

Witness protection in terms of a fair trial in criminal matters

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ABSTRACT: This study concerns the problems that surround the implementation and enforcement of witness protection measures in the International Criminal Court. The protection of witnesses and decline of their testimony because of their fear to be threatened is a new challenge to International Criminal Court. New challenges should bring to new measures in the future. My research focuses on a special area of international criminal law, yet very narrow and problematic to put into practice. Aim of this research is to take a very active approach to give recommendations in solving the problem. The court has an obligation under its founding document, the Rome Statute, to protect witnesses even though witnesses are not treated as 'a part'. At trial, the judges have the power to take all "necessary steps" to protect witnesses and their families from any threat and risk they maybe confront because of their testimony.

Keywords: Witness protection, criminal matters, International Criminal Court.

INTRODUCTION

One of the most important issues of criminal justice, issues of justice and judicial support staff. The international economic and financial problems, and in Iran, unfortunately, Considering that intuition plays an important role in the implementation of criminal policy and their inhibitors, It is essential both criminal and protective and preventive mechanisms appropriate to protect and repel any threat must be taken against these persons.

The role of witnesses and the evidence they provide in criminal proceedings is often crucial in securing the conviction of offenders, in respect to the crimes alleged in the Rome Statute: crimes against humanity, war crimes and genocide.

Today, witness protection is viewed as a crucial tool in combating organized crime, and a large number of countries around the world have established such specialized programmers or have legislated their creation.

Purpose

Protection of witnesses from the perspective of a fair trial in criminal matters

The primary aim of is to explain the protection system as it exists at the ICC, to highlight the problems faced and to discuss alternative arrangements in the conclusions.

What is witness protection?

Witness" means a person who commits himself/herself and present at, or testify, or give evidence to competent official for investigation, criminal interrogation, court for criminal proceedings, includes expert and not for defendant who himself/herself as witness.

"Security" means security in life, body, health, liberty, honour, property or any lawful rights of witness before or at the time or upon becoming witness.

"Minister" means Minister who is in charge for execution of this Act.

What are its main elements? How is it used to strengthen? Criminal investigations and prosecutions? Are there any universally applicable lessonsthat are the secret to successful witness protection programmes? Can countries with lim- ited human and financial resources afford programmes like the ones operated and prized by well-funded

and well-resourced legal systems? These are some of the questions that the Present publication seeks to answer. Some answers will come easily. In most cases, however, experience has shown that, in actuality, practice is complicated.

The definition of “witness” may differ according to the legal system under review. For protection purposes, it is the function of the witness – as a person in possession of information important to the judicial or criminal proceedings – that is relevant rather than his or her status or the form of testimony. With regard to the procedural moment at which a person is considered to be a witness, the judge or prosecutor does not need to formally declare such status in order for protection measures to apply.

Witnesses can be classified into three main categories:

- (a) Justice collaborators;
- (b) Victim-witnesses;
- (c) Other types of witness (innocent bystanders, expert witnesses and others)

Witness Protection and Human Rights

The Rome Statute requires that proceedings before the Court be carried out fairly and impartially, with full respect for the rights of the parties in the proceedings. With regard to fair trial rights, the ICC takes into account specifically: the right to a public hearing, the right to be present at the trial, the rights to equality of arms, the right of the accused to call and examine witnesses etc.

The balance of rights has to be interpreted carefully as long as there is no general privilege protects fundamental human rights of the witness. While the right to a fair trial should be guaranteed, war criminals would never be tried before the ICTY and before national courts if it was not for the witnesses to testify. If the interest of justice, both rights – the defendant’s right to a fair trial and the witness’ right of protection – have to be safeguarded.

Witness Protection Bureau and Prosecution

It would be Witness Protection Bureau established under the administration of Ministry of Justice. The Bureau shall dealing with general or specific measure, improper practice. It includes coordination and arrangement to obtain result among public agencies, private organization, where relevant, with would make protection measure effective under this Act.

Witness in the following case may eligible to privilege of special protection measure:

- (1) case under the law on narcotic drug, money laundering law, anti-corruption law, or customs law;
- (2) Case on national security under Criminal Code
- (3) Sexual offence under Criminal Code refers to luring people into sexual gratification of other.
- (4) Criminal offence with organized crime nature under Criminal Code and including any crime committed criminal group with networked welled and complicated nature.
- (5) Case that punishable for 10 years of imprisonment or heavier;
- (6) Case that Witness Protection Bureau deemed appropriate to arrange for protection.

Witness Protection Bureau shall arrange the one or more among the following for witness’s special protection measure.

- (1) Arrange for new accommodation place.
- (2) Expense for daily life for witness, person under his/her patronage for not exceeding 1 year; extension can be made in necessary case for 3 months each time and not exceeding 2 years.
- (3) Coordinate with relevant agencies in order to change first name, family name, and information that contribute to know personal identify of witness and including the arrangement for original status.
- (4) Act in the way to help witness to have his/her own career and training education and other means of living his/her proper life.
- (5) Assist or act on behalf of witness for his/her lawful rights.
- (6) Arrange for body guard service for the necessary period of time.

- (7) Other action to assist and support witness for his/her security as appropriate.

In acting under prior paragraph, official of relevant agencies must keep it as secret and not lawful to disclose except with authorization of Minister of Justice.

In the case where witness lose his/her security, competent official for criminal investigation, interrogation, prosecution or Witness Protection Bureau as the case maybe shall design for witness for protection measure as deem appropriate or as witness or person who is with For necessary case the said person would ...police officer or other official for protection and this must subject to witness’s consent.

The notifying, procedures, and its termination to be adopted by police officer or relevant official in first paragraph of this Section must comply with the regulation of Police Commissioner-General or head of relevant government agencies as the case maybe.

Protection measure may also design for safe place for witness, name-family name, domicile, identification, and information that would to identify witness as appropriate and personal status of witness and nature of that criminal case.

Challenges

As an ICC's challenge it is clear that a more effective witness protection measure is the frequent use of closed session. Given the current poor reputation of the ICC, fewer closed sessions would help promote the image of justice and transparency.

It is generally recognized that the State has an obligation to provide assistance and protection to persons who are likely to be harmed because of their collaboration with the criminal justice system. There are different means of protection. The kind chosen in each case depends to a large degree on the type of witness (victim, vulnerable witness, justice collaborator etc.), the type of crime (crime within the family, sex crime, organized crime etc.)

and the level of threat or intimidation the witness is required to cooperate fully with law enforcement and judicial authorities and to strictly observe all rules imposed by the protection authority. Cooperation can be in the form of positive obligations, such as compliance with instructions, full disclosure of personal history and true testimony, or abstention from certain actions, such as acknowledging participation in the programme, disclosing information on how the programme operates or making unauthorized contact with people from the witnesses past. The memorandum of understanding usually provides that witnesses may be expelled from the programme if they fail to comply with any of the obligations contained in the memorandum of understanding. In practice, since participants know important details and may become a threat to the integrity of the programme even after it has terminated, expulsion is exercised judiciously as a last resort in response to serious security breaches or continuous refusal to cooperate.

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