Lesson Series 47

Victim and witness protection

Summary

This lesson series discusses victim and witness protection as a concept and notes its absence in the majority of Asian countries. Witness protection is particularly important for a country’s justice system, which is also discussed.

The series also uses Thailand’s fledgling witness protection programme as a case study.
THEME: Victim and witness protection

The Issue

When victims of human rights abuse dare to speak out and make complaints against their perpetrators, they invariably face further abuse and harassment. Witnesses to such abuse—bystanders, relatives of the victim as well as the victim herself—are also subjected to abuse and harassment, in hopes of dissuading them from giving testimony.

Witness testimony is crucial to successful prosecution of the perpetrators and for ensuring justice, particularly in Asian jurisdictions. It is therefore essential that victims and witnesses are given adequate protection to ensure fair trial and effective redress. The majority of Asian countries however, have no mechanisms in place to provide this protection. Lack of protection prevents victims and witnesses from coming forward, which in turn reduces the chance of effective prosecution and justice. It also serves to encourage perpetrators to continue committing violations.

The Lessons

Lesson 1 discusses the issue of victim and witness protection, focusing on its absence in many Asian countries and the consequent implications for court trials and justice.

Lesson 2 is a case study of Thailand’s fledgling witness protection programme.
Lesson 1

This lesson introduces victim and witness protection as a concept, through cases from various Asian countries. The distinction between victims and witnesses is explained, as is the importance of protection for the criminal justice system.

A. Threats to victims and complainants of abuse

Mrs Shahin Sultana Santa was severely assaulted by the Bangladeshi police on 12 March 2006 while she was waiting to pick up her son from school. Pregnant at the time, Santa was later forced to undergo an abortion, as her injuries caused medical complications.

After the Mohammadpur police station refused to file her complaints against the police officers, Santa lodged two cases at the Chief Metropolitan Magistrate Court of Dhaka (CMM), under the Penal Code and the Women and Children Repression Prevention Act respectively. Although the court dismissed all charges against the accused police officers on May 21, Santa is in the process of appealing the judgment.

From the time she lodged cases in the court, Santa and her family have been subjected to threats and harassment, including being implicated in false cases. On March 22, two cases were lodged with the CMM against Santa and her husband, Mr Atiur Rahman, a lawyer by profession. The first case involved charges of illegally claiming tolls, while in the second case Santa and Atiur were charged with theft. Furthermore, the investigating officers in both cases are the officers accused of assaulting Santa.

On March 23, one of Santa’s witnesses, Mr Zakir, went to the Magistrate’s office to give evidence regarding Santa’s case filed under section 10/30 of the Women and Children Repression Prevention Act. Shortly after leaving the Magistrate’s office, Zakir was arrested. Similarly, on March 29, another witness, Mr Omar Farukh Keru was threatened by police inspector Nabo Jyoti Khisha, who said he would be implicated in 10 cases. The police have also been threatening other witnesses in Santa’s case by frequenting their or their relatives’ homes.

Police harassment has also forced Santa and Atiur to flee their home. Regardless, on May 5, Santa’s husband was attacked by eight persons on his way back from work, losing his mobile phone and 8000 taka. Again on May 24, he was accosted by unknown persons as he was leaving work. They held a gun to his chest and threatened to shoot him. Santa also continues to receive threatening phone calls. She has no recourse to protection, and is afraid that if she goes to the police to report any of these incidents, she or her family may be implicated again in false cases [see further: AHRC AS-114-2006, 24 May 2006; UP-114-2006, 25 May 2006; UP-112-2006; UP-101-2006; UP-096-2006; UP-083-2006; UP-062-2006; UP-058-2006; UA-105-2006].
The police in Bangladesh are notorious for their criminal and abusive behaviour. Just as notorious is the absence of any justice or redress for those having been abused. In fact, when victims such as Santa dare to seek redress, they face further abuse. Santa and her witnesses were harassed by the police, in order that all charges against them are dropped. Not even the court was able to serve justice to Santa.

Victims of abuse face a similar situation in Sri Lanka. Under the Sri Lankan constitution, citizens are able to file applications directly to the Supreme Court regarding violations of their basic rights, which provides an avenue for victims to seek redress. In this way, victims of police abuse, after filing complaints against their perpetrators, become witnesses in human rights cases. This however, inevitably results in the police further harassing the victims—directly or indirectly—with the intent to get charges withdrawn. These issues are detailed in the written statement made to the 61st session of the Commission on Human Rights by the Asian Legal Resource Centre (ALRC), sister organization of the Asian Human Rights Commission (AHRC).

1. On 8 and 9 January 2004 D.G. Premathilaka was arrested and tortured by officers attached to the Katugastota police station, Sri Lanka for giving up his illicit liquor business—which is profitable for many police officers. Following this, Premathilaka lodged a complaint, the outcome of which is still ongoing. On 16 November 2004, officers from the same police station threatened Premathilaka demanding that he withdraw his complaint made against them. Following this Premathilaka lodged a second complaint with Sri Lankan authorities, including the Human Rights Commission of Sri Lanka.

2. Despite two complaints having been lodged against police officers from the Katugastota police station, a further incident of torture against Premathilaka has taken place. On 23 January 2005 at about 2am, Premathilaka was tortured by 12 police officers, including the Officer-in-Charge, from the Katugastota police station. The officers broke the lock of Premathilaka’s front door and forced their way into the house. Claiming that a warrant had been issued for Premathilaka’s arrest, the officers dragged him out of his house and into their jeep.

3. The following day Premathilaka’s wife went to the police station. She could see that her husband’s sarong was wet with blood and he complained to her about the brutal assault he had received. At 1pm on the same day, Premathilaka was presented before the Kandy Magistrate and a lawyer—appointed by the same police officers who had beaten him—appeared on his behalf. On January 25 Premathilaka had to appear before the Kandy Magistrate again, where he was charged with selling illicit liquor. He was not granted bail and remained in custody until February 8. The purpose of instituting new charges against Premathilaka and getting him remanded was to obstruct him from pursuing a further complaint against the police and getting proper medical treatment.

4. This is the reality of seeking justice in Sri Lanka today. Retaliations against those who lodge complaints against the police are on the increase and there is little done to rectify this situation by way of providing witness protection. Gerald Perera was killed only days before he was to give evidence in his own torture case against the police. When the perpetrators were finally arrested, it was revealed that they were the three police officers who are accused of torturing Gerald.
5. Torture victim Channa Prasanna Fernando, into whose case an inquiry was being conducted, was kidnapped and an attempt was made on his life, which he only narrowly avoided. While two cases against the perpetrators were then ongoing, there was a third attempt on Channa’s life one night while he was sleeping. He was able to run away and is now in hiding.

6. In the case of Lalith Rajapakse, he was repeatedly threatened and intimidated. As a result, he is currently in hiding. His family, meanwhile, has received police protection, as has human rights activist ULF Joseph, after he was threatened for having helped Lalith.

7. Amarasinghe Morris Elmo De Silva, who was allegedly tortured by officers of the Jaela police station, was forced to flee the country due to threats to him and his wife because of a case against the perpetrators ongoing at the Negombo High Court.

8. As shown in the cases above, criminal behaviour by police officers, including threats and intimidation to complainants of police abuse, occurs with impunity in Sri Lanka. These officers are allowed to continue in their posts with no disciplinary action taken against them. Not only does this encourage further criminal behaviour, but it denies any personal security for those who seek justice for crimes committed against them [‘Threats and intimidation to those who seek justice in Sri Lanka’, E/CN.4/2005/NGO/108].

The above cases glaringly spotlight the life threatening obstacles faced by those who speak out and make complaints against the abuse they have suffered. This situation is worsened when victims are making complaints against state officers; Asian countries have a serious lack of independent complaint mechanisms against state officers, particularly the police. This means that any complaints to be filed against police officers have to be made to the same police station, or at best, a police station in a different locality. Furthermore, even when complaints are not against the police, most crimes are committed with the knowledge and/or collaboration of the police, as seen in Premathilaka’s illicit liquor business. Witness protection in these cases thus means protection from the police.

However, a common experience around Asia is to have the police force provide protection to individuals. This is problematic for two key reasons. First, if the perpetrators are themselves police officers, the victim will not feel secure by having fellow police officers around. As mentioned above, Gerald Perera was killed by persons on the behest of the police officers he was to testify against [click here for detailed information]. Second, the police are not in fact properly trained or equipped to provide protection. As officers providing protection to Angkhana Neelaphaijit, wife of disappeared Thai lawyer Somchai Neelaphaijit was told, they had not been assigned such an assignment previously, and were not given guidelines on how to proceed [more details are given in Lesson 2; also see http://www.ahrchk.net/somchai/].
B. Threats to witnesses in criminal cases

All victims of abuse are also witnesses. In fact, as eyewitness to the incident, they are the most important witnesses to the case; some cases are not able to be proved without eyewitness testimony. Not all witnesses however, are victims; they may be bystanders or relatives of victims. They can however, become victims of threat and intimidation for testifying in court. Witness protection is therefore an essential part of ensuring justice and fair trial. Unfortunately, even at the stage of court trials, few Asian countries have mechanisms in place to provide such protection, as the following cases indicate.

On 10 October 2005, a 23-year-old woman was allegedly raped by airport officers at the Bandaranaike International Airport in Katunayake, Sri Lanka. The victim was threatened at knife-point and forcibly drugged before being raped. She was then put onto a flight to another country immediately after the incident.

The victim identified airport security officer Mervyn Nissanka Anthony of Mulleriyawa North as the main suspect at an identification parade before Negombo Acting Magistrate Indra Peiris on October 28. Mervyn was then arrested together with four other suspects.

At this time, in court, a female relative of Mervyn threatened to kill the victim for taking action against the alleged perpetrator. Moreover, the perpetrator signalled a shooting action with his hand to the husband of the victim through the window of the prison bus. Fearing for her security, the victim informed the police that she would withdraw the case filed against the suspect. Police at the Bandaranaike International Airport complained about this matter to the Negombo Magistrate and Additional District Judge Kanthi Wanigasekera, who then refused to grant bail to the suspect and ordered him to be remanded until November 21. The other four suspects were released on bail. However, no witness protection has been provided to the victim and she still fears for her life and suffers from acute mental stress and humiliation.

A few days after the identification parade, the victim received anonymous telephone calls threatening to kill her. Suspicious persons were also loitering about her residence in Wellawa, regarding which she made a complaint to the Wellawa police.

Further calls were made to the victim’s family members on November 3 and 6, saying “Can’t you remember me? Can’t you recognise me? Don’t go to court. If you want to settle the matter out of court, come to Colombo. If you come to the court, you will be killed.” The November 3 call was made from a telephone bearing the number 0777 436 087. A further call was received on 12 January 2006 from an unidentified number and threats were again made that if the case went to court, people would be killed. Again, on 11 February 2006, a call was received with the caller saying “A contract has been given to murder you all. Don’t try to struggle too much. We have discovered all your whereabouts. If you all come to court, you will be killed.”
Following these threats, a second complaint was lodged at the Wellawa Police Station on 24 February 2006. However, the police have been unable or unwilling to take effective action against the perpetrators and made the victim feel secure. For this reason, the victim and her family are now frightened in pursuing the case, assisting in the investigation and appearing before the court [see further: AHRC UA-183-2005, 21 October 2005; UP-127-2005, 1 November 2005; UP-149-2005, 28 November 2005; UP-151-2005, 1 December 2005; and UP-065-2006, 31 March 2006].

As the attorney general of Sri Lanka has himself noted, the country’s four per cent conviction rate is primarily due to the reluctance of witnesses to testify against crimes.

In the Philippines, there are an alarming number of activists killed daily. Witnesses to these killings are reluctant to come forward to testify, which has resulted in the authorities’ inability to prosecute those responsible. The AHRC has closely documented many of these killings, none of which have led to criminal convictions. In an open letter to the Department of Justice dated 11 January 2006, the AHRC referred to several of these cases.

Mr Norman Bocar, a lawyer from Eastern Samar, was killed on 1 September 2005. Prior to his death Bocar sought the help of the police for his security following serious threats against his life. It is not known however, whether the police acted on his request. The police investigation into his death has reached no conclusive findings and the perpetrators were not identified. The police formed “Task Force Bocar” to investigate the killing but this has failed to bring any justice to this case.

Mr Joel Reyes was killed on 16 March 2005 in Panganiban, Camarines Norte. The lone witness to his case, Dario Oresca, was also slain before he could testify in court. Even though the local police were aware of the threats made against Oresca, he was not placed under any protection. In a letter to the AHRC, the Commission on Human Rights (CHR) regional office in Naga City, the Commission’s special investigator, Raymundo de Silva admitted failure of the RA 6981 [Act for Witness Protection, Benefit and Security]. De Silva said that the programme was not yet thoroughly understood by the populace.

Although De Silva concluded in his findings that the killing of Reyes and Oresca could have been perpetrated by a reformist armed group critical of the communist movement and identified two alleged perpetrators, named only as Ka Clito or Ka Abril and Ka Darlin or Ka Love, these persons have not been located. Thus, the case will be highly jeopardised by the absence of a prosecution witness in court.

Mr Felidito Dacut, a human rights lawyer, was slain on 14 March 2005 in Tacloban City. In a 30 May 2005 letter received by the AHRC from the Commission on Human Rights (CHR) regional director, Mr Paquito Nacino stated that the witness in his case, Felix Dumlao, could no longer be located, thus jeopardising the process in prosecuting the perpetrators. Dumlao soon after went into hiding in fear for his life. The AHRC is unaware of any action taken by the government to locate him or provide him with security under RA 6981.
Mr Alfredo Malinao and Fr. Edison Lapuz were slain on 12 May 2005 in San Isidro, Leyte. An inquiry conducted by the CHR regional director, Mr Nacino has revealed that their relatives are either reluctant or not cooperating in their inquiry. The relatives’ reluctance to cooperate does not constitute a disinterest in pursuing this case, but rather demonstrates the fear they have for their security should they become involved [AHRC-OL-002-2006, 11 January 2006].

The reason for the killings themselves is the lack of protection afforded to the activists and human rights defenders. Although the Philippines has a protection law, it is not effective or properly implemented. It is therefore not surprising that witnesses to the killings are not willing to come forward. For instance, activist Elena Mendiola suffered an attempt on her life in March 2006, but was not given any protection. On 10 May 2006, Elena and her partner Ricardo Balauag were shot dead in in Barangay Garit, Echague, Isabela. Witnesses to Elena and Ricardo’s killings are reportedly afraid to testify, also due to the lack of protection.

In fact, a task force established on May 12, Task Force Usig, to investigate the current rampant killings has publicly admitted that one of its great difficulties is the reluctance and unwillingness of witnesses to cooperate.

The reluctance of witnesses and victims’ families to cooperate with police investigators comes as no surprise. The police have themselves been implicated in the abductions and killings. For instance, one of the three hooded men who attempted to take the life of labour leader Gerardo Cristobal in Imus, Cavite on April 28 was alleged police intelligence officer SPO1 Romeo Lara. In many other cases too state agents are suspected of involvement.

Although Task Force Usig has publicly recognised that it has a problem with cooperation by witnesses and relatives of victims, it has not yet recognised that the reason for this is the lack of effective witness protection in the Philippines. In fact the failing undermines the country’s entire judicial system. The government and Commission on Human Rights of the Philippines too have publicly accepted that these killings are a “gross violation of rights” and a “failure of the justice system” without making this connection, and taking steps to remedy the situation by legislative and judicial means…

Task Force Usig must begin its work by recognising witness protection as the overriding concern. It must work with the Department of Justice to make Witness Protection, Security and Benefit Act (RA 6981) reality. The success of Task Force Usig’s investigations, and any subsequent trials, depends on this, as does its reputation and that of the justice department [AHRC AS-120-2006, 26 May 2006].

Implications for trials and justice

As the above cases clearly indicate, protection is essential for the participation of witnesses and victims of human rights violations within the justice system. Apart from the suffering they themselves experienced or witnessed, they will be aware of the impunity granted to perpetrators, as well as the dire consequences facing those who dare to seek redress. Under these circumstances, with no recourse to protection and support, there are
few persons who will come forward.

A justice system depends upon evidence being collected and brought before the courts. If fear prevails, evidence cannot be collected. When evidence is not collected, the courts either do not take up cases or dismiss the charges against the accused, as the judge can only consider what is brought before the court. In this manner, the perpetrators of torture, extrajudicial killings and forced disappearances routinely escape justice.

Just as the outcome of a case depends upon the quality of evidence presented to the court, the quality of evidence depends upon the investigation, from its earliest stages. If a complainant is unafraid and comes forward shortly after a crime, describes in detail what happened, points to other persons and materials that substantiate this account, is supported by other witnesses and does not change the account, the case will probably be a success. By contrast, if a complainant is fearful and has low expectations of the courts, coming forward only much later if at all, reluctantly giving details of what happened and who else may be able to substantiate the story, and under pressure changes the account, the case is unlikely to succeed. In human rights cases especially, the determining factor between one outcome or the other is protection.

Witness protection is also about how a judge exercises authority. In a developed legal system, the judge asserts the prerogative to make decisions on how the case is handled. Respect for that authority is determined by the extent of respect for fair trial. Where fair trial is respected, judicial orders are upheld. Where fair trial is sabotaged, judicial orders are mocked. When the accused is able to get rid of prosecution witnesses or cause them to reverse earlier testimony, the court also is made into a cruel parody. Whatever formal gestures the judge may make, the authority of the court is diminished.

The authority of a court and respect for fair trial are put to the greatest test when state officers are the accused. A law enforcement officer has many more means than an ordinary person to ensure that complaints against him are never heard by a judge. Where they are heard, he has still many other means to reduce a trial to farce. In most cases against law enforcement officers in Asia, witnesses are too afraid to appear in court. Where they do appear, they deny earlier testimonies or lie blatantly in a desperate attempt to escape retribution.

So the absence of witness protection and the absence of fair trial are one and the same. When the public understands that the courts are in the hands of police and politicians and even the best judges can be manipulated and cornered, the entire system loses credibility. Where judges are active participants in this charade, the very notion of justice will be lost to the society. Where a case is repeatedly postponed because witnesses have not appeared or alleged perpetrators are acquitted “for lack of evidence”, although the judge may be acting within the law in fact the effect is that the court is making a mockery of itself. Under these circumstances, institutions of justice lose all credibility.
C. State obligation to provide protection

To ensure fair trial and the administration of justice is the obligation of all states, under international (ICCPR article 14) as well as domestic law. Victim and witness protection, as mentioned above, is essential to fair trial. It therefore follows that states are obliged to provide such protection.

Furthermore, international law also obliges states to ensure that victims of human rights violations have recourse to effective remedies (ICCPR, article 2(3)). Remedies for any violation must include the prosecution and punishment of perpetrators, as well as suitable reparation for victims. In seeking these remedies, victims and witnesses must not be intimidated or threatened; the circumstances present in most Asian countries require that protection be provided in order for victims and witnesses to effectively obtain remedies.

Other obligations under the ICCPR that hinge upon states having an effective witness protection programme include the right to life (article 6), freedom from torture and cruel, inhuman or degrading treatment or punishment (article 7), right to security of person (article 9) and freedom of movement (article 12).

Implementation of the rights guaranteed under international law requires effective legislation and competent authorities. However, there are few Asian countries that have such effective measures regarding witness and victim protection. Most countries have no provisions at all, including India, Sri Lanka and Bangladesh, while a few such as the Philippines and Thailand have ineffective provisions.

2. **Indonesia:** A long-awaited Witness and Victim Protection Bill is still in draft. Apart from measures to give assistance to witnesses and victims, the draft imposes serious penalties on persons who attempt to stop witnesses from appearing court, or inform others of their whereabouts and identities. However, even before the bill has been completed the chairman of the drafting committee has proposed that the witness protection agency be under the police, rather than properly independent. Unfortunately, placing the task of witness protection in the hands of the police completely defeats its purpose... Meanwhile, the Indonesian security forces and paramilitary groups continue to operate with gross impunity right across the archipelago, and human rights defenders and victims face serious and systematic threats on their lives, as well as those of their colleagues and families.

3. **India:** There is no national-level scheme or guidelines for witness protection, and some states have no laws to protect witnesses and victims. The trials of persons accused of mass killings in Gujarat during 2002 descended into farce after witnesses constantly changed their testimonies due to a systemic campaign of intimidation by the state authorities and powerful nationalist groups, coupled with a lack of witness protection. In most parts of the country, witnesses brought to court in cases against rich and powerful people turn hostile, making a mockery of the law and India’s pretensions to human rights and democracy. The police in many areas work together with corrupted judicial officers and criminals to intimidate and murder with impunity, through use of “crossfire” encounter killings and mob attacks on persons and property. The country’s enormous bureaucracy remains largely inert and complicit, and countless judicial reform committees and commissions have paid virtually no attention to witness protection.
4. Sri Lanka: There is no witness protection programme of any sort. The exceptional collapse of the rule of law there, and very strong nexus between the police, politicians and criminals, together render the state incapable of protecting witnesses and victims of crime, even if it had the will to do so. Citizens’ groups have instead organised their own programmes, with great difficulty, to relocate and hide victims of police torture and other abuses. Nonetheless, Sri Lankans who have dared to speak out and press complaints against state officers have lost their lives as a consequence [‘Protecting witnesses or perverting justice?’, ALRC 2006].

Protecting witnesses is a duty of the state. This is a fundamental and globally-established principle. Where the state declines to protect witnesses, it denies justice to society. The state must find the people, money and means to do this. A state that talks about witness protection but does not allocate funds and resources for that purpose fails in its duty.

But the real problem in setting up a witness protection programme is not money; it is about the place of witness protection in state policy. Where the importance of protecting witnesses to obtain justice is understood and articulated, an authority to give effect to this policy can be quickly established and developed. There are many available resources for such work these days. Where witness protection is limited or non existent it is primarily a question of understanding and official will.

What should be expected of a proper witness protection programme? It must be easily accessible. It must be widely known and its role understood. It must respond promptly to requests. It must have a range of alternative forms of protection available to witnesses, including special protection in courts. It should also be able to protect identities when required. It must respect confidentiality. A working protection scheme of this sort will win public confidence, support and cooperation, and have profound effects on the working of the country’s entire judiciary.

Questions For Discussion

1. Do you know of similar situations, where victims or witnesses of violations have been further threatened, or have been afraid to testify?
2. In your opinion, what other issues are involved in the protection of such individuals?
3. Discuss the relationship between protection and
   a. The participation of individuals in civil society;
   b. Crime;
   c. Impunity.
4. Are you aware of any legal provisions for victims and witnesses in your country? If so, how effective are they?
Lesson 2

This lesson examines the Thai Office of Witness Protection as a case study, based on the report ‘Protecting witnesses or perverting justice?’ by the Asian Legal Resource Centre, June 2006.

Thailand is among the few countries in Asia with witness protection legislation. However, as it stands at present, the Thai experience is indicative of the reality throughout Asia: the existence of legislation does not necessarily translate into its implementation, or protection for citizens. On the other hand, if Thailand’s fledgling witness protection office is able to do its job effectively, it would be a very useful example for other countries to follow. Towards this purpose, the study examines the structure and content of Thailand’s witness protection programme and makes suggestions to overcome its obstacles.

A. Thailand’s witness protection programme


Many new laws and institutions were established after the 1997 Constitution of Thailand with the purpose of effecting rights that did not exist under earlier constitutions. The Witness Protection Act is among these. Under the 1997 Constitution

In a criminal case, a witness has the right to protection, proper treatment, necessary and appropriate remuneration from the State as provided by law. [Section 244]

In a criminal case, an injured person has the right to protection, proper treatment and necessary and appropriate remuneration from the State, as provided by law.

In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by another person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or her heir has the right to receive aid from the State, upon the conditions and in the manner provided by law. [Section 245]

These constitutional rights cannot however, be enforced directly in a court of law. Persons seeking to secure their rights must rely exclusively upon enabling legislation.

Witness protection therefore only became a legal reality in Thailand when the Witness Protection Act BE 2546 was passed in 2003. It followed the Compensation for Victims of Crime Act BE 2544 of 2001.
While witness protection may now be a legal reality, at barely eight pages, the Witness Protection Act is little more than a thumbnail sketch of the work of witness protection. It is instead beholden upon the mandated agency or agencies to introduce regulations with which to expand upon its limited contents. A glaring example of its limited contents is that while the Witness Protection Act was introduced to prevent intimidation and threats against witnesses and victims of crimes, at no point is there a definition of ‘intimidation’ or ‘threat’. Similarly, sections 21 to 23 set down relatively light penalties for revealing the identity of witnesses, intimidating them or causing harm or death, but again, key terms such as ‘harm’ are not explained.

There is, however, a definition of ‘witness’ in section 3, which is problematic for different reasons:

“Witness” means a person who commits himself/herself to be present at, or testify, or give evidence to a competent official for investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert but not a defendant who himself/herself is a witness. [Unofficial translation; emphasis added]

The exclusion of defendants from the definition of persons who may obtain protection runs contrary to its purposes and is enormously detrimental to the protection of human rights and advancement of justice. Victims of torture, arbitrary detention and other severe abuses in police custody are easily subjected to criminal prosecution based upon forced confessions, doctored evidence and fraudulent record keeping. They are among the persons in greatest need of protection. However, the present Thai law denies them this right.

Not only is this limitation deeply offensive, it is also in violation of Thailand’s obligations under the International Covenant on Civil and Political Rights (ICCPR). As a party to the Covenant, Thailand has committed itself to providing redress to all persons who have suffered violations of the rights it encompasses. This obligation stands without regard to other factors, such as whether or not the person is the defendant in a criminal case. It is also contrary to the stipulation of the UN Human Rights Committee, when reviewing Thailand’s compliance with ICCPR provisions for the first time in July 2005, that appropriate arrangements be made for investigations of all cases of custodial abuse in Thailand. In fact, the effect of this provision can only be to encourage police to lodge criminal charges against persons they have abused, in order to ensure that they be denied protection.

Furthermore, the Act does not clearly outline what measures are to be taken to ensure protection or what criteria are to be used in giving protection. In comparison, section 4 of the Hong Kong Witness Protection Ordinance (2000) sets out all the basic criteria to be used in deciding whether or not a witness should be protected:

1. Whether the witness has a criminal record, which could indicate a risk to the public if the witness were included in the witness protection programme;
2. If a psychological or psychiatric examination has been conducted to determine if the witness is suitable for
the programme;
3. The seriousness of the offence;
4. The nature and importance of the evidence or statement given by the witness;
5. Whether or not there are viable alternative methods of protecting the witness;
6. The nature of the perceived danger to the witness;
7. The nature of the witness’s relationship with other witnesses being assessed for inclusion in the protection programme; and
8. Other factors that the approving authority considers relevant.

The procedures that witness protection officers in Hong Kong must adhere to are also set out comprehensively in the Witness Protection Ordinance. For example, section 8 enumerates the steps taken to establish a new identity for a witness. It identifies the public officers authorized to issue the necessary documents to create a new identity, and how they are to proceed.

The Witness Protection Act of Thailand however, fails to consider in detail any of the practical steps and problems arising from witness protection. Section 10 loosely nominates the Witness Protection Bureau—later renamed the Witness Protection Office—to take certain measures, including:

1. New accommodation;
2. Daily expenses for a witness and person under his or her care for up to one year, with further three month extensions not exceeding two years;
3. Coordination with relevant agencies to change the first name, family name, and information that contributes to knowledge of the personal identity of the witness;
4. Assistance for the witness to continue with a career or obtain training with which to earn a living;
5. Assisting or acting on behalf of a witness for his or her lawful rights;
6. Bodyguards for any necessary period of time; and
7. Any other action to assist and support the witness with his or her security as appropriate.

Nowhere in the Witness Protection Act is there a step-by-step explanation of how these provisions are expected to operate, or who is in charge. There are no universal guidelines on witness protection. There is no guidance on the role of particular agencies. The lack of guidelines leaves the door wide open for disparities in methods of dealing with witness protection, and inter-agency conflict. All this is despite the existence of a discrete body, the Witness Protection Office, established ostensibly for the purpose of seeing the law brought into effect.
The Witness Protection Office

Among the new agencies set up following the 1997 Constitution, a number were placed under the Ministry of Justice. They are aimed at counterbalancing the established powers of the police and traditionally powerful parts of government such as the Ministry of Interior. They include the Central Institute of Forensic Science, Department of Special Investigation and Department of Rights and Liberties Protection.

The Department of Rights and Liberties Protection houses both the Witness Protection Office and Office for Public Compensation for Criminal Cases. According to the Witness Protection Act BE 2546 (2003), the Witness Protection Office has powers of “coordination and arrangement to obtain results among public agencies and private organizations, where relevant, which would make protection measures effective” (section 13; unofficial translation).

The Witness Protection Act suggests a supervisory role for the office, in conjunction with other key agencies, such as the police. But how does this coordination work? Is there supposed to be a hierarchy of public agencies with the office at the top? The law does not make this clear. In fact, section 13 is the only one that deals with the office specifically.

The lack of detail is compounded by section 5, which stipulates that “the Prime Minister, Ministers of Defence, Interior and Justice shall be in charge of enforcement of this Act and, in relation to their respective Ministries, shall have the power to appoint competent officials and issue Ministerial Regulations and notifications for the purposes of the implementation of this Act”. Again, the law gives no guidance on how these ministries are supposed to cooperate, suggesting that in the hurry to put the law into effect hard questions about which part of government should be put in charge were deliberately avoided.

Despite the lack of clarity about the precise role of the office, it is envisaged as the specialized agency for witness protection in Thailand, responsible for seeing the law implemented and further rules and regulations drafted. At present, there are many areas of witness protection awaiting clarification by the office. For example, if a witness dies or is killed while under protection, who is liable? Is it possible to relocate witnesses outside of Thailand? Successful witness protection hinges on answers to such questions. If regulations are not fully developed, the office cannot call upon other government agencies to comply with procedures and implement and promote witness protection schemes.

However, the office has very limited resources and capacity. At the end of 2005, it had only 10 officers, although under existing arrangements it should have been allocated 22. The officers do not have special qualifications or training. Most have been transferred from other parts of the Ministry of Justice, without any criteria applied to assess their suitability for witness protection work. The Witness Protection Act does not offer
any guidance on who should be recruited to the office. There is no formal training for officers once they are recruited. In short, the small cadre of officers also lack professional qualifications and skills specific to the job.

With 10 unqualified staff for the entire country of some 65 million, the Witness Protection Office must rely upon seven other agencies to offer protection:

1. Royal Thai Police;
2. Royal Thai Army;
3. Bureau of Internal Security Affairs, Ministry of Interior;
4. Department of Special Investigation, Ministry of Justice;
5. Department of Corrections, Ministry of Justice;
6. Office of the Narcotics Control Board, Ministry of Justice; and

Like the staff of the Witness Protection Office itself, most officials from the seven agencies have little or no expertise in protecting vulnerable witnesses and victims. Most know only how to interrogate suspects and detain convicts. When approaching witnesses, many use the same methods of aggressive inquiry and forced confinement, leaving the witness or victim feeling like a suspect. Some witnesses complain of having been followed at any time of day or night by the ‘protecting’ officers, making them feel even more vulnerable and intimidated than before.

After it was established in 2004, the Witness Protection Office began by introducing the concept of witness protection to police officers from all nine police regions across Thailand. One employee from the Department of Rights and Liberties Protection was sent to each of the country’s 76 provinces to meet representatives of the seven agencies there. Among the seven, the key agency is the police. In view of the fact that the police in Thailand are the main perpetrators of human rights violations, this is a great flaw in the current arrangement. In fact, it completely undoes the entire notion of protection.

Police

In principle, the Witness Protection Office protects witnesses in Thailand; in practice, the police are in charge. As the Royal Thai Police have the men and national reach, it is taken for granted that they have the capacity to protect witnesses, if they wish. Out of the approximately 130 persons that have been under witness protection since the Witness Protection Act was passed, around 90 per cent have been protected by the police.

Rather than question whether the police are suitable persons to offer protection, the Witness Protection Office has instead chosen pragmatically to concentrate on training them. Although short on experience, its
officers are conducting programmes with senior district-level police, who are then expected to train their subordinates, and so on. Subsequently, the office will concentrate on staff in the six other agencies.

The Witness Protection Office cannot order the police to protect someone. When the office refers a case to the police, they may choose to accept or reject it. The office has no power to contradict a decision by the police. It can only protest, or request another part of the police or another of the seven agencies to protect the witness. However, the remaining six agencies will only act on specific cases that are already part of their respective mandates. For instance, the Department of Special Investigation may consider giving protection to a witness in a case that it is investigating, and the Department of Corrections will only take up cases concerning prisoners. Again, these agencies act at their own discretion, not under any obligation.

Once a case is accepted by the police, they have complete control. They decide when protection is offered, how it is offered, and when it ends. The Witness Protection Office has no input, contrary to its stated role as ‘coordinator’ of the relevant public and private agencies involved in making the protective measures effective. Once a witness is referred to the police, the office can do little more than contact the concerned officers from time to time to request basic information about the person’s wellbeing.

Thus the existing provisions for witness protection in Thailand contain a startling and enormous contradiction. The express purpose of the Witness Protection Office being established outside the police force was to bring a degree of civilian oversight over the protecting of victims and witnesses. However, the direct consequence of the existing arrangements has been to hand virtually all of the real authority for protection directly to the police.

In cases where the office has been asked to give protection against police from particular areas, it has sought the assistance of national-level police agencies, or those from other regions. However, this is usually only a short-term arrangement that leaves the witness feeling far from satisfied.

Contrast this arrangement with what has been established in Hong Kong. Under the Witness Protection Ordinance there, both the head of the police and the head of the Independent Commission Against Corruption (ICAC) have the power to institute witness protection measures. Witnesses in criminal cases involving corrupt and illegal actions by state officers, having complained to the ICAC, may seek protection from its own independent Witness Protection and Firearms Section. The ICAC then takes direct responsibility for protection. It does not rely on outside agencies, and can control all aspects of protection as set out in the ordinance, independent of the police.

Thailand does not yet have any independent investigative agencies like the ICAC upon which the Witness Protection Office can call for assistance. However, there are many interim alternatives that remain untried for lack of political will. The government could, for instance, attach a discrete armed unit to the office, give it special
training and make it answerable to the ministry. Whatever the case, steps need to be taken to remove control of witness protection from the police; this is by far the biggest weakness in the current arrangement, and the one that undermines the very principles upon which it was founded.

**How to get protection in principle**

It is not easy to get protected. To begin with, the Witness Protection Office must receive a request for protection, from the witness or a concerned person, in order to begin its work. But the office is little known. The extent of its publicity to date, apart from some leaflets, has been in the form of ‘crawling text’ at the bottom of television screens during news broadcasts. Far more needs to be done to raise its profile, especially to ensure its prompt intervention in emergency cases.

A witness can also approach the police or any of the seven agencies involved in witness protection directly. Any one of them can offer protection without the involvement or knowledge of the Witness Protection Office. The only requirement is that they do so in accordance with the general provisions of the Witness Protection Act.

If the office receives a request for protection, it usually proceeds as follows.

1. A witness protection officer ascertains whether or not the situation is critical. If so, the police are contacted immediately. If not, the officer takes several days to examine the case and decide how to proceed.

2. If protection is offered, the witness or victim is asked to give written consent, by way of a form. Four persons are entitled to have access to these documents: the witness protection officer responsible for the case, the director of the Witness Protection Office, and the Deputy Director-General and Director-General of the Department of Rights and Liberties Protection.

3. The witness protection officer then contacts the police, starting with the superintendent of the district where the witness is residing. He is asked to allocate a team of officers to protect the witness or victim. Under existing regulations, this arrangement can continue for up to 21 days. After this, the commissioner of
One glaring problem arising from the above is the artificial deadlines imposed by the police while giving protection. Cases may take years to pass through the courts, and the need for protection may in some instances extend well beyond the conclusion of a trial. While the Witness Protection Act envisages long term protection of this sort, at present the police offer only short term security, except in rare cases where the head of the police force intervenes.

4. Once the police have agreed to give protection, the case is in their hands. They decide the duration and manner of the protection. Under any circumstances, they will cease giving protection when the trial in which the witness is appearing has concluded, when the threats and intimidation are perceived to have ceased, or if the witness dies.

5. The witness protection officer has a ‘hotline’ to the police officers in charge of protecting the witness. The officer can ask about the health and other circumstances of the witness, but answers depend on the willingness of the police to cooperate.

B. Protection in practice

The following are a few persons who were given protection by Thai authorities.

I. Angkhana Neelaphaijit: Wife of disappeared lawyer

Angkhana Neelaphaijit is the wife of prominent human rights lawyer Somchai Neelaphaijit, who was forcibly disappeared on 12 March 2004. Five police officers, four of them members of the powerful Crime Suppression Division, were charged in connection with his abduction. On 12 January 2006 one was sentenced to three years in prison. The court acknowledged that Somchai had been abducted. The prime minister and others have acknowledged that the perpetrators were police. The Department of Special Investigation is continuing inquiries,
but Angkhana has doubted its sincerity, and especially that of its director, whom she has urged to step aside from the investigation.

Angkhana has advocated strongly for justice. She was also a joint plaintiff in the criminal case against the five accused, against the wishes of the public prosecutor. As a result, she has been a target for threats.

On 18 April 2005, Angkhana received a telephone call from a man whose voice she recognized as that of a government intelligence officer. He asked about her interventions in the United Nations. Shortly after, another man approached her near her house and warned her against any high profile advocacy on her husband’s case, such as going on television or making other public statements.

After strong interventions and publicity of the threats, the then-justice minister ordered that Angkhana be given protection. The Witness Protection Office organized for two police officers from the Metropolitan Police Bureau to protect her from the next day. Angkhana agreed to protection for an initial two months.

The two police officers, both men, came to Angkhana’s house. They did not appear to have clear orders or a good understanding of what to do. They thought that they would stay in the house; Angkhana refused to allow them to stay with her however, so they rented accommodation nearby instead. Each day they patrolled around the house. At night they stayed at their accommodation, but called frequently to check that everything was alright. When Angkhana complained about the manner of giving protection, one of the officers apologized, saying that they had not been given an assignment like this before and that they lacked detailed instructions. In short, they did not understand what they were supposed to do.

Angkhana’s husband had been abducted by the police, and she had sought protection from the perpetrators or their associates. Not surprisingly, she felt more insecure with the constant presence of the police than she did without them. Neighbours and friends stopped visiting the house. Her family also felt intimidated. The police wanted to know the phone numbers and movements of her five children, four of them young women. When she met the prime minister, she asked him directly if her phone was being tapped, and he did not deny it.

When the two-month period was finished, Angkhana declined to renew the witness protection, as she felt harassed and burdened by the police. She obtained the assistance of colleagues and made her own private arrangements for security.

On 21 March 2006 Angkhana was again threatened by the same man who approached her in 2005, at a time that she was working with the Central Institute of Forensic Science on possible locations of her husband’s remains. The man warned her not to go out or she might have an accident or find a bomb under her car. She did not seek any protection from the government, saying that it would not do any good. Other threats also she has not reported for the same reason.
II. Chaweewan Yuthaharn and Adirake Yimwadee: Eyewitnesses to forced disappearance

Chaweewan Yuthaharn and Adirake Yimwadee were eyewitnesses in the case against the five police officers accused in connection with the disappearance of human rights lawyer Somchai Neelaphaijit. Ultimately, it was on the basis of their testimonies that one of the five defendants was convicted on 12 January 2006.

Both Chaweewan and Adirake very reluctantly approached police investigators to tell what they saw, and said that they were told that they would only have to give a testimony at the police station and would then be allowed to go home. Neither of them had expected that they would have to testify in open court. Had they been aware of this, it is highly unlikely that either of them would have come forward in the first place.

Chaweewan, a young woman, initially told the investigating officers that she had clearly seen the abduction, and positively identified the one defendant who was later found guilty. But in court on 25 August 2005 she refused to identify him when he sat before her. She was visibly afraid and looked straight ahead at the bench, or downwards. When asked repeatedly to try to identify the accused, she only snatched glances at him and immediately looked downwards again.

Adirake similarly refused to respond to many questions in the court. When asked by the judge if he was aware that he could perjure himself by denying his earlier testimony, he neatly described his dilemma by saying that as the police were both investigators and defendants in the case, he was afraid of each side.

Chaweewan and Adirake felt very vulnerable when appearing in the court not only because of the persons they were testifying against but also because of the court procedure and layout.

Witnesses in Thailand sit on benches outside the court waiting to be called. There is no special waiting room or other arrangements for them. If the defendants are on bail, they can enter and leave the courtroom as and when they like, each time passing by the witnesses. Court observers also come and go. On the days that the eyewitnesses appeared in this case, there were many police present as observers. Others were milling around downstairs. The large number of police appears to have been organized to intimidate the eyewitnesses with their presence, as they were not there on other days. They also went to and fro freely. Even at lunch time, no special arrangements were made by the court for protection of the witnesses. Some human rights monitors attending the court sat with Chaweewan in the cafeteria.

Once in the courtroom, the witness is sandwiched between the prosecution and defence, facing the judge. The courtrooms in Thailand are generally small, and the witness is seated within two to three metres of bailed defendants, in full profile view. There is no physical barrier separating the victim or witness and the defendants. Nor is there any special security in cases where the defendants have posted bail.
Both Chaweewan and Adirake were also asked by the prosecutor to watch video tapes that they had used to identify the defendants, which were played on a laptop computer that had been brought to the court by a police officer and set on a small table behind the witness’s seat. Each had to turn around and face the assembled court observers, which included the many plain-clothed police and other supporters of the defendants, to watch the video. Chaweewan was visibly unwilling to comply, and the sequences were played over. Lawyers and defendants got up and milled around behind her. At one point, observers were also invited in to take a look. A crowd gathered around behind the witness, with people talking and moving here and there as they pleased.

By contrast, in many other jurisdictions around the world, the defendants are not allowed to come and go during the hearing, and are not entitled to speak unless permitted by the judge. Also, the witness stand is kept at the furthest convenient point possible from the defendants, and the two are separated by court staff, lawyers of both parties and other persons involved in the court process. Security personnel are also assigned should the defendant or another party to the case become violent or try to leave illegally.

In some jurisdictions, screens may be placed around the witness box, or the witness may give testimony through a live video link from an adjacent room, and chief testimony can be given by pre-recorded video.

At present there is little in the judicial procedure of Thailand to protect the rights and interests of witnesses in court. The Criminal Procedure Code contains some provisions for children to give testimony through a social worker or video, but no equivalent provisions exist for adults. Under section 237 bis it allows for the prompt recording of testimony in cases where the witness “will depart from the Kingdom, has no habitual residence, or has residence far from the Court of trial, or there are reasonable grounds to believe that he will be tampered directly or indirectly”. As the prompt recording of testimony should be a basic principle in all criminal trials, this provision is not remarkable. And as the section allows for a defendant to cross-examine such a witness himself, except in offences punishable with death, it may compound the abuse that has already been caused by allowing for the possibility that a police officer can stand in front of a person whom he has humiliated, beaten, electrocuted or raped and ask intimidating questions in order to escape prosecution.

Despite the fact that Chaweewan and Adirake were appearing in a reputed human rights case and giving information to the court that could send ranking police officers to jail, there was complete disregard for their security. Chaweewan travelled to and from the court unescorted and by bus. Only after this was communicated to the Department of Rights and Liberties Protection, was an officer from the Witness Protection Office dispatched the following day.

Although the presiding judge sensed the fear of the eyewitnesses, especially Chaweewan, a young woman forced to sit in front of five glowering ranking police officers in a male-dominated courtroom, little was done to adequately protect them and make them feel comfortable in court, in the interests of fair trial. In apparent response
to Chaweewan’s discomfort, the presiding judge ensured that in addition to two female assistant judges, another senior woman judge joined the bench in the afternoon. However, this was the only notable concession made in response to the witness’s obvious distress.

In reaching a verdict based on Chaweewan’s testimony, the judge acknowledged that she had been afraid while in court and therefore relied upon the investigation records submitted by the prosecution rather than what she and Adirake said in court. However, this judgment opens many avenues for appeal by the one defendant found guilty and only reinforces the fact that the lack of witness protection undermines due process, threatens the integrity of the courts, and encourages impunity.

What more could the court have done? Certainly there were times when the court could have been better managed to better respect the interests of the witnesses. However, beyond that there appear to be few avenues for judges in Thailand to give orders or take action in response to a fearful witness. The generic model offered by the Witness Protection Office allows for a witness to request protection from the court and for the court to notify the relevant agencies to take the necessary steps. However, again there appear to be no specific criteria for the court in determining whether or not to accept a request, and judges in Thailand show little sensitivity to the security needs of witnesses coming before them.

By contrast, in other jurisdictions where the court is satisfied that the quality of evidence given by the witness is likely to be diminished for reason of fear or distress, special protection can be given. This may depend upon the importance of the witness’s evidence, severity of the alleged offence, age of the witness, and behaviour towards the witness by the accused, his family or associates. Were such criteria available to courts in Thailand it seems certain that the eyewitnesses to the abduction of Somchai Neelaphaijit would have been given some kind of additional protection, although under the current circumstances this would have inevitably entailed further police involvement.

III. Phra Kittisak: Police decide

Phra Kittisak Kittisophon has been involved with the Mettadhammarak Foundation, which aims at promoting Buddhism by supporting community activities related to education, preserving the environment and local forestry. Phra Kittisak and Phra Supoj Suwagano were supporting villagers involved in land disputes and trying to protect community and temple forest nearby their Buddhist training and studies centre in Chiang Mai province. Members of the foundation have been threatened in the past, allegedly by local influential businessmen. In March-June 2005 there was an attempt to develop the land into rubber plantations, which the foundation fought.

On 17 June 2005, Phra Supoj was stabbed to death in the forest 300 meters away from his temple accommodation. Subsequently, Phra Kittisak also began receiving death threats. The temple worker who first
found Phra Supoj’s body was harassed by local police nightly. After she moved away from her house to escape them, it was burned down.

Phra Kittisak sought protection three days after Phra Supoj was killed. The Witness Protection Office was given responsibility, and it contacted Phra Kittisak. Although the Department of Special Investigation was put in charge of the murder case, it did not offer protection on the ground that it did not have enough personnel. The office suggested that it organize protection by local police (Police Region 5), but Phra Kittisak refused as he believes that local police were involved in the killing. So instead he said that he wanted the Bangkok-based Crime Suppression Division to protect him.

The Crime Suppression Division provided four officers from June 25, for one month. It then withdrew the officers, saying that they were no longer needed. After the foundation requested further protection, the police were reinstated a couple of days later, until October 18.

The four officers sent were young and did not seem to know what they had to do. They had had no special training. They waited for advice from their superiors. Initially there was mistrust between the officers and the monks. The police were sceptical about whether the witnesses really needed protection. But by October they were more sympathetic.

Since October Phra Kittisak has had no protection, despite continuing to receive threats. Both the Witness Protection Office and Department of Special Investigation have supported his requests for further protection, but the final decision is in the hands of the implementing agents, the police, who are unwilling to commit officers for a long time.

IV. Anek Yingnuek: Defendant not witness

Anek Yingnuek was arrested by officers of the Phra Nakhon Si Ayutthaya Police Station on 9 September 2004 on charges of robbery. At the police station, he was allegedly tortured for several hours. The police allegedly beat him with a PVC pipe and suffocated him with plastic bags. They also allegedly electrocuted him on his penis, testicles and other body parts. Three of Anek’s friends were also allegedly tortured, and charged. At least one of the officers was later implicated in the torture of another victim, Ekkawat Srimanta. During the trial, Anek and his friends testified in court that they had been tortured; the judge however, ruled that the testimony was irrelevant on procedural grounds. Despite the plausibility of the allegations and severity of the said torture, no investigation is known to have been conducted.

As Anek and his friends were made criminal defendants due to forced confessions, they are disbarred from seeking witness protection under the existing law. Yet by speaking out in court they risked reprisals. As in other
cases in Thailand, the court showed no sensitivity to this danger. The only path that lies open to them in the event of threats is to seek assistance from their custodian, the Department of Corrections.

Anek’s relatives, including his mother, are also isolated and unprotected, despite living in the same vicinity as the police accused of torture. Anek’s mother has been the most active among the family members in fighting for the rights of her son, and it was she who first lodged the complaint of torture. At least one relative of another victim also complained at that time, offering a similar account of abuse and thereby strengthening the credibility of the complaints. In January 2006 the relatives were sued by one of the police officers over a small report in a newspaper about their complaints. They are now subject to criminal defamation charges and have been forced to present themselves and have the cases documented at the local police station.

C. What needs to be done?

The government of Thailand claims to adhere to the ICCPR and have in place a constitution that protects those rights. It can point to the existence of a law, and an office, for witness protection. But the law is deficient, the office is understaffed, the police continue to run the show and victims and witnesses of gross human rights abuses are not in fact protected.

Both international law and the national constitution can be made good only through effective domestic laws and institutions. The means exist to make Thailand’s witness protection scheme a reality. So what can be done?

The Witness Protection Act must be better defined

Key words in the legislation need to be clearly defined. What is ‘intimidation’? What is ‘harm’? Who is a ‘vulnerable witness’? For this purpose, witness protection laws in other jurisdictions, such as Hong Kong, should be studied and discussed.

 Defendants must be entitled to protection

Among the most vulnerable and important witnesses—and perhaps some of the most common in Thailand—are criminal defendants who allege that they have been tortured or threatened into making a confession by the police. It is essential that the Witness Protection Act be amended to cover these persons, whether or not they are in custody. In this respect, Thailand must ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which will pave the way for necessary administrative and legal reforms across the board to punish torture perpetrators and protect victims, where they are defendants in criminal cases due to extracted confessions.
There should be criteria for offering and giving protection

Witness protection officers are forced to make arbitrary decisions and use their own initiative for want of explicit criteria on who does or does not deserve protection. Once protection is offered, the lack of defined procedures for giving it hampers effective intervention. The act must include details of certain key procedures. For example, how does a witness get a new identity? Which other agencies need to be involved? How can protection be given immediately, in emergency situations? Developed witness protection laws in other jurisdictions should be studied and adapted to suit conditions in Thailand. Once basic criteria are laid down in law, they can be amplified through additional regulations and guidelines.

The Witness Protection Office must be given explicit power

The role of the Witness Protection Office is at present captured in a single section of the Witness Protection Act. The law says nothing of how it is to be run, its functioning and responsibilities. Above all, it says nothing of the relationship of the office with other government agencies, especially the police. The act must instead specify the powers, role and functioning of the office and its staff. The office should be given managerial and administrative power over witness protection. Where the office is not able to give protection itself, it must be entitled to enforce its directives to the police and other agencies, including through legal action where there is refusal to comply. It must be entitled to be fully informed of all steps taken in compliance with its directives by other agencies.

The Witness Protection Office must be given more staff and resources

Thailand has over 200,000 police but at present only 10 staff assigned to witness protection, with paltry funding. Until this massive imbalance is corrected it is obvious that there will be no possibility for the office to play any kind of significant role, and it will be forced to continue to rely on the police and other outside agencies. The Minister of Justice and cabinet must take personal responsibility to increase the staff and resources assigned to the Witness Protection Office. To this end, the ministry should advocate vigorously for a greater allocation out of the national budget. In the longer term, attention should be paid to separating the office from the ministry and running it as an independent agency.

Witness Protection Officers must be given rigorous training

Witness protection officers are being recruited from other parts of the government bureaucracy. They must be carefully selected according to specific criteria. Once in their new jobs, they must have rigorous specialized training. Only then will they be in a position to offer effective protection to witnesses, and extend what they have learnt to personnel in other agencies.
Legal and medical professionals should also be trained on witness protection

Very often the first persons to have contact with victims and witnesses in need of protection are public prosecutors and other lawyers, or doctors and other medical staff. There should be special efforts to inform these persons on witness protection, and incorporate them into relevant procedures. A doctor treating a person who has allegedly suffered torture, or a public prosecutor who has been assigned to their case should know to contact the Witness Protection Office without delay, and make arrangements for staff from the office to visit the person immediately. Lawyers should be able to explain to a client about witness protection and advise whether or not the client should request it. Judges should be taught to identify cases of possible torture or intimidation and be given explicit powers to take additional steps to protect the rights and interests of the accused, including by ordering independent physical and psychological examinations before a defendant is released on bail or detained to await trial. Professional associations such as the Lawyers Council of Thailand can play an important role in advancing knowledge of witness protection among their members.

Courtrooms must be modified to protect witnesses

The witness stand in Thai courtrooms needs to be moved as far as possible from the defence and prosecution benches. Legislation should be introduced or amended to allow for special measures in cases where witnesses are already under protection or are otherwise deemed vulnerable. Simple low cost measures include the placing of screens to conceal the witness from most of the courtroom, or giving of evidence via live link from a third location. Judges should also be trained to identify witnesses whose testimony is obviously damaged due to fear, and take necessary steps to intervene, including by postponing testimony and seeking intervention from the Witness Protection Office. Again, the government of Thailand can study measures taken in other jurisdictions.

More criminal procedures must be introduced to protect witnesses

Other legislation needs to be amended and developed to complement the Witness Protection Act, such as the Criminal Procedure Code. This must include more express provisions on the penalties for intimidating witnesses, and criminalizing acts that obstruct the course of justice.

The public must be better informed about witness protection

The public needs to know about witness protection in general, and the Witness Protection Office in particular. As both a new concept and a new agency in Thailand, without a concerted effort at raising public awareness, the witness protection scheme will remain anonymous. In particular, intervention at critical moments depends upon persons outside of the office requesting its assistance. The government of Thailand must increase the amount of resources and airtime on television and radio stations for publicity of the Witness Protection Office and the importance of witness protection for the entire criminal justice system. Attention must be paid to getting the
information to particularly vulnerable groups, such as the large number of migrant workers in Thailand who are easy targets for abuse by the police. Human rights groups, such as the National Human Rights Commission of Thailand, should also play a key role. Similarly, the media, academics and other concerned agencies can raise discussion at home and abroad that may impress upon the government a greater sense of its obligation to ensure that witness protection be made a reality in Thailand.

Although Thailand has introduced a law and discrete agency on witness protection, these are yet to make witness protection a reality. Little has changed. Protection measures are arbitrary and few. The police are in control. It is perverse to expect a victim of police torture, a wife of a person abducted by state officers, or a witness of an extrajudicial killing to rely upon the police for their security. At best, the present arrangement does nothing more than create a cruel expectation that such a thing as “witness protection” exists. At worst, it expands the capacity of the police to commit abuses and damage the work of the courts by entitling them to take charge of a scheme over which they should not have responsibility.

It is likely that if the Witness Protection Office is not given the support and attention it needs, it will become nothing more than a de facto agency of the police. If that happens, it will be a failure. If, by contrast, the office is made into a strong and independent working entity, through improved legislation and ample resources, it may become a lesson for other countries in the region. There are many other countries in need of a good example. And the advancement of witness protection will also do much for the improvement of Thailand’s international reputation on human rights, which in recent years has suffered considerably.

The government of Thailand has the resources to make effective protection of victims and witnesses a reality. It has an obligation under the national constitution and international law to do the same. Whether or not it has the willpower depends largely upon the extent to which attention is paid to the importance of effective independent witness protection by outside agencies, and discussion is raised among the public. All concerned persons and agencies in Thailand and abroad, especially human rights defenders and their organizations, should play a part in creating a public debate on witness protection.

Thailand’s institutions have historically worked to protect the perpetrators of human rights abuses. To have them protect the victims instead is no simple matter of a law and an office. It will require much more than this. But as the struggle is on in earnest for the rights of the ordinary person against the power of the influential person, the interests of the private citizen against the authority of the state agent, the principles of constitutionalism against the brutality of feudalism, the time is right. All concerned persons and organizations must recognize that effective witness protection is integral to the functioning of the courts and the guarantee of justice, and therefore to work for the changes needed to make it a reality in Thailand.
Questions For Discussion

1. Discuss the strengths and weaknesses of Thailand’s witness protection programme.
2. Are you aware of any other national witness protection schemes in other countries? If so, compare these to the Thai one.
3. What are the key factors needed for witness protection to be effective?
4. Discuss initiating such a scheme for your own country.