

JUSTICE FOR VICTIMS



Tool 8.16 Access to information and legal representation

Overview

This tool explains the importance of providing victims of trafficking with access to information and, when required, legal representation to facilitate their participation in criminal proceedings against traffickers. For related information, see Tool 5.15.

States need to encourage the participation of victims of trafficking in the criminal proceedings against the trafficker. They are an important source of evidence for the successful prosecution of a trafficking case.

Victims should be supported in their efforts to participate in the judicial process through direct and indirect means, timely notification of critical events and decisions, provision in full of information on the procedures and processes involved, support of the presence of victims at critical events and assistance when there are opportunities to be heard. The structure of the justice system should take into account the obstacles which many victims encounter in seeking to obtain such access, owing to factors such as culture, race, language, resources, education, age or citizenship.



Source: Handbook on Justice For Victims of Crime and Abuse of Power (chap. II, sect. D), available at:

www.unodc.org/pdf/crime/publications/standards_9857854.pdf

Facilitating the participation of victims in criminal proceedings

Trafficked persons need information, in a language that they understand, about the judicial process and about their own rights and responsibilities as participants in criminal proceedings. Access to information is an important starting point for the participation of victims of trafficking in the criminal process. The most extensive list of rights is of no practical use to victims if they are not informed of those rights. Information helps to prepare and familiarize victims with the criminal proceedings and to ease their psychological stress and their anxiety. It is also a means of empowerment and enables victims to participate actively in the case and enforce their rights.

Article 6, paragraph 2, of the Trafficking in Persons Protocol

The Trafficking in Persons Protocol creates an obligation on States parties to provide victims with information and an opportunity for their views and concerns to be presented at criminal proceedings against offenders. (The basic obligation to ensure that victims are permitted an opportunity to participate is set out in article 25 of the Transnational Organized Crime Convention.) Such presentation could be in the form either of written submissions or oral statements and is to be done in a manner not prejudicial to the rights of the defence.

The Trafficking in Persons Protocol also requires States to provide victims of trafficking with information on relevant court and administrative proceedings and with counselling and information, in particular about their legal rights, in a language they can understand.

Article 6, paragraph 2

Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- (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.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex) states that victims of crime should be informed of their rights to seek redress, of the role of judicial and administrative processes, of the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and when they have requested such information, and of the availability of health and social services and other relevant assistance.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected,

without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

In some jurisdictions, the legal right to receive information about various proceedings is limited to certain groups of victims. In some cases, only those who play a formal role in criminal proceedings, for example as witnesses or civil claimants or private prosecutors, are given basic information.

Some States have established the legal duty of authorities involved in criminal proceedings to provide information to victims of crime. One advantage of such an approach is that it raises the officials' awareness of their responsibility towards victims.

The mere existence of a legal obligation is not sufficient to ensure that victims have access to information. Additional measures, such as the provision of translation services and legal assistance, are necessary to ensure victims can effectively use this information.

Legal representation and assistance

Victims are often deterred from participating in legal proceedings because simple, accessible and timely legal advice is not available to them when they seek assistance and support. Legal advice should be made available as part of the integrated support offered by the victim assistance programme. Because many victims of trafficking are fearful of Governments and bureaucratic authorities, the provision of legal assistance and representation is especially important. The development of close links between non-governmental organizations providing legal assistance and law enforcement agencies can greatly facilitate the protection of victims and their rights. The development of formal and informal protocols and procedures between these agencies should be part of any integrated victim assistance strategy.

The task of legal counsels is to inform victims about their rights and role in criminal proceedings and to accompany them throughout the process. They assist victims in expressing their views and enforcing their procedural rights. Legal counselling also prepares victims for the criminal proceedings and can reduce the risk of imposing further trauma on the victims. It increases the chance of sound and coherent witness statements and contributes to the successful prosecution of the traffickers. There is a clear relationship between the victims' access to legal representation and successful prosecution outcomes.

Many jurisdictions allow victims to hire a lawyer to advise and accompany them throughout the proceedings, if they pay for these services themselves. Victims of trafficking, however, usually have no financial means to pay for legal counselling. Therefore, it is necessary to make available State-paid legal counselling. Furthermore, the professional legal counsels should be familiar with the needs and situations of victims of human trafficking and should have acquired the necessary expertise to represent them effectively during the various legal proceedings.

Promising practice

Cambodia

Action pour les enfants (www.aplecambodia.org) is a non-governmental organization established to combat the sexual exploitation of children. In addition to social workers who provide counselling and rehabilitation services to child victims, the organization's lawyers provide pro bono legal advice and representation to children and their families. The organization also monitors cases before Cambodian courts, reports on adherence to legal procedures and collaborates with foreign law enforcement and international organizations in education, advocacy and awareness-raising activities.

Through the **Cambodian Defenders Project** (www.cdpcambodia.org), a group of lawyers working in Cambodia assists people through the legal process and to develop the legal system. The Project's Centre Against Trafficking provides legal assistance to victims of trafficking and conducts training for local police authorities in relation to trafficking investigations.

Moldova

The **Centre for Prevention of Trafficking in Women** (www.antitraffic.md) provides free legal assistance for victims of trafficking and offers training to law enforcers, prosecutors, judges and border guards.