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Global Initiative to Fight Human Trafficking



# **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 victims 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 in trafficking in persons cases” 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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