

RECOMMENDATIONS

[UNTOC & UNCAC]

1. The United Nations Convention against Transnational Organized Crime (UNTOC) and its Protocols, and the United Nations Convention against Corruption (UNCAC) are the main international legal instruments in the fight against organized crime and corruption. They cover a wide range of measures, including witness protection, and establish a framework for further international co-operation. Accession to these conventions should be duly considered and is hereby encouraged. Appropriate measures to protect witnesses should be taken as required by the UNTOC and the UNCAC.
2. The use of force, threats or intimidation, and the promise, offering, or giving of undue advantage to induce false testimony or to interfere in the giving of testimony in relation to criminal offences seriously undermine witnesses' willingness and ability to produce accurate evidence and testimony. Such use of force, threats, and inducements should be duly criminalized in accordance with the UNTOC and the UNCAC, and such penal provisions should be properly enforced.

[General Recommendations]

3. Every actor in the criminal justice process has a role to play in witness protection. Adequate training for criminal justice personnel should be provided on protection measures and attendant ancillary procedures.
4. Various measures and ideas that do not require enabling legislation or changes in the existing law, such as providing separate waiting rooms and prompt disposition of pending trials, can substantially reduce the risks to and burdens of witnesses. Such measures and ideas, within available resources, should be considered to the extent practicable.
5. Special attention should be paid to the needs of vulnerable witnesses, particularly children.

[Police Protection]

6. Police measures to ensure the physical security of witnesses should be in place and duly applied. Depending on the level of the threats involved, enhanced security measures, such as temporary relocation and closer protection, should be applied when necessary.

[Procedural Protection]

7. Court procedures that allow witnesses to testify without fear and in a manner that ensures their safety should be available in accordance with each country's domestic law. In the application of such measures, due consideration should be given to balancing the need to protect the witnesses and to ensure the defendant's due process rights. Such measures may include the following:
 - Removal of defendants;
 - Removal of particular spectators and/or media;
 - Use of pre-trial statements of the witness;
 - Limiting disclosure of personal and identifying information of the witness;
 - Shielding the witness from the defendant and/or from spectators;
 - Disguising the face and/or distorting the voice of the witness;
 - Allowing accompanying persons during testimony;
 - Allowing testimony via videoconferencing or other communication technology.

[Witness Protection Programmes]

8. Where there is a serious threat to the witness's security as a result of his or her co-operation with the criminal justice authorities that cannot be addressed by other protection measures, a formally established covert programme that provides for, among other things, the relocation and change of identity of the witness may be established. Because of the significant state resources required to operate the programme, and the dramatic changes to the life and privacy of the witness, relocation and change of identity should be considered a measure of last resort. Admission to the programme should be voluntary, and the consent of the witness should be required.
9. In order to safeguard their neutrality, it is advisable that, regardless of their location in the government, witness protection programmes should be specialized and be separated from the investigation and prosecution functions. However, close co-ordination with various criminal justice authorities including the police, prosecution, judiciary and prison administration, and other governmental authorities, such as housing, health, and security, is also called for.
10. Witness protection programmes should operate on the basis of strict confidentiality.
11. Adequate funding should be allocated by state budgets to ensure the effective functioning and sustainability of witness protection programmes.

12. Particular care should be taken to ensure that the protection and the support provided by the programme are not seen as a reward for the witness's co-operation and testimony.

[Mitigation of Punishment]

13. Mitigation of punishment and grants of immunity from prosecution encourage accomplices and "insiders" to supply useful information and testimony. Providing for the possibility, in appropriate cases, of mitigating punishment or granting immunity to persons who provide substantial co-operation in the investigation and prosecution of criminal offences should be duly considered.

[Whistle-blower Protection]

14. Public and private sector employees who, in good faith and on reasonable grounds, report facts concerning possible criminal offences to competent authorities play an important role in bringing to light and providing an opportunity to tackle unlawful conduct. Due consideration should be given to adopting appropriate measures to protect such persons from unjustified treatment.

[Sharing of Experience and Enhancement of Understanding]

15. Notice should be taken of assistance and information provided by the UNODC, notably its publication entitled "Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime".
16. International fora, such as UNAFEI's Regional Seminars on Good Governance, allow for the development of international dialogue and the exchange of experiences and good practices, and participation is therefore encouraged. It is important that participants share and disseminate the content of such programmes with their colleagues at home.