

# **Witness Protection in Global Perspective: An Analysis of International Laws**

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## **Abstract**

*Witness protection is a significant part of international criminal justice system. The purpose is to secure witnesses from reprisals and threats. Numerous agreements and laws have been designed all over the world to protect witnesses against intimidation, reprisals and injury. This paper analyzes thoroughly the strategies and underlying global legal frameworks for the protection of witnesses in international criminal justice systems around the globe. It also looks at the various ways used across the world in tackling this fatal issue. It also emphasizes the need for states' coordination to strongly implement these measures. The United Nations Convention against Transnational Organized Crime sets forth fundamental guidelines for witness protection including safeguards with regard to physical security, anonymity and relocation of the witnesses and their families. Despite all of this, providing sufficient funding for implementation and bringing national law into accord with international standards remain issues. It is necessary to foster international cooperation for effectively fighting transnational threats. Testimony is promoted, not least by safeguarding witnesses, not only because witnesses so important to justice, but also because of their role as a bulwark of the rule of law internationally. Witness protection effectiveness is dependent on strong legislative frameworks and inter-agency collaboration at the domestic and international level. Agencies, like UNODC, are always creating best practices and recommendations to improve these frameworks worldwide. Witness protection encouraged people to tell the truth without worrying about fear or being injured, which not only helped in pursuit of justice but also strengthen the rule of law, says the article.*

**Key Words:** Witness, Victim, International Criminal Justice, UNODC, Witness Protection, Rule of Law

## **Foreword**

A witness is a person who gathers information about the crime using his senses. He provides the court a detailed account of everything in order to fully comprehend the situation and facilitate the administration of justice by learning the truth. The proof and its relationship to the accused must be shown beyond doubt in order to declare someone guilty. The judge must use every type of evidence specified in the Laws of Evidence. Testimony is among important types of evidence in criminal prosecutions. It might even be the only evidence in some circumstances. Witness testimony is, therefore, still a crucial procedure despite its

drawbacks. The witness may face attacks on his life, finances, honor, and family since he plays a major role in the legal process. Thus, the question of witness protections arises in order to prevent these harms from occurring to those who provide testimony (Feligha, 2022). Nonetheless, it was essential that contemporary legislation advance toward passing regulations to guarantee that witnesses are protected from any threats and attacks. The protection to witnesses would help better criminal trials and ensures rule of law.

It is pertinent to mention here that, the international world has recognized the importance of the witness as a vital part of the legal system. False testimony and coercing or threatening other witnesses into making a false statement have been punished from the beginning of time. Nations came to agreements to develop procedural rules that ensure witness safety and legal frameworks that protect witnesses (Pursley, 1977).

### **Understanding the Concept of Witness**

Jeremy Bentham once said, "The witnesses are the eyes and ears of justice" the great philosopher rightly pointed out (Bentham). The importance of witnesses. Witnesses could be considered the cornerstones of justice. The reliability of a witness testimony determines the outcome of the case. In an adversarial system, the judge acts as an unbiased arbiter, and it is the parties' duty to prove their case. In a criminal trial, the prosecution makes its case using witness testimonies and other evidence that is presented to the court. Therefore, it may be concluded that witness statements always influence the court's ruling. The witness will often not be impacted by the court's decision because he is neither the accused nor the victim. Nevertheless, he tries to appear in court to testify (Joseph, 1976).

The witnesses devote their valuable time and resources to testify. They carry out a very important civic duty by assisting the court in discovering the truth. Henceforth, it is very important to protect witnesses from any fear of injury. Anyone whose safety is at risk due to his or her cooperation with law enforcement is considered a witness. "Any person regardless of his or her legal status, who is eligible under the law of a country involved to be considered for admission to a witness protection program" is what the UNODC defines as a witness (UNODC, 1997). The definition of a witness in South Africa's Protection Act, 1998, is "anyone who is or may be required to give evidence or who has given evidence in legal or court proceedings" (SAPA, 1998). A person who has complied with the government requirements to testify in court and is protected by the witness protection program is considered a witness, according to this definition. As a result, it may be claimed that a "witness" is commonly described as someone who witnesses an event or obtains information and specifics about it to the court. The term "witness" refers to a wide variety of individuals, ranging from those who just attest to legal documents to those who testify in court. Therefore,

the term witness is exhaustive in nature. It covers a number of scenarios and varies on specific evidence requirements of each case.

### **International Instruments Guarantying Witness Protection**

Corruption, organized crime, terrorism, and violations of human rights have been long standing problems for the international community. Albeit, judicial systems, among other things are the best means of resolving these problems. The problems could have been settled more convincingly if, for example, witnesses were adequately protected if this was possible. It took significant steps to handle this crying need. UNO also passed several agreements and treaties, which provide a variety of protections for witnesses.

International instruments that emphasize the importance of protecting persons who come forward to testify serve to enhance legitimacy and efficacy of legal processes. There are clauses as well in the statutes of several international judicial entities that protect witnesses. Several developed and emerging countries have been successful examples to the world by adopting comprehensive witness protection provisions into their national laws. The following is a list of some of the most significant international accords that protect witnesses

### **Universal Declaration of Human Rights 1948 (UDHR)**

The Universal Declaration of Human Rights (UDHR, 1948) establishes a fundamental framework to guarantee the security and dignity of people, inter alia of witnesses. Protection advocated for the witnesses can arguably be extended to protection of the rights guaranteed under the UDHR. The effective administration of justice is the essential means by which many of these rights are realized. In Article 3 of the UDHR life, liberty and personal security, rights are granted. This clause obligates governments to guard people – including witnesses – against violence, aggressive acts, or threats which they could fall hostage to, if linked to legal processes. The right to security provides a basis for making policy provisions such as relocation, anonymity and deterrents to retaliation by individual persons giving evidence in sensitive cases (Art. 3, 1948 UDHR).

Article 5 adds to the need to protect witnesses from harm or coercion by prohibiting torture or cruelty, inhuman or degrading treatment. (Art. 5, UDHR, 1948). In addition, Article 7 guarantees equal legal rights and safeguards against prejudice for all subject to investigation, including witnesses' whatever their background. (Art. 7, UDHR, 1948). Monitoring of witness protection is inherent to Article 10, which provides for the right to a fair trial, and should be interpreted from that perspective. For the trial to be fair a

witness has to be able to testify honestly and freely without fear for his life (Art. 10, UDHR, 1948). Efficient witness protection procedures, therefore, uphold the justice, impartiality enshrined in this article.

### **The European Convention on Human Rights 1950 (ECHR)**

The European Convention on Human Rights does protect witnesses to some extent but the protection is not direct, its provisions relating to basic human rights and freedoms provide for it. However, witness protection is not specifically mentioned in the convention, several of its articles set the ground to ensure that the rights and protections of those who become involved in legal procedures are safeguarded. Article 2 of the ECHR (1950) confers the right of life to citizens, obliging states to refrain from putting their lives in danger, including causing danger by their duty as witnesses (Art. 2, ECHR 1950). It involves, for example, laying down policies to protect witnesses from intimidation or reprisal. Article 3 forbids torture as well as cruel, inhuman or humiliating treatment or punishment.

The importance of protecting witnesses from abuse that may come from having testified was the main point in this provision. There can be no right to a fair trial without the protection of witnesses, and Article 6 guarantees that right. A fair trial (Art. 6, ECHR, 1950) must allow witness who may testify without fearing for his or her own safety to participate. Consequently, in order to protect witnesses and preserve integrity of the legal system, states ought to adopt anonymity for witnesses, as well as witness relocation programmes. Article 8 also supports the confidentiality of the identities and private information of the witnesses further, since it determines the right to respect for private and family life. This clause protects witnesses from overly intervening or staring and from privacy threats.

### **International Covenant on Civil and Political Rights 1966 (ICCPR)**

International Covenant on Civil and Political Rights (ICCPR, 1966), which was adopted in 1966, concentrates strongly on fundamental rights. That gives them important protections. Its provisions ensure the safety, respect, and equitable treatment of everyone whether witness or party at any stage of legal proceedings. Article 6 of the ICCPR recognizes the inalienable right to life and that states are obliged to take steps to protect citizens against danger, including pressure from their position as witnesses (Art. 6, ICCPR, 1966). It demonstrates the privilege of a state to protect a witness from harm, threat or retribution. Article 7 bans torture and all cruel, inhuman, or humiliating treatment or punishment. (Art. 7, ICCPR, 1966).

Moreover, this article provides protection to the witnesses as well. It ensures they cannot be hurt or teased, cannot be made to testify against their will. The Article 14 is linked to witness protection as well. It also defends the right to a fair trial. In order for a trial to be fair, its witnesses must testify fearlessly for their testimony to be truthful and without interference. (Art. 14, ICCPR, 1966). Consequently, the legal system must safeguard itself by moving and hiding witnesses' identity. In addition, Article 17 protects people from arbitrary interference with their correspondence, family and privacy. (Art. 17, ICCPR, 1966). This clause supports confidentiality measures, which protect witnesses' private information from disclosure. The ICCPR characterizes witnesses as persons whose safety and dignity must be stressed while protecting them and whose role is important in working towards security and justice. It precludes states from enacting the necessary safeguards, nor enforcing rule of law.

### **Convention against Torture 1984 (CAT)**

Important safeguards for witnesses, especially those engaged in cases of torture and associated abuses, are provided under the 1984 Convention against Torture and Other Cruel, Inhuman, or Demeaning Treatment or Punishment (CAT). Its provisions guarantee the security and respect of anyone who might testify in cases involving torture. States are required by Article 2 to take appropriate steps to stop torture within their borders. (Art. 2, CAT, 1984). This includes protecting witnesses who might testify against torturers because they frequently run a serious risk of intimidation or reprisal. People who report torture are expressly protected under Article 13.

States are compulsorily expected to protect witnesses and complainants. They shall be protected from any kind of abuse or coercion because they participated in the inquiry or provided testimony (Art. 13, CAT, 1984). The clause stresses upon the importance of providing a safe space where witnesses can tell their stories without worrying about retaliation. Furthermore, victims of torture, even those who testify as witnesses, are required by Article 14 to have the right to compensation (Art. 14, CAT, 1984). This includes safeguards against additional harm, such as physical security, witness support services, and confidentiality. The CAT upholds states' duties to establish safeguards for witnesses, guaranteeing their involvement in legal proceedings free from intimidation or coercion. The agreement enhances responsibility for acts of torture and preserves the values of justice and human rights by placing a high priority on the security and welfare of witnesses.

### **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985**

The United Nations approved the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985. It offers important guidelines for protecting witnesses. It emphasizes to protect especially those who have also been victims of abuse or crime. The Declaration acknowledges the interconnected role of witnesses in the legal system. It outlines a roadmap that indirectly extends protection and support to the witnesses although its main emphasis is on the victims. It pushes states to enact policies that shield people from harassment, intimidation, or injury brought on by their involvement in court cases. Protecting witnesses who testify against criminals or abusers is part of this.

The paragraphs 4 to 7 of the declaration stress the importance that victims and witnesses have to access to the support services that they need including security arrangements, counseling and help with moving when they cannot live in safety in their present homes or countries. These are all steps you need to ensure that people who speak do not fear reprisals or injury. It urges nations to buttress their legal systems and enforcement procedures to help protect witnesses, in particular. Concerning cross border threats to witnesses in situations concerning organized crime or abuse of authority, it invites international cooperation. The proclamation underlines the import of witness engagement to realize justice through the promotion of inclusive steps in offering it and protecting them from all dangers to their wellbeing and dignity. In addition, it provides a framework for states to improve their mechanisms for protecting witnesses.

### **United Nations Convention against Transnational Organized Crime 1989 (UNTOC)**

Although the United Nations Convention against Transnational Organized Crime, adopted in 2000, contains some extensive measures to provide protection to witnesses in transnational organized crime prosecutions, the. Under the terms of the agreement, governments must take specific steps to ensure the safety of witnesses, and make it simpler for them to assist law enforcement, reflecting the essential role witnesses play in the prosecution of this kind of crime. Article 24 of UNTOC goes a step further and specifically has Article 24 say that countries must take the necessary steps to protect witnesses along with their families from intimidation and reprisal. Some precautions are use of physical protection, relocation, technology such as video conferencing, which can allow anonymous witness testimony and the like.

Lawmakers also appeal to states to pass laws permitting the use of quarantined identities to protect witnesses during investigation and in the courtroom (Art. 24, UNTOC, 1989). The said article also urges states to enact legislation allowing the use of hidden identities with an aim to safeguard witnesses during investigations and trials. In addition, Article 25 focuses itself on the needs of the victims, who quite often are qualified as witnesses. It improves protection for witnesses overall, in that States are required to ensure



that victims are protected and afforded support services (Art. 25, UNTOC, 1989).framework for witness protection overall by requiring states to guarantee victims are protected and given support services. The convention sets out both international and bilateral cooperation to prosecute and bring to justice those responsible.

Article 18 on mutual legal assistance calls for States to work together so as to develop joint cross border witness protection arrangements. For instance, relocation programs or the exchange of best practices. UNTOC houses some strong clauses (Art. 18, UNTOC, 1989), using which grants the governments a framework to protect witnesses on both legal and practical agendas and by ensuring their safety and by encouraging them to participate in the fight against organized crime protected and given support services.

Article 18 on mutual legal assistance encourages States to work together on cross border protection of witnesses arrangements, for example, as relocation programs and the exchange of best practice. UNTOC sets very strong clauses (Art. 18, UNTOC, 1989), which provide governments with a base upon which to protect witnesses legally and practically, to keep them safe and encourage their participation in fighting organized crime. It can be deduced from the above arguments that, these are necessary to keep the reliability of justice system and protect the rule of law against international criminal threats.

### **Rome State 1998**

The Rome Statute of the International Criminal Court (ICC, 1998) offers much needed witness protection for witnesses from serious international crimes, including war crimes, crimes against humanity, aggression and genocide. The procedures are dictated to assure safety, dignity and proper participation in the legal proceeding to witnesses endangered by such proceedings. Article 68 of the Rome Statute mentions witness protection in text. It requires that the ICC perform its duty to ensure the privacy, dignity and physical and mental integrity of victims and witnesses. (Art. 68, ICC, 1998). These include the use of pseudonyms, testimony under cover of voice, testimony under cover of appearance distortion, and testimony under circumstances of hearing in private or closed session when necessary. The strong offenders necessitate them to shield the witnesses against threats, coercion and reprisals. Article 43(6) of the Act creates a Victims and Witnesses Unit (VWU), within the Registry of the ICC.

The VWU is responsible implementing security and protection plans for witnesses, including ideas for the relocation of witnesses and providing emotional counselling services. (Art. 43(6), ICC, 1998) plans for witnesses, involving relocation initiatives and counseling assistance, falls under the purview of the VWU.

The Organization works closely with both domestic and foreign authorities to ensure that witnesses get the help they need to testify and after the trial. Furthermore, pursuant to Article 64 the court has the capacity to act to preserve the safety of witnesses during proceedings. The ICC has the authority to make orders to stop the release of private material that will put witnesses or their loved ones in risk. It means that the public will not be able to access some parts of the proceedings. It also emphasizes the importance of protecting witnesses, during pretrial and investigative phases, by the Rome Statute. Article 56 makes exceptional measures possible during investigations to protect witnesses in danger of severe personal hardship and to preserve the reliability of witness testimony. (Art. 56, ICC, 1998).

These provisions ensure the comfortable work of witnesses on the ICC and, therefore, the collection of trustworthy evidence in complicated cases. The act also emphasizes the importance of a governmental collaboration in its implementation of witness protection policies. In addition, the States Parties are duty bound under Article 93 to also assist the ICC to relocate the witnesses, and to undertake protection measures. (Art. 93, ICC, 1998). Collaborating in these cases is especially necessary when witnesses have to be transferred to another jurisdiction or have to be protected for an extended period. The legislation also recognizes that violence in many crimes for which ICC jurisdiction is recognized is gendered. Article 68(1) expressly provides that protective measures shall be created, having regard to the gender, age, health and other condition of witnesses, in order to meet the requirements of fragile witnesses, such as victims of sexual violence. (Art. 68(1), ICC, 1998).

Supporting protection for safety, anonymity and dignity, and furthering the creation of the VWU, concisely the Rome Statute's witness protection provisions already provide a solid foundation for such an endeavor. Protective measures are built into every step of the legal process and an emphasis on international collaboration is placed into the act, in order to ensure that witnesses can take part in the quest of justice free from fear of danger. The integrity of the ICC and ensuring the safeguarding of its ability to encourage accountability for the most serious crimes under international law depend on them.

### **UN Convention against Corruption 2003 (UNCAC)**

The United Nations Convention against Corruption, adopted in 2003, provides an extensive anti-corruption framework and robust protections for experts, witnesses and other persons who could assist in corruption investigation and prosecution. It is noted that reprisals, intimidation, injury and other dangers are likely to prevent or impede the free exposition of the truth if the testimony of witnesses is not fully protected States Parties shall take effective steps to prevent all acts of harassment, intimidation and retaliation against



complainants in cases of torture or other ill treatment. Article 32 of UNCAC expressly provides for witness protection. States Parties shall take the measures necessary to protect experts, witnesses and their families from intimidation or reprisal on the account of their testimony. For example, the protection may include secure communication lines, relocation initiatives and physical safety precautions (Art. 32, UNCAC, 2003). States are also urged to allow prosecutions to take place with video conferencing, anonymous testimony and other safeguards in court proceedings, to minimize the risks to witnesses. Article 33 also stipulates that whistleblower safety guarantees as well as witness specific safeguards exist in along with the role of those who divulge corrupt actions. States Parties are encouraged to adopt policies to protect individuals who report an offence of corruption in good faith from criminal, civil, administrative sanctions, in connexion with the service of truthful information regarding the commission of such an offence (Art. 33, UNCAC, 2003). The UNCAC also establishes that reversal of legal aid, as mentioned in Article 46, forms part of witness protection. States are urged to work together to relocate witnesses, exchange best practices and the secure cross border transfer of individuals as necessary. Collaborative approach is especially important when dealing with situations of transnational corruption, when witnesses may be threatened across international borders (Art. 46, UNCAC, 2003). Moreover, Article 31 concerns seizing and seizing assets gained through corruption in a way that implicitly affords the witness protection of reducing dishonest actors' capacity to influence or inflict harmed on witnesses.

The convention recognizes too that testifying in corruption cases can have psychological and social impact, especially on vulnerable witnesses. It requests that States Parties make counseling and legal aid available as a means of protection of witnesses' welfare as well as of the legal process. UNCAC recommends the establishment of particular organizations and units, such as protection of witnesses programs to implement such laws and perform protective measures effectively. These units, however, depending on the particulars of the case, work and often collaborate with law enforcement and judicial entities in order to assess threats and to provide specialized methods of protective action. Accordingly, UNCAC can be said to be a strong base for transfer of witness protection, provided it requires institutional, operational and legal safeguards to prevent intimidation and reprisal on witnesses. It has a wide approach to the difficulties witnesses in corruption cases have, emphasizing whistleblower protection, and international cooperation and support services. The protection and security of witnesses contained in UNCAC enhance the battle against corruption, encourage accountability, and maintain integrity of legal systems around the world.

#### **UN ECOSOC Guidelines regarding Witnesses 2005**

In year 2005, The UN ECOSOC promulgated the Guidelines on Justice in matters involved Child Victims and Witnesses of Crime. These recommendations were meant to help the nations develop laws, regulations and recommendations on protection of the rights of "child victims and witnesses." As one of the rules, "Child victim and witnesses are considered to be all persons under age of 18 who have suffered from a crime and/or have seen an offence, regardless of the extent of such person's involvement in the above crime or the process of the prosecution of an accused person or persons and/or groups of offenders."

The Guidelines are meant to preserve a few fundamental rights in order to protect child victims and witnesses. These rights include that of privacy, practical help, and protection from adversity, safety, and specific preventive measures; and that of equal treatment, information and trial hearing. States must educate and train experts in protecting witnesses and underage victims, in order to defend these rights. After reading the Guidelines, one could infer that the member states found them useful to their legislation protecting witnesses. Because of this, member states can adopt laws that protect witnesses and comply with the recommendations of the Guidelines.

### **Recommendations**

In spite of their importance, programs for witness protection have several challenges. However, one of the great problems here is lack of resources, especially in developing countries. They place a heavy strain on logistical, financial and protection needs of relocation, new identities, round the clock protection on the national budgets of developing countries. This means that programs are impossible to complete entirely by nations with low budget and witnesses are left in danger. Then social and cultural considerations compound problems. In tight knot communities, or in the instance of very close knit families, the removal of a witness may result in social exclusion or suspicion. Furthermore, the witnesses are often afraid of retaliation to them or to family members out of their surveillance. Implementation is even more difficult due to procedural and legal irregularities. Legal framework to limit precise rule about protection of witnesses is deficient in many jurisdictions. An example of this would be if there are no regulations to protect the confidentiality of witnesses throughout the court processes that could put witnesses in danger needlessly. Corruption in among the legal and law enforcement sectors is also a further source of weak trust in witness security initiatives. Police are supposed to see compromised authorities working a case, and there is fear that witnesses will be reluctant to cooperate if they think their friends can be betrayed or leaked, their side.

If we want to enhance the effectiveness of witness safety programs worldwide, governments must priorities adequate funding and corresponding resource allocation. International cooperation, including exchange of

best practice and technical support, can help countries with little experience do this and indeed can help create efficient systems. Moreover, providing specialized training to law enforcement and judicial personnel will promote the efficient operation. Processes need to be standardized and witnesses have to be protected legally, but legislative measures are needed for that. Photos and videos also can help witnesses describe what happened to them, which is why psychological support services for witnesses and their families are also incorporated. To rule of law and justice, protecting witnesses programs are essential. Looking beyond technical advisors, however, to systemically address corruption, cultural sensitivity and scarce resources is crucial to their success. By doing all this, nations will be able to improve the worldwide fight against crime and make witness settings safer.

### **Concluding Remarks**

It is safe to say that witness protection laws are something that has evolved. Witnesses to the legal system require their safety because they are crucial to it. This demonstrates how witness protection transitions from regular safety measures to complete safety plans. The Rule of Law can be established by nothing short of witness protection. This however has created such an urgent need of developing a universally accepted mechanism to protect witnesses. The United Nations and other international organizations have taken cognizance of the same. As a result, international laws and standards were laid down. The progression of witness protection laws into national initiatives and to an international standard is reflected in the need to protect witnesses who are requirements for the quest for justice. The preservation of the integrity of court procedures, of course, requires effective witness protection. Witnesses should be able to give honest testimony freely, without fear. Criminal laws and legal systems are in the process of change for the purpose of filling the new demands, thus adjusting the rules for implementation of measures on witness protection. A continuous commitment to improve witness protection means can help maintain equitable, recognizable, and open culture to court systems around the globe. In a world that is continually evolving, integrity in criminal justice systems will ensure they remain just, and able to protect those who are essential to the fight for justice.

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