

Legal Memo on Protection Orders and Protective Measures

September 2017

INTRODUCTION

Our government is committed to ensuring that the justice system is fair, accessible for victims and witnesses. In addition to punishment and reform of offenders, it is the objective of our justice system to ensure that vulnerable and intimidated persons, including children and the disabled, are supported.

The Criminal Procedure Code 2014 (CPC) brought in important changes to support and protect vulnerable and intimidated persons before and during the trial. This included: video-recorded statements, concealment and evidence via live link.

In Afghanistan, we are proud to say that some of our police officers have proved their dedication to vulnerable victims/witnesses. They have assisted many at risk to improve home security; helped them access mobile phones and other emergency contact points through the society. When there was risk of threat and intimidation, they put in place higher measures such as physical bodyguard protection, regular patrol, temporary relocation, and, escorted victims/witnesses to their place of education, work and to and from the police station, court and home. However, more can still be done to ensure that protection is thoughtful, tailored, consistent and effective.

The purpose of this Legal Memo is to analyze the law on victim/witness protection. We hope that this Memo will be useful for the State and civil society who are assisting vulnerable victims/witnesses every day.

SECTION A: VULNERABLE AND INTIMIDATED VICTIMS AND WITNESSES

1. Who are protected persons under the Criminal Procedure Code?

Vulnerable and intimidated persons are to be protected under the law. Article 54 of the CPC defines **vulnerable** and **intimidated** persons as follows:

- (1) Persons at risk due to threat, menace or any other similar action;
- (2) Persons suffering from serious physical or psychological trauma as a result of the crime;
- (3) Persons suffering from serious psychological conditions; and
- (4) Child witnesses.

These persons, or their relatives and their advocates can apply for protection measures.

Usually, these persons are likely to be considered vulnerable and/or intimidated and will require protection:

- (1) Victims and witnesses of gang-related violence
- (2) Victims of repeat victimization
- (3) Children and elderly victims and witnesses
- (4) Disabled and ill victims and witnesses
- (5) Victims of sexual assault
- (6) Victims of domestic violence
- (7) Victims and witnesses of gun, acid, knife and other serious offences

(8) Victims and witnesses of crimes committed by people in power.

2. What is the difference between a “vulnerable” person and an “intimidated” person?

Article 54 of the CPC refers to both vulnerable and intimidated persons. The difference can be illustrated through the following examples:

- (i) Some witnesses may be vulnerable as well as intimidated. For example, a young girl who is being stalked and sexually harassed by her teacher.
- (ii) Others may be vulnerable but not subject to intimidation. For example, a child who witnesses a murder.
- (iii) Others may not be vulnerable but may be subject to intimidation. For example, a young woman who physically and psychologically able, but who fears violence from her former husband.

In both cases, the quality of evidence is likely to be diminished by reason of fear, trauma or distress.

3. For the abovementioned persons, is protection mandatory under the law?

Yes, protection is mandatory under the law on two grounds: (1) victims’ rights and (2) State duties.

As regard victim’s rights, a victim and plaintiff have a right to:

- (1) Ensured safety
- (2) Fair behavior
- (3) Respect of their human dignity; and
- (4) Personal honor

During the legal prosecution stages (Article 6(1)(2) and Article 6(1)(1)).

As safety and respect of honor and dignity are recognized as rights under the law, it follows that the State “take and enforce the required measures to ensure that a victim has access to all of his/her rights” (Article 6(2)).

Article 26 of the Police Law adds to this. Article 26 makes it mandatory for the police to assist in two circumstances:

- (1) If a person asks for police cooperate and probably without the interference of the police may lose his right;
- (2) If a person is unable to protect his/her right himself.

This is also aligned with the objectives of the Police Law

According to Article 5 of the Police Law, the police shall be obliged to execute the following duties:

- (1) Ensure and maintain public order and security;
- (2) Ensure individual and societal security and protect their legal rights and freedoms;
- (3) Take preventive actions to stop crimes from happening;
- (4) Timely discover the crimes and arrest the suspects and perpetrators according to the provisions of the law;
- (5) Counter moral deviations, in moral social behaviour and actions that disturb public tranquility;
- (6) Protect the properties and assets of the public and private sector (...) attract public cooperation in the preventative and *ad hoc* operations.

As the obligation to protect lies on the State, it follows that, the State shall assess all victims and plaintiffs (under Article 6 of CPC) and witnesses (under Chapters 5 and 7 of the CPC) in order to determine if they are vulnerable and/or intimidated persons, thereby requiring protection. The obligation is on the State to assess in order to inform such persons of their rights and such persons cannot be assumed to know their rights.

Witnesses may also approach the prosecution and the court to apply for protective measures before and during trial (Article 55(1) of the CPC). They do so by submitting their application to the prosecution and court in a sealed envelope, which the prosecution and court shall both review and make a decision in their relevant areas (Article 55(2) of the CPC). The contents of a person's application are confidential and disclosure of the same is prohibited (Article 55(2) of the CPC).

4. Are there certain kinds of cases which will likely necessitate State protection?

Intimidation of victims/witnesses is likely to arise in:

- (1) Sexual offences
- (2) Serious assaults
- (3) Offences where the victim knew the offender
- (4) Offences which involved repeated victimisation, such as stalking, harassment and human trafficking.

Different victim/witnesses will have different needs. The appropriate measures will depend based on a consideration of these needs, as well as the circumstances of the alleged offence, profile of the victim/witness and profile of the abuser/accused.

5. Are protection measures only intended to protect a person's physical safety? What about psychological safety?

The CPC refers to a person's physical and psychological safety. The measures that it provides equally safeguards physical and psychological safety.

The State's duty is to take all "required measures" to "remove danger" including, psychological danger, otherwise also known as "trauma".

6. Why are protection measures necessary?

Victim and witness protection is closely linked to the function, operation and success of our criminal justice system. Ultimately, the success of any investigation and prosecution depends largely on the information provided by, and testimony of, victims and witnesses. This makes their safety a cornerstone of a successful criminal justice system. Without their testimony, few crimes may be successfully prosecuted. The Prosecution also depends on reliable testimony which can be accepted as precise and complete. A victim's perception of his/her own safety will affect the quality of his/her testimony. To enable victims to give high-quality evidence which is precise and complete, victims must feel that it is safe to do so.

Victim protection and safety is fundamental to the criminal justice system. When vulnerable people are protected by the State, and when they feel safe, they will have confidence in the justice system and the rule of law. Without their confidence, they will resort to other justice mechanisms or take the law into their own hands.

In addition to this, protection orders are directly relevant to the fundamental rights of a person:

- (1) Article 22 (the right to equality)
- (2) Article 23 (the right to life)
- (3) Article 24 (the right to liberty and human dignity)
- (4) Article 37 (the right to confidentiality)
- (5) Article 40 (the right to property)
- (6) Article 52 (the right to healthcare)
- (7) Article 53 (the right to medical services and financial aid)
- (8) Article 54 (the right to physical and spiritual health of mother and child in the family).

7. Why are protection orders important to the fulfillment of fundamental human rights?

Fundamental human rights such as human dignity, the right to life, the right to freedom and the right to physical integrity and safety, are rights which are:

- (1) Inherent: This means that it is not granted by any person or authority. Human rights do not have to be bought, earned or inherited; they belong to people simply because they are human. Human rights are inherent to each individual.
- (2) Inalienable: Human rights cannot be taken away; no one has the right to deprive another person of them for any reason.
- (3) Indivisible: All human rights whether they relate to civil, cultural, economic, political or social issues, have equal status, and, cannot be positioned in a hierarchical order.

This means: if a person's fundamental right is at risk of violation, the State cannot excuse itself

from its duties and deprive a person of his/her rights. The State can only excuse itself from its duties when the State can demonstrate that its excuse is legal under the law. Otherwise, the State must do all that is reasonably necessary to safeguard a fundamental right (subject to the law).

SECTION B: PROTECTION ORDERS AND PROTECTIVE COURT MEASURES

8. What are examples of protection and protective court measures under the CPC and Police Law?

Some measures are set out under Articles 36, 39, 40, 50, 53 and 54 of the CPC, as follows:

- (1) Consider the witness's age, gender, psychological condition during questioning [Article 36(1)];
- (2) Ensure non-interference in personal matters which are not necessary for collecting reasons and evidence [Article 36(2)];
- (3) Ensure that the types of question posed to the victim does not cause psychological inconvenience to him/her [Article 36(3)];
- (4) Ensure that the recording of testimony of a witness who is a minor or has mental disorder complies with certain requirements [Article 39 and Article 40];
- (5) Conceal the name, residential address, work place, occupation, official deed, registration book or file or any other information, which could lead to identity of the witness [Article 53(1)(1)];
- (6) Forbid the accused person's defence attorney to disclose the identity of the witness or any information that could lead to the identity of the witness [Article 53(1)(2)];
- (7) Avoid the disclosure of any record or document which could lead to the identity of the witness, unless directed otherwise by a competent judge [Article 53(1)(3)];
- (8) Issue an alias to the witness [Article 53(2)];
- (9) Conceal the witness through one or more of the following measures:
 - (i) Testifying behind a nontransparent curtain [Article 53(3)(1)];
 - (ii) Using a technical voice and visual changer device [Article 53(3)(2)];
 - (iii) Live broadcasting the questioning from another location which will be connected to the court room via closed circuit television [Article 53(3)(3)];
 - (iv) Hearing the statements and testimony of the witness and questioning of the witness using a pre-recorded video tape ahead of the trial [Article 53(3)(4)]; and/or

- (v) Removing the accused person from the court room for a temporary period of time if the witness refuses to testify in presence of the accused person or if the witness will not testify truthfully in the presence of the accused person [Article 53(3)(5)];

Further to such orders above, Article 9 of Police Law lists the types of actions that can be taken.

- (1) Stop persons to determine their identity
- (2) Instruct a person to leave an area
- (3) Call and summons a person
- (4) Impose financial sanctions
- (5) Detain a person
- (6) Search person, goods and house
- (7) Protect property

The specific measure that the Police take should meet the client's needs.

Of note, the CPC mandates protection of children, the disabled, and victims of sexual offences. Victims of sexual offences must be protected from offensive questions which:

- (1) Interferes with their personal matters;
- (2) Which are unnecessary for collecting reasons and evidence; and
- (3) Which causes psychological inconvenience.

This means that the police, prosecution and court should object to such questions.

9. Are there other additional protective measures in Court for the protection of a minor/child victim/witness?

All of the measures identified above which apply to vulnerable and intimidated adults will similarly apply to minors.

In addition to that, Article 39(2) and 39(3) of the CPC states:

“A child (...) shall be questioned as a witness by the prosecutor and judge only in the presence of his/her parents or legal representative”

“The litigants may ask the prosecutor or the presiding judge to let them question the witness in relation to the case providing that the questions will not harm the psychological status of the witness”

10. Are the above measures the only measures which the State and Courts are legally obliged to provide?

No. The CPC provides some examples but these examples are not exhaustive. This is clear from the language of the CPC which states:

Police, prosecution and the courts each shall, within their area of jurisdiction, take and enforce “**required measures**” to ensure that the victim has access to his or her rights (Article 6(2) and Article 55 of the CPC)

By order of prosecution or court, security forces shall protect witnesses until the removal of danger [Article 54(5)].

The CPC mentions two important points:

- (1) Police, prosecution and courts shall take “**required measures**”; and
- (2) Security forces shall protect “**until the removal of danger**”. This clearly refers to an outcome. In other words: protect until there is no more danger.

This may comprise the measures listed under the CPC, or other measures as may be required for the protection of the person.

11. How does one decide what type of protection measures will be “required” or is sufficient to “remove danger”?

The State and Courts can ask 5 questions to determine which protection measure is “required” for the victim/witness.

- (i) Is the person a ‘vulnerable’ or ‘intimidated’ person as defined under Article 55 of the CPC?
- (ii) Are the measures likely to improve or maximise the quality of the person’s evidence?
- (iii) Will the measures empower the person to access her/his Article 6 CPC rights and allow her to move on with her life (return to work, school, move freely without fear)?
- (iv) Will the measures prevent retraumatization?

You may find that a person may “require” several measures. Choose the measure that the person needs and feels most comfortable with. Also, consider the profile of the accused.

For example, in the case of protective measures at trial, some victim/witnesses may prefer a video-recorded interview as evidence-in-chief (Article 53(3)(4)). Others may want to be present in the courtroom behind a screen (Article 53(3)(1) or via a television link (Article 53(3)(3)) – as they want to feel present in the courtroom and be able to hear and confront the defendant.

12. What are common provisions in a Protection Order?

A Protection Order may include many different provisions, including:

- (1) **No Contact Provision**: Prohibiting the abuser from calling, texting, emailing, stalking, following, attacking, hitting, or disturbing the victim.

Take for example an abuser who sends flowers to the victim every day for 1 month. From the abuser’s point-of-view, it is a nice gesture and he is not committing a harassment. From the victim’s point-of-view, she may feel threatened or feel that her privacy is being intruded

upon. She does not want him to send her flowers or have any contact with him.

A No Contact provision can be used to stop such kind of behaviour. Even if “sending flowers” is not a crime, the fact that (a) it is recurring and that (b) the victim feels violated, makes “sending flowers” a form of harassment. This is the basis for a No Contact Provision in the Protection Order.

- (2) **Stay Away Provision:** Ordering the abuser to stay at least a certain distance (e.g. 5 km) away from the victim, his or her home, job and school.

Take for example an abuser who stands outside the victim’s school gate and watches her every time she enters and leaves school. From the abuser’s point-of-view, standing at her school-gate and watching her is harmless. From the victim’s point-of-view, it is an intrusion of her privacy and personal space. She may feel uncomfortable, threatened, intimidated. She may avoid going to school altogether.

A Stay Away provision can be used to stop such kind of behavior.

- (3) **Move Out Provision:** Requiring the abuser to move out of a home shared with the victim. Take for example that the abuser is the victim’s brother-in-law who lives with the victim in the same house. The abuser insults and abuses her daily and a police warning does not stop the abuse. The victim does not want to prosecute him as she does not want to anger her husband and his family.

A Move Out Provision can be used to force him to move out of the shared home for a time period. Such a provision prioritizes the right of the victim to a safe home and a safe and healthy life. A Move Out Provision can be used in the event that an abuser has been warned but yet fails to comply with a warning.

- (4) **Weapons Provision:** Requiring the abuser to surrender any guns, knives or dangerous object he or she possesses and/or prohibiting the abuser from purchasing them.

Take for example of an abuser who uses a particular instrument (e.g. wire, belt, knife, gun) to commit violence against the victim.

A Weapons Provision can be used to confiscate the weapon, in addition to, other measures.

- (5) **Counseling/Mediation/Rehabilitation Provision:** Ordering the abuser to attend counseling/mediation/rehabilitation. Such a provision is intended to address the root cause of criminal behavior.

- (6) **Restorative Provision:** Ordering the abuser to return property belonging to the victim/witness.

13. What is the procedure for obtaining a Protection Order?

- (1) Conduct a risk assessment of a person to identify risks, causes, consequences and solutions.
- (2) Inform the prosecutor-in-charge or police.

- (3) The Prosecutor will send an official letter to the Head of Police.
- (4) The Head of Police will then send a letter to the District Police (of the person's home, office, school).

We highly encourage police to issue **written notices** which serves 2 objectives. First, it is proof that the police complied with an order issued to them. This is good for the police. Second, it can be adduced as evidence at trial, should the victim/witness suffer a crime. Such evidence will be material proof of the victim/witness's case. Written notices are also more authoritative and prominent. They send a firm warning to the offender that the police are watching and will take action if the offender commits a threat or a crime.

14. Which districts of police are obliged to protect the victim/witness?

Sometimes a victim/witness requires protection in several police districts. This can be the case when for example, her home is in one district and her school is in another district.

When assessing the victim/witness, the police should enquire the locations where she fears a threat. Based on this, the respective districts should be informed and ordered accordingly. This is in line with Police Law.

Article 7 of Police Law states:

- (1) The police of one area can take action in another area if:
 1. They are asked by the police of another area for support;
 2. There exists no police in the given area;
 3. The arrest or persecution of a suspect, accused or criminal would require an urgent action;
 4. The police of the area are far from the place of the event and the suffered person asks for assistance;
 5. The court or the attorney decides so.

SECTION C: STATE OBLIGATIONS

15. What should the State do if a person is in need of protection?

The obligation on the State is to remove danger, pursuant to Article 54(5) and Article 6 of the CPC. As such, the State is obliged to consider the measures which are necessary in order to protect a person. Examples of such measures have been provided under the CPC.

In general, the State and Judiciary shall order all measures which are reasonably necessary to secure the physical and psychological safety and well-being of vulnerable victims. The State must consider:

- (1) If the victim is at risk of an affront of his/her dignity and honour
- (2) If the victim is impeded from safely participating in his/her legal proceedings
- (3) If the victim is impeded from accessing information concerning his/her legal

proceedings

(4) If the victim is physically unsafe

(5) If the victim is unable to access legal, physical, medical, psychological and social services.

Once the above is determined, the State should then consider specific measures. Thus, the measures are to be determined on a case-by-case basis depending on the needs of the victim/witness.

The State and Judiciary should take account of:

- (1) The nature and alleged circumstances of the offence;
- (2) The age of the person;
- (3) Presence of trauma, distress, shock, depression, fears of intimidation/ recrimination and recent significant or stressful events experienced
- (4) The social and economic background of the person
- (5) The domestic and employment circumstances of the person
- (6) Any behaviour towards the person by:
 - The accused
 - Members of the accused person's family or associates
 - Any other person who is likely to be either an accused person or a witness in the proceedings.

Asking a person a few questions can give the State the necessary information to determine what kind of actions it needs to take.

Right	Question
Article 6 of CPC	
Dignity and honour	Question can be posed to the victims' family: Has there been any changes in his/her behavior? What were those changes?
To participate in legal proceedings and be able to direct questions to the accused [Article 6(3) of the CPC];	Do you have any difficulties coming to the police station, EVAW Department or Court?
To exercise his/her right of compensation [Article 6(4) of the CPC];	Do you have the support of your parents, brothers or elders in the family?
Being able to access information concerning his/her legal proceedings	Do you have a lawyer who can help you?

Physical safety	<p>Are you aware if the offender has access to any weapon such as a knife or others?</p> <p>Does the offender follow you, text or call you very often?</p> <p>Does the offender control your decisions, your movements?</p> <p>Beside the offender, has anyone in the offender's family contacted you?</p> <p>How long has this been going on for?</p> <p>Here are some things we can do to protect you. Will any of this help you feel safer?</p>
Being able to access legal, physical, medical, psychological and social services [Article 6(7) of the CPC].	Have you been to the doctor? Why not?

16. What if the State does not have sufficient resources to protect?

The State must strive to do all it reasonably can to safeguard fundamental rights. Oftentimes, protection measures which civilians require are not unreasonable, especially if we consider:

- (a) The impact that these measures will have on a person's life, safety, freedom, right of work, right of education, right to health (and recovery); and
- (b) The serious consequence to the person if these measures were not implemented. Oftentimes, the injury to a person, whether psychologically or physically, is irreversible.

Whilst appreciating that our police force is under-resourced, the balance should still weigh in favour of a vulnerable person's life and safety, and not, on the work/effort that 1 or 2 police officers must do to secure that person.

We should pay caution to this balance, especially in Afghanistan, where generations after generations are plagued with mental and physical trauma due to political and personal / domestic violence. Taking small steps to secure a person can make a huge impact and difference to that person's sense of self, safety and ability to resume his/her normal life.

We must also remember that the fundamental duty of the police is to protect. If the police take a decision not to protect, they must justify this reason on the basis of law. In other words, there is a default de jure responsibility to protect. Thus, a decision not to protect must be justified on the basis of law.

17. Are the police obliged to give unconditional and limitless protection?

No. No protection order is unconditional and limitless. The State and Courts are legally obliged to protect them “until the removal of danger” pursuant to Article 54(5) and Article 6 of the CPC. The issue of what is reasonably necessary is to be assessed on a case-by-case basis, in consultation with the victim/witness, his/her family and legal representative.

- (1) Protection orders are time-bound (not indefinite).
- (2) They are addressed to specific people. The State and Courts should make orders against all persons who are causing danger: the accused (and/or his relatives), as well as, all persons who can assist in removing the danger: other members of the public such as educational establishments, school principal, shopkeepers, district police, wakil-e-guzar, neighbours etc...
- (3) They specify the actions to be taken by whom, when and where.

A Protection Order which is tailored to the victim/witness’s needs and threat level, will not by its nature, be unconditional and limitless.

The term of a Protection Order will depend on the needs of the victim/witness and her general situation:

- (1) If there an ongoing case against the accused;
- (2) If the accused or his family is still a threat;
- (3) If the victim/witness is still receiving counselling or is still in fear;
- (4) If the victim/witness is an orphan, disabled, a minor, a victim of a sexual/ weapons offence;
- (5) If the accused belongs to a powerful family.

The orders should enforce their compliance until a danger to the victim/witness is no longer present.

18. When should protection be considered?

Firstly, Protective measures should not be dependent on initiating a criminal case.

Secondly, early identification of risks to a person is important in order to guide subsequent planning at pre-trial and trial stages.

If protection is only given at a later stage of the proceedings, many people may withdraw their cases at the early stages due to a lack of protection.

Intimidated witnesses should also be informed about the protection that might be available to them, including witness protection schemes where appropriate. Where there is risk of intimidation, witnesses should be offered information about they can get help. A leaflet listing names, addresses and telephone numbers of relevant individuals and agencies should be available in each locality for distribution to witnesses.

Investigators need to be alert to the possibility that a witness may not be intimidated at the time the offence is reported, but that subsequent events may give rise to fear and distress later on in

the criminal process that would qualify the witness for consideration for special protective measures.

Courts should promote swift action in the event it discovers that a victim/witness is at-risk. The State and Court should also assess the vulnerability and risk to victims/witnesses when granting bail, conditional release, parole or probation, especially when dealing with repeat and dangerous offenders.

As testifying in a trial can cause secondary traumatization for victims and witnesses, it is now standard protocol in many countries that the police, prosecution and judges set up regular, early meetings in order to assess and determine the psychological and physical well-being of victims and witnesses. At the earliest stage, they determine the special considerations to put in place to help victims and witnesses throughout the justice process. These considerations range from interviewing techniques to court arrangements and other protection and assistance they may need to enable them to testify effectively and safely. This is especially important where child/juvenile witnesses are concerned and when witnesses suffer from intellectual or physical impairment and disability.

19. What are some considerations the State needs to take?

The State needs to be aware that sometimes a Protection Order can provoke the abuser, leading to further violence and harm to a victim/witness. As such, the State should check with the victim/witness of the likelihood of further violence.

20. Is the State and are the Courts only obliged to protect when requested, or, are they legally obliged to enquire and assess a person's protection needs?

The CPC is clear that the duty lies on the State and Courts, not on the civilian. As they are duty-bound under the law, they are required to conduct the necessary enquiries. Further, it is not disproportionately tedious or unreasonable for State to make the necessary enquiries to determine whether a person is in need of protection.

Further, the State is presumed to be more aware and informed of civilian rights and crime prevention, than the ordinary civilian. The ordinary civilian cannot be expected to know the laws and his/her rights to protection. Or to know that the police can take specific actions to protect him/her.

SECTION D: EVIDENCE

21. Does the victim/witness need to provide evidence to prove the danger or threat?

As the objective of protection measures is to prevent crime, a victim/witness should not be prejudiced for not having adequate evidence. In other words, the law does not require the victim/witness to first suffer a crime (and prove the suffering by evidence), before being able to exercise his/her right to protection.

As long as the request for protection is not unbelievable or "out of the ordinary", the police must take the request seriously. At the time of the request, the person who can best assess

his/her risk is her/his own self. Few people will go out of their way to ask for police protection unless it is really needed. That request should be respected. As a matter of principle, we cannot assume that victims/witnesses are malicious in their request.

Moreover, failure to take the request seriously can lead to physical and psychological damage to the victim/witness. In turn, the individual police/ prosecutor will be held accountable for failure to protect under the law.

As such, it is in the benefit of the person and the State to take protection requests seriously.

SECTION E: PUBLIC COOPERATION

22. In addition to the above, can the State order the public to cooperate?

Yes. Under Article 10(1) of the Police Law, the police can issue a written or oral notice or notification to the inhabitants of an area to perform or avoid an action in order to protect public order and security.

23. What are some examples of public cooperation?

The following are some examples of actions the State can order the public to perform:

- (1) Principal of a school shall pay special attention to the victim/witness's welfare and ensure an opportunity to catch up on missed classes.
- (2) Wakil-e-guzar, rui-safith and Mullah shall take actions such as:
 - a. Visit the victim/witness's family weekly and check to see if they have faced any threats.
 - b. Call the police immediately in the event of a crime.
 - c. Assist the victim/witness to get in touch with the police, her lawyer or social services, through a mobile phone.
- (3) Dukandor shall ensure that the victim/witness is not followed, stalked or harassed during her route to school or workplace.

The above examples are real examples we have seen in Kabul, Mazar and Heart. We consider these examples as some of Afghanistan's best police practices.

24. What is the procedure for obtaining public cooperation?

The State can exercise their right of summons and ask all relevant persons to attend at the designated place, pursuant to Article 9(3) of Police Law.

Based on this, the police shall then issue a notice or an order (pursuant to Article 10 of the CPC) to the relevant persons to comply.

25. Is the public obliged to comply with a Police Notice?

Yes. A police notice is a statutory notice, as it originates from the Police Law. If the public fails to comply with the notice, the police can give a warning and can take actions to implement the orders of the notice. Those who do not comply can be prosecuted.

SECTION F: VIOLATION OF PROTECTION ORDER

26. What are the legal consequences to a person who violates a protection order?

A person who violates a protection order risks prosecution and penalty.

Article 33 of Police Law states: “Interference with the provision of this law shall result in judicial actions.”

27. Will the offender be held liable even if there was no harm done to the victim?

The violation of a protection order will attract one kind of penalty.

The causing of harm to the victim will attract a different kind of penalty, in accordance with the Penal Code and/or EVAW Law, depending on the crime that is committed.

28. What are the legal consequences to an officer who fails to protect after a protection order is issued?

An officer who does not comply with an order to protect, risks prosecution and penalty.

Article 33 of Police Law states: “Interference with the provision of this law shall result in judicial actions.”

Moreover, as these rights are constitutionally protected, the State is obliged to respect, protect and fulfill them. Victims of constitutional violations will be able to exercise their right to compensation against the State pursuant to Article 51 of the Constitution.

29. Will the officer be held liable even if there was no harm done to the victim?

Yes, non-compliance with a protection order is a breach of procedural and police law, regardless of whether the victim was harmed.