



Tool 5.19 Special considerations relating to the protection of child witnesses

Overview

This tool discusses special considerations relating to the protection of child witnesses.

Before a child is asked to play a role in trial proceedings, formal assessment of the risks posed to the child and his or her family should be carried out. The assessment should consider whether there is a threat to the child, both during legal proceedings and afterwards.

The harm posed to the child from having to repeat the story of his or her ordeal must also be considered.

The decision for a child to participate or not in legal proceedings (and if so, on what conditions) must be taken with due regard for the possible threat from traffickers and their associates before and during the trial, and the risks created by procedures observed in the course of a trial or other proceeding, and for whether a threat is likely to be posed to the child after the conclusion of the trial, particularly where traffickers are not successfully prosecuted. The protection required by children participating in legal proceedings is different from the basic protection needed by all trafficked children, because there is a real risk that the procedures used at trials and in other proceedings may themselves expose children to harm. Protection must be afforded:

- Before the trial, while waiting for the trial to take place or while giving pretrial testimony
- During the trial, including special in-court protection and child-friendly procedures
- After the trial, when the trafficker is released from custody or prison

The identity and secure location of children should not be publicly disclosed; their privacy should be respected and protected as much as possible while taking into account the right of the accused to a fair trial. Witness protection can be expensive (e.g. providing witnesses with a new identity, relocation and resettlement). However, there are measures which are relatively cheap and effective, such as providing the child with a mobile phone or alarm to ring if he or she feels threatened.

Child-friendly procedures in the course of legal proceedings

Given that legal procedures in many countries are not currently child-friendly, trafficked children are often prevented from having adequate access to the law. As a result, many countries are not fulfilling their obligations under the Convention on the Rights of the Child. Specific measures to protect children's rights and interests are outlined in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which states that the special needs of children as witnesses

must be recognized. Article 8 of that Optional Protocol offers seven measures which States parties should adopt to protect the rights and interests of children in the criminal justice process:

- (a) Adapting procedures to recognize their special needs of children, including their special needs as witnesses
- (b) Informing children of their rights, their roles and the scope, timing and progress of proceedings
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law
- (d) Providing appropriate support services to child victims throughout the legal process
- (e) Protecting the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to their identification
- (f) Providing for the safety of child victims, as well as their families and witnesses on their behalf, from intimidation and retaliation
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims



More information about protecting child witnesses can be found in the *UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, available at:
www.unicef.org/ceecis/protection_4440.html

Model Guidelines for the Effective Prosecution of Crimes against Children (International Institute of Prosecutors)

IAP compiled guidelines bringing together international standards to be observed for the treatment of children and standards to be observed by prosecutors. The guidelines cover general principles, case management and training, pretrial decisions, case preparation, trial procedures, sentencing, services to the child and multi-disciplinary teams, international cooperation and assistance, and implementation and monitoring.

With regard to trial procedures, the model guidelines state that prosecutors should facilitate the development, availability and use of procedures to assist the child in giving testimony. Prosecutors should consult with the child, assist him or her in making an informed decision regarding the use of procedures and apply to the court to have procedures in place for the child during the trial. Procedures vary between jurisdictions, but may include:

- (a) Allowing a videotaped statement of the child's evidence
- (b) The use of closed-circuit television
- (c) Alternative arrangements for giving evidence, such as screens

- (d) Allowing for the presence of a support person or advocate while the child is giving evidence
- (e) Use of an intermediary to assist child witnesses to give evidence
- (f) Prohibiting the defendant from cross-examining the child victim in person
- (g) Objecting to aggressive or improper cross-examination by the defence
- (h) Closing the court to the public
- (i) A ban on the media
- (j) Reducing the formality of the courtroom by measures such as removing advocates' robes



The complete model guidelines are available at:
www.iap.nl.com



For information on measures to protect children as witnesses, see also
the website of the International Bureau for Children's Rights at:
www.ibcr.org