

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS ACT, 2013 (ACT NO. 7 OF 2013)

DIRECTIVES IN TERMS OF SECTION 44(1)(a) OF THE PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS ACT, 2013

The Director-General: Justice and Constitutional Development has, under section 44(1)(a) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013), and after consultation with the National Commissioner of the South African Police Service, the National Director of Public Prosecutions, the Chief Executive Officer of the Government Communication and Information System, the Commissioner of the South African Revenue Service and the Directors-General: Health, Home Affairs, International Relations and Cooperation, Labour, Social Development, State Security Agency and Women, Children and People with Disabilities, issued the directives in the Schedule.

Schedule

1. Definitions

In these directives any word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates—

“Director-General” means the Director-General: Justice and Constitutional Development;

“officials” means all police officials, members of the prosecuting authority and officials of the Departments of Home Affairs, Labour and Social Development who execute functions in terms of the Act, and **“official”** has a similar meaning;

“reporting statement” means a statement made by a person who reports a case related to trafficking in persons;

“Republic” means the Republic of South Africa; and

“the Act” means the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).

2. Directives by Director-General

Section 44(1)(a) of the Act provides that the Director-General must issue directives regarding —

- (a) the manner in which the reporting of cases related to trafficking in persons must be dealt with (*section 44(1)(a)(i)*);
- (b) measures to be taken in instances where foreign victims of trafficking are not conversant with any of the official languages of the Republic (*section 44(1)(a)(ii)*); and
- (c) measures to be taken to ensure the safety of victims of trafficking or other potential witnesses if there is a likelihood that harm might result to them as a result of the reporting and consequent investigation of and prosecution of the case (*section 44(1)(a)(iii)*),

with which all officials must comply.

3. Victim centred approach

- (1) Officials must, in the execution of their duties in terms of the Act and these directives, also act in accordance with the Service Charter for Victims of Crime in South Africa (the Victims' Charter), the Minimum Standards on Services for Victims of Crime and the National Policy Guidelines for Victim Empowerment issued by the Department of Social Development .
- (2) Without detracting from the rights of all victims of trafficking in general, officials must be sensitive as to the vulnerability of children, women, persons with disabilities, persons with albinism and persons with a specific sexual orientation.

4. Confidentiality

- (1) Steps must be taken by all officials to ensure the confidentiality and protection of all documentation and information envisaged in directives 6, 7 and 8. If a victim is assured that he or she or a child with them is safe and that information about that victim or child will not be given to unauthorised persons, that victim will be more willing to co-operate with the police investigation and prosecution. Steps to be taken include, but are not limited to the following:

- (a) Classify all information relating to trafficking in persons matters and victims or suspected victims of trafficking as “restricted” or “confidential”;
- (b) all paper documents must be kept safe and secure, under lock and key and must never be left lying around or unattended on desks or common areas;
- (c) all documents must be disposed of by shredding or similar method, once they are no longer required;
- (d) electronic files must be stored in secure information systems, protected by individual passwords with limited access to key staff; and
- (e) information regarding a victim or suspected victim of trafficking may only be shared with that victim or suspected victim’s knowledge and approval.

(2) Officials must adhere to the prescripts of the Minimum Information Security Standards (MISS) and any other security policies applicable in their respective departments regarding the provisions in paragraph (1) and the forms prescribed in Annexure 1 to these Directives.

(3) Officials must note that section 23 of the Act criminalises the unauthorised access to or disclosure of information of a victim of trafficking, suspected victim of trafficking or child in the care of a victim or suspected victim, except for the purpose of giving effect to the Act or an order by a competent court. A person convicted of this offence is liable to a fine or a period of imprisonment not exceeding 15 years or both.

5. Reporting duties in terms of the Act

(1) Officials must acquaint themselves regarding who must report victims of trafficking and cases related to trafficking in persons in terms of the Act as required by the Act, as well as the interpretation of the expression “*knows or ought reasonably to have known or suspected*” used in section 2 of the Act:

(a) Section 18(1)(a) of the Act provides that “despite any law, policy or code of conduct prohibiting the disclosure of personal information, *any person who knows or ought reasonably to have known or suspected* that a *child* is a victim of trafficking, *must* immediately report that knowledge or suspicion to a police official for investigation.”. A *designated child protection organisation* which comes into contact

with a child who is suspected of being a victim of trafficking and who has not been reported to a police official *must* immediately report that child to a police official (section 18(1)(b)).

(b) Section 19(1)(a) of the Act provides that “despite any law, policy or code of conduct prohibiting the disclosure of personal information, any person who knows or ought reasonably to have known or suspected that an *adult person who he or she comes into contact with during the execution of his or her duties*, is a victim of trafficking, *must* immediately report that knowledge or suspicion to a police official for investigation. An *accredited organisation* which comes into contact with an adult person who is suspected of being a victim of trafficking and who has not been reported to a police official, *must* immediately report that person to a police official for investigation (section 19(1)(b) of the Act). Any other person who suspects that an adult is a victim of trafficking, *may* report that suspicion to a police official for investigation (section 19(2) of the Act).

(c) Section 8(1) of the Act provides that *any person who, subsequent to the lease or sublease of premises, becomes aware or ought reasonably to have known or suspected* that it is being used to facilitate or promote trafficking in persons and *fails to report that knowledge or suspicion to a police official, is guilty of an offence*.

(d) Section 8(2) of the Act provides that an *electronic communications service provider* that is *aware or becomes aware* of electronic communications which contain information that facilitates or promotes trafficking in persons, *must* without delay report certain particulars regarding those electronic communications to the police.

(e) Section 9(2) of the Act provides that a *carrier* who, on reasonable grounds, *suspects* that any of its passengers is a victim of trafficking *must* immediately report that suspicion to a police official for investigation.

(f) In terms of sections 18(2) and 19(3) of the Act the obligation to report does not apply to a legal practitioner where a legal professional privilege exists between the legal practitioner and his or her client.

(2) Officials must note that sections 18(3) and 19(4) of the Act provide that a person who reports a victim of trafficking must provide reasons for that knowledge or suspicion. A person who makes the report in good faith is not liable to civil or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information. He or she is also entitled to have his or her identity kept confidential if his or her safety is at risk as a result of the report, unless the interests of justice require otherwise. Officials should be aware that persons, as a result of the legal duty to report suspected child victims of trafficking in terms of section 18(1)(a) of the Act, may sometimes do so out of fear of being prosecuted if they fail to do so.

6. Manner in which the reporting of cases related to trafficking in persons must be dealt with

Note:

The National Instruction issued by the National Commissioner of the South African Police Service in terms of section 44(2) of the Act contains provisions regarding the handling of reports of cases relating to trafficking in persons, by members of the South African Police Service. This directive deals with the instances where a case related to trafficking in persons is reported to an official, for example a labour inspector, and where that official, in turn, reports that case to the police. It is envisaged, however, that the majority of cases of trafficking in persons will be reported directly to the police.

(1) Any official receiving a report must always view that report in a very serious light and must pay immediate attention thereto. A person reporting a case related to trafficking in persons may not be turned away in any circumstances, even if the incident took place a long time ago, or where the case related to trafficking in persons is reported to a police official, the incident was allegedly committed in the station area of another police station.

(2) Where possible, the person reporting, who might be the victim himself or herself, must be taken to an appropriate protected area away from other members of the public, so as to provide for privacy and protection from persons who might be involved in the trafficking of persons or the trafficking of that particular victim.

(3) Officials must treat a person who reports a case related to trafficking in persons, in a professional manner and reassure that person that the report is viewed in a serious light and will be investigated thoroughly. That person must be made aware of the provisions referred to in directive 5(2).

(4) The official receiving the report must bear in mind that the victim may be severely traumatised and by reporting the offence, the victim relives the event and, in so doing, experiences secondary trauma. The secondary trauma is exacerbated if the official treats the victim in an insensitive manner. An official must be sensitive towards the emotions of the victim and especially so towards a child victim. As a result of the trauma, a victim may be unable to make a coherent reporting statement, in which case a reporting statement must be obtained from any person that may be supporting or accompanying the victim. If circumstances permit at this stage, psychological support should be made available to the victim. The victim must be allowed sufficient time, taking into account time limits of visitor's visas, before a full statement is obtained from him or her by the police official investigating the case.

(5) If the report is made to an official other than a police official, that official must—

- (a) immediately take a reporting statement by completing a form which must correspond substantially with Form 1 prescribed in Annexure 1;
- (b) immediately forward the completed form referred to in paragraph (a) to the nearest police station and ensure that it has been received and is being attended to; and
- (c) ensure the safety of the person reporting and/or the victim and a child in the care of that victim pending the arrival of the police or until such time that the case is taken over by the police.

(6) Steps to ensure the safety of the person, victim and child referred to in paragraph (5)(c) include, but are not limited to —

- (a) having a risk management plan ready to reduce the likelihood of the risk materialising;

- (b) taking that person to an appropriate and protected area, such as an office, away from the public;
- (c) making that person aware of potential risks and advising on how to minimize them; and
- (d) sharing information on a need to know basis only.

(7) The official forwarding the completed Form 1 to the police must obtain a Criminal Administration System number from the police official investigating the case as proof that the case has been reported and must indicate that number on Form 1.

7. Measures to be taken in instances where foreign victims of trafficking are not conversant with any of the official languages of the Republic

(1) List of interpreters

- (a) Each provincial office of the departments whose officials fall under the auspices of these directives, must keep a list of interpreters who are on a list of service providers and must promote awareness of the list.
- (b) The people on the list must, wherever possible, be properly accredited with the South African Translator's Institute with qualifications in interpretation, direction of interpretation (e.g. from English to Portuguese, and *vice versa*) and be of both genders.
- (c) The list must include interpreters for the languages needed most in that province and interpreters who are able to assist persons with visual, hearing and speech disabilities.
- (d) The list must contain the particulars of a coordinator in the provincial office/task team who can be contacted when the need for an interpreter arises.

(2) Vetting of interpreters

- (a) Interpreters must, as far as is reasonably possible, be vetted against local intelligence and criminal records systems and, where appropriate and possible, against the intelligence and records systems of other countries from where they may have originated or where they previously resided. This must be done to ensure that the interpreter is not part of a criminal group involved in trafficking in persons.

(b) Interpreters must also, as far as is reasonably possible, be vetted against the National Child Protection Register established in terms of section 111 of the Children's Act, 2005 (Act No. 38 of 2005) and the National Register for Sex Offenders established in terms of section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).

(3) Attributes of interpreters

(a) Officials must ensure that interpreters are psychologically or emotionally suitable to translate in cases of trafficking in persons. Interpreters who may be technically very efficient and capable may not necessarily be suitable to use as interpreters in a trafficking case: translating in a case of theft from a shop is not the same as translating in a case of trafficking where, for example, sexual exploitation is involved. Officials must therefore establish in a sensitive manner if a person is able to cope with hearing about serious violence, graphic sexual detail and abuse, by asking direct questions.

(b) Officials must ensure that interpreters are ethnically, culturally or religiously suitable. In many parts of the world people who share the same language may have long running inter-ethnic, cultural or religious tensions. Officials should be aware of the likely points of tension around individual languages and cultures. Tactful questioning of the interpreter will help to build a picture of the situations where it would and would not be appropriate to use them.

(c) Whenever possible, officials should get feedback on how an interpreter has performed on a case. This feedback must be included in any records kept about them, ensuring any comments are evidenced and reasonable.

(4) Telephone interpretation

(a) In certain circumstances, interpretation over the phone may be appropriate or the most practicable in the circumstances. The same planning considerations should apply to phone as in face-to-face interpretations. Telephone interpretation is most likely to be suitable only in the very early stages of an enquiry to get the basic details of an account. As with face-to-face interpretation only vetted and accredited interpreters must be used wherever possible.

(b) Some countries and law enforcement agencies have contracts with companies who provide 24-hour interpretation over the telephone for many languages. These services can be very expensive. Law enforcement agencies in other countries may be able to help with phone interpretation in some circumstances. However, this is not recommended as standard procedure as the quality of interpretation may be variable and there could be international cooperation and (possibly) risk assessment issues in some locations.

(5) Contracts with interpreter or interpretation service

(a) Officials must familiarize themselves with the procedures relating to the procurement of interpretation services.

(b) A formal contract with an interpreter or interpretation service may be required. If so, officials must ensure that the contract is not overly restrictive, for example not covering certain languages or the interpreters not suitable for certain cases but the contract prevents the agency using other interpreters.

(6) “Volunteer” interpreters

(a) There may be circumstances where people “volunteer” themselves as interpreters. It may be tempting to use them, particularly where there are very few interpreters for a language or where they are not available. Officials must avoid using volunteer interpreters as far as possible in trafficking in persons cases. Traffickers have shown they will attempt to infiltrate investigations and using the interpreter is a good way of doing that. Officials should therefore be very careful not to use anyone with links to the traffickers or their associates or who knows the victim and his or her family.

(b) Officials must be aware that interpreters may also be at risk of intimidation, threats and corruption even though they are not initially associated with the traffickers.

(c) If the use of volunteer interpreters is unavoidable, officials must do what is practicable and reasonable to assess if they are linked to traffickers, watch for

reactions of the person who is being interpreted, keep the use of the interpreter to an absolute minimum and check their interpretation when you have access to an official interpreter.

(7) Contacting the interpreter

(a) On first contact with the interpreter enough information must be given to allow the interpreter to decide whether he or she is willing and able to take on the task, but not so much to compromise the investigation. Details about the task they are being asked to do should include what type of crime is under investigation, what type of interpretation they will be expected to do (e.g. verbal interpretation in an interview, verbal interpretation plus a written transcript of what has been said).

(b) Officials must give interpreters an estimate of how long they will be involved in the case to allow them to make any necessary personal arrangements and plan whether they need to bring extra clothes etc. or even to decide whether they can accept the task. Interpreters are an essential element to interviews: failing to be honest with them can lead to them leaving after a short time. This can be particularly serious in trafficking victim interviews because it is very important to establish as much stability and continuity as possible.

(c) Officials must try to make sure that the interpreter knows the interpretation for words they are likely to encounter when interpreting. This may be difficult to anticipate but an example may be a victim using street words to describe particular sexual acts, with which the interpreter may not be familiar. Similarly, in a case of labour exploitation, it may be likely that certain words associated with particular industrial or agricultural processes will be used and the interpreter should be given enough information to allow him or her to do some research before the interview.

(8) Interpretation to take place under the supervision of an official

Any interpretation must take place under the supervision of an official depending on the circumstances of the case in question.

(9) Oath or affirmation

(c) Officials must point out that if the interpreter is approached by anyone outside the interview (victim, witness, suspect, defence lawyer or other third party) he or she must report the incident.

(d) Officials must ask the interpreter to bring to the official's attention immediately but as discretely as possible where the person being interviewed suggests that any person is in danger.

(e) Officials must explain how the interview will be recorded and how the interpreter must keep record.

(f) Officials must allow interpreters time to prepare for the interview when they arrive. Interviews may be urgent in some cases but even a small amount of preparation time for interpreters can improve the quality of the interview. See also in this regard the contents of paragraph (7)(c).

(11) Using separate interpreters for each victim and suspect and various interpreters for one victim

(1) Ideally, in trafficking cases separate interpreters should be used for each victim and suspect. Using separate interpreters reduces the possibility of cross contamination of accounts (information and details of incident/s provided), secondary traumatization of the victim and attempts by suspects to corrupt interpreters to help intimidate victims. It is acknowledged that this may not be practicable in many situations, but the minimum should be that the very strongest efforts possible are made not to use the same interpreters for victims as are used for suspects.

(2) The use of various interpreters for one victim should, as far as is practicable, be avoided. Using a different interpreter each time a victim is interviewed hinders the establishment of a trust relationship between the victim and the interpreter.

(12) Costs and personal needs of interpreters

(a) Officials must establish the costs of the interpretation work as far as possible. The relevant procurement processes must be adhered to.

(b) If the interpreter needs to stay away from home, officials must arrange appropriate accommodation. This is the type of consideration that helps ensure an interpreter will stay with the investigation as long as required.

(c) Similarly, officials must arrange transport whether that is long distance or daily trips to and from the location of an interview.

(13) Other related measures

Other measures that could be considered relating to interpretation in respect of trafficking in persons cases include, but are not limited to the following:

(a) Posters and leaflets in various languages that are specific to trafficking could be produced. Simple leaflets can be produced relatively cheaply. If the resources to produce posters and leaflets are unavailable, consider contacting other countries who have produced material in the languages needed.

(b) Documents that contain visual prompts such as flags could be produced to help victims and witnesses identify their nationality. This may be useful in helping identify the language they speak but is not necessarily conclusive.

(c) Technological solutions have been used in some locations such as digital players with messages recorded in a number of languages.

(14) Guidelines for interpreters

Officials are encouraged to furnish interpreters they intend to use with the Guidelines contained in Annexure 2 to these directives.

8. Measures to be taken to ensure the safety of victims of trafficking or other potential witnesses in cases where harm might result to them as a result of the reporting and subsequent investigation and prosecution of the case

(1) The UN Convention Against Transnational Organised Crime as well as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, which supplements the UN Convention, both provide that member States must put measures in place to provide for the protection and safety of victims of trafficking or

witnesses. Besides the requirements in international instruments, the essential concern for all in the criminal justice process is that a person, who is a witness, victim or otherwise, gives the maximum possible cooperation in the criminal justice process. The less effective the protection of witnesses, the more chance that the required cooperation will be withdrawn. A thorough understanding of and commitment to safety measures for victims of trafficking or other potential witnesses, must therefore be a priority for officials.

(2) Safety measures in respect of suspected victims of trafficking are found in sections 18 (it is envisaged that all the protective measures of the Children's Act, 2005 will apply to child victims of trafficking) and 19(5), (6) and (9) of the Act. Section 17 of the Act provides protection to a foreign victim of trafficking by providing for a recovery and reflection period and who has rendered assistance in the investigation and prosecution of a case of trafficking in persons. The Schedule to the Witness Protection Act, 1998 (Act No. 112 of 1998) has also been amended by the Act to provide that all the offences in terms of Chapter 2 of the Act are offences in respect of which a person may be placed under witness protection. Officials must therefore acquaint themselves with the relevant provisions of the mentioned Acts and utilise the said provisions.

(3) Officials, whether reporting suspected victims of trafficking to the police, dealing with a reactive enquiry or acting proactively, must review the circumstances to establish any likely risk to the victims or other potential witnesses as soon as possible.

(4) If the victim or witness is not placed under witness protection in terms of the Witness Protection Act, 1998, or if the provisions of the Act mentioned in paragraph (2) cannot be used for whatever reason, officials must have contingency plans in place to ensure the safety of victims or other potential witnesses in accordance with the Guidelines in Annexure 3 to these directives.

(5) Officials must ensure that the sharing of information relating to the case in the investigation process happens on a need to know basis only.

(6) With regard to proceedings in court, the directives to be issued by the National Director of Public Prosecutions in terms of the Act will address this issue.

(7) Officials must ensure that victims of trafficking who have been trafficked within the borders of the Republic receive the same protection as foreign victims of trafficking.

(8) In all cases, whichever course of action is deemed the most appropriate from a welfare and security perspective, the views of the victim should be sought and taken into account before any decision or action is taken.

(9) It is essential that officials' support and protection measures are handled in such a way as not to amount to any form of inducement that could be presented in court against them during the hearing of the case.

(10) Officials must be careful when providing anything to support a witness such as accommodation and phones. Such support should not be excessive, the rationale for doing anything should be recorded and any abuse of the support should be identified quickly and addressed as soon as possible.

9. Disciplinary steps for failure to comply with duties imposed by the Act or directives

The failure of an official to comply with any duty imposed on him or her in terms of the Act or these directives, constitutes an act of misconduct to which the relevant policies and procedures for disciplinary steps in the Public Service apply.

SIGNED at Pretoria on this day of Two thousand and fifteen.

MS N SINDANE
DIRECTOR-GENERAL: JUSTICE AND CONSTITUTIONAL DEVELOPMENT

ANNEXURE 1

FORM 1

REPORTING STATEMENT

(DIRECTIVE 6(5)(a))

**DIRECTIVES IN TERMS OF SECTION 44(1)(a) OF THE PREVENTION AND
COMBATING OF TRAFFICKING IN PERSONS ACT, 2013**

CONFIDENTIAL

To the commanding officer, South African Police Service station:.....
Details of official who reports case related to trafficking in persons: Name..... Department..... Office at..... Rank.....
Contact details of official who reports case related to trafficking in persons: Office telephone no..... Cell no..... E-mail address..... Fax no.....
Case data: 1. Date of reporting:..... 2. Language used:..... 3. Name of interpreter:..... 4. Interpreter's contact details:..... 5. Name of supporting/accompanying person, if any: 6. Circumstances under which suspected victim/s was/were found: 7. Reasons to suspect person/s is/are a victim of trafficking:

8. Description and particulars of traffickers, if known:

.....
.....

9. If suspected victim has not been rescued, address or place and surroundings where he or she might be found:.....

.....
.....

10. Any other information or remarks:

.....
.....

Details of suspected victim of trafficking no 1:

Name.....

Gender.....

Date of birth/Age/Approximate age.....

Identity no/Passport no (if available).....

Nationality, if known.....

Place of birth, if known.....

Details of suspected victim of trafficking no 2:

Name.....

Gender.....

Date of birth/Age/Approximate age.....

Identity no/Passport no (if available).....

Nationality, if known.....

Place of birth, if known.....

Details of suspected victim of trafficking no 3:

Name.....

Gender.....

Date of birth/Age/Approximate age.....

Identity no/Passport no (if available).....

Nationality, if known.....

Place of birth, if known.....

Details of suspected victim of trafficking no 4:

Name.....

Gender.....
Date of birth/Age/Approximate age.....
Identity no/Passport no (if available).....
Nationality, if known.....
Place of birth, if known.....
Details of suspected victim of trafficking no 5:
Name.....
Gender.....
Date of birth/Age/Approximate age.....
Identity no/Passport no (if available).....
Nationality, if known.....
Place of birth, if known.....
If there are more victims, indicate their details on a separate annexure and attach them to this form.
Own record reference no:
CAS no:
(to be obtained from the police station to which the case was reported)

.....
Official taking the reporting statement

Official date stamp

**FORM 2
OATH OR AFFIRMATION
(DIRECTIVE 7(9))**

**DIRECTIVES IN TERMS OF SECTION 44(1)(a) OF THE PREVENTION AND
COMBATING OF TRAFFICKING IN PERSONS ACT, 2013**

CONFIDENTIAL

Reference No.

Official in whose presence the interpretation referred to in directive 6 (8) takes place:

.....

Department:.....

Place:.....

Rank:.....

I,

.....

(full name)

with identity number/passport number.....

do hereby swear/solemnly and sincerely affirm and declare that I will in any capacity as an interpreter faithfully and correctly, to the best of my knowledge and ability, interpret from the language I may be called upon to interpret into an official language of the Republic of South Africa and *vice versa*.

SIGNED AT(PLACE) ON(DATE)

.....

SIGNATURE OF INTERPRETER

1. I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(1) Do you know and understand the contents of the declaration?

Answer.....

(2) Do you have any objection to taking the prescribed oath?

Answer:.....

(3) Do you consider the prescribed oath to be binding on your conscience?

Answer:.....

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God"/I truly affirm that the contents of this declaration are true."

The signature/mark of the deponent is affixed to the declaration in my presence.

.....

Commissioner of Oaths

Full first names and surname:.....

(Block letters)

.....

Designation (rank):.....

Ex Officio

Republic of South Africa

Business address:.....

.....

(Street address must be stated)

Date:.....

Place:.....

OFFICIAL STAMP

ANNEXURE 2
GUIDELINES FOR INTERPRETERS
DIRECTIVE 7(14)
DIRECTIVES IN TERMS OF SECTION 44(1)(a) OF THE PREVENTION AND
COMBATING OF TRAFFICKING IN PERSONS ACT, 2013

1. Purpose of a law enforcement interview

The purpose of any law enforcement interview, whether of a witness or a suspect, is to—

- (a) establish the facts in a case;
- (b) obtain all possible information; and
- (c) collect evidence to allow a decision to be made on whether to prosecute or not.

2. The role of an interpreter in a law enforcement interview

(1) The role of the interpreter in a law enforcement interview is to accurately interpret questions put by the interviewer to a witness or suspect and the response to those questions.

(2) It is not the role of the interpreter to act as a social worker or counsellor to a witness, or to provide any form of guidance or suggestions to the person being interviewed.

(3) You should not be asked to guard a person or remain with them without the interviewer or other law enforcement officer being present. You should decline to do this if you are asked to do so. If you are left alone with the person being interviewed you should leave.

3. When your services are requested by law enforcement

(1) When you are asked to attend an interview, let the interviewer know when you will be able to arrive at the interview location. This is very important for investigators as there may be legal time limits on how long they can hold a suspect or speak to a witness. Ask the interviewer how long he or she thinks the interview will take. Let

the interviewer know if you have any other commitments during this time. It is not acceptable to let the interviewer know about a pre-planned commitment during the interview.

(2) Ask the interviewer to give you a summary of the case. This summary should be brief. If you are told anything that suggests there is a conflict of interest or any other reason why you cannot do the interpretation, tell the interviewer immediately. The interviewer will decide if it is appropriate to use you.

(3) Ask the interviewer if there are any slang or street words or technical words you may need to research before you start the interview.

(4) Check the language and dialect the person is speaking. Do not rely on the interviewer to do this as they may not be able to identify the language. The best way to do this is to ask for the person to be brought to the phone and listen to the person speak.

4. At the interview location

(1) You will be asked if there is any conflict of interest in acting as interpreter for a particular witness or suspect. There may be a number of reasons why there might be a conflict of interest. Common examples are, knowing the victim, witness or suspect or knowing members of their family. Tell the interviewer about anything you think might be a conflict of interest. The interviewer will decide whether he or she feels this will affect the case. They may decide it is not appropriate for you to continue as interpreter. If anything happens during the interview which suggests there is a conflict of interest you didn't know about tell the interviewer immediately.

(2) In particular, let the interviewer know immediately if there is any attempt to corrupt or threaten you while carrying out your duties. If you are approached by anyone outside the interview (victim, witness, suspect, defence lawyer or other third party) you must immediately report the incident to the interviewer. You always have the right to stop the interpretation for such reasons.

(3) Ask the interviewer where he or she wants you to sit in the interview room. The interviewer may ask you to sit out of the immediate view of the interviewee.

5. In the interview

(1) If you have not had the opportunity to check the language and dialect spoken by the person being interviewed you should do so now. Do not discuss the case. Be brief, conversational and confine yourself to establishing the language and dialect spoken. The interviewer should introduce you to the person that is being interviewed.

(2) The interviewer must stress the fact that you, as an interpreter, are independent, and that you are not an investigator, a lawyer, adviser, social worker, counsellor, etc or involved in the investigation in any way. The interviewer must stress that your only role is to facilitate communication between people who speak a different language. If the interviewer does not do this, ask him or her to do it.

(3) Accurate interpretation of the language used by the interviewer and person being interviewed should reflect the level of language used and the exact words and phrases used. You should not change the grammatical structure of the questions and responses.

(4) It is very important that you do not change the meaning of words that you may find embarrassing or disturbing. You should not add anything to what was said.

(5) The interviewer will put his or her questions directly to the witness or suspect. For example a question should be "Where were you at the 10 in the morning?" not "Ask him where he was at ten in the morning".

(6) How the interview is recorded will depend on the rules of the jurisdiction and whether it is a suspect or witness interview. It may take the following forms:

- (a) Writing responses down as a general text;
- (b) Writing the questions and responses in a question and answer format;
- (c) Recording the interview on audio tape;
- (d) Recording the interview on video tape.

(7) Questions should be asked one at a time. The interviewer should pose the question, you should interpret it for the interviewee, allow them time to respond and then interpret the response for the interviewer.

(8) Do not put questions in the third person. "Where were you?" should not be translated as "She is asking where you were". Do not change the structure of the question. Open questions need to stay open. "Where were you?" cannot be changed to "Were you there?"

(9) In general, interpreters should not ask questions or intervene in the interview except in the following circumstances:

- (a) If you don't understand a question or response to clarify what was said;
- (b) To indicate to the interviewer that the person being interviewed does not understand what a question means;
- (c) To point out any cultural differences between the interviewer and the person being interviewed that are relevant to communication. An example is nodding, which in some cultures means "Yes", in others means "No".

If you have to intervene, tell the interviewer why.

(10) Wherever possible avoid putting your home or business address or contact details on any document that may be disclosed to a suspect in a case. It is permissible to give the police station or other law enforcement premises as a contact address.

(11) Do not have a conversation in a language that one of the people involved does not understand. Always interpret what was said.

(12) Make it clear to the interviewee that he or she cannot give you any information that he or she doesn't want you to report to the interviewer.

(13) As a general rule you should never have confidential conversations with the interviewee whether they are requested by the interviewee or the interviewer. In some exceptional cases you may have a confidential conversation with a victim of crime. This should be very carefully managed. If you do have such a conversation

you must always make the interviewee aware you will inform the interviewer of the content of the conversation.

ANNEXURE 3
GUIDELINES FOR CONTINGENCY PLANS TO ENSURE SAFETY OF VICTIMS
OF TRAFFICKING AND OTHER POTENTIAL WITNESSES
(DIRECTIVE 8(4))

DIRECTIVES IN TERMS OF SECTION 44(1)(a) OF THE PREVENTION AND
COMBATING OF TRAFFICKING IN PERSONS ACT, 2013

1. Interviews

- (a) Interviews with victims, other witnesses and suspects must be done in separate rooms or facilities away from the public.
- (b) Separate locations must be used for interviews with victims, witnesses and suspects.
- (c) Interviews with victims should, as a general rule, not take place at places of temporary safe care, accredited organisations, designated child protection organisations or similar locations where traffickers or their associates may be present or at least have links to those in the organisation, posing a danger to the victim, staff and the investigation. If it is unavoidable or preferable to meet at the mentioned places, the investigating official must ensure that the victim feels safe and secure and must take all risk factors into consideration and the visit must be carried out as discretely as possible, for example, go in plain clothes and do not use cars with police markings etc.
- (d) Establish early in interviews if victims or other witnesses are aware of threats to themselves or others.
- (e) Keep victims, witnesses and suspects separate at all times when the investigation process is under way.
- (f) Officials should be aware that some persons presenting themselves as victims may be offenders. Keep victims separate in the initial stages. Allowing identified victims to freely associate, can support their psychosocial recovery, but this should be actively managed and only be done if officials are confident that it will not lead to intimidation. Be aware that association may also be used to allege that witnesses have colluded.
- (g) Officials must not make promises that they cannot keep.

2. Assistance of partner organisations and departments

(a) Consider the assistance that partner organisations and departments could offer, for example, accompany victims or witnesses to court or to medical facilities or to organisations providing services.

(b) The following issues could be taken into consideration when requesting assistance regarding shelter:

- (i) Is the available shelter physically secured?
- (ii) Are security staff available?
- (iii) Is the shelter in a location that you are likely to be able to keep “secret” from traffickers?
- (iv) What communication equipment is available to call for help or warn about any concerns?
- (v) Are staff trained in their roles at the shelter, etc.?
- (vi) Do shelters have any “early warning” system in place to allow residents to confidentially report other residents they suspect may be working with traffickers?
- (vii) Are counsellors or other support staff available?
- (viii) How effective has the organization been in protecting and supporting victim-witnesses?
- (ix) Is there a reasonable prospect the location will continue to remain “secret”? For example, is the victim or witness likely to contact traffickers, their associates or others linked to them while at the “secret” location?

3. Other measures which could provide additional protection

(a) Access to mobile phones and/or special phone numbers to call.

(b) Assigning a counsellor from an external agency or dedicated victim support officer within the law enforcement agency.

(c) Guidance to victims or witnesses on how they should conduct themselves to keep themselves safe.

(d) Guidance on signs to look out for that may suggest they are under threat.

(e) Access to alarms such as personal attack alarms carried by individuals or at premises they are staying.

(f) “Early warning systems” to notify victims or witnesses if there is a change in the threat(s) they face.

4. Family communications

(a) The issue of communication with family members at home is a difficult one. It is entirely natural for victims to wish to speak with their loved ones if they wish and their ability to do so may form an important part of the recovery process. However, family communications may also pose security risks, which are mainly the following:

- (i) With or without the knowledge of the victim, family members or loved ones may be involved in the trafficking crime or be associated in some way with the traffickers. Communications with the family etc. may disclose the location of the victim.
- (ii) If the traffickers know the location of the family members or loved ones, they may already be intimidating them and may be able to monitor communications in some way in an attempt to establish the location of the victim.

(b) Where there is little indication of risk, victims should be allowed to make contact with their loved ones but should be told to be careful what they talk about.

(c) It is only in those cases of high risk that the victim should be advised against communicating at all. As a compromise welfare matter in such cases, messages can be passed through or under the control of the investigation team.