

Chapter 13 Victim/Witness Security and Protection

13.1 General principles

- Child victims who agree to testify should be accorded special protection measures to ensure their safety and that of their family members in the countries of destination, transit and origin.
- Ministries of the Interior and other relevant law enforcement authorities should adopt all measures necessary to protect the child victim and their family members, including through international cooperation.
- When the victim/witness's protection cannot be ensured in either the country of destination or in the country of origin, measures should be taken to allow resettlement in a third country.

13.2 Implications of the principles

Children who take part in the trial of a trafficker or who participate in bringing a legal case against a trafficker (or anyone else who has committed abuse against them) expose themselves to a risk of intimidation or retaliation. They also expose their relatives to a similar risk.

Assessing this risk and taking action to counter it is more difficult when legal proceedings are occurring in one country while a threat to safety is perceived in a different country. This is common in cases of cross-border trafficking and implies that law enforcement agencies in two (or more) countries should cooperate to meet the threat. In practice, difficulties frequently seem to impede good cooperation.

More information is available about threats which traffickers have made against adult victims of trafficking than about threats against child victims. What is clear is that the transnational nature of much trafficking is exploited by traffickers to make threats against the victim's relatives or loved ones. These are similar to the threats which are on occasion used to make trafficked teenagers and adults follow orders while they are being exploited in the first place. Law enforcement officials sometimes estimate these threats to be insignificant but they are nevertheless terrifying to the victims.

In principle, before the child is asked to play a role in trial proceedings, formal assessment of the risks to the safety of the trafficked child, their family or close associates should be carried out. This is not only necessary to ensure adequate protection of a child but also to ensure that the child's assistance leads to successful prosecution. The assessment should examine whether the threat exists not just during legal proceedings but also afterwards, and in the country of origin, destination or third country.

Police, prosecutors and any others involved in collecting evidence for a prosecution must also bear in mind the potential for harm when children have to repeat the story of their ordeal many times and to many different officials. Such 're-living' can worsen their original trauma.

The child's guardian and legal representative also have to assess what is in the child's best interests and advise the child accordingly. This includes the decision of whether or not to participate in legal proceedings at all, and, if so, on what conditions. It means assessing the possible threat from a trafficker and his or her associates before and during a trial. It means assessing risks created from the procedures observed in the course of a trial or other legal proceedings (which may, for example, result in the child's name or personal details becoming known to others or aggravate any trauma from which the child is suffering). It also means assessing whether there is likely to be a threat to the child's safety after the conclusion of any trial proceedings, especially if the traffickers are *not* successfully prosecuted.

Box 17

The effect of threats made against close relatives: 'Jana' and 'Maria'

Jana was trafficked through the Balkans to Italy. The man who exploited her in Italy bought her in Albania. A relationship developed between them in which he became her 'boyfriend'. He forced her into prostitution in Italy and raped her repeatedly. He kept control of her and another woman from Eastern Europe, Maria.

The women were forced to work every day. Out of the 20 million lire [€10,300] each of them earned every month, they were sometimes allowed to keep two million lire [€1,030] or 10% for themselves. Then in the last few months, Jana was not given any money. Their trafficker controlled them by watching them as they worked, recording the length of time they spent with clients and constantly calling them on their mobile phones.

Maria and Jana were both scared to report their trafficker to the police. Their trafficker threatened to kill Maria's mother and sister since he knew where they lived. A local NGO contacted Maria and Jana, and advised them of their legal rights to a permit to stay, and of the support available to them. They escaped and reported the trafficker to the police.

On the basis of their testimony police arrested and prosecuted the trafficker. He was charged with facilitation, enticement and exploitation of prostitution under aggravated circumstances, aiding and abetting illegal migration and residency, forcing another to undergo sexual acts/sexual abuse and the possession of false documents and weapons. The trafficker pleaded guilty and was sentenced to four years in prison.

From: Elaine Pearson, "Human traffic, human rights: redefining victim protection", Anti-Slavery International, 2002.

Children who are asked to provide information to help secure the conviction of traffickers require protection *before* a trial (either while waiting for a trial to take place or while giving pre-trial testimony), *during* a trial (including special in-court protection and child-friendly procedures) and *after* a trial (e.g., when the trafficker is released from prison). The protection that trafficked children require because of participation in legal proceedings is different from the basic protection that *all* trafficked children need. This is because there is a real risk that the procedures used at trials and other legal proceedings may themselves expose children to harm.

As part of the protection for a victim/witness, authorities should not publicly disclose the identity of children who have been trafficked, even during a trial. The child's privacy should be respected and protected as much as possible while taking into account the right of any accused person to a fair trial.

Conventional witness protection can be very expensive as it involves providing the witness with a new identity, relocating them to a new town or country, and supporting their resettlement. However, there are also many security and safety measures that are relatively cheap, simple and practical. For example, it is relatively cheap to provide secure accommodation and a mobile phone or alarm to ring if they feel threatened. The location of any secure accommodation should be kept confidential and the presence of particular children in shelters or residential accommodation should also be kept confidential.

International development assistance may be needed to finance measures to protect child victims and witnesses might be required. Expertise and experience may also be borrowed from other countries or international organizations.

If it is apparent that it will not be possible to protect a child from threat either in the country of origin or destination, the authorities responsible for finding a durable solution for the child should consider resettlement in a third country. However, if the threats involved are due principally to the child testifying against a trafficker in legal proceedings, both the prosecuting authority and the child's guardian have an obligation to consider whether it is really in the child's best interests for her/him to testify.

13.3 Who has responsibility to take action?

The police, courts or others who wish a trafficked child to remain in their country to take part in legal proceedings must make suitable arrangements to enable the child to remain safely and legally in their country for the duration of any criminal, civil or administrative proceedings. They must also provide both the child and her or his relatives with protection from intimidation and retaliation, wherever they are situated.

The police and prosecuting authority have a responsibility to warn both the trafficked child and her/his legal representative and guardian of the difficulties inherent in protecting the child's identity. The warning should be as clear as possible and the child, legal representative and guardian should not be given false or unrealistic expectations in this regard.

The Ministry of Justice or other authority in charge of the administration of justice is responsible for:

- ensuring that protection for witnesses is provided for in law;
- proposing changes to the law or legal procedures to provide for witness protection (as well as child-friendly procedures in the judicial process);
- giving advice to the courts on both formal and informal protection measures that will help protect child victims and witnesses and indicating the circumstances in which the courts should use these; and
- identifying needs for international development assistance to finance measures to protect child victims and witnesses and cooperating with other ministries as appropriate to request and obtain such assistance.

It is the responsibility of the police and prosecution to assess the risks to the safety of a trafficked child and her/his close relatives or associates. When a security assessment requires checks in the child's country of origin, the Ministry of the Interior and other relevant law enforcement agencies are responsible for contacting their counterparts in that country, assessing the security risks there and making arrangements for protection to be provided to the child's relatives should they be considered to be at risk.

The police and prosecuting authority have a responsibility to provide children and their guardians and legal representatives promptly with news about any developments in a case, before, during and after any trial. This includes notifying children and their guardians and legal representatives about the arrest or release from prison of someone suspected of being involved in trafficking or abusing the child (whether this is a release after a few days of questioning, during pre-trial detention or after serving a prison sentence).

13.4 Who else may take action?

In some countries NGOs have attempted to gauge the effect of legal procedures on adult and child victims and witnesses who have been trafficked. These groups may be contacted by a child's legal representative or guardian seeking information to inform their decision about whether they should encourage or permit a child victim to testify in a prosecution.

13.5 Key challenges and examples of good/bad practices

13.5.1 Balancing the needs of justice and the best interests of the child

A variety of officials involved in law enforcement and the administration of justice seek the cooperation of individuals who have been trafficked, whatever their age, to make statements that can be used as evidence to secure the conviction of suspected traffickers and their accomplices. The officials involved include police, investigating judges (and other procuracy officials), other magistrates and court judges.

Very young children are rarely called upon to give evidence, but adolescents are regularly asked to testify in court or before magistrates at pre-trial hearings. In many cases, the victims of traffickers

do not think it is in their own interest to testify, either publicly or in secret, as this exposes them and others closely connected to them to a risk of retaliation.

Sometimes law enforcement officials offer incentives to adult victims, such as a temporary residence permit in return for their agreement to testify. In the case of children, however, public officials are required to consider what is in the best interests of the child. Consequently, they may not jeopardize the safety of the child in order to secure a conviction. In other words, the types of incentives offered to adults are not acceptable in the case of a child – even a 17-year-old who looks like an adult.

The primacy of the ‘best interests of the child’ has other implications. For example, when law enforcement officials want to take a statement from a child who has been trafficked, they are not entitled to inhibit or delay the child’s return to her or his country of origin, or reunification with her or his family, if these moves are in the best interests of the child.

13.5.2 Benefits of pre-trial measures

The significance of pre-trial statements taken from victims and witnesses varies among legal systems. In some, an investigating magistrate holds pre-trial hearings that are closed to the public and this preliminary deposition of evidence means that most evidence reviewed by trial judges is written not oral. In others, witnesses make statements to the police while the police are collecting evidence against a suspect, but the trial procedures requires all the witnesses to a suspected crime to appear in court to repeat their statements and to be subjected to cross-examination by the defendant’s lawyer or legal representative.

In principle it is easier to guarantee the anonymity and safety of witnesses or victims in countries where an investigating magistrate holds pre-trial hearings, precisely because these are closed to the public. In countries where pre-trial hearings offer an opportunity to take formal trial evidence, there should be little or no need for a child to appear in court in person during the public stage of the trial. Furthermore, an investigating magistrate can order all the measures necessary to keep the name and personal details of a child victim or witness from the general public and journalists, and potentially even from the person suspected of offences related to trafficking or their legal representative. However, these measures will not necessarily prevent a defendant accused of trafficking (or his/her legal representative) from guessing the identity of the person testifying for the prosecution.

Nevertheless, in both types of legal system, law enforcement officials need to keep the names and identifiable personal details of children confidential. It is up to the national authority responsible for the administration of justice to instruct law enforcement officials and advise the courts to protect the identity of children involved in legal proceedings against traffickers. Since traffickers and their associates may be charged with a variety of offences, many of which do not mention the words ‘traffic’ or ‘trafficking’ explicitly, this instruction should not be limited to prosecutions involving trafficking, but be extended to a range of related offences such as ‘facilitating illegal immigration’, ‘facilitating sex with a minor’, ‘forced prostitution’ or ‘exploitation of the prostitution of a minor’, ‘debt bondage’ and ‘forced labour’.

In Belgium prosecution witnesses in trafficking cases are guaranteed complete anonymity at all stages of the trial process. However, unless there are a large number of witnesses in a case, this measure will not necessarily guarantee anonymity to witnesses, as traffickers are likely to be able to work out who the witnesses are.

13.5.3 Effective in-court measures

The Ministry of Justice or other authority responsible for the administration of justice may need to consider whether amendments to the code of penal (criminal) procedure are needed to allow for child-friendly in-court procedures. These could include allowing a child’s testimony to be videotaped or video-linked in court as formal evidence. Children then could avoid being physically present in court where they might be identified and subject to threat or retaliation.

In some courtrooms screens are used to shield a witness from public view, while in others the evidence of vulnerable witnesses is heard in closed court rather than in public. However, such measures usually neither attempt to nor succeed in preventing the defendant or the defendant's legal representative from seeing witnesses or knowing their identity.

Is it reasonable to refuse to disclose the identity of a trafficked child to a person accused of trafficking or exploiting the child? Very few jurisdictions consider that a fair trial can occur while withholding such information. From the prosecution's point of view, it may seem sufficient to keep a witness' identity secret until such time as the witness appears in court; this is because the prosecution's priority is usually to secure a conviction. However, those responsible for deciding what is in the best interests of the child have to consider a much wider range of factors, including the possibility that retaliation or reprisals might be taken against a child or her or his relatives after a trial, whatever the outcome of the trial.

In addition to modifying in-court procedures for listening to child witnesses, those responsible for organizing trials can take action to ensure that witnesses (and victims) do not encounter either the people accused of trafficking them or any of their relatives or associates outside a courtroom. This means that different categories of witnesses need separate waiting rooms, separate entrances into the court building, and so on.

13.5.4 Protecting children's security after the conclusion of legal proceedings

The focus by authorities on securing successful prosecutions of traffickers has inhibited them from paying attention to the longer-term needs to protect their witnesses. For example, some Western European countries only permit willing witnesses to remain in their country until the trial or appeal process is completed. However, the fact that one or two offenders are in prison does not eliminate any threat posed by their associates who remain at large. Consequently, after a trial or appeal, law enforcement officials retain a responsibility for actively protecting a child witness by assessing the risks to her or him and working with law enforcement partners in the child's country of origin to ensure the risk is contained. If the safety of a trafficked child cannot be guaranteed in either the country of origin or destination, measures should be taken to arrange the child's resettlement in a third country.

Box 18

The risk of reprisals once a trafficker is freed from prison

In a South Eastern European country where adolescent girls have been trafficked into commercial sexual exploitation within their own country, victims have described various forms of retaliation which their former trafficker or exploiter has taken against them after they emerged from prison (sometimes when the victim has turned 18 and is no longer a child). In one case the girl concerned testified against a trafficker who had abducted her when she was 15-years-old. He was sentenced to two and a half years' imprisonment. By the time the trafficker came out from prison, the girl had acquired a new boyfriend. It was her boyfriend who was assaulted by associates of the trafficker. The boyfriend felt intimidated and refused to continue the relationship. Although her parents were supportive, the girl who had previously been trafficked stopped feeling safe at home and felt she had no future living there or even remaining in her own country.

Source: Interviews with trafficked children carried out in September 2005 during the preparation of a report: M. Dottridge, "Action to Prevent Child Trafficking in South Eastern Europe. A Preliminary Assessment", UNICEF and Terre des hommes, forthcoming (2006).

