



Tool 5.16 Protecting victims during investigations

Overview

This tool introduces the requirements of the Organized Crime Convention and the Trafficking in Persons Protocol with respect to protecting victims, and summarizes some good practice that can serve as a basis for a humanitarian approach to law enforcement.



The health and safety of victims takes precedence over other investigation objectives!



For more on victim assistance see Chapters VI and VIII below. Law enforcers should particularly refer to Tool 6.10 concerning victim identification and Tool 6.11 on interviewing victims, Tool 8.2 on obligations of States to child victims and Tool 8.3 on protection, assistance and human rights. See also Tool 5.19 concerning special considerations with regard to the protection of child witnesses of trafficking in persons.

Basic principles of protection

Law enforcement officers have an unequivocal humanitarian and legal duty to treat the victims of trafficking in accordance with their fundamental human rights.

The safety of the victims and their families and loved ones is the paramount consideration at all times and the direct responsibility of the investigator.

Notwithstanding that the most effective response to trafficking victims is a multi-agency one, the issue of safety resides and remains with the law enforcement investigator—it cannot be abrogated or delegated to other agencies.

The investigator has a clear duty to conduct a continuous process of risk assessment with respect to the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.

Safety and the possibility of reprisals against the victims and their families will always be a feature of crime related to trafficking and it will never be possible to completely eradicate

the risk factors. However, the duty of the investigator is to ensure that the risks in each case are assessed from the outset and that the assessment is continuously reviewed and updated. Moreover, where the victims have testified, the duty of care does not end with the conclusion of the trial.

The investigator has a clear duty to be open and honest at all times with the victims so that they are made fully aware of the issues, responsibilities and potential consequences and risks attached to any decision that they may be called upon to make.

Cooperation with law enforcement officers will always involve an element of risk for the victims of trafficking and possibly their families. The critical point is that the victims are made fully aware of all the issues and risks attached to any decision they are asked to make by the investigator, so that they can reach a fully informed decision. Deception of the victims is a means utilized by traffickers; the situation should never arise whereby victims of trafficking can justifiably claim that they were deceived for a second time by law enforcement officers.

The investigator has a clear duty to ensure that the victims are made fully aware of all available support measures and services that exist to help them overcome their ordeal and that the victims are able to establish initial contact with them.

Victims of trafficking may never recover from the physical, psychological or sexual damage that they have suffered. It is vital that they are given access to the full range of support and care services that exist to aid them in the recovery process. It is not the role of the investigator to provide this care and support; other agencies exist to provide these services and do it far better than law enforcement officers. The crucial point is that it is the duty of the investigator to ensure that the victims are fully informed of the help that is available to them and can get in touch with the relevant organizations. To facilitate this, investigators should develop a network of contacts with the relevant governmental and non-governmental organizations that provide such support services.



Source: Best Practice; UNDP, Law Enforcement Manual for Fighting against Trafficking of Human Beings, available at: www.undp.ro/governance/Best%20Practice%20Manuals

Protection of victims under the Organized Crime Convention

Article 25, paragraph 1, of the Organized Crime Convention requires each State party to “take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation”. Generally, the requirements for the protection of victims will be subsumed within legislation providing protection for witnesses. Article 24, paragraph 4, of the

Convention requires States parties to ensure that that protection extends to all victims who are also witnesses, but to meet the requirements of article 25, legislators must either extend it to victims who are not witnesses, or adopt parallel provisions for victims and witnesses. In either case, the substantive requirements will be the same, and both articles 24 and 25 make specific references to potential cases of “retaliation or intimidation”.

Victims of trafficking are often reluctant to come to the authorities for a number of reasons:

- Fear of reprisal from traffickers
- Trauma, shame and fear of rejection by family and society upon return to their country of origin
- Hope of being smuggled again for the possibility of a better life
- Lack of trust
- Lack of information on available assistance, particularly from non-governmental organizations

With these factors in mind, key points to note are that States are required, by virtue of article 25, to assist and protect victims of trafficking regardless of whether they are witnesses in criminal proceedings. Merging witness and victim protection measures with appropriate support measures assists countries in complying with the requirements of the Organized Crime Convention and increases the chance that witnesses and victim-witnesses will cooperate with criminal justice processes.

Protecting the identity and privacy of victims

Article 6, paragraph 1, of the Trafficking in Persons Protocol supplements the provisions of the Organized Crime Convention and requires that measures be taken to protect the privacy and identity of victims, including by making legal proceedings confidential to the extent that this is possible under domestic law. A State’s procedural laws may require amendment to ensure that courts have authority to protect the privacy of victims in appropriate cases. This may include keeping the proceedings confidential, for example by excluding members of the public or media representatives, or by imposing limits on the publication of specific information, such as details that would permit identification of the victim.

Ensuring the physical safety of victims

The requirements of article 6 of the Trafficking in Persons Protocol supplement the provisions of the Organized Crime Convention concerning the provision of assistance and protection to victims.

Article 24 of the Convention refers to the dangers represented by “retaliation or intimidation” for those who cooperate with law enforcement authorities, whereas article 9 paragraph 1 (b) of the Protocol also refers to protection from the risk of “revictimization”, a significant problem in trafficking cases.

The fears of victims are often fully justified by the very real prospect of retaliation if they assist the competent authorities. It is therefore essential that programmes to protect victims

both during and after they have cooperated are implemented and adequately resourced. Protection measures may include:

- (a) Physical protection, such as relocation and permitting limitations on the disclosure of information concerning identity and whereabouts;
- (b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness.

Contacts with State authorities are usually very problematic for the victims, especially when traffickers have used fear of such authorities to intimidate victims. In such cases, non-governmental organizations may play an important role as intermediaries.

The role of prosecutors in providing physical protection measures to victims appearing as witnesses (victim-witnesses)

- Full or partial anonymity may be appropriate for some victim-witnesses.
- Where the law allows, review cases to identify if there is a need for anonymity and make appropriate arrangements (including any judicial hearings) required to establish anonymity.
- Consider if the risk to the victim indicates that it would be appropriate to hold a suspect or suspects in custody pending the final court hearing.
- Where you do not have the power to authorize pre-hearing detention, make an application 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, do so as discretely as possible.
- It may be difficult to arrange protection at some courts. In some situations it may therefore be appropriate to hear a case in a particular court or transfer a case to a particular court. Find out the possibility and the procedures for arranging the transfer of hearings to other courts.
- Consider any protection measures that may be required in court buildings at any hearings (including pre-hearing and full trial). These may include:

Visiting courts to check whether they are suitable to provide required levels of protection

Video or audio links from rooms within the court or from another building; in some cases, it may be possible to use video links from outside your state or region

Screens for witnesses to keep the victim-witness out of view of the suspect and others in court

Separate rooms for victim-witnesses and suspects and defence witnesses

Checking that court staff are aware of what they should do to help protect victim-witnesses

Secure routes into and out of the court

Arranging for accommodation that is accessible to the court but secure

Showing witnesses the layout of the court prior to the hearing and explaining court procedures (Note: It is important not to coach witnesses on how to give evidence)

Special arrangements such as (in some jurisdictions) removal of gowns and wigs

Where you need prior judicial approval for special arrangements, informing the judicial authorities and starting the required procedures

- In some jurisdictions, there are specific requirements concerning the use of witness supporters in court. Where there is no specific requirement, it is good practice to provide witness support, but only where provided by appropriate people with appropriate training and experience.

Recommended resources



For more information on protecting victims (and witnesses), see the UNODC operational training manual to combat trafficking in persons, forthcoming in 2008, at:
www.unodc.org

Human Traffic, Human Rights: Redefining Victim Protection

This 2002 publication by Anti-Slavery International is an investigation of various measures to protect victims of trafficking, particularly those who act as witnesses in the prosecution of traffickers, in Belgium, Colombia, Italy, the Netherlands, Nigeria, Poland, Thailand, Ukraine, the United Kingdom and the United States. The report found stronger success in prosecutions where there were stronger measures in place to protect victims effectively. The report makes various recommendations for Governments on protecting victims of trafficking.



The full report is available at:
www.antislavery.org/homepage/resources/humantraffichumanrights.htm

Promising practice

Federal Law of the Russian Federation

The 2005 Federal Law on Government Protection of Victims, Witnesses and Other Participants in Criminal Proceedings establishes a system of measures to ensure Government protection, including actions to ensure security of and assistance to victims, witnesses and other participants in criminal proceedings. The Law also sets out eligibility criteria and procedures for the application of protection measures.



The Federal Law of the Russian Federation is available at:
<http://no2slavery.ru/files/witseclaw.doc>