

INSigHT - Building Capacity to Deal with Human Trafficking and Transit Routes in Nigeria, Italy, Sweden

Guidelines for Cultural Mediators Trainings

Introduction

The human beings taking part in a mediation process might be separated by many other boundaries besides culture. This is in particular true when state actors deal with presumed victims of trafficking and exploitation who are migrants, asylum seekers or refugees.

Personal divisions among trafficked persons and actors of public administration, law enforcement and criminal justice practitioners, health and social workers and lawyers may be along lines of social and economic status, generation, gender, or agency mandate, for example. Thus, possible problems making the prevention and/or solution of a conflict more difficult do not necessarily derive from cultural differences, just as opposing values and interests need not be necessarily only culturally determined. Even in those cases where culture does play a role, the importance of culture in interpersonal relations will not be the same between different pairs of interlocutors.

That being said, cultural factors need to be considered, as the decisive character of culture in provoking miscommunications and misunderstandings potentially even escalating to a conflict cannot be denied, in particular in the contexts where other difficulties are more likely to be present, such as in the instances where the victims of





trafficking and exploitation interact with the public administration, law enforcement and other stakeholders.

What are the main barriers and challenges in public administration interactions with trafficking and exploitation victims, which cultural mediators should be aware of:

- the lack of understanding of contra-intuitive reactions of victims such as (perceived “passivity”, belayed reporting/coming forward, lack of “self-identification”, inconsistent accounts, deposition withdrawal, absencing visible trauma symptoms, possible positive attitudes towards the suspect(s))
- credibility assessment is carried out on the basis of possibly inconsistent statements and behaviour
- establishment of “reasonable grounds” to believe that the person has been trafficked¹, without the need to reach the “beyond any reasonable doubt” threshold, in the context of constant credibility assessment
- the correct application of the concept of the “abuse of the position of vulnerability” as one of the means/elements to determine that the person is trafficked. The existence of threat or the use of force need not to be regarded as the only means (criteria) to consider the person as trafficked and to provide him/her with access to assistance and protection²

¹ The Council of Europe Convention on Action against Trafficking in Human Beings

² The Palermo Protocol definition, the Council of Europe Convention definition, the EU Trafficking Directive definition of trafficking and specifically the definition of “means”



What is the expected value-added of cultural mediation in trafficking and exploitation cases

Cultural mediation is “the intervention of an **acceptable, impartial and neutral third-party** who has **no authoritative decision-making power** to prevent escalation of conflict and **to assist parties** in voluntarily **reaching their own mutually acceptable settlement of issues**”.³

It is a voluntary process where an **impartial** third-party (the cultural mediator), accompanied mainly by the civil society worker (increasingly also by public administration, e.g. a cultural mediator introduced in the process by the asylum determination authority), **facilitates communication** between the parties and **engages them in a joint problem solving process**, in the multi-agency setting.

Effectiveness of the outcome thus depends crucially on the capacity of each party **to understand and appreciate the interests of the other**, and of **the cultural mediator to make this understanding possible** (Carnevale and Pruitt, 1992)

How should cultural mediators make this understanding possible?

Participants in cross-cultural mediation must not make the mistake of perceiving actors from other cultures (e.g. individualist versus collectivist cultures) and their opinions and actions **as predetermined exclusively by culture**. As importantly, the distinctions here must not mask the fact that both individualist and

³ Kay Lucke, Aloys Rigaut, 2002



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collectivist **cultures are far from homogeneous**. Miscommunications and misunderstandings based on culture can well take place between two cultures from one group.

The basic premise of successful cultural mediation shall depart from the fundamental principle that *“all human beings are born free and equal in dignity and rights, whatever their race, colour, sex, language, religion, opinion, national or social origin group, property, birth or other status”* (Article 1, Universal Declaration of Human Rights, 1948)

Culture and communication

Successful communication is already difficult enough without the introduction of different cultures in the process.

Insofar as models of verbal communication are concerned, they describe **how message is first encoded by the sender by putting it into words and then transmitted to the receiver who has to decode the words to interpret the intended meaning**.

Regularly, information is lost or indeed added in this process of codifying and de-codifying, as individuals intending to communicate with each other attach different meanings to the code: **for different individuals, words have different connotations**. Different attitudes to verbal and non-verbal communication are likely to complicate the communication process further.⁴

⁴ The direct, frank and confrontational style prevalent in individualist, low-context societies can easily be understood as rudeness and lack of respect by those from collectivist societies.



The problems of communication are exacerbated when communication takes place across cultures. This is not only due to the basic problem of translation, or due to the difficulties for non-native speakers of catching nuances when discussing in a foreign language. Language as a social instrument reflects a culture.

The more differences between the sender and receiver, the more likely it is that **the informational content of a message will be lost or altered during its transmission**. If culture consists of shared concepts and attached values, then culture is the basis for successful communication, enabling the correct interpretation of the intended meaning of the code.

Thus, if the same word has different meanings for mediation participants, both parties are likely to project their own culturally bound assumptions into the code, leading to a false interpretation of the other group's position.

The role of a cultural mediator is to impartially enable de-codification of the message so that it leads to the understanding of its intended meaning.

At the same time, the cultural mediator must not fall prey to his own stereotypes. While a mediator will have to show cultural awareness and sensitiveness, this **must not be confused with accepting all positions and acts as culturally determined**. Cultural ignorance must not be replaced by **excessive comprehension for all acts allegedly justified** with regard to culture. Aware of the problem, it is up to the mediator to strike a balance and decide if cultural diversity is a legitimate justification for certain positions/behaviour/demands or not. Cross-cultural win-win strategies should be exploited. For this to



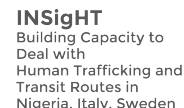
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be possible, mediators should understand the **culturally determined objectives of the parties**. This underlines the need for cultural mediators to have an excellent knowledge about the cultures of those present, not only of the culture of the (presumed) victim.

Standard setting requirements for cultural mediators in trafficking and exploitation cases⁵

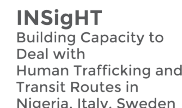
In cases where cultural mediation is required in trafficking and exploitation cases in the multi-agency setting, it is important to ensure that:

- Agencies participating at the interaction with the (presumed) victim agree beforehand on the selection and modalities of the engagement of the cultural mediator
- The leading institution/organization carrying out the interaction is established and it makes sure that it maintains agency during the entire interview
- Family members or friends are not used as “surrogate interpreters”
- (Presumed) victims are, when possible, able to choose the gender of the cultural mediator
- Cultural mediators are qualified professionals who have been vetted, background checked and referenced
- Cultural mediators fully understand the duty of confidentiality. This should be explained clearly to the (presumed) victim at the outset of the first session with the cultural mediator present.
- If working together with interpreters, cultural mediators appreciate the importance of interpreter’s mandate to translate word by word questions or explanations, and any answers or information that survivors give. Only when doubts



arise as to the interpretation and understanding of the intended meaning of such a conveyed message by interlocutors, cultural mediator shall proceed to clarification, always leaving the agency to the authority responsible for leading of the interview.

- Cultural mediators do not indicate, through verbal or non verbal means any judgement regarding the victims' conduct or experiences
- Cultural mediators are briefed prior to, and following appointments/interviews and are guided by the caseworker from the agency, which introduced them to the process. Cultural mediators may not be experts in the given topic/area of intervention (such as immigration law, asylum law, criminal law, civil or administrative law), and require regular briefings and guidance.
- The case worker running the interview never asks the cultural mediator's opinion about any aspect of the victim's behaviour and /or presentation unless this is **solely** to clarify the potential for cultural differences
- (Presumed) victims understand what is being said and are comfortable with the cultural mediator – it is the responsibility of the leading agency to ensure that. This should be explained at the outset of the first session with the cultural mediator so that they know that victims can raise any difficulty they have at any stage. Victims might not always feel able to assert their needs so case workers should remain vigilant and notice any behavioural changes that could be indicative of discomfort with the cultural mediation. Cultural mediators should be questioned by the agency leading the interview if what they have said does not seem to fit, has not been understood or appears incorrect



- All information received via a cultural mediator is recorded in the case notes, including the time of the session and the name of the cultural mediator
- Procedure for raising formal complaints against the cultural mediator are in place, they are explained and implemented in case of need

Cultural mediators impartially enable:

- Provision of a calm, consistent and welcoming environment
- Maintaining awareness of communication in all forms
- Understanding the person's presentation
- Focusing on current and future person's safety needs
- Demonstrating interest in the person's immediate safety, health and practical needs
- Explaining the identity, role and duties of all professionals in the room
- Ensuring that person's consent is informed and given freely
- Using and recording person's names appropriately
- Working effectively and safely with parents who are with children and babies
- Setting realistic goals and objectives
- Requesting sensitive and personal information
- Enabling the person to disclose sensitive personal information or full trafficking/exploitation histories (only for purpose of acting professionally in survivors' best interests and with their informed consent)
- Minimizing any distress by referring back to the 'Here and Now' principle⁶

⁶ "Here and Now" principle: Rachel Witkin, Dr Katy Robjant: Trauma-informed Code of Conduct, Helen Bamber Foundation, 2018, p.13





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- Working with survivors who have instilled beliefs and fears (including from ritualized violence).

What should cultural mediators help to clarify, using which framework?

Methodology:

The Systemic Investigation, Protection and Prosecution Strategy (SIPPS)⁷ is a framework that addresses the needs of victims of exploitation and trafficking from the point at which they are identified, all the way through to prosecution of traffickers. **It is particularly fit for the multi-agency based identification, referral and assistance work, conflict prevention, mediation and resolution in multi-agency setting aimed at identifying and assisting trafficking victims as well as in the context of criminal justice response and prosecution.**

This approach enables safeguarding practitioners and investigators to account for the unpredictable dynamics of an abusive and exploitative relationship.

Cultural mediators' role, such as making this understanding possible through the use of the SIPPS framework, is crucial to the human rights based approach compliant intake and the overall dealing with the trafficking/exploitation case.

⁷ Craig Barlow, 2015



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The SIPPS emphasises the fact that trafficking and exploitation of vulnerable adults and children can be placed **upon a developmental continuum**.

Within the SIPPS, vulnerability, risk and actual exploitative events are **evaluated** in terms of **Historic Conditional Factors, Current Conditional Factors and Current Consequential Factors**.

The role of cultural mediators in enabling the correct display, assessment and evaluation of these factors by public authorities and law enforcement/criminal justice bodies as supporting evidence is crucial.

Any cultural mediator working in the field of trafficking and exploitation shall be trained to use the SIPPS framework.

The elements of the Systemic Investigation, Protection and Prosecution Strategy (SIPPS)

Historic Conditional factors/items relate to the person's history; these are experiences and events that have happened and cannot be changed. The greater the presence of vulnerability factors in a person's history, the more vulnerable and visible they are to a likely offender. Such experiences may also add to the potential victim's value to the offender and explain the absence of an effective guardian.

Current Conditional items aggravate the existence of the Historic Items, increasing the person's vulnerability and visibility and decreasing their resistance to movement and control by another or others. A current state analysis helps to identify the presence or



absence of any guardian against trafficking and exploitation or other protective/resilience factors.

Current Consequential factors identify actual or possible markers indicating that this person is a victim of trafficking or exploitation.

Application of the SIPPS:

The Historic Conditional Factors enable the assessor to develop effective methods of **adducing the evidence as well as clarifying and explaining the contextual factors that led to the exploitation of a person.**

Evidence can be organised and analysed using the SIPPS framework in previous cases so that practitioners can be assisted in understanding the nature of the abuse, the dynamics of the abusive relationship and the impact of the abuse and exploitation where it has occurred.

Extensive Historical Conditional Factors greatly increase the risk of re-victimisation and will increase the impact of current or very recent abuse and exploitation. This has implications for the victim's recovery and on-going support needs: a person that has had multiple experiences of abuse, neglect and exploitation is more likely to have developed complex trauma related needs and have a poorer prognosis for recovery than someone without the historical experiences in addition to the current experience.

As a consequence, the individual's psychological, emotional, social and protection needs will require greater resources and time to be met.



Assessment Domains:

The organisational structure of the SIPPS comprises 8 (eight) domains:

1. Education and Employment
2. Home and Environment
3. Behaviour
4. Psychological Health
5. Physical Health
6. Sexual Health
7. Suspected/Actual Abusers
8. Facilitators

The organisational structure provides the assessor or investigator with a method for **organising their data, prioritising information and identifying areas for further enquiry.**

Cultural mediator is the facilitator of this entire enquiry process.

The assessor or investigator is free to exercise professional judgement with regard to the case-specific salience of the presence of items.

Historic Conditional Factors

The more items that are identified at this stage of the inquiry, the greater the person's vulnerability to trafficking and exploitation. The person may not say that they have been trafficked or exploited or



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may not be a victim but can be considered vulnerable to trafficking and exploitation.

Example:

Harmful home environment; Family or personal history of substance abuse; Rigid parenting, Parental relationship; Instability; Problems from others; Problems with family; Exposure to de-stabilisers; Pattern of street homelessness; Previous victim of abuse (individual abuser); Previous victim of sexual exploitation (2 or more abusers); Previous victim of physical abuse, emotional abuse or neglect

Education/Employment: Academic performance and an educational history; History of truanting, non-attendance or exclusion, regular breakdown of school placement; Nature and degree of sex education; Further or higher education and attainment; Employment history, trade, training and skills, etc.

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Current Conditional Factors

These will **add to or aggravate** any Historical Conditional Factors. The person may not disclose or be a victim of trafficking or exploitation, but their vulnerability may be significantly increased.

Example:

Education/Employment Items Include: Attending a bogus school or college; Is not in any formal educational, Is not free to leave or come and go as he/she wishes; Is unpaid or paid very little, or paid only through tips; Works excessively long and/or unusual hours; Is not allowed breaks or suffers under unusual restrictions at work, owes a large debt and is unable to pay it off, was recruited through false promises concerning the nature and conditions of his/her work.

Home/Environment Item includes: Harmful home environment (e.g. domestic violence); Bad/unhealthy living conditions; Family or personal problems; Problems with substance abuse; Relationship instability; Problems from others; Problems with family; Current exposure to de-stabilisers; Local economic downturn; Displaced by conflict or natural disaster; Disowned by family/community; Isolation from family or community; Deceived about: family reunification, housing and living conditions; No legal documentation or obtaining legal migration status and travel conditions; Seems to not know the area or have access to amenities and services.

Behaviour Item includes: Emotional and behavioural problems; Episodes of going missing/absconding; Current accommodation/work placement breaking down or there is a likelihood of it breaking down due to behaviour; Current criminal activity; Sexualised language, Aggression and violence; Impulsivity;



Current self-harming, low mood, low self-esteem, high dependency; Frequently going missing/absconding; Experimenting with drugs/substances; Withdrawal from previous activities, secretive.

Psychological/Mental Health. Item Includes: Fearful, anxious, depressed, submissive, tense, or nervous/paranoid; Exhibits unusually fearful or anxious behaviour after bringing up law enforcement; Claims of just visiting and inability to clarify where he/she is staying/address; Lack of knowledge of whereabouts and/or do not know what city he/she is in; Loss of sense of time; Has numerous inconsistencies in his/her story.

Current Consequential Factors

Presence of these items, **particularly in addition to Historic and Current Conditional Items indicate a person is extremely vulnerable and there is a likelihood of trafficking and exploitation related offenses.** Immediate intervention to ensure safety is required.

Example:

Home/Environment Item Includes: Unaccounted for monies and or goods (especially mobile phone); Associating with other exploited people, reduced or limited contact with family/friends; No contact with family or friends; Abduction or forced imprisonment; Disappeared from system (no contact with support system); Early or forced marriage; Has few or no personal possessions; Not in control of his/her own money; No financial records, or bank account, is not in control of his/her own identification documents (ID or passport), is not allowed or able to speak for themselves (a third party may insist on being present and/or translating); Person made to live in their



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place of work; frequently moved around; Living in multiple occupancy dwellings with unhygienic, undignified or degrading conditions; Lack of privacy.

Behaviour Item Includes: Overt sexualised dress/attire; Wearing an unusual amount of clothing, Getting into strangers' cars; Clipping; Extensive use of phone (especially at night); Reports from reliable sources, suggesting involvement in sexual exploitation or other forms of exploitation; Seen in/picked up in known red light district; Disclosure of assault/abuse/exploitation followed by retraction; Serious substance abuse; Sexually harmful/offending behaviour.

Psychological/Mental Health Item Includes: Stress/anxiety; Learning Disability; Autism Spectrum Disorder (ASD); Suicidal ideation; Clinical depression.

Any cultural mediators' training shall therefore comprise **The Systemic Investigation, Protection and Prosecution Strategy (SIPPS)**⁸ framework use training. It is recommended that this framework is used in all multi-agency interventions in trafficking and exploitation cases.

⁸ Craig Barlow, 2015

