



Malawi

Victim Protection in Trafficking in Persons

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Introduction

Trafficked persons who escape their situation often find themselves victimised again as a result of the treatment they receive at the hands of the authorities. Protection offered to trafficked persons too often prioritises the needs of law enforcement over the rights of trafficked persons. Often 'protection' still means repression of victims' rights. Protection should be redefined and reworked so that it means supporting and empowering those who have been trafficked. Protection of victims *per se* is not the same as protection of victims' human rights. The challenge for governments is to live up to their obligations under international law and make protection of all human rights a reality for trafficked persons who escape their situation.

Empowering: Compensation in trafficking

Compensation is often confused with "restitution" and sometimes used interchangeably. Compensation is generally regarded as payment or reparation for injury or harm; restitution, on the other hand, is a form of payment or action taken to restore the victim to the position he or she would have been in but for the victimization. Compensation to a victim of trafficking in persons will not necessarily remove the traumatic effects of the process of human trafficking but it will improve the chances of his/her psychological recovery and eventual reintegration into society as well as assuage his/her feelings. It will also offer economic empowerment and protection from being re-trafficked.

Victim protection under the TIP

The Trafficking in Persons Act creates a committee known as the National Coordination Committee against Trafficking in Persons for the proper administration of the Act (Section 4).

The committee has the duty to ensure that victims of TIP are treated with dignity and respect of their rights during interviews and throughout trial; and To ensure that screening of trafficked persons is conducted in accordance with guiding principles provided under the Act (Section 8). A social welfare officer can be designated by the Minister as Protection Officer for purposes of ensuring that victims are accorded proper treatment, care, assistance and protection; and That interviews of trafficked persons are conducted in accordance with the guiding principles (Section 44). Restrictions on Disclosure: The Act requires that disclosure to the media of information relating to identity of victim or steps in relation to judicial proceedings should not be done without leave of the court. Violation of this is an offence punishable with MK1 Million and 2 years imprisonment (Section 46). Witness Protection: to protect the safety of witnesses (under protection) and trafficked persons the Act prohibits giving access to unauthorized persons to any witness or trafficked person and disclosure of any information relating to the identity of a protected or trafficked person; place of safety of the witness; the fact that a particular person is under protection. Violation of the provision attracts 7 years imprisonment (Section 47) Enforcement of Witness Protection In case of threats of safety of a witness or member of his family a witness can apply to court for protection. Application can also be made on behalf of the witness by an interested person or an investigator for the protection of the witness or his family Basis of the application is the reasonable belief that the safety of the witness or his family is threatened (see section 48). An NGO in one case relating to persons living with albinism applied to court for the protection of a witness and her two children living with albinism and the court granted the order.

Victim protection measures during court proceedings

Exclusion of the general public from hearing to protect witness identity, privacy and dignity. Section 71A of CP & EC (sexual offences) Trial in camera. Accompanying friend or relation. Partition or screen be placed to obscure witness's view of the suspect. Evidence be taken outside court room and be transmitted to the court room by way of closed circuit television.

Child cases in camera under the CCPJA

In practice the most common method is trials in camera, although some magistrates have innovated and used practical methods to separate the victim from the accused in court.