A Review of Selected Witness Protection Programs

by

Dr. Yvon Dandurand
University of the Fraser Valley

with

Kristin Farr

prepared for

Research and National Coordination
Organized Crime Division
Law Enforcement and Policy Branch
Public Safety Canada

The views expressed herein are those of the authors and do not necessarily reflect those of the Department of Public Safety Canada.

Report No. 001, 2010

Cat. No.: PS4-96/2010E-PDF
ISBN No.: 978-1-100-20036-1

Table of Contents

Executive Summary

Background and Objectives

In the interest of a fair and effective criminal justice response to organized crime, terrorism and other serious crimes, government and police agencies provide protection for informants and witnesses against intimidation, violence and reprisals. Witness protection is especially important in the fight against crime and gangs, as intimidation of informants and potential witnesses is one of the defining characteristics of criminal organizations. Offering protection to these informants and witnesses is necessary in order to obtain and sustain their collaboration. Effective and reliable witness protection programs have proven their value as essential tools in the fight against serious crime.

In 2008, when the Standing Committee on Public Safety and National Security undertook a review of the federal witness protection program, it concluded that independent research on the operations and effectiveness of the program would help ensure its "smooth operation and credibility" (Standing Committee on Public Safety and National Security 2008). The purpose of the current study was to review selected witness protection programs (WPPs) in Canada and in other countries, as well as the successes and challenges they encounter. This review consolidates and synthesizes open source information about the structure of WPPs in foreign countries and jurisdictions and contrasts it against the situation in Canada.

Method

The present review was limited to open sources of information since it was undertaken with the intent of releasing the final report to the public. In some respects this results in a partial picture of the structure and operation of existing programs, as well as the various logistical and personal challenges encountered. This review builds upon and updates previous research conducted on behalf of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (Dandurand 2008). As with the previous review, the present study is based on the literature available in the public domain, including articles, reports, and publications available from:

- academic, legal, and professional journals and periodicals (including policing and criminal justice publications);
- records of government legislative and committee deliberations;
- government publications and reports from law enforcement agencies; and,
- selected news reporting media (particularly opinion pages).

Key Findings

The review generated a number of interesting findings. Overall, amongst the countries with WPP programs that were reviewed (Canada, Germany, Ireland, Italy, Jamaica, Kenya, New Zealand, Philippines, South Africa, United Kingdom, South Africa and United States of America) , the following was observed:

- Most cases of witness intimidation appear to be perpetuated by individuals linked to criminal organizations.
- The majority of protected witnesses are criminally-involved police informants or criminal associates of defendants; the protection of non-criminal witnesses or victims in WPPs is very rare.
- The level of risk faced by a witness dictates the nature and extent of the protective measures that must be taken. For instance, most witness protection programs have a requirement that a serious risk to the witness be established before protection services are offered.
- Most WPPs are managed by national or regional police forces, and most programs are legislatively based.
- Generally, the media and the public understand the necessity of and support the existence of WPPs.
- Better oversight, evaluation, and protection of the interests of witnesses is identified as a need in most jurisdictions.
- Sufficient open-source information does not exist to accurately compare the effectiveness of WPP or many program details between jurisdictions.
- Few attempts appear to have been made internally to systematically evaluate WPPs in any jurisdiction.

Further Research

Several issues were identified by the author which might benefit from further empirical research.

- Studies on witness intimidation and failed prosecutions as a result of intimidation or suppression of witnesses could be useful. This could be accomplished by gathering data form the police or prosecutorial files, as well as through interviews with prosecutors (or another form of survey).
- The experience of criminal investigators in using informants and agents and securing their cooperation is also an area deserving further attention. In particular, a review of existing threat assessment practices in various police forces.
- In terms of the administrative aspects of the witness protection programs themselves, an empirical review of all agreements and program decisions made during a given period of time, although potentially complicated, could be a useful exercise.
- Given the number of independent programs now available in Canada, research could assist in understanding the relationship between these programs and help identify potential duplications or cost-ineffectiveness.

An attempt could also be made, perhaps in collaboration with countries with similar WPPs, to develop some standard performance indicators for such programs.

1 Introduction

In the fight against serious crimes, it is crucial for the justice system to be able to provide effective protection to informants, whistleblowers and witnesses. In the interest of a fair and effective criminal justice response to organized crime, terrorism and other serious crimes, governments must be able to handle the problem of informant and witness intimidation and find ways to protect them effectively against intimidation, attacks and reprisals.

Witness protection is especially important in the fight against organized crime and gangs. The intimidation of informants and potential witnesses is one of the defining characteristics of criminal organizations. They function and perpetuate themselves through the manipulation of public fear and go to great lengths to avoid detection and prosecution. The closed character of these groups makes the use of traditional investigative methods very difficult. Infiltration and the use of informants and agents who must then be protected play an important role in police investigations. Members of criminal organizations place themselves at considerable risk by cooperating with the authorities and they are well aware of the personal danger and potential harm they face by collaborating with the justice system. Effective protection is part of the enticement measures necessary to obtain their collaboration.

Effective and reliable witness protection programs have proven their value as essential tools in the fight against serious crime. Nevertheless, in many countries, there remain persistent concerns about some of the deficiencies and limitations of existing protection measures, the growing cost of existing programs, as well as the legal and ethical issues associated with some of their more controversial aspects. In recent years, a few comparative reviews of existing witness protection programs have been undertaken, usually as a basis for further policy development. A few years ago, when the Standing Committee on Public Safety and National Security undertook a review of the Canadian witness protection program, it concluded that independent research on the operations and effectiveness of the program would help ensure the program "smooth operation and credibility" (Standing Committee on Public Safety and National Security 2008). A pre-

requisite to such research is a good understanding of the operations of witness programs in Canada and in other countries and the challenges they face.

The present review offers a comparative analysis of the characteristics and operations of witness protection programs in selected countries, as well as the successes and challenges they encounter.

1.1 Definitions

A few definitions will be useful here. Internationally, the terminology used may vary somewhat, but for the most part the basic concepts remain the same. The terms "witness," "witness at risk" and "protected witness" cover several categories of actors: a "victim" who can testify and provide evidence, an "informer" who brings some evidence to the authorities, an "observer of a crime" who was not otherwise involved in the crime, an "undercover agent" or an "informant" who has special access to a criminal, an "accomplice" in a crime, or a "repenti" or "pentito" who is willing to give evidence in return for certain considerations.

The concept of "collaborator of justice" is defined by the Council of Europe as "any person who faces criminal charges, or has been convicted of taking part in a criminal association of any kind, or in offences of organized crime, but who agrees to cooperate with criminal justice authorities, particularly by giving testimony about criminal association or organization, or about any offence connected with organised crime or other serious crimes" (Council of Europe 2006a). In many instances, collaborators of justice have themselves been accomplices in the commission of the crime being investigated or in other related criminal activities. This category includes informants and agents who agree to cooperate or work with the authorities. The use of such informants and agents is often as essential to successful criminal investigations as it is problematic.

Most witness protection programs use their own restrictive definition of witnesses based on their own eligibility criteria. The *United Nations Convention against Transnational Organized Crime* refers to the measures that should be taken by States parties to the convention to protect witnesses, experts and victims. However, it does not define

"witness," expecting states to rely on their own procedural law for such a definition (UNODC 2008:100-104). The Council of Europe defines the term "witness" to mean "any person, irrespective of his/her status under national procedural law, who possesses information relevant to criminal proceedings, including experts and interpreters."[1]

A "witness at risk" or "endangered witness" is a witness who is likely to endanger himself or herself by cooperating with the authorities, or a witness who has reasons to fear for his or her life or safety or has already been threatened or intimidated. In some countries, such as the Netherlands, the law refers to a "threatened witness" – a legal category which opens up the possibility of a testimony under conditions of anonymity (Council of Europe 2006b: 272-3).

A "protected witness" could mean any witness who is offered some form of protection against intimidation or retaliation. In practice, however, this term is generally reserved for witnesses who receive the protection of a formal witness protection program. In Canada, the *Witness Protection Program Act* refers to these witnesses as "protectees," a term not typically used in other jurisdictions. For the purpose of that and many other programs, the term "witness" may also refer to other persons who, because of their relationship to the witness, may also require protection.

The expression "reporting persons" found in article 33 of the *United Nations Convention against Corruption* designates another group of persons that may be in need of special protection. States parties are encouraged to consider measures to provide protection against unjustified treatment for any person who reports misconducts and crimes in good faith and on reasonable ground to the competent authorities. These measures are sometimes referred to as "whistleblower protection" schemes. They are particularly important in cases involving economic and financial crimes (Alexander 2004) or corruption (UNODC 2009).

---

[1] See: Council of Europe Recommendation Rec (2005) 9 on the protection of witnesses and collaborators of justice, Appendix.

Intimidation can, of course, take many forms even if its fundamental purpose remains the same: to interfere unduly with the willingness of a person to testify freely or to react and retaliate against someone who has given a testimony. The Council of Europe also defines the term "intimidation" for the purpose of witness protection: "any direct or indirect threat carried out or likely to be carried out to a witness or collaborator of justice, which may lead to interference with his/her willingness to give testimony free from undue interference, or which is a consequence of his/her testimony" (Council of Europe 2006b) According to the Council of Europe, this includes intimidation resulting from the "mere existence of a criminal organization having a strong reputation for violence and reprisal or from the mere fact that the witness belongs to a closed social group and is a position of weakness therein" (Council of Europe 2005).

Most witness protection legislation and programs recognize that a witness can be intimidated indirectly, such as when his or her family, relatives, or friends are being targeted. The expression "people close to witnesses and collaborators of justice," frequently used in legislation, usually refers to relatives and other persons who are in close relation with the witnesses and find themselves at risk and in need of protection because of that association.

Informants occasionally become witnesses or protected witnesses, but in practice their role is often limited to providing intelligence as opposed to evidence, thus allowing them to continue to act as a covert source of information.

Victims of crime are often witnesses, but they seem to rarely be enrolled in formal witness protection programs. They are expected to play a central role in the criminal justice process and are also frequently subjected to threats and other forms of intimidation.[2] Fear of reprisal, it is well known, is a frequent reason for victims' decisions not to report a crime to the authorities (Singer 1988). Recognizing the need to provide victim-witness protection in spite of the constraining eligibility criteria of witness

[2] See: *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (U.N. General Assembly resolution 40/34, annex).

protection programs, some countries have developed other protection schemes to encourage victims to testify in physical security and to avoid revictimization (UNODC 2008). These schemes include temporary relocation, police protection and some financial assistance. Procedural measures are also adopted to protect vulnerable victims.

1.2 Witness Intimidation and Obstruction of Justice

The risk involved in collaborating with the justice system is heightened by the power wielded by those involved who committed the crime, their ability to intimidate or suppress witnesses and informants, and the relative inability of the justice system to offer full protection to those witnesses (Boisvert 2005). Obstruction of justice includes many different offences, including witness tampering and intimidation (Roadcap 2004), jury tampering, and intimidation of justice officials (Laborde 2005). There is very little systematic research on witness or jury tampering, in part because it is difficult to establish when and how it actually occurs. Knowing more about the nature and prevalence of such incidents could certainly contribute to an understanding of the kinds of measures required to better protect witnesses and jurors (including the relative cost-effectiveness of various protection measures) (Finn and Healey 1996:1).

Intimidation of justice officials is a serious problem, particularly when dealing with criminal groups. It is yet another area where systematic research is still very limited. There are numerous well documented cases in various countries where judicial personnel, prosecutors and judges have not only been intimidated, but also attacked and eliminated by criminals who have not otherwise been able to neutralize them. Intimidation of police officers takes various forms and not all of it is serious, but its frequency is a matter of concern (Gagnon 2009).[3] Intimidation is also frequently reported by correctional officials and prison guards who must not only deal with members of organized crime groups while they are in prison, but also protect, while they are in protective custody, informants and witnesses (Australia, Parliamentary Joint Committee on the National

[3] The study is based on a survey of 2,438 police officers in the province of Quebec. Among other things, the survey showed that more than a third of the reported incidents of intimidation of a police officer were attributable to a member of a criminal organization.

Crime Authority 1988). The corruption or intimidation of prison personnel can introduce a huge element of risk for the witnesses who are being detained.

There is also a major lack of empirical data on the nature, scope and consequences of witness intimidation. Some limited research exists (Bruce 2005, see also: Burton et al. 2007). However, it remains very difficult to try to estimate the extent of the intimidation that occurs in order to prevent the reporting of a crime or to deter witnesses from cooperating with the authorities (Fyfe 2001:4). As the main purpose of intimidation is to prevent people from going to the authorities, it is not surprising that there is so little empirical evidence on the nature and scope of witness intimidation taking place in Canada or elsewhere.

Official data are being gathered on individuals who are charged with or convicted of various offences of witness intimidation or causing harm to a witness, but these data are of limited use. Witnesses who are successfully intimidated do not inform the police and, if they are already cooperating with the authorities, they often withdraw their cooperation and hide the fact that they have been pressured to do so. Even when witness intimidation is suspected, it is often difficult to prove that it took place (Council of Europe 2004:21). Also, it is common practice in the compilation of most police-based crime statistics to only include the most serious offence in what is considered a reportable "incident" and, as a result, incidents of witness intimidation are not counted as such when they are accompanied by or also constitute a more serious offence (as in the case of aggravated assaults, use of explosives, or murder).

Nevertheless, we know from accounts given by police and prosecutors that threats to witnesses are common when gangs (Bauer 1997, Verhovek 1996) and other criminal organizations are involved and that they often seriously undermine criminal prosecutions (Council of Europe 2004:15, Finn and Healey 1996). In fact, as was recently reported by Dedel, a number of small-scale studies and surveys of police and prosecutors suggest that witness intimidation is pervasive and increasing (Dedel 2006). In addition, a number of experts are convinced that there is an increased incidence of violence and intimidation in situations involving gangs and criminal organizations (Council of Europe 2004). In the

British Crime Survey of 1998, 15 percent of respondents who had been victimized and had some knowledge of the offender, reported that they had later been victims of intimidation, and in the majority of these cases (85%) the intimidator was the original offender (Tarling, Dowds and Budd 2000). According to the survey of the impact of intimidation on crime reporting in the U.K, it appeared that fear of intimidation or retaliation deters a greater number of witnesses than victims from reporting, whereas actual intimidation is reported more often by crime victims than by crime witnesses (Maynard 1994).

Intimidation can be overt or implicit (when there is a real but unexpressed threat of harm)(Finn and Healey 1996). Witnesses can also experience fear and feel intimidated whether they are in actual danger or not. Just as it is well known that there is no perfect correlation between fear of crime and risk of criminal victimization, neither is there a perfect correlation between the fear experienced by witnesses and the real risk of their victimization as a result of collaboration with the authorities.

1.3 Research on Witnesses Protection

Empirical research on witness intimidation and protection is still very limited and most of the existing literature focuses generally on witnesses of serious crimes. In recent years, a number of comparative reviews of existing programs and measures have been undertaken, usually as a basis for further policy development (Council of Europe 2006a; Dandurand 2008; Fyfe and Sheptycki 2005, 2006, Law Commission of India 2004). They were generally limited to comparing existing programs and legislations. Some of these reviews were based on surveys of national authorities (Council of Europe, 2004, 2006b). There is a general lack of empirical evidence on the effectiveness of any of protection measures and programs. One exception is a review conducted in 2005 by the Office of the Inspector General, United States Department of Justice, of the United States Marshals Service's (USMS) administration of the witness security program (United States Department of Justice 2005). The study included information collected from the protected witnesses themselves and an analysis of the costs and the efficiency of the service.

Ineffective protection measures can affect the outcome of prosecutions and trials, and affect public confidence in the efficacy and fairness of the courts. There is very little research on the effectiveness of existing programs, and the evidence relating to their cost effectiveness is very weak. Nevertheless, anecdotal evidence of their success in obtaining convictions in cases where protected witnesses are used is generally positive.

1.4 Witness Protection Programs and Other Forms of Witness Protection and Assistance

The Council of Europe distinguishes between "protection measures" and "protection programs." The first refers to all individual procedural and non-procedural measures aimed at protecting witnesses and collaborators of justice from intimidation and retaliation, while "protection programs," refer to a set of individual protection measures which are described in an agreement between the authorities and the protected witness or collaborator of justice (Council of Europe 2006b).

The witness protection measures applied to any given situation, whether they are part of a formal witness protection program or not, need to be proportional to, among other things, the seriousness of the risk faced by the individual. Enrolling someone in a witness protection program is only one of the possible responses to a situation where witnesses or informants are at risk. At one extreme of the range of measures available are formal protection and relocation programs which are very costly and quite difficult to manage. Other less intrusive measures, including procedural and basic police protection measures, are also available to temporarily protect the individuals at risk.[4] The later often need to be considered as an alternative to enrolling someone in a formal protection and relocation programs.

[4] The Council of Europe Training Manual for Law Enforcement and Judiciary (Council of Europe 2006b:28) distinguishes between three basic forms of protection: (1) basic police protection of persons and witnesses; (2) procedural measures for witness protection; and, (3) special witness protection through witness protection programs.

1.5 Method

The very nature of the problem of witness and informant intimidation makes it quite resistant to public scrutiny and research. Most witness protection programs and the law enforcement agencies with which they are associated are understandably careful about the information they make public concerning their operations and the methods they use. The few cases that come to the attention of the media tend to become public because of some kind of program failure and this can introduce a bias in the perception that people have of these programs.

In conducting the present review, our access was limited to open sources of information and in many respects the latter could only provide an incomplete picture of existing programs. This review builds on a previous review conducted on behalf of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (Dandurand 2008). Like the previous review, it is based on the literature available in the public domain, including articles, reports, and publications available from: (1) academic, legal, and professional journals and periodicals (including policing and criminal justice publications); (2) records of government legislative and committee deliberations; (3) government publications and reports from law enforcement agencies; and, (4) selected news reporting media (particularly opinion pages).

Some witness protection programs publish annual reports, but the data they provide is often quite sketchy. The most recent versions of these reports were consulted. In recent years, a few comparative reviews of existing witness protection programs have been conducted, usually as a basis for policy reviews or in order to identify best practices (Dandurand 2008, UNODC 2008, Council of Europe 2004, 2006b, Fyfe and Sheptycki 2005, Piacente 2006). These reviews were consulted and served here both as sources of information and as a means to corroborate information gathered from other sources. Some program reviews were conducted by various bodies—parliamentary committees, police integrity offices, auditors—which typically did not include an examination of protection practices outside of the jurisdiction in which they were conducted (Boisvert

2005, Brouwer 2005, Standing Committee on Public Safety and National Security 2008, United States Department of Justice 2005).

Standard academic databases were used to identify relevant publications and public media databases were used to collect a number of newspaper and magazine articles reporting on various perceived issues with existing witness protection programs and practices.

2 Characteristics of Witness Programs

2.1. Purpose

Formal witness protection programs offer a way to safeguard the investigation, the criminal trial, and the security of witnesses. Their main objective is to safeguard the lives and personal security of witnesses and collaborators of justice, as well as people close to them. The programs include procedures for the physical protection of witnesses and collaborators of justice such as, to the extent necessary and feasible, relocating and re-documenting them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the new identity and whereabouts of such persons. Even if it is not uncommon for a witness to be rewarded for cooperation with law enforcement authorities (financially, by charge reduction as a result of plea bargaining, or leniency at the time of sentencing), witness protection programs are not in principle meant to reward a witness for cooperating with the authorities.[5]

2.2. Structure

In many countries, witness protection is largely seen as a police function (Fyfe 2001, Fyfe and Sheptycki 2005: 333), whereas in others the judiciary and various government departments play a key role. In Canada, for example, the federal witness protection program is seen primarily as a police program.

---

[5] Although one easily understands that it may be necessary for the authorities to provide an incentive for cooperation, this must be done cautiously as it can in fact compromise the value of the testimony or its credibility.

At the federal level in Canada, the law gives the responsibility of managing the federal witness protection program to the Commissioner of the RCMP. At the provincial level, the situation varies. In Ontario, the Ministry of the Attorney General has a special team of police officers seconded from police forces or retired police officers. The provinces of Quebec[6] and Manitoba operate their own programs and a provincial program is also being proposed in Alberta. In British Columbia, since 2003, Police Services, the RCMP and the municipal police departments of the province have established an Integrated Witness Protection Unit in order to provide a consistent approach to witness protection based on highly trained resources in witness management as well as a system designed to reduce the risk to both the police and the protected witnesses. The unit includes a few officers from municipal police departments and operates under RCMP policies as part of the Source Witness Protection Unit.

In the US, it is the Office of Enforcement Administration, at the Department of Justice, that makes the decision related to entry into the witness protection program at the federal level. This is done in consultation with the US Marshals Service which evaluates the risks and is responsible for ensuring the protection of witnesses (United States Department of Justice 2005).

In Queensland, Australia, the witness protection program is operated by the Crime and Misconduct Commission which is responsible for both witness protection and protecting public sector integrity, including the investigation of public misconduct (Queensland Crime and Misconduct Commission 2009: 36-9).

There is a growing consensus internationally that it is preferable for witness protection to be kept separate from the agency conducting the investigation or prosecution (UNODC 2008, Council of Europe, 2004, 2006a).[7] A Council of Europe study of best practices in witness protection concluded that it is important to separate witness protection agencies

---

[6] There is also a municipal protection program in the City of Montreal.

[7] Following her review of the witness protection system in the province of Québec, Marie-Anne Boisvert also recommended the creation of a separate bureau within the Ministry of the Attorney General (Boisvert, 2005:21).

from investigative and prosecutorial units, with respect to personnel and organization. This is necessary in order to ensure the objectivity of witness protection measures and protect the rights of witnesses. The independent agency is responsible for admission into the protection program, protective measures, as well as continued support for the protected witnesses. Since the investigative agency is usually most knowledgeable about the criminal background of the applicant, the nature of the investigation, and the crime involved, the agency often assists the protection service in the assessment of the threat to the applicant and his or her immediate relatives (Council of Europe, 2004: 38). The Standing Committee (Standing Committee on Public Safety and National Security 2008:24) recommended the establishment of an independent witness protection office at the Department of Justice.

Similarly, the ISIC-OPCO-EUROPOL Working Group recommended that specialized witness protection units be established with adequate administrative, operational, budgetary, and informational technology autonomy (ISISC-OPCO-EUROPOL 2005: 7). The group of experts emphasized that such units should not be involved in the investigation or in the preparation of cases where the witness/collaborator of justice is to give evidence (ISISC-OPCO-EUROPOL 2005: 8).

A review of existing programs in Europe identified three main necessary characteristics of agencies charged with implementing witness protection: (1) they must cooperate very closely with law enforcement agencies, presumably on the basis of well defined protocols; (2) the agency (or the part of the law enforcement agency) responsible for witness protection should operate independently of the other elements of the organization to protect the confidentiality of the measures taken to protect a witness; and, (3) the staff dealing with the implementation of the protective measures should not be involved either in the investigation nor in the preparation of the case for which the witness is to give evidence (Piacente 2006:36-9).

2.3 Enabling Legislation

The rules governing the protection of witnesses and others who participate in criminal proceedings are fairly recent. As Table 1 shows, most programs have a legislative basis,[8] but a few, such as the one in the United Kingdom, do not. In the absence of a legislative basis, these are treated solely as a police activity. In some countries, particularly those of the civil law tradition, the legislation dealing with witness protection may also include dispositions concerning agreements of leniency or immunity, as well as dispositions concerning procedural measures to protect witnesses. Part of the enabling legislation in this area often concerns mechanisms to ensure that participants in the program do not use the program to evade civil or criminal liability. Some legislations touch upon the delicate question of whether a witness can be included in a protection program as a reward for giving evidence or providing intelligence. Another important part of most enabling legislation is this area is that they create an offence for the divulgation of protected information related to the program or the witnesses (UNODC 2008: 9).

2.4 The Nature of the Protection and Services Offered

Existing protection programs do not differ widely in terms of the kind of protection they offer, although there are some differences among them in terms of eligibility criteria and the manner in which protection is offered. There are also some significant differences in terms of who is responsible for their operation. The protection offered by these programs tends to be extended only to witnesses involved in the most serious criminal cases, and not necessarily always in cases involving the most serious threats. This is because the logic behind such programs, given their costs and the need to establish priorities, is based primarily on the desire to facilitate the cooperation of witnesses in order to secure criminal convictions rather than on the premise that the State has an obligation to protect all witnesses or that witnesses have the right to be protected.

---

[8] The United Nations Office on Drugs and crime has developed a *Model Witness Protection Bill* to facilitate the development of legislation at the national level (UNDCP 2002).

Most witness protection programs are able to offer similar protection measures depending on the circumstances of the case and the associated risk assessment. They include physical protection, identity change, relocation (sometimes internationally), financial support, and various other support services (counselling, access to medical services, etc.). Some programs have the ability to offer a sum of money in lieu of physical protection, so that the individual may afford to take his/her own precautions.

TABLE 1 – Protection Offered								
Country	**Management of the Witness Protection**	**The type of protection offered**						**Relevant Legislation**
		Physical Police Protection	Identity Change	Relocation	Financial Support	Financial Payment	Other Support Services[9]	

[9] This includes other support services such as accommodation, transportation, child care, medical care, psychological support, etc.

Australia	**National Witness Protection Program (NWPP):** Operated by the Australian Federal Police (AFP); Commissioner is responsible. Witness Protection Committee decides program entry/exit. Complementary state/territory witness protection schemes also exist.[10]	✓	✓	✓	✓	No rewards.[11]	✓	*Witness Protection Act*, 1994 (*Commonwealth Act*)

[10] Australian Capital Territory - *Witness Protection Act 1996;*New South Wales - *Witness Protection Act 1995;*Northern Territory - *Witness Protection (Northern Territory) Act 2002;*Queensland - *Witness Protection Act 2000;*South Australia - *Witness Protection Act 1996;*Tasmania - *Witness Protection Act 2000;* Victoria - *Witness Protection Act 1991 (amended in 2000);*Western Australia - *Witness Protection (Western Australia) Act 1996.*

[11] In some legislation, there is a specific reference that admission into the program is not to be done as a reward or as a means of persuading or encouraging the witness to give evidence or to make a statement.

	State of Victoria: Operated by the Victoria Police Witness Security Unit within the Protective Security Division of the Victoria Police; Chief Commissioner of Police is responsible.	✓	✓	✓	Not specified	✓	✓	*Witness Protection Act*, 1991 (amended 2000)
	State of Queensland: Operated by Crime and Misconduct Commission; Chairperson is responsible. Witness protection officers are (mostly) sworn police officers.	✓	✓	✓	✓	No rewards.	✓	*Witness Protection Act, 2000*

	State of South Australia: The Witness Protection Section, Investigation Support Branch of the South Australian Police is responsible for the protection of witnesses accepted into the State Witness Protection Program; Police Commissioner is responsible.	✓	✓	✓	✓	No rewards.	✓	*Witness Protection Act, 1996*
	State of Western Australia: Police arrange and provide protection and other assistance to witnesses under the State Witness Protection Program (SWPP); Police Commissioner is responsible.	✓	✓	✓	✓	No rewards.	✓	*Witness Protection (Western Australia) Act*, 1996

Canada	**Federal Witness Protection Program (WPP):** Operated by the Royal Canadian Mounted Police (RCMP); Commissioner is responsible. RCMP Commissioner decides program entry/exit after a recommendation is made by a law enforcement agency or international criminal court or tribunal. Provincial and Municipal police forces have the power to create and maintain their own witness protection programs.	✓	✓	✓	✓	No rewards.	✓	*Witness Protection Program Act, 1996*
Germany	Protection schemes run by the Federal Criminal Police Office (BKA), the Customs Investigations Office (ZKA) and the sixteen German states' Criminal Investigation Offices (LKÄ); specialized units within the regional police forces are responsible.	✓	✓	✓	✓	unknown	✓	*Witness Protection Harmonization Act*, 2001 (last amended 2007)

Ireland	Witness Security Program administered by Garda Crime and Security Branch and operated by Garda Special Detective Unit (SDU); Garda Commissioner is responsible.	✓	✓	✓	✓		✓	No statutory footing, yet program in place since 1997.
Italy	Ministry of Interior appoints the Central Commission to run the program through both the Central and Local Protection Services.	✓	✓	✓	✓	unknown	✓	*Law 82/1991, updated Law 45/2001.*
Jamaica	Ministry of National Security witness protection program operated by the Victim Support Unit of the Ministry of Justice and the Jamaica Constabulary Force (JCF) Witness Support Unit; JCF Commissioner is responsible.	✓		✓				*Justice Protection Act* (Act 23 of 2001)

Kenya	Managed by the Office of the Attorney General and run by the Witness Protection Unit. Multi-agency task team consists of: Police, Provincial Administration, Judiciary, National Security Intelligence Services, Kenya Anti-corruption Commission, Immigration Department, National Counter-terrorism Centre, Prisons Department, Ministry of Justice and Constitutional Affairs.	✓	✓	✓	Not specified	No rewards.	✓	*Witness Protection Act*, 2006 (amended 2008)
New Zealand	New Zealand Police Witness Protection Program; liaison between Department of Corrections and Police.	✓	✓	✓		unknown	✓	
Philippines	Administered by National Prosecution Service (NPS) within the Department of Justice (DOJ). Regular interaction with the Armed Forces and the Philippine National Police (PNP).	✓	✓	✓	✓	✓	✓	*Republic Act* No.6981, 1991 (*Witness Protection, Security and Benefit Act*)

South Africa	Office for Witness Protection falls under the National Prosecuting Authority (NPA). There are nine regional Witness Protection Units which fall under the Office of the National Director of Public Prosecutions (NDPP). Protection provided by the South African Police Service.	✓	✓	✓	✓		✓	*Witness Protection Act* 112, 1998
United Kingdom	No National Witness Protection Program in place. Police services and law enforcement agencies provide protection; Police Commissioners are responsible. Protection providers: Police, Serious Organised Crime Agency (SOCA), Scottish Crime and Drug Enforcement Agency, Her Majesty's Revenue and Customs, other public authorities as required.	✓	✓	✓	✓	Not specified	✓	*Serious Organised Crime and Police Act*, 2005

United States of America	**Federal Witness Security Program (WitSec)**: Operated by the US Marshals Service (USMS); the Attorney General is responsible.	✓	✓	✓	✓	✓	✓	Original Sources: *Organized Crime Control Act, 1970*; *Comprehensive Crime Control Act*, 1984 Present Source: US Code, Title 18 "Crimes and Criminal Procedure", Part II, Chapter 224 "Protection of Witnesses"
	Commonwealth of Massachusetts: Witness Protection Board: Attorney General, the State Auditor, Massachusetts District Attorney Association rep., Massachusetts Chief of Police Association rep., and Secretary of Public Safety and Security. Prosecuting officers (AG or DA) may petition the Witness Protection Board for assistance in providing protection to witnesses.	✓		✓	✓		✓	Original Sources: *Witness Security and Protection* Act, 2007; *Short-term State Witness Protection Program Act*, 2007; *An Act Reducing Gang Violence*, 2006. Present Source: *General Laws of Massachusetts, Part. IV, Title I, Chapter 263A*

2.5 Who Are the Protected Witnesses

Witness protection programs are most frequently used to protect individuals who have acted as agents or informants for the police. Law enforcement authorities increasingly need to rely on the testimonies of co-defendants and accomplices willing to cooperate and provide evidence against their former associates (Council of Europe 2004: 22, Schreiber 2001). Although some may argue that there is insufficient evidence to verify the effectiveness of that particular approach (Fyfe and Sheptycki 2005, 2006), the use of criminal informants and accomplices is often depicted as essential to the successful detection and prosecution of terrorism and organized crime (Laborde 2005). This is why various international agreements and conventions actively promote the development of a capacity to utilize these methods.[12] In civil-law countries in particular, many of these procedural changes to criminal law have been difficult and have therefore been implemented cautiously (Laborde 2005). In many instances, police attempt to turn an "informant" into an "agent." However, the practice is not without its own pitfalls, whether it is on the basis of moral or ethical concerns, criminal law principles, the integrity of the police agency itself, or concerns about the reliability of the information and evidence provided by informants (Williamson and Bagshaw 2001).

Several observers have noted the general need to provide a tight framework for the management of informants, in the form of guidelines, statutory regulations, or increased independent oversight (Clark 2001: 49, Harris 2000: 63, Schreiber 2001: 360, Tak 1997: 25). Clark argues that, because of the high-risk nature of the relationship between informants and their handlers, such a relationship should always be the subject of intrusive and intelligence-led supervision and surveillance (Clark 2001:49). In cases potentially involving matters of national security, and where public scrutiny of law enforcement activities is more difficult, there is an even greater need for independent oversight of practices relating to the use of informants and collaborators of justice.

---

[12] See, for example: *United Nations Convention against Transnational Organized Crime*, 2000. Also, Council of Europe, Recommendation *REC(2001)11 of the Committee of Ministers to member states concerning guiding principles on the fight against organized crime. Strasbourg*, September 2001.

The ability of investigative agencies and investigators to recruit informants, agents and witnesses is influenced by their reputation with respect to their ability to protect them. Failure to protect can result in a lack of trust in law enforcement, thus resulting in fewer informants or witnesses (Mallory 2000). The ways in which the police recruit and handle informants and collaborators of justice can present some serious problems (Boisvert, 2005: 22). The alleged use of controversial methods to compel criminals to cooperate is also a potential problem (e.g., various forms of blackmail, entrapment, and techniques to compromise them in relation to criminal organizations or their own accomplices and put them at risk or place them in precarious positions).[13] There are also difficulties in situations involving an agent who is infiltrating a criminal organization and to whom potentially deceitful promises are made explicitly and implicitly during the investigation. For these reasons, some experts insist that "investigation practices" and "prosecution practices" must be kept separate from "witness protection practices" (Boisvert 2005: 23; see also, Standing Committee on Public Safety and National Security 2008:24).

Who gets to be enrolled in a witness protection program is partly determined by the threshold eligibility criteria established for each program. The criteria do not establish a right to protection; the decision remains a discretionary one. Table 2, below summarizes the threshold eligibility criteria of several programs.

TABLE 2 – Eligibility Criteria

Country	Eligibility for Protection
Australia	**National Witness Protection Program (NWPP):** (a) a person who has given (or agreed to give evidence) on behalf of the Crown (or State or Territory) in criminal or prescribed proceedings for an offence;

[13] Many countries have introduced policies to regulate the use of criminal informants and defendants who agree to provide information or testimony in exchange for financial incentives, protection, and leniency. However, it would seem that, in order to compensate for weakening of their discretionary power, police officers may be developing new deceptive tactics in dealing with informants (Turcotte 2008).

	(b) persons who have made a statement in relation to an offence; (c) persons who may require protection and assistance for any other reason; and (d) persons who are related to or associated with such persons. Considerations: criminal record, psychiatric evaluation, nature and seriousness of offence, nature and importance of evidence, perceived danger to the witness, and the nature of the relationship between witnesses being considered for inclusion into the program.
	State of Victoria: (a) same as above, yet in relation to the commission or possible commission of an offence against the law of Victoria, the Commonwealth, or another State; (b) family members of witnesses also eligible (spouse or domestic partner, parent or sibling of the witness, child of the witness or of the witness' spouse or domestic partner) Considerations: threat, risk, medical, psychological, cost assessments. Sentenced and remanded prisoners not eligible.
	State of Queensland: Persons needing protection from a danger arising: (a) because the person has helped, or is helping, a law enforcement agency in the performance of its functions; (b) because of the person's relationship or association with such a person (family member or associate) Other factors considered: witness criminal history, nature of threat, seriousness of the offence, medical assessments, and the extent of the help offered by the witness.
	State of South Australia: Eligibility requirements and considerations for inclusion into the State Witness Protection Program are largely the same as those required by the National Witness Protection Program (NWPP).
	State of Western Australia: Eligibility requirements are largely the same as those required by the National Witness Protection Program (NWPP). Additionally, and according to the Act:

	(a) unless the contrary intention appears, a person is a witness if, in the opinion of the Commissioner, there is a risk to the safety or welfare of the person for any reason other than those otherwise stated; (b) unless the contrary intention appears, a person is a witness if he or she is related to or associated with a person referred to (above) and in the opinion of the Commissioner, may require protection or assistance under the State Witness Protection Program (SWPP) because of that relationship or association. Other factors considered: criminal record, risk to public, psychiatric examination, seriousness of offence to which evidence will be given, nature and importance of evidence or statement, perceived danger to the witness, nature of the relationship between witnesses seeking inclusion into the program.
Canada	**Federal Witness Protection Program (WPP):** (a) a person who has given (or agreed to give) information or evidence, or participates (or agreed to participate) in a matter, relating to an inquiry or the investigation or prosecution of an offence and who may require protection because of risk to the security of the person arising in relation to the inquiry, investigation or prosecution; (b) a person who is related or associated with a witness who may also require protection for the reasons referred to in (a). Other factors considered: nature of the risk to the security of the witness, danger to the community if the witness is admitted to the program, nature of the inquiry, investigation or prosecution, importance of the witness, value of the information or evidence, likelihood that the witness will adjust to the program (maturity, judgment, personal characteristics), program costs, alternative protective measures.
Germany	Where they are endangered as to life, limb, health, freedom, or significant assets: (a) witnesses who are in a position to testify about the progression of events leading to a criminal offence; (b) witnesses testifying about the structure of the criminal organization concerned; (c) relatives of the witnesses.
Ireland	Those whose testimony will be, or has been used to convict serious criminals. Spouses and Children are also eligible for protection. Other factors considered: The veracity of the evidence, and the likelihood it will be

	crucial in securing a conviction is measured.
Italy	(a) witnesses to drugs, mafia or murder offences, and all offences where the sentence is between five and 25 years; (b) informants for mafia, terrorism, and drug trafficking offences; (c) those close to witnesses or informants who are in danger. Eligibility depends on witnesses revealing all information in 180 days.
Jamaica	Witnesses of major crimes who want to testify in court and whose safety and security are at risk. Witnesses are required to remain in the program until after the case is tried and it is deemed safe for that person to leave the program.
Kenya	(a) a person who has given, or agreed to give evidence on behalf of the State in relation to the commission (or possible commission) of an offence; (b) a person who has made a statement to police or other law enforcement agencies; (c) a person who for any other reason requires protection, including family or other relations. Other factors considered: seriousness of offence, nature of evidence, nature of danger to witness, existence of other protective measures.
New Zealand	Witnesses and their families under threat of harm who give evidence against gang members and other serious criminals.
Philippines	(a) Individuals with information about a crime who are willing to testify before a judicial body and who face the threat of serious harm; (b) witnesses who participated in the commission of a crime and who wish to be State witnesses; (c) the immediate family members of witnesses. Police officers are not eligible for protection. Other factors considered: The offence must be a "grave felony"; testimony must be "substantially corroborated"
South Africa	Any witness whose safety is threatened and who will testify in criminal and other proceedings.

	Other factors considered: The nature and extent of the risk to the safety of the witness or related person, the nature of the proceedings, the importance, relevance and nature of the evidence.
United Kingdom	Persons involved in criminal investigations or proceedings Other factors considered: The nature and risk to the person's safety, the cost of the arrangements, the ability of the person to adjust to their change in circumstance, the nature of the proceeding and the importance of their testimony.
United States of America	**Federal Witness Security Program:** (a) Attorney General may provide for the relocation and other protection of a witness or a potential witness for the Federal Government or for a State government in an official proceeding concerning an organized criminal activity or other serious offence if it is determined that violence will likely be directed at the witness; (b) also applies to the immediate family members, or persons closely associated with the witness Eligible only for cases being tried in official proceedings in federal courts. Witnesses must testify in court to be eligible for protection under the program. Other factors considered: Criminal history, psychological evaluation, seriousness of the case, risks to the public assuming if witness is relocated, whether the need for testimony outweighs the risk of danger to the public, alternatives to providing protection, whether protection will infringe on the relationship between a child who would be relocated and that child's parent who would not be relocated. Protection not provided if the Attorney General deems that the risk of danger to the public outweighs the need for that person's testimony.
	Commonwealth of Massachusetts: Massachusetts Attorney General or District Attorney may apply for funds to protect: (a) "critical witness": any person who is participating in a criminal investigation and who is reasonably expected to give testimony that is, in the judgment of the prosecuting officer, essential to a criminal investigation or proceeding; (b) "endangered persons": the relatives, guardians, friends, or associates who are reasonably endangered by such person's participation in the criminal investigation or proceeding.

	Other factors considered: The nature of the criminal investigation or prosecution, nature of danger, cost of services.

The criteria summarized above revolve around the level of threat to the individual, the individual's personality and psychological fitness, the danger that the offender may pose to the public if relocated under a new identity, and the critical value of the information or testimony provide by the individual (see: UNODC 2008: 61)

Empirical data on the number of people considered for enrolment into witness protection program, the number of people accepted or rejected, the reasons motivating admission decisions and the characteristics of the individuals in question is nearly always treated as confidential and is therefore not readily available to researchers.

2.6 Assessing the Threat and the Need for Protection

The level of risk faced by a witness dictates the nature and extent of the protective measures that must be taken. For instance, most witness protection programs have a requirement that a serious risk to the witness be established before protection services are offered. A proper threat assessment is necessary for appropriately and strategically allocating limited protection resources.

A threat assessment is a set of investigative and operational activities designed to identify, assess, and manage persons who may pose a threat of violence to identifiable targets. One can distinguish among three major functions of a threat assessment: (1) the identification of a potential perpetrator; (2) the assessment of the risk of violence posed by a given perpetrator at a given time; and, (3) the management of both the subject and the threat that he or she poses to a given target (Fein 1995: 3). There are situations, such as when there has been a failed attempt on the life of a witness, where the evaluation is relatively straightforward. However, threat assessments are not always that simple and rely by no means on a simple or standard process.

While a group that makes or poses a threat may be identified, not all potential aggressors are, or can be, identified. Risk assessments may be based on information that has questionable validity and reliability. Management of the aggressors or potential aggressors may be difficult if they cannot be identified, cannot be located, or are operating in another country. In addition, the predictive capacity of threat assessment models is not absolute. The secretive nature of the groups who are involved, contextual vagaries, and the often ambiguous and unconfirmed nature of the intelligence gathered by security agencies make it extremely difficult to arrive at reliable conclusions.

In theory, threat assessments are based on a number of factors, including: the potential vulnerability of the witness (age, gender, physical and mental condition); the proximity of the witness to the offender; the nature of the crime or crimes that were committed; the characteristics of the accused, including his/her criminal history, whether or not he/she has access to weapons, whether he/she is known to belong to a terrorist or criminal organization; whether his/her alleged accomplices are still at large; evidence of past attempts at intimidating witnesses or justice officials; and the presence and nature of any direct threat that might have been made by the suspect or his/her known associates (Fyfe and McKay 2000a, Fyfe 2001). In many instances, the nature of the potential risk is subject to change and too complex to be readily assessed by any simple method (Dedel 2006: 21).

If the potential exists for a witness to be threatened or harmed, then there is a level of risk. The challenge is in identifying, analyzing, validating, evaluating, and quantifying the risk(s). Risk is contextual, dynamic, and exists along a continuum of probability (Borum et al. 1999). Assessments should therefore be conducted periodically and their results should be shared with the witnesses so that they have a realistic understanding of the dangers they potentially face, without invalidating their feelings of fear and anxiety (Council of Europe 2006b, Dedel 2006: 20).

2.7 The Rights of Protected Witnesses under the Program

The rights of protected witnesses may include internal appeals or challenges to decisions made by the witness protection agency, civil action, judicial review of decisions, and complaints to mechanisms of civilian oversight of the police. However, protected witnesses are rarely in a strong enough position to affirm these rights.

Vulnerable witnesses and informants are typically not in an advantageous position to negotiate the terms of their cooperation with the authorities. The authorities may or may not always honour these terms and when they do not, there are very few recourses available to the witnesses. This is even more problematic for witnesses who are denied protection when the police are unable or not prepared to proceed with a given case or when they decide that they no longer need a particular witness. As many of the decisions concerning witness protection and the use of informants are still left to the discretion of the police or prosecutors, it is important to balance these discretionary decision making powers with adequate protection for the rights of the individual witnesses and informants.

The review was not able to establish to what extent witnesses at risk in different countries had access to legal representation during these delicate negotiations or when a termination is being considered. As was noted by the Standing Committee, someone who is negotiating with the RCMP for individual protection, and in some cases for the protection of his or her family, is not offered the services of a lawyer (Standing Committee on Public Safety and National Security 2008: 27). The situation is most likely very similar in other countries. The Standing Committee recommended that that the *Witness Protection Program Act* be amended so that potential candidates are automatically offered the aid of legal counsel with an appropriate security clearance during the negotiation of the candidate's admission to the Witness Protection Program and the signing of a protection contract (Standing Committee on Public Safety and National Security 2008: 28).

3 Governance and Management of Witness Protection Programs

3.1 Governance, Relative Autonomy, and Decision Making

Among the witness protection programs covered under this review, the majority are provided by specialized units within national or regional police forces. As is the case in Canada, Australia's National Witness Protection Program (NWPP) is operated by the Australian Federal Police (AFP). Accordingly, the Commissioner is responsible for the program and is permitted to enter into arrangements with a number of 'approved authorities' to ensure that sufficient protection is provided to witnesses. In addition to the National program, Australia has State and Territory witness protection schemes which are generally consistent with one another, but not necessarily managed in the same way.[14] In Victoria, South Australia, and Western Australia, witness protection is provided by the relevant State Police whereby the Chief Commissioners serve as the "approved authority." In contrast, Queensland's witness protection program is governed by the Chairperson of the Crime and Misconduct Commission. However, it is also worth noting that witness protection officers under this scheme are primarily police officers who have received specialized training. This review shows that similar arrangements exist in Germany, Canada and the United States.

In contrast, some countries operate a single protection scheme that is not grounded in any legislation. As a result, the law enforcement agency responsible enjoys complete autonomy and decision making authority. In Ireland, for example, the witness security program is administered by the Garda Crime and Security Branch which is operated by the Garda Special Detective Unit (SDU). As one Irish Times article bluntly states (Lally 2009: 3):

---

[14] These State/Territory schemes are provided for in the following legislation: Australian Capital Territory - *Witness Protection Act 1996;*New South Wales - *Witness Protection Act 1995;*Northern Territory - *Witness Protection (Northern Territory) Act 2002;*Queensland - *Witness Protection Act 2000;*South Australia - *Witness Protection Act 1996;* Tasmania - *Witness Protection Act 2000;* Victoria - *Witness Protection Act 1991 (amended in 2000);*Western Australia - *Witness Protection (Western Australia) Act 1996.*

> The protection programme operates in secret. It was never put on a statutory footing. It is effectively a fund of money operated by senior Garda management for the best protection possible of those people whose testimony will be, or has been, used to convict serious criminals.

There have been repeated calls for the government to place the program on a statutory footing, but Garda sources have made it clear that this would undermine the operation of the program and limit its present flexibility (Lally 2009). In a similar fashion, New Zealand's police witness protection program does not appear to be bound by specific legislation, but public information about the program suggests that there is a strong relationship between the Police Force and the Department of Corrections with the recognition that a majority of witnesses in the program have been associated with criminal groups and are offenders themselves (New Zealand House of Representatives 2008, New Zealand Police 2008).

As Table 1 shows, other types of governing structures do exist such as in South Africa and the Philippines where witness protection is administered through the respective national prosecution authority, and protection services are provided by the police. In Kenya, decisions are made by the Office of the Attorney General, and operations are provided by a multi-agency task force. In two Australian states, the protection program is managed by the same commission responsible for civilian police oversight and processing complaints against the police.

3.2 Organizational Structure and Reporting Requirements

Witness Protection Programs that are grounded in legislation tend to have clearer management guidelines and usually identify the main centre of responsibility for the program and specify the reporting requirements. According to subsection 30(2) of Australia's *Witness Protection Act 1994*, an annual report on the general operations, performance and effectiveness of the NWPP must be submitted to both Houses of Parliament. Importantly, this report is prepared "in a manner which does not prejudice the effectiveness or security of the NWPP" (Australian Federal Police 2009) and so program

details and case information are not included. While the report describes the significance of some of the clauses in the Act, and explains how the overall program is managed, the only details relate to annual expenditures and the number of active operations for the reporting period. Put together by the AFP, the report is formally submitted to Parliament by the Minister for Home Affairs.

A similar organizational structure and reporting relationship is in place in Canada where Section 16 of the *Witness Protection Program Act* requires the submission of an annual program report in order to ensure transparency, yet without compromising witness safety. This reporting requirement ensures that program information is recorded on a regular basis, yet it also leaves room for more in-depth reviews into program operations. In March 2008, for example, the Standing Committee on Public Safety and National Security presented a review of the federal witness protection program to the House of Commons (Standing Committee on Public Safety and National Security 2008).

It is important to recognize, however, that organizational structures and reporting requirements are not always as clear and well-defined as in Australia and Canada. In Ireland, the program has never been put on a statutory footing and so it is unclear whether the Garda Commissioner has a responsibility to provide the government with regular updates on program operations. However, it has been reported that the Court of Criminal Appeal and the Supreme Court have both upheld the validity of the operation of the program. Thus, while obtaining information is difficult, it is clear that there is a system in place whereby program information is made available under special circumstances.

3.3 Decisions to Offer Protection and Criteria

Decisions to offer protection and the factors that are considered in reaching such decisions differ among countries and programs. In some cases the responsibility for these decisions rests with a single individual or agency, and in others the decisions require careful consideration by multi-agency taskforces or witness protection boards.

As previously mentioned, the Irish Witness Protection program appears to be almost entirely administered by the Garda. In spite of some public criticism about the secrecy

surrounding the management of the program and the apparent lack of independent oversight, it is clear that a number of guidelines are in fact in place. For example, Garda who are involved in the investigation of crimes are prohibited from any involvement in the discussions and decisions related to a witness' eligibility for protection. That measure is meant to preserve the independence and consistency of decision making with respect to the operation of the program.

In other cases, witness protection programs are administered by a board or a committee comprises representatives from a variety of relevant law enforcement agencies and/or government departments. In Australia, a Witness Protection Coordinator applies to a Witness Protection Committee for the placement of a witness in the NWPP. This committee is comprised of the Deputy Commissioner of National Security, as well as two senior AFP officers. Together, these make recommendations to the AFP Commissioner on the entry and exit of witnesses in the program (Australian Federal Police 2009: 4). As is the case in Ireland, Australian investigating officers, as well as those preparing submissions to the Committee, are excluded from the decision-making process for that particular witness' placement in the program (Australian Federal Police 2009: 4). This separation of responsibilities is an important feature of a number of programs included in this study as it ensures that decisions are made as objectively as possible.

Where witness protection programs are administered by the Department of Justice, Attorney General, National Prosecuting Authority, or other agencies other than police forces, witness protection boards, committees and units are often put in place. In Massachusetts, a witness protection board comprises the Attorney General, the State Auditor, the Secretary of Public Safety and Security, as well as representatives from the District Attorney Association, and the Massachusetts Chief of Police Association (Massachusetts Executive Office of Public Safety and Security, 2009: 4). In Kenya, a multi-agency task team consists of representatives from the Police, Provincial Administration, Judiciary, National Security Intelligence Services, Kenya Anti-Corruption Commission, Immigration Department, National Counter-terrorism Centre, Prisons Department and the Ministry of Justice and Constitutional Affairs. Despite these collaborative efforts, according to Section 5 of the *Witness Protection Act 2006,*

admission into the program may be initiated by the witness, investigator, prosecutor or intermediary, yet the decision to include any person in the program is the sole responsibility of the Agency Attorney (Republic of Kenya 2008).

Regardless of whether the decision to offer protection is made solely by a Police Commissioner, an Attorney General, or else by a board or committee, the criteria considered for program admission seems to be fairly standard. In nearly all the programs included in this report, decisions for inclusion are taken after first analyzing the specific aspects of each situation. Several factors are typically considered to determine the suitability of a witness for admission into a protection program. They include: the seriousness of the offence(s) involved; the importance of the evidence the witness can offer and whether the witness can be expected to offer a credible and significant testimony; whether the witness is essential to a successful investigation and prosecution and is committed to testifying; the level of risk the witness is facing and whether there is a direct and significant threat to the life and safety of the witness, or persons close to him/her; and, the availability and suitability of options other than full protection.[15]

A few additional requirements worth mentioning include Italy's requirement that witnesses reveal all information related to the case within 180 days. A 2001 law introduced this time constraint after which a State witness' information will no longer be considered relevant or usable (Allum and Fyfe 2008: 97). In Ireland, significant attention is paid to the likelihood that a witness' evidence will secure a conviction. Moreover, since the Irish program is geared toward prosecuting criminals involved in serious organized gangs, it is assumed that a majority of witnesses are in some way involved with these groups, and so alcohol and drug dependencies are assessed in an effort to avoid cases where these might jeopardize the ability of a witness to remain in the program over the long-term (Lally 2009: 3).

---

[15] The United States Witness Security Program, administered by the US Marshals Service, uses very similar criteria for admission to their "WITSEC Program", and the European Union has proposed similar admission criteria in their draft European program for the protection of witnesses in terrorist and transnational organized crime cases.

The initiative to consider an individual for admission into a protection program usually comes from the police, often at the request of the person concerned and most often after a threat assessment. In countries where that decision does not belong to the police, a different procedure exists for reviewing applications/requests for admission into the program. In such cases, the request for protection must include information on the nature of the investigation, the role of the candidate in the criminal activity, and the danger or threat faced by the individual. Some countries rely on a central "assessment board" while others rely on prosecution authorities. In some countries, the prosecution service is hardly, if ever, involved in the decision. Often, the protection service is not represented officially in the decision-making body, but gives information and advice to it.

When admission into the program requires a formal approval process, provisions are usually made to authorize some temporary protection measures in urgent circumstances. In addition to considering the seriousness of the threat involved, most witness protection programs consider the suitability of the witness to "fit" in the program, whether the witness is stable or has significant emotional, psychological and chemical dependency/abuse issues, or whether they will compromise the protection program. The costs of the measures also enter into consideration.

Prior to acceptance into the witness protection program, the police typically conduct a biographical review of the witness to identify and assess both the level of threat to his/her person and people close to him/her, and any encumbrances that may hinder their entry into the program. Oftentimes, an in-depth interview of the witness forms part of that assessment. The interview serves to help determine the suitability of the candidate for entry into the program, assess the likelihood that they will succeed in the program, and identify who else might be at risk of harm should the witness testify. In the case of individuals who are involved in a criminal lifestyle, the interview is also used to debrief the witness on crimes they may have knowledge of or involvement in.

All individuals involved must voluntarily agree to enter the program. This is important because protected witnesses must play an active role in ensuring their own safety and preventing harm to themselves and persons close to them (Council of Europe 2004: 26).

Once an individual is accepted into the program, a certain amount of planning is required and a "protection plan" is developed to put in place a number of measures commensurate with the level of threat and the various people involved (witnesses and people close to them).

3.4 Protection Agreements

Protection agreements are fundamental components of most witness protection programs since these can serve as legal contracts between witnesses and the State. However, this is not always the case. In many European programs, the agreement takes the form of a memorandum of understanding and, properly speaking, do not constitute a contract in the sense that the protected witness cannot derive any rights from it (Council of Europe 2004: 30). Usually, all protected individuals, the witnesses or informants and the persons close to them, are required to sign the agreement. However, note that in many programs the individuals may not, for security reasons, receive a copy of the agreement (Council of Europe 2004: 31). This is because complete secrecy with regard to the measures being implemented must be maintained.

In the Canadian federal program, witnesses sign a formal contract with the government. Each agreement is individually negotiated and articulates what the government will do by way of support and protection of the witness in return for the witness testifying at trial. As mentioned earlier, the witness is not provided automatically with the assistance of legal counsel. The agreement specifies the obligation of the protection service to protect the individual and his/her relatives, as well as the duration of the protection measures. The duration of the protection measures may depend upon risks as evaluated by the protection service. The agreement also outlines the obligation of the witness to keep secret his/her former identity, old address, role in criminal proceedings, etc.; refrain from activities that would increase the risk against them; cooperate fully in the criminal proceedings; try to find employment quickly; and make arrangements for outstanding accounts, contracts and financial obligations. The agreement explains clearly the conditions under which the protection will be ended.

In the United States, for example, the legislation that governs the Federal Witness and Security Program (WitSec) has very clear guidelines as to what needs to be included in any memorandum of understanding (MoU) between the Attorney General and the prospective witness. Put simply, this agreement clearly outlines the responsibilities and expectations of both parties as long as the witness is in the program. In the case of the WitSec Program, these responsibilities include, but are not limited to: the agreement of the witness to testify in the appropriate proceedings; the agreement of the person not to commit any crime; the agreement of the person to take all necessary steps to avoid detection; the agreement to comply with legal obligations and civil judgments; the agreement of the person to disclose all outstanding legal obligations; the agreement to disclose all probation or parole responsibilities; and the agreement to regularly inform the appropriate program official of their activities and current address.[16] Importantly, the MoU also describes the nature and degree of protection which will be provided to the witness, the procedures to be followed if the agreement is breached, as well as the procedure for filing and resolving grievances regarding the administration of the program.[17]

While this degree of detail is not necessarily made explicit in all the relevant legislation, it is clear that in countries with fairly developed programs such as Canada, Australia and New Zealand, an official contract is drawn up between the witness and the relevant authority before admission into the program is finalized. Accordingly, when the contract is breached, the authorities can discharge the witness from the program. However, a number of cases have shown that this is not automatic. As the Ministerial Inquiry into the death of Debbie Ashton in New Zealand has shown, at least one witness under a new identity in that country succeeded in breaking the law only to be tried as a first-time offender under their new identity. In fact there do not appear to have been any attempts made to discharge the offender from the program. In Australia, Victoria police failed to oust "166" from the program despite claims that the witness had breached the terms of

---

16 *US Code*, Title 18 "Crimes and Criminal Procedure", Part II, Chapter 224 "Protection of Witnesses"

17 Ibid.

their contract. Thus, it appears that where these agreements do exist, there is nevertheless a "grey area" where authorities are expected to weigh the risks of maintaining the secrecy of the program and the security of a former witness at the expense of public safety and undermining the integrity of the program.

The duration of a witness participation in a protection program cannot always be determined at the beginning of the process. Participation in the program is in large part determined by the length of the investigation and the criminal proceedings. On average, the minimum length of the witness participation in a protection program is two years (Heijden 2001) and the average duration is between three and five years in the three programs reviewed in the best practices document prepared for the Council of Europe (Council of Europe 2004: 36). "The general principle is that a protected witness should be enabled to live a normal life as much as possible and as soon as possible" (Council of Europe 2004). After that, the witness protection agency will let participants leave the program and take care of themselves again, the moment this can be done safely. However, according to the UNODC, experience has shown that even after the end of the formal protection program, some form of care must still be provided, because the threat against the person rarely disappears completely (UNODC 2008: 74).

3.5 Decisions to Terminate Protection and Voluntary Withdrawals

The protected witness can typically withdraw from a protection program voluntarily or their participation may be terminated by the agency. Typically, an involuntary termination occurs when the protected individual commits a new offence or is otherwise not in compliance with the protection agreement, including for having compromised his/her new identity. Proper notification of a decision to terminate the protection must be communicated to the individual in question and he or she needs to have an opportunity to challenge or appeal the decision. Legal representation should ideally be available in such circumstances. In reality, however, this is not always the case (Standing Committee on Public Safety and National Security 2008: 27).

In most cases, protection ceases because witnesses have chosen to remove themselves from the program. While the reasons span from a lack of trust and confidence in

protection programs to witnesses being unwilling to abide by restrictive measures, authorities need to pay close attention to the reasons for voluntary removal as this can be considered a measure of program effectiveness. These are difficult situations to manage. Other protection measures may be offered, but in the end it is impossible to offer effective protection to someone who is not willing to cooperate with the program.

For the year 2008-2009, Canada's federal program saw the voluntary termination of 11 cases Public Safety Canada 2009). In the same reporting year in South Africa, 44 witnesses (16.9%) left the program (South Africa 2009: 31). While statistics such as these are hard to access, it is clear that program conditions, or else the stress of living away from family and friends is incredibly taxing on protected witnesses and their families. As many reports have confirmed, witnesses will often find that they can no longer make the sacrifice of relocating, giving up their identities and living under such extreme amounts of stress. In Italy, it has been noted that many witnesses withdraw because of a lack of attention to psychological support and anxiety (Allum and Fyfe 2008). Unfortunately, this is a very important aspect of any witness protection program, particularly since participants are not only dealing with very serious threats to their security and well-being, but also with the stress of "disappearing" from family, friends, and livelihoods. In fact, in the United States "mental distress has resulted in an above average suicide rate for protected witnesses which means, ironically, that the greatest danger to the safety of protected witnesses may be themselves" (Allum and Fyfe 2008).

In countries such as Kenya, Jamaica and the Philippines, witness protection programs are not as publicly trusted, and it is felt that many witnesses refuse to participate, fearing for their personal safety and security. This is especially problematic where there is a real lack of confidence in the impartiality of the police (Amnesty International 2009).

As was mentioned earlier, the protection of a witness is most often regulated by a formal agreement which is made between the participant and the relevant authority. Accordingly, the continuation of the protection is governed by that agreement. Thus, protection termination can take a number of forms. First, where a participant breaches a term of their protection agreement, assistance services may be immediately terminated. In

fact, almost all of the countries covered in the present review have clear rules in this regard. Some programs will also terminate protection where it is discovered that the participant knowingly gave misleading or false information about themselves, or the case at the time their application was being considered. In Israel, when witnesses violate the conditions of their protection they are not only discharged from the program, but they can also be indicted and required to return the money already invested in protecting them (Ilan 2008).

The length of time during which protection is extended is not always pre-determined, if it is it may be subject to periodic reviews. In Europe, the minimum duration of the protection is generally determined by the length of trial proceedings, on average between three and five years (Council of Europe 2004: 36). In Canada and Norway, for example, protection is deemed to be for life unless the terms of the protection agreement are breached. Other programs reserve the right to decide when to terminate protection. In South Africa, protection is provided for only as long as the perceived threat is deemed to exist, and then for a following a six-week phasing out period, after which protection is terminated (Amnesty International 2009). Similar clauses exist in Australia, Jamaica, and the Philippines where the relevant authority has the right to decide when the circumstances which gave rise for the need for protection have ceased. Where decisions to admit or terminate protection are concerned, some countries have taken additional precautions to ensure that this is managed at the highest level. In Australia, these decisions cannot be delegated below the position of Deputy Commissioner of the AFP (Australian Federal Police 2009: 5).

Despite the rules regarding the termination of protection, there have nevertheless been some high profile cases that illustrate the difficulties involved. In the State of Victoria, police repeatedly failed to terminate a protection agreement with a witness known as "166." According to media reports, the Office of Police Integrity (OPI) which is responsible for considering appeals against these decisions overturned a fourth termination attempt in 2008 after a multi-million dollar legal battle between Victoria Police and the protected witness (Hugues 2008). The crux of the problem in this case is how the threat to a witness can be measured, and how that decision should be reached.

Among other things, Victoria Police argued that the need for protection had ceased, meanwhile "166" claimed that risk remained because "criminal associates saw his co-operation with police as an unforgivable betrayal of the gangland code of silence" (Hugues 2008: 5). Methods of involuntary termination need to be more closely explored since cases such as this have a negative effect on the perceived credibility of witness protection programs in the eyes of the public, particularly for potential applicants. One way of addressing this is to ensure that appropriate appeal procedures are in place. However, there is always the risk that a witness who has been involuntarily removed from witness protection will go to great lengths to undermine the security and/or integrity of the program.

The European Union draft program for the protection of witnesses in terrorist and transnational organized crime cases proposes that protection of a witness may be terminated if he or she compromises themselves by: (1) committing a crime; (2) refusing to give evidence in court; (3) failing to satisfy legal or just debts; (4) behaving in a manner that may compromise his or her security and/or the integrity of the program; and, (5) stepping outside the guidelines or rules laid down as part of the protection program or by contravening the terms set out in the written agreement (protection pre-entry agreement). The protection may also be terminated if it is determined that the threat no longer exists (ISISC-OPCO-EUROPOL 2005). Severe violations of the conditions under which the witness was admitted into the program may lead to sanctions and warnings and, sometimes, that is sufficient.

3.6 Responsibilities for the Management of Programs

In addition to the general reporting requirements to which a program is subject, some programs are required by legislation to maintain registers to ensure that these programs are properly managed. This is the case with the NWPP in Australia where certain information such as the participant's name and new identity, as well as details of offences for which the participant has been convicted are duly recorded.[18] In the UK, the Crown

[18] Section 11 of the *Witness Protection Act 1994*

Prosecution Service has undertaken to maintain a register of all cases where applications for witness anonymity orders have been submitted.[19] In New Zealand, and following the recommendations of a Ministerial Inquiry, the Department of Corrections now requires all offenders on the witness protection program to be put on an Offender Warning Register. This ensures that these witnesses "are subject to greater managerial oversight and less tolerance in terms of non-compliance or re-offending".[20] This is especially noteworthy since in most cases, witnesses on protection schemes are themselves criminals.[21] For its part, New Zealand Police have a policy which requires them to record all contacts made between a witness and their case officer. In addition, all cases are to be reviewed on a weekly and monthly basis by an appropriate manager or supervisor.[22] Significantly, a police electronic monitoring system has also been put in place which ensures that the Witness Protection Unit and National Manager are automatically and immediately notified of any contact between police and a witness on the program. The purpose of these dispositions is to avoid situations similar to the one which lead to the Ministerial Inquiry in the first place, namely that a witness under protection be found to reoffend and be tried as a first time offender under a new identity.

3.7 Impact of Technology

Biometrics refers to the use of digital technology to record and recognize a person's physical and behavioural traits. This technology is used in both the public and private sectors, usually for security purposes, but it is problematic from a witness protection perspective (UNODC 2008: 90). It threatens to undermine the ability of law enforcement agencies to keep the true identities of their protected witnesses' secret. This is an issue which is recognized by the witness protection agencies, but which has yet to be

---

[19] See: *The Director's Guidance on Witness Anonymity* which can be accessed online at: http://www.cps.gov.uk/publications/directors_guidance/witness_anonymity.html#a01

[20] See: Department of Corrections. "Ministerial inquiry into matters relating to the death of Debbie Marie Ashton." *Department of Corrections, Media Release.* July 9, 2008.

[21] See: New Zealand House of Representatives. *Parliamentary Debates. First Session, Forty-eighth Parliament, 2005-2008. Week 80, Volume 648.* Tuesday, 22 July, 2008. pp. 17263.

[22] See: New Zealand Police. "Joint Corrections- Police Release of the Ministerial Inquiry into Matters Relating to the Death of…" *New Zealand Police, News Centre.* July 9, 2008.

addressed. The impact of biometrics such as retina or face recognition devices could nullify the protective measures taken by police or other responsible agents (UNODC 2008: 90). While protected witnesses can be issued new identification documents, relocate or change their physical appearance, they will always have the same retina scans, fingerprints, and DNA. Moreover, in many parts of the world, these systems are slowly being integrated among countries so that even relocation measures cannot ensure that a witness will not one day be correctly identified in a scan at the airport, or having their fingerprints taken as they enter a new country. As long as communication channels are clear among law enforcement authorities, these risks can be managed. However, the real challenge lies in the fact that those technologies that are available to police and customs officers can also be easily acquired and used by those who pose a threat to a protected witness. Concerted efforts are needed to ensure that law enforcement agencies cooperate in this area or else they risk accidentally exposing protected witnesses during routine security checks.

3.8 Human Resources and Training

AFP officers deployed to Australia's Witness Protection Program are required to undergo a specialized training program each year referred to as the WP Skills Maintenance Training Program (Australian Federal Police 2009: 5). Repeated training in this area enhances and maintains necessary operational skills which are necessary to the performance of the witness protection scheme. In addition to operational training, these officers are also expected to attend national and international conferences since this "allows the AFP to benchmark its witness protection activities against other agencies" (Australian Federal Police 2009: 5). In Jamaica, the Witness Support Unit of the Jamaica Constabulary Force (JCF) apparently provides advice and support to police officers on how to deal with vulnerable victims of crime. Since this unit is responsible for administering the Ministry of National Security witness protection program, it is assumed that this training extends to those JCF officers in charge of protecting witnesses in the program. In the United States, the *Witness Security and Protection Grant Program Act* of 2009 allows for state and local witness protection programs to receive technical

assistance from the US Marshals Service which is responsible for protecting witnesses under the Federal WitSec program.[23]

While this piecemeal information indicates that specialized training is provided to officers responsible for operating witness protection programs, there is not a lot of publicly available information on the nature and effectiveness of this training.[24] In fact, Australia's NWPP annual report purposely leaves out information such as base salaries of the Witness Protection personnel operating the program "so as to not disclose the number of Federal Agents involved in providing Witness Protection services" (Australian Federal Police 2009: 10). Other sources, such as the US Marshals Service, are more forward with the information they provide on the number of personnel administering witness protection programs.[25] What is clear, however, is that some notable efforts are being made to share best practices, technical expertise, and training policies among those agencies responsible for operating witness protection programs. For example, the US Marshals Service hosted the first-ever Witness Security Symposium in 2006 in an effort "to expand the international community of witness security experts."[26] Subsequent symposium's have since taken place and other information sharing forums have been initiated by the EU, Europol, the OAS, and UNODC.

3.9 Number of Cases and Costs of Programs

Australia's NWPP provides an interesting case study for Canadians to consider since the costs of protective services are shared between the AFP and other approved authorities depending on who referred the witness to the program. In other words, the AFP is only responsible for the costs of AFP sponsored witnesses in the NWPP.

---

[23] See: US Fed News Service, Including US State News. *Rep. Cummings Introduces Witness Protection Legislation.* Washington, D.C. November 9, 2009; US Fed News Service, Including US State News. *House Approves Rep. Cummings' Witness Protection Bill.* Washington, D.C. June 10, 2009.

[24] One notable exception is the Council of Europe Training Manual for Law Enforcement and the Judiciary (Council of Europe 2006b)

[25] See: US Marshals Service Factsheet. http://www.usmarshals.gov/duties/factsheets/facts-1209.html

[26] See: "U.S Marshals Service Talks WitSec to the World." *America's Star: FYi,* Vol. 1(1). Washington: August 2006.

Other agencies with witnesses in the NWPP are, by arrangement with the AFP, responsible for all other costs including those related to the security and subsistence needs of their witness and the composite payments, taxes, travel and accommodation expenditure by AFP Witness Protection Federal Agents who supervise the agency-sponsored witness (Australian Federal Police 2009:10).

As it was previously mentioned, AFP witness protection figures do not include the salaries of witness protection personnel, therefore total expenditures for the year July 1, 2008 to June 30, 2009 (minus salaries) amounted to slightly more than A$1,5 million whereby nearly half was covered by other agencies.[27] Total expenditures over the past decade show that program costs have remained fairly constant with the greatest difference being between 2003 and 2004.[28] A similar reporting method is used by the RCMP in Canada, and financial information conveyed in the Witness Protection Program Annual Report does not include the salaries of RCMP members, the cost of investigations, or subsequent legal costs. In other words, figures which are reported only present a fraction of the cost of protecting witnesses (Standing Committee on Public Safety and National Security 2008: 19). According to the official 2008-2009 statistic, the total cost of Canada's Federal program was C$6.6 million (Canada, Public Safety Canada 2009).

A number of witness protection program costs are reported in Table 3 below. However, comparing these across countries is extremely difficult since financial reports do not necessarily include the same expenditures and program components. Moreover, many countries are reluctant to publish financial information, such as in the UK where the Ministry of Justice refuses to reveal exact figures. In other words, reported program costs are nothing more than best guesses.

---

[27] Officially, total expenditure amounted to 1,570,620.88; less amounts recovered amounted to 736,263.37; and total commonwealth expenditure amounted to 834,537.51. (Australian Federal Police 2009: 11).

[28] Total expenditure for the reporting year 2002-2003 was A$647,524.25 compared to A$2,160,809.62 for the reporting period 2003-2004. (Australian Federal Police 2009:12).

TABLE 3: Number of Protected Witnesses and Costs of Programs		
Country	**How many witnesses are protected?**	**Costs of providing protection?**[29]
Australia	**National Witness Protection Program (NWPP):** July 1, 2008- June 30, 2009: 34 active witness protection operations, bringing the total to 78 persons	**National Witness Protection Program (NWPP):** July 1, 2008 - June 30, 2009: Approx. A$1.6 million[30], excluding the salaries of protection officers. (C$1.5 million)
	State of Victoria: 2004: 73 witnesses and 89 spouses and children, bringing the total to 162 persons	
	State of Queensland: July 1, 2008- June 30, 2009: 51 new admissions into the program, bringing the total to 70 protected persons.	**State of Queensland:** July 1, 2008 - June 30, 2009: Approx. A$5 million. (C$4.7 million)
Canada	**Federal Witness Protection Program (WPP):** April 1, 2008- March 31, 2009: 15 new admissions into the program (11 by other law enforcement agencies, 4 by the RCMP).	**Federal Witness Protection Program (WPP):** April 1, 2008 - March 31, 2009: Approx. C$6.6 million, excluding RCMP salaries, cost of investigations or subsequent legal costs.

[29] Costs are approximate. Canadian dollar figures are not exact, and calculated February 27, 2010. Exchange rates: 1AUD=0.933416CAD; 1EUR=1.40134CAD; 1GBP=1.54165CAD; 1ZAR=0.136206CAD; 1USD=1.03338CAD.

[30] Other agencies (such as State/Territory Police) with witnesses in the NWPP are responsible for costs. These are therefore not included in the Australian Federal Police budget which was calculated as A$1,570, 620.88 for the period July 1, 2008 - June 30, 2009.

	2008 Review: Approx. 1,000 protectees (700 managed by the RCMP, 300 managed by other law enforcement agencies)	
Germany	Approx. 650 witnesses are said to be in German witness protection programs every year.	
Ireland		Media sources speculate that approx. €1,2 million was set aside for witness protection in 2009. (C$1.7 million)
Italy	5,000 individuals are said to be protected under the State Witness Protection Program, including 1,000 witnesses and 4,000 relatives.	Approx. UK£72 million/ year. (C$116 million/year)
Jamaica	Approx. 1,500 witnesses and family members have benefited from the witness protection program since its inception in 2001.	
Philippines	2006: 205 witnesses admitted into the program, bringing the total to 549 protected persons.	
South Africa	2008/2009: 218 witnesses in protection (including the family members of witnesses), bringing the total to 431 protected persons.	2008-09: Approx. R103 million. (C$14 million)
United Kingdom	Estimated that 3,000 individuals have received protection.	Approx. UK£22 million/ year. (C$35 million/year)

United States of America	**Federal Witness Security Program (WitSec)**: According to the US Marshals Service, 8,200 witnesses and 9,800 family members have been protected since the program began operating in 1971.	**Federal Witness Security Program (WitSec)**: 2003: Approx. US$60 million. (C$62 million) Salaries and expenses appropriated for Fiscal Year 2010: US$1.125 billion. (C$116 billion) **State Witness Protection Schemes:** Federal appropriations for short term State Witness Protection Schemes US$90 million/ fiscal year. (C$93 million)
	Commonwealth of Massachusetts: 2006-2008: 132 cases approved for protection. July 1 2007- June 30 2008: 72 cases admitted, bringing total to 77 cases or 221 persons.	**Commonwealth of Massachusetts:** 2006-2008: Approx. US$1 million. July 1, 2007to June 30, 2008: Approx. US$500,000 Estimated to cost between US$250 and US$26,100/case.

Among the many factors that influence the costs of witness protection programs, the following are usually noted: whether the witness has a family that also needs protection, the length of time the witness spends in temporary accommodation, the witness' standard of living, the changing nature of the threat against the witness, and the entitlement of the witness to financial assistance (Fyfe and McKay 2000: 287).

As can be seen in Table 3 above, the number of cases involved each year is quite high even and may be subject to substantial increases as police investigations begin to rely more heavily on the use of informants and collaborators of justice. Costs tend to accumulate over the years since witnesses may stay in the program for extended periods of time. Regardless, the high costs of protection programs explain why their use remains limited to serious crimes and strategically important cases. Funding these programs out of regular police budgets is not always sufficient. This may lead to decisions which are

primarily and perhaps inappropriately based on protection costs and shrinking resources, as opposed to the rights of witnesses or the requirements of the justice system.

3.10 Interagency Collaboration

Some protection measures (e.g. identity protection) require the collaboration of several agencies throughout the government, often at different levels of government. Mechanisms are required to help mobilize these various agencies and ensure that they collaborate towards achieving the witness protection objectives (Boisvert 2005: 12).

Interagency competition and conflicts frequently create difficulties with the use of informants and the operation of witness protection programs (Norris and Dunnigham 2001). Inter-agency cooperation is essential to the success of prosecutions based on the testimony of protected witnesses (Brouwer 2005, Dedel 2006, Dandurand et al. 2007, Fyfe 2001: 67, Greer 2001: 136, Maynard 1994). Cooperation is required in identifying cases of intimidation. Cooperation is also crucial in cases involving witness relocation. It is therefore essential to have efficient, prompt, and secure communication among the agencies involved. It is also crucial to ensure that the necessary safety precautions are taken within each agency to protect the confidentiality of the information that must be exchanged. Careful attention must therefore be given to mechanisms that foster effective interagency cooperation—nationally and internationally.

In New Zealand, while there is little information available on the witness protection program, the previously mentioned Ministerial Inquiry revealed that there is now more collaboration taking place between the New Zealand Police and the Department of Corrections.[31] As such, clear policies in relation to communication and interaction between the two agencies have been developed, particularly as these relate to witnesses on parole. There is apparently also a liaison officer who facilitates cooperation between the two agencies.

---

[31] See: New Zealand Police. "Joint Corrections- Police Release of the Ministerial Inquiry into Matters Relating to the Death of…" *New Zealand Police, News Centre.* July 9, 2008; Department of Corrections. "Ministerial inquiry into matters relating to the death of Debbie Marie Ashton." *Department of Corrections, Media Release.* July 9, 2008.

3.11 International Cooperation and Relocation

The United Nations, the Council of Europe and other multilateral organizations have increasingly focused their attention over the last decade on the transnational nature of many serious crimes. States have recognized the need to engage with each other in a number of exercises to harmonize their legislation and criminal justice practices and to enhance their capacity to cooperate with each other in the fight against international terrorism and organized crime. Conventions and bi-lateral treaties have been ratified to reflect this new commitment. International cooperation initiatives with respect to the identification and use of informants and witnesses, the sharing of intelligence and evidence, and the protection of witnesses, are just a few of the many facets of this trend. The importance of operational cooperation across borders among law enforcement agencies investigating and prosecuting crimes with a transnational dimension must be acknowledged, and it is now specified in a number of international instruments (Dandurand 2007: 240, Dandurand et al. 2007: 278).[32]

Because many criminal organizations operate quite efficiently across national borders, the threat they represent to witnesses and collaborators of justice is not confined within national borders. Physical and psychological intimidation of witnesses and their relatives can take place in a variety of contexts. Furthermore, witnesses may need to move to another country or return to their own country during lengthy criminal proceedings. Finally, there are cases where a State, because of its size, means or other circumstances, may not be able to ensure the safety of witnesses on its own.

For all these reasons, cooperation in the protection of witnesses and their relatives has become a necessary component of normal cooperation between prosecution services.

---

[32] Article 19, of the *United Nations Convention against Transnational Organized Crime* requires States Parties to consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. See also similar language in article 49 of the *UN Convention against Corruption*.

Furthermore, international cooperation may also be required at times in order to protect interpreters, the prosecutors themselves, and/or other judicial and correctional personnel.

Developing a capacity to protect witnesses and even relocate them across borders must often be considered. Article 24 (para. 3) of the *UN Convention against Transnational Organized Crime* and article 32 (para. 3) of the *UN Convention against Corruption* require States parties to consider entering into agreements or arrangements with other States for the relocation of witnesses (Dandurand et al. 2007).

To ensure greater international cooperation in offering effective witness protection at home or across borders, law enforcement and prosecution agencies often need to develop arrangements with other jurisdictions for the safe examination of witnesses at risk of intimidation or retaliation. In the Canadian legislation, the *Witness Protection Program Act*, article 14, provides that the Commissioner of the RCMP may enter into reciprocal agreements with the government of a foreign jurisdiction to enable a witness of that jurisdiction to be admitted in the Program.

Another type of interagency collaboration exists where formal bi-lateral or even regional agreements are concluded between governments or witness protection agencies to ensure that protection is upheld by all relevant authorities. In some cases, where a witness may have to move from a country to another, the responsibility for providing protection may be transferred accordingly. For example, Australia's Commonwealth, State and Territory witness protection laws are such that arrangements can routinely be made among the respective protection providers.[33]

International cooperation is particularly important in protection cases where witnesses must be relocated to another country. A growing number of countries are therefore recognizing the importance of enabling the inclusion of foreign nationals into their programs. Section 10 and 10A of Australia's *Witness Protection Act 1994* acknowledges that foreign nationals or residents can be considered for inclusion into the NWPP at either

[33] For the U.S.A. (Abdel-Monem 2003).

the request of the appropriate foreign authority, or else the International Criminal Court (ICC). Importantly, the decision to admit a foreign national requires the attention of the Minister of Home Affair who decides if it is appropriate to refer the request from the foreign authority to the Commissioner of the AFP (Australian Federal Police 2009: 8). Accordingly, two conditions must be met, namely that the foreign witness has been granted an entrance visa for Australia, and that the foreign authority referring the witness has agreed to cover the costs of protection and assistance to be provided by the AFP (Australian Federal Police 2009: 9).

One noteworthy cooperation initiative is the European Liaison Network which was established in 2000 and is coordinated by Europol. The network incorporates the heads of specialist witness protection units in an effort to "create a useful, common platform for future cooperation and to give those Member States in which the implementation of witness protection is still underway the great chance to avoid waste of time and 'reinventing the wheel' again" (Fyfe and Sheptycki 2006: 331). It is clear that the establishment of witness protection programs is gaining momentum since it is proving to be an effective tool in the fight against serious and organized crime. Thus, initiatives such as this will serve to ensure that good practices and minimum standards are met and maintained. In this regard, the United Nations has also developed a number of instruments which promote cooperation, most notably the publication "Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime" (UNODC 2008).

The Organization of American States (OAS) has also supported and encouraged greater cooperation in the area of witness protection, particularly as this relates to relocation agreements among member states. A recent study provides a number of notable suggestions in this regard. More specifically, these are: (a) the dissemination of practices adopted nationally and regionally as these relate to the protection of witnesses; (b) the establishment of a directory of national authorities responsible for witness protection; (c) the establishment of a regional information exchange mechanism (convening meetings through electronic means of communication); (d) the use of modern means of communication to facilitate the examination of a protected witness; and, (e) developing a

model bilateral cooperation agreement (OAS 2009: 5). According to the OAS, eighteen member states have legislation which provide for witness protection programs, yet only Argentina, Canada and Colombia formally encourage international cooperation (OAS 2009: 4). Evidently, this is an area with significant room for improvement. If witness relocation programs are to be effective, authorities will need to make a concerted effort to improve international cooperation, particularly as it relates to information protection and witness relocation.

4 Issues

This section reviews a few issues of interest. It includes a discussion of alternatives to witness protection programs and of the questions of the rights of victims and the rights of protected witnesses. It includes a brief review of witness program issues as depicted in information media, and concludes with a presentation of issues related to international cooperation in the protection of witnesses and informants.

4.1 Alternatives to Witness Protection Programs

Each year, only a few witnesses are offered the opportunity to participate in a formal witness protection program. Of these, some decide not to accept the protection offered. In fact, the great majority of witnesses who feel threatened do not participate in a witness protection program, choosing to remain under the responsibility of local police services. Many of them decide to move and relocate somewhere not very far from where they used to live, sometimes because they think that this is the only effective way to protect themselves and their family (Fyfe 2001: 104). They may also change jobs, move their children to another school, stop frequenting certain places (places of worship, restaurants, etc.), and change their normal mode of transportation (e.g. avoid public transportation, drive different routes, etc.). Many rely temporarily on friends and relatives for assistance, temporary accommodation they can offer, even though they are hesitant to ask for that kind of help for fear of compromising someone else's safety.

The police can take a number of basic measures to protect witnesses against intimidation. For example, they can engage in surveillance activities at crucial times; escort the witness to work, court, etc; lend a personal alarm device; assist with emergency relocation;

increase police patrols in the area where the witness lives; or even offer 24-hour police protection. Whether or not to offer these services is often a question of resources and costs. Moreover, police are not always provided with sufficient guidance on their responsibility with respect to witness and victim protection.

In some cases, police must resort to protective custody, even if that protection method is not one which is particularly likely to encourage witnesses to collaborate with the authorities. Many countries have provisions in their laws to permit the detention of a material witness (someone who has unique information about a crime). There is, however, a clear danger of abuse of these provisions, in particular those who are being detained as a form of "investigative detention" while the investigation is ongoing (Studnicki and Apol 2002: 520). Compelling material witnesses to testify (by arresting and/or detaining them) is arguably one of the least effective measures for obtaining useful evidence from a threatened witness. Since the method produces doubtful results (e.g., via arrest, investigative hearings), it should be used with discretion (Dedel 2006: 32).

Protective measures can also be taken at the level of the courts. Some witnesses may be unable to testify freely if they are required to testify in open court in the usual manner. Measures may be taken by the courts to restrict public access to the witness's identity or testimony through a number of measures, including having a witness testify under a pseudonym; expunging names and identifying information from the court's public records; or having all members of the public, including members of the media, excluded from the courtroom during the testimony of a witness. The use of screens, closed-circuit television and video links are the main methods by which a witness, while testifying, can be protected from the accused. The Supreme Court of Canada has recognized that limitations on public access to the identity or testimony of a witness can assist the administration of justice in a number of ways.[34]

The use of practical measures such as videoconferencing, teleconferencing, voice and face distortion, and other similar techniques is also encouraged (ISISC-OPCO-

[34] See: C.B.C. v. Dagenais 94 C.C.C. (3d) 289 (S.C.C.), 1994, at 320-321.

EUROPOL 2005, Nijboer 1999), as well as allowing witnesses to conceal their address or occupation. In France, for example, some witnesses (those who can contribute an important element of evidence and were not involved in the offence) may be allowed to testify without having to reveal their address. They are allowed to give the address of the police instead of their own (Laborde 2005, Lameyre and Cardoso 2005: 150).

Procedural measures are also used to reduce the risk faced by witnesses. One of them consists of recognizing pre-trial statements**.** In most European countries, pre-trial statements given by witnesses and collaborators of justice are recognized as valid evidence in court, provided that the parties have the opportunity to participate in the examination of witnesses (Piacente 2006: 22). A report by a Council of Europe Group of Experts suggests that one may assume that, in a system where pre-trial statements of witnesses or testimonies of anonymous witnesses are generally regarded as valid evidence during proceedings, these procedures can provide effective protection of witnesses. The need for actual witness protection, it was argued, was probably lower under those circumstances, than when these procedures do not exist in the justice system (Council of Europe, 2004: 22).

Another promising procedural approach to witness protection consists of better managing the disclosure process and the risks that it represents to witnesses and potential witnesses.[35] Defense lawyers have a right to obtain witness statements at the time of disclosure, but these statements can eventually be used against witnesses and increase their vulnerability

In some cases, the law provides that a witness may be heard in the absence of the defendant, in order to prevent both direct verbal or physical threats to the witness as well as more subtle intimidation by the defendant, such as ominous looks or gestures (Council of Europe 2004a: 20). Another form of procedural protection for witnesses is sometimes available, even if quite controversial; in some countries, it is possible to use statements of

[35] For instance, the ICTY considers delaying the disclosure of witness identity prior to trial as a measure that can be taken by the court to achieve the appropriate level of protection for a particular witness.

anonymous witnesses as evidence in court although, generally speaking, convictions may not be based on anonymous testimony alone. This is usually limited to cases where there is reason to believe that the witness would be seriously endangered. In many European countries, in exceptional circumstances and in accordance with European human rights law, anonymity of persons who provide evidence in criminal proceedings may be granted, in order to prevent their identification. The European Court of Human Rights has often agreed to the legality of the use of anonymous informants during preliminary investigations, but it has also emphasized that the use of the information thus obtained at the trial presents a problem with respect to fairness. Even when permitted by law, the procedure for granting partial or full anonymity to a witness tends to be rarely used because of how, in practice, it can limit the admissibility of various elements of their testimony (Council of Europe 2004: 20).

Anonymous testimony raises obvious issues about the rights of the defendants to a fair trial Beresford 2000, Lusty 2002). For example, the European Court on Human Rights has set some limits on the use of anonymous testimony.[36] The judge must know the identity of the witness and have heard under oath the testimony and determined that it is credible, and must have considered the reasons for the request of anonymity; the interests of the defense must be weighed against those of the witnesses and the defendants and their counsel must have an opportunity to ask questions of the witness; a condemnation cannot be based on the strength of the testimony of that witness alone (Lameyre and Cardoso 2005: 152). The admissibility of such anonymous testimony depends, according to the European Court on Human Rights, on the circumstances of the case and three principles that emerge from case-law (Council of Europe 2006a).[37] Is anonymity justified for compelling reasons? Have the resulting limitations on the effective exercise of the rights of the defense been adequately compensated for? Was the conviction exclusively

---

[36] European Court on Human Rights, *Visser vs. The Netherlands*, 14 February 2002.

[37] The European Court of Human Rights, through its judgments, has played an important role by "establishing legal limits within which the battle against organized crime in Europe must be waged", in particular with respect to the use of undercover agents and anonymous witnesses. (Fijnaut, C. and L. Paoli (eds.) *Organized Crime in Europe -Concepts, Patterns and Control Policies in the European Union and Beyond.* (Dordrecht: Springer, 2004, p. 628).

or substantially based on such an anonymous testimony? Special rules on anonymity have been legislated in Belgium, France, Germany, the Netherlands, Moldova, and Finland (Piacente 2006: 19). In some of this legislation (e.g. Moldova), the testimony of an anonymous witness must be corroborated to be considered valid.

In the UK, the *Coroners and Justice Act 2009* came into effect on January 1, 2010 and replaced the *Criminal Evidence (Witness Anonymity) Act 2008*. Accordingly, the Director of the Crown Prosecution Service made available a Guidance which sets out how Crown prosecutors are expected to proceed with applications for witness anonymity. What is made very clear is that the use of an anonymous witness should only be considered where it is justified under the 2009 Act and "should be regarded as an exceptional measure of last practicable resort."[38] In other words, before witness anonymity should be granted, other statutory or protective measures must first be explored. These include, for example, having the statement of a witness read, screening the witness from the accused, applying for reporting restrictions, and other safeguards normally provided by police witness protection schemes. This ensures that the defendant's right to a fair trial is duly respected, and where witness anonymity orders are considered, the Crown Prosecutor must ensure that the police have obtained sufficient additional corroborative evidence.[39] Where an

---

[38] *The Director's Guidance on Witness Anonymity*, p. 24. It can be accessed online at: http://www.cps.gov.uk/publications/directors_guidance/witness_anonymity.html#a01

[39] As a first step, Police (or relevant agents) investigating a criminal offence must provide the Crown Prosecution Service (CPS) with sensitive documentation, including the Superintendent's request for a witness anonymity application, a full evidential statement from the witness (giving their true identity), a redacted version which does not reveal their identity, a witness statement outlining their fear of giving evidence and justifying their request for anonymity, as well as a comprehensive police risk assessment. While these procedures are modified slightly where the witness is involved in the investigation of criminal offences (such as for police officers), it nevertheless remains that the onus is on the prosecution to ensure that the defendant receives a fair trial. Thus, the credibility and reliability of the witness needs to be objectively verified through comprehensive background checks and an examination of any relationships existing between the witness and the defendant, as well as with other witnesses. Considerations include whether the witness' evidence could be tested without disclosing their identity and identifying any motives which might cause the witness to be dishonest. It is the Crown Prosecutor who is responsible for ensuring that the witness' fear of being identified by the defendant is "reasonable" and that sufficient evidence exists to satisfy the essential conditions outlines in the Act.

anonymity order is granted, the prosecution is responsible for providing the defence with as much information as possible in order to enable effective cross-examination.[40]

4.2 Rights of Victims

Victims of crime are frequently called upon to testify and have a right to be protected against intimidation, violence and retaliation. Their situation rarely justifies entering into a witness protection program, but there are cases where this option may be deemed necessary. The situation if victims of human trafficking who are often facing considerable intimidation and violence by criminal groups is a case in point (IOM 2003, UNODC 2006). Other people who are witnesses of a crime but not called to testify may also be subject to threats and intimidation to prevent them from sharing what they know with the authorities. Regardless of their immediate usefulness to the investigation or the prosecution, victims and witnesses should have access to adequate protection against those who are threatening them.

There are several other issues concerning innocent witnesses/victims which require more attention. For example, the rights of children witnesses and the ability of current mechanisms to protect them, the question of protecting victims/witnesses involved in cases of police misconducts, and the question of protecting witnesses for the defence are rarely discussed.

4.3 Rights of Protected Witnesses

The position of witnesses in most criminal justice systems around the world revolves around responsibilities rather than rights (Moody 2005). When it comes to collaborators of justice and informants, their rights are generally limited to what they can negotiate with the authorities, obviously from a disadvantaged position. A recent training manual published by the Council of Europe (Council of Europe 2006b: 16) reminds its readers

[40] The CPS has established a register and will maintain records of all cases in which an application for a witness anonymity order is made, including on what grounds the order was sought, the outcome of the application and any reasons given by the court.

that criminal law must be sensitive to the specific needs of persons who are subject to the civic duty of providing testimony:

> "Prescribing the duty of a witness to give a statement implies that the government has to take responsibility for making the fulfillment of such obligation free from any threat to the witness' own values – his life, bodily integrity, family or property. Therefore, this responsibility to the state may be seen as the right of the witness to fulfill his obligation to testify freely, meaning without any influence on his statement, without damage and without risk for the witness."

There is an apparent imbalance between the "rights" of witnesses, who can be compelled to testify, and the "rights" of the State to demand that witnesses respond to summons and subpoenas, testify under oath, and tell the truth (Council of Europe 2006b). The imbalance is particularly troubling when one considers that most of the decisions made about witnesses, the information or evidence they provide, or whether or not they are compelled to testify depend on police and prosecutorial discretion which is generally not open to public scrutiny. This is why guidelines concerning these practices are important and why the careful monitoring of this somewhat obscure part of the criminal justice process is required. In brief, notwithstanding the legitimate legal, public safety, security, confidentiality, and privacy considerations that must equally be addressed, it is imperative that some greater transparency be introduced with respect to decisions made concerning the granting of witness protection, the denial of protection in certain cases, as well as the general use of informants and collaborators of justice. It is also important to ensure that witnesses have access to legal advice and representation with respect to these decisions and the processes that lead to them.

In Canada, the Standing Committee (Standing Committee on Public Safety and National Security 2008: 28) which reviewed the witness protection program recommended that:

> (...) the *Witness Protection Program Act* be amended so that potential candidates are automatically offered the aid of legal counsel with an appropriate security clearance during the negotiation of the candidate's

> admission to the Witness Protection Program and the signing of the protection contract. The fees of such counsel should be paid by the independent Office responsible for witness protection at the Department of Justice.

The Standing Committee (Standing Committee on Public Safety and National Security 2008: 31) also recommended that:

> (…) the *Witness Protection Program Act* be amended to make the Commission for Public Complaints Against the RCMP responsible for handling complaints from candidates for, and protectees of, the Witness Protection Program. The Commission should have access to all documents it considers necessary for carrying out its review effectively, with the exception of Cabinet confidences subject to the appropriate safeguards. The Committee considers that candidates and protectees should be systematically informed of this recourse during negotiations for their admission to the Program.

Some protection measures are also necessary when a witness is being detained. Witnesses who are incarcerated can be particularly vulnerable. Their protection poses some distinct challenges to the authorities (Boisvert 2005: 16). In a review of current practices with respect to "jailhouse witnesses", a report prepared for the Los Angeles County District Attorney's Office refers to a number of challenges that can be encountered in trying to ensure the safety of incarcerated witnesses and prevent their intimidation by criminal elements (Cooley 2004). Some of the most frequent ones come from the presence in the institution of other inmates who want to prevent them from testifying or who may themselves intimidate or harm the witnesses. Co-mingling of protected witnesses with general inmate population inmates is generally inadvisable. This should also apply during transportation to court or in court lockups in order to minimize the opportunities for violence, threats, and intimidation. Witness-safety issues around communication with the outside world (telephone, letters) and visits must be examined carefully. Weaknesses in information management systems, either at the institution or at the court level, can

significantly add to the risks faced by protected witnesses. Dangerous mistakes can also occur because of poor communication between prison authorities and professionals from other agencies who share a responsibility for the protection of witnesses (Cooley 2004).

Intimidation of protected witnesses who are detained can be very hard to detect, particularly when it occurs indirectly. There is often a need to take measures to protect the families of custodial witnesses (Australia, 1998). In some instances, the corruption or the intimidation of prison personnel can introduce a huge element of risk for the witnesses who are being detained. It is therefore often necessary to limit the circle of individual staff members who have access to the protected inmates and to information about them. In some cases, detained witnesses may be transferred to another province/state or country for their protection, provided that the necessary agreements exist between the jurisdictions.[41]

Because protected witnesses serving a sentence of imprisonment must do so under harsher circumstances than would otherwise be the case, their situation sometimes receives special consideration at the time of making parole or release decisions (Australia 1988). At times, special arrangements concerning their supervision on probation or parole must be made. Protected witnesses serving a prison sentence must be given clear assurance as to the arrangements proposed for their protection upon release (Australia 1988: xv).

4.4 Thematic Review of Media Reports

The secretive nature of witness protection programs has received regular media attention over the past decade; as more countries enact their own protection schemes public opinion slowly reveals itself through a variety of media sources and editorials. Media reports in those countries with well-established programs such as Canada, the United

---

[41] In some jurisdictions, correctional authorities have established a special "witness protection unit" with special security measures and better quality of accommodation for inmates. It is also possible to have alternative housing and transportation options for endangered witnesses. No matter where these protected witnesses are being held, it is usually necessary to limit their mobility within the institution and to minimize contact between them and other inmates.

States, the United Kingdom, Australia, New Zealand and Ireland tend to focus on criticizing program failures. However, in countries such as Israel, India, Colombia and Mexico, media coverage has been more concerned with highlighting the need for such programs in order to cope with growing organized crime. Similarly, in Kenya, Jamaica and South Africa, attention has been on bolstering the programs which were recently put in place in order to strengthen their respective criminal justice systems. Despite these differences there are nevertheless three main recurring themes which seem to emerge from selected media sources: (a) the ethical dilemma of using taxpayer money to protect witnesses who are criminals; (b) the notion that criminals are protected at the expense of public safety, calling into question a lack of public accountability; and (c) concerns over whether protection programs are reliable.

4.5 Criminals as the Principal Beneficiaries of Witness Protection Programs

As some media reports have been quick to point out, the costs of running effective witness protection programs is justified when courageous witnesses risk their own security in order to give evidence against dangerous criminals. However, as one Sunday Telegraph article highlights, "increasingly it is not witnesses who are benefiting from receiving new identities, paid for by the public purse, but murderers and those convicted of serious crimes."[42] Media attention in the UK has recently highlighted the fact that convicted criminals and their accomplices are able to use the1998 *Human Rights Act* to argue that their lives are threatened enough by vigilante groups to entitle them to witness protection after their release from prison.[43] It has been revealed that the couple convicted of murdering "Baby Peter" will likely disappear into the country's witness protection program after hate groups surfaced on social media sites such as Facebook and MySpace. As the article explains, it is the seriousness of these threats which makes this possible and

---

[42] Craig, O. "The criminals' new lives that cost us millions." *The Sunday Telegraph (London).* August 16, 2009. p. 18.

[43] Ibid.

"worryingly, the new communities and neighbourhoods into which they integrate will know nothing of their heinous crimes."[44]

Newspaper articles in Ireland have also focused on the fact that its witness protection program tends to favour criminals, albeit for different reasons. On one hand it needs to be acknowledged that the police program was established to protect those whose testimony could be used to convict serious criminals. Thus, eligibility criteria have catered to witnesses with inside information into gangs and other organized criminal groups. The most notable example is the successful prosecution of John Gilligan since his drug conviction was achieved primarily because of accomplice evidence.[45] In this regard, public information sources are also critical of the idea that some witness protection programs not only support witnesses willing to testify against their former colleagues, but effectively provide criminals with incentives since they will likely be able to evade prosecution for their own crimes and possibly benefit financially.[46] Such is the case in Canada of Mubin Shaikh who reportedly requested a $2.4-million raise from the RCMP after agreeing to spy on the "Toronto 18" for $300,000. The issue can be clearly summed up in the words of the defense lawyer for one of the accused, namely that "[y]ou have to be concerned about the motives of an informant whose sole source of income has been taxpayer money…and if Mr. Shaikh is asking for more money, then it causes further concern that his sole motivation in giving evidence is financial rewards."[47]

However, as at least one media report has explained, despite the fact that witness security schemes such as the one existing in Ireland aim to obtain accomplice evidence in organized crime cases, the very nature of witness protection programs generally are to blame for favouring criminal witnesses. "The witnesses must be willing to be relocated,

---

[44] Ibid.

[45] Coulter, C. "Protection a high price for witnesses to pay: Would the witness protection programme have changed the course of the Liam Keane trial, asks Carol Coulter, Legal Affairs Correspondent." *The Irish Times.* November 8, 2003. p. 50; Collins, L. (2005). "Witness Scheme Vital in Fight Against Crime". *The Sunday Independent.* November 27, 2005.

[46] Coulter, C. "Protection a high price for witnesses to pay".

[47] Friscolanti, M. "$2.4 Million Raise?" *Maclean's.* Toronto: August 4-August 18, 2008. Vol. 121, Iss. 30-31, pp.18-19.

breaking links with families, communities and friends. While this might be an acceptable option for an individual faced with the alternative of a jail sentence, it is likely to be less attractive to someone who has no involvement in criminal activity and wants to live a normal life."[48]

4.6 Protecting Criminals at the Expense of Public Safety

New Zealand media reports in July 2008 were monopolized by articles concerned with the death of Debbie Ashton who was killed in a car crash by a criminal who had recently received a new identity under the country's witness protection program.[49] Despite a long list of convictions under a different name, Jonathan Allan Barclay was treated as a first time offender when he appeared in court on a drunk-driving charge since the judge was unaware that he was in the program.[50] An inquiry was later launched, culminating in a Ministerial report which identified systematic inadequacies within the Police and Corrections Departments which have since been addressed. Importantly, all offenders on the program are now put on an Offender Warning Register, and an electronic monitoring system is also in place to ensure that the Witness Protection Unit will be immediately alerted if contact is made between police and a protected witness.[51] Nevertheless, media coverage was quick to highlight that a criminal was protected at the expense of an innocent victim.[52] It is clear that New Zealand has been struggling with striking an acceptable balance between protecting the "covert nature" of their program and ensuring public safety.

A similar debate has taken place in Canada following a Globe and Mail story on Richard Young, also known as Agent E8060, an RCMP informant who was admitted to the

---

48 Coulter, C. (2003). "Protection a high price for witnesses to pay".

49 "Justice perverted, says mother; Woman killed by protected witness." *The Press (Christchurch, New Zealand).* July 10, 2008. pp. 3; "Another victim of a flawed system." *The Dominion Post (Wellington- New Zealand).* July 10, 2008; "Inexcusable fatal crash driver on parole- Goff." *The New Zealand Herald.* July 9, 2008.

50 "Another victim of a flawed system." *The Dominion Post (Wellington- New Zealand).* July 10, 2008

51 "Inexcusable fatal crash driver on parole- Goff." *The New Zealand Herald.* July 9, 2008.

52 "Justice perverted, says mother; Woman killed by protected witness." *The Press (Christchurch, New Zealand).* July 10, 2008. pp. 3

witness protection program and later committed murder.[53] Shortly thereafter, a 2007 Editorial in the Globe compared the secrecy laws in the United States and Canada, highlighting that provisions in Canadian law have ensured that the identity of Mr. Young will be protected for life so that even the family of the victim will not be privy to that information.[54] Interestingly, in the United States, the pasts of protected witnesses are made public if they commit a serious crime, which has sparked lawsuits, congressional hearings and demand for the government to justify the protection of certain mobsters and killers.[55] Naturally, the same Editorial criticized the RCMP argument "that allowing identities to be disclosed in cases of serious crime would 'bring the program down' by destroying the confidence of potential informants."[56] So, while the RCMP insist that Canada's *Witness Protection Program Act* "forces them to hide problem cases,"[57] media attention has concerned itself with pointing out that other witness protection programs such as the U.S. Federal program, as well as the provincial one in Quebec, have managed to persevere without such a provision. Also worth noting is that public opinion on the matter was so strong that Globe and Mail editor-in-chief Edward Greenspon wrote to the minister of Public Safety, Stockwell Day, suggesting that a civilian body be put in place to oversee the program.[58] What is clear is that in both Canada and New Zealand where laws prohibit revealing the identities of protected witnesses at all costs, media coverage has nevertheless done its part in exposing the possibility that this could threaten public security. In both instances, debates at all levels have taken place over whether or not the public has a right to know about the problems in the administration of their respective witness protection programs.

Is the Protection Provided by These Programs Enough?

---

53 "The excessive secrecy of witness protection." *The Globe and Mail.* April 7, 2007. A20;

54 "The excessive secrecy of witness protection." *The Globe and Mail.* April 7, 2007. A20

55 "Coming clean on witness protection." *The Globe and Mail.* Toronto: Tuesday June 5, 2007.

56 "The excessive secrecy of witness protection." *The Globe and Mail.* April 7, 2007. A20

57 "Coming clean on witness protection." *The Globe and Mail.* Toronto: Tuesday June 5, 2007.

58 "Day orders briefing on informant who conned RCMP." *The Globe and Mail.* A2, March 24, 2007

Many witnesses elect not to participate in witness protection programs for a variety of reasons, among them the knowledge that these programs are imperfect and the associated fear that this protection might fail. The media in Canada, Australia, Ireland and the United States have all included poignant articles about the difficulties faced by those living under new identities. In some cases, these have even highlighted the stories of those being 'kicked-out.'[59] In other words, it is clear that the programs are making headlines. Canadian police and politicians have expressed fears that fewer prospective witnesses are opting for the federal program because the rules are too strict,[60] the prospect of losing protection once it has been granted is also of great concern. This is particularly troubling when news reports detail cases where protected witnesses are injured and/or killed. In May 2004, Australian media paid close attention to the story of Terence Hodson and his wife who were murdered in their safe house after helping Victoria Police.[61] In April 2009, the Irish Times reported the story of Roy Collins who is believed to have been shot in a revenge killing after a family member gave evidence in court against a gangland member in 2005. Echoing the concerns over the safety of protected witnesses in other countries, the article bluntly asks, "If Roy Collins could be shot dead while his family was being given Garda protection, is anybody really safe?"[62]

It should be recognized that most witness protection programs and law enforcement agencies with which they are associated are understandably careful about the information they make public about current operations and methods. As it has been shown, the cases that are brought to the attention of the media tend to become public because of some kind of program failure which can bias the perception that people have of these programs. Having said this, a review of media reports across selected countries did not uncover any legitimate news articles in favour of abolishing witness protection schemes. In fact, media coverage in many countries such as India, Israel, Colombia, Mexico, Kenya, the

---

59 Rankin, J. "Living underground, in limbo." *The Toronto Star.* A06, March 31, 2006; Hughes, G. (2008). "Cops again fail to oust witness from program." *The Australian.* November 10, 2008. p. 5.

60 Ibid.

61 Nguyen, K., S. Shtargot and D. Gray. "Witness safety not 'guaranteed'." *The Age (Melbourne, Australia).* May 29, 2004. p. 2.

62 Lally, C. "Evidence that puts lives at risk." *The Irish Times.* April 18, 2009. p. 3.

Philippines and South Africa has been exclusively concerned with either the need for establishing a witness protection program, or else the need for strengthening and bolstering the one already in place.

4.7 International Cooperation

When a case requires international cooperation, differences in the law regulating the use of these investigation techniques or the use of collaborators of justice can hinder the efforts of the prosecution. Major efforts have been devoted to the implementation of the United Nations Convention against Transnational Organized Crime and other international cooperation initiatives to identify these obstacles and remedy the situation.

With a few regional exceptions, international cooperation in the field of covert investigations tends to take place in a quasi legal vacuum. Member States increasingly seek to provide a legal basis for judicial cooperation in criminal matters involving officers acting under cover or false identity[63] or with agents and informants. The International Bar Association's Task Force on International Terrorism has recognized the importance of law enforcement cooperation and recommended that States develop a multilateral convention on cooperation among law enforcement and intelligence agencies setting forth the means, methods, and limitations of such cooperation, including the protection of fundamental human rights (International Bar Association 2003: 140).

In Europe a major effort has been made to develop European legal instruments to set common criteria for the design and implementation of a set of effective legal and practical protection measures and assistance programs for different categories of witnesses, victims and collaborators of justice. The objective is to develop them while preserving an acceptable balance between the protection measures and the human rights and fundamental freedoms of all parties involved. There is no legally binding European legal instrument that specifically and comprehensively deals with witness protection.[64]

---

[63] For instance, the matter is dealt with in the new European Union's new convention on mutual legal assistance.

[64] For a summary of the various European legal instruments developed to date, see: Council of Europe 2006a, 2006b.

However, a number of significant Recommendations of the Committee of Ministers of the Council of Europe were adopted in order specifically to deal with witness protection and the rights of witnesses.[65]

The following measures have been found to support international collaboration in witness protection:

- Cooperation in evaluating the threat against a witness or victim;
- Prompt communication of information concerning potential threats and risks;
- Mutual assistance in relocating witnesses and ensuring their ongoing protection;[66]
- Protection of witnesses who are returning to a foreign country in order to testify, and collaboration in the safe repatriation of these witnesses;
- Use of modern means of telecommunications to facilitate simultaneous examination of protected witnesses while safeguarding the rights of the defence;
- Establishing regular communication channels between witness protection program managers;
- Providing technical assistance and encouraging the exchange of trainers and training programs for victim protection officials;
- Developing cost-sharing agreements for joint victim protection initiatives; and
- Developing agreements and protocols for the exchange of witnesses who are prisoners.

---

[65] For example: Council of Europe. Committee of Ministers Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice. Strasbourg: Council of Europe. See also: Council of Europe (2005). Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice. Explanatory Report. Strasbourg: Council of Europe.

[66] International cooperation in this area, as noted by a best practice survey conducted by the Council of Europe, "is highly important, since many Member States are too small to guarantee safety for witnesses at risk who are relocated within their borders" (Council of Europe 2004: 15).

The cost of protecting a foreign witness abroad is usually borne by the authorities of the sending country. Cooperation among national protection services at the international level is considered to be quite good. Nevertheless, there are still very few countries that have entered into international (bilateral or multilateral) agreements for the protection of witnesses and collaborators of justice. In Canada, the Solicitor General of Canada may enter into a reciprocal agreement with another State to admit foreign nationals into the witness protection program.[67] In Europe, a European Liaison Network under the aegis of Europol has existed since 2000 to facilitate cooperation in witness protection. Non-European countries, such as Canada, Australia, New Zealand, South Africa, and the USA have also joined the initiative (Di Legami 2005: 2).

Europol has developed two documents: "Basic principles of European Union police co-operation in the field of witness protection," and "Common Criteria for taking a witness into a Protection Programme." It also offers training annually on "witness protection" and the "handling of informants".

Small states often face some special difficulties in offering effective protection to witnesses. Members States of the Caribbean Community, for example, have established a "Regional Justice Protection Agreement" (CARICOM 1999) outlining the need to prevent any interference in the administration of justice by the intimidation or elimination of witnesses, jurors, judicial and legal officers, and law enforcement personnel and their associates. The agreement also provides for the establishment of a regional centre to administer the cooperation program.

5 Performance Measurement and Accountability

The use of informants and witness protection programs raises many issues of accountability (Fyfe 2001: 65, South 2001). Because of the secrecy that must surround these activities, there sometimes seems to be very little room left for proper accountability or oversight mechanisms. Even the financial accountability of the police-based programs tends to be problematic as it is hard to obtain information on the cost of

[67] *Witness Protection Program Act* (S.C. 1996, c. 15, s. 14 (2)). (See also: Lacko 2004).

the programs, the amount spent on particular cases, and the compensation offered to informants and witnesses. Countries vary in terms of the measures that they have in place to hold to account those responsible for these programs (Brouwer 2005). In many countries, including Canada, an annual report must be submitted to Parliament (or another public authority). Several countries require their programs to publish a report on their activities (Fyfe and Sheptycki 2005: 33). However, none of these arrangements is completely satisfying from the point of view of public accountability.

5.1 Emerging Standards and Accepted Best Practices

There are no internationally accepted formal standards for witness protection. Several guiding principles have been articulated over the last decade by the Council of Europe (Council of Europe 2005). Some of them are referred to in the present review. The UNODC has also published a handbook on good practices for the protection of witnesses in criminal proceedings involving organized crime (UNODC 2008). As mentioned earlier, at least two major United Nations conventions, against organized and against corruption, call for the development of witness protection measures and for greater international collaboration in witness protection.

5.2 Measuring Program Performance

Ineffective protection measures can affect the outcome of prosecutions and trials, and affect public confidence in the efficacy and fairness of the courts (Brouwer 2005). There is very little research on the effectiveness of these programs, and the evidence relating to their cost effectiveness is limited. However, the general perception seems to be that these programs are successful in obtaining the collaboration of informants as witnesses and, when they do, in securing convictions (Fyfe and Sheptycki 2005: 27).

The three national programs reviewed in the Council of Europe survey of best practices (Council of Europe 2004) were apparently very effective: not a single participant or relative of a protected witness has been victim of an attack by the source of the threat. According to the study: “The effectiveness is underlined by the fact that there have been attacks, some of them fatal, on relatives not participating in a protection programme and

on witnesses who chose to leave the programme at a moment when the responsible protection agency did not consider the situation safe" (Council of Europe 2004: 40). In all three cases, serious attempts by criminals to trace protected witnesses were documented. In some instances, it became necessary to relocate the participants and their relatives a second time. Exact figures on the number of convictions gained on the basis of statements made by protected witnesses were not available in any of the countries studied. As the study cautioned, "successes in the combating of organized crime should not be attributed to witness protection measures alone but to the combination of a witness protection programme and a system of regulations concerning the collaboration of co-defendants with the justice authorities" (Council of Europe 2004: 40).

In the rare cases where it was possible to interview protected witnesses after their relocation, these usually indicated that, without protection measures, they would not have agreed to or have been able to testify (Australia 1988: 18). Then again, witnesses seldom regard giving evidence as a positive or satisfying experience.

Satisfaction of participants in a protection program is rarely measured systematically. A rare exception to this is the survey of 300 witness security program participants in the US by the Office of the Inspector General, which apparently revealed that the great majority of respondents agreed that adequate measures had been taken to ensure their protection (United States Department of Justice 2005).

5.3 Existing Evaluations

Very few systematic evaluations of witness protection programs have been conducted. In addition, to the very instructive audit conducted by the United States by the Office of the Inspector general (United States Department of Justice 2005), we can note a study conducted in England which evaluated the Strathclyde Police witness protection program, including interviews with 14 protected witnesses. It is the only police force in the U.K. to have a formal witness protection program (Fyfe and McKay 2000: 296). The witnesses complained of mental distress and there was evidence that their experience had seriously affected their mental health (Fyfe and McKay 2000: 298). In terms of witness

intimidation, it was unclear what signals relocation sends to intimidators. Witness relocation "may reinforce the problem of intimidation by demonstrating the power of intimidators to 'purify' communities of those viewed as 'grasses'[68] because of their cooperation with the criminal justice system" (Fyfe and McKay 2000: 298).

The few attempts made to assess the effectiveness of existing witness protection programs have assessed the outcomes of the programs mainly in terms of the physical security of witnesses (whether or not they were injured or attacked while in the program) and their participation in the legal process (including whether their participation led to a conviction of the accused). However, as Fyfe and Sheptycki convincingly argued, evaluations of witness protection programs should not only look at conviction and witness safety/satisfaction data but also at other aspects of the programs and their potential impact, whether intended or unintended (Fyfe and Sheptycki 2005: 28).

Having reviewed existing data, Fyfe and Sheptycki concluded that, in spite of claims that are frequently made about the cost-effectiveness of witness protection programs or, more generally, the use of criminal informants in criminal investigations and prosecutions, the evidence is far from conclusive. Expediency, they added, should not be confused with cost-effectiveness, particularly where some of the many negative effects of the use of criminal informants are weighed against the benefits of some current practices (Fyfe and Sheptycki 2005: 29).

5.4 Oversight Mechanisms

Regular police oversight mechanisms often seem to be inadequate for dealing with some of the complex accountability issues that arise out of various witness protection practices or the use of informants and agents.[69] Police complaint mechanisms are available to witnesses and these have been used only in few cases. In practice, because these

---

[68] In the U.K., "grass" and "supergrass" are slang terms for informers.

[69] In his testimony before the Standing Committee on Public Safety and National Security, the Chair of the Commission for Public Complaints Against the Royal Canadian Mounted Police, Mr. Paul Kennedy, noted the limitations of the current complaint process for protected witnesses, and the statutory obstacles to the Commission's access to the relevant information, Tuesday, May 29, 2007.

witnesses are still dependent on the police for their protection, existing mechanisms do not seem to offer satisfactory means of seeking and obtaining redress. Furthermore, witnesses who have entered a protection program usually have limited means of complaining about how they are treated without jeopardizing their new identity or exposing themselves to more danger.

In Victoria, Australia, a review of the witness protection program was initiated under the power of the Director of the Office of Police Integrity which has the authority to conduct inquiries on his own motion. The review acknowledged that witness protection activities must proceed in rigorous secrecy, but also argued that, if other aspects of the mandate of the program are to be performed effectively, there needs to be publicity and the dissemination of accurate general information; these two aspects need not be in conflict with each other (Brouwer 2005).

6 Additional Research

Several areas have been identified throughout this review which could benefit from additional empirical research. In particular, studies on witness intimidation and failed prosecutions as a result of intimidation or suppression of witnesses could be useful. This could be accomplished by gathering data from police or prosecutorial files, as well as through interviews with prosecutors (or another form of survey). It could be part of a broader study of the nature and prevalence of witness intimidation, jury tempering and other forms of obstruction of justice. A legal study of cases involving prosecutions for obstruction of justice would help us understand whether the full power of the criminal law is brought to bear on such cases; a review of sentencing patterns in such cases would likely be useful as well.

The experience of criminal investigators in using informants and agents and securing their cooperation is also something that would deserve further attention. Also of interest would be a review of existing threat assessment practices in various police forces and their relation to decisions made with respect to witness protection and the use of informants.

In terms of the witness protection programs themselves, an empirical review of all agreements and program decisions made during a given period of time, although complicated, could be possible. In particular, it would be important to conduct a review of cases where decisions were made not to admit an individual in the program or to terminate his/her participation in the program. This could include a review of cases where complaints have been lodged against the program or appeals have made of the program decisions. A properly designed survey of protected witnesses, administered through their protection officers, would also provide a rare opportunity to describe more systematically the experience of these individuals and their experience of the protection program.

Given the number of independent programs now in existence in the country, research could assist in understanding the relationship between these programs and help identify potential duplications or cost ineffectiveness. The question of whether protected witnesses are really making a difference in terms of the success of key investigations or prosecutions is certainly one which comes immediately to mind.

An attempt should also be made, perhaps in collaboration with countries with similar witness protection programs, to develop some standard performance indicators for such programs. In fact, a proper evaluation, including a cost effectiveness analysis, of the federal program is probably overdue.

References

Abdel-Monem, Tarik. 2003. Foreign nationals in the United States witness security program: A remedy for every wrong? The American Criminal Law Review 40, 3: 1235-1269.

Alexander, Richard. 2004. The role of whistleblowers in the fight against economic crime. Journal of Financial Crime, 12, 2:131-138.

Allum, Felia and Nicholas Fyfe. 2008. Developments in state witness protection programmes: the Italian experience in an international comparative perspective. Policing: A Journal of Policy and Practice 2, 1: 92-102.

Amnesty International. *Philippines: Witness Protection Needed to Ensure Justice for Victims of Massacre.* 26 November 2009.

Australia. Australian Federal Police. *Witness Protection Annual Report 2008-09.* Canberra: Commonwealth of Australia, 2009.

Australia. Parliamentary Joint Committee on the National Crime Authority. *Witness Protection*. Canberra: Australian Government Publishing Service, 1988.

Australia. Victorian Legislation and Parliamentary Documents. *Witness Protection Act 1991.* Act. No 15, 1991. (Version 30 October, 2009).

Australian Federal Police . *Witness Protection Annual Report 2008-09.* 2009.

Bauer, Robert, Hasler, Carrie, Myrent, Mark, Przybylski, Roger, Ramker, Gerard, and Jeff Travis. *An Evaluation of the Illinois State Police Gang Crime Witness Protection Program*. Chicago: Research and Analysis Unit, Illinois Criminal Justice Information Authority, 1997.

Beernaert, Marie-Aude. 2003. De l'irrésistible ascension des 'repentis' et 'collaborateurs de Justice' dans le système pénal. Déviance et Société, 27, 1: 77-91.

Beresford, Stuart. 2000. The New Zealand Approach to Witness Anonymity and the Right to a Fair Trial. Canterbury Law Review, 7, 3 (2000), pp. 465-486.

Boisvert, A.M. *La protection des collaborateurs de la justice: éléments de mise à jour de la politique québécoise* – Rapport final présenté au ministre de la Sécurité publique. Québec: Juin 2005.

Borum, Randy, Fein, Robert, Vossekuil, Bryan, and John Berglund. 1999. Threat assessment: defining an approach for evaluating risk of targeted violence. Behavioural Sciences and the Law, 17: 323-337.

Brodeur, Jean-Paul and Fabien Jobard, eds. *Citoyens et délateurs: la délation peut-elle être civique?* Paris: Éditions Autrement, 2005.

Brouwer, G.E. *Review of the Victoria Police Witness Protection Program.* Report of the Director of the Office of Police Integrity. Melbourne: Victorian Government Printer, P.OP. No. 145, 2005.

Bruce, David. 2005. Danger, Threats or Just Fear: Witness intimidation in three Gauteng courts. South African Crime Quarterly, 13: 23-28.

Burton, Mandy, Evans, Roger, and Andrew Sanders. 2007. Vulnerable and intimidated witnesses and the adversarial process in England and Wales. International Journal of Evidence and Proof, 11, 1: 1-23.

Canada. *Witness Protection Program Act, S.C. 1996, C.15.*

Canada. Immigration and Refugee Board of Canada. *Philippines: Crime, Police Effectiveness and State Response, Including Witness Protection (2005-2007).* March 14, 2008. Available at: http://www.unhcr.org/refworld/type,QUERYRESPONSE,,PHL,4804c0dcc,0.html

Canada. Public Safety Canada. *Witness Protection Program Act - Annual Report: 2008-09.* Ottawa: Public Safety Canada, 2009.

CARICOM. *Agreement establishing the Regional Justice Protection Programme.* Georgetown, Guyana: Caribbean Community Secretariat, 1999. Available at: http://www.caricom.org/jsp/archives/justiceprotection.htm

Clark, Roy. "Informers and Corruption", in Nemitz, T. R. and P.T. Bean, eds. *Informers: Policing, Policy, Practice*. Portland: Willan Publishing, 2001, pp. 38-49.

Cooley, Steve. *Jailhouse Witness Protection Task Force: Final Report*. Los Angeles: District Attorney's Office, August 2004.

Council of Europe. *Report on Witness Protection (Best Practice Survey)*. Strasbourg: European Committee on Crime Problems, Committee of Experts on Criminal Law and Criminological Aspects of Organized Crime, March 24 1999.

—. *Combating Organised Crime: Best Practices Survey of the Council of Europe.* Octopus Programme. Strasbourg: Council of Europe Publishing, 2004.

—. *Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice*. Strasbourg: Council of Europe, 2005.

—. *Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice*. *Explanatory Report.* Strasbourg: Council of Europe, 2005.

—. European Committee on Crime Problems (CDPC). *Draft Recommendation Rec(2005) on the Protection of Witnesses and Collaborators of Justice. Explanatory Memorandum*. Strasbourg: Council of Europe, 2005.

—. *Terrorism: Protection of Witnesses and Collaborators of Justice*. Strasbourg: Council of Europe Publishing, 2006a.

—. *Protecting Witnesses of Serious Crime – Training Manual for Law Enforcement and Judiciary.* Strasbourg: Council of Europe Publishing, 2006b.

Dandurand, Yvon. 2007. Strategies and practical measures to strengthen the capacity of prosecution services in dealing with transnational organized crime, terrorism and corruption. Crime, Law and Social Change, 47:225-246.

—. 2008. *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*. A report prepared for the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Ottawa.

Dandurand, Yvon, Colombo, Gherardo, and Nikos Passas. 2007. Measures and mechanisms to strengthen international cooperation among prosecution services. Crime Law and Social Change, 47:261-289.

Dedel, Kelly. *Witness Intimidation. Problem-Oriented Guides for Police Series*, No. 42. Washington: United States Department of Justice, Office of Community Oriented Policing Services, July 2006.

Fein, Robert A., Vossekuil, Bryan and Gwen A. Holden. *Threat Assessment: An Approach To Prevent Targeted Violence*.NIJ Research in Action. Washington, National Institute of Justice, 1995.

Fijnaut, Cyrille, and Litizia Paoli, eds. *Organized Crime in Europe -Concepts, Patterns and Control Policies in the European Union and Beyond.* Dordrecht: Springer, 2004.

Finn, Peter, and Kerry Murphy Healey. *Preventing Gang- and Drug- Related Witness Intimidation*. Washington: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1996.

Fyfe, Nicholas. *Protecting Intimidated Witnesses*. Hampshire: Ashgate Publishing Limited, 2001.

Fyfe, Nicholas, and Heather McKay. *Making it safe to speak? A study of witness intimidation and protection in Strathclyde.* The Scottish Office, 1998. Available at: http://www.scotland.gov.uk/Publications/1998/12/227b1d70-80ca-4cf9-9105-3434f1b17f39

—. 2000. Police protection of intimidated witnesses: A study of the Strathclyde police witness protection programme. Policing and Society, 10: 277-299.

—. 2000. Desperately seeking safety: witnesses' experiences of intimidation, protection and relocation. British Journal of Criminology, 40: 675-691.

Fyfe, Nicholas, and James Sheptycki. *Facilitating Witness Co-operation in Organised Crime Cases: An International Review* (Home Office Online Report 27/05). London: Home Office, 2005.

—. (2006) International trends in the facilitation of witness co-operation in organized crime cases. European Journal of Criminology, 3,3: 319-355.

Gagnon, Claudine. 2009. *L'intimidation envers les policiers du Québec*. Montréal : Centre International de Criminologie Comparée.

Graham, Michael H. *Witness Intimidation – The Law's Response.* Westport: Quorum Books, 1985.

Greer, Steven. "Where the Grass is Greener? Supergrasses in Comparative Perspective", in Billingsley, R., Nemitz, T., and P. Bean, eds. *Informers: Policing, Policy, Practice*. Portland: Willan Publishing, 2001, pp.123-140.

Harris, George C. 2000. Testimony for Sale: The Law and Ethics of Snitches and Experts. Pepperdine Law Review, 28, 1: 1-74.

Healey, Kerry Murphy. *Victim and Witness Intimidation: New Developments and Emerging Responses*. Washington: U.S. Department of Justice, National Institute of Justice, October 1995.

Heijden, Toon van der. *Witness Protection Programmes Compared*. A paper presented at the Second World Conference on the Investigation of Crime: Modern Criminal Investigation, Organized Crime and Human Rights. Durban: December 3-7, 2001.

Hughes, Gary. 2008. "Cops again fail to oust witness from program." *The Australian.* November 10, 2008.

IIan, Shahar. "As Knesset approves bill, witness protection program makes aliyah." *Haaretz.com (Online).* November 4, 2008.

International Criminal Defence Attorneys Association. *Protection of Witnesses.* Position Paper presented during the United Nations Preparatory Conference on ICC Rules of Procedure and Evidence, July 15; July 26 - 13 August 1999.

IOM. *Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries*. Geneva: International Organization for Migration, 2003.

ISISC-OPCO-EUROPOL. *Harmonisation of Witness Protection Legislation - Final proposal of the ISISC-OPCO-Europol working group on minimum requirements for*

potential legislation at European Union level, Explanatory Report. Siracusa: International Institute of Higher Studies in Criminal Sciences, 2005.

Laborde, Jean-Paul. *État de droit et crime organisé.* Paris: Dalloz, 2005.

Lacko, Gregory. *The Protection of Witnesses*. Ottawa: The International Cooperation Group - Department of Justice Canada, 2004.

Lally, Conor. 2009. "Evidence that puts lives at risk." The Irish Times, April 18, 2009, p.3.

Lameyre, Xavier, and Maria Cardoso. La délation en droit pénal français, une pratique qui ne dit pas son nom", in Brodeur, Jean-Paul., and Fabien Jobard, eds. *Citoyens et délateurs – La délation peut-elle être civique?* Paris: Éditions Autrement, 2005, pp. 144-154.

Law Commission of India. *Consultation Paper on Witness Protection*. New Delhi: Law Commission of India, August 2004.

Law Commission of India. *198th Report of the Law Commission on 'Witness Identity Protection and Witness Protection Programme*. Delhi: Law Commission of India, 2006.

Lusty, David. 2002. Anonymous accusers: An historical and comparative analysis of secret witnesses in criminal trials. The Sydney Law Review, 24: 361-426.

Mackarel, Mark, Raitt, Fiona, and Susan Moody. *Briefing Paper on Legal Issues and Witness Protection in Criminal Cases*. Edinburgh: The Scottish Executive Central Research Unit, 2001.

Mallory, Stephen L. *Informants: Development and Management*. Nevada: Copperhouse Publishing, 2000.

Manning, Peter K., Redinger, Lawrence J., and Jay Williams. "Recruter, cibler et gérer les informateurs. Lutte antidrogue et crime organisé sur le continent américain", in Brodeur, Jean-Paul, and Fabien Jobard, eds. *Citoyens et délateurs : La délation peut-elle être civique?* Paris: Éditions Autrement, 2005, pp. 155-173.

Massachusetts Executive Office of Public Safety and Security. *The Commonwealth of Massachusetts Witness Protection Program: An Overview of Cases during Fiscal Year 2008.* May 2009.

Maynard, Warwick. *Witness Intimidation: Strategies for Prevention*. Crime Detection and Prevention Series, Paper No. 55. London: Home Office, Police Research Group, 1994.

Ministère de la Justice du Québec et Ministère de la Sécurité publique du Québec. *Rapport sur l'utilisation des témoins repentis en 1998*. Québec: Ministère de la justice. June 2000.

Moody, Sue. *Vulnerable Witnesses Rights and Responsibilities*. A paper presented at the 18th International Conference of the International Society for the Reform of Criminal Law. Edinburgh: June 2005.

New Zealand House of Representatives. *Parliamentary Debates.* 48th Parliament, 1st Session. Week 80, Volume 648 (22 July 2008): 17245-17246, 17251-17263.

New Zealand Police. "Joint Corrections- Police Release of the Ministerial Inquiry into Matters Relating to the Death of…" *New Zealand Police, News Centre (Online).* July 9, 2008. Available at: http://www.police.govt.nz/news/release/4106.html

Nijboer, J. 1999. Children and young persons in the criminal justice system: the Council of Europe recommendation on witness protection and rights of the defense. Criminal Law Forum, 10: 443-465.

Norris, Clive, and C. Dunnigham. 2001. Subterranean blues: conflict as an unintended consequence of the police use of informers. Policing and Society, 9: 385-412.

OAS. General Secretariat, Department of Legal Cooperation of the Secretariat for Legal Affairs. *Study on Cooperation on the Protection of Victims and Witnesses.* San Salvador: March 23, 2009.

OSCE. *Witness protection in Kosovo*. Organization for Security and Co-operation in Europe Mission in Kosovo, 2006. Available at: http://www.osce.org/documents/mik/2006/12/22703_en.pdf

OSCE. Presence in Albania Press Release. "OSCE, PAMECA Organize Training on Witness Protection for Albanian Officials". *Organization for Security and Co-operation in Europe (OSCE) website.* Tirana: May 25, 2007. Available at: http://www.osce.org/albania/item_1_24710.html

Piacente, Nicola. "Analytical Report", in Council of Europe, *Terrorism: Protection of Witnesses and Collaborators of Justice.* Strasbourg: Council of Europe, 2006, pp. 7-65.

Public Safety Canada. *Witness Protection Program Act - Annual Report: 2008-2009.*

Queensland Crime and Misconduct Commission. "Provide an Effective Witness Protection Service." *Crime and Misconduct Commission Annual Report 2008-09.* Brisbane, pp. 36-9.

Reid-Howie Associates. "Vulnerable and Intimidated Witnesses: Review of Provisions in Other Jurisdictions." *Central Research Unit Crime and Criminal Justice Research Findings No. 60.* Edinburgh: Scottish Executive, 2002.

Republic of Ireland. Department of Justice, Equality and Law Reform. "Speech on Private Members' Witness Protection Programme Bill 2007." October 31, 2007.

Republic of Kenya. The State Law Office (Office of the Attorney General). *The Witness Protection Act 2006 as Amended by the Witness Protection (Amendment) Bill 2008.*

Republic of the Philippines. Department of Justice (Online). "Witness Protection, Security and Benefit Program". June 3, 2008. Available at: http://www.doj.gov.ph/index.php?id1=4&id2=1&id3=0

Republic of the Philippines. Supreme Court E-Library (Online). *Republic Act* No. 6981. An Act Providing for a Witness Protection, Security and Benefit Program and for Other Purposes. April 24, 1991.

Republic of South Africa. Cape Gateway (Government Information Service Provider) (Online). *Witness Protection Act 112 of 1998.* November 19, 1998.

Republic of South Africa. National Prosecuting Authority. *Annual Report 2008/09.* August 2009.

Roadcap, Sarah. 2004. Obstruction of Justice. American Criminal Law Review, 41, 2: 911-945.

Schreiber, Amanda J. 2001. Dealing with the devil: an examination of the FBI's troubled relationship with its confidential informants. Columbia Journal of Law and Social Problems, 34, 4: 301-368.

Sénat Francais. Les repentis face à la justice pénale, Les documents de travail du Sénat. *Série Législation comparée, no LC 124*. Paris: Juin 2003.

Singer, Simon I. 1988. Fear of reprisal and the failure of victims to report a personal crime. Journal of Quantitative Criminology, 4, 3: 289-302.

Slate, Risdon N. 1997. The federal witness protection program: its evolution and continuing growing pains. Criminal Justice Ethics, 16, 2: 20-34.

South Africa. National Prosecuting Authority. *Annual Report 2008-09*. August 2009.

South Australia. *Witness Protection Act 1996.*

South, Nigel. "Informers, Agents and Accountability", in Billingsley, Roger, Nemitz, Teresa, and Philip Bean, eds. *Informers: Policing, Policy, Practice*. Portland: Willan Publishing, 2001, pp. 67-80.

Spencer, J., and M. Spencer. *Witness Protection and the Integrity of the Criminal Trial.* Paper presented at the Conference on Modern Criminal Investigation, Organized Crime and Human Rights. Durban: December 3 - 7, 2001.

Standing Committee on Public Safety and National Security. *Review of the Witness Protection Program - Report of the Standing Committee on Public Safety and National Security.* Ottawa: Communication Canada Publishing, 2008.

Studnicki, Stacy M., and John P. Apol. 2002. Witness detention and intimidation: the history and future of material witness law. St. John's Law Review, 76: 483-533.

Tak, Peter J. P. (1997). Deals with criminals: supergrasses, Crown witnesses and pentiti." European Journal of Crime, Criminal Law and Criminal Justice, 5, 1: 2-6.

Tarling, Roger, Dowds, Lizanne, and Tracey Budd. *Victim and Witness Intimidation: Findings from the British Crime Survey*. London: Home Office, Research, Development and Statistics Directorate, 2000.

Taylor, Chris. 2001. In the public Interest: public interest immunity and police informants. The Journal of Criminal Law, 65, 5: 435-447.

Turcotte, Mathilde. 2008. Shifts in police-informant negotiations. Global Crime, 9, 4: 291 – 305.

UNODC. *Model Witness Protection Bill* 2000. Vienna: United Nations Drug Control Programme, 2000.

UNODC. "Tools 5.12 and 5.13." *Toolkit to Combat Trafficking in Persons*. New York: United Nations, 2006.

UNODC. *Good practices for the protection of witnesses in criminal proceedings involving organized crime.* New York: United Nations, 2008.

UNODC. *Technical Guide to the United Nations Convention against Corruption.* New York: United Nations, 2009.

United States Department of Justice, Office of the Inspector General. *OIG Audit Report on the United States Marshals Service's (USMS) Administration of the Witness Security Program (WitSec Program: Executive Summary).* Washington: Office of the Inspector General, U.S. Department of Justice. March 2005.

Verhovek, Sam Howe, *Gang Intimidation of Witnesses is a Growing Problem.* San Diego: Greenhaven Press, 1996.

Williamson, Tom, and Peter Bagshaw. "The Ethics of Informer Handling", in Billingsley, Roger, Nemitz, Teresa, and Philip Bean, eds. *Informers: Policing, Policy, Practice*. Portland: Willan Publishing, 2001, pp. 50-66.

uation, including a cost effectiveness analysis, of the federal program is probably overdue.