

Inclusion of Marginalized or Underserved Populations: Drafting Considerations for Human Trafficking Instruments

A WARNATH GROUP PRACTICE GUIDE



The WARNATH GROUP

Inclusion of Marginalized or Underserved Populations: Drafting Considerations for Human Trafficking Instruments

PRACTICE GUIDE
by The Warnath Group

“Human trafficking ensnares individuals from throughout our communities. As a result, it is paramount that all be included in the application and protection of each country’s human trafficking laws, policies, and practices. Recognition and inclusion of all members of our communities will provide the foundation for developing practical tools and resources to appropriately address the shared and unique aspects of human trafficking involving under-considered populations.”

-Stephen Warnath, CEO & President, Warnath Group

AT A GLANCE

Intended Audience:

- Policymakers and lawyers writing or revising national anti-human trafficking laws and policy instruments, standard operating procedures, or national referral mechanisms

Takeaway: Too many countries’ trafficking in persons (TIP) laws and policies fail to properly serve certain vulnerable populations. Some of these populations are marginalized and extremely vulnerable to trafficking but are unable or unwilling to seek help for a variety of reasons. By paying attention to the needs and vulnerabilities of specific populations it is possible to create a national response that will ensure that services are available for, and the national system is responsive to, the full range of TIP victims.

In This Practice Guide:

- Identification of trafficking in persons within some typically marginalized or underserved populations
- What to consider when deciding how to best provide for individual access to justice and services for TIP victims who are members of vulnerable populations
- Understanding the barriers vulnerable populations face in accessing services



INTRODUCTION

In many countries, trafficking in persons (“TIP” or “human trafficking”) laws and policies focus on the exploitation of women and girls for commercial sex. While sex trafficking of women and girls is a serious issue that must be effectively addressed, this scope of attention is too narrow. A national law should protect everyone from the full range of extreme exploitation that encompasses human trafficking in all of its forms and provide services to every victim. This protection must extend fully

to those who are frequently under-protected including those who are vulnerable as a result of their gender, sexual orientation, age, race, national origin or religious affiliation, and socio-economic status.

This Practice Guide provides information about some of the difficulties facing specific marginalized and underserved populations and the specific challenges they may face as TIP victims.

It is possible with sufficient forethought, well-drafted legislation, well-trained criminal justice actors, and an inclusive social service system to create a human trafficking response that is in line with best practices and is fully responsive to the needs of all victims of human trafficking.



IDENTIFYING VULNERABLE POPULATIONS

The focus of laws and policies addressing TIP in many countries emphasize the exploitation of women and girls, particularly for commercial sex. This limited perspective arose, to a large extent, because of outdated notions of inherent female vulnerability and a paternalistic focus on the need to protect the “weaker sex.” In the context of human trafficking law it is critical to recognize that anyone may potentially become the targeted victim of traffickers. There are huge numbers of women and girls in the world today who due to discrimination rather than inherent weakness face poverty, lack of education and employment opportunities, legal discrimination, and/or diminished social standing who are particularly vulnerable to sex trafficking. At the same time, there are a number of distinct vulnerable populations who likewise face a heightened risk of

exploitation by traffickers who should also be fully protected and provided services under national laws. This is not simply a preferred approach. Failure to embrace all victims of human trafficking within the protections afforded by countries' TIP laws does not comply with international laws and standards.¹

When drafting or amending national TIP laws, national plans of action, standard operating procedures, or national referral mechanisms it is critical to identify and be inclusive of the range of vulnerable populations, including those who may need special consideration or might otherwise be unable or unwilling to access services for a variety of reasons. Identifying vulnerable or under-considered populations within each country is a first step to identifying TIP cases within those populations. This Practice Guide discusses some of these vulnerable populations. This is by no means a complete list, and it is important for drafters to take into consideration the full range of potential victims within the local context.

In many cases, the vulnerability of a population makes individual members prime targets for human trafficking. Some populations may face a general threat of violence, harassment, and discrimination on a regular basis. By recognizing not only the vulnerability of these populations but the ways in which they may be marginalized or underserved in the context of the “3Ps” of combatting human trafficking (i.e., prevention,

¹ International legal instruments have recognized the central importance of including coverage of all individuals in the enforcement and protection components of national laws by, in part, incorporating non-discrimination explicitly in countries' anti-trafficking law. This is illustrated in the following examples of seminal regional anti-trafficking Conventions that include the principle of non-discrimination in the development of laws and policies.

Article 3 of the Council of Europe Convention on Action Against Trafficking in Human Beings which reads:

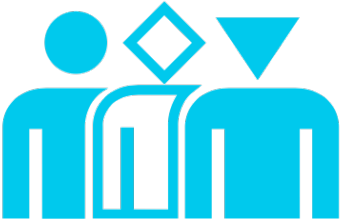
The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This is further bolstered by language in the Convention's Preamble that states: “Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory...” Make sure we have proper and complete citations to both of these references.

Similarly, the recently ratified ASEAN Convention Against Trafficking in Persons, Especially Women and Children Article 1(2): states:

“The Parties agree that the measures set forth in this Convention must be construed in a manner that is consistent with internationally and regionally recognised principle of non-discrimination, especially to those persons on the ground that they are victims of trafficking in persons.”

prosecution, and protection), it is possible to formulate an appropriate response that will result in more perpetrators of human trafficking being charged criminally and more victims receiving needed care and support.



LGBTQ – LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, OR QUESTIONING

SOURCE OF VULNERABILITY

Individuals who identify as Lesbian, Gay, Bisexual, Transgender, Queer or Questioning (hereinafter LGBTQ), including LGBTQ homeless youth, commonly face elevated risks of violence, prejudice, and discrimination in comparison to the general population. Perpetuation of the view of LGBTQ people in a negative light, whether recognized in law or policy or not, means that the actions of some individuals responsible for enforcing the law and providing social services do not sufficiently and fairly respond to LGBTQ individuals who are trafficking victims. In some countries, this discrimination is an accepted and expected official response to individuals perceived to be LGBTQ, even if such discrimination is not codified or part of official policy.

The risk of human trafficking for LGBTQ individuals is particularly high in countries where there are laws criminalizing homosexual and/or transgender activity, forcing members of the community underground and effectively cutting off regular access to standard law enforcement and social service responses.

This kind of societal or government sanctioned ostracism and/or criminalization results in the creation of an extremely vulnerable population. Those who are open about their identity may be estranged from their family members and shunned by communities who are not accepting of individuals they perceive as "other" or undeserving of equality and protection. This lack of acceptance may stem from cultural, religious, or personal beliefs and can take the form of anything from shunning to active violence. Individuals who are not open about their identity and try to conceal who they are may distance themselves from family and friends in an effort not to be "discovered." The ultimate result is that LGBTQ individuals often are estranged from the people who would normally provide them with a social safety net. LGBTQ individuals may have difficulty obtaining employment, healthcare, and educational opportunities. This combination of the absence of a social safety net and inaccessibility of opportunity may result in members of the LGBTQ population seeking out alternative, and often riskier, opportunities.



ISSUES IN TIP RESPONSE: IDENTIFICATION

Identifying LGBTQ victims of human trafficking can be difficult, especially when individuals actively avoid contact with law enforcement. Much of this inclination toward avoidance is rooted in a fear of law enforcement. Police in many countries have historically arrested, abused, or assaulted members of this community. In countries where homosexuality is illegal there is a legitimate fear of being arrested and punished. In countries where homosexuality is not criminalized there may still be a rational fear that law enforcement will not take complaints or concerns seriously or that exposure could result in negative repercussions. LGBTQ individuals may opt not to provide information, either by voluntarily reporting a crime or providing information in response to a police investigation, for fear they may be asked to share details about their gender, sexual identity, or sexual activity they would prefer not to reveal to law enforcement.

In some case where the victim is not openly LGBTQ, the trafficker(s) may have threatened to expose the victim's secret to family, friends, employers, or members of their community if the victim goes to the police as part of the coercion or leverage used to control the individual. This leveraging of information as a threat can happen in any kind of human trafficking case, including those where the exploitation involved, such as forced manual labor, is not in any way related to the victim's LGBTQ identity.

These are some, but in no way all, of the reasons many LGBTQ individuals do not see working with the police as a path to protection and justice.



ISSUES IN TIP RESPONSE: PROTECTION

When LGBTQ individuals are identified as trafficking victims there may not be adequate or appropriate services available for them, most notably when a transgender individual is in need of shelter services. There can also be a myriad of problems if the social service providers are not adequately trained to recognize and respond appropriately to unique issues that might impact members of the LGBTQ community.

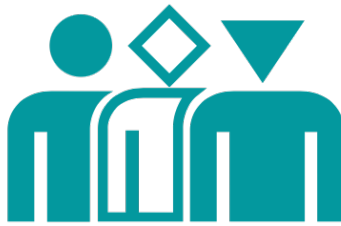


GOOD POLICIES & PRACTICES RELATED TO LGTBQ VICTIMS OF HUMAN TRAFFICKING

There are a number of good practices that should be included in every country's legislation and associated policies and practices. They include:

- Draft an anti-human trafficking law that includes a comprehensive non-discrimination provision and clearly and explicitly protects the full range of victims, including LGBTQ victims
- Enact a generally applicable clear non-discrimination policy and supporting guidelines for law enforcement and social service workers that specifically includes the LGBTQ population
- Train law enforcement to treat LGBTQ individuals with respect, take their complaints seriously, and recognize how they are vulnerable to trafficking
- Build trust between law enforcement and the LGBTQ community
- Train law enforcement and others with relevant responsibilities to sensitively identify human trafficking cases involving LGBTQ individuals and to share appropriate referral information for safe victim-centered care.
- Ensure that there are shelter options available for LGBTQ TIP victims
- Train Social Service Workers to identify issues that impact LGBTQ TIP victims

- Provide training to police and social service providers on good practices for communicating with LGBTQ individuals



MEN AND BOYS



SOURCE OF VULNERABILITY

Men and boys are victims of all forms of human trafficking in countries around the world. Yet this group has often been misserved by inadequate identification and national anti-trafficking responses and may be vulnerable primarily because of the fallacy that men (and boys) cannot be victims of human trafficking. This is often based upon an assumption, reinforced by societal beliefs about gender, that men are strong, can look out for themselves, and that if they fall victim to human trafficking it is only because they made bad decisions. In fact, many male victims do not recognize or refuse to recognize that they are victims of a crime. And cases that involve men are often viewed as failed migration instead of human trafficking, even when all of the elements of human trafficking can be proven. As a result, in many countries men and boys are often overlooked and unidentified as victims of trafficking.

A man or boy may experience psychological coercion, direct threats, and/or physical control to compel exploitive work or other activity. He may suffer from traumatic working and substandard living conditions; dramatic declines in mental and physical health; threats of abuse; physical violence; and severe restriction on any movement beyond the

exploiter's control and still not recognize he is a victim of a crime, or be recognized as such by others.

The problem of governments' failure to recognize men and boys as potential victims of trafficking is exacerbated because many men, discovered in contexts of human trafficking, reject the social construction of "victimhood" because it is problematic for them to accept and apply that label to their personal situation.

Many simply reject being labeled a victim. They may be ashamed of their failure to earn money for their family and blame themselves as opposed to the trafficker. Or they may associate the crime of human trafficking exclusively with sexual exploitation (sometimes as a result of a too narrow scope of the majority of human trafficking "awareness" campaigns) and not want anyone to think that they have been the victim of sex trafficking. Therefore, they may fear significant stigma if they return to their home communities characterized as a TIP victim rather than as having been involved in a failed immigration attempt.

In tandem with the misperception that men cannot be victims of human trafficking, some countries exclude men from their human trafficking laws altogether, only criminalizing TIP in cases involving the extreme exploitation of women and girls (or women and all children) or only criminalizing the TIP subset of sex trafficking without any official or community recognition that men and boys can be victims of sex trafficking.

While most countries do criminalize the extreme exploitation of men and boys as trafficking many of these countries make no effort or a very limited effort to affirmatively identify them or provide those who are identified with even the most basic of social services appropriate for a human trafficking victim.

The final hurdle, even in situations where a country does recognize men and boys as potential TIP victims, is the narrow perspective that whatever resources are available to fight human trafficking should be expended to protect women and girls, leaving men and boys vulnerable to trafficking and without any recourse once they've been trafficked.



ISSUES IN TIP RESPONSE: IDENTIFICATION

As detailed above, both law enforcement - and male victims themselves - can be reluctant to identify male TIP victims even in countries where they are protected under the country's TIP law. This failing is based upon fundamental misperceptions of the inherent absence of potential vulnerability of men and boys and it is evident that little progress will be made in identifying male victims until these underlying misperceptions are addressed.



ISSUES IN TIP RESPONSE: PROTECTION

Many countries are unable or decline to provide male victims with basic social services such as accommodation, medical care, legal assistance, and security, much less long-term and complex support often necessary for TIP victims. Even when support is available men are less likely to seek out or accept the support that they are eligible for.

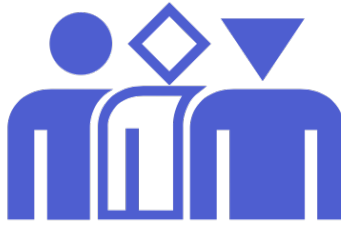


GOOD POLICIES & PRACTICES RELATED TO MALE VICTIMS OF HUMAN TRAFFICKING

There are a number of good practices that should be included in every country's legislation and associated policies and practices. They include:

- Draft an anti-human trafficking law that clearly protects the full range of victims, including men and boys
- Ensure that there are basic services, including appropriate shelter or accommodation options, available for male TIP victims (recognizing that this requires facilities and options – e.g., accommodations - that are in addition to those provided to women)
- Train law enforcement so they understand that men and boys can be trafficked using fraud or psychological and other forms of non-physical coercion, not just physical force

- Include in trainings instruction on advanced skills and techniques, to be applied with sensitivity, for identifying victims who are reluctant to self-identify
- Allocate adequate funding for social services for men, in addition to sufficient funding for services for women and all children, and make those services available to men who come from situations or describe facts that suggest they may be human trafficking victims, even if they do not explicitly self-identify as victims to officials or others
- Conduct public education campaigns on the full scope of human trafficking, which includes information about labor trafficking, as well as sex trafficking, involving male victims
- Train social service workers on best practices for encouraging male victims to accept assistance
- Educate all relevant actors involved in human trafficking cases about victim-centered practices and practices tailored to working with male victims



RELIGIOUS, RACIAL, AND ETHNIC MINORITY POPULATIONS

SOURCE OF VULNERABILITY

Religious, racial and ethnic minority populations are frequently targeted by human traffickers because they are often among the most economically and politically disadvantaged groups within the larger community. This targeting includes domestic trafficking of local minority and indigenous populations and cross-border exploitation of individuals who are members of groups with distinct religious, racial, ethnic, or linguistic characteristics. Their lack of power within society makes them far more susceptible to human trafficking. With fewer educational and employment opportunities members of minority communities will often be more willing to accept questionable or risky offers of work in order to pursue their dream of a better life. These “opportunities” may require the individual and/or their families to borrow money in order to take advantage of a job offer, which can result in debt bondage. Because of the limited opportunities typically available for members of the minority communities, these individuals, both men and women, may agree to take a job in a distant location with a person or company they do not know and cannot adequately vet. This leaves them susceptible to abuse, wholesale deception, and fraudulent offers.

Minority groups often face systemic challenges to being seen, heard, and protected within the larger community and can be subject to unfair prejudice and judgments about

their worth and honesty. Prejudice, skepticism or distrust can compromise access to justice in a human trafficking case. Where widespread societal discrimination exists against a population, law enforcement, judges, and members of juries, may in some cases be less likely to believe a victim who is a member of one of these vulnerable populations. Marginalized groups also may have less access to justice and/or fewer recognized rights in law or in fact, thereby further complicating efforts to obtain appropriate remedies.



ISSUES IN TIP RESPONSE: IDENTIFICATION

Members of minority groups that have historically been abused or ignored by law enforcement may not trust law enforcement enough to share information and may strongly resist attempts by law enforcement to interview them. Traffickers sometimes tell victims, truthfully or not, that the police work with them as enforcers or have been bribed, along with other criminal justice officials, in order to scare the victims from seeking help from law enforcement. Whether or not this claim is true, members of minority groups may be more likely to believe such claims if they or members of their community have had negative experiences with law enforcement in the past. A lack of trust in law enforcement on the part of a victim can make it extremely difficult for law enforcement to gather enough information to identify someone as a victim.



ISSUES IN TIP RESPONSE: PROTECTION

Marginalized populations often may not have access to or eligibility for services provided to others within a country. They may have difficulty communicating with staff and other residents if they do not share a common language. In addition, other residents of the shelter may have biases or prejudices against individuals from the minority population that can have a negative impact on the victim's stay at the shelter, including presenting heightened risks to physical safety or psychological health. In addition, there are often fewer community resources made available for members of minority populations due to choices made by government officials, NGOs, and others about how and where to focus expenditure of limited resources.



GOOD POLICIES & PRACTICES RELATED TO RELIGIOUS, RACIAL, AND ETHNIC MINORITY POPULATIONS VICTIMS OF HUMAN TRAFFICKING

There are a number of good practices that should be included in every country's legislation and associated policies and practices. They include:

- Draft an anti-human trafficking law that clearly protects the full range of victims, including members of vulnerable minority communities
- Include in the anti-human trafficking law a comprehensive non-discrimination provision that penalizes discriminatory or biased treatment of members of minority groups
- Enact a generally applicable clear non-discrimination policy and supporting guidelines for law enforcement and social service workers that specifically includes the relevant minority communities
- Train law enforcement on how to recognize and overcome both overt and implicit bias, particularly with respect to the common religious, racial, and ethnic minorities in the region
- Build trust between law enforcement and minority communities
- Enact policies and procedures that guarantee that victims have access to interpreters and are provided resource materials translated into a language that they can understand
- Ensure that obstacles to access to justice are removed and support provision of independent legal advice and/or representation
- Provide cultural awareness training on different minority groups, as needed, for police and social workers



CONCLUSION

This is a very broad overview of some of the challenges that these marginalized and underserved minority populations may face when they become victims of human trafficking. The very vulnerability that makes them susceptible to human trafficking often makes it more difficult for them to be identified and receive appropriate services. However, by making an effort to consider what the specific challenges there may be for each of these or any other marginalized populations, it is possible to have anti-TIP policies and procedures in place that help ensure the government human trafficking response is fully and appropriately responsive to all victims of TIP.



ADDITIONAL RESOURCES

For more resources on some of these topics please see research produced by the NEXUS Institute and available on its website (at www.NEXUSInstitute.net), including:

- Surtees, R. (2018). At Home: Family reintegration of trafficked Indonesian men. *Anti-Trafficking Review*, (10). Available at: <https://bit.ly/3o53wcf>
- Surtees, R. (2014). In African Waters. The Trafficking of Cambodian Fishers in South Africa. *International Organization for Migration and NEXUS Institute*. Available at: <https://bit.ly/2L4bP9M>
- Surtees, R. (2008) Trafficking in Men, a Trend Less Considered: The Case of Belarus and Ukraine. *International Organization for Migration and NEXUS Institute*. Available at: <https://bit.ly/38M8Cnt>

For more information about drafting or amending national anti-human trafficking laws contact the Warnath Group at info@WarnathGroup.com. To access additional practical tools and resources, visit our website at www.WarnathGroup.com.

Copyright © The Warnath Group, LLC 2020 All Rights Reserved. No part of this paper may be reproduced without written permission.