

Policy Guide on Identifying Victims of Trafficking



The Bali Process

on People Smuggling, Trafficking in Persons and Related Transnational Crime

An introductory guide
for policy makers and
practitioners



The Bali Process

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was established in 2002 and is a voluntary and non-binding regional consultative process co-chaired by the Governments of Australia and Indonesia and comprising over 45 member countries and organizations.

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The Bali **Process**

Foreword

Since its inception in 2002, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) has effectively raised regional awareness of the consequences of people smuggling, trafficking in persons and related transnational crime, and also developed and implemented strategies and practical cooperation in response. 48 member countries and international organizations, as well as a number of observer countries and international agencies, participate in this voluntary forum.

Senior Officials at the eighth Ad Hoc Group Meeting of the Bali Process, recommended a set of policy guides on the issues of identification and protection of trafficked persons be developed by the Bali Process Regional Support Office (RSO) in consultation with interested members. Further to this direction, the RSO established a Drafting Committee co-chaired by the Government of the Republic of Indonesia and the International Organization for Migration (IOM) to draft the policy guides. This Drafting Committee comprised experts from the Governments of Indonesia, Australia, Maldives, Philippines, Thailand and the IOM.

The Committee met on four occasions, over a six month period, with the objective of developing short introductory guides for policy makers and practitioners on issues related to identifying and protecting victims of trafficking. Draft versions of the guides were circulated to Bali Process members and observers for written comments and discussed and reviewed at a full Bali Process Consultation Workshop held from 23-24 March, 2015 in Bangkok, Thailand. Participants agreed that the policy guides were useful resources for policy makers and practitioners to assist in identifying and protecting victims of trafficking. In response to comments received from the membership, the Drafting Committee revised the drafts and incorporated key changes and recommendations.

The policy guides aim to provide an overview of international and regional standards for the identification and protection of victims of trafficking, drawing extensively on examples of good practices from Bali Process member countries. In line with the recommendations of the Fifth Ministerial Conference in April 2013, these policy guides are the second set of Bali Process Policy Guides falling within the thematic areas of the Bali Process and on issues of particular concern to Bali Process members. They are voluntary, non-binding and intended for use as reference tools by a range of domestic agencies in Bali Process Member States.



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Acronyms and Abbreviations

ASEAN	Association of Southeast Asian Nations
Bali Process	Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-governmental organization
Organized Crime Convention	United Nations Convention against Transnational Organized Crime
RSO	Regional Support Office of the Bali Process
Trafficking in Persons Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

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Executive Summary

A victim of trafficking is someone who has been subject to the crime of ‘trafficking in persons’ as defined in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Failure to identify victims of trafficking results in their continued exploitation and their inability to access the assistance and protection to which they are entitled. It may also result in authorities being unable to gather information and evidence necessary to bring traffickers to justice. Identification is therefore an essential part of the process to prevent and prosecute this serious crime, and to assist and protect its victims.

Practitioners are more likely to identify victims of trafficking when they understand how trafficking in persons is defined in law, and the different forms of exploitation victims may experience. Accordingly, this Policy Guide offers an overview of human trafficking and the different forms it may take. For the purposes of this Guide, ‘identification’ of victims of trafficking is understood in a broad sense. It encompasses the process of **initial screening** at the point of first contact and the initial assistance and protection that is provided once a person is presumed to be a victim. It also involves the **verification** of the person’s status as a victim as more evidence comes to light and, in some cases, **official confirmation** that a person is a victim following the conclusion of a criminal process.

The identification of a victim of trafficking is inherently difficult, and so the Guide encourages States to apply a **low threshold** when attempting to identify someone as a victim. This is particularly useful at the point of first contact, before the authorities have had sufficient time to build the trust of the suspected person. Once someone is presumed to be a victim, they should then be provided with appropriate assistance and protection. Should the presumption later prove unfounded, assistance and protection can be adjusted according to needs or be withdrawn.

Identification processes may be aided by the use of ‘**indicators**’ of trafficking as a starting point for further investigation. The Guide proposes a list of sample indicators, including those related to various forms of exploitation, which can assist practitioners as well as non-experts to identify victims of trafficking. States are encouraged to update, adapt and weigh these indicators to provide stakeholders, including non-experts, with the guidance needed in the situations they are likely to encounter.

Although States have the primary responsibility for identifying victims of trafficking, **non-governmental and civil society organizations** are an invaluable asset in identification processes, and should be supported in the crucial role they can play in building trust and rapport between victims and the authorities. Frontline authorities of the State including officials dealing with law enforcement, border, immigration, labour controls, and social services should be appropriately trained and equipped with the specialized skills needed to identify presumed victims in a way that takes into consideration their personal characteristics and also respects their privacy. Community members should also be made aware of the phenomenon and know how to identify and refer presumed victims to the appropriate authorities.

Section 1:

Introduction to identification of victims of trafficking

1.1. Who is a victim of trafficking?

Human trafficking is an illegal practice which appears in different forms, and exhibits different characteristics across regions. Men, women and children are exploited in a range of industries including agriculture, construction, care and hospitality, domestic work, entertainment and sports, forestry, fishing, mining, and textiles. People may be exploited when they move across international borders or within their own countries. Although there are many factors which make people vulnerable to human trafficking, groups who are particularly at risk include undocumented migrants, ethnic minorities, and unaccompanied children. Factors such as poverty, unemployment, gender inequality, lack of access to education opportunities and resources and the absence of systematic birth registration are also factors that may increase vulnerability to human trafficking.

Anyone can be a victim of trafficking, regardless of their age, sex, gender, sexual orientation, nationality, ethnic or social origin, disability, or circumstances. A victim of trafficking is, most simply, a person who has been a victim of the crime of human trafficking. As set out below in Section 1.2, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking in Persons Protocol) provides an international definition of the crime of 'trafficking in persons'.

In practice, it is not always easy to identify who is a victim of such crime. Impediments include communication challenges relating to language or culture and the reluctance of victims to speak to authorities due to fear or distrust, particularly at the point of first contact. Depending on their experiences, people may not consider themselves to have been trafficked or exploited. Some may believe that they have agreed to their situation even when coercion, threat or deception has been used to gain their supposed consent. For these and other reasons, many victims of trafficking are never identified.

Tip: Introduce a presumption in favour of treating presumed victims of trafficking as victims

State policies for victim identification should allow authorities that suspect that a person is a victim of trafficking to act upon that presumption by treating the person as if he or she is a victim for the purposes of providing initial assistance and protection.

It is good practice to presume that a person is a victim of trafficking where there is any suspicion that he or she may be in such a situation. Applying such a presumption means that where there is any suspicion that a person may be a victim of trafficking, authorities will treat him or her as a person in need of assistance and protection. If it is later determined that a person is not a victim of trafficking and not in need of assistance or protection, such support can be withdrawn at that time. A person who displays signs of being trafficked may also be a victim of other types of crime, such as physical or sexual assault, or kidnapping. If it is determined that the person is not a victim of trafficking but rather is the victim of another crime, he or she can be transitioned to more appropriate support services. Victims of trafficking may also be outside their countries of origin and have a well-founded fear of being persecuted at home for reasons of race, religion, nationality, membership of a particular social group or political opinion. In such cases they need to be referred to asylum processes.

¹ Throughout this document, the term 'human trafficking' is used to refer to 'trafficking in persons' as defined in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking in Persons Protocol).

Tip: Raise awareness of crimes related to human trafficking

Persons who are not considered to be victims of trafficking may be victims of other crimes and in need of assistance and protection measures. Practitioners who are responsible for identifying victims of trafficking should be made aware of related crime types and be equipped to respond accordingly.

People who have experienced human trafficking are victims of crime and must be treated as such by States and protected accordingly. In addition to being victims of crime, victims of trafficking may also have experienced abuse of their human rights, and other harm, including physical or mental injury, emotional suffering, perceived shame or stigma, and economic loss.

A person should also be considered a victim irrespective of whether a trafficker is identified, apprehended, prosecuted or convicted, and regardless of any family relationship between the victim and the alleged trafficker.

Table 1: Myth and reality in victim identification²

MYTH	REALITY	For more information see:
People must cross international borders to be considered victims of trafficking	Although many people are trafficked across international borders, human trafficking can also occur within a country's borders, a phenomenon known as internal (or domestic) trafficking.	1.2 Human trafficking defined
Only women and children can be victims of trafficking	Much research and media coverage on human trafficking has focused on the trafficking of women and children. However, men are also trafficked into all kinds of exploitation, particularly forced labour.	1.2. Human trafficking defined 1.3. Understanding forms of exploitation
All victims of trafficking are trafficked for sexual exploitation	Although trafficking for sexual exploitation accounts for a significant portion of trafficking, people are trafficked for purposes of forced labour, slavery or practices similar to slavery, servitude, organ removal and other forms of exploitation.	1.3. Understanding forms of exploitation

² Further information relevant to the points addressed in this table can be found in the following resources: *Global Report on Trafficking in Persons*, UNODC, 2014; *ILO Global Estimate of Forced Labour 2012: Results and Methodology*, ILO, 2012; *Trafficking in Persons Report 2014*, United States Government, Department of State, Office to Monitor and Combat Trafficking in Persons, 2014.

All people working in the sex industry are victims of trafficking	Although trafficking for the purpose of sexual exploitation is one of the most common and visible forms of human trafficking, people working in the sex industry are not necessarily trafficked. Prohibited means, such as coercion, threat or deception, must have been used (where the victim is an adult) to indicate that a person has been trafficked for the purpose of sexual exploitation.	1.3 <i>Understanding forms of exploitation</i> 3.3. <i>Indicators of trafficking</i>
All undocumented migrants are victims of trafficking. Migrants in regular situations cannot be victims of trafficking	Although victims may be brought irregularly into the country in which they are exploited, not all people who enter a country irregularly are exploited. Further, people who travel into or remain in a country through regular channels may also be victims of trafficking.	1.2. <i>Human trafficking defined</i> 2.2 <i>Recognizing and addressing challenges in identifying victims of trafficking</i> 3.3. <i>Indicators of trafficking</i>
People who know about or appear to have consented to their situation cannot be considered victims of trafficking	Even if a person appears to accept his or her situation, or agree to the conditions (e.g. employment) at the outset he or she may still be a victim of trafficking. The consent of a child is always irrelevant, and the consent of an adult victim is irrelevant if prohibited means such as coercion, threat or deception have been used to gain his or her compliance.	1.2. <i>Human trafficking defined</i> 3.3. <i>Indicators of human trafficking</i>
People who are related to, or in a relationship with, their trafficker cannot be considered victims of trafficking	Often victims are lured or groomed into a human trafficking situation by a friend or relative. Marriage and other intimate relationships are also a means by which traffickers may control their victims. Servile or forced forms of marriage can also constitute 'practices similar to slavery'. ³	3.3. <i>Indicators of trafficking</i>
People who believe their life is easier or economically better than before cannot be considered victims of trafficking	Someone may be a victim of trafficking even if they are earning more money and/or have a more comfortable living situation than they did prior to being trafficked. Exploitation must be assessed objectively.	2.2. <i>Recognizing and addressing challenges in identifying victims of trafficking</i> 3.3. <i>Indicators of trafficking</i>

³ The term 'practices similar to slavery' is defined in the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (Supplementary Convention), as discussed in section 1.3.

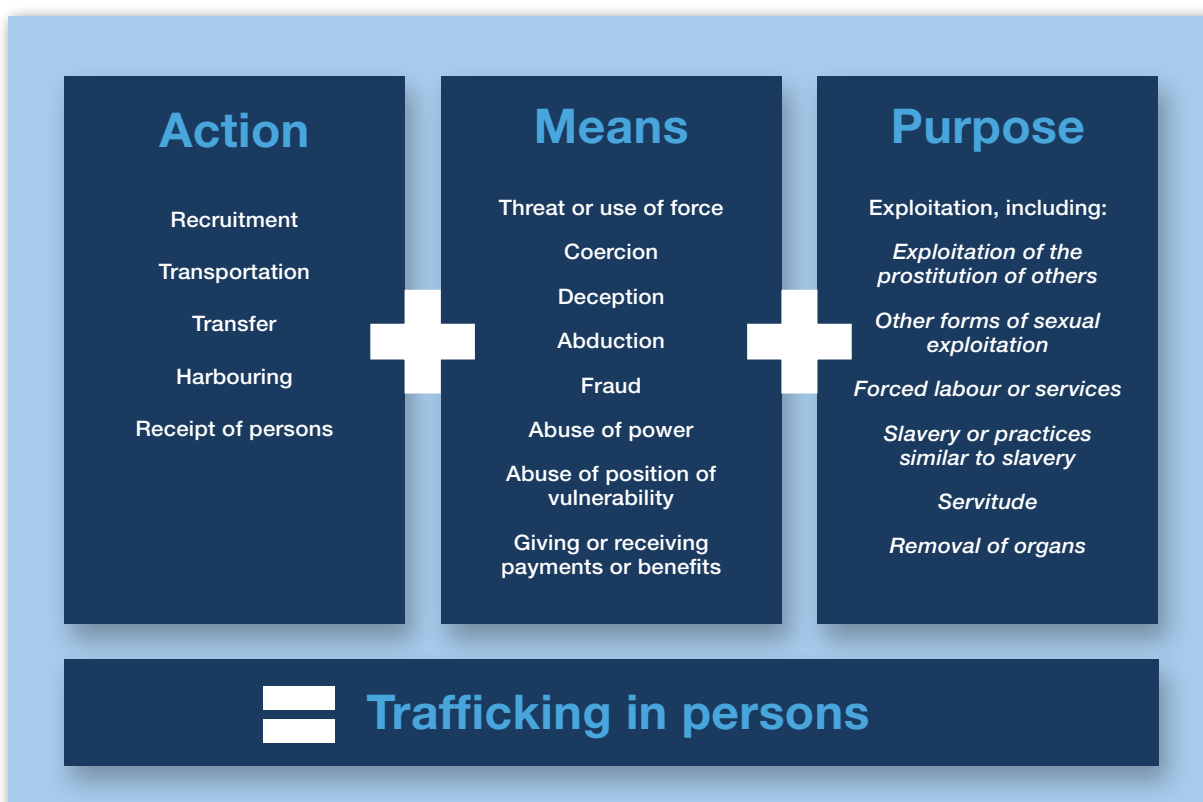
1.2. Human trafficking defined

One of the stated aims of the Trafficking in Persons Protocol is to protect and assist victims of trafficking, with full respect for their human rights.⁴ This aim creates an implicit requirement for States to identify victims of trafficking who may be in need of such assistance and protection. Identifying who is a victim of trafficking requires State authorities to understand what human trafficking is on the basis of a legal definition of the crime. In international law, the definition of the crime is found in Article 3(a) of the Trafficking in Persons Protocol.

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

Figure 1 below outlines the three elements that must be present for the crime of the human trafficking of adults. Any one element from each column is required to establish trafficking.

Figure 1: Key elements of the international legal definition of trafficking in persons:⁵



⁴ See Article 2(b) of the Trafficking in Persons Protocol.

⁵ Source: *Policy Guide on Criminalizing Trafficking in Persons, Bali Process, 2014, p.5.*

Article 3(b) of the Protocol provides that the consent of the *victim* becomes meaningless where any of the prescribed means have been used. Articles 3(c) and (d) provide that the prescribed means need not be proven in cases where the *victim is a child* under the age of 18 years.⁶

The Protocol is not the first international instrument to address the problem of human trafficking, but it provides the most comprehensive definition to date and is the primary international instrument relied on by States Parties to define the crime in national law. The Article 3 definition has helped to standardize the understanding that men and boys can also be victims of human trafficking, and that ‘exploitation’ includes not only sexual exploitation but other forms of exploitation as well.⁷ The list of exploitative forms set out in the definition includes ‘forced labour or services’ and ‘slavery or practices similar to slavery’, which are defined elsewhere in international law, as well as ‘servitude’ and ‘removal of organs’. While this list sets a minimum standard of the kinds of practices that must be considered exploitative, it is not exhaustive, which gives the definition flexibility to adapt to new forms of exploitation.

There are different ways of interpreting the international definition of human trafficking. Some approaches consider human trafficking as the *process* by which a victim is delivered into exploitation (“recruitment, transportation, transfer, harbouring, or receipt”), with the exploitation itself standing apart, while others understand the crime as encompassing both the process and the end result (“exploitation”). For example, a strict textual interpretation of the definition suggests that movement is not implicit to trafficking, but without implying movement to trafficking, it becomes difficult to distinguish trafficking in persons from the aforementioned forms of exploitation, such as forced labour, which are defined elsewhere in international law. Further, the forms of exploitation that are explicitly captured in national legislation differ between States.

There is a legal distinction between human trafficking and migrant smuggling in international law.⁸ In practice, particularly where human trafficking occurs transnationally, it may be difficult to differentiate a victim of trafficking from a migrant who is the subject of a smuggling operation, particularly since a person may be both a smuggled migrant and a victim of trafficking.⁹ Smuggled migrants are highly vulnerable to falling victim to trafficking or other forms of exploitation during their journey or once they arrive in the country of destination. Offenders may commit both crimes in the course of a single operation, smuggling some members of a group while trafficking others. Although smuggled migrants voluntarily enter into arrangements with migrant smugglers, they are highly vulnerable to falling victim to trafficking, exploitation and other crimes (including extortion, abuse, sexual assault, rape or torture). The circumstances of the smuggling journey may be such that the choice they initially made to be smuggled

Tip: Identify presumed victims of trafficking among vulnerable groups

Prior to the exploitation phase, victims of trafficking are extremely difficult to identify. States should ensure that their policies include prevention provisions that support authorities to identify presumed victims among persons vulnerable to trafficking, including smuggled migrants.

⁶ Also see *Policy Guide on Criminalizing Trafficking in Persons, Bali Process, 2014*, pp.4-5.

⁷ While international treaties in 1904, 1910, and 1933 concentrated on the practice of moving women and girls across international borders for purposes of prostitution, and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others expanded this beyond women and girls to include ‘anyone’, the Palermo Protocol was the first trafficking-focused international instrument to incorporate forms of exploitation that are not necessarily linked to sex.

⁸ Smuggling of migrants means the procurement, in order to obtain “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 permanent resident” according to Article 3 of the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*.

⁹ For more detailed discussion on the legal distinction between human trafficking and migrant smuggling, see *Policy Guide on Criminalizing Trafficking in Persons, Bali Process, 2014*, pp.8-9 and *Policy Guide on Criminalizing Migrant Smuggling, Bali Process, 2014*, pp.9-10.

ceases to be a meaningful one.¹⁰ For instance, the precarious situations migrants find themselves in en route, may make them dependent on their smugglers and leave them with little choice but to continue their journeys, regardless of the conditions they have to endure. Depending on when such situations are detected, people encountered may be considered smuggled migrants rather than victims of trafficking. An exploitative purpose is required to establish the crime of trafficking, but is likely to be discovered only once the exploitation has already occurred. Authorities should look for indicators of trafficking among smuggled migrants to ensure that victims of trafficking are identified.

1.3. Understanding forms of exploitation

Most victims of trafficking are identified once they have been exploited, and so it is important to understand exploitation in its various forms and as they are defined in international law. Evidence of exploitation is particularly useful to support a presumption of trafficking.

In many countries, significant attention has been given to trafficking for the purpose of sexual exploitation. Sexual exploitation, particularly of women and children, is a significant problem around the world, but it is important to understand other forms of exploitation.

Forced labour or services

According to the 1930 *International Labour Organization (ILO) Forced Labour Convention*, ‘forced labour or services’ are “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered herself/himself voluntarily”.¹¹ ‘Menace’ has been interpreted to include physical and also psychological coercion by the employer,¹² such as by denying employees possibilities of promotions, transfers, new employment or housing.¹³ ‘Involuntariness’ is also critical to identifying forced labour. Labour is forced unless the worker has freely given his or her consent and can revoke it.

Child Labour versus Child Work

The 1973 ILO Convention concerning Minimum Age for Admission to Employment describes child labour as being any work or service performed by a person under the age of 18 years that is dangerous to his or her health and safety, or hinders his or her education or vocational orientation and training. Child labour is distinguishable from child work, which does not compromise the health or safety of children, or their educational opportunities.

¹⁰ The *Protocol against the Smuggling of Migrants by Land, Sea and Air* (Smuggling of Migrants Protocol) includes mandatory protection provisions similar to those set out in the *Trafficking in Persons Protocol*.

¹¹ The International Labour Organization (ILO) definition of forced labour was reaffirmed in 2014 with the adoption of a Protocol to the *Forced Labour Convention*. International Labour Conference, *Text of the Protocol to the Forced Labour Convention*, 1930, Provisional Record 9A, 103rd Session, Geneva, 2014, Art. 1(3).

¹² ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 90th Session, Geneva, 2002, p. 98.

¹³ *Abolition of forced labour*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 65th Session, Geneva, 1979, para. 21 [hereafter: *Abolition of forced labour*, General Survey of 1979]. See also *Eradication of forced labour*, General Survey of 2007, at para. 37.

Slavery and practices similar to slavery

Slavery is regarded as the most extreme form of human exploitation. Freedom from slavery is one of the few norms of international law from which States can never ‘derogate’, meaning there are no circumstances in which States can ever allow slavery. Slavery was first defined in the 1926 *Convention to Suppress the Slave Trade and Slavery* (known as the ‘Slavery Convention’) as “*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*”.¹⁴ At its root, slavery is about ownership; the ‘powers attached to the right of ownership’ that described traditional slavery are still considered a hallmark of contemporary forms of slavery. Some signifiers of slavery included in the Slavery Convention include authority to determine the victim’s name, religion, marriage or sexual partners, as well as the fate of his or her offspring.¹⁵ Slavery can also include conduct that degrades the victim’s physical or mental capacity to sustain his or her life.¹⁶

Tip: Identifying slavery

Slavery is marked by the relationship that exists between the perpetrator and his or her victim, rather than by the conditions of the situation as such. Authorities should understand that a person in a situation of slavery could conceivably live in comfort, but have no power to make fundamental personal decisions.

Practices similar to slavery are prohibited by the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (Supplementary Convention). ‘Institutions and practices similar to slavery’ refer to exploitive human relations, which have aspects of ownership and are maintained not necessarily by law, but by custom, tradition, or social practice. Specifically, the Supplementary Convention identifies as institutions and practices similar to slavery:

- **Debt bondage** (Article 1(a)), being “*the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined*”. In other words, debt bondage refers to a situation in which a person provides services to pay a debt that can never be repaid.

Tip: Identifying debt bondage

Debt bondage is a common experience of many victims of trafficking. A situation of debt bondage may be identifiable by the existence of a debt that is indeterminable and cannot be paid by any amount of work or service. Many jurisdictions understand debt bondage more broadly, as situations where labour or services are provided to repay a debt in conditions that are exploitative.

¹⁴ *Convention to Suppress the Slave Trade and Slavery*, 60 League of Nations Treaty Series 253, 25 September 1926, entered into force 9 March 1927 (Slavery Convention).

¹⁵ See for example, *Prosecutor v. Kunarac, Kovac and Vukovic*, Case IT-96-23-T and IT-96-23/1-T, International Criminal Tribunal for the former Yugoslavia Appeals Chamber, 12 June 2002.

¹⁶ See for example, the *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery*, Research Network on the Legal Parameters of Slavery, 2012.

- **Serfdom** (Article 1(b)), being “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status”.
- Any institution or practice (Article 1(c)) whereby;
 - “(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person”.

Tip: Identifying forced marriage

Since the Supplementary Convention on Slavery entered into force, which only identifies the forced marriage of women, it has been widely acknowledged that boys and men can also be forced into marriage. To combat forced marriage in all its forms, it is considered good practice to ensure legislation prohibiting forced marriage applies equally, regardless of the sex of the victim.

- **Sale of children for exploitation** (Article 1(d)),¹⁷ whereby the parents or guardians of a child allow a third party to exploit the child’s labour. Recent instruments offer a broader definition than that provided in the Supplementary Convention. The 1999 ILO *Convention on the Worst Forms of Child Labour* adds forced or compulsory recruitment of children for use in armed conflict, pornography, illicit activities such as the production and trafficking of drugs, and “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”. Article 2(a) of the 2002 Optional Protocol to the *Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* broadly defines the ‘sale of children’ as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.¹⁸

Tip: Identifying the sale of children for exploitation

As the sale of children or babies does not require exploitation to take place after the sale, States should consider extending this concept to include practices such as sale for adoption and commercial surrogacy arrangements.¹⁹

¹⁷ These concepts, also known as ‘servitudes’, have definitions at international law that may be useful to identifying exploitative situations.

¹⁸ *Optional Protocol to the Child Convention on the Sale of Children, Child Prostitution and Child Pornography*, 2171 United Nations Treaty Series 227, 25 May 2000, entered into force 18 January 2002, Art. 2 (a).

¹⁹ See further Anne T. Gallagher, ‘Article 35’, in Phillip Alston and John Tobin, *Commentary to the Convention on the Rights of the Child*, Oxford University Press, forthcoming, 2015. See also discussion of forced/illegal adoption at 2.3, below.

Removal of organs

Human trafficking for the purpose of organ removal can occur in the context of commercial trade in organs for transplantation into paying donors, as well as in cultural and ritualistic contexts that may involve the removal of body parts in addition to organs. In some States, anti-trafficking legislation goes beyond organ removal to also include body parts (to capture cultural and ritualistic practices), as well as cells and fluids (to capture situations of commercial surrogacy). Trafficking for the purpose of organ removal raises unique identification challenges, given that the exploitative act occurs only once, as opposed to other forms of exploitation that may involve on-going provision of labour or services.²⁰

Other forms of exploitation

States should at a minimum understand exploitation as including the forms of exploitation expressly referenced in Article 3 (a) of the Trafficking in Persons Protocol. Other exploitative forms of exploitation encountered in practice include exploitation for forced begging and criminal activity, such as drug cultivation or transportation by acting as ‘drug mules’. Beyond risking detection and prosecution for drug-related crimes, victims trafficked to cultivate or carry drugs on or in their bodies have been exposed to significant risks to their lives and safety.²¹

Tip: Put in place specific indicators for different forms of exploitation

States should consider providing authorities with indicators of trafficking that are sufficiently detailed and specific to allow first responders to recognize various forms of exploitation. During the provision of assistance and protection, further evidence of the other elements of the definition may become apparent. Section 3.3 offers a basis for developing specific and detailed indicators.

²⁰ For more information on trafficking for the purpose of organ removal, see for example, the *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation* and the *Declaration of Istanbul*, both available at <http://www.who.int/transplantation/en/>.

²¹ Both of these additional forms have been explicitly recognized in the *European Union Trafficking Directive 2011/36/EU* with ‘forced begging’ understood as a form of forced labour or services as defined by the *ILO Forced Labour Convention* and exploitation of criminal activities understood to including pick-pocketing, shop-lifting, drug trafficking and other similar activities subject to penalties and implying financial gain. See: Directive 2011/36/EU of the European Parliament and of the Council of the European Union, 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101/1, 15 Apr. 2011 (EU Trafficking Directive 2011/36/EU), Article 2(3).

Section 2:

Obligations, interests, and challenges

2.1. Why identification is important

Without victim identification, States will be unable to effectively achieve the prevention, prosecution and protection objectives set out in the Trafficking in Persons Protocol. Therefore, in establishing comprehensive anti-trafficking policies, programs and other measures, special attention should be paid to victim identification as a necessary component of fulfilling obligations set out in the Protocol.

The identification process leads to the recognition of a person's victim status and consequently, the prompt provision of assistance and protection services, such as medical and other health services, accommodation, food and basic needs, counselling and psychosocial care among others. In some States, verification as a victim of trafficking entitles the person to additional benefits and services, such as temporary or permanent residency. Failure to identify victims of trafficking promptly and properly is likely to result in their further abuse, exploitation, and denial of their rights, including their right to be assisted and protected. The longer identification takes, the more complicated recovery and reintegration of victims will be. For this reason, victim identification is a necessary precursor to protection measures.²²

Beyond protecting victims of trafficking, States also have several other interests in identifying victims of trafficking. Victim identification is a key means of identifying crimes and the criminal networks behind them. Where victims are identified and receive appropriate protection and support, they can become key witnesses who can support the criminal justice process. Where victims go unidentified, criminal networks can continue with impunity and valuable evidence can be lost. Transnational organized crimes such as human trafficking can allow other crimes, such as money laundering and corruption, to flourish and hamper economic and social progress. States have an interest in preventing and addressing forced labour, which can have the follow-on effect of reducing employment opportunities and wages and eroding conditions for other workers in the country. Combating human trafficking is therefore an essential means of ensuring not only the safety and security of individuals, but also the health of societies.²³

Table 2: Obligations, interests and tips for victim identification

Obligations	Interests	Tips
Prevention	Identification of victims of trafficking is necessary to prevent and deter human trafficking.	Incorporate victim identification into national strategies, including those aimed at combating trafficking and other types of crime such as migrant smuggling and domestic violence.
	Identification of the root causes of human trafficking and individuals or groups vulnerable to being trafficked is essential for evidence-based prevention.	Develop indicators on root causes and the vulnerability of individuals and particular groups to trafficking in order to support the prevention of trafficking before the exploitation phase.

²² See *Policy Guide on Protecting Victims of Trafficking*, Bali Process, 2015.

²³ See *Policy Guide on Protecting Victims of Trafficking*, section 1.1, Bali Process, 2015.

	<p>Data and information collected by relevant authorities is strengthened when it comes from identified victims, including: profiles and characteristics of traffickers, means and methods, routes and links between and among individuals and groups, as well as possible measures for detecting them.</p>	<p>Use data and information collected through the identification process as a basis for identifying gaps in State responses to human trafficking, identifying capacity building and training needs of relevant State actors, and formulating better policies, including in the area of labour and migration.</p>
Investigation and Prosecution	<p>Efforts to investigate and prosecute human trafficking are strengthened when practitioners are trained to effectively identify victims and collect relevant evidence.</p> <p>Investigators and prosecutors obtain information and evidence from identified victims of trafficking about human trafficking, traffickers and potentially related crimes and criminals.</p>	<p>Develop training programs on victim identification for frontline responders, such as investigators and prosecutors to ensure they have a common understanding of the elements of the crime, evidence gathering and admissibility, norms for identification, and special considerations such as working with traumatised victims/witnesses, culturally and linguistically diverse victims, as well as child victims.</p> <p>Develop a system for the proactive identification of victims, ensuring that a range of indicators are used to capture both domestic and transnational trafficking situations and the diversity of possible victims (men, women and children) for all forms of exploitation.</p>
Assistance and Protection	<p>Identification of victims of trafficking is necessary for the effective delivery of assistance and protection services.</p> <p>Victims of trafficking who receive appropriate protection and assistance are better able to assist with the criminal justice process, allowing for the prosecution of traffickers and prevention of further human trafficking.</p>	<p>Refer victims to responsible agencies to provide specialized assistance and support, ensuring that presumed victims of trafficking do not face barriers to accessing assistance and protection, including by separating identification procedures from immigration management agendas.</p> <p>Ensure that formal identification procedures extend to all victims of trafficking, regardless of their age, sex, gender, sexual orientation, nationality, ethnic or social origin or disability, in accordance with international law.</p> <p>Ensure that service providers offer comprehensive assistance, from protection at first contact, through to support in criminal justice processes, and in repatriation and reintegration.</p> <p>Inform victims of their rights to assistance and protection and their options for support in the course of criminal justice processes against traffickers, and empower them to make informed decisions. Guarantee that identification (and resulting protection) is not dependent on victim cooperation with authorities.</p>
Cooperation	<p>Multi-agency involvement in victim identification, including the formalized input of specialized NGOs and other relevant actors, can strengthen effectiveness of identification mechanisms, and in turn strengthen prevention, prosecution and protection measures.</p>	<p>Ensure that the identification system is a collaborative process involving multi agency and multi disciplinary cooperation between state authorities and non-state actors, including specialized NGOs.</p> <p>Ensure the regular exchange of information on trafficking trends as well as new techniques and best practices in victim identification.</p>

2.2. Understanding why victims of trafficking may be reluctant to identify themselves

Victims rarely identify themselves as victims of trafficking. In many cases, victims of trafficking become dependent on their traffickers, and may not recognise or admit that they are victims. Others view their traffickers as benefactors who have helped them improve their situations. They may even be related to their traffickers. For instance, in forced marriage contexts or situations where children are sold into exploitation, the offender may be the victim's parents or other family members, making the victim reluctant to come forward to authorities. The same may be true for other forms of trafficking and exploitation where there are personal relationships between the victims and traffickers. Even where there is no pre-existing relationship, victims may become involved in personal relationships with traffickers without knowing that the relationship is a means of controlling them.

Further identification challenges stem from the perceived and/or actual lack of incentives that many victims have to identify themselves to authorities. This is particularly the case where victims of trafficking have entered a country irregularly; they may fear deportation due to their irregular status. Other victims of trafficking, though suffering severely in the control of traffickers, may prefer to remain in exploitative and abusive situations for a variety of reasons. For instance, victims may have binding relationships with traffickers or others that keep them in the situation, or they may feel the conditions they are in are better than the alternatives available to them. Traffickers frequently take advantage of these fears and concerns in order to exercise control over victims.

The challenges posed in identification should be understood and considered when designing and implementing identification mechanisms. Possibilities should be provided to allow for persons to be referred to appropriate procedures at any stage in the process, even if they were not initially identified as presumed victims of trafficking at earlier stages.

Threats of detention and deportation

Where victims are non-nationals, traffickers often tell them to not seek assistance from authorities because they will be arrested, deported or detained due to their immigration status or illegal activities resulting from their trafficking situation. This is often not the case, and even where true, for some victims, deportation or return to communities will not improve their situation. If conditions that made a person vulnerable to trafficking have not changed, they may be at risk of falling into a similar situation again. The recruiters who placed them in a trafficking situation may also still be present, creating concerns about their security and that of their families.

Tip: Encourage victims to come forward by addressing their concerns about detention and deportation

To address fears that victims may have about being detained, measures should be put in place to ensure that victims are not criminalized for offences they committed as a result of being trafficked, including any immigration offences. To address victims' fears of deportation, visa pathways should be put in place to allow victims of trafficking to remain in the destination country to receive assistance and protection.

Fear of threats and reprisals from traffickers

Some victims fear threats and reprisals from traffickers when they identify themselves as victims of trafficking. Traffickers often threaten to harm victims and/or members of their families. Fears about the inadequacy of the domestic legal system to protect victims and their families from retaliation can stop victims from coming forward. This fear may be exacerbated where victims' families are in other jurisdictions and criminal justice actors in different countries are needed to ensure their protection.

Tip: Encourage victims to come forward by protecting them and their families

States should consider putting in place measures to ensure effective protection of victims, witnesses and their families. Where persons in need of protection are in other States, cooperation should be sought with criminal justice actors in those States or if appropriate, visa and immigration pathways should be made available to offer protection to persons at risk of harm.

Sense of shame and fear of stigmatization

Where the identity, confidentiality and privacy of victims and their families are not protected by victim assistance and protection programs, victims may fear that identification could lead to shaming, stigmatization and social exclusion. Victims may fear that if they admit that they have been victimised, their families and communities may feel they have failed (particularly where victims were exploited in the course of migrating) subsequently hindering their ability to provide for the needs of their families. Male victims of trafficking have been known to be particularly reluctant to admit that they have fallen victim to crime or to have been deceived.

Tip: Encourage victims to come forward by protecting them from stigmatization

States should ensure that assistance and protection programs address victims' fears of shame and stigma by upholding the confidentiality of information of victims, and by working with NGOs, communities and victims themselves to understand and address concerns in developing protection policies.

Section 3:

Process of victim identification

3.1. Who can identify victims of trafficking?

The identification of victims of trafficking is rarely a conclusive, point-in-time event, but rather a process that may involve the following phases:

1. Initial screening that suggests a person might be a victim of trafficking. This may be done by anyone who comes into contact with the presumed victim, and results in referral to appropriate authorities.
2. Presumption by appropriate authorities that there are sufficient indicators to suggest the person may be a victim of trafficking and should therefore be given access to initial assistance and protection.
3. Verification by appropriate authorities that the person is a victim of trafficking. This may result in the person being entitled to more comprehensive assistance and protection services. It may also coincide with the investigation and prosecution of alleged traffickers.
4. Confirmation that the person is a victim of the crime of human trafficking, as a result of the conviction of a trafficker. This phase may only apply in some jurisdictions, and the fact that the crime of 'trafficking in persons' cannot be successfully prosecuted does not mean that a person is not a victim.

Identification of victims of trafficking can occur as a result of reactive investigations following direct reporting by a victim, his or her family or others. Identification can also occur proactively, as a result of police or other actors - such as border and labour officials - carrying out investigations and being equipped to identify victims of trafficking in the course of their work. Increasing efforts to proactively identify victims of trafficking is preferable to relying solely on reactive identification.

Anybody in the community, including relatives, friends and peers, can play a role in victim identification, particularly during the initial screening phase. Non-governmental actors including civil society organizations, medical professionals, workers' unions and recruitment agencies prove an invaluable source of information and can play a key role in identifying and referring presumed victims of trafficking to appropriate authorities.

However, States have the primary responsibility for identification. Authorities including law enforcement (police, prosecutors, judicial officers, immigration and customs officers, and labour inspectors), social service workers, local administrators, and embassy and consular officers can also play a role in identifying victims of trafficking.²⁴ In many States, the official

Tip: Raise public awareness about human trafficking to improve victim identification

States should initiate and support campaigns to raise public awareness of human trafficking situations. It is best if such campaigns explain to the target audience a) what human trafficking is and what it may look like, and b) specific actions that individuals can take, and particularly with regard to the provision of details for referrals to appropriate authorities, including information on hotlines.

²⁴ The 1967 *Vienna Convention on Consular Relations* outlines the roles, rights and responsibilities of consular officers when carrying out their duties in the sending and receiving States, a number of which are relevant to assist victims of trafficking. The Handbook for Diplomatic and Consular Personnel on How to Assist and Protect Victims of Human Trafficking is a useful toolkit for consular staff as it sets out specific indicators to be aware of when processing visa applications. See: *The Handbook for Diplomatic and Consular Personnel on how to Assist and Protect Victims of Human Trafficking*, Council of Baltic Sea States Secretariat, 2011.

processes of presumption, verification and confirmation conducted by relevant authorities are used to determine a person's status as a victim of trafficking and provide him or her with access to corresponding levels of assistance and protection. In some States, responsibility for these processes is allocated to law enforcement officials, and in others, to State agencies responsible for social welfare. In other States, official processes for victim identification have been delegated to specialised non-government actors. Consular personnel can also play a role in identification of victims of trafficking.

Tip: Strengthen the capacity of different stakeholders involved in identification

Introduce clear guidelines and operating procedures to clarify roles and responsibilities of a broad pool of State authorities and other relevant actors in effective victim identification processes.

Irrespective of a State's approach to identification, appropriate training is essential for relevant stakeholders to quickly and effectively identify victims of trafficking.²⁵ Standard guidelines and procedures for identification should respect and protect the dignity and human rights of presumed victims of trafficking.²⁶

Tip: Provide identification training to persons who may come into contact with victims of trafficking

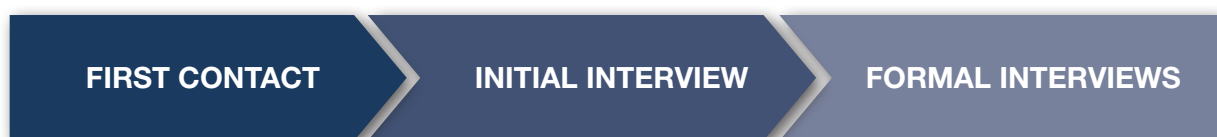
It is important to prioritise the training of frontline officials in the identification of victims of trafficking. Consideration should also be given to providing training to teachers, journalists, medical professionals, private sector actors and others in the community who may come into contact with victims of trafficking, in order to make them aware of the indicators which might suggest a person is a victim.

²⁵ (E/2002/68/Add.1), United Nations High Commissioner for Human Rights, Guideline 2: Identification of trafficked persons and traffickers, Guideline 2(3).

²⁶ Also see *Policy Guide on Protecting Victims of Trafficking*, Bali Process, 2015, section 3 on "Coordination and the multi-stakeholder approach".

3.2. Basic processes

Each stage of the identification process offers opportunities to screen people by observation and interaction, from the point of initial contact through to the conduct of interviews. At each stage of a basic identification process, practitioners must consider the assistance and protection needs of victims.²⁷ States should consider incorporating identification procedures into wider protection processes to allow appropriate referrals to be made where particular protection needs are identified (for instance, where victims of trafficking are children or asylum seekers).



A. Point of first contact

At the point of first contact, a key objective is to consider whether a person might be a victim of trafficking and in need of initial assistance and protection.

Initial screening occurs when a presumed victim is first encountered as a result of observation (conversations with the person, his or her behaviour, appearance or circumstances), information provided from third person referrals, or through self-identification. However, victims of trafficking may not identify themselves for reasons discussed above in Section 2.2.

Initial screening at the point of first contact may be hampered by communication challenges due to language and cultural barriers, as well as issues relating to gender. Such barriers can be addressed in part by ensuring that people who may come into contact with presumed victims have language and cultural skills or backgrounds (or ready access to people who do) to equip them to screen people at the point of first contact.

Where verification cannot be conclusively made, the presumption that the person is a victim of trafficking should be applied in order to afford him or her access to assistance and protection services. When presumed victims of trafficking are encountered, they may be in imminent danger or in need of urgent medical treatment or other assistance. Ensuring their immediate safety is the key priority at the point of first contact.²⁸ Presumed victims must be referred to specialized service providers for social, medical and psychological care, and safe accommodation to ensure that they are protected from further harm. It is also crucial that the privacy of people is protected, and that they give their informed consent to receiving assistance and protection services.²⁹

²⁷ In addition to the information provided below, more information about victim protection is provided in the *Policy Guide on Protecting Victims of Trafficking*.

²⁸ See *The IOM Handbook on Direct Assistance for Victims of Trafficking*, IOM, 2005.

²⁹ See *Policy Guide on Protecting Victims of Trafficking, Bali Process*, 2015.

In relation to the identification of child victims of trafficking, it is useful to implement procedures for rapid identification and the immediate notification of specialized child service providers. Since children may not appear to be children and/or may lie about their age, best practice is to treat a person who may be a child as a child, in accordance with the Convention on the Rights of the Child. Similarly, where a child may be a victim of trafficking, he or she should be presumed to be a victim until another determination can be made.³⁰

Tip: Strengthen identification of child victims of trafficking

Implement procedures for rapid identification of potential child victims of trafficking and immediate notification of specialized child service providers, through identification approaches that afford both:

- The presumption of minority, and
- The presumption of victim status.

B. Initial interview

Authorities may be able to verify that a person is a presumed victim of trafficking during an initial interview. A key objective of initial interviews is to assess risks and determine specific assistance and protection needs. At the stage of initial interview, the person should be informed about the purpose, procedure, and consequences of the interview. The person should be given clear information in a language he or she understands, with the use of experienced interpreters, if necessary.

People conducting interviews should be well-trained to build trust and rapport with the presumed victim and create an atmosphere that makes him or her feel comfortable enough to communicate. Interviewers should ideally be trained to understand trauma and how to avoid re-traumatizing people in conducting interviews with them. Civil society actors can be invaluable in working with victims of trafficking and authorities to build trust and rapport between them. Some States use a questionnaire to guide the initial interview.³¹ Interviewers also require appropriate skills to address challenges posed by different languages and cultures, and to use interview techniques appropriate to the personal characteristics of the interviewee.

- **In relation to language considerations:** interviewers will be assisted by the availability of lists of interpreters who can assist at short notice, giving consideration to the impact of linguistic, ethnic or cultural differences on building trust and rapport. Interpreters should be impartial, well briefed about their roles, confidentiality and other issues and be appropriately trained. The role of interpreters in the interview process should also be explained to presumed victims.
- **In relation to gender and age considerations:** it is often preferable that people are interviewed by, or in the presence of, people of the same gender. Children (or those who may be children) should be appointed a guardian as appropriate (for example, if they are unaccompanied) and only be interviewed by people trained to work with children.

³⁰ Legislative Guide, Trafficking, paragraph 65; *UNICEF Guidelines on the Protection of Child Victims of Trafficking, and Commentary to the OHCHR Principles and Guidelines on Human Rights and Human Trafficking*, OHCHR, 2010, pp.162-164.

³¹ For instance, *Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations* (presented by Costa Rica prepared jointly with El Salvador, Guatemala, Honduras and Nicaragua, with IOM and UNHCR support, presented to the Regional Consultation Group on Migration (RCGM) of the Regional Conference on Migration (RCM) in June 2012), on p.11.

- **In relation to cultural considerations:** it may or may not be preferable for the interviewer to be from the same community or cultural background as the interviewee. While he or she may feel more comfortable with a person from the same culture, in cases where the community is involved in or acquiescent to the exploitation, victims may be put at serious risk by being interviewed by someone from his or her community.

Determining what is appropriate for a particular interview will require consultation with the interviewee as to his or her preferences and accommodation of those preferences to the extent possible and appropriate.

Tip: Support use of victim-sensitive interview techniques

Ensure persons conducting interviews are equipped with appropriate skills to address language, gender, age and cultural considerations. As far as possible, consult with individual interviewees as to their preferences and accommodate those preferences to the extent appropriate.

In conducting an initial interview, there are some important considerations to take into account, regardless of the status or characteristics of the person. For instance, it is useful for identification processes to include procedures for receiving and considering asylum claims from victims of trafficking who may be in need of asylum.³² Asylum authorities (or UNHCR in some countries where there is no national asylum system) should undertake refugee status determinations for people who give any indication during victim identification processes that they could be at risk of persecution or serious harm in their country of origin. Similarly, anti-trafficking authorities should screen asylum seekers and refugees who show signs that they may be victims of trafficking. Appropriate referral mechanisms should be established to allow for the referral of individuals wishing to seek international protection as a refugee to asylum authorities, and for the referral of asylum-seekers and refugees who may be trafficking victims to the appropriate anti-trafficking authorities. In both situations, authorities should ensure that any engagement with authorities in countries of origin does not endanger persons who may be asylum seekers or refugees.

Tip: Ensure identification procedures allow for appropriate referral of asylum seekers

States should not contact the diplomatic representation of the country of origin for identification where a person has applied for asylum, or where there is reason to believe that a person is a refugee.

C. Formal interviews

Formal interviews provide the opportunity to refine the assistance and protection services provided, on the basis of specific needs that may be identified. It is best practice for authorities to give victims a 'reflection period' to assist them in recovering enough from their ordeal to provide evidence in the course of a formal interview.³³ Depending on the condition and the needs of an individual victim or presumed victim of trafficking, formal interviews may take place before or after the reflection period has commenced, at a point when the possible victim is better able to contribute after having received initial assistance and protection.

³² See Article 14 of the Trafficking in Persons Protocol. Also see *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add.1), United Nations High Commissioner for Human Rights, Guideline 2(7).

³³ For more information on the reflection period, see *Policy Guide on Protecting Victims of Trafficking, Bali Process*, 2015.

Once assistance and protection services have been provided, further interviews may then serve investigatory or prosecutorial objectives. Information can be gathered for the purpose of confirming whether or not a person is a victim of trafficking. People must consent to being interviewed, to any video or audio recording of the interview being made, and must understand the purpose and implications of the interview.³⁴ Interviews and any transcripts or recordings should be kept confidential to protect the interviewee and his or her privacy. Interviewers should be specially trained to understand why victims' accounts may change, and should be accustomed to working with people of different ages, who speak different languages, come from diverse cultures, and may be traumatized.³⁵

This stage of the process may result in a victim statement. Other evidence should also be collected at this stage to identify relevant facts or information to corroborate victim statements. The protection plan in place for an individual may need to be revised on the basis of information received in the interview. Referrals to specialized services providers may be needed.

As discussed above in Section 2.2, victims may be reluctant to trust authorities. Interviewing victims can be challenging, and requires sensitivity and patience to avoid causing further emotional stress and anxiety to victims. Interviewers should focus on building trust and confidence. Wherever possible, interviewers should avoid causing victims to recall experiences that will traumatize, shame and/or disempower them, or make them lose self-confidence in making informed decisions. Doing so may cause further harm to victims, hinder evidence gathering, and deter victims from continued cooperation with the criminal justice process.

3.3. Indicators of trafficking

In many States, standard sets of 'indicators' are used to identify potential situations of trafficking. Such indicators can be useful tools for training and capacity building of specific stakeholders (for instance, medical professionals as well as police, immigration and customs officials), and may relate to particular aspects of the potential trafficking situation (for example, the means used by the trafficker to gain a victim's compliance), or to a particular form of exploitation (for example, forced labour). In practice, given that most victims of trafficking are identified once they are being subjected to exploitation, indicators relating to the exploitation phase are considered to be more reliable.

Tip: Consider weighing indicators

States should consider weighing indicators to help those responsible for identification of victims to prioritize certain kinds of information. The approach taken by the ILO and the European Commission qualifies each indicator as being strong, medium or weak, with the provision that a single indicator may be strong for children while being medium for adults, or strong for sexual exploitation and weak for labour exploitation.

However, the inherent limitations of indicators should always be considered. Given the different ways that people are trafficked, and the different contexts in which they are exploited, some indicators are always more strongly suggestive of trafficking than others. In other words, what may be a compelling indicator in one case of trafficking may be entirely absent or irrelevant in another. For instance, a person working excessive hours each day for limited pay under armed guard is a stronger indicator of trafficking than a

³⁴ Generally children cannot provide legal consent. Procedures for obtaining consent from parents or guardians should be ascertained before proceeding with any interviews of children.

³⁵ See *Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 8: Interviewing victims of trafficking who are potential witnesses*, UNODC, 2009.

child being taken across a border without a passport. Some indicators may also be suggestive of other crime types or scenarios, and the presence or absence of any indicator is not conclusive in determining whether or not human trafficking is taking place.³⁶ A further limitation is that traffickers adapt to indicators and may act accordingly, for instance, by giving victims access to their travel and identity documents so as not to raise the suspicions of authorities. In light of these limitations, the use of a combination of different ‘types’ of indicators will provide more insight than reliance on one type. Moreover, indicators are not proof of trafficking, but can be used to justify a presumption in favour of the victim for assistance and protection purposes.

The following non-exhaustive lists of sample indicators are offered against different exploitation types that are listed in the Trafficking in Persons Protocol, and must be viewed in the context of the above limitations. As the list of exploitation types in the Protocol is non-exhaustive, indicators of other forms of exploitation increasingly encountered in practice are also set out below. The ‘person’ referred to in the indicators below is the presumed victim of trafficking, not the potential trafficker.

Tip: Tailor indicators to context

Lists of indicators are most effective when they are adapted to the specific situations authorities encounter in the course of their work. States should ideally update indicator lists on a regular basis to ensure their on-going relevance to changing trafficking trends.

Key common indicators of exploitation

The indicators below may apply to any form of exploitation. Some of the indicators will point to signs of exploitation and others will suggest signs of control that the trafficker may have over the suspected victim:

- ▶ The person is forced/coerced to enter into or remain in the situation
- ▶ The person is deceived about the nature/location of the situation
- ▶ The person’s working days or hours are excessive
- ▶ The person’s living or working conditions are inhumane and/or degrading
- ▶ The person is under the control of/heavily dependent on others
- ▶ The person is subject to threats or use of violence
- ▶ The person is in a situation that is inappropriate for his or her age

Key indicators of specific forms of exploitation

The following indicators relate to specific forms of exploitation that are listed in the Trafficking in Persons Protocol. As the list of exploitation types in the Protocol is non-exhaustive, indicators of some other forms of exploitation increasingly encountered in practice are also set out below.

³⁶ See *Anti-human trafficking manual for criminal justice practitioners*, UNODC/UN.GIFT, 2009, Module 2. Also see *National Referral Mechanisms: A Practical Handbook*, OSCE, 2004, p.61.

Exploitation of the prostitution of others and forms of other sexual exploitation

As set out in Table 1 (Section 1.1), not all people working in the sex industry are victims of trafficking. The indicators below may be useful in identifying those people who are presumed victims of trafficking:

- ▶ The person cannot refuse to service clients, to carry out specific sexual acts or to have unprotected sex
- ▶ The person does not receive money directly from clients/receives only a small portion of the fee paid by clients to employers or intermediaries
- ▶ The person is forced/coerced to use or not use specific types of contraception
- ▶ The person is forced/coerced to receive medical/pregnancy testing
- ▶ The person is underage

Trafficking for the purpose of organ removal

The following indicators pertain primarily to situations in which organs are to be removed or have been removed for transplantation in a medical context. They are less relevant for organ removal for cultural and ritualistic purposes:

- ▶ The person is forced/coerced into agreeing to organ removal
- ▶ The person is deceived about the procedures involved or the compensation to be received for organ removal
- ▶ The person does not know where or when the transplant procedure is to take place
- ▶ The person does not understand the transplant procedure and associated risks
- ▶ There appears to be a third party procurer
- ▶ There are indications that the intended recipient is intending to travel overseas with the person

Trafficking for the purpose of domestic servitude

- ▶ The person receives poor quality/substandard food and shows signs of malnourishment
- ▶ The person works excessive hours
- ▶ The person has no private space, or private space is inadequate
- ▶ The person is confined or denied social interaction and/or never leaves the house without their employer
- ▶ The person is subject to insults, abuse, threats, violence and/or assaults
- ▶ The person pays a recruitment fee
- ▶ The person is underage

Trafficking for the purpose of forced, servile or early marriage

- ▶ Cash or other 'gifts' were paid to a third party to bring about the marriage
- ▶ A marriage contract was negotiated by people other than the married parties and/or without their involvement or agreement
- ▶ The person is forced into a situation of labour, domestic servitude or sexual exploitation
- ▶ The person has received/is to receive virginity testing
- ▶ The person's relatives were forced into marriage
- ▶ The person displays signs of depression, self-harm, social isolation or substance abuse
- ▶ There are signs of family discord, violence or abuse
- ▶ The person is underage

Trafficking for the purpose of exploitation in begging and criminal activities

- ▶ The person is punished if he or she does not collect or steal enough
- ▶ The person lives with others who perform the same activities
- ▶ The person does not understand the purpose of activities or their illicit nature
- ▶ The person is underage, elderly or disabled

The indicators above relate to specific forms of exploitation that may be relevant in addition to those provided below, which may apply to all forms of exploitation.

Challenges of Identifying Victims of Trafficking Exploited in Criminal Activities

People exploited in criminal activities may be misidentified as criminals rather than as victims of trafficking. To reduce this risk, authorities should be adequately trained on use of 'means' by traffickers to control a person and place him or her in an exploitative situation, and the irrelevance of a victim's consent to exploitation.

Use of 'means' by the suspected trafficker

The 'means' set out in the Trafficking in Persons Protocol are indicators of trafficking. Although the use of 'means' is not a required element of the offence of trafficking under the Protocol where victims are children, their use may nonetheless be indicative of trafficking or related exploitation. Means may be used at any stage of the trafficking process from recruiting, transporting, transferring, harboring or receiving a person, through to controlling him or her in the exploitation phase, and may be used to subject the victim to any type of exploitation. Although the use of some 'means' is relatively easy to identify (for example, use of force), sometimes 'means' are subtle and difficult to determine (for example, abuse of power or a position of vulnerability).

The following non-exhaustive list provides potential indications of trafficking in order to assist in establishing this element of the trafficking offence:

Threats

- ▶ The person (or his or her family, friends or community) is threatened
- ▶ The person (or his or her family, friends or community) is threatened with force
- ▶ The person is threatened with deteriorating living or working conditions
- ▶ The person is threatened with being turned over to authorities
- ▶ The person is threatened with force

Use of force

- ▶ The person displays signs of physical harm
- ▶ The person shows signs of mental and psychological harm
- ▶ The person shows signs of sexual assault and/or rape

Coercion

- ▶ The person has familial or economic problems
- ▶ The person has a history of crime or is otherwise known to authorities
- ▶ The person has irregular migration status and/or is undocumented
- ▶ The person's documents, money or other possessions have been confiscated
- ▶ The person has entered into an unfair debt arrangement
- ▶ The person is isolated, confined, and/or under surveillance or supervision
- ▶ The person's cultural or religious beliefs have been manipulated

Abduction

Fraud/Deception (false, inaccurate, incomplete or misleading information) relating to:

- ▶ The person's migration process or prospects (including destination)
- ▶ The person's travel and recruitment conditions
- ▶ The person's employment conditions including: type, pay, wages, income, earnings
- ▶ The person's access to educational opportunities
- ▶ The person's housing and location or living conditions
- ▶ The legality of the person's documents, migration status, work or contract
- ▶ The laws, attitude or conduct of authorities in relation to the person
- ▶ The person's prospects of family reunification, marriage or adoption

Abuse of power or of a position of vulnerability,³⁷ through the abuse of:

- ▶ The person's economic, psychological or emotional dependency on, or relationship with the exploiter/ employer/family member
- ▶ The person's romantic or emotional attachment with the exploiter/employer/ family member/other
- ▶ The person's migration documentation and/or status
- ▶ The person's social, cultural or linguistic isolation
- ▶ The person's unemployment or economic destitution
- ▶ The person's mental or physical disability
- ▶ The person's age (young or old), sex, gender, sexual orientation, nationality, ethnic or social origin, and disability
- ▶ The person's cultural or religious beliefs, rituals or practices
- ▶ The person's drug or alcohol dependency or addiction

Giving or receiving of payments or benefits to achieve the consent of a person in having control over another person:

- ▶ The person is placed in a situation through payment of fees, dowry or giving or receiving of gifts to third persons.

³⁷ See *Abuse of a Position of Vulnerability and other "means" within the definition of trafficking in persons*, UNODC, 2012 and *Guidance Note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UNODC, 2012.

The way the presumed victim travels to, enters into, or remains in a foreign State

In situations where a person is suspected to be a victim of transnational trafficking, the way in which he or she travels to, enters into, or remains in a foreign State may offer insight into his or her situation as a presumed victim of trafficking:

- ▶ The person's travel or identity documents are carried/presented by a third party
- ▶ The recruitment and/or travel agencies are unregistered and/or unregulated and/or charge high fees to the worker
- ▶ The entry visa is not applicable and/or the purpose of travel does not correspond with other information (for example, inadequate money for duration of stay, physical condition of traveler, or the declared profession)
- ▶ The person's luggage does not correspond with the statement of travelers (for example, quality and type of luggage, small bag for a proposed long stay or large bag for proposed short stay)
- ▶ The person is travelling in a group of others he or she does not appear to know
- ▶ The person has a false identity, work and/or travel documents and/or information provided by travelers is not credible
- ▶ The person is confused about his or her travel route, destination or purpose of travel
- ▶ The person is in a situation of irregular migration/residence status (including due to the confiscation of identity papers or dismissal from employment)

Physical condition of the presumed victim

Many victims of trafficking suffer severe mental and physical harm in the course of being trafficked. The physical state of a person when encountered can offer insight into whether he or she may be a victim of trafficking. However, it is important to note that many victims of trafficking do not identify themselves as victims and may appear content with their situation.³⁸ A person's insistence on his or her satisfaction with a situation may itself serve to prove how effectively the trafficker has manipulated him or her.

Psychological state and behavioral signs:

- ▶ The person appears anxious, depressed, submissive, fearful, tense, nervous, paranoid
- ▶ The person refuses to make eye contact
- ▶ The person is reluctant to talk about or discuss injuries

Physical signs of mistreatment and/or neglect:

- ▶ The person shows signs of physical violence
- ▶ The person shows signs of drug or alcohol addiction/dependency/use
- ▶ The person shows signs of malnourishment, or other physical conditions owing to deprivation of food, water, sleep, medical care or other life necessities
- ▶ The person shows signs of a lack of hygiene due to lack of access to washing and/or sanitary facilities

³⁸ See section 2.2.

Conditions of the place in which the presumed victim is found to be living and/or working

Indicators pertaining to living and/or working conditions relate to the exploitation of victims of trafficking. Presumed victims may be found in a range of industries and contexts, including the sex industry as well as domestic work, childcare, health services, care of the elderly, sports, entertainment, hospitality, construction, forestry, fishing, mining, agriculture, and textiles industries. The indicators below are applicable to all contexts in which a presumed victim of trafficking may be found to be living and/or working.

Pay and contracts:

- ▶ The person is prohibited from possessing and/or transferring earnings and savings
- ▶ The person receives little or no pay for his or her work or pay is delayed
- ▶ The person is underpaid relative to wages promised or national minimum wages
- ▶ Excessive deductions are made from the person's salary, including to pay debts to employers/recruitment agents
- ▶ The person is denied benefits and social protections to which they are legally entitled
- ▶ The person did not sign a contract or the terms of contract are not respected
- ▶ The person was made to sign a new contract upon arriving in the State and/or commencing employment
- ▶ The employer is unable to show evidence of payment of wages to employees
- ▶ The person was dismissed without cause, notice and/or benefits

Workplace health and safety:

- ▶ The person is not provided with appropriate safety and other protective gear and equipment, or taught to use gear and equipment
- ▶ The person is denied access to medical care
- ▶ The person works excessively long/unusual hours
- ▶ The person has little or no leisure time
- ▶ The person is subjected to punishments/fines for failure to meet quotas

Restrictions on movement and substandard facilities:

- ▶ The person shows signs of physical restraint or confinement to place of work or other location (e.g. blocked/barred windows, doors locked from outside, barbed wire, security cameras)
- ▶ The person sleeps where he or she works
- ▶ The person is denied access to means of communication
- ▶ The person does not have possession of his or her travel/identity documents, and/or documents were confiscated by their employer or another³⁹

³⁹ For more information and sources of indicators, please see Matrix of Resources.

Section 4:

Summary of tips for identifying victims of trafficking

- ✓ **Introduce a presumption in favour of treating presumed victims of trafficking as victims:** State policies for victim identification should allow authorities that suspect that a person is a victim of trafficking to act upon that presumption by treating the person as if he or she is a victim for the purposes of providing initial assistance and protection.
- ✓ **Raise awareness of crimes related to human trafficking:** Persons who are not considered to be victims of trafficking may be victims of other crimes and in need of assistance and protection measures. Practitioners who are responsible for identifying victims of trafficking should be made aware of related crime types so as to be equipped to respond accordingly.
- ✓ **Identify presumed victims of trafficking among vulnerable groups:** Prior to the exploitation phase, victims of trafficking are extremely difficult to identify. States should ensure that their policies include prevention provisions that support authorities to identify presumed victims among persons who are vulnerable to trafficking, including smuggled migrants.
- ✓ **Identifying slavery:** Slavery is marked by the relationship that exists between the perpetrator and his or her victim, rather than by the conditions of the situation as such. Authorities should understand that a person in a situation of slavery could conceivably live in comfort, but have no power to make fundamental personal decisions.
- ✓ **Identifying debt bondage:** Debt bondage is a common experience of many victims of trafficking. A situation of debt bondage may be identifiable by the existence of a debt that is indeterminable and cannot be discharged by any amount of work or service. Many jurisdictions understand debt bondage more broadly, as situations where labour or services are provided to repay a debt in conditions that are exploitative.
- ✓ **Identifying forced marriage:** Since the Supplementary Convention on slavery entered into force, which only identifies the forced marriage of women, it has been widely acknowledged that in practice, boys and men can also be forced into marriage. To combat forced marriage in all its forms, it is useful to replicate the practice of States that ensure legislation prohibiting forced marriage applies equally regardless of the sex of the parties concerned.
- ✓ **Identifying the sale of children for exploitation:** As the sale of children or babies does not require exploitation to take place after the sale, States should consider extending this concept to include practices such as sale for adoption and commercial surrogacy arrangements.

- ✓ **Put in place specific indicators for different forms of exploitation:** States should consider providing first responders with training on indicators of trafficking that are sufficiently detailed and specific to allow authorities to recognize various forms of exploitation. During the provision of assistance and protection, further evidence of the other elements of the definition may become apparent. Section 3.3 offers a basis for developing specific and detailed indicators.
- ✓ **Encourage victims to come forward by addressing their concerns about detention and deportation:** To address fears victims may have about being detained, measures should be put in place to ensure that victims are not criminalized for offences they committed as a result of being trafficked, including immigration offences. To address victims' fears of deportation, visa pathways should be put in place to allow victims of trafficking to remain in the destination country to receive support and assistance.
- ✓ **Encourage victims to come forward by protecting them and their families:** States should consider putting in place measures to ensure effective protection of victims, witnesses and their families. Where persons in need of protection are in other States, cooperation should be sought with criminal justice practitioners in those States or if appropriate, visa and immigration pathways should be made available to offer protection to persons at risk of harm.
- ✓ **Encourage victims to come forward by protecting them from stigmatization:** States should ensure that assistance and protection programs address victims' fears of shame and stigma by upholding confidentiality of information of victims, and work with NGOs, communities and victims themselves to understand and address concerns in developing protection policies.
- ✓ **Raise public awareness about human trafficking to improve victim identification:** States should initiate and support campaigns to raise public awareness of human trafficking situations they may encounter. It is best for such campaigns to explain to the target audience a) what human trafficking is and what it may look like and b) specific actions that individuals can take, and provision of details for referral to appropriate authorities, including information on hotlines.
- ✓ **Strengthen the capacity of different stakeholders involved in identification:** Introduce clear guidelines and operating procedures to clarify roles and responsibilities of a broad pool of State authorities and other relevant actors in effective identification processes.
- ✓ **Provide identification training to persons who may come into contact with victims of trafficking:** It is important to prioritise the training of frontline officials in the identification of victims of trafficking. Consideration should also be given to providing training to teachers, journalists, medical professionals, private sector actors and others in the community who may come into contact with victims of trafficking, and equipping them with indicators to play a role in victim identification.

- ✓ **Strengthen identification of child victims of trafficking:** Implement procedures for rapid identification of presumed child victims of trafficking and immediate notification of specialized child service providers, through identification approaches that afford both:
 - The presumption of minority, and
 - The presumption of victim status.
- ✓ **Support use of victim-sensitive interview techniques:** Ensure persons conducting interviews are equipped with appropriate skills to address language, gender, age and cultural considerations. As far as possible, consult with individual interviewees as to their preferences, and accommodate those preferences to the extent appropriate.
- ✓ **Ensure identification procedures allow for appropriate referral of asylum seekers:** States should not contact the diplomatic representation of the country of origin for identification where a person has applied for asylum or there is reason to believe that a person is a refugee.
- ✓ **Consider weighing indicators:** States should consider weighing indicators to help those responsible for identification of victims to prioritize certain kinds of information. The approach taken by the ILO and the European Commission qualifies each indicator as being strong, medium or weak, with the provision that a single indicator may be strong for children while being medium for adults, or strong for sexual exploitation and weak for labour exploitation.
- ✓ **Tailor indicators to context:** Lists of indicators are most effective when they are adapted to the specific situations authorities encounter in the course of their work. States should ideally update indicator lists on a regular basis, to ensure their on-going relevance to changing trafficking trends.





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