



Tool 6.13 Victim certification

Overview

This tool advocates for a process of certifying victims as such to enable them to access services and support more effectively.

Victims of trafficking cannot easily establish their status as victims and, as a result, may experience difficulties in accessing services that are available to this group. A State may therefore consider developing a scheme to confirm the “victim status” of individuals and their eligibility for various services, including temporary residence permits, health services, shelter and protection.

While the Trafficking in Persons Protocol makes some provision for the assistance and support of victims, no specific requirement or process is provided for whereby the status of victims as such can be established. In cases where steps are taken to provide assistance to victims, legislators may therefore wish to consider establishing a process whereby victims or others acting on their behalf can seek such status. Generally, this might involve any or all of the following:

- Allowing courts or tribunals that convict traffickers or deal with trafficking in civil or other litigation to certify as such any victims that are identified during the proceedings, whether or not they actually participate in those proceedings.
- Allowing a judicial or administrative determination to be made based on the application of law enforcement, border control or other officials who encounter victims in the course of investigations or prosecutions.
- Allowing a judicial or administrative determination to be made based on the application of the alleged victim personally or some representative, such as a representative from a non-governmental organization.

Promising practice

Certification process in the United States

The following example of a certification process is the Victim Certification Process managed by the United States Department of Health and Human Services.

Certification allows victims of trafficking who are not United States citizens to be eligible for a special visa and certain benefits and services under any federal or state programme or activity to the same extent as a refugee. Certification provides victims of trafficking with the necessary documentation to be eligible to receive benefits and services they may need to rebuild their lives while remaining in the United States. Victims of trafficking who are United States citizens do not need to be certified to receive benefits. As United States citizens, they may already be eligible for many benefits.

To receive certification, a victim of trafficking must:

- Be a victim of a severe form of trafficking as defined by the Trafficking Victims Protection Act of 2000
- Be willing to assist with the investigation and prosecution of trafficking cases and
- Have completed a bona fide application for a T-class visa or
- Have received continued presence status from the United States Citizenship and Immigration Services in order to contribute to the prosecution of human traffickers.

Once they have met the certification requirements listed above, victims of trafficking receive an official letter of certification from the Department of Health and Human Services, Office of Refugee Resettlement.

Adult victims of trafficking who are certified by the Department of Health and Human Services are eligible to receive certain benefits and services.

Child victims of trafficking (under the age of 18) do not need to be certified in order to receive services and benefits. The Office of Refugee Resettlement will issue a letter stating that a child is a victim of a severe form of trafficking and is therefore eligible for benefits.



Source: United States Department of Health and Human Services, The Campaign to Rescue and Restore Victims of Human Trafficking, Fact sheet, available at:

www.acf.hhs.gov/trafficking/about/cert_victims.html

Another step taken in the United States to protect victims of crime has been the passage of regulations by the Department of Homeland Security, on 5 September 2007, making immigrant victims of crime immediately eligible for a U visa. These regulations came after a prolonged delay following the passage of the Victims of Trafficking and Violence Act of 2000, which stipulated that the U visa should be created. The U visa offers temporary legal status to undocumented immigrants who are victims of crime and are helpful in the investigation or prosecution of a crime. The U visa is available to immigrants who:

- Are victims of crimes which violate federal, state or local criminal laws, including trafficking
- Have suffered severe physical or mental abuse as a result
- Have been helpful, are being helpful, or are likely to be helpful in the investigation or prosecution of criminal activity

The U visa allows undocumented immigrants to feel safer in coming forward to report and testify, because it removes the fear of deportation, thereby increasing the effectiveness of law enforcement efforts in investigating and prosecuting crimes.



More information about the U visa is available at:
<http://legalmomentum.org>