

GROUP 2

EFFECTIVE MEASURES TO SECURE PROTECTION AND COOPERATION OF WITNESSES

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I. INTRODUCTION

It is important to implement witness protection measures, because witnesses'/victims' support and protection is key to the success of the criminal justice system.

The criminalization of obstruction of testimony is equally important as the actual protection of witnesses because that will ensure that the witness is protected.

Our group has been assigned to discuss the topic "Effective Measures to Secure Protection and Cooperation of witnesses", with particular attention to be focused on non-organized crimes such as sex crimes, crimes involving child victims, or violent crimes. We agreed to conduct the discussions based on the following agenda: 1) Effective legislation and measures to protect witnesses; 2) Criminalization and punishment of obstruction of justice.

II. EFFECTIVE LEGISLATION AND MEASURES TO PROTECT WITNESSES

A. The Current Situation

1. Police Protection of Witnesses

From the discussion, it was verified that the police force of each country has a primary responsibility to ensure effective measures to secure protection and cooperation of witnesses. Some examples are police patrols for witnesses and escort of witnesses and victims. One good example of physical protection was provided by Hiroshima Prefectural Police Department.

2. Procedural Protection Measures at Trial Stage

Most participants' countries have measures to limit witnesses' exposure to the public or psychological stress and many countries have measures to reduce fear through avoidance of face-to-face confrontation with the defendant and measures to make it difficult or impossible for the defendant to trace identity of the witness. Existing legislation in Japan permits the use of screens during the testimony of witnesses. Additionally, other measures include the giving of evidence via video link, the likelihood of witnesses being accompanied in court, separate waiting rooms for witnesses, legislation to prevent disclosure, financial assistance, psychological support, and coordination among relevant government agencies.

All participants' countries consider it important to balance witness safety and the defendant's right to a fair trial; for example, all countries have cross-examination.

3. Comprehensive Witnesses Protection Programme

Only one country, El Salvador, has legislated to support a standardized witness protection programme. In

other countries, existing legislation and other measures are used for witness protection.

4. Other General Matters

Some countries have programmes of training on witness assistance and their protection as well as international cooperation with regard to the protection of witnesses.

It is observed that some countries have measures to enable the prompt disposition of pending cases, namely pre-trial conference procedures, which clarify arguments and disclosure of evidence.

B. Problems and Challenges

1. Police Protection of Witnesses

Some countries have special guidelines for protection of witnesses. Countries which do not have such guidelines have to deal with protection of witness case-by-case.

Most participants' countries have insufficient training for police officers regarding witness protection.

2. Procedural Protection Measures at Trial Stage

There are a few countries which do not have any measures to reduce the hostility a witness may face when testifying.

Although some measures are employed, they do not include voice distortion or concealing identifying information of the witness from the defendant.

When introducing countermeasures mentioned above, balancing witnesses safety and the defendant's right to a fair trial is an important consideration.

3. Comprehensive Witness Protection Programme

Only one country has a comprehensive witness protection programme. The others protect witnesses case-by-case.

The country with a comprehensive witness protection programme still has problems with international relocation resulting from ineffective implementation treaties. The other problem is change of identity of witnesses, resulting from lack of guidelines.

4. Other General Matters

There is a necessity to improve capacity building and training for officers involved in witness assistance and protection.

All participants observed that its a necessity to cooperate in witness protection.

The majority of the participants' countries have a lengthy trial process, which in some cases results in witnesses being reluctant to participate in the criminal justice system.

Likewise, those countries are also facing financial constraints, because this programme is expensive to effectively implement.

C. Countermeasures

1. Police Protection of Witnesses

Establishing specific witness protection guidelines, forming a special unit for witness protection, regular patrols, creating a special hotline for witnesses and adequate training are all essential countermeasures which could be adopted to address issues related to police protection of witnesses.

In order to prevent secondary victimization in cases of sexual offences, training courses for police officers should be provided.

2. Procedural Protection Measures at Trial Stage

Regarding the countermeasures to reduce fear through the avoidance of face-to-face confrontation with the defendant at the trial stage, there are measures such as the giving of testimony via closed circuit TV or video conferencing, the use of pre-trial statements instead of in-court testimony, the removal of the defendant from the courtroom, the provision of separate waiting rooms, and recorded testimony and shielding. These are all significant measures that could be employed to reduce the fear experienced by some witnesses.

In the identification of countermeasures to make it difficult or impossible for the defendant to trace the identity of witnesses, effective measures may include the use of anonymous testimony, limiting the disclosure of information that can be linked to the witness' identity, punishing persons who willingly provide information on witnesses to the defendant and distortion of the witness' voice or face.

To limit witness exposure to the public and psychological stress, effective countermeasures could include exclusion of the public from the courtroom during trial (evidence in camera), or allowing the presence of an accompanying person to provide support for the witness. Some measures to reduce fear through avoidance of face-to-face confrontation with the defendant are also applicable for limiting the witness' exposure to the public and psychological stress.

The above measures are also effective in terms of child abuse and sex crime.

We have to consider the rights of the defendant as well as the rights of the witness, for example: allow the presence of the defence lawyer at all stages of the process and allow the witness an accompanying person during the trial; ensure cross-examination; and disclosure of relevant information to the defendant's counsel.

3. Comprehensive Witness Protection Programme

According to the visiting experts, Mr. Gaña, Ms. Kramer, and Mr. Courtney, and the experience of El Salvador, and based on the discussion we had in our group, we identify the following measures as a comprehensive witnesses protection: relocation, change of identify, financial assistance, psychological support, coordination among the relevant governmental agencies, work and study relocation, medical assistance, job training for witnesses and training for police officers.

4. Other General Matters

In an effort to ensure the best results from a witness protection programme the following points are essential: family protection and assistance, safe houses and shelters, training for officers involved in witness assistance and protection, international cooperation (e.g.) treaties and prompt disposition of pending cases.

D. Recommendations

- The police should protect witnesses if necessary.
- It is crucial to introduce legislation and establish organizational structure of witness protection measures.
- The witness protection measures are necessary for all countries, and countries that do not have this policy should implement it. Countries that have such policies in place should consider their own situation and make the necessary improvements.
- A comprehensive protection programme is an effective system to protect the witness; on the other hand, when we looked the financial burden, and the burden placed on the witness, it should be considered as a last resort, therefore at the introduction of the programme, we have to carefully examine its necessity. If the programme is not necessary, we should take other specific measures to protect the witness.
- We have to ensure sufficient state budget for running the programme, and the enactment of legislation that provides for the proceed of crime to be utilized for witness protection budgets.
- For victims of sex crime it is important to prevent secondary victimization and in the case of child victims it is important to implement measures specifically for children so that sex crime victims and children can feel comfortable making a statement in Court.

III. CRIMINALIZATION AND PUNISHMENT OF OBSTRUCTION OF JUSTICE

A. The Current Situation

Obstruction of justice is criminalized in all represented countries but one, based on the provisions outlined in UNTOC and UNCAC, in addition to their existing legislation.

In some of the countries, when unjust acts are taken against witnesses or sex crime victims, the punishment imposed on those perpetrators is severe, based on the stipulations in the legislation.

Most of the countries, with the exception of one, define the offence of witness interference as obstruction of justice.

For one country, among the actions that are stipulated under UNCAC and UNTOC, there are measures against assault and intimidation, but there are no particular measures that punish unreasonable benefits or the promise of unreasonable benefits.

B. Problems and Challenges

In one country, providing undue advantage or promising to provide undue advantage to the witness for the purpose of making or encouraging a false statement or not making any statement are not penalized. In other countries, there is effective legislation, but some countries have problems when it comes the enforcement of such legislation.

C. Countermeasures

It was observed that in one country there is a need to establish a separate provision for providing or promising to provide undue advantage.

For those countries which have problems with the enforcement of legislation, improvement measures must be taken, so that the law can be enforced more easily and effectively.

D. Recommendations

In order to ensure the cooperation and protection of witnesses, it is necessary to implement correct measures to criminalize obstruction of justice, and in order to realize this with regard to countries in which legislation is not adequate, improvement is necessary. As for countries in which legislation is adequate but enforcement is not, enforcement must be improved so that legislation is effective.