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Global Initiative to Fight Human Trafficking



Anti-human trafficking manual for criminal justice practitioners

Module 5

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Anti-human trafficking manual for criminal justice practitioners

Module 5:

Risk assessment in trafficking in persons investigations



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Module 5: Risk assessment in trafficking in persons investigations

Objectives

On completing this module users will be able to:

- Recall the principles of continuous risk assessment in trafficking in persons;
- State the key questions to be considered when assessing risk in trafficking in persons cases;
- Understand the concept of “risk” in the context of trafficking in persons cases;
- Identify the object (“who”/“what”) of risk in trafficking in persons;
- Describe how the severity of risk and likelihood of risk are considered to determine the level of risk;
- Recall the actions to be considered when deciding on a response to an identified risk and the level of that risk;
- Describe what the risks are, what the level of risk is and possible action that should be taken, when considering the following:

All categories of victims of trafficking in persons;

Victims of trafficking in persons cooperating with law enforcement investigations;

Victims partially cooperating with law enforcement investigations;

Victims of trafficking in persons not cooperating with law enforcement investigations;

Relatives and friends of victims of trafficking in persons;

Law enforcement staff and other professionals investigating trafficking in persons;

The trafficking in persons investigation;

Post-investigation (repatriation and reintegration).

Risk assessment in trafficking in persons investigations

Trafficking in persons criminal networks more than many other criminal groups are a source of potential risk to their victims and the victims' loved ones as well as law enforcement agents in diverse ways. This is understandably so when a victim is seen collaborating with

the criminal justice system or the criminal enterprise is threatened by the state investigations. This risk should not only be recognized and planned for but should form a key aspect of investigators' strategies in the trafficking in persons investigation. An investigator should as a matter of duty identify and assess risk in trafficking in persons investigation and do whatever is possible to eliminate or reduce it.

Though there has been very little trafficking in persons specific risk research, there have been large amounts of anecdotal evidence of the risks encountered in the investigation of trafficking in persons cases.

“Risk” is simply defined to be the likelihood of a potential hazard becoming reality and the consequences if it does. Risk-assessment in trafficking in persons therefore is an attempt to decide how likely it is that a hazard will become reality and what measures should be taken to reduce or abort it completely, and insulate the victim. There is no generalized formula in trafficking in persons risk-assessment. Every case should be taken on its own merit as each case is unique and may present different challenges from your previous experiences.

Sometimes the information that may call for trafficking in persons risk assessment may come from interviews with victims, NGOs, a client, the product of enquiries, previous intelligence or information from surveillance and other specialist investigation techniques. Whatever the source of your information, it should not be ignored. Moreover, there may be different risks at different stages of trafficking in persons cases and thus the risk assessment needs to be a continuous process.

Some of the consequences of failing to identify and deal with risk include:

- Intimidation, threats, assault or death of victims, their families or friends (through the traffickers and people linked to them, before, during and after identification of case/victim);
- Illness—both physical and mental;
- Exploitation or continued exploitation;
- Wrongful conviction of the innocent, escape of the guilty from prosecution;
- Reduction of law enforcement capability to deal with trafficking in persons;
- Disappearance of relevant exhibits and evidence.

The principles and process of continuous risk assessment

The principles underpinning the risk assessment process are as follows:

- Investigators have a clear humanitarian duty of care to the victims of trafficking crimes;
- In accordance with the United Nations Convention against Transnational Organized Crime and its supplementary trafficking in persons protocol, a number of other international legal instruments, and in many cases, national legislations and procedural rules, investigators also have a legal duty of care to the victims of trafficking crime that are

brought to their attention. A critical part of fulfilling this duty is to conduct a risk assessment in relation to identified victims and other existing or potential victims;

- Coupled with the humanitarian and legal obligation imposed by law, effective risk assessment increases your chance of a successful investigations and prosecution in trafficking in persons cases;
- The risk assessment should be carried out as soon as possible after a trafficking victim has come to notice and then becomes a continuing process;
- Risks can only be assessed on what you know or what you could reasonably be expected to find out.

According to Article 6(5) of the Trafficking in Persons Protocol, each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

Article 8(2) of the Trafficking in Persons Protocol also supports the need for risk assessment when it provides as follows. “Where a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.”

Carrying out a risk assessment supports the implementation of these articles.

The four key questions

The four key questions for you to address in any trafficking in persons risk assessment process are:

- Who or what is at risk?
- What is the risk?
- What is the level of risk?
- What action should be taken?

These key questions will be addressed in detail below.



Self-assessment

What are principles of continuous risk assessment in trafficking in persons?

What are the four key questions to be considered when assessing risk in trafficking in persons?

Who or what is at risk?

This may include:

- Victims of trafficking in persons, including identified and unidentified victims, those fully cooperating with law enforcement as victim-witnesses, partially cooperating or not cooperating;
- Family, friends, partners of victims;
- Witnesses;
- Staff of law enforcement, prosecutors or other agencies including NGOs and interpreters;
- Integrity of the investigation.



Discussion

Anonymous information has been received that an agricultural processing plant in your area is using trafficked labour.

Initial enquiries do not indicate any specific risk. You decide to deploy officers to observe the plant. These officers are briefed on potential risks involved in trafficking in persons investigations and report any concerns they have.

Officers see a car leaving the plant. The licensed number is noted and an intelligence check made. A man associated with the car three weeks ago has prior convictions for acts of violence and has a history of using weapons against police officers.

What are the potential risks that need to be considered when responding to this situation?

Who is at risk?

What is the risk?

The risks associated with trafficking in persons are diverse and extensive. The coercive and exploitative nature of trafficking in persons comes with health and other associated risk. A comprehensive risk assessment is needed, taking into account the behaviour of traffickers, to what extent the behaviour of a victim gives reason to fear acts of revenge and the security situation of the place where a victim would live in his/her home country, and to what degree authorities in a country of origin would be able and willing to safeguard the physical security and integrity of the victim. Law enforcement agencies will have the primary responsibility in this field and should take the lead in the process.

Victims' cooperation with law enforcement officers always involves an element of risk for the victims and possibly for their families. The critical point is that the victims should be made fully aware of all of the issues and risks attached to any decision they are asked to

make by the investigator so that they can reach a fully informed decision. The greater the cooperation of the victim, the greater the likely risks to them, their families and other potential victims. The greater the risk, the more challenging it is for you to control those risks. The level of risk varies between individual cases and determined by many factors including the form of trafficking, profile of victims, nature of the criminal network and the capabilities of the law enforcement agencies

In the context of the crime of trafficking in persons, “risk” refers to:

- The existence of a threat to the security or safety of the individuals outlined above
- The integrity of the investigation through anything which affects the:
 - Exhibits and admissibility of evidence (i.e. any item that may confirm or disprove the commission of the crime);
 - Ethical application of the criminal law and criminal code procedures;
 - Ethical application of organizational policy and procedures.

Victims may be at risk of damage to their physical and psychological health through conditions of exploitation or direct assault as a control measure. The risk to health may continue long after initial interventions by criminal justice authorities. This may be as a result of illnesses etc. contracted during trafficking or direct assault from traffickers to prevent cooperation or enforce return.

Assaults or intimidation on victim-witnesses have the effect of increasing the risk they will not cooperate with the investigation or withdraw testimony, with clear potential investigations and prosecutions cannot proceed.

Returning victims to their point of origin location brings with it risks that people will be stigmatized, put back into the same circumstances that led to them being trafficked or placed in a situation where there is very limited support. All these have consequences for their health and increase the chance of being re-trafficked.

Family, friends partners of victims may be at risk as traffickers threaten or assault them in order to control victims or if they attempt to find out what has happened to the victim or are seen cooperating with the authorities.

Witnesses in trafficking cases may be at risk from the criminal network involved in trafficking in persons. .

Police officers or any law enforcement officers involved in the investigation of trafficking in persons cases may be at risk from attack during visits or raids, health risks from exploitation environments or intimidation to prevent investigation.

Prosecutors and judges may be vulnerable to intimidation, threats and assault.

NGO workers or other victim service providers supporting the process may be exposed to assault and intimidation during traffickers' efforts to attack the victims; they may also be exposed to disease or illness and prolonged stress through working with traumatized victims.

Interpreters: If interpreters are used during the interview stage of the investigation, it is important to realize that they too could be subject to similar risks.

Criminal justice practitioners may, in some cases, be at risk from the activities of colleagues in other jurisdictions, for example through the exposure of details relating to an investigative unit or individual involved in an investigation in another country.

Investigations may be at risk through withdrawal of testimony as a result of threats to the people above, direct corruption of those people, weak criminal justice management systems or unethical application of the law and policy.

What is the level of risk?

By its nature, trafficking in persons carries a considerable risk to the victims. The precise determination of that level of risk is difficult and depends on various factors including the type of trafficking, the individual traffickers and victims involved, the culture of the victims and traffickers. 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 ranking 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.

This can be displayed in a table (See table 1)

Table 1. Risk Rating Matrix

Severity	3	Medium	High	High
	2	Medium	Medium	High
	1	Low	Medium	Medium
		1	2	3
		Likelihood		

As can be seen from the matrix a risk with low severity and low likelihood will be rated as low risk. Medium risks occur when either both severity and likelihood are medium or where one is high and the other low. High risks occur when either both are high or one is high and the other medium.

Questions to help assess the level of risk

Some of the key questions to when assessing the level of risk include:

- *Is someone in immediate danger?* Those in danger can include other victims or relatives and friends of the victim. Circumstances where a presumed victim has been seriously assaulted or raped and suggest both high levels of severity and likelihood of injury, psychological trauma etc. Similarly, presumed victims working in a dangerous industrial process would also indicate a high severity and likelihood of injury.

- *Are there outstanding presumed victims?* Outstanding victims could increase overall risk levels in a number of ways, primarily the risks to the presumed victims themselves. Exactly what the level of risk is will depend on the answers to other questions here.
- *Have traffickers previously threatened or used violence?* Factors that would affect the risk rating include the nature of the violence (severity) and frequency (likelihood). If there is evidence of previous violence or threats the risk level is likely to be higher.
- *What knowledge do the traffickers have?* Do the traffickers know the victim's home/work address or telephone number or details of those of his or her family? Knowing this type of information will raise the likelihood of risk.
- *What support services, including physical protection, are available?* Good support services such as health care, counselling and secure accommodation can reduce the likelihood of risks such as attacks on victim-witnesses, withdrawal of testimony, etc. Those support services also reduce the severity of risk, for example by improving the chance of recovery to health.
- *What is the victims social network?* Is he/she married? Does the victim have any children? A social network may help a victim recover (reducing the severity of risk) or provide an informal victim protection (reducing the likelihood of risk) and thus the overall risk rating. In other cases suspected traffickers may have the ability to intimidate the family or social network, increasing both the severity of risk (for example by persuading the victim-witness not to testify) and the likelihood of it occurring.
- *Do the traffickers know (or claim to know) the locations of safe houses for victims of trafficking, home addresses of family etc?* Actual knowledge will increase the likelihood of risk to victims. Claimed knowledge, even if not true, impacts on risk because it may be difficult to assess the likelihood of them knowing this information and the severity of risk increases because it may have the effect of intimidating the witness.
- *Who do the traffickers have the ability to attack?* Does it appear they have associates in place in locations that could enable them to attack the victim, his or her family or friends, thereby increasing the likelihood or a risk of injury to someone or preventing a witness from testifying.
- *How "secure" is the investigation?* Threats to the security and integrity of the investigation may come in a number of ways. Traffickers with a previous history of bribing public officials would increase the severity of risk of a total failure of the investigation; money in the hands of those same traffickers would increase the likelihood of bribery taking place. Other issues affecting security and integrity include (for example) weak exhibit management systems, wide access to intelligence/information resources, etc.



Self-assessment

What is "risk" in the context of trafficking in persons?

Who is likely to be at risk in trafficking in persons?

How are the severity of risk and likelihood of risk considered to determine the level of risk?

What action should be taken?

The tactical options available to the investigators when responding to a trafficking in person case have their own associated risks and challenges. For instance, reactive tactics may rescue one victim but expose others to danger. Proactive approaches can give powerful evidence but put officers in hazardous situations. Disruptive methods may make an environment hostile to the trafficker but make evidence gathering more difficult as offenders go further “underground”. The application of one of these approaches may not be sufficient in a given case. A tactic (or more properly a combination of range of tactics) that has been employed effectively is the combination of all these three approaches in an operation.

Questions to help decide on action

Some of the key questions when deciding on action to be taken include:

- What law enforcement investigation activity is appropriate? What risks might that activity bring to victims etc. and to any NGO, other victim service provider or law enforcement staff involved?
- Is the risk faced by current, outstanding or potential victims or family, etc. so high that immediate intervention is necessary?
- If immediate action is required, what actions can be taken to prevent suspected traffickers from becoming aware that law enforcement agencies are aware of the traffickers’ activities?
- If immediate action is not required, can the level of risk be safely managed while proactive investigation is initiated/conducted/continued?
- If proactive investigation is not feasible, can the level of risk be safely managed to allow disruptive strategy to be initiated/conducted?

Remove, accept, reduce and avoid.

One model to deal with risk in some jurisdictions has been to consider how you might:

Remove
Accept
Reduce and/or
Avoid

risk. Taking the consideration further, the question is which of these approaches is appropriate to the particular risk identified. In trafficking in persons cases the following examples illustrate the use of the method.

Remove

A victim is recovered and enquiries show that the trafficker has a long history of violence. An application is made to have the trafficker held in pre-trial custody to prevent him attacking the victim. If this application is successful, the threat is removed.

Accept

An investigation shows that victims of trafficking in persons are being held in dangerous conditions in a factory. Action is required to recover the victims, but taking that action may alert traffickers and allow them to relocate the victims and conceal further traces of evidence. A decision is made to enter and recover the victims. The risk of evidence being removed is accepted.

Reduce

Information is received that mine workers who have been trafficked are suffering from a contagious disease. A decision is made to recover them, but seek expert medical advice and provide appropriate health and safety equipment to staff involved in the recovery efforts. The health risk has been reduced.

Avoid

People are being trafficked across a national border to work in very dangerous conditions in mines. A multi-agency border operation identifies potential victims, provides information and counselling and persuades the people being trafficked not to go any further. The risk to their health and safety has been avoided.

This model simplifies the method. In reality, each identified risk is likely to require a blend of approaches. Also it is important to remember the risks and responses must be kept under continuous review.

Risk assessment relating to repatriation/return to location of origin

The Trafficking in Persons Protocol on residence permits and repatriation of trafficking victims

According to Article 7 of the Trafficking in Persons Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. In implementing the provision, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

According to Article 8 of the Trafficking in Persons Protocol, in returning victims to their home countries, the return shall be with due regard for the safety of that person and for the status of any legal proceedings. The return shall preferably be voluntary.

Assessing risk in other jurisdictions

There may be many occasions when criminal justice practitioners are required to assess risk in jurisdictions outside their own. Examples include arranging the return of a victim, identifying appropriate support services for him or her and assessing risk to family and friends in the country of return.

Essentially, the same process to that outlined above should be followed. There are a number of practical challenges however. These include:

- Lack of common language;
- Legal issues concerning cooperation between jurisdictions;
- Difficulty in assessing the quality of any “local” response within another jurisdiction;
- In some cases the need to act quickly to reduce risk.

The general advice for criminal justice practitioners is that they should work with the existing structures that facilitate cooperation between jurisdictions. Even where an enquiry is urgent they may be able to give some indications of who to speak to and who or which organizations are trustworthy. When dealing with liaison offices emphasize you need to make enquiries as quickly and safely as possible.

If there are no prior liaison arrangements there may be other national or international organizations or individuals who can give advice.

Consider asking general questions about conditions before asking specific questions about individuals.

Keep strict control of information about individuals and only share it with individuals or organizations you are confident will use it responsibly.

Many of the issues surrounding repatriation revolve around the level of support and protection received by the victim in the country of destination and if/when they return to their country of origin. As a general rule the more support they are given, the less likely the person will be a victim again in the future and the less severe the consequences will be to their health. In assessing the level of risk to the victim upon repatriation it is important to consider the following:

- The returned victim may still be suffering from medical and psychological problems as a result of his/her trafficking experience;
- His/her traffickers are still out looking for opportunities to revenge;
- The victims' conditions back home may still be the same and thus exposed to those push factors that necessitated his/her ordeal;
- They may be faced with stigmatization and rejection from family and community members, etc., possibly resulting in a lack of alternatives and thus even greater exposure to the risk of trafficking.

These issues, among others, call for specific risk assessment before repatriation could be embarked upon. The risk assessment in these situations may require a finding of facts in the following areas:

- What social support services are available in the country of return to support the victims to recovery?
- What is the level of physical protection that could be provided to the victim against the traffickers and his associates by the government of the receiving country?
- Are there any social, cultural or religious factors that may make repatriation dangerous, i.e. is the victim being sent back to a family that sold him/her in the first place or does the nature of exploitation (i.e. sexual exploitation) put the victim at risk by reason of his/her religious inclination if he/she is repatriated as a trafficked victim?
- What NGO or other victim service providers exist in the country of destination and/or the country of origin that can either support the return of the victim or allow them to delay a return or not return at all?
- Is it safe to allow the victim to return home or are they at risk of being assaulted and/or re-trafficked?
- If it is not safe, how can you reduce or eliminate the risk? If they are outside their country of origin can they be given temporary residency status? What support and assistance is available?

In all cases of minimizing risk to victims of trafficking there is no substitute for planning. Planning allows you to assess what is available to you, what processes you may need to go through and analyse which individuals and organizations you can trust. Though it is not always possible to plan ahead because of certain situations that may not be possible to anticipate, it is a desirable step in risk assessment. While you may be forced by circumstances to contact individuals and agencies outside your jurisdiction for the first time when you are dealing with a case it is not desirable, as the contacts may also need to plan ahead.

If you are responsible for planning at the strategic level, consider making contact with other agencies and victim service providers, including NGOs outside your jurisdiction to find out if they can assist with things like providing accommodation now or would be willing to start planning to do so in the future.

Every trafficked person's situation is different. Find out exactly what kind of support the returnee may need. The necessary information can be obtained through careful planning, prior to return by considering the following:

- Coordination with victim support agencies in your area to determine victim's needs and wishes, and how you might be able to assist. If the victim wishes to return, check and conduct risk situation analysis and help them to access support before returning and assist with arrangements for return whilst they are in the country of destination.
- The situation and suitability of the family or nearest relatives to whom the returnee will go back in the state of origin in terms of being able to care for and support the returned victim.
- If you have a tactical role find out what provision is available from victim service providers, including NGOs regarding recovery, support and safe return of trafficked victims. If

none is available consider contacting strategic decision makers and drawing their attention to the situation.

- Find out what your state's policy is on repatriating trafficking victims. Does your state offer a period of reflection for victims of trafficking? Does this apply to the victim you are working with? If so, what processes do you have to follow and who do you have to contact to arrange it?
- You may have to make enquiries in the victim's location of origin to find out what risks they are likely to face if they return. This may involve contact with local agencies to get the information you need.
- Be careful of whom you contact: you may not know the people you are speaking to and they may not be trustworthy.
- Where you have to make international enquiries for safe return and repatriation, always liaise and speak to the agency in your state that deals with such enquiries first. They deal with agencies in other countries and may be able to give you details of trusted organizations or people you can contact. Emphasize that you need to make your enquiries as quickly and as safe as possible.
- If it is an enquiry within your own country, establish the contact you should talk to. The people you seek are those that can be both trusted and are likely to have access to the information you seek. Speak to others who may have made similar enquiries in the past to establish if they were done properly.
- Don't just consider law enforcement agencies: NGOs and other victim service providers may have people you can trust on the ground to give you the information you require. Where necessary make sure you have an information sharing agreement with the other agency.
- Consider making general enquiries about local conditions before you start asking specific questions about individuals. Responses to the general questions might allow you to assess whether it is safe enough to move on to questions about the victims and traffickers.
- Planning should include intelligence assessment of the social, cultural and religious factors applicable to the victims and that will likely be encountered in your area of responsibility. There is always the possibility that you will encounter victims from a background you had not expected but this type of planning will likely be useful in many cases.
- Strict control should be kept on the information that relates to the victim. It should be held under tight security, with limited access and not shared unless you are confident the individual or agency you are sharing it with will use it responsibly.

Cases involving repatriation by International Organization for Migration (IOM)

The International Organization for Migration (IOM) has considerable experience and has handled a large number of programmes for the repatriation and re-settlement of migrants, including victims of trafficking. It is advisable that when planning repatriation or assessing the risk situation before repatriation, you may need to liaise with the organization's local mission in your country.



Case example

Angelica was recruited by her cousin who lives in East Asia. She was asked to come to work for her cousin as a babysitter. She was unaware that her cousin was the girlfriend of a member of an organized crime group and was working as a broker to recruit Latin American women into the sex industry. After arriving she was told she had a debt of a large amount of money, which for unexplained reasons increased substantially. She was told that if she did not agree, her two children would be harmed. She was forced to work in a number of commercial sex premises, stripping and prostituting herself.

After a few months she ran away to a police station. The police called the Embassy of her country. Angelica said that her passport, ticket and clothes were at the apartment where she was staying and she wanted the police's assistance to get them back. The police identified the apartment as one known to be controlled by an organized criminal group and were hesitant to go there without further evidence, but finally agreed to go with Angelica and Embassy officials. The police managed to retrieve Angelica's ticket, passport and clothes.

Angelica went into hiding in a refuge while waiting for her flight back home. While at the refuge, she fell ill and had to be admitted to hospital. The hospital agreed to put her in an isolated ward and to admit only police, Embassy or refuge staff, and not to divulge information about her whereabouts. Members of the organized criminal group came to the hospital but were unable to locate her. Soon after, she was repatriated.

Human Trafficking for Sexual Exploitation in Japan ILO Geneva 2004



Self-assessment

In the case of victims of trafficking in persons:

What are the risks?

What factors might determine the level of risk?

What actions that might you consider responding to risks?

Summary

- Trafficking in persons brings a number of risks that are different to general investigations and, in some cases, unique to trafficking cases.
- Investigators have a clear humanitarian duty of care to protect victims of trafficking. This duty of care has a number of international legal mandates, including the Convention against Transnational Organized Crime and the Trafficking in Persons Protocol.

- Risks to victims vary according to their level of cooperation.
- Assessment of risk in trafficking should not simply be confined to those risks faced by victims. Other areas include potential risks to:
 - Relatives and friends of victims of trafficking.
 - Other members of the public.
 - Law enforcement staff and other professionals investigating trafficking and working with its victims.
 - The trafficking investigation.
- The key questions to address in any trafficking risk assessment process are:
 - What is the risk?
 - Who is at risk?
 - What is the level of risk?
 - What action should be taken?



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