

Human Trafficking

Reference Guide for Canadian Law Enforcement





Royal Canadian Mounted Police Gendarmerie royale du Canada



Global Programme on Trafficking in Persons



**International Centre for Criminal Law
Reform and Criminal Justice Policy**

Human Trafficking

**Reference Guide for
Canadian Law Enforcement**

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INTRODUCTION

Law enforcement agencies throughout the world face some difficult challenges in their attempts to prevent and control human trafficking. It is often difficult to identify and harder still to convict human traffickers. Human trafficking often goes unreported because victims are frightened to give evidence, may have been brutalized, are in need of care and assistance, and may sometimes have been mistaken for criminals themselves by some law enforcement agencies.

Human trafficking is a crime that is frequently international in nature, crossing national borders and jurisdictions. Human trafficking can also occur domestically, within our own borders. Law enforcement efforts can be confounded by the need to conduct investigations or pursue criminals across international borders. Substantive and procedural criminal law dispositions do not always support an effective and proactive law enforcement response to that problem. Existing laws are often very difficult to enforce. Finally, human trafficking is in fact better understood as a collection of crimes bundled together rather than a single offence, a criminal process rather than a criminal event. Stopping human trafficking involves a number of complex law enforcement activities.

In spite of all these difficulties, there are law enforcement officials around the world who are successfully arresting and prosecuting traffickers and disrupting their activities. Some are achieving success by following the profits and money generated by this crime. Others, in destination States, have found that linking their efforts with those of their colleagues in the State of origin can bring arrests and convictions. Still others have found that by increasing police training at all levels and making sure that law enforcement personnel recognize signs and clues that human trafficking is taking place can lead to increased interventions and arrests. Most have found it essential to coordinate their efforts across agencies, including working with new partners such as non-governmental organizations, the media, victim assistance agencies, and various service providers.

Trafficking offences are difficult to prosecute for some of the same reasons that they are difficult to investigate. Because of the nature of the crime, the frequent need to rely on evidence collected abroad, the need to rely on the services of interpreters and translators, and the potential for victims and witnesses to be intimidated or for public officials to be corrupted, prosecuting these offences presents the judiciary with some new and difficult challenges. Enhanced international judicial collaboration, effective collaboration with victim assistance services, and the development of stronger witness protection measures must all be part of a strategy to meet these challenges.

The purpose of this short guide is to provide Canadian law enforcement officials with a reference tool to allow them to benefit from the experience of other law enforcement agencies working within the framework of the UN Convention Against Transnational Organized Crime (TOC Convention)¹ and the protocols thereto, in particular the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children* (hereafter referred to as the “Trafficking in Persons Protocol” and the “TOC Convention”)² and the *Protocol against Smuggling of Migrants by Land, Sea, and Air*, (hereafter the “Smuggling of Migrants Protocol”)³. Canada became a party to these three international instruments on May 13, 2002, and it is therefore bound by the obligations they create. (In ratifying the TOC Convention and Protocols, Canada signalled it was already in compliance with these instruments.

WHAT IS HUMAN TRAFFICKING?

The international community finally has, in the Trafficking in Persons Protocol, an agreed upon definition of trafficking in persons. A common basis for the criminalization of the behaviour in national laws will favour greater international cooperation in enforcing these laws. Reducing discrepancies in national laws will ensure that offenders have no place to hide and that they cannot exploit legislative gaps or inconsistencies to avoid liability. The use of a common definition of the crime should also help standardize data collection and research, thus assisting in the identification of regional trafficking patterns and the development of an accurate global picture of the problem.

Article 3 of the Trafficking in Persons Protocol defines the crime as follows:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of

¹ The TOC Convention was adopted the UN General Assembly (resolution 55/25) on 15 November 2000 and entered into force on 29 September 2003. The text of the Convention and the Protocols can be consulted at: http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf. The Convention's ratification status can be consulted at: http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html

² The Trafficking in Persons Protocol was adopted by the UN General Assembly (resolution 55/25) on 15 November 2000. It entered into force on 25 December 2003. The Protocol's ratification status can be consulted at: http://www.unodc.org/unodc/en/crime_cicp_signatures_trafficking.html

³ The Smuggling of Migrants Protocol was adopted by the UN General Assembly (resolution 55/25) on 15 November 2000. The Protocol's ratification status can be consulted at: http://www.unodc.org/unodc/en/crime_cicp_signatures_migrants.html It entered into force on January 28, 2004.

exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

DEFINITION OF HUMAN TRAFFICKING

Trafficking in Persons Protocol (Art. 3.a)

Trafficking in persons is:

- **the action of** recruitment, transportation, transfer, harbouring, or receipt of persons
- **by means of** the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- **for the purposes of** exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.

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should be noted that the Trafficking in Persons Protocol mandates that in the case of children, the threat or use of force, other forms of coercion, abduction, fraud, deception, the abuse of power or vulnerability or the giving of payments or benefits are not required to establish the crime of trafficking in persons.

By naming the conditions of forced labour, servitude, slavery like practices, and slavery, the Trafficking in Persons Protocol avoids the tendency to restrict the definition of human trafficking to cases involving sexual exploitation. It recognizes all forms of trafficking, including trafficking into domestic, agricultural and factory labour. As well, it recognizes that any individual can be a victim of trafficking, even if women and children are particularly vulnerable to this form of victimization.

While the new definition provided by the Trafficking in Persons Protocol is crucial to the development of an effective international response to the problem, it is important to remember that it is not an exhaustive definition, and that the TOC Convention and the Protocols are limited in scope. The Trafficking in Persons Protocol applies to the “prevention, investigation and prosecution” of Protocol offences, but only where these are “transnational in nature” and involve an “organized criminal group” (as defined in the TOC Convention).

WHAT IS MIGRANT SMUGGLING?

The *Smuggling of Migrants Protocol* was adopted in order “to prevent and combat the smuggling of migrants as well as promote cooperation among States Parties, while protecting the rights of smuggled migrants”.⁴

The protocol defines smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Article 3 (a)). It contains the following elements:

- the procurement of illegal entry
- into a State of which the person is not a national or a permanent resident
- to obtain direct financial or other material benefit.

In addition to smuggling *per se*, the Smuggling of Migrants Protocol also requires States Parties to criminalize additional forms of conduct often associated with smuggling. They are required to criminalize the “producing” and the “procuring, providing or possessing” of a “fraudulent travel or identity document”. (Ibid, Article 6(b)) In Canada, related provisions are included in the *Immigration and Refugee Protection Act* (IRPA), s. 122 (pages 18–19 of this document for extracts from IRPA).

States Parties must also criminalize the offence of “enabling illegal residence”. The intention in establishing this offence is to include cases where the entry of migrants is through legal means (e.g. temporary resident visas), but the stay is through resorting to illegal means. These illegal means enable them to remain for reasons other than those used for entry or beyond the length of time covered by their permits or authorizations to enter.

WHAT IS THE DIFFERENCE BETWEEN THE TWO?

Smuggling of migrants and human trafficking both involve moving human beings for profit. However, in the case of human trafficking, two additional elements beyond smuggling must be present: there must be some improper form of recruitment, such as coercion, deception or some abuse of authority; and, the activity must have been undertaken for an exploitive purpose, although that purpose need not necessarily have been fulfilled. As noted previously however, in

⁴ The Smuggling of Migrants Protocol was adopted by the UN General Assembly (resolution 55/25) on 15 November 2000. The Protocol's ratification status can be consulted at:
http://www.unodc.org/unodc/en/crime_cicp_signatures_migrants.html

the case of trafficking of children, all that is required is the movement, harbouring or recruitment for the purpose of exploitation.

In human trafficking, the major source of revenue for offenders and the economic driving force behind the offence are the proceeds derived from the exploitation of victims in forced prostitution, and other forms of sexual exploitation, forced labour or in other ways. In smuggling, the smuggling fee paid by the illegal migrant is the major source of revenue and there usually is no ongoing relationship between the offender and the migrant once the latter has arrived at destination.

Trafficking in persons and smuggling of migrants are distinct crimes, but they represent overlapping crime problems. Actual cases may involve elements of both offences or they may shift from one to the other. In fact, the movement of victims of trafficking by traffickers from one State to another may constitute either “procuring illegal entry” or “enabling illegal residence”, the principal offences established by the Smuggling of Migrants Protocol. Methods employed to illegally move persons between countries or to effect entry may be similar or the same for smuggling and trafficking situations.

It is common to distinguish between three components of trafficking: (1) recruitment; (2) movement; and, (3) exploitation. However, many victims of human trafficking begin their journey by consenting to be smuggled from one State to another. Smuggled migrants may later be tricked or coerced into exploitive situations and thus become victims of human trafficking. In fact, it may often be difficult for law enforcement officials and victim assistance workers to determine whether a particular case is one of smuggling or trafficking, and the migrants themselves may not be aware of the potential danger.

In practice, law enforcement officials sometimes use the evidence gathered initially to launch a smuggling investigation which will later focus on human trafficking as additional evidence comes to light. In such cases, law enforcement officials will frequently have to rely on existing measures against the smuggling of migrants until the additional elements of a human trafficking offence can be established.

Furthermore, victims of trafficking often come to the attention of the authorities not as victims, but as offenders as they are being forced to participate in various types of criminal activities (e.g., drug production, illegal work, prostitution, etc.).

Authorities may initially find it difficult to distinguish between migrants who have been smuggled, and victims who have been trafficked. Depending upon the jurisdiction and circumstances, protection and assistance services may be available to victims of trafficking. While in some countries there are formal mechanisms to determine whether or not a person is a trafficking victim, this is not the case in Canada. Status in Canada or availability of services will vary on a case-by-case basis, according to the individual's situation, jurisdiction and many other factors.

IS THE TRAFFICKED PERSON ALWAYS A VICTIM?

One of the difficulties faced by law enforcement in potential cases of human trafficking is how to determine whether they are dealing with illegal immigrants or victims of a tragic crime. In many instances, the issue boils down to a question of "consent". It has in fact been one of the key issues that countries have faced in developing an effective response to human trafficking. To help resolve this issue, the Trafficking in Persons Protocol establishes that the consent of the victim is irrelevant where the use of illicit means is established.

In doing so, the Protocol recognizes that a victim's exercise of free will is often limited by means of force, deception, or the abuse of power. It respects the ability of adult persons to make self-determined decisions about their lives, specifically regarding labour and migration choices. However, the Trafficking in Persons Protocol excludes a consent-based defence for traffickers in cases where the use of improper means of obtaining consent is established.

A child cannot consent to being trafficked: the Protocol excludes any possibility of valid consent from a victim under the age of 18, and any recruitment, transportation, transfer, harbouring or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used.

HOW IS IT A POLICE RESPONSIBILITY?

The terms "law enforcement" does not fully convey the complex responsibilities of the police and other law enforcement agencies with respect to human trafficking. In the UK, a crime prevention toolkit has been developed which attempts to clarify what these responsibilities are and how they relate to those of the numerous other agencies that are called upon to intervene. Because this is an area where it is crucial that all agencies work closely together, it is important for each one of them to be very clear about what it is expected to do.

The box below is borrowed from that toolkit (and amended for Canadian law enforcement) and provides a quick and useful checklist.

HUMAN TRAFFICKING RESPONSIBILITIES OF THE POLICE

Police have generic responsibilities relating to:

- the identification of victims;
- the protection of victims and support workers;
- the protection of life;
- investigation, intelligence gathering and surveillance, including liaison with national and international enforcement agencies;
- gathering all evidence, both scientific and material, to ensure there is a fair trial (this includes the disclosure to the defence of any evidence that may assist the accused);
- the recording of crime (this includes rape and assault, abduction etc); and,
- identification and support of vulnerable or intimidated witnesses.

Children

With regard to child victims of trafficking, police responsibilities may include:

- identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies or members of the public, following up reports of children missing from care);
- report instances of children in need of protection to relevant child protection agencies;
- contributing to the development of victim profiling with other agencies;
- undertaking joint interviews with social workers (according to guidelines in 'Achieving Best Evidence') of children identified as victims or potential victims to assess risk and assist in the development of protection plans;
- carry out checks on sponsors and 'uncles' and 'aunts' who claim to be the relatives of children already identified as being at risk of trafficking;
- receiving and seeking intelligence, undertaking investigations, with immigration officials and any other appropriate parties;
- use and contribution to the development of investigation toolkits for trafficking work;
- participating in local child protection networks with related organizations (immigration, social services, Non-Governmental Organization (NGOs), health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate;
- responding to media enquiries and utilizing publicity as appropriate to raise awareness and hence improve the quality of intelligence and investigations;
- log intelligence material as specified and ensure links with other forces and national/international policing organizations;

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- if children disappear, initiate missing persons procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
- notify National Missing Children Services (NMCS)

Adults

With regard to adult victims of trafficking, police responsibilities may include:

- contributing to the development of victim and offender profiles on an inter-agency basis;
- identification of adults at risk (e.g. following raids on off-street sites, responding to referrals from other agencies, members of the public, etc.);
- informing victims/potential victims of their rights (for example, to obtain legal advice);
- informing victims/potential victims who are not Canadian citizens or permanent residents of their options with regard to immigration status;
- identifying support services and referring victims/potential victims to specialist NGO's and safe accommodation, where these are available, and arranging safe transport;
- undertaking interviews, receiving and seeking intelligence, undertaking investigations, with immigration officials and any other appropriate parties, logging intelligence material and ensuring links are made with other forces and national/international policing organizations;
- providing protection to victims and staff supporting them, if appropriate involving the appropriate Source Victim Witness Protection Program;
- making referral to Victim Services for witness preparation and court familiarization
- language support (translation services);
- if adults who have been identified as victims/potential victims disappear, initiate missing persons procedures, investigating circumstances and circulating information/undertake investigations, linking with other agencies as required.

Collaboration

- police should work closely with Citizenship and Immigration Canada (CIC), Canada Border Services Agency (CBSA), provincial/territorial and municipal agencies, with Social Services, child welfare authorities, and with any NGOs involved in service delivery to provide protection to the children;
- police need to utilize existing liaison structures with authorities in the countries of origin;
- currently, there are no organizations with the sole responsibility of protecting and providing support to trafficked victims;
- although this may reasonably be considered to be the role of an NGO, police may need to provide some specific services, including protection to a trafficked victim

during their court case, and after, if the victim remains in Canada;

- in countries with exit controls, police should work with immigration and border authorities to help identify victims leaving the country with their traffickers; Canada does not have exit controls; nonetheless police should include in their liaison with other authorities any possibility for assisting in preventing persons being removed from Canada by traffickers;
- police need to provide front-line information/intelligence to local intelligence offices and data banks;
- police should work with other agencies trying to ensure that those who are removed or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children, CIC would prepare risk assessment for adults).

Source:

United Kingdom – Home Office Crime Reduction Information Centre – Crime Reduction Toolkit – Trafficking in Human Beings

<http://www.crimereduction.gov.uk/toolkits/tp0501.htm>

DON'T GO IT ALONE — PLANNING AN EFFECTIVE RESPONSE

Effective responses to the problem of human trafficking call for collaborative, multi-agency, long-term, coordinated, strategic and well-planned action. Planning for action must be based on a sound assessment of the problem and of the existing capacity to respond to it. It must be supported by a local willingness of the various groups and agencies involved to cooperate not only with each other but also with others at the international level. In many instances, a progressive law enforcement agency can play a leadership role in promoting, initiating, and even facilitating such a collaborative process.

It is important to assess the situation requiring a response. The problem usually presents itself in a different way in each jurisdiction. Proper assessment of the situation and the careful planning of an intervention are usually the hallmarks of successful responses. The best assessments are those that are based on existing effective collaboration and information sharing between the various agencies that need to be part of the response to the problem.

Given the complexity of the problem of human trafficking, it is unlikely that any real success will ever be achieved at the local or national level without ongoing interagency collaboration. A concrete plan of action must be developed to delineate mutually agreed-upon objectives, priorities for

action, and strategies, as well as the many tasks to be achieved, the resources required, and the respective responsibility of each agency. There are a number of examples of regional, national, or even local plans of action. The OSCE, for instance, has developed a Practical Handbook which provides several useful assessment tools that could be readily adapted to local circumstances⁵.

WHAT IS THE RELEVANT LEGAL FRAMEWORK?

This quick guide cannot explain in detail the legal framework within which each law enforcement agency must develop its own anti-trafficking strategies. That framework obviously varies considerably from one country to another. However, States that have ratified the TOC Convention, the Trafficking in Persons Protocol or the Smuggling of Migrants Protocol have signalled that their laws comply or will soon comply with the requirements of these international treaties.

A comprehensive national strategy to respond to the problem of human trafficking must take into account the need to review and amend, as necessary, the legislative framework that will shape the law enforcement response. The Trafficking in Persons Protocol requires State Parties to criminalize conduct which constitutes human trafficking as defined in the Protocol in domestic law. The UNODC has developed legislative guides to facilitate the implementation of TOC Convention and the Protocols Thereto.⁶

Canadian criminal law prohibits a range of activities related to trafficking in persons. The *Criminal Code* includes many offences which may be relevant to trafficking in persons such as kidnapping, extortion, forcible confinement, conspiracy, procuring, living on the avails of prostitution, operating a bawdy house, assault, sexual assault, as well as organized crime offences.

⁵ The tools are part of the Practical Handbook, National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons and it can be found at: http://www.osce.org/documents/odihr/2004/05/2903_en.pdf

⁶ The UNODC Legislative Guides can be consulted (in French and English as well as in other languages) at: http://www.unodc.org/unodc/en/organized_crime_convention_legislative_guides.html

RELEVANT CRIMINAL CODE OFFENCES⁷

- Administering stupefying thing for the purpose of illicit sex, s.212(1)(i)
- Assault, ss.265-268
- Causing death by criminal negligence, ss.220 and 221
- Child abduction (non-parental), ss.280 and 281
- Conspiracy, s.465
- Controlling or living on the avails of prostitution of another, s.212
- Criminal breach of contract, s.422
- Criminal interest rate, s.347
- Extortion, s.346 (1)
- Forcible confinement, s.279 (2)
- Forgery and uttering forged documents, ss.366 to 368
- Fraud, s.380
- Fraudulent use of certificate of citizenship, s.58
- Homicide, Murder and Manslaughter ss.222, 224, 226, and 229 to 236
- Intimidation, ss.423 and 423.1
- Keeping a common bawdy-house, s.210(1)
- Kidnapping, ss.279 (1) and (1.1)
- Living on the avails of the prostitution of a person under 18 years of age, ss.212(2) and (2.1)
- Obtaining or attempting to obtain the sexual services of a person under 18 years of age, s.212(4)
- Participation in criminal organization activities, s.467.11
- Passport forgery, s.57
- Proceeds of crime, ss.462.3 and 462.31 to 462.49
- Procuring, s. 212
- Robbery, s.343 and 344
- Sexual assault, ss.271 to 273
- Theft, ss.322 and 334
- Transporting a person to a bawdy-house, ss.211, 212(1)(f)
- Uttering threats, s.264.1
- Commission of offence for criminal organization, s.467.12
- Instructing commission of offence for criminal organization, s.467.13

In addition, the *Immigration and Refugee Protection Act* (IRPA) contains the additional offences of Human Smuggling and Trafficking in Persons. Section 117 prohibits human smuggling while s.118 prohibits trafficking in persons. Both came into effect in June 2002. The trafficking in persons offence carries a severe maximum penalty of life imprisonment and/or a fine of up to one million dollars.

⁷For the text of these sections of the Criminal Code: <http://laws.justice.gc.ca/en/C-46/index.html>

HUMAN SMUGGLING, HUMAN TRAFFICKING, AND OFFENCES RELATING TO DOCUMENTS

Immigration and Refugee Protection Act (2001, c. 27)

Organizing Entry into Canada

117. (1) No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.

Penalties — fewer than 10 persons

- (2) A person who contravenes subsection (1) with respect to fewer than 10 persons is guilty of an offence and liable
- (a) on conviction on indictment
- (i) for a first offence, to a fine of not more than \$500,000 or to a term of imprisonment of not more than 10 years, or to both, or
- (ii) for a subsequent offence, to a fine of not more than \$1,000,000 or to a term of imprisonment of not more than 14 years, or to both; and
- (b) on summary conviction, to a fine of not more than \$100,000 or to a term of imprisonment of not more than two years, or to both.

Penalty — 10 persons or more

- (3) A person who contravenes subsection (1) with respect to a group of 10 persons or more is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.

No proceedings without consent

- (4) No proceedings for an offence under this section may be instituted except by or with the consent of the Attorney General of Canada.

Offence — Trafficking in Persons

118. (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or *coercion*.

Definition of “organize”

- (2) For the purpose of subsection (1), “organize”, with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

Disembarking persons at sea

119. A person shall not disembark a person or group of persons at sea for the purpose of inducing, aiding or abetting them to come into Canada in contravention of this Act.

Penalties

120. A person who contravenes section 118 or 119 is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.

Aggravating factors

121. (1) The court, in determining the penalty to be imposed under subsection 117(2) or (3) or section 120, shall take into account whether
- (a) bodily harm or death occurred during the commission of the offence;
 - (b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;
 - (c) the commission of the offence was for profit, whether or not any profit was realized; and
 - (d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

Definition of “criminal organization”

- (2) For the purposes of paragraph (1)(b), “criminal organization” means an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence.

Offences Related to Documents

122. (1) No person shall, in order to contravene this Act,
- (a) possess a passport, visa or other document, of Canadian or foreign origin, that purports to establish or that could be used to establish a person’s identity;
 - (b) use such a document, including for the purpose of entering or remaining in Canada; or
 - (c) import, export or deal in such a document.

Proof of offence

- (2) Proof of the matters referred to in subsection (1) in relation to a forged document or a document that is blank, incomplete, altered or not genuine is, in the absence of evidence to the contrary, proof that the person intends to contravene this Act.

Penalties

123. (1) Every person who contravenes
- (a) paragraph 122(1)(a) is guilty of an offence and liable on conviction on indictment to a term of imprisonment of up to five years; and
 - (b) paragraph 122(1)(b) or (c) is guilty of an offence and liable on conviction on indictment to a term of imprisonment of up to 14 years.

Aggravating factors

- (2) The court, in determining the penalty to be imposed, shall take into account whether
- (a) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization as defined in subsection 121(2); and
 - (b) the commission of the offence was for profit, whether or not any profit was realized.

TRAINING

The review of existing legislation and any relevant cases or court decisions is also essential for the development of the necessary training materials for all law enforcement officials involved in anti-trafficking initiatives and the colleagues with whom they will have to work closely. Evidentiary requirements of existing laws should be spelled out clearly and concisely so that they may be well understood by all concerned, including members from all police forces, the judiciary, immigration officials, health services, victim assistance agencies and others who are in contact with the victims of trafficking. Law enforcement training may consist of a review and analysis of major law enforcement cases, both successful and unsuccessful, which can provide a good training basis for effective case management techniques and practices.

Finally, law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked persons. This responsibility lies with the investigator and cannot be abrogated.

The United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking* provides a number of elements, which should be integrated into the training of law enforcement officials.⁸

SOME TRAINING TOOLS

Law Enforcement Manual for Fighting Against Trafficking in Human Beings (UNDP) – Best Practice

<http://www.undp.ro/governance/Best%20Practice%20Manuals/>

User name: LawEnforcement

Password: anti-trafficking

Anti-trafficking Training Module for Police (International Centre for Migration Policy Development) – ICMPD

<http://www.icmpd.org/uploading/Comprehensive%20Training%20Strategy.pdf>

⁸The full text of the Guidelines can be consulted at: http://www.unhcr.bg/other/r_p_g_hr_ht_en.pdf

INVESTIGATION

In effect, there are three major investigative approaches and they are not mutually exclusive:

- Reactive investigation – victim led
- Proactive investigation – intelligence generated, police led
- Disruptive investigation – police led option in cases where the other two options are not possible

In addition, the commercial characteristics inherent in this type of crime mean that the traffickers are compelled to become involved in one or more of the following activities:

- *Advertising* – as part of the recruitment or exploitation process
- *Renting of premises* – ‘safe houses’ and/or brothels, sometimes workshops
- *Transportation* – identity and travel documents – transit process
- *Communications* – organizing the recruitment and exploitation
- *Financial transactions* – applicable to all of the above.

Evidentiary material may therefore exist and investigators must find ways to fully exploit these evidential opportunities and thereby secure the rescue of the victims, the apprehension and conviction of the traffickers, and the confiscation of their criminal assets. Parallel financial investigations and the use of special investigation techniques can also produce appreciable results, particularly when joint investigations teams systematically apply these methods.

REACTIVE, VICTIM LED INVESTIGATIONS

A reactive investigation as a result of a complaint from one or more victims is often necessary, even if it does not always lead to very effective action. In such cases, the need for an immediate intervention to protect the victims, affords little time to implement a proactive investigation to obtain independent evidence. The result is often that the investigators are left with suspects but no viable evidence upon which to prosecute them.

In all cases, where victims come to the attention of a law enforcement agency, the following responses may be applicable:

- Immediate intervention against the traffickers in order to rescue other victims, to prevent further potential victims from being entrapped, or to secure evidence that may otherwise be lost or compromised.

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- Utilization of the intelligence or statement of the victim or third party as the basis for developing and conducting a proactive or disruptive investigation into the trafficking occurrence.
- Utilization of the intelligence or statement as the basis for an in-depth, intelligence gathering operation into the traffickers.

Where the assessment of risks for the victims clearly indicates the need for immediate intervention, it is necessary to take prompt action.

Where the level of risk to outstanding victims or the need to secure vital evidence demands an immediate intervention, the case must move to the arrest phase. The following useful tips should be kept in mind:

- Every suspect against whom there is sufficient evidence to justify the action should be arrested, no matter how minor or peripheral his or her role may first appear to be. Experience has shown that the major players in any network will usually take every precaution to conceal their part in the crime. They will be extremely unlikely to retain possession of any incriminating documentation and are likely to remain silent throughout any interview process.
- It is advisable to have a skeleton arrest plan prepared and ready to be used from the early stages of every operation, a plan that can then be refined as the operation progresses. It is often necessary to proceed with an arrest at very short notice, for example, when the cover of surveillance or undercover officers has been compromised or when there is a sudden increase in the risk to which the victims or witnesses are exposed.
- The arrest should be timed and coordinated so as to maximize the opportunity to simultaneously arrest as many of the suspects as possible and to rescue as many victims as possible. In addition, the objective is to execute the plan at a time that will offer the best prospect of securing all available evidence.
- If time permits, when some premises must be raided or searched, it is worth considering deploying an undercover or covert officer before launching the raid and proceeding with the arrest of the suspects. This provides an opportunity for an inspection of the premises to estimate the number of persons present and the layout of the premises such as means of entry, the presence of reinforced doors, or the numbers of rooms.

The risks posed by the arrest operation and the resources required to overcome them can then be properly assessed. It also specifically helps determine whether victims are likely to be directly at risk during the raid and whether anything can be done to minimize that risk.

For a variety of reasons, reactive investigations are often the least effective option for investigators. For instance, a victim may initially provide a statement and promise to testify in judicial proceedings and then withdraw his/her cooperation with detrimental consequences for the ongoing investigation.

THE PROACTIVE APPROACH

The typical complexity of the investigation of a human trafficking case tends to dictate long-term, sustained efforts based on solid intelligence and multi-agency collaboration. To that end, a proactive approach is often required. Such an approach usually involves proceeding with the investigation, arrest, and successful prosecution of traffickers without necessarily relying upon the active cooperation and testimony of the victims. The use of this approach often stems from an acknowledgement on the part of law enforcement agencies of the real difficulties confronting the victims of trafficking who may not wish or be able to testify against their exploiters. By using a combination of intelligence, human and technical surveillance, undercover deployments, when authorized under the law, and standard investigative techniques, investigators can identify the traffickers and ensure that they are effectively prosecuted.

The proactive option provides the means whereby law enforcement agencies can take steps to combat the traffickers without the complaint and evidence of the victims. It is not intended to disenfranchise the victims from the prosecution process, far from it. The testimony of the victims will always remain one of the prime sources of quality evidence.

Experience and best practice have shown that the proactive option is a very effective method of combating traffickers. The explanation for this can be found by considering the crime from the same commercial perspective as that used by the traffickers. Traffickers regard men, women, and children as commercial commodities to be recruited, transported, and exploited for profit – it is criminal business and, as with most crime, it is ultimately all about money. The traffickers may vary their modus operandi, alter the routes, switch their identities, and use a range of other tactics to maximize their profits and avoid detection.

What this means in terms of law enforcement is that, provided an investigator knows where to look, the exploitative work or forced prostitution that is the basic foundation of the crime, can always be identified and located – and if one can locate the victim, one can locate the traffickers.

THE DISRUPTIVE APPROACH

Where neither the reactive nor the proactive approach is possible, it may be useful for law enforcement to resort to a number of tactics to disrupt human trafficking operations and force offenders to reveal themselves. The use of the disruptive approach may be appropriate in a variety of circumstances:

1. Where the level of risk to the victims demands an immediate response that precludes the proactive approach but may require an immediate intervention and disruption thereafter;
2. Where the proactive approach is not viable for operational reasons, such as where geographical and/or topographical features make surveillance on target premises impracticable, or where it is impossible to achieve undercover penetration of the network;
3. Where legislative, procedural or resource implications preclude the use of a proactive approach; and,
4. Where the disruptive approach provides a faster response to specific complaints from local residents or other affected groups.

Irrespective of why the disruptive option may be the most appropriate response under certain circumstances, two key points should be noted. Firstly, disruption is simply that, a disruption. It may temporarily relieve the situation, but usually does not solve the problem and often only displaces the problem to another location. Displacement of the trafficking activities to another location, one that is perhaps not as well equipped to face the problem, may sometimes aggravate the overall problem.

Secondly, the key to success in the systematic use of disruptive interventions is the use of creative and innovative multi-agency tactics to create so many daily problems for traffickers as to make it virtually impossible for them to continue to operate with their current methods and networks, and at their current location.

There are a number of agencies that can be mobilized to contribute to the disruptive activities. They include: various local enforcement agencies, taxation services, immigration services, customs agencies, Ministries of foreign affairs,

health, environment, and labour, fire services, municipal authorities, airlines and other carriers.

Disruptive activity always creates intelligence opportunities, so it is important to ensure that all available intelligence is captured and properly recorded. It may become the basis of proactive operations at a later date. On the other hand, disruptive activity may also disrupt existing criminal patterns and quickly render some previously useful information and intelligence obsolete.

PARALLEL FINANCIAL INVESTIGATION

It would be difficult to overstate the critical role of financial investigation in the successful investigation of human trafficking. The golden rule is: “Follow the money and you will find the trafficker.”

The financial aspect of the crime of human trafficking presents itself in at least two important ways:

- The crime itself is all about money. In addition to the initial investment to create the infrastructure and deliver people for exploitation, the ongoing management of the proceeds of the exploitation and, finally, the laundering and movement of the profits have to become part of the activities of the human traffickers.
- Trafficking is a crime that takes time to establish and develop. Therefore, it becomes a lifestyle crime. Other offender lifestyle aspects, such as the mode of travel, expenditure on luxury items such as cars and jewellery, and leisure activities will point at the illegitimate revenues of the offenders.

In transnational cases, diversity of legislation, procedure and resources can become an issue. This is especially the case with financial investigations.

A proactive financial investigation can be conducted both during the pre-arrest and post-arrest investigative phases. When applied during the proactive pre-arrest phase, its use must be considered against the risk of disclosing the law enforcement operation. However, most versions of asset confiscation legislation contain punitive provisions for any individual or institution that discloses the fact of a financial enquiry to the account holder. This reduces the security risks that are always attached to proactive enquiries in the pre-arrest stage.

RECRUITING INFORMANTS

The investigation and prosecution of traffickers can be greatly assisted by the cooperation of members of criminal organizations involved in these activities. The use of inside intelligence gleaned from informants can assist in the prevention of serious crimes and the further victimization of innocent persons.

Under certain circumstances, some accused persons may be encouraged to collaborate with law enforcement, as informants, through the use of such things as monetary rewards, immunity from prosecution or a reduction of sentence. Article 26 of the TOC Convention recognizes this and requires State Parties to consider providing for these possibilities. The specific steps to be taken are left to the discretion of the States.

In Canada there is Common Law governing the use of police informants and the protection of their identities. In addition, each respective police force within Canada will have its own internal policies guiding the use of informants.

SPECIAL INVESTIGATIVE TECHNIQUES

It is often necessary to resort to the use of special investigative techniques to investigate instances of human trafficking, particularly when one is dealing with sophisticated transnational criminal organizations. In fact, Article 20 of the TOC Convention specifically endorses the investigative techniques of controlled delivery, electronic surveillance, and undercover operations if permitted by the basic principles of a State's domestic legal system.

These techniques are particularly useful in dealing with sophisticated organized criminal groups because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence. In many instances, less intrusive methods simply will not prove effective, or cannot be carried out without unacceptable risks to those involved. Undercover operations may allow law enforcement to infiltrate a criminal organization in order to gather evidence.

In cases where a close-knit group cannot be penetrated by an outsider or where physical infiltration or surveillance would represent an unacceptable risk to investigations, electronic surveillance, specifically the interception of communications, may be the most useful alternative to ensure that the best possible evidence is available for court.

Because of the very intrusive nature of the interception of communications, the Canadian Parliament, in drafting the legislation pertaining to this type of electronic surveillance, has attempted to strike a reasonable balance between the right of individuals to be left alone and the right of the state to intrude on privacy in the furtherance of its responsibilities for law enforcement.

Special investigative techniques, including electronic surveillance, may also be part of the law enforcement initiatives undertaken across borders as part of the activities of a joint investigation team or a mutual assistance scheme.

JOINT INVESTIGATION TEAMS

As with any form of international organized crime, the successful investigation of trafficking in persons depends on the ability of law enforcement officers to investigate it while they identify and gather evidence from other jurisdictions. Past experience shows that **joint** proactive operations tend to be the most effective counter-trafficking approach for law enforcement.

There are several reasons for this:

- Traffickers operate in more than one jurisdiction and a joint investigation reflects that situation.
- A joint operation facilitates the collection of evidence in each of the jurisdictions involved in the crime.
- While traffickers are more vulnerable while present in the States of destination, they also tend to be surveillance conscious and more cautious in their activities while they are in that State. They are often less concerned to conceal and protect themselves from investigation in the States of origin or transit because they feel safer. Joint operations mean that investigators in the origin or transit States can use these evidentiary opportunities and gather valuable corroborative evidence of the recruitment and transportation phases of the crime.
- Joint proactive operations increase the ability of law enforcement agencies to combat traffickers because they allow the investigators to agree in advance on the overall strategy best suited to ensure the conviction of the offenders. This includes not only some agreement as to where the main investigative effort should be focused, but also decisions as to the method of coordination, the tactics to be

employed to collect the evidence, the specific offences being targeted, and the best venue for the prosecution of the offenders.

The question for law enforcement agencies often becomes one of determining which offence and which location offers the best prospect of securing sufficient evidence upon which to base a successful prosecution. In many cases, it is the State of destination. However, it does not necessarily follow that the prosecution must take place within that same jurisdiction.

Subject to extradition laws and the circumstances of the case, investigators from the origin and destination States can implement a pre-agreed, proactive joint operation whereby the evidence is simultaneously collected in each State with the objective of mounting the prosecution of the traffickers in one of the two countries.

A number of important points need to be considered before carrying out a joint investigation. The law enforcement agency seeking to establish a joint proactive operation must first identify an investigative counterpart in that State. That counterpart must not pose a security risk to the operation or to the victims involved and it must have a capacity and an ability to conduct the type of investigation that is being proposed. The security risk is particularly troublesome when there is a possibility that some members of the counterpart agency are corrupt, or that they may be involved or complicit in trafficking.

At the legal level, extradition agreements and mutual legal assistance arrangements must also exist to support that law enforcement collaboration by allowing the collection and transfer of supporting evidence from one State to the other and, if need be, the extradition of offenders.

Additionally, before a joint operation is launched, the operational strategy and tactics that will be used should be clearly defined and agreed upon by all parties involved. The required coordination and communication channels and mechanisms should be clearly established.

Furthermore, a mechanism should be defined for the review and redirection of operational objectives as required. The key to the success of a joint investigation is good planning and close coordination of activities from the outset.

Virtually all investigations involving human trafficking must establish links with agencies in other countries. Procedures regulating joint operations vary

from State to State. In some States, the decision to conduct a joint operation is taken by the police officer in charge of the squad concerned. In other venues, the decision rests with the prosecutor or examining magistrate. In some countries, the decision may require a formal Letter of Request before a joint operation can commence.

When preparing a joint document, such as a Memorandum of Understanding, between countries, it is important to consider the following:

1. *Duplicity* – The possibility exists that there is no offence in the State of origin. When exiting the State of origin the syndicates will often route the illegal immigrants to visa exempt countries; in these cases there is no offence when exiting the State. Of interest is the fact that illegal immigrants are often warehoused in visa exempt States pending the syndicates' acquisition of false or altered documents to complete the trip to the State of destination. The issue in this scenario is the 'often' lack of offence in the originating State.
2. *Refugee sur place* – This 'agreement' or 'understanding' between States, may require the cooperation and testimony of illegal immigrants who are undergoing a refugee claim process. Acknowledging the refugee claimant's presence in Canada may create a refugee sur place scenario. When dealing with refugee claimants, consideration needs to be given to providing access to the originating State.
3. *Conspiracy* – States of origin often consider illegal immigrants as conspirators, as these people have, for the most part, willingly and knowingly, conspired with smuggling syndicates to facilitate their move to the destination State. For credibility purposes, the legal system in many of these States may require the local authorities to charge the smuggled person in a conspiracy. In these cases, and as pre-agreed, the legal system will provide immunity when/after the smuggled person testifies, thereby alleviating the possibility of the witness recanting or seen to be benefiting for his/her cooperation.
4. *Intelligence exchange* – Most States have entry and exit controls (Canada only has entry controls). When dealing specifically with human smugglers, there is a significant need to exchange

intelligence between States on people smuggling/trafficking syndicates and illegal immigrant escorts. This information will be entered on the entry-exit data banks and the smugglers travel/escort activities monitored with a view of identifying the victims they may be facilitating to the destination State.

What is essential is that the investigators promptly establish effective liaison across jurisdictions prior to taking action. Depending on the circumstances of a case, the investigation may require bi-lateral or multi-lateral cooperation. Whatever the situation, the most important point to remember is to establish early contact with the RCMP International Policing (LO/Interpol) network that is the most effective in the State concerned.

Investigators from other States can also be invited to join the investigation or part of it as observers. This has proven useful for establishing contacts and building trust between law enforcement agencies in different States. It is also a way of informally sharing information and expertise and generating new investigations in that other State.

International Policing is the Canadian law enforcement community's gateway for international assistance and it is also the primary gateway for the international community to Canadian law enforcement. The RCMP has an excellent rapport with CIC and CBSA personnel at missions abroad. International assistance in criminal matters is primarily processed either through the Interpol or the International Operations Branch (IOB) Liaison Officer networks.

Interpol and International Operations Branch (IOB) are situated in RCMP HQ, Ottawa. To make the best use of available resources, all first time incoming and outgoing assistance requests will be processed via the International Policing Critical Incident Centre who will assess the initial request and channel the same via Interpol or the LO network. Once the initial communication protocol is determined, the investigating agency will deal directly with Interpol or the individual Liaison officers as determined by the Critical Incident Centre.

INTELLIGENCE/INFORMATION GATHERING AND EXCHANGE

Intelligence is information that has been subjected to the intelligence process of collection, evaluation, collation, analysis and dissemination. The purpose of intelligence is to provide knowledge and understanding upon which operational decisions can be made.

Intelligence/information gathering and exchange between relevant agencies, often across borders, is crucial to the success of measures to attack transnational criminal networks. Human trafficking networks often create “paper trails” in one or more of the following areas: advertising, rentals, transportation, communications, or financial transactions. Each of these areas affords intelligence-gathering opportunities for law enforcement officers.

An increasing number of States are creating national task forces or other specialized units to assist in coordinating intelligence/information gathering and exchange. The coordination of intelligence gathering efforts is a key function of these units. At the international level, police agencies such as Interpol now produce annual situation and threat assessment reports on a country-by-country basis and conduct analytical research into the phenomenon. Much more needs to be done to enhance the situation and provide national and international law enforcement agencies with the necessary strategic and specific tactical intelligence material to enable them to successfully combat the traffickers.

The skilful and targeted gathering and exchanging of intelligence is of critical importance in the fight against human trafficking:

- It enables an accurate assessment to be made of the actual scale, method and gravity of the crime at the local, national, and international levels. That assessment can then serve as a basis for planning a strategic response in areas such as legislative changes, international cooperation, prevention strategies, and education campaigns.
- It provides the raw material and forms the basis for reactive, proactive and disruptive human trafficking investigations.
- It can lead to the rescue and repatriation of victims of trafficking.
- It facilitates the conduct of joint operations between States and it may prevent or reduce duplication of investigative efforts in different jurisdictions.

- It allows the identification of emerging/future trends related to human trafficking, as well as the intelligence gaps which need to be addressed.

There are two types of intelligence: strategic and tactical.

Strategic Intelligence

The objective of this type of intelligence gathering activity is to conduct an overall intelligence assessment of the various strategic factors that underpin the existence of human trafficking activity in a particular State or group of States. A large proportion of the data used to generate a strategic overview of the situation is usually derived from intelligence gathered at the operational level.

Areas of strategic intelligence may include:

- **Socio-economic.** Thematic data can be gathered relating to factors such as economic hardship, the feminization of poverty, the absence of job and other economic opportunities, lack of access to healthcare facilities for loved ones, civil unrest, or any other relevant factors that serve to create a supply of potential child victims. That thematic intelligence ideally also includes an understanding of the factors that impact upon the demand side of the cycle.
- **Cultural.** Thematic intelligence on cultural factors that may affect the nature of crime and the manner in which it is perpetrated is often also crucial. These may include cultural beliefs and attitudes that are used by offenders to recruit or exploit victims (e.g. 'voodoo' rituals in the case of West African nationals) or that may affect the attitude of the victims towards those who exploit them, their fears, their willingness to collaborate with the authorities, or their eventual repatriation.
- **International relations.** Thematic indicators relating to the historical, cultural or colonial connection between countries can also be relevant. This could include information about languages, military cooperation between

States, the presence of foreign troops in a State, population displacement, internal and international conflicts, as well as international labour movement and economic and trade relations.

- **Patterns and profiles.** Intelligence on recurring crime patterns, on patterns of associations and collaboration between criminal organizations, on visa requirements, on the strengths and weaknesses of border control and other law enforcement measures in different parts of a region, are all useful predictors that can be used in developing prevention initiatives and in recognizing the profiles of offenders and potential victims.

Tactical Intelligence

Tactical intelligence affords immediate and timely support to ongoing investigations by identifying criminals and by providing advance information on their movements. It leads to specific action, including arrests, further investigations and prosecution.

There are a number of key areas of intelligence gathering activity at the operational level. The following areas require special attention as common elements may assist in investigations as well as in prevention measures:

- *Recruitment methods* – deception, coercion, abduction – what is the person being recruited for, e.g. promise of legitimate work as a dancer, factory worker?; where was the person recruited from – home country or Canada?
- *Advertising media* – ‘word of mouth’, printed media, internet
- *Forged passport, travel documents and identity documentation* – preparation, acquisition, payment methods used and location of agents
- *Immigration and visa fraud* - preparation and acquisition
- *Travel routes and means* – routes followed, mode of travel
- *‘Safe house’ accommodation* – location and provision
- *Means of communication* – email, mobile phones, fax machines etc
- *Financial transactions in respect of all of the above activities*
- *Information from visa sections and consular services*
- *Information from airlines and travel agencies*

Human Trafficking

In all of this, it is important to remember that intelligence is only useful if it is transmitted in a timely manner to those who are in a position to use it. Expeditious transfer of intelligence between relevant agencies is often an issue. Intelligence can very quickly become obsolete in the fast moving field of human trafficking.

Intelligence must be centrally managed to avoid duplication and ineffective use of resources. Intelligence and information must be reported objectively without any preconceived ideas. Relevant information and intelligence must be readily available to intelligence analysts and users. The fundamental principle of intelligence is to provide advice.

Victims and witnesses

IDENTIFICATION OF VICTIMS

There are heightened difficulties in accurately identifying genuine trafficked victims and ensuring they are not treated as illegal migrants but as victims of serious crime that have immediate and acute humanitarian needs. Although some States have formal processes for identification of victims, Canada is one of many that does not.

The early identification of trafficked persons is a prerequisite for their recognition as victims and, consequently, their access to assistance and protection. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) states, at clause 16, that persons who are likely to be in contact with victims should receive training in order to enable them to identify victims and to be sensitive to their needs. This is especially significant for those who may come in contact with victims of trafficking who may be without legal status in the destination State and the resources that may flow from such status and are thus especially vulnerable.

It is crucial to enlist the cooperation of all persons and groups who come into contact with victims of trafficking, such as border guards, police and immigration officers, justice officials, doctors, medical and social workers, housing and agricultural inspectors, and staffs of immigrant rights organizations, women's, victims' rights and refugee organizations and shelters. Proper training can help these various individuals identify trafficked persons in order to refer them to victim support organizations.

Foreign Service officials, including consular officers, working outside of Canada, can also be provided with substantive information on the nature and scope of the human trafficking problem as well as specific information on how to identify and assist victims.

Outreach work can be a crucial element of efforts to identify and support victims of trafficking in the environment in which they are forced to work. This work is typically performed by social work agencies and non-governmental organizations. Health care providers are also part of the front line services that may come in contact with victims. A network of professionals and agencies should be involved in the identification of potential victims and should be working together in order to protect victims and ensure a referral network without gaps.

Whenever possible, hotline and outreach services should be able to respond in foreign languages. Law enforcement, immigration, health care, social

services, and other professionals may also be able to use these hotline services when they need to refer victims to the appropriate services.

Correctly identifying victims of human trafficking is essential for their protection and the protection of their rights. It is useful to have a checklist of questions that law enforcement officers may ask during their investigation to determine whether someone is a victim of human trafficking.⁹ *Appendix 1* presents a screening tool developed by the Department of Justice Canada to help identify a potential victim of trafficking.

Recommended Guideline on the Identification of Trafficked Persons and Traffickers

“Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process — such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.

States are also obliged to exercise due diligence in identifying traffickers, including those who are involved in controlling and exploiting trafficked persons.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.
2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
3. Ensuring cooperation between relevant authorities, officials and nongovernmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.

⁹ A checklist, developed by the United States Department of Health and Human Services, contains key questions law enforcement officers may ask to determine whether someone is a victim of human trafficking.
http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_law/screen_questions.html

4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.
5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

Source: The United Nations Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), Guideline No. 2.

http://www.unhcr.bg/other/r_p_g_hr_ht_en.pdf

CHILD VICTIMS

Article 6(4) of the Trafficking in Persons Protocol provides that the State Party, in considering measures to assist and protect victims of trafficking, must take into account the special needs of child victims. Often, the age of the victim will be uncertain and there will be questions about whether the victim is a child.

If so, unique issues of protection and assistance may arise. With respect to the question of returning child victims, it may be necessary to ensure that local law enforcement and government officials are able to work with the relevant social work and child welfare authorities, whether or not the repatriation of a child victim is safe (in accordance with our international humanitarian obligations, takes into consideration the privacy of information and in accordance with provincial and federal legislation), to ensure that the process takes place in a dignified manner, and is governed by a concern for what is in the best interests of the child.¹⁰

SPECIAL MEASURES FOR THE PROTECTION AND SUPPORT OF CHILD VICTIMS OF TRAFFICKING

The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.

States and, where applicable, intergovernmental and non-governmental organizations, should consider, in addition to the measures outlined under Guideline 6:

1. Ensuring that definitions of trafficking in children in both law and policy reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of trafficking where the person involved is a child.

¹⁰ See also the Model Guidelines for the Effective Prosecution of Crimes against Children developed by the International Association of Prosecutors (IAP): <http://www.iap.nl.com/children.html>
And the Guidelines on Justice for Child Victims and Witnesses of Crime, developed by International Bureau for Children's Rights. : <http://www.ibcr.org>

2. Ensuring that procedures are in place for the rapid identification of child victims of trafficking.
3. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
4. In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest.
5. In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.
6. In both the situations referred to in the two paragraphs above, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.
7. Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.
8. Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.
10. Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.

Source: OHCHR - Recommended Principles and Guidelines on Human Rights and Human Trafficking, http://www.unhcr.bg/other/r_p_g_hr_ht_en.pdf

THE SAFETY OF VICTIMS DURING AN INVESTIGATION

Law enforcement officials have an unequivocal humanitarian and legal duty to treat the victims of trafficking in accordance with their fundamental human rights. The following summarizes some of the best practices in that regard:

- *The safety of victims and their families and loved ones is the paramount consideration at all times and the direct responsibility of the investigator.*

Notwithstanding that the only effective response to trafficking victims is a multi-agency one, the issue of safety resides and remains with the law enforcement investigator – it cannot be abrogated or delegated to other agencies.

- *The investigator has a clear duty to conduct a continuous process of risk assessment with respect to the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.*

Safety and the possibility of reprisals against the victims and their families will always be a feature of human trafficking, and it will never be possible to completely eradicate the risk factors. However, the duty of the investigator is to ensure that the risks in each case are assessed from the outset and that the assessment is continuously reviewed and updated. Moreover, where the victims have testified, the duty of care does not end with the conclusion of the trial.

- *The investigator has a clear duty to be open and honest at all times with the victims so that they are made fully aware of the issues, responsibilities, and potential consequences and risks attached to any decision that they may be called upon to make.*

Cooperation with law enforcement officers will always involve an element of risk for the victims of trafficking and possibly their families. The critical point is that the victims are made fully aware of all the issues and risks attached to any decision they are asked to make by the investigator so that they can reach a fully informed decision. Deception of the victims is a constant theme in trafficking crimes. The situation should never arise whereby trafficked victims can justifiably claim that they were deceived for a second time by law enforcement officers.

- *The investigator has a clear duty to ensure that all victims are made fully aware of available support services and to help them establish initial contact with them.*

Trafficked victims may never recover from the physical, psychological, or sexual harm that they have suffered. It is vital that they are given access to the full range of support and care services that exist to aid them in the recovery process. It is not the role of the investigator to provide this care and support. To facilitate this, investigators must develop a network of contacts with relevant governmental and non-governmental organizations providing support services.

The fears of victims are often fully justified by the very real prospect of retaliation if they assist authorities. It is therefore essential that programs to protect victims both during and after they have cooperated be implemented and adequately resourced. Protection measures may include actual physical protection, anonymous relocation, and in some cases relocation to another State. Under the TOC Convention and the Trafficking in Persons Protocol, States Parties must endeavour to protect the physical safety of victims of trafficking while they are within their territory. Contacts with State authorities are usually problematic for the victims, especially when traffickers have used fear of such authorities to intimidate victims. In such cases, non-governmental support organizations may play an important role as an intermediary

Even when a victim escapes exploitation and receives shelter and assistance, a serious risk may still exist. The victim's escape may trigger serious reprisals from the traffickers. The latter may do this by taking action against the victims or against victims' families and relatives. When the victim agrees to become a witness for the prosecution, the risks of intimidation and reprisals immediately increase considerably. Finally, given that the victim is receiving support, the risk extends to those who are providing this support and may come between the trafficker and the victim. A risk assessment therefore needs to be carried out as soon as possible after a trafficking victim has come to notice and then be regularly reviewed.

Security issues apply to: accommodation (including emergency alarms/video cameras/ immediate access to police if needed), communication within and outside of the country, secure transport (to and from services, for hearings and proceedings, airports, etc); interpretation and translation services; the safety of the victim's family and relatives. Special security issues may relate to children, including their security while being provided with education services, and the fact that they may have been instructed by their traffickers to make contact.

VICTIM INTERVIEWS

The interviewing of trafficking victims must respect their rights, their choices, and their autonomy. Given the very complex situation in which these victims find themselves, it is often difficult to ensure the protection of these rights. At first, investigators proceeding with an investigation may not even be sure that they are indeed dealing with a victim. That person may understandably be very apprehensive and very reluctant to cooperate with the authorities. Often, this is because what may look like a simple routine inquiry, from the point of view of the investigator, may in fact be life threatening for the victim.

INTERVIEWING VICTIMS

The Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe offers the following guidance for the work of law enforcement officials during their interview of persons they suspect may be victims of trafficking.

“Law enforcement can identify persons as presumed trafficked persons during the first interrogation if they suspect that persons may have been trafficked. The following minimum standards should be in place during the first interrogation, regardless of the legal status of the interrogated person:

- The presumed trafficked person should be informed about the procedure of the police interrogation and its consequences;
- The information given should be clear, accurate, and in the native language of the presumed trafficked person;
- Experienced interpreters should be present during the interrogation;
- Questions touching upon the person’s privacy, for instance, regarding intimate relationships and experiences in prostitution, should be avoided;

A trafficked person can only be conclusively identified as such if the distinct elements of the crime of trafficking have been detected. This may require time because of the complexity of the crime of trafficking and the vulnerable status of trafficked persons suffering from post-traumatic stress disorder;

A particularly effective way to promote self-identification of victims of trafficking is to allow for a “reflection delay”, a period of time in which the presumed trafficked person is referred for services and counselling,

without having to make an immediate statement to police on her or his status. This enables the presumed trafficked person to receive appropriate support and allows them to make informed decisions;

Besides the statements of the presumed trafficked person, other evidence should be collected to identify all the facts and relevant information to determine if the case is one of trafficking.”

Source: OSCE (2004). National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook. Warsaw: OSCE – ODIHR. http://www.osce.org/documents/odihr/2004/05/2903_en.pdf

VICTIMS’ IMMIGRATION STATUS AND THEIR REPATRIATION

The issuance of exclusion or deportation orders and efforts to effect removal from Canada may well discourage presumed or actual victims of trafficking from giving evidence or testifying against traffickers. The Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003, should be taken into consideration when dealing with victims of trafficking.

Trafficked persons tend not to have a regular residence status in the State of destination, either because they arrived illegally or because their authorization to stay has expired. Therefore, they might fear being deported from that State if they report the victimization to the authorities or, if in the course of an investigation, their illegal presence in the State comes to the attention of the police. The unwillingness or inability of authorities to help trafficked persons regularize their residence status may result in denying them access to protection, assistance, civil redress and justice. Their deportation/removal also means that they will not be available to assist in the prosecution of the traffickers.

Article 7 of the Trafficking in Persons Protocol stipulates that:

“1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.”

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In the destination State, assistance and protection services for victims of trafficking cannot be offered effectively if the victims are not granted a form of temporary resident status or if they are being criminalized because of their irregular residence or employment status. Temporary residence will also assist in providing the victim with the tools to make an informed choice about whether to participate as a witness in legal proceedings against the trafficker.

There is no obligation on the part of States Parties to the TOC Convention and the Trafficking in Persons Protocol to legislate measures relating to the immigration status of victims. However, in several States where measures have been adopted for the temporary or permanent residence of victims of trafficking, these measures have had a positive effect on victims coming forward to testify against traffickers, and on non-governmental organizations encouraging victims to whom they provide services to report incidents to the government.

In the Canadian context, the IRPA and its related regulations is the legislative embodiment of Canada's program of managed immigration. It provides the legal framework for Canada to admit immigrants, refugees, foreign students, visitors and temporary workers and manage access to Canada.

Foreign nationals who are victims of trafficking may avail themselves of a number of legislative and administrative measures in order to remain in Canada, temporarily or permanently. These include stays of removal, temporary resident permits, refugee protection claims, applications for humanitarian and compassionate consideration, and pre-removal risk assessments.

Foreign nationals who are subject to removal orders because they have no legal status in Canada are eligible for stay of removal orders. Stays of removal allows the individual to remain in Canada during a proscribed period. They may be statutory (for a person awaiting a pre-removal risk assessment, for example) or issued on a case-by-case basis, such as to individuals testifying in judicial proceedings (i.e. as a witness).

A temporary resident permit (TRP) is a discretionary tool which may be issued to allow foreign nationals deemed otherwise inadmissible to remain in Canada for a specific period of time. Depending on the nature of their inadmissibility, TRP holders may apply for permanent residence as members of the permit holders class following a statutory time period of three or five years. In some instances, temporary resident permits may be issued to persons under a removal

order, and holders are eligible to apply for work and/or study permits from within Canada. Depending on the province of residence, TRP holders may have access to health and other social services.

Humanitarian and compassionate consideration is a further discretionary tool which allows for judgement and flexibility in addressing applications for permanent residence for individuals who do not fit into other categories, such as family or economic class immigrants. A successful application on humanitarian and compassionate grounds results in permanent residence, in which case the individual is eligible to work, study, and apply for social assistance and provincial medical care.

Canada offers protection to people in Canada who are afraid of returning to their home country. A claim can be made at a port of entry or at a Canada Immigration Centre (CIC) office Canada. Once a CIC officer finds that a refugee protection claimant is eligible to be referred, the claim is sent to the Immigration and Refugee Board (IRB) for a decision on the risk on return. Protection is conferred when the IRB determines that they are a Convention refugee or a person in need of protection. Protected persons may remain in Canada permanently. A refugee protection claim may lead to the individual receiving health benefits, work permits, and social assistance, if necessary. A successful claimant (Protected Person) may receive language training and other benefits.

Persons who are under a removal order which is in force may apply for a Pre-Removal Risk Assessment (PRRA), which assess the risks an applicant may face if repatriated to his or her country of origin. A positive assessment of risk usually permits the individuals to apply for permanent resident status and remain in Canada.

VICTIMS FACING DEPORTATION PROCEEDINGS

Victims of human trafficking may be facing deportation before they have had a chance to establish that they were indeed victims of trafficking. In many countries, apart from criminal proceedings against offenders, there are often no formal judicial or administrative proceedings in which a person's status as a "victim of trafficking" can be determined. A victim's deportation may compromise the future success of a criminal prosecution.

Furthermore, the TOC Convention Article 25, paragraph (3) and the Trafficking in Persons Protocol Article 6, subparagraph (2)(b) both require

States Parties, subject to their domestic laws, to ensure that victims are provided assistance to enable their views and concerns to be presented at appropriate stages of criminal proceedings against offenders. In practice, this may require the deferral of deportations until that stage (usually this will be after conviction but prior to sentencing) has been reached.

In Canada, the responsible agency for removal, including deportation, is Canada Border Services Agency (CBSA).

As stated above, one of the provisions of IRPA which may be applicable is Section 50 which allows for removal orders to be stayed pending a judicial hearing.

REPATRIATION

Article 8 of the Trafficking in Persons Protocol (Repatriation of Victims of Trafficking in Persons) sets out some basic obligations for States. A State at the request of a receiving State Party, must verify without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence, and issue necessary travel documents for his or her re-entry. Furthermore, when a State Party returns a victim of trafficking to the State from which the victim is a national or has a right of entry, the returning State Party must return the victim with due regard for their safety and the status of any legal proceedings related to the fact that the person is a victim of trafficking. Such return should preferably be voluntary. These provisions do not address the many administrative details that require attention at the time of the victims' return, nor do they specify exactly what protection or assistance measures must be in place for them at the time of their return.

In some cases, the return of victims will include arrangement for their being available to travel back to participate as witnesses in future criminal proceedings. In the interim, they may be vulnerable to intimidation. These are the kinds of things that are left to States to address, either on a case-by-case basis, or on the basis of bilateral or multi-lateral cooperation agreements designed to ensure the right of trafficked persons to return to the State of origin. In Canada, CBSA is the agency responsible for repatriation and removal.

The Trafficking in Persons Protocol (art. 8) envisions States Parties cooperating in the course of the return procedure. Upon a request of the receiving State, States of origin must verify whether the trafficked person is a

national or had the right to permanent residence at the time of entering the receiving state and, if the person has no proper documentation, issue the necessary travel or other documents to enable the person to travel and to re-enter its territory.

Receiving States are obligated to guarantee that the return shall be with due regard both for the safety of the returnee and for the status of any legal proceedings related to the fact that the person is a victim of trafficking. The returned victim may still be traumatized and suffering from medical and psychological problems as a result of the experience and/or still fear retribution from the trafficker.

The essential elements to address these issues include co-operative bilateral efforts between the destination State and the State of origin, and protection from the danger and retaliation by the traffickers to the victim upon their return. Cooperation with NGOs that assists the victim while in the destination State and that continue in the State of return is important. Effective support programs, which complement the assistance provided in the destination State, are a critical component for the successful repatriation and reintegration of trafficking victims.

REPATRIATION OF CHILD VICTIMS

In situations where a child victim is involved, returning the child to the country of origin may not be appropriate (i.e. when the risk to the child in the State of origin has not yet been assessed). In all cases, special precautions must be taken to ensure that returning children is in their best interests and that, prior to the return, a suitable care-giver such as parent, other relative, other adult care-taker, a government agency or a child-care agency in the State of origin has agreed and is able to take responsibility for the child and provide him/her with appropriate care and protection. States are also expected to establish procedures to ensure that the child is received in the State of origin by an appointed responsible member of the social services of the State of origin and/or child's parents or legal guardian.

FACILITATING THE PARTICIPATION OF VICTIMS IN PROCEEDINGS

The Trafficking in Persons Protocol creates an obligation on States Parties to ensure its domestic legal or administrative system contains measures to provide victims with information on relevant court and administrative

proceedings and assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders. The basic obligation to ensure that victims are permitted an opportunity to participate is set out in Article 6(1)(b) of the Trafficking in Persons Protocol.

WITNESS PROTECTION

According to Article 24 of the TOC Convention, States Parties must take appropriate measures within their means to provide effective protection from potential retaliation or intimidation to witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them. These measures may include:

- Establishing procedures for the physical protection of such persons, to the extent necessary and feasible such as relocating them and permitting, where appropriate limitations on the disclosure of information concerning [their] identity and whereabouts as per the Witness Protection Program Act (WPPA)
- Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness

The witness protection program is a voluntary program which aims to prevent offenders or their accomplices from approaching the witness. Such measures include, among others, relocation of witnesses, change of identity, police escorts, financial assistance and social assistance. Given the costs and the implication of such program on the daily lives of the witnesses involved, such program is usually restricted to serious crime, including organized crime. Relocation includes the removal of the witness(es) from their place of living to a place where they are not easily recognized.

In some cases, the participation of witnesses in a witness protection program will be necessary to guarantee their safety. Finally, there are situations, where protection measure may not be necessary at all. Being part of a witness protection program requires an enormous personal and psychological adjustment on the part of participants. Wherever possible, effective psychosocial support should also be provided to them.

In order to maintain effective witness protection programs, States need to ensure that sufficient funding is available. Candidates for the program must

be assessed for suitability and selected carefully. In many instances, informal protection measures, such as panic alarms, mobile phones, daily contact by law enforcement, or police escorts can be provided as an alternative to witnesses.

Witnesses usually enter a witness protection program by signing a written protection agreement that defines the obligations of the protected witness and of the protecting agency. Such agreements are codes of conduct rather than legally binding contracts.

The duration of witness protection programs is substantially influenced by the progress of criminal investigations and court proceedings. Witness protection is for life, however a person may voluntarily removed him/herself from the program or be removed formally by not obeying the rules and regulations of the program.

When dealing with foreign nationals or subjects that are subject of Immigration Status (refugee, permanent resident) Immigration involvement/assessment is required. This process will require consultation with both CBSA and CIC. Under the WPPA, the approval of the Minister of Citizenship and Immigration is required for the admission to Canada of a foreign national.

Obstruction of Justice

Human traffickers and their accomplices will often attempt to escape prosecution and punishment by intimidating or otherwise influencing potential witnesses and others in a position to provide the authorities with relevant evidence. Intimidation and corruption attempts may also be directed at law enforcement and other officials themselves, both in the destination State and the State of origin. This is why States Parties to the TOC Convention are required to address the question of “obstruction of justice”.

Under the TOC Convention, the obligation is to criminalize the use of both corrupt means such as bribery and coercive means such as the use or threat of violence. States Parties are required to criminalize “(t)he use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention” (Art. 23 (a)).

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The use of force, threats and inducements for false testimony can occur at any time before the commencement of the trial, whether formal “proceedings” are in progress or not. As such, law enforcement should be aware of the range of *Criminal Code* offences that may be relevant to this type of activity.

BORDER CONTROL MEASURES

In many States, the technical capacity of border control agencies to detect and prevent trafficking is inadequate. Criminal networks benefit from that situation and are transporting groups across borders where there is no effective inspection. Around the world falsification of all kinds of legal documents is occurring on a large scale, facilitated by new digital data storage, retrieval, and communication and reproduction technologies. In some States, there is a possibility that corruption among immigration officials and consular services personnel in league with trafficking networks exists which often adds to the problem. There has been no evidence of such corruption identified within Canada.

A number of measures may be taken to make it more difficult for traffickers to move people across borders. Many of these measures are included in the Protocol against the Smuggling of Migrant by Land, by Sea and by Air, supplementing the United Nations Convention against Transnational Organized Crime.

THE REQUIREMENTS OF THE TOC CONVENTION AND THE TWO PROTOCOLS

Under Article 11 of the Trafficking in Persons Protocol, States Parties are required to strengthen, to the extent possible, border controls to prevent and detect trafficking in persons. In addition Article 27 of the TOC Convention calls upon State Parties to cooperate with one another, as possible, to enhance the effectiveness of law enforcement activities to address trafficking in persons. Under Article 12 of the Trafficking in Persons Protocol, States Parties are required to take such measures as are necessary to ensure the integrity and security of their travel or identity documents. Under Article 13 of the Trafficking in Persons Protocol, they are also required, in accordance with their domestic law, to “verify within a reasonable time” the legitimacy and validity of travel or identity documents purported to have been issued by them and suspected of being used for trafficking in persons. The dispositions of these two articles are very similar to the dispositions of corresponding articles in the Protocol against Smuggling of Migrants.

OSCE RECOMMENDED MEASURES

The Organization for Security and Cooperation in Europe also offers several suggestions:

- Considering taking measures that permit, in accordance with its domestic law, the denial of entry, the revocation of visas or possibly the temporary detention of persons implicated in committing offences as defined by the legislation in force.
- Considering strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.
- Without prejudice to international commitments in relation to the free movement of people, strengthening, to the extent possible, border controls as may be necessary to prevent and detect trafficking in human beings.
- Adopting legislative or other appropriate measures to prevent, as far as possible, means of transport operated by commercial carriers from being used in committing offences, as defined by the provisions against trafficking.
- Where appropriate, and without prejudice to applicable international conventions, obliging commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of valid travel documents. In accordance with domestic law, taking the necessary measures to provide for sanctions in case.

Canada endeavours, through effective border controls, international cooperation and scrutiny at visa offices abroad, to prevent trafficking.

The Integrated Border Enforcement Teams (IBET) Program is an international initiative implemented to enhance border integrity and security along the shared Canadian-U.S. border between the Ports of Entry by identifying, investigating and interdicting persons and organizations that pose a threat to national security or are engaged in other border related criminal activity, (i.e. smuggling drugs or other commodities, trafficking of people and illegal migration). The core IBET agencies are the RCMP, Canada Border Services Agency (CBSA) (Immigration and Customs), the U.S. Bureau of Immigration and Customs Enforcement and the U.S. Coast Guard. In

addition to these five core agencies, there are also federal, provincial, territorial, state and municipal agencies represented on specific IBETs, depending on the location.

The IBET partners perform various functions within the international cooperative initiative, depending on the mandate of the partner agency. The RCMP component provides a dedicated intelligence and an enforcement role because of the RCMP's status as a National police service in Canada. The CBSA component provides an intelligence collection and analysis function. The United States Customs Border Protection/Office of Border Patrol, United States Immigration and Customs Enforcement and United States Coast Guard personnel are not dedicated to the IBET program but all of their personnel recognize the IBET concept as a philosophy which applies to their daily functions along the US/Canada border.

The IBET partner agencies identify, gather and analyze intelligence related to criminal activity between the Ports of Entry along the border in order to identify National Security threats and/or organized criminal activity such as human trafficking. This intelligence is then passed onto the appropriate agency in Canada or the U.S. for consideration in their individual investigation priority-setting exercises. The IBET's unit will assist those units further if requested and if the activity revolves around the Canada/U.S. border, but IBET units *will not undertake* long term investigations of any smuggling or trafficking operations of a specific commodity. The program has limited resources and cannot afford to tie up these resources in long term investigations which are the prime responsibility of another RCMP unit or government agency.

The IBET partner agencies can and will assist the commodity-specific, dedicated units by gathering additional intelligence at the border or by assisting with enforcement personnel during a take-down at the border, as long as it is organized by the commodity-specific, dedicated unit on either side of the border, but not at a Port of Entry.

Despite the fact that the RCMP was the only IBET partner to receive dedicated Government funding for the program, border security is not the exclusive responsibility of the RCMP or the IBET international initiative. *All law enforcement agencies* that have an interest in border integrity and have part of the border within their jurisdiction have a responsibility to respond to incidents that can compromise the integrity of the Canada/U.S. border. While local law enforcement has not necessarily received funding from the

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U.S. or Canadian federal governments specifically for the IBET program or border security per se, they do receive funding from their provincial, territorial, state and municipal governments to protect their citizens from the threat of terrorism and organized crime which can threaten their local economy, health, freedoms, infrastructures, etc.

The international IBET program was implemented to facilitate cooperation and information-sharing among all law enforcement agencies that have an interest in enhancing the integrity of the Canada/U.S. border. The IBET units actively encourage participation in the cooperation by all local law enforcement, regardless of their specific mandate (i.e. CNR Police, Niagara Parks commission Police, NY State Police, Parks Canada, etc.).

INTERNATIONAL COOPERATION

INTERNATIONAL COOPERATION: A Key to Successful Investigations and Prosecutions

The fight against criminal organizations involved in human trafficking calls for broad, multi-agency, flexible, and cooperative approaches both nationally and internationally. The shortcomings of national systems working alone and of weak cooperation patterns are well known. It is a fact that some of the best results in the prosecution of trafficking in persons have been obtained when law enforcement and prosecution agencies have been able to effectively work together both locally and across borders.

The main purpose of the TOC Convention and its protocols is to promote international cooperation both for the prevention and the effective control of transnational organized crime. The TOC Convention provides a framework for international cooperation in combating organized crime in general and trafficking in persons specifically.

EXTRADITION

Perpetrators of transnational crimes may be in a different State or may flee a State to avoid prosecution. Extradition proceedings are then required to bring them to justice in the prosecuting State.

Extradition is a formal and, most frequently, a treaty-based process leading to the return or delivery of fugitives to the jurisdiction in which they are wanted. It is the surrender by one State, at the request of another State, of an individual who is wanted for prosecution for, or has been convicted of, a crime committed within the jurisdiction of the requesting State.

Since the late 19th century, States have signed bi-lateral extradition treaties in their efforts to remove safe shelters for serious offenders. Treaty provisions vary from State to State and do not always cover the same offences.

In the past, extradition treaties commonly contained a list of offences covered, which created difficulties every time a new type of crime emerged with the advancement of technology and other social and economic changes. For this reason, more recent treaties are based on the principle of dual criminality, which applies when the same conduct is criminalized in both the requesting and

requested States and the penalties provided for it are above a defined threshold (e.g., punishable by imprisonment or deprivation of liberty by a maximum penalty of two years or more). In this way, authorities do not have to constantly update their treaties for the coverage of new offences.

The TOC Convention sets a basic minimum standard for extradition of the offences it covers, and it encourages the adoption of a variety of mechanisms designed to streamline the extradition process. Generally, the extradition provisions are designed to ensure that the Convention supports and complements pre-existing extradition arrangements and does not detract from them.

In Canada, the extradition process is governed by the *Extradition Act*¹¹. The Minister of Justice is responsible for the implementation of extradition agreements, the administration of the Act and responding to requests under the Act. The Act provides for the surrender of persons to “extradition partners”. An extradition partner is defined by s. 2 of the *Act* to include either a state or entity (such as international tribunals) with which Canada has an extradition agreement through bilateral or multilateral agreement. The partners are generally designated pursuant to s. 9 of the *Act* and are named in a schedule to the *Act*.

In some instances, it is possible to proceed with a provisional arrest of a person pending an extradition hearing or to request an extradition partner that a person be provisionally arrested.

MUTUAL LEGAL ASSISTANCE

In the majority of cases of human trafficking, national authorities need the assistance of other States for the successful investigation, prosecution and punishment of offenders, particularly those who committed transnational offences. The ability to assert jurisdiction and secure the presence of an accused offender in its territory accomplishes an important part of the task, but does not complete it.

The international mobility of offenders and the use of advanced communication technology, among other factors, make it more necessary than ever that law enforcement and judicial authorities collaborate and assist the State that has assumed jurisdiction over the matter.

¹¹ Extradition Act, S.C. 1999, 1999, c. 18. <http://laws.justice.gc.ca/en/e-23.01/text.html>

In order to achieve this goal, States have enacted laws to permit them to provide such international cooperation, and have increasingly resorted to various treaties on Mutual Legal Assistance in Criminal Matters (MLATs).

These formal international agreements enhance law enforcement in several ways. They enable authorities to obtain evidence abroad in a way that is admissible domestically. They supplement other arrangements on the exchange of information (e.g., obtained through Interpol, police-to-police relationships, judicial assistance/letters rogatory). They also resolve certain complications that often arise between States with different legal traditions, some of which restrict assistance to judicial authorities rather than prosecutors.

The TOC Convention builds upon a number of previous global and regional initiatives to develop multi-lateral treaties. It calls for the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings. The extraditable offences ought to include transnational “serious crimes” involving an organized criminal group, the offences established under the TOC Convention itself, and any offence established under one of the Protocols to which States have become party, including obviously the offences created by the Trafficking in Persons Protocol.

Legal assistance may be requested for taking evidence or statements, effecting service of judicial documents, executing searches and seizures, examining objects and sites, providing information, evidence and expert evaluations, documents and records, tracing proceeds of crime, facilitating the appearance of witnesses, and any other kind of assistance not barred by domestic law. It also applies to international cooperation regarding the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation.

In Canada, the framework for such cooperation is set in the *Mutual Legal Assistance in Criminal Matters Act* (S.C. 1988, c. 37). The legislation enables Canadian courts to issue compulsory measures, such as evidence gathering orders and search warrants, to obtain evidence in Canada on behalf of a foreign State for use in a criminal investigation and prosecution being conducted by that State. The legislation only implements requests made by a foreign state or entity pursuant to a treaty (bilateral or multilateral) special arrangement, or a designation under the Act.

The Minister of Justice is responsible for the administration of the *Act* and the implementation of the treaties. In all of Canada's treaties, the Minister of Justice is named as the Central Authority, the authority responsible for receiving and presenting requests for mutual legal assistance. In 1988, the International Assistance Group (IAG) was established as part of the Department of Justice Criminal Law Branch. The IAG was established, in part, to carry out the functions assigned to the Minister of Justice as Central Authority under the Act and related treaties. On a daily basis, counsels with the International Assistance Group are responsible for the review and coordination of incoming and outgoing requests for assistance. Updated lists of the bilateral and the multi-lateral conventions, and the parties to the multi-lateral conventions are available from the International Assistance Group (IAG) (DOJ) or the Mutual Legal Assistance contact person in the Department's regional offices.

Five main types of compulsory assistance are available under the various assistance treaties Canada has concluded with other countries: (1) assistance with the gathering of evidence, including documents, affidavits and witness testimony; (2) lending of exhibits; (3) transfers of sentenced prisoners to testify or assist in an investigation or prosecution; (4) search and seizure; and, (5) the enforcement of fines and confiscation orders. Under its treaties, Canada can obtain this assistance both before and after charges are laid. Most treaties also permit Canada to obtain commission evidence.

Generally, there are three formal means for obtaining assistance from another country: (1) a treaty request; (2) a non-treaty letter of request, when a request for assistance is addressed to a foreign state with which Canada does not have treaty relations; (3) a non-treaty court issued request pursuant to section 709 of the *Criminal Code*, a court in Canada can issue an order and request seeking commission evidence in a foreign State. Such requests are transmitted, through diplomatic channels, to the foreign State by the Minister of Justice on behalf of the requesting authority.¹²

OTHER FORMS OF COOPERATION

A formal mutual legal assistance request is not always necessary in order to obtain assistance from another State. Reliance on formal mutual legal assistance arrangements is often limited to instances where coercive measures are needed. This is because coercive measures normally require judicial authority. Several other more informal forms of international cooperation can also be very effective.

¹² See also: Department of Justice Canada (2002), *The Federal Prosecution Service Desk Book*.
<http://www.justice.gc.ca/en/dept/pub/fps/fpd/preface.html>

The TOC Convention provides for a number of other mechanisms to facilitate international cooperation, including joint investigations (Article 19) and law enforcement assistance (Article 27).

States Parties must also consider bilateral or multilateral agreements or arrangements to give effect to law enforcement assistance obligations. Furthermore, they must endeavour to cooperate in order to respond to transnational organized crime committed by use of modern technology.

Finally, according to Article 19 of the TOC Convention, a State Party must consider bilateral or multilateral agreements or arrangements regarding an establishment of joint investigative bodies, while ensuring that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Many States have developed an overseas law enforcement liaison capacity to support law enforcement cooperation, in particular with respect to various forms of transnational crime and organized crime activities. It is possible to include in such arrangements, particularly among States between which human trafficking is known to occur frequently, the presence of officers specialized in human trafficking and human smuggling.

SEIZURE OF ASSETS AND CONFISCATION OF PROCEEDS OF CRIME

When criminals are involved in human trafficking, the assets they used to commit the crime, as well as the proceeds gained from the trafficking activities can often be found in a State other than the one in which the offence is detected or committed. Specific international cooperation mechanisms are necessary to enable States to give effect to freezing these assets and to provide for the most appropriate use of forfeited proceeds and property.

Article 12 of the TOC Convention requires a State Party to adopt measures, to the greatest extent possible within its legal system, to enable confiscation of proceeds of crime, equivalent value of proceeds, and instrumentalities used in or destined for use in offences covered by the Convention. It also requires State Parties to adopt measures to enable the identification, tracing, freezing, and seizing of items for the purpose of eventual confiscation. In addition, they are required to empower courts or other competent authorities to order production of bank records and other evidence for purposes of facilitating such identification, freezing and confiscation.

Article 13 of the TOC Convention then sets forth procedures for international cooperation in confiscation matters. These are important powers, as criminals frequently seek to hide proceeds and instrumentalities of crime abroad, as well as evidence relating thereto, in order to thwart law enforcement efforts to locate and gain control over them.

A State Party that receives a request from another State Party is required by the article to take particular measures to identify, trace, and freeze or seize proceeds of crime for purposes of eventual confiscation. The Article also describes the manner in which such requests are to be drafted, submitted, and executed.

Finally, Article 14 of the TOC Convention addresses the final stage of the confiscation process: the disposal of confiscated assets. While disposal is to be carried out in accordance with domestic law, States Parties are called upon to give priority to requests from other States Parties for the return of such assets for use as compensation to crime victims or restoration to legitimate owners. States Parties are also encouraged to consider concluding an agreement or arrangement whereby proceeds may be contributed to the United Nations to fund technical assistance activities under the Convention, or be shared with other States Parties that have assisted in their confiscation.

When C-24 (Organized Crime bill) came into force (s. 81(3) of Bill C-24) in 2002, it amended the Criminal Code to include “designated offences” in the proceeds of crime provisions. This means that offences related to human smuggling and trafficking (in IRPA) are also included in the proceeds of crime provisions of the Criminal Code (462.3(1) and 462.31(1)).

462.3 (1) In this Part, “proceeds of crime” means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of,

- (a) the commission in Canada of a designated offence, or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds,

knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of;

- (a) the commission in Canada of a designated offence; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

(2) Every one who commits an offence under subsection (1);

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- (b) is guilty of an offence punishable on summary conviction.

Appendix 1

Model Canadian Screening Tool to Help Identify a Potential Victim of Human Trafficking¹³

- *The questions set out below are merely guidelines. There is no substitute for the judgement and intuition of the interviewer in determining whether an individual is a victim of trafficking. The critical concepts to be discerned are those of **exploitation** and **loss or severe limitation of liberty**.*
- **Corroborative Materials:** *In relation to all key points, ask if there are any witnesses; police or immigration reports; any documentation or travel tickets; immigration departure or landing cards; reports of any medical treatment provided in respect of injuries prior to referral; documents showing victim acting in a nominee role (i.e. Beneficial owner is really the trafficker); copies of bogus employment contracts or copies of the original advertisement; or diary entries, letters etc written by the victim.*
- *None of the answers to any of the questions will **on their own** resolve the issue – they must all be considered collectively together with the indicators highlighted above.*

A) General Information:

Victim's name, age, nationality, professional and educational background

B) Recruitment

1. What is the victim's citizenship?
2. What country was the victim last residing in?
3. How long was the victim residing in that country?
4. What was the victim's status in that country?
5. In what countries has the victim resided and for how long?
6. How old was the victim when he/she left the country of origin?
7. Do members of the family know the victim's whereabouts?
8. Was the victim forcibly transported to another location in his/her country of origin? If yes, how?
9. Who recruited the victim?
10. What was the purpose of the recruitment?
11. Was initial contact with recruiter voluntary or not?
12. If not, was the victim forcibly transported out of his/her country of origin? If so, how?

¹³ This Model Screening Tool was provided by the Department of Justice Canada.

Use of force or threat of force

If force was used in the recruitment please respond to the following questions:

13. Was the victim abducted or kidnapped?
14. Was the victim threatened with harm to his or her self or family?
15. Was the victim sold? By whom?
16. What were the circumstances of the forcible removal?
17. Who initiated the contact? How?
18. What was the method of recruitment (e.g. by advertising, acquaintance, family, tourism, study courses)?

Employment

If the recruitment was for employment, please answer the following questions:

19. What kind of job abroad was offered to the victim or what activities did the victim believe she/he would be engaged in following arrival at the new location?
20. How much money was promised to the victim and by whom?
21. Did the victim sign a contract? (e.g. an employment contract)
22. If so, what are the terms of the contract? Does the victim know them (e.g. was the contract in a language the victim understood)?
23. Does the victim possess a copy of the contract?
24. Was the victim coerced into signing the contract? How?
25. Was anyone paid a fee for recruiting the victim for work?

C) Travel and identity documents

26. Does the person have a passport?
27. If so, is it their own legitimate passport or is it a fraudulent passport?
28. How did they acquire this passport?
29. Was it provided to them by the trafficker?
30. What kind of visa or other document (e.g. employment authorization) was promised to the victim and by whom?
31. Was the victim promised permanent residency upon arrival in Canada or after a certain period? By whom?

Migration

32. In what country did the victim enter Canada?
33. Was the victim coerced into migrating? How?
34. If any travel costs were incurred before departure, who paid them?

35. Did the victim pay money in advance or agree to pay the costs or remainder of costs upon arrival?
36. Did the victim sign a loan contract? If so, does the victim have a copy?
37. Was victim smuggled into Canada or did he/she enter with their own passport and identity documents?

Covert entry

If entry was covert, please answer the following questions:

38. What means of transport was used?
39. Was a vehicle stopped at border?
40. Was the vehicle examined by border officials?
41. Did the victim change handlers during migration?
42. Was a fee paid for organizing the victim's migration? By whom and to whom?
43. Was the victim threatened, sexually or physically assaulted or confined during migration?

If the migration was overt, please answer the following questions:

44. What means of transportation was used?
45. Did someone else obtain the victim's travel documents? How?
46. Was the victim escorted to Canada, Embassy or Consulate to get a visa?
47. Which documents were obtained? (obtain full description, e.g. student visa, temporary foreign worker visa, visitor visa) (Please note: officers should be aware that not all nationalities require a visa for entry to Canada, but in most cases a foreign national would require an authorization to work or study. CIC should be consulted).
48. Were false documents provided to the victims?
49. Who has the documents now (legal or false)? If not in possession of the victim, why not?
50. Has the victim ever seen his/her own passport/visa?
51. Did someone else handle travel documents when entering Canada? Did they fill in declaration for the victim?
52. Was the victim coached about what to say to port of entry (CBSA) officials? By whom?
53. Was the victim questioned by officials and did the victim make any statements? (Orally or in writing)
54. Was the victim given clothing/jewellery/other items to wear for traveling?
55. Was a fee paid for organizing the victim's migration? By whom and to whom?

Human Trafficking

Transit countries

If the victim was taken to other countries prior to arriving in Canada, please respond to the following questions:

56. Did the victim spend any time in transit countries? Which countries, which cities and for how long in each place?
57. Was the victim placed in safe houses in transit states?
58. Was the victim sold or otherwise moved to different handlers in the transit states?
59. Was the victim threatened, physically or sexually assaulted or confined in the transit countries?
60. Was the victim forced into prostitution or forced labour in the transit countries?

D) Circumstances in Canada

61. When did the victim arrive in Canada? (date and time of entry, place of entry)
62. What was the first address the victim was taken to? Who took the victim there? How did the victim get there?
63. Did the victim know where he/she was at the time?
64. Was the victim subsequently moved? (between cities etc)
65. What happened to the victim's passport and other identification documents after arrival?
66. Who appropriated the victim's identity documents after arrival?
67. Was the victim threatened on the grounds that he/she no longer had travel or identity documents?
68. Did the employer/trafficker commit a crime (e.g. fraud) using the victim's identity?

Working conditions (exploitation)

69. Does the victim believe that she/he is subject to some form of "debt bondage"? (Debt bondage refers to the status of a debtor arising from a pledge by the debtor for his/her services or of those of a person under his control as a security for debt)
70. Does the victim believe that she/he "owes" money to recruiters/transporters/exploiters?
71. Was the victim paid and at what rate?
72. Who has the possession of these earnings now?
73. How many hours a day did the victim work?
74. Was the victim allowed any time off? Allowed to rest if sick?
75. At what point did the exploitation start?

Restriction of liberty

76. Was the victim unable to quit working for the employer and get a job somewhere else?
77. Was the victim's movement restricted? How? (e.g. did the victim have a key of the house)
78. Was the victim allowed to communicate with family members? Other workers?
79. Was the victim living and working at the same place?
80. Was the victim chaperoned, guarded, incarcerated?
81. When did the victim realize that he/she was not free?

Living conditions

82. What were the living conditions of the victim? (e.g. # of rooms, # of people living together)
83. Did the victim have friends?
84. Did the victim have money? Could the victim buy his/her own belongings?

Physical coercion

85. Was the victim subject to physical assaults or torture? (pinching, hitting, slapping, punching, kicking, shaking, burning etc.)
86. Was the victim subject to sexual assaults? (forced sexual contact, rape, forced prostitution etc.)
87. Was the victim forcibly confined or isolated?
88. Was the victim denied essential medical care?
89. Was the victim denied food/clothes and other basic necessities including ability to maintain basic hygiene?

Psychological coercion

90. Was the victim threatened with violence, harm or retaliation against victim or the victim's family members (or friends)?
91. Were there threats to report the victim to authorities for deportation/jail?
92. Did the victim view or hear others being physically or sexually assaulted?
93. Was the victim deceived regarding the employment, activities or basic conditions of his or her migration?
94. Was the victim subject to verbal abuse, name calling, degrading remarks about victim's ethnicity/social group?
95. Was the victim photographed and filmed while being physically or sexually assaulted, humiliated or degraded?
96. If so, did the traffickers threaten to use the images against the victim?
97. Was the victim threatened with confinement or isolation?

E) Risk Assessment

98. Do the traffickers know the victim's home/work address or telephone number?
99. Is the victim married? Does the victim have any children?
100. Do the traffickers have any details about the victim's family or loved ones?
101. Do the traffickers claim to know these things?

Special note concerning servile marriages

Ask the following questions in addition to those above¹⁴:

1. Was the victim coerced or forced into marriage? How? By whom?
2. How was the victim recruited? (e.g. Internet, marriage agency, pen pal, etc.)
3. Did the recruiter deceive the victim about his professional background? (e.g. Finances, education, etc.)
4. Did the recruiter deceive its victim about her living conditions in Canada? (e.g. food, clothing, control of money, freedom of movement, work, ability to earn money, school, religious practice, making friends, having children, household responsibilities, communicating with family, etc.)
5. Did they marry in the victim's home country? (Marriage recognized by government)
6. Did the victim understand her legal status in Canada? Did the victim have access to her legal documents?
7. Did the recruiter make the appropriate applications for legal status on her behalf?
8. Did the recruiter threaten the victim with deportation if she went to the authorities?
9. Did the recruiter extract any type of labour from the victim in Canada?
10. Did the victim discover that the recruiter was already married?
11. Did the recruiter sexually or physically assault the victim or threaten the victim with harm to herself or her family?

¹⁴ The victim is referred to in the feminine in the following questions because the vast majority of mail order marriages involve the movement of women.

Appendix 2

Other Useful Resources

- For the text of the TOC Convention and the Protocols:
http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf
- Legislative Guide for the TOC Convention and its Protocols:
http://www.unodc.org/unodc/en/organized_crime_convention_legislative_guides.html
- UN Global Programme Against Trafficking (UNODC):
http://www.unodc.org/unodc/en/trafficking_programme_outline.html
- International Centre for Migration Policy Development: Development of an anti-trafficking training module for Police:
<http://www.icmpd.org/default.asp?nav=news&folderid=405&cid=306&subfolderId=343>
- International Labour Organization: www.ilo.org
- International Organization for Migration: www.iom.int
- National Referral Mechanisms — Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook. Warsaw: OSCE – ODIHR.
http://www.osce.org/documents/odihr/2004/05/2903_en.pdf
- UNDP Best Practise Manual for Law Enforcement:
<http://www.undp.ro/governance/Best%20Practice%20Manuals/>
- U.K. Crime Reduction Toolkits: www.crimereduction.gov.uk/toolkits/index.htm
- United Nations (UNHCR) Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1 (2002).
http://www.unhcr.bg/other/r_p_g_hr_ht_en.pdf

