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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 investigations” 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 in trafficking in persons cases” 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 in trafficking in persons cases" 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.

- (a) Investigator;
- (b) Prosecutor; and
- (c) 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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