

TRAFFICKING: CONSIDERATIONS & RECOMMENDATIONS FOR BATTERED WOMEN'S ADVOCATES

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Introduction

This technical assistance brief offers considerations and recommendations to advocates for battered women about serving trafficked women and children. It does not provide instructions, or give guidelines about the laws, legal services or benefits that apply to trafficked victims. Advocacy for trafficked women differs from that provided to battered women and although advocates are accustomed to working with legal and social service systems, this work challenges the way they typically interact with systems and collaborate with other agencies or providers. These considerations and recommendations will assist programs already working with trafficked victims or programs thinking about doing so. Although boys and men are also trafficked and there are other ways women are exploited, this paper only focuses on women and girls brought in as a group for sex-trafficking.

Definition

Trafficking is defined as the recruitment, harboring, provision, receipt, transportation and/or obtaining of individuals by using force or threats, coercion, fraud and/or using systems of indebtedness or debt bondage for purposes of sexual or other forms of economic exploitation. Trafficking is distinct from human smuggling, which involves transporting individuals for a fee, typically across borders. There is no relationship between smuggler and smuggled, beyond transportation. However, the manner and circumstances of entry do not necessarily preclude someone from becoming a victim of trafficking. For example, a smuggler may use threats of serious harm or physical restraint to force someone into involuntary servitude, peonage, debt bondage, or slavery. Trafficking therefore includes some or all the following: recruitment, unsafe migration, systems of indebtedness, and forced or highly exploited labor.

Statistics

According to the U.S. Department of State, 600,000 to 800,000 people are trafficked globally each year.¹ Of the 45,000 to 50,000 that are brought to the U.S., 30,000 come from Asia, 10,000 from Latin America and 5,000 from other regions, such as the former Soviet Union. The primary Asian source countries to the U.S. are China, Thailand, and Vietnam.² Each year, two million children are forced into prostitution, half of whom live in and are trafficked within Asia.³ For example, 15,000 children are trafficked in Cambodia⁴ and 200,000 Nepali girls, many under the age of 14, are prostituted in India.⁵ The Thai government reports that 60,000 Thai children have been sold into prostitution, but non-governmental organization (NGO) experts estimate that the number is closer to 800,000 children.⁶ Although trafficking into the U.S. and Europe has gained a lot of attention in recent years, anti-trafficking advocates in Asia have been addressing this problem on the continent for decades.

Individuals may be trafficked for forced labor for domestic, industrial or agricultural work; prostitution, pornography and sex tourism; removal and sale of organs; servitude, including servile marriages; and slavery. This modern-day form of slavery has become a global industry, with estimated profits ranging from \$5 billion to \$7 billion per year.⁷

Analysis

In our view, sex trafficking is about:

- Violence against and exploitation of women;
- The exploitation of female poverty (including mothers who 'sell' their children);
- Demands for cheap, exploitable labor which have increased with globalization;
- The impunity of male demands for commodified sex;
- Complex 'push-pull' factors that can influence those who are trafficked, including economic factors such as paying off family debts, escaping poverty, remitting earnings or escaping gender violence in the hopes of greater safety.

Political positions about sex trafficking are cause for heated controversy because they are connected to positions that argue for abolishing, decriminalizing or legalizing prostitution. We recommend that advocates become informed about these positions when dealing with anti-trafficking programs. Some countries view trafficking as the only form of migration available to labor because all other sources are restricted or closed. They advocate safe migration as the way to halt trafficking.

¹ U.S. Department of State (2005) *Facts about Human Trafficking*. Washington D.C.: Author

² Foo, Lora Jo. (2002). *Asian American Women: Issues, Concerns, and Responsive Human and Civil Rights Advocacy*. New York: Ford Foundation <http://www.aapip.org/about.php?section=book>

³ Smolenski, Carol. Director of End Child Prostitution in Asian Tourism (ECPAT), USA, quoted in "Activists Unleash Campaign to Shut Down Sex Tours" in *Christian Science Monitor*, 16 Jan. 1999.

⁴ Cambodia's Women Development Association (no date) quoted in *Pamphlet on Trafficking Coalition Against Trafficking in Women*.

⁵ ECPAT (1995) *End Child Prostitution in Asian Tourism: A short introduction to ECPAT and the issue of child sexual exploitation*.

⁶ Smolenski, C. See footnote 3.

⁷ Rehn, Elizabeth and Sirleaf, Ellen J. (2002). Women War Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building. *Progress of the World's Women*, 1, p. 14.

1. Arrest

Considerations

- Trafficked individuals typically get arrested so it takes time and astute questioning for police officers to determine that they are victims, not criminals.
- At questioning, culturally sensitive advocates should be present for interpretation and support.
- There may be other victims in the community and public statements can have the effect of encouraging them to seek help or to flee.
- The arrest(s) will tip off the traffickers who might try to remove remaining victims from the area, or threaten them anew if they go to the police.

Recommendations

1. Sort out carefully who the victims are; it may be necessary to advocate for them to be recognized as such by the police or other government agencies.
2. Build relationships within the police department to identify trafficked victims.
3. If your program is going to encourage unidentified victims to come forward, coordinate your strategy with the police department.

2. Custody and Release

Considerations

- Arrested adults can be held at an Immigration and Customs Enforcement (ICE)* detention center or jail, and minors may be held in ICE juvenile detention, Juvenile Hall, foster home, Child Protective Services or placed with relatives.
- Unaccompanied minors will have different procedures that apply to them.
- Once police and ICE establish they are dealing with trafficking victims, not criminals, they may release them, but into whose ‘custody’ or care?
- Traffickers may post bond for the release of the women in custody.

Recommendations

1. Determine if trafficked victims are being held in custody and if so, where.
2. Stay in close contact with Child Protective Services if children/juveniles are released to them for placement in a foster home, it is important that the foster care provider speaks the minor victim’s language. However, a foster family may be connected to the traffickers, or could be tracked down and possibly endangered by them.
3. Do not agree to a victim’s release to a relative or family member because they could be the traffickers posing as grandparents, parents, aunts/uncles of minors; or as the husband, brother/sister, etc., of adults. The victim may claim them as family members, their documents and even their names may ‘prove’ this, but this may be the ‘relationship’ they were trafficked in on.
4. Information about their release must be kept confidential so the traffickers cannot find them.
5. Discuss flight risk with police and ICE agents so they can evaluate risk and identify appropriate strategies. Establish who is responsible for ensuring victims do not flee and what the ramifications are if they do.

* Immigration and Customs Enforcement (ICE), formerly Immigration & Naturalization Services (INS). Immigration matters are in the Department of Homeland Security as three different departments: Border Patrol; ICE which handles investigations and enforcement; and BCIS (Bureau of Customs and Immigration Services) handling documentation services.

3. Legal Representation and the Investigation Process

Considerations

- Victims will have to deal with multiple legal matters involving immigration law, criminal prosecution, access to benefits and services, juvenile law and/or civil litigation.
- G-28s (Notice of Representation for ICE) need to be filed immediately by lawyers known to the victim services agency because the trafficker's lawyers will try to do so in order to represent the trafficker's interests.
- Knowing where victims are held becomes crucial to a prompt filing of G-28s.
- Victims can be eligible for immigration-related remedies including obtaining parole status or applying for a T-visa, asylum, or special immigrant juvenile status.
- Victims can be questioned by federal agencies such as the US Attorney's Office, Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), Office of Refugee Resettlement (ORR), and others; agencies that domestic violence programs do not typically have experience dealing with.
- Determine if minor witnesses need a Guardian Ad Litem (GAL).
- Consider that a prosecutor may decide against using a trafficked victim's testimony because she is not considered a reliable witness, there may be factual discrepancies, or because her testimony is inconsistent with that of the other witnesses.
- Question all claimed familial relationships: these claims are the common ruses to bring people into the country.
- Interpreters and or bi-lingual advocates may be needed throughout all processes.

Recommendations

1. Coordinated case management is crucial given the involvement of myriad attorneys and social service providers. All victim advocates of *all* the trafficked women in a group need to plan and assist with case management and coordination.
2. Work closely with victim's attorney(s), interpreters, and other advocates.
3. Determine who has responsibilities for producing victim(s) for questioning or testifying, providing and paying for interpreters, ensuring that attorneys are present during questioning, deciding where they will be interviewed and how they will be transported.
4. In coordination with the attorneys, explain to the witnesses the process of questioning and testifying, who the players are, which offices they represent, what their roles are in the investigation and prosecution of the case.
5. Provide support for particularly grueling days of questioning, but do not inquire what was discussed.
6. Obtain certified interpreters for all processes: have each party bring their own, determine who will provide proceedings interpreters, and ensure that bi-lingual advocates stay in their role and do not provide interpretation.

4. Endangerment and Confidentiality

Considerations

- Confidentiality is crucial to safety as endangerment levels for trafficked victims are exceedingly high. There isn't just one batterer looking for his partner, but many people with much to lose.
- If the trafficker's lawyers have filed G-28s, the whereabouts of jailed or released trafficked victims is known to the traffickers, posing increased dangers to victims.
- A victim protection program is not suitable because it is premised on living independently: expecting participants to blend into a new place, operate a bank account, go to work, be literate, speak and understand English, etc.

- Endangerment increases based on the complexity and extent of the case and the stage of the investigation.
- Endangerment levels depend on the traffickers: whether they are isolated individuals or part of a larger ring, if someone low or high on the hierarchy has been arrested, if they exercise their threats here or in the victim's home country, and if they are well-known in the local community.
- The issue of victims' names is complicated by the fact that they generally come to the U.S. on false names so their documents reflect those names and other fraudulent data (e.g., date of birth). True names are only known the traffickers so using those names endangers victims.

Recommendations:

1. Assess each victim's level of endangerment to determine the safest location: What ability do victims have to function in daily life, thus blend in, away from the attention of their community? Who is looking for them and where? Is the danger greater if they stay together in the same location? How much of a threat is their own community? Who is implicated in the trafficking enterprise or in using 'sex services'; and what is their status in their community?
2. Ensure that all individuals having contact with the victims understand safety and confidentiality issues, particularly interpreters.
3. Explain clearly to the victims the rules for and dangers of contacting family, friends, traffickers, and others. Trafficked women and girls develop attachment and trust towards their traffickers and may try to contact them.
4. Inter-agency collaboration is critical to avoiding misunderstandings and breaks in confidentiality. Some agencies, such as refugee programs, do not typically deal with endangered individuals, so explicit safety planning is necessary.
5. Have contingency safety plans and work with other players such as law enforcement, ICE, etc. to implement them.
6. Review your agency's protocols for ensuring the safety of advocates and other residents/clients.
7. Keeping trafficked victims away from their ethnic community protects them from being found, intimidated, and shamed.
8. Establish the names that will be used on all identity documents including the EAD (Employment Authorization Document), leases, telephone and utilities, schools, etc., noting that both the true and false names are known to the traffickers and can easily be used to track down victims, and fraudulent names should not be used on newly issued documents.

5. Shelter Services

Considerations:

- Services for trafficked women and girls typically involve several agencies, a combination of advocates based in the corresponding ethnic community and traditional domestic violence programs. This is especially so if the victims need to be separated for the investigation.
- Detailed case information may be unknown to the shelter staff and to other advocates, as may the language and culture.
- Trafficked residents do not fully participate in shelter programs and services because heightened danger and the nature of the investigation preclude leaving the shelter for program activities (for teens and children that may mean not attending school).
- Trafficked women and girls are not allowed to discuss their case, so non-disclosure sets them in a difficult position with other residents. This and other exceptions generate tense dynamics between residents.
- Similarly, these differences can generate staff conflicts.

Recommendations:

1. Regular coordination within the team of advocates and agencies, client's lawyers, and governmental agencies is crucial. Sometimes there is clearly a "lead" agency, but as the case becomes more complex, this role becomes unrealistic. If possible, have a "lead" advocate (akin to a case manager) that the government agents and the prosecutor's office deal with.
2. Decide how to handle the fact that other team members might need to know the shelter's location, particularly interpreters, bi-lingual advocates and government agents involved in the investigation or in the transportation of residents.
3. Determine which services and program activities can be provided. For example, getting proper identification documents, since most trafficked individuals have forged ones with false information; haircuts and clothes that make them less identifiable by the traffickers; basic life skills (many women come from poor rural areas and may not know the basics of cooking and cleaning in a shelter setting); ESL (English as a Second Language) tapes; or counseling for trauma.
4. Develop procedures for handling exceptions to shelter rules such as length of stay, making international phone calls to families in the home country, housing minors without a related adult, and giving consent for a minor's medical care.
5. Establish a safety plan if traffickers locate the shelter and threaten the women and other residents.

6. Medical Records and Care

Considerations:

- Medical information and patient's rights are complicated in any language and may not be well understood by victims.
- Medical or psychological tests and evaluations may be ordered by the Federal Prosecutor's office and other governmental investigating agencies to establish sexual abuse, psychological harm, and/or pregnancy. Do the reports and results belong to the medical patient or to the government agency that required them? What about the medical records of a victim who is a minor, particularly an unaccompanied minor?
- The confidentiality of reports raises several questions. How will the confidentiality of medical and psychological records and results obtained for the investigation be protected? Will the traffickers' lawyers have access to them? How and when will the medical patient's consent be sought to release any part of the records? What about particularly sensitive information such as a person's HIV status?
- Consenting to treatment is another thorny area. Are traumatized adults, unfamiliar with the language and practices in the U.S., able to give informed consent and sign releases of information? What if they withhold consent, can examinations still be required?
- Are treatment decisions confidential? Furthermore, if a trafficked victim is pregnant, what are the implications of her decision to either continue or terminate pregnancy?
- Who signs medical consent forms for minors? Who makes treatment decisions for minors?

Recommendations:

1. Require health providers to have medically trained interpreters present for all medical and administrative procedures; and do not offer to provide medical interpretation.
2. Obtain precise information about consents to testing and treatment, confidentiality, and releases of information and convey it clearly to trafficked women.
3. Establish who will accompany minors and what their roles will be.

7. Complex Traumas and Oppressions

Considerations:

- The contexts of victims' lives include oppression, violence, ambivalence and conflict.
- Many come from abusive and oppressive environments, so they may be angry, resigned, or decide to tolerate these conditions.
- In a group of trafficked victims, there will be differing degrees of loyalty towards the traffickers, so some may be hostile witnesses.
- They may feel attached to their pimp/trafficker (as battered women do to their abuser).
- They may have fled traumatic bonds with their families.
- Amongst a group of victims, there is no automatic solidarity – in fact there can be competitiveness, sexual jealousy about who was the 'favorite', and class and regional differences.
- Some of the victims' behavior is based on extreme fear for themselves, their children, and/or families in the home country. They will also be fearful of being returned home, and the attendant shame, scorn and danger.
- Sexual violence and attendant trauma depends on the brutality of the initial rape, who else in the family is/has been assaulted, and the frequency of current assaults by the traffickers and/or other men.
- Labels like 'prostitutes', 'sex workers', or 'sex slaves' are stigmatizing terms that affect self-worth and future integration into the community.
- Women may have been forced into abortions, carrying a pregnancy to term, having a hysterectomy, or giving up a child for adoption.
- The extent of pre- and post-trafficking traumatic factors such as rupture from parents, siblings and the familiarities of home, or being a victim of child abuse play a role in healing and the resolution of trauma.
- There may be substance abuse or addictions because traffickers push them into drug use, or drug them to do the work, or because victims use them to numb their pain.
- Trafficked women can feel responsible for and be blamed for bringing down the trafficker, or causing harm to their family in the home country.
- Victims may feel pressured to testify.
- Events start happening fast here and in the home country – and just as with battered women – they will experience push and pull factors about going ahead with the case.

Recommendations:

1. Provide support and counseling that take the above issues into account.
2. Clarify issues about payment for therapy, certified interpreters at therapy sessions and whether reports will be used in legal proceedings and therefore be made available to opposing counsel.
3. Identify and utilize therapists who work with victims of torture or war, specialize in Post Traumatic Stress Disorder (PTSD), are experienced in working with interpreters present, and willing, if required, to testify as expert witnesses.
4. Prepare victims psychologically for testifying and seeing their traffickers in court.
5. Empower victims/survivors of trafficking to strengthen the legal case against their abusers, make their voices heard and obtain justice.

Resources

Governmental Resources

The Trafficking Victims Protection Reauthorization Act (TVPA) of 2003 steps up U.S. efforts against human trafficking and provides assistance to victims.

1. DHHS: Department of Health and Human Services: Campaign to Rescue and Restore Victims of Human Trafficking serves as a clearinghouse to help victims of human trafficking www.acf.hhs.gov/trafficking
2. DOJ: Department of Justice: Trafficking in Persons and Worker Exploitation Taskforce, Complaints Tel: 888-428-7581, www.usdoj.gov/crt/crim/tpwetf.htm
3. EEOC: U.S. Equal Employment Opportunity Commission provides assistance to victims of trafficking who are sexually harassed in the workplace. EEOC investigates complaints of sexual harassment and can file a lawsuit against the employer to obtain money for the victim including back-pay, compensatory damages (pain and suffering) and punitive damages, and to obtain injunctive relief. Federal law prohibits employment discrimination on the basis of race, color, sex, national origin, religion, age and disability, and prohibits retaliation against persons who protest discrimination. www.eeoc.gov or 800-669-4000
4. OVC: Office for Victims of Crime <http://www.ojp.usdoj.gov/ovc/help/tip.htm#1>
Governmental resources <http://www.ojp.usdoj.gov/ovc/help/tip.htm#2> Non-governmental organizations <http://www.ojp.usdoj.gov/ovc/help/tip.htm#3>

Non-Governmental Organizations (NGOs)

Directories, critical analysis, reports and other information can be obtained from:

1. Freedom Network <http://www.freedomnetworkusa.org/>
2. Office for Victims of Crime <http://www.ojp.usdoj.gov/ovc/help/tip.htm#3>
3. Protection Project, Johns Hopkins University <http://www.protectionproject.org/>
4. *Trafficking in Persons: A Guide for Non-Governmental Organizations* <http://www.usdoj.gov/crt/crim/wetf/trafficbrochure.pdf>
5. VAWnet, National Resource Center on Domestic Violence <http://www.vawnet.org/ENewsletters/TraffickingAnnouncement.pdf>

Interpreters

1. NAJIT: National Association of Judiciary Interpreters and Translators <http://www.najit.org/>
2. National Association of the Deaf <http://www.nad.org/>

Asian & Pacific Islander Institute on Domestic Violence / APIA Health Forum

This document provided considerations and recommendations to battered women's advocates.⁸ It is not an instruction manual. Guidelines about how to proceed with legal relief, obtain social services or benefits for trafficked victims can be obtained through the resources enumerated above. Please contact the API Institute on Domestic Violence for technical assistance and training requests at 415.568.3315 or apidvinstitute@apiahf.org.



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⁸ Can be downloaded from <http://www.apiahf.org/apidvinstitute/Critical%20Issues/trafficking.htm>