

**GROUP 2**  
**PHASE 2**

**METHODS FOR OBTAINING THE COOPERATION OF  
WITNESSES TO PUNISH ORGANIZED CRIMINALS: THE  
IMMUNITY SYSTEM AND WITNESS PROTECTION  
PROGRAMMES**

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**I. INTRODUCTION**

In battling transnational organized crime (TOC), early detection and effective law enforcement must be complemented by successful prosecution. To prevent TOC or to convict members of criminal organizations who have committed them, the essential factor that must always be considered is evidence. Vital documents as well as the fruits of the crime, such as illicit drugs or firearms, constitute physical evidence. Still, it is often ideal to present the testimony of certain persons - like police officers, undercover agents, informants, civilian witness, the victims, and, if necessary, some of the defendants themselves - in order to link the physical evidence to the accused or suspect. In cases involving TOC, the personal safety of witness for the prosecution, as well as that of the members of their families, may be placed in jeopardy due to the ferociousness of criminal syndicates and the vast power and influence that they possess. Thus,

there is a need for all nations to consider a feasible immunity system, as well as a comprehensive witness and victim protection programme, or to strengthen those which are already in existence,

There are countries which already have both of these mechanisms in place. Some have one or the other, while others have neither. Some are equipped with highly advanced systems, even as others are still in the formative or experimental stage. Additionally, as a rule, these laws do not specifically apply to TOC, but they may, nevertheless, be effectively used in cases involving TOC. The aim of this paper is to present some of the existing legal structures on immunity system and on witness and victim protection in order to share the information with nations which have yet to integrate them into their respective bodies of laws.

## II. IMMUNITY SYSTEM

### A. Scope

Immunity generally refers to the process of exempting from prosecution a person accused of a crime. This is particularly encouraged under Article 26 of the Draft United Nations Convention on Transnational Organized Crime, which deals with measures to enhance cooperation with law enforcement authorities.<sup>1</sup> As used in this paper, however, and in order to maximize the potential of witness cooperation as a tool for combating TOC, immunity will also be considered, in a limited sense, as a mitigation of sentence for suspects or accused persons who cooperate in a criminal investigation.

### B. Objectives

There are various reasons why immunity is sought or suggested. Principally, the testimony of a person who is party to a crime is very reliable because of his relationship with his co-accused. Any statement obtained from him, assuming it has passed the twin evidentiary tests of credibility and materiality, in can always strengthen a case or actually build one.

At the investigation stage, a State witness can reveal the identity of other suspects, eventually leading to further arrests. At times, his statements can also assist the police in locating the victim of a crime. Still, in other cases, he may point out the *corpus delicti* or the body of the crime. This is precisely the situation in Brazil, where, although no specific immunity system is in place, a criminal's sentence may be mitigated if his cooperation results in any of these three.

Granting immunity from prosecution has actually led to the solving of many

serious crimes, as in the Fiji Islands and Thailand. And as far as organized crimes are concerned, Italy with its age-old problem with the mafia, came up with a Witness Security and Benefit Programme in 1991, which provides immunity to people who are willing to testify against the mafia dons. Although this law is in the process of amendment, the use of an immunity system is perceived to be a very effective tool in prosecuting terrorists or members of the families in Italy. If ordinary witnesses are reluctant to come forward with information that may help in solving organized crimes, people who have actually participated in such crimes are even more hesitant of downright unwilling to implicate the mob, whose reputation for immediate retaliation has sown terror in towns controlled by the mafia.

Still, in other countries like India, Korea, Nigeria, Pakistan, and Uganda, immunity may be granted so that the prosecution of a certain case may find more success using the evidence that the State witness may provide. Stretching the definition of immunity further, the Philippines enacted a law<sup>2</sup> providing immunity to givers of bribes in graft and corruption cases, a piece of legislation intended to eliminate the reluctance of such bribe-givers from cooperating in the investigation for fear of prosecution.

### C. Procedural Requirements

The most common requisite in availing of immunity from prosecution is that an accused-witness must cooperate with the government by voluntarily making a full disclosure of facts and circumstances relevant to an offense for which he and other persons are being charged or investigated.<sup>3</sup> Some countries have more stringent requirements, including the absolute necessity of the testimony and the

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<sup>1</sup> See Annex A for the full text of this article.

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<sup>2</sup> Presidential Decree No. 749.

possibility of corroborating its material points using other evidence. In such case, the accused must not appear to be the most guilty among two or more accused persons, and he must never have been convicted of any crime where his integrity was placed in doubt.<sup>4</sup>

The grant of immunity is purely discretionary, so it can be withdrawn at anytime by the grantor if the grantee fails to fulfill his obligations under the terms and conditions of his immunity.<sup>5</sup>

At this point, it may be expedient to describe in more detail the immunity systems in two of the countries that have extensively dealt with organized crime and how they are utilizing this method in their fight against TOC.

In Italy, statements by a cooperating defendant have been used for 30 years, but, as stated earlier, it was only in 1991 that a witness security and benefit programme was formally adopted. There is now a bill pending in the Italian Parliament for the amendment of this law. The bill limits the scope of the cooperating defendant's testimony to cases involving terrorism or Mafia offenses and gives more emphasis to the quality of the cooperation than the original law. Furthermore, it prohibits such defendant from making statements relevant to the facts covered in the proceedings where he has cooperated, to bodies other than those who are involved in the immunity process, namely, the judicial authority, the police forces, and his

own defense counsel. Thus, while in detention, he is not allowed to engage in conversation with the police handling the investigation of the case, at least until the record of the cooperation is drawn up, in order to avoid any suspicion that his testimony was contrived by the investigators. Neither is he allowed to meet other cooperating defendants nor receive or send mail outside, save for purposes connected to protection needs. As a consequence of his collaboration, he may be spared from pre-trial detention or simply placed on house arrest after judgment if his contribution has been substantial or significant.<sup>6</sup>

But while the Italian government is eagerly awaiting the passage of this law which would, in effect, allow the prosecutorial service to take full advantage of the immunity system, the Americans have been successfully using it for decades. The United States of America used to have "transactional immunity," which gave total immunity to the witness from prosecution for an offense to which his testimony specifically related. By 1970, however, these had been replaced by "use immunity."<sup>7</sup> In essence, "use immunity" only provides that a witness' testimony will not be used against him/her, but he/she may still be prosecuted using other evidence.<sup>8</sup> The system ensures that the testimony will not lead to the infliction of criminal penalties on the witness.

To utilize "use immunity," the testimony or other information must be necessary to the public interest and the witness must have asserted or will likely assert his/her right against self-incrimination. The

<sup>3</sup> #306 Criminal Procedure Code (India); Witness Security Benefit Act of 1991 (Italy); Witness and Victim Protection Law (Republic of Korea); #9 Rule 119, 1985 Rules of Criminal Procedure (Philippines). The same is true for Fiji, Nigeria, Pakistan, Thailand, Uganda, and the USA.

<sup>4</sup> See note 3 (Philippines).

<sup>5</sup> #337-339, Criminal Procedure Code (Pakistan).

<sup>6</sup> Franco Roberti, UNAFEI lecture, 24 October 2000.

<sup>7</sup> 18 U.S.C., #6001-6005.

<sup>8</sup> The same system is being used by Tanzania under its Economic and Organized Crime Control Act of 1984, #53.

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United States Attorney, with the approval of the Attorney General or the designated Attorney General, is the one who shall apply with the court for an order granting use immunity.<sup>9</sup>

In addition to these codified immunity systems, there are two other types of immunity system which are not codified, namely, non-prosecution agreements and cooperation agreements. Non-prosecution agreements, which are mainly used where the involvement of a witness in a criminal act is minimal, grant immunity from prosecution in connection with that case in return for full and truthful cooperation, but these are rarely used.

Cooperation agreements, on the other hand, are utilized more frequently and are considered very valuable in the prosecution of organized crime groups. In a cooperation agreement, the government agrees to file a motion which would, in effect, give a judge the discretion to reduce the sentence in exchange for the defendant's complete and truthful cooperation. And upon receipt of such motion, the sentencing judge will usually reduce the penalty.<sup>10</sup>

#### **D. Alternatives**

Some countries have adopted systems which do not squarely fall within the concept of immunity discussed above. China, for example, grants immunity or mitigation of sentence to returning Chinese nationals who have committed a crime abroad for which they have already been punished.<sup>11</sup> Germany used to have a law on Principal Witness Regulations Against Organized Crime, but this ceased to be operative on 31 December 1999.<sup>12</sup> Section

31 of the Narcotics Act, however, which has been in force since 1981, has been unusually successful in the detection of organized narcotics crime.<sup>13</sup>

On the other hand, there is a way of getting the testimony of a person other than through immunity. Hong Kong's Organized and Serious Crimes Ordinance of 1994 allows the Attorney General to apply to the High Court for a "witness order", which compels a person to provide information to the police or other officers conducting an investigation of an organized crime. Defiance of such order is a punishable offense.

#### **E. Assessment**

There are many countries which have an immunity system, sophisticated or otherwise, because it is internationally recognized as an effective measure in combating TOC. This prerogative, however, must always be exercised with utmost caution. Others, like the US, have an advanced and evolving immunity system, a fact that may be attributable to their long experience with crime detection and prevention, their need to reconcile effective law enforcement and prosecution with the individual's right against self-incrimination, as well as on changes in the attitude of the general public toward crime and punishment. It must be noted that, in recent years, the trend in the USA has been toward granting less immunity to cooperating criminal, for basically the same arguments against immunity.

Some countries, however, do not have such a system. The reasons vary from one State to another, based on one or more of the following issues: (a) it violates the

<sup>9</sup> In 1999, 1,444 out of 2,059 requests for immunity were granted by US courts.

<sup>10</sup> Bruce G.Ohr, UNAFEI lecture, 24 October 2000, *citing* Federal Sentencing Guideline § 5K1.1.

<sup>11</sup> § 1, Article 10, Criminal Law.

<sup>12</sup> A summary of the pertinent law is provided in Annex B.

<sup>13</sup> A summary of the provision is provided in Annex C.

principle of equality and rule of law; (b) it is incompatible with the principle of mandatory prosecution; (c) it is prone to abuse by authorities; (d) it is detrimental to the citizen's confidence in the judiciary and in the inviolability of the law; (e) it breeds a negative public perception that the State is dealing with criminals; (f) it makes the defense more difficult; (g) it makes the trial and prosecution depend on the dubious statement of a criminal who wishes to escape liability; (h) the danger of betrayal tends to unite rather than divide crime groups<sup>14</sup>; and (i) in some countries, there is a culture of justice where the people cannot accept the exoneration of a criminal by testifying against his co-accused.<sup>15</sup>

Therefore, the absence or existence of an immunity system depends as much on each nation's culture, history, and national sentiment, as on their body of laws. This difference, in turn, poses one of the main obstacles in enforcing the immunity system provision of the Draft UN Convention Against TOC, which would bind all States Parties to consider the adoption of such a system.

### III. WITNESS AND VICTIM PROTECTION PROGRAMS

#### A. Scope Objectives

Keeping in mind the provisions of the Draft UN Convention Against TOC, specifically Articles 23-24,<sup>16</sup> the passage of which before the end of 2000 is very likely, the nations of the world are thereby encouraged to adopt measures which will guarantee the protection of witnesses from threats, intimidation, corruption, or bodily injury in relation to testimony given in a

<sup>14</sup> Issues (a) to (h) are actually the reasons that led to the collapse of the immunity system in Germany.

<sup>15</sup> This seems to be the main reason why there is no immunity system in Japan.

<sup>16</sup> See Annex A for the full text of these three articles.

case involving TOC.

In order to get the cooperation of people in the fight against TOC, they must be assured that in doing so, their life or property, or that of their family's, would be safe from the criminal organizations they are challenging. Depending on the degree of cooperation and the type of witness, this protection may be given before, during and/or after the judicial proceeding. A witness may either be the accused who is granted immunity, the victim, or a third party. Even as the inquiry is done before the police, the public prosecutor, or the court, protection must be considered as long as there is a possibility that the suspect/accused or other individual aims to prevent the witness from testifying against said suspect/accused or to force such witness to make a false testimony, by threatening or actually hurting the witness or any member of his/her family.

Some countries have specific witness protection programs, while others have incorporated witness protection provisions in their criminal or criminal procedure codes. Either way, if adequate protection can be given to witnesses, the law would have served its purpose.

#### B. Modes of Protection

##### 1. Witness and Victim Protection in General

In Brazil, the national programme for the protection of victims and witnesses took effect in August 1999. The persons who may benefit from this programme are those without decreed imprisonment and their relatives who habitually live with them. The programme includes the following measures:

- (i) Transferring the residence of the witness;
- (ii) Monthly financial aid for each witness;
- (iii) Supply of food and clothing;

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- (iv) Police protection when traveling;
- (v) Helping the witness find a job in the work market;
- (vi) Retention of benefits by a public employee who is removed from the service;
- (vii) Social, psychological and medical assistance; and
- (viii) Change of identity.

Under the Criminal Procedure Law and Police Law of Germany, there are witness protection measures that can be taken in several steps depending on the gravity of the danger. The concurrent utilization of several means is possible. The simplest though no less effective measure, is by protecting the address of the witness. However, the best way to protect a witness is by totally concealing his/her identity and person.<sup>17</sup>

Hong Kong's Witness Protection Ordinance of 2000 assures the safety of witnesses, specifically accomplices, and their families by allowing them to live in safehouses, omitting their address from their statements, and giving them a new identity after the trial. In addition, the Hong Kong Police has set up a hotline which may be used by the public to report the activities of criminal organizations in the first instance. In such a case, the identity of the reporter shall also be protected.

The 1991 witness protection programme of Italy covers cooperating defendants as well as non-criminal witnesses.<sup>18</sup> In implementing the programme, the following are observed:

- (a) the personal safety of the cooperating witness;
- (b) their psychological safety;
- (c) security of investigation; and

- (d) third-party position in the management of the collaboration, which is essential to prevent an instance where the police may suggest the answer to the suspect (otherwise known as the principle of separation between protection and investigation agencies).

Where the statement are indispensable for investigations on Mafia-type or terrorist-subversive criminal organizations, reinforced common measures - such as temporary police protection for the cooperating witness and his family members - may be applied to ensure the latter's safety. Financial support is usually given, although the amount is not substantial.

Moreover, the witness may be exempt from pre-trial custody if:

- (a) s/he has no current connections with the Mafia or terrorist organization;
- (b) s/he complies with the conditions of the programme; and
- (c) their cooperation is significant.

Witnesses who are, however, already in custody may be placed in appropriate and adequate correctional units. The law (Article 8, Law Decree No. 52 of 1991) also provides as incentive for the collaboration, a special extenuating circumstance, that is, the reduction of the penalty by one-third in case of conviction.

The Republic of Korea enacted its Witness and Victim protection Law on 31

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<sup>17</sup> Johan peter Wilhelm Hilger, NAFEI lecture, 17 October 2000.

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<sup>18</sup> The responsibility to protect a person and his family members, as long as it is necessary and possible, is vested by the law in a range of bodies and authorities, including the Chief Prosecutors or the Head of the Police, the National Commission of the Ministry of the Interior, and the National Protection Service.

August 1999, which came into effect on June 2000. The law covers not only the victim or the witness, but also extends protection to their families. If there is a possibility that a witness may be the target of retaliatory action, his name may be kept confidential and he may be given police protection. When the witness or victim sustains financial loss as a result of the crime or the investigation, he may be granted relief money for the loss suffered. And in the event there is a need for such witness to transfer his residence or secure new employment, he may be furnished some assistance at government expense.

In Laos, during investigation of a case, the police may provide protection to a witness whose personal safety is threatened. The investigation can be done in the office of the police investigator or the prosecutor, and the statement secured during the investigation can be presented and accepted as evidence at the court's discretion. The witness and victim protection programme of Nigeria, which is covered by regulations and not by any specific provision in the Criminal Code, is aimed at protecting witnesses who fear for their life or personal safety in the event they agree to testify against the accused. This programme includes keeping the name of the witness confidential.

In the Philippines, the Witness Protection, Security and Benefit Act<sup>19</sup> was enacted on 21 April 1991, with the Department of Justice as the lead implementing agency. As a result of admission into the Witness Protection and Benefit Programme, which has a substantial budgetary allocation,<sup>20</sup> the witness shall enjoy the following benefits:

- (i) Secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level;
- (ii) Relocation, if the circumstances so warrant;
- (iii) Financial and employment assistance;
- (iv) Retention of employment benefits;
- (v) Travel expenses and subsistence allowance during the inquiry;
- (vi) Medical treatment, hospitalization, and medication in case of injury;
- (vii) Burial benefits, in case of death due to his participation in the WPP; and
- (viii) Free education to children, from primary to college level in any State or private school, college or university, if the witness dies or becomes permanently incapacitated to work.

For its part, Section 52 of Tanzania's Economic and Organized Crime Control Act of 1984 allows the Inspector-General of Police, on his own motion or after consultation with the Director of Public Prosecutions, to arrange for the security of the witness or potential witness and, if necessary, his/her family, where there is danger or real possibility of threat or harm to such witness or potential witness.

In the USA, the federal witness security programme to aid the prosecution of organized crime groups was created by the Department of Justice in 1970. Because of security concerns regarding the witness and his/her family, the pending and actual participation of such witness in the programme shall not be disclosed except under the authorization of the Office of Enforcement Operation. This set-up gives the United States Marshal Service time to conduct preliminary interviews,

<sup>19</sup> Republic Act No. 6981.

<sup>20</sup> The latest available figure is 35,000,000, Philippine currency, for the year 1996.

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psychological testing and appropriate review, thereby minimizing the disruption to both the witness and the concerned government agencies. Once admitted into the programme, the witness and his/her family are given new identities, relocated to another part of the US, and given financial assistance until the witness is able to secure employment. The witness security programme, although rarely used and very costly,<sup>21</sup> has proven to be extremely beneficial and effective in the prosecution of organized crime groups.

2. Court Systems for Witness and Victim Protection

Japan has evolved a comprehensive witness protection programme under its Code of Criminal Procedure (CCP), which was amended on 18 August 1999 and 19 May 2000. For the purpose of this paper, the Japanese model will be utilized as a point reference for the following discussion on the various court systems adopted by different countries to ensure the protection of witness.

(i) Denial of Bail

Under Section 96.1 (4) in relation to Section 89 (5) of the CCP of Japan, an accused may be denied bail if there is reasonable ground to believe that he may threaten to or actually injure the body or damage the property of a witness, whether such witness be the victim or some other person who has knowledge of the case, or a relative of said witness. Likewise, in Papua New Guinea, when the suspect in a serious crime is in custody, the prosecution may file a motion in

court to deny bail to the accused if there is danger that he may go after the witness. It bail is granted, however, the judge may set as conditions that the accused must not leave his home nor talk to any of the prosecution witnesses. Moreover, he is placed under police surveillance and is required to report to court once a week. But during the trial, there is no legal mechanism for the protection of witnesses, except police escort during the hearings.

(ii) Attendants, Screen, and Video Link

With the recent amendment of Japan's CCP, an attendant of the witness may be allowed in the course of examination, and a screen may be set up between the witness and accused. One of the innovations introduced is the allowance of video link examination (to take effect in November 2001) where the witness, being out of the courtroom, answers the questions of the public prosecutor or the defense counsel who are in the courtroom.<sup>22</sup>

Similarly, some countries have rules of procedure which allow psychologist, social worker, public prosecutor, or other person to accompany a child victim under eighteen years of age during the inquiry and trial of the case, or the use of audio-video equipment to record the victim's statement (as in the case of Thailand),<sup>23</sup> or allow

<sup>21</sup> Since the beginning of the programme, over 6,800 witnesses have been admitted, along with some 9,000 family members. The average cost is \$75,000 per witness, per year, and \$ 125,000 per family, per year.

<sup>22</sup> CCP, #157-2 to 157-4.

<sup>23</sup> The 1999 amendment of Thailand's Criminal Procedure Code only applies to victims who are children under 18 years old.

the use of screens when the witness is a juvenile (as in the case of Fiji). In practice, the same modes of protection can be extended to witnesses in cases involving TOC, such as the trafficking of children.

By the same token, Italy's Law No. 11 of 7 January 1998 provides the bases for allowing the use of audio-visual equipment (video conference) to cover the deposition of cooperating witnesses whose lives may be in serious danger as a result of, or in connection with, a case involving TOC. In Germany, it is possible to interrogate the witness in another place, the proceedings therein recorded on videotape, and such tape brought to court as evidence. The witness need not be physically present in court, as long as the questioning is monitored via video link.

Article 164 of Pakistan's Qanun-e-Shahadat allows any evidence which may become available due to modern devices. Thus, the court can resort to video link evidence, although such facility is not yet available in Pakistan.

(iii) Isolation of the Witness

Under the CCP of Japan, to maintain order in the court,<sup>24</sup> or when the judge believes a witness will be unable to fully testify due to the presence of the accused<sup>25</sup> or of spectators,<sup>26</sup> the court may order such accused or spectators to withdraw from the courtroom

during the examination of the witness. This is the same practice in Laos and Pakistan, where an accused may be ordered to leave the courtroom when the witness is testifying, whether in an ordinary case or in a case involving TOC.

(iv) Out-of-court Examination

Under certain circumstances, Japan's CCP also permits the court to order the examination of a witness at any place other than the court,<sup>27</sup> or on dates other than those fixed for public trial,<sup>28</sup> even before the first fixed trial date.<sup>29</sup> In the latter case, the accused/suspect and the defense counsel may attend the examination only when the judge believes their presence will not interfere with the criminal investigation,<sup>30</sup> and the statement obtained thereby may—as an exception to the hearsay rule—be admitted in evidence during the trial even without presenting the declarant.<sup>31</sup>

Similarly, the laws of India, Malaysia, Nigeria, and Uganda allow in-chamber trials to be conducted if it is important to keep the public away from the proceedings.<sup>32</sup> For its part, a witness in Pakistan may be examined in his home by the court itself, or by a commissioner appointed by the court for that purpose. The defense counsel can also examine the witness, but the court may stop him or his client from asking questions which may

<sup>24</sup> CCP, #288.2; See also Court Organization Law, # 71-2.1

<sup>25</sup> *Ibid.*, #304-2.

<sup>26</sup> *Id.*, #202.

<sup>27</sup> *Id.*, #158.1.

<sup>28</sup> *Id.*, §281.

<sup>29</sup> *Id.*, #227.1

<sup>30</sup> *Id.*, #228.2

<sup>31</sup> *Id.*, #321.1(1).

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cause fear or embarrassment to, or threaten, the witness.<sup>33</sup>

(v) **Non-Disclosure of Personal Information About the Witness**

In Japan, if there is danger that the witness might be injured or his/her property damaged, the court may limit questions by which the domicile or other personal circumstances of the witness may be known by the defendant. During the disclosure of evidence, the prosecution may also request the other party's consideration in protecting the security of some witnesses.<sup>34</sup> The same is true in Pakistan, where it is the prosecution's prerogative whether to keep the address and name of such witness confidential.

3. **Criminalization of Certain Acts to Protect Witnesses**

While China has no specific law on witness and victim protection, Article 307 of its Criminal Law penalizes with an imprisonment of not more than three years, or, in severe cases, three to seven years, any person who (a) prevents with violence, threat, bribe, and other methods, a witness from testifying, or (b) instigates others to make false testimony. Article 308, on the other hand, punishes with the same penalty any person who resorts to persecution or retaliation against a witness. In Fiji, interfering with the witness is punishable under Section 131, Penal Code Cap.17. The offense carries a penalty of imprisonment of two years. This

law, however, does not always protect a witness because it does not cover witnesses identified at the investigation stage.

On the other hand, Section 105.2 of the Penal Code of Japan punishes any person who intimidates a witness in connection with such person's or another person's case. Under Section 10 of the 1991 Witness Protection, Security and Benefit Act of the Philippines, accused persons discharged to be State witness under Sections 9 and 10, Rule 119 of the 1985 Rules of Criminal Procedure may also avail of the benefits under the witness protection programme. Furthermore, Section 17 penalizes any person who shall harass a witness and thereby hinder, delay, prevent, or dissuade such witness from otherwise cooperating with the prosecution.

**C. Assessment**

The breadth and coverage of TOC countermeasures differ from one State to another. An effective witness protection programme is just one of such countermeasures. The Draft UN Convention on TOC included witness protection precisely because of the alarming growth of TOC worldwide. This is obviously a recognition of the fact that, although some countries currently have no serious problems with TOC, this state of affairs may drastically worsen in view of the rapid and continuing spread of TOC. In other words, countries which have not yet felt the full impact of TOC might eventually feel it in the near future.

It has been observed that many countries do not have witness protection programs that specifically apply to cases involving TOC. A number of States, however, have programs that are generally used in ordinary crimes, programs that may also be effective in fighting TOC, in addition to legal provisions that do not form part of any witness protection scheme.

<sup>32</sup> #237(2), Criminal Procedure Code of India; #7, Criminal Procedure Code of Malaysia (Similar provisions are reflected in #101, Subordinate Court Act of 1998, and #15, Judicature Act of 1997); Uganda's Children State of 1996.

<sup>33</sup> Criminal Procedure Code of 1898.

<sup>34</sup> CCP, #295.2 and 299-2.

This does not mean that all countries should adopt a uniform plan for witness protection. For one, as suggested earlier, different countries are not similarly situated as far as their exposure to TOC is concerned. There is also a divergence of experience in witness protection, especially with regard to TOC. For example, Germany has a sophisticated programme for giving a witness a new identity, but this facility is rarely used because their TOC problem is not serious enough to warrant the use of such a programme. Secondly, the details of each programme may vary for each country, depending on the peculiar circumstances present in their jurisdiction. Some countries, for instance, do not have adequate programs, or may have them but are not using them wisely. One of the reasons is financial. With inadequate funds, it may be difficult to devise a witness protection programme, or even to implement it. The other reason is that it is difficult to define the scope of witness protection. Should the protection be limited to the witness, or should it include his family, and if so, to what degree? Should the witness and/or his family receive protection or assistance only during the time of trial, or should it continue indefinitely as long as the threat exists? How much should financial assistance be? Unfortunately, there is no available data that would answer these questions. Some countries, on the other hand, have relatively new programs, so their efficacy cannot yet be gauged. Because each legal system is distinct from one another, the setting of standards for witness protection will inevitably have to be made on a country-to-country basis.

#### **IV. CONCLUSION**

The battle against transnational organized crime is fought in two major arenas. One is in the field of law enforcement, the other in a court of law.

To secure a victory, the system of justice must succeed in both. An element common to these two is evidence. Without sufficient material proof, no indictment will ever prosper. A key factor in evidence gathering is finding witnesses who have adequate information regarding a crime which is under investigation or one which is about to be committed. It makes no difference whether the witness be the victim, or a disinterested third party, or even an accomplice. If their testimony will lead to an arrest or a conviction, they must be persuaded to come to court and testify against a member of a TOC group. Since the most common reason why witnesses will refuse to testify is that their life or limb, or that of their families, may be placed in peril if they divulge what they know, their cooperation can be gained by offering them protection and other benefits, or, in the case of co-defendants, by granting them immunity from prosecution or a mitigation of sentence.

These strategies are strongly endorsed by the United Nations. Upon passage of the UN Convention on TOC before the end of this year, States Parties may have to devise feasible immunity programs, adopt legislation specially designed for the protection of witness and victims, or otherwise enhance existing systems so that they will conform to international standards and best practices. Inter-country cooperation in this regard will be more attainable if the necessary domestic laws are already in place.