



# How to Conduct Mock Trials and Investigation Simulations Based on Trafficking in Persons Cases

Trainer's Manual



**UNODC**

United Nations Office on Drugs and Crime



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## ACKNOWLEDGEMENTS

The present Manual was developed by the Human Trafficking and Migrant Smuggling Section of the United Nations Office on Drugs and Crime (UNODC) headed by Ilias Chatzis, under the substantive guidance of Panagiotis Papadimitriou and Alline Pedra Jorge. The Manual was prepared by Rahel Gershuni, international human trafficking expert and scholar.

The development of the Manual was initiated in 2019 by the Human Trafficking and Migrant Smuggling Section and the Regional Office for Middle East and North Africa (ROMENA), with financial support from the Government of the United Kingdom and the Government of the United States of America. A first draft of the Manual was prepared by Sandra Kozeschnik, international consultant, based on the discussions held during an expert group meeting (EGM) organized by UNODC in Vienna, from 19 to 21 June 2019. The final draft of the Manual was reviewed and discussed during an EGM held online on 9 and 10 March 2023.

UNODC extends its thanks to the practitioners, academics and experts who attended the EGMs and provided valuable contributions and feedback: Mohanad Al-Dweikat, Isabelle Algoet, Sara Bezzazi, Mohamed Ezzat, Anna Cornacchio, Lucia Gallegos, Mary Greer, Hava Karrie, Aondoaver Kuttuh, Megan Hjelle, -Lantsman, Alejandra Mangano, Juliana Rexha, Kees Klomp, Paul Dave Newton, Maarten Noordzij, Juanita Ospina Perdomo, Olivier Peyroux, Barbara Sidoti, Ralph Simpson, Erwann Tor, Frances Wallman who attended the EGMs and provided valuable insights and feedback.

UNODC would also like to thank former and current UNODC colleagues, Elsa Papageorgiou, for her extensive work on the first draft of the Manual, Abimbola Adewumi, Amjad Al-Adarbeh, Victor Aguirre, Silke Albert, Siham Al Figuigui, Giorgina Alfonso, Jeptum Bargoria, Sara Bentefrit, Colin Craig, Tiphane Crittin, Eltahir Eltahir, Natalia Espinoza, Shahida Gillani, Banele Kunene, Jee Aei Lee, Euridice Marquez, Carolina Morales, Anusha Munasinghe, Samantha Munodawafa, Annalisa Pauciullo, Carlos Perez, Aspasia Plakantonaki, Davor Raus, Zoi Sakelliadou, Gilberto Zuleta and Seny Roger Yao, as well as former UNODC interns Esther Ihowa and Nazmun Nahar for their contributions.

This Manual was made possible through support provided by the United States Department of State. The opinions expressed herein are those of UNODC and do not necessarily reflect the views of the United States Department of State.



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# 1. INTRODUCTION

## 1.1. Background

Trafficking in persons is a prevalent phenomenon across the world. It violates the dignity, autonomy and liberty of human beings and has been targeted by various international conventions, especially by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Protocol).

However, despite the gravity of the phenomenon, its prevalence and the sincere attempts of the international community to address it, there do not seem to be many successful investigations, prosecutions and convictions, in view of the complexity of the crime and the many evidential pitfalls which characterize it. It is for this reason that there is a need for capacity building worldwide in order to cull the insights and good practices of various States and international organizations.

As the guardian of the Protocol, UNODC plays a leading role in strengthening and coordinating the criminal justice response of Member States to human trafficking. UNODC offers practical specialized assistance to Member States, including the development of local capacity and expertise to investigate and prosecute the crime through evidence and case-based trainings

and capacity building activities, such as mock trials and simulated investigations.

Mock trials and simulated investigations allow participants to analyze the various manifestations of the crime, as well as the many complexities and challenges surrounding the investigation, prosecution and adjudication of trafficking cases.

UNODC has carried out more than 30 mock trial trainings which revolve around trafficking in persons, reaching a total of approximately 1,300 participants in Algeria, Bahrain, Bolivia, Brazil, Cabo Verde, Colombia, Egypt, Ethiopia, Guatemala, Guinea, India, Jordan, Mauritania, Mexico, Montenegro, Morocco, Niger, Nigeria, Panama, Peru, Sierra Leone, Sri Lanka, Sudan, Surinam, Serbia and Tunisia. Some of these trainings included both a simulated investigation and a mock trial, while some included only simulated investigations or only mock trials. These exercises have provided UNODC with a wealth of experience in delivering anti-trafficking in persons trainings with these tools and an ability to address the issues which may arise.

This manual was drafted to enable the planners of mock trials and simulated investigations on trafficking in persons to better conceptualize, prepare and implement them around the globe. It does so by offering a simple



step-by-step guide to follow when planning to carry out these kinds of trainings. However, while it stresses the core elements of the exercises, it also offers various options which can be chosen along the way.

The manual addresses the methodology; the content of the exercises; the stages which should be followed; the issues which arise at every stage; the roles which can be played; the tools which can be used; and the resources which can assist practitioners. Along with the mainstream mock trial, it also offers alternative kinds of exercises, for example a simplified mock trial during which witnesses are not heard; and a regional or international mock trial rather than a national one.

While the bulk of this manual addresses mock trials, the last section is devoted to simulated investigations. This section covers the core characteristics of a simulated investigation; the content, stages, and tools of such a simulation; and the issues which may arise at every stage. Such an investigation may be carried out independently of a mock trial or alongside it.

## 1.2. The tool and its utility

Mock trials are used as a tool outside the context of trafficking in persons learning.

For example, they are part of some universities' or secondary schools' programs, aimed at enhancing students' knowledge of the legal system and allowing them to practice courtroom skills in a competitive manner.<sup>1</sup>

Investigation simulations too, are used as an investigation learning tool over and beyond trafficking in persons workshops.

While these tools are used in other thematic areas of UNODC's mandate, they are particularly valuable in regard to trafficking in persons, as they allow participants to address the many substantive and evidential challenges and complexities which characterize this crime worldwide.

These are not the only interactive, case-based tools used by UNODC. For example, other successful tools include case studies with questions for thought; actual cases presented to participants and used as sources of group learning; role plays based on actual or fictional cases. All these tools appeal to criminal justice participants, accustomed to focusing on cases. However, mock trials and simulated investigations have additional advantages, as described in the next paragraphs.

A mock trial or simulated investigation is an excellent learning tool because it involves the participants in a holistic way, requiring them to identify key theoretical issues while implementing the trial or investigation practically. It can also be particularly powerful in involving the whole person, both analytically and emotionally. Moreover, when done properly, it can be more credible than other tools, such as fictitious case studies, and provides participants with controlled complexity, allowing them to tackle various issues in a learning environment which allows for mistakes.

Not the least of the advantages of the mock trial or investigation simulation derive from their reliance on the principles of adult learning. According to the literature, it has been found that adults learn best when the material is personally relevant for them; when they can participate in the learning process actively, thus "learning by doing"; when their experience is taken into account as a source of learning; and when they are engaged in a self-directed way. While theory has a place, it is best internalized if transmitted in the context of solving problems. If these principles are followed, theoretical knowledge can become part of participants' experience and transform the way they see the world.

Adult learning also leaves room for different learning styles, as it uses different methods involving feeling, observing, reflecting and doing; places an emphasis on reflection; and allows for learning by means of collaboration, rather than didactic lecturing. In addition, it combines opportunities for reflection with repeated practice in order to inculcate knowledge and skills.<sup>2</sup>

1 See for example, <https://www.19thcircuitcourt.state.il.us/1610/Guide-to-Conducting-Mock-Trials>

2 See for example: Anne A. Ghost Bear, "Technology, Learning and Individual Differences", *Journal of Adult Education*, Volume 41 No. 2 (2012), p. 27; Maria N. Gravani, "Adult Learning Principles in Designing Learning Activities for Teacher Development", *International Journal of Lifelong Education*, volume 31 No. 4 (2012), p. 419; Sarah Cornelius, Carole Gordon and Aileen Ackland, "Towards Flexible Learning for Adult Learners in Professional Contexts: An Activity - focused course design", *Interactive Learning Environments*, vol. 19, No. 4 (2011), p. 381.

These principles are at the basis of mock trials and simulated investigations, as we will see when we examine the core characteristics of these exercises. In adopting adult learning principles, these exercises provide an optimal environment for adult learning.

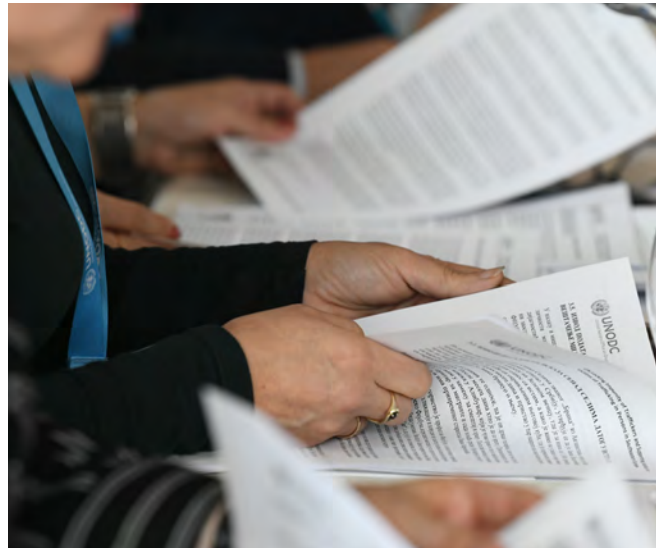
### 1.3. Short and long term goals

Mock trials and investigation simulations have short- and long-term goals.

- **Short term**, the goals are to enhance participants' skills and knowledge in terms of handling trafficking in persons cases by means of a combination of theory and practice. The goal is not to enhance general courtroom skills, but rather to strengthen practitioners' understanding of the typical substantive and evidential complexities of trafficking cases and to allow them to develop the skills to address them.
- **Long term**, these exercises can enable trainers to identify gaps in participants' practice and in national legislative provisions, thus providing an opportunity of engaging with relevant national agencies to close these gaps and providing a springboard for future capacity building. They can also aim at strengthening inter – agency cooperation and understanding, as they may involve participants from different disciplines who learn the value of other agencies and the difficulties they encounter, by means of collaborative work. As per [section 2.7](#), survivors may also be involved in the exercise, that can serve to open the minds and hearts of participants, as their experience speaks not only to the reason, but also to the emotions, thus leaving an indelible mark. Survivors, because of their lived experiences, can provide valuable skills and knowledge and advice on trauma-informed investigation and courtroom practices. In addition, the gains of the exercises can be sustained by creating a peer support group for participants; establishing and updating a database of cases and tools; and conducting follow up workshops with the same participants so that they can conduct mock trials in their own jurisdictions.

### 1.4. The manual's approach

The general approach of this manual is that no one size fits all and that no one answer may be absolute. In line with this approach, the manual describes the core characteristics of each exercise, while leaving implementation options to the discretion of trainers who must consider the needs of the participants before them. Thus, it focuses on raising issues for discussion, rather than giving one-answer solutions; on heightening the awareness of complexities, rather than providing absolute guidance.



While the exercises described in the manual require meticulous planning, they also require a good measure of flexibility in order to adapt to the needs of participants.

Culture is a prime consideration in decisions governing these exercises. This means being aware of the legal culture, organizational climates; and the cultural beliefs or practices of the given forum.

Thus, care needs to be taken:

- to include local experts in the training team;
- to have available, a pool of national experts for consultations;
- to base the exercises on a case which illustrates prevalent manifestations, patterns and issues of trafficking in persons in the particular jurisdiction;

- to solidly ground the theoretical part of the exercise on national or regional legislation, policies and practices;
- and to ensure that the exercise is in line with national legal culture and procedures, although as we will see, certain deviations from procedure can be permitted.

Organizational climate or culture can also affect participants' willingness to use certain tools like role plays or to act or to take part in the exercises with participants who are lower in the institutional hierarchy.

Attention also needs to be paid to topics which may be culturally sensitive, such as beliefs or practices which are well accepted, but problematic in terms of trafficking in persons.

Awareness of such cultural mores and assumptions is crucial, as ignoring them may lead to the failure of the exercise.

We will address these important aspects in greater detail in the next sections, which discuss the core characteristics of the mock trial and the investigation simulation.



## 2. CORE CHARACTERISTICS OF MOCK TRIALS

Mock trials are characterized by a number of core elements, some of which are conceptual and some practical. Whereas other facets of the exercise allow for the choosing among options, these are at the heart of the exercise. We note that many of these are also core characteristics of investigation simulations. However, we refer the reader to [section 13.2](#) for a particular list of core characteristics in relation to those exercises.

The following are the core characteristics of mock trials:

- 1 Creating an atmosphere of trust and cooperation:** Only by doing so can the exercise proceed smoothly, in a collaborative way and lead the participants to overcome their fear of making mistakes.
- 2 Cases based learning:** The exercises should be based on a concrete case in order to simulate reality and fully engage participants in their respective roles. This concrete case may be an actual case; an actual case tailored to the learning goals; or a made up case.
- 3 Focusing on local legal sources and patterns:** The exercises should focus on national or regional legislation, legal systems, patterns and issues, as this is the world in which the participants move. This does not mean that international sources should

be excluded, as the national and regional legislation usually relies on international sources and in particular, the Protocol which can be used as an interpretative aid. However, it should be remembered that national practitioners rely, first and foremost, on their national legal sources and in order to be of use to them, these should be emphasized.

- 4 Always considering culture:** It is imperative to consider the importance of culture from 2 standpoints:
  - **The legal and extra - legal culture of the country or region:** This may be important in assessing which topics may be sensitive; which roles or activities may be viewed as demeaning; how to handle cultures with fixed hierarchies which require that more space be given to those of higher rank or position. Organizational climates should also be considered as practitioners from different organizations may be accustomed to working in different ways. If there are cultural practices which may foster trafficking, these must be addressed in a sensitive way. Attention should also be paid to the legal culture which affects questions such as if children are considered believable.
  - **An awareness of the impact of culture on minority and foreign victims:** If prevalent kinds of victims



are from minority or foreign cultures, participants should be alerted that certain forms of behaviour, may mean different things in different cultures.

- 5 **Considering capacities and resources:** A prime consideration in implementing these exercises is not to lose sight of national or regional capacities and resources. For example, while some exercises have been held in arenas like real courtrooms, this is not always possible in terms of resources and logistics; while some exercises, and especially investigation simulations, have relied on electronic devices, such as tablets, thus allowing interaction and providing participants with information in real time, this is not always feasible in terms of resources.
- 6 **Core participants criminal justice practitioners:** The core participants in these exercises are criminal justice practitioners like judges, prosecutors and investigators. This is so because they are the main actors in criminal justice proceedings who will need to deal with and resolve complex human trafficking issues. We note that the mock trial is a particularly successful methodology with judges who are often averse to other forms of training. While it is optional whether to include other kinds of participants, this is to be encouraged, as their inclusion may provide richer learning.
- 7 **Survivors' engagement in mock trials:** The presence and input of survivors during mock trials may encourage deeper learning by engaging both emotions and mind. However, the team of trainers should be mindful of the risks of such engagement and ensure a safe and respectful space for their participation, while checking carefully that the suggested survivors are emotionally prepared to participate.
- 8 **Team of trainers characterized by a variety of experience and skills:** The team of trainers should have a variety of experience and skills and should include at least one member with local legal expertise and one member with international experience.
- 9 **Theoretical introduction as crucial:** Before embarking on the exercise itself, it is necessary to give participants some theoretical grounding so that they have the tools to proceed, are equipped with a basic modicum of knowledge and have a unified knowledge base.
- 10 **The importance of a variety of learning techniques:** The learning techniques throughout the exercise, should draw on adult learning principles, combining the opportunity to actively practice what participants have learned and to reflect on it. Frontal, didactic passing on of information should be limited. Different techniques should be encouraged and for example: case studies, role plays, group work.
- 11 **Clear ground rules:** The mock trial should be based on clear ground rules so that participants know what to expect and how to act. These should include the stages of the exercise; a description of the roles; the addressing of issues which typically arise during the exercise and the time frame. See [section 7.3.1](#) for more detail.
- 12 **The importance of varied evidence:** The mock trial itself should be based on varied kinds of evidence prepared by trainers, and not just victim statements and testimony. Examples of such additional kinds of evidence are: **statements** on the part of independent witnesses or suspects; **expert testimony**; **documentary evidence**, such as medical reports or financial records; and **physical evidence** such as biological traces, weapons or pictures. Audiotapes and videotapes may also be used if the logistics of preparing them are not too complex. Specific sources of evidence like social media communications and wiretapping information should be considered where the relevant jurisdiction permits them.
- 13 **Core emphases:** The exercises should emphasize a victim centered approach, including sensitivity to the influence of victim trauma; gender sensitivity; respect for the rights of victims and defendants; and take into account possible unconscious biases of participants, and for example, stereotypes regarding victims.
- 14 **Debriefing as crucial:** A debriefing is essential after the mock trial hearing in order to raise questions, internalize group learning and coalesce the group. Debriefings may also be useful at the conclusion of various parts of the exercise.
- 15 **Constant monitoring and evaluation:** It is crucial to maintain constant monitoring and evaluation during the course of the exercises in order to gauge what is working and what is failing to work; to



see if the learning has been internalized; to assess where changes need to be made; and to ensure that the lessons learned inform the thinking and design of subsequent activities. This is particularly important during the preparation period of the trial when mentoring of participants is of the essence (see [section 8.4](#)).

## Core Characteristics of Mock Trials

1. Creating an atmosphere of trust and cooperation;
2. Cases based learning;
3. Focusing on local legal sources and patterns;
4. Always considering culture;
5. Considering capacities and resources;
6. Core participants criminal justice practitioners;
7. Training team with a variety of experience and skills;
8. A theoretical introduction as crucial;
9. The importance of a variety of learning techniques;
10. Clear ground rules;
11. The importance of varied kinds of evidence and not just victim statements and testimony;
12. Core emphases on exercises which are victim centered (and address the influence of victim trauma), gender sensitive, emphasize the rights of parties, and uncover unconscious biases;
13. Debriefing as crucial;
14. Constant monitoring and evaluation by trainers.



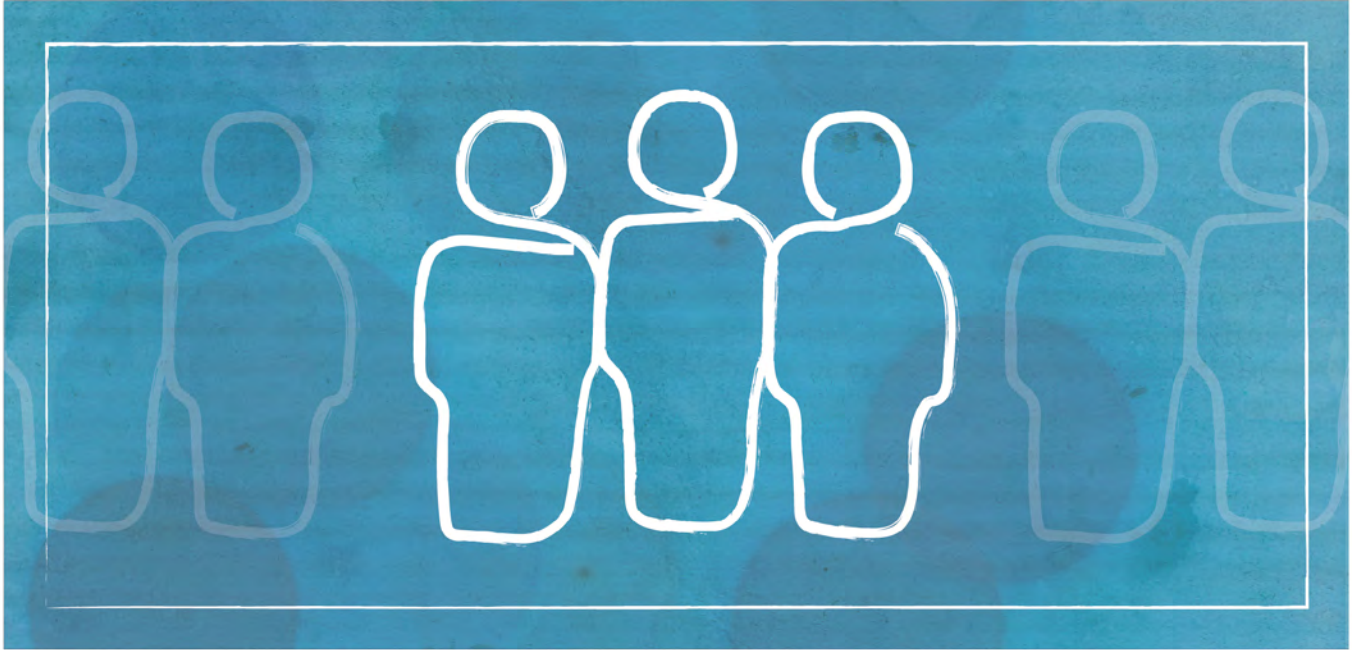
### 3. STAGES OF A MOCK TRIAL EXERCISE: A BIRD'S EYE VIEW

The stages of a mock trial exercise include the following:

- **Planning decisions** which impact on the kind of mock trial; the nature of participants and trainers; the time frame; how to encourage a climate of trust and cooperation. Consider dedicating one month for planning.
- **Choosing the case for the mock trial** which is among the most important planning decisions.
- **Theoretical presentations** in which basic issues are discussed in order to make sure that participants will be able to analyze the concepts and elements of the case (suggested duration: one day)
- **Moderator's introduction and role allocation** during which the purposes of the mock trial and the ground rules are explained and the roles allocated to the participants (suggested duration: one hour).
- **Preparation period before hearing** during which participants prepare the trial in respect of their different roles, including preparing witnesses for testimony, preparing examinations of witnesses and cross examinations, roughly drafting closing arguments and reading theoretical materials (suggested duration 2 and a half hours to 3 hours.)
- **Mock trial hearing** during which, as a rule, witnesses are heard, closing statements made, a verdict reached. Sometimes this part of the exercise is filmed in order to provide participants with the opportunity to evaluate their performance. If a simplified mock trial is preferred, this part will include the parties' oral arguments and the judges' verdict, but witnesses will not be heard (suggested duration 3 to 4 hours for full trial and one and a half hours to 2 hours for simplified mock trial).
- **The debriefing** during which trainers and participants react to the exercise, expressing what seemed beneficial and what could have been improved (suggested duration at least one hour).
- **Follow up activities** which can include setting up a reference group to discuss issues, discussing legislative gaps and gaps in practice revealed by the exercise with relevant agencies and conducting a training of the trainers with the same participants in the future so that they can hopefully conduct mock trials in their jurisdictions.

Diagram 1 - Illustrates the steps or stages of the mock trial exercise:





## 4. PRELIMINARY ISSUES DURING THE PLANNING STAGE

### 4.1. Different kinds of mock trials

#### 4.1.1. Should an investigation simulation be included?

In some jurisdictions, a mock trial was preceded by an investigation simulation regarding the same case. While characteristics of an investigation simulation are addressed in detail in [section 13](#) of this manual, it is crucial for the training team to decide, in advance, if they wish to include it, in order to leave sufficient time to address the issues which may arise.

The considerations which may play a part in the decision to include an investigation simulation or not are as follows: On the one hand, fuller learning takes place when both exercises are combined, and it is more practical and time saving to conduct them together if the intention is to implement both. However, sometimes busy practitioners cannot devote the time that this requires, which may favour conducting only one of the exercises. In addition, this, like many other activities, depends on resources.

#### 4.1.2. Should a full or simplified mock trial be held?

While a full mock trial usually includes the hearing of witnesses, a simplified mock trial can be held without. In this kind of trial, an indictment is submitted, the prosecutor and defense counsels present their arguments and a verdict is delivered by the judge or judges. Clearly, a trial which includes the testimony of witnesses will produce a richer learning environment. However, if there are time constraints or if the exercise is being conducted in a civil law system where the trial judge either hears witnesses before the trial or does not hear witnesses, the simplified mock trial is a possibility which allows participants to identify key issues, evaluate written evidence and use theoretical resources.



### 4.1.3. National vs regional or international mock trials

Although most mock trials to date have been conducted with participants from one State, several have been conducted among international or regional participants.<sup>3</sup> International or regional mock trials can be beneficial, but also require a greater degree of preparation.

The benefits lie in raising the awareness of participants to the prevalence of trafficking across the globe or region and to the similar methods of control, vulnerabilities and forms of exploitation which characterize the crime in many countries. This may lead to the realization that the issues that practitioners from different States face are similar and open the door to learning from other States' court cases and best practices. An additional benefit is the possibility of raising awareness to the value of international cooperation when trafficking takes place across borders in future real-life cases, even if the case at hand addresses only domestic trafficking. Moreover, if good rapport is established among participants, it may lead to the establishment of a reference group which can provide a forum to discuss common issues and even bring about future cooperation in real cases.

However, these trials also require more work on the part of trainers. They must provide a fictional trafficking law which can be used by all participants<sup>4</sup> or use a law based on the Protocol or a regional convention. This law should address crucial issues, and for example: the elements of crime; the difference between child and adult trafficking; a statement on victim 'consent'; and perhaps a statement on non-punishment of victims of trafficking for crimes connected to the trafficking.<sup>5</sup> These trials also require trainers to describe the procedure to be followed and the roles, and especially those of judge, prosecutor and defense counsel, in more detail than is necessary for trials involving participants

from one jurisdiction, as the participants may come from States that have very different laws and practice governing criminal proceedings and may even come from different legal systems.

A more substantive drawback of such trials is that participants will not be exploring the issues arising from their own particular national legislations and thus will learn less in that regard, although they will derive other important insights as described above.

Trainers can consider starting with a national mock trial and advancing to a regional or international mock trial.

A more detailed description of such trials appears in [section 12](#) of this manual.



## 4.2. The importance of checking the jurisdiction's laws of procedure and evidence:

Before commencing a mock trial, it is crucial to ascertain the nature of the given jurisdiction's rules of

3 A series of international mock trials for judges from a number of countries have been conducted in the Golda Meir Carmel – Mashav International Training Center in Haifa, Israel in conjunction with international partner organizations, namely UNODC, OSCE and IOM. A simplified regional mock trial was conducted by OSCE in November 2021 with judges from the OSCE area. A bilateral mock trial was conducted by UNODC in August 2022 with representatives (inter alia judges and prosecutors) from Morocco and Niger and a second mock trial was conducted in September 2022 with representatives (inter alia judges and prosecutors) from Ethiopia, Morocco and Niger.

4 In a few international mock trials, trainers drafted a trafficking law for the mythical Kingdom of Zenda. See Appendix 8 for an example.

5 According to this principle, victims of trafficking should not be penalized for crimes committed as a direct result of the trafficking or as a result of coercion during the trafficking process. See UNODC "Model Legislative Provisions against Trafficking in Persons", Vienna 2020, Article 13 from page 45 of English version at [https://www.unodc.org/documents/human-trafficking/2020/TiP\\_ModelLegislativeProvisions\\_Final.pdf](https://www.unodc.org/documents/human-trafficking/2020/TiP_ModelLegislativeProvisions_Final.pdf). See also: Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, "Policy and Legislative Recommendations towards the effective implementation of the non – punishment provision in regard to victims of trafficking" at <https://www.osce.org/files/f/documents/6/6/101002.pdf>



procedure and evidence. This is especially important as regards the differences between common law and civil law systems.

As a rule, common law jurisdictions mandate the hearing of witnesses and their examination and cross examination before the trial judge who acts as an umpire rather than an active collector of evidence. On the other hand, in some civil law jurisdictions while the examining or investigating judge may be authorized to actively gather evidence and hear witnesses, the trial judge adjudicates the case on the basis of written statements and documents and the parties' oral arguments. However, civil law jurisdictions too, may vary in their procedures. In some civil law jurisdictions, the examining judge and trial judge are one and the same functionary and in some, although there is a separate examining judge, the trial judge hears witnesses, and the parties can question them.<sup>6</sup>

Over and beyond the differences between civil and common law systems, there also exist mixed systems whose rules of procedure and evidence need to be studied. In addition, whatever the legal system, it is necessary to learn the rules of procedure and evidence which apply in the jurisdiction in which the mock trial is taking place. This knowledge is crucial for the following reasons:

- **To avoid confusion among participants:** Deviation from the rules familiar to participants may confuse them and impede learning.
- **To avoid lack of credibility:** The trainers' lack of knowledge may adversely affect their credibility.
- **To avoid too much focus on procedural matters:** whereas the focus should be on substantive learning.
- **To open the door to discovering more roles for practitioners:** Knowledge of the rules of evidence and procedure, may reveal additional roles to those commonly assumed, and for example, in certain civil law States, such as Sri Lanka or Brazil, the victim's counsel takes an active part in the trial.<sup>7</sup>

- **To enable trainers to forewarn participants as to intended deviations from procedure:** As we shall see when discussing the ground rules ([section 7.3.1](#)), it is permissible to deviate from criminal procedure in the interests of efficiency. However, this can only be done if trainers are aware of the rules of criminal procedure and forewarn participants about such deviations. For example, the training team might wish to include more judges in the bench than is generally permitted in order to allocate more active roles to participants. Similarly, the ground rules which present a clear set of instructions to participants as to how to conduct the mock trial can prohibit objections on the basis of procedural weaknesses so as to focus the learning on substantive issues, and they may allow all participants to be present throughout the hearing in the interests of learning, even though in general, witnesses are not permitted to be present when other witnesses are testifying.

## 4.3. Issues regarding participants

### 4.3.1 Kinds of practitioners who can be included beyond the core group

While the core target group of a mock trial is investigators, prosecutors and judges there are other options as well, and for example:

- immigration officials,
- border guards,
- labour inspectors,
- legal aid lawyers,
- social welfare workers,
- victim protection personnel,
- N.G.O.s,
- victim counsels in jurisdictions where legislation gives them active roles,
- survivors.

<sup>6</sup> See Lundmark, *Charting the Divide between Common and Civil Law* (Oxford University Press, 2012) and Capowski, "China's Evidentiary and Procedural Reforms, the Federal Rules of Evidence and the Harmonization of Civil and Common Law", 47 *Texas International Law Journal* (2012), 455, 459-466.

<sup>7</sup> See for example, Sri Lanka's Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 includes this role.

### 4.3.2 Trying to achieve gender balance

While broadening the kinds of participants may lead to over complexity, it can be beneficial in raising awareness to the value of such professionals and to the difficulties and challenges they face, both of which may promote future cooperation in real cases.

In many mock trials conducted by UNODC there was a gender imbalance, with men represented to a greater extent than women. This may arise because women are less represented in the roles of criminal justice practitioners, such as investigators, prosecutors and judges throughout the world. Trainers should try to achieve more of a gender balance when inviting participants, to the extent possible.

On the other hand, in many mock trials, the allocation of roles was not limited by gender. In general, this seemed to work well, but trainers need to ascertain if the local culture permits this.

### 4.3.3. Should the mock trial include mixed or similar practitioners?

As a note of caution, it is not always possible to “order” an ideal group of participants, as they may be chosen by national authorities in terms of numbers, professions, levels of knowledge or ranking in the hierarchy. However, on the assumption that it is possible to influence the choice, we raise several sub – questions:

#### Should mixed kinds of professionals be included?

Is it more beneficial to conduct separate mock trials for judges, investigators or prosecutors or to mix them?

On the one hand, there are benefits to conducting a mock trial for one kind of practitioners. This can hold true particularly in regard to judges who are sometimes reluctant to mix with other practitioners who appear before them and feel safer among their colleagues. On the other hand, there are benefits to conducting a mock

trial for a mixed group of practitioners, as the group can be enriched by the different viewpoints. Both kinds of mock trials have been successful.<sup>8</sup>

Trainers might consider starting with a homogeneous set of participants and advancing to mixed groups in time.

#### Should participants have mixed or equal levels of knowledge?

##### ► **Pros:**

It may be beneficial for participants to have equal levels of knowledge, as this allows trainers to focus on particular issues instead of beginning from the start, at the risk of tiring those participants who already know the material.

##### ► **Cons:**

It may be difficult to ascertain participants’ level of knowledge before the training, although pre-training questionnaires or inviting participants to do an e-learning module before the exercise can help. Moreover, it is possible that mixed levels of knowledge and experience can enrich the exercise by providing fresh vantage points from those who are not yet experienced.<sup>9</sup>

#### Should participants be of equal or mixed hierarchical levels?

##### ► **Pros:**

Mixing hierarchies may prove illuminating and enriching, on the condition that trainers find ways to limit dominating behaviour and open the floor to all participants, without antagonizing the higher-ranking participants who may be given special roles in order to recognize their expertise.

<sup>8</sup> Mock trials for judges alone have been successfully conducted in Sierra Leone and in Sri Lanka. A mock trial for young judicial officers was successfully conducted in Chandigarh, India. A mock trial for police officers was successfully conducted in Jaipur, India. On the other hand, a successful mock trial for mixed practitioners was conducted in Jordan where investigators, prosecutors, social welfare participants and judges participated.

<sup>9</sup> See for example, Thomas S. Kuhn, "The Structure of Scientific Revolutions" 2nd ed., University of Chicago Press (1970) p. 90 which propounds the thesis that scientific revolutions have largely been initiated by either very young people or those new to the scientific field in which they worked, as they were not as committed to the old rules and were free to espouse a fresh view. This book is available at: <https://www.lri.fr/~mbl/Stanford/CS477/papers/Kuhn-SSR-2ndEd.pdf>

► **Cons:**

Mixing low ranking and high-ranking participants can lead to domination by the high-ranking participants and reticence on the part of lower ranking participants, thus creating a layered group and militating against a collaborative spirit.

#### 4.3.4. What is the optimal number of participants?

Most successful mock trials ranged between 15 - 30 participants which allowed for the allocation of active roles for all. However, there are those of the opinion that 25 is the maximum. While there have been some successful mock trials with more than 40 or 50 participants,<sup>10</sup> the challenge is to creatively fashion active roles for all participants. Moreover, a higher number of participants will require the allocation of additional resources for catering, accommodation, etc.

#### 4.3.5. How to ascertain participants' level of knowledge before the exercise:

Clearly, it may be beneficial to know the participants' level of knowledge before the exercise so that trainers do not repeat what is already known and are free to discuss more complex issues in depth. Approaching participants before the start of the exercise may also engage them at an early stage. Moreover, if trainers choose to do this by posing questions to participants, the same questions disseminated at the close of the exercise can show what was learned.

Ascertaining the level of knowledge can be done in a number of ways:

- **Pre-training questionnaires** which illustrate the differences in levels of knowledge and allow the training team to address the most important gaps during the first hours of the training. These pre-questionnaires should be disseminated and filled out before the exercise. However, experience shows that in many cases, busy practitioners are unable to follow through.

- **Obligatory e-learning** assigned to participants before the exercise commences.
- **An online meeting before the exercise itself** to introduce basic theoretical issues and thus save time during the exercise– if logistically possible.<sup>11</sup>

The bottom line is that all these methods require a good level of organization by trainers and cooperation on the part of busy participants and this is not always the case.

If none of these methods succeeds, it remains for trainers to consider distributing pre-questionnaires at the beginning of the exercise.

### Issues regarding participants

- **Core group:** Criminal justice practitioners
- **Beyond core group:** immigration officials, border guards, labour inspectors, legal aid lawyers, social welfare workers, victim protection personnel, N.G.O.s, victim counsels, survivors.
- **Gender balance** to be encouraged.
- **Mixed or similar kinds of participants?**
  - Same professionals or different ones in the group? Pros and cons.
  - Same or different levels of knowledge? Pros and cons.
  - Similar or different hierarchical levels? Pros and cons.
- **Number of participants:** between 15-30.

<sup>10</sup> The mock trial held in Chandigarh, India in 2019 included over 50 participants and the mock trial in Sri Lanka in 2020 included over 40 participants.

<sup>11</sup> Obligatory e-learning of one module has been assigned in at least one investigation simulation conducted by UNODC. However, though this succeeded in one case, success in all cases cannot be taken for granted. Both the obligatory e-learning and the online meeting require more efforts from the team of trainers to prepare and follow up on participation. Besides, similarly to the pre-training questionnaires, they might be difficult for busy practitioners to follow through.

## 4.4. Issues regarding the team of trainers:

### 4.4.1 How to choose the team of trainers

Ideally, the team of trainers should be characterized by the following:

#### Characteristics of Team of Trainers

- **Number:** At least two
- **Skills and experience:**
  - national representatives with knowledge and experience of the national legal framework;
  - international experts and practitioners in the field of trafficking in persons, familiar with key issues and patterns;
  - experts with experience in handling mock trials in trafficking in persons cases;
  - experts in victim trauma and protection – either as part of a pool of experts called upon to present or as part of the training team.
- **Personal attributes:**
  - open mindedness, flexibility and the ability to listen.
- **Advantages of this mix:**
  - The diverse experience and knowledge of the team has the potential

to produce a thoughtful exercise which draws on different disciplines.

- The mix can highlight to participants the value of cooperation with different practitioners during the exercise and beyond it.
- Flexibility and open mindedness will better meet participants' needs.

### 4.4.2 What roles should the team of trainers perform?

The team of trainers should perform multi-varied functions, including:

- Planning the exercise by addressing the preliminary issues raised in [section 4](#) of the manual including the experts who are to present; the mix of participants; the time frame; the roles to be played; the pool of national experts to consult and ways to create a climate of trust and cooperation;
- Developing an awareness of sensitive issues in the relevant culture in consultation with local experts;
- Choosing the case on which the mock trial will be based ([section 5](#));
- Drafting the agenda;
- Deciding which theoretical issues should be addressed and preparing case studies and other learning tools for use during the theoretical presentations ([section 6](#));
- Deciding among various options regarding role allocation ([section 7](#));<sup>12</sup>
- Drafting necessary documents including ground rules, case scenarios, lists of roles and resources, a summary of the evidence and court documents (including indictments<sup>13</sup>, the statements of witness, victims and suspects before authorities, expert

<sup>12</sup> For example, what mode of role allocation to adopt; if participants should fulfill their own professional roles or switch roles; which roles should be filled by participants and which by trainers or actors (see section 7 on "Setting the stage: moderator's introduction and role allocation" for a detailed description of these issues).

<sup>13</sup> Preparing the indictment may be assigned to participants from the prosecution team as will be described in sections 3.11, 7 and 8. However, since there may not be time for them to implement this, trainers must prepare an indictment as a backup.

opinions if relevant to the case, documentary evidence relevant to the case<sup>14</sup>);

- Preparing physical objects,<sup>15</sup> including pictures to serve as evidence;
- Bringing about the translation of resources if necessary;
- Choosing experts to present during the theoretical part of the exercise;
- Facilitating and moderating various sessions;
- Mentoring of participants, and particularly during the preparation period, along with experts (see [section 8.4](#) for greater detail);
- Conferring with each other throughout the exercise “like a family”<sup>16</sup> besides conferring with national experts;
- Acting out some roles, as occurred in some mock trials<sup>17</sup> (see [section 7.2.5](#) on role allocation);
- Moderating the debriefing;
- Constant monitoring and evaluation;
- Conducting follow-up activities as described in [section 11](#) of the manual.
- As to the tasks which must be performed by trainers in an investigation simulation, see [section 13.3](#) on investigation simulations.

## 4.5. Choosing the pool of experts

As said above, one of the tasks of the training team is to choose a pool of experts who can assist them.

### 4.5.1 The functions of such a pool are:

- They can be consulted as to national law, practices, patterns, cases and culture;
- They can present during the theoretical part of the exercise;
- They can mentor participants during the preparation period, along with the team of trainers (see [section 8.4](#) for greater detail).

## 4.5.2 What kinds of experts may be required?

### Kinds of Experts

- **Multidisciplinary:** For example, experts in trafficking; national law, practice and case law; victim trauma; mock trials. We note that experts well versed in the psychological effects of trafficking are important in that they can shed light on victim behaviour.
- **National or regional experts:** who can analyze local law, procedure and evidence and are aware of cultural mores and local organizational climates.
- **From the professions of participants:** Judges, prosecutors, investigators and more.
- **Survivors:** as discussed under [section 2.7](#), survivors have in depth experience with the trafficking process, the control methods of traffickers and the trauma which results. They may also advise on court room trauma informed practices. As such, they may be included in the pool of experts and used for consultation purposes and to present as long as relevant national agencies or NGOs vouch for their emotional ability to handle this involvement. The “do no harm principle” should rule their engagement.

<sup>14</sup> See a list of possible documents which can be drafted in section 3.12 of the manual.

<sup>15</sup> See a list of physical objects which can be submitted as evidence in section 3.12 of the manual.

<sup>16</sup> This metaphor was coined by Mr. Carlos Perez, a Crime Prevention and Criminal Justice Officer, UNODC Vienna who has extensive experience with mock trials in Latin America.

<sup>17</sup> One example was a mock trial in Tunisia where trainers assumed some of these roles.



## 4.6. Time frame: optimal versus possible

► **The entire exercise:**

**Optimal:** Between 3 and 5 days

**Possible:** 2 and a half days to 3 days.

**Explanation:** In view of the fact that the possible time frame depends on resources and capacities, mock trials have been conducted for 2 days (as regards simplified mock trials) or 2 and a half days to 3 days (as regards full mock trials). If time constraints are tight, it can be decided to conduct a simplified mock trial which does not include the hearing of witnesses, but rather only oral arguments of prosecutors and defense counsel and the court's verdict.

► **Each stage of the exercise:**

- 1 **Theoretical part:** 1 day, but there were mock trials where this stage extended over 2 days whereas there were simplified mock trials which limited this part to a portion of 1 day.
- 2 **Moderator's Introduction and Role Allocation:** one hour
- 3 **Preparation Period:** 2 and a half hours to 3 hours although there were mock trials where participants had completed this stage in 2 hours.
- 4 **Hearing:** 4 hours
- 5 **Debriefing:** 1 hour

Diagram 2 - Each stage of the exercise:



## 4.7. How to promote an atmosphere of trust and cooperation:

To facilitate the exercise, trainers must work at establishing an atmosphere of trust and cooperation. This goal cannot be emphasized too much, as mock trials require collaborative work and an atmosphere of learning where participants are not afraid of making mistakes. In effect, the goal is to create a safe space where participants can feel free to be creative, to go beyond their comfort zones and to dare. Thought should be devoted as to how to achieve this goal well before the exercise itself.

### Ways for trainers to foster a climate of trust and cooperation

**Before the exercise:**

- If possible, **approach each participant individually** to call on them to contribute their experience to the exercise, thus engaging them from the start.

- Cultivate an **awareness of sensitive issues** in the given culture so as to be prepared to handle them.

#### During the exercise:

- Commence the exercise by asking participants what their **expectations** are to create a climate of listening;
- Make sure that every participant feels he has a **stake in the exercise** by means of encouraging participation and allocating active roles to all;
- Encourage a **climate of respect** towards each contribution and disallow demeaning reactions by members of the group;
- **Avoid a didactic stance** and give weight to participants' experience;
- Show **sensitivity** to participants who seem reticent and encourage their participation without exerting undue pressure;
- Use a **variety of training techniques** which fit diverse learning styles;<sup>18</sup>
- **Encourage questions** and validate insights;
- Assign **group tasks**, thus infusing participants with group spirit;
- Encourage participants to have **fun** during the exercise, as this encourages learning and a climate of trust.<sup>19</sup>

## 4.8. Choosing the physical milieu: real versus artificial arenas

Before the exercise trainers should decide if they intend to conduct the exercise wholly or partially in real arenas like real courtrooms or in artificial arenas like conference halls or training centers.

In Latin America, some investigation simulations and trials have been conducted in real arenas. On the one hand, this better approaches reality and tends to engage participants. It also encourages greater engagement by the State authorities, who need to authorize the use of courtrooms. On the other hand, it is resource intensive and requires complex logistical organization to secure the necessary authorizations.

If artificial arenas are chosen, care must be taken to ensure that there are enough rooms to allow different role players to prepare the case in relative privacy and that the requisite equipment is available such as cameras or screens to shield the victim during his or her testimony if this is decided upon by judges. See [section 4.13](#) for additional considerations as to the venue.

## 4.9. Filming the proceedings

### ► Pros:

There is merit in filming the trial, because it allows participants to review their performance independently before or during the debriefing.

### ► Cons:

- **Reserve or shame among participants:** Filming may lead to reserve among participants during the exercise. It may also shame some participants if viewed by the group and commented on, thus militating against the atmosphere of trust and cooperation which should prevail. We note that filming is more likely to disturb participants who are not accustomed to being filmed, as such people may be shocked by how they appear

<sup>18</sup> See for example, Awla, Hawkar. (2014). Learning Styles and Their Relation to Teaching Styles. International Journal of Language and Linguistics, Vol. 2, No. 3, 2014, pp. 241-245. doi: 10.11648/j.ijll.20140203.23

<sup>19</sup> See for example, Dorothy Lacardie, "The Impact of Fun and Enjoyment on Adult's Learning", Procedia – Social and Behavioral Sciences, vol. 142 (2014), p. 439; Kimberly Tyskiewicz, "Explicit Inclusion of Fun in Instruction as a Catalyst for Academic Success", (Thesis, Concordia University, St. Paul). Retrieved from [https://digitalcommons.csp.edu/cup\\_commons\\_grad\\_edd/370/](https://digitalcommons.csp.edu/cup_commons_grad_edd/370/)

before others, even if this has nothing to do with their performance in the mock trial exercise.<sup>20</sup>

- **Expense and time frame:** Filming tends to add to the expense of the exercise, as it may require hiring the services of professionals. Moreover, viewing footage during the debriefing also inevitably prolongs the exercise, as trainers will need to edit the film in order to choose which scenes should be shown.

► **Ways to mitigate disadvantages:**

- Showing the film to each person separately before the debriefing to provide an opportunity for self-criticism without the price of shame;
- Preparing the group about the filming which will take place and stressing the goals of self-learning rather than group criticism of performance;
- Comparing the group to a sports team which tries to achieve good results for the whole team;
- Using the film to evaluate groups or how well particular issues were addressed, rather than individual performance.
- Alternatively, the disadvantages can be mitigated if trainers take on themselves the bulk of the self-examination as to what did not work.

## 4.10. Drafting and implementing the agenda

The agenda should be drafted by the team of trainers with input from national counterparts to ensure that crucial local issues and patterns are covered; that the national legislation is correctly understood and addressed; and that local experts are involved in the presentations. Care should be taken to ensure that key issues are included such as: elements of the crime with an emphasis on subtle means of control; victim

‘consent’; the difference between child and adult trafficking; victim protection.

The agenda should be implemented in a flexible way to conform to the needs of participants over the course of the exercise, but not improvised from the start. The training team should also be ready to adapt to the level of knowledge of participants, if this has not been ascertained before the activity, but rather is revealed only by the questionnaires or interaction at the beginning of the mock trial.

Trainers should not forget to include coffee breaks, which are valuable, not only to provide time for refreshment, but also to allow participants to meet with one another against a more informal background and thus assist in coalescing the group.

We note that a sample agenda appears in [Appendix 1](#).

## 4.11. The preparation of the indictment:<sup>21</sup>

Two questions arise about the preparation of the indictment which should be addressed when planning the exercise:

- **Who should prepare the indictment?** Ideally, those who assume the roles of prosecutors should prepare the indictment, on the basis of the evidence distributed during the moderator’s introduction and role allocation stage.<sup>22</sup> However, trainers should prepare an indictment just in case this does not work out, as sometimes participants are not able to do this along with the other tasks required of them during the preparation period.<sup>23</sup> Moreover, if the indictment is prepared at this stage, the other participants will receive it relatively late during the preparation period, which could impair their ability to prepare the case. If an investigation simulation precedes the mock trial, the indictment can be prepared during this stage.<sup>24</sup>

20 See for example: Zajonc, R. B. (1968). Attitudinal effects of mere exposure. *Journal of Personality and Social Psychology*, 9(2, Pt.2), 1–27. <https://doi.org/10.1037/h0025848>. According to Zajonc, people show an increased liking for stimuli as they are exposed to them more and a reticence if exposed to them for the first time. On the other hand, repeated exposure to a stimulus is sufficient to improve attitudes toward that stimulus.

21 See sections on the moderator’s introduction (section 7.1); the roles and tasks of the prosecutors during the preparation period (section 8.1) and issues arising during the investigation simulation (section 13.5).

22 See sections 5 on “stages of trial: a bird’s eye view” and 7 on “setting the stage: moderator’s introduction and role allocation”.

23 See section 8 on “the preparation period”.

24 See section 13.6 on issues arising during the investigation simulation.

- **What charges should the indictment include?**  
In some mock trials, such as the one which took place in Sri Lanka in February 2020, the indictment included only a trafficking charge, whereas in others, such as the mock trials which took place in Chandigarh and Jaipur, India, held respectively in 2019 and 2020, it included alternative offences such as violations of child labour laws and bonded labour prohibitions.

Both approaches have advantages and disadvantages.

#### Pros and cons of alternative charges:

▶ **Pros:**

This approach teaches participants that a trafficking case may encompass other offences as well.

▶ **Cons:**

Even if moderators tell participants to concentrate on the trafficking charge, and even if this clearly appears in the ground rules, participants also tend to address the other charges, thus diluting the learning about trafficking.

#### Pros and cons of a charge of trafficking alone:

▶ **Pros:**

This approach focuses the trial on trafficking issues.

▶ **Cons:**

Participants may not be aware that a case of trafficking may encapsulate other charges as well. This is so even if the moderator tells participants that other charges could have been filed and even if this appears in the ground rules.

**One possible solution** is to limit the charges to trafficking, but in the indictment add a note that other charges could have been filed according to specific sections of local laws which are then noted. This was done in the mock trial in Sierra Leone in October 2021.

A sample indictment used in Sierra Leone can be found in [Appendix 5](#).

However, we note that the indictment must be drafted according to the form accepted in the given jurisdiction.

## 4.12. Which evidence should be prepared?

After the case is chosen,<sup>25</sup> trainers need to prepare the evidence which will form the basis of the case. The more varied the evidence, the better, as this passes on the message that it is not enough to rely on victim testimony which is typically plagued by weaknesses.

The different kinds of evidence can include **statements** before examining judges or investigators, including that of the victim, defendant and witnesses; **expert opinions** if relevant; **relevant documents** such as: data extracted from cell phones, employment contracts, passports, birth certificates, work permits, social media communications, advertisements in media; **physical objects** such as condoms, weapons, banknotes and marked money, tools, equipment, clothes, biological traces, traces of drugs or gunpowder, pictures of premises illustrating crowded, unhygienic conditions, lack of food in refrigerator, lack of running water and heating, inadequate bathrooms and safety equipment or pictures of persons with injuries or in poor physical condition. This can be supplemented by transcripts of audio or video recordings, if logistically possible.

Diagram 3 - The different kinds of evidence:



<sup>25</sup> See section 5 on "How to choose the case for the mock trial".

The statements before authorities and official documents like birth certificates or passports should be based on local templates supplied by national experts in order to enhance their credibility.

We note that it has been suggested to sometimes not include victim statements in the mock trial evidence.

► **Pros:**

This conveys the message that it is unwise to rely on victim statements in view of their typical weaknesses which can result in their unwillingness to testify and a subsequent ruling that they are hostile witnesses.

► **Cons:**

Despite the weaknesses of victim testimony, it is part of most cases, as even if there are other pieces of evidence, the victim is needed to provide a context for them. Including the victim testimony will also allow to precisely discuss its weaknesses and inconsistencies and how to address them.

We note that sample pieces of evidence appear in [Appendix 7](#) along with a more detailed list of kinds of evidence.

### 4.13. Thinking about the training venues and logistics

For the team to deliver high-quality training, the venues, facilities, and equipment need to be of high quality. The main training room should be big enough to host all participants and the training team comfortably and to allow them to move around for different sessions and working groups. Tables and chairs should move easily for quick regrouping. Lighting should be appropriate, allowing daylight in with the possibility to dim the light for possible screenings.

For interviewing practice and work in groups, it might be appropriate to use other smaller rooms of the hotel facilities.

For the mock trial hearing some exercises have used actual court rooms.

On the other hand, other mock trial hearings, were held in training rooms of judicial institutes. Such was the case in a mock trial hearing in Bahrain where the Judicial Institute has a training room, which resembles an actual court room which can be used for the mock-trial. Similarly, for the mock trial held in Chandigarh, India, the training was organised in the premises of the Judicial Academy of Chandigarh that looks like an actual court room.

Walls should allow for flipchart paper and posters to be hung and kept throughout the training. Additional, smaller break-out rooms for interviewing, crime scene examination or group work should be available.

If it has been decided to film the exercise or part of it, a professional familiar with filming and equipment for cutting the relevant scenes will have to be arranged.

Other equipment such as screens to shield the victim from the defendant's view (if this is ruled upon by the judges) should be prepared and checked, as should microphones, projectors, sound system to make sure that they function well.

Experience has shown that when participants are physically taken away from their usual environment and jointly stay at the training facility for the entire duration of the exercise, preferably in a location not close to their offices, they are less distracted by their daily responsibilities and usually discuss relevant aspects of the case well after the official working hours. This can also encourage the development of the mutual trust so important to the success of the exercise.





## 5. HOW TO CHOOSE THE CASE FOR THE MOCK TRIAL

Choosing the case for the mock trial is one of the most important planning decisions, as it will impact heavily on the progress of the exercise. It is for this reason that we devote a separate section to it. The choosing of the case should always be done in consultation with national counterparts in order to give weight to their insights and concerns. The following are some considerations that should be taken into account:

### 5.1 Should an actual or fictitious case be chosen?

The case may be based on an actual case or a fictitious case designed by trainers in order to conform to the local patterns and to the crucial issues. Alternatively, the case may be a composite case which is based on an actual case, but changed or added to in order to conform with the crucial issues and patterns to be addressed.

Each choice has advantages and disadvantages.

#### Pros and cons of actual cases:

- **Credibility:** Actual cases tend to be more credible. This conclusion has been borne out by the facts in actual mock trial exercises where participants have voiced doubts as to certain statements which formed part of the evidence. These doubts were erased and the message strengthened when they were told that this statement emanated from an actual case.<sup>26</sup>
- **Guidance:** An actual case also has the potential to provide guidance, even if it was adjudicated in another State and does not have the status of precedent.
- **Variety of issues:** Use of an actual case can emphasize that each case may present many kinds of issues.
- **Richer learning:** An actual case allows the trainer to reveal the actual verdict during the debriefing so that participants can compare it to theirs.

<sup>26</sup> This insight was shared by an expert who participated in the mock trial in Tunisia, during the expert group meeting in June 2019.

- **May not include all the key issues:** Despite the many pros, an actual case may not include all the key issues aimed at by trainers.

#### Pros and cons of fictitious cases designed by trainers:

- **All key issues covered:** These cases have the advantage of incorporating all the issues which need to be discussed.
- **Lesser credibility:** These cases may suffer from the disadvantage of less credibility in the eyes of participants.

#### Pros of composite cases:

In order to take into account the advantages and disadvantages of each choice, it may be helpful to base the mock trial on a **composite case**, namely an actual case, which can be changed by adding to it or subtracting from it, according to the issues and patterns which are deemed important. For example, if it is important to dissect a chain of trafficking, an additional perpetrator can be added, even if the actual case concerned only one; if it is important to learn about different kinds of vulnerabilities and their impact, victims can be differentiated, even if they actually suffered from the same disability; or it can be decided to include a minor and adult victim, even if the actual case included just a minor, in order to highlight the differences between adult and child trafficking.

A list of actual cases on which a mock trial case may be based appears in [Appendix 6](#). This appendix also includes an example of a fictional case.

## 5.2 Is a case from the State or region of the mock trial to be preferred?

On the one hand, choosing a case from the State or region where the trial is taking place may be advantageous in that it will reflect local law and patterns and in that it can be used as a precedent. On the other hand, it may not incorporate all the key issues and patterns. If so, one solution might be to add those key issues in order to enjoy the advantages and obviate the disadvantages.

## 5.3 What should the level of complexity be?

While an overly simple case may not challenge participants, an overly complex case may confuse them, especially in view of the time constraints of the exercise. So a balance must be struck between these two poles while also considering that if an actual case is used, it is legitimate to remove some elements of the case in view of time constraints. This means that the number of witnesses who testify may be limited, as should the number of issues, although it is often useful to have more than one victim and more than one defendant.

## 5.4 What key issues should be included in the case?

While certain core issues should generally be included, there are naturally optional issues which depend on the local context.

- Examples of **core issues are:** elements of the crime with an emphasis on subtle ‘means’ and different forms of exploitation; consent; typical substantive and evidential problems; and the importance of victim protection.
- Examples of **optional issues** are those particularly relevant to the national or regional patterns like: victims who commit crimes; family complicity; romantic partner complicity; transnational case requiring mutual legal assistance, extradition, and/or repatriation; chain of trafficking; particular forms of exploitation such as forced begging or child labour; particular forms of vulnerability such as migrants, minorities, children.

The following paragraphs aim at giving examples of elements which may be included in the case in order to highlight important issues.

- **Elements of the crime:**
  - **The exploitation did not transpire:** This is a prevalent pattern where the traffickers are apprehended before they had the chance to exploit the victim.
  - **The use of subtle means:** Focusing on the trafficker’s **use of subtle means** like psychological coercion, abuse of power or of a position of vulnerability. Examples might include a trafficker telling his victim

that it is dangerous to leave the house for fear of being arrested; working on the victim's emotions by telling him or her that the trafficker's family is dependent on their work and that the family will starve without it; alternating abusive behaviour with small presents and rewards; telling the victim that the trafficker loves him or her, whereas no one else does.

- **The line between trafficking and violation of labour laws:** Having the case revolve around **trafficking for labour exploitation** or forced begging and sharpening the issues by not including physical abuse by the trafficker. This is a particularly important topic as it is under-identified worldwide and requires participants to draw a line between labour law violations and trafficking. Trainers can rely on the few cases which have been adjudicated and which include various relevant scenarios.<sup>27</sup>
- **The issue of consent:** This is a crucial issue which may make the difference between exoneration and conviction. It may be addressed by presenting a case with different stages of seeming consent – during the initial recruitment, in the days after arrival at the destination, and in the following months, while describing the vulnerabilities of the victim and the control methods of the trafficker which explain why the victim seemingly consented.
- **Child versus adult trafficking:** Even if the case is based on an actual case which concerns only one victim, if it is important to point to the differences between child and adult trafficking, another victim can be added.
- **Typical evidential issues:**
  - **Typical weaknesses in victim behaviour and testimony:** Examples might be failure to flee or seek help at the first opportunity; a return to the abuser; contradictions or omissions in the victim's statements; a victim who initiates approaching a trafficker; a victim who claims that the trafficker is his

best friend; a victim who has family and friends but does not turn to them for help.

- **Restrictions of freedom** which do not include physical lock and key imprisonment but rather isolation; financial inability to leave; lack of leisure time to allow planning; constant supervision.
- **Good treatment of the victims** by the trafficker, even though he exploits them. Examples might be giving them inexpensive presents; talking to them respectfully; paying them small sums on occasion; never employing force against them.
- **Exploitation of the victim by family members or romantic partners**, which can cause the victim to feel ambivalent about exposing them and require participants to draw the line between accepted chores exacted by family members and exploitation.
- **The importance of understanding other cultures** – illustrated by the behaviour of victims from minority or foreign cultures which while appearing to weaken the case, can be understood differently in the light of their cultures. One example is a victim who did not report her sexual exploitation because in her culture it was considered shameful to engage in sexual relations without marriage, even if rape was involved.<sup>28</sup>

## 5.5 Including good practices and especially victim protection steps:

It is useful to include various good practices in the case which forms the basis of the mock trial. This can include victim protection steps such as the following:

- Having the investigator cooperate with social services by sending the victim to a shelter or safehouse.
- Having the investigator ask the victim about safety risks.
- Including a social worker among the witnesses and having him or her support the victim during the

<sup>27</sup> See an analysis of such cases in UNODC's Regional Case Digest on Typical Issues in Trafficking in Persons Cases, the Southern African Region, section 4.5 at: [https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Regional\\_Case\\_Digest\\_Southern\\_Africa\\_-\\_English.pdf](https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Regional_Case_Digest_Southern_Africa_-_English.pdf); See also: Case of the Hacienda Brasil Verde Workers v. Brazil, Inter American Court of Human Rights, judgment October 20, 2016 regarding domestic trafficking for labor exploitation of vulnerable populations in Brazil on the background of a long history of slavery in the country, available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_318\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf)

NOTE: For other cases involving forced labour as form of exploitation see UNODC, Case Digest on Evidential Issues in Trafficking in Persons Cases, available at: [https://www.unodc.org/documents/human-trafficking/2017/Case\\_Digest\\_Evidential\\_Issues\\_in\\_Trafficking.pdf](https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf).

<sup>28</sup> See R. v. Kovacs [2009] 2Qd R 51, 23 December 2008, Queensland Court of Appeal Australia. The case is available in UNODC Case Law Database (UNODC Case No. AUS005).

investigator's interrogation and through follow-up afterwards.

- If a child is involved, having her or him interviewed by a professional trained in child interviewing.
- If the case is one of trafficking for sexual exploitation of a female, having the victim interviewed by a female investigation officer.
- If the victim is a foreigner, having the investigator interview her or him with the aid of an interpreter.

Concrete examples of how to include these issues appear in [Appendix 3](#) which includes sample case studies.

## 5.6 How much detail should be included?

Once again, a balance should be struck between a wealth of detail in order to allow for nuanced learning, and too much detail which may confuse participants and deflect them from the main issues.

## 5.7 Should the case be theoretically important?

It is generally useful to design or include a case dealing with gray issues of importance which can lead to deeper understanding. Examples might be a case where the victim insists that he or she wishes to remain with the trafficker; a case where the victim signed a contract with the trafficker where the conditions of exploitation were clear; or a case where the line between trafficking and violation of labour laws is tested.

## 5.8 Should the case be based on a widespread pattern in the locality?

In general, it can be useful to base a case on a prevalent pattern in the given locality, as this is most relevant for practitioners and can engage their active participation.

However, care must be taken not to focus only on trafficking for exploitation in prostitution or other forms of sexual exploitation, because other forms of exploitation are widely ignored, even though they too may be prevalent. Cross border elements may or may not be incorporated. Whether or not they are included, it should be stressed throughout the exercise that trafficking can also occur domestically, as sometimes there is a misapprehension that all trafficking is trans-border.



## 5.9 Should well-known cases be avoided?

In general, the answer is yes, in order to ensure greater learning and to avoid participants relying on existing materials, rather than preparing their own arguments and verdict. Moreover, trainers would be well advised to check if any of the participants have been directly involved in a case which they are considering. This is so, because experience has shown that this can cause defensiveness among those who participated actively in the case and thus impact negatively on the climate of learning and cooperation which should be present.





## 6. THEORETICAL PRESENTATIONS

It is essential to precede the actual mock trial by a series of short theoretical presentations so that all participants are on the same page and equipped to address the substantive and evidential issues which arise in the case which forms the basis of the mock trial. We note that if the mock trial is preceded by an investigation simulation, the theoretical part can be delivered prior to the investigation simulation. Optimally, a day should be allocated to this stage of the exercise, although there have been successful mock trials where less time was allocated.<sup>29</sup>

The following issues arise:

### 6.1. Which topics should be covered?

#### Core topics:

While naturally the topics covered will depend on the case at hand, there are core issues which should always be addressed. These include the following:

- 1 **Elements of the crime** and the issues they raise. Examples are issues in respect of the ‘act’ element such as the question if movement is required; issues in respect of the ‘means’ element such as a discussion of subtle means of control like ‘abuse of a position of vulnerability’ or psychological coercion; how to interpret the ‘purposes of exploitation’ in the national trafficking legislation.
- 2 **The victim’s consent:** The variety of behaviour and statements which can give rise to this issue and how seeming consent can be explained; the Protocol’s statement on the irrelevance of consent.
- 3 **Differences between child and adult trafficking.**
- 4 **Typical evidential issues** which should include the building blocks of trafficking cases<sup>30</sup> and typical weaknesses<sup>31</sup> and for example problematic victim behaviour and testimony and how to address it, including how behaviour and testimony can be affected by trauma and the impact of stereotypes and myths on the assessment of victim behaviour. These can refer to gender, ethnicity, religion,

<sup>29</sup> NOTE: Even if it is decided to conduct a simplified mock trial, a theoretical part is of the essence so that participants are equipped to address the issues in the case and have a common level of knowledge. However, in view of time constraints, the duration may be shorter. Even if this is the case, presenters should still rely on interactive methods rather than didactic lectures.

<sup>30</sup> These building blocks appear in section 3.2 of UNODC’s Case Digest on Evidential Issues in Trafficking in Persons Cases (Case Digest), available at [https://www.unodc.org/documents/human-trafficking/2017/Case\\_Digest\\_Evidential\\_Issues\\_in\\_Trafficking.pdf](https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf).

<sup>31</sup> These weaknesses appear in section 2.2.1 of the Case Digest and section 3.3.



migrants. An example might be the assumption that a strong man cannot be trafficked or that migrants are happy to work for low wages and under poor conditions.

- 5 **Victim protection:** Its importance for the victim and the success of the case; the steps that can be taken to ensure it, including steps aimed at protection in the courtroom (such as ruling that the case should be heard in camera or that the victim should be heard behind a screen or that a foreign victim should be heard with the aid of an interpreter<sup>32</sup>); the non-punishment principle<sup>33</sup> and the importance of compensation or restitution.
- 6 **Balance between victim protection and defendant's rights:** This must always be borne in mind in light of Article 6(2)(b) of the Protocol which recognizes the importance of enabling the victim to be heard, but without prejudice to the defendant's rights.
- 7 **Sentencing guidelines:** In view of the fact that sentencing is not always commensurate to the gravity of the offence in trafficking cases, it may be important to devote some portion of the exercise to discussing sentencing, including the importance of compensation or restitution to the victim.

### Optional topics

These will depend on the nature of the mock trial, the case chosen, and local patterns and issues. Non-exhaustive examples may include:

- 1 The differences and intersections between trafficking and migrant smuggling.
- 2 The importance of specific kinds of evidence gathering techniques like financial tracking, social media evidence, wiretapping, surveillance.
- 3 The impact of vulnerabilities on trafficking cases, dwelling on those which are particularly relevant to the national or regional context.

- 4 Typical control methods of traffickers such as family complicity, the complicity of romantic partners, certain forms of deception.<sup>34</sup>
- 5 Prevalent forms of exploitation in the State or region such as trafficking for labour exploitation, begging, child labour, forced marriage.
- 6 The impact of culture, gender and age on interpreting victim behaviour. This will apply in particular, if the victim is a foreigner, or derives from a minority ethnicity.

## Which topics should be covered?

### Core topics:

- Elements of the crime
- The victim's consent
- Child and adult trafficking
- Typical evidential issues
- Victim protection
- Sentencing
- Balancing victim protection and the rights of the defendant

### Examples of optional topics:

- Trafficking versus migrant smuggling
- Specific kinds of evidence gathering
- The impact of vulnerabilities
- Typical control methods
- Prevalent forms of exploitation
- Impact of culture on victim behaviour

<sup>32</sup> As to the importance of interpreters as a victim protection step, see UNODC's Anti – Human trafficking manual for criminal justice practitioners, module 10, p. 2.

<sup>33</sup> According to this principle, victims of trafficking should not be penalized for crimes committed as a direct result of the trafficking or as a result of coercion during the trafficking process. See footnote 7 for references about this principle.

<sup>34</sup> For more guidance on control methods, see UNODC's Anti – Human trafficking manual for criminal justice practitioners, module 4. See also UNODC's Global case digest and regional digest for the southern African region previously cited.

## 6.2. Which sources should be used?

Whether core issues or optional issues are addressed, attention should be paid to both international and national or regional sources. National sources are paramount, as practitioners need to handle trials on the basis of these sources. International and regional sources are important to provide the context of national legislation and be used as interpretative aids.

### International sources:

Examples are the Protocol and relevant regional conventions.<sup>35</sup> In addition, various sources prepared by international organizations can be of value. Examples are UNODC's Model Legislative Provisions against Trafficking in Persons;<sup>36</sup> UNODC's Case Digest on Evidential Issues in Trafficking in Persons Cases (Case Digest);<sup>37</sup> UNODC's Regional Case Digest on Typical Issues in Trafficking in Persons Cases for the Southern African Region;<sup>38</sup> UNODC's Case Law Database;<sup>39</sup> UNODC's Issue Papers;<sup>40</sup> OSCE's "A summary of challenges facing legal responses to human trafficking for labour exploitation in the OSCE region";<sup>41</sup> OSCE's "Policy and legislative recommendations towards the effective implementation of the non – punishment provision with regard to victims of trafficking."<sup>42</sup>

Trainers should try to acquaint participants with UNODC's Case Digest, as they will be asked to cite cases during their arguments and verdict.

### National sources:

They should include the relevant trafficking legislation; allied criminal offences like slavery, forced labour, detention of identity and travel documents, abduction; relevant labour legislation; relevant child welfare legislation; relevant victim protection legislation; relevant immigration legislation; relevant money laundering legislation; relevant criminal procedure and evidence legislation. They should also include the national constitution if it includes trafficking, slavery or forced labour provisions. If there are important local cases, they should be noted and distributed. Additional sources which can be used are national plans, national referral mechanisms and the standard operating procedures which accompany them.

A more detailed list of resources appears in [Appendix 9](#).

## 6.3. Which methodology should be used?

The methodology to be used in the theoretical presentations is of a piece with the general mock trial methodology. Both rely on adult learning principles, as expounded in [section 1.2](#) and [section 2.9](#).

Thus, learning should be interactive, rather than solely by means of frontal lectures, thus allowing participants to learn by doing and to enrich the group by means of their own experience. It should allow for self-directed work and focus on problem solving. In addition, it should emphasize what is relevant to participants in terms of the exercise and strive to accommodate different learning styles by means of a variety of tools. It should encourage collaboration by means of group work.

35 Examples of regional conventions are The Council of Europe Convention on Action against Trafficking in Human Beings; American Convention on Human Rights; Arab Charter on Human Rights, 2004; The African Charter on the Rights and Welfare of the Child; Association of Southeast Asian Nations Convention against Trafficking in Persons particularly Women and Children.

36 Available at: [https://www.unodc.org/documents/human-trafficking/2020/TIP\\_ModelLegislativeProvisions\\_Final.pdf](https://www.unodc.org/documents/human-trafficking/2020/TIP_ModelLegislativeProvisions_Final.pdf)

37 Available at: [https://www.unodc.org/documents/human-trafficking/2017/Case\\_Digest\\_Evidential\\_Issues\\_in\\_Trafficking.pdf](https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf)

38 Available at: [https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Regional\\_Case\\_Digest\\_Southern\\_Africa\\_-\\_English.pdf](https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Regional_Case_Digest_Southern_Africa_-_English.pdf)

39 Available at: [https://sherloc.unodc.org/cld/v3/sherloc/cldb/search.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23\\_el.caseLaw\\_crimeTypes\\_s%22,%22value%22:%22Trafficking%20in%20persons%22%7D%5D,%22sortings%22:%22%22%7D](https://sherloc.unodc.org/cld/v3/sherloc/cldb/search.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23_el.caseLaw_crimeTypes_s%22,%22value%22:%22Trafficking%20in%20persons%22%7D%5D,%22sortings%22:%22%22%7D)

40 UNODC. Issue papers include: Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons, available at [https://www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf); The role of 'consent' in the trafficking in persons Protocol, available at [https://www.unodc.org/documents/humantrafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](https://www.unodc.org/documents/humantrafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf); The concept of 'exploitation' in the trafficking in persons Protocol, available at [https://www.unodc.org/documents/congress/backgroundinformation/Human\\_Trafficking/UNODC\\_2015\\_Issue\\_Paper\\_Exploitation.pdf](https://www.unodc.org/documents/congress/backgroundinformation/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf)

41 Available at: <https://www.osce.org/files/f/documents/0/5/24342.pdf>

42 Available at: <https://www.osce.org/files/f/documents/6/6/101002.pdf>

Such a methodology includes constant practice while leaving room and time for reflection at every stage. This requires trainers to leave time margins and not to squeeze the time frame to the limit, which may impede reflection.

## 6.4. Which tools can be used?

### 6.4.1 Guiding principle

Tools in line with the methodology based on adult learning principles can vary widely. However, a guiding principle, when considering which tools to use, is sensitivity to the local culture which may view certain tools as demeaning or infantilizing. Care should be taken to consult local experts about this issue.

### 6.4.2 Examples of tools

Some non-exhaustive examples of tools might include:

- **Short lectures** interspersed with interactive work which can be done in groups, pairs or by means of individual work, to be discussed later on in plenary, thus providing an opportunity for mutual learning and collaboration, and accommodating the different learning styles of participants, according to the principles of adult learning.
- **Multi-disciplinary presenters** with hands on experience in order to provide variety and practical knowledge. A survivor can be considered as a presenter, but care should be taken to ensure that he or she is emotionally ready to do so.
- **National or regional experts** as presenters to describe local legislation, issues and patterns in order to ensure relevance.
- **Films or other media** as a springboard for discussion.
- **Short drills** to practice the application of knowledge gained and to vary lectures.
- **Case studies** which can proceed from the simple to the complex (see [section 6.4.3](#)).
- **Role plays.**
- **Tablets:** Providing participants with tablets equipped with information and questions to avoid

loss of time and stress the self-directed character of the exercise.

- **E-learning modules**, usually before the training.
- **Online meeting before the exercise** to impart learning on basic theoretical issues, if logistically possible.
- **Packs of cards** with controversial statements and pictures to arouse discussion.
- **Points to debate:** Presenting a number of controversial points for debate and discussion in order to bring to the surface misunderstandings and stereotypes.

### 6.4.3. Issues in regard to case studies

**Their value:**

Case studies are a tried and tested tool in workshops for legal practitioners, as they provide a familiar climate of analysis by means of cases. They also accord with the principles of adult learning, by allowing for interactive discussion and problem solving in realistic settings and by drawing on the experience of participants. In addition, if conducted by means of group work they encourage collaborative thinking. Moreover, stories have always served as a medium of learning throughout human history, which gives this tool a yet stronger foundation.

**Kinds of case studies:**

Case studies may be based on actual cases or fashioned by trainers to conform to the questions at hand. Alternatively, they may be a composite - based on actual cases, but subtracted from or added to in order to conform with the aims of the training. Moreover, cases may be presented in stages, from a clear case to one which offers more of a challenge.

- **Actual, fictional or composite cases?** Each kind of case study has advantages and disadvantages. See [section 5.1](#) of the manual for an analysis.
- **A case presented in stages:**<sup>43</sup> It might be valuable to present a case in stages, proceeding from a black and white case and subsequently changing

<sup>43</sup> This method was described in an OSCE Judge Validation Workshop by Judge Kees Klomp from the Netherlands.

the facts in order to present more of a challenge. For example, in a trafficking for labour exploitation case, the first version might include difficult living and working conditions, no payment at all, locking workers in the premises, and beating them in order to force them to work. The next stage might change the scenario by presenting a case with no violence and with payment of a minimum wage. A further stage might be lack of safety equipment for workers but minimum wage, and no violence or lock and key imprisonment.

#### Modes of Implementation:

To encourage discussion and focus participants on the salient issues, case studies should be accompanied by “questions for thought” which provide guidance to participants in analysing the issues. The case study learning may be implemented in a number of ways:

- **Dividing participants into groups:** Participants may be divided into groups, and requested to appoint a rapporteur who will present answers to all or only some of the questions in plenary. This mode of implementation has the advantage of encouraging free discussion in small groups and involving all the participants actively, even those who may be reticent to express their views in plenary. It also encourages collaborative work.
- **Individual reading of cases followed by discussion in plenary:** It may be felt to be more appropriate to allow each participant to read the case individually and form his or her opinion of the answers to the questions, later to be discussed in plenary. This might accommodate a more individualistic learning style.
- **Using the case study as an opportunity to introduce local cases and the Case Digest:** Since participants will be required to support their arguments and verdict by means of cases during the mock trial itself, it can be useful to introduce this material during a case study exercise.

Examples of concrete case studies based on both actual and fictitious cases appear in [Appendix 3](#).

#### 6.4.4. Issues in regard to role plays

##### Value of tool:

Role plays simulate real situations and allow participants to practice skills by taking on various roles in a scenario, or by playing their own professional functions vis a vis other participants who take on other roles.

There is a number of advantages to this tool. Firstly, it is in line with adult learning principles which stress learning by doing. Secondly, role plays tend to involve the whole person, rather than just his or her analytical rational side which makes it more likely that the learning will be better retained and provides a better opportunity for reflection. It also provides a safe environment to practice new skills, unlike a courtroom trial or investigation which may be fraught with tension. Moreover, a role play requires group work which encourages collaboration and may lead to enhanced learning, as members of the group reinforce one another.

##### The need for caution:

However, before using this tool, it is crucial to explore both the national culture and the organizational climate of participants. In some cultures, acting a role may be considered to be demeaning, and especially when high ranking practitioners are involved. In addition, certain functionaries, like judges are accustomed to being perceived as neutral and high above the fray and may feel uncomfortable acting out a role.

On the other hand, experience has shown that this tool can be effective for practitioners, including judges, and that they often accept it and even enjoy this kind of departure from their ordinary roles.

What is the solution? Sometimes this concern may be mitigated if all or many participants are involved in this kind of exercise, thus encouraging one another. However, it is up to the trainer to be sensitive and adapt himself to the reactions of participants. He or she should never force participants to implement this tool if they are clearly uncomfortable with it.

##### When is the tool particularly appropriate?

Since the main purpose of the tool is to enhance skills, it is particularly appropriate during investigation

simulations to practice interviewing witnesses and victims in particular. However, it can also be used to develop skills during the stage of theoretical presentations before a mock trial.

See [Appendix 4](#) for concrete examples of role plays.

#### 6.4.5 Issues in regard to the use of tablets or e-learning

In several investigation simulations in Latin America, tablets were used in order to allow participants to cover theoretical material without spending valuable time listening to presentations. Information was entered into the tablets, followed by questions which participants were required to answer. The advantage of this tool is that it avoids loss of time, stresses the self-directed character of the exercise and allows participants to focus on the practical parts.

The same goes for e-learning. In several places, participants were required to do e-learning modules before the beginning of the training, thus giving them a common base of information and avoiding loss of time. However, while these tools have been used successfully, tablets clearly require resources which are not always available. In addition, both tools labour under disadvantages, in that they do not enhance collaborative skills, are not enriched by the experience and comments of other members of the group and may leave participants with unanswered questions. Moreover, there are advantages to human contact in promoting learning.<sup>44</sup>

Perhaps the solution to this dilemma lies in using these tools partially to address less complex issues and not as a substitute for other forms of learning – if resources allow.

#### 6.4.6. Issues in regard to the pack of cards/points to debate tools

##### Description of pack of cards tool:

A training tool which may stimulate brainstorming during the theoretical part of the exercise is a **pack of**

**cards** on which there can appear **pictures** which reflect trafficking situations or stereotypes; thought provoking **quotes** from cases or practitioners; sentences which



express **various approaches**; or **questions**. While this idea can be implemented in a simple way, by distributing notes with pictures and content, it is yet more powerful if a pack of cards is designed, resembling playing cards.

The texts which appear on the cards must be short to fit into a card format and to stimulate associative thinking. Some examples might be:

- A victim – “It was my fault. I was so stupid and naïve.” Should this close the case?
- People cannot be trafficked by their family members. Is this true?
- An articulate, intelligent woman cannot be trafficked. Is this true? (This can be supplemented by the picture of a woman in a suit and with a briefcase)
- A strong, capable man cannot be trafficked. (This can be supplemented by the picture of a solidly built, muscular man).
- A victim – “The suspect was my best friend; he took care of me.” Does this close the case?

<sup>44</sup> See for example: Karel Kreijns, Paul A. Kirschner, Wim Jochems, "Identifying the pitfalls for social interaction in computer-supported collaborative learning environments: a review of the research", *Computers in Human Behavior* 19 (2003) 335–353. See also, in regard to student perceptions of their best learning environment, Hurst, B., Wallace, R., & Nixon, S. B. (2013), "The Impact of Social Interaction on Student Learning" *Reading Horizons: A Journal of Literacy and Language Arts*, 52 (4). Retrieved from [https://scholarworks.wmich.edu/reading\\_horizons/vol52/iss4/5](https://scholarworks.wmich.edu/reading_horizons/vol52/iss4/5).



- Can trafficking occur in a marriage?
- If one victim protests the exploitation and the other does not, does this close the case regarding the one who acquiesces?

**Pictures** on cards may take the form of real scenes which have been photographed or pictures or cartoons which have been drawn. They may be used in two ways to stimulate discussion:

- **The picture alone can be shown:** For example, a picture may be shown of barbed wire around premises. The trainer could ask how this might be connected to trafficking and if so, if it is enough to constitute trafficking. He might also ask if premises where workers are free to come and go should close the case. Alternatively, a picture could depict crowded conditions with bedding on the floor, rats running rampant and no toilets, and the trainer might ask participants to react or add specific questions as to how this might be connected to trafficking and if it is enough to constitute trafficking.
- **Combined with word content:** Cards with quotes can be combined with pictures. For example, a quote like *"The suspect is my best friend"* can be illustrated by a picture of a child holding the hand of an adult. Alternatively, the picture can be combined with a question, and for example, a picture of a victim on a family outing with the trafficker and his family may be combined with a question like: **Does good treatment negate trafficking?**

Thus, the cards may include only text, only pictures or text and pictures.

#### The points to debate tool as an alternative:

While the pack of cards tool has the advantage of stimulating creativity, trainers should check if the cultural climate allows the use of a tool which may seem like a game and thus, feel demeaning for participants. If this is the case, an alternative possibility is to present the controversial statements and pictures as points to debate, selecting two participants or two teams of participants to present different sides of the questions.

Such statements would be similar to those posed in the pack of card tool or additional examples such as:

- If the victim contradicted herself the case should be closed. True or false? Justify your answer.
- To secure a conviction it is enough to have a good testimony from the victim. True or false? Justify your answer.
- Males cannot be trafficked for sexual exploitation. True or false? Justify your answer.

#### The tools' value:

Both the pack of cards tool and the points to debate tool have the advantage of stimulating creativity and encouraging participants to discuss freely and openly. They can appeal to the whole person including mind and emotion, thus leading to deeper learning. They can be used to explore complexities and to uncover erroneous assumptions which can lead to the failure of cases. They can also contribute to group collaboration, and are flexible, in that the trainer can decide at what stage to use them and how to present them. In two workshops which implemented the pack of cards tool, it was a great success.

#### Modes of implementation:

Trainers can use cards in various ways. They may disseminate a card to each participant or to groups of participants, who may be called upon to react in plenary, and subsequently open up the discussion to the whole group. Alternatively, they may show a card or cards to the whole group and request reactions. The mode of implementation may depend on how trainers choose to support a variety of learning styles which fit different participants.

As said, the trainer can choose to present the cards as is, or add a question or comment to guide the discussion.

The cards may be used at various stages of the exercise. One possibility is to use them at the beginning of the theoretical part in order to stimulate discussion, and then return to them further on in order to gauge if participants have changed their minds. Pictures can be used at any stage of the theoretical part of the exercise.

Points to debate can be used by appointing 2 participants to express opposite sides of the issue or by using teams to do so. Alternatively, the issue can be presented to the entire group.

## Examples of tools to use during theoretical part of exercise

- Short lectures interspersed with interactive work;
- A number of presenters with hands on experience;
- National or regional experts as presenters;
- Films or other media as a spring-board for discussion;
- Short drills to practice the application of knowledge;
- Case studies;
- Role plays;
- Tablets with information and questions;
- E-learning modules, either before or during the training;
- Packs of cards with controversial statements and pictures;
- Points to debate.

### 6.5. Trainers' roles

As a rule, the training team should act like conductors of an orchestra, rather than those who play the musical instruments, during this stage of the exercise.

Like the conductor, their main role should be to guide the exercise. Thus, they choose the topics, sources and tools after consulting with local experts; recruit the

appropriate presenters; monitor the various exercises in order to evaluate their efficacy and interpose in order to point out the relevance of issues and repeat key messages.

While some members of the trainers team may also present or moderate certain sessions where their expertise is relevant. As a rule, even if they present, trainers should cultivate a listening stance rather than a didactic manner in order to conform to the principles of adult learning and to encourage problem solving by participants.

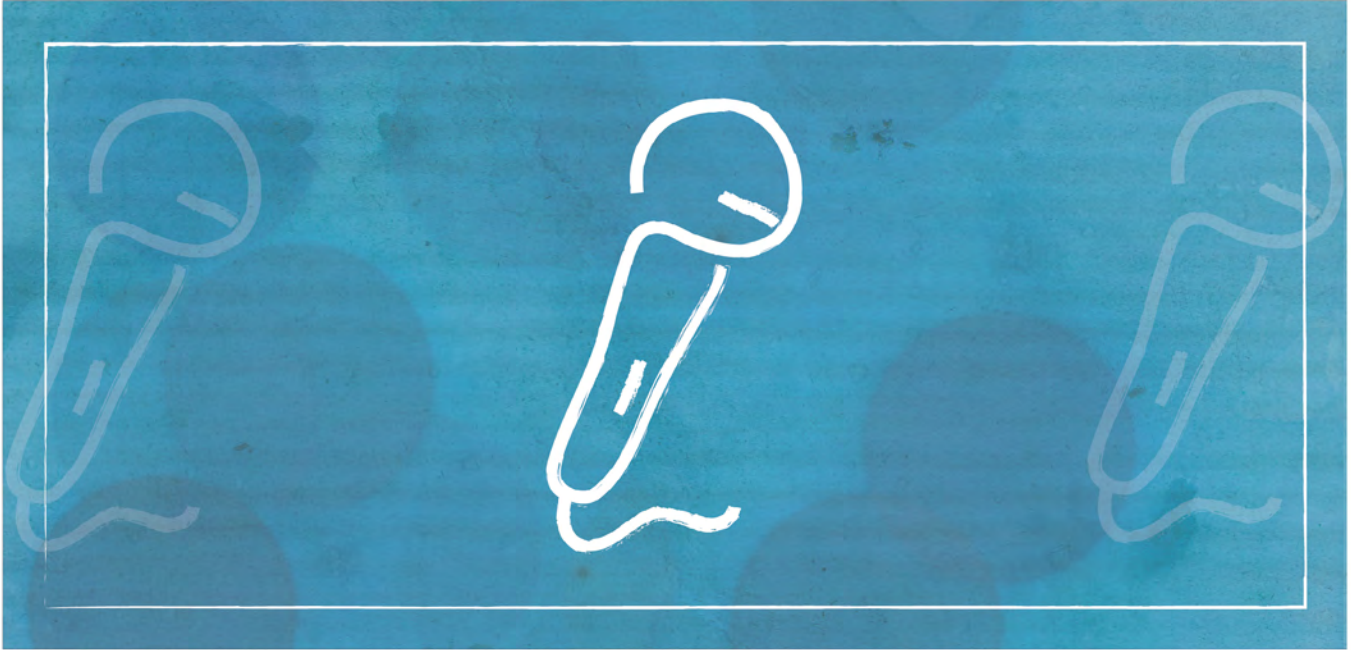
### 6.6. Other presenters' roles

As mentioned in [section 4.5](#) on “choosing the pool of experts”, it is valuable to rely on a variety of presenters with different styles and skills, thus preventing monotony and opening participants' minds to new ways of seeing issues.

The presenters, like the training team, should avoid purely didactic lectures and strive to involve the participants in the sessions. In order to do this, they can consider using the tools which appear in [section 6.4](#).

As much as possible, presenters should strive to present practical, and not only theoretical knowledge, as a function of their hands on experience. Examples of useful presentations might be by a social worker who deals with victim protection on a practical level; an expert on victim trauma who has dealt with victims on a case by case basis; a prosecutor who has handled trafficking cases; a survivor who has first hand experience with traffickers' control methods and with trauma. See [section 4.5](#) for a more detailed list of presenters.

A sample agenda in [Appendix 1](#) may be useful in planning the theoretical part of the exercise.



## 7. SETTING THE STAGE: MODERATOR'S INTRODUCTION AND ROLE ALLOCATION

Optimally, one hour should be allocated to this stage of the proceedings.

### 7.1. Introduction by moderator

The moderator should introduce the mock trial exercise to participants so that they know the aim of the exercise, its stages, the nature of the roles they are to assume and what is expected of each role at each stage. During this stage, the moderator should address the question if prosecutors should prepare the indictment.

We note that a description of the roles and what is expected of each at different stages of the exercise can be addressed after role allocation.

The introduction should also set forth rules crucial to the success of the mock trial and for example:

- The importance of keeping to the time frame of the preparation period and the actual trial hearing.
- The freedom of participants to add facts beyond the case scenario and court documents within reason, but not if they contradict the facts of the case.
- The noting of deviations from the accepted criminal procedure if these exist and for example – allowing all participants to see all court documents before the trial and to attend the entire trial even if they are witnesses who would not be permitted to be present during the testimony of other witnesses; larger benches of judges than the law allows in the interests of giving more active roles to participants.
- The limiting of objections and requests to substantive, rather than procedural or evidential topics, since the aim of the mock trial is to enhance participants' abilities to handle substantive issues. The importance of this rule can be seen by the following reactions of experts as to its central place in the ground rules.

## Practitioners on the importance of focusing on substantive issues<sup>45</sup>:

“We all tend to stress what we know, rather than exploring new terrain. So participants may tend to fall back on their procedural knowledge rather than wrestling with the new issues typical to trafficking cases. The ground rules should be drafted in order to avoid this problem.”

—

“Allowing procedural claims and objections will deflect participants from the key issues and the learning that should transpire.”

The introduction can also address other issues and for example various procedures to be adopted in the interests of saving time such as: agreeing that certain evidence will be uncontested or that an expert opinion will be submitted in writing, rather than the expert appearing in court.

During the introduction, the moderator may also explicitly encourage members of the judge group to consider drafting **minority opinions** if there are disagreements among them. Such opinions are of importance, as they serve to highlight issues and give weight to the reality that trafficking cases can present ambiguities which can lead to legitimate differences of opinion. They may also encourage members of the prosecution and defense teams to strategize during the preparation period.

**Ground rules** should be distributed to participants so that they can easily be consulted throughout the exercise. Sample ground rules and roles descriptions can be found in [Appendix 2](#).

## 7.2. Allocation of roles

After the moderator’s introduction, roles should be allocated to participants. We note that a detailed description of what each role player should do during the stages of the mock trial appears in [section 8 section 8](#) on the “Preparation period” and [section 9](#) on “The hearing”.

The following issues may arise in regard to role allocation:

### 7.2.1 Which roles?

Three roles always present are: **judge, prosecutor and defense counsel**, but unless there is extreme time pressure, it is useful to allocate additional roles and for example: victim counsel (in jurisdictions whose legislation includes this function);<sup>46</sup> investigator witness; other witnesses depending on the case scenario; expert witness, depending on the case scenario; victim, defendant.

We stress the importance of considering a **psychological expert** well versed in the impact of trauma on victim behaviour and testimony, as this can enrich the exercise.

We note that in some civil law jurisdictions where the judge does not hear witnesses, possibly the only roles to be allocated will be judges, prosecutors, defense counsels and victim counsel in jurisdictions where this functionary exists. This will also be the case if a simplified mock trial is decided upon.<sup>47</sup>

### 7.2.2 How to give each participant an active role

In the interests of learning, each participant should be given an active role in the trial. This is not always easy, especially in cases where there are many participants. How can this issue be handled? The following are a few suggestions:

<sup>45</sup> These opinions were expressed in the expert group meeting convened on March 9-10, 2023 in order to review a draft of the manual. We note that they are paraphrases of what was said.

<sup>46</sup> See for example, Sri Lanka’s Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 which includes this role.

<sup>47</sup> See section 3.1.2 on “Should a full or simplified mock trial be conducted?”

- **Victim counsels:** In jurisdictions whose legislation allows this – a victim counsel or counsels can take part.<sup>48</sup>
- **Bench of judges:** Roles can be allocated to a bench of judges, even in jurisdictions where a single judge adjudicates trafficking cases. This option has the added advantage of allowing members of the bench to do group work and enrich the exercise by conferring with one another. It also allows for majority and minority opinions. However, in these cases, the moderator should note that this is a deviation from the regular criminal procedure. We note that if a bench of judges is chosen, it will be necessary to allocate a special role to the presiding judge who will be responsible to direct the trial and to keep to the time frame.
- **Teams of prosecutors and defense counsels:** Roles can be allocated to teams of prosecutors and defense counsels with each team deciding which role should be performed by each member of the team. This option has the added advantage of allowing the teams to do group work and enrich the exercise by conferring with one another.
- **Witnesses:** Depending on the case scenario, roles can be allocated to various witnesses including expert witnesses and eye witnesses. See [section 7.2.3](#) for issues which can arise in regard to these roles.
- **Defendants and victims:** Roles can be allocated to the defendant or defendants and the victim or victims. See [section 7.2.3](#) for issues which arise in regard to these roles in general, and in particular, in regard to the role of the victim. If it is decided to have participants play these roles, another way of providing for more roles is to include more than one victim or more than one defendant.
- **More than one defendant or victim:** If it has been decided that participants should play the roles of defendant and victim, trainers can consider including 2 or more defendants and victims in the case. While the central reasons to opt for this are described in [section 5](#) of this manual on “choosing the case”, it can also benefit the exercise by providing more active roles for participants.
- **Professional observers:** While it is preferable to have all participants perform active roles in the trial, if there are too many to allow this, some mock trial exercises have used the role of “professional observers”. These participants are asked to observe the trial with an eye to pros and cons which can include gaps in legislation or practice, omission of victim protection steps, problems with the case scenario, alongside aspects which worked well. These participants can then be called upon to speak first during the debriefing. It is suggested to hand out to such role players a list of questions to guide them in their tasks. Examples might be:
  - **Issues respecting the organization of the exercise such as:** were the court documents clear enough? Did participants have enough guidance during the preparation period? Did the judges in particular have enough to do during the preparation period? Did the various role players adequately understand their roles? Would another method of role allocation have worked better? Was the time frame of the various stages optimal?
  - **Gaps in legislation, case law and practice:** such as – did the legislation impede the progress of the case? What gaps in practice could you identify? Was the relevant case law clear enough?

### 7.2.3. Issues arising in regard to various roles

#### Judges:

The role of the judges presents certain specific difficulties. Firstly, the presiding judge tends to take on a more active role than the other judges who sometimes behave passively. Secondly, whereas each of the members of the prosecution and defense teams can divide the active roles, with each examining a different witness and others preparing closing arguments, it is harder to do so in respect to a bench of judges. Thirdly, it is a challenge to define their role during the preparation period.

<sup>48</sup> An example is Sri Lanka where according to the Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015 victims are entitled to legal counsel during the investigation and trial (section 3(n)).



A possible way to encourage more active participation might be to alternate the function of presiding judge during different stages of the trial or to stress the power of each judge to ask questions during the hearing. A possible solution to the preparation period might be to suggest that judges read over the case carefully and try to find relevant cases, whether national or international via UNODC's Case Digest, in addition to conferring about the salient issues. During the preparation period, mentors might also encourage members of the judge group to consider trying to support a minority opinion, as this can serve to highlight issues as well as give judges a more active role.

We note that there are various options as to how to allocate the role of the presiding judge. Either the trainers can request volunteers for this role specifically or the identity of the presiding judge can be agreed upon by the group who will perform the role of judges.

#### Professional observers:

As said, the advantage of professional observers is that they provide roles in situations where there are many participants. The disadvantage is that they do not have a defined role during the preparation period, as they are not part of the actual hearing. This disadvantage may be surmounted by **dividing them into groups**, each of which observes the preparation period of the judges, prosecutors or defense counsels in order to assess the good points and obstacles. Alternatively, they can join the prosecution, defense or judge teams who are preparing the case and take part in the preparation, but not participate in the hearing itself in these capacities

#### Witnesses, victims, defendants

As to the issues in respect of the roles of witnesses, victims and defendants see [section 7.2.5](#) on "Who should play the roles? Participants? Actors? Trainers?"

#### 7.2.4. How to allocate roles

Roles can be assigned, selected randomly or volunteered for. Each of these methods has advantages and disadvantages.

- **Assigning roles** ensures that "strong" participants are selected for key roles such as presiding judge, but may damage the *esprit de corps* of the group, who may see some participants as favoured above others. It also classifies participants after a brief acquaintance with them, whereas some require time to demonstrate their strengths and may blossom into their roles.
- **Random selection:** Allowing participants to be randomly selected (and for example by drawing their roles from a hat) has the advantage of maintaining equality, encouraging trust and cooperation and promoting an atmosphere of fun which may further learning.<sup>49</sup> Moreover, experience shows that sometimes participants surprise trainers by blossoming into their roles, even if they were not very active before the hearing. On the other hand, this kind of role allocation may also result in poor matches between participants and roles and does not give participants a feeling of agency and choice; in addition, some participants may not feel comfortable with the role allocated to them randomly and at the same time hesitate to express their discomfort.
- **Volunteering:** Allowing participants to **volunteer** retains the advantage of group cohesion and trust. It may also give participants an opportunity to show their strengths, even if they were reticent during earlier stages of the exercise. Moreover, it has the benefit of allowing participants to express agency and choice. However, it may result in poor matches between participants and roles, although possibly less so than if roles are randomly selected.

Trainers should consider these advantages and disadvantages in choosing a method of role selection. We note that in several mock trials, relying on volunteers seemed to work well.

We also note that **the role of victim should never be assigned**, but rather chosen among volunteers, as there is no way of knowing the past experiences of participants who may have traumatic pasts which playing the victim may trigger.

<sup>49</sup> See footnote 20 for sources.

### 7.2.5 Who should play the roles? Participants? Actors? Trainers? Survivors?

While it is clear that participants should play the “legal” roles of judges, prosecutors and defense counsels, there are different approaches as to who should play the non-legal roles such as witnesses, defendants and victims.

Among the mock trials which have been conducted, in some, participants played the roles of victims, defendants and other witnesses and in some, these roles were played by actors or trainers. There are advantages and disadvantages to each option.

#### Participants?

When participants play these roles, the disadvantage is that seemingly they are not learning skills that will directly affect their professional lives, as is the case when they play classically legal roles like judges, prosecutors and defense counsels. Moreover, some participants may feel reticent at acting non-legal roles and view it as demeaning. On the other hand, playing witnesses can promote a better understanding of a case. For example, taking on the role of victims, may make practitioners more sensitive to victims’ feelings and to their typical behaviour patterns. In the mock trial which took place in Sri Lanka,<sup>50</sup> a judge who played the 15 year old female victim told us that he had deliberately volunteered for the role of minor victim in order to try to experience how such victims feel in court and that during his examination in chief and cross examination, it was difficult for him to speak of sexual matters in open court, even though he is not a fifteen year old girl with no experience of the courtroom. This was a powerful statement in favour of allowing participants to play witnesses, as it highlighted the positive changes which could arise from this.

If trainers decide to allocate these roles to participants, they should try to **maximize the learning** by distributing a description of the roles along with sources which deal with typical issues which arise in playing these roles. For example, the participant playing the victim should receive sources addressing typical weaknesses

in victim testimony and behavior, and for example sections 2.2.1 and 3.3.6 of UNODC’s Case Digest.

#### Actors?

In some mock trials, actors took on the roles of witnesses, victims and defendants. The advantage of this approach is that it allows the participants to focus on substantive roles which can enhance their professional skills. In addition, there are those who claim that schooled actors tend to be more credible than untrained participants or trainers and better able to elicit emotional reactions. The disadvantage is that actors must be trained on the topic of trafficking and given scripts in order to perform their roles. In addition, actors may add to the expenses of the exercise. We note that in Honduras the costs were defrayed by employing theater students from the university and giving them a certificate of internship at the end of the exercise. We also note that in Mexico actors used in simulated investigations and mock trials were hired for successive periods reaching a total of 5 years, thus allowing them to specialize and constantly improve their skills, and reducing the burden on trainers to prepare introductions and scripts. In case the engagement of actors is foreseen, financial means to compensate/pay them should also be envisaged at the time of planning the mock trial exercise.

#### Trainers?

In some mock trials, trainers took on the roles of witnesses, victims and defendants. This has the advantage of allowing participants to focus on substantive roles and does not entail the expense of hiring actors. Moreover, since trainers are versed in typical trafficking issues, they do not require an introduction or script. On the other hand, since they are not trained actors, they may be less credible and less able to elicit emotions on the part of participants.

#### Survivors?

As per [section 2.7](#), it is possible to involve survivors in playing the role of the victim. However, care should be taken to ascertain the emotional strength of the survivor

<sup>50</sup> This mock trial took place in February of 2020.

and his or her willingness to participate by means of national experts. On the one hand, such participation may empower the survivor, but on the other hand, it may trigger acute emotional distress.

In view of the above, in deciding who will play the roles of witnesses, victims and defendants, trainers should evaluate the advantages and disadvantages along with the characteristics of the participants and their cultural backgrounds. Like for actors, financial means to compensate survivors for the cost of their participation should also be foreseen.

### 7.2.6. Should participants take on their real-life roles or switch roles?

This issue too, was not answered uniformly in all the mock trials conducted to date. In some mock trials, participants played their own roles, whether prosecutors, investigators or judges,<sup>51</sup> whereas in others, participants played roles which were not their own.<sup>52</sup>

There are advantages and disadvantages to each approach.

When participants play their own roles, they are able to hone their professional skills which hopefully leads to a better handling of real cases. On the other hand, when participants switch roles, they can view the case from a different angle, thus enabling them more easily to creatively devise out of the box solutions. In addition, acting out a role not their own may lead to a greater understanding of the difficulties faced by these practitioners and their value, thus enhancing future cooperation.

### 7.2.7. Special considerations concerning judicial participants

When deciding on role allocation, trainers should consider if judicial participants should take part in the trial or perform a supervisory role. This will depend on the context and organizational culture of the particular jurisdiction. In some mock trials held by UNODC and other agencies, only judges and judicial officers participated. Under such circumstances, judges would

seemingly be less reluctant to assume roles, as all their colleagues would be expected to do so. However, in some organizational cultures, it might be seen as demeaning for judges to assume roles during the mock trial, especially if participants include other practitioners. In such cases, trainers can consider offering them a supervisory role and for example as mentors during the preparation period or as professional observers.



## 7.3. What materials should be provided?

Trainers should stand ready to provide the following materials to participants and others during this stage of the exercise:

### 7.3.1 Ground rules

It is crucial to distribute written ground rules to participants in order to provide a clear framework for the exercise and so that they can continually be consulted when in doubt. This is so, even if the moderator introduces the rules of the exercise, as experience shows that not all this information is absorbed immediately.

However, care should be exercised to ensure conciseness, as otherwise experience shows that participants

<sup>51</sup> One example is the mock trial which took place in Jordan in 2017.

<sup>52</sup> Examples are the mock trials in Sierra Leone in 2021 and in Sri Lanka in 2020 where judges took on roles other than their own, although some did perform the roles of judges.

do not necessarily have the patience to read the ground rules, from beginning to end, with attention.

Ground rules should include **crucial rules** such as keeping to the time frame; restricting objections to substantive rather than evidential or procedural ones; noting deviations from the local criminal procedure if these are present; noting the evidence which may be submitted by consent; to what extent participants may embellish the case; the stages of the exercise.

While ground rules may also include a **description of the roles** and what each role - player needs to do during the different stages of the exercise, this information may also be conveyed by distributing a **separate description of each role** to those who are to perform it, thus allowing the ground rules to be more concise and focused, without extraneous information which applies only to some participants.

Naturally, more detailed ground rules may be distributed to trainers. Sample ground rules and roles descriptions for participants can be found in [Appendix 2](#).

### 7.3.2. Are court documents and evidence necessary components?

Most mock trials provided participants with court documents and evidence such as: an **indictment; statements of the victim and defendant** before investigators and/or an examining judge, depending on the jurisdiction (and on the condition that the defendant chooses to give a statement); statements of various witnesses, depending on the case scenario; an expert opinion depending on the case scenario; other evidence such as objects or documents relevant to the case. See [section 4.1.2](#) and [Appendix 7](#) for a detailed list of possible pieces of evidence.

However, if the mock trial is preceded by an investigation simulation, the court documents and evidence will have resulted from the investigation and the prosecution will have prepared an indictment. Whether or not an investigation simulation is conducted, in some

mock trials, the prosecution is assigned to prepare the indictment during the preparation period of the trial.

It has also been found useful to distribute a **case scenario** which coalesces the separate pieces of evidence to form a unified story and a **summary of the evidence and roles** in order to provide focus for participants.

Several issues arise in regard to these materials:

- **Is a case scenario sufficient without evidence?**

Clearly providing participants with court documents and evidence allows for more complex learning, as the strengths and weaknesses of the case can be better appreciated and this more closely simulates a real trial. However, if time constraints are particularly tight, it is possible to hold a simplified mock trial on the basis of a case scenario. This kind of trial will usually not include the examination of witnesses, but rather only arguments by prosecution and defense and a verdict. Nevertheless, even a simplified mock trial can include court documents and evidence as was done during one such exercise.<sup>53</sup> Moreover, at least theoretically, witnesses can be heard in this kind of trial if trainers provide scripts or profiles for them.

If it is decided to make due with a case scenario, it should be detailed so as to allow for maximal learning.

- **Should the indictment include charges other than trafficking?**

This issue is discussed in [section 4.1.1](#) at length.

### 7.3.3. Scripts for actors

If it is decided to use actors to perform the roles of victim, defendant and witnesses, it is necessary to prepare scripts or profiles so that the actors can learn their roles. We note that the use of actors also requires trainers to deliver an introduction to them regarding trafficking in persons, and to coach them so as to make sure they are aware of the answers they are expected to give and their overall attitude and reactions.

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<sup>53</sup> This was a mock trial organized by OSCE among judges in the OSCE region in November 2021.

### 7.3.4. Theoretical resources relevant to the mock trial

Trainers should distribute theoretical sources directly relevant to the trial so that participants performing legal roles can rely on them to formulate a strategy and support their arguments or verdict and so that participant witnesses can rely on them when performing their roles, if this option has been chosen by trainers (and not to have the roles performed by trainers, actors or survivors).

These sources overlap those mentioned in [section 6.2](#) which addresses sources important for the theoretical presentations, but they should be more focused and concise, as participants will not have time to read lengthy materials during the preparation period, when they also need to design strategies, prepare witnesses, and divide the work among them.

**Core sources** to be distributed or given access to are:

- **National materials:** including the trafficking legislation, allied offences such as slavery and forced labour and case law on trafficking if it exists.
- **International materials:** This should include **the Protocol** (Article 3 in particular); relevant sections of **UNODC’s Case Digest on Evidential Issues in Trafficking in Persons Cases** (Case Digest),<sup>54</sup> and especially topics under [section 3](#) on **“The Mosaic of Evidence”**; and relevant sections of UNODC’s Regional Case Digest on Typical Issues

in Trafficking in Persons Cases for the Southern African Region.<sup>55</sup> The digests are particularly relevant to the mock trial, as participants are expected to rely on cases in their arguments and verdict.

A non-exhaustive list of resources may be found in [Appendix 9](#).

## 7.4 Moderator’s introduction and role allocation in a simplified mock trial

If a simplified mock trial is decided upon, there should still be a moderator’s introduction and role allocation, but these will be shorter in duration and the only roles which will be allocated are those of judge(s), prosecutor(s), and defense counsel(s) which present fewer issues than in a full mock trial. The issues which remain are how to allocate roles; how to ensure that as many participants as possible are given active roles; if active participants should switch roles or play their own professional roles. Materials to be distributed are the same in a simplified mock trial as they are in a full scale mock trial. However, the ground rules will be less detailed.

One way of allocating as many roles as possible is to have teams of prosecutors and defense counsels presenting their arguments before different benches of judges simultaneously. This method can highlight the complexity of trafficking issues, as different benches of judges may reach opposite conclusions.

<sup>54</sup> Available at: [https://www.unodc.org/documents/human-trafficking/2017/Case\\_Digest\\_Evidential\\_Issues\\_in\\_Trafficking.pdf](https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf). Examples of relevant sections, contingent on the specific case scenario might be: 2.2.1 (Typical weaknesses of victim testimony); 3.1 (Introduction to the mosaic of evidence); 3.2.2 (threats and especially irrational threats); 3.2.3. (deception); 3.2.4 (subtle means of coercion); 3.2.5 (vulnerabilities) 3.2.6 (restrictions of freedom)3.2.7 (isolation); 3.2.8 (low pay or absence of pay); 3.2.9 (difficult work conditions); 3.2.10 (poor living conditions); 3.2.13 (debt bondage); 3.3.5 (complicity in trafficking by victim's family);3.3.6 (victim behaviour).

<sup>55</sup> Available at: [https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Regional\\_Case\\_Digest\\_Southern\\_Africa\\_-\\_English.pdf](https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Regional_Case_Digest_Southern_Africa_-_English.pdf)





## 8. THE PREPARATION PERIOD

After roles have been allocated, participants should be given time to prepare the case. This stage is no less important than the hearing itself, because it lays the foundation of the trial both theoretically and practically. For this reason, optimally 2 and a half hours to 3 hours should be allocated to it.

### 8.1. Goals and tasks

The goal of the preparation period is to allow participants time to perform an array of activities in preparation for the hearing. These activities include practical and theoretical steps as follows. We note that this analysis relies on the common law legal system and may have to be adjusted in civil law systems which follow different approaches in regard to the examination of witnesses.

#### All participants

All participants should read the court documents and evidence in an effort to acquire familiarity with the facts of the case. They should also read the theoretical sources distributed by trainers and feel free to consult mentors on questions which arise.

#### The judges

If there is a **bench of judges**, they should appoint a presiding judge from among them, unless he or she has previously been appointed, and discuss the issues presented by the case among themselves in order to enrich the learning experience. Whether there is a **bench of judges or just one**, they should carefully read the court documents, evidence, and the theoretical material in depth with an eye to finding cases which can later be cited in their rulings. If the judicial system of the country where the mock trial is organized allows the examination of witnesses by the bench, the judges may also prepare some questions that they can ask during the hearing. Judges should be open to the idea of drafting rough minority opinions if there is disagreement among them at this stage or subsequently. Whether there is **one judge or a bench of judges**, they should consider their role in the hearing, including victim protection steps and possible compensation.

#### The prosecutors

The prosecution should prepare the indictment if time allows or rely on an indictment prepared by trainers or previously prepared during the investigation simulation, if this is a combined exercise. They should also divide the work among them if there is more than one prosecutor (who will examine or cross examine each witness;

who will prepare which witness for testimony; who will request victim protection steps; who will respond to a “no case to answer”<sup>56</sup> claim if it arises; who will draft and deliver closing arguments and pleas for sentence). They should also formulate a strategy focusing on the strengths and weaknesses of the evidence; prepare prosecution witnesses for testimony; prepare their examinations in chief and cross examinations; plan out requests for victim protection steps; prepare their reply to a possible “no case to answer” claim by the defense; roughly prepare closing arguments relying on at least 2 trafficking cases and roughly draft pleas for sentence, in case there is a conviction.

### The defense

If there are more than one defense counsel, they should divide the work among them (who will examine or cross examine each witness; who will prepare which witness for testimony; who will reply to requests for victim protection steps; who will draft and deliver requests for a “no case to answer”, closing arguments and pleas for sentence). They should also formulate a strategy, after conferring with the defendant, which should include deciding how the defendant should plead, if the defendant should testify; planning a possible “no case to answer” plea at the conclusion of the prosecution case; deciding if to adduce additional witnesses besides the defendant and if to submit documentary and physical evidence. If they decide to submit additional evidence, this must be prepared by them and if the additional evidence is a witness or witnesses, they must choose someone to portray their witness and prepare her or him for testimony. If they decide the defendant should testify, they should also prepare him or her for testimony. In addition, they should prepare their cross examinations and examinations in chief; roughly prepare closing arguments relying on at least 2 trafficking cases and pleas for sentence in case of a conviction.

### Prosecution witnesses (including the victim)

They should meet with members of the prosecution team who will prepare them for testimony; read over their statements before the investigator or the examining judge carefully look at relevant sections of the case digest addressing their roles;<sup>57</sup> consult with mentors as to questions which arise. **The victim in particular** should confer with the prosecution or the victim counsel in jurisdictions which allow this as to victim protection steps and compensation. We note that if these roles are undertaken by actors, they should read their prepared scripts during this part of the exercise.

### Defendants and defense witnesses

They should undergo preparation for testimony by the defense; carefully read their statements to the investigators or the examining judge if there are such; and read relevant theoretical materials.<sup>58</sup> **Defendants** should meet with the defense and confer with them as to strategy (and for example: how should they plead? should they testify or be silent? should they adduce further evidence?). We note that if these roles are undertaken by actors, they should read their prepared scripts during this part of the exercise.

### Victim counsels (in jurisdictions where they are present)<sup>59</sup>

If there is a role of victim counsel, he or she will need to act in the confines of his legislative role, but that may allow meeting with the prosecution to confer as to their particular role in the proceedings so as not to interfere with the prosecution role; meeting with the victim in order to ascertain his or her needs and the impact of the crime on them; carefully reading the victim’s statements before the investigator or the examining judge. They should also read theoretical material which relates to the victim in trafficking in persons cases.<sup>60</sup>

56 No case to answer is a submission by the defending party in a court action that the prosecution's case is not sufficient for the defendant to need to make any reply, either because of insufficient legal grounds or because of insufficient factual evidence.

57 For example, victim witnesses should read sections 2.2 and 3.3.6 of the Case Digest; other witnesses should read section 2.3.

58 For example section 2.3 of the Case Digest.

59 For example, Sri Lanka (see above).

60 For example, sections 2.2.1 and 3.3.6 of UNODC's Case Digest.

## Expert witnesses

They should meet with the party that invited them to submit their opinion in preparation for testimony. Usually this will be the prosecution, but there is some possibility that the defense may invite an expert. The expert should read his expert opinion carefully during this part of the mock trial. He or she may also read section 2.6 of the Case Digest on expert and professional testimony. We note that if this role is undertaken by actors, they should read their prepared scripts during this part of the exercise.

## Professional observers

They can be divided into 3 groups, each of which will observe the judges, prosecutors or defense counsels in order to evaluate the quality of the preparation and observe what was beneficial and what could be improved. Alternatively, they can take part in the preparation of these 3 groups, although they will not act out the roles during the hearing. It is suggested that professional observers be provided with a list of questions in order to guide them during this stage of the proceedings. We refer the reader to [section 7.2.2](#) of the manual which provides examples of such questions.

**We note** that a written document (whether part of the ground rules or in separate documents for each role) should include a detailed description of what each role player must do during the preparation period.

An example of role descriptions, including during the preparation period, can be found in the sample ground rules and roles descriptions in [Appendix 2](#).

## 8.2. The physical milieu

If possible, it is important to make sure that the legal teams (prosecution, defense and judges) and their witnesses are in separate rooms or in separate areas of one large room. This allows for the privacy and quiet necessary to adequately prepare the case.

## 8.3. The importance of allocating sufficient time

Since the methodology of the exercise relies on adult learning principles, sufficient time must be allocated to

allow for reflection as well as practical tasks. Optimally, 2 and a half hours to 3 hours should be allocated to avoid straining the limits of the time frame. Naturally, if there is more time available, and trainers deem it useful to utilize it to allow for more in-depth preparation, this can be done. That said, in general, preparation periods have extended over less time than this, although 2 hours would seem to be the minimum.

However, if trainers choose to conduct a simplified mock trial, while there should still be a preparation period, it can be shorter, as there is no need to prepare witnesses for testimony.

## 8.4. The importance of mentors

It is crucial for mentors to be available during the preparation period. These mentors can come from the team of trainers and/or from a pool of legal experts with experience and knowledge of trafficking cases.

The role of the mentors is not only to answer questions, but also to act proactively, and for example: actively ask the groups if they have questions from time to time; keep an eye on the various groups in order to see that they are minded to the tasks at hand; stress that they need to address the elements of the crime and typical evidential issues; and be present physically in the venue at all times to allow participants to approach them. This can also present an opportunity to direct participants on how to use UNODC's Case Digest in the context of their case and to encourage the judge group to consider drafting minority opinions if there is disagreement among them.

A balance needs to be maintained between allowing participants independence and time to prepare by themselves in their own ways, and providing answers to real problems. In accordance with the principles of adult learning, mentors should not take over the case, but rather facilitate the activities of participants by clarifying what is unclear.

## 8.5 The preparation period in a simplified mock trial

In a simplified mock trial there should still be a preparation period, but it may be shorter than that of a full

scale mock trial. In addition, the only role players are judge(s); prosecutor(s) and defense counsel(s). What is expected of them is governed by the brevity of the exercise and the fact that there is no examination of witnesses and no submission of evidence.

Thus, **judges, prosecutors and defense counsels** will not need to think about victim protection steps. **Prosecutors** will not need to strategize how to examine and cross examine witnesses or prepare their witnesses for trial. Similarly **defense counsels** will not need to

decide on strategies in consultation with the defendant. Nor will they need to prepare their witnesses for trial. If time allows, they may be permitted to prepare additional documents, physical objects or statements of additional witnesses during the preparation period. However, this may create complications, as they will need to disseminate this evidence to the other participants as soon as possible in order to allow them sufficient time to prepare, and this may not be possible within the limited timeframe.





## 9. THE HEARING

Optimally, the time allocated to the hearing should be between 3 and 4 hours in order to maximize the learning.

### 9.1. The stages of the hearing in general

The stages of the hearing are dependent on the kind of trial being held. There are differences between common law and civil law trials, and even within those systems there can be a range of different criminal procedures. These differences highlight the need to ascertain the criminal procedure of the given jurisdiction before embarking on the exercise (see section 3.2 on **“the importance of ascertaining the jurisdiction’s laws of procedure and evidence”**). There is also a difference between a full mock trial which includes the hearing of witnesses and a simplified mock trial which does not. Moreover, there is a difference between hearings taking place among national participants and hearings taking place among regional or international participants.

Whatever the procedure, it should be clarified in written ground rules. This is especially important when participants come from different States, as criminal procedures vary widely.

### 9.2. Stages of a common law hearing

Although criminal procedures may vary among States with common law systems, in general, common law criminal hearings *without juries* include the following stages:

#### Common law hearing

1. the reading of the indictment;
2. the defendant’s pleading;
3. opening statements (optional);
4. the examination in chief of prosecution witnesses by prosecutors;
5. the cross – examination of prosecution witnesses by defense counsels;
6. the submission of documentary or physical evidence by the prosecution if they so choose;
7. a possible “no case to answer” claim on the part of the defense at the conclusion of the prosecution’s case, which is answered by the prosecution and ruled upon by the judge;



8. if this claim is denied or if it is not raised, the defendant will notify the court if he wishes to testify or not. In some jurisdictions<sup>61</sup> he may also choose to submit a dock statement with no cross examination;
9. the examination in chief of defense witnesses by defense counsels;
10. their cross examination by prosecutors;
11. the submission of documentary and physical evidence by the defense if they so desire;
12. closing statements of prosecution and defense, each supported by at least 2 cases on trafficking and addressing the elements of the crime and substantive and evidential issues;
13. a recess to allow for the preparation of a verdict;
14. the delivery of the verdict, addressing the elements of the crime and substantive and evidential issues and supported by at least 2 cases on trafficking. We note that if there is a bench of judges, there may also be minority opinions;
15. if time does not allow separate claims about the sentence and there is a conviction, the bench delivers a sentence;
16. if time allows – the presentation of prosecution and defense claims in favor of a particular sentence, including attention paid to compensation of the victim if the jurisdiction allows this or requests of victim counsels for compensation if the jurisdiction has such functionaries, followed by the delivery of a sentence by the court.

An example of ground rules which address the stages of a common law hearing appears in [Appendix 2](#).

### 9.3. Stages of a civil law hearing<sup>62</sup>:

There is a variety of trial procedures among civil law jurisdictions. This variety obligates the training team to ascertain the accepted procedure meticulously, even if they themselves are from a civil law system.

Roughly, civil law systems can be divided into those where the trial judge hears witnesses and those where he does not. In systems where witnesses are heard, the mock trial procedure may resemble that of a common law mock trial as described in [section 9.2](#). In systems where the trial judge does not hear witnesses, the mock trial procedure can resemble that of a simplified mock trial where the prosecution and defense teams deliver oral arguments and the judge or judges deliver a verdict and sentence.

Examples of civil law systems are as follows:

- **Systems where witnesses are heard:**
  - In some civil law jurisdictions, witnesses are invited to testify at the hearing by the trial court. The Presiding Judge leads the examination of witnesses, and then gives the floor to the prosecutor and the defense counsel in case they want to ask questions. In most cases the defense counsel will ask exhaustive questions, trying to stress inconsistencies or gaps in the testimonies. Thus witnesses will be heard at the hearing, although the procedure is not the same as a common law examination/cross examination of witnesses. This kind of procedure most closely resembles a common law system and the procedure of the mock trial can be similar to that of a common law mock trial (as described in [section 9.2](#)).
  - In other civil law jurisdictions, the roles of examining judge and trial judge are performed by the same judge who has the authority to hear witnesses. In this kind of jurisdiction too, the mock trial procedure

<sup>61</sup> One example is Sri Lanka.

<sup>62</sup> See Apple and Deyling, "A Primer on the Civil – Law System", prepared for the Federal Judicial Center 1995

can closely resemble that of a common law trial (as described in [section 9.2](#)).

- **System where witnesses are not heard by the trial judge:**
  - In some civil law systems, after the investigation, an examining judge completes and reviews the written record and decides if the case should proceed to trial. His review relies primarily on written documents, although he can take on an active role in collecting more evidence and interrogating witnesses, including the defendant, who may be heard, but has the right to remain silent. In these jurisdictions no cross examination takes place during the review of the examining judge.
  - After the examining judge has completed his review and ruled that the case can proceed to trial, it is adjudicated by a trial judge who is responsible for the final decision whether to convict or exonerate, but does not hear witnesses and cross examination does not take place, but rather the parties present oral arguments on the basis of the written record compiled by the examining judge.
  - In this kind of civil law system, the mock trial procedure can resemble that of a simplified mock trial, as described in [section 9.4](#) on “Stages of a simplified mock trial”.

## 9.4. Stages of a simplified mock trial hearing

Sometimes, without regard to the kind of legal system involved, time constraints militate against a full scale mock trial where witnesses are heard. If this is the case, there should still be a preparation period, but it can be shorter than that recommended for a full mock trial. By the same token, there should still be a debriefing at the conclusion of the hearing. However, the hearing stage can be limited to the following stages:

### Simplified mock trial hearing

1. the reading of the indictment;
2. defendant’s pleading presented by the defense counsel;

3. oral arguments of the prosecution and defense, relying on at least 2 trafficking cases;
4. a recess in order to prepare the verdict;
5. the reading of a verdict relying on at least 2 trafficking cases, where members of the bench (if there are more than one judge) are free to write minority opinions. If time constraints do not allow separate pleas regarding the sentence, this will be immediately followed by the delivery of a sentence which can include compensation to the victim;
6. if time allows - arguments as to the sentence by prosecution, defense and victim counsel in jurisdictions where this functionary is present, including possible claims for compensation;
7. delivery of the sentence by the court which can include compensation to the victim.

## 9.5. The nature of the roles and what role players are expected to do

### 9.5.1. Concise description of roles

A detailed description of the roles and the various issues which arise in regard to them appear in [section 7.2](#) of the manual.

To summarize what is said there, the core roles in the mock trial hearing are **judges, prosecutors and defense counsels**. These roles are present in all kinds of mock trials, including simplified mock trials, and they are performed by participants only, as they are legal roles which allow participants to improve their professional skills and understanding.

In mock trial hearings which include the hearing of witnesses, the **victim** or victims and the **defendant** or defendants are also core roles, but as seen in [section 7.2.5](#) of this manual, they may be performed by participants, actors or trainers.

Other roles, which depend on the case scenario, are **prosecution or defense witnesses** and for example, eyewitnesses like neighbors, taxi drivers, co-employees, shelter personnel, NGOs, social workers; **expert witnesses** such as physicians, social workers, psychologists, cultural experts; **victim counsels** in jurisdictions where this function is present. The first two roles may be performed by participants, actors or trainers, while the last one, as a legal role, should be performed by participants (see [section 7.2.5](#) of the manual).

If there are too many participants to fill these roles, trainers may allocate the role of **professional observers** to some participants. These participants will observe the positive and negative sides of the mock trial exercise and report on them during the debriefing.

### 9.5.2. What is expected of role players during the hearing

The ground rules should include a detailed description of what every role-player is expected to do during each stage of the exercise. Alternatively, trainers can distribute separate role descriptions to every role so as to limit the lengthiness and complexity of the ground rules which would then include only information that all the participants need.

A detailed sample description of roles appears in [Appendix 2](#), although naturally, the implementation will change as regards certain roles, depending on the case scenario.

The following is a concise description of what each role is expected to do during the hearing stage of the exercise. It relies on the common law procedure and may need to be adjusted if the mock trial takes place in civil law systems which do not allow cross examination of witnesses or if the trial is a simplified mock trial.

#### The judges

- **All judges:** may interpose clarification questions when witnesses are on the stand; ask questions to the prosecution or defense teams; prevent the

harassment of witnesses; rule on victim protection steps such as holding the hearing in camera or allowing an intimidated witness to testify behind a screen; confer if a particular objection or request arises which requires a ruling and rule on it (and for example a claim of “no case to answer”); confer after the conclusion of the evidence about the final verdict and sentence; prepare and deliver a verdict which relies on at least 2 trafficking cases and analyze the elements of the crime and substantive and evidential issues. If there are minority opinions – they should be prepared and delivered by the judges who ascribe to them. The sentence may include compensation to victims in addition to other sanctions if the jurisdiction so allows.

- **The presiding judge:** In addition to the tasks fulfilled by the bench of judges, the presiding judge directs the trial in the following ways: he or she reads out the charges at the commencement of the trial; makes sure that the time frame is followed<sup>63</sup>; stands ready to disallow procedural or evidential objections or requests except on victim protection measures; asks the defendant if he wishes to testify at the conclusion of the prosecution evidence; confers with the other judges about the verdict and sentence, drafts it with the assistance of the other judges and delivers it.

We note that if there is only one judge adjudicating, he will fulfill the functions of a presiding judge as well as the general functions of all judges.

#### Prosecutors:

During the hearing, the prosecution should examine the prosecution witnesses while they are testifying in order to elicit their stories; submit documentary and physical evidence to the court if it exists; reply to a claim of “no case to answer” by the defense, if it is raised; cross examine the defendants if they choose to testify and any additional defense witnesses if they are brought forth; request the court to implement victim protection steps if necessary; present closing arguments relying on at least 2 trafficking cases and analyzing the

<sup>63</sup> Examples are: limiting the time for examination and cross examination of witnesses; limiting the time for closing arguments; deliberating on requests expeditiously; considering to allow only one prosecutor or defense counsel to examine a witness; allowing defense counsel to bring a witness besides the defendant only if the time frame allows this; deciding if there is time to hear arguments from the parties about the sentence.

elements of the crime and substantive and evidential issues; if time allows and the defendant is convicted, plead for a particular sentence, including compensation to the victim if the jurisdiction so allows.

#### **Defense counsels:**

During the hearing, the defense should do the following: cross examine the prosecution witnesses; raise a claim of “no case to answer” at the conclusion of the prosecution’s evidence if they deem this to be justified; examine their own client, if he or she chooses to testify; request the court for permission to submit further defense evidence such as additional witnesses, or documentary or physical evidence, and if their request is accepted, examine the additional witnesses and submit the additional documentary or physical evidence; deliver closing arguments at the conclusion of the hearing, relying on at least 2 trafficking cases and analyzing the elements of the crime and salient substantive and evidential issues; after conviction, plead for a particular sentence if their client is convicted and if time allows.

#### **Prosecution witnesses including the victim**

They will be questioned by the prosecution and cross examined by the defense counsels and perhaps questioned by the judge or judges as well. **Victims in particular** may be called upon to testify as to the reasons behind certain victim protection steps requested by the prosecution or the victim counsel in jurisdictions which have this functionary.

#### **Defendants and defense witnesses:**

The following are the roles of the **defendants**: at the commencement of the trial defendants should plead guilty or not guilty, unless the law of the jurisdiction allows them not to do so; at the conclusion of the prosecution evidence, they will notify the court if they wish to remain silent or testify under cross examination or submit a dock statement without undergoing cross examination, if the relevant national law allows this.

If the defendants choose to testify, they will answer the questions posed by defense counsels and be cross examined by the prosecution. They may also be called upon to answer the judges’ questions; if pleas are permitted as to the sentence, they may be called upon to testify as to their personal circumstances. Defense witnesses will be examined by the defense and cross examined by the prosecution. They may also be called upon to answer the judges’ questions.

#### **Victim counsels (in jurisdictions which have this functionary)**

Their tasks will depend on how the legislation defines their role. An example, taken from Sri Lanka, comes from the *Assistance to and Protection of Victims of Crime and Witnesses Act No.4 of 2015*<sup>64</sup> which accords the victim the right to be represented by legal counsel in a trial and in particular to present the impact of the crime on the victim after conviction of the defendant.

During the hearing, the victim counsel may present requests for victim protection; object to the harassing of the victim during cross examination; and present to the court the impact of the crime on the victim after conviction.

#### **Experts:**

During the hearing, the party who invited the expert may make do with the written opinion submitted to the court, in which case he may be cross examined by the other party. Alternatively, he or she will be examined by the party who invited him and cross examined by the other party or parties and may be questioned by the judges.

#### **Professional Observers:**

During the hearing, professional observers assess the progress of the trial in order to gauge what works and what could be improved. They also assess if legislative gaps, gaps in practice by participants, or problematic case law can serve as impediments to trafficking cases. As mentioned previously, it is recommended that a list

64 Section 4(n) and (o) read as follows, according to victims the right to: (n) without prejudice to the prosecution, to be represented by legal counsel at the several stages of the criminal proceedings relating to the offence, including at the non- summary inquiry, trial, appeal and application in revision, and where a request is made, to be provided where available with legal assistance for such purposes; (o) following the conviction of the offender and prior to the determination of the sentence, either personally or through legal counsel, to submit to court the manner in which the offence concerned had impacted on his life, including his body, state of mind, employment, profession or occupation, income, quality of life, property and any other aspects concerning his life.

of questions be provided to them in order to guide them. We refer the reader to [section 7.2.2](#) which gives examples of such questions.

We note that a detailed description of roles should appear in the ground rules, including what each role is expected to do during the hearing stage of the proceedings.

### 9.5.3. The roles in a simplified mock trial

In a simplified mock trial, in general, the only roles will be the judge or judges; the prosecutor or prosecutors; and the defense counsel or counsels.

The prosecutors and defense counsels will not examine or cross examine witnesses, but merely present their arguments for and against conviction and subsequent to conviction – plead for a particular sentence including compensation if the jurisdiction allows this. The judges' role will be to rule on exoneration or conviction and subsequent to conviction – to deliver the sentence

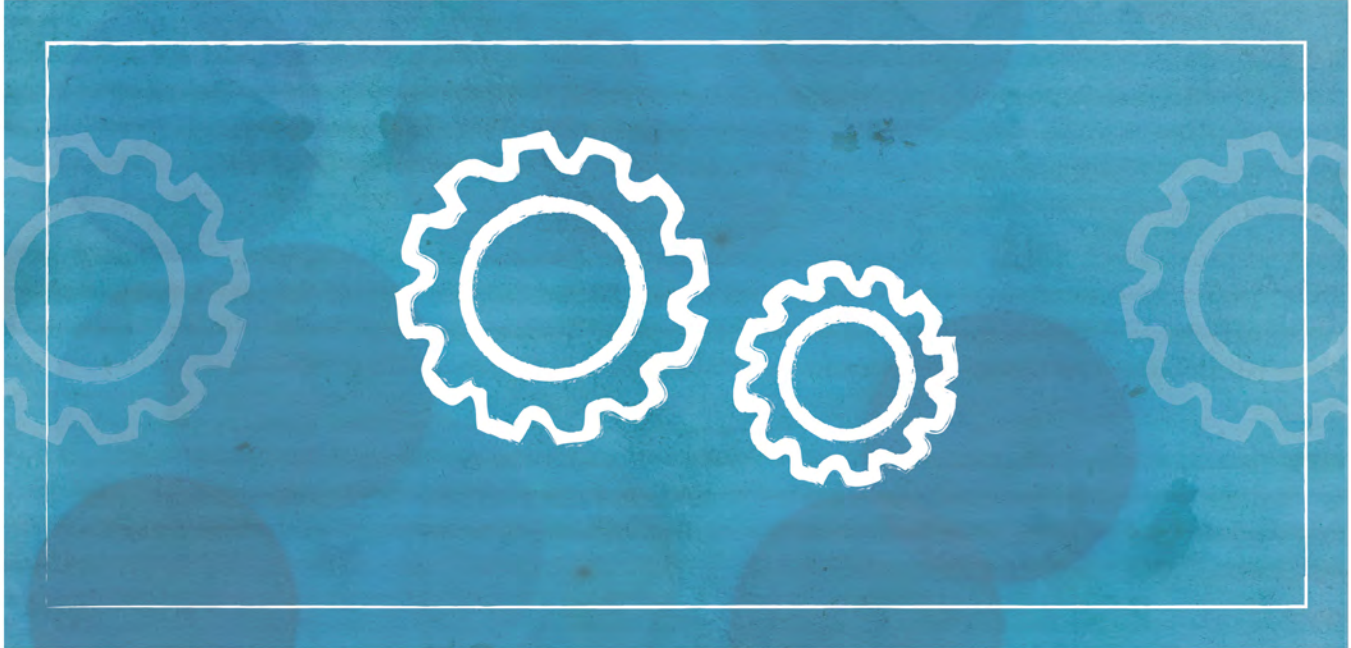
which may include compensation to the victim if the jurisdiction allows this.

## 9.6. The time frame

Optimally, 3 and a half hours to 4 hours should be allotted to the mock trial hearing including the verdict. However, there have been mock trials which made due with less time and for example, 2 – 3 hours. Trainers should be aware that the more time is allotted, the more learning can transpire. Trainers are well advised to stress to the presiding or sole judge the importance of respecting the time frame, including by means of limiting objections and requests to substantive issues rather than procedural or evidential matters, as this forwards the main goal of the mock trial exercise, which is to encourage the development of knowledge and skills in handling typical issues in trafficking in persons cases.

Optimally, the time allocated to the hearing should be between 3 and 4 hours in order to maximize the learning.





# 10. THE DEBRIEFING

## 10.1. Aims and importance

Due to its importance at least one hour should be devoted to the debriefing.

The aim of the debriefing session is to allow participants to express their opinions on the value of the mock trial exercise. We note that care must be taken not to allow the criticisms to be levelled at specific participants, but rather to the organization and content of the exercise and to group performance, so as to retain the climate of trust and cooperation so crucial to the success of the exercise. This is important to participants and trainers alike:

- **Participants:** The debriefing enables participants to crystallize the learning that has transpired and to internalize it. It requires them to think over the exercise and evaluate it and enables them to hear what others have to say, thus enriching their own experience. It also gives participants a sense of closure. As such, it conforms with adult learning principles which emphasize the importance of reflection.
- **Trainers:** The debriefing also allows trainers to better evaluate the exercise and to strive to improve it in future by addressing the comments of participants.

Moreover, it assists them to identify the gaps impeding the successful resolution of trafficking in persons cases in the relevant jurisdiction.

During the debriefing, the **professional observers** (if this role is enacted) should be given the opportunity to speak first, as they have focused on evaluating the mock trial throughout the preparation period and hearing. After they have commented, the floor can be opened to the other participants.

We note that the debriefing is also essential in a simplified mock trial

## 10.2 How to encourage free and open discussion

Experience shows that sometimes participants hesitate to voice criticism during the debriefing. This can be a function of culture or hierarchy. Culturally, there may arise a feeling that criticism would be tantamount to ingratitude when trainers worked so hard. In addition, when high ranking members of the local institutional structures are present during the debriefing, participants may hesitate to voice criticism which may be frowned upon, especially if it relates to existing national legislation or national capacities.

While it may be illusory to expect to break down the walls of reticence, steps may be taken to create a more open atmosphere. The following are some examples:

- To emphasize to participants that trainers are eager to listen to criticisms in order to improve future exercises.
- To open the session by stressing that its aim is not to personally criticize specific participants' performance, but rather to evaluate the organization and content of the training and group performance, in order to retain the atmosphere of trust and cooperation so important to the success of the exercise.
- To stress that the central role in this stage is that of the participants and to emphasize this by allowing participants to comment first before trainers in order to allow them the utmost freedom. This also means that trainers should limit their comments to the barest minimum in order to stress this message.
- Perhaps after asking for general comments, if it is felt that participants are not comfortable, the moderators of the debriefing should ask specific questions such as: What is your opinion about the ground rules? What did you think about the time allocated to the hearing? Did you feel you understood enough about evidential issues by the time the exercise finished? What did you think about the method of role allocation? Why did the defense choose the strategy of testifying the defendants? Did you feel the questions the witnesses were asked were adequate?
- Another useful step might be for trainers to voice their own self-criticism, thus paving the way for others to speak openly.

Another technique implemented in a mock trial in Morocco was to divide participants into 4 groups during the debriefing, on the assumption that it is easier to express one's opinions before the smaller group, which can then report to the plenary.

Clearly, moderators and trainers should be careful to leave the floor open to participants, rather than take over the debriefing with their own comments and insights. They should listen rather than guide and make sure participants are aware that they are taking their comments seriously. Comments should be noted in writing to be discussed later on in the interests of learning.

### 10.3. Using films of the exercise during the debriefing

In [section 4.9](#) of this manual, we discuss the pros and cons of filming the exercise and note that one of the pros is that it enables participants to evaluate themselves independently during the debriefing, rather than receive criticisms from trainers which may be resented as needlessly didactic.

However, on the other hand, we noted that filming participants may cause them to feel shame if their failures are publicly exposed before colleagues and trainers, thus militating against the atmosphere of trust and cooperation which is crucial to the success of the exercise. We also noted that, in general, people tend to show more negative reactions towards stimuli with which they are not accustomed, so that if participants are not accustomed to being filmed, this may strengthen their negative feelings.

Moreover, time constraints enter into the equation, as handling footage during the debriefing will require additional work on the part of trainers to locate relevant excerpts and screen them, as it will be impossible to show the entire film.

Trainers must evaluate the use of filming during the debriefing in view of these considerations and in view of time constraints. One way to mitigate the problems might be for trainers to use the film to evaluate groups or how well particular issues were addressed, rather than individual performance.



# 11. FOLLOW UP ACTIVITIES AFTER THE EXERCISE

In order to fulfill the long-term goals of the exercise, trainers' activities should not stop with the debriefing, but rather continue with steps aimed at using the exercise as a springboard for positive change.



## 11.1. Short term follow-up activities:

These might include:

- Asking participants to fill out a **post-training questionnaire**: This may serve to coalesce the comments of participants and to provide an opportunity for them to express comments they have not felt comfortable enough to express publicly.
- **A written evaluation by trainers**: This ensures that the lessons of the debriefing are not lost. This evaluation should include recommendations based on participants' comments, as this is crucial for the future of similar exercises, whether in the given jurisdiction or generally. In this respect, it is also crucial that the training team meet to discuss the evaluation and agree on the recommendations. This can be done virtually.

## 11.2. Long-term follow-up activities:

Examples might be:

- Creating a **reference group** which can serve as a forum for continued discussion and raising of issues. Such a forum could also include a database of materials for participants. For example, UNODC created a reference group of participants after the Sierra Leone mock trial training, who meet virtually

every month through UNODC's online platform KNOWTS.<sup>65</sup>

- **A springboard for discussing changes in legislation** with relevant national agencies, if it has been found that there are gaps which impede the successful resolution of cases.
- **A springboard for discussing gaps in the practice** of participants with relevant agencies with an eye to improving them and in order to address them in future trainings.

- Plan to conduct a **training of the trainers** with the same group of participants so that they can hold their own mock trials in their own jurisdictions, with the advantage of a greater familiarity with the local patterns, legislation, legal culture and cultural mores and a greater sense of agency.

Send follow up questionnaires or organize group discussions with the participants to collect quantitative and qualitative feedback 6-9 months after the workshop in order to monitor and assess mid-term impact of the intervention.

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<sup>65</sup> KNOWTS is the UNODC'S Knowledge Hub on Human Trafficking and Migrant Smuggling. It is a specialized virtual hub that aims to connect, communicate, engage, and collaborate effectively with networks of practitioners working on countering Trafficking in Persons and Smuggling of Migrants. For more information, here is the link to the platform: [KNOWTS eLearning Platform: Log in to the site \(unodc.org\)](#).





## 12. HOW TO HANDLE INTERNATIONAL OR REGIONAL MOCK TRIALS

In several cases, mock trials were held with participants from different countries in one region or with participants from across the globe.<sup>66</sup> Such participants may come from different legal systems and their trafficking legislation is generally not identical. This poses special challenges to trainers, but if they surmount them, there can be great gains and for example:

- Participants may become aware of the similarities among countries in the patterns and issues they face, including traffickers' methods of control and victims' vulnerabilities.
- They may realize that they can learn from one another despite the differences between them, as the elements of trafficking offences are very similar in most jurisdictions, based in the international definition of the UN Protocol against Trafficking in Persons, and practitioners face same evidential and substantive challenges.

- The mock trial may even promote better long-term future cooperation between participants from different states.

How can trainers contend with the differences among participants' legal backgrounds?

### 12.1. Central Issues

While most of the guidance in this manual can be useful in these kinds of mock trials, the following are central issues which need to be addressed in particular:

#### Planning the exercise:

It is of great importance to organize preparatory meetings among trainers before the actual exercise so that they can discuss how each country implements the Protocol and study what the best practices of each country are.

<sup>66</sup> A series of international trials was held for judges from a number of countries in the Golda Meir Carmel – Mashav International Training Center in Haifa, Israel in conjunction with international partner organizations: UNODC, OSCE and IOM; a regional mock trial was conducted by OSCE in November 2021 with judges from the OSCE area.



Moreover, in choosing the kinds of participants, trainers should consider including the same professional participants from each country, thus providing an opportunity to discuss good practices.

### Choosing the case:

In addition to the considerations enumerated in section 5 of the manual, if a regional mock trial is held, trainers should also consider basing the case at the foundation of the mock trial on a case in the region. In doing so, they may look to regional courts such as the European Court of Human Rights<sup>67</sup> or the Inter-American Court of Human Rights<sup>68</sup> which generally include cases with in-depth analyses of issues. If an international mock trial is held, it might be helpful to base the case on an important case from one of the countries whose representatives are participants in the mock trial. Such a case might also include foreign victims who require interpretation and might include best practices from a number of countries.



### Preparation and distribution of a unified law:

If participants come from different countries, their trafficking legislation will not be identical. Consequently, trainers will need to draft a trafficking law that practitioners can consult when participating in the mock trial hearing. This law should include elements of the crime; a statement on consent; and the difference between child and adult trafficking. They may also choose to include a section on non-punishment of victims of trafficking for crimes connected to the trafficking. In a number of mock trials which included international participants, this fictional law was attributed to the mythical kingdom of Zenda.<sup>69</sup>

The easiest option is to base this law on the Protocol (although this will not include a non-punishment provision).

A sample law which is only partially based on the Protocol and includes more 'acts' and 'purposes of exploitation' can be found in [Appendix 8](#). We note that this law draws on several States' trafficking laws.

### Topics during the theoretical presentations:

In choosing topics to be presented during the theoretical part of the exercise, trainers might consider focusing on regional patterns, if the mock trial is a regional one. If participants are from several regions, it might be helpful to focus on topics which are present in many countries but are not always well understood, such as trafficking for labour exploitation which is under identified in many countries.

### Sources:

If the trial is a regional one, it would be helpful to include regional sources and for example, relevant regional conventions like The Council of Europe Convention on Action against Trafficking in Human Beings or the American Convention on Human Rights and to base the trial on a case adjudicated by one of those courts. A detailed list of such regional conventions appears in

67 See for example: *Siliadin v. France* (App. No. 73316/01) ECHR 26 July 2005, European Court of Human Rights. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. FRA010).

68 See for example: *Case of the Hacienda Brasil Verde Workers v. Brazil*, Inter-American Court of Human Rights, judgment of October 20, 2016.

69 This idea derives from the novel "The Prisoner of Zenda" by Anthony Hope.

[Appendix 9](#). If the trial includes international participants, it might be helpful to include various international conventions over and beyond the Protocol in addition to examples of different States' laws and case law.<sup>70</sup>

#### **The moderator's introduction to the mock trial:**

The moderator's introduction to the mock trial should include a brief explanation of the differences between civil law and common law systems and any other legal systems which are represented by participants.<sup>71</sup> He or she would also be well advised to explain clearly how the mock trial will be held, despite these differences, focusing on the stages of the trial and the legislation which will apply.

#### **How the ground rules may differ from national trials:**

It is particularly important that trainers prepare a clear set of ground rules setting out the stages of the trial, as they cannot rely on the prior knowledge of participants as to the proper criminal procedure. Trainers can choose among various options in deciding on the stages of such a trial. They may ascertain what legal system the majority of the participants come from and design the stages of the hearing on that basis, while clarifying the sequence to all participants (and striving to include the examination of witnesses which provides a richer learning experience); they may combine the characteristics of several legal systems; or they may choose a procedure similar to that of the simplified mock trial, which can provide clarity, though at the price of a less rich learning experience.

**The main point is that trainers should make sure that the stages of the trial are clear to participants.**

## **12.2. Subsidiary issues**

#### **Choosing participants:**

Trainers need to decide if they wish to focus on participants from countries with the same legal system which will mean that participants are equipped with a more unified legal background, or to diversify in which case trainers will need to work harder in order to create a unified procedure and law. If they choose to diversify or are required to do so, they may consider striving to achieve a balance between participants from the different legal systems.

#### **Choosing a team of trainers:**

In addition to the considerations enumerated in section 4.4 of the manual, if a regional mock trial is being held, trainers should consider including an expert with regional expertise; if an international mock trial is held, trainers might consider including representatives from different legal systems in order that they be equipped to fully understand the differences and convey them to participants. Perhaps trainers could even hold a panel among such members of the team to clarify the differences among the different legal systems to participants.

#### **How the preparation period may differ:**

During the preparation period for the mock trial hearing, it may be valuable to choose mentors from a variety of local legal systems so they are equipped to answer questions of participants as to the procedure of the trial.

<sup>70</sup> Examples are: the Slavery Convention of 1926 ; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, or the I.L.O. Forced Labour Convention 1930 (No. 29), as these conventions are directly relevant to understanding several purposes of trafficking, namely slavery, practices similar to slavery and forced labour.

<sup>71</sup> See section 1.3 of UNODC's Case Digest for an analysis of the differences and similarities of common law and civil law systems.



# 13. MOCK TRIALS THAT INCLUDE INVESTIGATION SIMULATIONS

## 13.1. Introduction

UNODC has conducted several mock trials which included investigation simulations in Latin America,<sup>72</sup> in Tunisia, in Mauritania and in Jordan. This provides a continuum of learning, allowing participants to follow the case from its inception up to its adjudication in court, while enhancing their understanding of the difficulties of collecting evidence in trafficking in persons cases, acquainting them with techniques which may assist them, and helping them to recognize the challenges which various practitioners face, thus leading to better future cooperation.

Along with mock trials which include investigation simulations, UNODC has also conducted investigation simulations which stand alone, and for example, in Sierra Leone and in Serbia.

This section of the manual discusses both kinds of investigation simulations.

## 13.2. Core characteristics

Investigation simulations have certain core characteristics, some of which overlap the core characteristics of the mock trial exercise.

### Goals of exercise:

Enhancing skills and abilities of practitioners to investigate and prosecute trafficking offences; raising awareness of the importance of victim protection; enhancing collaboration among various stakeholders.

- 1 **Creating an atmosphere of trust, cooperation and learning:** where participants feel free to make mistakes and wish to cooperate with one another.
- 2 **Composition of training team:** The training team should include local legal experts and international experts. At least some of the members should have practical experience with investigations and drafting indictments. The number of trainers in the core group can vary but should not be so numerous as to be unwieldy.

<sup>72</sup> These simulations were conducted in Peru, Bolivia and Colombia.

**3 Meticulous planning by training team while leaving room for flexibility:** The exercise requires meticulous planning by the team of trainers, as can be seen by the list of tasks which appear in section 13.3 of the manual. However, despite the need for planning, trainers should never lose sight of the particular participants before them and be ready to change the course of the simulation according to their needs and the progress of the investigation. They should also be aware of the need to limit the learning objectives so that the exercise does not become overwhelming.

**4 Core participants:** The core participants in the exercise should be law enforcement and prosecutors, where law enforcement can include investigators and border police. We note that **prosecutors** should play a key role, even in jurisdictions where they are not directly involved in conducting investigations, as they are responsible for evaluating the findings of the investigators in order to prepare the indictment and are authorized to send the file back to investigators with guidance for additional action to be taken. As such, the simulation allows them to discuss issues and challenges with investigators in a safe learning environment and thus bring about greater understanding, and hopefully better cooperation between these practitioners in future.

**Investigators** profit from the exercise, in their turn, by enhancing their awareness of typical evidential difficulties, understanding the need to gather a variety of evidence, and learning about special investigative techniques which may strengthen the evidential picture. Like the prosecutors, they also profit from the ability to raise issues and challenges with prosecutors in a safe learning environment, thus leading to better understanding and hopefully to better future cooperation.

Other participants may be included such as **judges**, as was done in an investigation simulation in Tunisia.

The number of participants can vary but optimally should not be more than 25 so that every participant can play an active role.

**5 Time frame:** Optimally, the investigation simulation should take place for 2-3 days. If it is combined with a mock trial, optimally it should not take longer

than 2 days in order to leave enough time for the mock trial and to ensure that participants will be able to take the time off from their busy schedules.

**6 Basic stages of exercise - theory and practice:** The exercise should include a theoretical part and a practical part including an investigation and the drafting of an indictment on the basis of the investigation. However, in order to cover all bases, the training team should have an indictment prepared just in case time constraints prevent its preparation by participants. We note that while a theoretical part is crucial, the bulk of the exercise should be practical.

**7 Important guidelines for the practical part of the exercise:**

- **How to choose the case for investigation:** The case should be chosen on the basis of the same criteria which guide case selection in mock trials as described above in section 4 of this manual.
- **The importance of varied pieces of evidence and various evidence gathering techniques** in order to bring about internalization of the message that it is not enough to rely on victim testimony.
- **How to spark the investigation:** Participants should have before them a case scenario which can vary as to the amount of detail, or a crucial piece of evidence and for example: a press report, a social media conversation, the transcript of a phone call or a suspicious document which should lead to the gradual discovery of additional evidence. (See section 13.5 for further details).
- **Concrete tasks to be assigned to participants:** It is useful to give participants concrete tasks at every stage and to present them with options along the way. Among the concrete tasks given to participants, they should be encouraged to formulate **an investigation strategy and victim protection strategy** based on leads and evidence, which strategies can change as the exercise progresses. In addition, the exercise should include the **gathering of evidence** including searches to discover documents and objects, interviews with key witnesses, site visits, special investigative techniques if relevant. Emphasis should be placed on the weaknesses of victim testimony, thus encouraging sensitive interviewing and collection of additional evidence



to corroborate victims. In addition, the exercise should include the **preparation of an indictment**.

We note that not all simulations organized by UNODC included the interviewing of witnesses.

**8 Victim protection considerations crucial:**

Throughout the course of the exercise, participants should be instructed to consider victim protection and for example in terms of risk assessments and protection steps.

**9 The importance of an evolving investigation approach:**

Allowing participants to accommodate themselves according to new pieces of evidence presented to them, both in terms of investigation strategies and victim protection strategies, thus closely simulating a real investigation process.

**10 Never losing sight of resources and logistics:**

For example, while opting for real arenas such as bus terminals and airports has been done on occasion, attention should be paid to the capacities of the given jurisdiction in terms of resources and logistics; while supplying participants with tablets including information has been done on occasion, attention should be paid to the costliness of such a tool.

**11 Paying mind to local patterns, legislation and culture:**

As in the mock trial exercise, care should be taken to focus on local patterns and legislation as well as to pay attention to local culture and organizational climates.

**12 The importance of clarity and keeping to time frame:**

Instructions to participants should be clear, concise and time linked.

**13 Encouraging practice with special investigative techniques:**

Consideration should be given to allowing participants to develop strategies involving important special investigative techniques like surveillance, asset tracking, freezing and seizing assets, wire - tapping, handling internet-based evidence and to experiment with them, while instructing them to check their legality and while considering the question of resources.

**14 Constant monitoring and evaluation but not at the price of stifling creativity:**

It is useful to maintain constant and consistent monitoring and evaluation on the part of the training team, which can include debriefings after each stage and at the

end of the exercise. However, trainers should take care not to oversee too stringently so as to allow for self-directed and creative solutions on the part of participants.

## Core characteristics of Investigation Simulation

- **Goals of the exercise:** to enhance investigation and prosecution of trafficking offences; raise awareness of the importance of victim protection and strengthen collaboration between investigators and prosecutors.
- **Creating an atmosphere of trust, cooperation and learning.**
- **Varied composition of training team** including practical experience handling investigations and indictments.
- **The need for meticulous planning by trainers** including planning stages of exercise, choosing case and preparing varied pieces of evidence **while leaving room for flexibility.**
- **Core participants** law enforcement officers and prosecutors.
- **Optimal time frame** 2-3 days.
- **Theoretical and practical stages** crucial.
- **Practical stage to include concrete tasks for participants** at every stage with the discovery of new evidence including formulating investigation strategy, evidence gathering and preparing of indictment.
- **Sparking the investigation** by means of a piece of evidence or a case scenario.



- **A variety of evidence gathering techniques and kinds of evidence.**
- **Emphasizing victim protection strategies.**
- **The importance of an evolving investigation** approach presenting participants with new leads and evidence at each stage.
- **Never losing sight of resources and logistics.**
- **Always paying mind to local legislation, culture and patterns.**
- **The importance of clear, time linked instructions.**
- **Encouraging practice with special investigative techniques.**
- **Constant monitoring and evaluation by training team** while taking care not to limit participants' creativity.

### 13.3. The varied tasks of the trainers before and during the exercise

Trainers are responsible for directing the exercise while taking care that participants should be given the latitude to innovate.

Their tasks include planning and preparing, both before and during the exercise:

#### Before the exercise commences:

Trainers should take the care to consult local experts on the laws of evidence and procedure pertinent to the simulation; investigation practices; the roles of investigators and prosecutors; the cultural milieu, including topics of cultural sensitivity; and the organizational climate of the professionals who will be participating. Examples of the negative consequences of not seeking expert advice on cultural issues occurred in an investigation simulation in Ethiopia where lack of awareness

of the sensitivity of land tenure issues led to hostility on the part of local villagers who suspected the trainer of being in the pay of investors when he took pictures of their homes.<sup>73</sup>

Trainers should **choose the topics** which are most important for the specific jurisdiction and which will be addressed in the theoretical part of the exercise and in the case to be investigated. They should also decide **who should present** during the theoretical part of the exercise, what **tools** should be used to make the theoretical part interactive and what **sources** they should distribute to participants. In addition, they should **choose the case** on which the exercise will be based; **decide which witnesses** will appear (and for example if they intend to include only eye witnesses or an expert as well); **prepare the relevant documents** including an agenda, clear rules for participants,<sup>74</sup> a list of roles, a case scenario or a crucial piece of evidence which sparks the investigation, instructions for participants at every stage of the exercise, scripts for actors if it is decided that they will play the roles of witnesses.

They should also prepare the **varied pieces of evidence** which will be used in the investigation, such as the profiles or statements of witnesses, relevant documents, objects, pictures of persons or premises and perhaps audiotapes or videotapes, though this may require complex logistics to implement; decide **where to plant** the documents and objects and **who should play the witnesses** - participants, trainers, actors or survivors. During this stage, they should **plan out the tasks for participants** at each stage of the exercise and plan out the **gradual introduction of evidence** with one piece of evidence leading participants to the next. They should also decide what **evidence gathering processes** should be included and for example, interviewing witnesses, visiting the site of the crime, seizing objects and documents. Finally, they should agree on the **estimated time frame** of each stage of the exercise.

In order to determine the kinds and pieces of evidence to be introduced, the trainers team will need to consider the questions and issues they wish to highlight. This

<sup>73</sup> This information was provided by a United Kingdom practitioner who participated in the Expert Group Meeting which reviewed a draft of this manual.  
<sup>74</sup> See section 13.5.1 for examples of such rules and for example regarding physical contact during the course of the exercise.

will determine the content of the statements of the witnesses and the kinds of documents and physical evidence to be introduced.

NOTE: A sample evidence gathering process along with the evidence produced by it appears in [Appendix 12](#).

During this preliminary stage trainers should **decide on their approach to various issues** analyzed in section 13.6 such as: the number of participants, what kinds of participants should be included beyond the core participants; if participants should play their own roles or switch roles and more.<sup>75</sup>

#### During the exercise:

Trainers should introduce each stage of the exercise, assign tasks, divide participants into groups and mentor the groups to ensure that they are progressing. Throughout the exercise, they should provide guidance on how to perform the assigned tasks and in particular – how to interview witnesses and how to implement special investigative techniques, if these are included. Throughout the exercise, they should constantly monitor and evaluate each stage while taking care not to stifle participants' creativity. They should maintain vigilance and know when to change course according to participants' progress, including the preparation of new evidence if needed.

#### Both before and during the exercise:

Before embarking on the simulation, trainers should conduct coordination meetings to make sure everyone understands the case and how the simulation should be conducted. The principal trainer can prepare and distribute a handout for the other trainers with a sequential presentation of the simulation. During the exercise, as it develops, trainers should make sure to maintain contact and good communication and to update each other on the progress of the simulation. This will require that all trainers speak a common language

and that they can maintain communication, including by electronic means such as social media group chats.



### 13.4. The theoretical part of the exercise

As said, the investigation simulation is divided into two main parts: a theoretical part and a practical part. The following provides more detail as to the theoretical part of the exercise.

This part of the exercise may be delivered before the practical part. Alternatively, a theoretical presentation may precede each part of the practical stages of the exercise. While this part is crucial in order to ensure a common base of knowledge to participants, it should be brief, as the bulk of the exercise should focus on practice, rather than theory.

If the investigation simulation precedes a mock trial, the theoretical part should be tailored to the mock trial as well as to the investigation simulation and may make further theoretical presentations during or preceding the mock trial stage unnecessary. Alternatively, brief theoretical presentations should be made during the

<sup>75</sup> Examples of such issues are: the number of participants, what kinds of participants should be included beyond the core participants; If participants should play their own roles or switch roles; who should play the role of the witnesses – participants, trainers or actors; how it is best to divide the participants into groups and what each group should do; If real or artificial arenas should be used; what should spark the investigation – a case scenario or a crucial piece of evidence; what roles the prosecutors should play; if they should opt for an unfolding investigation where new evidence is introduced at later stages of the exercise; if they should include special investigative techniques and if so which ones; if they should include practice with international cooperation in the exercise.

investigation simulation to be followed by more in-depth presentations during the mock trial.

The theoretical part of the exercise should explore particularly important substantive and evidential issues, though briefly. Examples are topics like the elements of the crime; the consent of the victim; the difference between child and adult trafficking if relevant; indicators in identifying victims; typical strengths and weaknesses of evidence in trafficking in persons cases, and in particular weaknesses in the behaviour and testimony of victims; the importance of victim protection; and the balance which needs to be achieved between possible risk to the victim and the need to gather as much evidence as possible.

In addition, investigation methodology should be presented, including planning and strategy and evidence gathering techniques. If it is intended to use special investigative techniques, it should be clarified when their use is valuable and the local legislation regarding them should be described. If it is intended to include interviewing of witnesses among the tasks of participants, guidance should be given as to proper methods of interviewing witnesses and especially victims.<sup>76</sup>

Additional topics can be chosen if they are particularly relevant to the local patterns. An example could be **the use of interpreters** if the case concerns foreign victims unfamiliar with the local language. This presentation could include good practices alongside typical pitfalls in choosing the proper interpreter.<sup>77</sup> Another optional

topic might be how to handle the committing of criminal acts by the victim during the course of the trafficking process. If the case at hand includes international elements, the theoretical part of the exercise could include the topic of international cooperation.

During this stage, participants should be provided with a limited arsenal of theoretical materials such as the relevant trafficking legislation; laws concerning various investigative techniques like wire-tapping or surveillance, if relevant; relevant sections from UNODC's Anti – Human Trafficking Manual for Criminal Justice Practitioners<sup>78</sup> and selected sections from UNODC's Case Digest which address kinds of evidence and evidential strengths and weaknesses<sup>79</sup>

The theoretical part of the exercise can be delivered by means of a variety of tools: short presentations; e-learning modules assigned to participants<sup>80</sup> information and questions fed into tablets which participants are required to read and respond to<sup>81</sup> films like UNODC's Central Asian Office film "Victims, Not Villains"<sup>82</sup> which provides a good method of interviewing victims; **role plays** simulating interviews of witnesses and especially victims, but see section 6.4.4 for the caution which should be observed in regard to role plays.

A useful **sample agenda**, including topics to address during the theoretical part of the exercise, can be found in [Appendix 10](#).

76 Examples appear in UNODC's Anti-human trafficking manual for criminal justice participants, module 8 on interviewing victims of trafficking in persons who are potential witnesses; module 9 on interviewing child victims of trafficking in persons, available at: <https://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>.

77 A description of good practices and possible pitfalls appears in UNODC's Anti human trafficking manual for criminal justice practitioners, module 10. The risks include inadvertently choosing an interpreter connected to the suspect; one from an ethnic group hostile to the victim's group or from the same ethnic group which may lead to a fear of stigmatization.

78 Most of the modules are highly relevant to an investigation simulation. Examples of relevant modules are: module 1 – definition of trafficking in persons and smuggling of migrants; module 2 – indicators of trafficking in persons; module 3 – psychological reaction of victims of trafficking in persons; module 4 – control methods in trafficking in persons; module 5 – risk assessment in trafficking in persons investigations; module 6 – international cooperation in trafficking in persons cases; module 7 – crime scene and physical evidence examinations in trafficking in persons investigations; module 8 – interviewing victims of trafficking in persons who are potential witnesses; module 9 – interviewing child victims of trafficking in persons; module 10 – interpreters in trafficking in persons investigations; module 11 – victims' needs in criminal justice proceedings in trafficking in persons cases; module 12 – assistance and protection to victim-witnesses in trafficking in persons cases.

79 Examples of relevant sections are 2.1 – an introduction to kinds of evidence; section 2.2.1 – weaknesses in victim testimony; section 2.3 – testimonial evidence of persons other than victims; section 2.6 – Expert or professional testimony, if relevant; section 2.7 – documentary evidence; section 2.8 – real evidence; section 2.9 – evidence gathered by special investigative techniques; selected subsections of section 3.2 – circumstances which can contribute to conviction; section 3.3.6 – victim behaviour as a weakness in a case

80 See section 6.4.5 for further information on this tool and an analysis of its pros and cons.

81 See section 6.4.5 for an analysis of the issues which arise in respect to this tool.

82 Previously cited.

## 13.5. Practical part of the exercise:

The practical part is at the heart of the exercise, aimed at strengthening participants' skills and knowhow as to how to handle trafficking in persons investigations and the drafting of indictments and how to evaluate the evidential picture and protect the victims.

A useful **sample planning methodology** can be found in [Appendix 11](#).

### 13.5.1. Stages of the exercise:

The practical part of the exercise should include an investigation and the drafting of an indictment on the basis of the investigation. It may follow the following stages, although trainers should feel free to depart from them in response to participants' needs:

- 15 Presenting rules:** It is important to commence the exercise by presenting participants with important rules, and for example, prohibitions on touching unnecessarily; prohibition of fighting; interdiction of physical restraints and of escape tactics. Trainers might also consider rules on issues which should not be brought into the simulation. One example might be the introduction of bribery into the exercise by participants which tends to happen because this is a prevalent pattern in many countries. However, since it may deflect participants from the core issues of the simulation, trainers may prohibit it.
- 16 Division into groups** of practitioners to encourage active participation of each participant. If participants come from different professions, it is preferable to mix them in each group so as to profit from various areas of expertise and to encourage mutual understanding and appreciation, which may lead to better future cooperation.
- 17 Distribution of a brief case scenario or a crucial piece of evidence to spark the investigation.**
- 18 Initial investigation and victim protection strategies:** After the case scenario of initial piece of evidence is distributed, participants should be tasked with formulating initial investigation and victim protection strategies, if victims are already identified. This initial strategy should include what immediate actions need to be taken.
- 19 Initial evidence gathering by participants:** After participants have formulated their initial investigative strategy, they should proceed according to it and begin to gather evidence which may include interviewing independent witnesses or victims or conducting searches or site visits.
- 20 Evolving investigation strategy:** After initial investigative actions have been undertaken, participants will be asked which investigative strategy to pursue in light of the additional evidence or leads which they have uncovered, and which further investigative actions should be undertaken. They will then be asked to proceed to undertake such actions. As the investigation proceeds, and as each new piece of evidence is collected by participants, they will be asked what important information was elicited and what further action should be undertaken. Participants will perform the evidence gathering decided upon, which may include interviewing witnesses, conducting searches or site visits, requesting expert evidence, and considering if to use special investigative techniques. However, even if participants do not succeed in eliciting maximal information from each investigative / evidence gathering action, trainers will provide them, when each action is concluded, with complete information prepared before the exercise commenced, whether in the form of the statements of witnesses, victims or suspects; evidence elicited in searches or site visits; expert opinions; or information elicited by means of special investigative techniques. Thus, participants will be able to proceed to the next stage of the investigation with complete information.
- 21 Kinds of evidence which can be produced by means of evidence gathering actions:** The evidence gathering process may produce the following evidence or leads:
  - A Interviewing relevant persons** may produce important information relevant to the elements of the crime or evidential issues and point to further actions which need to be undertaken. These persons may include victims, independent witnesses, suspects and their family members and expert witnesses, if necessary.

NOTE: If witnesses are interviewed, trainers should introduce this stage or address it in the theoretical



part by highlighting various issues, including the importance of the physical state of room, how to best address interviewees and especially victims, how to perform risk assessments, and what protection steps are available.<sup>83</sup>

- B Conducting site visits** may result in evidence such as photographs of premises or persons or leads as to important questions to ask witnesses. The photographs may be of premises illustrating crowded, unhygienic conditions, lack of food in refrigerator, lack of running water and heating, inexistence or inadequate bathrooms, unsafe living or working conditions or photographs of persons in poor physical condition – sickly, emaciated, with wounds on body.
- C Conducting searches** can produce **documents** which can be seized, (like data extracted from cell phones, employment contracts, passports, birth certificates, work permits, social media communications, advertisements in media); and **relevant objects** which can be collected (like condoms, weapons, banknotes and marked money, tools, equipment, clothes, biological traces, traces of drugs or gunpowder.) This evidence can be supplemented by pictures of premises or persons as described in subsection (b). In addition, audiotape or videotape evidence may be collected, although it may require complex logistics to prepare it. These pieces of evidence can be physically made available to participants or be described/depicted in documents to be handed to participants when the investigation simulation is carried out solely as a table-top exercise.
- D** Considering the option of requesting **expert evidence** like medical or psychological reports or cybercrime analyses may produce important explanations of victim behaviour or suspect modus operandi.
- E Using special investigative techniques** may produce leads which enable participants to gather

additional evidence or produce relevant evidence in themselves.

NOTE: A detailed description of the evidence produced by means of an evidence gathering process appears in [Appendix 12](#).

- F Evolving victim protection strategy:** At relevant stages of the investigation participants should be tasked with **developing a victim protection strategy** on the basis of a risk assessment of victims<sup>84</sup> and the consideration of relevant victim protection steps such as transferring the victim to a shelter or safe accommodation; ensuring that welfare staff are available, both during victim interviews and to support the victim after he or she has completed his or her statement.<sup>85</sup> Such steps should be reviewed and adjusted during successive stages of the investigation.
- G Debriefing** at various stages of the exercise and general debriefing at the conclusion of the investigation.
- H The preparation of an indictment:** The prosecution should prepare an indictment on the basis of the evidence gathered. We note that the training team should have an indictment in reserve in case participants do not have the time to prepare it.
- I Examining judge review:** In some civil law systems, it may be considered to proceed to the examining judge in order that he reviews the evidence and rules if it is sufficient to go to trial.
- J Mock trial exercise:** Participants can move on to the mock trial if this is a simulation intended to precede the mock trial. The mock trial will include a moderator's introduction and role allocation, a preparation period, a hearing and a debriefing. However, the theoretical part may not be necessary or may be shorter than usual, if some topics have been covered during the theoretical part of the investigation simulation.

<sup>83</sup> See modules 8 and 9 of UNODC's Anti human trafficking manual for criminal justice practitioners, available at <https://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>

<sup>84</sup> An important source in this regard is UNODC's Anti – human trafficking manual for criminal justice practitioners, module 5 on "Risk assessments in trafficking in persons investigations" available at <https://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>

<sup>85</sup> For some ideas about additional victim protection steps see: Module 12 of UNODC's Anti – Human Trafficking Manual for Criminal Justice Practitioners, accessible at [https://www.unodc.org/documents/human-trafficking/TIP\\_module12\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/TIP_module12_Ebook.pdf)

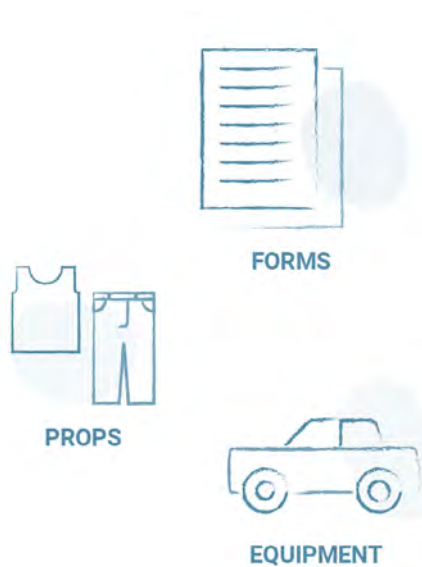


### 13.5.2 Tools:

During the practical part of the exercise, the following tools have been used successfully:

- **Forms** aimed at helping participants develop operational strategies or plans which can be used at various stages of the exercise.
- **Props** which should be provided for whoever is playing the roles of suspects, victims, witnesses including expert witnesses, if present. These can include convincing clothing, phones, slips of paper and bank notes, some of which can constitute evidence.
- **Equipment** should be provided to participants in order to simulate reality, and for example: radios, fake guns, vehicles. Care should be taken that the equipment works and real guns should never be used.

Diagram 4 - Tools:



### 13.6. Issues which may arise:

The following are a number of issues which may arise during the course of the exercise. Most can be solved in a number of ways, each of which may have advantages and disadvantages:

#### Number of participants:

A balance should be achieved between too many participants and too few. There are advantages to few participants in that this enables trainers to devote enough attention to each participant, to give each participant an active role in the exercise and to avoid the clumsiness of interacting with too many participants. However, the institutions of the various participants will doubtless be interested in training as many practitioners as possible. One suggestion is to involve up to 30 participants.

#### Number of trainers/supervisors

Since this is an intensive exercise which may unfold in unexpected directions, it requires a number of trainers/supervisors to be present and keep their fingers on the pulse. One recommendation was to include at least 4 supervisors/trainers.

#### Additional participants over and beyond investigators and prosecutors?

Depending on the case, there may be value in including other practitioners over and beyond investigators and prosecutors. These can include functionaries who may serve as important sources of information for investigators. Examples are labour inspectors, immigration officials, welfare workers, health workers or N.G.O employees. These practitioners may encounter cases which present suspicions of trafficking and their cooperation with investigators may make the difference between a case and the lack of one. In some civil law systems, where there are examining judges, they may be included, as it is their function to examine the evidence after it is gathered in order to assess if it suffices to go to trial. It can be considered to include a survivor in the investigation to give input as to the effect of certain investigatory steps on victims. It can also be considered to include a cybercrime expert in order to guide participants in locating and using this form of evidence which has assumed much importance during the last years.

When deciding on participants over and beyond investigators and prosecutors, attention should be paid to the local culture and hierarchies and for example, in some jurisdictions, judges would not be an appropriate choice, if they view such simulations as demeaning.

### **What language should be used?**

The exercise should be conducted in local languages so as to facilitate a natural flow to the exercise. If trainers/supervisors are not familiar with these languages, interpreters might be used.

### **Should participants play their own roles or switch roles?**

As in the mock trial hearing, the question arises if it is more valuable for participants to play their own roles or switch roles. The advantage of participants playing their own roles is that this directly enhances their professional skills. On the other hand, switching roles may serve to foster a greater understanding of the difficulties faced by other practitioners and lead to smoother future cooperation among them. It may also lead to a more creative view of the case at hand when viewed from a different vantage point.

NOTE: Allocation of roles during the investigation simulation phase does not necessarily have to influence role allocation during the mock trial phase.

### **How to spark the investigation**

It is possible to distribute a case scenario or a crucial piece of evidence or lead raising a suspicion of trafficking, and for example: a social media conversation, the transcript of a phone call from a concerned citizen or a suspicious document such as a contract including a no payment provision until an enormous debt has been paid.

While the case scenario may promote clarity and thus make the exercise run more smoothly, choosing a crucial piece of evidence or a lead, may more closely simulate reality, as an investigation begins on the basis of some piece of evidence or a lead, rather than a completed set of facts.

If a case scenario is chosen the amount of detail may vary. While a more detailed case scenario may promote an efficient use of time, a less detailed scenario may simulate reality more closely.

### **Should actors, trainers, participants or survivors be employed to play the roles of witnesses, victims and suspects?**

While in some simulations, actors, trainers or off duty police officers who were paid for overtime, were engaged to play the victim, suspects and witnesses, in others these roles were played by participants or survivors.

The pros and cons of these choices have been explored above in [section 7.2.5](#) on “who should play the roles?”, when addressing the mock trial hearing.

If actors are chosen to play these roles, there is a need for extensive coaching of them; it will not suffice to simply tell them in general lines about their profiles and what they need to do, but rather it will be necessary coach them by presenting them with hypothetical questions so that they can develop into their roles<sup>86</sup>

NOTE: As in the mock trial hearing, if it is chosen to have the victim played by a participant, this should be a voluntary and not an assigned role, as there is no way of knowing the past history of participants and their sensitivity to undertaking this role. If it is decided to have this role played by a survivor, trainers need to ask national experts to choose such a victim in order to ascertain that she or he is emotionally capable of performing the role without undue stress and that this is voluntary on their part.

### **What should the role of the prosecutor be?**

While it is clear that the prosecutor should draft the indictment, the role can include leading the investigation or at least accompanying it in line with the approach according to which prosecutors need to take an active role during the investigation stage due to the complexity of the crime. It can also include going over the evidence and returning the file to investigators in order to gather further evidence.

### **What are the advantages of an evolving investigation?**

In most past simulations, the investigators were given the responsibility to gather evidence in response to developments in the case which started in one way

<sup>86</sup> This was suggested by an expert who participated in the Expert Group Meeting convened on March 9 – 10 to review a draft of this manual.

and developed in another. The advantage of the evolving investigation is that it better simulates reality and presents participants with complex problems which may increase learning. On the other hand, it obligates trainers to prepare more evidence, both from the start, and sometimes during the course of the exercise, if participants proceed in different directions than originally foreseen.

An example is the investigation simulation held in Tunisia in 2019 where at first, the participants were provided with very limited preliminary information on the case (through a transcript of a phone conversation) and were asked to develop an investigative strategy. Throughout the next days of the investigation simulation, participants engaged in evidence gathering, where each new piece of evidence pointed the way to additional evidence gathering actions. In response to each new piece of evidence, participants adjusted their investigative strategies. Even if participants did not succeed in eliciting maximal information from each evidence gathering activity, they were provided with a complete transcript which had been previously prepared by trainers and which they used to continue the investigation.

This is a standard approach used to various extents in most investigation simulations.

### **Should participants be permitted to initiate evidence not planned by trainers?**

While trainers must plan the simulation meticulously, including the planning of investigative strategies and evidence at every stage of the exercise, the question arises if participants should be permitted to add evidence which has not been planned by trainers. One example would be taking pictures of premises or people in order to strengthen the case, even if trainers have not distributed such pictures. Another example would be to allow participants to create their own characters to be interviewed. On the one hand, allowing this freedom can spark creativity, but on the other hand, it can also create confusion, complicate the exercise and militate against time restraints.

### **Should the prosecutors or trainers prepare the indictment?**

Ideally, the participants playing the roles of prosecutors should prepare the indictment, thus acquiring skills and gaining practice with identifying the facts which are crucial to the crime of trafficking in persons. However, there is a risk in that participants may prepare an indictment missing crucial elements. In that case it might be awkward or even embarrassing for trainers to substitute their indictment for the one prepared by participants. In addition, time constraints might not allow participants to prepare an indictment.

One solution might be to invite the groups to present orally, at the end of the investigation, what the elements of the indictment should be, and then distribute the pre-prepared indictment or allow participants to prepare the indictment on the basis of that discussion, if time allows.

### **Which arenas/venues should be used?**

Three main questions arise:

#### **1 What size should the arena be?**

This should achieve a balance between the ability to supervise it and the need to separate certain places like shelters and police stations in order to conform to reality.

#### **2 What should the venue include?**

Walls should allow for flipchart paper and posters to be hung and kept throughout the training. Additional, smaller break-out rooms for interviewing, crime scene examination or group work should be available.

#### **3 Real or artificial arena?**

In some simulations in Latin America, real arenas were used and for example: airports, bus terminals, factory sites. The advantage of this choice is that it better simulates reality and better enlists the enthusiasm of participants. On the other hand, in other simulations, artificial arenas like conference rooms were used due to the logistical complexity of arranging real arenas and due to considerations of resources and capacities. Both methods can further learning. However, in both cases, attention should

be paid to ensuring that an adequate number of rooms is available for witness interviews and crime scene activity.

That said, trainers should be aware of some of the pitfalls of conducting the simulation in real arenas. The following were some negative experiences reported by experts:<sup>87</sup> One expert reported that where a simulation was conducted in a hotel, an actress portraying a prostitute was propositioned by hotel clients.



Another expert reported that in a country with land tenure issues, participants portraying villagers were attacked by real villagers.

In another case, neighbors who were unaware of the simulation contacted the police and in yet another case participants mistakenly arrested a member of the public rather than the actor who was portraying the suspect.

For these reasons, often, for convenience, investigation simulations are conducted in conference/hotel/training rooms. However, even when the simulation is conducted as a table-top exercise, some actions, such as interviews of witnesses/victims, can be conducted in a venue arranged to reproduce a police station in the interests of engaging participants.

## Questions regarding the dividing of participants into small groups:

The following questions arise in regard to dividing participants into small groups:

### 1 **Should the various groups be assigned different tasks** or should all focus on one task? Both approaches have validity.

- In an exercise in **Mauritania**, one group focused on searches and other investigative steps whereas another group focused on victim interviews and protection and yet another focused on international cooperation and coordinating the products of all the groups. This emphasized the importance of cooperation and coordination. However, this approach required extreme levels of concentration and engagement by participants, as well as solid and meticulous preparation on the part of trainers.
- On the other hand, in an exercise conducted in **Serbia**, all 3 groups competed by working on the same tasks, which motivated each group to succeed. If this alternative is chosen, all the groups will play the role of investigators and in interviewing witnesses, they will alternate so that each group does at least one interview. At the end of the process, those who play the roles of prosecutors will be tasked to prepare the indictment or the trainers will distribute an indictment which they have prepared previously.

### 2 **Should the various groups be composed of one kind of professional or mixed professionals?**

Most exercises seemed to opt for mixed groups in order to profit from different perspectives and focus on cooperation. However, it can be claimed that dividing the groups according to profession may better enhance professional skills. Still the advantages of the mixed groups seem to outweigh the drawbacks so that this is the recommended practice.

### 3 **Should interviewing witnesses be a mandatory part of the exercise?**

While in most simulations, practice with interviewing was part of the exercise, in an investigative simulation in Serbia emphasis was placed on practice

<sup>87</sup> These experiences were reported by experts who participated in the Expert Group Meeting convened on March 9-10 2023 to review a draft of this manual.



in gathering material evidence in the given arena, thus stressing that this evidence is crucial to the success of a case, in view of typical weaknesses in victim testimony. This way of proceeding also assisted the training team to remain within the time frame, as interviewing is time intensive.

However, in view of the importance of witnesses in trafficking cases, it is recommended that interviewing witnesses be a part of the exercise, while cautioning participants to gather as many kinds of evidence as possible.

#### **4 Should international cooperation be a mandatory part of the exercise?**

This is an important topic to address in any cross-border case and may include practice in working with joint investigation teams, seeking intelligence from other States or from Interpol, or requesting mutual legal assistance or extradition. For these reasons, such a topic was tackled in an investigative simulation in Mauritania. However, this decision will depend on the case scenario and on the time frame of the exercise.

#### **5 What special investigative techniques should be utilized?**

This will depend on the local context, the relevance of various kinds of techniques to the case, the legislation in the given jurisdiction,<sup>88</sup> and resources. Examples might be eliciting evidence from social media; data analysis of phone evidence; wiretapping (if legal in the given jurisdiction); surveillance; financial tracking.

#### **6 How to handle downtimes?**

During the course of the simulation, there will be times when participants need to wait, as happens during real investigations. Trainers can handle this in two ways: by assigning activities during these times and/or by providing means of entertainment and for example: newspapers, magazines or television.

### **13.7. Learning from a sample investigation simulation**

In order to concretize how an investigation simulation actually works, we have attached a sample agenda ([Appendix 10](#)); a sample planning methodology document for trainers ([Appendix 11](#)), and sample evidence gathering documents ([Appendix 12](#)).

These sample documents were drawn from an investigation simulation and mock trial which took place between 25 March 2019 and 29 March 2019 in Tunisia under the auspices of UNODC. We note, that in this exercise the investigation simulation preceded a mock trial. The following describes this investigation simulation exercise:

#### **► The theoretical part:**

**Time frame** - 2 days.

**First day** - included topics such as the international framework of trafficking in persons, the institutional and legal framework of the fight against trafficking; indicators and identification methods, the typology of human trafficking and difficulties in identification.

**Second day** - addressed more specific topics like investigation methodology; investigation techniques; special investigation techniques; gender based human trafficking and migrant smuggling; international cooperation; the security approach to trafficking; victim interviewing; the role of civil society lawyers in protecting victims.

**Interactive tools** like case studies were used during the theoretical part of the exercise.

#### **► Actual investigation simulation:**

**Time frame** - about one day.

**The sparking of the investigation** – by means of a transcript of a telephone conversation received by police from an independent witness who had seen the condition of the victim with concern. Participants were asked what pertinent information

<sup>88</sup> Jurisdictions vary as to the permissibility of certain techniques and for example, in the Philippines, wire – tapping is illegal, whereas in other jurisdictions it is permitted under certain conditions.



emerged from this piece of evidence and what would be their first investigative action.

### **Subsequent investigative strategies and actions –**

- Participants decide that the first investigative action needs to be the interviewing of the concerned citizen. After doing so they are asked which important information was elicited from the witness and what their next investigative act should be.
- Participants decide to interview workers at the concerned citizen's mill who might have observed the victim. When these interviews are concluded, participants are asked what important information has emerged and what their next investigative action should be.
- Participants decide to visit the worksite of the victim, where they discover the victim's poor living conditions and his sickly appearance. They are asked what important information has emerged, what they wish to seize and what their next investigative action should be. Photographs are taken of the victim and his living conditions.
- Participants decide to send the victim to a hospital for an examination and the hospital document attests to his admission to the hospital and to the medical problems he displays. Participants are asked if further medical expertise is necessary.
- Participants decide that before consulting an additional expert they wish to interview the victim and do so. They are asked what important information has been elicited from him and which points should be verified.
- Participants decide to interview the suspect employer and do so. They are asked what important information has emerged and what points in his testimony need to be checked.
- Participants decide that they need to seize objects on the worksite and uncover several objects and

documents which support the victim's story including two smartphone videos of the victim being abused. They are asked if they have any other ideas of exhibits to seize and what further actions they need to undertake.

- Participants interview the wife and sons of the suspect. The sons are asked in relation to the objects seized at the worksite. Through the testimony of one son, they discover that there are additional workers on the worksite and locate where they live, form an impression of their poor living conditions and find the workers themselves who were hiding.
- Participants decide to interview these additional workers and do so. One displays signs of Stockholm syndrome<sup>89</sup> and testifies as to how he was recruited by a man called Josai. Participants are asked if they need to use special investigative techniques to find Josai.
- Participants decide to ask the victim to point out the place where he first met the suspect. He points to a tearoom and they interview the owner who testifies that the suspect met the victim there and also a black person whom he thinks is from Senegal. He promises to inform police if he sees this person again. This happens and police arrest the person who is identified by the additional workers at the worksite as their recruiter. Participants are asked if special investigative techniques to locate this recruiter have become superfluous.
- Participants decide to interview the recruiter and photograph him.
- On the basis of his information they decide to interview the suspect a second time in order to confront him with the new information.
- Participants decide to obtain an expert opinion of the victim's physical and mental state and do so.

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<sup>89</sup> Sometimes victims of trafficking and other crimes develop psychological attachments towards perpetrators upon whom they are dependent. This may cause them to identify with the perpetrators and magnify any small benefit conferred upon them. This psychological process is called 'trauma bonding' or 'Stockholm syndrome' after an actual case of hostage taking in Stockholm, Sweden, where this process was thought to be present. Often perpetrators encourage this process by doling out small benefits interspersed with abusive behaviour. See UNODC Anti – human trafficking manual for criminal justice practitioners, module 4 on "Control methods in trafficking in persons", p. 9, available at: <https://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>.

- Theoretical material is distributed on PTSD<sup>90</sup> and Stockholm syndrome<sup>91</sup> which enrich what the expert has said and explain victim behaviour and attitudes.

This investigation simulation has been chosen as a sample because it includes the following important elements:

- **Example of an evolving investigation strategy** which changes with the discovery of each new piece of evidence or lead which in turn leads to further evidence or leads.
- **A wealth of evidence gathering techniques**, including the interviewing of witnesses, victims and suspect, a site visit, the seizing of objects and documents, expert opinions and a question posed as to the need for special investigative techniques.
- **An array of evidence** is gathered over and beyond the main victim's statement: additional **statements**;<sup>92</sup> **objects** and **documents** found on the site; **photographs** of living conditions, victims and the recruiter.
- **Background information** is distributed which can assist participants to understand victim behaviour (about PTSD and Stockholm Syndrome).<sup>93</sup>
- **A variety of issues** and for example – both international and domestic trafficking; typical victim behaviour and attitudes which seemingly denote consent along with explanations of this behaviour.
- **Challenging questions** and for example: has the requisite intent to exploit been proved against the recruiter? Can the additional workers on the site be considered victims of trafficking despite their seeming consent? How should participants address the weaknesses in the case?
- **The mock trial exercise commences**, no additional theoretical presentations are included, as

they have been delivered prior to the investigation simulation.

We note that though participants are expected to perform all the investigatory actions, just in case they do not elicit all the requisite information, the trainers have previously prepared evidence with full information so that participants can proceed to the next stages with complete knowledge of the evidential picture.

### 13.8. Advantages and disadvantages of the exercise

There are many advantages to an investigation simulation, whether carried on in conjunction with a mock trial or independently of it, in that it allows participants the opportunity to improve both skills and understanding.

- **Development of skills:** Such an exercise allows practitioners to practice cooperating, which is crucial in trafficking in persons cases. It also allows them to experience first-hand the difficulties in collecting evidence and the complexity of the issues, alongside the opportunity to experience different investigative techniques to address them. If interviewing of witnesses is practiced, participants gain experience doing so according to the PEACE system<sup>94</sup> or other systems, including how to interview sensitively and how to handle inconsistencies and other kinds of weaknesses.
- **Heightened awareness and understanding:** Examples are understanding the importance of gathering evidence to corroborate victim statements in view of the typical weaknesses in victim testimony and behaviour; realizing that protecting the victim also helps the case; understanding that a seeming weakness in the case can actually be seen

90 Posttraumatic stress disorder (PTSD) is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, series of events or set of circumstances. An individual may experience this as emotionally or physically harmful or life-threatening and may affect mental, physical, social, and/or spiritual well-being. See American Psychiatric Association definition at <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>. See also Judith Herman, "Trauma and Recovery" Basic Books, 1997.

91 Previously explained.

92 These include independent witnesses' statements, two suspect statements, statements by additional persons who may be victims, statements by the suspects' family members.

93 These terms have been previously explained.

94 This is a five-stage method of interviewing witnesses: Planning and preparation, engaging with the victim-witness and explaining the process and content, obtaining the account of the victim-witness, closing an interview appropriately and evaluating the content of the interview (PEACE). See UNODC's Anti Human Trafficking Manual for Criminal Justice Practitioners, module 8 – on interviewing victim of trafficking in persons who are potential witnesses

as a strength;<sup>95</sup> understanding the difficulties and challenges faced by other practitioners along with their importance to cases, thus leading to better cooperation in future. Finally, such a simulation may open the hearts and minds of participants and pave the way to seek creative, out of the box solutions.

The richest learning is provided when such a simulation is combined with a mock trial, thus allowing practitioners to participate in the full gamut of the case and learn from every stage. Thus, participants assume responsibility for the gathering of evidence, rather than being passive recipients of evidence prepared by trainers. The same goes for the preparing of the indictment; instead of receiving a ready-made indictment or preparing an indictment on the basis of written material alone,

participants prepare it on the basis of the evidence they have gathered.

- **Disadvantages:** On the other hand, investigative simulations also have a number of disadvantages. Firstly, such a simulation is time consuming, thus lengthening the exercise when combined with a mock trial and making it difficult for busy practitioners to take so much time off from their professional duties. Secondly, it requires more investment of resources, both in terms of expenses and trainers' work. Moreover, it may be difficult to achieve a balance between this stage and the hearing stage, as there may tend to be more emphasis on the investigation because it may appear to be more exciting and active, and seem to allow more room for creativity.

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<sup>95</sup> An example is realizing that victim omissions, inconsistencies and hesitations may actually prove credibility as can be seen in the Canadian case of *R. v. Urizar*, File No. 505-1-084654-090, L-017.10, Court of Québec, District of Longueuil, Criminal Division (J.C.Q.), (2010-08-13), 13 August 2010, and *Urizar v. R.*, No. 500-10-004763-106, Court of Appeal, Quebec, 16 January 2013. The trial court case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CAN005). Another example is realizing that the victims' failure to escape or seek help at the first opportunity may show the strength of the control methods applied to her as can be seen in the Australian case of *R. v. Kovacs* [2009], 2Qd R 51, 23 December 2008, Queensland Court of Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS015)







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