Cour Pénale Internationale

International Criminal Court

Summary Report on the Seminar on Protection of Victims and Witnesses Appearing Before the International Criminal Court

Introduction

1. A Seminar on Protection of Victims and Witnesses was held on 24 November 2010 at the seat of the International Criminal Court (the "ICC" or the "Court") in The Hague. It was organised by ICC Registrar with financial support of Finland in order to present to States Parties the Court's protection system and to compare it with other national and international protection systems. The seminar was structured as a discussion forum in order to permit views exchange between the participants. Discussions took place on four major topics: international protection models; national protection models; relocation and resettlement agreements; and complementarity.

2. The seminar was attended by experts from international tribunals[1], international organizations[2], and national witness protection programs[3]. State parties representatives were also invited to attend and to present their views on the issues discussed.

1. First panel : International protection models

1.1. Start of Protection

3. Addressing the moment at which the protection of victims and witnesses should begin, the participants emphasized the need to protect the witnesses as of the start of the investigations. It was noted in that regard that the Prosecution has an important role to play as its investigators are the first ones in contact with victims and witnesses in the

[1] Staff members from the ICC (the Registry, the Office of the Prosecution ("OTP") and the Office of Public Counsel for the Defence ("OPCD")), the International Criminal Tribunal for Rwanda ("ICTR"), the International Criminal Tribunal for the former Yugoslavia ("ICTY"), the Special Tribunal for Lebanon ("STL"), and the Special Court for Sierra Leone ("SCSL") attended the seminar.

[2] Such as the United Nations High Commissioner for Refugees ("UNHCR"); the United Nations Office on Drugs and Crime ("UNODC") and the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo ("MONUSCO").

[3] Representatives from Italy, Netherlands, Belgium and the United Kingdom.

field. The involvement of the Units in charge of the protection of witnesses should start upon referral by one of the calling party.

4. In that regard, the SCSL representative advised that a Witnesses Unit should not engage in the implementation of protective measures before the Prosecution is absolutely convinced that the witness will in the future testify before the Court. The Witnesses Unit should only act after the referral by the Prosecution in order not to get involved in the investigations and, therefore, to maintain its neutrality.
5. The MONUSCO representative insisted on the leadership role that the ICC should play in convening international actors, including international organisations, non-governmental organisations ("NGOs") and national authorities to act in a coordinated way before any action is taken on the ground.

1.2. End of Protection

6. According to the ICC Victims and Witnesses Unit (the "VWU") the situation of relocated witnesses can be monitored by the Court as long as it is needed. However, the ultimate objective is to have these persons completely integrated in the society of the host states. There is no specific time-frame to reach such goal.
7. The ICTY representative explained that a definite timeframe for the protection programme duration cannot be set. In principle, the objective of relocation is to decrease the involvement of the Protection Unit with relocated witnesses as they integrate in new society. Nevertheless and although the ICTY has entered into its completion strategy, contacts with witnesses may be required to communicate with them at any point in the future.
8. As far as SCSL's exit strategy is concerned, a monitoring residual mechanism will be in place for relocated witnesses, with yearly (or more extensive periods) security assessments, until protection measures are deemed no longer required.
9. The same kind of residual mechanism allowing witnesses to remain within witnesses protection programme after completion of court procedures is considered by the ICTR. Besides, in ICTR's system of protection the participation of a witness in the protection programme can only be ended with the person's consent and the awareness of the Chamber and the referring party.
10. The STL concurred with the assertion that, once witnesses are relocated, the court's contact with them declines. From that stage, it is the host country that manages and monitors witnesses and informs the court in case any relevant issue arises. The STL also pointed out that it is extremely difficult to provide host countries with periodical threat assessments to justify the maintenance of the relocation. Therefore, relocation agreements have been modified to state that the STL is only obliged to inform host countries if there is a change in the risk assessment.

1.3. Protective measures

11. Tools such as relocation to third countries, internal resettlement, safe-houses, evaluation platforms, increased police patrols, initial response systems, best practices, and psychological care were mentioned by speakers and the participants elaborated further on their respective protection programmes.
12. The STL representative informed that its Rules of Procedure and Evidence contain a provision whereby a protection programme is defined for the first time within the system of an international criminal court[4].
13. The UNHCR representative described its practices of relocating[5] refugees and explained the use of "evaluation platforms", installed in partner countries where refugees (victims/witnesses) may remain for some time before being sheltered in a refugee programme in another country. He also shared its expertise in resettlement programmes for refugees and explained that, through such programmes assistance is provided by the States. At minimum, this includes accommodation, the right to work, the reunification of families, medical coverage, language training, access to psychological care programmes and special assistance for victims of torture.
14. According to ICTY's experience both refugee programmes and domestic witness protection programmes can be used for relocation purposes. In the majority of cases, witnesses enter into the host country through immigration or refugee procedures and only a very limited number of persons enter domestic protection programmes.
15. Concerning the funding of relocation, the ICTY representative explained that the costs related to the transportation of witnesses to host countries are covered by the tribunal. In addition, before the witnesses are relocated the tribunal provides necessary language and educational training that will help their integration in a new society. Any other costs can be borne by the host country. It was noted that host countries have provided ICTY witnesses with assistance services for periods from 1 to 5 years. However, the key objective is that the relocated persons are granted the host country citizenship which will allow them to return to their home countries if they desire to do so.
16. The ICTR representative explained its practice of resettling witnesses within the country where they reside. In such a model, the ICTR bears all the costs related to assistance and the resettlement. The participant's involvement in such a programme is reviewed every six months and may usually endure for one year, but can be extended for up to two years.

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[4] Special Tribunal for Lebanon – Rules of Procedure and Evidence, Article 166, as amended on 30 October 2009. The article reads: "[...] The Registrar shall establish a protection programme within the Victims and Witnesses Unit for the purpose of protecting individuals through relocation to Third States. The Registrar shall take all necessary measures to arrange relocation to Third States of individuals and their close relations who, following the determination by the Registrar, are at risk of imminent serious harm or death as a result of their interaction with the Tribunal. All procedures and administrative functions in relation to the Protection Programme shall remain confidential. [...].

[5] For the purposes of this document, "resettlement" is the removal of a victim/witness within a country, while "relocation" is the removal of a victim/witness to a third country. The UNHCR representative uses the term "resettlement" for the removal of a refugee (whether a victim or witness) to a third country.

17. The VWU emphasised the challenge of managing the expectations of witnesses and discouraged the use of intrusive methods of protection, such as relocation, which could increase the possibilities of psychological harm caused by the witnesses' interaction with the Court. ICC OTP stated that it was not in favour of removing witnesses out of the area where they live.

1.4. Vulnerability

18. ICC VWU developed a "Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses" for assessment and support of vulnerable witnesses[6]. Vulnerable witnesses are those persons who face an increased risk of being harmed due to the fact of being witnesses before the Court, being involved in the proceedings or having difficulties during their testimony. Several factors can contribute to witnesses' vulnerability, including: age (both the youth and the elderly); previous or ongoing personality problems; any disabilities; status of a victim of crimes (such as sexual crimes, being conscripted as a child-soldier or torture). Particular circumstances also have relevance. It was noted that witnesses may suffer as a consequence of being relocated or feel under pressure due to being a key witness for a calling party.
19. The VWU tries to quickly identify such persons, in collaboration with the calling party. As soon as they are identified, a series of vulnerability assessments may be planned and commenced. These assessments may occur at different times, being conducted by the VWU, and, if appropriate, in collaboration with the Children and Gender Unit of the OTP.
20. Last vulnerability assessment may be taken prior to testimony, as a result of which special measures may be recommended to be implemented in the courtroom for particular witness. These measures can include, *inter alia*: allocation of an in-court assistant, use of a screen to shield direct eye-contact between the accused and the witness, presence of a psychologist in the courtroom, or reduction of the number of persons in the courtroom.
21. The OTP commented that a person may already be traumatised before an investigative interview or be further traumatised by it. To avoid potential harm where the risk is identified, the OTP established the practice of conducting a preliminary psychological assessment (*i. e.* prior to the investigative interview). Furthermore, OTP investigators have received training on how to identify vulnerable witnesses. It was also reported that an examination of the investigators compliance to these practices is carried out afterwards. As soon as any relevant issue is detected, the OTP informs the VWU which may then take the appropriate measures.

[6] ICC-01/05-01/08-974-Anx2, 25 October 2010.

2. *Second panel: National protection models*

2.1. *The Netherlands*

22. The Netherlands' Public Prosecutor distinguished, at first, witnesses who testify before the Court and witnesses who fall within the Dutch protection programme. Whilst ICC witnesses are mostly "traumatised clients", the majority of protected witnesses in the Dutch system were stated to be criminals with relevant information for the investigations who have negotiated individual deals with case prosecutors.
23. A witness protection unit exists in The Netherlands since 1995. It is organised within the Ministry of Justice and is coordinated by prosecutors. According to the Public Prosecutor, the Dutch protection programme could be more independent, if conflicts amongst prosecutors concerning protection were not submitted to the same authority, namely the Procurer-General.
24. Prosecution and Defence witnesses are entitled to receive protection. However, the Dutch protection programme does not envisage protection of victims.

2.2. *Kenya and South Africa*

25. UNODC representative gave insights into the Kenyan and South African witness protection systems to participants.
26. The South African system started with the Truth and Reconciliation Commissions, being restructured between 1996 and 1998 and latterly in 2006.
27. In Kenya, victims are protected as long as they are witnesses, *i. e.* provided that they have testified before a tribunal or commission.
28. In relation to the organisation of protection programmes, the UNODC has advised countries in Africa to adopt autonomous and centralised systems, with special bodies responsible for protection enforcement.

2.3. *Italy*

29. The Head of the Liaison Bureau of Italy at the Europol spoke about Italian witness protection programme. In Italy a protection programme for cooperating witnesses has existed since 1991. Within Italian system, Public Prosecutors are the competent authorities to request protective measures. Public Prosecutors address a central commission, composed by members nominated by both the Minister of Justice and the Interior Minister. This commission is presided over by the Interior Deputy Minister and is composed of two judges and five law enforcement agency experts (the latter are normally specialists in organised crime). The commission is responsible for deciding whether protective measures will be granted or not. In urgent cases, the Police Chief can

also request implementation of special protective measures by the commission, after receiving the Public Prosecutor's acquiescence.

30. Italian protection system does not take into account Defence witnesses but only Prosecution witnesses and informants. Italian law of 2001 clearly distinguishes witnesses and informants, granting different protective measures for each category.
31. The Italian protection programme encompasses a set of measures such as protection, assistance and social integration of witnesses and their family members. It is not offered for an unlimited duration and normally finishes after the witnesses social integration is achieved. Initial protection measures include the provision of identification documents, employment and financial assistance. Central commission has local units responsible for physical protection measures and escort of witnesses to the place of testimony, provision of medical care or management of schooling needs, etc.

3. Third panel: Relocation and resettlement agreements

32. ICC VWU presented three different types of agreements that the Unit operates with. Through the first type of agreement States Parties are invited to host protected persons and are responsible for all expenses related to assistance needs, such as medical care, housing, training, etc. It was stated that, to date, the Court signed 10 agreements of this form with States Parties. The second approach, developed since 2009, consists in inviting States Parties to contribute to the Special Fund for Relocations. The Special Fund for Relocations was created to collect resources from States Parties that have financial means to support relocation of protected persons, but, for any reason, cannot lodge them in their own territories. With the collected funds, the Court identifies a State Party which is willing to shelter a protected person, but does not have enough resources to do it. The necessary amount is then transferred to the host state for the protected person's welfare and sustainability. At last, through the third kind of agreement, States Parties can sponsor assistance of specific victims or witnesses within situation countries or abroad.
33. The VWU reminded participants that the relocation is considered a measure of last resort, that regional solutions are always sought by the Court and that only a small percentage of Court witnesses needs to be relocated.
34. In the view of Belgium representative the Court should only enter into conventional relocation agreements. According to him, the new relocation agreement approach (with the use of the Special Fund for Relocations) could discourage host states to take over all the entailed responsibilities concerning relocation of protected persons. As a result, host states may not be committed to effectively integrate protected persons into their societies, considering that they would not have to bear any financial burden. For these reasons, Belgium recommended that relocation agreements with the use of the Special Fund for Relocations should include pre-established terms, after which host states would have to be fully responsible for witness assistance costs. Finally, he urged other present States Parties to formalise relocation agreements with the Court.
35. Information regarding the relationship between the ICC and the UNHCR with regard to relocation of witnesses was provided by UNHCR representative. The UNHCR indeed

assists the ICC to relocate protected persons upon referral without requesting further information about them besides the data provided by the Court. Furthermore, the UNHCR maintains dialogue with the VWU on security assessments of witnesses.

36. With regard to the country to be chosen to relocate witnesses it was stated that protected persons from African countries should preferably be relocated within the African continent and in a region where cultural, linguistic and geographic particularities are close to the person's region of origin, thus avoiding any abrupt uprooting (comment from Belgian representative). The UNHCR also insisted on the necessity to relocate protected persons in culturally similar environments as neighboring countries may not always share common culture.

4. Fourth panel: Complementarity in protection related matter

37. Representatives of the MONUSCO and the UNODC were asked to share their experience with regard to States capacity building in relation to protection of witnesses.
38. The MONUSCO commented that the Democratic Republic of the Congo (the "DRC") suffers from a lack of financial resources and essential state institutions. The judiciary capacity is below minimum standards and building a protection programme for victims and witnesses is deemed remotely possible. It was, however, stated that basic capacity could be built through judiciary system key players, such as magistrates, investigators and staff members, through provision of information sessions. It was also noted that outreach activities could be implemented in addition to existing activities for protected persons. It was recommended that the Court should be cautious in providing financial means to situation states, due to possible existence of resource deviations at high levels of the government entities. The Director of Court Services, ICC Registry, answered that the Court never provides money to countries, but only services aimed at quality improvement.
39. Under MONUSCO mandate, prosecution support cells are being established in order to provide guidance and support to Congolese investigators, who remain responsible for inquiries. The ICC and international partners could render assistance to DRC's judiciary system, for instance, by providing with instructions regarding document security and witness identity protection methods. The Court was advised to deepen collaboration with international organisations, to, thereby, seek their support to reinforce the Court's concerns in the international agenda.
40. The MONUSCO informed that the protection of whole affected communities is often not feasible, thus one of its adopted strategies consists in installing systems securing documentation and protecting witnesses' identities. The ICC could provide MONUSCO with expertise to set up these systems. Any such measures may optimise witness protection without the requirement or allocation of extra resources by the Court.
41. Finally, the need to acquaint eventual witnesses with their right to decide whether they want to testify in Court or not was pointed out.
42. The UNODC asserted its cooperation with the ICC and that the Court could take part in training and capacity building in Kenya. Insertion of international specialists in Kenyan

witness protection agency was discussed and it was suggested that a Court's expert could be amid these professionals.

43. The VWU emphasized that the Court has to deal with a different country every time a new situation opens. That means that the Court is always impelled to create new strategies in conformity with the country's peculiarities. The need for additional resources to adequately build a complementarity system, with staff specially assigned for this purpose, was also outlined.
44. Finland's representative stressed witness protection issues importance within the context of complementarity, as the essential area of justice system. Finland recalled that the topic was brought very often to the table in the Review Conference of the Rome Statute in Kampala, where the Court's impact on victims and affected communities was discussed. The Court's aim should not, according to Finland, be focused on the instalment of a full-fledged protection programmes within the states, but rather on making use of existing resources and tools, such as best practices, training operations and actors operating in the field. The ICC should seek intelligence from professionals operating in the field so as to reach a holistic approach to complementarity. The Court should deal with its budget constraints and may not engage as the main player in capacity building in countries. On the other hand, it does not mean that the Court should refrain from engaging in partnerships with other actors for this purpose. The principal challenge may be reaching practical ideas of how to coordinate the different players.
45. The OPCD representative affirmed that it is necessary to help states to integrate the Rome Statute into their domestic systems. For this purpose, the highest standard of a fair trail should be integrated by States Parties, as well as rules regarding victims and witnesses protection. Provisions concerning relocation of protected persons could be included amongst such rules.

5. Conclusions

46. Among other conclusions, the participants agreed that all different national and international actors have a role to play in witness and victim protection. Different measures designed for this purpose were discussed, including psychological care, best practices, police patrolling, initial response systems, internal resettlement, safe-houses, evaluation platforms, and relocation to third countries. The need of conclusion of more relocation agreements between the ICC and States Parties was emphasised.
47. The ICC and attending international tribunals and organisations reaffirmed the continuity of their cooperation with regard to the improvement of victims and witnesses protection systems. Such cooperation in sharing of expertise between the Court and international tribunals and organisations may also be financially beneficial for all players.
48. The audience stressed the importance of such seminars. The Registrar called on participants to maintain the momentum built in the event and the commitment with victims and witnesses protection.