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Global Initiative to Fight Human Trafficking



Anti-human trafficking manual for criminal justice practitioners

Module 6

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Anti-human trafficking manual for criminal justice practitioners

Module 6:

International cooperation in trafficking
in persons cases



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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
<p>What are the types of international cooperation that can be provided as defined by the UNTOC?</p> <p>What is the process of making a formal request for mutual legal assistance?</p>	

	Practical guidance: drafting a legal assistance request
<p>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).</p>	

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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