



**Australian
Aid**



**ASEAN-Australia
Counter Trafficking**



Victim Sensitive Courts

A Handbook for ASEAN Member States



June 2022

Author: Leisha Lister, Senior Adviser ASEAN-ACT

ASEAN-ACT is supported by the Australian Government and implemented by Cardno International Development, a DT Global Company. This publication has been funded by the Australian Government through the Department of Foreign Affairs and Trade. The views expressed in this publication are the author's alone and are not necessarily the views of the Australian Government.

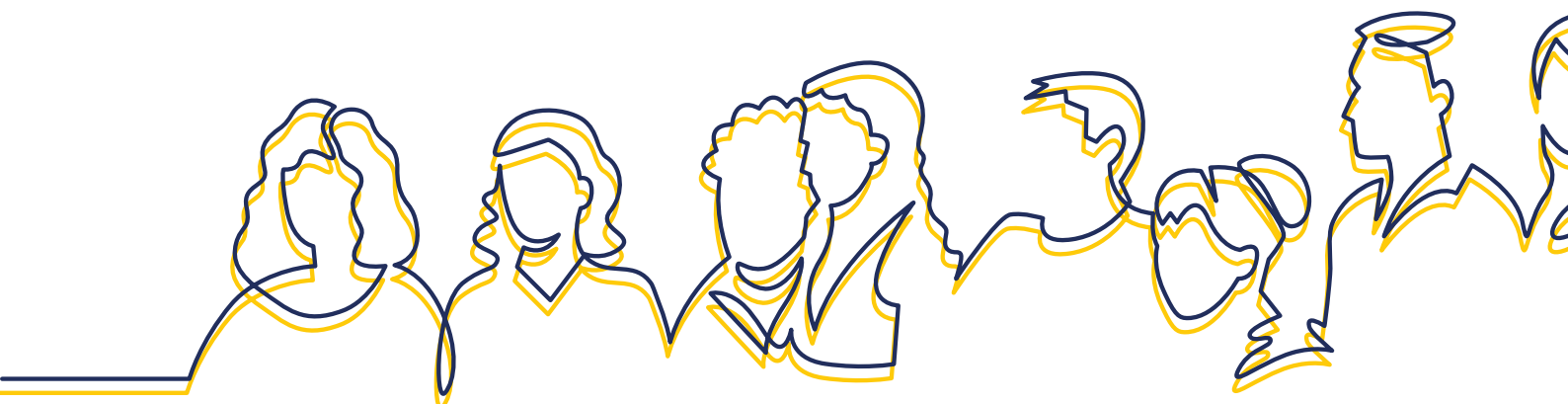
Photo cover by: Paolo Nicolello and Hakan Nural on Unsplash, Dong Nhat Huy on Shutterstock

Australian | **ASEAN-Australia**
Aid  **Counter Trafficking**

Victim Sensitive Courts

A Handbook for ASEAN Member States

Contents



Overview	6
ACTIP Provisions	7
Key principles.....	11
The 8 Victim Sensitive Court Indicators	12
Annex 1: Victim Sensitive Court Indicators Self-Assessment Tool	49



Indicator 1 15

Overview	15
Principles	15
Examples	16



Indicator 5 32

Overview	32
Principles	33
Examples	33



Indicator 2 16

Overview	16
Principles	16
Examples	17



Indicator 6 35

Overview	35
Principles	35
Examples	36



Indicator 3 21

Overview	21
Principles	21
Examples	22



Indicator 7 37

Overview	37
Principles	38
Examples	39



Indicator 4 25

Overview	25
Principles	26
Examples	26



Indicator 8 44

Overview	44
Principles	45
Examples	46



Overview

“

A victim-centred criminal justice response requires judges to place victims at the centre of consideration when performing their judicial tasks, emphasizing practices that effectively address the protection of victims from further harm. Not only is the victim's safety and well-being a stand-alone objective, putting victim safety and dignity at the core of any criminal justice intervention is likely to increase her willingness to cooperate with the criminal justice system.¹

”

Objectives of a victim-centred approach

- ▶ To protect and advance the rights of victims and witnesses in the disposition of criminal cases.
- ▶ To reduce the possibility of re-victimization by the criminal justice sector.
- ▶ To help the criminal justice sector, in particular courts, understand and recognize the role of the victim and witness and their needs during the criminal justice process.
- ▶ To guide the criminal justice sector, in particular courts, in applying a victim-centred and sensitive approach in handling trafficking cases in the criminal justice system.

A victim-centred approach and international good practice

“

The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking...anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular, the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers.²

”

In trafficking cases, victims are often the only source of evidence, and it is therefore difficult to prosecute the offenders. Having a victim-centred approach means putting the victim at the centre, or as the priority, for everything that needs to be done. It can include providing information to the victim so that they can make an informed decision about participating in the process, explaining their rights and interests to ensure that their basic needs are met and to

1 UNODC, “Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women”, in UNODC, Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women (2014), available at https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.

2 The UN High Commissioner for Human Rights and Human Trafficking 2002

make sure strict confidentiality and privacy of the victim is maintained. If the criminal justice agency can apply a victim-centred approach to their work, then they will be able to protect the rights of the victim and to ensure their dignity, their privacy and their safety are protected.

ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)

The Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) was developed in recognition of the growing issue of human trafficking within and involving the ASEAN Member States.

ACTIP, signed by all ten ASEAN nations in November 2015, sets out legally binding obligations to assist ASEAN Member States to deal with their diverse national challenges, priorities, and strategies in the fight against trafficking in persons. Article 1, which sets out ACTIP's core objectives, recognises the need to strengthen the protection of, and assistance to, victims of trafficking in persons, especially women and children.

The 8 Victim Sensitive Indicators in this Handbook are derived from obligations in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

ACTIP Provisions

Article 1 (Objectives) - sets out ACTIP's core objectives and recognises the need to strengthen the protection of, and assistance to, victims of trafficking in persons, especially women and children.

- ▶ Article 16 - relates to law enforcement and prosecution and refers to the need to ensure all authorities dealing with TIP cases are equipped with appropriate knowledge to protect the rights of TIP victims and they deal with TIP cases efficiently, and they maintain the privacy of the victim.



Prevention of Trafficking

Article 11 (Prevention of Trafficking in Persons) - deals with the prevention of trafficking and requires member states to introduce measures that protect victims from re-victimisation and to cooperate with NGOs and to strengthen legislative measures to prevent TIP.

Article 11 of ACTIP requires ASEAN members to:

- establish comprehensive policies, programmes and introduce relevant measures to prevent and combat trafficking in persons and protect victims (particularly women and children) from re-victimisation;
- conduct research and cooperate with non-governmental organisations in relation to trafficking risk factors such as poverty; and
- strengthen legislative and educational measures to prevent and combat trafficking in persons.

Article 12 (Areas of Cooperation)

This Article of ACTIP does not impose a positive obligation on ASEAN members and suggests that the relevant provisions be carried out “in conformity with domestic laws”. It sets out possible areas of cooperation, for example:

1. implementing measures to discourage the demand that feeds the trafficking industry;
2. implementing measures to strengthen regional cooperation in investigation and prosecution efforts; and
3. generally building capacity to combat trafficking.

Article 13 (Cross-border Cooperation, Control and Validity of Documents)

Article 13 of ACTIP requires ASEAN members to:

4. endeavour to undertake cross-border cooperation by, among other things, establishing communication channels and exchanging intelligence; and
5. implement effective border controls, controls related to the issuance of identity and travel documents and introduce measures to prevent counterfeiting, forgery or the fraudulent use of such identity or travel documents.



Victim Protection

Article 14 (Protection of Victims of Trafficking in Persons) - is specific to the protection of victims in relation to their physical safety, protecting their identity, ensuring that the specific needs victim such as children and persons living with a disability are accommodated. Article 14 also requires member states to ensure there are measures in place for victims to obtain compensation for damages.

Article 14 of ACTIP requires ASEAN members to establish national guidelines or procedures for the proper identification of victims of trafficking and where trafficking takes place in more than one country, ASEAN members should respect and recognize the identification of a person as conducted by another ASEAN member. In addition, this Article aims to protect victims by recommending that ASEAN members should:

- i. consider measures to enable victims to remain in its territory temporarily or permanently and ensure victims' physical safety in respect thereof;
- ii. ensure the privacy and identity of victims of trafficking in persons and the confidentiality of legal proceedings involving such victims;
- iii. not hold victims of trafficking in persons criminally liable for unlawful acts committed by them as a result of being trafficked;
- iv. not unreasonably hold victims of trafficking in persons in detention or in prison; and
- v. provide victims of trafficking in persons with care and support and assist with their reintegration.

Article 15 (Repatriation and Return of Victims)

Article 15 of ACTIP requires ASEAN members to:

- vi. verify whether a victim is a national or permanent resident of its country without undue delay;
- vii. facilitate and accept without undue delay and with due regard of their safety, victims who are nationals or have right of permanence residence in their country;
- viii. where victims do not have the proper documentation, provide victims with the necessary travel documents and authorization to enable their re-entry into its territory; and
- ix. adopt legislative or other measures as may be necessary to establish repatriation programmes.



Enforcement

Article 16 (Law Enforcement and Prosecution)

Article 16 of ACTIP requires ASEAN members to:

- i. adopt measures necessary to equip its authorities and legal systems with adequate resources to deal with trafficking in persons;
- ii. take steps to detect, deter and punish any participation of individuals in trafficking in persons;
- iii. take all necessary steps to protect victims of, and witnesses relating to, trafficking in persons

- iv. cooperate with each other in order to encourage victims of trafficking in persons to voluntarily enter and stay temporarily in the relevant territories for the purposes of prosecuting traffickers; and
- v. establish a long statute of limitations period under its domestic laws relating to commencing proceedings for offences under ACTIP.

Article 17 (Confiscation and Seizure)

Article 17 of ACTIP requires ASEAN members to:

- i. adopt measures that are necessary to enable the identification, tracing, freezing and/or confiscation of proceeds derived from, or property involved in, offences under ACTIP; and
- ii. empower their courts or other competent authorities to order that bank, financial or commercial records be made available, including that any refusal to do so on the grounds of bank secrecy should not be allowed.

Article 19 (Extradition)

Under Article 19 of ACTIP:

- i. any trafficking offence established in accordance with Article 5 (Criminalisation of Trafficking in Persons) of ACTIP shall be deemed to be an extraditable offence that ASEAN members should undertake to include in every extradition treaty concluded with another ASEAN member;
- ii. if there is no extradition treaty between the relevant ASEAN members, ACTIP should be considered as the legal basis for extradition; and
- iii. if an ASEAN member does not extradite an alleged offender because he/she is one of its citizens, it shall be obliged to submit the case to its own national authorities for the purpose of prosecution of the alleged offender.

Article 22 (Disposal of Confiscated Proceeds of Crime or Property)

Under Article 22 of ACTIP:

- i. any proceeds of crime or property confiscated by an ASEAN member under ACTIP shall be disposed of by such member in accordance with its domestic laws and administrative procedures; and
- ii. if requested by an ASEAN member, the other ASEAN member should give priority consideration to returning any confiscated proceeds or property to allow compensation and assistance to victims of trafficking in persons or to allow the return of such confiscated proceeds or property to their legitimate owners.



Monitoring & Compliance

Article 24 (Monitoring, Reviewing and Reporting)

Article 24 of ACTIP requires the ASEAN Senior Officials Meeting on Transnational Crime, supported by the ASEAN Secretariat, to promote, monitor, review, and report periodically on the implementation of ACTIP to the ASEAN Ministerial Meeting on Transnational Crime.

Key principles

The Victim Sensitive Indicators (VSI) stem from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime.

The Victim Sensitive Indicators also draw on the principles set out in the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime³, the Recommended Principles and Guidelines on Human Rights and Human Trafficking⁴, and the UNODC Toolkit to Combat Trafficking in Persons.⁵

The underlying principle of a victim-centred approach is that victims of trafficking are victims of crime and, as such, they have a right to justice. They should be treated with compassion and respect, all services should be victim centric,⁶ and special protections should be afforded to those especially vulnerable such as children and persons living with a disability.

The key principle of this approach is to:

- **Empower** victims by actively supporting and engaging them in the process.
- **Reduce** the likelihood of secondary victimisation and re-traumatisation of the victim.
- **Build** confidence in the judiciary and the justice system
- **Protect** the integrity of the criminal justice system.

3 The Trafficking in Persons Protocol was adopted by the General Assembly in its resolution 55/25 of 15 November 2000 (annex II). It entered into force on 25 December 2003. The ratification status of the Protocol can be consulted at: www.unodc.org/en/treaties/CTOC/signatures. See also the annotated guide available at: www.globalrights.org/site/DocServer/Annotated_Protocol.pdf?docID=2723

4 ECOSOC Resolution 2005/20

5 Recommended Principles and Guidelines on Human Rights and Human Trafficking; report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (2002) (E/2002/68/Add.1)

6 Victims should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability, and level of maturity and fully respecting their physical, mental, and moral integrity. Victims should be treated as an individual with his or her individual needs, wishes and feelings.

The 8 Victim Sensitive Court Indicators

There are 8 high level areas courts and other justice system stakeholders should focus on when dealing with trafficking in person cases. These Victim Sensitive Indicators (VSI) serve as a framework and reference point to assist the justice sector, in particular courts, to protect the rights of trafficked persons.



A short video has been created to provide an overview of these indicators and can be viewed by going to <https://www.youtube.com/watch?v=tZoiD2NfC0E>

INDICATOR

1

Safety & privacy



Indicator 1: Ensuring the safety and privacy of trafficked persons

Overview

It is critical the justice sector ensures trafficked persons are effectively protected from further harm, threats or intimidation by traffickers and associated persons. This means that there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial.⁷ It also means taking all reasonable steps to ensure the safety of the victim when they come to court, and that steps are in place to identify and mitigate any risks to the trafficked person when they are a witness in a case.



Principles

What should be implemented?

- 1.1.** Close the court when a victim or vulnerable witness is giving their testimony (ACTIP Art. 14.6)
- 1.2.** Develop and implement risk assessment/safety plans for victims/witnesses that detail steps to be taken to protect them during the criminal justice process (ACTIP Art. 14.5)
- 1.3.** Decisions/judgments in TIP cases anonymised and published online (ACTIP Art. 14.6)
- 1.4.** Court procedures in place to prohibit the publication of identifying details of the victim/witness by the media or on social media (ACTIP Art. 14.6)



Examples:

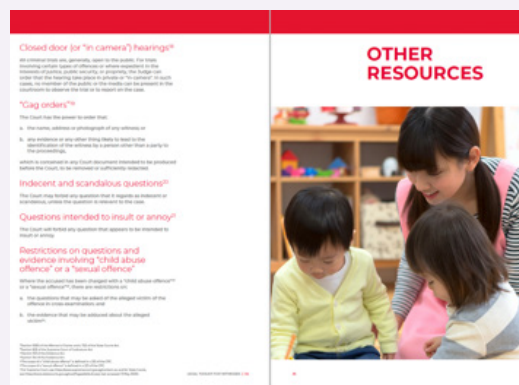
Closing the court to the public - In Australia, the Commonwealth Criminal Code enables courts to exclude all or some members of the public from attending court. This is particularly important for cases involving a child or a vulnerable victim/witness, for example someone who is required to give evidence of physical or sexual violence.

⁷ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. P11



Information about strategies the court can implement to protect victims and witnesses - The Singapore Courts developed a *Legal Toolkit for Witnesses*⁸ which details how the court can order the hearing to take place in private or ‘in-camera’ where the proceedings are closed to the public and the media. They can also implement ‘gag orders’ to protect vulnerable witnesses by prohibiting the publication of identifying details from being published. This can include the witnesses name, address, photograph, or any other thing likely to lead to the identification of the witness.

They can also implement ‘gag orders’ to protect vulnerable witnesses by prohibiting the publication of identifying details from being published. This can include the witnesses name, address, photograph, or any other thing likely to lead to the identification of the witness.



Legal Toolkit for Witnesses

Information about safety for victims and witnesses - In the United States some jurisdictions provide information to witnesses on how to protect their safety when going to court.⁹

Getting to the courthouse

- Try to get to court at a different time than you think the abuser will arrive to avoid seeing him/her on the street or in line to enter the court. If the abuser is always late, try arriving early. If the abuser always arrives early, try arriving closer to your hearing time or come with a friend. Remember: make sure to leave plenty of time to get through the lines, metal detectors, etc., so that you get to the hearing on time. If you are late, the case may be called without you and dismissed. Finding a domestic violence advocate to go with you can really help with safety. Call the National Domestic Violence Hotline (1-800-799-SAFE) to find help near you. You can also find a list of domestic violence organizations in your area in our [Advocates and Shelters](#) page.
- See if your police department or sheriff's department will take you to the courthouse. Meet them somewhere other than the courthouse and then ask the officer to walk you inside. Have the officer wait with you until you find the bailiff or courthouse security and let them know your situation. Try to sit near the court officers or security guards if you can.
- Bring a friend or family member with you so you won't have to be alone at all during the day.
- If your friend or family member cannot spend the day in court with you, ask that person to drive you to court. It's best to get someone whose car the abuser doesn't know. Ask him/her to drop you off at the courthouse entrance so you don't have to walk alone through the parking lot.

Safety Plans - In Australia, the Family Court staff ask victims a series of questions and discuss what arrangements are needed to enable them to participate in court events safely. The staff create a ‘safety plan’ in consultation with the victim/witness that sets out what protection the victim can expect from the court, what numbers to contact if they are concerned for their safety, and in some cases, can provide a security guard to chaperone the victim to and from the court.¹⁰



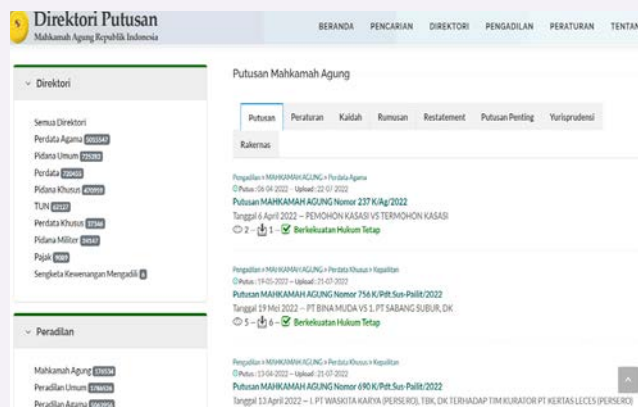
⁸ <https://hagar.org.sg/wp-content/uploads/2021/06/General-Legal-Toolkit-Handbook-for-Vulnerable-Witnesses.pdf>

⁹ <https://www.womenslaw.org/about-abuse/safety-tips/safety-court#1>

¹⁰ See: <https://www.fcfcoa.gov.au/sites/default/files/2021-08/Do-you-have-fears-for-your-safety-while-attending-court-0921V1.pdf>

Publishing anonymised judgments online

– The Supreme Court of Indonesia publishes TIP court decisions online via a database called *Direktori Putusan*.¹¹ The database is searchable by type of case, year, and region. Publishing decisions in trafficking cases is important as it allows for greater transparency of court proceedings, builds confidence in the judicial system, and improves the public's understanding of court processes. Making judgments publicly available also raises awareness and deters others from engaging in similar activities and serves as a valuable resource for legal education.



Most countries anonymise TIP decisions before making them publicly available online. There are several ways to anonymise a judgment including:

1. using the initials of the party only (Serbia)
2. redacting the judgment so that all identifying material cannot be seen (United States)
3. using pseudonyms which is acknowledged on the cover page of the judgment (Australia).

a) A Serbian example of an anonymised judgement using initials of the parties only



b) United States example of a redacted judgement



Another relevant consideration is whether "the order is necessary to protect the safety of any person": s 8(1)(c). "Safety" includes psychological safety: *AB (A Pseudonym) v R (No 3)* at [59]. When considering s 8(1)(c), the "calculus of risk approach" should be adopted, which requires consideration of the nature, imminence and degree of likelihood of harm occurring to the person. If the prospective harm is very severe, it may be more readily concluded the order is necessary even if the risk does not rise above a mere possibility: *AB (A Pseudonym) v R (No 3)* at [56], [59]; *Darren Brown (a pseudonym) v R (No 2)* [2019] NSWCA 69 at [37].

11 <https://putusan3.mahkamahagung.go.id>

INDICATOR

2

Evidence & proceedings



Indicator 2: Best Evidence - The way trafficked persons record and present their evidence in the proceedings

Overview

Victims of trafficking often feel vulnerable and overwhelmed by the unfamiliarity of the justice system and can be re-victimized through the insensitive or discriminatory treatment provided by some justice service providers. It is critical that measures are put in place to prevent further trauma that may result from attending the trial and giving evidence.

To ensure that trial processes maximize the survivor's cooperation, it is critical that courts provide friendly and enabling court environments for TIP survivors to feel safe and comfortable recounting what they have experienced, that there are procedures in place to minimize re-victimization, and evidentiary rules are applied in a non-discriminatory manner.



Principles

What should be implemented?

To implement this principle, courts should ensure:

- 2.1.** TIP cases are prioritised or expedited. By responding quickly and appropriately to trafficking cases and by expediting cases that involve vulnerable victims, victims are more willing to report these cases and confidence in the court to deal with efficiently and effectively with the case will be improved (ACTIP Art. 16.3)
- 2.2.** Measures are in place to ensure victims are permitted an opportunity to and are supported in the criminal proceedings by:
 - a) Using expert witnesses (such as an intermediary) to provide evidence when required about the dynamics and complexities of trafficking; information on vulnerable witnesses such as the impact of trauma, the effects on children, evidence of sexual violence from forensic and medical doctors etc. (ACTIP Art. 14.10)
 - b) Allowing a victim to have a support person of their choice to be with them when they give their testimony in court (even in closed proceedings) and throughout the trial¹² (ACTIP Art. 14.10)

¹² In some jurisdictions, a common technique is for a defence counsel to subpoena the victim's family members as potential witnesses, so they are unable to support the victim in court and to put additional pressure on the victim. It is essential that Courts and Prosecutors are aware of this strategy used by some defence counsel and deny these motions.

- c) Ensuring there are qualified language interpreters available, so victims can understand and meaningfully participate in the criminal proceedings (ACTIP Art. 14.10b)

2.3. Measures are in place to ensure victims (who wish to participate) can do so without seeing the accused by using:

- a) witness screens in place to screen the accused (ACTIP Art. 14.6)
- b) Use of video conferencing technology so the witness can give evidence remotely from another location or from another room (ACTIP Art. 16.7)
- c) pre-recorded video evidence is played in court in place of the victim having to recount the evidence (ACTIP Art. 16.7)
- d) separate entrances and waiting rooms available for victims that are available to TIP victims/witnesses during the whole trial, but especially, before and after giving evidence (ACTIP Art. 16.7)

2.4. The use of 'victim impact statements' to ensure the judge has a comprehensive assessment of the impact on the victim caused by the offender to obtain compensation for damages suffered (ACTIP Art. 14.13)



Examples:

Many jurisdictions have introduced several special measures, such as using screens, giving evidence via video link, or playing the pre-recorded police interview, removal of formal legal dress and emptying the public gallery of the court. These special measures have been evaluated in England and Wales¹³ and have proven successful in reducing anxiety in victims.

Pre-Recorded Video Evidence - In many jurisdictions around the world, there is provision in the law to allow for vulnerable witnesses to give their evidence under conditions that make the experience easier for them. This includes giving their evidence in chief by way of a pre-recorded interview, which is completed by the police. Such a pre-recorded video may be edited to remove any inadmissible statements the victim made, prior to being played in court. This type of evidence can also be used to inform prosecutors, social workers, and victim support professionals so the victim does not have to keep retelling their story.

In civil law traditions, the victim's statement is recorded before the judge with the defence lawyer present to be able to put questions to the victim at some point. In common law countries, the recorded statement is entered during the examination in chief, but the victim is to be available to answer questions from the defence during cross-examination.

¹³ Olivia Smith and Tina Skinner, "Observing Court Responses to Victims of Rape and Sexual Assault", *Feminist Criminology*, vol. 7, No. 4 (2012).

The Crown Courts in England and Wales have introduced these special measures which spare vulnerable victims and witnesses the trauma of attending court and allow children and other vulnerable witnesses to have their cross-examination video-recorded and played during the trial. The recording takes place as close to the time of the offence as possible to help memory recall and to reduce the stress of giving evidence in a courtroom setting.¹⁴ You can learn more about pre-recorded evidence in the ASEAN ACT Webinar - Alternative Modes of presenting victim testimonies at

<https://aseanactpartnershiphub.com/events/>

Video conferencing technology - connects parties to the court proceedings without requiring them to travel, thereby reducing costs and increasing efficiency of proceedings. It can increase the likelihood that important witnesses in trafficking cases will be available to give evidence to the court. Another benefit of video-link testimony is the ability to connect interpreters who may be in different locations. For example, it may be challenging to locate a Khmer interpreter for Cambodian trafficking victims testifying in a Malaysian or Thai court. Video-link testimony allows these interpreters to connect remotely and be available at a lower cost to the court.

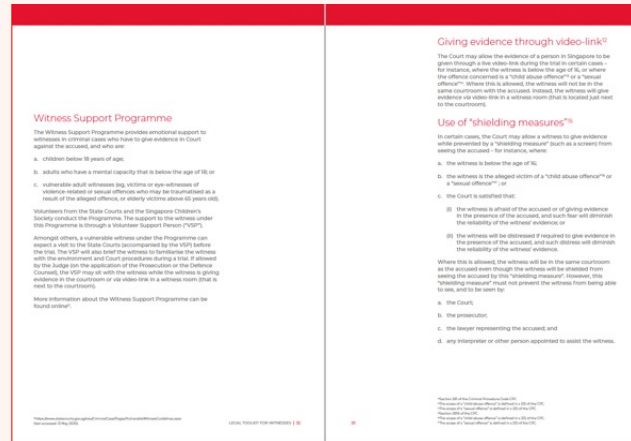
Victim Privacy Screen - In those courts where video testimony or closed-circuit TV facilities are not available, a vulnerable witness should be permitted to give evidence in an alternative way, such as from behind a privacy screen in the courtroom. A vulnerable witness should also be permitted to have a support person, such as a parent or friend of their choosing, sit with them while they are giving their evidence.



A Victim Privacy Screen is erected in a court in Germany because closed-circuit TV was not available.

¹⁴ <https://www.gov.uk/government/news/new-courtroom-protections-for-vulnerable-victims-available-nationwide>

Providing information to victims about special measures available - The Singapore *Legal Toolkit for Witnesses*¹⁵ details how the Singapore Courts can implement 'shielding measures' to protect vulnerable witnesses by enabling the witness to provide evidence through a video link or by placing a screen between the witness and the accused. It is important that witnesses are made aware of these measures early so they can request they be made available to them.



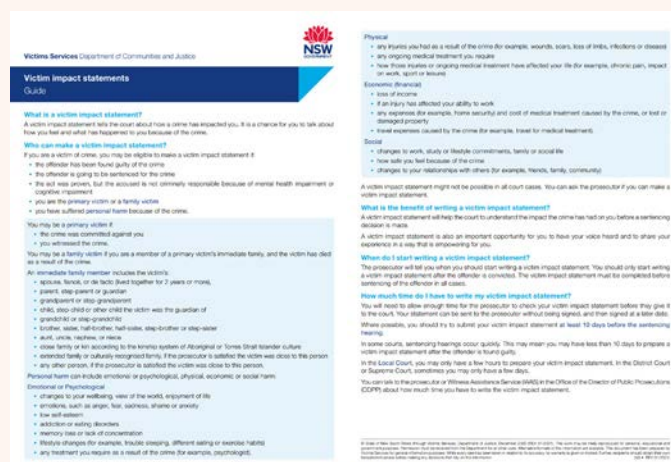
Legal Toolkit for Witnesses

Victim Impact Statements - Professor Paul Cassell from the United States talks in this YouTube video about how victim impact statements can provide victims with an opportunity to address the accused, to tell the court how the crime affected their lives, and in some cases provide the victim with 'closure'. It is a means of ensuring that the victim's voice is heard in criminal proceedings.



<https://www.youtube.com/watch?v=UtGr6p81VBE>

Guide to Victim Impact Statement for Victims of Crime¹⁶ - The New South Wales Government of Australia has created a guidebook to assist victims of crime to prepare a 'Victim Impact Statement' which is read by the judge, after the offender has been convicted of the crime and prior to sentencing. A victim impact statement tells the court about how a crime has impacted the victim and it provides the victim with an opportunity to talk about how the crime has affected them: financially, emotionally, and physically.

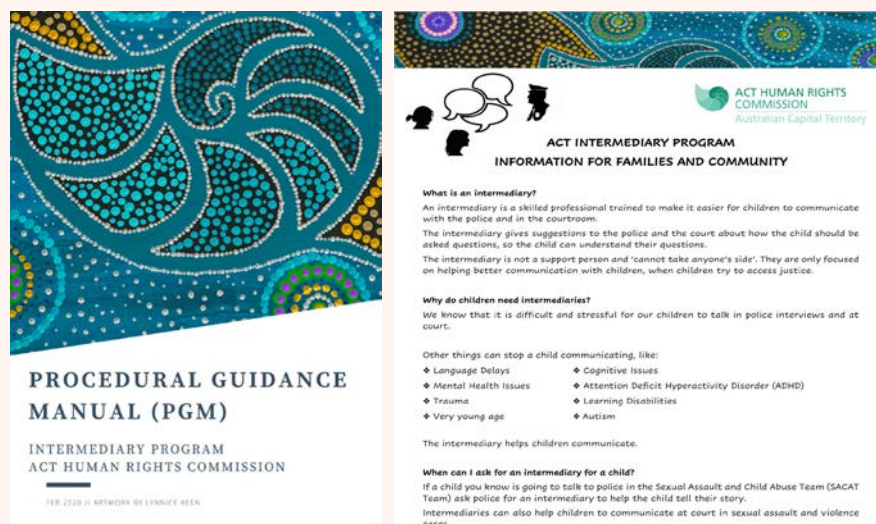


Guide to Victim Impact Statement for Victims of Crime

¹⁵ <https://hagar.org.sg/wp-content/uploads/2021/06/General-Legal-Toolkit-Handbook-for-Vulnerable-Witnesses.pdf>

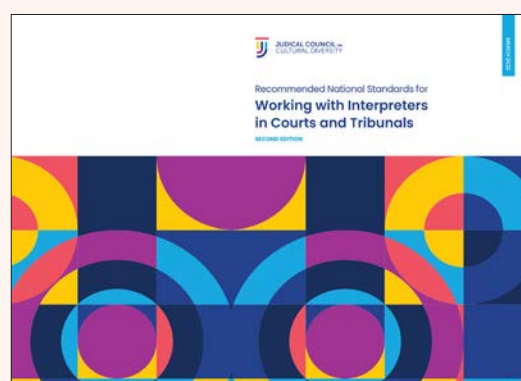
¹⁶ <https://victimsservices.justice.nsw.gov.au/documents/victims-rights/charter-of-victims-rights/victim-impact-statement-guide.pdf>

Use of Intermediaries - Intermediaries help witnesses to communicate their best evidence. In Canberra, Australia, Intermediaries are officers of the court who have undertaken rigorous training to become accredited. Their role is to facilitate communication between witnesses and police, and witnesses, lawyers, and others at court during the criminal trial process. Intermediaries are experienced facilitating communication of witnesses with language delays, mental health issues, learning disabilities, cognitive issues, and trauma. The intermediary is an impartial participant in the process who is focused on helping the effective communication of evidence. As impartial officers of the court they are subject to laws governing their conduct and are prohibited from discussing the content of the evidence.



Procedural-Guidance-Manual¹⁷

Use of Interpreters - The work of interpreters is essential to ensuring access to justice and procedural fairness. The Australian Judicial Council on Cultural Diversity (JCCD) developed National Standards for Working with Interpreters in Courts and Tribunals¹⁸ to establish recommended standards and optimal practices for the use of interpreters in Australian courts.



Legal representation of victims - There is evidence to suggest that victims who are supported through the legal process are more likely to participate in a prosecution and are able to provide complete and accurate evidence. Their duties could range from acting as an intermediary during questioning to providing advocacy and representation throughout the whole legal process, including sentencing and applications for restitution and compensation.

¹⁷ <https://hrc.act.gov.au/wp-content/uploads/2020/05/1.-ACT-Intermediary-Procedural-Guidance-Manual-FEBRUARY-2020.pdf>

¹⁸ <https://jccd.org.au/wp-content/uploads/2022/05/JCCD-Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals-second-edition.pdf>

INDICATOR

3

Justice sector personnel



Indicator 3: Interaction – How the formal justice sector agency personnel and judges interact with the victim/witness.

Overview

Without the appropriate knowledge, skills and abilities, justice sector personnel and judges will not be able to provide appropriate services for victims of trafficking. Adequate training of police, prosecutors, judicial officers, medical professionals and relevant government departments on the laws and procedures must be provided to ensure victims have access to justice and are afforded proper care and respect. The training should focus on protecting the rights of victims and take into account the need to consider human rights and child-and gender-sensitive issues.

In addition to training, the without standard operating procedures, service standards, and codes of conduct that outline expectations and consequences for breaches of professional accountability, and follow-up when those requirements are breached, justice sector personnel can proceed with impunity.



Principles

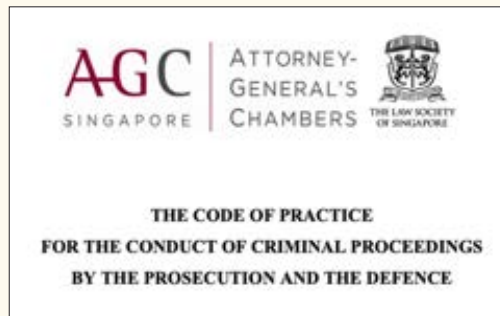
What should be implemented?

- 3.1.** There are special units/persons to deal with TIP cases in the court (ACTIP Art. 16.1)
- 3.2.** The Court should establish guidelines and standard operating procedures (SOPs) for all court staff and judges on how to deal with trafficking cases. These SOPs should focus on victim sensitive practices and a trauma informed approach. SOPs should ensure that all investigative processes are adhered to, all necessary interviews have been conducted, that all evidence has been collected and processed, that prosecutors and judges are in possession of all the evidence and documentation required to hear the case and that witnesses are available and ready to proceed at the trial (ACTIP Art. 11.1(b) and 14.10(c))
- 3.3.** The Court should develop and adopt specific regulations and codes of conduct setting out the expected standards of behaviour of judges and court staff and the consequences of failure to adhere to these standards when dealing with TIP cases. These standards should be available to the public such as in Victim's Charter of Rights (ACTIP Art. 16.1)
- 3.4.** TIP training, provided to all judges and court personnel, is based on a trauma informed approach, and is included within existing judicial accreditation and training programs (ACTIP Art. 16.6)




Examples:

Treating victims with dignity and respect - It is the judge who sets the tone and creates the environment for a fair trial in his or her court. All who appear in court are entitled to be dealt with in a way that respects their human dignity and fundamental human rights. The criminal laws in some countries provide that extra care and sensitivity should be taken where the witnesses are young, and/or have been adversely affected or traumatized by the relevant offences. For example, Section 19 of the Singapore *Code of Practice for the Conduct of Criminal Proceedings*¹⁹:



19. Extra care and sensitivity should be taken where the witnesses are young, and/or have been adversely affected or traumatized by the relevant offence(s). Where the witness is a child or a young person as defined under the Children and Young Persons Act (Cap 38), Prosecutors and Defence Counsel should interview the witness in the presence of a Child Advocate or a Child Protection Officer where reasonably practicable. The Child Advocate or Child Protection Officer should be allowed to call for intermissions during the interview, if he is of the view that it is in the interest of the witness to do so.

Guidelines and Standard Operating Procedures (SOPs) - Outlining the responsibilities of court personnel ensures there is a clear understanding of the expectations of judges, magistrates, and court staff. The following two examples are extracts from the Pacific Judicial Strengthening Program Toolkit²⁰ developed for courts in Pacific nations which demonstrates how responsibilities can be clearly articulated.



Judge and Magistrate responsibilities

Overview of responsibilities

- The judge/magistrate is responsible for ensuring that victims and witnesses of family and sexual violence feel supported and protected by the court during the court process so that they can participate without fear, while also ensuring fairness to the defendant.
- The judge/magistrate has responsibilities they need to proactively address, working closely with court staff, in three stages: pre-hearing, during hearing and post hearing/sentencing.
- The Judge is responsible for remaining in control of the case in all three phases.

For further background and guidance see PJST Human Rights Toolkit <https://www.fedcourt.gov.au/pjsi/resources/toolkits/Human-Rights-Toolkit.pdf> especially Chapter 7

19 <https://www.agc.gov.sg/docs/default-source/newsroom-documents/media-releases/2013/code-of-practice-for-the-conduct-of-criminal-proceedings---final.pdf>

20 See for example Checklist 4 "When victims of family & sexual violence come to court" for Chief Justice, Judges, Magistrates and Court Staff: <https://worldjusticeproject.org/sites/default/files/documents/PJSI%20-%20Human%20Rights%20Checklists.pdf>

Guidelines for court personnel outlines their responsibilities using a 'victim sensitive' process and include a checklist to ensure a victim or witness is in a safe situation when they come to court, also known as a 'Safety Plan'. Checklists in SOPs are a good tool to ensure that all available services to protect victims and witnesses are in place.²¹

Court staff responsibilities

Court staff share responsibility with the judge/magistrate to ensure that victims and witnesses of family and sexual violence feel supported and safe (physically and psychologically) to participate in the court process without fear.

For further background and guidance see PST Human Rights Toolkit <https://www.fedcour.gov.au/pjsi/resource/toolkits/Human-Rights-Toolkit.pdf> especially Chapter 7

Preparation for the hearing

- Treat confidentiality of the victim/witness very carefully** (especially when having any contact with the suspect, victim or suspects' family members or other community members).

Checking victim/witness is in a safe situation

- ☒ If they are still in home environment, carefully consider how to contact the witness/victim safely. (i.e. call them on their telephone and check first if it is safe/good time for them to talk).
- ☒ Find out where the victim/witness is currently living and whether they are in a safe situation. Ask them:
 - ☐ Are they are feeling safe from the suspect/anyone else around them
 - ☐ Has anyone used to threatened violence against them since they made a complaint to the police/court?
 - ☐ Discuss with person their options for being in a safer place or how to make their current situation safer. (see guidance below on making a safety plan)

Benchbooks - In Australia, the Judicial College of Victoria has developed Benchbooks for use by judges, court staff and other legal professionals which provide further information and advice regarding the law and its application.²²

Victims of Crime in the Courtroom - The Judicial College of Australia have also developed a comprehensive benchbook which details considerations for judicial officers and court staff to limit re-traumatisation of victims and enhance opportunities for post-traumatic growth, without compromising the integrity of the criminal justice system.²³

Note 3: The Courtroom Experience and Public Confidence

Key points to consider: Engaging with witnesses and victims of crime

<p>Lead by example: Encourage court staff to strive for clear, respectful and appropriate interactions with victims and witnesses.</p>	<p>Be aware of support services: Consider asking whether support services have been accessed and whether a general statement about support services should be made by court staff or the judicial officer at the outset of the hearing.</p>	<p>Open Justice Considerations</p> <p>Though courts are presumptively open to the public, judicial officers can restrict information about certain victims from being publicly available and, in some cases, restrict access to court and tribunal rooms in which matters are being heard.</p> <p>Restriction of information is a critical and sensitive issue for victims, particularly children, people with cognitive impairments and victims of sexual offences and family violence.</p> <p>Judicial officers can also consider the use of pseudonyms for victims and witnesses and the removal of their identifying information from the judgment or public court documents.</p>
<p>Acknowledge the victim: In appropriate cases, consider directing remarks towards the victim, maintaining appropriate eye contact and thanking the victim for their participation.</p>	<p>Minimise the victim's contact with the accused: Consider whether staff can make physical arrangements to minimise contact.</p>	<p>For more information on open justice in Victorian courts and tribunals, see:</p> <ul style="list-style-type: none"> • Powers to Make Orders Qualifying Open Justice – Open Courts Bench Book and • Committal Hearings and Open Court Principles – Victorian Criminal Proceedings Manual.
<p>Consider victims in case management: Be informed about the particular needs of the victim/s and consider their role in the process.</p>	<p>Be aware of and consider using cultural protocols: See Guidance Note 6: Culturally and Linguistically Diverse Backgrounds.</p>	<p>Guidance Notes 6 - 14 contain further detail on steps the court can take to assist victims with diverse needs including child victims, victims of family violence and victims from culturally and linguistically diverse backgrounds including Aboriginal and Torres Strait Islander backgrounds.</p>
<p>Consider specific needs: Does the victim have specific needs that can be met to maximise their participation and engagement with the court process?</p>	<p>Consider use of language: Be aware of the message that language and actions may convey to victims from different backgrounds.</p>	
<p>Develop a trauma-informed practice: A trauma-informed practice is one that is attuned to all aspects of a service, how it is delivered and the myriad ways in which stress can further traumatise people whose physiology and psychology are disrupted and dysregulated. For more information see Trauma and the Law. The Judicial College runs programs to support judicial officers to develop a trauma-informed practice.</p>	<p>Recognise that courts are not workplaces for victims: Understand that victims may react emotionally to the court process. Consider outlining expectations of appropriate behaviour in court and addressing all participants.</p>	
<p>Be aware of and consider use of intermediaries and Ground Rules Hearings: The College has produced a best practice video which can be accessed online.</p>	<p>Warn observers about evidence: Some evidence can be particularly distressing for victims such as photographs or audio-visual recordings. Consider notifying observers when potentially distressing evidence will be displayed, explaining why it must be shown and providing an opportunity for observers to temporarily leave the courtroom. A short adjournment might allow for an inconspicuous departure.</p>	

21 <https://worldjusticeproject.org/sites/default/files/documents/PJSI%20-%20Human%20Rights%20Checklists.pdf>

22 See for example: <https://www.judicialcollege.vic.edu.au/resources>

23 <https://www.judicialcollege.vic.edu.au/resources/victims-crime-courtroom>

“What We Can and Cannot Do” –

In Indonesia and Australia, courts have set out what administrative court staff can for litigants, witnesses and clients of the court. This type of document makes it very clear what victim/witness rights are and what they can expect from the court and its staff and the responsibilities of the court.²⁴

Victim Charter of Rights is an excellent way to set out the rights of victims and witnesses and enables them to see that the Courts take their needs seriously. This example from Canada sets out four principal rights of victims: Information, Protection, Participation and Restitution as well as their right to file a complaint for an infringement or denial of any of their rights under this Charter. The Charter is readily available to the public and is published on the Court's website.²⁵



²⁴ See for example The Religious Court of Medan, Indonesia - <https://pa-medan.go.id/index.php/kepaniteraan/hak-hak-pencari-keadilan>; The Federal Court of Australia - <https://www.fcftoa.gov.au/pubs/can-cannot> and the Land Court - <https://www.lec.nsw.gov.au/lec/coming-to-court/what-court-staff-can-and-can-t-do.html>.

²⁵ https://csrcvc.ca/general_resources/know-your-rights/

INDICATOR**4****Information
& services**

Indicator 4: Information and services provided to trafficked persons when in contact with the formal justice system

Overview

Access to information is an important starting point for the participation of victims of trafficking in the criminal justice process. It is therefore critical that all justice agencies, including Courts, have measures in place that provide TIP victims with information on relevant court and administrative proceedings and to provide assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings.²⁶

- ▶ Judges, in their leadership role, should whenever possible, arrange the following in their jurisdiction:²⁷
- ▶ Victims and witnesses are provided with information and material in non-legal terms regarding their rights including information about:²⁸
 - the trial process
 - the physical layout of the courthouse/courtroom
 - witness fees if available to them
 - compensation fund/remedies
 - other available financial assistance available to them to enable them to realize their right to adequate and appropriate remedies.
- ▶ Establish reception areas/focal point to provide victims and witnesses with information about public and community services available to TIP victims including crisis intervention, counselling, and other support services for victims.
- ▶ Ensure victims and witnesses are treated with courtesy, respect, and fairness at all times.

It is important for judges to understand that trafficked persons have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining compensation. Judges should, where possible, ensure that applications for remedy are made by the victim and dealt with concurrently with the trial.

26 See: *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Viet Nam acceded to the Convention on 8 June 2012.

27 UNODCCP, *Handbook on Justice for Victims*. https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf

28 Some States have established the legal duty of authorities involved in criminal proceedings to provide information to victims of crime. One advantage of such an approach is that it raises the officials' awareness of their responsibility towards victims.



Principles

What should be implemented?

4.1. The Court should provide appropriate information and material in a variety of formats to trafficking victims in simple, non-legal terms and in a language they understand²⁹ concerning:

- a) what human trafficking is; the criminal justice process including the victim's legal position; their rights; their options (to participate or not); support services available to victims and the estimated time frame of a trafficking trial (ACTIP Art. 14.9 & 14.10(b))
- b) the non-punishment principle so the victim understands they will not be criminally or administratively liable for unlawful acts committed by them, if the acts are directly related to the trafficking (ACTIP Art. 14.7)
- c) the right of TIP victims to seek restitution/ compensation (if available) for their loss and trauma as well as the application process³⁰ (ACTIP Art. 14.13)

4.2. The court has appointed a focal point/case manager/victim witness coordinator who will keep in contact with the victim, provide updates on the status of the case, and provide referral information to the victim support services available to them (ACTIP Art. 16.1)



Examples:

Preventing secondary victimization in the criminal justice system - The courtroom can be a frightening place for victims. Criminal courts, procedures and trials can be formal and traditional. Judges have a better chance of reducing the anxiety of the victims if the judge understands how this institutionalized setting and its practices contribute to the inhospitable conditions faced by victims and expose them to secondary victimization.

The Table below provides a summary of some of the factors or aspects of the formality of criminal trials that contribute to inhospitable conditions for victims. It shows that many of the factors that contribute to the trauma experienced by victims are most likely unavoidable e.g., victims must describe to people they do not know well, or at all, the details of the violence. The defence must have an opportunity to ask questions of the complainant. However, some of the rituals of the trial, or aspects of these rituals, are unnecessary.

29 Victims of trafficking remain very vulnerable when the services they receive are in a language they cannot understand. Language and cultural considerations are important factors in service delivery and the provision of information. Services that are provided in conjunction with liaison staff from the victims' cultural and linguistic groups allow the victims to gain a better understanding of the bureaucratic processes they have to go through. In many instances, it may be important to provide the services of a translator of the same sex as the victim.

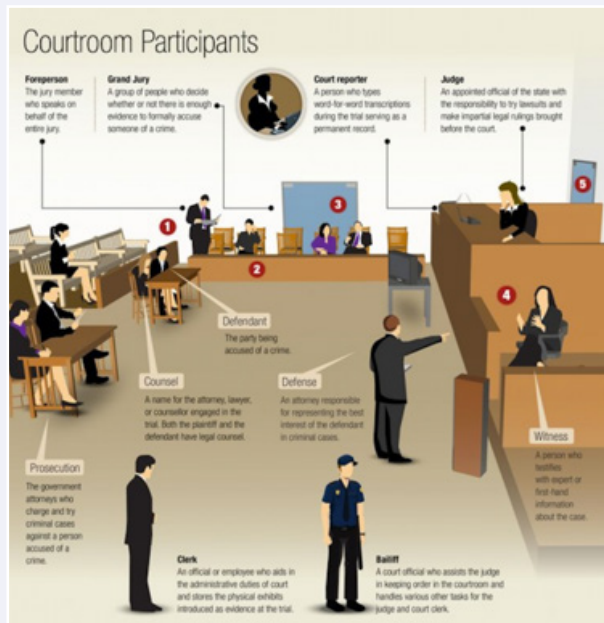
30 In accordance with principles 8 to 13 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (General Assembly resolution 40/34, annex), compensation should include the return of property or payment for harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, provision of services and restoration of rights. Where compensation is not available from the offender or other sources, States should endeavour to provide financial compensation to victims, their family, or dependants (in the event of their death) see: www.un.org/documents/ga/res/40/a40r034.htm and Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. P11

Table of Factors that create inhospitable courtroom environments³¹

Aspects	Details	Considerations for the judiciary	Aspects	Details	Considerations for the judiciary
The formality of civility	<ul style="list-style-type: none">- The formality of civility or comparable standards expected of victims and witnesses in court sets the boundaries of acceptable courtroom conduct.- All participants in a trial, including the victims, are expected to perform their role with decorum, orderliness and politeness.- Even victims who are often subjected to intimate, humiliating and aggressive questioning are expected to use correct language, the appropriate tone and level of emotion, and deference to judges and lawyers.- While judges and lawyers may be disciplined for not treating other judges or lawyers uncivilly, they are not typically disciplined for uncivil conduct towards witnesses. The victim's credibility is contingent upon her willingness and ability to perform the ritual.- Example: "[A] if engaged in a civil discourse, and without any articulation of outrage or incredulity, to the same question, asked over and over, about how many days following forced anal intercourse it took before she could endure a bowel movement. Time times she answers this question."	<ul style="list-style-type: none">- Appreciate how the degree of self-subjugation necessitated by the demand for civility in the face of humiliation and incivility contributes to secondary victimisation of the victim by the criminal justice system.- Understand that the obligatory performance of civility does not level the playing field.- Prevent questioning that is needlessly repetitive or irrelevant. Control humiliating questioning and focus on relevancy.- Allow for incivility by victims without using this as a factor in assessing their credibility.- A more coherent and less classist conception of the duty of civility would suggest that those charged with administering the criminal trial process – that is to say lawyers and judges – should behave in this matter towards all trial participants.	The physical space and courtroom aesthetic	<ul style="list-style-type: none">- The spatial design of a courtroom establishes particular lines of sight, rendering some participants more visible or more audible than others and facilitating certain hierarchical lines of engagement that distinguish between the learned legal profession and the laity.- Judges typically sit behind an elevated bench at the front and centre of the courtroom, assisting in their ability to maintain control over the proceedings.- In many countries, the courtroom is physically divided by a bar – only those ceremoniously inducted into the profession ("called to the bar") are seated in the front part of the courtroom. Others, including other professionals (such as social workers, medical professionals, courtroom support workers, articling clerks, and paralegals), are only permitted to cross this threshold under specific and invited circumstances. The public is always to remain behind "the bar".- Traditionally, a witness was expected to stand while they provided testimony, thus the label "witness stand". This could involve standing for hours.	<ul style="list-style-type: none">- Changing the aesthetics of the courtroom.- Reconsider the physical design of some courtrooms. For example, reconfigure courtrooms that were designed such that the only way the trier of fact can properly hear and observe witnesses is if they remain standing.- Remove formal symbols, such as gowns and/or wigs for judges and lawyers.- Allow the witness to sit while providing testimony.
	The script	<ul style="list-style-type: none">- The form of communication accepted in trial proceedings is formal, heavily scripted, and rigid. Judges and lawyers use specialised language. There are rules regulating who can speak, to whom, and when.- The evidence of witnesses must be obtained through a strict, heavily structured format.- The scripted form of communication used in a trial is explicitly hierarchical.- Lawyers (and judges) ask questions and complainants (and other witnesses) answers them – never the other way around.- Example: "[Complainant]: How does that have anything to do with today? [Defence] Well, the rules are I get to ask the questions..."- The format of cross-examination (which includes leading questions, repetition, and insistence on particular answers) allows defence lawyers to exert significant control over a complainant's testimony.- Complainants who deviate from the script risk being perceived as disorderly or disrespectful, and thus untrustworthy.		<ul style="list-style-type: none">- Allow for witnesses to seek clarification, express concerns or contribution to the direction of the exchange.- Be aware of how a complainant's answer may be distorted in efforts, by the defence, to insist upon a desired response.- Embrace a more affable style of interaction with complainants, simply by engaging with them as human beings.- Deviate from and permit others to deviate from their scripted roles.- Before permitting defence counsel to begin cross-examination, ensure a minimum of comfort for the complainant, including that she has been provided with water and tissues and telling her to let the court know if she needs a break.	The legal process
Unprepared victim		<ul style="list-style-type: none">- Complainants are often woefully under-prepared for the criminal trial process.- The specialised language used, the roles of particular parties, the courtroom procedures and the trial process more generally will be unfamiliar to many victims.- Many complainants come to court unrepresented, without having completed even basic preparation such as a proper review of one's testimony and without familiarity of the setting.	<ul style="list-style-type: none">- Consider measures that better prepare and support victims for and during the criminal process.- Familiarising complainants with the context may reduce the impact on them arising from their trial performances.- Best practice would be independent, state-funded legal representation for the victim.		

Judges have a duty to consider what steps they can take to minimize the negative impact of those ritualized practices that are considered necessary. The key question is how judges can make the trial more hospitable to complainants without threatening the accused's right to a fair trial. Here are some examples:

Information for victims - In the USA, this poster is displayed in courthouses and information is provided to victims and witnesses detailing the layout of the courtroom and a short explanation of the key players and their roles.



31 Elaine Craig, "The Inhospitable Court", *University of Toronto Law Journal*, vol. 66, No. 2 (2016).

Information about the Trial Process - Information about the trial process should be available in multiple formats for example, by video, on websites, social media etc. as well as information in printed form. Often the material is developed by the justice sector in conjunction with victim support services. The printed material is provided to support services and NGOs, so victims have information about the criminal trial process early. The information should be available in different formats and multiple languages to meet the needs of all victims and witnesses.

An online video about the role of a witness in a case - created by the Courts in Thailand to provide information to witnesses and to alleviate the fear they may have of attending court. The video is sent via their Facebook page.³²



Information for victims of crime going to court - *The Justice Journey* created by the Courts of New South Wales, Australia: A series of 10 videos on YouTube³³ to assist victims of crime when going to court in New South Wales, Australia. The video shows the layout of the court, it explains the process of the trial and key concepts such as evidence in chief, cross examination & re-examination.



Ministry of Justice (United Kingdom): Seen through the eyes of a witness, this animation explains what to expect throughout the court process and follows the journey a young woman from making a statement, right through the criminal court process and after the trial. It also explains the special services provided such as separate waiting rooms, video evidence, witness support/case manager etc.³⁴



32 <https://www.facebook.com/watch/?v=261359598249050>

33 <https://www.youtube.com/watch?v=2tgMHIHyuE>

34 <https://www.youtube.com/watch?v=t8gMFYl6Nm4>

Information for victims and witnesses - Going to court is difficult for witnesses and victims. It is important that they receive all the information they require about the processes of the court. The Federal Circuit and Family Court of Australia provide an information pack to all justice seekers who do not have legal representation. The document (available in several languages) provides details about how to prepare for court, what to wear, personal safety, what to do when that arrive at court, common words used in the courtroom and how to address the judge. It also provides information about where to access free legal advice.³⁵



Going to court – tips for your court hearing

FACT SHEET

This fact sheet is for people who are representing themselves in court. It covers some of the things you can do to prepare for your court hearing, as well as what you should and should not do inside the courtroom.

Getting ready

Be prepared and ready to present your case on the day of your court hearing. Do as much research as possible and gather all the information for your case.

Make sure you have all your documents clearly organised and mark the documents that have already been filed with the Court. Bring a note pad and pen with you too.

Some people find it helpful to sit in a courtroom before the hearing if they have never been in a court before. Most court hearings are heard in open court so you can do this any time.

What to wear

There are no rules about what to wear in court. However, the Court is a formal place and you should dress accordingly.

Children at court

Generally, courts are not appropriate places for children. Please make other arrangements for your child's care when you come to court.

If your child needs to attend court to speak to a court child expert or judicial officer, check with court staff before your court appointment whether any child-care arrangements need to be made for the day.

Personal safety

If you have any concerns about your safety while attending court, please call 1300 352 000 before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. See the fact sheet *Do you have fears for your safety when attending court?*

Arriving at court

You can confirm the location of the Court registry by visiting www.fcfoa.gov.au/court-locations. You should arrive at least 30 minutes early to give yourself plenty of time to clear security and find the courtroom. If you have any problems finding the right courtroom, ask court staff.

In most court locations, a duty lawyer may be available to assist you on the day of your court hearing. The duty lawyer assistance is limited and you must meet certain guidelines to be eligible for assistance.

You can bring a family member or friend (who is over the age of 18) to sit with you and provide support. Unless approved by the judicial officer, your support person cannot sit with you at the bar table and cannot speak on your behalf.

Recording devices are not permitted in courtrooms without permission of the judicial officer.

Before entering the courtroom you should:

- turn off electronic equipment, including mobile phones, and
- remove hats or sunglasses, unless for medical or religious reasons.

Do not bring any food or drink into the courtroom.

Witness Allowance Scheme (financial support) - The Singapore Courts, through their public website, provides details about financial compensation for witnesses. It provides a checklist and an explanation on how to apply.³⁶ The form is very simple to complete and prosecutors and defence counsel advise and assist their witnesses to apply for the allowances.

WITNESSES' ALLOWANCES BY PROSECUTION

Please note that a witness has to be subpoenaed by the State Courts to attend court proceedings to be eligible for Witness Allowance. For Local Witnesses, please refer to Part 2 to claim for Witness Allowance. For Foreign Witnesses, please refer to Parts 1 & 2 to claim for Witness Allowance.

PART 1 | PRIOR TO TRIAL: For Foreign Witness only

The submission of application by the IO/Prosecutor to Finance should be at least 14 working days prior to the trial date.

- 1 COMPLETION OF APPLICATION**
Investigation Officer (IO)/Prosecutor to complete the Application Form for Foreign Witness (**Form W2**) and prepare required supporting documents.* Deputy Public Prosecutor (DPP) to endorse on **Form W2** before submission.
*Forms and checklist of supporting documents can be downloaded below.
- 2 SUBMISSION OF APPLICATION**
IO/Prosecutor to submit **Form W2** and required supporting documents to Finance via contact@statecourts.gov.sg.
- 3 PROCESSING OF APPLICATION**
Finance to process the application.
- 4 OUTCOME OF APPLICATION**
a) If application is approved: Finance to inform IO/Prosecutor of the approved amount.
b) If application is rejected: Finance to inform IO/Prosecutor that the application has been rejected.

PART 2 | POST TRIAL: For Local and Foreign Witness

Rule 170 of the Regulations states that the claim form and supporting documents are to be submitted to the Court no later than 2 months after accrual of the claim (i.e. date of last day of court attendance by the witness).

- 1 APPLICATION OF CLAIM**
a) For Local Witness: Witness to complete Local Witness Allowances Claim Form (**Form W1**) and submit **Form W1** and supporting documents* to IO/Prosecutor (Certifying Officer).
b) For Foreign Witness: Witness to complete Foreign Witness Allowances Claim Form (**Form W3**) and submit **Form W3** and supporting documents* to IO/Prosecutor (Certifying Officer).
*Forms and checklist of supporting documents can be downloaded below.
- 2 CERTIFICATION OF CLAIM**
IO/Prosecutor to certify the claim form and supporting documents.
- 3 SUBMISSION OF CLAIM**
a) If case is registered on ICMS: IO/Prosecutor to submit the claim on ICMS to the Trial Judge for approval, together with the supporting documents.
b) If case is not registered on ICMS: IO/Prosecutor to submit the claim to the relevant Court Officer, who will forward the claim to the Trial Judge for approval.
- 4 APPROVAL OF CLAIM**
Trial Judge to review the claim.
- 5 OUTCOME OF CLAIM**
a) If claim is approved: Finance to process the claim and transfer the approved amount to the bank account stated in the claim form.
b) If claim is rejected: Finance/Court Officer to inform IO/Prosecutor that the claim has been rejected.

WITNESSES' ALLOWANCES BY DEFENCE

Please note that a witness has to be subpoenaed by the State Courts to attend court proceedings to be eligible for Witness Allowance. For Local Witnesses, please refer to Part 2 to claim for Witness Allowance. For Foreign Witnesses, please refer to Parts 1 & 2 to claim for Witness Allowance.

PART 1 | PRIOR TO TRIAL: For Foreign Witness only

The submission of application by the DC to Finance should be at least 14 working days prior to the trial date.

- 1 SUBMISSION OF APPLICATION**
Defence Counsel (DC) to complete the Application Form for Foreign Witness (**Form W2**) and submit **Form W2** and required supporting documents* to Finance via contact@statecourts.gov.sg.
*Forms and checklist of supporting documents can be downloaded below.
- 2 PROCESSING OF APPLICATION**
Finance to process the application.
- 3 OUTCOME OF APPLICATION**
a) If application is approved: Finance to inform DC of the approved amount.
b) If application is rejected: Finance to inform DC that the application has been rejected.

PART 2 | POST TRIAL: For Local and Foreign Witness

Rule 170 of the Regulations states that the claim form and supporting documents are to be submitted to the Court no later than 2 months after accrual of the claim (i.e. date of last day of court attendance by the witness).

- 1 APPLICATION OF CLAIM**
a) For Local Witness: Witness to complete Local Witness Allowances Claim Form (**Form W1**) and submit **Form W1** and supporting documents* to DC (Verifying Officer).
b) For Foreign Witness: Witness to complete Foreign Witness Allowances Claim Form (**Form W3**) and submit **Form W3** and supporting documents* to DC (Verifying Officer).
*Forms and checklist of supporting documents can be downloaded below.
- 2 VERIFICATION OF CLAIM**
DC to verify and submit the claim form and supporting documents to the relevant Court Officer (Certifying Officer).
- 3 CERTIFICATION OF CLAIM**
Court Officer to certify and submit the claim to the Trial Judge for approval.
- 4 APPROVAL OF CLAIM**
Trial Judge to review the claim.
- 5 OUTCOME OF CLAIM**
a) If claim is approved: Finance to process the claim and transfer the approved amount to the bank account stated in the claim form.
b) If claim is rejected: Court Officer to inform DC that the claim has been rejected.

35 <https://www.fcfoa.gov.au/sites/default/files/2021-08/Going-to-court-tips-for-your-court-hearing-0921V1.pdf>

36 https://www.judiciary.gov.sg/docs/default-source/attending-court-docs/witnesses_allowances_flowchart.pdf

Seeking compensation - The Singapore Community Justice Centre supports the Singapore Courts by assisting victims of crime to apply for compensation through the *Victim Assistance Scheme*. The webpage details who can apply, how to apply, and information about disbursement.³⁷

Victim Restitution - In British Columbia, Canada the government website provides information to victims about (1) how to apply for restitution; (2) when to apply; (3) what losses and damages can be compensated; (4) information about what they will receive and (5) what to do if the offender does not pay. The website also provides links to the applications and further information.³⁸

The screenshot shows the British Columbia Government website page for Victim Restitution. The page layout includes a top navigation bar with the British Columbia logo, a search icon, and a menu icon. Below the navigation bar is a breadcrumb trail: Home > Law, crime and justice > Criminal justice > B.C.'s criminal justice system > If You Are a Victim of a Crime > Victim of Crime >.

The main content area is titled "Victim Restitution" and features a warning banner that says "Use this banner to exit this site quickly." Below the banner, there is a paragraph explaining that when a victim experiences a financial loss or damage, they have the right to have the court consider making a stand-alone restitution order at sentencing under section 738 or 739 of the Criminal Code. This is followed by a paragraph stating that restitution may be ordered by the criminal court judge once an offender has been found guilty, and it can be ordered in different ways, such as a condition of an offender's probation or a stand-alone restitution order, enforceable by the victim in civil court if the restitution is not paid. A final paragraph states that the page provides information on requesting and receiving restitution and also provides details on how the Restitution Program can be of assistance.

The right sidebar contains two sections: "Restitution Program Contact Information" and "Related Links". The contact information section lists the Restitution Program, Ministry of Public Safety & Solicitor General, PO Box 5550 Station Terminal, Vancouver, B.C. V6B 1H1, and provides phone numbers for Lower Mainland (604-660-4898), Toll Free (1-844-660-4898), and Fax (604-660-5340). It also includes an "Email" link. The "Related Links" section lists several links, including "Statement on Restitution", "Victim Impact Statement", "Community Impact Statement Program", "Small Claims Court", "Supreme Court of BC", "Department of Justice Canada - Restitution Orders", "VictimLinkBC", "Victim Services & Violence Against Women Program Directory", "Publications for Victims of Crime", "Information and Resources for Service Providers", and "Criminal Justice Glossary".

The left sidebar contains a list of links, including "Understanding criminal justice", "If You Are a Victim of a Crime", "Victim of Crime", "First Steps", "Staying Safe", "How You May Feel", "Victim Notification", "Crime Victim Assistance Program", "Crime Victim Assistance Program Application Forms", "Victim Restitution", "Victim Travel Assistance", "Victim Services", "Family Information Liaison Unit", "Victim Services & Violence Against Women Program Directory", "Your Rights", "Coming Forward", "Investigating the Crime", "The Court Case", "Court Decision", "Child or Young Victim", "Victim of Youth Crime", "Publications for Victims of Crime", "If You Witnessed a Crime", "Reporting a Crime", "If You Are Accused of a Crime", "If You Are Convicted of a Crime", and "Youth Justice".

³⁷ <https://www.cjc.org.sg/services/social-support/victim-assistance-scheme/>

³⁸ <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-a-victim-of-a-crime/victim-of-crime/victim-restitution>

Free legal advice for victims and witnesses - In many countries, free legal advice and support is provided to victims of crime. This legal advice can extend to assisting victims to claim for compensation and restitution.³⁹ Often these free legal aid services are offered by independent lawyers who are co-located at a courthouse. In Sydney, Australia, Legal Aid NSW provides free legal advice and support to victims of violent crime.

The Department of Attorney General and Justice in NSW, Australia, provides a victim support service that can provide support, information, referrals, counselling, and compensation services to victims of violent crimes and witnesses to violent crimes. They also provide very clear information on their website of what is available to victims of crime (see below).⁴⁰

What can I get help with?

The table summarises the different types of supports that you may get and what information we need from you for each support type.

Purpose	Benefits	Who is eligible to apply?	What information do I need to give?	How long do you have to claim?
Type of help: Counselling				
To help in your recovery	Up to 22 hours of counselling and more for some victims	<ul style="list-style-type: none"> Primary victims Secondary victims Family victims 	<ul style="list-style-type: none"> Application form Government issued ID 	No time limit
Type of help: Financial assistance for immediate needs				
To help pay for things you need urgently to be safe and healthy because of the violent crime	You may get up to \$5,000 to help pay for: <ul style="list-style-type: none"> changing the locks on your doors moving house putting an alarm in your home emergency doctor, dentist and other medical bills crime scene clean up You may get up to \$9,500 to help pay for the funeral	<ul style="list-style-type: none"> Primary victims Parents, step-parents and guardians Family victims 	<ul style="list-style-type: none"> Application form Government issued ID Police* or government/government-funded organisation report, or a medical report that provides details about what happened and shows how the violent crime has affected you (not required for family victims) Copies of tax invoices, receipts or treatment plans of costs you are claiming A description of how each cost relates directly to the violent crime 	<ul style="list-style-type: none"> Within 2 years from the violent crime* For children, within 2 years of turning 18

Free legal advice for victims and witnesses - In many countries, just like Vietnam, free legal advice and support is provided to victims of crime. This legal advice can extend to assisting victims to claim for compensation and restitution. Free legal advice in Vietnam is available from various legal aid organisations and if a witness has not received legal advice, judges often direct the victim to the appropriate service to ensure they can access their legal rights.

³⁹ Legal advice should be made available as part of the integrated support offered by the victim assistance programme. Because many victims of trafficking are fearful of Governments and bureaucratic authorities, the provision of legal assistance and representation is especially important. The development of close links between non-governmental organizations providing legal assistance and law enforcement agencies can greatly facilitate the protection of victims and their rights. The development of formal and informal protocols and procedures between these agencies should be part of any integrated victim assistance strategy.

⁴⁰ https://static1.squarespace.com/static/60c04522c28dde76edfa63a3/t/60fe3f9ab2fdf61c00407ce9/1627275162746/Victim_s+Support+Scheme.pdf

INDICATOR

5

Physical, psychological & social recovery of victims



Indicator 5: Indicators that relate to measures in place to provide for the physical, psychological, and social recovery of victims of trafficking in persons

Overview

Victims and witnesses may require special services and support, both material and psychological. Effective services for victims of trafficking are dependent on multiple service providers working together in a coordinated manner to address the specific needs of victims including the provision of legal advice.

The victim-centred approach of the ACTIP Convention can only be met through multi- agency co-operation, such as in the framework of a National Referral Mechanism, involving a series of governmental and non-governmental actors working together in a co-ordinated way to ensure that all victims, regardless of the body which identified them, have access to assistance, to ensure their needs are effectively met.

Because of endemic lack of trust in law enforcement, it is NGO personnel that can build relationships of trust with trafficking victims. NGOs have the specialist skills and experience to treat, counsel and accommodate victims whom investigators wish to convert to witnesses.

Experience from various countries has shown that successful prosecutions against traffickers depend on strong ties and excellent liaison between agencies and service providers. It also shows that cooperative agreements between State and non-State actors raise the rate of successful prosecutions of traffickers. Formal protocols and memorandums of understanding between agencies provide a solid basis upon which to build this multi-agency collaboration.⁴¹

A well-managed justice system recognizes the need to coordinate responses to TIP cases and Courts can implement initiatives and reforms in collaboration with NGOs and civil society without risk to their independence. By working in a coordinated and collaborative manner, courts can provide responsive and effective services to meet the needs of victims, by providing a 'wraparound' or "one-stop-shop" access to services.

⁴¹ For additional information on MOU/agreements, see the United Kingdom Home Office Crime Reduction Toolkit on trafficking in people available at: www.crimereduction.gov.uk/toolkits/tp00.htm and *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons; A Practical Handbook* (Warsaw, OSCE, 2004), available at: www.osce.org/publications/odihr/2004/05/12351_131_en.pdf



Principles

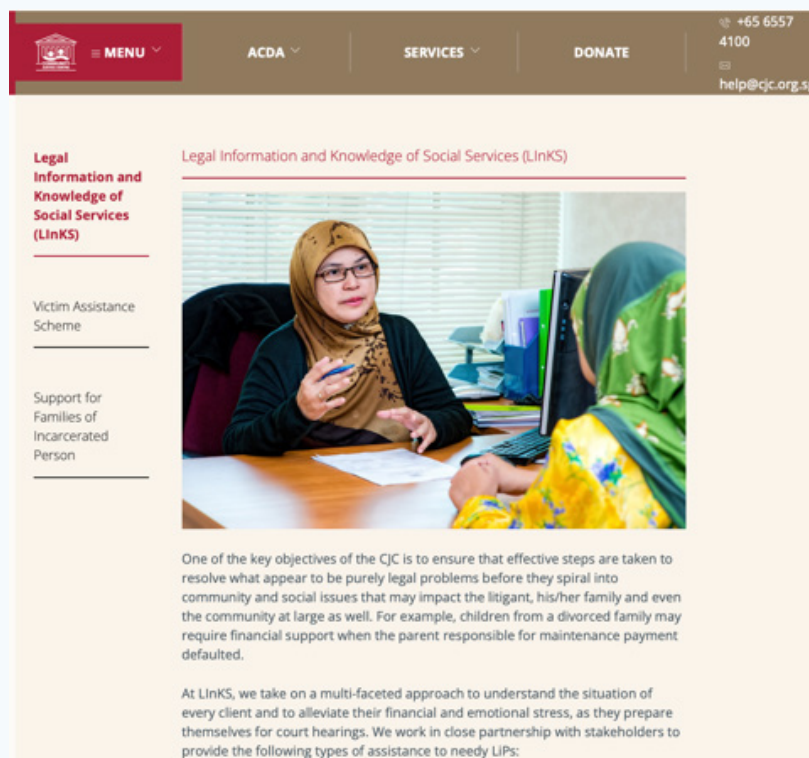
What should be implemented?

- 5.1** MOU or agreements should be in place between the Court and civil society/non-governmental organisations (NGOs) to encourage and facilitate cooperation and collaboration for the provision of services and support to TIP victims (Art. 14.10 (b) (c)).
- 5.2** Inter-agency protocols should be in place for the coordinated 'wraparound' or 'one-stop shop' services for TIP victims in relation to counselling, medical, housing, education and training, legal documents, and broader social protection programs (Art. 14.10 (b)(c)).



Examples:

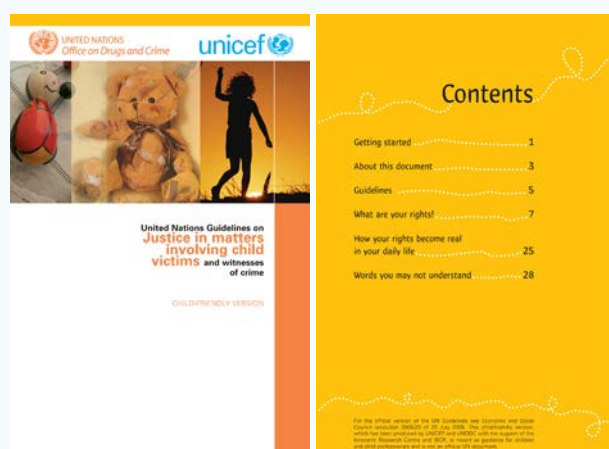
Court links with NGOs - In Singapore, The State Courts have links with an NGO, Legal information of Social Services (LinkS) to provide counselling, referral, and advice to support women, children and families affected by several different issues. Setting up a page on the Court's website with links to NGOs can assist victims and witnesses to access services that the Court is unable to provide such as counselling, financial and legal assistance. An MOU can establish the parameters of the support to be provided by the NGO and set out how the two organisations will work together.⁴²



⁴² <https://www.cjc.org.sg/services/social-support/legal-information-and-knowledge-of-social-services-links/>

Partnerships with NGOs - In Singapore, the State Courts in connection with NGOs and civil society organisations developed a 'Toolkit for Witnesses' to assist witnesses in preparing for a trial.⁴³

Specially designed material for child witnesses and victims - The *United Nations Guidelines on Justice in matters involving child victims and witnesses of crime (child-friendly version)*⁴⁴ explains in simple and child appropriate language, what should be done and how people should act in certain situations to ensure children who have been harmed by crime and children who have seen others harmed are protected and treated fairly when they tell their stories in a court of law. The document also helps to protect children when they talk to the police, lawyers, social workers, and anyone else they meet before and after they go to court.



Victim Support - In New South Wales, Australia the Victims & Witnesses of Crime Court Support (VWCCS) was established to inform and support victims and witnesses of crime whilst giving evidence in NSW courts. The non-government organisation, run entirely by trained volunteers, works with both individuals and agencies (including the Courts) and all services are free. They reach victims of crime through their Facebook page, by referrals directly from prosecutors and they also get referrals from the Court.⁴⁵



43 <https://law1.nus.edu.sg/cpbcle/pdfs/legaltoolkitforwitnesses2020.pdf>

44 https://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf

45 <https://www.vwccs.org.au>

INDICATOR

6

Medical & forensic services



Indicator 6: Indicators that relate to the provision of medical and forensic services for victims of trafficking

Overview

Many victims of trafficking have medical needs to be addressed. They may have physical injuries or have been exposed to the risk of disease. They may have been forced to use drugs as a means of control or have developed drug addictions to assist them to cope with the situation they were in. Some victims may have mental health problems associated with the trauma suffered as a result of the trafficking. Others may have acquired sexual health issues because of unsafe and violent sexual practices, including an increased risk of contracting HIV/AIDS and other sexually transmitted diseases.

Initial medical examinations and discussions should preferably be undertaken in partnership with appropriate non-governmental organizations that can provide a support person and interpreter (if needed) to the victim of trafficking. These examinations should ensure all injuries are identified, appropriate evidence is collected, and a treatment plan, including post-test counselling, is initiated. Forensic evidence should only be collected if it will be of assistance to a case and with the active consent of the victim.

For Courts and judges, it is important that they understand reliability and validity of scientific evidence. Judges should have an understanding of the World Health Organisation guidelines for the appropriate collection of forensic evidence, and the qualifications for appropriately skilled professionals. Judges, police, and prosecutors should also receive training from suitably qualified medical and forensic professionals of the requirements and limitations of this type of evidence.⁴⁶



Principles

What should be implemented?

- 6.1.** Prosecutors and judges receive specific training on the strengths and weaknesses of forensic evidence in relation to sexual and physical violence (ATIP Art 16.1 & 16.6).
- 6.2.** National protocols for sexual assault forensic examinations are in place and based on WHO guidelines.
- 6.3.** Annual formal exchanges of information between regional TIP institutions and specialist forensic institutions in the ASEAN region to develop regional expertise and foster collaboration (ACTIP Art. 12 (g)).

⁴⁶ See also WHO *Guidelines for Medico-legal Care for Victims of Sexual Violence* at: www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/



Examples:

ASEAN ACT provided an online seminar to introduce judges and prosecutors to the requirements and limitations of forensic medicine. Associate Professor, Dr. David Wells from the Victoria Australia Institute of Forensic Medicine provided an in-depth presentation on the care and services needed in this area.⁴⁷



In the Philippines, Governance in Justice (GOJUST) developed a general crime scene **Forensic Manual**⁴⁸ and conducted forensic training for judges, prosecutor and public attorneys which provided a baseline of information on this topic.



47 <https://www.youtube.com/watch?v=506AhUYtr7g>

48 The Forensic Manual can be downloaded from: <https://www.scribd.com/document/431951965/Forensics-Manual>

INDICATOR

7

Special provisions for children



Indicator 7: Special indicators that relate specifically to children as victims or witnesses of trafficking

Overview

Children are defined as anyone under the age of 18 years of age as specified in the ASEAN Convention Against Trafficking in Persons Especially Women and Children⁴⁹ The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions and the best interests of the child must be a primary consideration in all actions concerning trafficked children.

Children who come into conflict with the law are more likely than other children to have experienced violence or adversity. Studies have found that children in justice systems have been victimised by physical, psychological, and sexual violence perpetrated by different actors in the justice system (including the police and corrections officers), as well as adult detainees in detention centres. The trauma suffered can cause lasting harm to a child, their development, their self-worth, and their future.

Child victims and witnesses in contact with the justice system may experience anxiety surrounding court appearances and fear of facing or being hurt by the defendant, of embarrassment from crying, or of not being able to answer questions. They are often re-victimised and re-traumatised by the justice system actors who do not have sufficient capacity to properly manage the situation and procedures.

Child-sensitive justice services and practices are particularly valuable to protect children in vulnerable situations, support them to understand and manage emotions, prevent (and/or respond to) conflict and violence, and provide them with a safe space to express themselves and be heard when dealing with matters relevant to them, including as victims or witnesses.

Guidelines, policies, awareness campaigns, and other safeguarding mechanisms within the criminal justice system, need to be established to safely prevent, detect, identify, report, and treat cases of violence against children.

Children are vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs to prevent further hardship and trauma that may result from their participation in the criminal justice process. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.

49 Article 2(d) ASEAN Convention Against Trafficking in Persons Especially Women and Children (ACTIP)

Courts need to implement a victim-centric approach that is sensitive to the child's age,⁵⁰ wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic, and social background, caste, socio-economic condition and immigration or refugee status, as well as to the special needs of the child, including health, abilities, and capacities. Professionals should be trained and educated about such differences.⁵¹

The child victim should be fully informed about the criminal justice process, the status of the case and have the right to express their views freely in all matters affecting him or her. The court should welcome children's participation in expression and respect their decision to participate or not in the criminal justice process.

In addition to those indicators listed in Indicator 2 & 4, Courts should, where applicable and possible, provide essential protection to child victims by allowing the child to testify through closed-circuit television or through an intermediary, make the courtroom and procedures less intimidating to a child, and provide instruction to the prosecution and defence counsel to ensure that questioning takes into account the child's age and special needs in order to avoid the risk of re-victimization.⁵²



Principles

What should be implemented?

- 7.1. Courts should provide safeguards for the protection of child witnesses, victims, and child defendants by:
 - a. ensuring there are measures in place to minimize delays in the criminal justice process (ACTIP Art. 16.3)
 - b. protecting the privacy of the child by prohibiting the identification of the child victim/witness or child defendant (ACTIP Art. 14.5; 14.6 & 16.7)
 - c. keeping the child informed of their role and the scope, timing, and progress of the proceedings (ACTIP Art. 14.9; 14.10 (b) & 14.12)
 - d. developing and implementing child witness preparation schemes to familiarize children with the criminal justice process prior to their giving evidence (ACTIP Art. 14.9)
 - e. providing child sensitive and age-appropriate information to the child about the trial process, their role in the case, the court's expectations of them, and seek to address any concerns they may have throughout the criminal trial process (ACTIP Art. 14.9; 14.10 (b) & 14.12)
 - f. allowing for the provision of pre-recorded videotaping of the child victim/

50 Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.

51 UN Guidelines on Child Victims and Witnesses. See also the *Model Guidelines for the Effective Prosecution of Crimes against Children (International Institute of Prosecutors)* at www.iap.nl.com and International Bureau for Children's Rights at www.ibcr.org

52 Handbook on Justice for Victims UNODCCP

witness testimony to be played in court as an official piece of evidence (ACTIP Art. 14.5 & 14.6)

- g. allowing (as a minimum standard) the provision of a privacy screen to be placed between the child victim/witness and the accused during the trial (ACTIP Art. 14.5 & 14.6)
 - h. allowing the child victim/witness to testify through closed-circuit television if the child is required to attend the trial for cross-examination (ACTIP Art. 14.5 & 14.6)
 - i. making the courtroom and procedures less intimidating to a child witness (ACTIP Art. 14.12)
 - j. closing the courtroom to the public when the case involves a child victim/witness or child defendant (ACTIP Art 14.5; 14.6 & 16.7)
 - k. using an intermediary to question child victims (e.g., social worker, child specialist, victim lawyer/representative) in the trial and to assist with police and prosecution interviews⁵³ (ACTIP Art. 14.12)
 - l. providing instruction to the prosecution and defence counsel to ensure that questioning takes into account the child's age and special needs to avoid the risk of re-victimization (ACTIP Art. 14.12)
 - m. ensure that the 'best interests of the child' are of paramount consideration throughout the criminal justice process (ACTIP Art. 14.12)
- 7.2.** A "guardian" has been appointed to accompany the child throughout the criminal justice process (ACTIP Art. 14.10(b))
- 7.3.** The court has implemented and institutionalised specialist capacity building for justice personnel and judges working with child TIP victims and witnesses⁵⁴ (ACTIP Art. 12 (f) & (g) & 16.1).



Examples:

Information for young offenders - In

Thailand, the Royal Thai Courts have developed a video for Facebook along with supporting brochures about the trial process involving children. The video talks about the trial process and explains some of the rights of the child including: the child's right to a lawyer; to have their parent or guardian accompany them; the right to an interpreter; and their right to protection and privacy.⁵⁵



⁵³ This is particularly relevant if the accused is not legally represented. All efforts should be made to prevent the defendant from directly questioning the child victim/witness if they are conducting their own defence.

⁵⁴ See for examples the Europe Law Enforcement Group of ECPAT's 10-session training course on child-related trafficking at www.ecpat.net/eng/pdf/Trafficking_Report.pdf

⁵⁵ <https://www.facebook.com/watch/?v=872023606597713>

Material for young children about going to court - In Singapore and Australia, the courts have developed booklets for children who have to attend court. These booklets (available in several different languages) contain information that is age appropriate about what the court does, what the child can expect going to court and what the court needs from the child. These booklets help prepare a child for the trial and also assist with getting the best evidence. Singapore also has a video specifically designed for children attending the family court called "[Emily's day in the Family Justice Court](https://www.judiciary.gov.sg/docs/default-source/attending-court-docs/sara_goes_to_court_english.pdf)". This video helps children to understand the possible court events they might encounter in a family court proceeding.⁵⁶

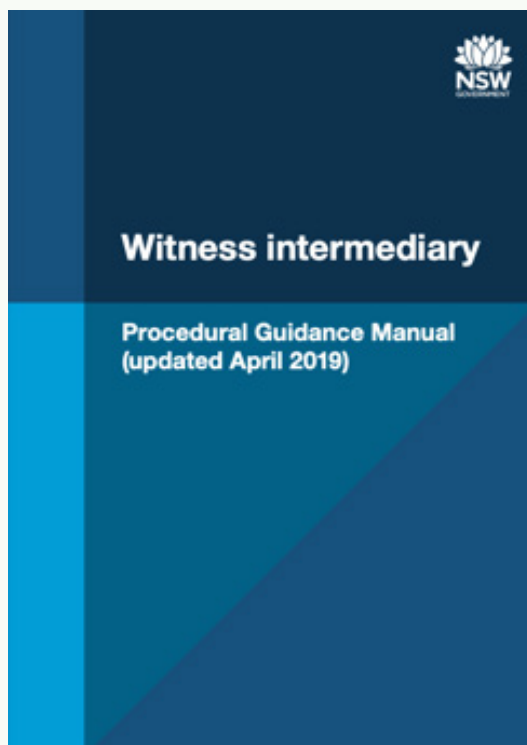


Family Court of Australia - "*Why am I going to see a Family Consultant*" series⁵⁷ of books that are available for two different age groups and in multiple languages. These books provide children with information about the family court process and what the family consultant (social worker or child psychologist) role in the proceedings are. These books help to take away some of the anxiety and fear children have knowing that they must go to court and talk about difficult events.

⁵⁶ https://www.judiciary.gov.sg/docs/default-source/attending-court-docs/sara_goes_to_court_english.pdf

⁵⁷ <https://www.fccoa.gov.au/resources/publications/fl/why-family-consultant-5-8>

Changing the courtroom environment - In Australia, the state courts in Victoria have implemented specialist courts for children. The courts have been designed to be less formal and therefore less intimidating for children and there are specially trained judges and court personal to hear these cases.



Child Witness Intermediary - In addition to the examples of the use of intermediaries discussed earlier in this document, there are 'children's champions' or specialist child Intermediaries (particularly for cases involving sexual violence against children) who facilitate communication with child witnesses through the trial process and expand the use of pre-recorded evidence in criminal court proceedings. The aim of an Intermediary is to reduce trauma experienced by child witnesses in the criminal justice process while preserving the rights of an accused to a fair trial. Pictured here is the Guidelines & Procedural Manual created by the New South Wales Government in Australia to ensure the best interests of the child are protected and to articulate the limitations of the role.

Communicating with Children in Court – The School of Law and School of Applied Social Studies, University College Cork, Ireland, developed a guide for practitioners talking to and asking children questions in a court setting. The publication provides examples of how to ask and how NOT to ask children questions in court.⁵⁸

58 *Communicating with Children in Court* - a useful guide in child protection cases. Created by Dr Kenneth Burns, Dr Conor O'Mahony, Carly McAuley (Triangle), Dr Fiachra Ó'Súilleabháin and Dr Elaine O'Callaghan, School of Law and School of Applied Social Studies, University College Cork, Ireland, and Triangle. Co-funded by the Rights, Equality and Citizenship (REC) Programme of the European Union.
<https://www.ucc.ie/en/media/research/ideachildrights/Communicatingwithchildrenincourt.pdf>

3. Participate TALKING TO AND ASKING QUESTIONS OF CHILDREN IN A COURT SETTING

In this section, we provide example of questioning approaches. **Text in pink indicate how NOT to ask questions** and **text in blue are examples of child-friendly questions**. No two children are the same in terms of their communication style and ability. You will need to be flexible and adapt your approach to meet the needs of each individual.

Plan questions in advance. Simplify language as much as possible and follow a logical, chronological order. Help the child to understand when a topic is changing.
We've finished talking about what happened in your classroom. Now I'm going to ask you about what happened in the playground.

Children are used to adults knowing the answers to the questions they ask. Children need to be told, and reminded, in the court environment that this is not the case.
I don't know because I wasn't there.

Ask open questions whenever possible. If you need to ask specific closed questions or forced choice questions to clarify details, return to open questions as soon as possible. If forced choice questions are used, always offer a third option.

*Were you there with Mummy?
Tell me all about what happened?
Was it black or red?
Was it black, red or something else?*

If yes/no questions must be used, try to avoid asking them in series. If this is the only option, reverse some questions to ensure a mix of yes and no answers. This will increase the accuracy of a child's responses.
*(Q) Do you and Lucy live with Mummy? (A) Yes.
(Q) Do you and Lucy live with Daddy? (A) No.
(Q) Did you and Lucy ever live with Daddy? (A) Yes.*

At school and at home, children are used to being encouraged to guess if they do not know the answer to a question. Children need to be taught that there is a different rule for interviews with professionals and at court.
*When we do talking in this room we don't do guessing.
If you don't know the answer, we need you to say 'I don't know'.*

Children need questions to be asked in a way that makes it clear that an answer is required. Instead of making a statement or comment, phrase the question as a question.
*You were worried about your Mum finding out.
Were you worried about your Mum finding out?*

Tagged questions (where a statement is made and a short question is added inviting a child to agree) should always be avoided.

*Uncle David didn't really touch you, did he?
You said Uncle David touched you. Uncle David said he didn't touch you. Did Uncle David really touch you?*

Children will often take questions literally. They are often unable to imagine why a question is being asked.
*(Q) Are you in school at the moment? (A) No, I'm at the court, talking to you. Do you go to school?
(Q) Can you tell me what happened at School? (A) Yes.
Tell me what happened at School when X happened.*

Be specific. Children are less likely to be able to generalise questions, especially when they do not understand why a question is being asked. When planning questions, think about whether they could be misinterpreted.
*(Q) Were you wearing your clothes at the time? (A) No.
(may mean they were wearing their school uniform or pyjamas). What were you wearing?
Young children may associate the word 'touch' only to hands or fingers.
(Q) Did Harry touch you? (A) No.
Did any part of Harry's body touch your body?*

Children are unlikely to be able to determine the motives of others. Such questions should be avoided if possible as they may produce unreliable answers. Young children particularly, find it difficult to answer questions starting with "Why".
*(Q) Why did Dennis take you to the park? (A) I don't know.
What made Dennis take you to the park that day?*

Children may find it difficult to answer questions about when something happened. Some children will say "Yesterday" or "Last week" for anything that happened in the past.
*Was it a school day? Was it before or after dinner?
Was it light or dark or don't you know?*

Cross-examination - When a child-witnesses is cross-examined, it should be done by way of closed-circuit TV, rather than from within the court room. Giving evidence in this way allows child witnesses to remain in another room, separated from the accused and shielded from the hostility and formality of the court room. In Vietnam, a child TIP victim is to be "separated from the defendant". The victim participates in the trial from a separate room where the court proceedings are transmitted via an online closed circuit television system. The child's legal representative, guardian, psycho-social worker, or child protection worker must be present in the room.

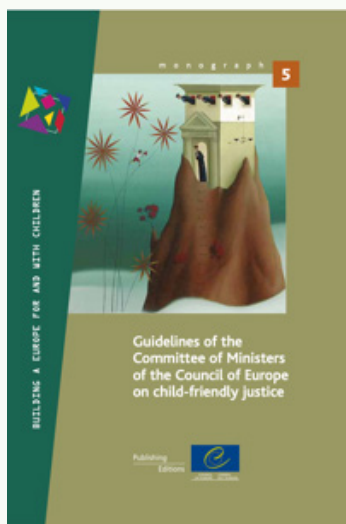
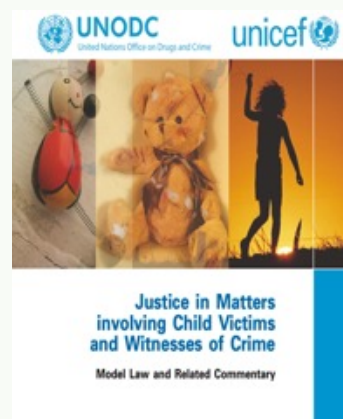
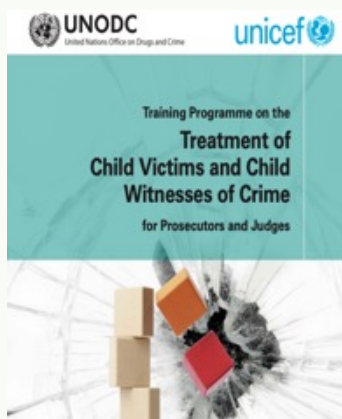
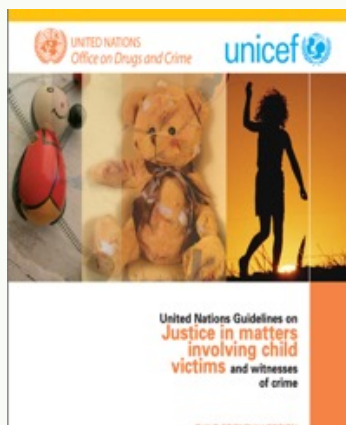
In the Children's Court of Victoria, Australia, children can give evidence through a closed-circuit TV, supported by a support person of their choice. The cameras are positioned so that the child witness cannot see the accused, but the judge, the prosecution and the defence can see the child.⁵⁹

59 See also the ASEAN ACT Webinar on Alternative Modes of Victim Testimony at <https://aseanactpartnershiphub.com/event/evidence-presentation/>

Creating a 'child-friendly' courtroom - In Vietnam, the Chief Justice of the Supreme People's Court issued Circular No. 01 and 02/2017/TT-TANDTC which requires courtrooms used for hearings involving children to be arranged in a '[child] friendly' manner, ensuring the best interests of [the child] and for Judges to wear the administrative uniforms of the People's Courts rather than judicial gowns. It further stipulates for children's cases involving sexual abuse, violence or trafficking, the Court must conduct a closed trial.



Specific guidelines, training and model laws for cases involving children - UNODC in partnership with UNICEF created several guidelines, trainings⁶⁰ and model laws to assist police, prosecutors and judges to hear cases involving children.



Guidelines on child-friendly justice - The Council of Europe adopted guidelines on child-friendly justice specifically to ensure: (1) children can participate in proceedings; (2) the best interests of the child are a primary consideration in all matters affecting them; (3) children are treated with care, sensitivity, fairness and respect; (4) they are protected from discrimination; and (5) the rule of law principles are applied equally to children as they are to adults.⁶¹

⁶⁰ https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Prosecutors_and_Judges.pdf

⁶¹ See <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3>

INDICATOR

8

Special provisions
for people living
with a disability



Indicator 8: Special provisions for people living with a disability

Overview

Victims of human trafficking may develop disabilities from abuse at the hands of their traffickers, and individuals with disabilities may be specifically targeted by traffickers because they are vulnerable. People living with disability (PLWD) often face a host of physical, communication and attitudinal barriers when accessing the justice system for example a person's disability may lead criminal justice professionals to overlook them as credible witnesses; people with mobility issues may face physical impediments in accessing criminal

**DISABILITY
IS NOT A
BARRIER
DISCRIMINATION IS**

justice institutions; and the availability of targeted support services is not always available for victims living with disability. It is therefore critical that PLWD are identified early, and provisions are made to ensure they can actively participate in the criminal justice process and are included in all decisions and matters that involve them.

Furthermore, disabilities are not always visible to others so it is important that Courts take active steps to identify victims/witnesses and defendants with a disability so appropriate accommodations can be made to ensure they can effectively participate in the criminal justice process and access their rights.





Principles

What should be implemented?

Judges and Court Administrators should ensure the services *provided to victims with disability are flexible and tailored to meet their individual needs* by ensuring:

- 8.1.** Appropriate accommodations are made to ensure persons with disability are able to access the court and to effectively participate in the proceedings by:
- a. ensuring the courthouse and courtroom is accessible to victims with a disability (i.e., in a wheelchair consider holding trials on the ground floor, remotely or using video evidence; ensure there is enough room for the victim to move in and around the courtroom. Will their wheelchair fit in the witness stand?) (ACTIP Art. 14.12)
 - b. removing all obstacles in the courthouse/courtroom that may impede a witness who has a vision impairment or mobility issue (ACTIP Art. 14.12)
 - c. providing signage at the court that uses [Universal Symbols of Accessibility](#) to direct, promote and publicize the accessibility features of places, programs and services in the court for people with disabilities (ACTIP Art. 14.10(b) & 14.12)
 - d. providing information about the criminal justice process for TIP cases in a variety of accessible formats such as braille, descriptive audio media video content with captions and subtitles; printed material that adheres to accessibility guidelines (ACTIP Art. 14.10(b) & 14.12)
 - e. ensuring there are appropriately trained sign language interpreters⁶² available to enable PLWD to actively participate in the trial (ACTIP Art. 14.10(b) & 14.12)
 - f. using an intermediary for people with a cognitive disability to question the victim in court and to assist police and prosecution at interview⁶³ (ACTIP Art. 14.10(b) & 14.12)
- 8.2.** The Court collects disability disaggregated data by using the Washington Group Short Questions (ACTIP Art. 14.10 & 14.12)
- 8.3.** The Court has established partnerships with Disability Service Provider Organisations (DPO) to better understand the needs of victims/witnesses/defendants with a disability (ACTIP Art. 14.10)
- 8.4.** The Court has implemented capacity building for judges, prosecutors, and court staff to address the specific needs of those living with a disability (ACTIP Art. 14.12 & 16.12)

62 The interpreter should be someone that is appropriately qualified, who is impartial, and is acceptable to the court and the victim. See the 'Equal Treatment Benchbook' developed by the UK Courts which provides advice to judges about how to communicate through an interpreter. <https://www.judiciary.uk/wp-content/uploads/2021/12/Equal-Treatment-Bench-Book-December-2021-interim-update.pdf>

63 This is particularly relevant if the accused is not legally represented. All efforts should be made to prevent the defendant from directly questioning the victim if a defendant is conducting his or her own defence.



Examples:

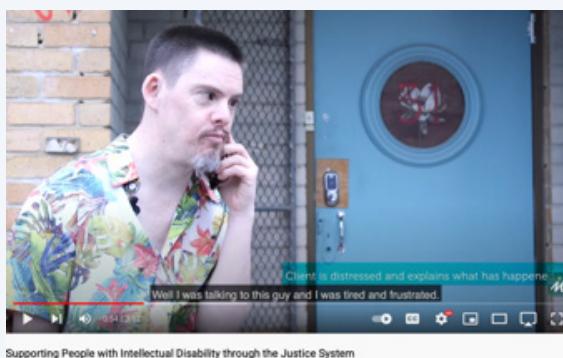


Universal Symbols of Accessibility - are used extensively around the world in Courts, airports, hospitals and other government institutions as well as on social media such as Twitter and Facebook and video streaming sites.

Accessible video online - The New South Wales Department of Justice in Australia created a video for people with cognitive disabilities who must go court. The video uses actors who have a cognitive disability and a person with a vision disability and explains the process of going to court and what is required.⁶⁴



Partnerships with NGOs and specialised service providers in the community - Linking witnesses with support services such as disability advocates, counsellors etc. who are skilled at working with this vulnerable group. By using an advocate or linking the person with an NGO, the witness will have the support they need in order to effectively participate in the process. The service can help them understand the options available to them, obtain legal advice and to explain and support them through the justice process.



Accessible written material - The Department of Justice in NSW Australia has created brochures for victims and witnesses with a disability. This brochure advises PLWD of the range of services provided by the court, and the process for seeking assistance from the court. The brochure also requests the consent of the witness so that the Court can link the witness with external service providers who may be able

64 <https://www.youtube.com/watch?v=0WaTnsW3UWQ>

to assist. The brochures are available at NGOs and disability support organisations and on the Court's website.⁶⁵

Social Media and Persons with a disability

– Courts need to ensure that all material is accessible to persons with a disability, including social media posts. Twitter provides guidance on how to make images accessible to people who are blind or low-vision.⁶⁶

Washington Group on Disability Statistics

Questions⁶⁷ – will assist courts to understand adult victim/witness' and defendant's capabilities (limitation in functioning) and any environmental barriers (physical, social, cultural, or legislative) that may limit their participation. There are specific questions for children 5 years old and under and for children and youth aged 5-17 years.⁶⁸



WG Short Set on Functioning Questions

Preamble to the WG-SS:

Interviewer read: "The next questions ask about difficulties you may have doing certain activities because of a HEALTH PROBLEM."

VISION

VIS_SS [Do/Does] [you/he/she] have difficulty seeing, even if wearing glasses? Would you say... [Read response categories]

1. No difficulty
2. Some difficulty
3. A lot of difficulty
4. Cannot do at all
7. Refused
9. Don't know

HEARING

HEAR_SS [Do/Does] [you/he/she] have difficulty hearing, even if using a hearing aid(s)? Would you say... [Read response categories]

1. No difficulty
2. Some difficulty
3. A lot of difficulty
4. Cannot do at all
7. Refused
9. Don't know

MOBILITY

MOB_SS [Do/Does] [you/he/she] have difficulty walking or climbing steps? Would you say... [Read response categories]

1. No difficulty
2. Some difficulty
3. A lot of difficulty
4. Cannot do at all
7. Refused
9. Don't know

65 <https://www.justice.nsw.gov.au/diversityservices/Documents/Request4CourtTransFinalAccess.pdf>

66 <https://help.twitter.com/en/using-twitter/picture-descriptions>

67 The Washington Group questions are available in a variety of languages see: <https://www.washingtongroup-disability.com/resources/translations-of-wg-question-sets/>

68 For children aged 5-17 see: https://www.washingtongroup-disability.com/fileadmin/uploads/wg/Documents/Washington_Group_Questionnaire_5_-_WG-UNICEF_Child_Functioning_Module_ages_5-17_.pdf and in different languages see: <https://data.unicef.org/resources/module-child-functioning/>

Capacity Building for Court Staff - The first step to making courts more disability-inclusive is to ensure that court staff are able to identify people with disabilities and know how to find out what assistance they may need. In the table below, developed by the New Zealand Pacific Judicial Strengthening Initiative (PJSI), are some of the factors court staff should consider when making the court more disability-inclusive.

8.3.6 Physical and Sensory

Physical barriers may prevent persons with physical disabilities from accessing the courthouse or moving to or inside the courtrooms themselves. Sensory barriers may prevent people with vision or hearing impairments from being able to understand, follow and fully participate in proceedings.

8.4 Creating Disability-Inclusive Courts

The first step to making courts more disability-inclusive is to ensure that court staffs are able to identify people with disabilities and know how to find out what assistance they may need. In the table below are some of the factors to consider as you develop your plan to make your court more disability-inclusive.

8.4.1 Ability of persons with disabilities to enter and move within courts and navigate proceedings	
Disability Type	Factors to Consider
Mobility impairments	<ul style="list-style-type: none"> Is the court room on the ground floor or accessible by a lift? If the courtroom is on the ground floor – are there still any steps to enter the court room, or a ramp? Is the court door wide enough to accommodate wheelchairs? Is there space for wheelchair users to move around the courtroom? Where will a person in a wheelchair sit in the courtroom when they are giving evidence? Are court hallways wide and clear of furniture or debris? Is there a wheelchair accessible toilet available?
Visual impairments	<ul style="list-style-type: none"> Do all court staff know that a guide dog may enter the courtroom? Will court staff assist with directions and/or or walk with the client to the courtroom? Do elevators have braille buttons or a sound system to announce the floors? For reading documents, can the document be emailed to the client as one that can be “read” by someone with a visual impairment, using appropriate software?
Any kind of disability	<ul style="list-style-type: none"> Is courtroom signage clear? Are staffs available and trained to help users to navigate their way around the court?
8.4.2 Ability of persons with disabilities to prepare for, and participate in proceedings	
Any kind of disability	<ul style="list-style-type: none"> Is disability-inclusive information available: By phone? Email? In person at the registry? Via the court website? – Does it include information about the law, the process and the help available? (From court, legal aid, other specialised services?)
Hearing impairments	<ul style="list-style-type: none"> Is there a sign interpreter available or a ‘hearing loop’ in court? Is there someone available to answer any questions on what will happen on the day through a text phone, email, skype or some other message service?

Annex 1: **Victim Sensitive Court Indicators Self-Assessment Tool**



Victim Sensitive Court Indicators Self-Assessment Tool



'GREEN' – Country meets and has implemented all of the criteria of the indicator



'ORANGE' – The country is in transition and only partly meets the criteria of the indicator. Some areas have not been met or fully implemented



'RED' – The country has not met the criteria of the indicator and is weak in this area



'BLUE' – Situation is not clear or is unknown

INDICATOR

1



Safety and
privacy

**Ensuring the safety
and privacy of
trafficked persons**

1.1 Provisions in place to close courts when giving victim testimony



1.2 Risk assessment/safety plans in place that detail steps to protect the victim/witness during the criminal justice process



1.3 Decisions/judgments in TIP cases anonymised and published online



1.4 Court procedures in place to prohibit the publication of identifying details of the victim/witness by the media or on social media



INDICATOR

2



Evidence and
proceedings

**Best Evidence -
The way trafficked
persons record and
present their
evidence in the
proceedings**

2.1 TIP cases are prioritised or expedited



2.2 Measures are in place to ensure victims are permitted an opportunity to and are supported in the criminal proceedings by:

a) using expert witnesses (such as an intermediary) to provide evidence when required



b) allowing a victim to have a support person of their choice to be with them when they give their testimony in court



c) ensuring there are qualified language interpreters are available for victims/witnesses so they can meaningfully participate in the proceedings



2.3 Protective measures are in place to ensure victims/witnesses can give evidence without seeing the accused by using:

a) witness screens in place to screen the accused



INDICATOR

2
Con't



Evidence and proceedings

b) use of video conferencing technology so the witness can give evidence remotely from another location or another room



c) Pre-recorded video evidence is played in court in place of the victim having to recount the evidence



d) Separate entrances and waiting rooms available for victims that are available to TIP victims/witnesses during the whole trial, but especially, before and after giving evidence



2.4 The use of 'victim impact statements' to ensure the judge has a comprehensive assessment of the impact on the victim caused by the offender (to obtain compensation for damages suffered)



INDICATOR

3



Justice sector personnel

Interaction – How the formal justice sector agency personnel and judges interact with the victim/witness.

3.1 There are special units/persons to deal with TIP cases in the court



3.2 The Court has guidelines and standard operating procedures (SOPs) for all court staff and judges on how to deal with trafficking cases.



3.3 The Court has specific regulations and codes of conduct setting out the expected standards of behaviour of judges and court staff



3.4 TIP training, provided is based on a trauma informed approach



INDICATOR

4



Information and services

4.1 The Court provides appropriate information and material in a variety of formats to trafficking victims in simple, non-legal terms and in a language they understand concerning:

a) what human trafficking is; the criminal justice process including the victim's legal position; their rights; their options (to participate or not); support services available to victims and the estimated time frame of a trafficking trial



INDICATOR

4

Con't



Information and services

Information and services provided to trafficked persons when in contact with the formal justice system

b) the non-punishment principle so the victim understands they will not be criminally or administratively liable for unlawful acts committed by them, if the acts are directly related to the trafficking



c) the right of TIP victims to seek restitution/ compensation (if available) as well as the application process



4.2 The court has appointed a focal point/case manager/victim witness coordinator who will keep in contact with the victim, provide updates on the status of the case, and provide referral information to the victim support services available to them



INDICATOR

5



Physical, psychological and social recovery of victims

Indicators that relate to measures in place to provide for the physical, psychological, and social recovery of victims of trafficking in persons

5.1 MOU or agreements should be in place between the Court and civil society/ non-governmental organisations (NGOs) to encourage and facilitate cooperation and collaboration for the provision of services and support to TIP victims



5.2 Inter-agency protocols should be in place for the coordinated 'wraparound' or 'one-stop shop' services for TIP victims in relation to counselling, medical, housing, education and training, legal documents, and broader social protection programs





Medical and forensic services

Indicators that relate to the provision of medical and forensic services for victims of trafficking

6.1 Prosecutors and judges receive specific training on the strengths and weaknesses of forensic evidence in relation to sexual and physical violence



6.2 National protocols for sexual assault forensic examinations are in place and based on WHO guidelines



6.3 Annual formal exchanges of information between regional TIP institutions and specialist forensic institutions in the ASEAN region to develop regional expertise and foster collaboration



Special provisions for children

Special indicators that relate specifically to children as victims or witnesses of trafficking

7.1 Courts provide safeguards for the protection of child victims/witnesses/defendants by:

a) ensuring there are measures in place to minimize delays in the criminal justice process



b) protecting the privacy of the child by prohibiting the identification of the child victim/witness or child defendant



c) keeping the child informed of their role and the scope, timing, and progress of the proceedings



d) developing and implementing child witness preparation schemes to familiarize children with the criminal justice process prior to their giving evidence



e) providing child sensitive and age-appropriate information to the child about the trial process, their role in the case, the court's expectations of them, and seek to address any concerns they may have throughout the criminal trial process



f) allowing for the provision of pre-recorded videotaping of the child victim/witness testimony to be played in court as an official piece of evidence



g) allowing (as a minimum standard) the provision of a privacy screen to be placed between the child victim/witness and the accused during the trial





Special provisions for children

Special indicators that relate specifically to children as victims or witnesses of trafficking

h) allowing the child victim/witness to testify through closed-circuit television if the child is required to attend the trial for cross-examination



i) making the courtroom and procedures less intimidating to a child witness



j) closing the courtroom to the public when the case involves a child victim/witness or child defendant



k) using an intermediary to question child victims (e.g., social worker, child specialist, victim lawyer/representative) in the trial and to assist with police and prosecution interviews



l) providing instruction to the prosecution and defence counsel to ensure that questioning takes into account the child's age and special needs to avoid the risk of re-victimization



m) ensure that the 'best interests of the child' are of paramount consideration throughout the criminal justice process



7.2 A "guardian" has been appointed to accompany the child throughout the criminal justice process



7.3 The court has implemented and institutionalised specialist capacity building for justice personnel and judges working with child TIP victims and witnesses



Special provisions for people living with a disability

Special provisions for people living with a disability

8.1 Appropriate accommodations are made to ensure persons with disability are able to access the court and to effectively participate in the proceedings by:

a) ensuring the courthouse and courtroom is accessible to victims with a disability



b) removing all obstacles in the courthouse/courtroom that may impede a witness who has a vision impairment or mobility issue



c) providing signage at the court that uses Universal Symbols of Accessibility



d) providing information about the criminal justice process for TIP cases in a variety of accessible formats





Special provisions for people living with a disability

Special provisions for people living with a disability

e) ensuring there are appropriately trained sign language interpreters available to enable PLWD to actively participate in the trial (ACTIP Art. 14.10(b) & 14.12)

If the victim is deaf or has a hearing impairment, they will be unable to participate effectively in the trial if they cannot understand the proceedings or communicate with the prosecutor and judge.



The interpreter should be someone that is appropriately qualified, who is impartial, and is acceptable to the court and the victim.



f) using an intermediary for people with a cognitive disability to question the victim in court and to assist police and prosecution at interview



8.2 The court collects disability disaggregated data by using the Washington Group Short Questions



8.3 The Court has established partnerships with Disability Service Provider Organisations (DPOs) to better understand the needs of victims/witnesses/defendants with a disability



8.4 The Court has implemented capacity building for judges, prosecutors, and court staff to address the specific needs of those living with a disability





Australian Aid  ASEAN-Australia Counter Trafficking

Victim Sensitive Courts

A Handbook for ASEAN Member States