

SPECIAL AND ADDITIONAL MEASURES FOR VICTIM-WITNESSES

A Regional Support Office of the Bali Process and NEXUS Institute Practitioner Guide



REGIONAL SUPPORT OFFICE
THE BALI PROCESS



This Practitioner Guide was prepared by NEXUS Institute in the framework of the project: Improving the Identification, Protection and Reintegration of Trafficking Victims in Asia: Practitioner Guide Series, implemented jointly by NEXUS Institute and the Regional Support Office of the Bali Process. The Practitioner Guide Series supports the work of practitioners in ASEAN and Bali Process Member States by identifying, distilling and presenting existing evidence in a succinct and accessible format and offering guidance on how to address issues and challenges to improve the identification, protection and reintegration of trafficking victims in the region.

Author: Rebecca Surtees and Laura S. Johnson
Technical review: Stephen Warnath, Elena Bartoloni, Sally Escutin
Design and layout: Laura S. Johnson

Publishers: NEXUS Institute
5335 Wisconsin Ave. NW, Suite 440
Washington, D.C., United States
20015

Regional Support Office of the Bali Process (RSO)
27th floor, Rajanakarn Building
3 South Sathorn Road, Sathorn 10120,
Bangkok, Thailand

Citation: Surtees, Rebecca and Laura S. Johnson (2023) *Special and Additional Measures for Victim-Witnesses*. Bangkok: Regional Support Office of the Bali Process (RSO) and Washington, D.C.: NEXUS Institute.

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The NEXUS Institute[®] is an independent international human rights research and policy center. NEXUS is dedicated to ending contemporary forms of slavery and human trafficking as well as other abuses and offenses that intersect human rights and international criminal law and policy. NEXUS is a leader in research, analysis, evaluation and technical assistance and in developing innovative approaches to combating human trafficking and related issues.



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The Regional Support Office of the Bali Process (RSO) was established in 2012 to support on-going practical cooperation among Bali Process members. The RSO brings together policy knowledge, technical expertise and operational experience for Bali Process members and other key stakeholders to develop practical initiatives in alignment with Bali Process priorities. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) established in 2002 and Co-Chaired by Australia and Indonesia, is a voluntary and non-binding process with 45 Member States and 4 international organizations, including the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM) and the International Labour Organization (ILO) as well as several observer countries and international agencies.



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Cover photograph by andresr for Getty Images.

This photograph illustrates various aspects of special measures for victim-witnesses. Unless stated otherwise, individuals in this photograph are not trafficking victims.

The prosecution of trafficking crimes depends on the meaningful participation of trafficking victims as victim-witnesses. Understanding how to fully and appropriately protect and support trafficking victims who serve as victim-witnesses before, during and after their involvement in the criminal justice process is, therefore, key to improving the effective prosecution of traffickers and access to justice for individuals who have suffered exploitation. This Practitioner Guide provides a foundation for developing special and additional measures designed to practically and proactively advance the victim-centered involvement of trafficking victims in investigations and court processes.



Stephen Warnath,
Founder, President and CEO
NEXUS Institute
Washington, D.C.

It takes courage for victims of human trafficking to come forward, much more to serve as witnesses against their traffickers. Victims have experienced physical, emotional, and/or sexual abuse that they do not want to recall and relive. They may be struggling with depression, anxiety, and trauma that can be triggered by their participation in legal proceedings. The precariousness of the victims-witnesses' situation is compounded when they are trafficked to another country where they may face language and cultural barriers. Victims of cross-border trafficking will need additional support such as shelter, stay and work permit in the countries they were trafficked in, where their testimonies against their traffickers is so critical to the global efforts to dismantle trafficking networks. Practitioners have a vital role in assisting victims in their search for justice. Practitioners provide victim-witnesses with information about their rights, available services, and remedies, help victims navigate the criminal justice system, and ensure that they are treated with respect and dignity throughout the process. The RSO, in partnership with NEXUS Institute developed this Practitioner Guide: Special and Additional Measures for Victim-Witnesses. This Practitioner Guide aims to support practitioners by distilling existing knowledge and evidence that can support them in their practice to ensure that it is victim-centered and trauma-informed.



David Scott
RSO Co-Manager (Australia)
Regional Support Office of the Bali Process (RSO)
Bangkok, Thailand



Sukmo Yuwono,
RSO Co-Manager (Indonesia)
Regional Support Office of the Bali Process (RSO)
Bangkok, Thailand

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About the Practitioner Guide: Special and Additional Measures for Victim-Witnesses



What it is

This Practitioner Guide presents existing research and evidence on special and additional measures for victim-witnesses, including challenges faced and practices that can enhance the protection and well-being of trafficking victims as victim-witnesses. It is part of the NEXUS/RSO Practitioner Guide series: *Improving the Identification, Protection and Reintegration of Trafficking Victims in Asia*, which shares knowledge and guidance on different aspects of trafficking victim protection, including:

- Trafficking victim identification
- Trafficking victim protection and support
- Recovery and reintegration of trafficking victims
- Special and additional measures for child trafficking victims
- Special and additional measures for victim-witnesses
- Access to remedies

This series is drafted by NEXUS Institute and published jointly by NEXUS Institute and the Regional Support Office of the Bali Process (RSO). The project is generously funded by the Australian Department of Home Affairs, through the RSO. The series is available on the NEXUS Institute website and RSO website.



Who it is for

This guide is for **practitioners** in Bali Process Member States, as well as further afield, seeking to better support adult and child trafficking victims who serve as victim-witnesses. This includes victim-witness advocates, lawyers and paralegals, prosecutors, judges, child protection specialists, social workers and social assistants, psychologists and counselors. This Practitioner Guide will also be useful for **policymakers** tasked with improving practice and procedures in supporting trafficking victim-witnesses.



How to use it

This Practitioner Guide offers a comprehensive overview of key issues and challenges faced by trafficking victims who serve as victim-witnesses, both adults and children, as well as practitioners tasked with implementing special and additional measures for trafficking victim-witnesses. Practitioners can use this guide to better understand victims' experiences as victim-witnesses as well as structural and institutional challenges faced in the criminal justice process. The guide also offers concrete and practical guidance to practitioners on how to better support and protect trafficking victim-witnesses.



Key



Guidance



Notes



Tips



Victim experiences



Structural and institutional challenges

What are special and additional measures for trafficking victim-witnesses?

Victims of trafficking are entitled to be involved and have their views known in any legal case concerning them. Victims should be encouraged, but not compelled, to participate in the prosecution of their exploiters. Before, during and after their involvement in the criminal justice process, victims should be provided with appropriate information, assistance and support and protection from re-traumatization. Foreign victims should have their legal status temporarily regularized to enable their effective participation without detention or deportation. Special efforts should be made to ensure that the investigation and court processes do not re-traumatize or otherwise cause additional harm to trafficked persons.

Special and additional measures are needed to ensure the safety and well-being of trafficking victim-witnesses. These measures are needed in relation to:



Informing victims and regularizing the legal status of victim-witnesses. Criminal prosecutions against traffickers are often impossible without the testimony of victims. For this reason, states should develop victim-centered strategies aimed at encouraging cooperation with criminal justice authorities. At a minimum, this requires states to: (i) provide identified victims with information about their legal position and options and (ii) regulate the legal status of foreign victim-witnesses to allow them to remain without being detained or deported and, in situations where they have gone home, to return for purposes of giving evidence.



Protecting victim-witnesses from intimidation and reprisals. Victims of trafficking who are cooperating in the criminal justice process can be at a higher risk of retaliation and intimidation. National criminal justice institutions and other relevant agencies should work to identify and address risks to victims' safety and well-being, including through protecting their privacy. Not only are privacy and confidentiality key in protecting victim-witnesses, but protecting privacy and confidentiality also builds feelings of safety and trust. In some cases, the protection of victim-witnesses may require transnational judicial cooperation and the involvement of criminal justice actors both in the country of destination and the country of origin.



Facilitating the safe and meaningful participation of victims in the criminal justice process. Victims of trafficking will be understandably reluctant and afraid to give evidence if this means the risk of being identified by the media or standing up in a public courtroom, often in view of their exploiter, and talking about traumatic personal experiences. They also will not be able to meaningfully engage as victim-witnesses if they do not feel protected or trust criminal justice actors.

If victim-witnesses are focused on self-protection and even survival, they will understandably be reluctant and even fearful to participate in the criminal justice process. National criminal justice practitioners and systems need to find ways to assist trafficking victims to participate safely and meaningfully in legal proceedings. This includes recognizing and being sensitive to their experiences of trauma in all interactions and actions taken.

Victims' wishes, safety and well-being should be prioritized in all matters and procedures. And they should be treated with equal respect regardless of their age, gender identity and cultural backgrounds.



trauma-informed: recognize the impact of trauma and promote environments of healing and recovery



victim-sensitive: prioritize the victim's wishes, safety and well-being in all matters and procedures



child-friendly: design and implement measures with the needs, interests, safety and best interests of the child in mind



gender-sensitive: treat all victims with equal respect regardless of their gender identity, refraining from stereotypes or assumptions on the basis of gender



culturally appropriate: take into account and respect the victim's cultural and religious beliefs, values, norms, practices and language

Special and additional measure for victim-witnesses should be **trauma-informed, victim-sensitive, child-friendly, gender-sensitive** and **culturally appropriate**.

In the case of children as victim-witnesses, additional measures and protections are required. Because child victim-witnesses are especially vulnerable to re-traumatization, intimidation and retaliation, it is essential to consider the risks carefully and manage them proactively, making all decisions about their involvement on the basis of the best interests of the child. In the absence of parental care, a legal guardian should be appointed to support the child in all decision-making regarding their potential role in the criminal justice process.


In addition, children should be informed of their rights, protection processes and legal proceedings in a language and manner/method that is appropriate for their age and stage of development. If it is determined that being a victim-witness is in the child's best interests, child victims-witnesses should be provided with a support person to safeguard their best interests in the legal process and ensure the child receives the protections available, such as alternatives to direct testimony and interviewing in court.


Different practitioners should be involved in providing special and additional measure for victim-witnesses. This includes victim-witness advocates, lawyers and paralegals, prosecutors, judges, child protection specialists, social workers and social assistants, psychologists and counselors.


Legal obligations related to trafficking victim-witnesses


Special and additional measure for victim-witnesses are addressed in some international and regional instruments, which may be relevant for domestic laws and policies.

International law and guidance


 **UN Trafficking Protocol** (2000) calls on Member States to protect the privacy and identity of victim-witnesses, including by making legal proceedings confidential; establishing measures that provide trafficking victims with information on relevant court and administrative proceedings; and providing trafficking victims with assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders (Article 6).


 **UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking** (2002) call for legal and other assistance to be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers and for the government to provide protection and temporary residence permits to victims and witnesses during legal proceedings (Guideline 4.7); trafficked persons to be given legal information and assistance in a language they understand (Guideline 4.8); and guaranteeing that protections for witnesses are provided for in law (Guideline 4.10).


 **UNICEF Guidelines on the Protection of Child Victims of Trafficking** (2006) call for the protection of privacy and the opportunity to be heard in judicial and administrative proceedings (Guidelines 2.1-2.9); measures to exclude the public and the media from the courtroom when a child is giving testimony (Guideline 10.1); and child-friendly measures when a child victim-witness is giving evidence at trial, including the use of interview rooms designed for children, interdisciplinary services for child victims integrated under one roof, modified court environments that take child witnesses into consideration, use of recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, and on-call systems to ensure the child goes to court only when necessary (Guideline 10.1).


 **UN Convention on the Rights of the Child** (1989) establishes that in all actions concerning children, including in courts of law, the best interests of the child shall be a primary consideration.

Regional law and guidance

 **ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)** (2015) calls for the protection of the privacy and identity of trafficking victims, including by making legal proceedings relating to trafficking confidential, protecting victims and witnesses from intimidation and harassment, and establishing a long statute of limitations period in which to commence proceedings.

 **ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children** (2012) calls for measures to provide information to trafficking victims in a language they understand regarding their legal rights and the relevant court and administrative proceedings and to facilitate their access to assistance in order to enable their views and concerns to be presented and considered during legal proceedings.

 **ACWC Gender-Sensitive Guidelines** (2016) recognize that each victim should have a right to just treatment and access to justice; receive legal aid; have court proceedings conducted expediently by officials who have been trained on how to handle trafficking in persons matters; receive information on legal proceedings in a language that they understand; have access to witness protection programs and relocation programs where possible; have their identity and privacy protected; where necessary and practical have access to special measures such as live links, screens, and holding rooms; and be protected from hostile cross-examination in court proceedings.

 **ACWC Regional Guidelines and Procedures to Address the Needs of Victims of TIP, especially women and children** (2018) address special measures for victim-witnesses in Area 3, including additional and special protections for child victim-witnesses (Area 4).

Issues and challenges in ensuring special and additional measures for victim-witnesses

Issues and challenges faced in the provision of special and additional measures for victim-witnesses center around two main themes:

- **Trafficking victim experiences of being a victim-witness**
- **Structural and institutional challenges in measures for victim-witnesses**



Trafficking victim experiences of being a victim-witness

- Feelings and reactions after trafficking, as a victim-witness
- The decision to be a victim-witness
- Feeling pressured or forced to be victim-witnesses
- The costs of serving as a victim-witness
- Feeling uninformed, unsupported as a victim-witness
- Unable to return home, to move on
- Language barriers for trafficking victim-witnesses



Structural and institutional challenges in measures for victim-witnesses

- Long legal processes and limited alternatives to in-person testimony
- Access to information about the criminal justice process and role as victim-witness
- Availability, accessibility and appropriateness of measures for victim-witnesses
- Challenges of the criminal justice process
- Insufficient knowledge, skills and sensitivity of criminal justice practitioners

Special and additional measures can ensure the protection and well-being of victim-witnesses before, during and after legal proceedings. However, in practice, not all trafficking victim-witnesses benefit from special and additional measures. This may be because of trafficking victims' individual experiences, which impact their decision-making and reactions related to serving as a victim-witness. In other cases, structural and institutional factors impede or undermine the provision of special and additional measures for victim-witnesses. It is important to understand these different factors to better support trafficking victim-witnesses in the legal process.



Trafficking victim experiences of being a victim-witness



Feelings and reactions after trafficking, as a victim-witness

Many trafficking victims wish to pursue legal remedies, to access justice for what they have endured and as a deterrent for traffickers. Some trafficking victims wish to be involved in the legal process – to be witnesses in cases against their traffickers, to see their traffickers brought to justice and to receive compensation or civil remedies.

Some trafficking victims are willing and able to speak out against their exploiters. And in some cases, trafficking victims are treated appropriately and sensitively by practitioners and their rights are protected in the legal process.

At the same time, many trafficking victims have negative feelings and reactions as a result of trafficking and as part of their involvement in the legal process. For many victims, these feelings and reactions stem from the impacts of trafficking and are exacerbated by serving as victim-witnesses. For some victims, the experience of the criminal justice process results in harm or negatively impacts their well-being.

Feeling unsafe, fear of traffickers and reprisals.

Trafficking victims are often afraid of their traffickers even some time after escape or exit from trafficking. They fear risks and retaliation against themselves and their families. Children may be especially fearful of their traffickers. In some cases, trafficked persons avoid the legal process as a means of preventing threats or violence against themselves or their families.

Many victim-witnesses fear for their safety and that of their families when they cooperate with the authorities or serve as victim-witnesses. They may fear that traffickers will find out that they have given a statement to the police or otherwise cooperated. This is especially the case when traffickers and their relatives and associates come from a victim's home community or know where they live and work.

Some victims and/or their families have been threatened or harmed by their traffickers. They may therefore decline any assistance for fear that this will be perceived by traffickers as cooperating with authorities.



I testified against the [traffickers] and I won that case. I felt glad that they were punished. (Trafficking victim)¹



No one should have to go what I went through. That is why I had to bring this case. I feel more at peace now. (Trafficking victim)²



I was afraid to talk because things that I was going to say might fall on the ears of the persons who exploited me and I knew them. They were capable of harming my family... I couldn't trust anybody. (Trafficking victim)³



The girls are afraid... They used to say that they were afraid for their families at home because apart from those holding them, there are also the ones at home who can go and hurt their families. (Practitioner)⁴

Victims often feel unsafe and unprotected even after they have escaped or exited trafficking. For some victims, their main motivation for becoming a victim-witness is to access protection.

That being said, police and criminal justice authorities are often unable to provide sufficient protection to victim-witnesses during legal proceedings and even less so once legal proceedings have ended (and in particular, in the case of unsuccessful prosecutions). Many victims return to live in their home communities where traffickers often also live or know where to find them.

Shock and trauma. Exploitation has a severely negative impact on trafficking victims' physical, psychological and emotional well-being. This, in turn, can influence their feelings and decisions about serving as a victim-witness, as well as their ability to cooperate with authorities and participate as an effective victim-witnesses. Many trafficking victims are shocked and traumatized after trafficking. Trauma has profound and long-lasting physical and psychological effects that influence how victims cope after trafficking and how they interact with others, including as victim-witnesses (for example, not being able to remember events, being seemingly "difficult" or "uncooperative", making contradictory statements, not trusting practitioners).

The physical, psychological and emotional impacts of trafficking are especially harmful for children, although this differs according to their age and stage of development, as well as the nature and length of their trafficking experiences. Trafficked children are also particularly at risk of re-traumatization in the criminal justice system, given that many existing criminal justice processes are not child-friendly or victim-sensitive.

Stress and distress. Serving as a victim-witness is often a stressful and even frightening experience. Stress and distress may be triggered by different issues, including having to face traffickers and their associates in court or a courthouse setting, the stress of reliving one's trafficking experience, discomfort with the criminal justice environment (police stations, prosecutor officers, courtrooms) and being questioned (giving a statement, in interviews, while giving testimony).



For me, it was most important to be safe. I didn't care if I would receive some help. It was just important to be protected. (Trafficking victim)⁵



I was afraid to go to [my village] because his family was there... I'm not afraid for myself. If he wants to kill me, let him kill me. But I'm afraid for my cousins, that he can burn their house, to make them some problems... to kill my brothers... (Trafficking victim)⁶



I think that ideally they should have left us alone for several days to give me time to calm down a little... I was absolutely shocked... I don't even remember what the police officer was asking me. (Trafficking victim)⁷



...at the end of the day, trauma affects children in a very different way...these children are scarred for life. And the reality is we do need to address that, and we do need to make sure that we're there long-term. (Practitioner)⁸



Mentally, it's exhausting. We have to further share our experience. That's what happens to those who report. [...] It's not easy to report things like this. Also for me personally the burden is very heavy. (Trafficking victim)⁹



[It was] almost five years [before I contacted the police]. At the beginning I was afraid of the police. I knew that many police officers were closely connected with traffickers. I was afraid of being deported from the country. (Trafficking victim)¹⁰

Generally there are limited options for victim-witnesses to avoid these triggers (for example, by providing advance statements or video testimony) and even these options do not entirely address these challenges.

Stress and anxiety can be amplified when legal cases drag on for long periods of time, preventing victims from being able to move on with their lives. Many victim-witnesses are forced to stay in shelters and in destination countries for the duration of legal proceedings, which further amplifies stress and anxiety and delays their recovery and reintegration.

Shame and embarrassment. Many victims are embarrassed or ashamed of having been trafficked and what they were forced to do while exploited (for example, prostitution, irregular migration, irregular work, criminal activities). Disclosing these experiences to authorities and then again in statements or testimony to different practitioners is understandably difficult for trafficking victims.

Some victims may feel embarrassed by things they must disclose during criminal justice proceedings. Criminal justice proceedings, most of which are open to the public, can expose aspects of the victim's personal life and private relationships. Many victim-witnesses do not fully understand what is happening during the criminal justice process, which can cause feelings of inferiority or shame.

Fear, mistrust and suspicion. Some victims mistrust authorities. Some victims have reported their cases to the police or other criminal justice authorities in the past but were not believed or assisted. In some cases, criminal justice authorities have even returned trafficking victims to their trafficking situation (where they continued to be exploited and/or went unassisted).

Many victims are also suspicious of authorities because they are initially treated as criminals (for example, categorized as illegal immigrants or criminalized for offences related to trafficking) rather than being recognized as victims. Some trafficking victims mistrust authorities due to manipulation and influence by their traffickers. Some victims have been exposed to corrupt authorities while trafficked (for example, authorities who were directly involved in their trafficking). Some have also faced corruption and abuse of power from authorities in their lives



I didn't quite understand what was happening. I was afraid of the police very much. When I had to speak about the things that had happened to me, I got stuck in a way, blocked. And when the police officer shouted at me I got even deeper into my shell. (Trafficking victim)¹¹



Many men don't tell about what happened to them. They are ashamed of the fact that they were tricked and lied to. (Practitioner)¹²



Telling people publicly about what I'd been through made me feel more ashamed because I'd never told anyone or was open about it. (Trafficking victim)¹³



So there was no one who believed my report and because of that he did violence again and again to me and finally I escaped from there. (Trafficking victim)¹⁴



Many [trafficking victims] have had bad interactions with the police. Not only is their personal perception an influence on them, but also their captor has typically brainwashed them... (Practitioner)¹⁵



The police should not hurt children...For example, we just only walk along the street and they just arrest us, just like that. And when they arrest us, then they beat us with the baton and sometimes they put hot water on us and they also lock us up... (Child trafficking victim)¹⁶

before or after trafficking, leading them to be suspicious of authorities and resistant to involvement in legal processes. Some victims are abused by police and other authorities.

Trafficking victims may have different and even contradictory feelings about serving as a victim-witness. A victim may, for example, feel empowered by sharing their story and participating in a process that brings them a sense of justice, while, at the same time, feel nervous and stressed about facing their trafficker in court or speaking to authorities about their trafficking. In addition, trafficking victim-witnesses may have different feelings and reactions over time. Initial feelings of hope may give way to frustration and even despair when legal proceedings are stressful and drag out for long periods of time, preventing them from moving on with their lives.



Victim-witnesses experience different feelings and reactions after trafficking, which influences decisions about involvement in the legal process, as well as behaviors and reactions during criminal justice proceedings. It is important that practitioners understand the physical and psychological impacts of trafficking and how these inform victims' decision-making about participation in the criminal justice process. Practitioners also need to understand that trauma has profound and long-lasting physical and psychological effects that influence how victims cope after trafficking and how they interact with others, including as victim-witnesses (for example, not being able to remember events, being uncooperative, making contradictory statements, not trusting practitioners). Practitioners, especially victim advocates, social workers and psychologists, play an important role in helping victims to manage their emotions and reactions while serving as victim-witnesses, as well as after their involvement in the criminal justice process. Practitioners require guidance on how to prepare and work with victim-witnesses. Approaches that are trauma-informed, victim-sensitive, child-friendly, gender-sensitive and culturally appropriate lead to better outcomes for engaging victim-witnesses.

What other feelings and reactions might trafficking victims have about being a victim-witness? How can you address these?





The decision to be a victim-witness

Many trafficking victims express a desire for justice, wanting their exploiters to be held accountable and punished, and are therefore willing to be involved in the legal process – to give a statement and/or to serve as a victim-witness. For some, the decision to be a victim-witness may be straightforward and participation in the criminal justice process may even be healing or empowering.

Many trafficking victims who cooperate with criminal justice authorities are understandably concerned about receiving their outstanding salary or compensation for unpaid work, as they may be struggling with lack of financial resources or debt. They may also see financial compensation as means of reparations and access to justice. Some also express a desire to assist other trafficking victims or to prevent their traffickers from exploiting additional individuals.

However, many trafficking victims, even those who desire justice or want to help other trafficking victims, do not wish to be victim-witnesses or in any way involved in the criminal justice process. Being a victim-witness is not easy and can present tremendous challenges to the individual and their family members. It requires disclosing very personal and difficult experiences to (sometimes many) different practitioners, often repeatedly and generally in a public setting.

Being a victim-witness involves interacting with authorities on an on-going basis – with police, prosecutors and eventually judges. Most victim-witnesses also must come face-to-face with traffickers and their associates, which can result in very real risks.

In some cases, trafficking victims and their families fear or do not trust criminal justice authorities. Some victims have had previous experiences with the criminal justice process that were negative or even traumatic.

Some victims have had bad experiences with police, such as corruption or abuse. Many victims feel intimidated, confused and even frightened by anything to do with the law or authorities. To the extent that victims feel or believe that victim identification or receiving services requires involvement in the criminal justice process, this may dissuade them from even being identified as a victim of trafficking.



At the trial, it felt empowering to look at [my trafficker] the entire time. I'm sure it drove him crazy. He can never touch me but he had to look at me and listen and it made me feel good. (Trafficking victim)¹⁷



I want [authorities] to arrest the facilitator who took [us] to work there. Pay for compensation... I want to help to get back my salary and help other [trafficking victims] who are trapped [in situations of exploitation]. (Trafficking victim)¹⁸



I also need to get back all of the salary from when I worked there. Even less than the amount they promised is fine. I could accept whatever compensation was. (Trafficking victim)¹⁹



I don't want to be involved with the law. If there's another person who is exploited, I feel pity for them. I hope they don't go to the same agent again... But if I have to be involved with the law, I don't want to. (Trafficking victim)²⁰



There when abroad, I didn't dare to denounce my trafficker. I believed him, that he was connected to police. Policemen were often coming to the [place where I was exploited]. (Trafficking victim)²¹

Some trafficking victims worried about how involvement in the legal process as a victim-witness will interfere with their recovery and being able to move on with their life.



I got some advice to report my case to the nearest police department, but I never did. [I didn't want to report because] I feared that this matter will drag on. (Trafficking victim)²²



While many trafficking victims desire justice, not all trafficking victims will decide to serve as victim-witnesses. In supporting trafficking victims to make this decision, practitioners should understand the challenges faced by a victim-witness and the range of issues that might arise in the legal process. An understanding of victims' negative experiences or mistrust of authorities can aid practitioners in this process. It is important that practitioners understand and take a victim's concerns into account in preparing a trafficking victim for involvement in the criminal justice process.



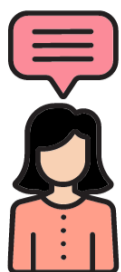
Feeling pressured or forced to be victim-witnesses

Authorities may “encourage” or even strongly pressure victims to cooperate in criminal justice proceedings, without explaining what this entails and their right to decline. Many victims are told, or are under the impression, that they are legally required to provide statements and testimony and be involved in legal proceedings against their traffickers, which is not always the case.



I had to go to the court. There was no choice for me. (Child trafficking victim)²³

In some countries, victims' rights (including protection, assistance and temporary residence permits) may be conditional upon cooperation in trafficking investigations and prosecutions. Many victims do not accept protection and support that is contingent on cooperation with law enforcement or involvement in the legal process. Practitioners often do not clearly explain what cooperation with authorities entails (such as the time involved) or their right to refuse.



[At the shelter]...they explained to me that I should stay there several days, in order to give testimony against the man, who sold us into slavery... Yes, they told me that I had to cooperate with police. (Trafficking victim)²⁴

Even when a victim's rights are not contingent on cooperation with authorities, some victims feel pressure to cooperate and believe (or are told) that receiving assistance is contingent upon this cooperation. Sometimes this pressure is exerted by law enforcement authorities and sometimes by service providers. Some victims feel subtle pressure to cooperate and engage in the legal process, including as a show of gratitude for assistance or to be helpful.



[The police officer] asked me to go on testifying while undergoing my treatment. I trusted him. From my perspective, he was “a good police officer” who wanted to change something in the world... I did not feel like testifying but I felt obliged. (Trafficking victim)²⁵

In some extreme cases, trafficking victims are threatened or coerced by authorities to compel their cooperation as a victim-witness.



...the [police] said if I wished to be assisted in re-obtaining my passport, I had to give testimony against the traffickers. Otherwise, they would even place me into prison for falsifying documents. (Trafficking victim)²⁶

Trafficked children often have limited options to decline to be involved as victim-witnesses in the legal process, and their circumstances after trafficking (for example, in shelters in destination countries away from family) make this even more taxing, as do the ways in which legal proceedings are conducted.



Trafficking victims should not be forced or pressured to serve as victim-witnesses. Recognizing that successful human trafficking prosecutions are almost always dependent on victim cooperation and testimony, victims should nonetheless never be pressured to cooperate in criminal justice proceedings. In all cases, a victim's cooperation should be voluntary and based on full and informed consent. Protection and assistance should not be contingent on cooperation in trafficking investigations or prosecutions.



The costs of serving as a victim-witness

Beyond the emotional costs and the potential risk of harm, being involved as a victim-witness often comes at a substantial financial cost for trafficking victims. Some trafficking victims are supported during their involvement in legal proceedings, particularly when staying in shelters. In some cases, this is formal assistance specifically to victim-witnesses (for example, housing and food in the shelter, transportation to the courts, legal assistance and interpretation). In other cases, authorities may offer informal support to victim-witnesses by driving them to and from the courts, paying for food from their personal funds and connecting them with service providers.

More commonly, the costs for being involved in the criminal justice process – travel costs, lost income, childcare – are borne entirely by trafficking victims. Trafficking victims often incur substantial costs to serve as victim-witnesses in criminal cases, as well as when they are involved in compensation claims. This puts enormous pressure on victim-witnesses (and their families) who are unable to afford these costs.

Victim-witnesses are generally required to appear in court and give statements on multiple occasions. They may incur costs for travel, meals and accommodation when they are required to meet with authorities.

Victims also face loss of income and even loss of jobs when they need to regularly be absent from work. Some victims may be unable to find work if they have to request time away to attend to their case. There are also costs of childcare or other care responsibilities. Often victim-witnesses who are able to pay these costs themselves are only able to do so because of help from their families.



[My sister] nagged so much about me costing her money. Sometimes I didn't even have a meal. I wish that I had someone to cover the costs [of going to court] and to help me face the trial. (Trafficking victim)²⁷



My concern is that when the court calls my friends [as witnesses], they cannot come and it will postpone the process...The problem is money [for transportation]...I also face the same problem...so transport fares become a constraint sometimes. (Trafficking victim)²⁸



As long as I am handling this case, it has been six times that I went back and forth from [my home to the court]. Just imagine the transportation cost in one trip... [The money went] for my costs here – food and minimum for transportation cost back and forth. (Trafficking victim)²⁹



I gathered information to solve my case so I could get my money, so I could support my family, so I could have a capital for my business. I tried here and there. I spent money for transport. (Trafficking victim)³⁰



Serving as a victim-witness comes not only with emotional and personal costs, but also practical ones. Victim-witnesses may incur costs for travel, meals, accommodation and childcare, as well as lost income or the inability to find work when they are required to repeatedly meet with authorities (to provide statements or appear in court). Practitioners should consider what cost barriers victim-witnesses may face and work to address these.



Feeling uninformed, unsupported as a victim-witness in the legal process

Many trafficking victims are not fully informed about what is involved in a legal case against their traffickers – what the legal process entails, their rights as a victim, their responsibilities as a victim-witness, the duration of the process, challenges they may face, options to return home prior to the completion of the case and their options whether or not to participate. This is especially common for victims who are too stressed or traumatized to fully comprehend or make informed decisions about participation as a victim-witness. Feeling uninformed is exacerbated for trafficking victims who do not understand or speak the language of the country or community.

In the case of children, information about the legal process and their role as victim-witness is not always tailored to their different ages, maturity and stages of development, individual experiences and comprehension capacities. Many children are engaged as victim-witnesses in ways that do not align with their best interests and are seemingly unaware of their right to decline to be victim-witnesses. Many children are “encouraged” to testify with these dynamics amounting to pressure or even coercion.

Often trafficking victims are unsupported when serving as victim-witnesses. They generally do not have a victim advocate or other support person to accompany them through the legal process. Police and prosecutors may not keep victim-witnesses informed about the progress of the case nor be available to answer questions or concerns.

Many trafficking victims rely on service providers like social workers or shelter staff to update them on the legal process, although these practitioners are not experts on these issues nor kept abreast of criminal justice proceedings by prosecutors and law enforcement.



[Victims need] to receive a more qualified legal assistance, to have a better protection of the witnesses who testify against traffickers. (Trafficking victim)³¹



I get the feeling that the judge speaks a different language, using words I don't understand but then I forget to ask my lawyer about them. (Trafficking victim)³²



People who come to work with children, [the] important thing is that they must be able to interact with children easily. They should not dislike children. They should not just come and talk, talk, talk... They should not be like that. (Child trafficking victim)³³



[The attitude of the police] was like, “leave me alone, I have more important things to do than that thing of yours”. (Trafficking victim)³⁴

When trafficking victims return home while a case is on-going, they may have even less access to information and their case. Many do not receive updates on the status of their case and do not know how to go about asking for this information including whom to contact.



The only thing that I would still like to do, and told myself that I should do it one day, is to call the police officer in [the destination country] who handled our case because I am curious to learn what happened. (Trafficking victim)³⁵



Trafficking victims require complete and comprehensible information about the legal process before they can make informed decisions about participation as a victim-witness. Practitioners should ensure that trafficked persons' involvement in the legal process is fully informed, and by implication, voluntary. Victim-witnesses should be supported through the legal process and receive information in a language and manner that they understand, including about their rights as a victim, their responsibilities as a victim-witness, the duration of the process, challenges they may face, options to return home prior to the completion of the case and their on-going options whether or not to participate as a victim-witness.

**What can you do to help trafficking victims better understand the criminal justice process and what it means to be a victim-witness?
What information can you provide them with?**





Unable to return home, to move on

Many trafficking victims are unable to return home and move on with their lives while serving as a victim-witness. In destination countries, victim-witnesses are generally required to stay in shelters for the duration of criminal justice proceedings, which can take months and even years. In addition, these are often “closed” shelters, with restricted freedom of movement and limited contact with persons outside of the shelter. Most victims in shelters are unable to work and send money home over the course of this period, which can be a source of considerable stress.

Many victims, including children, have little to no contact with family members while in shelters, which is source of stress and distress for children and families alike and undermines relationships, as well as their eventual recovery and reintegration.

When victim-witnesses are able to return home, if the case is on-going, they are not always able to move on with their lives due to the continued demands of the criminal justice process and on-going psychological and emotional tolls. In many criminal cases there are appeals and re-trials, resulting in some trafficking victims facing years of being a victim-witness.



I think I stayed too long in the shelter for the prosecution process. I understood that I have to finish [the case] first but during that time I could not contact my family, which upset me a lot. It would be nice if the prosecution process did not take that long. (Trafficking victim)³⁶



I thought that this was all over when we had the last trial, and I thought that things would start to go back to normal for me and I could finally start to heal and move past this and move on with my life... it just drags you down and it just is never-ending. (Trafficking victim)³⁷



Trafficking victims who decide to serve as victim-witnesses should be provided with unconditional and on-going support that meets their self-articulated needs. They should not face controls or restrictions that interfere with the enjoyment of their rights. As much as possible, criminal justice practitioners should explore options for obtaining convictions that do not rely on testimony or statements from the victim-witness, such as investigations and evidence gathering. Victim-witnesses should receive protection and support for the duration of legal proceedings, including appeals and re-trials.



Language barriers for trafficking victim-witnesses

Many trafficking victims interact with authorities and serve as victim-witnesses in legal proceedings that are conducted in a language that they do not understand or in which they have minimal proficiency. This occurs when foreign nationals are victims-witnesses in countries where they were exploited or when victims do not speak the majority language in their own country.



[The police treated me] not so well. They shouted at me. I did not understand anything. I was answering in my language but they kept shouting at me and I didn't understand [the local language]. I was scared. (Trafficking victim)³⁸

Being unable to understand what is being discussed or what is happening is disconcerting and intimidating for victim-witnesses, feelings that are amplified by their trafficking-related stress and victimization.

In many countries, there are limited options for interpretation at all stages of the legal process, meaning that trafficking victims who do not speak the language feel confused, uncomfortable and unable to follow and understand the process. This can be even more difficult for trafficked children who may already feel intimidated and frightened.



I didn't feel scared when I heard [my language] spoken. But when I heard [the language in the destination country], I was always shaking... That is why I am glad that the police found people [speaking my language].
(Trafficking victim)³⁹

Available interpretation is not always high quality and some interpreters may be insensitive in interacting with victims. Some victims may feel judged or badly treated by the interpreter. In some cases, cultural barriers can also impact communication between a victim-witness and the interpreter.

Language barriers can lead to miscommunication and misunderstandings, which can negatively impact statements and interpretation of testimony in ways that affect the victim-witnesses and outcomes of a legal case.



It is important that practitioners understand that language can be a barrier for victim-witnesses and develop strategies to overcome language barriers. This requires engaging interpreters to work sensitively and appropriately with victim-witnesses. Some technological solutions can assist with overcoming language barriers but attention to sensitivity is still needed in interacting with victims. Consular assistance is another possible avenue for support with interpretation for trafficking victims serving as victim-witnesses.

**How and where can you find qualified interpreters in your work environment?
What other strategies can you utilize to address language barriers for victim-witnesses?**



Guidance for Practitioners



Be sensitive to the range of emotions and reactions that trafficking victims experience when serving as victim-witnesses, including how these may change over time. These may include both positive feelings (a sense of justice, empowerment, healing) as well as negative feelings (fear, anxiety, shame, embarrassment). Recognize that a range of emotions and reactions is normal and a natural part of serving as a victim-witness. Learn about and apply trauma-informed, victim-sensitive, child-friendly, gender-sensitive and culturally appropriate approaches in your work with victim-witnesses.



Ensure that victims are fully informed of and have consented to being a victim-witness, taking into account their mental and physical state after trafficking, as well as issues of comprehension, age, language and culture. Do not force or pressure a trafficking victim to serve as a victim-witness.



Identify any threats or risks of harm to victim-witnesses, including from traffickers and their associates. Put in place protection measures that address victim-witnesses' individual situations and guard their safety and well-being. Assess risk and protection needs on an on-going basis.



Assign a support person to each trafficking victim-witness. This support person (such as a victim advocate, social worker or psychologist) should help a victim-witness to manage and process their emotions and reactions while participating in legal proceedings, as well as after their involvement in the criminal justice process.



Work to ensure that victim-witnesses receive protection and support for the duration of legal proceedings (including appeals and re-trials). Protection and assistance should not be contingent on cooperation in trafficking investigations and prosecutions. Victim-witnesses should not face controls or restrictions that interfere with the enjoyment of their rights.



Provide trafficking victims with complete and comprehensible information about the legal process before they make a decision about participation as a victim-witness. Ensure that trafficked persons' involvement in the legal process is fully informed and voluntary. Information provided to trafficking victims should include, at minimum, their rights as a victim, their responsibilities as a victim-witness, the duration of the process, challenges they may face, options to return home prior to the completion of the case and their on-going options whether or not to participate as a victim-witness.



Explore options for obtaining convictions that do not rely on testimony or statements from the victim-witness, such as investigations and evidence gathering. When cases rely on the participation of a victim-witness, consider options to alleviate stress for the victim-witness (such as remote testimony or recorded statements).



Consider what cost barriers victim-witnesses face in serving as a victim-witness (for example, the costs of travel, meals, accommodation, childcare, lost income) and work to address these. Ensure victim-witnesses are provided with unconditional and on-going support that meets their self-articulated needs.



Understand how language can be a barrier for some victim-witnesses and develop strategies to address language barriers. Identify qualified and sensitive interpreters to assist in working with victim-witnesses.



Structural and institutional challenges in measures for victim-witnesses



Long legal processes and limited alternatives to in-person testimony

Trafficking cases – criminal justice proceedings, civil cases and compensation claims – generally take a long time to resolve. For foreign trafficking victim-witnesses, this usually means being forced to stay in a foreign country, often in a shelter, away from home and family and unable to work and earn money. For victim-witnesses who are able to return home while involved in the legal process, this means on-going interruptions in their lives, delays in recovery and reintegration, psychological and emotional impacts of being a victim-witness and using personal resources to pursue their case.

Delays and continuances in legal proceedings are commonplace. Trafficking victims also experience delays in receiving compensation, even after successful resolution of claims. Many trafficking victims wait years for cases to be resolved and longer still to receive compensation or restitution. While there is sometimes an option for foreign victims to return home while compensation is processed, many victims do not trust this process and instead opt to wait in the destination country for final resolution and payment.

In the case of children in destination countries, this additionally means being separated from their families and communities, limited opportunities for healthy social and emotional development, and being unable to go to school (or attend school in their native language).

Even within their own countries, victim-witnesses often struggle to manage and navigate long legal processes. Trafficking victim-witnesses are usually required to be available to the police and the courts before legal proceedings begin and for the duration of the proceedings. This often involves traveling on many occasions to provide statements, give testimony and be available to support the process.

Overall, there are very few alternatives to in-person testimony – for example, video testimony, live link testimony, advance testimony or relying on other evidence to obtain convictions. In some jurisdictions, these options are increasingly allowable. However, practitioners often lack the resources to implement these options.



I decided to stay on for legal proceeding process. I wanted to go for a prosecution... It took over two years. I understand that there are many procedures. But I feel that it is too long. And I have to keep waiting. (Trafficking victim)⁴⁰



[The practitioners] asked if I wanted to file a complaint. I went to the hearing, later on it was quiet. I call the lawyer often, the lawyer said the trial was not yet done. I think it is hopeless. Even though they are arrested, but still they cannot touch them. (Trafficking victim)⁴¹



I went back and forth leaving my family. I didn't work but took care of my case, to track down my salary. The case was transferred to [one city]. I went to [that city]... [There were more things asked of us]... we became frustrated. (Trafficking victim)⁴²



It doesn't seem like there will be an end to it. The case is still floating uncertainly. I believe if the media doesn't blow it up, that case won't be completed until the end of time. (Trafficking victim)⁴³



It has been two years and it is still on-going, but it is never solved... I just thought, "How long will be and where else do I have to go to complain, to get this case done". I am in need of money. But I think again if it goes like this, even until forever it won't be finished. (Trafficking victim)⁴⁴

Long legal processes also mean that victims are generally unable to recover and move on with their lives after trafficking, forced to relive their experiences when giving testimony and often facing their traffickers repeatedly in court.



Lengthy criminal justice proceedings, civil cases, and compensation claims are commonplace in trafficking cases. As much as possible, practitioners should explore options to alleviate the stress of long legal processes for victim-witnesses (for example, alternatives to in-person testimony). Victim-witnesses should receive protection and support for the duration of legal proceedings (including appeals and re-trials), as well as on-going and updated information about their case.



Access to information about the criminal justice process and role as victim-witness

For many trafficking victims, serving as a victim-witness is confusing, unclear and may feel beyond their control. Trafficking victims generally receive insufficient or incomplete information when asked to serve as a victim-witness. In some cases, they may even receive inaccurate information. Trafficking victims are often not clearly informed about what the criminal justice process entails, their roles and responsibilities as a victim-witness, the forms of support available to victim-witnesses, as well as the potential risks and downsides of serving as a victim-witness.

Practitioners themselves may not understand legal proceedings or have the information that they need to be able to provide full information to victim-witnesses. Structural barriers in the criminal justice sector and a lack of communication between criminal justice actors may mean that information is not available or clearly conveyed. Practitioners do not always sufficiently take into account factors that impact victims' comprehension of information to be able to make informed decisions, including literacy, language, educational background, analytical and decision-making skills or the impacts of trauma on information processing.



After that he said that we will go to [the capital]. And that shocked me a lot. Well, I didn't know what was there... They didn't say anything. Only that we will go [the capital]... That we will see there with the prosecutor. He said only that. (Trafficking victim)⁴⁶



Honesty is a big factor in that process. [The police] have to tell what is going to happen... tell those things so it can be easier for us to accept we don't go home. (Child trafficking victim)⁴⁵



They said that everything would be fine but when the case reached the court, the prosecutor rejected [my case]... I called [the police officer] once to ask about the case... She told me she didn't know why the prosecutor had rejected the file. (Trafficking victim)⁴⁷



Trafficking victims need to be fully informed and actively engaged in decisions about their involvement in the legal process. Practitioners are responsible for informing victims about the criminal justice process, their role and responsibilities as victim-witnesses, the forms of support available to victim-witnesses and any risks and downsides of serving as a victim-witness. Trafficking victims need this information in a clear and comprehensible format, verbal and written, to make informed decisions. Information provided to victim-witnesses needs to be tailored to different education levels, literacy levels and languages. For child trafficking victims, information should be tailored to different ages and stages of development so that children and their families or guardians can make informed decisions that are in the best interests of the child.

Measures in relation to interviewing. Often times, legal processes do not move forward without a victim-witness. Interviews are necessary to secure information for investigations and prosecutions. For this reason, practitioners should utilize victim-centered strategies aimed at encouraging cooperation with criminal justice authorities, including trauma-informed interviewing practices. For child trafficking victims, interviews should be conducted in a child-friendly manner, in a child-friendly space and involve child protection authorities.

In practice, many victims' interactions with criminal justice authorities are adversarial and aggressive. Victims are often interrogated, rather than interviewed, and feel pressured or coerced by criminal justice authorities to provide information. Some victims feel criminalized themselves, including being detained as part of the interview process.

Interviews that are not victim-centered may be traumatizing for victims, which impacts their ability to recover from their trafficking experiences and reduces their ability to accurately recall and provide information that is critical to successful legal cases.

Trafficking victims are often interviewed and re-interviewed many times by authorities, exposing them to stress, discomfort and the risk of re-victimization. Victims are often required to provide multiple statements and regularly interact with criminal justice practitioners, including in some cases traveling long distances from their homes or remaining in shelters away from their families and communities. This is often a source of considerable stress and frustration for victim-witnesses and impacts their well-being.

Measures in relation to privacy and confidentiality. Special and additional measures are necessary to protect the privacy of victim-witnesses, as most criminal justice proceedings are public. These measures are not available in all cases and, further, many victim-witnesses have their privacy and confidentiality breached by authorities.

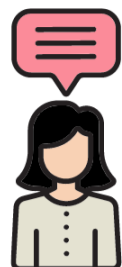
In some cases, authorities go as far as to disclose private and confidential information to the media. Victim-witnesses may suffer breaches of privacy and confidentiality by practitioners (for example, when interviews are conducted in open settings and in the presence of others). Their personal information may also be shared between different agencies and institutions in ways that breach privacy and confidentiality. While information sharing can be important in avoiding unnecessary re-



Victim testimony is not just a necessity. It's a legal requirement. If I don't have [the victim's testimony], I got no case. (Practitioner)⁴⁸



Yes, they interrogated us... Yes, it took a long time [over twelve hours]. They didn't even give us a glass of water in the station. They were horrible, terrible. (Trafficking victim)⁴⁹



We were not beaten. They were simply interrogating us... We could not refuse to speak. In case we did, they started shouting at us. We were very frightened... I didn't feel comfortable. We were separated and locked. They interrogated us in turn. (Trafficking victim)⁵⁰



I had to learn to be victim-oriented, to take a step back and not come as strong when you sit and interview... to take a softer approach. A more open-minded approach... dealing with victims, they might be suspects in other things, but let's address the victim end of it first. (Practitioner)⁵¹



It was an unpleasant surprise for me that my testimony was going around [the country].... I didn't feel safe. It seemed to me that the whole world knew my story... It was very important for me that very few people knew it. (Trafficking victim)⁵²

interviewing and, potentially, re-traumatization and secondary victimization, this should only be done with strict parameters and protocols and with the victim's full knowledge and consent.

Measures in relation to language barriers. Many trafficking victim-witnesses participate in legal proceedings in a language that they do not understand or in which they have minimal proficiency. In addition, interpretation and translation options are often very constrained. While interpretation may be available for some parts of the legal process – for example, when victim/witnesses give their statements or provide testimony in court – it is not generally offered for the full duration of legal proceedings.

Victims are often asked to make statements, give testimony and sign documents with only the most limited understanding of what is being asked of them. Interpreters are not always available, skilled, or sensitive in how they work with victims.

Measures in relation to protection from traffickers. Victims of trafficking who are cooperating in the criminal justice process can be at serious risk of harm. Victims and their families may face threats and retribution from traffickers when giving a statement to the police or when testifying in court. They may also be at risk of violence or re-trafficking upon their return home, particularly when their trafficker comes from the same community. Even when traffickers are convicted, they may continue to pose a threat.

Measures in relation to assistance for victim-witnesses. Many victim-witnesses are unassisted and unsupported during the legal process. Some victims may be detained or held in detention during interviews and even while giving testimony and statements.

Some victim-witnesses are accommodated in closed shelters without freedom of movement or contact with family for months and even years.

Participation in the criminal justice process does little to help some victims meet their immediate needs or to prevent their future vulnerability.

Comprehensive victim services are essential to protecting victim-witnesses and supporting their cooperation and testimony but are often unavailable, particularly for certain categories of victims (for example, men or foreign trafficking victims).



I also had a problem with the translator. Because I speak very fast, the translator was nervous and didn't understand me and didn't interpret me correctly. That was extremely frustrating but I couldn't talk slower. When I'm nervous my speech becomes very fast. (Trafficking victim)⁵⁴



I thought [testifying] was the right thing to do, because that guy did a lot of bad things to many people like me and he might have continued. But by testifying against him I harmed myself because I have lived on the move ever since. (Trafficking victim)⁵³



I don't feel safe at all. I expect that any day the [traffickers] would come after me, the whole family of that one who got arrested... There's nobody to ask for help or to keep you in hiding. I shall have to do something on my own. (Trafficking victim)⁵⁵



The guy is in jail and he has been convicted for 15 years, only he has appealed the trial... I can't say I'm satisfied but this guy has his own relatives outside and I'll never be 100% safe... It's not that I'm scared but I know I'll not be safe out there. (Trafficking victim)⁵⁶



They put us into a prison cell. It had a small window... I had the feeling I was in a zoo. That's why when we were transported to court sessions, I didn't really feel safe... I had the feeling that I would be kidnapped and murdered. It was psychologically difficult for me. (Trafficking victim)⁵⁷

Generally there is a lack of assistance to help victim-witnesses overcome practical barriers that they face while cooperating with criminal justice authorities. Many victim-witnesses are required to travel at their own expense, to give statements, meet with authorities and provide testimony. This is additionally challenging for victim-witnesses with family responsibilities, including household responsibilities, childcare, or care of other family members or dependents. Without assistance to address these constraints, trafficking victims who serve as victim-witnesses will have limited options for access to justice.



Victim-witnesses require special and additional measures to support their cooperation with criminal justice authorities and facilitate their effective participation as a victim-witness. These measures should be victim-sensitive, child-friendly, gender-sensitive, trauma-informed and culturally appropriate and applied during all stages of the criminal justice process, from interviews to testimony. It is important that protection and support is available to all victim-witnesses, including specifically to address their immediate needs, language barriers, the risk of harm from traffickers, privacy and confidentiality, and any practical barriers that they face in participating in the legal process.



Challenges of the criminal justice process

Human trafficking cases are legally complex, difficult to prove and often take longer to resolve than other crimes. Prosecutions are often unsuccessful in spite of a great deal of effort, investment and pressure on trafficking victim-witnesses. Some of the challenges that practitioners face in working on human trafficking cases are endemic to the criminal justice process itself. However, some challenges are unique to the crime of trafficking in persons and its impact on victim-witnesses.

Trafficking victims not seen as reliable or credible witnesses. Trafficking victims are often seen as unreliable or not credible. The impacts of trafficking (trauma, depression, self-blame, psychological or physical injury) often prevent trafficking victims from being able to accurately remember or describe details of their exploitation, which makes criminal justice actors (as well as judges and jurors) question their stories. Language barriers can also negatively impact how others perceive a trafficking victim-witness.

In many cases, the factors that made individuals vulnerable to human trafficking in the first place may be held against them in legal proceedings (for example, gender, ethnicity, poverty, violence, drug addiction, engaging in criminal activities, irregular migration, prostitution).



You realize after talking to two, three, or ten victims, [they are] not lying. A day in their lives is a difficult thing for them to talk to us about. It continues to be an eye-opener for me. (Practitioner)⁵⁸



[A]most all of these [trafficking victims] are damaged goods. They've been abused physically or sexually or you know, if you sit down and talk to them, you can tell they're just not good witnesses. (Practitioner)⁵⁹

The way that trafficking victims behave while trafficked or the activities that they engage in to survive trafficking exploitation can also impact their credibility in court (for example, staying with a trafficker even when there are opportunities to escape or consenting to engage in criminal activity). Judges and jurors may see certain factors as reducing the victim-witness' honesty and may not believe them.

The way that trafficking victims respond to questions (for example, being combative or unsympathetic) can also impact how the judge or jury views them, especially if they have preconceived ideas about how a trafficking victim should look or act. Concerns that a trafficking victim-witness may not be viewed as credible can cause prosecutors to dismiss or settle cases.

Statements and investigations do not lead to prosecutions. Trafficking victims often give statements and are involved in investigations that lead nowhere. Investigations often stall before reaching the prosecution stage, leaving victim-witnesses without access to justice or remedies.

In some cases, this may be because trafficking victims lack key knowledge about circumstances related to their trafficking exploitation (for example, the names of their traffickers, the locations where they were exploited, individuals who may have encountered them in various situations). For the same reasons that trafficking victims are often seen as unreliable or not credible, they may not be able to provide the information that criminal justice actors need to move forward a case.

Weak prosecutions and light sentences

Even when criminal cases do move forward and perpetrators are convicted and sentenced, many victims are not satisfied with the outcomes of the criminal justice process. Some traffickers receive only short sentences or fines that are not in line with the severity of the crimes they have committed.

In some cases, victim-witnesses are unable to access compensation or face difficulties in the payment of compensation even when these remedies are awarded.



... I told them my story but they did not believe me. (Trafficking victim)⁶⁰



These aren't like drug cases that have tangible evidence you can lock away in an evidence locker and break it out for trial. You have a live human being that the foundation of the case rests upon them. And they're your evidence. (Practitioner)⁶¹



[The problem prosecuting human trafficking cases is]... really the victim and the evidence that surrounds the case and often these cases are very shrouded. You know, they're difficult cases just by the nature of the events of the crime. (Practitioner)⁶²



There is of course frustration [for the trafficking victims] because [the trafficker] only got 3 years, 5 years, 10 years. They think "he deserves so much more for what he did to me." (Practitioner)⁶³



Increasing understanding among criminal justice actors about the crime of trafficking in persons and its impact on victims may help to address some of the challenges of the criminal justice process that are unique to human trafficking cases. Bringing in expert witnesses can help to enhance the credibility of trafficking victims (for example, by having an expert witness explain the impact of trauma on the individual's behaviors and decision-making). Enhancing coordination among criminal justice actors can also improve the investigation and prosecution of trafficking crimes. It is important to utilize victim-centered, trauma-informed approaches with victim-witnesses.



Insufficient knowledge, skills and sensitivity of criminal justice practitioners

The interactions that trafficking victims have with practitioners in the criminal justice process are often not trauma-informed, victim-centered, gender-sensitive, child-friendly or culturally appropriate. While some trafficking victims have positive experiences and interactions while serving as a victim-witness, there are also substantial issues in terms of the knowledge, skills and sensitivity of practitioners, rising in some cases to instances of maltreatment and abuse.

Knowledge and skills of practitioners. Criminal justice practitioners (including law enforcement officers, prosecutors, court officials, judges) often receive little or no training on the issue of human trafficking, in spite of this being a complex crime. For those who have been trained, they are not always re-trained or informed when there are changes to anti-trafficking laws and policies. Many criminal justice practitioners lack conceptual clarity on the elements of the crime of trafficking in persons, which can result in victims going unidentified and cases not being pursued.

Much of the available training is only foundational and does not provide criminal justice practitioners with the knowledge and skills needed to apply legal definitions or victim-centered, trauma-informed work on cases in practice. Training in gender sensitivity, victim-centered practices and culturally appropriate care is also often limited or unavailable. Practitioners themselves frequently point to a lack of professional training opportunities, as well as on-the-job training to enhance their skills and knowledge in criminal cases against traffickers.

Lack of capacity may be particularly pronounced when there is a high rotation of staff, leading to challenges in building and retaining knowledge, skills and experience working on trafficking cases.

Sensitivity of practitioners. Many trafficking victim-witnesses are not treated sensitively or appropriately. Some trafficking victims face discrimination from criminal justice practitioners (for example, because they are trafficking victims or due to their age, gender, nationality, ethnicity or sexual identity).

Some practitioners are not sensitive to the gender, age, nationality, or other characteristics of victim-witnesses and do not consider what may be needed to make them comfortable.

Some practitioners are not sensitive in that they breach victims' privacy (for example, by disclosing a victim's identity without their consent or discussing victim case information without the victim's consent).



I think the police must [not] understand our condition because when my sister reported to the police, they did not accept my case. They said they only took care of torture and thief cases. (Trafficking victim)⁶⁴



Some policemen didn't understand that we were forced to work, that we were threatened with death... they didn't believe that our passports were taken by the exploiters... (Trafficking victim)⁶⁵



[Many criminal justice practitioners don't know how to] build a case properly. They're still operating off of the old system with this new knowledge and trying to make something work... (Practitioner)⁶⁶



I would [have preferred a woman to take my statement] and even if she wasn't taking the statement, it was important for me for a woman to be there. (Child trafficking victim)⁶⁷



I prefer [interacting] with older people because they know more [than younger people]. (Trafficking victim)⁶⁸

Discrimination, maltreatment, abuse. Some trafficking victims face maltreatment at the hands of criminal justice practitioners. For example, some trafficking victims who approach authorities to report their case are ignored or sent away. Others may be extorted for money, forced to pay fines to avoid arrest. Victims trafficked for prostitution may be abused and pressured to provide sexual services to avoid arrest. In some cases, authorities cooperate with traffickers.

In some instances, trafficking victims are subjected to verbal and physical abuse from criminal justice practitioners. Depending on the circumstance, such acts may constitute negligence, collusion, abuse of power and corruption (in some cases even constituting the crime of trafficking in persons).

Such experiences are stressful, frightening and potentially re-traumatizing and also impact trust in practitioners generally. This can translate into reluctance or refusal to seek out or accept assistance in the future or be part of the criminal justice process.

For trafficked children, the impact of maltreatment and abuse is necessarily amplified as they have less developed coping skills to manage and overcome these experiences and violations. It also reinforces fears about further harm and lack of trust in authorities.



[The policeman was] screaming, “Who sent you [abroad]”, “what have you done”, “what you wanted in the border where they caught you”... He pulled me from my blouse, and I almost fell down from the chair.” (Trafficking victim)⁶⁹



To tell the truth, I felt very bad. I was 22-years-old when I was exploited, I had understood that even myself. But you feel bad when the others say it to you. There were a lot of policemen in the room, and their behavior was rough... (Trafficking victim)⁷⁰



It is important that criminal justice practitioners are educated and trained in trafficking in persons, including understanding and applying complex legal concepts, updates and changes to the country’s anti-trafficking legislation and the application of associated regulations and procedures. Criminal justice practitioners benefit from training in how to interact appropriately and sensitively with victims, including how to be victim-sensitive, trauma-informed, gender-sensitive, child-friendly and culturally appropriate. Enhanced sensitivity and care contribute to building trust and better protecting victims, which in turn leads to more effective victim-witnesses. Practitioners should be held to account for failure to identify and refer trafficking victims, receive statements, conduct investigations or protect victim-witnesses. Reports of wrong-doing should be carefully investigated.

Guidance for Practitioners



Ensure that trafficking victims are encouraged, but not compelled, to participate in the prosecution of their exploiters and only when it is assessed safe for them to do so. Trafficking victims are entitled to be involved and have their views known in any legal case concerning them. Develop victim-centered strategies aimed at encouraging cooperation with criminal justice authorities.



Establish and enhance communication and collaboration amongst criminal justice actors and victim service providers to ensure that victim-witnesses are protected and receive assistance and support. This includes in conducting risk assessments, providing physical protection, ensuring access to assistance, protecting privacy and confidentiality and empowering victims through case management and counseling.



Ensure that interactions with victim-witnesses are trauma-informed, victim-sensitive, child-friendly, gender-sensitive and culturally appropriate. Special efforts should be made to ensure that the investigation and court processes do not re-traumatize or otherwise cause additional harm. Report any instances of discrimination, maltreatment and abuse of trafficking victim-witnesses by anyone in the process of protection and support so that those responsible are held to account.



Ensure that the privacy of victim-witnesses is protected in law and practice. Prohibit the publication of names or any other identifying details of trafficking victims, including witnesses.



Provide clear, comprehensive and accurate information about the legal process to trafficking victims. Ensure that trafficking victim-witnesses are fully and continuously informed about their rights as a victim, their responsibilities as a victim-witness, the duration of the process, challenges they may face, options to return home prior to the completion of the case and available protection and support.



Give victim-witnesses the time needed to make informed decisions about their involvement in the legal process and continue to seek consent over time. When sharing information with child victim-witnesses, it should be conveyed in a way that is suitable to their age and stage of development.



Explore options to alleviate the stress of long legal processes for victim-witnesses, including alternatives to in-person testimony and specialized courts focused on cases of trafficking in persons. Victim-witnesses should receive protection and support for the duration of legal proceedings (including appeals and re-trials), as well as on-going and updated information about their case. Protection and support is also needed after the completion of legal proceedings.



Protection and support should include measures to specifically address the immediate needs of trafficking victim-witnesses, language barriers, the risk of harm from traffickers, privacy and confidentiality, and any practical barriers that victim-witnesses face in participating in the legal process. When needed, cooperate transnationally in the protection of victim-witnesses.



Underpin all work with child victim-witnesses with child rights principles, child-specific protocols and child participation. Ensure all criminal practitioners are professionally trained and sensitized in working with trafficked and/or vulnerable children and adhere to a child protection policy. For child trafficking victims, interviews should be conducted in a child-friendly space and involve child protection authorities.



Access on-going professional development opportunities to ensure that all practitioners involved in the criminal justice process are trained and educated. Apply good practice models, standards and guidance on special and additional measures for victim-witnesses in your work.

Other Bali Process and NEXUS Institute resources related to special measures for trafficking victim-witnesses

Bali Process (n.d.) *Assisting and Interviewing Child Victims of Trafficking: A Guide for Law Enforcement, Immigration and Border Officials*. Bangkok: Regional Support Office of the Bali Process (RSO). Available at: <https://bit.ly/3h6FTeZ>

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Bali Process (2015) *Policy Guide on Protecting Victims of Trafficking*. Bangkok, Thailand: Regional Support Office of the Bali Process (RSO). Available at: <https://bit.ly/37LO6nZ>

NEXUS Institute and Bali Process (2021) *Special and Additional Measures for Child Trafficking Victims: A Practitioner Guide*. Washington, D.C.: NEXUS Institute and Bangkok: Regional Support Office of the Bali Process (RSO). Available at: <https://bit.ly/3fdGsom>

NEXUS Institute and Bali Process (2021) *Trafficking Victim Protection and Support: A Practitioner Guide*. Washington, D.C.: NEXUS Institute and Bangkok: Regional Support Office of the Bali Process (RSO). Available at: <https://bit.ly/3fdGsom>

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⁸ Hargitt, K. (2017) *Casting Light on the Care, Recovery and (Re)integration Needs of Commercially Sexually Exploited Children*. Bangkok: ECPAT International, p. 87.

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¹² Surtees, R. (2007) *Listening to victims: Experiences of identification, return and assistance in South-Eastern Europe*. Vienna: ICMPD and Washington, D.C.: NEXUS Institute, p. 213.

¹³ ICE (2021) *Human trafficking victim shares story*. Washington, D.C.: U.S. Immigration and Customs Enforcement.

¹⁴ Surtees, R. and T. Zulfahary (2018) *Seeing the unseen. Barriers and opportunities in the identification of trafficking victims in Indonesia*. Washington, D.C.: NEXUS Institute. p. 67.

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REGIONAL SUPPORT OFFICE

THE BALI PROCESS

Regional Support Office of the Bali Process (RSO)

27th Floor Rajanakarn Building
3 South Sathorn Road, Sathorn, Bangkok 10120, Thailand
Tel. +66 2 343 9477 Fax. +66 2 676 7337
info@rso.baliprocess.net

For further information on the Bali Process and the RSO please visit
www.baliprocess.net



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www.twitter.com/baliprocessrso



NEXUS Institute

5335 Wisconsin Ave. NW
Suite 440 Washington, D.C. 20015
Office@NEXUSInstitute.net

For further information on NEXUS Institute please visit
www.nexusinstitute.net



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