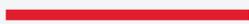




**ASEAN-Australia
Counter Trafficking**

DO NO HARM GUIDE FOR WORKING WITH TRAFFICKED PERSONS



**Inclusive ASEAN-ACT
Implementation**

May 2021



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How to use the guide?



This guide includes four sections which can be read together or separately. Each section provides an overview of the potential harms and a list of tips on how to do no harm. Specific advice is provided in the following areas:

- Victim identification
- Working with children
- Criminal justice response
- Working with marginalised groups

An annex provides six case studies as examples of how to practically assess and mitigate potential harm when working with a victim of trafficking in persons.

What is Do No Harm?



Do No Harm (DNH) is a principle borrowed from the medical Hippocratic Oath which has been applied to other fields such as international development. A DNH approach recognises that well-intended actions designed to help or assist may inadvertently cause harm and requires that practitioners identify and mitigate any potential harms. DNH has a lot in common with human rights based, gender responsiveness and social inclusion approaches. DNH promotes non-discrimination and the importance of social identity in understanding and assessing individual experiences of harm.

How does DNH relate to human trafficking?



Counter trafficking programs disproportionately work with victims and groups vulnerable to discrimination and exploitation due to their gender, religion, ethnicity, sexuality, migrant status or age. ¹ Potential harms may occur at each step of the process – wrongly identifying victims as criminals, not providing adequate information and interpretation during legal processes and returning a victim to their place of origin despite a risk of reprisal from traffickers. Another common cause of potential harm includes the design and delivery of inadequate psychosocial, community based, and economic/vocational programs which fail to consider a person’s privacy, social and cultural identity, autonomy and agency.²

From first responders including non-governmental organisation (NGO) practitioners and law enforcers, to prosecutors, judges and policy makers, every effort must be made to avoid causing harm when protecting and assisting victims of human trafficking. Some DNH principles relevant to working on human trafficking include:

1. Respect and protection of human rights
2. Confidentiality, right to privacy and anonymity
3. Full information and consent
4. Self-determination and participation
5. Non-discrimination
6. Gender sensitivity
7. Best interests of the child

DNH principle requires any individual, organisation coming into direct contact with victims of trafficking including the justice sector, government and non-government service providers, development donor and implementing partners, academia, advocates and researchers, and the media to assess the potential for harm and provide alternatives to mitigate risks.

¹ UNODC. Anti-Human Trafficking Manual for Criminal Justice Practitioners: Risk Assessment in Trafficking in Persons Investigation. (New York: 2009) https://www.unodc.org/documents/human-trafficking/TIP_module5_Ebook.pdf

² Rende Taylor, L. & Latonero, M. Updated Guide to Ethics and Human Rights in Anti-Human Trafficking: Ethical Standards for Working with Migrant Workers and Trafficked Persons in the Digital Age. (Bangkok, Issara Institute: 2018). https://44f2713d-a205-4701-bba3-8d419653b4b6.filesusr.com/ugd/5bf36e_1307f698e5ec46b6b2fc7f4391bff4b6.pdf

Victim identification: potential harms and tips to DNH

The ASEAN Regional Guidelines and Procedures state that the accurate and timely identification of victims is critical to their safety and well-being. It is also necessary to ensure that perpetrators of trafficking can be apprehended and punished for their crimes. It calls for mechanisms and procedures to be put in place to guide and facilitate victim identification - these should be standardised across the ASEAN region.

Potential harm: Failure to identify a victim of trafficking

This applies not just to persons who have been exploited overseas but also to those who are victims of domestic trafficking. Those who are not recognised by law enforcement officials as possibly having been trafficked, face the following risks: continued exploitation and abuse, detention, deportation, criminalisation, rights violation, no access to essential services and assistance, re-trafficking, and reprisal from traffickers.³ In many Southeast Asian countries, an overwhelming number of trafficked victims are identified as women or girls while men, boys, people with disabilities and lesbian, gay, bi-sexual trans-gender, queer and intersex (LGBTQI) people are rarely recognised.⁴



Tip #1:

Follow national guidelines or Standard Operating Procedures (SOPs) on victim identification and referral. Use a government or agency-endorsed set of indicators to help determine if a person is a victim of trafficking. If in doubt, consult a superior or a more experienced and knowledgeable staff member about the case.

Tip #2:

Take time to assess whether or not a person is a victim of trafficking. A victim of trafficking may not meet all the indicators of trafficking during the screening or identification process, especially if they do not feel safe or comfortable or are suffering from trauma. Children, people with disabilities and those with special needs may experience more difficulties in sharing their experiences and consequently identified.

³ Anti-Slavery International. Human Traffic, Human Rights: Redefining Victim Protection. (London: 2002) http://www.antislavery.org/wp-content/uploads/2017/01/hum_traff_hum_rights_redef_vic_protec_final_full.pdf

⁴ This was a common observation made in many ASEAN countries in the Equality and Social Inclusion Stakeholder Mapping Report developed by ASEAN-ACT.

Potential harm: Criminalisation, arrest, detention and deportation

Victims of Trafficking who have not been properly identified as such could be subject to arrest, detention and in the case of irregular migrants, deportation. Migrant workers who have entered and stayed in the country illegally are often arrested, detained and deported for immigration status offenses and for crimes committed during their trafficking. Irregular migrants are often treated as victims of smugglers as opposed to traffickers and are therefore not identified as victims of trafficking. It is common for many of them to be placed in immigration detention centres, jails or other closed facilities where they are not free to come and go.



Tip #3:

A trafficked person may not wish to be identified as a victim or to receive assistance and protection. They should still be reassured that they will not be punished or criminalised.

Tip #4:

If there is good reason to believe someone has been trafficked, the person should be treated as a victim for the purposes of providing them protection and support until another determination is made. This is especially important in the case of irregular migrants and children.⁵

Tip #5:

Ensure victims of trafficking are not detained, deported, prosecuted or punished for any unlawful activities they were involved in as a direct consequence of their situation as a trafficked persons, including violations and offences linked with prostitution, petty crime or immigration laws.

⁵ ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons. Annex: References and Good Practices. (n.d.).

Potential harm: Re-traumatisation by law enforcement during interviews

As part of the victim identification and assistance process, trafficked victims are asked questions or made to recount details of their trafficking experience. These process place physical, psychological and social pressure on persons who are already under stress. Some may suffer from post-traumatic stress disorder and memory loss – a very common complaint within trafficking – whereby the victim has been subjected to prolonged and repeated abuse, violence, torture and manipulation.⁶



Tip #6:

The victim should be interviewed by someone of a gender that they are comfortable with.

Tip #7:

Conduct screening or interviews in a safe and secure environment by specially trained police/immigration investigators, psychosocial/medical specialists, social workers or specialised NGO partners.⁷

Tip #8:

Reassure the victim of their right to privacy and anonymity and inform them of the specific measures taken to ensure confidentiality of the information provided.

Tip #9:

When requesting consent and assent (for youth and children), it is not acceptable to pressure an individual or even to imply what is best for them. It is important that information and requests related to consent and assent are presented in a neutral way that demonstrates that the individual is free to choose and that whatever their choice, it will be accepted without bias against them.⁸

⁶ IOM. Caring for Trafficked Persons, Guidance for Health Providers. (Geneva: 2009). https://publications.iom.int/system/files/pdf/ct_handbook.pdf

⁷ ASEAN. Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons. (Jakarta: 2016). https://asean.org/wp-content/uploads/2012/05/FAASN_gender_8_email_REV.pdf (Paragraph 3.3.1)

⁸ Ibid.

**Tip #10:**

Consider allowing the presence of support persons during the interview, when requested by the victim or witness.

Tip #11:

Use interpreters, vetted by relevant authorities. No one from the person's immediate community (including friends, family, neighbours, community leaders, or connected with potential exploiters) should be used as an interpreter.⁹

Tip #12:

Avoid interview questions that insinuate negative judgements about a victim's decision, their actions or question their character. Questions should be asked in a supportive, non-judgmental manner and the responses of the victim should be affirmed supportively.¹⁰

Tip #13:

Maintain a professional distance and demeanour, but at the same time be compassionate and comforting.¹¹ Reassure the victims they are not to be blamed and explain that what happened to them was not their fault. It is important to convey to the victims that they are not criminally or morally responsible for having been tricked or coerced into the journey or engaging in the subsequent acts that took place.¹²

Tip #14:

If a person shows acute signs of anxiety or stress, the interview should be suspended or terminated until it is possible to continue. It is important during the interview to monitor non-verbal forms of communication such as signs of fear or anxiety or acute tiredness. Whenever there are reasons to believe that the person being interviewed is suffering from a mental health condition, the assistance of a psychologist should be sought before proceeding further.¹³

⁹ Bali Process. Policy Guide on Identifying Victims of Trafficking: An Introductory Guide for Policy Makers and Practitioners. (Bangkok, Regional Support Office of the Bali Process: 2015). <https://www.baliprocess.net/UserFiles/baliprocess/File/Policy%20Guide%20on%20Identifying%20Victims%20of%20Trafficking.pdf>

¹⁰ OSCE. Questioning victims of trafficking: The P.E.A.C.E. Model. (Uzbekistan: 2016). <https://polis.osce.org/index.php/questioning-victims-trafficking-peace-model>

¹¹ IOM. The IOM Handbook on Direct Assistance for Victims of Trafficking. (Geneva: 2007). https://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf

¹² IOM (2007).

¹³ IOM (2007).

Potential harm: Disempowerment, forced identification and assistance

Not all trafficked persons see themselves as victims. Some victims may not wish to be identified and even actively avoid or evade identification.¹⁴ For some, formal victim identification process involves assistance that they do not want or in a format that they do not wish to receive (for instance, because it requires staying in a shelter or living apart from family). Identification may also require victims to return to their country or place of origin, which they may wish to avoid, hoping instead to find work in the destination country or city.



Tip #15:

Fully inform victims of the purpose of the data collection and the way it will be used. They should be aware of their right to participate in, and to end, the interview at any point.

Tip #16:

Ensure that identified victims of trafficking receive clear information on the nature of protection, assistance and support to which they are entitled to under domestic laws and the ASEAN Convention against Trafficking in Persons (ACTIP), within a reasonable period.¹⁵

Tip #17:

Victims should be granted a reflection and recovery period during which non-conditional support (including shelter, medical treatment, legal assistance, counselling, communication with their family, etc.) is given with the aim of providing them with time and space to decide on their options, including whether they will cooperate with criminal justice agencies in the prosecution of their exploiters.¹⁶

¹⁴ IOM (2007).

¹⁵ ACTIP Article 14 (9)

¹⁶ Bali Process (2015).

Potential harm: Discrimination, stigmatisation and rejection by family and communities

Victims may already experience discrimination as a result of their nationality, ethnicity, religion, gender, age or sexuality. Those exploited into sex work may feel ashamed and be reluctant to share their stories for fear of further discrimination, stigmatisation and rejection by family and communities.¹⁷ In cases where violence and exploitation is normalised by cultural practices, traditions and religion, such as early, child, forced or temporary marriage, victims are less likely to come forward and may not think they have any recourse to justice.¹⁸



Tip #18:

Identification processes must be inclusive and allow for all victims of trafficking to be identified, which include women and girls, and men and boys. Frontline responders and support persons should be conscious of their biases and avoid any verbal or non-verbal behaviour that could be perceived as intimidating or make the interview feel inferior.¹⁹ Frontline responders or support persons should self-assess whether they have any negative preconceptions, prejudice, biases, or racist feelings towards the victim.²⁰ They must consider how they feel about persons who have engaged in common trafficking types of labour (for example, sex work, begging, domestic work), persons who have been victims of certain types of abuse (e.g sexual abuse), persons who may suffer stigmatising or apparent illnesses or injuries (for example, HIV positive people, physical disfigurement or disabilities), migrants, drug and alcohol users, persons self-identifying as LGBTQI and persons who have social, cultural or religious beliefs or practices different from their own.

¹⁷ Inter-Agency Coordination Group against Trafficking in Persons (ICAT). Draft Submission to CEDAW's General Recommendation on Trafficking in Women and Girls in the Context of Global Migration (n.d.) <http://icat.network/sites/default/files/publications/documents/ICAT%20submission%20to%20CEDAW.pdf>

¹⁸ UNODC. Toolkit for mainstreaming human rights and gender equality into criminal justice interventions to address trafficking in persons and smuggling of migrants. (UNODC & IOM, Vienna: 2021) https://www.unodc.org/documents/human-trafficking/GLO-ACTII/UNODC_Toolkit_for_mainstreaming_Human_Rights_and_Gender_Equality_February_2021.pdf

¹⁹ Adapted from IOM, "Victim identification and interview technique" (2006)

²⁰ IOM (2007).

Potential harm: Lack of access to protection and safe accommodation facilities

Victims who have been identified may fear for their lives and safety. Their exposure to prolonged and repeated trauma experience including physical, sexual and psychological abuse and violence, deprivation and torture makes them reluctant to discuss the details of their trafficking experience. A safe and secure shelter or temporary accommodation facility is often a way for victims of trafficking to gain access to essential services including medical assistance and to recover from their trafficking experience. Despite this, access to protection and appropriate shelters and accommodation is a challenge in many countries.²¹



Tip #19:

Transfer immediately those identified as victims of trafficking to a safe and secure shelter or temporary accommodation facility. They should also be quickly referred to responsible agencies for specialised assistance and support.²²

Tip #20:

For women and girls victims of trafficking who may have experienced physical and sexual violence, ensure there is an option to refer them to violence against women (VAW) specialised services.

Tip #21:

Pregnant and nursing women, and mothers accompanied by young children, should be provided appropriate and separate facilities.²³

Tip #22:

Where possible, provide victims with the option to receive care outside the formal shelter system. This could be safe and appropriate accommodation including rented houses or apartments, or community-based housing.²⁴

²¹ Anti-Slavery International (2002).

²² ASEAN Gender Sensitive Guideline Paragraph 3.3.1

²³ UNICEF, UNODC, UN Women. The role of law enforcement to protect women and children during a public health crisis, including COVID-19. See https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/misc/2020/09/poster_%20law%20enforcement%20women%20and%20girls%20covid%2019_%20burmese.pdf?la=en&vs=5708

²⁴ McAdam, M. Freedom of movement for victims of trafficking: Law, policy and practice in the ASEAN region. Information note supported by the Australian Government. (Bangkok, 2020). <https://aseanactpartnershiphub.com/resources/asean-shelter-study-mcadam-freedom-of-movement-for-victims-of-trafficking-final/>

Potential harm: Forced return to the country/place of origin

Returning victims to their point of origin risks placing victims in the same situation as they were in prior to being trafficked, often with limited or no income or access to support.²⁵ They may be subjected to violence and intimidation from traffickers—particularly if they have cooperated with criminal justice agencies or owe money that cannot be repaid.²⁶



Tip #23:

Ensure that a victim who wishes to remain in the country has access to independent legal counsel to ensure safe or voluntary return.²⁷ To respect the rights of trafficked persons, organisations must ensure a victim's return is voluntary, and based on the victim's informed, and when possible, written consent.²⁸

Temporary residence permits on social or humanitarian grounds that may be related to, for example, respect for the principle of non-refoulement, the inability to guarantee a secure return and the risk of re-trafficking, must be granted.

²⁵ UNODC (2009).

²⁶ ASEAN. Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children. (Jakarta: 2016); https://asean.org/?static_post=asean-handbook-on-international-legal-cooperation-in-trafficking-in-persons-cases-3

²⁷ ASEAN Regional Review (2016) Recommendation 7.2

²⁸ UN TIP Protocol, Article 8.

Criminal justice response: potential harms and tips to DNH

Victims' rights and needs are at the core of the whole criminal justice process. Yet victims are regularly objectified and regarded as a piece of evidence within a criminal justice process that centers on the prosecution of offenders. The ASEAN Regional Guidelines and Procedures affirms that *all victims of trafficking participating in the investigation or prosecution of their exploiters should be provided with adequate, legally mandated protection, support, and assistance for the duration of their involvement in criminal proceedings*. ASEAN countries are required to ensure that victims are aware of available remedies and put in place the necessary laws and procedures to ensure the possibility of compensation being obtained.

Potential harm: Absence of informed consent

Obtaining informed consent from trafficked victims is complex. Firstly, language, cultural and socioeconomic differences are a major barrier. In addition, some may be promised financial support, protection, compensation, short shelter stay, or anything else, in order to gain their cooperation in legal proceedings.



Tip #1:

Request voluntary and informed consent for participation in the process and allow the victims to refuse assistance and protection anytime during the criminal justice process.

Tip #2:

Inform victims before and during their involvement in the criminal justice process, of the criminal justice system, their legal position, their rights, their options, services available and the time factor in the trial process in a non-threatening tone, and in a language they understand. Consideration should be given to their nationality, ethnicity, age, disability if any, etc.²⁹

Tip #3:

Provide a reflection and recovery period for identified victims to make an informed decision about cooperation and help avoid victims agreeing to informally 'settle' their case so they can return to normal life. Such arrangements are inevitably compromised, not least because they encourage corruption and perpetuate impunity of exploiters.³⁰

²⁹ ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, Section B (g); ASEAN Gender Sensitive Guideline Paragraph 3.6.4; ACWC Regional Review Recommendation 4.4.

³⁰ ASEAN. Practitioners' Model Implementation Toolkit for the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons (2019).

Potential harm: Intimidation to prosecute exploiters

Many victims of trafficking do not see tangible benefits from participating in criminal justice proceedings but may be intimidated or compelled to do so by the questioning officer, prosecutor, attorney or other service providers. Their fears of being forced to return home to face stigmatisation and rejection from their families and communities may be a disincentive.



Tip #4:

Decide jointly with the victim whether other options, such as corroborative evidence and expert/other witnesses could be used instead of victim statements and testimony, if the latter would cause harm to the victim. The use of corroborative evidence also means the case is not solely reliant on the victim's testimony and could proceed if the victim is unable or unwilling to testify.

Tip #5:

Avoid treating victims of trafficking as purely a source of evidence. This is a short-term approach that is likely to fail. Victims and witnesses are more likely to cooperate in the investigation and prosecution process if they feel safe and secure, and their needs are understood and appropriately addressed.³¹

Tip #6:

Inform the victim that they have a right to be present and express their views during any legal proceedings.³²

³¹ Office of the High Commissioner for Human Rights. Recommended Principles and Guidelines on Human Rights and Human Trafficking. (n.d.) <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

³² APA Section B(g). UN TIP Protocol, Article 6(2)(b).

Potential harm: Loss of privacy and anonymity

Being part of a criminal justice process increases the risks of violation of the privacy and anonymity of a victim. The loss of their privacy and anonymity will impact on their safety due to the risk of retaliation from their traffickers; it may lead to shame, rejection and punishment by families or communities.



Tip #7:

If the victim decides to participate in the prosecution of their traffickers, protect their privacy and confidentiality throughout the process, for instance by not sharing details without their permission and that any information that may reveal the victim's identity or address is treated with the strictest confidentiality.³³

Tip #8:

Use protective measures in courts such as, separate waiting rooms, private entrances, recorded testimony, pseudonyms, closed hearing, video/audio distortion, one-way mirrors, screens, or curtains to ensure the anonymity of the victim. Also explain to the victim how their testimony will be delivered and to what extent their identity will be revealed, if at all, to the defendant and the public. Allow for enough time for the victim to testify and do not interrupt or request them to speed up their recollection of what happened.

Tip #9:

The media should be required to respect the privacy and confidentiality of victims and relevant witnesses, ensuring that their identities are protected during court proceedings and also outside of the courtroom.

³³ As stated in the ASEAN Practitioner Guidelines: "Victim-witnesses and where necessary, their families, should be protected from reprisals. Laws should be in place to protect the privacy of victim witnesses and the confidentiality of their identities." Part One E.1 and E.2; ACTIP Article 14(6).

Potential harm: Reprisal from traffickers

The fear of reprisal from their traffickers is a genuine concern, especially for victim-witnesses and those involved in any criminal justice process. The capacity of the traffickers to retaliate against victims who have managed to escape and/or have testified against them is well documented.³⁴ In addition, reprisal could also occur not just from the traffickers, but from the employers, trafficking agents, pimps and law enforcement officials.



Tip #10:

Assess the risk of the victim being harmed by participating in the criminal justice system, in coordination with law enforcement and victim support service providers, including psychologists. The victim's interpretation and assessment of risks is paramount here. Such risks may include, but are not limited to: trauma, retaliation from traffickers or their acquaintances, stigmatisation and humiliation by family or community members.

Tip #11:

If possible, and in consultation with the victims, assign trained female and male investigators to provide physical protection to victims who express fear for their lives and safety and that of their family members.³⁵ The provision of protection services could be coordinated with the Victim and Witness Protection Agency/Coordinator that are available in some jurisdictions.

Tip #12:

Victims must be kept informed about the progress of any case they are involved in and can request information at any time.³⁶

³⁴ IOM (2007).

³⁵ ASEAN Practitioners' Model Implementation Toolkit (2019).

³⁶ APA Section B(g). UN TIP Protocol, Article 6(2)(b).

Potential harm: Forced detention in facilities or closed shelter

Victims may be placed in closed shelters against their will for the purpose of protecting their safety. In some countries, victims of trafficking who are irregular migrants are kept within government-run or approved shelters to restrict their mobility. Victims are also detained in closed shelters on the justification that they are therefore available to participate in investigations and prosecutions.³⁷



Tip #13:

Building trust is essential towards gaining the cooperation of a victim. Arresting or and detaining a victim could lead to serious setbacks or destroy the opportunity to build a victim's trust.

Tip #14:

Provide victims and witnesses who are not citizens with adequate protection and temporary residence permits during legal proceedings.³⁸

Tip #15:

Explore ways to obtain evidentiary statements and testimonies from victims without detaining them for prolonged periods in shelter facilities.³⁹ This may entail the use of pre-trial testimonies, video recordings of testimonies, or testimony via video-link. If the victim is willing and available to testify, use pre-trial depositions, video links and expedited hearings, where legislatively possible, to help shorten their mandatory stay in the closed shelters.⁴⁰

³⁷ McAdam (2020).

³⁸ ACTIP Article 14(4) and 14(5), ASEAN Practitioners' Model Implementation Toolkit (2019).

³⁹ ACWC Regional Review Recommendation 5.1, 5.2 and 5.3. See also Office of the High Commissioner for Human Rights. Recommended Principles and Guidelines on Human Rights and Human Trafficking. (n.d.) <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

⁴⁰ ACWC Regional Review Recommendation 4.1

Potential harm: Re-victimisation during court proceedings

Even when the victims have voluntarily agreed to fully participate in court processes, victims remain vulnerable to intimidation in and around the court. They can easily be influenced, their credibility can be demolished by a strong defence counsel, or they can be persuaded into withdrawing their cooperation by the traffickers, either through bribery or intimidation directed to the victims and/or their family.⁴¹ Those who are forced to face their traffickers may be re-traumatised during the process.

⁴¹ Anti-Slavery International (2002).



Tip #16:

Any intrusive investigative processes requiring physical and psychological examination and evaluation should only take place with the informed consent of the victim. The victim should be informed of the steps and the process involved and why it is required. The victim's silence should not be construed as consent. The examination and evaluation should also be done by someone of a gender that the victim is comfortable with.

Tip #17:

If possible, assign a dedicated 'victim-witness advocate' or 'victim-witness coordinator' to accompany and support the victim throughout the court process. This person can provide updates on the status of the case, and information about referral to services.⁴²

Tip #18:

Request practical court support measures aimed at reducing stress and trauma on the victim such as: pre-trial courtroom visits so that the victims can familiarise themselves with the surroundings and with who will be sitting where; escorts to and from court buildings, the use of separate entrances to the court building, private waiting areas and the regular provision of information concerning the conduct of the trial from the prosecution side throughout the court proceedings.⁴³

⁴² ASEAN Practitioners' Model Implementation Toolkit (2019).

⁴³ ASEAN Practitioner Guidelines, Part One F.4. ASEAN Gender Sensitive Guideline Paragraph 3.6.

Potential harm: Investigation and judicial decisions based on bias and stereotypes

Intersecting and compounded gender stereotypes and other forms of discrimination may prevent victims from accessing justice. For example, a person with mental disabilities may be presumed to be an incompetent or unreliable witness. Stereotyping can compromise the impartiality of justice actors such judges and prosecutors' decisions, as well as their view about witness credibility and/or the legal capacity of witnesses.



Tip #19:

Judges and defending lawyers must adhere to their code of ethics and professional practice. This includes refraining from using offensive or aggressive language or tone. Furthermore, no victim should be pushed to recount their story.

Tip #20:

Train criminal justice professionals in international human rights law and on gender stereotyping and bias. Highlight the harm of judicial stereotyping through evidence-based research. Analyse judicial reasoning for evidence of stereotyping and highlight good practice examples of justice actors who have challenged and overcome gender stereotypes.

Potential harm: Economic stresses and limited restitution or compensation

Involvement in a legal proceeding may impose significant financial costs to the victim and their family. For many of the victims, who are sole breadwinners, the situation creates undue economic, emotional and psychological stresses. Successful prosecution of traffickers may not lead to restitution or compensation for the victims and their families. The benefits of assisting with a criminal justice process are not clear to many victims.



Tip #21:

Do not over promise or overstate the benefits of participating in a legal proceeding. Protection and support services such as medical assistance and shelter (including temporary accommodation) should be delinked from criminal justice objectives.

Tip #22:

Provide clear information about remedies in a language and form that the victim can easily understand. This may include: eligibility to access remedies especially for victims residing outside of their country of origin; the application process and documentation required; the assessment and approval timeframe, and so on.⁴⁴ Victims who are not citizens should be granted the right to remain in the country, including the right to work, should they wish to, until resolution of their compensation claim.

Tip #23:

Award restitution and compensation even if the trafficker is at large, or “has no money”.

⁴⁴ Ibid.

45 UNICEF. Guidelines on the Protection of Child Victims of Trafficking. UNICEF Technical Notes (New York: 2006). https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/unicef_guidelines_on_protection_of_the_rights_of_the_child_2006_en_2.pdf

Working with children: tips to DNH

Trafficked children, by virtue of their age, maturity and trafficking experience, have assistance needs requiring highly specialised care. It is important for practitioners to acknowledge that not all child victims of trafficking will present as such. They may be carrying false identity papers that misstate their age or may lie about their age because this is what they have been told to do by their exploiters. Since child victims of trafficking are rarely able to extricate themselves independently from their exploitative situation, they are reliant on proactive identification measures taken by government and non government agencies.⁴⁵ ASEAN Member States are required to put in place appropriate laws, policies, and mechanisms to ensure the safety and well-being of child victims at every stage – from identification to the securing of a durable solution.

**Tip #1:**

A victim whose age is uncertain should be presumed as a child and victim identification and interviewing processes should be consistent with the principles in the Convention of the Rights of the Child (CRC). Victim identification needs to be expedited and prioritised to determine the victim's age so as to ensure that the services offered to the victim are appropriate.⁴⁶

Tip #2:

To the greatest extent possible, only staff trained in the special needs and rights of children should handle or interview child victims.

Tip #3:

Trafficked children should be appointed a legal guardian to advise them and to protect their rights and interests, whenever their parents are temporarily or permanently unable, unwilling or unsuitable to exercise their parental rights.⁴⁷ The appointed guardian should be consulted and informed regarding all actions taken in relation to the child.

Tip #4:

All information that is communicated needs to be tailored to the child's age, maturity, level of education and experience and presented in a child friendly and appropriate way. Encourage and ensure that all decisions are made with the involvement and inputs of the child. The extent to which children can provide informed consent will vary according to the child's age, experience and stage of development. Bear in mind the potential impact of the power imbalance between children and adults, including whether this creates pressure to consent (by the staff or parent/ guardian).⁴⁸

46 ASEAN Gender Sensitive Guideline Paragraph 3.2.3. ACWC Regional Review Recommendation 2.2.

47 UNICEF (2006).

48 Surtees, R. Ethical principles for the re/integration of trafficked persons: Experiences from the Balkans. Issue Paper #5. (Nexus Institute: 2013).

**Tip #5:**

Allow children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibit any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child.⁴⁹

Tip #6:

Children must be provided information in a manner appropriate to their age and maturity. Provision of information to parents, guardians or caregivers should be in addition, and not an alternative, to communicating information to the child.⁵⁰

Tip #7:

Arrange an interview with a child such that an adult the child trusts is present. This person's responsibility is to look after the child's best interests. It could be a guardian, a legal representative or, if neither has been appointed, a teacher or social worker.⁵¹

Tip #8:

Ask questions that take into account the child's characteristics and family background. Child-friendly language should be used. Children should be given an opportunity to tell their story in their own way before they are asked explicit questions. Any interview should begin with open-ended questions and direct or leading questions should be reserved for the latter part of the interview.

49 UNODC. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. (Vienna: 2013). See https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

50 UNODC (2013)

51 ACWC Regional Review

**Tip #9:**

Undertake an assessment of the best interests of a child as soon as a child has been identified to be at risk. The child's views on the assessment and the process must be considered. This should be an on-going process that places the child's best interests at the centre of any action and as a primary consideration and objective of any measure affecting them.⁵²

Tip #10:

Detention of child victims cannot be justified solely on the basis of the child being unaccompanied or separated, of their migratory or residence status, or lack thereof. Similarly, avoid placing a child victim in a shelter or welfare facility, and only do so after exploring all other alternative care options. Such placement should be for the shortest possible period of time and should be regularly reviewed by an independent authority.⁵³

Tip #11:

Child victims must never be identified, and every effort must be made to protect the child's privacy.⁵⁴

Children do not have the capacity to consent to the distribution, publication or presentation or any written or visual material which would identify them as victims of human trafficking. Any images of trafficked people who are children, must not be used, because of the risks that it could identify them.

⁵² Office of the High Commissioner for Human Rights. Recommended Principles and Guidelines on Human Rights and Human Trafficking. (n.d.) <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

⁵³ ASEAN Practitioners' Model Implementation Toolkit (2019).

⁵⁴ ASEAN Regional Guidelines and Procedures; ACWC Regional Review.

**Tip #12:**

Children should be fully informed and engaged in all decisions about their participation in the criminal justice process, including information regarding the trial schedule, their right to legal assistance, access to compensation. Justice actors and related service providers should be specifically trained in the principles and practice of child participation and protection in the criminal justice process.

Tip #13:

The judicial and administrative proceedings should be conducted in an atmosphere and manner that allows children to be heard either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. Taking into account the child's age and maturity may also require modified judicial and administrative procedures and practices.⁵⁵

Tip #14:

The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, that could reveal or indirectly enable the disclosure of the child's identity, including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records.⁵⁶

⁵⁵ UNODC (2013).

⁵⁶ UNODC (2013).

**Tip #15:**

Family reunification is the first and preferred option in accommodating children. This should be pursued in all situations where this is deemed safe and healthy for the child. When this is not possible, alternative placements might include extended family care/kin-based placement, foster care, small group homes and so on. Shelter and institutions should be considered as a last resort in the case of trafficked children and, when necessary, should be a temporary solution. Because children and youth are a diverse group (differing by age, gender, maturity, stage of development, trafficking experience, their personal and family situation, assistance needs), a diverse range of accommodation options should be made available.

Tip #16:

Services to support the reintegration of trafficked children must be tailored to their individual and specific needs and be designed and implemented in a child-friendly way.⁵⁷ Child-rights principles and child-specific protocols should underpin this work.

⁵⁷ ACWC Regional Review

Marginalised groups: tips to DNH

The gender and socio-economic status of a person determines their vulnerability to human trafficking. Certain groups, by virtue of their gender, age, ethnicity, religion, household income, level of education, citizenship (or lack of it) disability and so on, are more vulnerable to being trafficked. In conceptualizing “vulnerability”, the UNDOC considers the victim’s personal and situational circumstances.⁵⁸ At the same time, the gender and socio-economic situation of a victim of trafficking also affects their ability to access rights, protection and assistance.

The ongoing COVID-19 pandemic will exacerbate the vulnerability of migrants and other marginalised groups in Southeast Asia and heighten the conditions for human trafficking and modern slavery. The sharp increase in unemployment brought about by COVID-19 means that traffickers and unscrupulous recruiters, brokers and employers will have no difficulties targeting victims who are marginalised, in difficult circumstances or in desperate need of employment.⁵⁹

⁵⁸ UNODC. ‘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 Organised Crime’ (Vienna: 2012), paragraph 2.3. See https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf

⁵⁹ United Nations Office for Drugs and Crime. Global Report on Trafficking in Persons 2020. (Vienna: 2020). https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_15jan_web.pdf

**Tip #1:**

Interviewers and service providers must assess whether they have any negative preconceptions, biases, or racist feelings about the persons they will interview/assist and take steps to ensure these do not negatively impact the services and support provided to a victim.

Tip #2:

Provide translators for victims from ethnic minority groups and those with disabilities. Ensure that victims are comfortable with the gender of the translator and that they are not known to the victims.

Tip #3:

Offer women and girls the option of being interviewed or seen by a female practitioner. If none is available, a woman should be present during the interviews and examinations. Similarly, it is as important to offer men and male adolescents the option to be interviewed or seen by a male practitioner.⁶⁰

Tip #4:

Because of their socially vulnerable status, the multiple risks of involving marginalised groups in any legal proceeding should be thoroughly assessed and discussed with the victims prior to the undertaking. Their right to informed consent, confidentiality and privacy applies here.

Tip #5:

Provide special assistance, such as legal guardians for individuals who are mentally disabled, psychologically disabled or individuals who are otherwise unable to fully participate in the informed consent procedure. The legal guardian is a person with full power of attorney granted by the individual, or the individual's legal counsel holding such written power of attorney. Organisations should consult an attorney regarding consent by individuals who, due to a mental or physical condition, are not in a position to give legally valid consent.⁶¹

⁶⁰ IOM (2007)

⁶¹ IOM (2007)

**Tip #6:**

The special needs of vulnerable groups should be highlighted in an objective and unbiased manner without resorting to language that conveys pity or shame.

Tip #7:

All information should be provided in a manner that corresponds to the needs of illiterate persons and such information should be in a language that those persons understand.

Tip #8:

Victims should be fully informed of rights, options and opportunities, and actively engaged in all decisions about the services they do (or do not) wish to receive.⁶²

Tip #9:

Be aware of the social norms that negatively impact women and the specific challenges women, men and child victim-survivors face, and ensure that all services are designed to respond to these dimensions, such as, psycho-social support, legal information, representation, safe shelter.⁶³

Tip #10:

Ensure that victims have access to comprehensive multi-sectoral services that are gender-responsive, such as psycho-social counselling; legal assistance, sexual and reproductive health and social services; women-only spaces; peer support and access to women's shelters or transitional housing.

⁶² Surtees, R. Supporting the Reintegration of Trafficked Persons: A Guidebook for the Greater Mekong Sub-Region. (Bangkok: NEXUS Institute, UN-ACT and World Vision, 2017).

⁶³ Ibid.

**Tip #11:**

Ensure training and skills development programs avoid reiterating gender stereotypes that risk trapping women in low-paid and exploitative occupations. To do this, training and skills development should deliberately address occupational segregation by providing training in higher-return and higher-quality occupations and sectors, and actively supporting women to engage in this training if they wish to.⁶⁴

Tip #12:

Introduce measures that address the stigmatisation of victims of sexual exploitation and those who have been exposed to HIV or other sexually transmitted infections including by establishing rights-based, confidential sexual and reproductive health services, peer support groups, working directly with families, communities and civil society.⁶⁵

Tip #13:

Reintegration programmes for returnee migrant workers should also take into consideration the socio-economic conditions in their countries of origin not only for themselves but also their families.

Tip #14:

Partner with other agencies and institutions to ensure the provision of comprehensive support services and a continuum of care.⁶⁶

⁶⁴ ICAT Draft Submission to CEDAW.

⁶⁵ Ibid.

⁶⁶ Surtees, R (2017).

Case studies

Case study #1 ⁶⁷ Victim identification after a raid

"Hoa" is a young woman who was recruited by an agency that promised her a job in the capital city as a seamstress. She borrowed money from friends and family to pay a recruiter fee but when she arrived in the city, she found that her "debt" to the recruiting agency had more than doubled, and she, along with 25 or so other women, were convinced to work in a massage parlor to make more money more quickly. At first she believed that it really was massage work, but quickly discovered that she was expected to perform sexual favors for her clients. After her first client, she felt so ashamed, and trapped. The proprietor of her massage parlor told her that no one would hire her as a seamstress anymore, not with her history of working as a sex worker.

One day, the massage parlor was raided and Hoa and the other women and girls were rescued from their predicament. The police and detectives involved in the raid were almost certain that these women were trafficking victims. A detective is interviewing the women, and it is not going well. Hoa is the third woman the detective has talked to and she, like all the others, insists that she has not been enslaved.

Hoa: The money is good. I can earn money for myself and my family. That's why I stay. I am free to come and free to go. It's my choice.

Detective: But we have very reliable information that tells us that you were probably brought here under false pretenses. Didn't you think you were coming here to do something different?

Hoa: Yes, I thought I would be a seamstress. But then I found out the money is better in this business.

Detective: And no one forced you to do this? No one said it was the only way to pay back your debt?

Hoa: Maybe I could get more help if I told you that I am chained to my bed every night and that they beat me and force me to do this thing. But that is not the truth.

Detective: Well, I only want the truth, but I worry that you are saying these things because you are scared. You know, if things are as you say, you may need to go back to your family back home. Is that what you want?

Hoa: No...no... Please, you will not tell my family? Please do not tell my family how you have found me....

Do No Harm pointers



- Many things can limit freedom, including feeling ashamed of one's situation. This is a common experience by many victims of trafficking. While Hoa may be free to come and go, she is clearly terrified that her family will find out.
- Hoa may believe that, having worked as a sex worker, there is no way back into mainstream society. In this case, she believes it is better for her in the long term to protect the traffickers and to keep earning an income to support herself and her family.
- Out of frustration, the detective has indirectly threatened that Hoa will be sent home if she does not cooperate. This may be the case, but the way that it is said implies that Hoa is powerless and has no other option to exercise.
- It is important to remember that the goal in any interview is not to get information at any cost, but to help remove any obstacles which might be preventing the victim from telling their story. Once those obstacles are identified, and then removed as much as they can be, attorneys, police and service providers must recognise and accept that it is the victim's choice about whether to speak or not. It is not ethical to trick, manipulate or threaten victims into speaking. Such tactics replicate the power dynamics of exploitation and do not guarantee accurate information.

Case study #2 ⁶⁸ Lawyer and NGO staff

A pro-bono male lawyer and an NGO staff member are discussing the case of a young man who claims to be a victim of human trafficking. He says he was brought to the country when he was 17 years old and forced to prostitute himself, but much of his story is not adding up.

Lawyer: This is not going well. It is impossible to get a straight story from him. He needs to understand that he needs to tell me exactly what happened if I'm going to help him.

NGO staff: It will take time to build trust with him. I've been working with him for a few weeks and only now is he starting to open up.

Lawyer: I understand but we don't have time. We need enough evidence to take this to the police and the more time that passes the less chance we have of succeeding. I know I'm pressing him hard, but he has to understand that if he doesn't cooperate he's going to get sent back home. That's not a threat, it's just the truth.

NGO staff: I don't think he understands why we're asking him to relive everything and give us all this detail. It's completely re-traumatizing him.

Lawyer: Well, right now it looks as though he's lying. First, he tells me he arrived here on foot, then he tells me, no actually he came by truck. Then he tells me he services 15 clients a day, then the next he says it's 7, then 30. He says he is locked in, but then he's telling me about times when he went out with his friends. He tells me he is 17 years old, and then he tells me he's 20 years old. It just doesn't add up. I don't know if he's lying to protect someone or what he's afraid of, but I can't help him or those other kids until I get the story straight.

NGO staff: I really don't think he's lying. I think he's confused and traumatised and so his memory of things is fuzzy. And we're working through an interpreter and I think that makes it harder.

Do No Harm pointers



- Trauma and stress can blur and confuse memory. Many people who are severely traumatised will initially have difficulty telling a coherent story. Memory serves to protect the victims and some images are clear and crisp, while others may be completely blocked out. If a trafficked person cannot remember or changes the account of events, this does not mean that s/he is lying or being uncooperative. It is essential to show patience in relation to memory problems, and not to discourage individuals from adding to, or altering their initial account of events and details of their experience later, as memories may return.
- The young man may come from a culture that relies more on symbols, metaphors, inference, and surrounding context to relay meaning, rather than words. This tendency to communicate indirectly can become particularly strong when the conversation is about a difficult and painful topic, such as trauma and sexual exploitation. In this case, the young man may be trying to tell his full-story but it confuses the prosecutor.
- The victim is likely to be operating in a climate of fear – fear of repercussions from the traffickers for cooperating and distrust of law enforcement based on past experiences in his home country.
- The pressure and the hint of threats and coercion present in the interview with the lawyer may remind the victim of his oppressors. Therefore, it is not surprising that the young man is slow to trust, resistant about disclosing the full truth, or confused about the details and chronology of his story.
- He may not be comfortable being interviewed by a female or male lawyer.
- The young man has to decide whether he wants to tell his story to the lawyer. In order to make that decision, he needs to understand why he is being asked to do so and what the outcomes most probably will be. It is always his choice whether he talks or not.
- The young man should be provided with sufficient time to recover and to reflect on his next steps. If he decides to share his story with a lawyer, then a counselor can work with him to reconstruct his narrative so that he can tell it more clearly to the lawyer.

Case study #3 ⁶⁹ An attorney interviews a child victim

"I know that it is going to be difficult, but I need you to tell me exactly what happened, with as much detail as possible." Sumi, an attorney working for an agency that assists survivors of sex trafficking, paused while the interpreter translated to her client, a 15-year-old girl.

The girl had indicated that she wanted to help in the prosecution of her perpetrators and was willing to tell everything that happened.

"The last time we met, you told me generally what had happened, and you said that the traffickers used violence against you. Can you tell me more about that violence?" Sumi paused again as the interpreter translated.

Then the girl began to speak. She spoke for a long time and began to cry. Although Sumi didn't understand a word, she kept eye contact with the girl and showed compassion in every way she could.

"I was beaten and tied up," said the translator. "They forced me to do many things I think you know."

Sumi turned to the interpreter. "Is that all she said? It sounds to me as though she gave much more detail."

The interpreter said, "Yes, in our language the words are much longer and it takes more words to explain the same thing."

Sumi continued. "You said that they forced you to do many things. Would you be willing to tell me specific details about those things?"

The interpreter translated and the girl began to tear up, look confused, and frustrated.

Do No Harm pointers



- It is important to ensure that the victim feels comfortable recounting their experience with the translator. Before any interview process begins, it is a good idea to promote some form of rapport building between the victim and interpreter, including allowing some time for the interpreter to introduce themselves.
- Sometimes interpreters are not comfortable translating certain details, particularly details of a sexual nature which may be taboo. In a case such as this one, the young girl is probably aware of the interpreter's discomfort and may edit her story.
- Specific words may not exist or may be difficult to translate. When that is the case, sometimes the victim tells a story in a culturally appropriate way (that is often longer and more contextualised) but it is difficult to relate the exact meaning of the story by translating the exact words.
- Adding a third party to an interview is always difficult. The victim can feel more exposed and more vulnerable. This too, may affect the content of the victim's narrative.
- In all cultures, though in some more than others, women can be blamed for their sexual victimisation. If the victim blames herself or senses that the interpreter blames her for what happened, she will naturally be reluctant to speak openly.
- An important tip for working effectively with interpreters is not to allow the victim to speak for a long time without translation. The interpreter should translate sentence by sentence, and all parties – including the interviewer – will need to be reminded of this several times throughout the session.
- If the information to be gathered is particularly sensitive in nature, it is a good idea to work with the interpreter in advance to ensure she understands the importance of translating each detail.
- The attorney, Sumi, was professional and compassionate in her line of questioning. She was careful not to suggest that the victim was to be blamed for what happened and instead, allowed the victim to articulate what happened.

⁷⁰ Adapted from "Assisting survivors of human trafficking: Multicultural case studies". Project of the O.L. Pathy Family Foundation. (2017).

⁷¹ Adapted from "Assisting survivors of human trafficking: Multicultural case studies". Project of the O.L. Pathy Family Foundation. (2017).

Case study #4 ⁷⁰ Judge speaks to a male victim

The Judge was getting frustrated. "Tell me again why you didn't just leave?"

"I told you, your honor, they took my passport. I couldn't leave."

The immigration judge was listening to a man named "Maung". He and his attorney were claiming that he had been trafficked to the country under false pretenses. According to Maung, he had paid a fee to his broker to find a good job working in a restaurant. Instead, he claimed to have been enslaved by a seafood processing factory. He said he had never seen a single paycheck since he had started working there 11 months earlier. He worked every day under filthy conditions and slept in a small, ill-ventilated room with 14 others where they were locked in at night. When the factory was being investigated for tax-evasion and fraud, they released Maung and the others without paying them.

Judge: "You don't need your passport to walk away. Why didn't you just walk away from the factory one day?"

Maung: "I ... I couldn't, your honour."

Judge: "Why not? Did they threaten you? Did they say they would hurt you? Did they ever use violence against you?"

Maung: "No."

Judge: "Did they threaten your family back home?"

Maung: "No. But I had no money, and I had no papers. What was I to do?"

Judge: "You could have walked out and walked to the police and told them what they were supposedly doing to you."

Maung: "But then they would have arrested me."

Judge: "Why? Are you telling me that you were breaking the law? Is there a reason that they should have arrested you?"

Maung: "Because I didn't have my documents, your honour."⁷¹

Do No Harm pointers



- When trafficking victims have been involved in something illegal – as many have been – this presents a powerful obstacle to seeking help. Traffickers know this and often exploit the fears of their victims. Most victims do not know or understand that they may be entitled to legal recourse and some protection.
- The judge should recognise that it is not easy for a trafficked victim to simply walk out of their situation. Most trafficked persons feel like they have no control over their situations. It is common for them to feel very helpless and cut off from the rest of the society. It is essential to understand the complex feelings trafficked persons may experience and the political and legal contexts from which they are coming.
- Maung may have been exploited but may not want to tell the judge the entire truth. Many trafficking victims feel extremely ashamed of having been tricked and/or deceived. As a man, Maung may believe that he needs to present himself as strong and in control of the situation. The judge should adopt an open mind to listening to Maung's story in order to obtain all the facts about the situation.

Case study #5⁷² Retraumatization during a court hearing

“Kunthea” was involved in two legal proceedings related to her trafficking experience – one for human trafficking, the other for rape. She requested to provide her statement in private but her request was denied. The NGO assisting Kunthea requested for a private waiting room for her during the court hearing. They also arranged for Kunthea to provide testimony in both cases on the same day to save time and reduce travel costs. Kunthea, however, was heavily traumatized by having to cope with both cases at the same time as well as facing both her trafficker and rapist.

During the hearing, relatives of the defendants (more than thirty people) began to mock Kunthea and the judge did not interfere with this harassment. This frightened her. In addition, the judge asked Kunthea some intimate questions that had nothing to do with the case. She lost trust in the legal process and also became frightened because of the threat posed by her trafficker/rapist and their families.

Judge: “Did you have a boyfriend before you were raped?”

Kunthea: “No, your honour...”

Judge: “Do you like partying and having a good time?”

Kunthea: “No, your honour...”

Judge: “Do you like to wear revealing clothes to attract boys’ attention?”

Kunthea: “I don’t, your honour.”

(Court audience could be heard saying loudly that Kunthea was not a good girl and liked hanging out with bad boys.)

Do No Harm pointers



- The NGO tried to save Kunthea time and travel cost by arranging for her to provide testimony on two cases on the same day. However they did not take into consideration the potential trauma she may suffer as a consequence, which could affect her recovery process as well as her ability to continue to be part of the criminal justice process.
- The prosecutor representing the victim should have requested for a closed-door trial which means only the victim, her support person/s, and other required parties are allowed in the courtroom, such as the accused and their lawyer, court director, stenographer, interpreter, etc.
- The court should have protected Kunthea's anonymity during the hearing and ensure that any information that may reveal her identity or address is not mentioned. Court officials should put in place measures to protect Kunthea's safety and security from her perpetrators through measures such as: restricting the people in court to only those considered essential, escorts to and from court buildings, the use of separate entrances to the court building, private waiting areas, etc.
- The judge should be more sensitive towards Kunthea by ensuring that she does not feel intimidated or re-victimised by the court hearing. He should actively intervene on behalf of Kunthea if she was being harassed. He should have asked the relatives of the defendants and other non-essential staff to leave the courtroom when the victim is testifying. He should not ask her irrelevant or intimate questions unrelated to the case.

Case study #6⁷³ An attorney speaks to a child victim

"I can't tell what you what to do," said Lisa, a lawyer for an underage sex trafficking client. "You have the choice about whether you talk to the police. No one is forcing you, but if you do, it will help your case and help the others who are still in the same situation."

Lisa's client, Mai, kept her eyes to the floor. "I think that you know best. You are the lawyer. Please tell me what I should do."

"Well...it's your choice, but I think that you should talk to the police." Mai nodded, her eyes still down.

Lisa felt unsure about this. Last week, Mai had said she wanted to talk, but then in the interview with the police she had said next to nothing. She is not sure what Mai really needs or wants. She is not sure whether all safety issues have been adequately considered. She is finding it nearly impossible to strike a balance between giving Mai advice and ensuring that she has the room to make her own decisions.

"OK, Mai, we'll do whatever you want. But I want to be sure that you understand that you are my boss. I can tell you what I think is best, but you need to tell me what to do."

Mai smiled and looked up briefly. Then down at the floor again and nodded.

Lisa continued. "Talking to the police is better, but you don't have to. You are under 18 and that means that you have rights, and you can stay here and go to school even if you don't talk. Do you understand that?"

"Yes."

"So, what would you like to do?"

"What do you think? I will do what you advise me to do."

Do No Harm pointers



- As soon as a child victim is identified, a guardian shall be appointed by the authority to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been identified and implemented. In this scenario, it is unclear if Mai has a parent or an appointed guardian who is accompanying her throughout the process.
- The lawyer, Lisa, is trying to do the right thing by empowering Mai and letting her make her own decisions. She has presented Mai with a few options and informed her of her rights.
- However, Lisa is missing Mai's non-verbal, indirect messages. She is listening for Mai's words to tell her what she needs, rather than watching her behavior with the police and her body language in the interview.
- Lisa does not appear to understand that from Mai's cultural world view, it may be impolite for her to name her own needs so directly. In Mai's family and community, someone else is supposed to name your needs. Therefore, Mai feels distinctly uncomfortable and worried about coming across as self-centred, disrespectful and ungrateful.
- Lisa should be more sensitive to the age difference between her and Mai. In Mai's culture, she is expected to defer to anyone who is older than her, and she views Lisa as an older sister. Thus, she needs to show Lisa that she respects her advice and her opinion. When Lisa tries to shift these power dynamics, Mai smiles. This could mean a number of things – ranging from appreciation to distinct discomfort.

