remain in Europe to earn more money as a prostitute working for herself. Within a matter of days her former traffickers denounced her to the authorities and she was deported as a destitute, to her country of origin.

Dealing with debt bondage control

Traffickers have, in some cases, kept records of the money “owed” and paid off by victims. If you are raiding or searching premises, seize any items that appear to be records of such transactions. Any seizures should be made in accordance with your domestic legislation. Records may be either paper documents or held on computers.

Financial investigations may reveal suspicious transactions that indicate debt bondage repayments. Estimates of the money going through an exploitation operation may show that all or the vast majority of the money is kept by the traffickers. This suggests that very little is being paid out on expense such as “wages” and may indicate victims are being kept in debt bondage.

Questions should be introduced at appropriate points in interviews. Some trafficked victims may have paid a fee before they set off believing they were migrating legitimately or were being smuggled, but this is relatively rare.

Where a suspected victim indicates they were controlled by debt bondage, ask questions that show who the debt was paid to, the amount(s) paid, what the alleged goods and services supplied were, what interest rates were charged and what they think they currently “owe” the traffickers. Establish at what point they were first told they would have to pay a debt and if the conditions of that debt were ever varied.

If you recover any money from the traffickers, if possible within your jurisdiction, consider repaying it to victims in accordance with any domestic law on compensation.

Module “Financial investigations in trafficking in persons investigations” gives more information that may be useful when investigating debt bondage.

Relationship control

Victims may consider themselves to be in a relationship with one or more of their traffickers. Commonly seen examples include parents, family and boyfriend-girlfriend relationships and what is sometimes known as “Stockholm syndrome” where victims associate themselves with their captors and exploiters.

Stockholm syndrome, also known as capture bonding, has been seen in a number of trafficking in persons cases. It may be difficult to determine if a person is complying with traffickers because they are suffering from the syndrome (an apparently irrational bond with their victimizers) or because they have made a rational decision that compliance is required to survive.

Relationship control may use a blend of other methods such as violence, deception, collusion and taking oaths.

Parents and others with control over children have been found to be involved in child trafficking in many cases. Examples include “selling” children for labour or sexual exploitation,

forced begging or domestic servitude. The control is often simply that the child trusts the parent or other relative or may have no choice in the matter.

Boyfriend-girlfriend relationships are seen in many cases of trafficking for sexual exploitation. This can range from a man who moves his girlfriend around for his friends to have sex with, to a person who targets a woman, forms a relationship and then deceives her into moving to another country.

Emotional control may be used where women are asked to “prove” their love by doing something they would not normally consent to. Victims may also be drawn into complicity in drug use or transport or asked to sell sex to support a man's drug habit. Violence has been seen where “boyfriends” assault or threaten women to ensure compliance. Oaths and promises are common in relationships in some countries; this is exploited by traffickers in ways explained in more detail below.

Control within relationships between men and women for the purposes of trafficking in persons often have much in common with some forms of domestic abuse and can mirror attitudes within a society of acceptable behaviour between the genders or their respective roles. Victims may be vulnerable to this type of control if they have been in abusive relationships in the past.

Dealing with relationship control

Remember that people in relationships with victims of trafficking may be involved in their exploitation. Be wary about informing them the victim is with you or using them as social supporters in interviews.

Do not return victims to relationships without assessing whether the people in that relationship were involved in the trafficking process. Assess possible risks to victims even where the person was not previously involved in trafficking; for example, if an uncle lives in extreme poverty, will he take the same opportunity to sell a child victim as the father did?

Victims should receive counselling as soon as it is possible to help them break a potential cycle of abuse in their lives. Only trained counsellors should be used, and special care must be taken, especially with child victims. Any decision must aim at the best interests of the child; specialized counsellors can also help when making these decisions.

Isolation control

Victims of trafficking are likely to be isolated by the nature of their circumstances, away from their homes and family, often not speaking the local language, lacking money and with restrictions on their movement. Traffickers may use a number of other methods to increase this sense of isolation.

Access to communications equipment such as phones is likely to be restricted. The constant presence of traffickers and their associates also mean it may be difficult to write and post letters.

Social life may be non-existent or very limited. Not allowing access to religious services has an impact on people of faith that is explored below but it also has the effect of eliminating an opportunity to socialize.

Locations where victims of trafficking are held may be remote and difficult to access. This applies particularly in cases of agricultural, mining and quarrying exploitation.

Domestic servitude cases often involve a single trafficking victim in a household. Naturally isolating as this situation is, loneliness may be increased by control measures such as making the victim eat meals alone and not giving any days off.

Dealing with isolation control

Look for signs of isolation control when visiting premises. These signs may include separate sleeping and eating quarters or concealed accommodation.

Brief law enforcement staff and staff of other agencies about what to look for that may suggest isolation control when they are visiting premises.

Plan interviews to include questions that concern isolation control.

Religion, culture and belief control

Victims of trafficking may have been prevented from taking part in religious services during their period of victimization. This can have a serious effect on the psychological well-being of those victims for whom religion is an important part of their lives.

In some cases religion has been used by traffickers to control victims. A commonly encountered example is that of African traditional religions and their derivatives that are found throughout parts of the Americas.

All of these present both challenges and opportunities for investigators. The attitude of the investigator is the key to meeting those challenges and maximizing opportunities. Specifically, you should have an open mind and approach this subject without prejudice.

Dealing with control through religion, culture and belief

Whatever your own faith, beliefs or opinions, they are unlikely to be reflected exactly by the faith, beliefs or opinions of the victims of trafficking you are dealing with. In some cases you may encounter beliefs that you find very difficult to understand. Whether you agree with the beliefs of a victim, you must work with them. A basic awareness of those beliefs, how those beliefs may have been exploited by criminals and what the effects are on the victim will help you prevent a possible block to your investigation. A deeper knowledge will give you some ideas of how to actively use religion and belief to support the victim and actively progress your investigation.

If a person of faith has been prevented from attending services and acts of worship, consider arranging for them to go to services or to speak to a religious leader.

This must be handled very carefully. If the religious leader does not understand the nature of trafficking they may display revulsion at what they hear or even condemn the victim for what they have been forced or coerced to do.

Anyone who is asked to speak to victims in this capacity should be clearly told they must keep all they are told confidential.

You may consider asking victims and religious leaders not to discuss with each other the exact details of the case under investigation.

Experience has shown that priests and elders of religions can help victims heal through counselling and explaining that whatever threats traffickers may have used to control the victims will not materialize.



Case example

This was a two-defendant forced labour case in the United States involving a twelve-year-old victim who was brought from Egypt illegally to be the domestic servant for the defendants in Los Angeles. The victim was illegal, illiterate, and could not speak English when she entered the country. The defendants did not allow the victim to attend school, see a doctor, or pray at a mosque. The victim lived in a garage in squalid conditions while the defendants and their children lived in luxury in a four-bedroom house in a gated community. The defendant threatened to have the victim arrested if she stopped working for him or told anyone about her work in his house. Upon her liberation, law enforcement took her to child family services where her identity and location were protected. As a condition of their release from prison awaiting trial, the defendants were prohibited from having any contact with the victim. Her identity remained confidential throughout the court proceedings. After a period of time, the victim was adopted by an American foster family. She was immediately granted “continued presence” by the United States Department of Homeland Security, allowing her access to benefits including temporary immigration relief. She was later granted “lawful permanent residency” and is applying for United States citizenship. The defendants are in prison and will be deported after they complete their sentence.



Self-assessment

What were the control mechanisms utilized in the above case?

What are the main forms of control of victims in trafficking in persons (TIP) cases?

What options are there for dealing main forms of control when investigating trafficking in persons cases when

- Visiting premises?
- Conducting interviews?
- Presenting evidence to courts?
- Planning prevention activity?

Summary

Some of the main forms of control found in trafficking in persons cases are:

- Violence and threats of violence
- Deception
- Imprisonment
- Collusion
- Debt bondage
- Isolation
- Religion, culture and belief

Traffickers frequently use a blend of control methods.

How coercive those methods are varies according to the nature of trafficking in persons, the location, victim profile and stage of the trafficking process.

Control measures may become more coercive the nearer the victim is to the intended point of exploitation.

Just because a person has not been assaulted or threatened with violence does not mean they are not being subjected to a control method. Some of the subtle methods of control are equally or more powerful than physical force and threats.

Knowledge of control measures should be used to:

- Look for physical signs of trafficking in persons;
- Interview suspected victims of trafficking;
- Take appropriate measures to reduce the effectiveness of control measures in:
 - Specific cases
 - As a general preventative measure
- Present evidence of the use of control methods to courts in a way that allows courts to understand them and make appropriate decisions in findings and sentencing decisions.



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Module 5

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Anti-human trafficking manual for criminal justice practitioners

Module 5:

Risk assessment in trafficking in persons investigations



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Module 5:

Risk assessment in trafficking in persons investigations

Objectives

On completing this module users will be able to:

- Recall the principles of continuous risk assessment in trafficking in persons;
- State the key questions to be considered when assessing risk in trafficking in persons cases;
- Understand the concept of “risk” in the context of trafficking in persons cases;
- Identify the object (“who”/“what”) of risk in trafficking in persons;
- Describe how the severity of risk and likelihood of risk are considered to determine the level of risk;
- Recall the actions to be considered when deciding on a response to an identified risk and the level of that risk;
- Describe what the risks are, what the level of risk is and possible action that should be taken, when considering the following:

All categories of victims of trafficking in persons;

Victims of trafficking in persons cooperating with law enforcement investigations;

Victims partially cooperating with law enforcement investigations;

Victims of trafficking in persons not cooperating with law enforcement investigations;

Relatives and friends of victims of trafficking in persons;

Law enforcement staff and other professionals investigating trafficking in persons;

The trafficking in persons investigation;

Post-investigation (repatriation and reintegration).

Risk assessment in trafficking in persons investigations

Trafficking in persons criminal networks more than many other criminal groups are a source of potential risk to their victims and the victims' loved ones as well as law enforcement agents in diverse ways. This is understandably so when a victim is seen collaborating with

the criminal justice system or the criminal enterprise is threatened by the state investigations. This risk should not only be recognized and planned for but should form a key aspect of investigators' strategies in the trafficking in persons investigation. An investigator should as a matter of duty identify and assess risk in trafficking in persons investigation and do whatever is possible to eliminate or reduce it.

Though there has been very little trafficking in persons specific risk research, there have been large amounts of anecdotal evidence of the risks encountered in the investigation of trafficking in persons cases.

"Risk" is simply defined to be the likelihood of a potential hazard becoming reality and the consequences if it does. Risk-assessment in trafficking in persons therefore is an attempt to decide how likely it is that a hazard will become reality and what measures should be taken to reduce or abort it completely, and insulate the victim. There is no generalized formula in trafficking in persons risk-assessment. Every case should be taken on its own merit as each case is unique and may present different challenges from your previous experiences.

Sometimes the information that may call for trafficking in persons risk assessment may come from interviews with victims, NGOs, a client, the product of enquiries, previous intelligence or information from surveillance and other specialist investigation techniques. Whatever the source of your information, it should not be ignored. Moreover, there may be different risks at different stages of trafficking in persons cases and thus the risk assessment needs to be a continuous process.

Some of the consequences of failing to identify and deal with risk include:

- Intimidation, threats, assault or death of victims, their families or friends (through the traffickers and people linked to them, before, during and after identification of case/victim);
- Illness—both physical and mental;
- Exploitation or continued exploitation;
- Wrongful conviction of the innocent, escape of the guilty from prosecution;
- Reduction of law enforcement capability to deal with trafficking in persons;
- Disappearance of relevant exhibits and evidence.

The principles and process of continuous risk assessment

The principles underpinning the risk assessment process are as follows:

- Investigators have a clear humanitarian duty of care to the victims of trafficking crimes;
- In accordance with the United Nations Convention against Transnational Organized Crime and its supplementary trafficking in persons protocol, a number of other international legal instruments, and in many cases, national legislations and procedural rules, investigators also have a legal duty of care to the victims of trafficking crime that are

brought to their attention. A critical part of fulfilling this duty is to conduct a risk assessment in relation to identified victims and other existing or potential victims;

- Coupled with the humanitarian and legal obligation imposed by law, effective risk assessment increases your chance of a successful investigations and prosecution in trafficking in persons cases;
- The risk assessment should be carried out as soon as possible after a trafficking victim has come to notice and then becomes a continuing process;
- Risks can only be assessed on what you know or what you could reasonably be expected to find out.

According to Article 6(5) of the Trafficking in Persons Protocol, each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

Article 8(2) of the Trafficking in Persons Protocol also supports the need for risk assessment when it provides as follows. “Where a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.”

Carrying out a risk assessment supports the implementation of these articles.

The four key questions

The four key questions for you to address in any trafficking in persons risk assessment process are:

- Who or what is at risk?
- What is the risk?
- What is the level of risk?
- What action should be taken?

These key questions will be addressed in detail below.



Self-assessment

What are principles of continuous risk assessment in trafficking in persons?

What are the four key questions to be considered when assessing risk in trafficking in persons?

Who or what is at risk?

This may include:

- Victims of trafficking in persons, including identified and unidentified victims, those fully cooperating with law enforcement as victim-witnesses, partially cooperating or not cooperating;
- Family, friends, partners of victims;
- Witnesses;
- Staff of law enforcement, prosecutors or other agencies including NGOs and interpreters;
- Integrity of the investigation.



Discussion

Anonymous information has been received that an agricultural processing plant in your area is using trafficked labour.

Initial enquiries do not indicate any specific risk. You decide to deploy officers to observe the plant. These officers are briefed on potential risks involved in trafficking in persons investigations and report any concerns they have.

Officers see a car leaving the plant. The licensed number is noted and an intelligence check made. A man associated with the car three weeks ago has prior convictions for acts of violence and has a history of using weapons against police officers.

What are the potential risks that need to be considered when responding to this situation?

Who is at risk?

What is the risk?

The risks associated with trafficking in persons are diverse and extensive. The coercive and exploitative nature of trafficking in persons comes with health and other associated risk. A comprehensive risk assessment is needed, taking into account the behaviour of traffickers, to what extent the behaviour of a victim gives reason to fear acts of revenge and the security situation of the place where a victim would live in his/her home country, and to what degree authorities in a country of origin would be able and willing to safeguard the physical security and integrity of the victim. Law enforcement agencies will have the primary responsibility in this field and should take the lead in the process.

Victims' cooperation with law enforcement officers always involves an element of risk for the victims and possibly for their families. The critical point is that the victims should be made fully aware of all of the issues and risks attached to any decision they are asked to

make by the investigator so that they can reach a fully informed decision. The greater the cooperation of the victim, the greater the likely risks to them, their families and other potential victims. The greater the risk, the more challenging it is for you to control those risks. The level of risk varies between individual cases and determined by many factors including the form of trafficking, profile of victims, nature of the criminal network and the capabilities of the law enforcement agencies

In the context of the crime of trafficking in persons, “risk” refers to:

- The existence of a threat to the security or safety of the individuals outlined above
- The integrity of the investigation through anything which affects the:
 - Exhibits and admissibility of evidence (i.e. any item that may confirm or disprove the commission of the crime);
 - Ethical application of the criminal law and criminal code procedures;
 - Ethical application of organizational policy and procedures.

Victims may be at risk of damage to their physical and psychological health through conditions of exploitation or direct assault as a control measure. The risk to health may continue long after initial interventions by criminal justice authorities. This may be as a result of illnesses etc. contracted during trafficking or direct assault from traffickers to prevent cooperation or enforce return.

Assaults or intimidation on victim-witnesses have the effect of increasing the risk they will not cooperate with the investigation or withdraw testimony, with clear potential investigations and prosecutions cannot proceed.

Returning victims to their point of origin location brings with it risks that people will be stigmatized, put back into the same circumstances that led to them being trafficked or placed in a situation where there is very limited support. All these have consequences for their health and increase the chance of being re-trafficked.

Family, friends partners of victims may be at risk as traffickers threaten or assault them in order to control victims or if they attempt to find out what has happened to the victim or are seen cooperating with the authorities.

Witnesses in trafficking cases may be at risk from the criminal network involved in trafficking in persons. .

Police officers or any law enforcement officers involved in the investigation of trafficking in persons cases may be at risk from attack during visits or raids, health risks from exploitation environments or intimidation to prevent investigation.

Prosecutors and judges may be vulnerable to intimidation, threats and assault.

NGO workers or other victim service providers supporting the process may be exposed to assault and intimidation during traffickers' efforts to attack the victims; they may also be exposed to disease or illness and prolonged stress through working with traumatized victims.

Interpreters: If interpreters are used during the interview stage of the investigation, it is important to realize that they too could be subject to similar risks.

Criminal justice practitioners may, in some cases, be at risk from the activities of colleagues in other jurisdictions, for example through the exposure of details relating to an investigative unit or individual involved in an investigation in another country.

Investigations may be at risk through withdrawal of testimony as a result of threats to the people above, direct corruption of those people, weak criminal justice management systems or unethical application of the law and policy.

What is the level of risk?

By its nature, trafficking in persons carries a considerable risk to the victims. The precise determination of that level of risk is difficult and depends on various factors including the type of trafficking, the individual traffickers and victims involved, the culture of the victims and traffickers. A commonly used method to assess levels of risk is to consider the severity of the risk and the likelihood of the risk occurring. Both severity and likelihood are ranked as high, medium or low. Each of the ranking is given a score (Low being 1, medium being 2 and high being 3). The overall risk rating is calculated by multiplying severity by likelihood.

This can be displayed in a table (See table 1)

Table 1. Risk Rating Matrix

Severity	3	Medium	High	High
	2	Medium	Medium	High
	1	Low	Medium	Medium
		1	2	3
		Likelihood		

As can be seen from the matrix a risk with low severity and low likelihood will be rated as low risk. Medium risks occur when either both severity and likelihood are medium or where one is high and the other low. High risks occur when either both are high or one is high and the other medium.

Questions to help assess the level of risk

Some of the key questions to when assessing the level of risk include:

- *Is someone in immediate danger?* Those in danger can include other victims or relatives and friends of the victim. Circumstances where a presumed victim has been seriously assaulted or raped and suggest both high levels of severity and likelihood of injury, psychological trauma etc. Similarly, presumed victims working in a dangerous industrial process would also indicate a high severity and likelihood of injury.

- *Are there outstanding presumed victims?* Outstanding victims could increase overall risk levels in a number of ways, primarily the risks to the presumed victims themselves. Exactly what the level of risk is will depend on the answers to other questions here.
- *Have traffickers previously threatened or used violence?* Factors that would affect the risk rating include the nature of the violence (severity) and frequency (likelihood). If there is evidence of previous violence or threats the risk level is likely to be higher.
- *What knowledge do the traffickers have?* Do the traffickers know the victim's home/work address or telephone number or details of those of his or her family? Knowing this type of information will raise the likelihood of risk.
- *What support services, including physical protection, are available?* Good support services such as health care, counselling and secure accommodation can reduce the likelihood of risks such as attacks on victim-witnesses, withdrawal of testimony, etc. Those support services also reduce the severity of risk, for example by improving the chance of recovery to health.
- *What is the victim's social network?* Is he/she married? Does the victim have any children? A social network may help a victim recover (reducing the severity of risk) or provide an informal victim protection (reducing the likelihood of risk) and thus the overall risk rating. In other cases suspected traffickers may have the ability to intimidate the family or social network, increasing both the severity of risk (for example by persuading the victim-witness not to testify) and the likelihood of it occurring.
- *Do the traffickers know (or claim to know) the locations of safe houses for victims of trafficking, home addresses of family etc?* Actual knowledge will increase the likelihood of risk to victims. Claimed knowledge, even if not true, impacts on risk because it may be difficult to assess the likelihood of them knowing this information and the severity of risk increases because it may have the effect of intimidating the witness.
- *Who do the traffickers have the ability to attack?* Does it appear they have associates in place in locations that could enable them to attack the victim, his or her family or friends, thereby increasing the likelihood of a risk of injury to someone or preventing a witness from testifying.
- *How "secure" is the investigation?* Threats to the security and integrity of the investigation may come in a number of ways. Traffickers with a previous history of bribing public officials would increase the severity of risk of a total failure of the investigation; money in the hands of those same traffickers would increase the likelihood of bribery taking place. Other issues affecting security and integrity include (for example) weak exhibit management systems, wide access to intelligence/information resources, etc.



Self-assessment

What is "risk" in the context of trafficking in persons?

Who is likely to be at risk in trafficking in persons?

How are the severity of risk and likelihood of risk considered to determine the level of risk?

What action should be taken?

The tactical options available to the investigators when responding to a trafficking in person case have their own associated risks and challenges. For instance, reactive tactics may rescue one victim but expose others to danger. Proactive approaches can give powerful evidence but put officers in hazardous situations. Disruptive methods may make an environment hostile to the trafficker but make evidence gathering more difficult as offenders go further “underground”. The application of one of these approaches may not be sufficient in a given case. A tactic (or more properly a combination of range of tactics) that has been employed effectively is the combination of all these three approaches in an operation.

Questions to help decide on action

Some of the key questions when deciding on action to be taken include:

- What law enforcement investigation activity is appropriate? What risks might that activity bring to victims etc. and to any NGO, other victim service provider or law enforcement staff involved?
- Is the risk faced by current, outstanding or potential victims or family, etc. so high that immediate intervention is necessary?
- If immediate action is required, what actions can be taken to prevent suspected traffickers from becoming aware that law enforcement agencies are aware of the traffickers' activities?
- If immediate action is not required, can the level of risk be safely managed while proactive investigation is initiated/conducted/continued?
- If proactive investigation is not feasible, can the level of risk be safely managed to allow disruptive strategy to be initiated/conducted?

Remove, accept, reduce and avoid.

One model to deal with risk in some jurisdictions has been to consider how you might:

Remove
Accept
Reduce and/or
Avoid

risk. Taking the consideration further, the question is which of these approaches is appropriate to the particular risk identified. In trafficking in persons cases the following examples illustrate the use of the method.

Remove

A victim is recovered and enquiries show that the trafficker has a long history of violence. An application is made to have the trafficker held in pre-trial custody to prevent him attacking the victim. If this application is successful, the threat is removed.

Accept

An investigation shows that victims of trafficking in persons are being held in dangerous conditions in a factory. Action is required to recover the victims, but taking that action may alert traffickers and allow them to relocate the victims and conceal further traces of evidence. A decision is made to enter and recover the victims. The risk of evidence being removed is accepted.

Reduce

Information is received that mine workers who have been trafficked are suffering from a contagious disease. A decision is made to recover them, but seek expert medical advice and provide appropriate health and safety equipment to staff involved in the recovery efforts. The health risk has been reduced.

Avoid

People are being trafficked across a national border to work in very dangerous conditions in mines. A multi-agency border operation identifies potential victims, provides information and counselling and persuades the people being trafficked not to go any further. The risk to their health and safety has been avoided.

This model simplifies the method. In reality, each identified risk is likely to require a blend of approaches. Also it is important to remember the risks and responses must be kept under continuous review.

Risk assessment relating to repatriation/return to location of origin

The Trafficking in Persons Protocol on residence permits and repatriation of trafficking victims

According to Article 7 of the Trafficking in Persons Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. In implementing the provision, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

According to Article 8 of the Trafficking in Persons Protocol, in returning victims to their home countries, the return shall be with due regard for the safety of that person and for the status of any legal proceedings. The return shall preferably be voluntary.

Assessing risk in other jurisdictions

There may be many occasions when criminal justice practitioners are required to assess risk in jurisdictions outside their own. Examples include arranging the return of a victim, identifying appropriate support services for him or her and assessing risk to family and friends in the country of return.

Essentially, the same process to that outlined above should be followed. There are a number of practical challenges however. These include:

- Lack of common language;
- Legal issues concerning cooperation between jurisdictions;
- Difficulty in assessing the quality of any “local” response within another jurisdiction;
- In some cases the need to act quickly to reduce risk.

The general advice for criminal justice practitioners is that they should work with the existing structures that facilitate cooperation between jurisdictions. Even where an enquiry is urgent they may be able to give some indications of who to speak to and who or which organizations are trustworthy. When dealing with liaison offices emphasize you need to make enquiries as quickly and safely as possible.

If there are no prior liaison arrangements there may be other national or international organizations or individuals who can give advice.

Consider asking general questions about conditions before asking specific questions about individuals.

Keep strict control of information about individuals and only share it with individuals or organizations you are confident will use it responsibly.

Many of the issues surrounding repatriation revolve around the level of support and protection received by the victim in the country of destination and if/when they return to their country of origin. As a general rule the more support they are given, the less likely the person will be a victim again in the future and the less severe the consequences will be to their health. In assessing the level of risk to the victim upon repatriation it is important to consider the following:

- The returned victim may still be suffering from medical and psychological problems as a result of his/her trafficking experience;
- His/her traffickers are still out looking for opportunities to revenge;
- The victims' conditions back home may still be the same and thus exposed to those push factors that necessitated his/her ordeal;
- They may be faced with stigmatization and rejection from family and community members, etc., possibly resulting in a lack of alternatives and thus even greater exposure to the risk of trafficking.

These issues, among others, call for specific risk assessment before repatriation could be embarked upon. The risk assessment in these situations may require a finding of facts in the following areas:

- What social support services are available in the country of return to support the victims to recovery?
- What is the level of physical protection that could be provided to the victim against the traffickers and his associates by the government of the receiving country?
- Are there any social, cultural or religious factors that may make repatriation dangerous, i.e. is the victim being sent back to a family that sold him/her in the first place or does the nature of exploitation (i.e. sexual exploitation) put the victim at risk by reason of his/her religious inclination if he/she is repatriated as a trafficked victim?
- What NGO or other victim service providers exist in the country of destination and/or the country of origin that can either support the return of the victim or allow them to delay a return or not return at all?
- Is it safe to allow the victim to return home or are they at risk of being assaulted and/or re-trafficked?
- If it is not safe, how can you reduce or eliminate the risk? If they are outside their country of origin can they be given temporary residency status? What support and assistance is available?

In all cases of minimizing risk to victims of trafficking there is no substitute for planning. Planning allows you to assess what is available to you, what processes you may need to go through and analyse which individuals and organizations you can trust. Though it is not always possible to plan ahead because of certain situations that may not be possible to anticipate, it is a desirable step in risk assessment. While you may be forced by circumstances to contact individuals and agencies outside your jurisdiction for the first time when you are dealing with a case it is not desirable, as the contacts may also need to plan ahead.

If you are responsible for planning at the strategic level, consider making contact with other agencies and victim service providers, including NGOs outside your jurisdiction to find out if they can assist with things like providing accommodation now or would be willing to start planning to do so in the future.

Every trafficked person's situation is different. Find out exactly what kind of support the returnee may need. The necessary information can be obtained through careful planning, prior to return by considering the following:

- Coordination with victim support agencies in your area to determine victim's needs and wishes, and how you might be able to assist. If the victim wishes to return, check and conduct risk situation analysis and help them to access support before returning and assist with arrangements for return whilst they are in the country of destination.
- The situation and suitability of the family or nearest relatives to whom the returnee will go back in the state of origin in terms of being able to care for and support the returned victim.
- If you have a tactical role find out what provision is available from victim service providers, including NGOs regarding recovery, support and safe return of trafficked victims. If

none is available consider contacting strategic decision makers and drawing their attention to the situation.

- Find out what your state's policy is on repatriating trafficking victims. Does your state offer a period of reflection for victims of trafficking? Does this apply to the victim you are working with? If so, what processes do you have to follow and who do you have to contact to arrange it?
- You may have to make enquiries in the victim's location of origin to find out what risks they are likely to face if they return. This may involve contact with local agencies to get the information you need.
- Be careful of whom you contact: you may not know the people you are speaking to and they may not be trustworthy.
- Where you have to make international enquiries for safe return and repatriation, always liaise and speak to the agency in your state that deals with such enquiries first. They deal with agencies in other countries and may be able to give you details of trusted organizations or people you can contact. Emphasize that you need to make your enquiries as quickly and as safe as possible.
- If it is an enquiry within your own country, establish the contact you should talk to. The people you seek are those that can be both trusted and are likely to have access to the information you seek. Speak to others who may have made similar enquiries in the past to establish if they were done properly.
- Don't just consider law enforcement agencies: NGOs and other victim service providers may have people you can trust on the ground to give you the information you require. Where necessary make sure you have an information sharing agreement with the other agency.
- Consider making general enquiries about local conditions before you start asking specific questions about individuals. Responses to the general questions might allow you to assess whether it is safe enough to move on to questions about the victims and traffickers.
- Planning should include intelligence assessment of the social, cultural and religious factors applicable to the victims and that will likely be encountered in your area of responsibility. There is always the possibility that you will encounter victims from a background you had not expected but this type of planning will likely be useful in many cases.
- Strict control should be kept on the information that relates to the victim. It should be held under tight security, with limited access and not shared unless you are confident the individual or agency you are sharing it with will use it responsibly.

Cases involving repatriation by International Organization for Migration (IOM)

The International Organization for Migration (IOM) has considerable experience and has handled a large number of programmes for the repatriation and re-settlement of migrants, including victims of trafficking. It is advisable that when planning repatriation or assessing the risk situation before repatriation, you may need to liaise with the organization's local mission in your country.



Case example

Angelica was recruited by her cousin who lives in East Asia. She was asked to come to work for her cousin as a babysitter. She was unaware that her cousin was the girlfriend of a member of an organized crime group and was working as a broker to recruit Latin American women into the sex industry. After arriving she was told she had a debt of a large amount of money, which for unexplained reasons increased substantially. She was told that if she did not agree, her two children would be harmed. She was forced to work in a number of commercial sex premises, stripping and prostituting herself.

After a few months she ran away to a police station. The police called the Embassy of her country. Angelica said that her passport, ticket and clothes were at the apartment where she was staying and she wanted the police's assistance to get them back. The police identified the apartment as one known to be controlled by an organized criminal group and were hesitant to go there without further evidence, but finally agreed to go with Angelica and Embassy officials. The police managed to retrieve Angelica's ticket, passport and clothes.

Angelica went into hiding in a refuge while waiting for her flight back home. While at the refuge, she fell ill and had to be admitted to hospital. The hospital agreed to put her in an isolated ward and to admit only police, Embassy or refuge staff, and not to divulge information about her whereabouts. Members of the organized criminal group came to the hospital but were unable to locate her. Soon after, she was repatriated.

Human Trafficking for Sexual Exploitation in Japan ILO Geneva 2004



Self-assessment

In the case of victims of trafficking in persons:

What are the risks?

What factors might determine the level of risk?

What actions that might you consider responding to risks?

Summary

- Trafficking in persons brings a number of risks that are different to general investigations and, in some cases, unique to trafficking cases.
- Investigators have a clear humanitarian duty of care to protect victims of trafficking. This duty of care has a number of international legal mandates, including the Convention against Transnational Organized Crime and the Trafficking in Persons Protocol.

- Risks to victims vary according to their level of cooperation.
- Assessment of risk in trafficking should not simply be confined to those risks faced by victims. Other areas include potential risks to:
 - Relatives and friends of victims of trafficking.
 - Other members of the public.
 - Law enforcement staff and other professionals investigating trafficking and working with its victims.
 - The trafficking investigation.
- The key questions to address in any trafficking risk assessment process are:
 - What is the risk?
 - Who is at risk?
 - What is the level of risk?
 - What action should be taken?



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Anti-human trafficking manual for criminal justice practitioners

Module 6

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Anti-human trafficking manual for criminal justice practitioners

Module 6:

International cooperation in trafficking
in persons cases



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This publication has not been formally edited.

Module 6:

International cooperation in trafficking in persons cases

Objectives

On completing this module users will be able to:

- Explain why international cooperation is likely to be required in trafficking cases;
- Recall the different forms of international cooperation;
- Give examples of both formal and informal international cooperation;
- Recall the principles of international cooperation;
- Describe the impact differing legal systems have on extradition proceedings;
- Describe the types of international cooperation that can be provided as defined by the United Nations Convention Against Transnational Organized Crime (UNTOC);
- Recall the process involved in making a formal request for mutual legal assistance;
- Recall what should be included in a formal letter of request for international cooperation;
- Explain when it is appropriate and not appropriate to use informal requests for international cooperation;
- Describe the actions required when making urgent and “officer to officer” requests;
- Explain the considerations when making officer/investigator to public contact in another jurisdiction;
- Recall the considerations when officers/investigators visit other jurisdictions;
- Describe actions when sharing information between jurisdictions;
- Describe the actions required when considering the repatriation of victims of trafficking in persons.

International cooperation to combat trafficking in persons

International cooperation in criminal matters is an essential prerequisite to combat trafficking in persons. A significant proportion of trafficking in persons cases are transnational and even those cases within a single jurisdiction may involve victims or offenders who originate outside that jurisdiction. A given set of facts may justify and give rise to criminal investigations and prosecutions in multiple jurisdictions. Informal and formal methods of international cooperation are important in order to deprive traffickers safe haven.

International cooperation in criminal matters can be very challenging and requires knowledge, planning and awareness of practical issues at stake in both the requested and the requesting States. Some of these issues include but are not limited to the cost of investigations, the venue of trial, the applicable legal framework, nationality, the location of witnesses, the location of offenders, gathering of evidence and admissibility of evidence rules. However, with a little experience, the benefits of using tools of international cooperation will greatly outweigh these challenges.

Different forms of international cooperation include, among others:

- Extradition;
- Mutual legal assistance;
- Transfer of criminal proceedings;
- Transfer of sentenced persons;
- Cooperation for purposes of confiscation to deprive traffickers of criminal assets;
- Cooperation between law enforcement authorities including exchanging information and cooperation in conducting inquiries;
- Joint investigations;
- Cooperation in using special investigative techniques.

Channels of communication of international cooperation include (who is contacted will depend on the type of cooperation needed, legal requirements of the requested state and the provisions of the agreement in issue):

- Competent national authorities or central authorities;
- Diplomatic staff;
- Law enforcement officials.

It should be noted that the forms of cooperation mentioned above could complement each other with a view to ensuring that the widest measure of assistance is afforded in investigations, prosecutions and judicial proceedings related to trafficking in persons.

Examples of more structured forms of cooperation in law enforcement include:

- Posting liaison officers to facilitate cooperation with the host government's law enforcement officers in criminal investigations;
- Bilateral and multilateral agreements and arrangements on law enforcement cooperation and on the sharing of law enforcement information;
- Cooperation within such structures as the International Criminal Police Organization (INTERPOL), or various regional cooperation structures such as the European Police Office (Europol) or Eurojust.

Judicial cooperation in criminal matters provides a more formal framework for cooperation compared with the cooperation in law enforcement. The tools available are based on bilateral and multilateral agreements and arrangements or, in some cases and in the absence of such agreements and arrangements, directly on national law.

Both informal and formal law enforcement cooperation, however, have been hampered by a number of problems, such as:

- Diversity of legal systems;
- Diversity of law enforcement structures;
- Absence of channels of communication for the exchange, for example, of basic information and criminal intelligence;
- Diversity in approaches and priorities;
- Lack of trust.



Case example

In some jurisdictions the police have considerable autonomy, directing and conducting enquiries. Within such a system there may be a culture of very informal officer-to-officer contact. Prosecutors and courts accept such informal contact. For instance in *Re Sealed's* case, the United States Court of Appeals rejected the argument that United States law enforcement agencies were limited to obtaining evidence in accordance with the provisions set out in the mutual legal assistance treaty signed by the Swiss and United States Governments. In other systems the police may be directed by investigating prosecutors or magistrates and such direct informal contact would not be acceptable. Misunderstandings can arise if those working under one system do not understand the other system.

832F 2d 1268 (1987), US Ct of Appeals for the District of Columbia

The United Nations Convention Against Transnational Organized Crime (UNTOC) contains detailed provisions on both formal and informal cooperation in criminal matters, which are also applicable, *mutatis mutandis*, to the Trafficking Protocol, as follows:

- Extradition (art. 16);
- Transfer of sentenced persons (art. 17);
- Mutual legal assistance (art. 18);
- Joint investigations (art. 19);
- Cooperation in using special investigative techniques (art. 20);
- Transfer of criminal proceedings (art. 21);
- International cooperation for purposes of confiscation (art. 13-14);
- Law enforcement cooperation (art. 27).

In general terms, States parties can use UNTOC as a legal basis for international cooperation. In the field of extradition, States parties that make extradition conditional on the existence of a treaty are required to inform the Secretary-General whether they will consider the Convention as the legal basis for this form of cooperation. States may also use national legislation and/or the principle of reciprocity to execute extradition requests.

In the field of mutual legal assistance, article 18 includes a set of provisions that can be used by countries not bound by relevant bilateral treaties or by States that have already concluded such treaties and may wish to complement them.



Case example

A case investigated in Bulgaria involved extensive cooperation with the Netherlands. The Dutch prosecutor contacted the International Legal Assistance department of the Supreme Cassation Prosecutors Office in Sofia to establish which colleague was working on the case in question in Bulgaria. The Dutch prosecutor then made direct contact with his counterpart in Bulgaria.

The Netherlands then sent a letter of request to the Bulgarian court requesting that some items of evidence (money and jewellery) be frozen and seized as part of the investigation. The Bulgarian court gave its permission and the items were seized by the Bulgarian public prosecution and sent as evidence to the Netherlands. Once the Dutch authorities reached a final decision on the case, the seized items were returned to Bulgaria and became confiscated items of the Bulgarian state.

Furthermore, the Dutch requested that their authorities were present during the taping of telephone conversations intercepted in Bulgaria. They made this request to ensure that evidence gathered was in accordance with Dutch evidentiary procedures and therefore were admissible in the Dutch court.

832F 2d 1268 (1987), US Ct of Appeals for the District of Columbia

Awareness Raising of Judicial Authorities Concerning Trafficking in Human Beings handbook Vol 1 October 2005 page 26 – courtesy of IOM Mission in Netherlands, missionhague@iom.int.



Self-assessment

Why is international cooperation likely to be required in trafficking in persons cases?

What are the different forms of international cooperation?

Give examples of both “formal” and “informal” cooperation.

Jurisdiction

Before considering the different forms of international cooperation, it would be useful to consider basic jurisdictional aspects in criminal responsibility because of its importance in defining the State authority seized with power of investigations and prosecution.

Jurisdiction under the UNTOC

Article 15 of the UNTOC establishes a series of jurisdictional bases that are relevant to trafficking in persons cases. In this context, States parties are obliged to provide for jurisdiction on the basis of the principle of territoriality (para. 1), as well as to establish extra-territorial jurisdiction for domestic prosecution in lieu of extradition when the latter is denied on the ground of nationality (para. 3). States parties are further encouraged to establish jurisdiction on the basis of active and passive personality principles, namely when their nationals are perpetrators or victims of related offences (para. 2), as well as establish jurisdiction for domestic prosecution in lieu of extradition when the latter is denied on grounds other than nationality (para. 4).

Trafficking cases may involve a number of countries and jurisdictions; this may lead to the question of which jurisdiction should lead the investigation and where prosecutions should take place. A number of basic principles apply:

- A person should not be tried more than once for an offence otherwise known as principle of double jeopardy (*ne bis in idem*).
- Appropriate venue for prosecution may be subject to a number of considerations, including commission of offence(s), the law, location of basic evidence, victims' issues, etc.
- States can transfer proceedings to another State if it is considered to be more cost effective, or convenience and/or suitable for the proper administration of justice to conduct proceedings there.

Investigators, generally, will not take decisions about where a case will be investigated and put before a court: this is a decision for prosecutors and the judicial authorities based on the considerations enumerated above. In jurisdictions where investigative judges are also judicial authorities, they will take decisions about where cases will be investigated, etc.

Your role should be to put all relevant facts to those making these decisions, including the extent of the criminality you have found or suspect in your own jurisdiction and any information that suggests criminal activities in other jurisdictions.

It is further important to ensure not only the establishment of domestic jurisdiction to adjudicate trafficking in persons cases, but also to ensure effectiveness of the relevant proceedings, either by resorting to concrete modalities of international cooperation in criminal matters (mutual legal assistance, transfer of criminal proceedings) or by ensuring that appropriate

mechanisms exist to allow victims of trafficking in persons conducive atmosphere provide evidence in those proceedings (see, for example, article 6, para. 2 of the Trafficking Protocol, as well as article 7, which encourages States parties to consider adopting legislative or other measures that would enable the temporary or permanent residence of victims in their territory for evidentiary purposes).



Self-assessment

What are the basic principles of international cooperation?

Extradition

For a long time, extradition was largely a matter of reciprocity or comity. Even now, in the absence of a binding treaty, there is no international obligation to extradite. However, there is a growing trend towards recognizing the duty to extradite or prosecute, in particular with certain international crimes, including trafficking in persons.

Extradition of a person sought may be requested either for prosecution or for the purpose of enforcing a sentence.

Some of the most important extradition principles and requirements:

- A legal basis for extradition must be present

In general, some States require a treaty to extradite and some do not. In States which do require a treaty, bilateral and multilateral treaties can provide the basis for extradition. Multilateral treaties like UNTOC are very efficient with regard to extradition as they provide an obligatory basis for extradition with many States at once.

- Sufficient evidence of the alleged crime

Importantly, in terms of using UNTOC as a legal basis for extradition in trafficking in persons cases, it should be noted that the transnationality requirement of the Convention is relaxed. Under UNTOC, the person sought for extradition must only be “located in the territory of the requested State Party and the evidence of the person’s criminal conduct are overwhelming.” There is no need to prove that the offence was transnational in nature at this point in the investigation for purposes of extradition.

- Dual criminality

The requesting State must prove that the criminal offence for which extradition is requested must be punishable under the domestic law of both the requested and requesting States. The strict application of this rule has been relaxed over the years by attempts to list acts that are offences and punishable in the agreement by the parties to it.

- Specialty

This principle obligates States to detail with specificity the offences for which the extradition request is being sent and obligates the requesting State to prosecute only those offences

In a regional context like the European Union, States have agreed to honour each other's arrest warrants, implementing the "European arrest warrant" which was designed to replace traditional extradition proceedings between States. Other recent trends in extradition law have focused on making it easier for States to fulfil the dual criminality requirement. This has been done by inserting general provisions into treaties that list acts and require only that they be punished as crimes or offences by the laws of both States. Some States have simplified the requirement even further by introducing a "conduct-based test" that allows extradition for any conduct criminalized and subject to a certain level of punishment in each State. Regional harmonization of national legislations with the criminalization provisions in UNTOC and the Trafficking in Persons Protocol can greatly aide extradition procedures

With particular regard to the trafficking in persons offence, it is essential to achieve convergence in national laws in terms of defining the relevant criminal conduct in accordance with the definition contained in the Trafficking Protocol (article 3(a)) and especially ensuring that such conduct is an extraditable offence.

- Double jeopardy

A State may deny a request for extradition whether the person sought has already been tried for the offence contained in the request.

- Non-extradition of nationals

The reluctance of States to extradite its own nationals appears to be lessening in many States. The UNTOC includes a provision that reflects this development: article 16, paragraph 11, refers to the possibility of temporary surrender of the fugitive on condition that he or she will be returned to the requested State party for the purpose of serving the sentence imposed. In cases where the requested State refuses to extradite a fugitive on the grounds that the fugitive is its own national, the State is often seen, under binding international legal instruments, to have an obligation to bring the person to trial. This is an illustration of the principle of *aut dedere aut judicare* (extradite or prosecute) and requires the establishment of appropriate jurisdictional basis (see below). Where extradition is requested for the purpose of enforcing a sentence, the requested State may also enforce the sentence that has been imposed in accordance with the requirements of its domestic law.

Different prosecutorial practices under both common law and continental law systems can make effective interregional and international cooperation difficult. In the field of extradition, such differences are even more acute when dealing with the documents required to be presented to the requested State and the relevant evidentiary requirements needed for granting an extradition request, especially in complex trafficking in persons cases. A bit of advance research on requirements as well as close coordination with foreign counterparts can go a long way towards simplifying extradition procedures.



Self-assessment

What are the the most important extradition principles and requirements?

What impact do differing legal systems have on extradition proceedings?

Mutual legal assistance

As is the case with extradition, mutual legal assistance is generally based on bilateral or multilateral treaties, but it can also be based on national legislation. There appear to be significantly fewer bilateral mutual legal assistance treaties than treaties related to extradition. In addition, few States appear to have national legislation on the subject. On the other hand, where such legislation exists, in some cases it encompasses in a comprehensive manner all forms of judicial cooperation in criminal matters.

Over the past few decades, some multilateral instruments have been drafted that deal with specific offences. These instruments generally include provisions on mutual legal assistance as well as on extradition. The sets of provisions included in some of these treaties are so extensive that they have been seen to constitute “mini-treaties” on mutual legal assistance. Such is the case, for instance, with the provision of Article 18 of UNTOC, which requires States parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention and the Trafficking Protocol.

In addition, State parties are also obliged to reciprocally extend to one another similar assistance where the requesting State has reasonable grounds to suspect that one or some of these offences are transnational in nature. Reciprocal assistance can also include tracing of victims, witnesses, proceeds, instrumentalities or evidence of such offences when they are located in the requested State party and the crime involve an organized criminal group. The Convention requires only reasonable possibility and not evidence based on facts with respect to transnationality and involvement of an organized criminal group. Therefore, the UNTOC establishes a lower evidentiary threshold that tends to facilitate mutual legal assistance than the transnationality requirement for prosecution under UNTOC. At the time of requesting MLA from another State Party, the requesting State may not yet know for sure whether the offence was carried out transnationally and that this should not be an obstacle to requesting mutual legal assistance.

The following types of mutual legal assistance can be requested according to article 18:

- Taking evidence or statements;
- Effecting the service of judicial documents;
- Executing searches and seizures and freezing criminally acquired assets;
- Examining objects and sites;
- Providing information, evidentiary items and expert evaluations;

- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- Facilitating the voluntary appearance of persons in the requesting State Party (i.e. voluntary assistance of an investigation in one country at the request of another);
- Any other type of assistance not contrary to the domestic law of the requested State Party (i.e. not against the law of the country the request has been made to).

The UNTOC also allows several forms of assistance that were not envisaged in earlier international instruments. Examples include the freezing of assets (art. 18, para. 3 (c)), video conferences (art. 18, para. 18) and what is known as the “spontaneous transmission of information”, whereby the authorities are allowed, even without prior request, to pass on to the competent authorities of another State information that they believe might be of use (art. 18, paras. 4 and 5).

Requesting assistance

Article 18, paragraph 13, of the UNTOC requires States parties to designate a central authority having the responsibility and power to receive mutual legal assistance requests and either to execute them or transmit them to the competent national authorities for execution. Such a designation should also be notified to the Secretary-General of the United Nations.

UNODC’s Mutual Legal Assistance Request Writer Tool is a step by step interactive tool for preparing MLA requests, with links to relevant laws and regulations. UNODC also publishes a directory of competent national authorities in order to assist with whom to send an MLA request once it is completed. Both tools are accessible online at www.unodc.org under Legal Tools.

There is potentially some confusion between the role of a “central authority”, meant as authority designated to deal with requests for mutual legal assistance, and other liaison arrangements. A country may have a unit, commonly staffed by law enforcement officers, that processes enquiries through “informal” arrangements such as memoranda of understanding, bilateral agreements etc. This is likely to be separate from the Central Authority that deals only with formal requests as defined by the TOC.

It is a good practice for States to ensure that their central authorities under international crime instruments, including the UNTOC, are a single entity in order to facilitate greater consistency of mutual legal assistance practice for different types of criminal offences, including trafficking in persons, and to eliminate the potential for fragmentation of effort in this area.

Requests for mutual assistance through central authorities are often required in situations where a formal decision on the request must be given by a court and provide a strong audit trail. They place a legal requirement on other jurisdictions to respond, take diplomatic issues

into account and the information produced is likely to be admissible in court in your country. Their disadvantages are that response times are frequently very slow and the bureaucracy involved can be extensive and complicated. In addition, central authorities could play an active role in conducting informal consultations in cases of refusal of assistance with a view to finding the most appropriate way to deal with relevant requests.

Since the procedural laws of States differ considerably, the requesting State may require special procedures (such as notarized affidavits) that are not recognized under the law of the requested State. The cost of fulfilling any of these unusual procedures is normally borne by the requesting State. However, where the cost is prohibitive, the States consult with a view to seeing how the cost could be shared. The modern trend is to allow more flexibility as regards procedures. According to article 18, paragraph 17, of the UNTOC, a request shall be executed in accordance with the domestic law of the requested State. However, the article also provides that, to the extent not contrary to the domestic law of the requested State and where possible, the request shall be executed in accordance with the procedures specified in the request. Thus, although the UNTOC does not go so far as to require that the requested State comply with the procedural form required by the requesting State, it does clearly exhort the requested State to do so.

One of the major problems in mutual legal assistance worldwide is that the requested State is often slow in replying and suspects must be freed owing to lack of evidence. There are many understandable reasons for the slowness: a shortage of trained staff, linguistic difficulties, differences in procedure that complicate responding and so on. Nonetheless, it can be frustrating to find that a case must be abandoned because even a simple request is not fulfilled in time.

It is important to execute mutual legal assistance in a speedy and prompt manner. The requested State should do whatever they can to meet the deadlines suggested by the requesting State.



Self-assessment

What are the types of international cooperation that can be provided as defined by the UNTOC?

What is the process of making a formal request for mutual legal assistance?



Practical guidance: drafting a legal assistance request

Drafting requests for legal assistance requires some knowledge of the legislation, processes and requirements of individual countries. As stated above, UNODC's Mutual Legal Assistance Request Writer Tool can significantly ease the burden of preparing such a request as well as close coordination with foreign counterparts in the requested State. The tool is available on UNODC website (www.unodc.org/mla/index.html).

In general the following steps will need to be taken to complete a request for legal assistance:

- Specify the legal basis for the request;
- Specify the types of assistance you are requesting and provide case details for each type of assistance;
- Specify the national authority dealing with the case;
- Specify any prior case-related contact between your and the requested State's authorities;
- Specify alleged offences and related provisions in national laws;
- Provide any available information on suspects/alleged offenders and entities/organizations;
- Provide a short summary of the facts and procedural history of the case;
- Specify whether and why the request is urgent and/or confidential;
- Explain particular execution or procedural requirements the requested State should follow.



Discussion

A police patrol at a trafficking transit location stop a car containing two men and two women.

The officers separated the people when they speak to them. Despite some difficulty with the language, one of the women says that she is being trafficked.

She says she answered an advert in her home country for catering and domestic staff in another country. She has been passed through three countries now and met the men and woman in your country two days ago. Yesterday, she heard the woman speaking on a phone to someone else and heard her discussing selling her into prostitution. Realizing she had been trafficked she attempted to escape, but was caught and beaten by one of the men.

What type of request would be appropriate to follow up this investigation?



Self-assessment

What should be included in a formal letter of request for mutual legal assistance?

Informal or formal?

Informal cooperation

Informal cooperation is an exchange of information between law enforcement and/or regulatory agencies and their foreign counterparts without the use of a formal mutual legal assistance request. It is also known as police-to-police and agency-to-agency-assistance. Informal

cooperation can be used prior to an investigation becoming official and prior to the commencement of court proceedings, for example to conduct surveillance or take voluntary witness statements. In circumstances where coercive measures are not required, it is usually faster, cheaper and easier to obtain information or intelligence on an informal basis than via formal mutual assistance channels. In this way, informal cooperation can greatly enhance the formal mutual assistance regime.

Where the authorities of two States have established a history of working together (for example because of extradition cases, requests for mutual assistance or generally on transnational crime), they can build up a relationship of trust that may ease informal cooperation. This may lead to increased forms of bilateral cooperation between the central authorities (such as exchange of officials at departments or ministries of justice or of the interior) or for example between the local authorities on both sides of a border (in particular, police and customs authorities). Such forms of cooperation may in time be guided by bilateral executive agreements between the agencies involved.

Any informal cooperation should comply with your local procedures. These are likely to vary according to the jurisdiction you are working with. Typically they will involve passing a request through a central liaison unit or officer. In urgent cases, it may be possible to make direct officer to officer contact between jurisdictions, generally with a requirement that the liaison unit or officer be informed of the contact.

MOU and regional agreements may cover a wide range of investigative actions. Examples include:

- Intelligence development;
- Activities such as controlled deliveries, surveillance or communications interceptions;
- Establishing what evidence is available before a formal request is made to obtain that evidence.

Informal requests should never be used if you intend to present the evidence from another jurisdiction in a court in your jurisdiction. If you are going to use the evidence in court you should always make a formal request.



Practical guidance

Find out about how “informal requests” are dealt with in your country

It is impossible to give detailed guidance here about all the variety of informal arrangements that exist throughout the world.

Find out what your local arrangements are. Do not assume that they are the same in every circumstances or for every country: they can differ greatly.

Always take advice from your liaison units or officers (where they exist)

Urgent requests

Urgent requests from “officer-to-officer” may put a victim, relative or other person at risk through a “leakage of information”, deliberate or otherwise, from the agency involved. It may be very difficult to assess the level and impact of that risk at a distance.

Wherever possible speak to liaison departments and officers to identify whom you can safely contact. Many such departments will have a 24-hour call out system. Find out if there is one in your jurisdiction.

If a person’s safety is at risk it is unlikely that the formal “letter of request” route will be appropriate. Referral to your Central Authority, onto a second countries Central Authority and finally to a unit on the ground is likely to take a considerable time.

Officer-to-officer contact

Direct officer-to-officer or investigator-to-investigator contact has advantages and disadvantages.

Many law enforcement and criminal justice practitioners around the world have reported the considerable benefits of good personal relationships to international cooperation. This is particularly relevant in trafficking in persons cases as they can move very quickly and often carry simultaneous risks to people in a number of countries.

Disadvantages to such relationships include:

- Exposing colleagues in other countries to increased risk if they help you;
- Diplomatic incidents because action is not properly considered;
- Exposure of victims and others to increased risks through unwitting or deliberate release of information etc.;
- Increased risk of compromising other operations and law enforcement staff.

Consider these steps to minimize risk

- Do not make individual officer-to-officer contact if this is specifically forbidden by one of the jurisdictions;
- Find out what the arrangements are for cooperation between your countries. Where there are liaison officers or units get their advice on contact and comply with your local procedures;
- Do not pass information that may expose someone to danger without establishing what the risks are of contacting a particular unit or individual;
- Keep liaison units informed of what you are doing.

Officer/investigator to public contact

As a general rule the police officers or investigators of one country should not make direct contact with members of the public of another. Such contact should be made either from some type of approved informal contact between criminal justice agencies or through a formal letter of request.

Police to public contacts can lead to diplomatic incidents between States, danger to victims etc. because officers do not know who they are dealing with and unwitting compromise of other law enforcement operations.

It is acknowledged that there are some circumstances where direct contact with members of the public is either unavoidable or advantageous to all involved. Examples include:

- Cases requiring immediate action where a victim in one country has called someone who has then directly contacted the police in another country;
- Victims who have been repatriated before a trial has taken place where contact and support is required to ensure they give evidence.

Consider the following suggestions to minimize risks in officer to public contact:

- If you do have direct contact, speak to the relevant liaison officer/unit as soon as you can. Let them know what has happened and take their advice.
- Do not plan to have direct contact with the public of other States in an investigation. In particular avoid activity such as visiting other countries and interviewing people or taking statements unless you are doing this under the relevant informal or formal arrangement.
- If a victim has been repatriated make an appropriate formal or informal approach to the country concerned to get permission to maintain contact. If appropriate, maintain contact through the central authority and/or the criminal justice personnel from the country. As an alternative, consider support through an NGO or other victim service providers but get permission through relevant cooperation channels.

Parallel requests

Even though a formal request should be used to obtain information admissible as evidence in court, you can make parallel informal enquires. The advantage this offers is that you can obtain information that allows you to develop your enquiry while waiting for the formal response. This approach can help you make your enquiry more efficient and avoid pursuing lines of enquiry that are not going to be productive.

Visiting other jurisdictions

In some circumstances it may be beneficial for investigators from one jurisdiction to visit another to support or (in some cases) carry out investigations. The following points should be considered:

Any visit should be carried out with the full permission and knowledge of both jurisdictions.

In some cases this permission may be obtained via some kind of bilateral agreement but in many the formal request route should be followed.

Exactly what enquiries are going to be made and how they are going to be conducted should be outlined in the request and agreed by the receiving State before the visit starts.

Activity permitted on visits may vary. Rarely, visiting investigators may be allowed to conduct investigations accompanied by local staff. Investigators may be allowed to be present in interviews etc. but not take part or they may be allowed to visit the country but not to be present in interviews etc. In some cases permission to visit may be refused and enquiries dealt with by local staff.

Resources may be very limited in some locations. Check if transport etc. is available to law enforcement agencies. Consider offering to contribute to costs where appropriate.

Material obtained from visits can also be dealt with in a number of ways. Some jurisdictions may not permit foreign investigators to take material or copies away send it through the normal channels. If this is the case investigators should make as extensive and detailed notes as possible to help reduce delays in the investigation.

In most cases, investigators will be allowed to take copies of material providing they agree to use it for information purposes and not to use it in judicial proceedings. The material can, of course, be used in judicial proceedings when it arrives through the official channels.



Discussion

A police officer working in a source location receives information that two women from the district have been trafficked to a foreign country and are being sexually exploited. The names are given but there is no detail about exactly what they are doing.

The officer confirms the women's identity and that they were last seen in the district six months ago. Friends say they think they are in a town in another country. They provide the name of the town and country they think they went to and their mobile phone numbers. They have rung friends recently from their mobile phones and said they are unhappy and want to come home, but will not discuss exactly what they are doing.

In this investigation this what kind of international cooperation would be appropriate?



Self-assessment

When is it appropriate and not appropriate to use informal requests for international cooperation?

What actions are required when making urgent and "officer/investigator to officer/investigator" requests?

What points should be considered when making officer/investigator to public contact in another jurisdiction?

What points should officers/investigators consider when visiting other jurisdictions to conduct enquiries?

Information sharing

States are required to share information either on a voluntary basis or in accordance with existing agreements or arrangements.

The absence of channels of communication results in an inability to obtain both operational information (data that would be useful in responding to specific offences and offenders) and general information (for example, data on forms of, and the extent of, cross-border crime). Article 27 of the UNTOC encourages States parties to cooperate closely with one another, for example by enhancing and, where necessary, establishing channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by the Convention, strengthen the cooperation in conducting inquiries, provide items for analytical and investigative purposes or exchange information on offenders' *modus operandi*.

Moreover, article 10 of the Trafficking Protocol requires law enforcement, immigration and other relevant authorities of States parties to cooperate with one another by exchanging information related to perpetrators or victims of trafficking in persons, types of travel documents used for such criminal activity and means and methods used by organized criminal groups for the purpose of trafficking in persons.

Generally, international cooperation should be enhanced through the development of more effective systems of information sharing at the regional and international levels on patterns and trends in the commission of trafficking offences and on trends in the development of organized criminal groups. In view of the above, cooperation within the framework of international structures should be envisaged. Relevant examples include the work of INTERPOL, Europol, States of the Schengen Agreement and the Southern African Regional Police Chiefs' Cooperation Organization.

The type of information to be shared includes:

- Information that allows a country to determine if a person travelling without documents or with documents belonging to other people are perpetrators or victims of trafficking;
- The types of documents individuals have used when crossing or attempting to cross borders for the purposes of trafficking;
- Methods used by organized criminal groups in all aspects of trafficking in persons.

States that receive information are obliged to comply with any conditions placed on the use of the information by the country that sent it.

Typical conditions include restrictions on the type of cases in which the information can be used as evidence and limitations on disclosure to members of the public or potential criminal suspects.

Information can be shared spontaneously if a State has information or evidence that it believes is important to prevent crime.

Before sharing information spontaneously or placing restriction on the use of information the requested State should discuss any issue with the receiving State.

- Your State should have established procedures to share information with other countries. Find out what these are and use them accordingly;
- Be careful not to share information in a way that would breach your domestic legislation;
- Only use information in a way that complies with the sending State's wishes. Particularly, do not use as evidence if the sending country has not agreed to it being used in that way. This can cause diplomatic problems and may limit what is shared in the future;
- Always look for opportunities to share information that may help stop or disrupt trafficking in other jurisdictions. Use locally established channels to discuss any issues with the country you are considering sending the information to before you send the actual information.

The promotion of law enforcement cooperation to combat trafficking in persons is also pursued by other provisions of the Trafficking Protocol calling for enhancement of cooperation among border control agencies, as well as establishment and maintenance of direct channels of communication among them (article 11, paragraph 6); and the cooperation of competent authorities for the verification of the legitimacy and validity of travel or identity documents (article 13)].



Self-assessment

What actions should be taken when sharing information between jurisdictions?

Repatriation of victims

Article 8 of the Trafficking Protocol enables the repatriation of victims of trafficking in persons who, at the time of entry in the receiving State, are nationals or have a right of permanent residence in the State of origin.

There are a number of measures, prescribed in that article, that allow a victim to be returned to their country of origin. These include:

- The State that the victim is a national or permanent resident of shall accept and facilitate that persons return to their country with due regard for that person's safety;

- Any return of a victim should, preferably, be voluntary;
- The State sending the victim back shall have due regard to that persons safety;
- Where a victim is found in one country, other countries should verify whether or not the victim is a national or resident of their country;
- Where a victim is to be returned to a country where he/she is a national or resident, that country should issue the documents or authorization that allow the victim to travel and re-enter its territory.

If a country offers victims the right to remain for any period or gives any other right to a victim of trafficking none of the provisions above should prejudice these rights.

None of the provisions above should prejudice any bilateral or multilateral agreements that exist between countries.

- Repatriation can offer considerable benefits to victims and investigators but also carries with a number of risks;
- Always conduct a risk assessment before you arrange for the repatriation of a victim. Use domestic and international intelligence sources. Contact recognized international organizations such as the International Organization for Migration (IOM) for their advice;
- Do not automatically contact local law enforcement or other officials in the intended country of repatriation. Always check with sources outlined above to establish if there are any likely corruption issues;
- Never send a victim back to a situation where they are at risk of serious harm or death;
- Take the needs of the investigation into account when arranging repatriation. Make arrangement for the victim to return (if appropriate) to give evidence or assess the possibility of alternative options such as video links. Make plans to maintain contact with the victim between the time of repatriation.



Self-assessment

What actions are required when considering the repatriation of victims of trafficking?

Summary

- This guidance is generic. It is important that you find out the arrangements for international cooperation within your jurisdiction.
- International cooperation is an essential prerequisite to combat trafficking in persons.
- The UNTOC is an enabling international legal instrument. It should be interpreted broadly, particularly when considering international cooperation.
- Formal requests for legal assistance should be made when the results of the request are required for use as evidence in a court case.

- Formal requests should be made through the Central Authority of your jurisdiction.
- Although police officers and investigators may not draft formal requests for the provision of mutual legal assistance, putting as much evidential detail as possible into a request and stating exactly what investigations are required will reduce drafting delays considerably.
- Allow a considerable amount of time for a response to a formal request: they frequently take a long time to process both within the requesting State and the State where the request is being made.
- In many cases it may be appropriate to start make both informal and formal requests in parallel.
- Direct officer to officer or investigator to investigator contact have advantages and disadvantages. It should not be made if it is forbidden by one jurisdiction, liaison units should be informed about the contact and great care should be taken the contact does not put someone in danger.
- In general, officers from one jurisdiction should not directly contact members of the public in another. Where such contact is unavoidable inform liaison units as soon as possible.
- International information sharing is a vital in many trafficking investigations. It is recommended to have bilateral and multilateral memorandums of understanding (MOU) that outline information should be shared and used.



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Anti-human trafficking manual for criminal justice practitioners

Module 7

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Anti-human trafficking manual for criminal justice practitioners

Module 7:

Crime scene and physical evidence
examinations in trafficking in persons investigations



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This publication has not been formally edited.

Module 7:

Crime scene and physical evidence examinations in trafficking in persons investigations

Objectives

On completing this module users will be able to:

- Explain what a “crime scene” is and summarise the specific features of crime scene;
- Describe the types of physical evidence most commonly encountered in trafficking in persons investigations and information available when examining those various physical evidence;
- Outline basic actions required to preserve and document crime scene and recover physical evidence traces from crime scenes;
- Recall the key considerations and possible actions in trafficking in persons when examining:

Victims and suspects;

Locations;

Vehicles;

Documents found at the scene, on victims or suspects and in a vehicle;

IT and communications equipment found at the scene, on victims or suspects and in a vehicle.

Introduction

This module considers how examinations of physical evidence can be used to support trafficking in persons investigations.

The module focuses on the main types of physical evidence likely to be present in trafficking in persons cases, e.g., biological materials, finger marks, documents and communications technologies, and on specific features of crime scene examinations in trafficking in persons cases.

Forensic science in its broadest definition is the application of science to law. It can be used for traditional court evidence, as an investigative tool to guide the police investigation (i.e.,

relating trace to trace as well as trace to source and source to trace) or to gather intelligence to help detect trends and patterns, for example links to organized criminal networks.

Forensic science should always be seen as tool in an overall investigation, not the sole investigative approach. It can easily be discredited, particularly if crime scene are not properly secured and processed and physical evidence not collected, packaged, transported and stored in an appropriate way.

It is recognized that some of the techniques presented in this module may not be available at your national or regional level. However, an appropriate approach at the scene can help you build a more comprehensive picture of the trafficking process, add to intelligence or information and produce high quality of evidence at court (physical evidence properly collected and stored can be analyse at a later stage). Wherever possible this module suggests basic approaches that can be applied regardless of the technology available.

The module is intended to be a general guide for those conducting trafficking in persons investigations, non forensic personnel, first responder at the scene. It does not give detailed guidance on particular forensic techniques.

This module contains accurate and frank descriptions of various aspects of trafficking in persons victimization. Some readers may find this disturbing. It is important that all investigators fully understand these aspects of trafficking in persons to allow them to make informed decisions ultimately leading to safe convictions.

None of the suggestions made in the module are exhaustive. They are based on common experiences found around the world.

The first part of the material considers two questions that apply in all criminal investigations: What do you want to achieve? How are you going to achieve it?. The module then explains what a crime scene is, the types of physical evidence found in trafficking in persons and basic issues when processing a crime scene to recover those traces to a standard that will allow proper analysis and presentation as evidence in court.

The module moves on to highlight the issues found when examining trafficking in persons crime scenes and gives guidance on the trafficking in persons specific considerations and possible actions when examining victims, suspects, locations, vehicles, documents, Information technology and communications (ICT) equipment.

Initial questions

The first two questions to address when considering forensic examinations in trafficking in persons or other case are:

- What do you want to achieve?
- How are you going to achieve it, given the resources available and the circumstances of the case?

These questions will always depend on each other. For instance, using the example of a rape case, you may wish to obtain a DNA profile of a person suspected to have raped a woman, samples were properly collected and stored, but you do not have access to DNA profiling technology. Equally, you may have the most sophisticated technology in the world but possible sources sample have gone because the rape took place two weeks ago and no appropriate action took place at this time.

What do you want to achieve?

There are a number of potential goals you may wish to achieve from a forensic examination in a trafficking in persons case. These include:

- Identifying a suspect;
- Identifying a victim;
- Establishing the age of a victim;
- Corroborating a victims account;
- Identifying the links between suspects, victims, locations, vehicles, documents, etc;
- Identifying the authenticity of identity and travel documents.

How are you going to achieve it?

Available resources

An important first consideration is the resources you have available. As already outlined, this module gives guidance on basic approaches that may be used regardless of the resources available.

Some technologies are needed to achieve some objectives. The collection, preservation, storage of physical evidence is crucial but will not allow to achieve the objectives above-mentioned.

Circumstances of the case

The next question is how do the circumstances of the case affect what you want to achieve.

Some activities will irrevocably modify the scene of crime, create or delete physical evidence and adversely influence the final result of the investigation.



Case example

Police arrested seven people in an Eastern European country following an operation after they had received information and collected video and material evidence about an organized criminal group's activity in trafficking in persons. The police raided the operating premises after suspicions were confirmed through telephone wiretapping and agents' infiltration that revealed that trafficking took place from Eastern Europe to a Mediterranean country. During the raid, the police confiscated for evidence the groups cellular telephones and two vehicles that were used for trafficking. Examinations of the phones linked the traffickers to the phones and the phone numbers to the previous communications interception and communications data analysis.

Crime scene examination and physical evidence

A crime scene is any physical scene, anywhere that contains fragile records of past activities. Crime scenes can be locations (indoor or open air), vehicles and persons (victims and suspects).

"Crime scene examination" in this module means an examination of the scene using a technical and scientific approach.

Crime scene examination is guided by a fundamental principle of forensic science: every contact leaves a trace. Any contact of a person with a person, person with a vehicle or location, vehicle with a location, etc. in general all activities leave traces of them: also included are traces (both physical and electronic) found in and on electronic equipment.



Self-assessment

What is a crime scene?

Types of physical evidence

Biological materials

Biological materials are blood, semen, skin cells, tissues, organs, muscle, bone, teeth, hair, saliva, fingernails, urine, etc.

Preliminary tests can reveal the type of body fluid or the presence of drugs.

DNA is present in many traces originating from the human body.

Deoxyribonucleic Acid (DNA) analysis

Deoxyribonucleic Acid (DNA) is not a sample in itself but it is a substance present in many biological traces originating from the human body. It carries a genetic code that is virtually unique to an individual.

Some current DNA techniques are so sensitive that it is possible to detect traces that have been left after very limited contact. This can be very useful, but can mean a trace is detected that comes from a totally innocent contact. An example is trace evidence from police officers who have gone to a scene to start an investigation.

DNA analysis has been a massive advance for law enforcement investigations. However, using this technology requires highly trained scientists, ultra clean, specially designed premises and expensive equipment. If these facilities are not available within your State it is recommended that you consider sending samples for analysis in neighbouring countries.

DNA is fragile, it can be degraded rapidly if exposed to environmental factors.

Special anti-contamination measures should also be used.

Blood is a very good source of DNA but may be of use in other ways.

Blood samples may reveal the presence of drugs or diseases.

Where blood is found, the pattern is also informative to the investigation.

Dried blood can yield DNA evidence for many years if it is stored properly.

Semen is also a good source of DNA. The most useful part of semen for DNA analysis is the sperm itself.

It may be found on any part of the body (particularly bodily orifices), on victims clothing, bedding or around the location of a sexual offence.

Semen and other fluids drain rapidly from orifices or are rapidly degraded by enzymes and bacteria in or on the body. Typically there is very little chance of obtaining a semen sample after seven days from the vagina, two or three days from the anus or 24 hours from the mouth.

Where semen is dried on clothing or other material it may remain for many years and, in some cases, even remain after washing.

Saliva will generally leave traces of DNA.

Saliva may be found on victims' bodies, clothing or bedding. Examples of where saliva may be found include cigarette butts, cups or envelopes people have sealed by licking them.

Saliva may degrade rapidly in some circumstances, but in others may remain for a considerable time.

How many cells are available for DNA analysis in a saliva sample depends on a number of factors.

Breath

Breath will carry particles of saliva with it. DNA samples may be recovered from where suspects have breathed on someone or something (e.g., on phones). However, analysing samples from breath requires a very specialized and sensitive technique.

Urine may carry samples of DNA of those who have had sexual contact with a person (for example as it passes through the vagina). Urine may also contain traces of drugs or other substances that a person has consumed, had administered or been in contact with.

Urine very rapidly flushes material from the body. (for example, see “Semen” above). Urine rapidly deteriorates if not stored properly,

Hair is also a source of DNA, the type of analysis and results obtained are subject to the quality of the hair (with or without the “root”).

Hair may also record a person’s exposure to drugs, chemicals and other substances.

Depending on the length of the hair the record may go back many years.

Skin cells may carry DNA. They are shed continuously by the body, and are frequently transferred between two people when they have contact

Skin cells will pass between the two people who have contact simply by touching each other. An example is the transfer of cells during sexual intercourse.

Skin cell recovery

This is a specialized technique that requires proper training and equipment.

Finger marks and body part marks

Fingerprints are unique to each individual. Finger marks refer to traces left. Those marks can be visible or latent. The visible marks can be positive or negative. The latent marks require the application of optical (e.g., UV), physical (e.g., powdering) or chemical treatment in order to visualize them.

Other parts of the body, such as feet and ears, can also leave unique marks.

Fingermarks and DNA

DNA is present in natural secretions of finger marks. Finger marks deposited by the ridges of the finger can range from sweat, sebaceous to complex mixture of secretion and contaminations. that offers an opportunity for analysis. It require specialized and sensitive techniques.

Finger marks can be left on a very wide range of surfaces, including on skin.

Depending on the surface they are on, finger marks may remain for a considerable period of time.

Finger mark recovery

Identifying and recovering finger marks should be done by trained staff using a range of techniques. Trained staff should be able to advise you on where finger marks are likely to be found, if it is possible to recover them and how that recovery should be done.

Document evidence

The illegal reproduction of identity and travel documents are important evidence in trafficking in persons. Documents can be counterfeited (reproduced as original) or forged (altered originals by adding, removing or substituting relevant information). Any other documents for the transportation, recruitment may also exist. Those documents may contain direct evidence, for example some record about a victim being bought or sold. They are also likely to have other physical evidence on them such as finger marks and traces of DNA.

The detection of false document is crucial before sending it to the forensic laboratory for throughout checking. In some circumstance a document may show evidence of the device used in its creation such as marks from printing machines and typewriters.

Handwriting analysis, either of large amount of text or a signature, will identify the author of a document/note.

Please see, section on “Examination of document evidence found at the scene, on victims or suspects and in vehicles” for the actions to be taken when examining document evidence.

Fibres and other micro traces

Fibres from clothes and other material can be transferred on contact. For example a person lying on a bed when clothed will transfer fibres from clothing to bedding and vice versa.

Transfer of fibres between clothing and seats in cars and other vehicles has also proved useful in some trafficking in persons investigations.

Other micro traces, such as paint, glass, soil, seeds, fragments of metal can also be transferred and recovered.

Fibres and micro traces may remain where they were deposited for a considerable period of time. Washing, exposure to the environment and further contact with other materials are examples of how this type of evidence may be lost.

Teeth


Examination of teeth is a technique that is common in many criminal investigations. In trafficking cases it may have an application in establishing the age of a person, particularly suspected victims. Annex 1 “Forensic techniques in age assessment” gives more detail of this technique.

Information technology and communication (ITC) equipment

IT equipment and communications equipment often contains valuable evidence: documents or e-mails stored, details of financial transactions and records of contacts.

Equipment is also likely to have other physical traces such as finger marks or biological material which allow individuals to be linked to those pieces of equipment.

Properly handled ITC may be a significant element in an investigation. Annex 3 “Recovery and preservation of electronic communications and IT equipment” gives guidance on how this should be done.

	Self-assessment
Describe the types of physical evidence traces most commonly used in trafficking in persons investigation.	

General aspects of crime scene examinations

For additional information on the importance of crime scene investigations and the nature and relevance of physical evidence, see the UNODC manual on “Crime scene and physical evidence awareness for non forensic personnel”.

Laboratory results can only be as good as the evidence that is submitted for analysis. Even where no prosecution takes place basic crime scene examination can support future anti-human trafficking activities.

Early cooperation between investigator and forensic personnel

- Investigators should involve forensic personnel at the earliest possible stage of a trafficking in persons enquiry, for technical work or advice;

- Investigators should give forensic personnel as much detail as possible about the case. The investigator should outline what he or she wants to achieve and should work with the forensic personnel to establish a forensic strategy;
- The plan should be dynamic and responsive to changing circumstances. It should be kept under active and continual review by the investigator and those with forensic expertise.

Organization of the work at the scene of crime

- There should be a coordinated approach. The roles and responsibilities of those managing and attending a scene should be defined and documented;
Initial scene evaluation is required before you know which approach is to be followed. Need to keep the general approach flexible.

Depending on the size of the scene,

- Appoint someone to have overall control of the scene. In some jurisdictions who this is may be determined legislation and procedures;
- Consider appointing someone with the specific responsibility to manage the recording and storage of exhibits;
- The required specialized expertise should be available;
- Establish some means of communication between those managing the investigation and those making the scene examination.

Preservation of the crime scene integrity

- Scene protection starts when incident first discovered (arrival of first responder) and ends only when the whole examination process is completed;
- Make an initial decision on how large an area needs to be protected. Keep this under review: new information may mean the scene changes;
- Protect the scene from unnecessary activities that may irrevocably compromise the evidence;
- Access to the scene by the public and law enforcement, staff and others should be controlled. If a person does not need to be there, they should not be there;
- Use any kind of physical barrier to prevent access. Use tape or fencing if you have it available;
- If you have to enter the scene protective clothing should be worn to prevent contamination;
- Staff who have been to one scene or dealt with a suspect or victim should not go to another scene. This prevents cross contamination of scenes;
- Only use clean or disposable facilities/equipment when working at the scene;
- Enter and leave the scene by a marked pathway.

Reality of crime scenes

Even with the best scene management and equipment there will be an unavoidable destruction of some evidence because of the nature of the environment, the weather or through necessary activities such as providing first aid to victims or crime or preventing the escape of suspects.

Measures to protect the scene from environmental impacts should be taken as soon as possible. First responders and others should be made “forensically aware” to minimize the impact of necessary activities. Records should be kept of what activity has taken place before the scene was secured for examination. (see below)

Recording scenes

- An exhibits officer should record all activity at the scene and document the evidence seized.
- The exhibits should include any notes, photographs, sketches or measurements made and a log book of who entered the scene, when they left, etc.
- Documentation starts with arrival of first responder at the scene. They should record who entered the scene, what they touched, moved etc; (photo or video).
- Records should be chronological, written in ink with no alterations or gaps. They should be signed and dated.
- Records should show who seized an exhibit and where the exhibit came from. The exhibit should be packaged and labelled in accordance with guidance given in “Recovery and preservation of physical evidence” below.
- This “chain of custody” of exhibits should continue when the exhibits are passed on for storage or analysis and should continue until any court case and (in some cases) after a court case in case there is an appeal.

Scene examination and recognition of physical evidence

- Observe the scene before taking any action;
- Consider the circumstances, surfaces, nature of the incident in order to determine search strategy (flexible, methodical), including use of search techniques that are appropriate to the situation;
- Consider possible scenarios and search for any physical evidence that may result;
- The evidence found may support or alter the scenario and further refine the direction of the examination.

Recovery and preservation of physical evidence.

- Recording where the items are before they are recovered and packaged by taking hand-written notes, diagrams/sketches, and photographs;
- Use appropriate containers, collection bags and boxes for samples. The decision on what type of container to use is largely determined by the type of physical evidence;

- Samples should be representative;
- Control samples should be taken including substrates/blank samples;
- Each exhibit should be sealed with a tamper proof seal, signed by the person sealing it and labelled with unique identity number and/or letter;
- Early evidence kits may be used to recover evidence from victims. They include containers to collect urine and a variety of swabs to collect traces of material from the mouth or skin. Samples can be obtained by victims themselves in some cases. The applications they have in trafficking in persons cases are outlined below;
- Intimate samples (samples from the genital area, anus etc) should only be obtained by properly qualified medical staff. Annex 2 “Conducting intimate examinations of victims” gives more detailed guidance in this area.

There are a number of specific issues concerning the recovery and preservation of: biological material, finger marks and electronic communications and IT equipment. Please see annex 3 “Recovery and preservation of electronic communications and IT equipment” for more detail.

Other issues

- Wherever possible, physical evidence should be collected by trained staff. In some cases this may need a high level of training (for example a medical examination of a person). In some cases samples can be taken by staff with basic training;
- Staff should be provided with equipment appropriate for the case investigated. This should include health and safety clothing, cameras, video equipment (where available), collection bags, boxes and adequate containers, labels and record sheets;
- Proper storage facilities should be provided to avoid loss or degradation of evidence prior to the analysis in a forensic science laboratory.



Self-assessment

Outline the basic actions required to preserve and document crime scene and recover physical evidence traces from crime scenes.

Specific features of crime scene examinations to trafficking in persons

Crime scenes in trafficking in persons investigations present a number of challenges to investigators.

Investigators will have experience of using crime scene examination to support criminal investigations; this shows some of the differences between traditional crime scene and physical evidence examinations and trafficking in persons cases.

Early cooperation between investigator and forensic personnel

This is important in any case, but particularly in trafficking in persons investigations because of issues outlined below.

Accounts of victim-witnesses and other information

The information available to you when deciding a forensic strategy in trafficking in persons cases may be very confused initially, more so than in general crime cases. The reasons for this include victims' response to victimization (varying or incomplete accounts), language barriers, identification of suspects only by nicknames and vague or inaccurate details of locations.

Lack of knowledge about trafficking in persons

Trafficking in persons crimes, its consequences and the traces it leaves, may be outside the previous experience of the investigator or forensic personnel. Forensic personnel should be briefed by experience trafficking in person investigator about the trafficking process.

Many scenes

In many crime cases there is likely to be a small number of scenes: for example, the car where the rape happened or the bank where the robbery took place, etc. In trafficking in persons cases there is a greater likelihood that there will be a large number of scenes of interest to the investigator. These may require simultaneous management.

Linked scenes may be found at the source, transit and destination locations in a trafficking case. Forensic evidence of victims and traffickers is likely to be present in premises in all those locations. Similarly, there may be evidence linking a person to transport used in all locations, or a vehicle that has passed through all three locations. Advertising, communications equipment and finance documents are all potentially connected opportunities for forensic examination.

You should always consider what scenes might be linked and where those scenes might be located. Explore the opportunities to examine linked scenes or request an examination takes place. This may not be practical in every case, but you may have very local links that should not be overlooked. Even where a scene is in another jurisdiction, an examination may have taken place already and it may be possible to share the results.

Linking scenes may allow you to identify further victims or suspects, generate intelligence and present a more robust and comprehensive case at court.

Staff who have been to one scene or dealt with a suspect or victim should not go to another scene. This prevents cross contamination of scenes.

People present at locations

By definition, there are likely to be people present at locations linked to trafficking in persons, presenting a number of difficulties. The people may be “scenes” themselves (as victims or suspects) as will the location. Identifying who is suspect or potential victim is likely to be difficult and there may be cross-contamination issues.

Where people have been living or working in close proximity traces transferred between people may be the result of innocent contact or could be evidence of exploitation.

Managing exhibits to ensure chain-of-custody

The main difference between trafficking in persons and other cases is that there is a potentially very large number of items that require seizing as exhibits or for forensic examination in a trafficking in persons case. This makes a structured approach particularly important.

The “chain of custody” in a trafficking in persons case may be long and complex because there may be a need to transfer exhibits between jurisdictions. Any such transfer should always be done in a way that complies with the legislation of the States it is moving between. Do not assume your system is applicable in other jurisdictions.

Length of time of exploitation

A lot of general crime consists of single events that have been short lived. In trafficking in persons cases the crime is likely to be a series of events involving exploitation over a long period of time, or even one continual crime where it is very difficult to isolate single events. Trafficking in persons cases are likely to involve a large number of suspects.

Consequences of this include scenes (people, locations, etc.) that are likely to have many forensic traces, some of those traces may be relevant, many may not and evidence of crimes may have deteriorated to the point it is of no value.

Commercial processes

Human trafficking is a commercial process. The objective of any law enforcement investigation should not simply be to convict individual criminals, but also to dismantle networks. A forensic strategy in a trafficking in persons case should consider how forensic examinations may be linked to the five processes in trafficking in persons—advertising, premises, transport, communications and finance.



Self-assessment

Summarize the specific features of crime scene and physical evidence examinations in trafficking in persons cases.

Examinations of victims

General considerations

- It may not be clear who is a suspect or victim on first encounter. Indeed, in many trafficking in persons cases this may not become apparent for some time.
- There may be cases where forensic contact evidence alone will prove a victim of trafficking in persons has been assaulted, but this is likely to be rare. In many more cases the forensic evidence will corroborate the account given by the victim or other evidence.
- The value of examinations of victims may be limited because victims and exploiters (or recruiters and transporters) often have very close long term contact with each other. There are particular issues concerning intimate examinations in sexual exploitation cases that are explored below.
- It is important to establish the age and identity of a person believed to be a victim of trafficking in persons. Annex 1 “Forensic techniques in age assessment” gives further guidance.

Examples of objectives in sexual exploitation cases include:

- Showing that a particular individual had sex with or sexually assaulted a victim;
- Showing that a particular individual physically assaulted a victim;
- Corroborating a victim’s account of what happened to him/her;
- Identifying any injuries, illness or disease that may be related to their exploitation;
- Establishing how long a person has been victimized;
- Establishing the age of injuries to a victim;
- Identifying the victim;
- Establishing the age of the victim;
- Connecting a victim to a particular location, vehicle, etc;
- Identifying any drugs or alcohol administered to or taken by the victim.

The same basic principles apply in labour exploitation and other cases with the additional objectives of:

- Linking a particular piece of equipment or machinery to a victim.
- Establishing the scale of the exploitative enterprise.

Multiple exploitation

In labour and other exploitation cases you may not have sexual assaults as a priority but you should always bear in mind that victims of all forms of exploitation are often at increased risk of sexual abuse.

Examining victims—specific considerations in sexual exploitation cases

- An early decision should be taken by the investigator in consultation with forensic examiners about whether or not a full examination should take place (with victim consent). It may not be viable because of the reasons outlined above or it could be technically possible but not with the resources available to you.
- Guidance on conducting examinations of victims is found in annex 2 “Conducting intimate examinations of victims” below.
- Consider using early evidence kits. These kits include items such as flasks to collect urine, swabs to take samples of material from under the fingernails and buccal swabs to take samples from the mouth. There are bottles and bags, some with preservative, that help store the material properly.

As you have seen above time may have passed and there may be little evidence to recover. However, using these kits is simple and much of the sampling can be done by the victim herself. It is non invasive and the kits are not expensive.

- If it appears there may be samples present but you are reaching the time limit of any trace remaining make sure the person taking the sample knows what they are required to do and how to do it. An example is the recovery of semen from the higher parts of the uterus which may allow recovery after an extend time period but is difficult and very invasive.
- Where it is not possible to conduct a full examination consider undertaking a less intrusive examination (with the victims consent). Although this may not prove contact with an individual it may give corroboration of the victims account, for example showing visible injuries consistent with what she is saying.
- If a full examination is made (with the victims consent) have a secondary objective of corroboration of the victims account. The presence of semen from many men would be valuable to a trafficking in persons sexual exploitation investigation even if you cannot identify the men.
- In sexual exploitation cases under clothing can be particularly useful to obtain traces of semen that has drained from victims.
- In many trafficking in persons cases a victim may be disclosing an incident that took place some time ago and no samples remain.
- The effects victimization may mean accounts from suspected victims sexual exploitation are particularly vague and incomplete.
- Victims of trafficking in persons for sexual exploitation may have had sexual contact with many people with the possibility that samples from many people are present on those victims.
- Semen may be found in the vagina, anus, mouth or virtually any other part of the victim.
- Hairs, both pubic and head hair will be transferred between the victim and the suspect.
- Semen may remain in the vagina and uterus for quite a long time (see “Semen” above) but recovery of samples is very invasive.

- Samples from different locations in the vagina and uterus may indicate when ejaculation took place and could corroborate an account of prolonged abuse.
- Victims may not have had access to clean clothes for some time. Numerous forensic traces may be present on the clothing.
- Informed consent of the victim to an examination may be difficult to obtain in an acceptable time scale because of traumatization of the victim, difficulties in translating and mistrust of the police.
- Examination is likely to be invasive and may be a pointless further victimization of the woman.
- For the reasons outlined above, there may be cases where a physical examination of a victim of sexual exploitation for trafficking in persons is unlikely to reveal any evidence of practical value. Investigators must (in consultation with forensic and medical experts) decide if the potential results of an examination justify asking a victim to consent to a physical examination.

Examining victims—specific considerations in labour and other exploitation cases

- In all trafficking in persons cases it is essential that any forensic strategy considers the account of the victim and any other evidence from the outset.
- Consider involving people you can trust with experience of the trade or industry you are investigating to identify what you need to look for.
- Consider speaking to medical practitioners who can identify the injuries or physical effects on the body of certain trades, etc. Any examination should take place with the victim's consent
- When recording where a person was on first contact include the machine they were working on, where they were in a field, what equipment they had, etc.

Injuries in trafficking in persons for labour

Examples include children working in textiles factories with calluses to their hands, mutilation in cases of begging, patterns of muscular development or injuries as a consequence of warfare or training for warfare.

- Fingerprints and or DNA may establish which equipment a victim has been using, with factories, rooms they have used or where they have slept.
- DNA may show a victim was injured on a particular machine or link a victim or suspect with a weapon as a “discipline” tool.
- Where appropriate (evidence of chemicals, drugs etc found on the premises) consider use of early evidence kits outline above in “Victims—Sexual exploitation”.
- Cross-contamination between victim and suspect may be likely because they have been living or working in close proximity for an extended period or time.
- Victims may have injuries or marks that can be linked to particular machines or other equipment.

- Clothing may have been adapted for particular work.
- Clothing may contain fragments of material from agricultural or industrial processes.
- Blood and urine samples may show that a person has ingested drugs, been exposed chemicals associated with particular processes or contracted a disease.

Examining victims

Actions

General crime scene approach is applicable

- Take health and safety precautions. If encountering a person through a tactical intervention (raid) or in the course of routine policing activity it may not be apparent who is a suspect or victim. There may be resistance, possibly with weapons.

In some cases the victims of trafficking in persons may present a risk of resistance and attack. An extreme example is the case of a child trafficked for warfare.

Appropriate health and safety measures should be provided and taken by those involved in bodily examinations or where bodily fluids are present. The need for safety should be balanced with the need not to stigmatize victims.

- Record where a person was on first encounter and what they were doing at the time.
- Record the general scene where a possible victim was found. (also see “Locations” below). This should be done using cameras and videos where available, drawings, plans and written descriptions.
- It is strongly recommended that before starting the examination of a victim you should establish what the victim's account is and what else is known about things like the location she was found in. Finding out what is being alleged should always be balanced with the need for the recovery of evidence which may be rapidly disappearing or deteriorating. Any examination must take place in accordance with your legislation and the consent of the victim.
- Although trace transfer is more likely the longer a person is in the company with another there may be traces of certain material in locations on a body that are difficult to explain no matter how long they have been in contact.

Obtaining a full account helps to identify those areas for examination where a trace would corroborate the account.

- You may consider a medical examination to establish age of victims. You should be aware this can be very difficult and may not be accurate. See annex 1 “Forensic techniques in age assessment” for further information.
- Make a note, draw or photograph the victim showing any visible injuries. Even where a victim consents to having non-visible injuries examined and recorded it is good practice to photograph or keep a record of how they were dressed before the examination. Whatever the extent of the examination the person consents to any record of injuries, etc. will add to the investigation.

- When taking photographs, be aware that showing a victim's face may cause problems in some cases. The defence may have access to the photograph or video leading to revelation in courts or to the suspect. Taking pictures of faces may reduce the chances of cooperation.
- Examination of clothing may reveal useful samples. Even where you are able to examine it is good practice to seize clothing.
- Clothing may be available for examination that the victim is not wearing at the time.
- Clothing may also have visible damage that corroborates the victim's account.
- Bedding (see "Locations" section below for more detail) and other furniture may also yield samples of value.
- In all cases investigators should try to identify where the victim's clothing is, where he or she slept, other areas of premises they had access to, worked or lived in, vehicles travelled in, etc. to increase forensic opportunities.
- Obtain control samples from the victim. Ideally this should include fingerprints, DNA and hair samples. These are required to link victims to locations etc.
- Collect any documents (identity, travel document and all other type of documents).



Self-assessment

What are the specific features of crime scene and physical evidence examinations in trafficking in persons cases when examining victims of trafficking in persons?

Examination of suspects

Considerations

- It may not be clear who is a suspect or victim on first encounter.
- Suspects may resist attempts to detain or search them or seize their property.
- Suspects may be in possession of weapons or other items that they could either deliberately use on those searching them or which could cause injury during a search.
- You may have some knowledge of what is alleged to have happened before you encounter the suspect either through a victim or witness account or the result of other enquiries.

Examining suspects—specific considerations in sexual exploitation cases

- Allegations of sexual assault are likely to leave samples of the victim on the suspect on intimate parts of a suspect's body (as well as the rest of the body).
- Alleged sexual assaults may have taken place some time ago.
- Although traces of suspects on victims' bodies may be discharged, degraded quickly or washed from their traces of the victim may remain on the suspects' body for some time, particularly where the suspect has poor hygiene.

- While it can be argued a trace has been found because victims and suspect live or work in close proximity, some traces are in locations on bodies and are difficult to explain away by “innocent contact”.

Examining suspects—specific considerations in labour and other exploitation cases

- Clothing of interest could include any uniform or badges that suggest they are in a position of authority, anything that suggests they are involved in a particular operation at a factory, command a unit etc or weapons or other equipment that might be used in “discipline” such as sticks or whips.
- There may be traces on the clothing that links a suspect with a particular victim, for example blood from an assault.
- There may be traces on the suspect that show they have been involved in a particular process.
- Other property in their possession may indicate a person holds a position of authority at a location and may be a suspect.
- The property in a person's possession may offer evidence from the information it holds, but may also have valuable contact—trace evidence such as finger prints.
- In some labour situations it may be clear who has authority and who does not. In other cases this may not be clear. Examples include groups of people begging, gangs stealing, children and young people trafficked for warfare.

Examinations of suspects

Actions

General crime scene approach applies in examinations of suspects.

Plan your forensic strategy around what you are aware of already. Continually review what you know and amend the forensic strategy accordingly. It is recommended you work with forensic examiners and analysts when making these decisions.

In all searches of people think health and safety.

- Record where suspects are found, for example where they were in a building, where they were sleeping, where they were sitting in a vehicle etc.
- Record who was with the suspect at the time he or she was encountered.
- Where possible record this with video or photographs.
- Photograph how they are dressed clothing.
- Search clothing—look for documents, phones (see document examination and ITC examination) etc, weapons, any objects that may suggest use of oaths or traditional religions (See module 4: “Control mechanisms in trafficking in persons” for more information)
- Do so in a way you are not going to contaminate it or lose material.
- Record what is found and who it is found on, preferably with photo/ video if you can.

- Record any injuries visible when the suspect is clothed.
- Consider seizing the clothing of suspects. Do this in accordance with your legislation and in a way that protects the dignity and privacy of the person. It is best to seize clothing at a police station or similar place. If you do have to seize clothing “in the field” ensure it is done at a location and in a way that avoids cross-contamination and protects the person’s dignity.
- If suspects and possible victims are found keep them separate as far as possible (this is good practice not only for forensic purposes but to prevent intimidation).
- It may be inevitable that there is some cross-contamination when suspects and possible victims are found together. Do what you can to ensure initial searches are conducted by separate people. Keep a record of who searched who and by open with forensic examiners, prosecutors and courts about what happened.
- Where appropriate, consider a full physical examination of the suspect conducted by an appropriately qualified person. This should be done in accordance with your legislation.
- Obtain fingerprints from suspects. This will allow you to link them to particular equipment, documents or locations.
- Consider obtaining DNA where appropriate. This may have an application in detecting who sent letters etc.

Examining suspects—specific actions in sexual exploitation cases

- Consider conducting an intimate examination of the suspect by an appropriate person in accordance with your legislation.
- Work with the person conducting the examination to identify objectives and main areas of interest in the examination.

Examining suspects—specific actions in labour and other exploitation cases

- Record where people were in premises and what they were doing at the time of your encounter with them. In labour exploitation points of interest would include who was apparently supervising other workers, were they supervising with other supervisors, were they in offices that appeared to be used for management of an operation.
- Record how they are clothed and equipped at the time of your encounter with them.
- Record any injuries visible when clothed.
- Search them in accordance with your legislation. Property of interest includes mobile phones, pagers, work records, daily task sheets, weapons possibly used in discipline, tools that associate them with particular tasks, identity badges, business cards, letters, wage slips, etc.
- Searches should also be made of any property they have with them such as brief cases.
- Enquiries should be made to establish where and what that person has access to. This includes which office they work in, draws, cupboards and lockers they have access to, vehicles they use, computers, phones and filing systems they use. This information may be available through interviews with the suspect, other witness including victims or other enquiries.

- Consider a further examination of the suspects by an appropriate person. This is unlikely to be as extensive or invasive as those in some sexual exploitation enquires but may be of use in circumstances where the suspect may have a corroborating injury from assaulting a victim or industrial accident for example.
- Where sexual offences are alleged (many victims of trafficking for non-sexual purposes are abused sexually) the same considerations as found in trafficking in persons for sexual exploitation apply.



Self-assessment

What are the specific features of crime scene and physical evidence examinations in trafficking in persons cases when examining suspects?

Examinations of locations

Considerations

- Many locations in trafficking in persons cases will carry health and safety risks to your staff.
- In many trafficking in persons locations there is likely to be significant contamination of scenes with multiple traces.
- In many encounters it may difficult to identify who are exploiters and who are victims. This may not become apparent until some time later.
- On most premises there will be a very large number of fingerprints. Recovering all fingerprints may be difficult, time consuming and involve specialist techniques.
- In a trafficking in persons case you may need to secure a location for a long time to plan and complete a forensic examination.

Examining locations—specific considerations in sexual exploitation cases

- Body fluids and traces are likely to be present at brothels and similar locations. These may present a significant risk to health.
- Brothels are likely to have many DNA samples present in traces of semen, blood, other body fluids and material.
- Documents of interest include any accounts or other records that show prices for sexual services and details of things like “rent” paid Experience has shown that in many situations of commercial sexual exploitation quite detailed records are kept.
- Where the location is a brothel make a record of reception areas, public rooms, cubicles, etc.
- Bedding is likely to reveal many contact traces. Consider seizing bedding etc. after recording it in situ. Seizing it allows the option of examination. If full examination does not prove practical, the condition of the bedding may be valuable in corroborating an account etc.

- Record any sex toys, sexual implements, lubricants or similar material should be found and seized them. These may be evidence in themselves, but also give opportunities for finger mark and DNA evidence recovery.

Examining locations—specific considerations in labour and other exploitation cases

- Labour exploitation sites may have particular health and safety risks because of the nature or the business or condition of equipment etc.
- Consider seeking advice from a person with knowledge of a particular trade or industry to assess risks in forensic examination of premises and equipment.
- Take someone with you who knows how to make equipment safe.
- A general and comprehensive record of conditions at the location should be made. This should include health and safety equipment (or lack of them), the condition of any machinery or other equipment should be recorded, notices, etc.

Machinery, tools and equipment can be examined to establish who has been using it.

If there is evidence of people sleeping on what should be exclusively work premises this should be recorded.

Samples of chemicals or other material at the location may allow you to link similar samples found on clothing of workers or to substances found.

Any evidence of who uses a particular office should be recorded. This evidence may include name plates on doors, photographs on desks, diaries, and business cards, etc. This evidence may help establish a “chain of command”.

Examinations of locations

Actions

General crime scene approach applies to examinations of locations.

- Use existing information and intelligence to plan a forensic strategy when entering premises, both in the case of tactical entries (raids) and visits on follow up enquiries.
- Record who is present and what they are doing when you enter a location.
- Ideally this should be photographed or videoed, and plans should be drawn.
- Use the guidance in “victims and suspects” (above) regarding the recording the clothing people are wearing and conducting searches.
- Ask people to identify where they work or sleep. Record their responses. Consider identifying who slept at a particular location, by photograph where possible, or other techniques such as fingerprinting the area of the bed or seizing bedding where appropriate.
- Consider interviewing those on the premises to establish who has access to where and for what purpose.
- Documents of interest should be sought on premises, recorded in situ and, where appropriate, seized for possible further examination. Examples include any notices showing

regulations, services offered, identity and travel documents, records of employment ledgers and similar recording transactions.

- Any suspected drugs or other substances of interest found should be recorded in situ and retained for possible analysis.
- Active review should take place to take account of any new information that emerges.
- Computers, laptops, cell phones should be seized



Self-assessment

What are the specific features of crime scene and physical evidence examinations in trafficking in persons cases when examining locations?

Examinations of vehicles

Considerations

- Vehicles may offer a useful opportunity to link victims to suspect and vice versa.
- Upholstery in cars and other vehicles may contain hairs and fibres from clothing from both victims and suspects.
- Property in vehicles such as receipts for petrol, parking tickets, etc. may also offer good opportunities for examination.
- Litter in cars such as cigarette stubs and chocolate may offer opportunities for examination
- The vehicle itself leaves tracks that may be useful in identifying it.
- Most vehicles carry registration or index plates which allow tracing.
- Documents such as diving licences and insurance certificates are required to drive and operate vehicles.
- Some traffickers will use vehicles without documents but others will drive legally as they do not wish to attract law enforcement attention.
- Even where no index number is available it is possible to trace vehicles through combinations of colour, manufacturer and individual marks. In some locations this can be done by automated searches.
- Vehicles can be removed by law enforcement and kept until they are able to examine it.
- Some vehicles may contain equipment that allows you to track its movements. This can include tacographs (journey recorders) in lorries, mobile phones or satellite navigation systems.
- If the vehicle itself does not have equipment that allows tracking, the people in it may have used or be using mobile phones that can allow tracking.

Examining vehicles—specific considerations in sexual exploitation cases

- If there is an allegation of sex or sexual assault taking place in a vehicle, semen and other material of interest may be left.
- Where there is an allegation of sex or sexual assault taking place in a car, forensic personnel should be informed. If forensic examiners are not aware of the nature of the allegation examination will not take place
- Where taxis and other forms of public transport are used, consider checks of drivers duties, calls for cabs, etc.
- In trafficking cases in some locations there a number of very short journeys from where the victim is living to where they are being exploited, often by taxi.

Examining vehicles—specific considerations in labour and other exploitation cases

- In the case of commercial vehicles, consider consulting experts in records that should be kept by transport managers and individual drivers, for example tachographs where used. These may give information on routes taken.
- Use experts such as police road traffic officers to identify alterations to vehicles that may suggest they have been used to conceal passengers, transport people as part of trafficking in persons process.
- Vehicles need to be dry to achieve best forensic evidence from them. Plan ahead for adequate storage facilities for the size of vehicle you anticipate examining. In trafficking in persons for labour exploitation some vehicles may be very large.

Examining vehicles

Actions

General crime scene approach is applicable

- If the vehicle is stopped with people in it record who they are and where they are sitting. Take action as outlined in above to search occupants and seize property.
- Record who has access to the vehicle after it comes into police possession, including where it has to be driven to a police station etc. for recovery. This allows elimination of samples from police officers etc.
- If a vehicle is damp it should be dried prior to examination.
- Consider photographing the vehicle before an examination takes place.
- Search the vehicle for other property before it is examined. Record where any property of interest was found (preferably by photograph) and seize it
- Collect micro traces on seats (fibres) and on the floor.

**Self-assessment**

What are the specific features of crime scene and physical evidence examinations in trafficking in persons cases when examining vehicles?

Examinations of documents found at the scene, on victims and suspects and in vehicles

Considerations

- Trafficking in persons is a commercial process and, as in any type of business, records must be kept. These records are frequently very valuable for investigators. Forensic investigations present a number of opportunities to determine the authenticity of a document or the author of an handwritten document or note. Examples of significant documents that may be found in trafficking in persons investigations include:
- Accounts of money taken in brothels or other illegitimate businesses.
- Bank statements and details of informal transactions (hawala type systems).
- Utility bills such as gas, electricity or phone bills.
- Records of rent paid, details of landlords, etc.
- Tickets, boarding cards and other travel documents.
- Records of bills paid for advertising.
- Credit card details of customers.
- Documents giving work instructions or “menus” of “services” available.
- Photographs of employees.
- Identity documents both genuine and counterfeited/forged.
- Cash.
- Documents in factories and other work places that record details of people working there.
- Documents that show the volume of trade in a particular location, such as material brought in and finished good despatched.

Examining documents—specific considerations in sexual exploitation cases

- Records may still be kept even by brothel keepers and similar even where prostitution is illegal. Examples include price lists, records of cash receipts, how many “clients” have visited a particular women.

Examining documents

Actions


Documentary evidence should always be handled with gloves.

Depending on the type of fraud or type of document involved the first examination will be done at the first line of inspection, in the field, the two first bullet points:

- Visual examination of features without specific equipment: e.g., watermarks, relief structure, mechanical erasure;
- Examination of features with technical facilities (e.g., visible light, UV, IR): e.g., fibres, chemical eradication;
- Examinations in the forensic science laboratory with sophisticated equipment that cannot be used in the field.

Actions specific to sexual exploitation cases when examining documents

- Always seize anything that appears to be a record, no matter how informal that record may look.

	Self-assessment
What are the specific features of crime scene and physical evidence examinations in trafficking in persons cases when examining documents?	

Examinations of IT and communication equipment found at the scene, on victims and suspects and in vehicles

Considerations

IT and communication equipment are essential to both legitimate and criminal organizations and present a number of forensic investigation opportunities including:

- Records of calls made, numbers held, photographs and videos, etc. on phones, both mobile and fixed line.
- Similar records from fax machines, pagers and phones which record messages (where these have a the tape the tape should be seized).
- E-mails, bank details, advertising material, accounts, etc. held on computers, including desk top, lap tops and small personal devices.
- Diaries and similar. These may include personal organisers, filofax, Personal Digital Assistants (PDAs), Blackberries, notebooks, etc.

IT and communication equipment

Actions

Wherever possible take a forensic IT expert with you when you believe you may have to seize IT and communication equipment. If you cannot take an expert with you, try to speak to one before you go to a scene. Annex 3 “Recovery and preservation of electronic communications and IT equipment” gives detailed guidance for circumstances where neither of the options above are available.



Self-assessment

What are the specific features of crime scene and physical evidence examinations in trafficking in persons cases when examining IT and communication equipment?

Summary

A crime scene is any physical scene, anywhere that contains physical traces of past activities. Crime scenes can be locations (indoor or open air), vehicles and persons (victims and suspects).

“Crime scene examination” is an examination of the scene using a technical and scientific approach.

There are a number of potential goals you may wish to achieve from a forensic examination in a trafficking in persons case. These include:

- Identifying a suspect;
- Identifying a victim;
- Establishing the age of a victim;
- Corroborating a victims account;
- Identifying the links between suspects, victims, locations, vehicles, documents, etc.;
- Identifying the authenticity of identity or travel documents.

Physical evidence that may be recovered at trafficking in persons crime scenes include:

- Biological material (e.g. blood, urine, saliva);
- Finger marks and other body part marks;
- Fibres and other micro traces;
- Document evidence;
- IT and other electronic equipment.

Effective management of crime scenes requires:

- Early cooperation between investigator and forensic personnel;
- Organization of the work at the scene of crime;
- Preservation of the crime scene integrity;
- Recording scenes;
- Scene examination and recognition of physical evidence;
- Recovery and preservation of physical evidence.

Specific issues of crime scene management include:

- Accounts of victim-witnesses and other information may vary or be very confusing;
- Crime scene examiners lack of knowledge of trafficking in persons and its challenges;
- There may be many scenes to consider;
- People are likely to be present at scenes leading to control of scene and contamination issues;
- The potentially large number exhibits means effective “chain-of-custody” procedures are essential;
- Length of time of exploitation may mean considerable volume of potential samples;
- Trafficking in persons is a commercial and criminal process. A forensic strategy should seek to prove facts in an individual case and also provide information that helps disrupt the commercial processes.

There are specific issues that may vary according to the type of trafficking in persons when examining:

- Suspected victims;
- Suspected offenders;
- Locations;
- Vehicles;
- Documents found at the scene, on victims or suspects and in a vehicle;
- IT and communications equipment found at the scene, on victims or suspects and in a vehicle.

Annex 1—Forensic techniques in age assessment

The age of a victim is very significant in many jurisdictions because it affects the charge and eventual sentence. It also has a significant impact on the victim care that the person is entitled to. In some locations there have been some issues with corruption of examiners to give an older or younger age as suits the traffickers' purposes.

In some locations there are no birth certificates and there is the possibility that parents may be involved in the trafficking. Some form of forensic examination may be the only option you have to establish age.

Similarly, identification of the victim using identity documents and identification by relatives may be problematic because the documents never existed or have been destroyed. Relatives can be unwilling to help because they are colluding with the traffickers or they are afraid.

Teeth are useful in estimating individuals' age as the development and formation of teeth is relatively independent of the external or nutritional status of an individual. This is an important aspect of trafficking in persons investigations, especially when trying to identify children. Age is an important factor as it impacts upon the legal status of the individual and subsequently what care protection would be required.

It is essential that only experienced and independent dentist are allowed to use this means to assess the age of a person.

An experienced dentist can accurately estimate a child's age by looking at:

- The number and quality of fillings;
- Presence of plaque and calculus, caries, gingivitis and periodontitis;
- Amount of dental wear;
- Type of teeth present;
- Tooth colour;
- Recessions;
- The number and type of teeth present in the mouth.

However, when trying to determine someone's age other methods should also be taken into account such as:

- A psychosocial age assessment (e.g. inspection of physical appearance, interviewing the victim);
- Physical and radiological examinations of (a) the hand wrist of the non-dominant hand and (b) the medial ends of both collarbones as well as (c) the radiological examination of the dentition.

Annex 2—Conducting intimate examinations of victims

Where a victim is to be examined, it should only be done with his or her consent.

The victim should be allowed to choose the gender of the forensic medical examiner and this should be complied with wherever possible.

Where a child victim is involved consent should always be obtained from the child's parent, guardian or other independent adult official who has temporary parental rights and responsibilities in respect of the child. Consent should be obtained before an examination takes place.

The victim must be told what the examination will consist of and why an examination is required before he/she gives her consent. Consent is not genuine if the victim does not understand what he/she has agreed to.

In the case of a child the explanation should be given to the parent or guardian but every effort should be made to help the child understand as much as possible about the examination and why it is being conducted.

Every effort should be made to provide proper clothing for the victim if his/her own clothing is to be removed: crime scene paper overalls are not suitable.

Do not transport victims in the same vehicles as suspects or detain them in the same place as suspects; doing so may transfer forensic evidence from suspect to victim or lead to allegations that this has happened.

Do not use the same investigation staff to work with the victims as deal with suspects. This can also lead to transfer of evidence or allegations there has been transfer.

No one who has been to a location where an offence is alleged to have happened should come near the victim before clothing has been removed or the examination has taken place because they may be transfer material from the location to the victim. The same advice applies to going near to suspects before they are examined.

Many victims may have physical or psychological impairment (or both). Examination for evidence of crime should not take place before the victim has been assessed by a suitable medically qualified person to establish if she is well enough to be examined.

If at all possible clothing should not be removed before forensic examination.

Consider photographing the victim before clothing is removed.

If clothing has to be removed it should be removed in a place and way that allows the victim to keep his/her dignity.

Members of the opposite sex should not be present when clothing is removed.

Clothing should be removed and packed in a way that preserves evidence.

Examinations should only be conducted by properly qualified people, often doctors or nurses. Where a country has laws or procedures that govern examinations these should be complied with.

Every effort should be made to examine the victim promptly.

Where it is not possible to do a full forensic examination you should consider what you are able to do with facilities you have available such as taking photographs and clothing.

You may be able to obtain samples from some types of offence by using non-intimate techniques that can be used by investigators. An example is a mouth swab for DNA etc. in cases where oral sex is part of the offence. Care should be taken to ensure this is allowed under local legislation.

Many victims are likely to want to wash, either because of the sex offence committed against them or because their traffickers have not allowed them to wash for some time. Washing may remove evidence and victims should be discouraged from washing until they have been examined. This must be explained as compassionately and sensitively as possible.

Allow victims to wash if they insist after it has been explained this may remove evidence.

Eating, drinking, smoking or washing teeth may also remove evidence of some types of sexual offence (oral sex for example). Victims may not have eaten properly or drunk for some time and may want to do so. Any request for the victim not to eat etc. should be balanced with an assessment of what evidence you think would be realistically obtained.

If doing any of things above appears likely to cause the victim to stop cooperating you should decide whether the evidence you are likely to get justifies the risk of withdrawal of cooperation.

Objectives of an examination may include:

- Any injuries consistent with the allegation, for example injuries to genitalia.
- Information that shows the extent of the injuries. This might include the severity of recent injuries or old injuries that have healed to some extent.
- The presence of traces of other people on the victim.
- Obtaining samples to link the victim to other locations, people, etc.

Remember to ask her to indicate if she has other clothes and if so where they are. Record or photograph the clothes where they are when you find them so you know where they are and try to seize this clothing for possible forensic examination.

Annex 3 “Recovery and preservation of electronic communications and IT equipment”

Where it is not possible to either take a forensic IT expert with you or to speak to one before you go to a scene try to follow this advice:

- Control the scene as soon as you enter.
- Search people found at the scene as well as the scene.
- Record everything found on each person including any IT or communications equipment.
- Records of who has what equipment should be exact. Consider photographing or videoing as you seize property from people.
- Do not allow anyone (including investigators) to touch any IT or communications equipment.
- Do not turn the equipment off.

- Shutting down some types of equipment may damage the information held on it. This should be done by experts, but where one is not available keep what equipment you can (for example that run on batteries) turned on for as long as you can. If it has to be moved, unplug it, do not turn it off.
- Video or photograph the equipment exactly as you find it.
- Video or photograph any connections from computers to other equipment.
- Before you disconnect the equipment consider marking the wires connecting the equipment with labels or pens.
- Photographs or labels on connections allow the equipment to be reconnected later by experts for forensic examination.
- Fingerprints and other contact evidence is likely to be found on equipment which could help link suspects to the equipment; when seizing equipment do it in a way that will not disturb that contact evidence. Store it in an appropriate way.
- Where possible seize all equipment, not just the hard drive. Printers, paper, blank paper and other items can be forensically compared later with other material recovered in the investigation.

Keep a log of everyone who enters a crime scene including police and investigators; this may become an issue when it comes to custody and contamination issues



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Anti-human trafficking manual for criminal justice practitioners

Module 8

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Anti-human trafficking manual for criminal justice practitioners

Module 8:

Interviewing victims of trafficking in
persons who are potential witnesses



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Module 8:

Interviewing victims of trafficking in persons who are potential witnesses

Objectives

On completing this module users will be able to:

- State the overall objective of all law enforcement interviews with victims of trafficking who are potential witnesses.
- Outline some of the key differences between interviews of suspected victims of trafficking in persons who are potential witnesses in court cases and those in other forms of crime.
- Identify the five stages of a victim interview—Planning and preparation, Engaging with the victim-witness and explaining the process and content, obtaining the Account of the victim-witness, Closing an interview appropriately and Evaluating the content of the interview (PEACE).
- Explain why it is important to plan for interviews of victim-witnesses in trafficking cases.
- Describe a number of practical steps that will assist you to plan an interview of a victim-witness of trafficking in persons.
- Identify the elements required to engage with a victim-witness of trafficking in persons in an evidential interview.
- List what should be explained to a suspected victim-witness of trafficking in persons.
- Identify when an interview should not proceed to the Account stage.
- Give a basic explanation of what free recall is.
- Describe compliance in the context of the interview of a vulnerable person.
- Explain the differences between open, specific, closed and leading questions.
- Explain how the nature of trafficking cases may affect the various techniques used in vulnerable person interviews.
- List special interview techniques and explain who should (and should not) use them.
- Describe what is required in the closing phase of an interview.
- Describe a number of practical steps to assist in evaluating an interview.

Introduction

This module focuses on interviews of suspected victim-witnesses in trafficking in persons investigations. Victim and witness are terms that have specific and different meanings among jurisdictions.

In some jurisdictions a person is declared a “victim” after a judicial or administrative process. Official declaration of “victim” status in these cases bring a number of privileges and protections. In other jurisdictions, the term victim is understood in broader sense without any legal/administrative requirements.

In some jurisdictions, “Witness” is limited to a person who gives testimony in courts, while in others it is used to describe a person who has information about a crime as well as a person making a written statement or giving testimony in court.

It is not possible to produce an interview module that precisely fits every legal system in the world. You may have to adapt some of the information contained in the module to your domestic legal system.

Whatever the precise terminology and structure of your legislation, this guidance is primarily intended for those situations involving people who you suspect have been trafficked and who you need to conduct an evidential interview with to get an account of the depth and quality that can be used in court proceedings. Even if the information is not used in a court case, this approach gives you the best chance of obtaining high quality information that can be used to counter human trafficking activities.

Interviewing suspected victims as part of an initial screening process in field operations differs in many respects from evidential interviews, although they have many things in common.

In some jurisdictions, decisions on victim status require an approach that uses a particular structure. The victim status may be specifically related to trafficking (for example as part of a national referral mechanism for victims of trafficking) or as practice for all forms of crime in that jurisdiction. Again, while these interviews have much in common with evidential interviews, they are not the same.

Even if an interview is not intended primarily to form the basis of evidence in a court case, you should be ready for every eventuality and prepare the interview in such a format that would be admissible in your legal system. For example, the defence may wish to see what was said at the initial field operations screening interview, interviews to determine victim status and the in depth evidential interview.

Ideally, interviews of victims of trafficking in persons should be conducted by specially trained interviewers. Typical operational units containing such trained personnel include sex offence investigators and domestic and child abuse units.

This document is intended for use in three main ways.

First, it provides specific guidance to trained interviewers on issues to consider when interviewing victims of trafficking. It should be emphasized that while this document provides an overview of certain techniques to highlight the specific points on trafficking; it will not replace the need to fully train specialist interviewers.

This leads to the second intended use. Although the aspiration is that only trained staff will be used, it is acknowledged that for various reasons this may not be possible in some locations. In these circumstances, the material may be used to provide guidance to an experienced law enforcement interviewer who may not have received relevant specialist training. It must be emphasized that this is not ideal, but it may help to avoid the most serious problems associated with using non-trained individuals in trafficking cases and increases the effectiveness of such interviews.

Finally, this document may be of interest to those who manage investigations and direct interviews. A common international theme that emerged during the creation of the material was that investigation managers do not understand the complexities of trafficking victim interviewing. A frequently reported consequence was that managers put pressure on interviewers to conduct the interview quickly. This can have serious implications for a trafficking investigation. This document can provide managers of trafficking investigations with insight into what is involved in such investigations and can help in planning reorigins and day-to-day management of interviewers.

This module starts by explaining some of the reasons why interviews in trafficking cases are different from many other investigations.

The next section addresses how trafficking interviews should be planned. The basis for this part of the module is the understanding that all victims of trafficking should be considered vulnerable witnesses.

The module then moves on to the topic of conducting a witness interview in a trafficking case. Although interviews of vulnerable witness in trafficking cases have the same structure as any vulnerable witness interview, there are a number of differences in how (and why) trafficking interviews should be conducted. Specific notes will identify these differences and provide advice on how to adapt to the differences throughout this section.

The module appendices also give some supporting material that you may wish to use operationally.

Appendix A provides a checklist for areas of questioning in trafficking witness interviews that relate the questions to the origin, transit and destination markets, as well as recruitment, transport and exploitation phases and the commercial processes of trafficking.

Appendix B provides a list of what trafficking investigators should (ideally) get from first responders when they pass the case on.

Appendix C provides some specific guidance for those responsible for strategic planning for trafficking victim-witness interviews.

Objectives of interviews

The ultimate objective of any interview conducted in connection with law enforcement activities is to obtain an accurate account. This applies to interviews of victims, other witnesses and suspects. In this respect, interviews in trafficking in persons cases are no different from any other types of interview.

As any experienced investigator will be aware obtaining an accurate account is frequently a difficult objective to achieve in practice. Trafficking in persons interviews, particularly those involving victims, have a number of challenges that you need to be aware of in order to maximize the chances of obtaining an account that fully reflects what happened.



Self-assessment

What is the overall objective of any law enforcement interview?

How can I apply this objective to an interview of a trafficking in persons victim-witness?

What are the peculiarities in trafficking in persons cases?

It is rare to find the number and range of support services required in trafficking in persons cases in any other type of investigation. A blend of accommodation, medical support, counselling, translation services, clothing, food and planning for return to the country of origin may be required. These are the range of support services that should be anticipated from the planning stage and implemented from the moment you come in contact with suspected victim for interview. It is not something that can be put off to the end of an interview or series of interviews. Support of this kind is not easy to arrange, and the earlier you start, the better. Cooperation and trust is not likely to occur until you have at least taken some steps towards making these support arrangements and telling the witness/victim what is in place for him/her.

Without victim's cooperation and testimony you are unlikely to have a case. This should not be confused with having victim's testimony as the only evidence you have in your case. Everything you are told should be corroborated or supplemented by as much other testimony and material evidence as you can gather.

Changing accounts

Accounts change during interviews of victims of all types of crime. In interviews of trafficking in persons victims, account changes have been reported as a particularly common phenomenon. Although this observation is based largely on anecdotal evidence, it has been consistently reported by investigators around the world.

A changing account is a very obvious risk to any potential prosecution. A defence can easily portray a person that has changed their story as a liar, thus discrediting the testimony.

Reasons for changes in an account are very complex. They are explained in this module to some extent, but in more detail elsewhere, such as module 3: “Psychological reactions of victims of trafficking in persons” and module 4: “Control methods in trafficking in persons investigations”

While an account may change because the story is not true, investigators should always be mindful of the possibilities of certain issues associated with trafficking in persons cases. It could be that the victim is still suffering from post-traumatic stress disorder, or that he/she is compromised by reasons of threat, intimidation or some other extenuating circumstances. It is very important that investigators do not see these account changes in a simplistic way and assume the person is lying, or that if one part of an account is not correct then the rest is automatically false. Every account should be verified and corroborated as much as possible by other means.

Each victim is different, and you may find that the person you believe to be a victim gives a fully accurate account that never changes. However, some amount of discrepancy is believed to be the more common situation. This is why evidence from interviews needs corroboration.

Investigators comment

During a training course for trafficking in persons investigators, an experienced investigator made the following observation.

“When I am investigating these cases I am more suspicious of the highly detailed account told from beginning to end that never changes than I am of the one that moves all over the place and has gaps and changes a number of times”

This should not be taken to suggest that consistent accounts are always suspect but does illustrate that changing accounts are not necessarily an indication of deception in practice.

The process of trafficking in persons

Human trafficking is a commercial as well as criminal process. Convicting trafficking criminals is important, but if the commercial process is not affected, a conviction will only have a small impact on trafficking networks. Always keep an open mind about whether the interview could be leading to a sustainable court case. Sometimes you may need to consider not proceeding with a court case if you feel the available evidence cannot justify such a course of action and instead use the victim's account to develop intelligence, proactive and disruptive approaches.

Continuously assess the risk of what the witness is telling you. What they are saying may mean that immediate action is required to protect witnesses' family, friends or other victims.

Action may be required within your country's borders and/or at locations of a foreign origin, transit and/or destination country.

Language

Many suspected trafficking in persons victim-witnesses would not speak the language of investigators, leading to the need for interpreters. This is not exclusive to trafficking in persons cases but likely to be more common.

Extensive guidance on the use of interpreters in trafficking cases is given in module 10: “Interpreters in trafficking in persons cases”

Culture

Satisfying basic requirements of a person's culture are important to help them feel relaxed, comfortable and willing to cooperate. Basic requirements include things such as food, clothing and religious observance. Many investigators will be experienced in working with these requirements; a possible difference with trafficking in persons is that a witness may come from a community or culture the investigator is not familiar with and will not know whether more or different provisions are necessary.

In cases of sexual exploitation, families may consider a woman who was forced into prostitution to have brought shame and dishonour on them. Even though a woman has been deceived or threatened she is likely to be very anxious about her family and friends finding out what has happened to her.

Trust

Trust is always required between the investigator and witness, particularly where the witness is also a victim. Trust in trafficking in persons investigations can be very difficult to win and easy to lose for a number of reasons.

Witnesses may believe that law enforcement agencies and officers are corrupt because of general experiences they have had, the potential involvement of law enforcement officers in their trafficking, and/or because traffickers have told them the police are corrupt.

Victimization and trauma

A significant proportion of victims may have suffered long-term abuse even before they were trafficked and as a result may have little experience in trusting others.

Victimization processes in trafficking in persons have a number of very serious consequences for victims that are explained in full in module 3: “Psychological reactions of victims of trafficking in persons”. The level of trauma is different from most cases (even to many sex crime investigations). This trauma leads to problems obtaining accurate accounts, often requiring interviews over a longer period than is usually the case in other criminal investigations. Disorientation from the victimization or the experience of living in an unfamiliar place may mean witnesses are not able to clearly identify where offences happened or the location of significant places in their account.

Criminal justice systems

Some criminal codes and systems around the world put very tight restrictions on how long a person can be held under arrest without being charged—as little as six hours in some places. This can be very challenging for investigators, particularly where a suspect has been detained at the same time as a victim was recovered. Investigators may be placed under pressure to get an account from a witness or victim to support a charge. However, victims of trafficking (particularly for sexual exploitation) are not likely to be able to give a fully reliable account in very short time scales. This is why the use of reflection periods is crucial in jurisdictions where it is available.

Victim status

Victim status in some countries is dependent on the person's cooperation with the criminal justice system: if they do not cooperate they are not regarded as victims. A decision on whether a person is cooperating or not may be required quite early in the investigation—a requirement that may have serious consequences for the victim. If the person is not assessed to be a victim they may not be eligible for important support measures.

Relatives and friends

Traffickers may know (or be) the victim's relatives. Threats and perceived threats to relatives and friends are more common in trafficking cases. The consequence of this is that trafficking victim-witnesses may be reluctant to cooperate in an interview.

Money

Most witnesses you interview are not going to lose money if the case you are investigating is prosecuted but in trafficking in persons cases there is a good chance they will because once the witness leaves the trafficking network, any income will stop. Even if this is a very small amount, it may be supporting a family in a country of origin where the income is more valuable. The family may face very hard times if the money stops. Victims do not consent to being trafficked, but may be trapped in a very difficult situation where they have to decide between cooperating with you and losing the little income they have.

Debt bondage of various forms is common in trafficking in persons investigations and may not just have implications for the victim: traffickers may know the victim's family and may have the capability to harm them if the victim doesn't pay the bond. This threat, stated or implied, can have a powerful controlling effect on the victim that is only rarely found in other types of investigation.

Immigration status

Witnesses and victims in trafficking cases are more likely to be in a country illegally than in most general investigations. There is a danger they will say things that they feel will help them stay longer, adding another complication to assessing the accuracy of the witness

account. Where an account is completely factual the events may be so extreme that they are unbelievable, this scenario opens the possibility of a defence claim that the witness lied because of his or her desire to remain in a country.

Every effort should be made to corroborate the details of the account with material facts and establish the identity of the person you are speaking to. This may be very challenging in the tight time schedule you are likely to face.

Accommodation

Witnesses in cases such as domestic violence and assault may need support in finding accommodation, but in most cases witnesses go back to their homes without the need for any help from law enforcement or other agencies in this respect. In trafficking cases it is very unlikely that this will be possible. Safe shelter accommodation and social support services are needed. Repatriation assistance for trafficked is likely to be required from law enforcement.

The accommodation for trafficking victims is generally supplied and controlled by the traffickers. Where a trafficker does not directly control the accommodation they are likely to know where the victim lives. It will be impossible for the victim (or other witnesses) to return to where they had been living after they have been interviewed or made a statement. Law enforcement officials should have the knowledge and skill to provide trafficked victims with safe accommodation or have the ability to make a referral to a safe accommodation service provider. Guidance on considerations when providing witness accommodation can be found in the module 12: "Protection of and assistance to victim-witnesses in trafficking in persons cases."

Age

Victims may not give their correct age for a variety of reasons in trafficking in persons cases. Not giving a correct age can complicate a case with processes that are later found to be unnecessary, as well as making it more difficult to identify the victim and creating a significant inconsistency in the victim's account that may be exploited later by the defence.

You may be able to establish age by checking identity documents and making enquires at the origin location or you may have to use techniques such medical and dental examination. If you do use medical techniques you should do so in accordance with your legislation and the consent of the victim. Another result of this is that you may unknowingly use the wrong procedure to interview the victim, making their statements useless as evidence in a court of law.

Sexual offences

Sexual offences in trafficking cases may be different from other apparently similar offences in a number of ways. Long-term victimization and the resulting trauma outlined both above and in other modules is just one reason. Complications may also occur because of the number of times the victim has been raped and sexually assaulted. Injuries and other evidence may come from offences that took place a long time ago, sometimes in other countries.

Victims of sexual exploitation should be examined by a forensically trained medical practitioner to establish, as far as possible, any material corroboration for the account. Medical examinations may also reveal material evidence the victim has not told you about because of perceived stigma and embarrassment. Such examinations should be conducted in accordance with your legislation and consent of the victim.

For further guidance on forensic examination see module 7: “Crime scene and physical evidence examinations in trafficking in persons investigations”.



Self-assessment

Outline some of the key differences between interviews of suspected victims of trafficking in persons who are potential witnesses in court cases and those in other forms of crime.

Interview concepts

Good practice in interviewing vulnerable and intimidated witnesses (both adults and children) enables them to give their best evidence in criminal proceedings. However, it is essential that police, social agencies, the prosecution and the defence, as well as court officials take account of the individual circumstances and expressed needs and wishes of each witness. Therefore, the following should not be regarded as a checklist to be rigidly worked through, but rather a helpful tool in planning and conducting interviews with the witnesses of human trafficking.

This section combines two concepts of interviewing: the PEACE model and Achieving Best Evidence (ABE) guidelines.

PEACE is an interview model used in a number of countries around the world that is applicable to interviewing suspects, witnesses and victims.

PEACE is an acronym that stands for:

Planning and Preparation

Engage and Explain

Account

Closure

Evaluate

The following summary gives a basic overview of the terms. They are explained in more detail later in the module.

Planning and preparation

Planning and preparation covers many aspects of interviews. Trafficking in persons cases may require additional planning compared to other interviews, such as arranging interpreters, social supporters and accommodation.

Engage and explain

In this stage, rapport is established. Engaging means forming a relationship or connecting with the person who is being interviewed. Explaining can be very broad, particularly in trafficking cases. Typically, the victim should be told what is going to happen in the interview, how information obtained might be used and victim's rights.

Account

The initial phase is to obtain an uninterrupted account from the person being interviewed. This is sometimes known as "free recall." Interviewers follow this approach by expanding and clarifying the account. In many interviews, the final phase reviews and questions any inconsistencies in an account.

Closure

In this phase the content of the interview may be summarized, the victim is given the opportunity to add anything and the victim is told what will happen next.

Evaluation

When the interview is concluded, it should be evaluated to establish if the aims and objectives of the interview have been achieved, how the new information obtained in the interview affects the investigation, and how the interview went overall and what improvements could be made.

Where interviewers are part of a larger team, the evaluation should take place with relevant members of that team.

Achieving best evidence (ABE)

ABE provides guidance on how to interview vulnerable and intimidated witnesses. It is generally used to interview victims of serious crimes such as sexual offences and serious assault. The ABE approach should be utilized in trafficking interviews and is applicable in every phase of an interview.

Please note that all victims of human trafficking are considered to be vulnerable witnesses.

**Self-assessment**

What are the five stages of a victim-witness interview?

Planning and preparing for interviews

The importance of planning

This section mainly considers tactical, day-to-day planning for interviews. Appendix C gives some additional guidance for strategic planners.

Interviewing witnesses is a human process, not something that relies on technology such as video and tape machines. These machines can help make interviewing easier, reduce legal challenges in court and improve the quality of witness testimony, but they are not the most important aspect of interviewing: you are.

The techniques explored here can be used in any environment regardless of the technical equipment you have access to. An honest assessment of what you can achieve with the resources available, followed by planning to use what you actually have (not what you might wish to have) will help produce interviews of high quality.

Careful attention must be paid to planning the interview of vulnerable witnesses. Time spent during the planning stage will increase the chances of producing best evidence while minimizing the possibility of errors and inconsistencies at a later stage.

**Self-assessment**

Why is planning for interviews of suspected trafficking victim/witnesses important?

What is the story so far?

You cannot plan for an interview if you know nothing about the circumstances of the case. Your first step must be to find out as much as you can about the case before you start to plan the interview.

In trafficking in persons cases this can be difficult, particularly if the interview is taking place in the early stages of an investigation. Typical challenges are lack of a common language with a victim, and the recovered victim being found in circumstances that suggest he or she was trafficked but the victim is not willing to talk to you.

Practical suggestions

- Review what you know about the person. Have they indicated what nationality they are? What language are they speaking? Where were they recovered: at premises of potential significance such as workplaces, brothels or transport facilities? How old are they saying they are? How old do they actually appear to be?
- Try to find out at least something about the country the person comes from: for example, where it is, the culture and level of development. Time and other pressures may mean this is far from perfect but it is a start you can build on as the case develops.
- Keep victims separate from each other and from suspects. Allowing association with other victims may lead to allegations they have made the account up. At the early stages of an investigation you may not be able to clearly identify who is a victim and who is a suspect. Seeing suspects is very likely to lead to intimidation. However, the need to keep victims separate has to be balanced with their need for support.
- Challenging a person on issues such as age at the outset of an interview is likely to hinder any efforts to build rapport. Identify the issues you are not happy with and plan how you are going to investigate or corroborate them in future.
- If the person has been recovered with others, review who they are, where they come from, what languages they speak, and consider making checks on domestic and international databases to establish what, if anything, is known about them.
- Where recovered by law enforcement, first responders, NGO staff or other witnesses, investigators should speak to these individuals and find out exactly what circumstances the trafficked victims were found in. If they were found with others, was there any evidence that one or more people had dominance or control over the suspected victims or others in the group? Ask what the suspected victims have said so far to the individuals that recovered the victims.
- The information you get from these enquiries should help create a general profile of the case. In some circumstances it may suggest you need to ask direct questions very early; for example, if you think the victim, her family or others may be at risk. More commonly such direct questions will give you background that will allow you to probe during appropriate points in the interview.
- The review of what is known is likely to suggest other lines of enquiry that need to be pursued outside the interview. These can include specific checks on the identity of the victim and general background research that establishes what intelligence is known about trafficking in persons from the victim's suspected origin location.

Interpreters

In many cases you are likely to need an interpreter at a very early stage when planning an interview. Module 10: "Interpreters in trafficking in persons investigations" gives detailed guidance on the use of interpreters in trafficking cases.

Other measures

Success in interviews does not only depend on what happens in the interview room. Other issues need to be addressed. These include risks to the victim and others, the victim's health, clothing, food, accommodation, residency status and potential repatriation.

Conduct a risk assessment of the victim and others as soon as you can. Use module 5: "Risk assessment in trafficking in persons investigations" to support this. In some cases you may need to ask direct and specific questions at a very early stage to assess risk. Depending on the circumstances, such questioning may have to take precedence over establishing rapport.

- You may need a psychological assessment of a suspected victim before you interview them (see below) but you may also need a more basic assessment of their physical health. Observations may show some obvious illness. Plan for an examination and ask them if they have any health problems.
- Give victims the choice of having alternative clothing. Clothing may be obtained by sponsorship from shops, local traders, victim service providers, including NGOs, or from police funds.
- Plan meals for the suspected victim. Avoid giving them detainee's/prisoner's meals. Meals should be appropriate to the person's culture and religion.
- Identify suitable accommodation. Such identifications should be risk assessed and appropriate to the particular case. You may be able to use accommodation provided by the State, local authorities or victim service providers, including NGOs. In some cases, accommodation may have to be provided out of law enforcement funds.
- Record details of everything you provide. Provisions should be adequate and decent but not extravagant.
- Start making enquiries as soon as you can to establish what rights of residency the suspected victim has. Make contact with immigration authorities where necessary. If it is possible to arrange a temporary residence permit in your jurisdiction, start the process straight away.

Objectives of interviews

Victims of trafficking are vulnerable victims. Interviewers should be careful, considerate and respectful. However, it is important to remember the interview is not counselling. It is a method of getting evidence and intelligence. Every technique you adopt, and every question you ask should ultimately serve the objectives of a trafficking law enforcement interview. They are:

- To establish the full facts of the case and lay out a case history in as logical and sequential an order as possible;
- To use the facts to corroborate the victim's story and establish his or her credibility as a witness;

- To use the evidence to identify, arrest and successfully prosecute the traffickers;
- To continuously review risk to the victim's family, other victims and potential victims. Where risk is unacceptable, consider if further interview or use of the victim as a witness is desirable;
- To identify opportunities for proactive, disruptive or intelligence development investigations, either in addition to pursuing prosecution or as an alternative.

The following sections should provide you with a structure for interviewing a vulnerable trafficking witness. As stated earlier, annex A provides checklists that give ideas about what the content of the interview should be. The checklists are designed to highlight issues such as how traffickers “recruit” or obtain victims, how they exploit victims and how they do these activities at every stage of the criminal and commercial process that is trafficking. By combining the structure of the interview with the content of the checklists, you will give the interview the best possible chance of achieving the objectives of the interview.

The product of interviews conducted in this way can, of course, be used in court cases against traffickers. But they can also be used in other ways. For example, breaking down the interview into types of market and commercial processes allows you to precisely identify further investigations or enquiries in your own country or abroad.

Written plan

Prior to conducting an interview, it is important to have a written interview plan. Trafficking victim interviews are likely to be complex due to the nature of the trafficking process, the number of people and locations that may be referred to and the effect of victimization on the witness.

A suggested structure of a plan is to list the stages of the interview (Planning and preparation, Engage and explain, Account, Closure and Evaluation). At each stage of the plan you can then record points to remind you to do certain things, tell the interviewee something or ask particular questions.

Using the guidance in the remainder of this module you can plan how you are going to use the principles of “Achieving best evidence” to conduct the interview at all stages. For example, at the “Engage and explain” stage you might record a note to tell the interviewee how you wish to record the interview and ask him or her if this is acceptable to them.

At the account stage you may wish to note specific questions you want to ask. You are likely to use the information you know already as the basis of questions, but you may also wish to use some of the suggested questions found in annex A of this module.

Listing the key points to be covered in an interview help maintain the focus of the interview which can be particularly helpful if the victim gives a very wide ranging account that contains a lot of detail not relevant to the investigation. A list prevents the interviewer(s) becoming lost in the details.

Written plans do not have to be complex. It is important to be flexible once the interview starts as you may be told things that change the plan completely.

Planning meeting

An early planning meeting may be advisable between the police and the prosecution to discuss the issues involved. In deciding whether to formally interview a vulnerable witness, a balance should be kept between the need to obtain best evidence and the best interests of the witness. Agreement should also be reached on the form in which the statement will be taken. See “How is the interview going to be recorded?” below.

Assessing the witness

Early individual assessment by an expert may be desirable to identify any particular difficulties that the witness may experience in producing a satisfactory statement during the interview.

The assessment should take place in the time between the victim first coming to the attention of the police, but before the first interview. Interviews prior to assessment should be confined to a small number of areas so as to protect the life of the victim or other victims or to prevent the escape of the suspect.

This assessment may be conducted by a doctor or other suitably qualified persons. Any assessment should comply with the requirements of your legislation should consider the physical and psychological condition of the victim. The material found in module 3: “Psychological reactions of victims of trafficking in persons” gives more detail on the effects and implications of the trafficking process on victims.

Decisions based on assessments

There may be circumstances where an examiner concludes a person is either not fit to interview or the interview would cause significant further traumatization. Generally the advice in these circumstances is that the interests of the victim should come first. However, there may be circumstances where interviews should proceed despite this.

Although it may be a very difficult decision to make, it may be that an individual victim has information that could lead to the recovery of others at risk of serious harm. The individual victim may be harmed by the interview but the result of the interview could save many others. In other circumstances, it may be that a victim could not provide information to an evidential standard but could provide valuable information/intelligence.

Where a decision is taken to go ahead with an interview contrary to the recommendations of an assessment, interviews should only go as far as necessary to prevent serious wider harm. Extra support measures for victims may be required when this course of action is followed.

In all cases the decision is a balance of the harm done to an individual versus the benefits to another individual or individuals.

Some vulnerable witnesses may be unaccustomed to speaking to strangers. Witnesses who are intimidated may be frightened and may well need to spend time getting to know the interviewer before they are ready and/or willing to take part in an investigative interview.

Planning should take account of the abilities and possible disabilities of vulnerable witnesses. Additional time is likely to be required to ensure that witnesses are able to understand and respond to the difficulties and pressures placed upon them due to the need to make a statement/ declaration that will be acceptable to the court. Attention should be paid at all times to issues of age, gender, race, culture, religion and language. An expert or a responsible person, who knows the witness well, may be called to provide advice on whether the witness would benefit from any special protection or assistance measures.



Practical guidance

Where possible, it is good practice to have a separate liaison officers to deal with issues not directly related to the interview.

This familiarization process may take some time (perhaps hours in some cases) and therefore, in their preparation, interviewers need to consider whether one (or more) meetings with a witness should be planned to take place prior to the investigative interview. Such meetings should comply with the requirements of your legislation. In some jurisdictions any such meeting would be regarded as an interview and recorded. Whatever your jurisdiction requires, it is good practice to record what was said during such meetings to avoid defence claims you have told the victim what to say in a statement or declaration.

Preparation should also consider the most appropriate location for the interview. Other considerations might include: regular breaks for refreshment as well as giving breaks to allow the witness to move around the room if the witness finds it difficult to sit still for longer than a short time.

Location of interview

In many jurisdictions the location of the interview is determined by law. If this is not the case in your jurisdiction, the question is: Where should you hold the interview? Should the witness come to a setting familiar to the interviewer but alien to the witness or is it possible for he or she to be interviewed in a setting they are familiar and comfortable with?

Points to consider when deciding on the location include:

- Will the victim/witness be distressed if the interview is held in an unfamiliar location?
- Will there be a negative effect on their account if it is held in a familiar location?
- Can appropriate assistance and support (e.g. interpreters, health care, etc.) be provided at the chosen location? This is especially important in cases involving severely traumatized victims.

- Is the location secure, clean and free from interruptions and distractions where the interviewee cannot be seen or overheard?
- Is required equipment working and are necessary “consumables” such as tapes and interview record forms available?

Interviews should not take place at a victim's home or the place where they live.



Practical guidance

- Some law enforcement agencies have access to sexual offence investigation rooms or suites. These often have interview rooms that are welcoming and comfortable and are likely to be a good place to hold an interview.
- Interviews may have to take place in locations that are not ideal; there are some simple things that can be done to make them as good as possible. Furniture can be re-arranged slightly so that tables and desks are not between the witness and interviewer. The most comfortable chairs available could be provided. Papers and litter can be cleared away. Arrangements can be made to make sure you are not disturbed during the interview and the room is as quiet as possible.

How is the interview going to be recorded?

Interviews can be recorded in three basic ways: video, audiotape and a written record.

Deciding which format to use is not always as straightforward as it may seem. In some situations the choice is made for you: if you have no video facilities available, it is obviously not an option. Other factors that might determine the recording format include the choice of the witness, local policy and legislation, and tactical considerations.

It is very important that whatever method is used, the victim fully understands what is going to happen, how the record will be used, and that they give informed consent. If the witness may have to give evidence in court in support of his or her previous statement he or she should be told this. Similarly, they should be told how a declaration to investigators will be examined in court.

Where appropriate, take expert advice about the suitability of a method of recording. An example of a circumstance where you might do this is where, at the outset, a person appears particularly vulnerable or appears to have some form of mental impairment. Keep in mind that vulnerability or impairment may only become apparent as the interview progresses, and you may have to then reassess the chosen recording method. Expert advice may come from doctors, psychologists and specialist social workers.

Interviews with victims of trafficking may go on for a considerable period of time, sometimes over a series of days. A factor to consider when deciding on the method of recording is the possible cost involved.

In some circumstances it may be necessary to record an interview in a manner that is not ideal. For example, in situations where video or audio equipment is not available locally but there is evidence that someone will be put at risk of harm immediately or in the near future unless information is immediately obtained from the victim, recording in writing could be the only option.



Practical guidance

- When the option of recording in writing is taken in urgent cases, it is advisable to use this method only to the extent required to prevent the harm. After that information has been obtained, it may be possible to delay the interview until a more appropriate method becomes available.
- If it is unavoidable to use methods such as interviews with contemporaneous notes, it is likely that a trafficking victim interview will go on longer than where other methods are used. Interviewers should do what they can to minimize the extra stress this may cause by breaking interviews into short stages and offering breaks.



Practical guidance

Video

- For video recording, the guiding principle is to conduct the video interview in the best interest of the victim and in accordance with domestic legal requirements.
- Video is the preferred choice for interviewing vulnerable victims where the facilities are available. It has the advantage of showing the condition of the witness, revealing non-verbal signs, and in many cases, helps obtain a free flowing, natural account from a victim while reducing the number of interviews. This helps reduce the “secondary victimization” of the investigation process.
- In some jurisdictions, recorded video can be used as testimony in court. This may mean that a victim can be returned to the origin location (with appropriate support) without having to wait to testify in court or that interviews can take place in one country and be presented in court in another.
- Video interviewing does have some disadvantages even where it is available. Victims of trafficking may react in unpredictable ways; some investigators have reported that this can involve inappropriate “humour” that victims use as an emotional release. If used very shortly after recovery from a sexually exploitive situation, a victim may relate to interviewers in ways their experience has taught them to. Examples include hostility and aggression to the interviewer or sexually inappropriate comments. Recording this on video may add difficulties during the prosecution stage.

Victims may not be happy to be videoed for a number of reasons. A common fear is that the traffickers or their associates will obtain the tape and identify them from it. Some objections may stem from religious or other beliefs held by victims.

- It is possible to electronically disguise the person being interviewed but this may be both expensive and time consuming.
- Video interviews may have to be fully transcribed (e.g. every question and response written down) before it can be used in evidence in some jurisdictions. This is not the case in all jurisdictions.

Audio

- For audio recordings, the guiding principle is to conduct the interview while considering the best interest of the victim and in accordance with domestic legal requirements.
- Audio has the advantage that it is more widely available than video, may be more portable, can be cheaper to operate and uses simple and robust technology. The account of the victim is recorded completely and the equipment allows a free flowing interview.
- It obviously does not capture the visible physical condition or non-verbal communications of the victim. This may have advantages in some instances and disadvantages in others.
- Using audio in trafficking interviews may help reduce victims concerns that they will be identified or their image will be used in some way to their detriment.

Written record

- The written record method has the advantage that it is very simple and universally available. A written record taken in accordance with local legislation and procedures is also likely to be accepted by the courts of a jurisdiction with relatively little further work necessary.
- Disadvantages in trafficking investigations are that writing everything down is time consuming (this is particularly important considering trafficking victim interviews are likely to last a long time anyway), the process may break down the flow required during the initial account phase, and it is hard to record everything that is said. In many trafficking interviews, there will be a need for an interpreter. This adds a further complication because notes taken by the interpreter may not record everything stated by the interviewer, leading to the possibility of challenges to the accuracy of the statements in court.
- Where you are recording in writing it is particularly important that you use two interviewers, one to ask questions the other to record what is said. People have different strengths: decide who is best for each role.

Who should interview the victim?

Many jurisdictions have legislation and established practice that will determine who should interview victims. If admissible in your legal system, it is good practice to have two interviewers, one to develop the victim's account and pose the questions, the other to act as observer (noting body language for example) and take general notes.

In case the chosen interviewer is not able to establish rapport with the victim, it is preferable to change the interviewer immediately.

Training interviewers

The Netherlands has a requirement that interviewers of some vulnerable witnesses undergo training that lasts over a year.

At the present time there are number of units around the world that have a specific mandate to investigate trafficking. Some of these units have interviewers who have significant experience in interviewing trafficking victims. More generally, however, where specialist interviewers have been used, they have come from units that do not directly specialize in trafficking investigation, but commonly have experience in fields such as domestic violence and sexual offence investigations. In many cases, investigators have had no specific training interviewing vulnerable victims or have limited experience in conducting such interviews.

Each of these groups can bring different challenges to an investigation. At the heart of these challenges lies a tension between existing police investigation and interview practices and those appropriate for trafficking investigations.

A dedicated, full-time trafficking in persons specialist interviewing team may offer the best chance of success in interviewing a victim, but this is likely to be an expensive resource that few law enforcement agencies can afford. Other specialist units have some of the skills required, but not all.

Investigators with no previous experience or training in interviewing vulnerable witnesses may deal with the victim as they would with any other witness. It has been observed and reported that some investigators challenge a victim's account too early and at inappropriate stages.

If at all possible, interviewers trained in working with vulnerable witnesses should be used to interview victims of trafficking. There is clear evidence of the vulnerability of victims of trafficking for sexual exploitation. Although there is limited evidence of the impact of other forms of trafficking on victims but they too should be considered vulnerable.

Gender of interviewers

Although some countries have legislation requiring that female victims of some crimes be interviewed only by female interviewers, there is evidence that some victims relate better to members of the opposite sex. The reasons for this are not entirely clear, but may be related to cultural and individual experiences.

The gender of an interviewer does not guarantee particular qualities. Both men and women may be compassionate, motivated and professional; equally, both may be disinterested, rude and incompetent.

Police rationale for using male interviewers

It has been reported from some jurisdictions that male officers have been used to interview suspected trafficking victim-witnesses in sexual exploitation cases because it is argued this educates victims that not all men are like their traffickers.

This approach has the danger that it imposes your values on the victim, reduces the victim's sense of control and the interviewer could be very intimidating. Using a male interviewer with a female trafficking victim for this reason alone would not be appropriate.

Where it is possible to give a choice of gender of interviewer, such decision should be made freely by the suspected victim.

It is also important to continually reflect on relationships during an interview and whether those relationships are working in the best interests of the victim or not. Gender is only one possible factor if the relationship is not effective but it is one that should be considered.

Many trafficking victim interviews will require an interpreter, and in some cases, a social supporter present. The role and management of both groups requires considerable care and attention. Never use the same interpreter (or social worker/appropriate adult) to interview suspected victims and the suspected trafficker.

Use of non-governmental organizations (NGOs)

Various policies for using staff of non-governmental organizations (NGOs) and other bodies are found around the world.

In some countries, law enforcement staff and NGO representatives conduct some trafficking victim interviews jointly. Law enforcement officers who have used this approach report that it offers an effective blend of skills and can help build rapport and trust with suspected victims.

Other countries, take this one step further. In these jurisdictions early interviews and early assessment is conducted by NGO staff. Only when it is assessed that the victim is ready are law enforcement interviewers brought in.

At the other end of the spectrum, some countries only allow NGO representatives into law enforcement interviews in very limited circumstances and place restrictions on them. They may be allowed to be present but not participate in the interview. In some jurisdictions, they are not allowed in at all.

Although there may be benefits from NGO participation, it carries the risk of challenges from the defence alleging that the NGO interviewer was not impartial, asked leading questions during the interview or coached responses from the witness.

Criminal justice practitioners should be aware that NGOs are likely to have different terms of reference from their own when dealing with trafficking in persons cases. Many of these terms of reference will be compatible with the aims and objectives of those of the criminal justice system, but there may be conflicts of interest in some areas. An example is cases where the funding of an NGO may be dependant on the identification of victims. It is possible this need for funding could lead to a less than objective assessment of what a suspected victim is saying.

The common theme found around the world is that law enforcement-NGO cooperation is crucial in combating trafficking in persons. Whatever model your country uses, there must be very clear understanding between law enforcement and NGO about roles, responsibilities and restrictions in the interview. It is also important that such agreements include legal issues such as how the record of the interview will be used and who can have access to it. It is recommended that these agreements are recorded in writing and agreed by all parties before interviews take place.

Social support/use of intermediaries at interview

The role of a “social supporter” or intermediary is likely to be determined by your legislation. Intermediaries in some jurisdictions are there to assist the witness to understand the interviewer, and the interviewer to understand the witness. This is not a translation role but one of assisting communications where a person may not be capable of understanding due to mental or physical impairment or because the victim is young. In other jurisdictions intermediaries may be restricted in the support they can give. Whatever the precise role, intermediaries should not interfere in the interview, change what is being said or persuade interviewees to change their story.

If the intermediary already knows the witness, then useful information concerning that witness's communication methods will be available. If this is the case, then it should be established in the planning phase that the intermediary has played no role in the events in question. Also, the planning phase should take account of the extra time that may well be required if an intermediary is to be used in the interview.

If possible, you should find out if the person wants someone present prior to the interview, and if so, who this person should be. The interviewer must explain to the interview supporter that he or she should not prompt or speak for the witness, especially on any matters relevant to the investigation.



Practical guidance

- Where you need both an interpreter and a support person in an interview you must have two people. One person cannot do both jobs.
- In some jurisdictions there is a legal requirement to have a victim support person present when a vulnerable person is interviewed. In some jurisdictions, social supporters are obligatory in certain circumstances regardless of consent (for example, some countries require such

support during juvenile interviews). In other cases, consent may be required before a supporter is used. In any event it is good practice to clearly explain what is proposed and obtain consent whenever you can.

- Care should be taken when deciding on who should offer support in trafficking cases. It is likely that the victim (particularly in sexual exploitation cases) will only have “friends” and associates who are linked in some way to the trafficking. Whenever you use someone the victim knows you must be very careful.
- A “friend” of the witness may have links to the suspected traffickers.
- Under no circumstances should a social supporter be used if they are suspected of being involved in the events under investigation.
- Even if there is no link between the support person and trafficker, the supporter may be easily identified, threatened or corrupted, particularly if they come from a small community.
- The witness may not be giving genuine consent to having a support person during the interview due to intimidation or the effects of victimization.
- Be particularly careful if a person offers help for which you have not asked.
- Planning and conducting interviews that involve a social supporter takes more time than interviews without the presence of a supporter because you have to locate the supporter, brief them and make sure they can attend for the proposed duration of the interview.
- Social services, NGOs and voluntary organizations may be able to help, but care also has to be taken here. The supporter will probably have to commit a lot of time to the witness; accounts from victims of trafficking can be very disturbing to hear and victims may display various distressing symptoms. If the supporter does not expect this or cannot cope with it, they may leave, possibly leaving the witness (and your investigation) in a worse condition.
- You may be able to find a professional or NGO member who knows the suspected victim-witness who would be appropriate to use as a social supporter/intermediary.

Where you do not feel it is appropriate to have a social supporter in an interview, or your legislation prevents it, consider using them at other stages of the process such as immediately before or after the interview.

Interview duration

“Pace and duration” (below) gives some guidance on the particular issues faced in trafficking victim-witness interviews. A significant feature is that these interviews are likely to take a lot longer than interviews in many other investigations. This should be taken into account at the planning stage, particularly when deciding who will be able to conduct the interview, the availability of interpreters, etc. and how frequent and how long rest periods should be.

Intimidation

If it is suspected that the witness’s evidence could be adversely affected by threats and intimidation, careful consideration should be given to the support necessary to deal with such intimidations. Module 12: “Protection of and assistance to victim-witnesses in trafficking in persons cases.” gives guidance in this area.



Self-assessment

What steps are required when planning for an interview of a suspected trafficking victim-witness?

What needs to be considered when planning and preparing for an interview with a trafficking victim-witness?

Engage and explain

Interviewer behaviour

When you meet people you do not know, you may behave differently from how you usually would. Vulnerable people can often sense the unusual behaviour and may identify the behaviour as a sign of discomfort.

In most trafficking cases it is unlikely you will have met the person you are interviewing before; there is also a good chance that the person will be from a culture other than your own, even possibly from a culture you know little about. They may speak a different language to yours and have few life experiences in common with you. It is understandable if you feel uncomfortable in these situations.



Practical guidance

- Monitor your behaviour throughout the interview, and to try to keep it as normal as circumstances allow. Interviewers should particularly think about how they will manage the opening minutes of the interview.
- Interviewers should try to avoid being uncomfortable or unsure how to behave with people whom they have rarely encountered. You should be reassuring and sympathetic but avoid behaviour that vulnerable witnesses may find demeaning, insincere or patronizing.
- To get accurate information from a vulnerable witness you must be sensitive to the communication needs of the witness and to your impact on the interview. Try to focus on the witness as a person rather than on their vulnerability or their role as a possible source of evidence.
- Whenever possible, explain to the witness the reasons for the types of questions being asked. If the victim better understands the purpose of the questions, they are more likely to cooperate and feel less frustrated.
- Some vulnerable witnesses may choose to place themselves nearer to or further away from you than other witnesses. Be aware of your own reactions to this decision.
- You should try to act in a friendly and helpful way to vulnerable witnesses, but without displaying signs of unease, anxiety, and embarrassment.

- Some vulnerable witnesses may not be able to communicate with you in a way you would expect them to. The witness may not have much experience in communicating with strangers.
- Be sure to use non-sexist and non-discriminatory language and attitudes when engaging with the victim.

All vulnerable victims are likely to be traumatized and disturbed. Trafficking victims may have been abused for a long period of time, by many people, and in intimate ways. Control over their lives may have been taken from them months or even years ago. The effect of this is an unusually deep, long lasting and powerful traumatization, one that may result in victims behaving in a number of ways investigators may find hard to understand and cope with.

Although we use the term “victim,” it should always be remembered that victims of trafficking are also survivors; to survive they will have developed ways to cope, one of which is likely to be suspicious of what anyone, including you, tells them.

The behaviour this combination of circumstances leads to can include reacting in an unpredictable, angry or aggressive way towards you and any other practitioners.



Practical guidance

It must be acknowledged that this will be difficult to deal with. Preparation before the interview will help create situation that is as comfortable as possible. Consider these options:

- Speak to those who have worked with the victim already to develop a picture of what has happened to them so far in the process.
- If a victim has already formed a positive relationship with a first responder or another individual, consider meeting the victim with the person they are familiar with before the formal interview. Talk about neutral things, like checking that they have had something to drink and eat, etc. and explaining the processes.
- Try to find out some basic things about the culture that the person comes from. There may be information held by your agency, or some NGOs may be able to help, and neutral questioning of the victims could also be useful. Interpreters and some support workers may also be able to help. Be careful though: cultural identity is complex, and just because someone speaks their language or has met people from their culture before, it does not automatically mean they will be able to give suitable advice.
- Check with other people in the interview (e.g. interpreter, support person, social worker) to find out what they think the witness feels about you. They may have noticed the witness is not comfortable with something, or the witness may have told them they are unhappy. Find out what the problem is and do what you can to change it or explain it to the victim.

Pace

Many vulnerable witnesses will require that their interviews occur at a slower pace than others. Both research and best practice have found that interviewers will need to:

- Slow down their speech rate;
- Allow extra time for the witness to take in what has just been said;
- Provide time for the witness to prepare a response;
- Be patient if the witness replies slowly, especially if an intermediary is being used;
- Avoid immediately posing the next question;
- Leave space for periods of silence—this also allows you to prepare the interview further.
- Avoid interrupting the victim.

The interview should occur at the pace established by the witness.

In cases where you are using an interpreter you should use short phrases. These phrases should be part of concise questions.

Allow time for the question and response to be interpreted before asking further questions.

Breaks

Not only will interviews with vulnerable witnesses typically be conducted at a slower pace than those with other witnesses, but these interviews will usually involve more breaks and pauses. Many vulnerable witnesses will not be able to concentrate for as long as others, and some of them will also require regular comfort breaks. The interviewer should agree with the witness on a simple sign (e.g. the use of a special card) that the witness could use to request a break. The break can provide an opportunity for refreshment. Such breaks should never be used as an inducement to witnesses.

Breaks should be allowed for religious observance.

Breaks and control

Interviews with victims of trafficking may go on for a period of days, due to the significant levels of trauma experienced by the victim and the impact this trauma has on their cognitive process. Planning for breaks may have to take into account the need to break overnight a number of times.

Joint agreement between yourself and the witness about breaks is a simple way you can start to give victims of trafficking a sense of control, which is particularly important in helping them start to recover. Returning control is also likely to improve the accuracy of the account you receive.

Duration

Interviews of suspected trafficking victim-witnesses may take longer than in general cases because of the effects of trauma and complexity of the cases. Long interviews are likely to be very stressful for victims. The need for a full and accurate account should be balanced with the victims need to recover. Interviews should be kept as short as possible in the circumstances.

Establishing rapport

The opening stages are critical to an interview's success.

A substantial rapport phase will allow the interviewer time to become more familiar with the witness' preferred method of communicating, and to become more competent with this method. This phase should also allow earlier decisions made during the planning phase to be revised as necessary.

Starting an interview

- Say who you are, your position and that you are experienced in this kind of work and, if applicable, that you have met and interviewed people in similar situations before.
- Explain the “here and now” situation to the trafficked person. Explain the purpose of the interview and the role of others who may be present in the interview e.g. the interpreter, other police officers, etc.
- An explanation should be given about how the interview will be recorded. This may be as simple as saying, “I will speak to you and my colleague will note what we say,” or it could be explaining the use of technical equipment used such as video. Ask if the interviewee is comfortable with the way the interview will be recorded.
- In cases where you have very limited information, you may decide to run an initial interview with the objective to find out enough information in order to develop a plan for further interviews.

Another major aim of the rapport phase is to help the witness, and indeed the interviewer, to relax and feel as comfortable as possible. As interviewers become more familiar with interviewing vulnerable witnesses, they may become tempted to shorten their rapport phases. This temptation should be resisted, because while the interviewer may now be more familiar with such interviews, the witnesses will not be.

First interviews

The first interview can be a very general one with the primary aim of establishing a rapport with the interviewee. In some cases it may be appropriate to have a number of rapport-building interviews before you move on to evidential matters.

In some jurisdictions numerous interviews over a period of time may be used to suggest the victim was coached by the interviewers. Speak to prosecutors if you are going to use this approach to allow them to plan a response to defence challenges and to be prepared to explain the reasons to a court

The interviewer should not mention the alleged offence and directly related topics in the rapport phase. Typically, the witness should be invited to discuss “neutral” events in his or her life (for example, interests or hobbies, where appropriate for that witness). Be careful when talking about the interviewees’ family in trafficking cases: it may cause distress due to long separation and fears about what they may say if the victim is returned or discusses the trafficking experience.

At an appropriate point in the rapport phase, if the witness has not spontaneously mentioned it, the interviewer should briefly discuss with the witness the reason for the interview in a way that does not refer directly to an alleged offence. Interviewers should be aware that while some interviewees will, from the outset, be very clear concerning what the interview is about, other interviewees will not.

Some witnesses may feel that their initial, lawful cooperation with a person who subsequently committed an offence may make them blameworthy. The interviewer should also bear in mind that some vulnerable witnesses will assume that because they are being interviewed they have done something wrong. The interviewer may need to reassure the witness on this point, but promises or predictions should not be made about the likely outcome of the interview. So far as possible, the interview should be conducted in a “neutral” atmosphere, with the interviewer taking care not to assume, or appear to assume, the guilt of an individual whose alleged conduct may be the subject of the interview.

In addition, being interviewed is an unusual occurrence for individuals who are probably unaccustomed to conversing with someone who questions the substance of the victim’s statements. This is particularly so in an interview with a stranger who is also an authority. A witness could enter the interview confused about its purpose, anxious about its process and outcome, and possibly distressed by prior events. Furthermore, some witnesses may not comprehend why they are being interviewed about embarrassing, painful experiences that they may have been told to keep quiet about.

Interviewers should be aware that asking someone to provide information frankly and in detail about personal matters (e.g. involving sex) is asking the person to discuss something in a manner they have learned to avoid. The interviewer should tell witnesses that they will not be asked questions out of curiosity but because a detailed account of the crime is required. Giving such detail in this situation is not breaking with convention. Also, interviewers should be aware that some interviewees might prefer initially to write rather than say aloud sensitive words or phrases.

Sexually explicit language

Interviewers should familiarize themselves with explicit words for sexual activity and their slang equivalent. In the rapport building phase it may not be appropriate to clarify sexual words. Where there is doubt about what words or phrases mean they should be noted and the interviewer should tactfully ask the victim to explain what is meant at a later stage in the interview.

It is important that the interviewer does not display embarrassment or revulsion by blushing, facial gestures or any other form of verbal or non verbal signs.

Some witnesses may be unhappy or feel embarrassed or resentful about being questioned, especially on personal matters. In the rapport phase, and throughout the interview, the interviewer should convey to the witness that she/he has respect, sympathy and understanding for how the witness feels.

A witness may be apprehensive about what may happen after the interview if she/he does provide an account of what happened. Such worries should be addressed.

It may be that some vulnerable witnesses do not perceive the need to produce full and detailed accounts of their experiences. Thus the need for a full account should be explained, without putting undue pressure on the witness. When discussing “neutral” events the interviewee can be encouraged, if appropriate, to provide free recall and to appreciate that it is the interviewee who has the information. It may well prove problematic to attempt to proceed with an interview until rapport has been established. Some witnesses are not used to relating to strangers. Indeed, many are taught not to do so. Should establishing rapport prove difficult it may be preferable to postpone the interview rather than proceeding with an interview that may well turn out to be of no benefit.

Lack of shared experiences

Establishing a rapport with a victim of human trafficking may be complicated by a lack of shared experiences between the interviewer and victim. A lack of common experiences makes it difficult to talk about neutral subjects. This is likely to be a difficulty with many vulnerable victims, but even more likely in human trafficking cases due to cultural differences.

Victims of trafficking may also have different assumptions about people with authority to those victims you may have dealt with in the past even where the victims were vulnerable.

In cases of trafficking for sexual exploitation, talking about sex is difficult in any culture; in trafficking in persons cases the cultural background of the victim may be one where sex is never discussed at all. You should be prepared for such cases.



Self-assessment

Identify the elements required to engage with a trafficking victim-witness in an evidential interview.

When starting an interview, what should be explained to the victim-witness?

When should an interview not proceed to the Account stage?

How should rapport between the interviewing officer/s and the victim be developed and maintained?

Account

Free narrative

If you have been unable to establish rapport with the witness, there is little point in continuing and you should consider terminating the interview. Other reasons for terminating the interview include the health (physical and mental) of the victim, risks you have identified to the victim and others or that the victim is either unable or reluctant to provide you with any useful information.

After closing the interview you should evaluate what has happened, identify any action that needs to be taken, and review how the case should proceed.

If you decide it is appropriate to continue with the interview, the witness should be asked, wherever possible, to provide in her/his own words an account of the relevant event(s).

Witnesses are likely to expect you, as a figure of authority, to control the interview. However, a witness interview requires that information flow from the witness to the interviewer. Some vulnerable witnesses may think you already know much or all that happened and that they are expected to confirm your version of events.

It is crucial that you tell witnesses, in a way that they understand, that you do not know what happened to them until they tell you.

You should only ask the most general, open-ended questions in this phase. These questions should be about the general areas of life experience that are relevant to the investigation (e.g. "Is there anything that you would like to tell me?"). This type of question is one that inquires in a non-specific manner.



Practical guidance

- Be careful about asking questions about the victim's family when speaking about general life experience. Some trafficking victims may be happy to talk about their families, but others may be very anxious about their family finding out what has happened to them. Be led by the victim here.

If the witness responds in a positive way to such questions you can then encourage the witness to give a free narrative account of events. During this stage you should help the victim talk and listen to what they are saying; do not interrogate the victim or challenge what they are saying.

Research has found that improper questioning of vulnerable people is a greater source of distortion of their accounts than memory deficits; thus it is essential to use appropriate questioning in the early parts of an interview. Make every effort to obtain spontaneous information from the witness that is not contaminated by you as the interviewer.

In the free narrative phase, the interviewer should encourage witnesses to provide an account in their own “words” by the use of non-specific prompts such as, “Did anything else happen,” “Is there more you can tell me?,” “Can you put it another way to help me understand better?” Verbs such as “tell” and “explain” are likely to be useful. At this stage, prompts should not include details about the case that the witness hasn’t already told you. Free narrative accounts from vulnerable witnesses tend to provide less information than non-vulnerable witnesses. Information from vulnerable witnesses may be as accurate as that of non-vulnerable witnesses, but they are more likely to be tainted by inappropriate questioning.

When recalling negative events, vulnerable witness may at first be more comfortable talking about less significant matters, and may only want to move on to more relevant matters when they feel this to be appropriate. Be careful not to put pressure on the witness to talk about things they are not comfortable with.

Vulnerable witnesses may pause and be silent, sometimes for a long time; avoid the temptation to interrupt. Witnesses may also repeat themselves and give irrelevant information; this should be anticipated and tolerated. Above all, avoid asking the witness if anything suspicious happened.

A form of active listening is needed, letting the witness know that you have heard what she/he has said. This can be done by reflecting back to the witness what she/he has just communicated. For example, if the witness said, “I didn’t like it when he did that” you might say as the interviewer, “You didn’t like it.” Take care not to subconsciously or consciously indicate approval or disapproval of the information just given.

If the witness has said nothing relevant to the investigation, you should consider whether or not to continue to the next phase of the interview (i.e. questioning). When making this decision, the needs of the witness and of justice must both be considered; in some exceptional cases you may decide to conclude the interview by moving directly to the Closure phase. After you have closed the interview, you should move to the Evaluation phase.



Practical guidance

- Many witnesses in trafficking in persons cases come from cultures where law enforcement officers are powerful authority figures. This may mean these witnesses have a very strong expectation that you will lead them through the interview, making free recall particularly difficult to achieve.

- More than ever great care must be taken in the early stages of an interview with a vulnerable witness in trafficking in persons investigations because the process of victimization in trafficking in persons leaves many witnesses very open to suggestion. Experience has shown that in many trafficking cases the defence will exploit any hint that the witness has been led by the interviewer.
- Assess the risks continuously. Do not be afraid to decide to not continue an interview. If you do decide to stop it, review what you have been told and how such information may support a proactive, disruptive or intelligence investigation. Alternatively, you may decide that the witness may not be able to support an investigation leading to a court case, but you could continue the interview to get more information to support proactive, disruptive or intelligence operations.

Compliance

Some vulnerable interviewees may try to comply with what they think the interviewer wants, particularly witnesses who see the interviewer as an authority figure. Also, some witnesses may be frightened of authority figures. You should do what you can to not present yourself as a figure of authority.

Many vulnerable people are very concerned about presenting themselves in the best possible light. Even though they may not understand a question, vulnerable witnesses may prefer to answer it than to say that they do not understand. Saying that one does not understand a question can be taken to be implying that the interviewer or witness is at fault. Some vulnerable people will prefer to avoid such implications. Interviewees who feel they have some control over their lives have been found to display less compliance than those who feel they have no control. This is one reason why allowing the witness some control over the interview is likely to improve its quality.

Interviewers should clearly explain in the Rapport Phase that because they were not present at the event(s), they might unwittingly ask questions that witnesses do not understand or questions that they cannot answer. They should explain that if they do ask such questions, they would be very happy for witnesses to indicate that they don't understand, don't remember or don't know the answer. Interviewers should also make it clear that if the witness does not know the answer to a question, then "I don't know" responses are welcome. This will also help to avoid witnesses feeling under pressure to fill in parts of the event that they did not witness or cannot remember.

If communication becomes difficult it may be helpful, where appropriate, for the interviewer to say "Can you think of a way to tell me more?" or "Can you think of a way to show me what you mean?" or "Is there a way I can make this easier for you?"

If the witness has communicated something that the interviewer feels needs to be clarified, but the witness presently seems reluctant or unable to do so, it may be better that the interviewer return to the point later rather than be insistent.

Agreement and conforming

Vulnerable witnesses may always answer “Yes” when they are asked “yes/ no” questions, even when an almost identical “yes/no” question is asked later but with the opposite meaning. This is not just because the victim is vulnerable: if the questions are complicated or asked in an authoritarian way witnesses may simply find it easier and less stressful to keep saying “yes.”

You could also find that the witness always says “No” to a “yes/no” question. A common reason for this is that they are being asked about behaviour that is not acceptable within their own culture.

Although “yes/no” questions are often used in everyday conversation, do your best to avoid using them when interviewing vulnerable victims. It is often possible to change a “yes/no” question to an “either/or” question, and research has found that this produces more reliable responses than a “yes/no” approach. Even when “either/or” is used a small number of people will always agree with the second option. A technique you could use to find out if this is happening is to think about which option is more likely to be correct and sometimes put it first, other times put it second. The same method is good practice if you cannot avoid using “yes/no” questions.

Styles of questioning

General approach

During the free narrative phase of an interview, most witnesses will not be able to recall all relevant information that is in their memory. In the free narrative phase, the witness is asked to try to remember what has happened and tell you about it. Many vulnerable people find this difficult for a number of possible reasons: they may not be able to remember, they may have tried very hard to forget painful memories or they may feel frightened or stressed.

Their accounts could greatly benefit from asking appropriate questions that assist in further recall. However, both research and best practice have found that vulnerable interviewees may well have great difficulty with questions unless:

- The questions are simple;
- They do not contain jargon;
- The questions do not contain abstract words and/or abstract ideas;
- They contain only one point per question;
- Questions are not too directive or suggestive.

It is important to understand that there are various types of questions that vary in how directive they are. The questioning phase should, whenever possible, start with open-ended questions and then go on, if necessary, to specific questions and closed questions. Leading questions should only be used as a last resort.

When questioning a witness, interviewers may wish to ask various types of questions about one issue before going on to ask questions about another; this is good practice in terms of how memory storage is organized. Questioning on each issue should normally begin with an open question.

Open-ended questions

Open-ended questions are ones that are worded in way that allows the witness to provide an unrestricted response. They also allow the witness to control the flow of information. This type of questioning minimizes the risk that interviewers will impose their view of what happened. Such questions usually specify a general topic which allows the witness considerable freedom in determining what to reply.

Open-ended questions can also be used to invite the witness to give more detail about incomplete information they provided in the free narrative phase. For example, “You’ve already told me that the person who hit you was a man. Would you please describe him for me?”

If the witness responds to open-ended questions, avoid interrupting even if the witness is not providing the expected type(s) of information. Interrupting the witness takes power from the witness and suggests that only short answers are required. If a witness tells you something you do not understand, do not interrupt them. Wait until they have finished and then try to clarify what they have said.

Avoid asking questions involving the word “why:” it may be interpreted by vulnerable people as you blaming them in some way. Don’t repeat a question soon after the witness has provided an answer to it (including “Don’t know” responses). Witnesses may interpret this as a criticism of their original response and give a different response that is closer to what they think you want to them to give.

When being questioned, some witnesses may become distressed. If this occurs, consider moving away from the topic for a while, and if necessary, go back to an earlier phase of the interview (such as the rapport phase). You may need to do this a number of times in an interview.

Some witnesses may find it easier to describe the general pattern of the events before recalling the detail. Giving a general outline of what happened may well help them recall specific events. Do not ask questions about specific events too early in an interview.

Most witnesses, whether vulnerable or not, will recall correct information about events but it may not be in the correct chronological order.

Specific questions

Specific questions can be asked in a non-suggestive way to clarify, develop or add to the information the witness has given.

Although some particularly vulnerable witnesses may not be able to provide information in a free narrative phase nor be able to respond to open questions, they may be able to respond to specific questions. However, be aware that specific questions should not unduly suggest certain answers to the witness.

For some vulnerable witnesses open-ended questions will not assist them that much to access their memory, while specific questions may well do so. One problem here is that the more specific questions become, the easier it is for them to be suggestive.

Closed questions

Closed questions are ones that provide the interviewee with a limited number of alternative responses. As long as the question provides a number of sensible and equally likely alternatives it would not be considered suggestive. Some vulnerable witnesses may find closed questions particularly helpful. However, at the beginning of the use of closed questions, try to avoid using ones that contain only two alternatives (especially yes/no questions) unless these two alternatives contain all possibilities (e.g. "Was it day time or night time?"). If questions containing only two alternatives are used, these should be phrased so that they sometimes result in the first alternative being chosen and sometimes in the second alternative.

Some vulnerable witnesses may only be able to respond to closed questions that contain two alternatives. Even in such circumstances, it should still be possible for you to avoid an investigative interview being made up largely of leading questions. However, such interviews are likely to require special expertise and extensive planning, especially about the questions to be asked.

If you do use closed questions, it is particularly important to remind the witness that "Don't know," "Don't understand," or "Don't remember" responses are welcome and that you don't know what happened. If a witness replies, "I don't know" to an 'either-or' question (e.g. "Was the car large or small?") try to avoid then offering a compromise 'yes-no' question (e.g. "If it wasn't large or small, would you say it was medium size?") that the witness may just agree with.

Leading questions

A leading question is one that implies the answer or assumes something is a fact. Whether a question is leading depends on the nature of the question and on what the witness has already said in the interview. The defence may object to evidence from a leading question, with the result that it may not be allowed to be heard in court.

Psychological research suggests that interviewees' responses to leading questions tend to be determined more by how witnesses are questioned rather than by what they remember.

If you ask a leading question regarding important facts of the case that have not already been described by the witness, the interview is likely to be of very little value in a court case.

Where a leading question produces a response that reveals important evidence, you should not follow it up with more leading questions. Instead, go back to the more “neutral” types of questioning described above. This is particularly important when the evidence the witness revealed wasn’t actually related to the leading question to which they were responding.

A leading question that succeeds in prompting a witness into providing information spontaneously beyond that led by the question might be acceptable. However, unless there is absolutely no alternative, you should never be the first to suggest to the witness that a particular offence was committed, or that a particular person was responsible. Once such a step has been taken, there is a very strong chance the suspect and defence will argue that the witness would never have said it if the interviewer had not put the idea into the witness’ head.

Some witnesses may be so vulnerable they will go along with anything interviewers say, no matter how ridiculous the question. This shows the interviewer as incompetent and also provides grounds for the defence to challenge the evidence of the witness in court.

When forming your questions, try to use information that the witness has already provided and words/concepts that the witness is familiar with (such as for time, location, persons).

Some vulnerable witnesses will experience difficulty if the questioning moves on to a new topic without warning. To help witnesses, you should indicate a topic change by saying, for example, “I’d now like to ask you about something else.”

As noted earlier, many vulnerable witnesses will have difficulty with questions unless they are simple, contain only one point per question, do not contain abstract words and lack suggestion and jargon. Although you may be familiar with certain words and terms, the witness may not be and could misinterpret what you are saying.

Check that witnesses understand what has been said by asking them to tell you what she/he understands you to have just said. Just asking the witness, “Do you understand?” could result in an automatic reply of “Yes.” If they do not understand a question, some vulnerable people will still attempt to answer it to the best of their ability by guessing at what is meant, possibly producing an inappropriate reply.

Some vulnerable witnesses are not likely to be aware that what they are saying will be tested in court proceedings whether that is by direct cross examination in court or by determinations based on declarations they have made to the police. If interviewers decide to repeat one or more questions later on in the interview, even with changed wording, they should also explain that it does not necessarily indicate that they were unhappy with the witness’ initial responses; they just want to check their understanding of the witness. Otherwise some vulnerable witnesses may believe that the questions are being repeated solely because their earlier responses were incorrect or inappropriate or that they were not believed.

The questioning of vulnerable witnesses requires extensive skill and understanding on the part of interviewers. Incompetent interviewers can cause vulnerable witnesses to provide unreliable accounts. However, interviewers who are able to put into practice the guidance on questioning contained in this document will provide witnesses with much better opportunities to present their own accounts of what really happened.



Practical guidance

Styles of vulnerable victims questioning in trafficking cases are the same as those used in any other case. How you need to apply those styles in a trafficking interview may differ in the following ways:

- Trafficking victims' extreme loss of control over their lives could mean they will tend to comply and agree more with the interviewer. As has been mentioned a number of times, giving control back in simple ways may help to prevent this. Also, make sure that you continually check that the witness is comfortable saying they do not understand, or will challenge you if they do not agree with what you have said.
- Lack of a common language is also likely in trafficking cases, bringing with it the possibility of misunderstanding what has been said, why you asked a question, or why you are conducting the interview in a certain way. Briefing the interpreter and social supporter about how you plan to run the interview before it occurs may minimize this risk.
- Cultures can vary in how people communicate with each other in different situations. This, together with attitudes to authority, can lead to misunderstanding or over compliance. Witnesses' response to different questioning styles should be actively monitored to identify what is most appropriate to them and will achieve the objectives of the interview. Again, interpreters and social supporters may also be useful resources at the planning stages and in the interview.
- It may be helpful to ask questions regarding certain dates that are significant to the victim, such as his/her birthday, or some other significant anniversary, to help them more accurately place some of the chronological events relating to their victimization. This can help establish a set of chronological landmarks so that events can be placed in the context of "before" or "after" certain dates.

Understanding what the witness is trying to convey

Some vulnerable witnesses will have speech or other forms of communication that ordinary people find difficult to understand. At appropriate points in the interview, and especially in the closure phase (see below), you should reflect to the witness what the interviewer believes the witness to have communicated. When the meaning of the witnesses' communication is unclear, she/he could be asked, for example, to "put it another way" or "Can you think of another way of telling me?"

Interviewers need to be aware that the common human frailty of ignoring information contrary to one's own view may be even more likely to affect interviews with vulnerable people whom they are having difficulty understanding, and/or may believe to be less competent than other persons. Research on interviewing has consistently found that interviewers ignore information that fails to fit in with their assumptions about what may have happened. One important role for the accompanying interviewer (if there is one) is to check that the lead interviewer does not ignore important information provided by the witness.

Special interview techniques

It is strongly recommended that special interviewing techniques should only be used by people who have been trained in their use. These techniques are controversial in some jurisdictions and may not be admissible in court hearings.

Whichever special techniques are being considered for use in an interview, the emphasis must be on assisting witnesses to retrieve information from their own memories rather than suggesting things to them.

At the present time, little is known about techniques other than those described above that could further assist vulnerable witnesses. Witnesses who find verbal communication difficult may sometimes benefit from acting out or drawing the information they wish to convey. However, in such instances it is very important that the interviewer checks, in an appropriate way with the witness, that the interviewer has correctly understood what the witness was trying to convey.

Objects to assist recall

The use of items similar to those involved in the event to be remembered may assist recollection. However, they may also cause the witness distress. Furthermore, it may not be certain which items were actually involved, and the introduction of incorrect items may mislead and/or confuse the witness. Similarly, models or toy items may be misleading if the objects they represent were not part of the event being described. Some vulnerable witnesses may not realize the link between a toy or model and the real-life object it is supposed to represent.

The cognitive interview

The cognitive interviewing procedure (CI) contains procedures based on good communication skills (many of which have been described above), as well as a number of procedures specifically designed to assist witnesses access their memories. These procedures are usually referred to as:

- Mental context reinstatement (MCR);
- Change the order of recall;
- Change perspective.

MCR is based on the theory that if you put someone back into the context where an event occurred it will enhance the person's memory of it. People can be physically taken back to a scene or asked to remember things about the scene. An example of "mentally" putting someone back would be to say "You are sitting in the room now. Describe what you are hearing". This might be followed by "You heard music. Describe that music".

MCR can be effective but has also been associated with creating "false memories".

An example of changing the order of recall would be to ask a person to give an account from most distant to most recent event and then changing it from most recent to most distant.

Changing perspective means asking a person to imagine they are viewing a scene from a different position.

A number of professionals who have worked with vulnerable witnesses recommend the use of CI. However, research has found that unless the training of interviewers who attempt to use CI has been appropriate, they will fail to use this technique effectively and could confuse the witness. Also, some witnesses may not be able to benefit from each one of the CI procedures (e.g. very young witnesses may well not be able to “change perspective”).

Interviewers and their managers need to be aware that techniques that assist witnesses to produce more recall will result in interviews that last longer. Surveys of those who use the CI have found that they often report it to be effective. However, their workloads and their supervisors put them under pressure not to conduct interviews that are time consuming. Such pressures should be resisted for interviews with vulnerable witnesses.



Practical guidance

- In trafficking cases, the series of events experienced by the victim may be extremely complex, having taken place over a long period of time and in a number of locations. CI runs a particularly high risk of causing further confusion in trafficking victims.
- Some vulnerable witness interviewers are reluctant to use techniques such as changing the order of recall, but will use techniques that pause an interview while a victim is asked to try to recall all that a particular sense was telling them or what other senses were telling them.

Other techniques

Other techniques to assist witnesses to give accounts are being developed. A process of supportive reconstruction may be very helpful in assisting witnesses with mental disorders to recall situations and memories. This involves repeatedly working through the context of the memory, reflecting back on what has been established so far, and cueing witnesses to relate what happened next (the phenomenological approach, i.e. events perceptible to the senses and relating to remarked phenomena or events). If this technique is employed, it is essential that the interviewers follow and not lead the witness.

When free recall and questioning has produced little information of relevance but suspicion remains high, a facultative style of questioning could be used with witnesses who are particularly reticent. This can involve asking about nice/nasty things, good/bad people, what the witness would like to change in her or his life, or similar techniques. For those who have been put under pressure to not disclose certain matters, an open-ended discussion of secrets

may be introduced. Such methods may be successful for those trained in these styles of questioning. If the interviewer avoids any suggestive questioning and succeeds in encouraging the witness to give an account, there should be no reason why evidence gained in this way should not be considered by the courts.



Self-assessment

What is “free narrative” in an interview?

What does “compliance” mean in the context of a vulnerable victim-witness interview?

What are open-ended, specific, closed and leading questions?

How does the nature of trafficking in persons cases affect the various techniques used in vulnerable person interviews?

List special interview techniques and explain who should (and should not) use them.

Closing the interview

Recapitulation

During this aspect of closing the interview the interviewer may need to check with the witness that the interviewer has correctly understood the evidentially important parts (if any) of the witness’ account. This should be done using what the witness has communicated, not a summary provided by the interviewer (which could be mistaken but with which the witness may nevertheless agree). Care should be taken not to convey disbelief.

Closure

The interviewer should always try to ensure that the interview ends appropriately.

Although it may not always be necessary to pass through each of the above phases before going on to the next, there should be good reason for not doing so. Every interview must have a closing phase. In this phase, it may be a useful idea to discuss again some of the “neutral” topics mentioned in the rapport phase.

In this phase, regardless of the outcome of the interview, every effort should be made to ensure that the witness is not distressed and is in a positive frame of mind. Even if the witness has provided little or no information, she/he should not be made to feel that she/he has failed or disappointed the interviewer. However, praise or congratulations for providing of information should not be given.

The witness should be thanked for her/his time and effort and asked if there is anything more she/he wishes to communicate. An explanation should be given to the witness of what, if anything, may happen next.

Promises that cannot be kept should not be made about future developments. Particular care should be taken to avoid making promises about residency status, that a victim will not have to give evidence or that a person will be charged.

The witness should always be asked if she/he has any questions, and these questions be answered as appropriately as possible. It is good practice to give the witness a contact name and telephone number in case the witness later decides that she/he has further matters she/he wishes to discuss with the interviewer.

Not only in closing the interview, but also throughout its duration, the interviewer must be prepared to assist the witness in coping with the effects of giving an account of what may have been greatly distressing events (and about which the witness may feel some guilt).

At the conclusion of their interview, vulnerable or intimidated adult witnesses who are victims should be given the opportunity to make a victim personal statement to say what effect the crime has had on them, and to help identify their need for information and support. The statement should be taken in the same format as the witness statement, i.e. where a video-recorded interview has taken place, the victim personal statement should also be video recorded. Providing a victim personal statement (video recorded or written) is entirely voluntary.

Witnesses should be offered information as to where rapid help and support can be obtained. A leaflet listing names, addresses and telephone numbers of relevant individuals and agencies should be available for distribution to witnesses. Where possible, law enforcement officers should assist the victim in accessing such support and be familiar with how to make referrals in this regard.



Self-assessment

Why is the closure phase so important?

Describe what is required in the closing phase of an interview.

Evaluation

At this stage the interviewer should consider whether the aims and objectives of the interview have been achieved, how the knowledge discovered in the interview affects the investigation, how well they conducted the interview, and what improvements could be made in future.



Practical guidance

- Always consider and assess any risks to the victim, their family or others that have been revealed in the interview.
- Evaluation should take place after each interview, no matter how short the interview was. Evaluation itself may be very quick: there may have been very limited objectives achieved in interviews in the early stages.
- Evaluation in trafficking in persons cases should also assess the mental and physical condition of the victim in light of what has happened in the interview. This may involve reference to experts such as doctors and psychologists.
- Use your written plan to identify which objectives have and have not been achieved.
- Work closely with other investigators and those managing the investigation to identify further enquiries to be made outside the interview and further points to explore inside the interview.

Visits to sites described in the interview

After interviews, interviewees have, on occasion, been taken to locations they have described to corroborate the account and identify further investigative opportunities. Investigators report considerable success with this technique.

This tactic requires some care when planning. The most important consideration is the safety of the witness. They should only make visits with plain clothes officers, wherever possible in an unmarked car, there should be sufficient staff to both protect the witness and record what is being said. Any staff involved should be briefed about the risks and objectives of the visit.



Self-assessment

What should you do when evaluating an interview?

Why is the evaluation phase important in the interview process?

Further interviews

One of the key aims of video recording early investigative interviews is to reduce the number of times a witness is asked to tell her or his account. However, even with an experienced and skilful interviewer, a witness may provide less information than he or she is capable of divulging. A supplementary interview may therefore be necessary and should also be video recorded if possible. Consideration should always be given to whether holding such an interview would be in the witness' best interest. The reasons for conducting supplementary interviews should be clearly articulated and recorded in writing.

With particularly vulnerable witnesses, a decision could be made at the planning stage to divide the interview into a number of sections to be conducted by the same interviewer on different days, or at different times on the same day, with rapport and closure being achieved each time.

There is always the possibility that at a later time the victim may feel that the impact of the experience has been such that a second statement is needed. It is good practice to ask the witness if he or she wants to make a second impact statement immediately before the court hearing or between the hearing and sentencing. This enables the court to take account of any long-term trauma the victim has suffered, and prevents the defence from negating the original impact assessment by suggesting the victim no longer feels the same way months later.

Summary

Interviewing victim-witnesses is a critical element of any trafficking in persons investigation. This section summarizes only the key points. Do not plan or conduct trafficking interviews based only on the content of this summary. It is essential that, at a minimum, you consider the whole content of this module. It is highly desirable that only properly trained interviewers conduct trafficking victim-witness interviews.

Victim-witnesses of trafficking are vulnerable victims and should be treated as such.

The objective of any law enforcement interview is to obtain an accurate account.

How trafficking in persons interviews differ

Interviews with trafficking victim-witnesses differ from general cases in a number of ways. These include:

- Changing accounts—due to the effects of the trafficking process accounts of victim-witnesses may change over time.
- The trafficking process is a commercial as well as a criminal process. Interviews should have objectives of investigating an individual offence and identifying how commercial networks can be dismantled.
- Language—in some cases obtaining interpreters may be difficult because only a few people speak languages at a location. Small communities increase the chance interpreters may know victims or traffickers.
- Culture—investigators may be dealing with cultures they know little or nothing about leading to possible misunderstandings.
- Trust—due to their experiences trafficking victims may not trust investigators.
- Victimization and trauma—trafficking victim witnesses may be suffering from levels of trauma rarely seen in other victims.
- Criminal justice systems—trafficking cases are often very complex to investigate. Some criminal codes and systems around the world have tight restrictions that make trafficking particularly challenging to investigate.

- Relatives and friends—traffickers may know (or be known to) the victim's relatives. Threats and perceived threats to relatives and friends can be common in trafficking cases.
- Money—trafficking victims may be receiving a small amount of money from traffickers. If this stops there may be serious consequences for victims' families.
- Immigration status—trafficking victim witnesses may have irregular migration status leading to fear of prosecution, removal, etc.
- Accommodation—in trafficking in persons cases it is likely accommodation will have to be found for victim-witnesses.
- Diplomatic—trafficking in persons cases bring an increased likelihood investigators will need to consider diplomatic issues surrounding the interviewee.
- Age—for various reasons trafficking victims may not give their correct age. This may have consequences for procedures required for children etc.
- Sexual offences—victims of trafficking for sexual exploitation may have been raped and sexually assaulted by many people over a long period of time. This may produce profound and complex psychological reactions, including post-traumatic stress disorder. It may also complicate forensic strategies.

Stages of victim-witness interviews

The five stages of a victim-witness interview are:

- Planning and preparing for the interview;
- Engaging with the victim witness and explaining the process and content of the interview;
- Account from the victim/witness is obtained;
- Closing an interview appropriately;
- Evaluating the content of the interview.

Planning and preparing

Planning for interviews is important because well planned interviews produce the best evidence and reduce the likelihood of errors and inconsistencies.

What is known about the person being interviewed or “the story so far” should be established.

A risk assessment should be conducted as soon as possible.

Other measures should be taken, such as considering a psychological assessment, assessing the person's physical health, providing appropriate clothing, meals and accommodation. Details of what is provided should be recorded. The person's migration status should be established as soon as possible.

Objectives should be identified before the interview starts.

Because of the complexity of many trafficking interviews, it is good practice to have a written plan.

Consider having planning meetings between those investigating the cases, conducting the interviews and managing the prosecution.

Investigators should consider assessing the witness to establish if the person is psychologically well enough to be interviewed.

The location of the interview should be clean, comfortable, comply with the legal requirements of your jurisdiction and as acceptable as possible to the victim-witness. It is generally not appropriate to interview at victims-witnesses' homes.

The interview should be recorded in the most appropriate way possible after consider what you have available and practical issues of each method of recording.

Where possible interviewers should be trained, two interviewers should be used and the same interviewers should be used throughout the interview.

The gender of interviewers should be appropriate to the needs of the victim. Where possible victims should have a choice.

The need for social support/intermediaries for the victim should be considered. Great care should be taken to ensure intermediaries etc. are not linked to traffickers.

Engage and explain

Interviewers should monitor their behaviour and adapt it to the needs of the interviewee.

Interviews should move at a pace appropriate to the needs of a victim. Regular breaks should be allowed. The victim-witness should be given some control over when breaks etc. take place. The duration of interviews should take the needs of the victim-witness into account.

Rapport should be established with a victim.

An explanation should be given of the interview process. It should include:

- Who the interviewer(s) is/are and their experience
- Purpose of the interview.
- Role of the interviewer and others present.
- How the interview is going to be recorded.

Consider conducting a first interview that covers general topics and does not directly deal with the offence under investigation.

If an initial interview indicates that the victim is so severely traumatized that obtaining an account would seriously affect his or her mental health consider terminating the interview and making alternative enquiries.

Account

Interviews should open, where possible, by asking the victim to give a free narrative account. This is an uninterrupted account of relevant events in the victim-witness's own words.

Extreme loss of control by victims of trafficking may mean they are more likely to comply or agree with an interviewer.

Initial accounts should be developed by:

- Open-ended questions (allowing the interviewee to give an unrestricted response).
- Specific questions (direct question that develops, clarifies or adds to information).

Closed questions provide the interviewee with a limited number of alternative responses. Closed questions may help to focus a response but should be used with great care.

A leading question implies the answer or assumes something is a fact. Leading questions should only be used very rarely if there is no alternative.

Special interview techniques should only be used by people trained to use them.

Closure

Recapitulate or summarize the main points of the interview to check the victim-witness has correctly understood the main points of the account.

Give the victim-witness an opportunity to ask questions about the interview.

Try to ensure the interviewee leaves in a positive frame of mind.

Give advice and guidance about further help and assistance that is available.

The interviewee should be told what is going to happen next.

Review for any new or changed risks the interview has revealed.

Evaluate every time at the end of the interview regardless of the length of the interview.

Assess the physical and mental condition of the interviewee after every interview and refer the interviewee to appropriate assistance and support if necessary.

Review your initial objectives to see if they have been achieved.

Identify further lines of enquiry.

Annex A—Interview check list

The following checklists are divided into three areas:

- General points recommending the detail you to seek in all relevant responses from the witness.
- Sexual, physical and psychological abuse outlining best practice questioning when these forms of abuse are suspected.
- Trafficking markets and the five commercial processes providing comprehensive detail of how you may use questioning to identify how a particular trafficking organization or network operates.

Each case is different and there is some overlap in some of the questions suggested below.

It is recommended that you read though all the checklists and identify the questions that would be most appropriate for the case you are dealing with.

Remember, do not use these check lists just to create leading questions. The interview process should be conducted in the most appropriate way possible.

General points

- There should be a full, detailed physical description of each named and unnamed suspect, together with descriptions of any vehicles and/or premises involved.
- It is important to obtain as much detail as possible concerning the interior of any premises and vehicles involved in the crime. Description of entrances, locks, furnishings, ornaments, pictures, or any other peculiar features about the premises may later prove to be important.
- Trafficked victims rarely know the registration numbers of vehicles they have been in, so it is useful to obtain detailed description of the condition of the exterior and interior of any such vehicle, such as damage, window stickers, pattern of seat covers, toys hung on the rear-view mirror, etc.
- The victim should always be asked if he/she has retained any documentary evidence, such as receipts or copies of advertisements, etc. If he/she has, they should be immediately seized, secured and sealed in evidence bags. The exhibits should be described in detail and exhibited by him/her in the statement.
- Trafficking victims should always be asked whether they have kept a diary of the events that have happened to them because they often do so. These diaries can include a detailed record of the money that has been earned in prostitution or other forms of exploitation and other vital evidential data. The interviewer will have to approach the issue with sensitivity because if one does exist, the victim may be reluctant to disclose it because it is likely to contain intimate and, as far as the witness is concerned, embarrassing material.

- If the victim has kept a diary, it should be seized, secured and exhibited in the usual way after the victim has been allowed to refer to it during the making of the statement.

Sexual, physical and psychological abuse

This checklist sets out points of best practice in respect of the human abuse offences as follows:

Abduction

Questions you may consider include:

- Where, when and how?
- Was violence used or threatened? If so, how was it inflicted, and what were victim's injuries?
- Were weapons used? If so, obtain full description.
- Was the victim drugged in any way? If so, obtain details such as method of administration— injection, liquid, inhalation?
- Was the victim told of the consequences if he/she tried to escape? If so, obtain full details concerning the nature of the threat and who issued it.
- Was anything said? If so, what was said, by whom, and in what language, dialect or accent? Any names or nicknames used?
- If the victim knows, where was he/she taken to and how was he/she taken there? How long did it take to travel from the abduction point to the detention point?
- Obtain full description of the place of detention; surroundings, could the victim hear voices or noises such as nearby trains or aircraft; any other details to identify the location?
- As stated above, obtain full detailed descriptions of the suspects, vehicles and premises.

Unlawful imprisonment

Questions you may consider include:

- Where was the victim kept and for how long?
- Obtain full description of the interior and surrounding areas of the location
- How was the victim imprisoned? Was he/she physically restrained, and if so, obtain details of restraints, locks, means of access and egress, keys and who had them.
- If the victim was guarded, obtain full description of the guards and any conversations that took place.

- What was the extent of the imprisonment? Was the victim confined in one space or could he/she move around freely within a specified area?
- Was the victim told of the consequences for him/her if she tried to escape? If so, obtain full details of the nature of the threat and who issued it.
- In relation to the above points, were there any witnesses to any of the events? If so, obtain full details.
- Obtain full descriptions of suspects etc.

Physical and sexual assault

Questions you may consider include:

- When did the abuse take place, and on how many occasions? Achieve exact dates where possible; use significant events to set the timing if exact dates cannot be ascertained (very often the victim will report that the abuse was so frequent, even daily, that single events blurred into one).
- Where did it take place? Obtain full description of the venues as outlined above: layout of the room, bed, sofa, furnishings; ornaments; clothing worn and/or damaged; bedding, sheets, duvet, colour, type.
- What was the exact nature and extent of the assault? Obtain full description of the injuries caused: Was the sexual assault vaginal or anal rape or forced oral or manual indecent assault? Obtain exact description of the state of penile erection, of the extent of penetration and whether ejaculation took place. Were condoms used? Were any weapons or other implements used?
- What was said to the victim during the abuse or threatened violence, and by whom?
- What was the context of the abuse—was it for sexual gratification or was the victim physically or sexually assaulted in order to intimidate, coerce or train him/her? Was it punishment because he/she had disobeyed instructions or attempted to escape?
- Did the victim demonstrate physically or verbally his/her refusal or lack of consent, and if so, exactly how did he/she do so? Did he/she inflict any injuries on his/her abuser during the assault? If so, describe the injury.
- With sexual assaults, trafficked victims often report that they neither said nor did anything to resist and that they simply submitted to the abuse in order to avoid a physical assault in addition to the sexual one. It is vitally important to record this condition, not only because the assault can amount to rape notwithstanding that refusal or lack of consent was not demonstrated, but because it illustrates the complete subjugation and enslavement of the victim.
- What was victim's physical condition afterwards, e.g. concussion, continuous internal or external bleeding, vomiting and nausea, etc.?
- Did the victim tell any other person about what had happened to him/her? If so, obtain the full details of that person and what was said.
- Did the victim require or receive any medical treatment for his/her injuries? If so, obtain details of doctor, hospital clinic, record made, etc.
- What was victim's state of mind and fear, both at the time and afterwards?

- What was said or done afterwards? Was the victim threatened with further abuse and, if so, in what context? Did his/her abuser(s) express regret?
- Obtain exact physical description of the attacker; any physical peculiarities such as tattoos, pierced ears, scars or marks, genital description and peculiarities, distinguishing voice, language, or accent, odour or perfume, the condition of his teeth and nails, etc.
- In relation to any of the above points, were there any witnesses to any of the events? If so, obtain full details.

Trafficking markets and the five commercial processes

Origin—recruitment and departure

Recruitment

Questions you may consider at origin locations include:

- Was the victim abducted? Or, was the initial contact between victim and trafficker voluntary? If so, who initiated the contact?
- If not voluntary, what were the means of coercion? Was the victim threatened or assaulted?
- What were the arrangements, and what did the victim understand the arrangements to mean? Did the victim know what he/she was going to be involved in?
- In case of sexual exploitation, was the victim aware that prostitution was intended, and if so, what form of prostitution was discussed—was it street walking, within brothels or call girl agencies?
- Was the victim deceived as to the real purpose for being taken from the origin to the destination? If so, what was he/she told he/she was going to do (legitimate employment such as office work, work peripheral to the sex industry such as lap dancing or hostess work, etc)?
- Did the victim sign a contract? If so, what were the terms of the contract?
- Where in the destination country was the victim told he/she was going to live and with whom?
- Did the traffickers know the victim's home address or any details of his/her family or other loved ones? Did they claim to know such details before he/she was trafficked?
- Did members of victim's family or other loved ones know of the arrangements?
- Was the victim sexually, physically or psychologically abused, or unlawfully imprisoned before he/she was trafficked? If so, obtain full details on the sexual, physical and psychological abuse.
- In relation to all of the above points, were there any witnesses to any of the events? If so, obtain full details.
- What is the age of the victim, and was his/her exploiter aware of this fact?
- Obtain full descriptions of each of the suspects in the recruitment phase.

Advertising

Questions you may consider at origin locations include:

“Formal” advertising:

- Did the victim respond to an advertisement?
- Where did the victim see the advert—was it in a newspaper, magazine, contact directory, professional publication?
- If so, which one, and was it published locally or nationally? In which section did it appear—the personal columns, job vacancies, etc?
- Was it a radio or television advertisement—if so, what was the channel etc.?
- What was the exact wording of the advert—what was it offering and did it name a specific individual to contact?
- What did it relate to? (Well-paid foreign work, bridal or escort agencies, etc.)
- How was contact with the advertiser to be made—was it by personal visit, telephone, fax, e-mail or correspondence to an address or accommodation address such as a P.O. Box? If so, what were the numbers and details, etc?
- Did the victim keep a copy of the advertisement? If so, where is it?
- Is the victim aware of anyone else who responded to the advert?

“Informal” advertising:

- Who told you about the “work”?
- How do you know them?
- Who introduced you to them?
- What exactly did they say?
- How did you meet them?
- Where did you meet them?
- Did they tell anyone else?
- Do you know whom their friends, work colleagues, family, etc. are?
- Who have you seen them with? Can you describe them?

Premises

Questions you may consider regarding origin locations include:

- Can the victim describe the conditions in which he/she was kept?
- Where was the victim detained—full description of the premises, furnishings, etc?
- If the victim was abducted, does he/she know where he/she was kept and can he/she describe the location and/or peripheral topographical features?
- Did the recruitment involve a visit to an office or agency premises? If so, obtain a full description

- Was contact made by a recruiting agent in a bar or nightclub? If so, obtain a full description of the suspect and the premises.
- Was the victim taken to and/or kept at any private addresses prior to leaving his/her country?

Communications

Questions you may consider regarding origin locations include:

- How was contact made between the victim and the traffickers: postal service, P.O. Boxes, landline phone, mobile phone, fax, or e-mail?
- What were the numbers and/or addresses?
- Did the victim see any billing, and if so, what was the name of the subscriber?
- If it was a mobile phone, what was the make and does the victim know the network provider; did he/she ever see it displayed on the phone screen?
- Did the trafficker use a laptop computer or personal organizer? If so, what model were they, and did the victim know any details such as access codes, e-mail service providers, etc?

Transport

Questions you may consider regarding origin locations include:

- Was the victim taken out of the country covertly or overtly?
- If covertly, by what means—road, rail, ferry and descriptions.
- If known, what was the exact date and point of departure and where was the border crossed?
- What identity documents did the victim have and in what name and nationality? How did he/she get the documents?
- Did the victim travel alone, or was he/she accompanied by other victims and/or traffickers?
- If the victim travelled overtly, what identity documents were used? Were they genuine or forged?
- If forged, what name was used and how and by whom were they obtained?
- Who took the victim to get the passport/identity document photograph, and where was it taken?
- If the victim used her own genuine passport/identity document or a forged one, was an entry/exit visa required?
- If so, which embassy visa sections were visited? Did the victim go in person or was he/she accompanied? If so, by whom? What date and time was the visit made? Was any fee paid, by whom and by what means? Was a receipt issued, and was it date and time stamped? Does he/she know the identity of the visa officer that dealt with the application? Can he/she provide a description?

- Were any other documents used to support the visa application, such as sponsorship letters, language school registrations, employment offers, etc? If so, what were the details, and does the victim have copies?
- Where were the travel tickets purchased, and by whom?
- By what means (cash, cheque or credit card) and with what name was the ticket purchased?
- What were the details of the carrier: coach, rail, ferry company or airline?
- What was the date and point of departure?
- Was the victim accompanied to the port of departure? If so, how did he/she get there, and with whom?
- Did the victim travel with other victims and/or traffickers, commonly known as “mules”? If so, obtain full details.
- Who checked in with whom and at what time? What luggage was checked in? Were any purchases made at the port of departure, and if so, by what means? What seats were issued and who sat next to whom on the plane, coach, etc.? Were any duty-free purchases made on the trip, and if so, by what means and by whom?
- Were departure control checks carried out? Was the victim examined by an immigration official, border guard or customs officer before leaving? Did he/she have to complete any forms? If so, whom were they handed to?
- On entry to the transit and destination countries, did an official examine the victim, and did he/she complete any entry documentation? If so, where and when and what name did he/she give?
- Did an immigration official examine any person travelling with the victim? If so, did they complete any documentation?

Finance

Questions you may consider regarding origin locations include:

- What were the financial arrangements? Did the victim pay any money in advance, or was there an agreed “debt bond” arrangement? If so, how much was the debt bond for, and long was the victim being given to repay it?
- How were payments to be made: directly to traffickers in the country of destination or by bank or money exchange transfer to the country of origin or a third country?
- Was the victim told that he/she might have to pay additional costs in the country of destination (such as sleeping quarters, advertising or the rent of brothel premises etc)?
- How much money was promised to the victim for his/her work, and by whom?
- Was any money or other goods of value exchanged for the victim with a member of his/her family or other individual having some degree of control over him/her?
- Any information on banks, personal or business accounts and numbers, the location of the branch, used in the transactions during the trafficking. At any stage in the recruitment

and export phase, were bankcards, credit cards, traveller's cheques or store charge cards used by traffickers? If so, where, when and for what purpose, i.e., to pay for the travel tickets, visa application, duty free goods, etc?

- Was foreign currency purchased prior to leaving? If so, where, when and how was it paid for?
- Did the victim ever see rental or advertising billing or phone bills? If so, how were they paid and to whom?

Transit—transportation

Exploitation in transit

Questions you may consider regarding transit location include:

- Was the victim physically, sexually or psychologically abused whilst in the transit phase? If so, obtain full details regarding the sexual, physical and psychological abuse
- Was the victim unlawfully imprisoned during this period; if so, obtain full descriptions of the method and the perpetrators regarding the sexual, physical and psychological abuse
- Did the victim come to the notice of law enforcement or other agencies whilst in transit? Was he/she stopped by the police, or did he/she seek any medical treatment or claim any state benefits whilst in transit? Did he/she complete any official documents for any reason? If so, obtain full details.
- Was the victim required to prostitute him/herself whilst in transit? If so, obtain full details of the type of prostitution, venues, financial arrangements etc (see the section "Country of destination" below)
- Was the victim exploited in any other way whilst in transit?
- Full detailed descriptions of any additional suspects, premises and vehicles appearing in the transit phase.
- In relation to all of the above points, were there any witnesses to any of the events? If so, obtain full details.

Note:

If the victim says they have been exploited consider asking further questions contained in the destination phase and Exploitation sections.

Advertising

It is rare that advertising is found in the transit/transportation phase of trafficking in persons.

Premises

Questions you may consider regarding transit locations include:

- Where was the victim kept and by whom—obtain full descriptions.
- How long was the victim in the transit country and what was the nature of the conditions in which he/she was kept?
- Where did the victim visit during transit?
- Was the victim imprisoned within any transit country? Obtain full descriptions.

Communications

Questions you may consider regarding transit locations include:

Consider asking the questions in the origin section in the context of transit and in addition:

- Did the traffickers use new phones in transit countries? If so, does the victim know how and where they obtained them, how they paid for them and for the phone call credits?
- Did the traffickers use any other form of communication in the transit stage? If so, who did what, where and when?

Transport

Questions you may consider regarding transit locations include:

Consider asking the questions in the origin section in the context of transit and in addition:

- Date, location, and time of departure from the origin country, and entry into the transit country.
- What identity and/or travel documents was the victim using? Obtain full details.
- Where did the victim obtain documents?
- Were any persons travelling with the victim examined at the departure and entry points, and were any documents completed by them?
- Date, time and location of the departure point, and means of travel from the transit country
- Who was the victim with, and did departure officials examine them? If so, were any documents completed?

Finance

Questions you may consider regarding transit locations include:

- How were tickets/accommodation paid for?

- Who paid the money?
- Who was the money paid to?
- Where were tickets etc. paid for?
- Who had access to money in the transit phase?
- Was any money drawn from banks etc?
- Was any money changed from one currency to another?
- Did any financial transactions take place that the victim-witness did not understand? Can they describe these?
- Who else was present when financial transactions took place?

Locations of destination—reception and exploitation

Exploitation

Questions you may consider regarding destination locations include:

All victims:

- Was the victim allowed to keep the identity and/or travel documents upon arrival or were they taken from him/her? If so, by whom and when was this done? Where were the documents then kept?
- Was the victim unlawfully imprisoned or physically, sexually or psychologically assaulted at this initial stage? If so, obtain full details as per sexual, physical and psychological abuse
- What form did the exploitation take: prostitution, forced labour, servitude, etc? Was the victim engaged in prostitution?

Victims of sexual exploitation:

- At what point did the sexual exploitation as a prostitute begin? Did the victim know that he/she was going to work as a prostitute?
- If not, at what point did the victim discover the truth and from whom?
- What type of prostitution did the victim engage in: street prostitution, off-street in apartment, house brothels, sauna or massage parlours, hostess or lap-dancing bars, or “call girl” escort agencies?
- If the victim engaged in street prostitution: what red-light area did he/she frequent and how did he/she get there? Did a trafficker supervise him whilst he/she worked?
- Did the victim come to the notice of police or other agency? Was he/she stopped or arrested and prosecuted for soliciting? If so, when and where and what identity did he/she use?
- If the victim engaged in off-street prostitution: Where did he/she work and how did he/she get there? Who took him/her to work? Which of the traffickers were aware that he/

she was working as a prostitute, and how did they know? Were they present in the brothel or on the street? Was his/her work discussed? If so, with whom?

- Was the victim supervised, and if so, by whom? What degree of liberty did he/she have? Could he/she leave the brothel or bar or agency unsupervised?
- Did the victim work with other prostitutes and/or maids or receptionists? If so, can he/she name and describe them?
- Was the brothel, bar or agency ever visited by law enforcement or other agency officials? If so, when, who visited, and was the victim required to give his/her name and any other particulars? If so, what name and details did he/she use?
- Whether engaged in “on or off-street” prostitution: what hours did the victim work, and what services was he/she required to provide to clients? Was he/she allowed any degree of choice as to which clients he/she entertained or which services he/she provided? Was he/she required to provide sexual services without contraceptive protection? If he/she refused, what were the consequences?
- What was the victim’s ability to speak the native language? Did he/she work from a written “menu” list? If his/her language ability was limited, who translated for him/her with the clients?

Questions for victims of other types of exploitation

- When did the exploitation begin?
- If the victim was to work, were working conditions different from what he/she expected?
- Was the victim living and working at the same place?
- Where did the victim work? How did he/she get there? Who took him/her there?
- Did the victim work with any other persons? Were they also victims of trafficking? Can he/she name and describe them?
- What hours did the victim work?
- Was the victim paid, and at what rate?
- Was there a debt-bondage arrangement? If so, how much did the victim owe, and at what rate was he/she required to repay the debt? How was it paid: directly in the country of destination, or was it sent back to the country of origin? If so, by whom, and by what means, to whose account was the money credited? Were any records kept of the repayments?
- Was the victim ever hit or threatened for doing bad work or working too slowly?
- Was the victim supervised and if so, by whom; what degree of liberty did he/she have?
- Did the victim ever come to the notice of police or other agency? If so, when, where and why? What identity did he/she use?
- What was victim’s ability to speak the native language?
- Was the victim required to pay additional infrastructure costs such as daily renting premises? If so, was he/she told about these additional charges before he/she left his/her home country?

- Was the victim threatened with or subjected to violent and/or sexual abuse? Was he/she threatened with reprisals against his/her family or loved ones? Were there any other control mechanisms such as cultural or religious points of coercion?
- Were the same control mechanisms used to ensure that the victim complied with the instructions given to him/her by the traffickers?
- Was the victim threatened to be reported to authorities, resulting in deportation and/or jail?
- What was victim's general degree of liberty? Could he/she move about freely, and what was his/her state of mind? Did he/she believe that his/her traffickers would implement any of the control mechanisms outlined above?
- Was the victim allowed to communicate with family members? Other workers? Was the victim allowed to make friends?
- Did the victim ask his/her offender if she/he could leave? Why? Why not? What happened?
- Was it possible for the victim to escape or seek assistance from law enforcement agencies? If so, did he/she attempt to do so? If not, why not? What was his/her state of mind on these points?
- Was the victim denied medical care, food, clothes or other basic necessities?
- Were others abused in front of the victim? If so, obtain full details.
- Was the victim sexually, physically or psychologically abused, or unlawfully imprisoned on any additional occasions? If so, obtain full details as per sexual, physical and psychological abuse
- Obtain full descriptions as to any persons, premises and vehicles that are part of the destination country phase and that are additional to those already mentioned in the origin and transit phases.
- A final summary as to the circumstances in which the victim is making the statement. Has he/she been rescued or did he/she escape by his/herself?
- In relation to all of the above points, were there any witnesses to any of the events? If so, obtain full details.

Advertising

Questions you may consider regarding destination locations include:

- Does the victim know how their labour or services were advertised? In cases of sexual exploitation off-street, was it by some type of formal advertising (posters, internet, newspapers, word of mouth, etc.)?

Premises

Questions you may consider regarding destination locations include:

- What was the first address the victim was taken to? Who took him/her there, and how did he/she travel there?

- On arrival, were other persons/victims present? What did the premises consist of? Can he/she describe the premises in detail?
- Did the victim stay in the same premises during his/her complete stay in the destination country? Who did he/she live with? Where was the victim taken to in the destination country? Did he/she change the premises during her stay?
- Obtain full description of any premises in which the victim was required to engage in prostitution or other forms of exploitation—including detail of the layout, decoration and any other peculiarities.
- If the victim was taken to any other premises as part of the trafficking process, such as embassy visa sections, other government buildings, hospitals, clinics, language schools or letting agent premises—obtain full details.

Communications

Questions you may consider at destination locations include:

- Did you ever have access to a phone while you were here?
- Did you see phones being used?
- Who was using them?
- Do you know where those phones are now?
- What conversations did you overhear by people on those phones?
- Did you make calls or emails or write letters home?
- Who did you call, write to, contact?
- What did you say in those contacts home?
- If you emailed, where was the computer?
- Did other people use this computer? Who? For what reason?

Transport

At destination locations the same questions asked at the origin location should be considered and additionally:

Entry into country:

- Date, time and location of entry point into the country of destination
- Was the entry covert or overt?
- If covert, what methods were used? Who was the victim with? What was the mode of transport, and was the vehicle stopped at the border crossing point? If by boat, where was the landing point, and who met him/her?
- If overt, what was the mode of transport? Did a law enforcement official at the border crossing point examine the victim? Did he/she complete any documentation such as landing cards, customs declarations, etc?
- What identity and/or travel documents was the victim using? Where are they and what are the full details?

- Did the employer/trafficker use the victim's identity for another purpose?
- Were any persons travelling with the victim examined at the entry point and were any documents completed by them?
- Was the victim met by anybody at the entry point? If so, by whom? Obtain full description.

While being exploited:

- At the conclusion of the shift, was the victim taken back to the "safe house" or did he/she remain in the brothel premises? If he/she went to a safe house, how did he/she get there and who took him/her?

Finance

Questions you may consider include:

- What prices did the victim charge for his/her services? Can he/she state his/her average daily earnings and estimate the total that he/she earned from prostitution during the duration of his/her exploitation? How much (if anything) was the victim allowed to keep?
- What happened to victim's earnings? Were they it handed over to a trafficker/receptionist/"maid" after each client, or did he/she hand them all over at the end of the shift? Were any records kept?
- Did the victim buy any items for his/her exploiters with his/her prostitute earnings, such as jewellery or clothing? If so where and when, description and cost, existence and location of the items and any receipts?
- Was there a percentage split of victim's earnings between him/herself and the trafficker, or was all the money handed over? Who instructed him/her as to the scale of charges?
- Was there a debt-bond arrangement? If so, how much did the victim owe, and at what rate was he/she required to repay the debt? How was it paid: direct in the country of destination, or was it sent back to the origin country? If so, by whom and by what means? To whose account was the money credited? Were any records kept of the repayments?
- Was the victim required to pay additional infrastructure costs, such as daily renting of premises or for advertisements? If so, was he/she told about these additional charges before he/she left his/her home country?
- Was there a system of fines? If so, what how much were the fines and what were they for?
- Did the victim remit any money back home?

Annex B—Information from first responders

The information passed from first responders should, where possible, include:

- How the victim came to the attention of the police;

- Language spoken by victim;
- Nationality (or suspected nationality of victim) and immigration status;
- Record of first account made to language line;
- What crime(s) the first responder believes are being alleged;
- Name given by victim;
- Age given by victim;
- Details of any impairment the victim may have, particularly when this means a pre-trial support person is required;
- Details of any health or other requirements that have been identified;
- Any action taken such as arranging forensic examination, searches, arrests made, etc. (but see comments below about taking this type of action).

Annex C—Strategic planning

Strategic level planning ensures the availability of adequate resources such as equipment, staff and the means to train staff. While tactical planning concerns the day-to-day management and conducting of interviews.

As a strategic planner, your ability to select the right people for the interviewing, to motivate and inspire them, provide training and supervision is key.

Where you have a responsibility to plan trafficking in persons investigations at a strategic level, it is recommended that you develop your structures and put resources in place as soon as possible. You may wish to consider the following suggestions. It is important to remember that options available here cover all levels of development and resources.

The general rule is that you should use the best resources you possibly can.

Where you have resources to create a standing team you should recruit staff that have been trained in interviewing vulnerable witnesses. If you have no staff available that have been trained in vulnerable witness interviewing, look for those who have a good record of experience with such interviewing.

If a course already exists for vulnerable witnesses, consider sending your staff to the course. These courses may not be completely applicable to trafficking cases, but many of the skills used in sexual investigation interviewing, for example, are relevant in trafficking interviewing. Consider speaking to the Training Department to explore whether an existing interview course can be amended to include trafficking aspects.

Where no course exists, consider working with your Training Department to develop one. Use this UNODC material to help develop a course. Adapt it to include details of your domestic or local context.

Where additional training is not possible, use this material to familiarize your staff with the techniques used.

Speak to managers of the individuals you propose to use as interviewers to obtain the manager's agreement. Use this material to raise the manager's awareness of the issues around trafficking in persons and emphasize the importance of trafficking investigation and interdiction. Seek their comments on aspects like time commitment, which may cause them problems, and develop mutually acceptable policies and procedures.

Consider whether you are going to use NGOs as support in interviews. Find out if your legislation allows for this type of involvement.

If you do decide to use NGOs, establish protocols and agreements outlining roles, responsibilities and restrictions within interviews.

Consider what technical resources you can deploy to support trafficking in persons interviews. Be creative: some NGOs and other agencies can provide equipment that your unit may lack. Find out what they have available.

Suggested skills for interviewers

If you are creating a trafficking in persons investigation team and looking for interviewers the following brief summary of skills may help in selecting appropriate staff:

- Questioning skills (particularly any evidence of appropriate questioning vulnerable victim-witnesses versus "interrogation" skills).
- Active listening skills.
- Observation skills: ability to recognize and respond to distress, anxiety, fear, etc.
- Ability to develop rapport with victim, while remaining professional (e.g., showing sympathy, acknowledging harm, patient, etc.).
- Ability to adopt a non-judgemental, non-blaming attitude (e.g., prejudices against caste, migrants, sex workers, women, men). Ability to reassure the victim that he/she has nothing of which to be ashamed, he/she is not to blame, etc.
- Cultural competency: willingness and ability to become culturally prepared/competent to work with persons with different backgrounds.
- Psychological preparedness to deal with highly distressing crimes.
- Professionalism: maintaining a professional but compassionate tone and style. No jargon and no swearing, but all the while still using words and terms that he/she chooses to use and understands. No inappropriate conduct (e.g., no physical contact, however well-intended).



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Anti-human trafficking manual for criminal justice practitioners

Module 9

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Anti-human trafficking manual for criminal justice practitioners

Module 9:
Interviewing child victims of
trafficking in persons



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This publication has not been formally edited.

Module 9: Interviewing child victims of trafficking in persons

Objectives

On completing this module users will be able to:

- Outline some the reasons why suspected child victims of trafficking in persons who are potential witnesses in court may be more vulnerable than suspected adult victims.
- Explain the differences between an interview of a suspected child victim of trafficking in persons and that of a suspected adult victim at each of the stages of an interview.

Introduction

This module is intended to provide awareness of some of the particular issues that interviewing child victims of trafficking in persons raise.

It is not intended to be a training package in interviewing vulnerable child witnesses in general; children should as a matter of duty and practice be interviewed by a specially trained professional. It is acknowledged, however, that in some locations trained staff may not be readily available or it will not be practicable or possible to train interviewers. For these circumstances some basic suggestions are made that can help improve your prospects of conducting a successful interview with child victims. It must be emphasized, however, that wherever possible staff should be trained in this speciality and you should always deploy the very best resources you can when interviewing a child victim of trafficking.

The United Nations Convention on the Rights of the Child defines children as persons under eighteen years of age. Some adolescents may both behave in a mature way and look mature. However, as long as they are under the age of eighteen they are legally regarded as children and must be treated as such.

In cases where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim should be treated as a child until his or her age is verified.

In general, resolution 2005/20 of the Economic and Social Council of the United Nations, entitled “Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime”, outlines the rights of all child witnesses-victims.

Basic principle: Consideration needs to be given to the best interests of the child at each stage of the process. All actions have to be based on the principles of protection and respect for human rights as outlined in the United Nations Convention on the Rights of the Child and other international instruments.

Many of the basic principles of interviewing any vulnerable witnesses are applicable to child witnesses. Child victims of trafficking may be more vulnerable than adult victims of trafficking. Some of the reasons for this are:

- Child victims may be naturally compliant: an instruction from an adult may be followed without question;
- With a lack of life experience children may consider abnormal conduct normal. Similarly, children may not know the words to describe what has happened to them;
- There may be nowhere or no one for a child to go back to. Many child victims of trafficking are unaccompanied when recovered. It may be impossible to trace relatives or they may be dead or displaced;
- Even when traced, parents may not want the child back. Children may be seen as a burden to very poor parents or the parent may be ill. In some locations it is regarded as a shame if you are a failed migrant. The child may be well aware they are not wanted at home;
- The child may not want to return to his or her family. In some cases children have experienced one of the most profound betrayals of trust: that committed by a member of their own family, sometimes their own parents, when the child was given to the traffickers.

These issues have implications at all phases of the interview process.

The suggestions below follow the same format as module 8: “Interviewing victims of trafficking in persons who are potential witnesses”. It highlights where there are similarities and differences in interviewing adult and child victims of trafficking.



Self-assessment

Below what age is a person considered a child?

What are the reasons why suspected child victims of trafficking in persons who are potential witnesses in court may be more vulnerable than suspected adult victims?

Planning and preparation

The basics

What is the story so far? Objective, written plan and planning meeting

The same considerations as outlined in module 8: “Interviewing victims of trafficking in persons who are potential witnesses” are important when planning and preparing for an interview of a potential child victim of trafficking. Additionally you should discuss any proposals to use certain special interview techniques in the interview. Comments below give more guidance on this.

Location

General advice about the location used for interviews applies equally to children. Children should not (as a rule) be interviewed where they live, whether that is a private home, children’s home or shelter. The exception to this is where child specific shelters have a special interview room set aside; this is the case in a number of countries.

Likewise, interviews should never be conducted at the location of exploitation or where the child was found.

Rooms should be made as child friendly as possible. This starts with basic things such as the removing physical dangers and preventing external disturbances such as phone calls or visitors.

The decoration and furnishing of the interview room should be as welcoming as possible. This could include the use of warm colours, soft carpets, providing toys appropriate to the child’s age and gender and some coloured crayons and paper. Do not provide too many toys as it may distract the child.

Interviewers should carefully weigh the pros and cons of the use of toys during an interview—on the one hand the risk of distraction and on the other hand a likelihood to improve the child’s situation and response. The interview should preferably indicate that other children have been there before. Technical office equipment should be limited to that required for the interview such as recording equipment.

Arrangements should be made to transport the child and any accompanying person(s) to and from the interview location.

Time

Preferably, children should be interviewed as soon as possible after their identification as possible victims of trafficking.

However, interviews should not take place until the basic needs of the child have been addressed, including health, sleep and food. Doing this is not only the right of the child but also helps you obtain the best possible evidence.

Length and possible breaks of the interview should be set by the pace of the child and adapted accordingly. If needed, interviewers should schedule a number of days to conduct the interview.

Assessing the victim

Assessing a child's suitability for interview requires a person with particular training and skills such as a specialized social worker or paediatric psychologist.

In some countries legislation prevents children under the age of 14 from testifying, and permits using recorded interviews as evidence. Even where this does not apply, the best interests of the child should be a main consideration. Assessing children's suitability to serve as witnesses requires considering their individual needs and skills, including language, health, maturity and their personal ability to deal with the events.

You may wish to consider inviting an expert to witness the non-verbal communication of the child during the interview.

How is the interview going to be recorded?

Similar considerations apply to both general trafficking victim-witnesses and child victims. In some jurisdictions there may be a legal requirement to interview vulnerable child witnesses on video.

Where it is not a legal requirement, video is the best option as it is not intrusive, helps relax witnesses and can reduce the need to go over the witness's account again.

Check that all technical equipment is working properly before you start the interview.

In cases where a handwritten report is required, it may be advisable that a person listening to the interview in another room records the interview in writing or uses a voice recorder.

Never forget to fully inform the child about what you are doing and why and how the record is going to be used.

Transcribe the written statement in the child's language.

Who should interview the victim?

In all trafficking cases it is desirable that interviewers specially trained to interview vulnerable people are used. This is even more important in the case of child victims.

Build trust with one or two interviewers and translators. Do not change interviewers and translators unless it is absolutely necessary. Changes are likely to confuse or scare the child.

Look for signs from the child indicating distrust or fear of the interviewer/translator. It is good practice to use interviewers and translators from the same or a similar cultural

background as the child, but always consider the child's reactions and his or her best interest.

Consider the gender of the child and what the most appropriate gender of the interviewers should be.

Interviewers must be familiar with the child's name, age, language, cultural background and health condition. Interviewing children requires a lot of very careful preparation.

The presence of a social supporter during child interviews is commonly a legal requirement around the world. In general the practice is that social support is often provided by the witness's parents or guardians. In interviews of child victims of trafficking this may be difficult because it is unlikely you will have access to the parents or guardian.

Care should be taken about who you use as a social supporter. No one who is or may be connected to the crime of trafficking should be used. Where someone presents themselves as a relative to the child victim, they should not automatically be used. You have to be conscious and wary of such an offer: it may be that they were involved in the crime in the first place. Check all information before deploying them.

Similar considerations apply to using interpreters in child interviews as apply in adult vulnerable victim interviews. Module 10: "Interpreters in trafficking in persons investigations" gives further guidance.

Check your domestic legislation. If victims with special needs should be interviewed by specialists, remember that child victims of trafficking are vulnerable victims so should only be interviewed by specialists. Even if you do not have legislation requiring you to use specialists in child interviews use them where you can. When you do not have access to trained interviewers consider how you might get training for yourself or staff.

In situations where law enforcement training is not available, consider if you can get support from a victim service provider, including NGOs. Many NGOs who work in the anti-human trafficking field give victim interview training to their staff. This may not be ideal for law enforcement but could help.

Whenever you approach NGOs, do so in accordance with your national and local policies.

In circumstances where you do not have specialist child interviewers available try to use any member of your staff who has previously interviewed child witnesses successfully. Use this module to raise their awareness.

Duration and breaks

Children are likely to need more breaks than adults and this should be built into your plans.



Self-assessment

What are the differences between an interview of a suspected child victim of trafficking and that of a suspected adult victim at “Planning and preparation” the stage of an interview?



Case exampleⁱ

In 2006, a Western European national who had previously been convicted of sexual crimes against children in his own country was convicted of child sexual abuse in South East Asia. The man was found naked in a guesthouse with a 13-year-old boy whom he had been sexually abusing for close to three years in exchange for financial support to the boy’s family. The case could have been tried in Western Europe but was tried in South East Asia under the domestic law, thereby sparing the child victim, who may have been required to testify, the additional distress and discomfort resulting from overseas travel and sending out a clear message that the South East Asian country was stepping up enforcement of its domestic legislation against sexual exploitation of children. The man received a prison sentence of 18 years—the longest received for such an offence.

Combating Child Sex Tourism: Questions & Answers 2008, ECPAT.

Engage and explain

A key difference between an adult interview and child interview is that the language used should be adapted to the age of the child.

Use open, friendly gestures that are culturally appropriate to the child from the moment you meet them. Social supporters may be able to advise you in some cases.

Interviewers should explain why the interview is taking place and what its purpose is in a language that is appropriate to that particular child. Failing to tell the child what is happening may cause stress and affect the quality of their cooperation.

Information given should also include anything relevant about the location, why the interview is needed, why technical equipment is there and how it works and what will happen to the record of the interview.

Be honest with the child and do not make promises that cannot be kept. Include information on the risks and the realistic advantages of making a statement. Make sure, however, that the child knows that everything done is in his or her best interest and that everything will be done to prevent any harm coming to them.

Make the child feel that he or she is in control by giving comprehensive information and allowing small choices, but do not put responsibility on the child. Explain that the interview is not an interrogation.

If at all possible the interviewers should not wear uniform in an interview. This applies to all interviews with vulnerable victims, but especially so with children.

Clearly introduce all the people in the room and explain why they are there. Again, this is general good practice but is particularly important to a child.

Check that the child understands what you have said. Do not simply interpret meaning into statements. Use as much as possible simple sentences and words, however, but avoid using “babytalk”.

Carefully consider the use of leading questions; preferably do not try to lead the answers in a particular direction.

Do not ask too many things at once; go through the questions one by one.

Do not put pressure on the child: explain that there are no “right” answers and that there is no hurry to complete the interview.

If you have a social supporter who is trained or experienced in interviewing or talking to children, ask them what they would consider appropriate language to be for the child you are dealing with. Keep checking with them as you go through the interview, and check with colleagues who may be assisting in the interview.



Self-assessment

What are the differences between an interview of a suspected child victim of trafficking and that of a suspected adult victim at the “Engage and explain” stage of an interview?

Account

No interviews with vulnerable victims, child or adult, should be seen as interrogations. The purpose of the interview is to help the child disclose information to contribute to the investigation.

Children should not, where possible, be asked to repeat their account. To some extent this may conflict with the process of asking for free recall, then ask questions probing the responses.

In some cases the account, particularly free recall, may be very brief and may describe events in ways that may not make it clear what has happened.

Even though an initial free recall account can be very brief developing that account can provide information that, taken with other evidence, may support a prosecution.

Children may also be particularly susceptible to suggestion, compliance and acceptance. This can be especially acute in trafficking cases where children may have had to comply to survive over a long period of time.

The child may want to be liked and give only answers they think will please the interviewer. It should be emphasized it is appropriate to give any answer accurate to the child's recollection of events, including "I don't know".

Use video recording (see above) wherever possible to reduce the need to repeat certain questions.

Video will only reduce the need to repeat the account to a certain extent; you will still need to probe the account. Good quality note taking in the free recall stage will help plan probing questions effectively so that you need to visit each topic once.

If you are using video you may chose to take a break in the interview and review the tape to plan probing questions. You may also consider reviewing the tape to interpret the non-verbal communication of the child, potentially with the help of an expert.



Case example

You may find the following example distressing. However it does illustrate the type of account you may hear in the interview of a child who has been sexually exploited. While this is a case where the child was victimized by her father it is relevant to trafficking for sexual exploitation cases.

Information was received by Indian police that a six year old girl had been sexually abused by her father. When interviewed it became apparent she had been orally raped, but she would only describe this in terms of being fed by her father.

Interviewers developed her account to some extent but she never explicitly said her father had raped her. The girl was severely traumatized, did not know the words that described the act and had been told by her father that he was feeding her.

Problems were encountered in the case when members of the judiciary asked what the girl meant by her account. They expressed the view that it may be difficult to secure a conviction on the account alone.

Prosecutors and investigators used a child psychologist to explain the victim's account to the court. The result was the father was found guilty and received a sentence of life imprisonment.

Where the account is very brief, be very careful about pressing the child too hard for further detail. You run the risk of traumatizing the child further and destroying any chances of getting any information.

Even a very brief account or one that uses only the child's private description for acts can be valuable evidence. Consider how you might use expert witnesses to interpret this evidence. The example at the end of this section illustrates successful use of this approach.

Where accounts are very brief or where limited information is given, consider stopping the interview. You may be able to review the position at some point in the future together with those responsible for caring for the child such as an NGO or social worker.

Compliance

Similar considerations apply with child witnesses as apply with adults. With children there is a heightened danger of compliance.

Agreement and conforming

As with the comments in the "Compliance" section, there is a greater risk of a child witness agreeing and conforming to what you say.

Styles of questioning

Again similar considerations apply as in the case of adults. Closed and leading questions should only be used with children after very careful consideration.

Special interview techniques

A number of special interview techniques, also known as cognitive interview techniques, have been used around the world when interviewing children. These use concepts such as changing perspective and the use of objects to help the child give his or her account.

Special interview techniques should only ever be used by those trained in their use. They should not be used unless the prosecutor (where there is a separation between investigator and prosecutor) is aware and agrees to their use.

Some approaches involve asking witnesses to move backwards through their account or consider what they might see if they were looking from a different position: these methods would not be acceptable unless the interviewer is trained.

A change in perspective may be acceptable when developing a witness's account by asking what the child could tell from a certain perspective or sense (e.g. if you were standing on the other side of the room, what could you see, smell, hear) in order to obtain an account.

These questions illustrate how you may ask a witness to tell you more about what a sense was telling them:

“You said that you saw a man beating the boy. What else could you see when that was happening?”

This might be developed further by questions such as:

“Who could you see there when the man was beating the boy?”

“What were those people doing when this was happening?”

“You said you saw the man beating the boy. What could you hear when this was happening?”

This might be developed by questions such as:

“The boy was screaming. Could you hear words?”

“What were those words?”

Do not use toys and other props to demonstrate what happened unless you have been trained in the method. Even where trained staff are used, this is a controversial technique.

Let children have a toy if this comforts them, but do not try to interpret what they do with the toy.

In some sexual exploitation cases it may be appropriate to use an anatomical drawing for the child to help the child indicate what happened.

Under no circumstances should the child ever be asked to demonstrate or indicate what happened on themselves, the interviewer or any other person present.

If you do use diagrams, or the child draws, you should record how this was introduced and what happened. Retain any material produced and exhibit it in accordance with your local procedures.



Self-assessment

What are the differences between an interview of a suspected child victim of trafficking in persons and that of a suspected adult victim at the “Account” stage of an interview?

Closure

Use the child's language (as far as possible) to summarize the main points of evidence in the child's statement. Check that you have understood what you have been told.

Where present, check with the second interviewer to see if they want to ask any further questions or clarify any points

Ask the child if they have anything they want to ask or add.

Tell the child what will happen next. Answer any questions in language appropriate to the child honestly and realistically. Don't make any promises you cannot keep.

Thank the child for their time and effort. Show you have taken their account seriously but do not thank them for making any disclosure.

If you think there might be further interviews, let the child know.

Give the child some time to relax after the interview has finished. The child should leave the interview feeling as positive as possible. You may consider discussing neutral topics that may have been mentioned at the "Engage and explain" phase or that the child has mentioned during the interview.



Self-assessment

What are the differences between an interview of a suspected child victim of trafficking in persons and that of a suspected adult victim at the "Closure" stage of an interview?

Evaluation


Evaluation should not be seen as something that is done only at the conclusion of an interview. There may be a number of points in an interview when it would be appropriate and useful to pause and evaluate what has happened.

General principles of evaluation of an interview are similar whether it is a child or adult being interviewed. You should consider involving the person managing the investigation, other investigators and any other relevant agencies (such as social services and NGOs) in the debrief.

In some case you may need to involve a specialist to help evaluate the information such as a child psychologist.

One possible difference between a trafficking interview and other vulnerable witness interviews is that in trafficking cases there is a greater possibility that you will need to have further interviews due to the complexity of these cases. The evaluation phase should be used to consider if this is needed in the case under investigation. Your evaluation should include details on the information obtained, the need for further questioning, etc.

Keep a record of the debriefing session and all decisions made.

	Self-assessment
What are the differences between an interview of a suspected child victim of trafficking in persons and that of a suspected adult victim at the “Evaluation” stage of an interview?	

Summary

A child is a person under 18.

Many aspects of interviewing child victim-witnesses of trafficking are similar to interviewing vulnerable adult victim-witnesses of trafficking.

Children may be more vulnerable in interviews because they:

- May be more compliant;
- Consider abnormal conduct normal;
- Do not know the words to describe what has happened;
- Do not have relatives, their relatives do not want them or they do not wish to return to their relatives.

Planning and preparation

- Rooms should be made child friendly;
- Length of interviews should be set by the pace the child is comfortable with;
- Children may need extra breaks;
- Wherever possible children should be assessed for suitability for interview by an appropriately qualified person;
- Transcribe the written statement in the child’s language;
- Wherever possible children should be interviewed by specially trained interviewers;
- “Social supporters” should be used wherever possible.

Engage and explain

- Language used should be adapted to the age of the child;
- Explanations should be clear and simple but you should avoid using “baby talk”.

Account

- “Free recall” in a child’s account may be very brief and vague. Even though an account may be brief it can form the basis of a successful prosecution with skilful development;
- Children are particularly vulnerable to suggestion, compliance and acceptance;
- Closed and leading questions should only be used after very careful consideration;
- Special interview techniques should only be used by appropriately trained people;
- Toys and props should never be used if you haven’t been trained. Even if you have been trained, the method is controversial.

Closure

- Any closing comments should be made in the language the child understands.

Evaluation

- Consider involving child psychologists or other specialists in the evaluation.



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Anti-human trafficking manual for criminal justice practitioners

Module 10

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Anti-human trafficking manual for criminal justice practitioners

Module 10:

Interpreters in trafficking in persons investigations



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This publication has not been formally edited.

Module 10:

Interpreters in trafficking in persons investigations

Objectives

On completing this module users will be able to:

- List the situations in which interpreters may be required in trafficking in persons investigations;
- Explain why it is important to retain an interpreter throughout a trafficking investigation;
- Explain the considerations when planning interpreting services;
- Describe the actions required when contacting an interpreter;
- Describe the actions required when preparing to conduct an interview;
- Identify the information that should be given to interpreters in trafficking interviews.

Interpreters in trafficking in persons investigations

This material uses the term interpreter throughout. An interpreter is a person who interprets speech from one language to another. A translator is a person who translates writing from one language to another. Although there may be a need for translation in some trafficking in persons cases, the majority of work required is likely to be interpretation.

Interpreters may be required in a number of situations in a trafficking investigation.

These include:

- Accompanying law enforcement staff on raids and similar operations;
- When a victim is recovered unexpectedly by law enforcement activity, presents themselves or is “rescued” by a third party;
- Using specialist techniques such as communications interception or electronic monitoring equipment;
- Interviewing victims;
- Interviewing suspects.

There are some considerations that apply to all these situations and others that only apply in certain circumstances.

Getting the right interpreter and keeping them throughout the investigation will make a significant contribution to the success of your investigation.

When dealing with victims it is likely you will have to stabilize them and reintroduce a sense of order and control to their lives. An interpreter the victim feels they can work with, one who stays throughout the case, is one way to help restore that order and control. Frequently changing interpreters erodes the sense of order and may lead to difficulties in re-establishing rapport between investigator, victim and interpreter.

Suspect interviews and surveillance interpretation bring other challenges if the interpreter leaves half way through a case. Vetting may take a long time and is probably not going to be easy or even possible in some cases. Interpreters with the skills to identify when they are hearing something that suggests someone is at risk might be rare.

For all these reasons it is essential that you do all you can to make sure the interpreter is willing to work with you and stay working with you. Obviously, if you find someone is not suitable for some reason you should not continue to use him or her. However, if they are competent you need to keep them. Keeping them involves being honest and open from the outset, finding out what their concerns are, trying to address those concerns, arranging acceptable accommodation, food and breaks for them when they are working with you.



Self-assessment

In what situations may interpreters be required in trafficking in persons investigations?

Why is it important to retain an interpreter throughout a trafficking investigation?



Case exampleⁱ

In a case investigated by an Eastern European prosecutor in June 2006, a victim from a neighbouring country was asked if she considered herself as a victim of trafficking. She replied in the negative. Subsequently, she privately asked the interpreter what the term “victim” actually means. When she was given examples of circumstances and abuses that would make her a victim, she replied that she had suffered much worse treatment.

Planning interpreting services

Interpretation can be a very sensitive and difficult area for investigators to manage. Good practice is to use a person independent from the investigation as the interpreter but this

brings the risk that the interpreter will not be familiar with procedures, may jeopardize the operation and, in some cases, may endanger the victim.

To minimize these risks it is essential to plan as much as possible before you need the services of an interpreter in a “live” investigation. Consider the following suggestions.

Have an approved list of interpreters

The people on the list should have, wherever possible, properly accredited qualifications in interpretation, direction of interpretation (e.g. from English to French, from French to English etc.) and be of both genders.

Some interpreters may not be suitable for certain types of criminal cases, e.g. sexual exploitation cases for a number of reasons which are outlined below.

They should also be vetted against your local intelligence and criminal records systems and, where appropriate and possible, against the intelligence and records systems of other countries where they may have originated or resided in.

You may require a formal contract with an interpretation service. If you do, ensure that the contract is not overly restrictive. Some law enforcement agencies have found contracts do not cover certain languages or the interpreters are not suitable for certain cases but the contract prevents the agency using other interpreters.

Make sure list includes interpreters for languages you need

Globalization and relative ease of movement means that in some locations languages have arrived that were unheard of ten or even five years ago. Do not be complacent and content with a list that may only cover the languages of longer standing communities in your area.

Be proactive and use intelligence to find out which linguistic groups are present now in your area of responsibility.

Speak to law enforcement staff on the ground to find out which languages they are hearing on the street.

Identify any informal arrangements staff on the ground may have that could be formalized by vetting the people they use and establishing what qualifications they have.

Are interpreters psychologically or emotionally suitable?

Interpreters who may be technically very efficient and capable may not necessarily be suitable to use as interpreters in a trafficking case: translating in a case of theft from a shop is not the same as translating in a case of trafficking for sexual exploitation.

Establishing if a person is able to cope with hearing about serious violence, graphic sexual detail and abuse is not easy, but direct questions may help. Direct questions should be handled

sensitively, but you may consider asking how the interpreter would feel if certain topics were discussed. There have been problems in some locations where interpreters have not interpreted exactly what victims have said because they are too embarrassed or because they do not want to use street words for various sexual acts for example. There may be evidence that an interpreter has successfully worked on a potentially disturbing case in the past.

Are interpreters ethnically, culturally or religiously suitable?

In many parts of the world people who share the same language may have long running inter-ethnic, cultural or religious tension. Simply because a person speaks the same language or comes from the same country does not mean it would necessarily be appropriate to use them as interpreters with individual victims. Even where there is no inter-communal ill feeling there may be simple misunderstanding because the interpreter and interviewee come from different social backgrounds or locations.

Suitability may be obvious in some cases, but not in others. It helps if you are aware of the likely points of tension around individual languages and cultures and can spot some of the more obvious problems. Tactful questioning of the interpreter could also help you to build a picture of the situations where it would and would not be appropriate to use them.

Continuity

If possible, use the same interpreter throughout the process. This reduces the stress on the victim.

Promote awareness of the list

Having interpreters available is not much use if no one knows they are there. Do as much as you can to ensure that staff are aware of the list.

Awareness should not be confined to specialist investigators. One of the essential elements of a successful trafficking investigation is that first responders are able to identify that trafficking may have taken place; this is often only possible if they can understand what the victim or other witnesses are saying. Everyone should know about the interpretation services available.

Get feedback

Wherever you can, get feedback on how a interpreter has performed on a case. Feed this back into any records you may keep about them, ensuring any comments are evidenced and reasonable.

Telephone interpretation

In some jurisdictions, interpretation over the phone may be appropriate in certain circumstances. The same planning considerations should apply to phone as in face-to-face interpretations.

Telephone interpretation is most likely to be suitable only in the very early stages of an enquiry to get the basic details of an account. As with face-to-face interpretation only vetted and accredited interpreters should be used wherever possible.

Some countries and law enforcement agencies have contracts with companies who provide 24-hour interpretation over the telephone for many languages. These services can be very expensive.

Law enforcement agencies in other countries may be able to help with phone interpretation in some circumstances. However, this is not to be recommended as standard procedure as the quality of interpretation may be variable and there could be international cooperation and (possibly) risk assessment issues in some locations.

How much will it cost?

Interpretation services can be very expensive, particularly in trafficking investigations that might be long running and involve a number of languages.

If you have an established list of interpreters you may have an established pay and expenses rate. There may also be fees set by interpretation professional bodies in your country.

If fee scales are not already agreed upon, you should agree on the issue at the planning stage.

It may also be advisable to negotiate an overall contract price for situations where an interpreter may be used for an extended period.

Other related measures

There are a number of other things that you may want to consider that are related to interpretation.

Many countries have produced posters and leaflets in various languages that are specific to trafficking. Simple leaflets can be produced relatively cheaply. If you do not have the facilities to produce them yourself, you may consider contacting other countries who have produced material in the languages you need.

Some countries have used documents that contain visual prompts such as flags to help victims and witnesses identify their nationality. This may be useful in helping identify the language they speak but is not necessarily conclusive.

Technological solutions have been used in some locations such as digital players with messages recorded in a number of languages.

Recorded messages for suspected trafficking victims

One country has obtained a number of digital players through a sponsorship deal with the manufacturer. Messages to suspected victims have been recorded in a number of languages that give information about the investigation process.

What if we don't have time to plan?

Trafficking cases can appear suddenly, apparently from nowhere. Enquiries already underway can take unexpected turns. One consequence of this characteristic of trafficking is that you may find you need interpretation services you have not been able to plan for.

Where this is the case you should use the principles above to identify what you are going to do. This is not ideal, but the structure should give you some idea of the questions to ask and checks to do to minimize the risks and maximize your chances of successfully using interpreters.

“Volunteer” interpreters

There may be circumstances where people “volunteer” themselves as interpreters. It may be tempting to use them, particularly where there are very few interpreters for a language or they are not available.

As far as possible, volunteer interpreters should be avoided in trafficking cases. They may be connected to the traffickers, or at least know the victim and his or her family.

If the use of volunteer interpreters is unavoidable, do what you can to assess if they may be linked to traffickers (using people from the same car for example may be particularly risky), watch for reactions of the person who is being interpreted, keep the use of the interpreter to an absolute minimum and check their interpretation when you have access to an official interpreter.



Self-assessment

What are the considerations when planning interpretation services in trafficking cases?

Contacting the interpreter

Are they the right person?

Where you have a list of interpreters, use what information you can to establish if a particular interpreter is appropriate for the circumstances you intend to use them in.

If you don't have a list, consider the questions shown in “Planning interpretation services” to give you some guidance about who you should use. It is acknowledged that in practice your choice may be very limited and time pressing but considering the planning and preparation questions may help you avoid some problems.

What should I tell them?

On first contact with the interpreter give them some details about the job they are being asked to do.

These details should include what type of crime is under investigation, what type of interpretation they will be expected to do (verbal interpretation in an interview, verbal interpretation plus a written transcript of what has been said, etc).

It is very important to give interpreters an estimate of how long they will be involved in the case. This will allow them to make any necessary personal arrangements and plan whether the need to bring extra clothes etc. or even decide they cannot take the job. Interpreters are an essential element to interviews: failing to be honest with them can lead to them leaving after a short time. This can be particularly serious in trafficking victim interviews as it is very important to establish as much stability and continuity as you can.

Enough information should be given to allow the interpreter to decide whether they are willing and able to take the job, but not so much that you compromise the investigation.

Try to make sure they know the interpretation for words they are likely to encounter in the interview. This may be difficult to anticipate but an example may be a woman whose only words in your language describe particular sexual acts; the words she used may be street words the interpreters may not be familiar with. Similarly, in a case of labour exploitation it may be very likely that certain words associated with particular industrial or agricultural processes will be used. Give the interpreter enough information to allow them to do some research before they arrive.

Conflicts of interest

Establishing if there is a conflict of interest in using a interpreter in a particular case is essential. This can be a sensitive area which requires a particularly careful balance between revealing too much and not enough.

Some communities may be very small in your location, meaning that there is a good chance interpreters may know the victim. There is also the possibility that the interpreter knows of the victim or their family through links in their country of origin or residence.

Traffickers have frequently shown they will attempt to infiltrate investigations and using the interpreter is a good way of doing that. Be very careful not to use anyone with links to the traffickers or their associates.

Interpreters may be at risk of intimidation, threats and corruption even though they are not initially associated with the traffickers.

Using separate interpreters for more than one victim-witness and for the suspect

Ideally, in trafficking cases separate interpreters should be used for each victim and suspect. Using separate interpreters reduces the possibility of cross contamination of accounts,

secondary traumatization of the interpreter and attempts by suspects to corrupt interpreters to help intimidate victims.

It is acknowledged that this may not be practical in many situations, but the minimum should be that the very strongest efforts possible are made not to use the same interpreters for victims as are used for suspects.

Costs and personal needs of interpreters

Establish as far as you can how much the interpretation work is going to cost.

If the interpreter needs to stay away from home arrange appropriate accommodation for them. This is the type of consideration that helps ensure a interpreter will stay with the investigation as long as required.

Similarly, do what you can to arrange transport whether that is long distance or daily trips to and from the location of an interview.



Self-assessment

What actions are required when contacting an interpreter in a trafficking case?

Preparing for the interview

On arrival give the interpreter more details of the case.

Check if the interpreter feels comfortable being involved in a trafficking in persons investigation.

Check again if there is any possible conflict of interest.

As an interviewer you should make interpreters aware of the following points:

- Interpreters should remain independent of the investigation.
- At the start of the interview, the interpreter should make it clear they are independent to all those present: victim, social supporter and interviewers.
- Everything said in an interview is strictly confidential. Nothing an interpreter hears should be communicated to third parties.
- Their role should be confined to facilitating communication between people who would not be able to communicate without the presence of an interpreter.
- Any interpretation should take place under the supervision of you or another a law enforcement officer.

- Interpreters should avoid becoming personally or emotionally involved in the case. Ideally, interpreters should have the same access to psychological help as law enforcement officers investigating the case.
- If they are approached by anyone outside the interview (victim, witness, suspect, defence lawyer or other third party) they should report the approach to you or another law enforcement officer.
- If at any point it becomes apparent to the interpreter there is a conflict of interest they should bring it to your attention immediately.
- Where the person being interviewed suggests that any person is in danger, the interpreter should bring it to your attention immediately but as discretely as possible.
- Explain how the interview will be recorded and how you would like the interpreter to keep records. This may be determined by regulations or practices in your jurisdiction. Depending on domestic legislation, translators may be required to keep notes in both languages, record the question and replies in the same language or questions in one language, responses in another.

Consider giving the interpreter the “Guidance for interpreters” found in annex 1.

Allow interpreters time to prepare for the interview when they arrive. Interviews may be urgent in some cases but even a small amount of preparation time for interpreters can improve the quality of the interview.

If appropriate, check again if they feel there may be technical or street terms they may need to research before the interview starts.

Further guidance on trafficking in persons interviews of victims may be found in module 8: “Interviewing victims of trafficking in persons who are potential witnesses”.



Self-assessment

What actions are required when preparing for an interview in a trafficking in persons case that requires an interpreter?

Summary

- Unless it is absolutely unavoidable, do not use “volunteer” interpreters.
- Interpreters interpret the spoken word; translators translate the written in word.
- In the majority of trafficking in persons cases the requirement is likely to be for interpreters not translators.
- Situations where interpreters may be required in trafficking cases include raids, recovery of victims, use of specialist techniques and interviews of victims, witnesses and suspects.

- It is very important to retain an interpreter throughout a trafficking investigation.
- Have an approved list of interpreters.
- Ensure the list includes interpreters who:
 - Can interpret the languages and dialects you require;
 - Are psychologically and emotionally suitable;
 - Are ethnically, culturally or religiously suitable.
- Make staff aware of the existence of the list.
- Negotiate fees before using an interpreter.
- Consider planning for and using telephone interpretation services where appropriate.
- Always check that the interpreter knows the language and dialect involved before using them.
- Brief the interpreter on:
 - The length of time they may be away;
 - Any technical or slang words they may need to research.
- Check there is no conflict of interest;
- Give enough information to allow interpreters to decide if they will take the case, but not so much it compromises the investigation.
- On arrival at the location an interview is going to take place, check again they can speak the correct language etc.
- Give the interpreter more information about the case.
- Consider giving them a copy of annex 1, "Guidelines for interpreters".

Annex 1. Guidelines for interpreters

Purpose of a law enforcement interview

The purpose of any law enforcement interview, whether of witness or suspect, is to:

- Establish the facts in a case;
- Obtain all possible information;
- Collect evidence to allow a decision to be made on whether to prosecute or not.

It is not necessary to obtain a confession.

The role of an interpreter in a law enforcement interview

The role of the interpreter in a law enforcement interview is to accurately interpret questions put by the interviewer to a witness or suspect and the response to those questions.

It is not the role of the interpreter to act as a social worker or counsellor to a witness, or to provide any form of guidance or suggestions to the person being interviewed.

You should not be asked to guard a person or remain with them without the interviewer or other law enforcement officer being present. You should decline to do this if you are asked to do so. If you are left alone with the person being interviewed you should leave.

When your services are requested by law enforcement

When you are asked to attend an interview, let the interviewer know when you will be able to arrive at the interview location. This is very important for investigators as there may be legal time limits on how long they can hold a suspect or speak to a witness.

Ask the interviewer how long he or she thinks the interview will take. Let the interviewer know if you have any other commitments during this time. It is not acceptable to let the interviewer know about a pre-planned commitment during the interview.

Ask the interviewer to give you a summary of the case. This summary should be brief.

If you are told anything that suggests there is a conflict of interest or any other reason why you cannot do the interpretation tell the interviewer immediately. The interviewer will decide if it is appropriate to use you.

Ask the interviewer if there are any slang or technical words you may need to research before you start the interview.

Check the language and dialect the person is speaking. Do not rely on the interviewer to do this as they may not be able to identify the language. The best way to this is to ask for the person to be brought to the phone and listen to the person speak.

At the interview location

The interviewer should give you a more detailed account of the case under investigation.

You will be asked if there is any conflict of interest in acting as interpreter for a particular witness or suspect. There may be a number of reasons why there might be a conflict of interest. Common examples are knowing the person or knowing members of their family.

Tell the interviewer about anything you think might be a conflict of interest. The interviewer will decide whether he or she feels this will affect the case. They may decide it is not appropriate for you to continue as interpreter.

If anything happens during the interview which suggests there is a conflict of interest you didn't know about tell the interviewer immediately.

In particular, let the interviewer know immediately if there is any attempt to corrupt or threaten you while carrying out your duties.

Ask the interviewer where he or she wants you to sit in the interview room. The interviewer may ask you to sit out of the immediate view of the interviewee.

In the interview

If you have not had the opportunity to check the language and dialect spoken by the person being interviewed you should do so now. Do not discuss the case. Be brief, conversational and confine yourself to establishing the language and dialect spoken.

The interviewer should introduce you to the person that is being interviewed.

The interviewer must stress the fact you as an interpreter are independent, and that you are not:

- An investigator;
- Involved in the investigation in any way;
- A lawyer, judicial advisor, social worker, etc.;

and

- Your only role is to facilitate communication between people who speak a different language.

If the interviewer does not do this, ask him or her to do it.

Accurate interpretation of the language used by the interviewer and person being interviewed should reflect the level of language used and the exact words and phrases used.

You should not change the grammatical structure of the questions and responses.

It is very important that you do not change the meaning of words that you may find embarrassing or disturbing.

You should not add anything to what was said.

The interviewer will put his or her questions directly to the witness or suspect. For example a question should be "Where were you at the 10 in the morning?" not "Ask him where he was at ten in the morning".

How the interview is recorded will depend on the rules of the jurisdiction and whether it is a suspect or witness interview. It may take the following forms:

- Writing responses down as a general text;
- Writing the questions and responses in a question and answer format;
- Recording the interview on audio tape;
- Recording the interview on video tape.

Questions should be asked one at a time. The interviewer should pose the question, you should interpret it for the interviewee, allow them time to respond and then interpret the response for the interviewer.

Do not put questions in the third person. "Where were you?" should not be translated as "She is asking where you were".

Do not change the structure of the question. Open questions need to stay open. "Where were you?" can not be changed to "Were you there?" ...

In general, interpreters should not ask questions or intervene in the interview except in the following circumstances:

- If you don't understand a question or response to clarify what was said;
- To indicate to the interviewer that the person being interviewed does not understand what a question means;
- To point out any cultural differences between interviewer and the person being interviewed that are relevant to communication. An example is nodding, which in some cultures means "Yes", in others means "No".

If you have to intervene, tell the interviewer why.

Wherever possible avoid putting your home or business address on any document that may be disclosed to a defendant in a case. It is permissible to give the police station or other law enforcement premises as a contact address.

Do not have a conversation in a language that one of the people involved does not understand. Always interpret what was said.

Report any form of threat to the interviewer. You always have the right to stop the interpretation for such reasons.

Make it clear to the interviewee that he can not give you any information that he or she doesn't want you to report to the interviewer.

As a general rule you should never have confidential conversations with the interviewee whether they are requested by the interviewee or the interviewer.

In some exceptional cases you may have a confidential conversation with a victim of crime. This should be very carefully managed. If you do have such a conversation you must always make the interviewee aware you will inform the interviewer of the content of the conversation.



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Anti-human trafficking manual for criminal justice practitioners

Module 11

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Anti-human trafficking manual for criminal justice practitioners

Module 11:

Victims' needs in criminal justice
proceedings in trafficking
in persons cases



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Module 11:

Victims' needs in criminal justice proceedings in trafficking in persons cases

Objectives

On completing this module users will appreciate:

- That victims of trafficking are usually faced with myriads of challenges;
- That some of these challenges are needs to be supported by different professionals;
- That effective addressing of these needs will facilitate the physical and psychological recovery of victims to enable them to participate effectively in the criminal justice process.

Introduction

This module explores the provisions of articles 6, 7 and 8 of the Trafficking in Persons Protocol regarding the needs and rights of victims of trafficking and gives practical suggestions on how to provide and support these needs and rights throughout the criminal justice process: spanning from interdiction and investigation to prosecution of the trafficking in persons offenders.

Victims' rights and needs are not additional to the investigations or pre-trial and trial processes; they are in fact at the core of the whole process. Cooperation from victims is a key factor of success in any trafficking in persons investigation and prosecution. If you do not have a victim to testify, you may have no case to present to court. It should be noted however that ideally such support, assistance and protection should not be made conditional upon victims' capacity or willingness to cooperate in the legal process.

Victims' rights are provided for in the United Nations Convention on Transnational Organized Crime (UNTOC) and the Trafficking in Persons Protocol. Those rights are additional and complementary to those provided for in the Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted by G.A. Resolution 40/34 1985). While the Protocol made some rights of victims mandatory, a significant proportion of them are discretionary. Thus in practice, the rights available to victims vary between jurisdictions. It is however advisable that although your legislation may not provide for certain needs of victims as rights, you may wish to consider how you might provide such assistance in order to address victims' needs as a matter of good practice.

The conditions of a trafficked victim may present what may be a unique range of challenges to investigators, prosecutors and the judiciary. The victimization process in trafficking is complex, multifaceted and often prolonged. To counter the effects of this process, the rights/needs based approach to addressing the problems of victims must be equally comprehensive and effective. Some of the practical solutions to the needs of victims suggested in this module will require additional resources such as accommodation for victims or some elements of witness protection measures. Resources may be important, but the critical element to success of the rights/needs approach is you as part of the criminal justice system chain. Your ability to recognize issues, develop creative solutions within the context of your role and jurisdiction you work in and provide practical supports to victims of trafficking.

This module gives some practical suggestions about how you can support those rights and needs. It divides these supports into the investigation and court hearing stages, which encompass among others emotional support, direct assistance and providing information to the victim at every stage of the whole criminal justice process.

Articles 6, 7 and 8 of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime requirements for the assistance and support are in two categories: namely, mandatory procedural requirements and basic safeguards, and discretionary requirements that provide assistance and support for victims. These articles should be read and implemented in conjunction with articles 24 and 25 of the TOC, which make provisions for victims and witnesses. Article 24 of the TOC cover victims to the extent that they are also witnesses while article 25 covers all victims.

These provisions underpin the rights of victims in trafficking cases. As you will see through this material, indications are made where an action would specially support one of the provisions of the Trafficking Protocol

General principles

A number of general principles apply to all trafficking cases. They are:

- Victims of trafficking should be identified as victims of crime;
- They should not be treated as criminals;
- They should not be treated only as a source of evidence.

Failing to recognize a person as a potential victim of trafficking may not only violate that person's rights and cause harm but also hamper opportunities to deal with trafficking in persons offenders through interdiction, investigation and prosecution.

The problems are compounded if such a person is treated as a criminal. Building trust is essential to gaining the cooperation of a victim. An arrest and detention will cause a serious set back or destroy any chance of building that trust.

Victims are obviously a very significant source of evidence but if their basic needs are not taken care of, they are a source that may quickly disappear. Thus treating a trafficked victim purely as a source of evidence is a short-term approach likely to fail.

Support during investigation of the crime

Information and communication

At the investigation stage when the law enforcement officers first come in contact with a victim of trafficking in persons, the officers should as a matter of duty employ certain measures that engender confidence and trust from the victim. Some of the basic steps include but are not limited to the following:

- Ensure that you are aware of the rights and assistance available for victims within your jurisdiction. Familiarize yourself with the processes of your criminal justice and social service system in providing for the immediate needs and assistance to the identified victim of trafficking to avoid unnecessary delay. This knowledge will help ensure you are providing accurate information and allow you to realistically plan victim support.
- Always tell the victim who you are and your role in the whole process. Where other professionals are involved and introduced to the victim, identify them and explain their respective roles or ask them to do so themselves.
- Ensure you have a competent, non-biased interpreter involved, if needed.
- Whenever possible, let the victim know what is happening and why it is happening. Knowing the reasons for certain actions is likely to increase trust and enhance the possibility of the victim cooperating in the investigation and as a witness during the trial. (This is in line with article 6 (2, 3) of the Trafficking in Persons Protocol.)
- As soon as circumstances allow, tell the victim what his or her rights are and what assistance can be provided.
- Never make promises of assistance that cannot be kept.
- Everyone involved in the criminal justice process (including investigators, prosecutors and the judicial officers) should communicate clearly in the language and in a way that the victim understands. (This is in line with article 6 (3) of the Trafficking in Persons Protocol.)
- Double check information passed and make sure that the victim understood what he or she has been told. Invite questions from the victim to ensure dialogue and mutual understanding. If there is no response, do not force the issue. If possible, change your mode of interviewing. Allow for a short recovery period and consider checking his or her understanding later (This is in line with article 6 (2, 3) of the Trafficking in Persons Protocol).

- Check for any available information leaflets that may be useful to the victim. Such leaflet must be ones that the victim can read and understand
- Be aware that the victim may be suffering from trauma. While being mindful of the possible effect of trauma on the victim's ability to give an accurate account of the events, emphasize the need for and value of detailed, coherent and accurate accounts of the events leading to his/her present circumstances.
- Any intrusive investigative processes requiring physical and psychological examination and evaluation should only take place with the informed consent of the victim. The victim should be informed of the steps and the process involved and why it is required. The victim's silence should not be construed as consent.
- The victim's privacy, identity and information disclosed during the examination and evaluation process should be kept confidential. His or her rights to privacy and confidentiality in accordance with your legislation should be protected at all times during the investigation.

It is recommended that information material be produced in different languages regarding the rights, available assistance and protection to victims of trafficking in persons. This recorded information should be kept in police stations etc. for ease of accessibility to victims.

Emotional support

- Qualified professionals should undertake early assessments of the victim's psychological and emotional situation as soon as the victim comes to the attention of investigators.
- Assessments should be done to identify the immediate needs of victims as well as their psychosocial ability to go through the process of investigation and prosecution.
- Assessments can also identify those victims who are either so traumatized by the process of trafficking or have other disabilities that may affect their ability to undergo the whole criminal justice process. The outcome of such assessments will inform any alternative measures/decisions that may be necessary. Victims' initial healthy appearance should not be a bar to the requisite assessment.
- Qualified personnel should conduct assessments. Some criminal justice systems may provide such professionals and, where such professionals are not available within the system, they should consider working with the staff of appropriate victim service providers, including NGOs with such capacities. Before doing so, satisfy yourself of the competency and reliability of the professionals the NGOs or the organization intends to use. The professionals should be aware of trafficking in persons requirements regarding the rights and needs of victims.
- Where qualified professionals are not readily available, the practical guidelines given in module 3: "Psychological reactions of victim of trafficking in persons", on the effects of trauma in trafficking in persons involving sexual exploitation, may be used as an interim measure. It must however be emphasized strongly that using these guidelines does not replace the need for full assessment. The value of the guidelines is to help plan some degree of support where professional assistance is not available.
- Closely linked to the assessment of the victim is the provision of medical and psychological assistance and counselling that should be available throughout the process of

investigation up to and including a court hearing. Such assistance and counselling may help a victim recover from trauma but also help ensure they give the best possible support to the investigation and prosecution of the case. (This is in line with article 6(3) of the Trafficking in Persons Protocol.)

- Even where it is strongly felt that there is evidence on a victim's body that will support a prosecution it should not be obtained without his/her consent. A medical examination without full and informed consent is likely to damage trust and reduce the chances of the victim cooperating further with the investigation. Depending on the legal system, victim should be told whether he/she has the right to decline.
- Medical examinations should be conducted within the accepted social and cultural sensitivities of the victim and the environment and only with the consent of the victim. The primary reason for a medical examination should be to ascertain the health and well-being of the victim while the evidential corroborative consideration of such an examination should be secondary. Examinations should be carried out by examiners of the same gender.
- Offer alternatives to intimate examinations such as recording visible injuries when clothed. This may achieve the necessary balancing of a victim's right to privacy with obtaining information for the investigation.
- Where available, the examiner should endeavour to use facilities such as sexual offence investigation suites. These allow examinations to be conducted in a dignified manner that would guarantee the victim's rights
- If such support is not available, consider how you can work towards making it available, for example by working with NGOs, involving law enforcement specialists in areas such as sexual offence investigation and creating policies to return control to victims by offering choices in things such as food and clothing.
- If you do not have access to the requisite examination facilities as mentioned above and making them available would take some time, use clean rooms and give privacy during examinations. If it is possible in your local situation and jurisdiction, consider using medical facilities.
- Supportive environments and individuals at all points in the trafficking in persons criminal justice process may help in a victim's early recovery.
- Some jurisdictions have specific legal requirements to provide social support to vulnerable victims, both at the investigation and court hearing stages. This could be achieved by allowing a social worker/counsellor to be present at the appropriate phases of proceedings.
- Consider providing victim support facilities including social worker/counsellor for victims of trafficking as a mark of good practice even if there is no specific law backing such practice, provided it is not prohibited.
- Where you have no formal structures to provide support, NGOs may be able to assist. Again, ensure the reliability, understanding and competence of the personnel of this organization before leaving your victim at their mercy. (This is in line with article 6(3) of the Trafficking in Persons Protocol.)
- Effective investigation of all trafficking cases regardless of the immigration status of the victims is important. Failing to investigate a trafficking in persons crime properly just because of the person's illegal status in the country only means traffickers can flourish and victims are likely to be re-trafficked. Victims have the right to be questioned

appropriately. Inappropriate questioning such as an intrusive interrogation approach is likely to prevent cooperation and reduce the amount of information you obtain. Module 8: “Interviewing victims of trafficking in persons who are potential witnesses” gives guidance on an appropriate approach. While it is focused mainly on investigative interviews, the principles apply to all forms of interview. (This is in line with articles 6(3) and 7(2) of the Trafficking in Persons Protocol.)

- Be particularly sensitive to the special requirements of children when interviewed. Module 9: “Interviewing child victims of trafficking in persons” will help with this. (This is in line with article 6(4) of the Trafficking in Persons Protocol.)

Direct assistance

- Assess the risk to the victim from the outset. Review this assessment continuously in the light of any new information that emerges. See module 5: “Risk assessment in trafficking in persons investigations” for further information.
- Provide effective protection for the witness from the time they come to the attention of investigating authorities until the conclusion of the proceedings. Allowing suspects to gain access to victims may destroy a case as well as sometimes putting the witness at risk of injury or even liquidation. See module 12: “Protection and assistance to victim-witnesses” for further information. (This is in line with article 6(5) of Trafficking in Persons Protocol.)
- To the extent possible, protection should be extended to the families of victims and in particular the victim’s children as well as the victim themselves. Failing to protect families may mean traffickers have a hold and influence over the victim.
- Detail records of treatment expenses of victim should be kept for references in case of any allegation that the victim’s cooperation was “bought”.



Self-assessment

What types of support and assistance would you give to a victim of trafficking during the investigation phase?

Why should the victim be given the support and assistance?

Support in the pre-trial and trial phase

Information and communication

- Victims of trafficking in persons are the people with the greatest interest in the successful prosecution of offenders. A professional and competent investigation is in their interests. Whenever you can, let the victim know what is happening and why it is happening. Knowing the reasons for something is likely to increase trust and enhance witness contribution. (This is in line with article 6(2 and 3) of the Trafficking in Persons Protocol.)

- If you take any personal belongings from the victim or persons with direct bearing to the victim for purposes of corroborative evidence, inform the victim or that person that the material evidence is kept in safe custody and will be returned at the appropriate time.



Case example

During the trial of a trafficker in one of the West African countries, some corroborative material evidence, such as wood carvings, pictures, books and some objects recovered from the shrine of a juju priest, who eventually became the prosecution witness, were returned at the end of the court proceedings. The trafficker was convicted and sentenced to some terms of imprisonment.

- Information you may consider communicating includes:
 - Likely time before a case will come to trial in a full hearing;
 - Any information about the location of suspects, for example if they are held in custody and, particularly, any change to those circumstances such as the release of a suspect;
 - Court processes, particularly whether or not victims will be screened from the view of the public and media of any other special measures available in the court. (This is in line with article 6(5) of the Trafficking in Persons Protocol);
 - Support that is available in the time leading up to the trial, at the trial or after the trial. (This is in line with article 6(3) of the Trafficking in Persons Protocol);
- Communicate these messages clearly in a way that the victim understands. Everyone involved in the process should do this: investigators, prosecutors and the judiciary. (This is in line with article 6(2 and 3) of the Trafficking in Persons Protocol.)

Emotional support

- Assessments of the victim's psychological and emotional situation should continue as appropriate throughout the pre-trial and trial phase of the criminal justice process. It should be noted that victims might initially appear to be coping well with their experience; it is only as time goes on that the full extent and impact of their traumatization may be revealed. (This is in line with article 6(3) of the Trafficking in Persons Protocol.)
- Assessments protect the rights of victims by identifying if the process of prosecution will traumatize them further and what interventions may be appropriate to aid victim recovery. They have the advantage to criminal justice practitioners of allowing measures to be identified that may help a victim give evidence and enhance the possibility of a successful prosecution.
- Counselling should be made available throughout the process of investigation and court hearing. Ideally, counselling should lead on from any assessment of the victims. It may help victims recover from trauma, protecting their individual rights, but also helping ensure they give the best possible support to the investigation and prosecution of the case. (This is in line with article 6(3) of the Trafficking in Persons Protocol.)

- Counselling should not just be seen as a role for professionals. Supportive environments and individuals at all points in the trafficking in persons criminal justice process may help in a victims recovery.

Direct assistance

- Effective protection for witnesses should continue throughout the criminal justice process, as the risks to them are likely to continue throughout the pre-trial and trial phases (and indeed beyond). (This is in line with article 6(5) of the Trafficking in Persons Protocol.)
- Victims should be provided with appropriate accommodation and support consistent with the risks they face. (This is in line with article 6(3) of the Trafficking in Persons Protocol.)
- If the case involves transnational trafficking it may be possible to return the victims to their country of origin between the initial investigation and trial at court. In some circumstances this may support victim needs by giving access to formal and informal support structures. (This is in line with article 8(1 and 2) of the Trafficking in Persons Protocol.)
 - Only return victims to a source location between investigation and trial if it is safe to do so. Consider partnerships with victim service providers, including NGOs to ensure that their needs are addressed;
 - Consider what protection measures can be given to a returned victim;
 - Consider how you will maintain contact to give best chance of attendance of the witness at court.
- Pre-trial detention of suspects can protect victim rights in a number of ways:
 - Protecting victims, their families and loved ones from retaliation;
 - Increasing chances of a fair trial by reducing opportunities for suspects to create a false account or tamper with evidence;
 - Reducing opportunities for suspects to influence or intimidate witnesses.
- Where appropriate and with due regard for the rights of the suspect, the prosecutors should consider remanding a suspect in pre-trial custody on the order of a competent court. This action would reassure the victims and help support their continued cooperation with the criminal justice system.
- Where a suspect is remanded in pre-trial custody, proceedings should start as quickly as possible to ensure the detention is kept as short as possible.
- Some jurisdictions have specific legal requirements to provide social support to vulnerable victims prior and at the court hearing stages.
- Even if you do not have a formal process of providing social support in your jurisdiction it is good practice to do so as it supports both victims needs and the investigation process.
- Where you have no formal structures to provide support, NGOs may be able to assist. Again, ensure these organizations and staff are competent, reliable and understand the needs of the criminal justice system. (This is in line with article 6(3) of the Trafficking in Persons Protocol.)
- Consider some measures you can adopt in court hearings to protect victim-witnesses. Examples include separate waiting rooms, screens for witnesses, closed-door hearings, video links and use of pseudonyms. These measures need not be complex or expensive.

For more information, see module 12: "Protection and assistance to victim-witnesses in trafficking in persons cases" to help you decide on how to conduct an interview. (This is in line with article 24(2b) of TOC.)

- It is very important to ensure everyone involved knows what he or she needs to do and why. This includes people such as those who manage courts hearings.
- Allowing inappropriate public access to a hearing may place the victim at risk and affect their willingness to cooperate. (This is in line with article 6(1) of the Trafficking in Persons Protocol.)
- Victims should have their views and concerns presented and considered at appropriate stages of the whole process. The acknowledgement of public authorities representing justice may help individuals come to terms with their experience. (This is in line with article 6(2) of the Trafficking in Persons Protocol.)
- In some jurisdictions victims are not obliged to give testimony in court if they do not want to. In such jurisdictions the wishes of the victim should be respected.
- In some jurisdictions victims are required to give testimony in court. As you will have seen in other modules there are many reasons why a victim may be reluctant to give that testimony. Where victims are required to give evidence it is particularly important that all other support measures are in place to support their psychological make-up and needs to enable the court obtain the best quality testimony possible.
- Pay attention to practical considerations such as how the victim can get to the court for any hearings, care for children or reimbursement for loss of earnings may prevent victims exercising their right to give testimony. (This is in line with article 6(6) of the Trafficking in Persons Protocol.)
- You may have existing structures that provide practical support. Where you do not, consider making specific arrangements for victims. NGOs may be able to assist, subject to their competence and suitability.
- Victims may be reluctant to give any testimony because they are traumatized or afraid.
- There may be a requirement to interview victims to clarify points in the time between the main period of investigation and the case coming to trial. It is necessary at the investigation stage to assess the victim's psychological make-up and level of trauma experienced before the interview. Do not insist as a severely traumatized victim's accounts of events may be unreliable and therefore not of use to the investigation. Use information found in module 3: "Psychological reactions of victims of trafficking in persons" to help you decide on how to conduct an interview in such cases.
- Be particularly sensitive to the special requirements of children when interviewed. Module 9: "Interviewing child victims of trafficking in persons" will help with this. (This is in line with article 6(4) of the Trafficking in Persons Protocol.)



Self-assessment

What types of support and assistance would you give a victim of trafficking during the pre-trial and trial phase?

Why should the victim be given this support and assistance?

Summary

- The conditions of a trafficked victim present a unique range of challenges to investigators, prosecutors and the judiciary because the victimization process in trafficking could be complex, multifaceted and prolonged.
- Everyone in the criminal justice process chain needs to know the victims' special needs and develop creative solutions within the context of their respective roles.
- The following principle should be borne in mind at all times on coming in contact with persons suspected to be a victim of trafficking in persons:
 - Victims of trafficking should be identified as victims of crime;
 - They should not be treated as criminals; and
 - They should not be treated as a source of evidence alone.
- At every stage of the criminal justice response, spanning from investigation to the trial, the following support for an identified victim of trafficking is necessary:
 - Information and communication;
 - Emotional support;
 - Direct assistance.



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Anti-human trafficking manual for criminal justice practitioners

Module 12

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Anti-human trafficking manual for criminal justice practitioners

Module 12:

Protection and assistance to
victim-witnesses in trafficking
in persons cases



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Module 12:

Protection and assistance to victim-witnesses in trafficking in persons cases

Objectives

On completing this module users will be able to:

- Understand the concept of witness protection in criminal justice system and its relevance to trafficking in persons cases;
- Understand the necessity of victim protection in trafficking in persons cases;
- Recall the appropriate protection measures that should be in place for a victim-witness in every phase of criminal justice process;
- Describe the role of every criminal justice administrator in ensuring the protection of a victim-witness.

Introduction

Witness protection is a term that does not lend itself easily to a precise definition. Different people understand it differently. This is further complicated by differing regulations and practices in between jurisdictions. For purposes of this module witness protection means the following.

Witness protection is any form of physical protection that is provided for a witness or an informant or any body concerned with the supply of vital information (against a criminal group, network or activities) that may activate a criminal justice process against such group or network with a view to dismantling them. The protection may include but is not limited to police and judicial protection during investigation and the trial stage of a case to a full-blown witness protection programme, including measures such as physical relocation of such a witness or informant to a different location, with the identity and vital particulars changed.

Although the use of full witness protection schemes should not be ruled out in trafficking in persons cases, global experiences have shown that their applications are likely to be very limited. The consideration of full witness protection programmes in trafficking in persons cases are explained in this module, but greater emphasis is placed on other forms of witness protection.

The TOC

Article 24 of the Convention against Transnational Organized Crime requires State Parties to take a wide range of “appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony...”, “and, as appropriate, for their relatives and other persons close to them.”

Article 25 of the Convention requires State Parties to “take appropriate measures within its means to provide assistance and protection to victims” of trafficking in persons, “in particular in cases of threat of retaliation or intimidation”.

Hence, the Convention extends witness protection in appropriate cases to witnesses’ relatives or others close to them. It also includes all witnesses, not just to victim-witnesses. The Convention also recognizes the fact that victims need assistance and protection beyond their role as witnesses. In other words, the requirement to provide support and protection to victims is regardless of whether or not they are witnesses in a case. Providing support to victims who do not initially wish to be witnesses may assist in encouraging them to become witnesses at some point during the process.

Article 6 of the Trafficking in Persons Protocol supplementing the TOC enjoins State parties to, protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. It goes further to provide a wide range of support, in appropriate cases, such as:

- (a) Information on relevant court and administrative proceedings;
- (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

The Trafficking in Persons Protocol also recognizes that measures are needed to provide for the physical, psychological and social recovery of victims of trafficking. In providing such assistance, cooperation with non-governmental organizations, other relevant organizations and other elements of civil society is recommended.

The measures include, in appropriate cases, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

Please see how your national legislation addresses witness protection and victim assistance and protection.

The essential concern for all in the criminal justice process is that a person, who is a witness, victim or otherwise, gives the maximum possible cooperation in the criminal justice process. The less effective the protection of witnesses, the more chance are that the cooperation will be withdrawn.

Witness protection in trafficking in persons cases is a twin track approach of securing the physical safety of the witness and providing such assistance and protection as is necessary. The overall goal of this approach is to maximize the chance the witness will cooperate and ensure that cooperation is of the highest possible quality.

Human trafficking has a number of features that make it different from other crimes. This invariably means that witness protection measures in human trafficking cases may be slightly different from witness protection in other cases. The physical safety of a witness is obviously the first concern of the prosecution and will continue throughout and beyond the closure of the case within the justice system. Providing physical protection may be very challenging for various reasons, not least that you may have to provide it for victims of trafficking and those close to them in jurisdictions outside your own.

As challenging, if not more so, is the need to provide appropriate support and assistance together with physical protection, particularly in the case of victim-witnesses. There is little point in keeping someone only physically safe and not addressing the psychological consequences of trafficking.

Ensuring the best possible cooperation of witnesses requires a blend of physical measures to prevent violence and intimidation; and support as well as assistance to address psychosocial factors and other reasons that might prevent that cooperation.

Victim, witness or victim-witness

The main focus of this module is victim-witness protection, although much of the guidance is equally applicable to all witnesses in trafficking cases. Victim-witnesses are generally the most vulnerable witnesses in trafficking in persons cases. A significant number of trafficking in persons cases have been either severely weakened or destroyed because victim-witnesses have either failed to cooperate initially or withdrawn cooperation.

Witness protection and support measures available may be affected by the legislation of the jurisdiction concerned. Some of those legislations provide for stringent conditions for a declaration of a victim status. This may be linked to whether or not a person should be regarded as a “victim” or not.

Some jurisdictions use the word “victim” in a very wide and general sense. Anyone who has had a crime committed against him or her would automatically be regarded as a “victim of crime”, from a person who has had a purse stolen to someone who has been murdered.

Other jurisdictions have a very narrow and specific definition of a victim. A person's victim status is decided in a judicial or administrative process according to certain criteria. Once declared a “victim”, the person has certain rights and, in some jurisdictions, responsibilities. This has a number of implications in trafficking in persons cases.

In some jurisdictions a person will not have the right to certain victim protection measures unless he or she has been formally declared to be a victim. You should establish what the procedure is in your jurisdiction. It may also be of value to establish procedures within jurisdictions that you may be running joint investigations with now or in the future.

An emerging trend in this area is that even where a jurisdiction does not have a general, formal process requiring a person to be declared a “victim”, it may have a national referral mechanism that requires a judgment to be made on a person’s victim status in trafficking in persons cases.

On the whole it is necessary and a good practice to extend certain support, assistance and protection to whoever is suspected to be a victim of trafficking.

Assessing the victim witness

The process and considerations

Assessing the risks and need for protection of victim-witnesses is a continuous and dynamic process that starts from the moment the potential victim-witness comes in contact with the criminal justice process and may extend for some time even after a trial has concluded.

Assessments made at the beginning of an investigation may not necessarily remain valid throughout the life of an investigation. Threats may become apparent or recede as time goes on or at particular phases of the investigation and judicial process.

In summary the process, as identified by Interpol, is as follows:

- Issues—an assessment is made of the prevailing issues that may affect victim-witness cooperation.
- Communication—this assessment will involve communication with the potential victim-witness and is likely to involve communication with other agencies.
- Risk—a risk assessment of the issues is made.
- Protection—according to that risk assessment, a decision is made on both the physical protection and other measures.
- Level—these physical protection measures may mean a person is placed on a full witness protection programme, but are more likely to involve a range of methods appropriate to the level of risk that fall short of a full witness protection programme

Issues that may affect cooperation

These fall into three major categories:

- Physical threat;
- Victim beliefs;
- Victim concerns.

Physical threat

There may be a threat of physical attack to the person of the victim-witness or those close to him or her. The witness may or may not be aware of these threats. A successful physical attack may intimidate the person into not cooperating or withdraw cooperation to the prosecutorial agency or the nature of the injuries may be so severe (including death) that he or she cannot cooperate.

Beliefs

A variety of possible beliefs may affect a victim-witness's willingness or ability to cooperate with the investigation. Module 3: "Psychological reactions of victims of trafficking in persons" gives you more insight into why it may be so and the consequences of that to you as a criminal justice practitioner.

A significant effect of victims' beliefs is that you are likely to be mistrusted at the outset by most victims of trafficking in persons cases. Building that trust by providing protection and assistance among other things is a key element in successful human trafficking investigations.

Concerns

Victim-witnesses in trafficking in persons cases may have many concerns. Five consistent areas of concern that have been identified are:

- Fear for their own safety or that of their family or loved ones;
- How they will be treated because they have committed offences;
- Immigration status (if the crime is transnational);
- Fear of stigmatization;
- Fear of being in the presence of traffickers.

Communication

Any concerns held by anyone in the criminal justice system about the safety of a witness should be communicated without delay to others within the chain who can take measures to reduce the risk and plan for protection and assistance.

Examples include law enforcement officers discussing protection issues with prosecutors and prosecutors raising issues with judges at pre-trial hearings.

Communication should not just be confined to those within the formal criminal justice system. Dealing with trafficking in persons requires multi-agency collaboration to be effective. Partners such as NGOs are both potentially useful in identifying risk and in providing solutions.

Communication should be proactive. If an investigator is taking over a case from a first response law enforcement officer, questions should be asked to find if that officer has noticed

any risk factors. Similarly, prosecutors should make enquires about and potential witness protection issues when taking over a case from investigators.

Risk

Module 5: “Risk assessment in trafficking in persons” should be used to help assess risk. The following additional considerations are specific to decisions about witness protection:

- A situation where a victim of a trafficking in persons case is a witness in a case against his/her trafficker has significantly increased the already high level of risk he or she might face;
- It is always an option not to use a victim as a witness if the level of threat to them becomes too great;
- Victims should be enabled to live safely, recover and be empowered to look after his or her own safety in the long run;
- Protection and support should be temporary;
- It should be applied according to the level of risk faced;
- Victims should be consulted on any decisions affecting their safety and, where appropriate, informed of any decisions taken.

Protection

Protection should be as comprehensive as to assuage the victim’s fear and concerns. It should not be limited to physical protection alone.

Level

Some guidance is given on both the levels of physical protection provided on full witness protection programmes and how physical protection may be used where full witness protection is not appropriate.

The section on full witness protection programmes is separate. It is a generic description and guidance. You should check the details of full witness protection programmes in your own jurisdiction (if they exist) where the option becomes necessary.

Guidance on other hybrid physical protection measures is given for each role in the criminal justice process.

Full witness protection programmes

Commonly a full witness protection programme is taken to mean some kind of formal programme provided by the State designed to protect witnesses in serious and organized crime cases.

Typical features of such programmes are changes of identity and relocation of participants, medium to long-term protection for them and some kind of medium to long-term financial support that allows witnesses to rebuild their lives.

Commonly, full witness protection programmes are aimed solely at protecting a witness to allow them to provide information. They do not provide any form of additional support.

Programmes are often open to anyone who is a witness in a qualifying case. In practice the majority of people on such programmes have been (or remain) very close to the defendants in cases. They may have a significant offending history themselves and could have had some role in the crimes under investigation. It is not unknown for a witness not linked to the defendants in anyway to be placed on such schemes, but it is rare.

Full witness protection in trafficking in persons—international experience

In trafficking in persons cases, the use of full witness protection schemes is rare. There may be a number of reasons for this.

In practice, in trafficking in persons cases full witness protection is psychologically often not the best solution for the victim. Many victims long for their families and loved ones and cannot imagine changing their identity and relocating.

Moreover, some practitioners have reported that they have yet to encounter a human trafficking organization or syndicate that is sufficiently organized, widespread or equipped to pose the level of threat required of a full witness protection scheme. Caution should be exercised because every case is different. It cannot be ruled out that some trafficking in persons cases will involve witnesses who require protection to the degree found in the type of programme described, but it is believed that it will be rare.


Criteria for inclusion on full witness protection programme


If you have a full witness protection programme in your jurisdiction, consider the criteria for inclusion on such a programme. These criteria vary around the world. Check what they are in your own jurisdiction. The following are some general criteria used in admitting a particular witness into the programme:

- The testimony of the protected witness must be in relation to a serious crime;
- The testimony of the protected witness must be capable of incriminating a high-level criminal within the criminal group network;
- The testimony of the protected witness must be indispensable to the prospects of a successful prosecution;
- The level of risk posed as a result of the protected witness's decision to cooperate with the judicial process must be demonstrable and justify the need for full witness protection measures;
- The protected witness must be willing to join the programme and comply with any instructions issued by the protection officers.

“High-level criminal” is not defined here (although your domestic legislation may give more specific guidance). It is an arguable point that most trafficking in persons victim-witnesses would not be able to give evidence against “a high-level criminal” as their knowledge may be limited to relatively low-level gang members and small scale independent criminal operations.

If a victim-witness satisfies the criteria for inclusion on a full witness protection programme, providing additional support measures for the needs of such a victim (examples outlined below) will help to enhance the cooperation of the victim. In some cases you may also be under a legal duty to provide such supports and assistance.

	Self-assessment
<p>What factors necessitate witness protection measures?</p> <p>What are your considerations in admitting a person to witness protection measures?</p> <p>What are the benefits of witness protection measures?</p> <p>(a) To a witness/victim in a human trafficking case;</p> <p>(b) To the criminal justice process in a human trafficking case.</p>	

	Case example
<p>In a case of trafficking investigated by a prosecutor in Eastern Europe, a juvenile victim from a neighbouring country gave three corroborating statements between 1 July 2004 and 30 December 2004. She provided incriminatory evidence against the defendants, showing that they had trafficked and raped her. She also reported that the defendants threatened to “kill her, her only brother and then her whole family”, “make all her extended family disappear”, and to “behead her” if she turned them in to the police. Nevertheless, she was given no protective measures. When she testified at trial, the parents and an uncle of one of the defendants accompanied her. She substantially changed her statement, retracting all incriminatory statements she had given previously. Both the district court and the Supreme Court characterized her new version of events as “preposterous”.</p>	

Specific duties of criminal justice practitioners

The next section considers the witness protection duties of categories of criminal justice practitioner. These are:

- First responders;
- Investigators;

- Prosecutors;
- Judiciary.

It is acknowledged that in many jurisdictions there may be cross over or overlapping between some of these roles, for example the first responder may be the investigator or a magistrate with investigation responsibilities.

It is important to remember these suggestions are not exhaustive. All activity should be driven by risk assessment and you may be able to think of others that are appropriate to the context you work in.

First responders

This section is intended mainly for situations where suspected victims are encountered in routine law enforcement duties.

Identifying the medium and long-term witness protection methods required is not likely to be appropriate at the first encounter stage. The main objectives are to give suspected victims the best opportunity to indicate they have been trafficked by making them feel safe and start the process of building the victim's trust in the criminal justice system.

The following outline suggests some ways of dealing with victim's concerns that you may like to consider:

Physical protection measures

- Talk to individuals separately;
- Do not just talk to one person in a group and then act against the rest of the group, for example by arresting them. It will be obvious where the information came from;
- Observe who appears to be in control of the group and speaking for others;
- Note if things are said between the members of the group that you don't hear or understand. Pass the information on to investigators to clarify in interviews etc.;
- If it can possibly be avoided, don't use a person from a group or other volunteer to interpret. If you cannot avoid this don't ask direct questions, ask everyone in the group the same questions and note the reaction of individuals to the interpreter.

Other support measures

- In first encounters you are unlikely to be able to give reassurances about not taking action if someone has committed offences. These decisions usually have to be taken by prosecuting and other authorities.
- Suspected victims of trafficking should never be arrested, detained or held in any detention facilities. Doing so destroys your possibilities to build trust.
- If you have no option but to arrest, consider things such as not using handcuffs, covering handcuffs from sight, keeping people out of the view of others when taking them away, etc.

IMPORTANT—always consider your personal safety when making decisions such as these and act in accordance with your legislation and policies.

- Do not make promises you cannot keep. This applies in particular to immigration status. You are unlikely to be able offer a person a period of reflection at this stage.
- You can help by not expressing signs of disgust, shock, revulsion or contempt at the revelation to you of what suspected victims have been forced to do, how they live or their appearances.

Investigators

Investigators are in a position to consider a wide range of witness protection and support measures.

The investigator should:

- Assess the victim-witness using appropriate support;
- Decide on an appropriate approach for a particular victim-witness in association with relevant partners (e.g. prosecutors, support agencies);
- Implement that approach in association with relevant partners.

You may become aware of a suspected victim of trafficking in persons as a result of a reactive case such as a direct report by the victim concerned, a third party “rescue”, other agency referral or discovery by first responder law enforcement staff. Intelligence may have led to a proactive enquiry that has identified suspected victims. Whatever the circumstances, you need to start considering witness protection and support as soon as you become aware of the existence of a suspected victim and continue to do so throughout the life of the investigation.

In considering protection first, the initial decision to be made is to evaluate whether the particular case at hand justifies full witness protection measures or whether the composite approach is more appropriate?

A range of considerations, some of which are explored in more detail below, will dictate the answer to this question. It is acknowledged that an important early issue to be considered may be the availability of full witness protection in your jurisdiction. If such a programme exists, are there are available resources committed to the programme?

It is difficult to give general advice in these circumstances. It is worth remembering that to date very few trafficking cases around the world have used full witness protection programmes for victim-witnesses. Also, composite methods have been found to be wide ranging, flexible to adapt and seen to be effective in many cases.

Support measures are required equally for trafficked victim-witnesses protected by full witness protection and those protected by composite measures. The recovery and empowerment issues should be made available regardless of the level of risk involved. Indeed, the higher the risk, the higher the support programme that would be made available to the victim.

If full witness protection is not appropriate, the next question to consider is what would be needed in a composite protection plan. Possible options are outlined below. Some techniques are limited by legislation in some jurisdictions, but in many cases as long as the considerations are lawful, the options are only limited by the imagination of the criminal justice practitioners and other agencies involved.

It is a useful starting point to consider the criteria for full witness protection that applies in your jurisdiction. Although it is unlikely this will apply to many trafficking in persons victim-witnesses, it gives a clear framework for your initial decision and helps you set out your supporting rationale. Recovering situations where you have failed to identify risk is likely to be very difficult. Going through this process reduces the chances of making such mistakes.

Physical protection measures

If the person has been referred to you as a potential victim you may have an opportunity to plan the venue for the first encounter.

- Don't speak to suspected victims at shelters or similar locations. Traffickers or their associates may be present or at least have links to those in the shelter posing a danger to the suspected victim, shelter staff and the investigation.
- Don't press for the suspected victims' identity if they have been referred to you by an agency that knows their identity.
- Plan to ask questions early in interviews to establish if the victims are aware of threats to themselves or others.
- Keep witnesses and suspects separate at all times when the investigation process is under way.
- Consider using separate locations for suspect and witness interviews.
- Be aware that some presenting themselves as victims may be offenders. Keep victims separate in the initial stages. Allowing identified victims to freely associate can support their psychosocial recovery, but this should be actively managed and only be done if you are confident that it will not lead to intimidation. Be aware association may also be used to allege witnesses have colluded.
- Decide if it is appropriate to interview the suspected victim under his or her own identity or whether full or partial anonymity is an option. If anonymity is allowed, it may be possible to extend it to any subsequent court hearings.
- If you are dealing with a reactive enquiry, review the circumstances to establish any likely risk to the victim as soon as you can.
- In proactive cases, create a policy to continuously monitor associated risk to potential victims-witnesses.
- Make contact with NGOs and victim service providers that may be able to provide victim-witness support and protection. Do this as a planned contingency before any investigation starts.

- When planning contingencies consider what your respective partner organizations can do. Typical issues include:
 - Is the available shelter physically secured?
 - Are security staff available?
 - Is the shelter in a location that you are likely to be able to keep “secret” from traffickers?
 - What communication equipment is available to call for help or warn about any concerns?
 - Are staff trained in their roles at the shelter, etc.?
 - Do shelters have any “early warning” system in place to allow residents to confidentially report other residents they suspect may be working with traffickers?
 - Are counsellors or other support staff available?
 - How effective has the organization been in protecting and supporting victim-witnesses previously?
 - How is the organization funded? Will that funding last for the time you anticipate a victim-witness will be present?
- Consider establishing a memorandum of understanding (MOU) between yourself and other partner agencies. These set out duties of partners and what is expected of them. (See annex A for more details).
- What physical security is required to protect the victim-witness against the level of threat?
- If the threat is high, is there a facility that provides high levels of physical security?
- Can the victim-witness be placed in a “secret” location not known to the traffickers?
- Is there a reasonable prospect the location will continue to remain “secret”? For example:
 - Is the victim-witness likely to contact traffickers, their associates or others linked to them while at the “secret” location?
 - Will he or she reveal where they are to anyone with links to traffickers?
 - Is there evidence that the victim/witness may be suffering from mental health, alcoholism, drug or other related problems leading to a life style that may make him or her inadvertently reveal the location in some way?
- Would other measures provide additional protection or support, or would they be appropriate to reduce the risk situations? Examples might include:
 - Access to mobile phones;
 - Special phone numbers to call;
 - Assigning a counsellor from an external agency or dedicated victim support officer within the law enforcement agency;
 - Guidance to victims-witnesses on how they should conduct themselves to keep themselves safe;
 - Guidance on signs to look out for that may suggest they are under threat;
 - Access to alarms such as personal attack alarms carried by individuals or at premises they are staying at;
 - “Early warning systems” to notify victim-witnesses if there is a change in the threat(s) they face;
 - Check if anonymity of any form is allowed in your legislation and if so what procedures you need to follow to use the option.

- Do not meet victim-witnesses at shelters or other places where they are living unless it is unavoidable;
- If it is unavoidable to meet at a shelter or similar place, visit as discretely as possible. Go in plain clothes and do not use cars with police markings etc.

Family communications

The issue of communication with family members at home is a difficult one. It is entirely natural for victim-witnesses to wish to speak with their loved ones if they wish and their ability to do so may form an important part of the recovery process.

However, family communications may also pose security risks. There are two areas of risk:

- With or without the knowledge of the victim-witnesses, family members or loved ones may be involved in the trafficking crime or associated in some way with the traffickers. Communications with the family etc. may disclose the location victim-witnesses.
- If the traffickers know the location of the family members or loved ones, they may already be intimidating them and may be able to monitor communications in some way in an attempt to establish the location of the victim-witness.

Where there is little indication of risk, victim-witnesses should be allowed to make contact with their loved ones but be told to be careful what they talk about.

It is only in those cases of high risk that the victim should be advised against communicating at all. As a compromise welfare matter in such cases, messages can be passed through or under the control of the investigation team.

In all cases, whichever course of action is deemed the most appropriate from the welfare and security perspectives, the views of the victim should be sought and taken into account before any decision or action is taken.

Word of caution

It is essential that your support and protection scheme is handled in such a way as not to amount to any form of inducement that could be presented in court against you during the hearing of the case.

Be careful when providing anything to support a witness such as accommodation and phones. It should not be excessive, the rationale for doing anything should be recorded and any abuse of the support should be identified quickly and addressed as soon as possible.

- Keep those you suspect are traffickers apart from those you suspect may be victims.
- Keep suspects and suspected victims separate within police stations when you are dealing with an investigation.

- If you decide to take witnesses to identify locations etc., arrange transport that allows the witness's identity to be concealed. Provide sufficient staff to both protect the suspected victim and give the victim the confidence that he or she will be protected.
- If you conduct procedures for victim-witnesses to identify potential suspects, do it in a way that protects the identity of the victim-witness.
- Make sure that if you conduct any type of identification procedure, ensure you conduct them in compliance with your legislation.
- If you are taking victim-witnesses for meals, to buy clothes, etc., do not do it in areas where suspected traffickers are likely to be.
- Speak to prosecutors or court officials to establish if it is going to be possible to protect a victim-witness's identity in any court hearings.

Other support measures

- Never make promises you can't keep.
- Never use non-prosecution for offences as an inducement to a victim-witness to cooperate.

Decisions on non-prosecution may be very difficult because of the requirements of the law and the complex nature of victimization in trafficking cases. Trafficking offenders may have been victims originally. Each case should be considered on a case-by-case basis; being a victim originally should not automatically mean someone is exempted from prosecution or used in mitigation.

- Make yourself aware of the policy on non-prosecution in certain circumstances. Do this before you deal with a human trafficking investigation.
- When investigating a specific case, identify where victim-witnesses may have committed (or believe they have committed) offences.
- Identify what those offences are and, as far as you can, the extent of the victim-witnesses involvement in those offences.
- Contact the person or department who can make a decision on how an offending witness should be dealt with. Do this as soon as you can.
- Communicate the decision to the victim-witness honestly.
- If the decision is to prosecute, remember that the person is still a victim. They should not be denied access to support services.
- Never make promises you can't keep.
- Never use immigration status as an inducement for a victim-witness to cooperate.
- Find out what your domestic policy is on the immigration status of suspected trafficked victims.
- Consider speaking to relevant immigration authorities before you investigate any trafficking in persons cases. Establish what their procedures and requirements are. Also, find out if staff involved in the process are aware of policies and the issues that face suspected trafficked victims.

- When investigating a case contact the relevant authorities at an appropriate level as soon as you can for a decision on immigration status.
- Do not move suspected trafficked victims around in handcuffs or other forms of restraint
- Do not expose victims to photography or other media interest without their informed consent
- Do not show signs of disgust or revulsion when a person is giving an account of what happened to them as victims of trafficking in persons.
- Make yourself aware of the consequences of trafficking in persons in the community of the suspected victims.
- If you have intelligence that suggests a particular community is being victimized, plan ahead: find out what issues a person who is a rescued victim of trafficking is likely to face.
- To get information about the possible stigmatization consider the following sources:
 - International law enforcement liaison staff;
 - NGOs;
 - Local community officers;
 - Open source material on the Internet;
 - Community representatives.
- Take care not to expose suspected victims to people they may know or who may know people they know (this can be very difficult in communities with very small numbers in a particular location).
- Remember that victims may suffer stigmatization for all forms of trafficking, not just trafficking for sexual exploitation.
- Don't automatically assume victims will be stigmatized. There are examples where properly briefed communities have protected witnesses and provided support. Find out if this has happened before in the community the suspected victim originates from.
- If this type of community support has not happened before, consider how you might develop this approach in the community you are working with.
- Plan and arrange counselling services that are culturally sensitive to the person's needs.
- Work with victim service providers, including NGOs that have expertise within a particular community or with particular aspects of victim support.
- Identify services that can be offered by victim service providers, including NGOs and others that may support the return of a person to the location they originated from.
- If available, maintain liaison with the IOM mission in your country for possible facilitation of voluntary return of victims back to their home country.

Prosecutors

Physical protection measures

- Anonymity may be appropriate for some victim-witnesses. Anonymity may be full or partial depending on the legal requirements and the level of threat.

- Review cases to identify if there is a need for anonymity of victim-witnesses (in jurisdictions where this is permitted). Make appropriate arrangements necessary to establish anonymity at every stage including during judicial hearings.
- Consider if the risk to the victim warrants holding a suspect or suspects in custody pending the final court hearing. In some jurisdictions, the victims could be kept in shelters or other safe houses and protected. After the trial an appropriate witness protection scheme would be put in place.
- Where you do not have the power to authorize pre-hearing detention, make an application to the court for pre-hearing detention.
- Unless it is unavoidable, do not visit victim-witnesses at shelters or other places where they are living.
- If it is unavoidable to make a visit to a shelter, etc., do it as discretely as possible.
- It may be appropriate to have a specialized court where the victim is assured of certain protection to hear trafficking cases. It may also be a possibility to transfer a case to another court. In trafficking cases this may be because it is difficult to arrange protection at some courts, certain courts have experience in dealing with trafficking cases or courts may be specially established to hear trafficking cases.
- Find out and familiarize yourself with the procedures for arranging for a hearing to be transferred to another court. Note that not every jurisdiction allows such transfers.
- Consider any protection measures that may be required in court buildings at any hearings (including pre-hearing and full trial). These may include:
 - Video or audio links either from rooms within the court to the court room or from outside the court building;
 - In some cases you may be able to use video links from outside your country. If this is admissible and an option you wish to consider, check how practical it is in your jurisdiction, what procedures you need to follow and possibly share ideas with a prosecutor who has used the method before;
 - Screens for witnesses to keep the victim-witness out of view of the suspects and others in the court;
 - Separate waiting rooms for victim-witnesses and suspects and defence witnesses;
 - Check if court staff are aware of what they should do to help protect victim-witnesses;
 - Secure routes into and out the court;
 - Arrangements for accommodation that is accessible to the court but secure;
 - Showing victim-witnesses the layout of the court prior to the hearing and explaining court procedures. It is important not to coach the victim-witness on how to give evidence;
 - In some jurisdictions where the judges and lawyers wear special uniforms, special arrangements such as removal of gowns and wigs of prosecutors, defence lawyers and judges may be appropriate to ensure a friendly courtroom environment;
 - Where you need prior judicial approval for any special arrangements, inform the judicial authorities and start the required procedures before the case is listed for hearing;
 - Visit courts to check if they are suitable to provide the levels of protection required.

- Use witness supporters in accordance with your local procedures. Some jurisdictions have specific requirements for such witness supporters at court in a case concerning a victim-witness. Where there is no such specific requirement in place, it is good practice to provide witness support within the limit of the law, although appropriate people with training and experience should only provide this. See module 11: “Victims’ needs in criminal justice proceedings” for further detail about use of supporters.

Word of caution

Note that it is important that such supporters should confine themselves to explanations of the court process. They should not be seen as an opportunity to “coach” the witness in the details of a particular case.

Other support measures

- Never make promises you cannot keep to victim-witnesses.
- Make yourself aware of your domestic legal and administrative procedures on witnesses who have committed offences, particularly where those offences are directly related to victimization. Check their understanding of procedures and awareness of issues facing trafficking in persons victim-witnesses.
- Consider contacting key individuals who will make decisions before you deal with the case.
- Non-liability should not be offered or implied in order to obtain cooperation from a victim-witnesses.
- In some jurisdictions you may have the power to make decisions on non-prosecution in individual cases. In other jurisdictions you may need to seek authority from more senior prosecutors or members of the judiciary. Whatever process you have to follow, start it as soon as you are aware a victim-witness may have committed an offence.
- Communicate any decisions on prosecution promptly to victim-witnesses in a way that they understand.
- Make yourself aware of your domestic immigration procedures before you deal with a trafficking case.
- Consider contacting key individuals in the immigration authorities before you deal with a case. Check their understanding of procedures and awareness of issues facing trafficking victim-witnesses.

In particular, never imply or offer residency in exchange for a victim cooperating with the criminal justice system except when such offers are part of the policy in that jurisdiction.

- In some jurisdictions law enforcement officers may have already made provisional arrangements with immigration authorities for residence permits. Check if this has been done and if any further work is required to formalize or extend any arrangements.

- In other jurisdictions it may be your responsibility to contact immigration authorities to arrange for a residence permit, etc.
- Before you speak to immigration authorities on the status of a victim-witness, ensure you are able to give as much detail about the risks facing them as possible. This will allow an informed decision to be taken.
- Promptly communicate any decisions on immigration status with the victim-witness, even where the decision is that they will not be allowed to remain.
- Don't show any signs of disgust or revulsion when a victim-witness is giving an account of what has happened to them
- Speak to those who have worked with the victim-witness previously. This might include police officers, social workers or NGOs. Identify any issues that may indicate potential stigmatization issues.
- If you have identified a stigmatization issue in a particular case of a victim, make other decision makers aware of them, for example those who may make decisions on immigration status and the prosecution of offences.
- You should also address a victim's fear of being in the presence of traffickers.

Judiciary

Physical protection measures

- In general terms, in trafficking cases some level of victim-witness protection is often required. This may include but is not limited to the non-disclosure or limitation on the disclosure of information concerning victim-witnesses.
- Consider removing from the court environment all intimidating factors including human elements that may impact negatively on the voluntary nature of the victim-witness's testimony
- Ensure that the media coverage of the proceedings does not expose the victim and further stigmatize or victimize him/her.
- Without prejudice to the rights of the accused, consider the following court protection measures, if applicable in your jurisdiction:
 - Court proceedings are conducted *in camera*, i.e. outside the presence of media and public. This may imply a closed court or the judge's chambers.
 - Records of the court proceedings are sealed.
 - Evidence of a victim-witness may be heard through a video link, or via the use of other communication technology.
 - If such technology is not available, the evidence of a victim-witness can be heard behind a screen or similar adequate means out of view of the accused.
 - The victim or witness may use a pseudonym.
 - The statement of a victim or a witness made during the pre-trial phase in front of a judge is admitted as evidence.
 - In some jurisdictions where the judges and lawyers wear special uniforms, special arrangements such as the removal of gowns and wigs may be appropriate to ensure a friendly courtroom environment.

- Consider if the risk to the victim warrants holding a suspect or suspects in custody pending the final hearing. In some jurisdictions, the victims could be kept in shelters or other safe houses and protected. After the trial an appropriate witness protection scheme would be put in place.
 - In some cases you may be able to use video links from outside your country. If this is applicable do consider it in the interest of justice.
- Allow the use of witness supporters in accordance with your local procedures. Some jurisdictions have specific requirements for such witness supporters at court in a case concerning a victim-witness. Where there is no such specific requirement in place, it is good practice to provide witness support within the limit of the law, although appropriate people with training and experience should only provide this. See module 11: "Victims' needs in criminal justice proceedings" for further detail about use of supporters.

Other support measures

- Some victims of trafficking have committed offences. The victim may have been compelled to commit an offence (the defence of duress) or the offence is directly connected or related to trafficking.
- Non-liability of victims should be the starting point where the victim has been compelled to commit an offence or where the offence is directly connected or related to trafficking such as breach of immigration laws.
- If the crime is of a particularly serious nature, there may be exceptions to non-liability. In any case, the victim status should be considered a mitigating factor.
- In some jurisdictions law enforcement officers or prosecutors may have already made provisional arrangements with immigration authorities for residence permits. If this is your role, make sure the arrangements are finalized.
- Don't show any signs of disgust or revulsion when a victim-witness is giving an account of what has happened to them.
- If you have identified a stigmatization issue in a particular case of a victim, make other decision makers aware of them, for example those who may make decisions on immigration status.
- You should also address victim's fear of being in the presence of traffickers. If applicable in your jurisdiction, make sure the defendant is not given an opportunity to intimidate the victim in any way.



Self-assessment

Describe briefly the respective role of each of the following criminal justice practitioners in the protection and assistance to victim-witness.

- Investigator;
- Prosecutor; and
- Judicial officers.

Summary

- Witness protection is any form of physical protection that is provided to a witness, informant or any criminal justice collaborator.
- Article 24 and 25 of the TOC enjoins State Parties to the Convention to adopt appropriate measures to protect witnesses and victims of crimes from potential retaliations or intimidation, etc.
- Witness protection has a twin track approach of securing the physical safety of the witness and the maximum cooperation of the victim in the criminal justice process.
- Protection measures and the procedure differ from one jurisdiction to another, while some have a formal administrative or judicial way of declaring victim status before being admitted to the programme, others consider any victim of a serious crime cooperating with investigation as a witness worthy to be admitted into the programme.
- The reasons and needs for protection of a victim-witness are a dynamic process and a continuous one. It includes:
 - Assessment of prevailing circumstances;
 - Constant communication with the victim;
 - Decision must be based on the risk assessment situation and the protection commensurate with the level of risk assessed.
- Though the application of full-blown witness protection programmes is very rare in trafficking in persons cases, its possibility should not be ruled out.
- The following are some general criteria used in admitting a particular witness into a full witness protection programme:
 - The testimony of the protected witness must be in relation to a serious crime.
 - The testimony of the protected witness must be capable of incriminating a high-level criminal within the criminal group network.
 - The testimony of the protected witness must be indispensable to the prospects of a successful prosecution.
 - The level of risk posed as a result of the protected witness's decision to cooperate with the judicial process must be demonstrable and justify the need for full witness protection measures.
 - The protected witness must be willing to join the programme and comply with any instructions issued by the protection officers.

Annex A

This is an example of an MOU that has been successfully used in Germany for a number of years.

The protocol first sets out a basic understanding between the two parties.

- Trafficking offenders will be efficiently prosecuted and that testifying victims have a key role to play in this process.
- All parties must acknowledge the trauma caused by the crime and the criminal justice system proceedings.
- That the victims must be treated with dignity.
- That—as a matter of fact—a cooperating victim in a trafficking case is always at risk.
- That the better the care and counselling of the victim, the better the quality of their evidence will be.
- Where there is any evidence of a concrete risk to a testifying victim of foreign origin if she returns home, she must be granted exceptional leave to remain in the country concerned.
- That all measures taken under witness protection programmes must be carried out by mutual consent.

It then outlines the measures to be taken.

The agreement then sets out the measures to be taken by both sides:

Law enforcement

- Investigators must inform the victim of the availability of the support services.
- As soon as the individual agrees to become a victim-witness, the investigator will establish contact with the victim support agency.
- The investigator will ensure that no information that could identify the witness is divulged.
- The law enforcement agency is responsible for protection measures before, during and after all activity linked to the criminal justice procedure, such as court inspections of the scene, interviews, attendance at identification parades, preliminary and full hearings until such time as the victim is returned to the shelter.
- The police investigator will permit the presence of a trained counsellor at each of these activities, provided that such services are available and that the victim consents to their presence.
- Police will provide security advice on protection to the victim support agency counsellors and staff.

The victim support agencies

- In consultation with the law enforcement agency, the support staff will decide upon the appropriate accommodation for the victim and make the necessary arrangements.

- The support agency will provide psycho-sociological care to the victim and arrange for physical, sexual and psychological medical care.
- Legal counsellors will inform victims of the facility of receiving a verbal and written briefing from a specialist trafficking investigator if she wishes it and the counsellor will initiate contact with the head of police counter-trafficking unit if the victim does request it.
- Legal and or psychological counsellors will be present during the interview of the witness.
- Counsellors will provide legal and psychological support to the witness during all activity related to the criminal justice procedure
- The victim support agency will provide re-integrative support measures for the victim-witness.

It then outlines security advice to victim-witnesses.

Victim-witnesses also have a key role to play in ensuring their safety and they should be given clear guidance on the issues set out below.

- As a self-protection measure for the investigator, a record should be made on each occasion that advice that is given to victim-witnesses and should include the precise details of the advice, the identity of the officer giving it and the date and time when it was given.
- Each of these records should be signed, timed and dated by the officer creating the record and countersigned by a supervising officer.

Personal responsibility

Whichever form of protective measures is put in place, victim-witnesses should be advised as follows:

- Their duty to observe any rules that are laid down as part of a State witness protection programme or by the victim support agency staff.
- To avoid going to areas where the suspects and/or their associates may congregate or where people of similar ethnic or national backgrounds might gather.
- To maintain caution in respect of friendships and communications.
- Not to disclose their address or contact numbers to anyone without consulting first with the police investigator and/or victim support agency staff.
- To exercise great care in regard to communications with their family or friends, particularly if these communications could disclose their current location.
- To immediately report any suspicious incidents to the investigation team and or victim support agency.



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Anti-human trafficking manual for criminal justice practitioners

Module 13

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Anti-human trafficking manual for criminal justice practitioners

Module 13

Compensation for victims of trafficking in persons



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Module 13:

Compensation for victims of trafficking in persons

Objectives

On completing this module, users will be able to:

- Understand the concept of compensation and its value in trafficking in persons cases;
- Describe the international legal basis for compensation;
- Explain the different modes of administering compensation;
- Explain the funding mechanism of compensation;
- Understand different procedures of claiming compensation.

Introduction

“Compensation” is understood differently, depending on the context and the circumstances. It is often confused with “restitution” and sometimes used interchangeably. It is important to understand the legal definitions and connotations of the two words from the beginning.

While compensation is generally regarded as payment or reparation for injury or harm, restitution on the other hand is a form of payment or action taken to restore the victim to the position he or she would have been but for the victimization. In this module the meaning used connotes a form of payment, most commonly in cash, to a person who has suffered harm as a victim of crime, specifically trafficking in persons crime.

It should be noted that compensation to a victim of trafficking in persons will not necessarily remove the traumatic effects of the process of human trafficking but it will improve the chances of his/her psychological recovery and eventual reintegration into society as well as assuage his/her feelings. It will also offer economic empowerment and protection from being re-trafficked.

The modes of administering compensation to victim differ from one jurisdiction to another. In some jurisdictions, it is an administrative action while in some it is judicial. Whichever form is adopted or is in practice in your jurisdiction, it is important to ensure that the procedure of claiming compensation is made as simple, accessible and well outlined as possible. Any cumbersome procedure that frustrates and discourages victim from making claims will

defeat the purpose of compensation. These factors are likely to result in victims having little confidence in the justice system and therefore reducing the likelihood that the victim cooperates with the system.

International legal basis for compensation

Article 25(2) of the UNTOC Convention requires States Parties to establish appropriate procedures to provide access to compensation and restitution for victims and requires that this right be communicated to victims.

Article 14 of the UNTOC Convention requires States Parties to give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party so that it can give compensation to victims.

In addition, Article 6(6) of the Trafficking Protocol requires that States Parties to ensure their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered.

Although the international basis for compensation is well defined, it is important to keep in mind that it is the implementation of these provisions in the domestic settings that may or may not create an enabling environment for victims to claim compensation.



Case example

In a case of trafficking, a North African couple pleaded guilty after being charged with forced labour and concealing and harbouring an alien for holding their niece as a slave. In exchange for lodging and the chance for a good education, the victim cared for the defendants' young son, prepared breakfast and dinner, performed household cleaning chores, and worked weekends and summers without pay at the defendants' espresso stand. When the defendants learned of the victim's complaints of mistreatment, they assaulted her, threatened to report her illegal status in the country, withdrew her from school, and forced her to work longer hours at the espresso stand, without pay.

In the court proceedings, the defendants were ordered to pay a large sum of money in restitution to the victim and one defendant was sentenced to six months of electronic home detention, 240 hours of community service and three years of probation. The other was sentenced to 90 days of electronic home detention, 60 hours of community service, and three years of probation.



Case example

In a case of human trafficking, two affluent doctors and their son were convicted in a forced labour conspiracy of coercing for more than 20 years a young Pacific Islands national into providing domestic labour and services for them. The defendants allegedly told the victim that she would be imprisoned if she left their service and used a variety of other coercive means to break her will, including forbidding her from having social contacts, monitoring and limiting her mail, forbidding her use of the telephone, and requiring her to hide in her basement room when guests were in the house. The parents were sentenced to 48 months in prison and ordered to pay over a large sum in back wages to the victim for her 15-hour workdays over those two decades. Their son was sentenced to 120 days of home confinement; three years of supervised release, and ordered to pay a fine.

Routes to compensation¹

Compensation laws differ around the world.

Commonly each system has two basic ways of funding compensation: through the assets of offenders (traffickers in this case) and through State-funded compensation schemes. Of these, offender-funded compensation is significantly more desirable than that funded by the State.

The administration of compensation payment to the victim could either be by judicial process or by administrative action. In the case of judicial action, it could be in two ways; namely,

- The court trying the trafficker ordering compensation to be paid to the victim at the end of a criminal trial or,
- The victim filing a separate civil claim.

Thus compensation claims could either be by criminal court or civil court process. The two courts are courts of equal jurisdiction in terms of adjudication. Definitions for each system are difficult, but broadly criminal courts adjudicate crimes committed against the State. While civil courts adjudicate claims by one citizen (or entity) against another. A variation of civil courts is a court which has a specific function such as a labour court or tribunal.

Varying legal systems

Use of the terms “criminal court” and “civil court” can be confused with “common law systems” (one based largely on precedent and jurisprudence) and “civil law systems” (one based largely on codified legislation and legal process). Both common law and civil law systems generally have a set of courts that judge crimes against the State and another set that judge private claims of harm or loss.

¹ See OSCE report, Compensation for Trafficked Persons in the OSCE Region, OSCE-ODIHR 2007.

This section of the module explains what each of the court processes (criminal, civil and labour) is and what is generally common in the process of awarding compensation under each system. It then gives a similar brief description of State-funded schemes and their common processes.

Criminal courts

The set of courts that administer criminal cases are regarded as courts of criminal jurisdiction or criminal courts. During the criminal trial of a trafficking offence, the court may (depending on the law) award compensation. In many jurisdictions, compensation may be awarded as part of the criminal court process. If a person is found guilty of the offence as charged, there may be a specific provision to award compensation to the victim by the convicted criminal as part of the sentence imposed by the court.

Criminal law procedures

A defendant must have been identified by the prosecuting authorities and that defendant must have been found guilty in legal proceedings before compensation can be considered through the offender.

In some jurisdictions, a victim can file a claim for civil damages to be heard at the same time as the criminal case. This has the advantage of combining two potentially lengthy procedures into one to be managed by one person, the prosecutor.

In other jurisdictions, there may be a specific procedure that allows compensation to be paid as part of a sentence. Calculating what may be appropriate in the circumstances may be based on the civil court procedure of assessment or it may be a completely separate procedure.

Some jurisdictions may use payment of compensation by the defendant to the victim as a mitigating factor to reducing the sentence that may be imposed. There may be a formal opportunity to “plea bargain” where compensation is an element under discussion.

Calculating compensation for lost wages

With regard to calculating lost wages that may be part of a claim for compensation, several different possibilities exist. For example, the claimed amount could be based on the local prevailing wage, a legislated minimum wage or on the basis of the promised contractual wage.

Civil courts

Civil courts handle civil cases other than criminal. The claim in civil court does not involve imposition of punishment but award of damages against the defaulting party. The cases are usually between two individuals or an individual against the State in a claim for rights. This

court is empowered to adjudicate over compensation claims. In jurisdictions and cases where a court of criminal jurisdiction is not empowered to award damages in the cause of criminal trials, the victim has an option to lay his or her claim before a civil court. In some jurisdictions, whether the law provides for such claims or not, the victim is entitled to lay such claims where he or she has suffered harm or loss. This is based on the principle of law that says that wherever there is a wrong, there is a remedy.

Depending on the jurisdiction, harm or loss may not be strictly defined or there may be specific types of harm or loss described in the legislation. Harm might result from someone being a victim of a crime against the State's criminal law, or it might be harm through something such as not honouring a contract.

In a civil court the outcome is most commonly an order of compensation or restitution. These courts often work with much defined legal principles and decide on the award of appropriate compensation. In many jurisdictions it is possible that a person who has been convicted of a crime in a criminal court can also be sued for harm or loss in a civil court.

Common legal terms

The structure and processes of all courts is very dependant on the legal structure of individual States. It is not possible to describe all legal terms here as they are interpreted in different ways in different jurisdictions.

Two terms commonly used in respect of harm or injuries done to one are “tort” and “delict”. Tort is a term found mainly in common law systems, delict mainly in civil law systems. They have a similar meaning, which is (broadly) harm to a person's body, property or rights. The concepts underlying tort and delict are the basis of many civil court compensation procedures.

Procedures in civil courts

Civil courts are those courts that judge claims of harms or injuries by one party against another.

Victims can make a claim for compensation from harm or loss for wrongdoing that is defined in national law or harm or loss resulting from more general wrongdoing (tort or delict).

Proceedings in civil courts require an identified party as a respondent. In most trafficking in persons cases this will be an individual trafficker, although it is possible it may be a company or other organization that has exploited a victim.

The defendant must be within the jurisdiction and must be financially solvent (i.e. have some assets that can be used to pay compensation). Damages calculation is typically based on national civil law and will often include both moral and material damages.

An alternative to criminal court?

Some victims may see civil court procedures as an attractive alternative to criminal courts. However, as outlined above, you still need to have identified someone to respond to your claims (i.e., someone to sue) in a civil court. Also, a civil court may question why the respondent has not been prosecuted in a criminal court if the alleged harm has involved criminal activities.

In many jurisdictions the burden of proof varies between criminal and civil courts. It may be possible to have a “not guilty” verdict in a criminal court and still be able to pursue a claim for compensation in a civil court. This is generally because the proof required of a criminal trial is proof beyond reasonable doubt while civil courts require proof on the balance of probabilities.

Labour courts and tribunals

In some jurisdictions, the main form of specialized court you are likely to use in a trafficking in persons case is a labour court or tribunal. A labour court or tribunal often functions in a similar way to a civil court. Standards of proof required are often the same and the purpose is to judge a claim of harm by one party (often an employee or employer) against another party (often an employer).

Procedures for compensation included in labour law are not as frequently used as the other models represented here.

International basis

The International Labour Organization (ILO) standards on forced labour, migrants, wages and private agencies all reinforce numerous labour rights which are relevant to the trafficked person as well as the right to a remedy including compensation for those subject to abuses of these rights.

The ratification and effective implementation of ILO Conventions is necessary to protect trafficked people by improving their labour rights and access to compensation.

Procedures in labour courts

A victim may have rights under labour law even if they have no labour contract. Rights and contractual breaches can be enforced against a wrongdoer (e.g. trafficker or exploitative employer) in labour courts or tribunals and compensation can be claimed.

Claims may be based on unpaid wages, failing to provide sick pay, not giving holidays, work-related accidents, discrimination in the workplace, not paying overtime, etc. The standard of proof in these actions will generally be lower than in a criminal case.

As with civil court claims, a wrongdoer must be identifiable, locatable and have assets to recover. A potential advantage of using labour courts is that employers may be insured for claims against them which may improve the chances of success of a compensation claim.

With regard to calculating the lost wages that may be part of a claim for compensation in labour law, several different possibilities exist. For example, the claimed amount could be based on the local prevailing wage, a legislated minimum wage or on the basis of the promised contractual wage.

State-funded compensation schemes

Compensation can also be paid by the state through a state-administered scheme. Some countries have established these schemes usually for victims of violent crime or specifically for victims of trafficking in persons.

State-funded or subsidized compensation schemes have the great advantage of providing a guaranteed payment of compensation to the victim. An additional advantage of such schemes is that it is not necessary to locate or identify a specific perpetrator.

Source of funds for compensation schemes

The law generally prescribes the sources of funds for compensation schemes and funds. Examples of such practices include where the law provides that funds for compensation schemes could only be paid from certain sources such as the confiscated assets of offenders, or the sales of the confiscated assets of offenders. Some laws include a broader base to include donations and budgetary allocations from the central Government. It is good practice to create a broad funding base for compensation schemes. Reliance on confiscated assets of the offender may not be identified or traced in time or, where the funds are traceable, it may take a long time for them to be disposed and the proceeds paid, as outlined by law.

Procedures in compensation schemes

To qualify for these schemes, jurisdictions have chosen different approaches. In many cases victims have to show they have reported the matter to the police and have been willing to cooperate with investigations. Investigations must have also disclosed a case of trafficking in persons. In some jurisdictions, State-funded compensation is only available if a person has been legally declared to be a victim within the meaning of the existing law. State schemes may still be relatively streamlined, unbureaucratic and quicker than civil proceedings.

The basis of a compensation claim

Depending on the legislation in your jurisdiction, a claim could potentially be made up of several bases on which compensation is requested including, but not limited to:

- Unpaid or underpaid wages;
- Legal fees;
- Excessive, fraudulent or illegal “deductions” from wages for rent, subsistence, transport, tax or social security “payments”;
- Reimbursement of illegal “fees” paid to a recruiting or employment agency or for smuggling or transportation;
- “Fines” imposed by traffickers for bad behaviour;
- Medical expenses;
- Loss of opportunities while kept as a victim;
- Pain and suffering due to physical or psychological violence;
- Degrading and inhuman treatment.

In some jurisdictions aggravated, exemplary or punitive damages may also be available to trafficking victims. Their purpose is to punish a wrongdoer for particularly outrageous conduct. Punitive damages can be related to the wealth of the wrongdoer.



Self-assessment

Describe briefly the various funding mechanisms of a compensation fund.

How can compensation be claimed?

What can be the basis for a compensation claim?

Seizure and confiscation of assets

International legal basis

Article 12 of the UNTOC requires States Parties to enable the identification, tracing, freezing, or seizure of any proceeds (in any form) of crimes for the purpose of confiscation. In addition, States Parties are also required to empower their courts to order that bank, financial or commercial records be made available.

Asset freezing, seizure and confiscation law is complex and detailed. Generally, separate powers exist in criminal and civil law to trace and freeze assets at the outset of a case and later, to confiscate assets if the case is proven. Module 16: “Financial investigations in trafficking in persons” provides further guidance.

Specific challenges are posed by the transnational nature of trafficking in persons. Victims who have changed jurisdiction from the location of the crime or since their identification as trafficking victims face clear practical difficulties in pursuing compensation claim across borders. They also face difficulties when a trafficker is transferred to another jurisdiction for prosecution or assets are located outside the territory.

Where assets can be traced, frozen and seized, States must be empowered to confiscate them. If those assets can be used for compensation, the procedures in a civil case and in a criminal case differ. In a civil case, the confiscation is usually limited to the value of the damages awarded but in a criminal case all assets arising from the crime or general criminal activity may be confiscated depending on the regulations in that jurisdiction.

There must be an explicit legal linkage of the confiscated assets to the payment of compensation orders. Where this does not exist it can inhibit or delay the compensation payment. Alternatively all or some of the confiscated assets could be used to establish or contribute to a fund to make compensation payments to victims of crime, including trafficking in persons.



Practical guidance

The following points should be considered:

- Find out what the procedures for compensation of victims are in your jurisdiction;
- Think “compensation” from the outset of a case;
- Always identify and do what you can to identify, trace, freeze or seize assets as soon as you can in an investigation;
- Investigators and prosecutors should ensure they have proof and all documentation required to obtain compensation in a criminal court case. This includes supporting any claims for compensation with as much comprehensive detail of the harm done as possible;
- In claiming for compensation, victims should be provided with as much information and assistance as possible to allow them to follow this route. Such information includes laws and procedures on compensation;
- Consider working with lawyers, paralegals, including law students, NGOs and other bodies that may be able to advise and support compensation claims;
- Do not just consider the compensation possibilities in your own jurisdiction. Other jurisdictions may provide compensation opportunities;
- Make sure victims have access to interpreters and translators to overcome language barriers.

Summary

There are two basic ways of funding compensation: through the assets of offenders (traffickers in this case) and through State-funded compensation schemes.

The administration of compensation payment to victims could either be by judicial process or by administrative action. In the case of judicial action, it could be in two ways; namely,

- The court trying the trafficker ordering compensation to be paid to the victim at the end of a criminal trial or,
- The victim filing a separate civil claim.

A claim could potentially be made up of several bases on which compensation is requested including, but not limited to:

- Unpaid or underpaid wages;
- Legal fees;
- Excessive, fraudulent or illegal “deductions” from wages for rent, subsistence, transport, tax or social security “payments”;
- Reimbursement of illegal “fees” paid to a recruiting or employment agency or for smuggling or transportation;
- “Fines” imposed by traffickers for bad behaviour;
- Medical expenses;
- Loss of opportunities while kept as a victim;
- Pain and suffering due to physical or psychological violence;
- Degrading and inhuman treatment.



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Anti-human trafficking manual for criminal justice practitioners

Module 14

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Anti-human trafficking manual for criminal justice practitioners

Module 14

Considerations in sentencing in
trafficking in persons cases



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Module 14:

Considerations in sentencing in trafficking in persons cases

Objectives

On completing this module users will be able to:

- Recall the main principles of sentencing;
- Explain the role of the judiciary in sentencing;
- Recall the common aggravating factors to be considered in sentencing in trafficking in persons cases;
- Recall the common mitigating factors in trafficking in persons cases;
- Describe the ways in which information may be found to assist in sentencing decisions in trafficking in persons cases.

Introduction

Theories of punishment have existed for thousands of years, dominated by two principle philosophies. Generally speaking, one theory advocates that the punishment administered should be justified on the basis of the crime committed. The other dominant school of thought argues that punishment should be forward thinking and imposed on the basis of the positive impact such punishment will have on the offender or on society more generally. Criminal justice systems around the world have adopted a mixture of these elements as justification for imposing punishment on the guilty.

The general principles of punishment are, of course, applicable to trafficking in persons cases. Trafficking cases may pose some unique characteristics including the fact that the crime is often committed in conjunction with a range of other offences.

The purpose of this chapter is to provide a short overview of factors that may be relevant to sentencing in trafficking cases. It should be remembered that the penalties provided for crimes will vary from jurisdiction to jurisdiction and be based upon various legal traditions, jurisprudence, national practices and differing policy objectives. An awareness of these factors will assist practitioners in ensuring that the penalties which are imposed accurately reflect the gravity of the offence(s) committed and the impact that such crimes have on victims, their families and society more generally.

The module first outlines the general principles of sentences. It then considers some of the potential aggravating and mitigating factors found in trafficking cases. Finally some guidance is given on how information to support sentencing decisions may be found.

Principles of sentencing

As noted above, the principles which underline sentencing regimes around the world are varied and based upon a variety of factors. Having said this, some of the dominant principles of sentencing reflected in various legal systems include:

- **Proportionality:** A sentence should be proportionate to the harm imposed and the benefits derived from trafficking and related exploitation. The harm may be to the individual victim, to their family or to the community at large (see discussion of harm below). It should be noted that this principle is explicitly recognized in article 11 of the United Nations Convention against Transnational Organized Crime (UNTOC). The article requires penalties to take into account the gravity of the offence and give due regard to deterrence. Various national penal laws confirm the tenor of this provision.
- **Retribution or denunciation:** The penalty is imposed in response to the offence and reflects society's outrage towards the offence committed.
- **Deterrence (both general and specific):** With general deterrence, the penalty is imposed in order to deter society in general and to promote social order while specific deterrence is designed to prevent the particular offender from repeating the crime again in the future.
- **Rehabilitation:** This principle suggests that a sentence should assist in rehabilitating the offender so that they can cease to be a threat to society and in turn become a positive participant in society.
- **Incapacitation or separation:** The sentence is imposed in order to remove the offender, and the threat of harm he poses, from society at large.
- **Reparation:** The penalty is imposed on the basis that it restores balance by returning the victim to the place they were before the crime was committed.

In systems where there is judicial discretion in the imposition of a sentence, it will be important for criminal justice system participants to be familiar with the sentencing regime which governs your legal system.

Depending on your legal system those responsible for investigations can be guided by the principles outlined above (as well as aggravating and mitigating factors which are discussed below) in the collection of evidence and the presentation of the case to those responsible for prosecution or adjudication.

Prosecutors can use this information to assist them in developing their theory of the case, structuring their arguments and in particular drawing to the court's attention that the facts of the case warrant particular consideration in relation to sentencing principles. As has been noted elsewhere in other modules, when possible it is advisable for those responsible for investigation and prosecution to liaise early and often for necessary and relevant information that may help the sentencing pattern.

Judges responsibilities in sentencing

Some legal systems may require courts to give primary consideration to certain principles of sentencing over others while other systems may leave it to the discretion of the judge. Other legal systems may provide little discretion to the court in imposing a sentence.

The judge will be guided by the principles of sentencing within their legal system. The judge will balance the applicable aggravating and mitigating factors against one another in determining a just and proportionate sentence for the particular case.

In some jurisdictions, members of the jury may have a role in recommending or determining sentences.



Self-assessment

What are the main principles of sentencing?

What is the role of the judiciary (and in some cases juries) in sentencing?

What are the main forms of “harm” in the context of trafficking in persons?

Aggravating factors

Aggravating factors are those circumstances present in the case, which warrant an increase in the penalty prescribed. In some jurisdictions, these factors may be expressly prescribed in laws; in others they may be reflected in jurisprudence. It is important to remember that what may have been an aggravating factor in one case need not necessarily be so in another. Aggravating factors are context specific having regard to the particular facts at play.

In some cases, what has been identified in laws or jurisprudence as an aggravating factor may already necessarily be part of the offence. For example, in jurisdictions where there is a distinct offence for trafficking in children, the fact that the victim is a child is necessarily reflected in the design of the offence and the penalty, which is assigned to it. In such a case, the fact that the offence was committed against a child should not be viewed as an aggravating factor and used as a justification for increasing the penalty.

In short, each case is fact specific and the facts must be thoroughly examined and held up against the offences within your jurisdiction as well as any aggravating factors that may exist in your legal system.

The list of aggravating factors below is illustrative only and may or may not apply to any given case of trafficking in persons in your jurisdiction.

Previous conviction(s) and behaviour, particularly where the previous convictions are for trafficking in persons or related offences

A guilty party's previous criminal record can be of relevance for sentencing considerations, particularly when they have been previously convicted for trafficking offences or related conduct such as offences involving coercion or violence. This factor can impact on a number of the sentencing principles identified above including specific deterrence, and denunciation. Efforts should be made to identify, obtain and verify this information. Care should be taken in determining the relevance of the record. For example, if the offence is unrelated to trafficking and occurred a considerable time in the past, its relevance for sentencing purposes may be less clear.

Prior “bad” conduct

Some jurisdictions may allow evidence of prior “bad” conduct to be considered when sentencing, even when this does not involve a previous conviction. “Bad” conduct may be very broadly defined.

Such conduct will be introduced for the purpose of establishing the character of the convicted party. It will be necessary to assess whether such information is relevant and how it relates to one of the principles of sentencing in your jurisdiction.

The offence was motivated by bias, prejudice or hate based on race, religion, sex, age or other personal characteristics that are immutable

While trafficking cases are unquestionably motivated by money, traffickers may choose or target their victims on the basis of their personal characteristics. Where evidence demonstrates that the convicted person deliberately chose his/her victims because of a bias, prejudice or hate based on the personal characteristics of the victim, this should be presented to the court as a factor that warrants an increase in the penalty.

The offence involved planning and deliberation

Most trafficking cases will involve planning on the part of the offender that is often long-term and in great detail. Any claim from a defendant that they committed a trafficking offence with no prior planning should be investigated thoroughly. The fact that the offence was planned thoroughly speaks to the blameworthiness of the guilty party and such pre-meditation demonstrates a deliberate intent to harm the victim and to commit the criminal act.

The offender intended more serious harm than actually resulted

The fact that the guilty party's intended exploitation did not actually take place should not diminish the severity of the offence. The consequences of the trafficking are relevant to the determination of an appropriate sentence. There is a danger that offenders could escape with lighter sentences because they have been intercepted at an early stage of the trafficking process, such as the recruitment stage.

Any evidence that shows serious harm would have been the likely outcome if their plans had been successful should be reflected in the sentencing submissions.

The offender operated in conjunction with an organized criminal group

The crime of trafficking is often perpetrated by a group involved in a criminal enterprise. Care should be taken to investigate any possible linkages to an organized criminal group whether it is a well-organized criminal organization or a loosely affiliated crime group. If established during the sentencing process, this factor demonstrates a heightened threat to society and an increase in the gravity of the offence.

UNOTC

According to article 2 of the United Nations Convention against Transnational Organized Crime, “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

The offence was motivated by financial or material gain

This aggravating feature is likely to be present in virtually all trafficking cases to some degree and should be a significant factor for sentencing purposes. Financial gain should not simply be seen in terms of money; payment in kind, such as free accommodation, food, access to vehicles, and gifts all represents a financial or material gain for the offender.

The fact that human trafficking involves the ongoing exploitation and violation of the autonomy of the victim and is motivated by the greed of those who traffic makes the crime particularly heinous.

Evidence that the convicted person received a high level of profit from the activity may only strengthen claims for a strong penalty of incarceration.

Deliberate attempts to obstruction of justice

If there is evidence to demonstrate that the convicted party deliberately attempted to obstruct the administration of justice during the investigative, or prosecutorial stages or during the sentencing, this can be taken to be an aggravating factor. Examples could include attempting to destroy or conceal evidence, misleading criminal justice officials or attempting to intimidate witnesses, police officers, prosecutors or other justice system participants.

UNOTC

According to Article 23 of the United Nations Convention against Transnational Organized Crime, obstruction of justice is to be criminalized. Obstruction means:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

The offence was committed while subject to conditions

Individuals who have been released on bail, are on probation, parole or some other form of release with conditions and who commit crime demonstrate a further disrespect for the justice system. As with other factors, the extent to which this is an aggravating factor in a case of trafficking will depend on the facts. For example, if a person was released in relation to previous charges for trafficking or related offences and commits a trafficking offence while on release, it will likely be an aggravating factor. A defendant on bail for an offence of petty theft is not likely to indicate greater culpability in a trafficking case, but again it will be important to consider the totality of the facts.

Trafficking is frequently transnational, so enquiries should be made to establish if an offender is on bail or parole in another jurisdiction and if so, for what offence. It is relevant when sentencing to consider parole or bail in other jurisdictions, but proper enquiries must be made to establish the accuracy of such information.

Deliberate targeting of vulnerable groups

The deliberate targeting of vulnerable groups as victims can be relevant as an aggravating factor in at least two ways:

- It reflects pre-meditation on the part of the convicted party to purposefully seek out a particularly vulnerable person as his victim
- It undermines the principle that society has a special responsibility to protect its most vulnerable citizens.

Vulnerable groups who may be targeted in trafficking cases include the young, physically or mentally disabled persons, the indigent or homeless. The same may apply to pregnant women. The factor of vulnerability is likely to be present in many trafficking cases.

The impact of the criminal conduct may be particularly harmful for vulnerable victims. Child victims, for example, lose contact with their families and communities, have their education and development impeded and may lose their language and culture if trafficked into another country. Such impacts can have lasting and irreparable impacts on young victims.

Use of a weapon to frighten or injure victim(s) or persons known to them

The use of a weapon to instil harm or to provoke a state of fear in the victim always makes the offence more severe. In trafficking cases, weapons may be used to control victims, through inflicting physical or psychological harm, in order to maintain the victim in a state of exploitation. The use of weapons may also extend to persons known to victims in order to maintain control. For example, a trafficker may threaten to harm the victim's family members if he/she does not continue to do as they are told while brandishing a gun.

Cruelty or brutality demonstrated through deliberate, repeated or gratuitous violence or other forms of degradation

The ongoing exploitation and violation of a person's autonomy makes trafficking in persons cases particularly reprehensible. Often these crimes are associated with heightened levels of brutality and can involve persistent attacks and crimes being committed against the victim. Excessive violence may also be used in order to demonstrate control.

Traffickers may also subject their victims to other forms of degradation. Examples include taking photographs or filming a victim while being sexually exploited (to be further used as a method of control or for the benefit of the traffickers) or subjecting people to other humiliating activity, such as begging for "privileges".

Assaults in the presence of others

In trafficking cases involving multiple victims, traffickers may chose to "make examples" out of their victims in the presence of others in order to maintain control. These assaults not only cause physical and psychological harm to the victim but also to those who have seen them.

Abuse of a position of power/authority or a position of trust

A position of trust or authority stems from the role an individual may occupy. It may be by virtue of a position where a person has been given power over others or a privileged position in relation to the operations of a business or organization. However, a position of authority or power may also extend to any relationship where one can actually exercise control over another, for example a parent occupies a position of trust and authority over a child. In some countries the same may apply to spouses or conjugal partners.

The abuse of a position of power or trust over another in a trafficking in persons case should be a strong aggravating factor particularly where it involves government officials whose

responsibility includes protecting the public and upholding the rule of law. Instances of corruption in trafficking cases undoubtedly raise questions about the abuse of a position of trust or authority and such facts should be put to the sentencing judge as aggravating circumstances.

The use of narcotics to maintain control over the victim

The use of drugs to maintain control over the victim, including by placing them in a position of vulnerability, may also occur in trafficking in persons cases. The drugs may be forcefully administered or the trafficker may introduce the victim to drugs indicating that they will help the victim deal with the situation. This, in turn, may lead to a drug dependency on the part of the victim creating an additional vulnerability that can be exploited by the trafficker to maintain control over the victim.

Multiple victims or multiple incidents

For obvious reasons, the longer the crime continues and the greater the number of victims, the greater the overall level of harm. Trafficking cases often involve multiple victims and generally involved persistent and repeated criminal conduct against the victim.

Victimization of individuals causes harm to many others, such as their families, friends and community of origin. Numerous direct victims are likely to mean many more indirect victims of the victim.

The victim is exposed to serious illness or injury

In trafficking for sexual exploitation, victims may be exposed to a number of health risks and diseases ranging from sexually transmitted infections, including HIV/AIDS.

Poor living conditions found in all forms of trafficking in persons may also expose the victim to a host of diseases.

Manufacturing, mining and agricultural processes may expose trafficking victims to risk of injury or illness, particularly where equipment is dangerous or poorly maintained.

The exposure to the potential injury or illness is the key point. It is largely irrelevant whether or not any actual injury etc. took place



Self-assessment

List the common aggravating factors to be considered when sentencing in trafficking in persons cases.



Case example

The defendant participated in a trafficking ring that took women from East Asia to North America, and required them to work to pay off debts. The defendant was given a 120-month sentence by the court after he pleaded guilty to conspiracy and forced labour. The defendant appealed against his sentence. On review, the court upheld the defendant's sentence. Under national sentencing guidelines, the defendant's role as the leader or organizer of the forced labour at a club owned by him was sufficient for the enhancement because the defendant controlled the activities at the club and directed his wife and club employees in the criminal activity. The court held that the defendant commanded the criminal conspiracy that was the subject of his conviction. Further, the enhancement was proper because at least one victim came from an impoverished background and had limited language skills. The defendant took advantage of her background and illegal immigration status when telling her that her contract to repay her debt was enforceable in the destination country. The choice of the women to violate the law by entering the country illegally did not preclude them from receiving protection.

Mitigating factors

The presence of a mitigating factor may serve to diminish the relevance of a sentencing principle in a particular case and have an impact on the overall sentence issued. Mitigating factors may be statutorily prescribed or developed through the common law. As with aggravating factors, mitigation is context specific and will depend on the particular facts of the case, the offence in question and the principles that guide sentencing in your jurisdiction.

The list below is not exhaustive but provides the practitioner with some general information on common mitigating factors that may be of relevance in a trafficking in persons case.

First-time offender

The fact that the convicted party has no criminal record may be viewed as a mitigating factor in your jurisdiction. Such a factor is likely to cause a sentencing court to consider the prospects of rehabilitation as a primary consideration in handing out a sentence (where such considerations are permitted by your legal system). Determining whether a trafficker has a prior criminal record may require liaising with criminal justice officials outside of your jurisdiction.

Prior good character

Just as prior bad character may be a relevant aggravating factor, the prior good character of an individual can be a relevant mitigating factor. The prior good character of the convicted person, demonstrated primarily through evidence of their reputation in the community as well as their deeds, demonstrates qualities that stand in opposition to those of a convicted criminal.

Remorse or conduct following arrest

The attitude or conduct of the accused following their arrest may serve as a mitigating factor. An individual who agrees to cooperate with law enforcement, who chooses to plead guilty early or who demonstrates genuine remorse for their actions and for their victim(s) may deserve consideration of these factors by the sentencing court.

The offender has also been a victim of trafficking in persons

As was noted in module 13: “Countering common defence strategies” it is not unusual for trafficked persons to subsequently become traffickers themselves. There are many reasons for this but the fact that the individual has also been trafficked may serve as a mitigating factor in a case involving prosecution for their role in a trafficking crime. In such cases, facts related to the convicted person’s own victimization may be relevant to a sentencing hearing. These facts can include:

- They were subjected to prolonged control measures prior to becoming an offender.
- Their own trafficking has caused such trauma that they are unable to take on any other form of work.
- They believed that if they became a trafficker this would enable them to escape their own exploitative situation.
- They have been rejected by their own communities as a consequence of being trafficked.
- They have no skills or cannot speak the local language and have no other means of support.

Actions committed under duress

In cases where a defence of duress is not successful, the arguments advanced by the defence that demonstrate that the party acted under duress may still be relevant as a mitigating factor. This may include circumstances where:

- A parent driven by extreme poverty and who is aware of the risks of such action nonetheless agrees to “lease” their child to a local community member.
- A trafficked person becomes a trafficker and claims that it was the only way they could escape their own exploitative situation.

Module 4: “Control methods in trafficking in persons cases” gives further guidance.

Offender’s age

The age of the offender may be relevant as a mitigating factor in sentencing; however, its effect on mitigation may be minimal given the seriousness of the crime of trafficking in persons.

Role in the offence

The extent of the offender's involvement in the actual commission of the crime may have an impact in determining an appropriate sentence though will not generally impact their culpability.

Examples of minor roles in trafficking in persons cases include:

- One-off transporting a victim for a short distance;
- Working as a cook or cleaning-person in a trafficking operation;
- Renting facilities knowing that they will be used by a trafficking operation;
- Loaning vehicles knowing that they will be used to move trafficked persons;
- Preparing fraudulent documents knowing they will be used to facilitate the movement of trafficked people.



Self-assessment

What are the common mitigating factors in sentencing trafficking in persons cases?

What is the difference between aggravating and mitigating factors in sentencing?

Finding information to assist in sentencing decisions

In many cases the information presented at court will give sufficient information to make a decision on sentence. In some cases there may be a need to find further information. The proper procedure to be adopted may be governed by your national laws and procedures. The following are suggestions that you may wish to adapt for use in your own legal system

Pre-sentence adjournment of a case for further enquires.

There may be the need to have a pre-sentence adjournment of a case for certain enquiries. Such enquiries include background checks of the convict to be undertaken for a proper evaluation of the circumstances that may be considered in pronouncing the appropriate sentence. In order to come to a proportionate sentence, judges may have the authority to ask for simultaneous reports from various parties and may direct (where this is allowed) specific areas of focus for the enquiry.

In some jurisdictions there is an official process for such enquiries to be conducted by an independent body or officials such as probation officers. It is desirable that where these processes do exist the people making enquiries and reports to the courts are aware of some of the specific issues in trafficking in persons cases. Module 3: "Psychological reactions of victims of trafficking in persons" and module 4: "Control methods in trafficking in persons cases" may be useful in developing this awareness.

Enquiries abroad may be required in some cases. If these are considered, judges should be aware these are likely to take a long time, will probably require the use of international legal procedures and involve some cost. In some cases it may be highly unlikely that the information either exists or is accessible.

A decision on foreign enquiries should be made on a case-by-case basis. Where they are made, a lengthy adjournment of court proceedings will almost certainly be required.


Sentencing information during court proceedings

In some jurisdictions there may be an opportunity to ask for information relating to the background of the offender to be obtained before the final hearing, to enable the judge to determine the sentence to be imposed. These enquiries should not prejudice the outcome of the case. Early enquiries may help reduce delays in sentencing and may be fair to both the victim and the convicted person.

Victim impact or personal statements

A number of jurisdictions permit the victim to provide a statement to the court detailing the impact the crime has had on him/her. This statement is provided after a finding of guilt but prior to the determination of sentence. This may include the harm suffered as well as the effects the crime has had not only on the victim but also his/her family members and loved ones. The purpose of the statement is to enable the victim to play a more prominent role in the process by enabling him/her to describe directly how the crime has affected his/her life.

“Victim” may be defined in some jurisdictions to include not only the person who was immediately the victim of the crime but may also include their family members or loved ones. In some jurisdictions, this information must be taken into consideration by the sentencing court.

	Self-assessment
<p>How can you find information that may assist in sentencing decisions in trafficking in persons cases?</p>	

Summary

Decisions on sentencing should be the sole responsibility of the judiciary (and in some cases juries) acting within the legislation of their jurisdiction.

Prosecutors and investigators should put all possible facts to the judiciary to allow them to make sentencing decisions that are fair and accurately reflect the circumstances of individual cases.

Some of the dominant principles of sentencing reflected in various legal systems include:

- Proportionality;
- Retribution or denunciation;
- Deterrence;
- Rehabilitation;
- Incapacitation or separation;
- Reparation.

Aggravating factors in trafficking in persons cases include:

- Previous conviction(s), particularly for trafficking offences;
- Prior “bad” conduct;
- Offence was motivated by bias, prejudice or hate on racial and other grounds;
- Evidence of prior planning;
- More serious harm was intended than actually resulted;
- The offence was committed by a group or gang;
- The offence was motivated by financial or material gain;
- Attempts to frustrate or impede the administration of justice;
- The offender committed crime while subject to pre-trial or sentence conditions;
- Vulnerable victim(s) were targeted;
- Weapons were used to frighten or injure victim(s) or persons known to them;
- Deliberate, repeated or gratuitous violence or other forms of degradation were used;
- Victims were assaulted in the presence of others;
- Offenders abused a position of power, authority or trust;
- Narcotics were used to maintain control over the victim;
- There were multiple victims or multiple incidents;
- Victims were exposed to serious illness;
- The victim played a significant role in the community.

Mitigating factors in trafficking in persons cases include:

- It is the offender's first offence.
- The offender:
 - Is of previous good character;
 - Has shown remorse or good conduct following arrest;
 - Has also been a victim of trafficking in persons;
 - Committed the offence under duress;
 - Is very young/old;
 - Had a minor role in the offence.