

Victim Compensation: The Role of the Prosecutor

A WARNATH GROUP PRACTICE GUIDE



Victim Compensation: The Role of the Prosecutor

PRACTICE GUIDE by The Warnath Group

“Leaders in countries around the world have committed, in the development and adoption of international law and policy on human trafficking, to create opportunities for survivors of trafficking to have a path to seek compensation. National laws have not fully reflected this expressed commitment and the aspirations of the international community. Prosecutors and their criminal justice colleagues have an important role to play in pro-actively considering and potentially facilitating each trafficking victim’s rights to attain access to compensation for damages under the applicable national law. From the perspective of the criminal justice system’s interest in obtaining justice, this can be a critical component of survivors’ restoration and help enable victims’ greater participation in seeking that justice.”

-Stephen Warnath, CEO & President, Warnath Group

AT A GLANCE

Intended Audience:

- Investigators and Prosecutors working on human trafficking cases

Takeaway: From the prosecutor’s perspective, obtaining the full cooperation of the victim is often the most challenging aspect of a human trafficking prosecution. Trafficking victims are frequently in need of money to support themselves and their families. The possibility that a victim of trafficking may be entitled to receive compensation from the court or State can be a crucial part of an overall strategy to secure victim cooperation in the criminal justice process. As such, it is incumbent upon prosecutors to inform

victims of their right to seek compensation, explain the filing process to them, and, where appropriate and consistent with national law and procedures, assist the victim in applying for compensation.

In This Practice Guide:

- Explanation of the right to compensation under international law
- Consideration of practical issues and barriers in seeking compensation
- Examples of national legal responses to ensure trafficking victims receive compensation
- Explanation of the role of the prosecutor in seeking compensation and strategic considerations



The Right to Compensation Under International Law

United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons [UN Protocol]

International law recognizes that victims of human rights violations are entitled to basic protection and support, including access to compensation for damages incurred, as a matter of fundamental justice. Trafficked persons are, by definition, victims of human rights violations.¹ As such, they have a right to seek compensation for harm caused during the commission of the trafficking crime.

The United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UN Protocol) makes this right explicit.² Section 6 of the UN Protocol provides that: “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking...the possibility of obtaining

¹ Office of the United Nations High Commissioner for Human Rights (2010) *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (“OHCHR Principles”), Principle 16 and Principle 17, pp. 219-224. Available at: https://www.ohchr.org/documents/publications/commentary_human_trafficking_en.pdf

² United Nations (2000) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (“UN Protocol”). Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en.

compensation for damage suffered.” This provision is based on “the international legal right of trafficked persons, as victims of a human rights violation, to such remedies.”³

It is important to stress that Section 6 of the UN Protocol uses the verb “shall” to indicate that access to compensation is not merely suggestive or recommended but rather a mandatory obligation that every State Party must implement.

It is equally important to recognize that the UN Protocol does not require that compensation be awarded. Instead, the UN Protocol mandates that countries “offer victims...the possibility of obtaining compensation for damages suffered.” In other words, States must have a process in place by which compensation can be claimed and paid if warranted under criteria established under domestic law.

From the prosecutor’s perspective, obtaining the full cooperation of the victim is often the most challenging aspect of a human trafficking prosecution. Trafficking victims are frequently in need of money to support themselves and, often, their families. In countries that have not included in their law a meaningful process readily accessible to victims for seeking compensation, the country fosters a situation that makes victims vulnerable to payment/bribery or other inducements from the traffickers or their associates, thereby offering traffickers a clear path to attempt to undermine the integrity of the criminal justice process (while heightening the risks of the victim being re-trafficked). The possibility that a victim of trafficking may be entitled to receive compensation from the court or State can be a crucial part of an overall strategy to secure victim cooperation in the criminal justice process. As such, it is incumbent upon prosecutors to inform victims of their right to seek compensation, explain the filing process to them, and, where appropriate and consistent with national law and procedures, assist the victim in applying for compensation.



Other International Law and Policy Supports a Right to Compensation

Providing an avenue for victims of trafficking to obtain compensation is widely recognized under international law as a crucial component to ensure that “victims are

³ OHCHR Principles, Principle 17.4, p. 228.

treated in a manner that respects their human rights and that they are provided with access to justice, to legal assistance, and to effective remedies and other services as applicable.”⁴ Many States have ratified the UN Protocol since its implementation in Palermo in 2000 and incorporated its provisions, including the right to seek compensation, into their national laws. In addition, regional anti-trafficking conventions and initiatives in various parts of the world have adopted, and in some cases expanded upon, the language in the UN Protocol, underscoring the importance of the right to compensation as a necessary component to an effective law enforcement response to human trafficking.

For example, the ASEAN Convention on Trafficking in Persons (ACTIP) incorporates the UN Protocol provision on victim compensation by requiring party States to “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”⁵ Moreover, the ACTIP goes beyond the UN Protocol by recommending that party States “make provisions for appropriate funds to be allocated, including...establishing national trust funds for the care and support of victim of trafficking in persons,”⁶ and encouraging party States to use confiscated proceeds from crime to provide “compensation and assistance to victims of trafficking in persons...”⁷

To similar effect is the *OSCE Action Plan to Combat Trafficking in Human Beings*, which encourages Member States to “establish a State compensation fund or other relevant mechanisms in accordance with national law” and adopt “legal measures to allow confiscated assets to be used to supplement government funding for programs that address the needs of victims of trafficking in human beings and to compensate the victims in accordance with the gravity of the crime committed against them.”⁸

⁴ Organization for Security and Co-operation in Europe (2011) *Ministerial Declaration on Combatting All Forms of Human Trafficking*, Ministerial Council DOC/1/11/Corr.1. Available at: <https://www.osce.org/files/f/documents/4/a/86373.pdf>

⁵ Association of Southeast Asian Nations (2015) *Convention Against Trafficking in Persons, Especially Women and Children* (“ACTIP”), Ch. IV, Art. 14, Sec 18. Available at: <https://asean.org/asean2020/wp-content/uploads/2021/01/ACTIP.pdf>

⁶ ACTIP, Ch IV, Art. 14, Sec 19.

⁷ ACTIP, Ch VI, Art. 22.

⁸ Organization for Security and Co-operation in Europe (2003) *Permanent Council Decision No. 557 of 24 July 2003 on the adoption of the OSCE Action Plan to Combat Trafficking in Human Beings* (“OSCE Action Plan”), Title V, Para. 6.2. Available at: <https://www.osce.org/odihr/23866>

The *European Trafficking Convention* (ETC) also recognizes the right of trafficking victims to seek compensation.⁹ It goes into somewhat greater detail on how that right is to be implemented. The ETC recommends that victims be notified of their right to seek compensation, that they are provided with legal assistance to assist in securing that right, and that compensation be paid from assets of the trafficker or from a special fund established to provide compensation to the victim.¹⁰ All of these steps reflect an intent to make trafficking victims' right to seek compensation meaningful in practice and ensure that it is more likely that trafficking victims can obtain the practical benefit of their right to seek compensation.

Some regional instruments obligate their member countries to adopt compensation frameworks, mechanisms, and opportunities. Nevertheless, in some cases, countries have been slow to conform their laws to their obligations. For example, few if any of the ASEAN States party to ACTIP have established viable national trust funds as required by that Treaty. These deficiencies in national laws are significant departures from commitments made by country leaders on the international level to create opportunities for those who have survived trafficking to be eligible to seek compensation.

Other regional instruments are not legally binding on member or participating States. They are important to underscore commitment, provide a framework for action, and guide Member States on good policy and practices, although they may not legally obligate or result in specific legislative action. For instance, despite the OSCE Action Plan that Member States create State funds for victim compensation, "still, not all OSCE participating States have established State compensation funds for victims of trafficking."¹¹

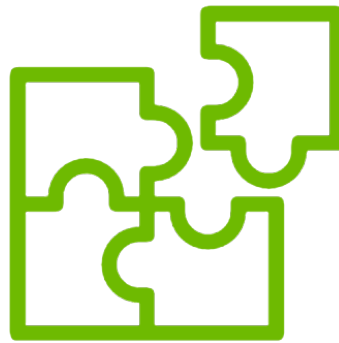
Despite an uneven record thus far by countries in adopting compensation opportunities in national law, the international law and policy is clear. Individual States should adopt practices, procedures, and laws to implement their respective obligations and/or the well-recognized principle under international law to provide victims of trafficking with

⁹ Council of Europe (2005) *Convention on Action against Trafficking in Human Beings* ("ETC"). Available at <https://rm.coe.int/168008371d>

¹⁰ ETC, Article 15.

¹¹ Organization for Security and Co-operation in Europe (2015) *Commentary to the OSCE Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557; Organization for Security and Co-operation in Europe (2005) *Addendum Addressing Special Needs of Child Victims of Trafficking for Protection and Assistance*, PC.DEC/557/Rev.1; and Organization for Security and Co-operation in Europe (2013) *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later*, PC.DEC/1107/Corr.11. Available at: <https://www.osce.org/secretariat/210391>

reasonable access to compensation commensurate with damage suffered. This is necessary to allow those who have survived human trafficking to have a realistic opportunity of receiving compensation, as required or intended by international law and policy.



Consideration of the Practical Issues for Seeking Compensation

International law makes clear that States must provide victims with an avenue by which they can apply for compensation, but few specifics on how this right is to be implemented in practice are given. These details are generally left to domestic law, putting the onus on States to enact laws, practices, and procedures governing the application and adjudication of victim compensation claims in human trafficking cases. Some of the issues that need to be addressed under national law include the following:



How are Damages to be Accessed?

International law does not definitively describe precisely how access to compensation is to be implemented. For example, can the State charge a filing fee that must be paid before an application will be considered, thereby potentially limiting access by those who were trafficked to the compensation process? What factors can the State consider in reviewing an application for compensation? Can the trial judge in a trafficking prosecution order compensation after conviction, or must the victim file a separate suit

in civil court or before an agency to seek recovery under existing civil laws and procedures? Is a conviction of the trafficker in criminal court a necessary precondition to seeking or receiving compensation, or can that determination be made irrespective of whether there is a trial and conviction? Those and other details on how to make compensation and restitution a reality for victims are largely left to domestic legal systems to work out. These questions and questions like these – many involving the process and the barriers that must be faced – often make the difference between whether a country has created a meaningful opportunity for victims of trafficking to seek compensation or not.

While implementation of the right to compensation is a matter for each country's domestic law, International Law contemplates that local process should conform to basic fundamental fairness so that the right to access relief is real and not simply an illusory promise. Access to compensation must be "effective and appropriate."¹² For example, filing fees should not be so high as to make application prohibitive for victims; criteria applied to evaluate the application should be public and reasonable; and the adjudication process, timely and transparent.



How Should the Compensation Fund be Directed?

Should such a fund be dedicated solely to compensating victims of trafficking, or does fairness require that any victim of certain other kinds of crimes be eligible as well? If the latter, which types of crimes would qualify for the fund?

There is no consensus in international law on this issue. The problem of defining the fund's reach must be resolved by the laws and regulations in domestic legal systems.



What is the Source of the Compensation Fund?

Where should the money come from to pay damages to the victim? Should the source of funds come from assets of the trafficker; from fines imposed by courts in trafficking and/or criminal cases; or from general revenue from taxes? Would establishing a victim

¹² OHCHR Principles, Principle 17.4.

fund require increasing the tax burden on the general population, or can sufficient revenue be raised by levying a more directed tax on specific industries or activities?

These are contentious policy issues that can only be resolved at the national level.



How is the Key Term, “Damage,” to be Understood?

The UN Protocol and regional instruments use the term “damage” as a measure of how the victim should be compensated, but they do not provide a uniform definition of what that term means.

Does the term “damage” incorporate “restitution” or are they separate and distinct concepts? Is “damage” limited to reimbursement for the cost of medical treatment for physical injuries suffered? Does it include payment for lost wages? What about emotional damage? Does “damage” contemplate compensate for loss of reputation or pain and suffering? And if so, how should such reputational and emotional losses be calculated?

Defining the scope of “damage” can present real challenges for prosecutors and judges, especially where national law is ambiguous or silent in this area.



Examples of National Legal Responses

Despite the need for more countries to enact compensation processes, there are, nevertheless, a number of countries that have recognized the need to flesh out the right to compensation established under international law in order to make that right a practical reality. Some States include a compensation provision in their domestic trafficking law. For example, the trafficking in persons (TIP) laws in Lao and Vietnam state that victims of trafficking are entitled to compensation. In Vietnam, compensation includes “material” or “mental” damage resulting from trafficking, while in Brunei, fines collected under their anti-trafficking laws go into a fund to provide services to the victim.

Under the Thai anti-trafficking law, the right to compensation for victims of trafficking also is explicitly recognized. That law makes the prosecutor the key official in assuring that the right to seek compensation is vindicated. For example, the law tasks the prosecutor with the affirmative obligation to inform the trafficking victim of this right¹³ and to assist the victim by filing a claim for compensation on his or her behalf.¹⁴ This approach which requires the prosecutor to inform and assist the victim has the double advantage of simplifying the application process for the victim while protecting the prosecutor from accusations by the defense of undue victim influence, since the prosecutor is merely doing what the law requires.

¹³ Thailand Anti-Trafficking in Persons Act, Act No. B.E. 2551 (2008), Section 34.

¹⁴ Thailand Anti-Trafficking in Persons Act, Act No. B.E. 2551 (2008), Section 35.

The national trafficking law of Jamaica gives the criminal court, upon conviction of the trafficker, authority to order the trafficker to pay restitution to the victim.¹⁵ Moreover, the Jamaican TIP law lists the types of damage or loss that the court may consider in determining the amount of restitution, including: lost income, medical and psychological treatment, emotional distress, pain and suffering, and a catch-all provisions, “any other loss...which the court considers applicable.”¹⁶ Finally, that law makes clear that funding to compensate the victim should come from assets of the trafficker seized as proceeds of the crime.¹⁷

In the Philippines, a victim’s civil action for damages can be incorporated into the criminal prosecution, thereby expediting resolution of the damages claim.¹⁸ Once a conviction is secured, Section 14 of the TIP Act authorizes the court to confiscate all proceeds derived from the commission of the crime. That section also specifically provides that damages awarded to the victim are to be taken from the personal property of the offender. But if those proceeds are insufficient to satisfy the amount awarded, the “balance shall be taken from the confiscated and forfeited properties.”¹⁹

Trafficking victims in the Philippines may also benefit from a State Victim Compensation Program. Under that program, victims of violent crime or unjust imprisonment or detention are entitled to modest amounts of compensation.²⁰ While this Program is not specifically designed for victims in TIP cases, they may be eligible to receive benefits under that program. Application for benefits is a relatively complicated process, however, involving filling out a claim form within six months from the date that damage was suffered. Attached to the claim should be supporting documents, such as relevant police reports, resolution of the investigating prosecutor, copies of medical expenses, and any sworn statements taken in the case. The application form and supporting documents are filed with the Board of Claims under the Department of Justice created by the Act.

¹⁵ Jamaica Trafficking in Persons (Prevention, Suppression and Punishment) Act (2007), Section 6.1.

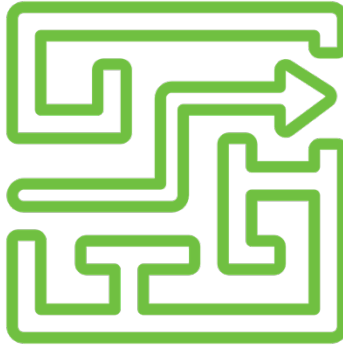
¹⁶ Jamaica Trafficking in Persons (Prevention, Suppression and Punishment) Act (2007), Section 6.2 a-g.

¹⁷ Jamaica Trafficking in Persons (Prevention, Suppression and Punishment) Act (2007), Section 6.3.

¹⁸ Philippines Rules of Criminal Procedure (2000), Rule 111.

¹⁹ Philippines Republic Act 9208, Section 14.

²⁰ Philippines Republic Act 7309.



Practical Barriers to Vindicating the Right to Compensation

While legal limitations and gaps in the law can make it difficult for prosecutors and judges to implement the right to compensation in some cases, practical barriers often present an equally serious impediment to victims seeking to receive the compensation due as a matter of right.



Knowledge

Victims may not understand that they have a right to seek compensation. Victims cannot take advantage of a right they do not know exists. It is incumbent on law enforcement and prosecutors to make sure that victims are made aware of their right to seek compensation and given information on how to do so.



Conviction as a Precondition

In some countries, a criminal conviction is a necessary precondition to receiving compensation from the trafficker. In other legal systems, a civil suit for damages or an application to a State victim fund can be pursued in the absence or instead of a criminal trial or conviction. But even in those States, a criminal conviction makes it much easier to prove damages and prevail in civil court or before a government agency. By

conditioning the possibility of compensation upon the completion of the criminal process, vindication of the right to compensation is closely linked, indeed dependent, upon the ability of law enforcement and prosecutors to conduct a thorough investigation resulting in a successful prosecution.

If the trafficker is not identified, arrested, charged, prosecuted, and convicted, the victim's ability to secure compensation for damages suffered may prove difficult, if not impossible in many States.



No Assets

Even where a trafficker has been successfully prosecuted and ordered to pay damages to the victim, the victim is unlikely to receive significant compensation if the convicted trafficker is a low-level operator with few or no assets with which to make payment.



Hidden Assets

Traffickers with significant assets who are charged and prosecuted will find ways to protect their assets well before those resources can be confiscated to pay compensation to the victim. They may take money out of bank accounts, convey ownership of real or personal property to friends or family, or transfer luxury items to shell companies set up for that purpose. By engaging in what is, in effect, money laundering, the traffickers shield their wealth and avoid responsibility to compensate the victim for the damage they caused.

Law enforcement should take every precaution to prevent the traffickers from avoiding their financial responsibilities by conducting parallel financial investigations to identify and secure resources used in, or derived from, illegal activities to ensure that sufficient funds are available from the trafficker to fully compensate the victim.



National Compensation Fund Does Not Exist or is Inadequate

In some countries, compensation may be made from a national fund set up specifically to pay damages to victims of certain types of crime, including human trafficking. Such funds act as a safety net for victims entitled to compensation where traffickers are not brought to justice or, if convicted, have managed to disburse their wealth and are unable or unwilling to pay damages.

In many States, however, no national fund has been established. In other States where the law has created such a resource for victims, funding is wholly insufficient to make that program viable. Even in States with an operational victim fund, the amounts that can be paid are too often severely limited and often fail to fully reimburse the victim for damages.

Insufficient or non-existent safety nets to ensure that compensation for victim is available underscores the need for thorough investigations, successful prosecutions, and early identification and seizure of assets.



Enforcement Can Be Lax

Finally, even in cases where a wealthy trafficker has been convicted and his or her assets confiscated, actual payment to the victim may be slow or fail to be made at all, because of bureaucratic inertia, incompetence or corruption.

The prosecutor should monitor the payment process to make sure that the victim's right to compensation is not frustrated by undue delay or mistake.



Prosecutor's Role

Given the lack of specificity defining the right to compensation in the UN Protocol, the reliance on domestic law to fill in the gaps, and the practical barriers victims face in securing payment, criminal justice actors – and prosecutors in particular - have a crucial role to play in helping victims vindicate this important right.

Because the application and evaluation process differ from country to country, it is incumbent on the prosecutor to be familiar with the specifics of applicable national laws and practices governing filing, procedural and evidentiary requirements for seeking damages to properly advise and help a victim be in the best position possible to be “compensated” for the severe exploitation traffickers have inflicted upon them.

The prosecutor's critical role includes the following:



Give Notice and Assistance

The prosecutor must make sure that victims are aware that they can seek compensation and that they understand how to make proper and timely application under the requirements of national law. This means that the prosecutor must be

thoroughly familiar with the process by which a victim of trafficking may apply for compensation under the regulations and procedures of domestic law.

In some situations, prosecutors may go beyond mere notification to be more proactive in assisting the victim with the application process. This may involve helping the victim file the application and access sources to defray any fees required.

In doing so, however, the prosecutor must keep in mind the possibility that, at trial, the trafficker will use the victim's application for compensation as a basis to attack the victim's motives for testifying, arguing that the victim's interest is money not truth and that the prosecutor has tried to influence the victim by helping her get that money.

The prosecutor must carefully consider whether actively assisting the victim to vindicate her or his legal right to restitution would have a negative impact on her or his credibility at trial. Referring the victim to a government agency, NGO or private counsel who can work with her to secure compensation, may be the safer option.



Prove Damages

In jurisdictions where damages can be determined and compensation ordered by the court in the criminal trafficking case, the prosecutor should be prepared to gather and present evidence to the court of damages suffered by the victim at the hands of the trafficker. This means carefully interviewing the victim to determine the nature and extent of damage and loss. This must be done without coaching.

The prosecutor must also ensure that the investigation secures evidence supporting the victim's account. This corroborative evidence may include eyewitness accounts, documents uncovered during a search of the trafficker's premises, photographs of injuries, medical reports, and statements from expert witnesses establishing the type and extent of harm and amount of loss to the victim.



Pro-Actively Find and Preserve Assets

A parallel financial investigation should be instituted to ensure that assets of the trafficker(s) are identified, preserved, and ultimately confiscated so that they can be used to compensate the victim once a conviction has been obtained.

This financial investigation should be undertaken as soon as possible and conducted in tandem with the trafficking investigation to minimize the possibility that the trafficker(s) will dispose or disguise assets before they can be confiscated.

The ultimate goal of the financial investigation is to identify the ownership and location of assets linked to criminal activity. Once this is done, those assets, including bank accounts containing money derived from the illegal trafficking enterprise; personal property, such as vehicles used to transport trafficking victims; and real property, such as houses and businesses where victims were harbored or exploited, must be seized or frozen pending the outcome of the investigation and trial. This is necessary to remove those assets from the trafficker's control and thus ensure that they are kept intact until the case is resolved.

If those charged as the traffickers in the case have few assets, prosecutors should consider the likelihood that the case does not include charges against key perpetrators – including those who may have profited significantly from the exploitation of the victim(s). In such cases, a prosecutor should examine her or his theory and scope of the case and whether it encompasses the full range of core criminal participants and seeks criminal accountability (and assets) of those perpetrators. See the subsection “Prosecute Big Fish” below.



Oversee Financial Investigation

In many States, this type of specialized inquiry is spearheaded by a financial crime section or FIU (Financial Crime Unit) with expertise and specific powers to carry out forensic financial inquiries. The prosecutor, while not normally having a leading role in this investigation, should not be content to stand idly by. The financial evidence

gathered is relevant to the victim's claim for damages and is also crucial to corroborate the victim's account and establish the elements of the crime. Therefore, the prosecutor should closely monitor the progress of this investigation and, where appropriate, help direct its focus to ensure that evidence relevant to the trafficking charges and the victim's claim for compensation are secured.

In addition to advising and focusing the investigation, the prosecutor also has an important legal role in ensuring that the evidence gathered is properly secured pending the investigation and trial completion. A court order to seize and freeze assets during the investigation is required in some systems. Prosecutors must be prepared to file the proper motions and make persuasive arguments in court to secure the orders necessary to seize and/or freeze the trafficker's assets.

Confiscation of the trafficker's property is the final step in securing assets to compensate the victim. Confiscation usually requires a court order which can be obtained once a conviction is obtained or, in the absence of a conviction, proof of illegal activity linked to property of the traffickers is offered. The prosecutor has an important role in securing the confiscation order by drafting and filing the appropriate motions and making persuasive arguments in court.



Prosecute Big Fish

The victim's right to compensation may prove illusory if the trafficker has no assets for the court to confiscate. Too often, investigators and prosecutors go after easy targets who have few if any assets and fail to charge those up the chain of command who profit most from the illegal operations.

Investigating and prosecuting relatively poor "mom and pop" operations or exclusively lower-level perpetrators may be quicker and easier to pursue than taking on the more complex and time-consuming task of investigating and prosecuting syndicates with money and influence. But, restricting efforts to relatively weak and vulnerable targets without digging deeper to uncover the possible involvement of more substantial players is unlikely to result in full justice to the victim. To vindicate the victim's right to compensation, it is important for investigators and prosecutors to identify and target the

“big fish” managing and profiting from the criminal enterprise and not just focus on the “low hanging fruit,” the minor associate with few resources.



Strategic Considerations

Prosecutors should consider the issue of victim compensation in terms of vindicating an important right mandated by international law and the role it can play in investigating and prosecuting the trafficking case.



Encourage Victim Cooperation

A frequent problem prosecutors face is the reluctance or inability of victims to maintain cooperation throughout the criminal justice process. Victims may initially provide statements to investigators describing a trafficking crime but later fail to appear for trial, withdraw their complaint before trial, or change their testimony at trial. There can be many reasons for this change of attitudes, such as lengthy court delays, loss of interest, fear of retaliation, lack of trust, or shame and embarrassment. A possible explanation in some cases can be that the trafficker or associates have paid the victim to disappear or withdraw the complaint. Given the financial vulnerability of many victims of trafficking and their families, an offer of even a small bribe or other inducement not to cooperate can be a powerful temptation.

The prosecutor should be aware that certain victims of trafficking may be particularly susceptible to bribery attempts by the trafficker, especially in jurisdictions where lengthy court delays give traffickers ample opportunity to prey upon a victim's insecurities. In view of this danger, the obligation to notify the victim of his or her right to seek compensation is not only obligatory to vindicate a fundamental right guaranteed by national and international law but can also be a very useful way to encourage cooperation and strengthen a victim's resolve to resist temptation from the trafficker. Making the victim aware that she is entitled to seek legal reimbursement and compensation is one way the prosecutor can minimize the possibility of victim tampering by the trafficker.

The prosecutor may consider reinforcing this positive message by assisting the victim in applying for compensation. As described above, this assistance may take the form of helping the victim draft the necessary filings; obtaining details from the victim on her loss and damage in preparation for presenting this evidence in court at the hearing on damages during or after the trial in those jurisdictions where that is allowed, or at least referring the victim to an independent agency or counsel with expertise to assist the victim in this matter.

However, the prosecutor must be careful not to make any promises of payment to the victim, keeping in mind that the law does not guarantee success, only that an application may be made and reviewed. Nor should the prosecutor offer to pay any filing fees on behalf of the victim, as this may be seen as an attempt to influence the victim's testimony unduly.

The prosecutor can mention to the victim that the chance of a successful application is enhanced if the trafficker is convicted. Therefore, the victim's cooperation is essential not only to secure a conviction but also to support the application for relief.



Risk of Undermining Victim's Credibility

In talking to the victim about the possibility of compensation, the prosecutor must always keep in mind the risks involved. The victim's interest in obtaining compensation

may be portrayed at trial by the trafficker as her primary motive for testifying. The prosecutor must be very careful not to tell the victim or even give her the impression that compensation in any amount is guaranteed or that obtaining it depends on testifying to anything other than the truth.

The prosecutor must keep in mind that, in all likelihood, the victim will be cross-examined by the lawyer for the trafficker at trial on efforts to obtain compensation and, more specifically, on her discussions with the investigators and prosecutors on this subject. The prosecutor, therefore, must be absolutely clear with the victim that in seeking compensation, she is doing nothing more than exercising her rights under the law and that her only obligation at trial is to tell the truth.



Limit Trafficker Access to Resources Protects the Victim

The potential for bribery to undermine the victim's commitment to the criminal justice process is ever-present in trafficking cases. One way to limit a trafficker's capacity to interfere with the victim is to deprive the trafficker of assets to carry out a bribery attempt. A parallel financial investigation can help to achieve this result.

As noted above, a goal of a parallel financial investigation is to prevent the disbursement of assets so that they are ultimately available to pay compensation to the victim. This is done by sequestering the trafficker's assets by seizing or freezing them during the investigation. But separating the trafficker from his or her assets early in the investigation has another benefit: it makes it more difficult for the trafficker to interfere with the investigation through bribery or intimidation. Depriving the trafficker of the financial tools he can use to undermine the criminal justice system, the prosecutor and investigator protect the integrity of the process, increase the likelihood of a successful prosecution, and, in so doing, strengthen the victim's application for compensation.



Other Advantages to a Parallel Financial Investigation

In addition to preserving assets for compensation and disrupting the trafficker's capacity to interfere with the investigation, undertaking a parallel financial investigation brings other benefits.

Facts uncovered by a financial investigation can be used as evidence to support the victim's account. For example, a financial investigation can establish a trafficker's extravagant lifestyle, suggesting that he or she was not running a massage parlor as claimed but a highly profitable brothel using unpaid workers, as the victim stated. Or this kind of investigation can establish links between various co-conspirators by following the money exchanges among them. As such, the financial investigation should be viewed as part of the overall trafficking investigation to support the victim's account and establish the elements of the trafficking crime.

In addition, the financial investigation can result in more charges implicating more highly placed defendants. Money laundering is one obvious charge that might result from a parallel financial investigation begun to support a trafficking prosecution. Other possible crimes might include fraud or theft. These added charges can give prosecutors increased leverage to secure cooperation from low-level associates against those higher up on the chain of command, increasing the possibility of bringing to justice leaders of the enterprise with assets that can be confiscated to pay restitution to the victim.



Conclusion & Key Takeaways

- ✓ Trafficking victims have a fundamental right guaranteed by international law to seek compensation for damages incurred while being trafficked.
- ✓ States have an obligation to provide a fair and equitable legal process by which trafficking victims may exercise that right.
- ✓ Details of how the right to access compensation is implemented is a matter for domestic law. Consult your national law for the specifics of what is involved in seeking compensation for victims of trafficking.
- ✓ Practical barriers often prevent victims from fully exercising this right, especially where the trafficker has few or no assets to draw upon to pay the victim or has managed to hide his or her wealth before confiscation can occur.
- ✓ Prosecutors have an important role in helping victims vindicate this right by
 - notifying and assisting the victim
 - preserving assets through a parallel financial investigation

- and taking efforts to target and successfully prosecute traffickers, especially owners and managers who profit most from the illegal enterprise

- ✓ Notifying the victim of the right to compensation and conducting parallel financial investigations can have significant beneficial side effects for the prosecution, including,
 - minimizing the possibility of victim tampering through bribery,
 - producing evidence of the elements of the crime of trafficking, and
 - establishing facts that corroborate the victim's account

End Notes

“For those who have suffered the severe exploitation of human trafficking – the coercion, violence, and loss of self-determination -- there is no adequate compensation. However, as recognized by international law and policy and many countries, a means to seek compensation offers a meaningful part of a fuller remedy for victims of trafficking. This Practice Guide considers the important topic of practical steps prosecutors can take to help victims of trafficking receive this compensation.

Albert Moskowitz, who authored this Practice Guide, led federal prosecutors in human trafficking cases in the United States as former Chief of the United States Department of Justice Criminal Section, Civil Rights Division. Significantly, he is an early proponent of the prosecutors’ role in contributing to the protection of victims’ interests. I would like to thank Albert for his work on this Practice Guide and as a Warnath Group specialist in our professional development trainings. I also want to express my appreciation to the Warnath Group team for contributions to the content and production of this Practice Guide.”

- *Stephen Warnath, CEO & President*

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