

Forensic medical examination of victims of trafficking in human beings*

Djordje Alempijevic, M.D., Ph.D.**, Dragan Jecmenica, M.D., Ph.D.,
Snezana Pavlekic, M.D., Ph.D., Slobodan Savic, M.D., Ph.D.,
Branimir Aleksandric, M.D.

Abstract

Trafficking in human beings (THB) is recognized as a global public health issue as well as a violation of human rights. Trafficking has been identified to be associated with several health risks including psychological trauma, injuries from violence, and substance misuse. Public and media reports suggest that the morbidity and mortality associated with trafficking are substantial.

The need of medico-legal healthcare for THB victims is being neglected. Forensic medical examination, as specific intervention, is a highly desirable element of emergency health care provided for victims of tracking. Acting in such a way, the investigation should establish the facts related to the allegation of trafficking, thereby assisting in identifying those responsible, but also contributing to the procedures designed to obtain redress for the victims. Local anti-trafficking policies and interventions, however, have not acknowledged these needs. Therefore, the agenda of anti-trafficking policies needs to be redrawn to include forensic medical assessment of victims for legal purposes.

Key words: human trafficking; victim; clinical forensic examination; injury; age estimation

Despite the definition given to trafficking in international law, the term and issues surrounding it remain confused both conceptually and in government policy and practice.¹ Definitions of trafficking in migrants vary widely (Text box 1). Terms such as “human trafficking”, “people smuggling” or “alien smuggling” often intend to describe the same thing, but in many cases definitions remain unclear and imprecise, overlap with other terms, or describe different phenomena.² Trafficking involves the organized movement of persons by means of force, coercion, and/or deception for the purpose of exploitation.⁴

In the past few years, there has been an upsurge in concern about trafficking and reports that the crime is growing. Such anxieties have flourished in the post-September 11 climate, which is marked by deepening apprehensions about transnational crime, terrorism, and border security, and a hardening of attitudes to illegal immigrants.¹ The crime of human trafficking has become a truly global phenomenon.⁵ Various statistics indicates that between 600,000 and 800,000 people are trafficked across international borders each year,⁶ while UNICEF estimates that more than 1.2 million children are trafficked annually.⁷

Trafficking organizations usually remove the identity documents of the migrant customers prior to their arrival in the destina-

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**) Institute of Forensic Medicine, 31a Deligradska Street; Belgrade 11000, Serbia. djolea@fon.bg.ac.yu

tion country. The main reasons for such action are to make return to their home countries impossible and to protect the trafficking organization.^{8,9} As indicated above, many children are victims of trafficking. Therefore, if no identification documents are available, in any case in which there is a doubt as to whether the individual is a child or not, that individual will be presumed to be a child pending verification of age.

A recent study identified trafficking to be associated with health risks such as psychological trauma, injuries from violence, sexually transmitted infections, HIV and AIDS, other adverse reproductive health outcomes, and substance misuse.¹⁰ These health risks are present throughout the transportation and exploitation phases of trafficking that include movement internally or externally and coercion into the range of exploitative practices.⁵ Traffickers make full use of violence and the threat of violence as an effective means of control. Victims of trafficking may be beaten, tortured, exposed to a range of sexual violence, confined, and deprived of food, water and sanitary needs. Traffickers are known to supply narcotic substances to their victims to create addiction and dependence.

“Trafficking in persons” means the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.³

Palermo protocol. *Definition of trafficking.*

Victims of an alleged crime or suspected perpetrators often have to be examined with regard to the presence of injuries.¹¹ It is essential to apply forensic principles and skills, those regularly used in forensic pathology, in the examination of living individuals, since the observations and the medical report on the wounds is likely to play an important part in any subsequent legal proceedings. Therefore, the physical examination and the documentation of the relevant results must be performed in an adequate and accurate manner. The purpose of assessment and documentation is to assist in establishing how a wound or injury is caused, which may often be at issue in courts or tribunals of law. Witnesses may give different accounts of the incident; it is the forensic physician’s role to assist the court in determining the true account.¹²

Moreover, exposure of trafficking victims to various health risks may lead to permanent loss or abnormality of psychological, physiological, or anatomical structure or function, which, according to WHO definition, constitutes basis of impairment.¹³ In the cases where permanent impairment is supposed, a proper medical evaluation should be performed for accurate documenting of the individual’s clinical status. In general, it is a physician’s responsibility to evaluate a patient’s health status and determine the presence or absence of an impairment.¹⁴ Assessment of permanent impairment may be necessary if victims pursue civil claims against their traffickers, as well as if their requests for compensation and restitution for damage suffered are placed.

Medical care of trafficking victims should be arranged in a manner to provide medical treatment and intervention if needed, but also to include forensic medical examination. Medico-legal examination must be carefully planned and structured to furnish medical

corroborative evidence of any injury, infection or illness that may have occurred as a result of the trafficking abuse. Such practices may lead to scientific evidence of serious physical and/or psychological consequences. This, in turn may provide grounds for conviction for an aggravated form of trafficking in which usually serious penalties are applicable. Even if the national legislation has no provision of so-called aggravated forms of trafficking, substantial trauma, if appropriately documented, will be taken into account in the sentencing process. Forensic medical examination is regarded as a matter of emergency once the victim of trafficking is in the custody of the appropriate authority or international or non-governmental organization. Therefore, it is necessary to carry out the examination as soon as possible to avoid deterioration of evidence. In addition, it should be carefully considered on a case-to-case basis whether a medical follow up would be needed, including subsequent examination.

Certain international standards for forensic medical examination of victims, including the victims of torture and sexual violence, are available in forms of protocols or guidelines.^{12,15} To our knowledge, such standards are not yet available for the examination of trafficking victims. It is impossible to prescribe a standardized format to suit every case, as the circumstances differ so much. Apart from the actual examination procedures, it has to be decided if samples need to be taken (for instance blood for alcohol or drugs, genital swabs, urine, hair samples and so on). In most cases photography is helpful and desirable, especially in complex and patterned injuries.¹¹

However, clinical forensic examination must not be undertaken without obtaining a valid and informed consent. It is also important to consider the patient's freedom of

choice regarding the gender of the forensic medical practitioner and also the freedom of choice for a particular examiner. Under unfavorable conditions, such as an emergency, or when other constraints are present, freedom of choice may be restricted to a certain extent. Evidence gathering must be sensitive to children and victims, and must not re-traumatize the trafficked person. Forensic examination of the victim is supposed to incorporate medical, psychiatric as well as psychological assessment, the later two being out of the scope of this article.

What forensic medical examination should cover

1. "Head-to-toe" examination, necessarily methodical and detailed, that aims to disclose all injuries and marks. If deemed necessary, the examination should extend to the use of imaging techniques, laboratory tests, and other auxiliary diagnostics. The findings of such examination must be accurately recorded and documented.^{11,16}

Although injuries are mainly non-specific, the so-called pattern of injury is one which has a tell-tale marker for the tool that inflicted it. The list of 'tools' is infinite. Commonly used ones are: hands, belts, baseball bats, kitchen utensils and curling irons. Each of these tools leaves a skin imprint that reflects its shape and is, therefore, unique to it. Pattern injuries are consistently reproducible. They can be classified into three major categories, according to their source: blunt force, sharp force and thermal.¹⁷

A knowledge of pattern injuries and the precise documentation as to the anatomic location of each injury will assist the physician and law enforcement officer in determining what implement, tool or weapon was responsible for producing a particular wound. Knowing which tool or weapon was used will help the investigator to determine

if the injury is consistent or inconsistent with the history given.^{11,16,17}

The offending weapon, sometimes of unique shape or configuration, when sufficient pressure is applied, will stamp a mirror image of itself onto the skin. The examples include slap marks from the hand digits delineated, looped or flat contusions from belts or cords, contusions from fingertip pressure, scratches from fingernails, parallel contusions from contact with a linear object, and contusions from the heels and soles of shoes.

The dating or aging of a contusion or bruise has been the focus of much debate within forensic community. The development of a contusion is under the influence of numerous variables so that no reproducible standard exists for the dating of a contusion based on its color.

Examples of pattern abrasions include fingernail scratches, bite marks, imprints of carpet fabric, and ligature marks around the wrist or neck.

A thermal pattern injury is an injury whose offending force is heated and whose physical appearance belies the heat source, such as flat iron burns, curling iron burns, splash burns, and immersion burns.¹⁷

Forensic examination in sexually abused and/or exploited victims of trafficking may give further evidence such as with a recent termination of pregnancy (abortion), as well as genital and/or anal injuries.

2. Besides documenting injuries, medical examination may reveal conditions such as malnutrition, vitamin deficiency or other alterations due to, for example, inhuman treatment. Such evidence may be used to corroborate a victim or witness statement. Sometimes it will be necessary to gather more evidence, such as circumstantial, by on-site investigation that may provide further details on the detention in slave like conditions.

3. Appropriate and timely collection of forensic samples (orifice swabs, hair, blood, urine, etc) is an indispensable component of victim examination. Samples should be systematically collected, labeled and stored for future analyses if required.¹⁸

4. Forensic age diagnosis for the purpose of criminal investigations should consist of a clinical examination, including the recording of body measurements and an evaluation of signs of sexual maturity, an X-ray examination of the left hand, and a dental examination which records dentition status and evaluates the dental radiography (orthopantomogram).^{19,20} A lot of research has already been done in the field and the results provided by the leading Study Group for Forensic Age Estimation that has 50 members from Germany, Austria, Norway, and Switzerland are available.²¹

5. Finally, clinical examination of a victim of trafficking in human beings is a good screening opportunity for sexually transmitted diseases (syphilis, gonorrhea, chlamydia), as well as for other infections that may be sexually transmitted (HIV/AIDS, hepatitis B and hepatitis C). The value of such testing is multiple – for the victims themselves, but also for public health and epidemiological purposes.

Conclusion

In conclusion, it should be pointed out that the application of specific clinical forensic medical knowledge in the management of victims, including victims of trafficking in human beings, is crucial for the improvement of the quality of gathered evidence. Existence of a widely accepted standard, and its application in casework, such as the use of the Istanbul Protocol, gives standardized output. Besides enhancing the quality of every single

forensic medical report, following the protocol will ensure data comparison and study on local, national, and international levels. Such analysis is helpful for a better understanding of the health hazards related to trafficking in human beings and the possible development of specific preventive measures and strategies. Finally, it can be seen from the above outline of forensic medical procedures present in the protocol that this approach to the examination of the victims may be more efficient and less re-traumatizing for them.

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