

Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Trafficking in Person Victim Identification Guideline

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Table of Contents

Preamble	5
Part I	6
General Knowledge about Trafficking in Persons	6
1. Trafficking in Persons definition	6
2. Elements of Trafficking in Persons.....	6
2.1 Act (Article 10)	6
2.2 Means (Article 11).....	7
2.3 Purposes (Article 12)	7
Part II: Trafficking in Persons victim identification	7
A. Definition of Victim.....	7
B. The rights of TIP victims	7
C. The basic principles for victim identification	8
1. Humanitarian principles	8
2. Principle of voluntary interview	8
3. Principle of confidentiality	9
4. Principle of non-discrimination against victims	9
5. The principles for interviewers and language of interview	9
6. Principle of paramount interests of victims	9
7. Principle of coordination	9
D. Reasons for having victim identification	10
E. Parties responsible for initial victim identification.....	10
F. Steps in victim identification	10
1. Pre-interview assessment	10
2. Preparation for interview.....	12
3. Interview with view to collect information	13
4. Summary of the interview.....	17
Part III. Comparison of differences between TIPs and other offences, laws and conventions that Lao PDR is a party to.	18
Table: A comparison between TIP and prostitution, prostitution business, pornography, legal marriage (the Law on Family), TIP and fraudulent marriage, child adoption, child pedophilia, child sexual abuse	18
Table: A comparison the difference between TIPs and illegal migration	22

Preamble

Trafficking in persons is a crime, severely violating basic human rights, having direct impact on physical and psychological health and dignity and freedom of individuals, as well as socio-economic development, stability and security of the Nation.

Trafficking in persons occurs and prevails globally, regionally and in Lao PDR; for Lao PDR is mostly a country of origin of trafficking in persons, many of its citizens have fallen victims of TIP and mostly victims of labor and sexual exploitation domestically and abroad.

The Government of Lao PDR has always given great importance to the tasks of prevention and combating trafficking in persons by adopting policies, making laws and regulations, putting in place mechanism and a specific national action plan for prevention and combating trafficking in persons. In addition to this Lao PDR has acceded and ratified a number of international conventions pertaining to anti-human trafficking at the regional and international level such as the Convention on Elimination of All Forms of Discrimination Against Women (accession on 14th August 1981), the Convention on the Child Rights (accession on 8th May 1991), Protocol of Convention on the Child Rights on Trade in Children, Child Prostitution and Child Pornography (accession on 20 October 2006), the Convention on Civil and Political Rights (accession on 20 September 2009), the Convention on Economic, Social and Cultural Rights (accession on 13 May 2007), the Convention on All Forms of Discrimination Against Race (accession on 22 February 1974), the Convention on Against Torture and Other Cruel, Inhuman or Degrading Treatment (accession on 10 September 2012) and the Convention on the Rights of Invalid Children.

In order to interpret the above conventions and to implement the Law on Trafficking in Persons, trafficking-in-person victim identification is crucial. There the victim identification must be done quickly, accurately, aiming to timely protect and rescue victims from the exploitation. The development of this Guideline, is therefore, important for officers of all parties to protect legitimate rights of victims and to bring perpetrators to justice.

Part I General Knowledge about Trafficking in Persons

Trafficking in Persons and Victim Identification Guideline were defined in the Article 3 and Article 37 of the Law on Anti-Trafficking in Persons (2015)

1. Trafficking in Persons definition

Trafficking in persons shall mean the recruitment, abduction, movement, transportation or transfer or receiving of persons, harbouring by means of propaganda, giving advice, deceiving, abuse of power, the use of threat, the use of other forms of coercion, putting persons in debt bonded conditions, child adoption or concealed adoption, concealed engagement, concealed marriage, the use of surrogate mothers, beggar the production, showing and distribution of pornographic materials or by other forms for the labour exploitation, sexual exploitation, slavery, prostitution, forced working in prostitution, removal of organs for purpose of trade and other forms of unlawful conducts contradicting to the national fine arts and traditions or for other purposes to gain benefits.

A victim shall mean a person who has directly been suffered in his or her physical or mental health, dignity, freedoms or his/her property resulting from all forms of human trafficking;

2. Elements of Trafficking in Persons

The definition of Anti-Human Trafficking defined in article 2 of the Law on Anti-Trafficking in Persons and the elements defined in article 9, 10, 11 and 12 of this law as detail follow:

1. Action;
2. Means;
3. Purposes.

As for offence against a child below eighteen years of age, only the elements of act and purpose shall constitute trafficking in person irrespective to consent or voluntary act of the child.

2.1 Act (Article 10)

Act means the recruitment, abduction, movement, transportation or sending or receiving of persons in the country or abroad, harbouring, or other acts relating to trafficking in persons as prescribed in article 2 of this law.

2.2 Means (Article 11)

Means shall mean the recruitment, guiding, deception, provision of benefits, incitement, abuse of power, use of threat, coercion, debt bondage, concealed adoption, concealed engagement, concealed marriage, concealed pregnancy, begging, production, showing and distribution of pornographic materials and other means.

2.3 Purposes (Article 12)

The purpose is for labour exploitation, sexual of exploitations, slavery, prostitution activities, forced prostitution, the removal of organs for sale and other purposes contradicted to the laws and national culture and traditions.

Part II: Trafficking in Persons victim identification

A. Definition of Victim

A victim shall mean a person who has directly been suffered in his or her physical or mental health, dignity, freedoms or his/her property resulting from all forms of human trafficking.

There are three types of TIP victims:

1. Lao nationals, foreign citizens and Stateless people, who live in Lao PDR and are victims in Lao PDR;
2. Lao nationals, foreign citizens and Stateless people, who live in Lao PDR and are victims in other countries;
3. People, who live in other countries but have fallen victims in Lao PDR.

B. The rights of TIP victims

The right of TIP victim defines in the article 39 of the Law on Anti-Trafficking in Persons which consists of

1. Solicitate assistance from others;
2. Report to concered authorities;
3. Prepared to provide statement;
4. Present evidence;

5. Submit request;
6. Receive compensation;
7. Be free from criminalization and detention on the charge of prostitution, illegal migration and immigration;
8. Receive appropriate protection, assistance and safe shelters;
9. Not to be taken pictures, video recorded and disclosure that might lead to damages to dignity and reputation;
10. Receive legal, medical advice, education and vocational training, economic opportunity, reintegration into family and society;
11. Request to see the case file, copy or take note of contents of the case file after the investigation;
12. Present in the court room;
13. Ask to change judges;
14. Complain about acts or orders of Head of Investigation Authority, President of People's Prosecutor Office, prosecutors or staff of People's Court that victims consider inappropriate;
15. Request to have an interpreter, legal representation or other supporting agencies during the proceeding;
16. Other rights as defined by laws.

Base on to the article 39 of the Law on Anti-Trafficking in Persons, in case the victims died, their relatives can have these rights.

C. The basic principles for victim identification

TIP victim identification must be in accordance with the Constitution, laws, regulations and international conventions, which Lao PDR is a party to, including the following main principles:

1. Humanitarian principles

The concerned organizations must consider humanitarian right of victims as key for TIP victim identification. They must be ethical with good of conducts and the identification must be holistic, complete, objective and timely.

2. Principle of voluntary interview

The TIP victim identification must be voluntarily attended by the victims, and victims must be well aware of benefits that they are entitled to, how long the

process interview is, the complication, the risks and other related factors that can be changed or increased during the interview.

3. Principle of confidentiality

In order to ensure the safety of victims, the officers, authorities conducting interview of TIP victims must keep information confidential not to disclose the status of victims because the information of victims and parties involved is important in order to ensure safety of the victims.

4. Principle of non-discrimination against victims

All victims have equal right to protection from concerned parties in accordance with domestic and international laws disregarding political status, the political, economic, social status, race and nationality, religious, language, gender, age and others.

5. The principles for interviewers and language of interview

- The interviewer must introduce themselves and must be trained on victim identification;
- The interviewers must consult important points of interview, technical terms, use of language, use of equipment and appropriate venue for the interview;
- The interview must be in the Lao language, but in case the victims do not know Lao they can use their own language or other language through interpreters.

6. Principle of paramount interests of victims

In victim interview, all concerned officers must consider the paramount interests of victims as the key of interview based on rights of the victims.

7. Principle of coordination

This principle is for the competent authorities dealing with victim identification must coordinate and collaborate with concerned domestic and international parties.

D. Reasons for having victim identification

- There is a report or complain from individuals or organisations related to people, who are suspected to be TIP victims;
- Officers encounter people, who are suspected to be TIP victims or as a result of premise search of other cases;
- Someone has escaped from a TIP network or an exploitation place and has asked for assistance from civil citizens or officers.

E. Parties responsible for initial victim identification

- Village administrations;
- Village public security officers (public security of clustered villages);
- Immigration officers;
- Border soldiers;
- Civil society organisations;
- Labor and Social Welfare sector;
- Other concerned organisations.

The duties of each party are stated in 4.1 and 4.2.

F. Steps in victim identification

The steps in victim identification consists of 4 steps

- Pre-interview assessment
- Preparation for interview
- Interview with view to collect information
- Summary of the interview

1. Pre-interview assessment

Those suspected to be TIP victims could be reflected in the initial information as follows:

- **Age:** all ages could be TIP victims, but in general, children under 18 years of age are the risk group to fall into TIP victims, and those older are less risky.
 - For TIP in form of labour exploitation, the focus is mostly on those under 40 years of age;

- For TIP in form of sexual exploitation, the focus is mostly on those under 20 years of age.
- **Gender:** females are the risk group to fall into TIP victims for the purpose of sexual exploitation. And males are risk group for TIP victims of labor exploitation;
- **Nationality:** no specific indication for nationality of victims;
- **Language:** victims cannot communicate in the Lao language, local language or other language;
- **Documents:** must notice if suspects of TIP victims have travelling documents, ID cards, family book, temporary residence certificate and other related documents or not;
- **Transport:** the transport vehicles, routes for transport / transfer, did they travel by themselves or accompanied by others or someone prepared for their travelling;
- **Place:** the last address of victims before rescue by authorities is important such as factory, mines, construction sites, sexual service establishments, guest house, hotel, house, restaurant or plantation, fishing boat and others are all can indicate the exploitation;
- **Behaviour:** acts or signs shown by suspects to be TIP victims such as avoiding questions, traumatised, worried, scared, frustrated and others;
- **Physical traces on body:** all bruises on body, malnutrition or mental impacts.

In addition to above indicators, there are other indicators obtained from abroad before the repatriation and obtained within the country such as medical report, interview information and others.

- Remarks:

Each piece of initial information can be interpreted in different ways and must be considered all together, interviewers must apply initial information in accordance with conditions and actuality to optimize effectiveness of TIP victims interview.

2. Preparation for interview

Before the interview, the participants to be in the interview must be prepared, the venue and interviewees must also be prepared.

2.1. Interview venue

- The interview must be conducted in an appropriate venue or specific place without interruption, providing privacy and friendly environment for interviewees;
- In case there is an interview room, the room must be equipped with facilities necessary for the interview such as voice recorder, video recorder, dolls, toys and others to suit different ages of interviewees.
- In case there is no interview room: the interview must be conducted in an appropriate place without disturbance, with privacy and friendly environment for interviewees.

2.2. Interviewers

- Must have been advised or trained on interview techniques;
- Have psychology, legal knowledge, child development for each age, basic knowledge of TIP and interview experience;
- Can control emotion and not to use emotion to confront with or feel for the interviewees;
- Knowledge to apply different methods such as observation, listening, speaking, interviewing, questioning and others;
- Other participants in the interview must meet to discuss and plan the interview in details.

2.3. Clothing conduct in interview

Must be dressed politely, clean and not to wear an uniform, arms to avoid the threatening looks for the victims.

2.4. Composition of participants in interview

- The interview must be participated by 2 or 3 persons consisting of note taker, interviewer and other concerned person;
- If interviewees are children, deaf, blind, mute, retarded, insane ..., which cannot exercise their rights, the interview must be participated

by parents, guardians, teachers, experts or experienced persons, lawyers or other supporting agencies and the interview place must be appropriate;

- If victims are seriously mentally affected, there must be a psychologist or an expert participated in the interview;
- In case the interviewee is a foreign person or an ethnic person, there must be an interpreter.

2.5. Preparation of interviewees

Before the interview, the concerned parties must consider the following important issues:

- Observe the readiness of victims in terms of physical and mental health;
- Assess communication capacity or information giving capacity;
- Assess the willingness of victims to be interviewed.

2.6. Preparation for emergency

The person who are going to interview TIP victims must prepare to deal with situations that might arise, meaning that they must consult with anti-TIP officers at different levels to prepare for emergency that might arise during the interview, especially if victims are not so healthy, not ready or not cooperative, the interviewers must plan to solve the problems appropriately until the victims are ready to cooperate.

If there are unusual situations happened during the interview such as victims faint, feel dizzy and others, which makes interview impossible to be conducted further, the interviewers must stop the interview at once and assist the victims immediately.

3. Interview with view to collect information

Before the interview, there must be ice breking and creation of a warm and friendly atmosphere in order to gain confidence from the interviewee;

The interviewers introduce themselves and participants, presenting the interview objective and explaining rights to the interviewee. When the interviewee is ready to be interviewed, the interview can start according to the process, and to ensure the effectiveness of the interview the interviewers should ask about the health conditions if the interviewer is injured and cannot continue, the interview will be postponed. If the

interviewee can continue, the interviewers must ask if the interviewee needs anything such as drinking water, if he/she needs to go the rest room and others.

3.1. Interview techniques

- Techniques that are sensitive and friendly for child victims;
- The questions must be easy to understand, appropriate for ages and capability of victims so they can distinguish good from bad, the interview must be familiar not to create fear, avoiding pressure, leading or close questions or questions that are encouraging; and there shall not be violence, force, threat, beating, torturing or use of illegal measures;
- At each interview there must be break time, for children the interview must not be longer than 90 minutes, for females the interviewer should be female or participated by females.

3.2. Contents of interview

There are 2 sets of question for interview:

- **Question set 1** is for the concerned parties as stipulated in Paragraph E of this Guideline, this is in order to collect initial information and then forwarding to the Anti-TIP police officers to conduct victim identification;
- **Question set 2** is specifically for the Anti-TIP police officers to confirm that the victims are TIP victims.

3.2.1 General interview contents to collect initial information (question set 1)

- **Why leaving home (reasons before leaving home)**

- Someone recruited ☐
- No one recruited ☐
- Recruited by phone ☐
- Work within the country ☐
- Work outside the country ☐
- Parents/guardians were aware of ☐
- Parents/guardians were not aware of ☐
- Someone told about work availability ☐
- No one told about work availability ☐
- Would receive high wages ☐

- Because of poverty ☐
- Because of threat ☐
- Because of debts ☐
- Because of the need to support family and themselves ☐
- Agreed to go for better life ☐
- Parents/guardians received money in advance ☐
- Victims received money in advance ☐

• **How was the travelling arranged?**

- Someone was responsible for the travelling ☐
- Someone was responsible for document arrangement ☐
- Own responsibility for travelling document ☐
- Own responsibility for costs ☐
- Parents/guardians accompanied ☐
- Travelled by themselves ☐
- Travelled by recruiters ☐
- Travelled by car ☐
- Crossed the Mekong river by boat ☐
- By air ☐
- Travelled on foot ☐
- Travelled alone ☐
- Travelled with many people ☐
- Travelled with wome/men ☐
- Only women that travelled ☐
- Only men that travelled ☐
- Someone transported ☐
- Documents were with someone else ☐
- Documents were with victims themselves ☐
- From Laos to other country ☐
- Followed others' instructions ☐
- Went separately ☐

- **How was the work place or the accommodation?**

- They told that victims had debts ☐
- They told that victims could not go back home ☐
- Not the work that was agreed before ☐
- Could not go anywhere ☐
- Documents were seized ☐
- Were forced to take narcotic drugs ☐
- Not enough of food ☐
- Physical violence was used ☐
- Worked by orders ☐
- Were forced to prostitute ☐
- Often suffered from bad words ☐
- Worked without pays ☐
- Received little pays ☐
- Heavy work ☐
- Long working hours ☐
- No rest ☐
- No medical care ☐
- Could not contact any one ☐
- Were tranfered from place to place ☐

3.2.2. Contents of interview for concered authorities (Question set 2)

➤ The act and means

- Please describe the situations before you left home?
- Who talked to you before you left home? How many people? What are their names? How old are they? Proffession? Address?
- How did you come to know those people?
- What did they tell you? Who knew about this?
- What job was offered to you? Where?
- How much was the monthly salary?

- Who was responsible for all travelling costs?
- Who was responsible for all documentation costs?
- How many people were travelling with you? Who are they? Names? Ages? Profession? Address?
- When did you go (date/month/year)? How did you travel? (by boat, car, on foot), what border did you cross? How long did the travelling take?
- Were your documents with you or with the person who took you there?
- During the journey were you separated from others or sent to other places?

➤ **Work place (purposes)**

- How was the first place you arrived at?
- Was there any job orientation?
- How much did they say you owned them?
- Who had your documents?
- Did you do the job as agreed in the beginning?
- Did anyone force, threaten, control you to work? (yourself or your family)
- How many people worked there?
- How long were the working hours?
- Did they physically harm you?
- Were you free to move or were you detained? Where were you (in what place)?
- What would happen if you did not work as instructed?
- What was the compensation for your work?
- Were you able to contact other people?
- How was your living? (food, accommodation)?

4. Summary of the interview

After the interview, the interviewer must compare the initial information with the interview results and other existing information. In case the interviewees are adults, the interview must be based on the 3 TIP elements such as the acts, means and purpose which defines on the Law of Anti-Human Trafficking. In case the

interviewees are children under 18 years of age, the interview must be based on the 3 TIP elements such as the acts, means and purpose.

4.1. In case the victims are suspected to be TIP victims

- Village authorities, police officers, immigration officers, border soldiers, civil society organizations, Labor and Social Welfare and concerned organizations are responsible to interview and collect initial information and then provide the information to anti-TIP police officers to verify and to have written comments, confirming that these are TIP victims or not TIP victims.
- If the victims are TIP victims, there must be coordination with concerned organizations immediately to provide support and protection as well as to prosecute the perpetrators according to legal procedures.
- If the victims are not TIP victims, the legal procedures and concerned laws and regulations must be followed.

4.2 In case, there is doubt that the victims are not TIP victims

The concerned organizations must provide initial information to the concerned police officers to check according with laws, regulations and legislations.

Part III. Comparison of differences between TIPs and other offences, laws and conventions that Lao PDR is a party to.

This guideline shows the comparison between TIPs and other offences, laws and conventions that Lao PDR is party to in the following tables:

Table: A comparison between TIP and prostitution, prostitution business, pornography, legal marriage (the Law on Family), TIP and fraudulent marriage, child adoption, child pedophilia, child sexual abuse

Type of crime	Acts	Means	Purpose
Elements of TIP (article 10-12 on the	- Seeking - Aduction	- Recruitment - Advice - Deception	- Labour exploitatoin

Law of Anti-Human Trafficking)	- Harboring or proving hiding place - Movement - Transport or transfer, receipt of foreigners or Lao nationals or other offences related to TIPs	- Payments, lure - Encouragement - Abuse of power - Treath, coercion - Debt bounded - Child adoption - Decieved child adoption - Decieved engagement - Decieved wedding - Pregnancy - Begger - Pornographic photos taking and presentation and others	- Sexual exploitation - Prostitution - Forced prostitution - Slavery - Organ cut off for sale and ohter illigal purposes and things that are in conflict with fine trandition and laws of the country and ohter purposes for benefits
Self prostitution (Article 131on Penal Code)	- This is to prostitute oneself for others' pleasure - 18 years old and above - <i>Not victims</i>	- This happens based on the notion of the ones prostituting themselves <i>Volunteerily</i>	For economic-financial purpose - No exploitation
Prostitution (article 132 on Penal Code)	- Haboring	- Facilitation the sexual service	- For economic-financial purpose

	- Contacting, soliciting, seeking but not harboring - receipt of foreigners or Lao nationals or other - No victims	- Earn income by prostituting others - Volunteer	- by prostituting others - No exploitation
Dissemination of pornographic materials (article 138 on Penal Code)	- Production of - Procession of: Magazines, photos, videos and other pornographic materials that are in conflict with fine tradition of the country	- Sale and dissimulation of different materials	- For economic benefits - To denigration of dignity, making shame for others - No exploitation
Legal wedding (article 6,6/1 c]t part 2 of Family Law)	- 18 years and above - Love, agreed to marry voluntarily	- Engagement - Asking permission from parents - Register marriage - Wedding ceremony	To make a family according to laws, with aim to build, manage and protect a happy family as a good element of society
Decieved wedding (Article 2 on the Law of Anti-Human Trafficking)	Not for love	Deception	Exploitation
Child adoption (Decree No. 194 on Child Adoption)	- Children to be adopted must be under 18 years old.	- Submit a request letter to the Village Chief where the child	- With aim to build, manage and protect a happy family as a

	- Foster parents must be older than 18 years old at time of request letter submission and the age gap between the foster parents and the child must be more than 18 years. - Foster parents do not have waivers from the parenting responsibilities and must meet the economic requirements. - There must be a written consent of both foster parents and a written consent of the child's parents unless the child has no parents or the parents are capable to be parents or missing people. - If the child is 18 years old and above, there must be consent of the child, too.	lives for consideration and the time frame for consideration is 1 month, if there is no problem there will be an Agreement on Child Adoption to be sent to the Family Registration Authority	good element of society
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Peadophilia (Article 89 on the Law of Protection of the rights and Interests of Children.	- Recruitment. - Having sexual intercourse with boys or girls. - Boys-girls aged 12-18.	- Deception. - Offering money or something in return. - Offering benefits in a form of interests	To have sexual intercourse with boys or girls.
Child sexual abuse (Article 129 on the Law of Protection of the rights and Interests of Children)	- Recruitment. - Having sexual intercourse with boys or girls. Boys-girls aged 12-15.	Having sexual intercourse with boys or girls with the consents of children	To have sexual intercourse with boys or girls

Table: A comparison of the difference between TIPs and illegal migration

	TIPs (adults)	TIPs (children)	Illegal migration
Victims	Above 18 years of age	Below 18	Anyone
Acts	Must have an act as stipulated above	Must have an act as stipulated above	Like people smuggling
Means	Must have a mean as stipulated above	No need	
Purpose	Exploitation	Exploitation	
Consent of victims	No need if there is a mean used	No need and no need to have means	People who have been smuggled agreed to be so
Border crossing	No need	No need	Need