
REPORTS OF THE COURSE

GROUP 1

EFFECTIVE MEASURES TO ENSURE COOPERATION OF WITNESSES AND TO SECURE THEIR TESTIMONY

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I. INTRODUCTION

Human trafficking and smuggling of migrants are very grave crimes. But when it comes to bringing criminals to justice, it is even more challenging because establishing guilt depends on evidence that the police obtain from witnesses (victims). In such circumstances cooperation with witnesses is very important to secure conviction. At the same time, as most of the evidence relies on witness testimony, supporting its credibility is a challenging task.

Owing to the aforementioned issues and group discussion outcomes, this report is divided into two main topics (securing witness cooperation and securing the credibility of witness testimony). Each topic outlines main challenges, best practices and recommendations.

II. ENSURING WITNESS COOPERATION

A. Issues and Challenges

1. Challenges of Reporting

Crime statistics related with TiP or SoM are skewed because most of the witnesses do not report these crimes. As a result, most of the TiP or SoM cases are left unprosecuted. The main reasons for that are:

- i. Lack or insufficiency of communication channels (hotlines, websites etc.), lack of public awareness about ways of reporting, the nonexistence of anonymous reporting in some countries, language barriers for foreigners who cannot contact (call, report) or understand the language of the host country;
- ii. Distrust in law enforcement and the criminal justice system, fear of retaliation by criminals, the existence of corruption in the criminal justice system, conflicts of interest, abuse of power by law enforcement, fear of being punished for other related crimes or fear of deportation faced by illegal immigrants;
- iii. Cultural/social values where victims feel ashamed to be seen as a victim of sexual exploitation, forced labour or slavery, physical, psychological harm or trauma caused by TiP/SoM.

2. Legal and Procedural Obstacles

- i. *From the perspective of witnesses:* lack of recognition as a victim, loss of time and financial burden due to lengthy investigation or trial, lack of legal assistance or support for witnesses, their maltreatment by law enforcement, undue pressure for additional evidence hinders witness cooperation. These

circumstances can lead to refusal to pursue the case and drop of legal proceedings by witnesses.

- ii. *Failure of the criminal justice system:* non-prioritization of TiP/SoM cases, lack of investigator's professionalism and consideration for the dignity of victims, continuous, repeated and non-victim-centred interviews, undue delay of procedure, lack of professional interpretation or misinterpretation of statements/testimony during investigation and trial further contribute negatively to cooperation.

3. Challenges of International Cooperation

Most of the criminals in TiP/SoM cases enjoy non-prosecution due to failure of international or bilateral cooperation. Jurisdictional issues, different legal procedures and prosecuting authorities, lack of mutual legal assistance, bureaucracy and lengthy procedures are some examples of obstacles in this sphere.

B. Best Practices and Recommendations

The group reached consensus to tackle challenges of securing witness cooperation via establishing secure communication channels, organizational and legislative countermeasures, witness support programmes and enhancing inter-agency and international cooperation.

1. Secure Communication Channels

Secure and accessible communication channels should be established to receive reports, while guaranteeing confidentiality of the reporter by allowing anonymous reports in multiple languages. The general public should be informed about these communication channels.

2. Victim (Witness) Protection / Support Programmes

All countries are recommended to establish victim support funds and to allocate adequate financial resources to support them. Money should also be allocated to NGOs in the form of grants or subsidies to support their activities in victim protection programmes.

3. Organizational Concepts

In order to identify and effectively combat country-specific challenges and patterns of TiP and SoM, deliberate research and well-designed surveys should be conducted to evaluate the overall situation of a country. Consequently, results of this study can be used as a basis for developing *national strategies* for combating TiP/SoM. Most participants agreed on establishing *special units* for fighting human trafficking. By specialization and identifying clear target groups, these units will be able to effectively and efficiently combat such crimes. Before taking decisions about rotation and promotion of such personnel, consideration should be given to their knowledge and expertise in this sphere. Likewise, special training should be conducted for law enforcement personnel to adequately meet risks and threats related to TiP/SoM. Clear and elaborate standards of operation (guidelines / manuals) for law enforcement personnel should be developed, and best practices and new methods of detection of TiP/SoM cases should be disseminated among them. Cooperation mechanisms should be developed between law enforcement and civil society for detection, investigation and rehabilitation of victims of human trafficking.

4. Overcoming Legal Challenges

Occasionally, depending on the case, witnesses should be guaranteed immunity from prosecution, including for crimes they committed during their victimization. Also, incentives should be increased for accomplices and suspects for their cooperation, law enforcement should give consideration to accomplices for providing evidence or testimony, the liability of offenders should be differentiated depending on whether they self-report their crimes, cooperate with the investigation or pay compensation to victims. Foreign or vulnerable witnesses' testimony during interviews should be secured via video recording for further use as evidence.

5. Enhancing International and Inter-agency Cooperation

Information exchange and the execution of requests play a vital role in immediately combating human trafficking. In order to facilitate collection and dissemination of data related to TiP/SoM, focal points (information sharing systems, red lists and risk profiles) should be established at the international, regional and domestic levels. Mechanisms for cooperation under the auspices of the UN, UNODC, INTERPOL and other international/regional organizations, on a bilateral level or on the basis of reciprocity should be used to discuss and communicate, exchange data and requests on TiP/SoM cases.

III. SECURING THE CREDIBILITY OF WITNESS TESTIMONY

A. Issues and Challenges

Human trafficking cases are very challenging to investigate and prosecute. Usually all investigators have is witness testimony. Sometimes all chances of securing witness testimony have passed or there was no opportunity due to the vulnerability of the witness. After thorough discussion of the issue, the group decided to classify the challenges of securing credibility of witness testimony into the following categories:

1. Bias or Vulnerability of an Individual's Testimony

The cross-border nature of TiP/SoM cases makes it challenging for law enforcement to prosecute criminals and bring them to justice. These criminals usually avoid prosecution by remaining in foreign jurisdictions with hidden identities. The vulnerability of witnesses due to age, psychological status and trauma, loss of memory or mental stability, fear of physical harm or pressure, not wanting to give testimony due to social/cultural values or stigma makes it impossible for the investigators to collect credible evidence to successfully prosecute suspects. The prosecutors will, thus, have false or fabricated evidence or insufficient evidence that would require corroborative evidence.

2. Pitfalls of the Criminal Justice System

Not following procedural rules when collecting evidence may result in evidence being disregarded. Undue delay of securing evidence consequently ends either with no evidence or the chances of obtaining evidence elapse. Investigators' lack of knowledge and expertise on deciding which kind of examination needs to be conducted in a specific case and in a timely manner inhibits collecting credible evidence.

B. Countermeasures and Recommendations

To secure credibility of evidence, the investigators must endeavour to find corroborative evidence to support the evidence of victims and witnesses. Corroborative evidence could be financial records, evidence of decoy witnesses, informants and others.

As new trends indicate, advances in technology and online platforms are contributing to the growth and complexity of crimes. To effectively detect and suppress such crimes new investigative techniques and tools (electronic/online investigation, financial investigations, undercover operations) should be developed and be used to collect corroborative evidence.

New methods of forensic examination of statements or testimony should be developed to verify the credibility of witness testimony. To avoid contamination of statements and mistakes of translation, interviews should be video recorded, and translations should be double checked. Video recording of interviews and evidence may be allowed to be used as evidence at trial.

To elude procedural pitfalls, capacity-building of law enforcement should be routinely conducted, and they should be provided with manuals and guidelines with clear instructions. Forensic interviewing techniques should be developed taking into consideration each country's circumstances, and speedy investigation and trial should be supported.

IV. CONCLUSION

The results of the group workshop and discussions show that securing witness cooperation and the credibility of witness testimony relies on both sides (witness and law enforcement). If both sides back up each other, they will both reach favourable outcomes. However, if one fails to back up another, none of them will reach their desired results. On the other hand, the existence of a number of obstacles and challenges makes it difficult or impossible for both sides to cooperate effectively. The participants of this group believe that implementation of the proposed solutions or recommendations will facilitate cooperation with witnesses, which will ultimately support the credibility of their testimony.