

The WARNATH GROUP

**USING THE VICTIM-CENTERED
APPROACH IN CASES OF TRAFFICKING
IN PERSONS FOR PROSECUTORS**

AUGUST, 2015

This training was funded by a grant from the United States Department of State.
The opinions, findings, and conclusions stated herein are those of the authors and
do not necessarily reflect those of the United States Department of State.

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WORKSHOP AGENDA

DAY ONE

WELCOME & INTRODUCTIONS	9:00 - 10:00AM
Introductory Remarks	
Group Photo (with Dignitaries)	
<i>Break</i>	10:00 – 10:30
WELCOME & INTRODUCTIONS (continued)	10:30 – 11:00
Warnath Group Experts Introduce Themselves	
Participants Introduce Themselves	
Overview of Workshop	
Pre-Training Questionnaire	
WHAT IS HUMAN TRAFFICKING	11:00 – 1:00
International Law Definition	
Myanmar Law Definition	
Presented by Deputy Director General Daw Khin Co Ohn	
Case Studies	
<i>Lunch</i>	1:00 – 2:00
WHAT IS HUMAN TRAFFICKING	2:00 – 3:00
Case Studies (continued)	
<i>Break</i>	3:00 – 3:30
VICTIM-CENTERED APPROACH	3:30 – 5:00
What is Victim-Centered Approach	
Why Use the Victim-Centered Approach	

DAY TWO

PROVING A HUMAN TRAFFICKING CASE	9:00 – 10:30
<i>Break</i>	10:30 – 11:00
PROVING A HUMAN TRAFFICKING CASE (continued)	11:00 – 12:30

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Lunch 12:30 – 1:30

WORKING WITH VICTIMS 1:30 – 3:00

Break 3:00 – 3:30

WORKING WITH VICTIMS (continued) 3:30 – 5:00

DAY THREE

CHILD VICTIMS 9:00 – 10:30

International Law Standards
Myanmar Practice
Working with Child Victims

Break 10:30 – 11:00

INTERNATIONAL COOPERATION 11:00 – 12:30

Lunch 12:30 – 1:30

DOMESTIC CASE COOPERATION 1:30 – 3:30

Working with Police
Working with NGOs

Break 3:30 – 4:00

WRAP-UP and CLOSE 4:00 – 5:00

Question & Answer Session
Post-Training Questionnaire
Closing Remarks

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ABOUT THE WARNATH GROUP

The Warnath Group, LLC provides strategic advisory services, customized training, and professional/technical skill development to advance work by government, business, philanthropy, international organizations and CSR collaborations regarding human trafficking, rule of law, humanitarian issues, and global women's leadership and empowerment. The Warnath Group works with leaders in countries throughout the world to design and implement strategies, laws, policies and programs to address these issues more effectively and appropriately.

The Warnath Group (WG) team includes among the foremost professionals working on the issue of human trafficking in the world. Our trainers and advisors have served at the forefront of the development of law and policy on these and related issues around the world. The depth and breadth of specialized expertise that we bring to our work on this issue spans more than the past decade and a half. Over this fifteen year period our collective experience includes advising governments at the highest levels and training (and developing training material) for many hundreds of law enforcement and other professionals.

WG's trainers and advisors include former high-ranking government officials, police and prosecutors as well as prominent and award-winning experts in providing legal assistance and other care to those who have escaped human trafficking. The WG team includes former White House staff, former officials from the U.S. Department of Justice (particularly former prosecutors) and Department of State, former State Attorneys General (with experience addressing human trafficking and victims of crime issues), attorneys who have served as counsel representing victims of human trafficking and working with NGOs to advance the rights of victims, and experts in victim service provision, conducting research and analysis on human trafficking and collaborations between NGOs, law enforcement and other government officials.

The Warnath Group has been retained by the U.S. State Department to provide training and technical assistance to government officials, law enforcement, victim service providers and other professionals combating human trafficking in countries around the world. Our contract with the State Department was recently extended for an additional three years.

The head of the Warnath Group is Stephen Warnath who has worked to bring about policy, legal and social change to abolish contemporary forms of slavery for over fifteen years. These efforts grew out of his work in the Clinton Administration White House where his portfolio of justice policy issues included matters ranging from migration and refugees to civil rights and exploitation crimes. He also led the White House's interagency policy development of many of the Executive Orders signed by President Clinton. Later, he moved to the U.S. State Department and participated in the creation of seminal anti-trafficking instruments, including as a member of the U.S. delegation negotiating the U.N. Palermo Protocol and as an architect of development of the U.S. anti-trafficking law. Subsequently he worked for several years with the Organization for Security and Co-operation in Europe (OSCE) in Vienna serving as Chief of Staff of the Stability Pact Task Force on Trafficking in Human Beings (where, among other things, he participated in negotiations of the Council of Europe Convention on Action against Trafficking in Human Beings and the development of laws, policies and national action plans in many countries of South East Europe).

Mr. Warnath is also the founder and President of the NEXUS Institute, a policy and action-based research center on human rights and rule of law, specializing in research and analysis to identifying best practices to combat human trafficking (www.NEXUSInstitute.net). He is a co-author of a casebook on the law and policy of human trafficking to be published later this year. Before his public service in the government, Mr. Warnath was a litigation partner in a law firm in Washington D.C. He is a graduate of Harvard Law School and Brown University.

For more information, please contact us at:

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ABOUT THE WARNATH GROUP TEAM

Stephen Warnath, J.D. is the founder and CEO of The Warnath Group. He has worked to bring about policy, legal and social change to abolish contemporary forms of slavery for over fifteen years. These efforts grew out of his work in the Clinton Administration White House where his portfolio of justice policy issues included matters ranging from migration and refugees to civil rights and exploitation crimes. He also led the White House's interagency policy development of many of the Executive Orders signed by President Clinton. Later, he moved to a Presidential interagency council at the U.S. State Department and was a leader in the creation of seminal anti-trafficking instruments, including as a member of the U.S. delegation negotiating the U.N. Palermo Protocol (as the delegation's senior anti-human trafficking policy official) and as an architect of development of the U.S. anti-trafficking law, the Victims of Trafficking and Violence Protection Act of 2000 (TVPA) in his role leading the Executive Branch's interagency process drafting the legislation and working with Congress toward its enactment. Subsequently he worked for several years with the Organization for Security and Co-operation in Europe (OSCE) in Vienna serving as Chief of Staff of the Stability Pact Task Force on Trafficking in Human Beings (where, among other things, he participated in negotiations of the Council of Europe Convention on Action against Trafficking in Human Beings and the development of laws, policies and national action plans in many countries of South East Europe).

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Sheila Berman, J.D. currently serves as Senior Advisor on Law & Policy for the Warnath Group and the Director of Pro Bono Engagement for the NEXUS Institute. The focus of her work is on global human trafficking issues. She has worked on the drafting of national human trafficking legislation as well as the training of police, prosecutors, judges, social workers and other stakeholders in numerous countries across the globe. Ms. Berman served as a Federal Prosecutor with the United States Department of Justice, Civil Rights Division, Criminal Section for over six years. In that position she investigated and tried criminal cases involving a wide range of civil rights violations including human trafficking, police brutality and hate crimes. In 2003 Ms. Berman successfully tried the case U.S. v. Clayton Waagner, securing a 51-count conviction against a man who had simultaneously been on the FBI's Top 10 Most Wanted list and the U.S. Marshals Service 15 Most Wanted list. Ms. Berman was honored for her work at the Department of Justice in 2004 with a Special Commendation for Outstanding Service. In 2006 Ms. Berman opened her own law practice where she

litigated civil cases, winning six-figure verdicts and settlements. Ms. Berman returned to Washington D.C. to work exclusively on human trafficking issues in 2012.

Jenny Stanger, is currently a specialist trainer on victims services, and, law enforcement and NGO cooperation. As a co-founder and staff person at the Coalition to Abolish Slavery & Trafficking (CAST) in Los Angeles, Jenny has worked as a case manager and advocate for survivors of human trafficking and slavery since 1998. Jenny campaigned for the passage of the U.S. *Victims of Trafficking and Violence Protection Act of 2000* through media advocacy, congressional testimony and policy advocacy. She is a founding member of Freedom Network USA, a national advocacy network, and directed the Freedom Network Institute on Human Trafficking, a collaborative nationwide training and technical assistance program delivered to thousands of government and non-government personnel in 23 American cities. While at CAST, Jenny facilitated the opening of the first refuge for trafficked/enslaved women in America in 2003.

Jenny relocated to Australia in 2005 and co-founded the Anti-Slavery Project in the Faculty of Law at the University of Technology Sydney. In 2007, through a project of The Salvation Army, she became the Supervisor of Australia's only shelter for women who have experienced human trafficking, slavery and/or slavery-like practices. Jenny is currently the National Director of the Freedom Partnership to End Modern Slavery, a Salvation Army national initiative in Australia.

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What is Human Trafficking?

USING THE VICTIM-CENTERED APPROACH IN CASES OF TRAFFICKING IN PERSONS

Myanmar
August 2015

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INTERNATIONAL LAW

Trafficking in human beings is:

. . . the recruitment, transportation, transfer, harboring or receipt of persons, by the threat or use of force, deception or other means, for the purpose of exploitation.

Exploitation shall include...the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery...or the removal of organs.

(Art. 3, UN Trafficking Protocol)

Elements of Trafficking – Palermo Protocol

Act

- Recruitment
- Transportation
- Transfer
- Harboursing
- Receipt of Persons

Elements of Trafficking – Palermo Protocol

Act

- Recruitment
- Transportation
- Transfer
- Harboursing
- Receipt of Persons

Means

- Threat of Force
- Use of Force
- Deception
- Coercion
- Abuse of Power

Elements of Trafficking – Palermo Protocol

Act	Means	Purpose / Exploitation
<ul style="list-style-type: none">• Recruitment• Transportation• Transfer• Harboursing• Receipt of Persons	<ul style="list-style-type: none">• Threat of Force• Use of Force• Deception• Coercion• Abuse of Power	<ul style="list-style-type: none">• Sexual Exploitation• Forced Labor or Services• Slavery• Practices Similar to Slavery• Removal of Organs• Etc.

Elements of Trafficking – Palermo Protocol

Act	Means	Purpose / Exploitation
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The special situation of children:

Act + exploitation = trafficking

UN Trafficking Protocol

Council of Europe Convention on Action against Trafficking in Human Beings

- Preamble

Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being

- Purpose, Section 1(b)

to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution

Chapter III – Measure to Protect and Promote Right of Victims...

- Article 10 – Identification of the victims
- Article 11 – Protection of private life
- Article 12 – Assistance to victims
- Article 13 – Recovery and reflection period
- Article 14 – Residence permit
- Article 15 – Compensation and legal redress
- Article 16 – Repatriation and return of victims
- Article 17 – Gender equality

Smuggling of Migrants is:

. . . the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

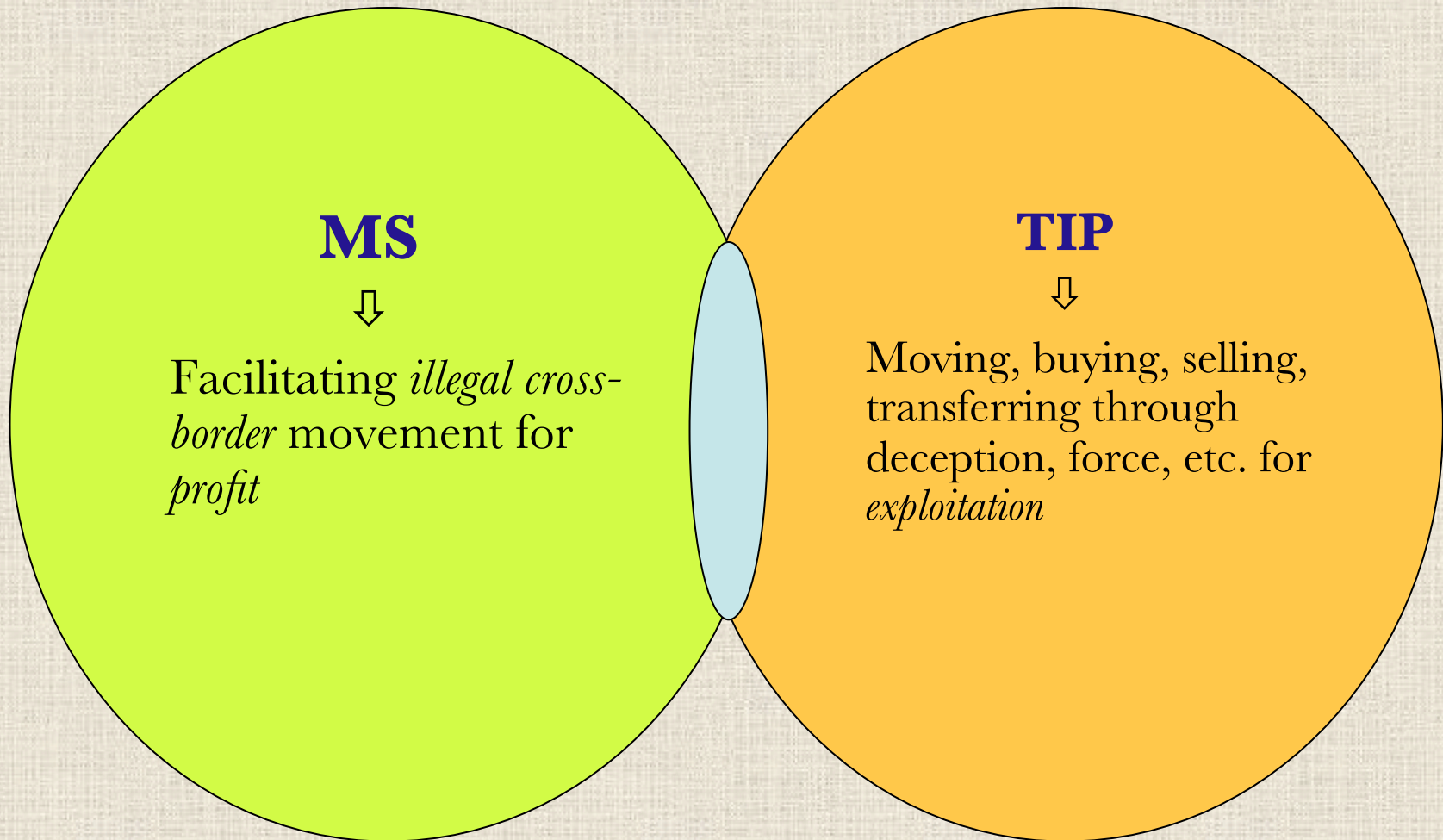
(Art. 3, UN Migrant Smuggling Protocol)

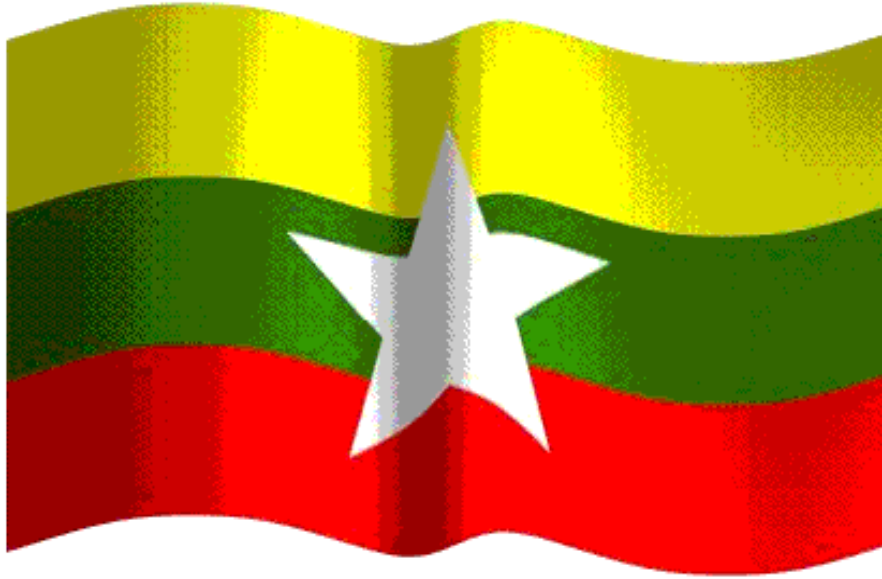
Elements of Migrant Smuggling

- Assisting a person;
- To cross an international border;
- The border crossing must be illegal;
- The smuggler's purpose is to make a profit from moving the migrant across the border.

Compare & Contrast:

Migrant Smuggling (MS) v. Trafficking in Persons (TIP)





**THE REPUBLIC OF THE UNION OF
MYANMAR**

TIP Legislation and related Criminal Offences

Ms. Khin Cho Ohn
Deputy Director General
Union Attorney General's Office
The Republic of the Union of Myanmar

TIP related International Conventions

- UNCTOC and its protocols in 30-3-2004
- ILO Convention(29) → 4-3-1955
- CRC → 15-8- 1991
- CEDAW → 22-7-1997
- UNCAC → 20-12-2012

The Anti -Trafficking in Persons Law

- Enacted in 2005 (SPDC Law No.5/2005)
- To prevent , and suppress the trafficking in persons as a national duty
- In preventing and suppressing trafficking in persons to pay particular attention to women, children and youth
- To prevent further trafficking in persons by passing effective and deterrent punishment
- To liaise and coordinate with international organizations, regional organizations
- To protect trafficked persons

Trafficking in Persons as a Criminal Offence; Section 3 (a)

Purpose

- **exploitation** of a person
- with or without his or her **consent**

Action

- recruitment
- transportation
- transfer
- sale
- purchase
- lending
- hiring
- harboring
- receipt of persons

Means that are used

- (1) threat, use of force or other form of coercion
- (2) abduction
- (3) fraud
- (4) deception
- (5) abuse of power or of position taking advantage of the vulnerability of a person
- (6) giving or receiving of money or benefit to obtain the consent of the person having control over another person

Exploitation

Prostitution

Other forms of sexual exploitation

Forced labour

Forced services

Slavery

Debt-bondage

Servitude

Removal and sale of body organs

Through any means out of the said 8 means

Receipt **money / benefit**

(or)

Agreement for **receipt of money / benefit**

Other Related Laws

- Penal Code (1861)
- Immigration (Emergency Provisions) Act (1947)
- Suppression of Prostitution Act (1949)
- The Child Law (1993)
- Overseas Employment Law (1999)
- Blood and Blood Products Law (2003)
- The Mutual Assistance in Criminal Matters Law (2004)
- The Body Organ Donation Law (2004)
- Anti Corruption Law (2013)
- Anti Money Laundering Law (2014)

Elements of Proof that need to be established

- There is no provision in TIP Law
- Burden of Proof under the Evidence Act
- Statement of victim is very important in TIP cases
- Circumstantial Evidence, relevant documents

Conspiracy, Attempt and Aid and Abet the Commission of TIP Penalties

Section 32

To Prepare, Attempt, Conspiracy, Organization,
Administration,

During...Abetment, Providing Financial Assistance

Prescribed Punishment

Compensation and or restitution of TIP

- **Section 33** :Confiscation, Disposal, of Property Involved in Offence.It may pass an order to pay damages to the trafficked victim from the money confiscated or from the proceeds of sale of property or from the fine.
- **Section 19(d)** : provides the right to civil remedy victims of trafficking, hiring lawyer, requesting LO if a necessary in a civil suit and assisting in hearing with interpreter.

Qualifying offence for Extradition and MLA

Extradition

- The Extradition Act (1904) still exists but does not apply in practice
- Drafting a special law on Extradition Law with the inclusion of international legal provision and International Standards
- Requests for extradition are processing on case-by-case basic now through diplomatic channel.

The Mutual Assistance in Criminal Matters Law (2004)

- Assistance may be provided in relation to an offence of Trafficking in Persons, as it is an offence punished by more than one year.{ Section 3(a)}
- Based on dual criminality

Extra- territorial Provisions

- Trafficking crimes are **transnational** in nature - *prepare in one country's jurisdiction and commit in the other's jurisdiction*
- TIP Law has jurisdiction on **any person** who commits any offence cognizable under TIP Law in the Union of Myanmar, or on board a vessel or an aircraft registered under the existing law of the Union of Myanmar citizen or on a Myanmar citizen or foreigner residing permanently in the Union of Myanmar who commits the said offence outside the country (**Section 2**)

Predicate offence for financial investigation and assets confiscation

- Under anti Money Laundering Law (2014)
- Order No.24/2015 of the Union Government
 - ✓ Money Laundering Offence:
 - ✓ (Trafficking and Smuggling)
- Chapter 5 of MLA Law:
search, seizure, control, issuing restraining order
and confiscation of exhibits

Related to Organized Crime

- **Serious Crime;** offence punishable with imprisonment for a term of four years or more
- **Organized Criminal Group;** structured group of three or more persons, for a certain period with the aim of committing a serious crime in order to obtain directly or indirectly a benefit relating to money or material

cont:

- **S.28(a)**-committing with S.24 with organized criminal group
 - ❖ 20< Imprisonment for life also fine
- **S. 28(b)**- committing with S. 25,26,27 with organized criminal group
 - ❖ 10 < Imprisonment for life also fine
- **S. 28(c)**- member of an organized criminal group
 - ❖ The same as **28(a), 28(b)**
- **S. 29**- serious crime in TIP
 - ❖ 10 < Imprisonment for life or death

Major Challenges to Successful Prosecution

- Absconding the main accused in another country
- No repatriation of the trafficked victims from another state
- According to legal system, there is no prior consultation with victim or witness and Prosecutor

Conclusion

- It is unable to combat the crime solely effort of one country
- The only way to combat the crime effectively is combating the crime by joining the hands with the international community through the cooperative measures
- Capacity building
 - ✓ Enhance the knowledge and skill of law enforcement agencies
 - ✓ Fulfill technical assistance

Thank You

GROUP EXERCISE – SHORT CASE STUDY SCENARIOS

You have been presented with the following facts and need to make a recommendation on whether or not to bring human trafficking charges. For each scenario answer the following questions:

- Who are the possible defendants?
- What are the act, means and purpose you will prove for each defendant?
- How will you prove the act, means and purpose?

Scenarios

1. A farming family with four daughters was having a bad year and decided it was time for their oldest child, eighteen-year-old Mya, to get married. A local woman Nang Lao Lao told the parents that she heard of a village in China where there were several very rich men looking for wives and that maybe Mya could find a husband there. Nang Lao Lao got in touch with someone from the village in China and made arrangements for Mya to go and meet a man named Ling. Ling sent money to Nang Lao Lao. He said some of the money was for Nang Lao Lao (for helping to arrange the meeting), some for Mya's parents (as a token of respect) and the rest for Mya to pay for her journey. Mya and Ling were married two weeks after Mya arrived in China. Mya is pregnant and came back to visit her parents before giving birth. A neighbor from the township called the police to report that Mya might be a victim of trafficking.
2. A young Shan woman, Nan Mo, wanted to become a teacher, but she did not have money to go to university. She started looking for ways to earn money. A man named Sai Khay approached her one day and said he could help her earn money for school. He said he could put her in touch with a man who could get her a job in Malaysia, tutoring Burmese children in math. Nan Mo paid Sai Khay 75000 kyat for making the connection. The man in Malaysia, Lee Hup Zee sent her a contract that indicated she would teach 8-10 hours a day 5 days a week for a year in exchange for a salary of 125,000 kyat a month. The contract indicated that a portion of her travel expenses to and from Myanmar would be deducted from her salary each month. However, when Nan Mo got to Malaysia Lee Hup Zee told her that there was no tutoring work available and that said that her only choice was to work as a prostitute or pay him back the cost of her travel immediately. If she didn't work and didn't pay him back he would call the Malaysian police and she would be arrested.

3. Soe Soe Nwe made his way to a jade mine in the hopes of getting a job. He was hired by a Chinese mining company to provide manual labor. The company gave him a place to sleep and food, and told him he would be paid after three months work. One of his friends got into an argument with the manager asking for his salary after two months. The manager and two other men beat up the friend. Soe Soe Nwe helped care for his friend – who had a broken arm, several broken ribs and ringing in his ears. The manager told all the workers that they had to do as they were told, or they too would be beaten. He also told them if they left before their three months were up they would not get any money.
4. Aung Thaw owns a small manufacturing plant in Yangon. Aung Thaw recruited 20 women and men from the countryside to work for him. The workers from the countryside sleep on cots in a tiny building built on the roof of the factory. The building on the roof has no running water and no electricity. They eat two meals a day that one of the two managers, who are from Yangon, bring into the factory. The managers do not sleep at the factory. The workers tell you that they wanted to go home, but they were never paid, so they had no way of getting home.

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The “Victim-Centered” Approach?

USING THE VICTIM-CENTERED APPROACH IN CASES OF TRAFFICKING IN PERSONS FOR PROSECUTORS

Myanmar
August 2015

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What is “Victim-Centered”?

Protect from harm and
do no further harm

What is “protect from harm”?

- What can you do for victim to prevent harm?
- What can you do to help victim?
- What can you ask others to do for victim?

What is “Victim-Centered”?

- Identification of Victims
- No Prosecution or Detention of Victims
- Information for Victims
- Protection and Support for Victims

Protection and Support

- Provide “victim services” - a wide range of support
- Victim’s needs vary from case to case
- Often victims can tell you what kind of services they need
- Think about what you would want in their situation

What are Potential Immediate Needs?

- Protection
 - Medical Treatment
 - Food
 - Clothing
 - Place to Sleep
- Time to Recover/Prepare
 - Contact with Family
- Information about Criminal Justice System

What are Potential Long Term Needs?

- Protection
- Medical Treatment (physical & psychological)
- Food & Shelter
- Work / Source of Income
- Transportation / Reintegration
- Education / Vocational Training
- Information about Criminal Justice System/
Civil Court Options

What are Potential Fears?

- Physical Harm (self, family, friends)
 - Financial Harm
 - Emotional Harm
- Prosecution for Criminal Behavior
 - Outcast from Community
 - Lack of Privacy

What are Potential Preference Points?

- Anonymity or (Warning) Example for Others
 - Reunification or New Opportunity
 - Justice or Clean Break with Past
- Restitution/Compensation or Clean Break with Past

Myanmar Specifics

- What are some of the needs of victims you typically encounter?
- What issues can you help address directly?
- Who can provide other services?
- How can you help get those services in place?
- How can you balance your duty to prosecute the case and the victim's needs?

What is Benefit of the “Victim Centered” Approach?

International Best Practices

Right Thing To Do

Build a Better Case

- Create a better relationship with the victim
- Victim may be more comfortable when testifying – provide better information and be more believable
 - Testimony does not traumatize victim
- Know victim’s whereabouts at time of trial

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VICTIM-CENTERED APPROACH – PROSECUTING A HUMAN TRAFFICKING CASE

Goals

This exercise focuses on skills for prosecuting a case using the victim-centered approach. Goals for this exercise include:

- Identifying crucial evidence / key information to prove each element of the crime
- Understanding the burden of proof in your case
- Fostering an understanding of admissibility of evidence
- Establishing the importance / primacy of victim cooperation as part of a trafficking prosecution
- Recognizing what might motivate a victim to cooperate, or not cooperate, with an investigation
- Learn best practices for interacting with victims

Scenario

The case started when a shopkeeper reported to police that he thought there was someone who might need help. Police went to the shop to interview the shopkeeper, Thiha Aung, and find out more. Thiha reported that a young woman handed him a note that said, “Please Help Me.” He explained he had seen the young woman fairly regularly over the last few months. She often came into the shop with an older woman and another young woman. They came to the shop almost every week to buy large amounts of food. The two younger women, who look like they might be anywhere between 15 and 21 years old, never spoke to him. The older woman would speak to him and always paid for the food. One of the young women put the note in his hand when the older woman’s back was turned and motioned for him to stay quiet. She looked really scared. He read the note after the women left the shop. He called the police a few days later – after he talked to his wife about what to do.

The police told Thiha Aung to call the next time he saw the young woman in the store. Thiha did call and when Officer Soe Khant Maung arrived at the shop he pointed out one older woman and two younger women who were busy shopping. He indicated the note came from the smaller of the two girls, Aye Myat Mon. The officer went over to the three of them and started asking questions. All three looked scared when he identified himself as a police officer. The older woman, Su Su Tun, tried to speak for the whole group. She said they all worked at a factory and they go shopping once a week to buy food for the factory workers. Su Su Tun said she was responsible for keeping an eye on the young girls, paying for the food with the money from the factory owner and returning

with a receipt and change. She said going to the store with the two girls is part of her job, and the two girls helped with the shopping, cooking and cleaning as part of their jobs.

Aye Myat Mon and the other girl, Le Le Myint, were very scared and responded to most of Officer Soe Khant Maung's questions with one-word answers. He asked Aye Myat Mon if she was in trouble. She said "no." The officer asked if she had given the shopkeeper a note saying she needed help. Before Aye Myat Mon could answer Su Su Tun said, "that girl is not educated – she does not know how to read or write - there is no way she could have written a note." The officer again asked Aye Myat Mon if she had given the shopkeeper the note. Aye Myat Mon said "no." Officer Soe Khant Maung thought the girls looked scared, but neither girl said anything was wrong. When Su Su Tun was looking away the officer slipped Aye Myat Mon a piece of paper with his name on it and the address of the police station.

Several weeks later Aye Myat Mon showed up at the police station asking for Officer Soe Khant Maung and told him her story. Aye Myat Mon was from a poor family. A year ago a widow, a good friend of her parents, told her that the factory where her daughter was working was looking for more workers. The widow said her daughter was happy at the factory and was sending money home to help support the younger children. Aye Myat Mon wanted to earn money and told her parents she wanted to join the widow's daughter at the factory. At first her parents did not want her to go – they had heard stories about bad things happening to other young women who went into the city to work. She kept telling them that this was a good factory, that the widow's daughter liked it there. Her parents talked to the widow, who confirmed that her daughter liked the factory and was sending money home. Aye Myat Mon's parents decided it was OK for her to go. The widow's daughter sent a letter to Aye Myat Mon saying that the factory owner would arrange transportation for her to get to the factory, pay her 5,000 kyat a day and provide food and shelter. She told police her parents were convinced it would be a good job in a safe place and agreed to let Aye Myat Mon go. The factory owner sent a car for her. The car picked her up, and stopped in two other towns to pick up other girls who were going into the city. The trip took two days. She does not remember the driver's name and has never seen him again. None of the other girls who got picked up got out of the car with her at the factory, they were going someplace else. She has not seen them again either.

When Aye Myat Mon got to the factory she could not find the widow's daughter. Her time at the factory has been very difficult. After she got to the factory she was told that she had to pay back the cost of her transportation, food and shelter. She sleeps in the factory with 15 other women, who roll out blankets on the floor next to their sewing machines. Between the sewing, cooking and cleaning she works 16-18 hours a day. She makes breakfast, serves breakfast, cleans up, sews until lunchtime or goes grocery shopping with Su Su Tun, makes lunch, serves lunch, cleans up, sews until dinner time, makes dinner, serves dinner, cleans up, starts preparing for breakfast, goes to sleep and then starts all over again in the morning. She is exhausted all the time and never gets enough sleep. Although the doors to the factory are unlocked and some of the women go out after dinner they have to be back before 2100. The only time she ever leaves is when she goes shopping with Su Su Tun.

The factory owner, Zin Min Thet is terrifying. He yells at the women all the time – telling them they are lazy, that they don't work hard and that they don't appreciate all he has done for them. Another woman, who isn't at the factory anymore, got really sick. She asked Zin Min Thet to get her some medicine and let her sleep during the day. He screamed at her, told her she was not sick and she had to keep working. A few days later she passed out at her sewing machine, fell on the floor and hit her head. The factory owner took her away in his car and she never came back. He said he took her to see a doctor and then put her on a bus home to her family. The women think maybe he killed her or sold her to a brothel. She has never seen the factory owner hit anyone, but she has heard stories about it from some of the other women including Su Su Tun.

Aye Myat Mon is afraid of the city, afraid of the factory owner, and afraid to try and leave. She thinks her parents are probably very angry at her because she has not sent home any money like she promised. Early on Aye Myat Mon asked the factory owner when she would get paid. He screamed at her – telling her she was lucky to have a safe place to sleep and food. He told her she still owed him money, and she wouldn't be getting paid at all until she paid back her debt. She does not know how much her original debt was, how much she has “paid back” or exactly how many days she has worked.

Zin Min Thet told Aye Myat Mon if she tried to leave before she paid off her debt he would call the police and have her put in jail. He said he has lots of powerful friends including politicians and police officers. She thought about leaving, but she was afraid she might get arrested and put in jail. She did not have any money, did not know the way back to her parent's house and was afraid her parents would reject her because she never sent any money.

Police then went to the factory to talk to the other workers:

They found 17 other women working in the factory. Thirteen (13) of them said that everything was fine, they liked their job, they got paid regularly and that Zin Min Thet was a good boss.

The other four workers made the following statements:

Le Le Myint said that she worked 16-18 hours a day and she still owed Zin Min Thet money. Su Su Tun kept a ledger of how much each person owed for the transportation, food and housing, how much they were paid, and when payments were made. Le Le Myint thought the calculations in the ledger were unfair. She knows that her bus ticket was not as much as it said in the ledger and the charge for sleeping in the factory was more than she would be charged for renting a room elsewhere in the city. Su Su Tun told Le Le Myint she should talk to Zin Min Thet if she had a problem with the calculations. Le Le Myint was afraid of Zin Min Thet and did not want to talk to him. She heard from some of the older women that he once killed a worker and buried her body behind the factory.

Sharmin Ratna – There was one woman from Bangladesh working at the factory. They found her passport and other paperwork locked in the factory owner's desk. She seemed very happy to have her paperwork back. There wasn't anyone who could speak her language, so no one found out her story. The police contacted the Bangladesh Embassy to see if they could make arrangements for her to go back home. IOM is making arrangements for her to be repatriated.

T.T.M. (15 Year Old Girl)—When the police came into the factory T.T.M. started crying hysterically about how she did not want to go to jail. She was inconsolable. The police had one of the female ATIPD officers to talk to her. The ATIPD officer spent a lot of time with her over several weeks. T.T.M. said she did not want to go back to the factory so the ATIPD officer called a social worker who made arrangements for her to stay at an NGO children's shelter. The ATIPD officer continued to visit and meet with the girl, telling her she wanted to help her. Eventually the 15 year-old girl confided that Zin Min Thet used to call her into his office inside the factory and touch her private parts. He threatened to tell her parents and everyone in her hometown that she was a prostitute and had sex with men for money. He told her it was her fault that she made him touch her private parts, it was her fault for being so pretty— and he would have the police arrest her. She does not know if he behaved this way with any of the other workers. She tried to hide what was happening to her. She does not think she could tell her story to a judge or a male police officer— it is too embarrassing and shameful. She never got paid, and does not know how long she was working at the factory. Su Su Tun took her identity card from her when she got to the factory. It was found locked in Zin Min Thet's desk drawer along with the Bengali woman's paperwork.

Su Su Tun said that she was responsible for keeping things running smoothly. She has worked at the factory since it first opened, 18 years ago. She does not sleep at the factory, but lives in a house with her husband nearby. She is responsible for keeping the books, enforcing the rules, making sure that all the younger girls are safe and taking care of things for Zin Min Thet. He never killed anyone, but there was a worker who died of an illness many years ago. She did not have a family or any money so Zin Min Thet arranged for her funeral rites to take place at a local temple. Su Su Tun remembers the widow's daughter. She wanted to leave and get married but she still owed money for her transportation. She offered to have her sister come, take her place and pay off the rest of her debt. Zin Min Thet agreed. When Su Su Tun realized that Aye Myat Mon was not her sister and did not know about the additional debt she went to Zin Min Thet. He said it did not matter, that Aye Myat Mon had to pay off the outstanding debt because that was what was promised. Su Su Tun stressed that she never made any decisions, she just did whatever Zin Min Thet told her to do.

The lead police officer asked an ATIPD officer in Aye Myat Mon's hometown to interview some of the witnesses. Here is what she found out:

Aye Myat Mon's Parents: Aye Myat Mon found out about the factory job from their friend, the widow. They never agreed to let her go. They thought it was too dangerous and told her that she should stay and look for a husband. One morning they found a note from Aye saying she loved them and would send money back as soon as she could.

They believed that she had gone to the factory, but do not know who took her, how she got there, or exactly where it was. When they found the note they went to talk to the widow who said that she did not know that Aye Myat Mon had made arrangements to go. The parents noticed that a few weeks after Aye Myat Mon left she had enough money to fix her roof. They do not know where she got the money, but it made them think she was somehow in on the deal. Aye Myat Mon's parents were happy to learn that she was safe and welcomed her back into the home.

Widow: The widow says that she was just passing along information from her daughter. She did not know that Aye Myat Mon had made arrangements through her daughter to go to the factory. She was as surprised as Aye Myat Mon's parents to learn that she was gone. She has not heard from her daughter in months and does not know where she is. She last heard from her daughter about two weeks after Aye Myat Mon left. Her daughter sent money to help fix the roof.

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Working with Victims

USING THE VICTIM-CENTERED APPROACH IN CASES OF TRAFFICKING IN PERSONS FOR PROSECUTORS

Myanmar
August 2015

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Working with Victims

Understanding the Impact of Trauma – Why it Matters

What is Trauma?

Traumatic experiences shake the foundation of our belief about safety and shatter our assumptions of trust.

What is PTSD?

Post-Traumatic Stress Disorder (PTSD) is a mental health condition that may develop after a person has experienced or witnessed a traumatic event.

A normal response to trauma can develop into PTSD.

Causes of Psychological Trauma

- Natural disasters – earthquakes, fire, flood
- Physical assault-rape, incest, molestation, domestic abuse
- Serious accidents
- Experiencing or witnessing horrific injuries or death
- Surgery, serious illness
- Terrorism, war



Traumatic Events

- Outside our expectations
- Provoke reactions that feel strange and unsettling

These are normal reactions to abnormal events.



Traffickers Use Multiple Means to Control Their Victims

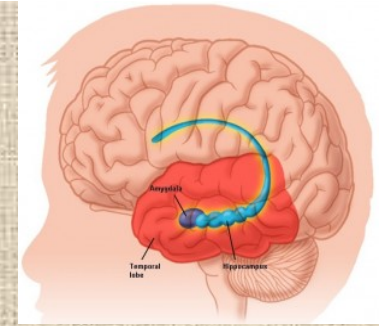
- Beatings, burnings, rapes, and starvation
- Isolation
- Psychological abuse
- Drug or alcohol dependency
- Document withholding
- Debt bondage
- Threats of deportation
- Threats against the victim's family or friends

Trauma and Trafficking

Many victims of trafficking are likely to experience symptoms of trauma:

- Anger, fear or lack of emotion
- Self-protective reactions
- Loyalty, gratitude, dependence on the trafficker
- Shame, fear of rejection and punishment
- Sadness or depression
- Behavior changes

Scientific Reasons for Behaviors-Trauma Impacts the Brain



- Prefrontal Lobe (responsible for language)
Cannot find words to express thoughts
- Amygdala (responsible for emotional regulation) in overdrive
Cannot regulate or control emotions
- Hippocampus (responsible for memory and experience assimilation actually shrinks in volume)
Problems with short-term memory loss
- Prefrontal cortex (responsible for regulation of emotion and fear responses) doesn't function properly
Feels frightened no matter what is happening

What do Victims of Trafficking Experience?

- Betrayal
- Violence
- Loss of identity, choice, independence
- Reputational harm
- Uncertainty
- Fear
- Emotional abuse
- Helplessness



Physical Symptoms

- Crying
- Nausea
- Headaches
- Loss of appetite
- Panic attacks
- Shaking or muscle aches
- Fatigue
- Nightmares

Behaviors

(You may see these during testimony)

- Inability to recall different aspects of an experience
- Inability to recall dates or times
- Inability to concentrate
- Irritability/angry outbursts
- Anxious and fearful
- Sleep disorders
- Shame and humiliation (withdrawal and isolation)
- Difficulty trusting others
- Complete shut down (Han – this means lack of ability to pay attention, concentrate or interact with other people)

Trust

- Victims of trafficking have difficulty trusting
- Victims have experienced betrayal and broken promises
- Victims may give a false story to police or in court
- Victims attitudes and behaviors are often confusing and don't reflect the situation, but are a result of trauma/and or trafficking experience

Avoid Re-Traumatization

Avoid any activity or interaction that results in the victim feeling:

- Coerced
- Abused
- Helpless
- Trapped or Cornered



Triggers

- Seeing the trafficker
- Seeing someone they recognize from the case (witness, another victim)
- Anniversaries
- Physical reminders
- News stories, media
- Lifecycle events
- Hearings, trials



Understanding the Victim

You can understand the effects of trauma and recognize how it may be impacting the victim

OR

You can label the victim as

- Difficult
- Uncooperative
- Dishonest
- Resistant
- Selfish

Best Practice Points

- Responses to trauma are normal reactions to abnormal events.
- Trauma impacts everyone differently.
- Understand the impact of trauma on a victim's ability to trust and disclose the truth.
- Victims need to be stable and safe in order to be effective witnesses.

Working with Victims

Identifying Needs, Concerns and Interests of Victims

The Basic Rights of Trafficked Persons

Victims of trafficking in persons are to be treated with:

- Dignity
- Fairness
- Compassion
- Respect for their human rights

Victim-Centered Approach

- Minimize re-traumatization
- Engage victims in the process
- Empower victims
- Make choices with victim's well-being in mind

Victim Needs

- Basic Needs (Food, Shelter, Clothes)
- Psychological
- Medical
- Legal
- Housing
- Interpretation
- Education
- Job Training/Employment
- Life Skills
- Family Reunification

Available Resources for Victims

- Government resources
- NGO resources

Challenges

- Resources are scarce
- Victim needs are complex
- Impact of trauma
- Delays in case
- Cultural issues
- Communication

Best Practice Points

- Educate yourself about available resources
- Understand how you can help
- Victims need to heal, rebuild and be empowered
- Meeting victims' needs develops trust and increases cooperation

Victim Concerns

- Personal safety
- Family / friends safety
- Financial risks
- Repercussion in home country or community
- Reputation

Decisions for Victims to Make

- Report trafficking crime or not
- Pursue criminal case
- Testify in criminal case
- Pursue civil litigation

Victim Interests- Why Come Forward?

- What happened was wrong
- Seeking justice
- Seeking restitution or compensation
- Empowerment
- Helping others by example

Best Practice Points

- Recognize and meet victim needs if at all possible
- Understand and respond to victim fears
- Empower victim to make decisions about their future and the case
- Figure out what motivates victim

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How To Talk to Victims of Trafficking in Persons

USING THE VICTIM-CENTERED APPROACH IN CASES OF TRAFFICKING IN PERSONS

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COMMUNICATION SKILLS FOR SUCCEFUL INTERVIEW OR DIRECT EXAM

- Active Listening
- Empathy
- Open Ended Questions
- Non-Judgmental
- Body Language Awareness
- Prepare Victim for Testimony (if possible)
- Use Interpreters Properly

TRAUMA INFORMED APPROACH

- Understand the impacts of trauma
- Normalise symptoms to victim
- Encourage them to get help
- Support belief in recovery
- Collaborate with mental health professionals via informed consent
- Be aware of trauma triggers
- Interviews are re-traumatising, make a plan for support if the victim becomes symptomatic
- **DO NOT** leave them in an emotional crisis

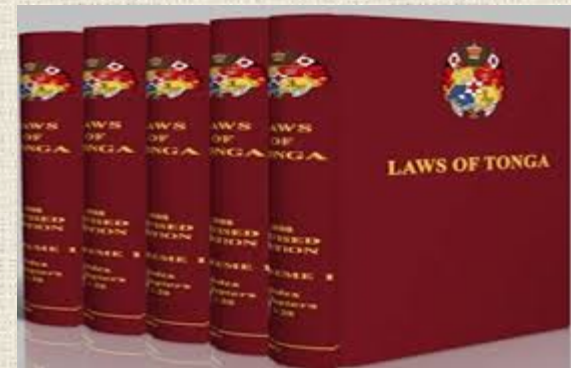


WHY DO VICTIMS WANT TO GIVE STATEMENTS OR TESTIFY

Safety and support



Justice for themselves



Stop it from happening to others



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HOW TO PREVENT OR MINIMIZE RE-TRAUMATISING

- LISTEN
- Follow the victim's lead in the narrative
- Do not judge nor appear overly upset
- Show firm belief in the story
- Assess if the victim is ready for follow up questions
- Be prepared to respond in case of crisis
- Respond to requests for help

WORKING WITH INTERPRETERS

- Screen for safety and confidentiality
- Assess for ability and willingness to interpret on the subject
- Do not accept unknown volunteers
- Debrief after the interview



RECOMMENDATIONS

- Explain process to the victim
- Provide information about rights and duties under the law
- Let the victim know it is OK to ask any questions he or she has
- Value the victim's input
- Do not discuss the case in public or with others not bound by confidentiality

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Child Victims

USING THE VICTIM-CENTERED APPROACH IN CASES OF TRAFFICKING IN PERSONS

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What influences children's development?

- Temperament
- Health
- Family
- Home
- Culture
- Community
- Experiences
- Environment
- Opportunities

Stages of Child Development

0 – 12 months

12 months – 3 years

3 – 5 years

5 – 7 years

7 – 9 years

9 – 12 years

12 – 18 years



Areas of development

- Physical
- Social
- Emotional
- Cognitive

12 – 18 years old

- Significant changes in body
- Self-concept: identity, gender, sexuality, culture, how to relate to others
- Ability to make decisions
- Values and opinions forming
- Behaviours around peers
- Intense emotions, mood swings
- Boundaries –negotiate safe and appropriate behaviour
- Learning to give and take with others in relationships
- Focus on the present – may take risks or not think about the future
- Interdependent with family members
- More opportunities to have adult experiences
- Logical thinking (thinking like an adult)
- How to solve problems
- Understanding other points of view

Harm of Trafficking

- Sexual abuse, violence
- Physical violence including injuries
- Deprivation of food and other needs
- Threats, lies
- Loss of family relationships, safety, belonging
- Psychological abuse

Impact

The child must find a way to:

- trust people who are untrustworthy
- maintain safety in a situation that is unsafe
- have control in a situation that is terrifyingly unpredictable
- “Have power in a sense of helplessness.”

-Judith Herman

Behaviours

- Regressive behaviour
- Violent, reckless, hyperactive
- Unable to manage emotions
- Low self-esteem, can't trust others
- Withdraw from relationships
- Vulnerable to depression, suicide, self-harm
- Pessimistic world view
- Poor appetite, sleep
- Loss of concentration, poor memory

**What types of trafficking could foreign
and local children experience in
Myanmar and surrounding countries?**

Are child victim witnesses more
vulnerable witnesses than adults?

Convention on the Rights of the Child

The best interest of the child is the priority at all times — a child is defined as under 18 years of age

- Special measures for protection
- Special measures for support
- Presumption of age in cases where this can be difficult to determine
- Presumption of age linked to presumption of being a victim

Key Principles for Children

- Do not criminalise
- Do not detain
- Care and support provided regardless of cooperation
- Non-coercive care and support
- Non-national child victims support & rights = other national children
- Respect for their views and provided with information
- Respect for privacy
- Guardianship to act independently in best interests
- Safe and meaningful participation in court processes

The Role of a Guardian

- Ensure all decisions are in the best interest of the child
- Ensure appropriate care is being provided
- Ensure access to legal representation (as needed)
- Advise and consult child about their rights
- Contribute to identifying a durable solution for the child
- Keep child informed of all proceedings
- Maintain links between child and supports
- Assist child in family tracing
- Ensure if repatriation is possible, it is in the best interests
- Ensure all relevant paperwork is completed

-UNICEF Guidelines on the Protection of Child Victims of Trafficking

Anti-Trafficking in Persons Law

Chapter VI Special Protections for Children and Youth

- Dignity, security and assistance
- Best interests
- Family reunification and/or protection
- Confidentiality
- Freedom of choice and expression of their desires
- Remedies for physical and mental damage
- Access to training
- Support during a civil proceeding for compensation

Interview/Meeting Essentials

- Is it appropriate to meet with the child at this time? Who can answer this question?
- Plan your interview in advance
- Create a child friendly room
- Guardian must be present
- Interviewer same gender as child
- Allow additional support person to be with the child
- Use interpreters as needed
- Limit length of interview
- Do not ask children to demonstrate or indicate what happened to them on themselves or another person

-UNODC Anti-human Trafficking Manual for Criminal Justice Practitioners

Interview Challenges

- Child-friendly language
- Children may agree with and accept any of your suggestions
- Do not know the words to describe what happened to them
- Misinformation = coping strategy
- Embarrassment, shame
- Family loss, broken attachment
- Don't understand why they should give info
- More time might be needed
- Trauma trigger

Pre-trial/Trial

- Assess best interest of child to testify with guardian
- Communicate about the process and timeline
- Arrange interpreters – same person for entire trial, if possible
- Arrange for testimony *in camera* and other available protections
- Orient child to the courtroom, procedures, people involved
- Arrange for support person to be near child during testimony
- Assess if safe transport and escort are needed + any costs
- Consider if suspect can/should be taken into custody before trial
- Ensure counselling is available for trauma
- Be prepared to ask judge for a break if needed
- Thank the child for their efforts
- Inform child of next steps or outcomes

Your belief in and support of a child victim will help them to recover!



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International Cooperation

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- Extradition

Formal process where one country requests another to return an individual to face criminal charges

- Mutual Legal Assistance

Formal Process asking other countries to provide information and evidence for investigation and prosecution

- Informal Cooperation

Less formal cooperation tools, where law enforcement and other governmental authorities share information and intelligence directly with their foreign counterparts

Extradition

- Trafficking Offenses Should be Treated as Extraditable Offenses
 - United Nations Convention against Transnational Organized Crime (Parent Instrument of Palermo Protocol), Article 16
 - United Nations Trafficking Principles and Guidelines, Principle 14
 - ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons, Part 1.A.5
- Extradition in Trafficking Cases Should be Expedited
 - United Nations Convention against Transnational Organized Crime, Article 16(8)
 - United Nations Trafficking Principles and Guidelines, Guideline 11(9)
- States Should Extradite or Prosecute
 - United Nations Convention against Transnational Organized Crime, Articles 15(3), 16(10)
 - ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons, Part 1.A.4, 2.B.1

Mutual Legal Assistance

- Taking Evidence or Statements from Witnesses
- Executing Searches or Seizures
- Identifying and Locating Witnesses / Suspects
- Providing original or certified copies of documents and records including government, bank, financial, corporate or business records
- Identifying or Tracing Proceeds of Crimes
- Freezing Assets
- Serving Judicial Documents
- Facilitating voluntary appearance of persons in the requesting State
- Transferring a Legal Proceeding, Investigation or Prisoner

Mutual Legal Assistance

- Domestic Law Should Provide Mutual Legal Assistance in Cases of Trafficking and Related Offenses
 - United Nations Convention against Transnational Organized Crime, Article 18(1)
 - United Nations Trafficking Principles and Guidelines, Principle 14
 - ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons, Part 1.A.5
- States Should Cooperate Across Borders to Investigate and Prosecute Trafficking
 - United Nations Trafficking Principles and Guidelines, Guideline 11
- MLA in Trafficking Cases Must be Prioritized and Expedited
 - United Nations Convention against Transnational Organized Crime, Article 18(24)
 - ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons, Part 2.D.4

Mutual Legal Assistance

- Must Respect Human Rights in MLA Process. No violation of established rights: rights of suspects, right to fair trial, prohibition on torture, prohibits discrimination
 - International Covenant on Civil and Political Rights, Articles 9, 4
 - Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries, Article 3(c) –(d)
 - United Nations Trafficking Principles and Guidelines, Guideline 14

Informal Cooperation

- Informal Identification and Location of Victim, Witnesses, Suspects
- Voluntary Victim/Witness Statements
- Verifying Information in Statements
- Criminal Record Checks
- Passport and Visa Record Checks
- Public Information (land ownership, addresses, motor vehicle reports)

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Domestic Case Cooperation

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