



European Union



Pakistan's Action to Counter Terrorism (PACT)

# WITNESS PROTECTION

Policy Options for the  
Criminal Justice System  
in Khyber Pakhtunkhwa

December 2018



**UNODC**

United Nations Office on Drugs and Crime



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This document is a review of existing witness protection around the world with the purpose of distilling crucial elements of witness protection applied in different countries. The analysis of common tenets of various witness protection schemes will be confronted with the realities of the criminal justice system in Pakistan. The objective of the paper is to identify options for legal, policy, and institutional reforms for the possible introduction of witness protection in Khyber-Pakhtunkhwa, drawing upon the experiences in Pakistan's province of Sindh, emerging practices in the Punjab, the witness protection regimes operating in other countries, and international normative standards.

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## Acronyms

|        |  |
|--------|--|
| ATA    | Anti-Terrorism Act   |
| ATC    | Anti-Terrorism Court   |
| CID    | Crime Investigation Department of the Police                     |
| CT     | Counter-terrorist  |
| DIGP   | Deputy Inspector General of the Police                           |
| DOJ    | Department of Justice  |
| EU     | European Union   |
| FIR    | First Information Report   |
| ICT    | Islamabad Capital Territory                                      |
| IG     | Inspector General of the Police                                  |
| KP     | Khyber Pakhtunkhwa   |
| MOA    | Memorandum of Agreement  |
| NACTA  | National Counter Terrorism Authority                             |
| NAP    | National Action Plan   |
| NISP   | National Internal Security Strategy                              |
| OIC    | Organization of the Islamic Conference                           |
| PACT   | Pakistan's Action to Counter Terrorism                           |
| PPA    | Protection of Pakistan Act                                       |
| TOC    | United Nations Convention against Transnational Organized Crimes |
| UK     | United Kingdom   |
| UKPPS  | United Kingdom Protected Persons Service                         |
| UN     | United Nations   |
| USA    | United States of America   |
| UNODC  | United Nations Office on Drugs and Crime                         |
| WITSEC | Witness Security Programme                                       |
| WP     | Witness Protection   |
| WPC    | Witness Protection Committee                                     |
| WPP    | Witness Protection Programme                                     |
| WPAB   | Witness Protection Advisory Board                                |
| WPU    | Witness Protection Unit  |



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## Background and Objective

Pakistan is one of the countries in the world most affected by the scourge of terrorism.<sup>1</sup> Although terrorist-related incidents have decreased recently, the rates of casualties and the damage to the country remain staggering. With over 1,800 terrorism-related deaths across Pakistan in 2016<sup>2</sup>, the country remains the 5<sup>th</sup> most affected by terrorism globally.

Khyber Pakhtunkhwa (KP) has been second to Balochistan in experiencing the horrifying effects of terrorism. The infrastructure and property destruction is assessed at billions of Rupees<sup>3</sup>. The state of pervasive insecurity in KP and across Pakistan, has hindered people's chances of stable and sustainable livelihoods and undermined their trust and confidence in the state's ability to handle terrorism.

The National Internal Security Strategy (NISP), Plan of Action (NAP), kinetic military campaign Zarb-e-Azab, and several legislative efforts such as the Protection of Pakistan Act (PPA 2014), show the resolve of the state to combat militancy. However, to bring about a sense of security to the inhabitants of KP and across Pakistan, a strong and efficient justice system must complement legislative and executive measures to provide redress and access to justice for victims, and to serve as deterrence to further terrorism-related crimes.

At present, the criminal justice system designed to deal with terrorist offences is ridden by multiple challenges. In 2016 only 28% of the cases brought before KP's Anti-Terrorism Courts (ATCs) resulted in convictions; the remaining 72% were acquitted or consigned.<sup>4</sup> The recent UNODC Country Office Pakistan review of the counterterrorism (CT) cases in KP<sup>5</sup> reveals some of the challenges to the capacity and operation of the institutions throughout the justice chain. This study focussed on the process; legislative and capacity needs of the justice institutions; as well as a comprehensive approach to coordination and capacity building. An important factor hindering the CT justice system emerged at the level of investigation. The over-reliance of law enforcement and the judiciary on confession undermines the credibility and reliability of the information obtained. According to the Research Society of International Law, the lack of evidence is due to the lack of will on the part of the witness; and this in turn is due to the lack of proper security given to witnesses.<sup>6</sup> Other reasons for the reluctance of potential witnesses to come forward in criminal proceedings can include social pressure or the general hesitance to involve oneself in the affairs of others.

To address the challenges of the justice chain, including through improvement of the quality of investigation, UNODC's project 'Support to Pakistan's Action to Counter Terrorism' (PACT) proposes reforms aimed at strengthening measures for witness protection in criminal cases. Additionally,

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<sup>1</sup> 2017 Global Terrorism Index, Institute for Economics and Peace 2017, <http://visionofhumanity.org/app/uploads/2017/11/Global-Terrorism-Index-2017.pdf>

<sup>2</sup> <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm>

<sup>3</sup> Economic Survey 2016-2017, Ministry of Finance of Pakistan: The exact economic loss in 2016-2017 amounted to Rs10,373.36 billion (USD 10.373.36 million) [http://www.finance.gov.pk/survey/chapters\\_17/Pakistan\\_ES\\_2016\\_17\\_pdf.pdf](http://www.finance.gov.pk/survey/chapters_17/Pakistan_ES_2016_17_pdf.pdf)

<sup>4</sup> Understanding the Counter Terrorism Response, UNODC 2016

<sup>5</sup> ibid

<sup>6</sup> Human Rights and Pakistan's Counter Terrorism legislative landscape, Jan 2017 <http://rsilpak.org/wp-content/uploads/2017/05/2.-2017-Human-Rights-and-Pakistan%E2%80%99s-Counter-Terrorism-Legislative-Landscape-Final.pdf>

UNODC advocates greater consideration to the victims and witnesses of terrorism in view of utilizing their possible contribution to criminal investigations and trials.

This document is a review of existing witness protection programmes around the world, selected to present varied elements of witness protection applied in different countries. The analysis of common tenets of various witness protection programmes will be confronted with the realities of the criminal justice system in Pakistan. The parallels from the existing laws and good practices of the programme in Pakistan's province of Sindh, and the emerging practice in the Punjab Province, will be drawn upon to inform policy-makers and the judiciary about the possibilities of introducing witness protection in KP.

## Witness Protection

The ability to shield the witness from external influences, including potential threat from the defendants and intimidation by law enforcement, is the cornerstone of a successful criminal justice system. The testimony of a witness (or victim) in court or during the investigation can be crucial to upholding the principle of a fair trial.

The value of witness testimony is emphasized in international human rights law. The 1950 European Convention of Human Rights (Art 6.3) and the 1966 International Covenant on Civil and Political Rights (Art 15), consider the importance of witness testimony an element of a fair trial. Ensuring the quality of testimony, or procedural protection of the witness, is also a fundamental entitlement of the accused. The jurisprudence of the European Court for Human Rights and the UN High Commissioner for Human Rights<sup>7</sup> highlights the situations in which the attendance of witnesses in court (an element of the fair trial) is intended to ensure the protection of the witness, specifically in cases of organized crime and terrorism. The international instruments dedicated to combatting terrorism cite witness protection as a valid element of CT criminal proceedings. For instance, the Convention of the Organization of the Islamic Conference (OIC) on Combatting International Terrorism stipulates in Art 37 'to undertake all necessary measures to ensure the protection of a witness or expert including the necessary security required by the condition of the witness or expert and of his family, and circumstances of the case and types of expected risks'.<sup>8</sup>

The 2006 UN Counterterrorism Strategy<sup>9</sup> calls on UN Member States to ensure the measures taken to combat terrorism comply with the norms and standards of international law including, by extension, those related to CT-criminal justice proceedings.

Witness protection affects the general criminal law of a country since it may act in derogation of two known and accepted principles of criminal law: the right to confront witnesses and the need for a court to be open. Therefore, it is important that witness protection measures are balanced, i.e. proportional to their need, and that the openness and transparency of the trial is safeguarded during the time witness protection measures are in place.

Depending on the circumstances, including age of the witness and severity of the crime, witness protection can take place at the level of investigation, court hearings, during and/or post-trial. In-court witness protection measures are generally authorized and regulated by criminal procedure legislation. Such measures are intended to prevent the accused or his or her accomplices from intimidating or attacking the witness. For instance, testimony via conference link allows a real-time audio-visual interaction between the witness and the participants of the trial. Removed from the courtroom and the physical threat of intimidation by the defendants, the witness can feel more secure to testify.

In cases where it is necessary to guarantee the anonymity of the witness, the video-link testimonies can be combined with voice/image distortion. Alternatively, witness concealment can occur in the courtroom behind an opaque shield.

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<sup>7</sup> Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/26)

<sup>8</sup> 1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism

<sup>9</sup> 2006 UN Counterterrorism Strategy, A/RES/60/288

In extreme cases, where the threat to the witness is severe and continues beyond the delivery of testimony in court, post-trial protection measures could include temporary or permanent relocation, change of identity, and social and financial assistance. Experience shows that occasions on which use of the most comprehensive measures afforded by Witness Protection Programs, which include relocation of the witness, their families, and the provision of new identities and other safeguards required, are relatively uncommon; and that other measures can be sufficient to ensure the safety and testimony of witnesses.

The first national legislation to compel witness protection was enacted in the United States. The 1970 Organized Crime Control Act empowered the United States Attorney General to provide for the security of witnesses who had agreed to testify truthfully in cases involving organized crime and other forms of serious crime. It was an attempt to counteract the unwritten code of the organized crime syndicates, not to testify against members of their own group. The US Witness Security Program (WITSEC) is to date the most established witness protection programme, ensuring the physical security of at-risk witnesses predominantly through their resettlement and new identity details. Other countries followed with relevant national legislation or procedural arrangements to safeguard witness evidence (Australia 1983, South Africa 1996, Germany 1998, Colombia 1991). Today, witness protection is viewed as a crucial tool in combating organized crime, and widely practiced around the world.

The 2000 Convention against Transnational Organized Crimes (ToC) includes the possible elements of a comprehensive witness protection model. Art 24 stipulates the following measures of effective protection from potential retaliation or intimidation for witnesses in criminal proceedings concerning offences, covered by the Convention, and, as appropriate, for their relatives and other persons close to them: -

- ◆ Establishing procedures for the physical protection of such persons as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on disclosure of information concerning the identity and whereabouts of such persons;
- ◆ Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communication technology such as video links or other adequate means.

The above mentioned shall also apply to victims insofar as they are witnesses.

The tenets of witness protection in national legal and procedural orders represent variations of provisions of the ToC. The overview of the below Witness Protection Programmes in selected countries around the world is intended to examine relevant elements which could be considered by the KP authorities. The compilation below is assembled to illustrate different solutions applied in relevant elements of the institutional and formal structure of witness protection.

## Witness Protection Programmes – International Practice

The analysis of selected witness protection measures in countries across the world renders some common threads, including as related to: the characteristics of the participants covered by protection; eligibility of the witness/victim and value of information he/she provides, the gravity of the crime pursued; the entity responsible for admission to and discharge from protection, and scope of its responsibilities vis-à-vis the witness; the form and enforceability of the agreement between the State and the witness who enters protection; and procedures for the disclosure of information regarding participants, and penalties for the unauthorized disclosure of such information.

The witness protection schemes of the observed countries are enshrined in separate legislation, whereas the in-courtroom measures are captured in the national codes of criminal procedure. In the majority of cases, witness protection applies in cases of grave felony and organized crime. In cases where the scope of criminal activity is non-exhaustive, the official in charge of the programme decides on admission, based on the gravity of the crime, the value of the potential testimony, and the profile of the witness. As stated earlier, fully-fledged witness protection programmes involving relocation of the witness are cost-intensive and are generally applied in cases where the threat to the life of the witness is severe, and the value of his/her testimony is essential to conviction.

Regarding administrative structure, the programmes are managed by a dedicated unit in the Ministry of Interior or other agencies and governed or monitored by another entity composed of officials from different governmental offices. Adequately, assessment of the value of the testimony, threat level to the witness, and decision-making on the admission of the witness into the programme occurs in two instances: between the police and the prosecutor, or the police and the advisory ministerial committee. Such a setup is intended to provide neutrality, transparency, and the possibility of recourse for decisions taken related to witness protection.

Some countries, especially those with a federal governance structure (United States of America, Germany) established dedicated forces to protect individuals while covered by the programme. The German Federal Criminal Police Office and the US Marshals are federal structures. The placement of the witnesses in federal protection removes them from the realm of sub-national governance structures and thus adds an additional layer of protection, but also adds, potentially, to administrative and operational complexity. Strict penalization for the disclosure of information about the witness while in coverage of the programme, is related to confidentiality clauses binding upon those involved in the programme and additional legislation barring the information from the media. To a varied degree, the states provide socio-economic support to the witness, while he/she decides to undergo protection in exchange for the testimony. Some cases from the witness protection programmes of the countries studied are analysed below.

### United Kingdom

UK law on witness protection is contained in the Youth, Justice, and Criminal Evidence Act 1999. Part 1 of the Act deals with special measures and directions in case of vulnerable and intimidated witnesses. Two types of witnesses are eligible for assistance: a) those who need assistance on grounds of age or incapacity, and b) those who need assistance on grounds of fear and distress. Special measures available to eligible witnesses include: -

- ◆ Screening witnesses from the accused;
- ◆ Testimony by video link;
- ◆ Testimony delivered in private;
- ◆ Video-recorded evidence in chief;
- ◆ Video recorded cross examination or re-examination;
- ◆ Examination of witnesses through intermediaries;
- ◆ Reporting restrictions.

The Agency responsible for witness protection in England and Wales is called the UK Protected Persons Service (UKPPS). The UKPPS brings together the former witness protection units. The UKPPS provides protection not only to witnesses, but also to people who may be subject to honour-based violence or may be helping with the investigation of serious crime. Protection Units are arranged regionally. Referrals to the UKPPS can only be made by police forces, the National Crime Agency, or other law enforcement bodies.

The UKPPS is coordinated by the National Crime Agency, which is a non-ministerial government department providing strategic and practical assistance and coordination to officers supporting protected persons.

## Sri Lanka

The 2015 Assistance to, and Protection of, Victims of Crime and Witness Act, establishes a protection scheme under the National Authority for the Protection of Victims of Crime and Witnesses.

The Act provides a broad scope of assistance and protection to victims and witnesses, including: -

- a) Protecting and promoting the rights and entitlements of victims of crime, and witnesses; including through establishing relevant institutional mechanisms and setting out corresponding duties of the State;
- b) Providing assistance and protection to victims and witnesses of crime;
- c) Enabling the victims of crime to obtain redress, including restitution, compensation, reparation, and rehabilitation of such victims;
- d) Stipulating and sanctioning offences that may be committed against victims of crime, and witnesses;
- e) Providing for the adoption and implementation of best practices relating to the protection of victims of crime, and witnesses.

Regarding the assistance and protection to victims and witnesses of crime, the Act provides the following measures: -

- ◆ Security to the person and property;
- ◆ Temporary accommodation including shelters;
- ◆ Permanent re-location with the consent of the victim of crime or witness as the case may be;
- ◆ Temporary or permanent employment;
- ◆ Re-identification;
- ◆ Any other measure which the Authority, the Division, or a Commission, shall consider necessary.

The Act established a dedicated entity to administer victim and witness protection and assistance: the above cited National Authority for the Protection of Victims of Crime and Witnesses. The Board of Management of the Authority consists of 12 members, including experts in the areas of criminology, the criminal justice system, the promotion and protection of human rights, and medicine as well as ex-officio representatives of the Ministry of Justice, the Police Department, the Ministry of Children and Women Affairs, the Human Rights Commission of Sri Lanka, the Attorney-General, and the Inspector General of Police.

The Authority's functions include identification, promotion, and protection of the rights and entitlements of the victims of crime and witnesses thereof. Thanks to the quasi-judicial functions entrusted to the authority by the act, it can investigate and monitor the infringement of rights of the victims and witnesses and make recommendations to state institutions. To that effect, the authority issues appropriate guidelines and operational directives.

## Germany

In 1998, the Witness Protection Act was promulgated. The Act included provisions that regulated criminal proceedings, with a focus on: -

- a. Use of video technology for interviewing at-risk witnesses (especially children testifying as victims);
- b. Improved possibilities for ensuring the confidentiality of personal data of witnesses at all stages of criminal proceedings;
- c. Provision of legal assistance for victims and witnesses.

Also, in 1998, the Criminal Police Task Force developed a witness protection concept outlining, for the first time, the objectives and measures to be achieved and implemented by agencies involved in witness protection. That led to the issuance of general guidelines for the protection of at-risk witnesses by the federal and state ministries of the interior and justice.

The 2001 Act was introduced to harmonize legal conditions and criteria for witness protection at the federal and state levels. Its main provisions cover the following areas: -

- ◆ Under the Act, admission may be granted to persons who are in danger because of their willingness to testify in cases involving serious crime or organized crime. Participants must be both suited and willing to enter the programme;
- ◆ While the Act provides that the protection unit and public prosecutor should take decisions on admission jointly, it also recognizes that witness protection units should hold decision-making authority on measures to be applied independently, using for that purpose such criteria as the gravity of the offence, the extent of the risk, the rights of the accused, and the impact of the measures;
- ◆ The files on protected witnesses are maintained by the protection units and are not included in the investigation files, but are made available to the prosecution on request:

Germany's witness protection programme consists of witness protection offices established at the federal level in each state. The Federal Criminal Police Office is responsible for the protection of witnesses in federal cases and for coordinating functions at the national and international levels, including:-

- a. Preparation of an annual report on the witness protection programme;
- b. Organization and conduct of training and continuing education;
- c. Organization of regular conferences involving the directors of federal and state witness protection offices;
- d. Cooperation between states, federal agencies, and offices located abroad;
- e. International cooperation.

In addition, the Federal State Project Group on Quality Assurance in the Field of Witness Protection – comprised of the Directors of seven State Witness Protection Offices and chaired by the Federal Criminal Police Office – ensures effective cooperation through the development of a uniform nationwide procedure for admission to the programme, creation of a standardized catalogue of requirements for witness protection caseworkers, and common concepts for training and continuing education.

## South Africa

In 2000 the Witness Protection Act 112 of 1998 was promulgated, establishing the national Office for Witness Protection under the authority of the Minister of Justice and Constitutional Development.

The Office is headed by a national director at the country level, and has branch offices in South Africa's nine provinces. Although legislative amendments have yet to be made, in 2001 the Office was provisionally reorganized as part of the National Prosecuting Authority and has since been known as the Witness Protection Unit.

- ◆ The Director of the Office decides on admission to the programme. The Director's decision is based on the recommendations of the Branch Office Head and the relevant officials from law enforcement agencies and the National Prosecuting Authority. The Director's decision to refuse application or to discharge a person from protection may be reviewed by the Minister of Justice and Constitutional Development;
- ◆ The list of offences is not exclusive as the Director has the discretion to approve protection for a witness in respect of any other proceedings if satisfied that the safety of the witness warrants it;
- ◆ Civil proceedings pending against a protected witness may be suspended by a judge in chambers, under an ex-parte application, to prevent disclosure of the identity or whereabouts of the witness, or to achieve the objectives of the Act.
- ◆ The decision on whether any information is to be disclosed lies with the Director, after consideration of representations and without prejudice to any other applicable law. Severe penalties are imposed for any disclosure or publication of information regarding persons admitted to the programme or officials of the Office for Witness Protection, so as to ensure the safety of protected witnesses and programme officials.

The Minister of Justice and Constitutional Development may enter into agreements with other countries or international organizations regulating the conditions and criteria for the relocation of foreign witnesses to South Africa and their admission to South Africa's witness protection programme. Any such relocation requires ministerial approval.



## The Philippines

The programme was established under Republic Act No. 6981 of 1991, 'The Witness Protection, Security, and Benefit Act', to protect from reprisals and economic dislocation those ready to testify before a court, quasi-judicial body, or investigating authority.

Any person having knowledge of, or information on, the commission of a grave felony, and willing to testify, is eligible to access the programme. However, a law enforcement officer cannot be admitted, even if he/she is ready to testify against other law enforcement officers. The immediate members of the applicant family may however be admitted into the programme.

After examination of eligibility, the Department of Justice (DoJ) records the statement of testimony of the witness and enters him/her into the programme upon signing of the Memorandum of Agreement (MoA) between the DoJ and the witness. The MoA includes the following provisions: -

- ◆ To provide information to all appropriate law enforcement officials concerning all appropriate facts of the offense charged;
- ◆ To avoid the commission of the crime;
- ◆ To take all necessary precautions to avoid detection by others of the facts concerning the protection provided him/her under this Act;
- ◆ To comply with legal obligations and civil judgments against him;
- ◆ To cooperate with respect to all reasonable requests of officers and employees of the Government who are providing protection under this Act;
- ◆ To regularly inform the appropriate programme official of his current activities and address.

The admitted person benefits from the security protection and escort services and immunity from criminal prosecution. Upon relocation to a secure housing facility, the programme provides assistance in obtaining means of livelihood. Free medical treatment, hospitalization, and medicine are granted for any injury or illness incurred while acting as a witness. Additionally, the State provides free education from primary levels to college for the minor or dependent children of a witness who dies or is permanently incapacitated.

If the witness refuses to testify following his/her acceptance into the programme, he/she may be arrested for perjury or contempt. The witness can be relocated to a different area where he/she will be safe and or given a new personal identity.

## Colombia

Colombia's witness protection programme originated from the Law No. 418 of 1997, which established three distinct witness protection programmes accessible upon application to the Office of the Attorney General:-

- ◆ Provision of information and recommendations for witnesses for their own safety;
- ◆ Limited monitoring of witnesses' situations;
- ◆ Change of identity which covers victims, witnesses, parties to proceedings, and officials of the Office of the Attorney General.

The third and most expansive programme is open only to witnesses in cases involving kidnapping, terrorism, and drug trafficking and provides for permanent relocation inside Colombia, and change of

identity for witnesses at risk. Witnesses receive financial assistance to start a new life together with psychological support, medical care, counselling, and assistance with resettlement and the issuance of new personal documents.

A Special Directorate manages the programme with headquarters in the Colombian capital Bogota and Regional Offices in the provinces. A special team of investigators is responsible for evaluating criminal investigations, studying witness participation in proceedings, and ultimately assessing the level of risk and threat that arises as a direct consequence of such participation. In addition, there is an assistance group (comprising physicians and dentists), which supports the persons already covered by the programme, and a security group responsible for implementing all the protection measures ordered by the Directorate following the threat assessment.

Witnesses participating in the programme may be removed from the protection for any of the following reasons: -

- a. Unjustified refusal to submit to judicial procedure;
- b. Refusal to accept plans or programmes for their resettlement;
- c. Commission of wrongful acts that seriously affect the protection procedure;
- d. Voluntary withdrawal.

## The United States

The US programme is premised on the Witness Security Reform Act of 1984, which places witness protection under the authority of the Attorney General, to provide protection and security by means of relocation for persons who are witnesses in official proceedings brought against persons involved in organized criminal activity or other serious offenses. The possibility of entering the witness protection programme is also open to non-citizens and prisoners. The Witness Security Program is managed by the Department of Justice, which oversees the use of individuals in the custody of the US Marshals Service or the Bureau of Prisons.

The Attorney General may provide protective services to certain relatives and associates of protected witnesses. To enter the programme individuals must be deemed essential in specific cases of organized crime and racketeering, and other serious federal felony cases for which a witness may provide testimony that may subject him or her to violence or threats of violence.

The Attorney General accepts an individual under the protection of the programme upon application of the Office of Enforcement Operations. Upon entering into the protection, the witness signs a memorandum of understanding, which outlines a mutual set of duties between the witness and the DoJ for essential protection services in exchange for testimony<sup>10</sup>. A dedicated protection force – the US Marshals - provides for the security, health, and safety of government witnesses and their immediate dependents. Witnesses and their families typically get new identities with authentic documentation. Permanent relocation within the US is connected to housing, and subsistence for basic living expenses and medical care are provided to the witnesses. Job training and employment assistance may also be provided.<sup>11</sup>

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<sup>10</sup> <https://www.justice.gov/usam/usam-9-21000-witness-security>

<sup>11</sup> <https://www.usmarshals.gov/witsec/index.html>

## **The European Union**

The European Union Agency for Law Enforcement Cooperation (Europol) operates a Witness Protection Network, for Witness Protection (WP) agencies from EU (and some non-EU) Member countries, which provides a forum for cooperation on (Witness Protection Programme) WPP matters, as well as sharing of good practices and approaches for monitoring and evaluating the effectiveness of WPPs. In addition to considering the approaches of existing regimes operating in Pakistan and other selected countries, in progressing towards any reforms it would be beneficial to explore options for drawing upon Europol's institutional expertise on these issues.

## Witness Protection in Pakistan

The 2014 Protection of Pakistan Act calls on the Government to take adequate measures to provide security to prosecution witnesses, including the establishment of high security prisons with courtrooms. Some legislation across Pakistan has followed through relevant acts.

### Islamabad

The federal 'Witness Protection, Security, and Benefit Act' of 2017 uses an inclusive definition of a 'witness' and includes persons associated with him/her as well. This piece of legislation is applicable to the Islamabad Capital Territory (ICT) and is formulated to cover witnesses of 'serious offences' during investigation, inquiry, and trial stages. The Law offers six types of protection to a 'witness', which are as follows: -

- ◆ Concealing of identity by wearing a mask, changing the voice or appearance, or other form of separation during investigation, trial, and examination as provided by the Law.
- ◆ Allowing distance testimony, video-conferencing or other arrangement, as approved by the authorities;
- ◆ Relocating the witness, including provision of accommodation for him/her;
- ◆ Provision of reasonable financial assistance;
- ◆ Compensating the legal heirs of a 'protected witness' if the witness is killed due to his/her protected status, including the provision of education and livelihood;
- ◆ Provision of special security arrangements for the witness for a reasonable amount of time.

The Act established the Witness Protection Unit (WPU) to manage the programme, including the establishment of the admission criteria. The Witness Protection Advisory Board (WPAB), comprising the Secretary the Administrative Ministry, Secretaries Ministries of Justice and Finance, Attorney General, and Inspector General (IG) ICT Police, advises the WPU. The witness can enter the programme based on a Memorandum of Agreement outlining the tenets of the protection.

### Sindh

The Sindh legislation was the first to be issued in Pakistan in 2013 (see Annex 2). The Sindh Witness Protection Act 2013 includes the following protection measures: -

- ◆ Establishing a new identify for the witness;
- ◆ Concealing of witness' identity by the wearing of a mask, changing of his/her voice or, appearance, or any other form of segregation during the investigation, trial, or examination under the Law;
- ◆ Subject to the approval of the relevant authorities, allowing video conferencing in order to secure the protected person;
- ◆ Relocating the witness; providing accommodation for him/her, and providing transport for his/her property;
- ◆ Providing reasonable financial assistance to the witness, whenever practicable, for obtaining a means of livelihood;
- ◆ Compensating the legal heirs of a 'protected witness' if the witness is killed due to his/her protected status, including the provision of education and livelihood to the dependents;

- ◆ Providing special security arrangements for the witness for a reasonable amount of time.

The Witness Protection Unit within the Sindh Home Office manages the programme. The Unit is headed by the Additional Inspector General of Police, Crime Investigation Department Sindh, who serves as the Chief Witness Protection Officer. Admission to the programme is administered by the Chief Witness Protection Officer, on his or her consideration of the report of a Committee established to assist the Head of the Unit. It is also at the discretion of the Chief Witness Protection Officer to terminate the protection and/or disclose information about a person under the programme.

## Punjab

The 2017 Punjab Witness Protection Bill, now becoming The Punjab Witness Protection Act 2018 ( Act XXI of 2018),<sup>12</sup> divides witness protection measures into two categories: a) out-of-court measures and b) in-court measures. The Law provides for the establishment of two witness protection units: one for anti-terrorism cases and one for other serious offences. The Witness Protection Units are charged with risk assessment and taking of out of court measures.

Out-of-court measures are to be finalized by witness protection units, to be overseen by a Witness Protection Board. These measures include provision of close protection services, lodging in safe houses, permanent relocation arrangements, and financial assistance to witnesses if they are rendered unable to continue employment or move about freely as a result of their involvement in the cases.

In-court measures are to be taken by the court after a decision regarding the need for witness protection. The Law requires that the judge decides that a witness is under threat or distress before ordering any measures. Special measures include:-

- ◆ Screening of witnesses;
- ◆ Taking testimony by video-link;
- ◆ Excluding persons from court;
- ◆ Prohibition of cross examination in person;
- ◆ Reporting restrictions;
- ◆ Anonymity provisions.

Witness protection measures under the Bill are viewed as exceptional measures. The convenience of witnesses is not a factor recognized by the Bill.

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<sup>12</sup> The Act was passed by the Punjab Assembly on May 16, 2018, assented to by the Governor on 21 May 2018 and, was published in the Punjab (Extraordinary), dated 24 May 2018, on pages 8133-38.

## Implications for KP

The Witness Protection models of Sindh, the ICT, and the planned Witness Protection regime of Punjab, are based on examples of international jurisprudence and practice, and are aligned with the international standards of the ToC. These solutions also show progressive steps that legislators and policymakers in Pakistan considered viable in the context of the country, and which may therefore be considered by the KP authorities. According to the Pakistan Institute of Legislative Development and Transparency, the approaches contained in the Sindh legislation were transferred from those observed in other countries, without due consideration for associated financial capacity constraints.<sup>13</sup> Further analysis of the tenets of existing witness protection programmes in Pakistan, as well as those observed in different countries, will support the KP policymakers in their decisions regarding the most viable means of witness protection, while avoiding the legislative and administrative pitfalls of earlier models adopted in the country.

## Resources

Financial considerations are crucial, given that the very existence of witness protection legislation can motivate persons to come forward with their testimony. Inability to follow through on the commitments of the programme can undermine the safety of the individual witness, discourage others, and jeopardize the integrity and effectiveness of the entire counterterrorism justice system.

Witness protection programmes being very cost-intensive, it is crucial to weigh the feasibility of coverage prior to admitting witnesses therein. Reportedly in Sindh, five years since its adoption, the programme still faces some significant implementation challenges. In a recent prominent murder case in the province, the witnesses covered by witness protection were not provided the security safeguards of safe and secret residence. New identity cards required in accordance with the Act were not issued. The media reported that despite clear-cut court orders there was no availability of funds for complete implementation of the Witness Protection Act.<sup>14</sup> Any regime adopted by authorities in KP needs not only to provide effective levels of protection for witnesses, but also be financially viable and sustainable.

## Legislative Clarity

Clear and unified programme admission criteria, and formal and procedural safeguards in the witness protection legislation, can help avoid confusion and minimize the possibilities of misconduct and elevated risk levels for the witness.

As observed in the legislative basis for the Sindh witness protection programme, the disclosure of information relating to the protected person is an offence. On the other hand, the Act allows the Chief Protection Officer to disclose information about the witness if he/she is investigated or has been arrested for a serious offence. Consequently, information concerning the witness could be exposed, if

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<sup>13</sup> [http://www.pildat.org/Publications/publication/ROLR/LB25\\_SindhWitnessProtectionAct2013.pdf](http://www.pildat.org/Publications/publication/ROLR/LB25_SindhWitnessProtectionAct2013.pdf)

<sup>14</sup> <https://www.geo.tv/latest/181028-naqeebullah-murder-case-two-witnesses-provided-security-under-witness-protection-act?5a7d28775d80c>

a (false) First Information Report (FIR) initiated an investigation, leading to disclosure of his/her new location and exposing him/her to the very harm the witness protection was intended to pre-empt.<sup>15</sup>

If not regulated, some additional ambiguities in the formulation of the law may leave important questions on socio-civil matters of the protected witness unanswered. For instance, the matter of inheritance rights once the witness is given a new identity remains unclear in the Sindhi Witness Protection Act. Would the state be obligated to compensate for the loss of his/her rights to inherit a particular property? What are the limits of compensation for such a loss?<sup>16</sup>

### Transparency and Accountability

On development of the programme and its administrative and formal setup, it is important to consider its management structure, which will allow checks and balances through diverse justice actors. This relates to varied functions assigned to the official who admits the witness into the programme, signs the memorandum of agreement with him/her, and terminates the coverage of the WP. Allocation of these crucial functions to one person, as is currently observed in Sindh, could undermine the transparency of the programme and expose the witness to potential misconduct.

In the Sindh Act, the Chief Protection Officer is responsible for both admitting of the witness into protection, as well as his/her removal from the programme. Although the witness, if aggrieved by the decision of the Chief Protection Officer, may apply to the Government to review the decision, the specific formulation of the Act renders him/her additionally vulnerable vis-à-vis the authority of the Chief Protection Officer. A protected person is by definition reliant on the services provided by the witness protection authority. Under real or perceived duress, he/she may be unable to disclose information about actual identity and/or access the court to challenge the decision of the Chief Protection Officer.

Additional administrative solutions put forward by the Sindh Act could open the way for potential abuse. For instance, the very police service personnel responsible for administering the witness protection programme are often accused of corruption or intimidation.

### Context Specificity

Within the characteristics of Pakistani society, it might be difficult to relocate the witness and his/her family across the country, especially where families and extended kin structures are intertwined across the provinces. Careful consideration is required as to whether attempting to relocate witnesses, in a way that enables them to meet their continuing social and family obligations from their place of origin, to a new location, is required.

According to the former prosecutor-general of Sindh, realizing the ambition and objectives of the provincial witness protection programme was not yet possible due to financial and cultural barriers.<sup>17</sup> Admittedly, the ties between witnesses, their extended families, and relatives could well compromise

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<sup>15</sup> [http://www.pildat.org/Publications/publication/ROLR/LB25\\_SindhWitnessProtectionAct2013.pdf](http://www.pildat.org/Publications/publication/ROLR/LB25_SindhWitnessProtectionAct2013.pdf)

<sup>16</sup> Ibid.

<sup>17</sup> <https://www.pakistanpressfoundation.org/killing-shows-govt-failure-to-implement-witness-protection-law/>

the level of information security required for a successful relocation of the witness and family from their place of origin, and ultimately the success of the regime.



## Recommendations for KP

The broad and long-lasting practice of witness protection in several countries worldwide, as well as international practice, along with the solutions piloted in Sindh and those emerging from Punjab, allow the Government of KP to consider means that can be both effective and adapted to the realities of the province. The elements below of a potential witness protection programme emerge from the analysis of several existing WP programmes, and are intended to support the agenda of the KP authorities towards strengthening its counterterrorism criminal justice system.

### Eligibility Criteria for Admission into the Witness Protection

#### A. THE CRIME

The United Nations Convention against Transnational Organized Crime provides that States parties should take appropriate measures to protect witnesses in criminal proceedings related to crimes covered by the Convention and its Protocols, including (a) Participation in an organized criminal group; (b) Money-laundering; (c) Corruption in the public sector; (d) Obstruction of justice; (e) Trafficking in persons; (f) Illicit manufacturing of and trafficking in firearms, their parts, components, and ammunition; (g) Smuggling of migrants; (h) Other serious crimes as defined in the Convention, encompassing the elements of transnationality and involvement of an organized criminal group.

Terrorism falls under category (h), where the effective protection of witnesses might be sine qua non to conviction. In Pakistan, the low conviction rate of terrorism cases is linked directly to the inability to produce witnesses by the prosecution and witnesses rarely coming forward out of fear of vengeance by members of the terrorist groups.

Additionally, the closed nature of terrorist groups makes it difficult to rely on witnesses from among the 'defectors'. Witnesses have come from the police force, posing additional challenges to the programme's administrative arrangements for ensuring transparency of the procedure. Given the pervasive nature of terrorism in KP, and the existence of a dedicated terrorism-related criminal justice system, it is necessary to consider to what extent the dedicated personnel should also handle these cases (see 3 below).

#### B. THE THREAT

Witnesses must be under serious threat to life to be granted protection. The threat cannot extend 'merely' to the wellbeing of the witness or his/her property and assets. The exact data on terrorist networks pursuing witnesses to their crimes is lacking. However, the threat assessment of those who come forward to testify against terrorist groups can be based on the existing practice or violent track record of the given group. In recent years in Pakistan, the witnesses in several high-profile cases were killed (as in the cases of the murders of Wali Khan Babar and Sabeen Mehmud).

The terrorist groups often explain their choice of targets as retaliation for adversely affecting the terrorist group's cause or combatants. It can be inferred that those who can undermine the terrorist group, such as witnesses to their crimes who come forward to testify in court, face a legitimate threat to life and thus shall be considered for witness protection.

The scope of the threat should be considered by the designated team of investigators, based on the available data from the case officers and the analysis of the case material and information on the alleged suspects from the criminal database. The threat analysis and the value of testimony the witness is able to provide, along with the assessment of his/her motivations and psychological conditions related to the ability to testify in the case, shall be a crucial element in the decision on admission for protection.

### Admission into Witness Protection

A tailored and gradual approach to the scope of means applied to each prospective protected witness should be considered. To that end, consideration may be given to the establishment of a Witness Protection Committee to consider the admission of the witness upon application by investigation authority, prosecution, or the witness himself/herself. The membership of the Committee requires consideration but could include a representative of the Home Department, the DIGP, and the Prosecutor, and act on the premise of confidentiality.

The Witness Protection Committee (WPC) should make decisions on admission based on assessment of the threat to the witness and also assess the availability of critical infrastructure, security of the courtroom, and technological and financial capacities of the investigative or judicial entity handling the case. The WPC should operate based on a set of clear and unified admission criteria. The Committee's power to recommend the applicable protection measures (short or extended Witness Protection Program; in court measures such as concealed identity, testimony by video-link, testimony in camera) needs to be considered in close consultation with the stakeholders, such as the judiciary. The relocation and identity change for witnesses, as the most difficult and resource-intensive measures, should be considered as last resort by the Witness Protection Committee.

Based on the recommendations of the WP, and guided by the unified admission criteria, the Chief Protection Officer, who should be a senior official of the Home Department, could be entrusted with the actual decision on admission and scope of protection applicable.

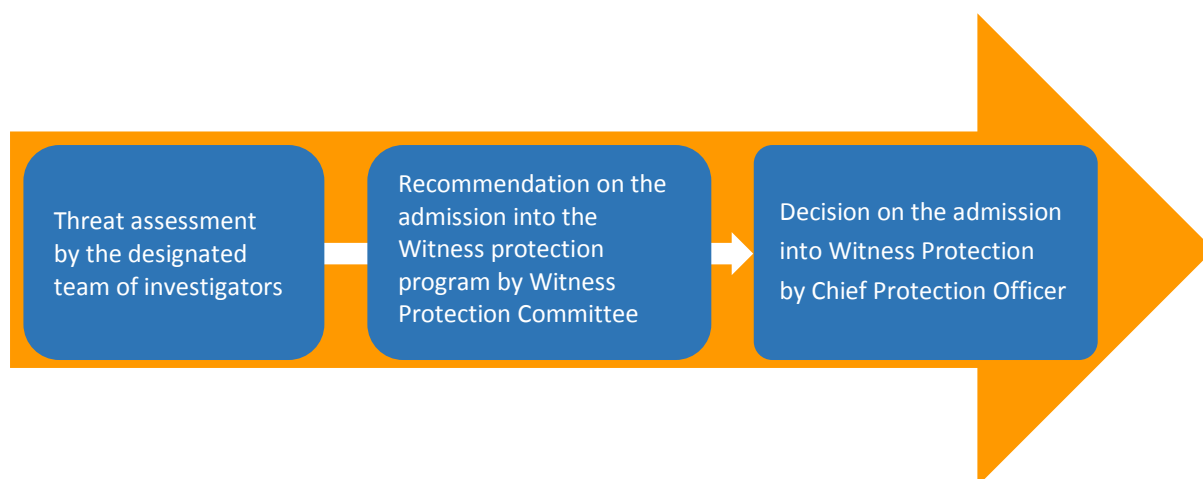


Chart 1. Witness protection - admission steps

## Administration of Witness Protection

The composition of the entities responsible for the administration and oversight of the programme is crucial to safeguard the transparency of the process and accountability for those involved. Some key considerations to uphold while designing the programme's administration and infrastructure include:

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- ◆ Separation from the investigation;
- ◆ Operational autonomy from the regular police;
- ◆ Secrecy and security of information;
- ◆ Shielding from political and other influences on the work of the programme.

Following these principles, the KP Provincial Assembly could consider establishing a Witness Protection Unit in the Home Department, charged with the administration of witness protection. The Chief Protection Officer could head the Witness Protection Unit. The functions of the WP Unit could be informed by an advisory and oversight mechanism in the form of the Witness Protection Advisory Board, charged with reviewing the admission and termination of the protection and monitoring its effectiveness (for composition and detailed proposed functions, see table 1 below). Such a multi-layered administration would mitigate the accumulation of powers in one entity, and minimize the potential dangers of in-transparency. The Advocate General could head the Witness Protection Advisory Board to additionally ensure there is recourse for any witness aggrieved by the conduct of the Chief Protection Officer.

| Witness Protection Stakeholder           | Composition  | Function   |
|--|--|--|
| <b>Team of designated investigators</b>  | Case officer, intelligence unit, investigator  | Threat assessment  |
| <b>Witness Protection Committee</b>      | Home Dept, Deputy Inspector General (DIGP), Prosecutor   | <ul style="list-style-type: none"> <li>- Consider the threat assessment vis-à-vis availability of critical infrastructure and security of courtroom and technological and financial capacities of investigative and judicial entity handling case;</li> <li>- Recommend admission into protection;</li> </ul>  |
| <b>Witness Protection Unit</b>           | Representatives of KP Home Dept.   | Administration of protection   |
| <b>Chief Protection Officer</b>          | High-rank representative of KP Home Dept.  | <ul style="list-style-type: none"> <li>- Heading of Witness Protection Unit</li> <li>- Decides on admission into protection;</li> </ul>  |
| <b>Witness Protection Advisory Board</b> | Secretary KP Home Dept.; Secretary Law Dept.; Secretary Finance Dept.; Advocate General; IG KP Police; IG Prisons; Prosecutor General; Human Rights Commissioner; IG, CID. | <ul style="list-style-type: none"> <li>- Advising Witness Protection Unit on exercise of its powers and performance of its functions;</li> <li>- Advising on formulation of witness protection policies in accordance with KP law and international best practices;</li> <li>- Overseeing administration of Unit;</li> <li>- Approving budgetary estimates of the Unit; and</li> <li>- Overseeing decisions of Unit on termination of witness protection;</li> </ul> |

Table 1: Proposed administration of witness protection program

### Termination/Removal from Protection

The criteria for termination of the coverage of protection must be clearly outlined in the Memorandum of Agreement, signed between the Witness Protection Unit and the witness upon his/her entry into the programme. The reasons for termination might be as follows: -

- ◆ Security is compromised by the actions of the witness;
- ◆ The witness violates the rules laid down in the memorandum of understanding;
- ◆ The witness refuses to give evidence in court;
- ◆ The seriousness of the threat against the witness's life has lessened.

The decision-making related to termination of the programme should rest with the Chief Protection Officer. His/her decision should be overseen and approved by the Witness Protection Advisory Board. Such decisions should be made after due notice to the concerned witness, to allow him/her a hearing.

It should also be noted that the commitment to the security of the witness remains beyond the duration of the programme, as the threat against a protected witness's life might not fully disappear. Therefore, it is important for the participants of the witness protection and the media to consider and abide by the rules on information disclosure regarding the witness Measures, which could include withholding names, addresses, identification details, and allowing pseudonyms.

## Victim-Witnesses

Those who suffered terrorism-related harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights<sup>18</sup>, play a central role in the criminal process. Including victims into the protection schemes applicable to witnesses is formally proscribed by the ToC. The physical safety of victims can be ensured by the general and in-court protection measures (for instance testimony via video conferencing, safe houses, use of protective screens). Victim-witnesses may also be included in a witness protection program if all other conditions are fulfilled (value of testimony, absence of other effective means of protection, existence of serious threat and personality of the witness).<sup>19</sup>

The victim assistance may be broader than the support provided to the witness given the physical, psychological, and fiduciary aspects related to suffering a terrorist incident. Different assistance measures could be considered in cooperation with law enforcement, judiciary, and where possible civil society, to create conditions that would allow victim-witnesses not only to testify in physical security, but to recover from the physical and psychological damage caused by terrorism. These could include: -

- a. Police protection;
- b. Temporary relocation in safe areas;
- c. Evidentiary rules of protection measures when testifying in court (anonymity, shielding, video-conferencing);
- d. Psychological support;
- e. Moderate financial assistance.

## Rules of Procedure

Additionally, witness protection should be based on clear rules and unified procedure. Supporting transparency of the process, as well as enhancing legislative clarity is pertinent in attaining its effectiveness. Accordingly, the admission and termination of protective measures should occur according to clearly defined criteria, to be assessed against each case.

The rules of handling of the case, including strict adherence to confidentiality and safeguarding the rights of the witness, could be included in the code of conduct for the police and administrative staff involved in the program. Rules of procedure ought to be reviewed periodically to ensure

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<sup>18</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex)

<sup>19</sup> <https://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>

responsiveness to changing circumstances and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights.

### **Principles of Witness Protection**

Witnessing the grave crime of terrorism places individuals in a position of vulnerability and reliance on the criminal justice system. If the witness is a victim, his or her protection relates to the fundamental principles of providing fair and swift justice. It is paramount that the conduct of the law enforcement and other actors involved in the witness protection be guided by the principles of shielding the wellbeing of the witness beyond his/her physical protection.

Effective witness protection needs to be designed in a way that promotes the transparent conduct of those involved. The multi-layered infrastructure of the protection scheme or the programme, including the oversight of admission and termination, is proposed to ensure accountability across all stages of the process.

The confidentiality enforced on all participants of the witness protection is intended to shield the privacy of the witness, especially in situations where the disclosure of information on his/her identity and whereabouts by the participants of the programme or the media, can endanger his/her life.

If relocated, the witness changing his or her identity and abode should not mean the derogation of family, property, and inheritance rights. The policymakers must consider how to transfer deeds and entitlements to new identities.

## Conclusions and the Way Forward

These recommendations, drawn from different international sources and models and the existing witness protection legislation and practice in Pakistan, are put forward for the consideration of the KP policy and decision makers. The ability to shield the witness from harm from the defendant and his/her criminal networks will add the crucial elements of effectiveness, fairness, and endurance to the KP counterterrorism criminal justice system. UNODC stands ready to assist the KP authorities with the development and implementation of relevant witness protection legislation, as well as the setting up of witness protection infrastructure and mechanisms, as deemed appropriate.

## Annex 1: Punjab Witness Protection Bill; 20.10.2017

### A BILL

to protect witnesses and other persons connected with certain criminal proceedings.

It is necessary to provide for measures to protect witnesses or other persons connected with the investigation, prosecution and trial of certain criminal proceedings relating the offence of terrorism, sexual offence or any other serious offence; and, to provide for ancillary matters.

Be it enacted by Provincial Assembly of the Punjab as follows:

#### 1. Short title, extent and commencement

(1) This Act may be cited as t h e Punjab Witness Protection Act 2017.

(2) It shall extend to whole of the Punjab.

(3) It shall come into force at once.

#### 2. Definitions. - In this Act:

- (a) "Act" means the Punjab Witness Protection Act 2017;
- (b) "Board" means the Witness Protection Board constituted under the Act;
- (c) "close protection service" means the provision of bodyguards for purposes of protection from assault, assassination or kidnapping;
- (d) "court" means the court seized of a case to which the Act applies;
- (e) "criminal proceedings" means an investigation, inquiry or trial under the Code of Criminal Procedure, 1898 (V of 1898) relating to an offence of terrorism on any other serious offence;
- (f) "Government" means Government of the Punjab;
- (g) "high risk accused" means a person under investigation, charged with, or tried for, the commission of an offence of terrorism or a serious offence and is considered to be a high risk for the persons connected with the criminal proceedings;
- (h) "law enforcement agency" includes a body or agency responsible for the enforcement of law relating to the prevention, detection and investigation of an offence;
- (i) "offence of terrorism" means an act defined as such in section 6 of the Anti-Terrorism Act, 1997 (XXVII of 1997) and includes such other offence under that Act as the Government may, by notification in the official Gazette, determine;
- (j) "prescribed" means prescribed by the rules made under the Act;
- (k) "Programme" means the Witness Protection Programme established under the Act.
- (l) "protected person" means any person who is extended protection under section 5 of the Act;
- (m) "protection" means the protection of a protected person and includes relocation or change of identity, or provision of assistance or services to, him under the Act;



- (n) "serious offence" means an offence punishable with death or imprisonment for life or for a term exceeding seven years and includes a sexual offence but does not include an offence of terrorism;
- (o) "sexual offence" means an offence under sections 366-A, 357-A, 376, or 377 of the Pakistan Penal Code, 1860 (XLV of 1860) or under the Punjab Suppression of Prostitution Ordinance, 1961 (II of 1961);
- (p) "serious criminal case" means a criminal case pertaining to a serious offence and pending in a court;
- (q) "terrorism case" means a criminal case pending in a court pertaining to an offence of terrorism;
- (r) "Unit" means the Witness Protection Unit established under the Act; and
- (s) "witness" means a person who may testify under Article 3 of the Qanun-e-Shahadat Order, 1984 (P.O.No. X of 1984) and includes such other person as is specified in the Act.

### **3. Witness Protection Board**

(1) The Government shall establish the Witness Protection Board, consisting of the following members:

- (a) Additional Chief Secretary or, as the case may be. Secretary to the Government, Home Department;
- (b) Secretary to the Government, Finance Department;
- (c) Secretary to the Government, Public Prosecution Department;
- (d) Prosecutor General, Punjab;
- (e) Additional Inspector General, Counter Terrorism Police Department;
- (f) Additional Inspector General Special Branch; and
- (g) Additional Inspector General Investigations;

(2) The Additional Chief Secretary or, as the case may be, Secretary to the Government, Home Department shall be the Chairperson of the Board.

(3) The Chairperson shall, by notification, appoint a suitable officer as Secretary of the Board.

(4) The Board shall:

- a) frame policy guidelines for purposes of the Act;
- b) submit policy guidelines to the Government for approval;
- c) oversee and monitor the implementation of the policy guidelines under the Act;
- d) spearhead and supervise the performance of the functions of the Units;
- e) perform such other functions as may be necessary to achieve the objectives of the Act; and
- f) implement any other direction of the Government in connection with the Act;

### **4. Witness Protection Unit**

(i) The Government shall establish the following Witness Protection Units:

- a) Unit-I relating to the offences of terrorism; and
- b) Unit-II relating to the serious offences.

(2) The Government, on the recommendations of the Board, shall appoint the head of a Unit and such other members of the Unit as the Government may determine or as may be prescribed.

(3) A Unit, under the general supervision and control of the Board, shall discharge its functions effectively and meaningfully to achieve the objectives of the Act, and shall implement the directions of the Board or, as the case may be, the Government.

## **5. Protected Persons**

(1) Subject to subsection (2), a victim or a witness or any other person connected with criminal proceedings and a person closely related to the aforesaid persons may apply for protection under the Act.

(2) The Government, the Counter Terrorism Department, the Public Prosecutor or the Court trying an offence of terrorism or a serious offence may direct the concerned Unit to assess the risk or continued risk of any person directly or indirectly concerned with the criminal proceedings.

(3) The Unit shall consider the following matters while determining the risk of a person:

- (a) the risk profile of the person involved;
- (b) the nature and gravity of the threat to that person; and
- (c) the measures required to eliminate or reduce the risk at the minimum possible cost.

## **6. Non-court measures for protection**

(1) On the direction of the Government or of its own motion, a Unit may, in consultation with the person to be protected, take one or more of the following measures for the protection of a protected person:

- a. provision of close protection service;
- b. lodging in a safe house
- c. temporary or permanent relocation at a safe place;
- d. change of identity;
- e. concealment of identity of the persons involved in the criminal proceedings; and
- f. providing financial assistance to a protected person who is unable to undertake regular employment when his freedom of movement is severely curtailed as a result of protection to him.

(2) The Unit shall determine the time for which a non-court protection measure shall remain in force but if the Unit is satisfied that the non-court protection measures are no longer

required, it may, at any time and after recording the reasons, withdraw the non-court protection measures.

(3) The Government may, after consultation with the Unit, revoke or modify protection measures taken by the unit.

(4) The expense for the measures under subsection (1) shall be borne by the Government.

(5) Every department, agency or office of the Government shall cooperate with and provide such assistance to the Unit as may be necessary for carrying out the measures under subsection (1).

## **7. Assistance to witnesses**

(1) A witness, other than an accused, is eligible for assistance in connection with his testimony before a court in a terrorism case or a serious criminal case under a direction for special measures, when:

- a. he is willing to give evidence but is fearful under stress owing to the nature of the offence or proceedings relating thereto or is intimidated or labors under an intimidation that harm may come to his person or family or property if he gives evidence and the court is satisfied that the quality of evidence is likely to be affected on that account;
- b. he suffers from a physical disability or mental disorder;
- c. he is under the age of 16 years at the time of recording of evidence;
- d. he is victim of a sexual offence.

(2) The court, while making an order under this section, shall also consider the following factors:

- (a) the personal circumstances of the witness including his opinion and belief;
- (b) the behaviour of the accused, his family or associates or any other person toward him;
- (c) the nature and circumstances of the offence; and
- (d) the report of the Unit with regard to the gravity of the threat to the witness.

## **8. Special measures**

(1) The Unit or, as the case may be, the court shall take special measures mentioned in section 9 to section 14 of the Act.

(2) If the court is satisfied on an application to the party of the proceedings or on its own motion, that a witness needs assistance under section 7 of the Act, it may, by order, direct to take such special measures as are mentioned in the order, but before making an order, the court shall afford an opportunity of hearing to the person likely to be affected by the order.

(3) The special measures shall, unless otherwise directed, have effect from the day the order is made and until the proceedings are concluded or for such period as the court may direct.

(4) The special measures may be discharged or varied at any time, in the interest of justice by the court either on the application of the party on whose request it was made, or of its own motion after affording an opportunity of hearing to the parties concerned.

#### **9. Screening a witness**

The court may direct that a special measure be taken to prevent the witness from being seen while coming to the court to give evidence or while entering the court or while recording the evidence or while leaving the court in a manner that he continues to see or be seen by the court, the public prosecutor, the legal representatives acting in the proceedings or any other person appointed by the court for that purpose;

#### **10. Video link**

(1) When so directed by the court, the Unit shall take special measures so that the court may examine a witness through video link at a location outside the court.

(2) Where it is not possible to have a video link in the court room, the court may move to the place where such facility, as determined by the Government in consultation with the High Court, is available.

Explanation. - For purposes of this section, the video-link means a live television link or other arrangement whereby a witness, while away from the courtroom or other place where the proceedings are being held is:

- (a) able to see and hear a person there and to be seen and heard by the persons specified in section 9; and
- (b) able to be seen and heard by the accused and the public unless the court directs otherwise.

#### **11. Restricted entry to the courtroom**

On an application by the Unit or the public prosecutor, the court may pass an appropriate order in terms of the proviso to section 352 of the Code of Criminal Procedure, 1898 (V of 1898) or, direct that the proceedings in the case specified in the order shall be held in camera.

#### **12. Rules of cross-examination**

(1) An accused charged with an offence of terrorism or a sexual offence shall not, without an express permission by the court, himself cross-examine a witness but his counsel may cross-examine the witness.

(2) The permission under subsection (1) shall not be granted when, in the opinion of the court, the cross-examination by the accused in person is likely to affect the voluntariness or quality of the evidence.

(3) The court shall forbid a question to the victim of a sexual offence relating to any sexual behaviour of the victim on any previous occasion with the accused or any other person, unless such a question, in the opinion of the court, is a relevant fact in the case.

### **13. Reporting criminal proceedings**

(1) The reporting of the identity of a person connected with an offence of terrorism or a sexual offence or the identity of members of his family shall be prohibited in print, electronic or other media, if the person involved in the offence is under the age of eighteen years.

(2) The reporting of the identity of a person connected with an offence of terrorism or a sexual offence or the identity of a member of his family shall be prohibited in print, electronic or other media, if the court is satisfied that the quality of voluntariness of the evidence of the person concerned will be diminished thereby.

### **14. Anonymity of persons involved in the proceedings**

(1) In any proceedings to which this Act applies, where a person is or is likely to be required as a witness, the court on the application of any party or of its own motion, make an order for the preservation of the anonymity of the witness or of any person who might be identified in the evidence of the witness, and to ensure that his identity is not disclosed in, or in connection with the proceedings.

(2) Unless otherwise stated, such an order shall be taken to include directions:

- a. that the name, address, and identifying detail shall be withheld;
- b. that the witness may use a pseudonym;
- c. that no question is asked at the trial that might lead to the identification of the witness or his address or any information from which his identity or address might reasonably be identified without the express permission of the court;
- d. for the deletion or redaction from all documents to be disclosed or produced in the proceedings of the witness's identity and address, and any information which might reasonably lead to identification of the witness; and
- e. that no person shall publish or communicate to other person the identity, address, or other identifying details of the witness, or any other information from which his identity or address might reasonably be identified, where it is known that or in such a way as it may be concluded that he is or was a witness in the case, save where it is necessary for the proper lawful conduct of the proceedings.

(3) The court shall not make an order under this section unless it is satisfied that:

- (a) an order is necessary:

- i. to protect the safety of the witness or any other person, or to prevent any serious damage to property; or
  - ii. to prevent real and significant harm to the public interest;
- (b) that the effect of the order, in no circumstances, would prevent the accused from receiving fair trial; and
- (c) that the importance of the testimony of the witness is such that in the interest of justice witness ought to testify; and either:
  - i. there is a genuine risk that witness would not testify if the order were not made; or
  - ii. there would be a genuine risk of real and significant harm to the public interest if the witness were to testify with such an order being made.
- (4) When considering whether the conditions in section 6 have been met, the court shall take into consideration all of the relevant circumstances, and in particular:
  - (a) the general right of the accused to know the identity of the witness;
  - (b) the extent to which the credibility of the witness is likely to be an issue in the proceedings:
  - (c) whether the evidence could be properly tested without the witness's identity being disclosed; and;
  - (d) whether the witness has a tendency or any motive to be dishonest.
- (5) An order made under this section shall be known as a 'Witness Anonymity Order' and shall remain in force during the period specified in the order unless the order is sooner revoked, or any other order is made.
- (6) The violation of a Witness Anonymity Order or any provision thereof shall be an offence.

## 15. Trial in jail

Where the Government is satisfied that a trial cannot be safely held in a court house, it may, by order, direct that the trial shall be held in such jail as may be specified in the order.

## 16. Punishment

A person, who contravenes the provisions of section 13 or section 14 of the Act, shall be punishable with imprisonment for a term which may extend to three years but which shall not be less than thirty days and with fine which may extend to rupees five million, but which shall not be less than rupees one hundred thousand.

## 17. Rules

The Government may, by notification in the official Gazette, make rules to carry out the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

[To be added by the administrative department]

MINISTER IN CHARGE

## ANNEX 2: The Sindh Witness Protection Bill, 2013

THE SINDH WITNESS PROTECTION ACT, 2013.

SINDH ACT NO. LI OF 2013.

AN ACT

to provide for protection of witnesses to enable them to give evidence in criminal proceedings in the Province of Sindh.

WHEREAS

**Preamble**

it is expedient to provide for protection of witnesses to enable them to give evidence in criminal proceedings in the Province of Sindh and for matters ancillary thereto;

Preamble. It is hereby enacted as follows:-

1. (1) This Act may be called the Sindh Witness Protection Act, 2013.  
(2) It shall extend to the whole of the Province of Sindh.  
(3) It shall come into force at once.

**Short title,  
extent and  
commencement.**

2. In this Act, unless there is anything repugnant in the subject or context –

**Definitions**

(a) "Board" means the Witness Protection Board constituted under section 5;

(b) "criminal proceedings" includes any criminal trial or inquiry before a court or tribunal having criminal jurisdiction, an inquest or inquiry into death and a police investigation under the Code of Criminal Procedure, 1898, and any investigation by any other authority under any law;

(c) "Government" means the Government of Sindh;

(d) "law enforcement agency" includes a body or agency responsible for the enforcement of laws relating to the prevention, detection and investigation of any offence;

(e) "prescribed" means prescribed by rules;

(f) "Programme" means the Witness Protection Programme established under this Act.



- (g) "protected person" means any person who has been placed under protection for the purposes of this Act;
- (h) "protection" means the protection to a witness provided in terms of this Act and includes reallocation or change of identity of, or other related assistance or services provided to, or protected persons, as may be prescribed;
- (i) "related person" means any member of the family or household of the witness, or any other person in a close relationship to, or association with, such witness.
- (j) "rules" means the rules made under this Act;
- (k) "Schedule" means the Schedule to this Act;
- (l) "serious offence" means an offence against a provision of –
- (i) any law in force in the Province of Sindh, for which the maximum penalty is death, or imprisonment for a period of not less than twelve months;
  - (ii) offences under Pakistan Penal Code, 1860; and
  - (iii) offences as specified in the Schedule;
- (m) "Unit" means the Witness Protection Unit established under this Act;
- (n) "witness" means a person who –
- (i) has made a statement, or has given or agreed or may be required to give evidence in relation to the commission or possible commission of a serious offence;
  - (ii) because of his or her relationship to or association with a person referred to in clause (i), may require protection or other assistance under this Act; or
  - (iii) a person in possession of, or provided any important information, statement or assistance to a public officer and has agreed to share the information with law enforcement agency and has agreed to give evidence on behalf of the State;
  - (iv) for any other reason, may require protection or other assistance under this Act;
- (o) "threatened witness" means any witness in respect of whom, there is likelihood of danger to the safety of his or her life or life of his or her close relatives; or serious danger to his or her property or property of his or her close relatives, by reason of his or her being a witness.

3. (1) The provisions of this Act shall be applicable to the investigation, inquiry and trial of serious offences.

**Application of the Act and over-riding effect.**

(2) In case of any inconsistency, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any provision of the Code of Criminal Procedure, 1898, or in any provision of any other law for the time being in force.

4. (1) As soon as after the commencement of this Act, Government shall establish a Witness Protection Programme for protection and safety of a witness in any proceedings relating to this Act.

**Witness Protection Programme.**

(2) The actions in the Programme may include the following:-

(a) making arrangements necessary –

(i) to allow the witness to establish a new identity;

(ii) to allow the witness to conceal his or her identity by wearing a mask, changing his or her voice, appearance or any other form of segregation during the investigation or trial, or examination under the law;

(iii) to allow video conferencing in order to secure the protected person; provided that such arrangements are approved by the concerned authority under this Act;

(iv) to protect the witness otherwise; or

(b) relocating the witness;

(c) providing accommodation for the witness;

(d) providing transport for the property of the witness;

(e) providing reasonable financial assistance to the witness, whenever practicable, for obtaining a means of livelihood;

(f) providing compensation to the legal heirs, if the protected person is killed due to his participation in the Programme, in case of death or permanent incapacity of the protected person during his protection, providing free education to his or her dependent minors;

(g) making special arrangements for security of witness for reasonable period of time.

(h) the above mentioned protection and facilities will also be provided to the family members of the witness if he or she demanded.

5. (1) Government shall establish a Board to be known as the Witness Protection Advisory Board, which shall consist of –

**Constitution of  
the Board.**

- (i) the Secretary, Home Department, Government of Sindh, who shall be its Chairman;
- (ii) the Secretary, Law Department, Government of Sindh;
- (iii) the Secretary Finance, Government of Sindh;
- (iv) the Advocate General Sindh;
- (v) the Inspector General of Police, Sindh;
- (vi) the Inspector General of Prisons, Sindh;
- (vii) the Prosecutor General, Sindh
- (viii) the representative of the Provincial Commission on Human Rights;
- (ix) the Additional Inspector General, CID, Sindh.

(2) The Additional Inspector General, CID shall also act as Secretary of the Board.

(3) The Board shall advise the Unit generally on the exercise of its powers and performance of its functions under this Act and shall, in particular and without prejudice to the generality of the foregoing shall–

- (a) advise on the formulation of witness protection policies in accordance with the current law and international best practices;
- (b) oversight the administration of the Unit;
- (c) approve the budgetary estimates of the Unit; and
- (d) exercise such other powers and perform such other functions as may be conferred by or under this Act or assigned to it by Government.

6. (1) A Unit to be called as the Witness Protection Unit, to facilitate the Programme shall be established in the Home Department, Government of Sindh.

**Establishment of  
a Witness  
Protection Unit.**

(2) Government may, by notification in the official Gazette –

(a) establish a branch office of the Unit in any defined area for the purposes of the administration of this Act; or

(b) abolish any branch office or incorporate it with any other such office, and may for this purpose make any administrative or other arrangements as deemed necessary;

7. (1) The Unit shall be headed by the Additional Inspector General of Police, CID Sindh, who shall be the Chief Witness Protection Officer.

**Unit to be headed by the Chief Witness Protection Officer.**

(2) The Chief Witness Protection Officer shall exercise such powers, perform such functions and carry out such duties as may be conferred upon, assigned to or imposed upon him or her by or under this Act, subject to the control and directions of Government.

(3) The Chief Witness Protection Officer may, subject to the laws governing the public service, appoint on secondment or deputation a person as Deputy Director for Witness Protection Unit who shall, subject to the control and directions of the Chief Witness Protection Officer, exercise, perform or carry out any powers, functions and duties conferred upon, assigned to or imposed upon him by the Chief Witness Protection Officer.

(4) The Chief Witness Protection Officer shall be assisted, subject to his control and directions, by -

(i) officers of the Home Department designated for that purpose by Government;

(ii) witness protection officers;

(iii) Police force or members of the Police force;

(iv) officers of any other Department of Government, or in the service of Government seconded to the service of the Unit, for a particular service, in terms of the Sindh Civil Servants Act,1973;

(v) or any person or officer or public servant designated or appointed by Government, subject to the provisions of this Act regarding administration of the Programme.

8. The Unit shall provide the framework and procedure for giving protection on behalf of the State to persons in possession of important information who are facing potential risk, threat or intimidation due to giving evidence on behalf of the State.

**Object and Purpose of the Unit.**

9. There shall be established a committee of following officers to assist the Unit for making recommendations in terms of placing a witness under protection: -

**Committee to Assist the Head of the Unit.**

- (i) Officer representative of Home Department, Government of Sindh;
- (ii) Additional IGP Special Branch;
- (iii) DIGP Headquarter;
- (iv) DIGP of the concerned Range (where the case is registered).

10. (1) The Chief Witness Officer -

(i) shall be responsible for the protection of witnesses and related persons, including temporary protection, and related services in accordance with the provisions of this Act;

(ii) may make an arrangement with any Department of Government or enter into an agreement with any person, body, institution or organization –

(a) in terms of which the Unit shall be authorized to make use of the facilities or equipment belonging to or under the control of such department, person, body, institution or organization;

(b) in order to obtain documents and other information that may be required for the protection of a protected person; or

(c) regarding any matter for the purpose of giving effect to the provisions of this Act;

(iii) may designate place or places to be used or utilized as place or places of safety;

(iv) shall exercise control over witness protection officers and security officers; and

(v) may exercise powers and shall perform functions or carry out the duties conferred upon, assigned to or imposed upon him or her by or under this Act.

(2)

(a) The Chief Witness Protection Officer may either in general or in a particular case or in cases of a particular nature, in writing delegate any power, function or duty conferred upon, assigned to or imposed upon him or her by the Board under this Act to any other member of the Unit.

(b) The Chief Witness Protection Officer may, at any time in writing, withdraw such delegation, and that the delegation of any power, function or duty under sub-section 2 (a) above, shall not prevent the Chief Witness Protection Officer from

**Powers,  
functions  
and duties of the  
Chief Witness  
Protection  
Officer**

exercising, performing or carrying out such power, function or duty himself.

- (3) All Departments of Government shall render such assistance as may be reasonably required in the exercise, performance or carrying out of the powers, functions and duties conferred upon, assigned to or imposed upon the Chief Witness Protection Officer by or under this Act.

11. (1) Government may, subject to the laws governing the public service, appoint a reasonable number of witness protection officers.

**Witness  
Protection  
Officers.**

(2) The Witness Protection Officers shall in the exercise of powers, performance of functions and carrying out duties conferred upon, assigned or imposed upon them by the Chief Witness Protection Officer, assist the Chief Witness Protection Officer.

12. The functions of the Unit shall be to -

**Functions of the  
Unit.**

(a) establish and maintain the Programme;

(b) determine the criteria for admission to and removal from the Programme;

(c) determine the type of protection measures to be applied;

(d) advise any Government department, agency, body or any other person on the adoption of strategies and measures on witness protection; and

(e) perform such other functions as may be necessary for carrying out the purposes of this Act, or any other functions as may be assigned to it by Government.

13. The Unit shall have powers to -

**Powers of  
the Unit**

(a) control and supervise its staff in a manner as may be necessary for the promotion of the purpose and the object for which the Unit is established;

(b) administer the funds and assets of the Unit;

(c) collect, analyse, store and disseminate information related to witness protection;

(d) give such instructions to a protected person as the Agency may consider necessary;

(e) summon a public officer or other person to appear before it or to produce a document or thing or information which may be considered relevant to the functions of the Unit within a specified period of time and in such manner as it may specify.

14. (1) The Chief Witness Protection Officer shall be responsible to decide for inclusion of a witness in the Programme, and shall give due regard to the report and recommendations of the committee specified in section and the witness protection officer concerned, in terms of the following: -

**Inclusion of a  
Witness in the  
Programme.**

(a) the seriousness of the offence to which the statement or evidence of the witness relates;

(b) the nature and importance of that statement or evidence;

(c) the nature of the perceived danger to the witness;

(d) the nature of the witness's relationship to any other witness being assessed for inclusion in the Programme;

(e) any danger that the interest of the community might be affected, if the witness or any related person is not placed under protection;

(f) the nature of the proceeding in which the witness has given evidence or is or may be required to give evidence, as the case may be;

(g) the probability that the witness or any related person will be able to adjust to protection, having regard to the personal characteristics, circumstances and family or other relationship of the witness or related person;

(h) the cost likely to be involved in the protection of the witness or any related person;

(i) the results of any psychological or psychiatric examination or evaluation of the witness conducted to determine his or her suitability for inclusion in the programme;

(j) whether there are viable alternative methods of protecting the witness; and

(k) whether the witness has a criminal record, particularly in respect of violent crime, which indicates a risk to the public if he or she is included in the programme;

(l) any other factor that the head of the Unit deems relevant.

(3) A witness shall not be included in the Programme unless the witness, or a person legally responsible for the person, agrees in writing to be included in the Programme.

15. (1) Subject to sub-section (2), the Chief Witness Protection Officer, before placing any witness or related person under protection, shall -

**Protection Agreement**

(a) enter into a written protection agreement with such witness; and

(b) where applicable, enter into a separate written protection agreement with each related person, setting out the obligations of the Chief Witness Protection Officer and the witness or related person in respect of his or her placement under protection.

(2) A protection agreement shall set out the terms and conditions under which a witness or related person is to be placed under protection, including-

(a) an obligation on the Chief Witness Protection Officer –

(i) to take such reasonable steps as are necessary to provide the protected person with the protection and related services, as referred to in the protection agreement concerned; and

(ii) not to keep a protected person under protection in any prison or police cell, unless otherwise agreed upon;

(b) an obligation on the witness or the related person –

(i) where applicable, to give the evidence as required in the proceedings to which the protection relates;



(ii) to meet all financial obligations incurred by him or her that are not payable by the Unit in terms of the protection agreement;

(iii) to meet all legal obligations, including any obligation regarding the custody and maintenance of children and taxation obligations;

(iv) to refrain from activities that constitute a criminal offence;

(v) to refrain from activities that might endanger his or her safety or that of any other protected person;

(vi) to accept and give effect to all reasonable requests and directions made or given by any member of the Unit in relation to the protection provided to him or her and his or her obligations;

(vii) to inform the Unit of any civil proceedings which have or may be instituted by or against him or her or in which he or she is otherwise involved;

(viii) to inform the Unit of any proceedings in which he or she was or may be involved, either as a witness or accused or otherwise; and

(ix) not to endanger the security or any other aspect of the protection of witnesses and related persons or related services or any other matter relating to a Programme provided for in this Act;

(c) any other prescribed terms and conditions or obligations agreed upon; and

(d) a procedure in accordance with which the protection agreement may, if necessary, be amended.

16. (1) For the purposes of this Act, the Unit may apply to the Court for an order authorizing a specified person or class of persons -

(a) to make a new entry in the register of births, register of deaths or register of marriages in respect of a witness;

(b) to issue in the witness's new identity a document of a kind previously issued to the witness.

(2) The Court may, if it is satisfied that the life or safety of that person may be endangered by virtue of the person being a witness, make a witness protection order.

**Court Orders  
Protecting  
Witnesses From  
Identification.**

(3) Any proceedings of the Court under this section shall be conducted in camera, and all records of the proceedings shall be sealed.

(4) While making of a witness protection order under sub-section (2), any person authorized to do so by the order may make such entries in the register of births, register of deaths or register of marriages as are necessary to give effect to the order.

(5) An entry made in the register of births, register of deaths or register of marriages shall have effect as if it were a valid entry made under the Births, Deaths and Marriages Act.

17. (1) Any person who is aggrieved by an order passed under section 16 above, may appeal against such order to the High Court within thirty days from the receipt of such order.

**The appeal**

(2) The High Court shall decide the appeal as expeditiously as possible and preferably within thirty days from the date of service of notice on respondent.

18. (1) The protection and assistance provided under the Programme -

**Termination of protection and assistance.**

(a) shall be terminated by Chief Witness Protection Officer if the participant or, as the case may be, protected person requests in writing that it be terminated; and

(b) may be terminated in writing by Chief Witness Protection Officer if –

(i) the witness deliberately breaches a requirement or undertaking relating to the Programme;

(ii) the witness's conduct or threatened conduct is, in the opinion of the Chief Witness Protection Officer, likely to threaten the security or compromise the integrity of the Programme; or

(iii) the circumstances that gave rise to the need for protection and assistance for the witness have ceased to exist, and the Chief Witness Protection Officer is of the opinion that, in all the circumstances of the case, the protection and assistance should be terminated.

(iv) the safety of the person is no longer threatened;

(v) satisfactory alternative arrangements have been made for the protection of the person;

(vi) the witness, in making application for placement under protection, wilfully furnished false or misleading information or particulars or made a statement which is false or misleading in any material respect, or wilfully failed to disclose any information or particulars material to his or her application;

(vii) the behaviour of the person has endangered or may endanger the safety of any protected person;

(viii) the evidence of a witness is no longer required in the concerned proceeding which might be established upon receipt of a written notice given by the interested functionary or that such proceedings have been concluded by written notice.

(2) A decision of the Unit to terminate protection and assistance under the Programme shall take effect –

(a) when the Unit notifies the witness of the decision;

(b) if the witness's location is not known and the Chief Witness Protection Officer has taken steps to notify the witness, at the end of a period of twenty-eight days after those steps were taken.

19. Any person aggrieved by any decision of or steps taken by the Chief Witness Protection Officer or any person acting on behalf of the Chief Witness Protection Officer under the provisions of this Ordinance, may within the prescribed period and in the prescribed manner, apply to Government to review the decision or steps taken.

**Review by the Government**

20. (1) A person whose protection has not been terminated shall not disclose his or her former identity for any purpose, and it shall be lawful for that person, in any proceedings or for any purpose to claim that his or her new identity is his or her only identity.

**Obligation on protected person.**

(2) If there are reasons to believe that a protected person who has been provided with a new identity under the Programme is using the new identity to -

(a) avoid obligations that were incurred before the new identity was provided; or

(b) avoid complying with restrictions that were imposed before the new identity was provided,

(3) The Unit may, after giving notice in writing to the protected person, take appropriate legal action against him.

21. The Unit may, if it considers appropriate, restore the former identity of a person whose protection and assistance under the Programme has been terminated. **Restoration of former identity**

22. (1) No person shall disclose any information which in the exercise of powers, performance of functions or carrying out the duties conferred upon, assigned to or imposed upon him or her by or under this Act or in the course of the performance of any functions relating to the provisions of this Act except.

(a) for the purpose of giving effect to the provisions of this Act;

(b) when required to do so by any competent court;

(c) if he or she is authorized thereto by the Chief Witness Protection Officer; or Disclosure of Information.

(d) in terms of sub-section (2).

(2) The Chief Witness Protection Officer may, subject to sub-section (1), and on such terms and conditions as he deems fit, disclose any information in respect of protected person –

(a) with the consent of the protected person; or

(b) in any criminal proceedings if the disclosure is necessary to establish the guilt or the innocence of a person;

(c) if the Chief Witness Protection Officer is notified by the competent authority that the protected person is under investigation for, or has been arrested for, or is charged with a serious offence, the Chief Witness Protection Officer may–

(i) release to that authority the new identity or location of the person;

(ii) provide that authority with the criminal record and fingerprints of the person;

(iii) release to that authority such other information as Chief Witness Protection Officer considers appropriate in the circumstances; and

(iv) otherwise cooperate with that authority.

(3) The Chief Witness Protection Officer shall, in determining whether information in respect of a protected person should be disclosed as contemplated in subsection (2), take into account –

- (a) the reasons for the disclosure;
- (b) the probability that the disclosure may endanger the safety of the protected person concerned or that of any other protected person or the integrity of a Programme under this Act;
- (c) whether the need for the disclosure can effectively be met by any other means:
- (d) whether there are effective means available to prevent any further disclosure of the information; and
- (e) any other factor that, in the opinion of the Chief Witness Protection Officer should be taken into account.

(4) Any person who contravenes the provisions of sub-section (1), commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years.

23. (1) Where in any proceedings in a court, tribunal, commission or in any inquiry, the identity of protected person is in issue or may be disclosed, the court, tribunal, commission or inquiry shall, unless it considers that the interest of justice requires otherwise -
- (a) conduct that part of the proceedings that relates to the identity of the participant in camera; and
  - (b) make such order relating to the suppression of publication of evidence given before the court, tribunal, commission or inquiry as, in its opinion, will ensure that the identity of the protected person is not disclosed.
- (2) Any civil proceedings in which a protected person is a party or a witness, may be proceeded within terms of the laws regulating such proceedings. However, if it appears to a Judge of the court in an application, made to him by the Chief Witness Protection Officer that the safety of any protected person might be endangered by the institution or prosecution of any civil proceedings in which a protected person is a party or a witness, the Judge may make any order as he deems appropriate with regard to the institutions or prosecution or postponement of those proceedings in a manner aimed at -
- (a) preventing the disclosure of the identity or whereabouts of the said person; or
  - (b) achieving the objects of this Act.

**Identity of  
protected person  
not to be  
disclosed in  
Court  
Proceedings.**

(3) The address of the Unit shall for all purposes of service of process on a protected person serve as the address of such person.

24. Notwithstanding anything contained in any law for the time being in force or any judgment of any court, the Protection Officer shall, at any proceedings instituted or conducted in terms of any law, in which the protected person is a party or a witness and in respect of which he or she is in terms of any law compellable to answer questions or to give evidence or to produce any book, record, document or object in his or her possession or under his or her control in such proceedings, make an order prohibiting the publication of any information, including any drawing, picture, illustration, painting, photograph, whether produced through or by means of computer software on a screen or a computer print-out, pamphlet, poster or other printed matter, which may disclose -

**Publication of information concerning protected person.**

(i) the place of safety or location where he or she is or has been under protection or where he or she has been relocated in terms of this Act;

(ii) the circumstances relating to his or her protection:

(iii) the identity of any other protected person and the place of safety or location where such person is being protected: or

(iv) the relocation or change of identity of a protected person, unless the Chief Witness Protection Officer satisfies the protection officer concerned that exceptional circumstances which are in the interest of justice exist why such an order should not be made.

25. (1) Any person who -

(a) wilfully or negligently allows any unauthorized person to gain access to any protected person;

(b) wilfully or negligently discloses, in contravention of any provision of this Act –

(i) the identity of any protected person;

(ii) information that a particular protected person is under protection;

(iii) the place of safety or location where any person is under protection or has been relocated in terms of this Act:

(iv) any information which could lead to the identification of any such person or any such place of safety;

(v) any information which undermines or compromises or could undermine or compromise the integrity of a Witness Protection Programme in terms of this Act; or

**Offences relating to witness protection.**

(vi) any information relating to the relocation or change of identity of a protected person; or

(vii) any information that compromises the security of such a person;

(c) wilfully or negligently contravenes any provisions of exception contained in this Act regarding disclosure of information or in contravention of any conditions determined by the Chief Witness Protection Officer, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding three years.

(2) (a) Any person who-

(i) Wilfully interferes with, or hinders or obstructs the Chief Witness Protection Officer or any other member of the Unit in the exercise, performance or carrying out of any of his or her powers, functions and duties contemplated in this Act; or

(ii) with intent to gain for himself or herself or for any other person protection in terms of this Act, makes any false statement or furnishes information that he or she knows to be untrue or misleading, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding five years.

- |     |   |                                       |
|-----|---|---------------------------------------|
| 26. | Any person who abets or attempts to commit any offence punishable under this Act shall be liable to be punished with the punishment provided for that offence.  | <b>Abetments and attempts</b>         |
| 27. | Nothing contained in this Act shall derogate from the powers of a Police Officer to provide protection and assistance to a witness under Police Act,1861 and rules made thereunder.   | <b>Powers of police not derogated</b> |
| 28. | (1) The Chief Witness Protection Officer shall, not later than 31 <sup>st</sup> day of January of the following year, submit an annual report to Government relating to the general operation, performance and effectiveness of the Programme.<br><br>(2) The Chief Witness Protection Officer may, whenever he considers it necessary to do so, submit special report to Government on any matter relating to the Programme. | <b>Reports to the government</b>      |
| 29. | Government may make rules for carrying out the purposes of this Act.  | <b>Rules</b>                          |

## SCHEDULE

(Schedule 2(k) (Offences in respect of which a witness or related person may be placed under protection)

1. Treason
2. Seditious
3. Murder
4. Rape
5. Public violence
6. Robbery-
  - (a) when there are aggravating circumstances; or
  - (b) involving the taking of a motor vehicle.
7. Kidnapping
8. Defeating the ends of justice
9. Perjury
10. Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.
11. Any offence related to contraband drugs and drugs trafficking if -
  - (a) the value of the substance and question is more than rupees one million; or
  - (b) the offence was committed by any law enforcement officer.
12. Any offence referred to in Anti-Terrorism Act.
13. Any offence relating to -
  - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or
  - (b) the possession of an automatic or semi-automatic firearm, explosives or armament.
14. Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft-
  - (a) involving amounts of more than rupees five million; or
  - (b) involving amounts of more than rupees one million if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or



(c) if it is alleged that the offence was committed by any law enforcement officer –

(i) involving amounts of more than rupees one million; or

(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

15 Any offence referred to in any law relating to offences of sabotage against the State.

16. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule,

17. Any other offence as may be prescribed.

18. Any other offence in respect of which it is alleged that the offence was committed by –

(a) a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(b) a law enforcement officer, and in respect of which the Chief Witness Protection Officer is of the opinion that the safety of a witness who is or may be required to give evidence, or who has given evidence in respect of such an offence in any proceedings or any related person, warrants protection.

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BY ORDER OF THE MADAM ACTING SPEAKER PROVINCIAL ASSEMBLY OF SINDH  
G.M. UMAR FAROOQ ACTING SECRETARY PROVINCIAL ASSEMBLY OF SINDH







**UNODC**

United Nations Office on Drugs and Crime

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