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Anti-human trafficking manual for criminal justice practitioners

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Anti-human trafficking manual for criminal justice practitioners

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Introduction

The crime of trafficking in persons is clandestine and complex. Where the elements of the crime, as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol) are misunderstood, criminal justice responses may be inappropriate and ineffective. The crime thrives mostly underground and sometimes spans over several States' jurisdictions, making detection and enforcement difficult.

Beyond this, the multiple approaches to combating trafficking in persons are relatively new to criminal justice practice. Consequently, the criminal justice response to trafficking in persons can be slow, and place more emphasis on punishing its culprits than on protecting its victims. In some instances, this has led to mishandling of trafficking cases, with the victims of the crime being arrested and treated as criminals. Not only does this destroy the trust needed for effective collaboration in the investigation and prosecution of the offence, but it also revictimizes and stigmatizes victims in the process.

The Anti-Human Trafficking Manual for Criminal Justice Practitioners is offered in response to these various challenges. It aims to address capacity gaps of criminal justice practitioners working to prevent and combat trafficking in persons, protect and assist its victims, and effectively cooperate with others in doing so. The manual elaborates promising practices in every phase of criminal justice response to trafficking in persons, and stands as a practical guide and training tool for criminal justice practitioners.

The Anti-Human Trafficking Manual for Criminal Justice Practitioners is the product of broad-based expertise gathered in the course of a series of expert group meetings of judges, prosecutors and law enforcement officers who are practitioners in the field of human trafficking. Each of the modules in the Manual is designed to equip criminal justice practitioners to appropriately respond to the challenges of trafficking in persons. The promising practices offered in each module are intended to reveal the complexities of the subject matter, and enable practitioners to apply lessons learned by other practitioners to their own experiences in the field.

The modules address each phase of criminal justice response to trafficking in persons, from identification of victims through investigations and prosecutions of traffickers to the protection of victims. Each module is designed to stand alone in meeting the specific needs of the particular phase of criminal justice response it seeks to address. The manual should not be viewed as an academic treatise, but as a practical guide for criminal justice practitioners.

Overview of modules

Module 1: Definition of trafficking in persons and smuggling of migrants

The first module serves as a key to some of the terms used throughout the Manual. It defines terms within the ambit of United Nations instruments, particularly the United Nations Convention against Transnational Organized Crime and its supplementary Trafficking in Persons Protocol. There is emphasis within this module on the definition of trafficking in persons as offered by the Trafficking in Persons Protocol, the smuggling of migrants, as defined by the Migrants Protocol, and the key differences between the two.

Module 2: Indicators of trafficking in persons

This module outlines some of the basic tell-tale signs that may flag potential trafficking situations to first responders. Such signs are explained in this module as indicators that trafficking may have taken place (rather than proof that it has), which should trigger further inquiry. The module catalogues indicators for different types of trafficking situations to offer guidance for border police and other actors who may come into contact with victims of trafficking in persons.

Module 3: Psychological reaction of victims of trafficking in persons

This module primarily considers the impact of sexual abuse and exploitation on victims of trafficking in persons. It explores how the trafficking in persons process affects the physical and mental health of a victim. The module also explains how the impaired health of a victim may be detrimental to the investigation and prosecution of the crime of trafficking in persons and discusses appropriate criminal justice strategies to enable victims to cooperate with the criminal justice process. Finally, the module offers guidance on minimizing the psychological impact that investigations may have on victims of trafficking in persons.

Module 4: Control methods in trafficking in persons

This module explains the main forms of control used by traffickers, describes how a combination of control measures may be used throughout the trafficking process, and explores the options for responding to the main forms of control when investigating trafficking in persons cases.

Module 5: Risk assessment in trafficking in persons investigations

This module outlines the need for continuous risk assessment and the key questions to be considered when conducting risk assessments in trafficking in persons investigations. It explains the concept of risk and the persons likely to be at risk in the context of trafficking in persons. The module also describes what the risks are, how to determine the level and severity of risk, and actions to be considered in response to an identified risk.

Module 6: International cooperation in trafficking in persons cases

Given many trafficking in persons cases take place transnationally, international cooperation is necessary for the effective investigation of trafficking in persons. This module explains why international cooperation is required in trafficking cases, recalls the different forms and principles of international cooperation, discusses types of international cooperation beyond traditional forms of extradition and mutual legal assistance as defined by the UNTOC, and discusses the impact of different legal systems on international cooperation amongst States. The module further offers insight into the process of making formal requests for mutual legal assistance, the contents of the request letter, and considerations when making requests. The module also explores possibilities of "officer-to-officer" contact in making requests of another jurisdiction and the cooperative actions required when repatriating victims of trafficking in persons.

Module 7: Crime scene and physical evidence examinations in trafficking in persons investigations

This module explains the relevance of "crime scene" investigations in trafficking in persons offences. It describes the types of physical evidence most commonly encountered in trafficking in persons investigations and outlines basic actions required to preserve and document the crime scene and recover traces of physical evidence from it. The module also addresses key considerations and possible actions in trafficking in persons investigations when examining:

- Victims and suspects;
- Locations;
- Vehicles;
- Documents found at the scene, on victims or suspects and in vehicles;
- Information technology and communications equipment found at the scene, on victims or suspects and in vehicles.

Module 8: Interviewing victims of trafficking in persons who are potential witnesses

This module identifies the overall objective of all law enforcement interviews with victims of trafficking in persons who are potential witnesses. It identifies five stages of the "PEACE" model for interviewing crime victims:

- Planning and preparing for the interview;
- Engaging with the victim witness and explaining the process and content;
- Obtaining the Account of the victim-witness,
- Closing an interview appropriately;
- Evaluating the content of the interview.

The module catalogues the practical steps of planning such an interview and the elements required to engage with a trafficking in persons victim-witness in an evidential interview. The module also outlines special interview techniques and explains the differences between open, specific, closed and leading questions in the interview.

Module 9: Interviewing child victims of trafficking in persons

This module identifies a child as a person below the age of 18 as provided in the Trafficking in Persons Protocol. It establishes that the underlining principle guiding interviews of children must be conducted with the best interest of the child in mind. The module recognizes that children who are suspected victims of trafficking in persons may be more vulnerable than a suspected adult victim, and adapts each of the five stages of the PEACE Model for interviewing victims accordingly.

Module 10: Interpreters in trafficking in persons investigations

This module lists situations in which interpreters may be required in the course of investigations and explains why it is important to retain one throughout a trafficking in persons investigation. The module explains relevant considerations when planning interpreting services and actions required when preparing to conduct an interview. It also identifies the information that interpreters should and should not be privy to in the course of offering interpretation services.

Module 11: Victims' needs in criminal justice proceedings in trafficking in persons cases

The victimizing impact of the trafficking process must be recognized and addressed at every phase of criminal justice response. The Trafficking in Persons Protocol provides for support of and assistance to victims. This module details the requisite support and assistance at every phase of the criminal justice process and outlines the benefits of supporting and assisting victims not only for victims, but also for criminal justice objectives. The module also demonstrates the challenges of respecting victims' rights irrespective of their level of collaboration with the criminal justice system.

Module 12: Protections and assistance to victims-witnesses in trafficking in persons cases

This module defines and explains the concept of witness protection in general, the necessity for it and its limitations with respect to trafficking in persons cases. The module recognizes the vulnerability of victims-witness of trafficking in persons, and the risk that victims-witnesses are exposed to in the criminal justice process. The module elaborates the roles of various criminal justice practitioners at different phases of the criminal justice response and the measures to put in place to protect the victims-witnesses. The protection required for a victim-witness is recognized as potentially starting at the point of identification and continuing through investigation to prosecution and beyond.

Module 13: Compensation for victims of trafficking in persons

This module describes the international legal framework for compensation in trafficking in persons to be the United Nations Convention against Transnational Organized Crime and its supplementary Trafficking in Persons Protocol as implemented within the domestic legislations of the States parties. The module also underlines jurisdictional differences in the administering, funding, claiming and paying of compensation. It further explores the likely basis for compensation claims by victims and the different courts that may adjudicate compensation claims.

Module 14: Considerations in sentencing in trafficking in persons cases

This module explores theories of punishment, provides practical suggestions and explores the role of the judiciary in sentencing. It recalls the common aggravating as well as mitigating factors to be considered in sentencing traffickers and addresses ways in which information may be used to inform sentencing decisions in trafficking in persons cases.

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Glossary*

Active listening

Active listening means letting the person to whom you are speaking know that you have heard what she/he has said. This can be done by reflecting back to them what they have just communicated. For example, if they said, "I didn't like it when he did that" you might say, "You didn't like it." It is important not to subconsciously or consciously indicate approval or disapproval of the information just given.

Actus reus

In criminal law terms the *actus reus*—the material or physical element(s)—and the *mens rea*—the mental element—are required for an accused to be found liable for a criminal offence in criminal systems around the world.
Actus reus refers to the physical component of a crime, the act of committing the crime.

Aut dedere aut judicare

Aut dedere aut judicare refers to a general principle in international law whereby States are obliged to prosecute or extradite perpetrators of universally condemnable crimes.

Change perspective

A technique used in interviewing, "changing perspective" means asking a person to imagine they are viewing a scene from a different position.

Changing the order of recall

Another interviewing technique. An example of changing the order of recall would be to ask a person to give an account from most distant to most recent event and then changing it from most recent to most distant.

Cognitive interviewing

Cognitive interviewing is based on good communication skills, as well as a number of procedures specifically designed to assist witnesses in accessing their memories: "mental context reinstatement (MCR)", "changing the order of recall" and "changing perspective".

* This glossary does not attempt to act as a legal dictionary and, while every endeavour has been made to ensure that the explanation for terms in this glossary are accurate, the definition of some legal terms may differ from jurisdiction to jurisdiction.

Communications monitoring

Communications monitoring means using various techniques to identify telephone numbers, email addresses etc used by traffickers in their communications.

Crime scene

A crime scene can be any physical scene, anywhere that may provide potential evidence to an investigator. It may include a person's body, any type of building, vehicles, open-air locations or objects found at a location. Crime scene examination refers to an examination where forensic or scientific techniques are used to preserve and gather physical evidence of a crime.

CROP (Covert Rural Surveillance)

Covert Rural Surveillance is a variation on static surveillance but is carried out by staff in the open air. Although the term uses the word "rural" it can take place in any open air location. Some forms and stages of trafficking, due to their location, will not be suited to CROP surveillance.

Culpability

Culpability refers to the degree to which an offender is to blame or is responsible for an offence. Culpability denotes that an offender has the intention to cause harm, the offender is reckless as to whether harm is caused and he/she has knowledge of the specific risks entailed by his/her actions.

Delict

Delict is a civil law concept in which a willful wrong or an act of negligence gives rise to a legal obligation between parties even though there has been no contract between the parties.

Disruptive investigations

Disruptive investigations may be used if, though it may not be possible to secure the evidence required to prosecute those involved in trafficking, opportunities may exist to disrupt the activities of individual traffickers or trafficking networks. Examples of tactics that can be used include prosecution for other offences, seizure of assets, confiscation of profits, or the creation of a hostile environment resulting in displacement of the traffickers.

Double jeopardy

Double jeopardy or *ne bis in idem* refers to the principle that a person should not be prosecuted more than once for the same criminal conduct. This applies even where a person has been acquitted of a charge relating to that conduct in another jurisdiction.

Electronic tracking/tagging

This technique is most commonly used to track the movement of vehicles and involves attaching a tracking device to the vehicle. It offers the advantages that it may be more cost effective and carry less risk to staff than mobile surveillance and may be used in very dangerous or surveillance-conscious situations.

Its main disadvantages are the limited information it can provide (it only reveals where a vehicle is, not what is happening in or around it), and its cost.

Foot surveillance

Foot surveillance involves following people on foot noting what they do, where they go and whom they speak to, how they communicate and what spending patterns they have. It generally requires specific information or intelligence to be effective. It is not likely to be the first technique deployed, but rather is usually used in conjunction with other techniques.

Harm

Harm to victims can take various forms. It includes physical injury, sexual violation, financial loss, damage to health, or psychological distress. Levels of harm can vary within each of these categories. Harm depends on the personal characteristics and circumstances of the victim as well as the nature of the case.

Informant

In this material, the term "informant" is given a very wide meaning and denotes any person who provides information to the police about a crime.

Intelligence

Intelligence, in the context of law enforcement, is information that has been through the intelligence process of collection, evaluation, collation, analysis and dissemination. The purpose of intelligence is to provide knowledge and understanding upon which operational decisions can be made.

Intelligence development

Intelligence can be developed for a number of reasons, including as part of a general initiative or through the receipt of a piece of information from a police officer, an informant or from an intelligence report outside the country.

Intrusive surveillance

Refers to any form of covert listening or viewing of activity in a situation that would normally be regarded as private. It can be deployed in premises of any kind, vehicles or locations in

the open air. It may involve live monitoring of what happens either with or without a recording device or can be a recording system that is only monitored when tapes etc. are accessed. Intrusive surveillance equipment may be part of a fixed installation at a location or in a vehicle, or may be carried by a person. It is a highly specialized technique requiring considerable technical expertise and planning.

Jurisdiction

In law, jurisdiction can be either territorial or legal. Territorial jurisdiction refers to areas where a given legal authority can be exercised, while legal jurisdiction refers to the extent of legal power, e.g. the power of a court to adjudicate over certain cases.

Memorandum of Understanding (MOU)

An MOU is an agreement between parties. Different rules may apply in trafficking in persons investigations in different agencies and in different jurisdictions. Therefore, where information is to be shared between jurisdictions, agencies or organisations it is strongly recommended that an MOU be established to define roles and responsibilities and how information will be exchanged and used.

Mens Rea

In criminal law terms both the *actus reus*—the material or physical element(s)—and the *mens rea*—the mental element – are required for an accused to be found liable for a criminal offence in criminal systems around the world.

Mens rea refers to the state of mind and intent of the person charged with an offence. Only those with a sufficiently "guilty mind", that is, who acted with criminal intent or knowledge that their actions were wrong, can be found liable for a criminal offence. In certain jurisdictions and in certain cases, criminal liability may be imposed in "strict liability" offences even in the absence of mens rea.

Mental Context Reinstatement (MCR)

MCR is based on the theory that if you put someone back into the context where an event occurred, it will enhance the person's memory of that event. People can be physically taken back to a scene, or asked to remember things about the scene. An example of MCR might be saying to them: "You are sitting in the room now. Describe what you are hearing"; perhaps followed by "You can hear music? Describe the music you are hearing".

Mobile surveillance

Mobile surveillance is conducted using a vehicle. It allows for long-range surveillance and may be used to follow people on foot or other vehicles. It is limited when people are travelling where vehicles cannot go. It can be used as an alternative to a static vehicle for surveillance, which may be obvious. It is frequently combined with foot surveillance and static surveillance.

Mutatis Mutandis

The phrase *mutatis mutandis* is clarified in the interpretative notes (A/55/383/Add.1, para. 62) as meaning "with such modifications as circumstances require" or "with the necessary modifications".

Non-governmental organization (NGO)

A non-governmental organization (NGO) is a not-for-profit, voluntary citizens' group, which is organized on a local, national or international level to address issues in support of the public good. Task-oriented and made up of people with common interests, NGOs perform a variety of services and humanitarian functions including, bringing citizens' concerns to governments, monitoring policy and programme implementation, and encouraging participation of civil society stakeholders at the community level.

Palermo Protocols

The Palermo Protocols are three protocols adopted by the United Nations in 2000 in Palermo, Italy, together with the Convention against Transnational Organised Crime.

The two Palermo Protocols referred to in this training material are the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children" and the "Protocol against the Smuggling of Migrants by Land, Sea and Air".

PEACE

PEACE is an interview model used in a number of countries around the world that is applicable to interviewing suspects, witnesses, and victims. The PEACE acronym stands for: Planning and Preparation – Engage and Explain – Account – Closure – Evaluate.

Post-traumatic stress disorder (PTSD)

PTSD can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened. It is a severe and ongoing emotional reaction to an extreme psychological trauma, to a degree that usual psychological defenses are incapable of coping. The symptoms of PTSD usually develop within three months of a traumatic event, although they can take up to a year to appear. The symptoms can include intrusion (the event is constantly revisited in the victim's mind, including through flashbacks or nightmares),, painful emotions, avoidance (avoiding symptoms by 'self-medicating' with alcohol or drugs, avoiding dealing with grief and anger), hyperarousal (insomnia, jumpiness, fear), depression and retreat from relationships, etc.

Proactive investigation

A proactive investigation is one that is started by the investigators on their own initiative, often as a result of intelligence obtained. In these cases a number of techniques and tactics can be used to build up evidence before moving to activities such as arrests of suspects and victim rescue.

Reactive investigation

A reactive investigation is one that is initiated when information that an offence has been committed is received unexpectedly and an immediate response is required, such as the rescue of a victim.

Risk assessment

Risk is the likelihood of a potential hazard becoming reality and the consequences if it does. Risk assessment is an attempt to decide how likely it is that a hazard will become reality.

Risk Rating Matrix

A Risk Rating Matrix is a table to illustrate different levels of risk. A commonly used method to assess levels of risk is to consider the severity of the risk and the likelihood of the risk occurring. Both severity and likelihood are ranked as high, medium or low. Each of the rankings is given a score (Low being 1, medium being 2 and high being 3). The overall risk rating is calculated by multiplying severity by likelihood.

Secondary victimization

Secondary victimisation occurs, not as a direct result of the criminal act, but through the response of institutions and individuals to the victim. The process of criminal investigation and trial may cause secondary victimisation because of difficulties in balancing the rights of the victim against the rights of the accused or the offender, or even because the perspective of the victim is entirely ignored.

Smuggling of Migrants

According to Article 3(a) of the "Protocol against the Smuggling of Migrants by Land, Sea and Air", 'smuggling of migrants' means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Source

Used in some jurisdictions to describe an informant.

Specialist techniques

A specialist technique is one that may not be found in day-to-day policing. Generally covert, the targets of the technique should certainly not be aware of their use. These techniques intrude into areas of people's lives that are normally regarded as private. Because of this their use is closely regulated in many jurisdictions.

Static observation points

Static observation points can be in premises, in vehicles or on the street. They may be staffed by observers or use automatic equipment such as video cameras. Observation points may be one of the first surveillance techniques used in an investigation where criminal activity is suspected but its exact nature or who is doing it is not known. However, they can also be used at any stage of an investigation.

Stockholm syndrome

Stockholm syndrome, also known as capture bonding, is a condition sometimes suffered by victims of trafficking in persons, where they come to associate themselves with their captors and exploiters regardless of the exploitative situation they may be subject to.

Surveillance

Surveillance is the monitoring or observation of behaviour during an investigation. It is generally undertaken at a distance either directly, such as by binoculars or postal interception, or by electronic means such as telephone tapping.

Tasking

Giving an informant a task to obtain specific information.

UN TOC

UN TOC refers to the United Nations Convention against Transnational Organized Crime. The Convention includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Air and Sea and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

Trafficking in Persons (TIP)

The recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at minimum, the exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Trauma

The essence of trauma is that it overwhelms the victim's psychological and biological coping mechanisms. This occurs when internal and external coping mechanisms are unable to deal with an external threat.

Undercover (UC) operations

Undercover operations may be used during police investigations of trafficking cases. Undercover operations are carried out by the police in secret and can range from a simple test purchasing visit to a location, to a large scale operation involving many UC agents. An undercover agent must disguise his/her own identity or use an assumed identity for the purposes of gaining the trust of an individual or organization to learn secret information or to gain the trust of targeted individuals in order to gain information or evidence.

Victim

The term "victim" has different definitions in different jurisdictions. In some jurisdictions a person is declared a "victim" after a judicial process. Official "victim" status in these cases brings a number of privileges and protections. In other jurisdictions, the term victim has a very general interpretation and no specific legal status.

Victim personal statements (VPS)

A victim personal statement differs from an evidential statement or written deposition of evidence in that it does not relate to the facts of the case, but instead to the impact the case has had on the victim.

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