

ASOCIACIÓN IBEROAMERICANA DE MINISTERIOS PÚBLICOS (AIAMP)



Santiago Guidelines / ON VICTIM AND WITNESS PROTECTION



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ASOCIACIÓN IBEROAMERICANA DE MINISTERIOS PÚBLICOS (AIAMP)

DOCUMENTO APROBADO EN LA XVI ASAMBLEA GENERAL ORDINARIA DE LA
ASOCIACIÓN IBERO AMERICANA DE MINISTERIOS PÚBLICOS (AIAMP)
REPÚBLICA DOMINICANA, 9 Y 10 DE JULIO 2008

DOCUMENT APPROVED AT THE 16TH ORDINARY GENERAL ASSEMBLY OF THE
IBERO-AMERICAN ASSOCIATION OF PUBLIC PROSECUTORS (AIAMP)
DOMINICAN REPUBLIC, JULY 9-10, 2008

DOCUMENTO APROVADO NA XVI ASSEMBLÉIA GERAL ORDINÁRIA DA ASSOCIAÇÃO
IBERO- AMERICANA DE MINISTÉRIOS PÚBLICOS (AIAMP)
REPÚBLICA DOMINICANA, 9 E 10 DE JULHO 2008

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RÉPUBLIQUE DOMINICAINE 9 ET 10 JUILLET 2008



Con la colaboración de





Santiago Guidelines

21 Countries Commit to Improving Victim and Witness Care and Protection



The joint efforts of experts and prosecutors specializing in victim and witness care and protection, the support of such international organizations as the United Nations Office on Drugs and Crime (UNODC) and EUROsociAL Justice and a series of meetings in Spain, Chile, Dominican Republic, Colombia and Mexico City have given rise to the “Santiago Guidelines.”

The 21 members of the Ibero-American Association of Public Prosecutors (AIAMP) agreed to the demanding task of adopting a series of measures aimed at raising the standard of care and protection prosecutors provide to victims and witnesses of crime.

The Santiago Guidelines are currently the world’s most important available document on the care and protection of witnesses and victims in criminal cases and fully reflect the United Nation’s basic principles of justice for victims of crime and abuse of power.

The Beginning

The Work Plan for the **Ibero-American Association of Public Prosecutors (AIAMP)** identified the topic of Victim and Witness Protection as a priority issue for the period 2007-2010.

The acting chair of AIAMP and host of the 15th General Assembly of the organization held in Madrid in 2007, the Attorney General of Spain, called upon the officials and experts present at the gathering to participate an international seminar on the topic to encourage members to delve into the matter more deeply.

The seminar, entitled “Protection of Victims and Witnesses: The Role of the Prosecutor’s Office,” was held in October 2007 and organized under the auspices of AIAMP, the Attorney General’s Office of Spain and the Office of the Public Prosecutor of Chile and supported with the funding and co-organization of the EUROsociAL Justice Project and the participation of the **United Nations Office on Drugs and Crime (UNODC)**. A total of 80 prosecutors specializing in the field from different Ibero-American countries attended the gathering to initially address best practices and experiences in working with victims and witnesses.



The extraordinary interest the topic generated among AIAMP members and the depth of those initial conclusions led the association’s Board to continue the effort through two working groups, each coordinated by experts.

The two groups, composed of AIAMP member organizations, were:

- 1) Victim Care (coordinated by the Attorney General's Office of Spain); and
- 2) Witness Protection (coordinated by the Colombian Prosecutor's Office).

Each working group was composed of 13 members, proposed by senior AIAMP member representatives. As such, experts and prosecutors appointed by Bolivia, Costa Rica, Chile, Honduras, Ecuador, Mexico, Nicaragua, Paraguay, Dominican Republic and Uruguay worked to establish the guidelines for inclusion in the document. The work of the witnesses group was bolstered by the participation of a representative of UNODC.

The working groups concluded their efforts at a meeting held June 16-18, 2008 in Santiago, Chile entitled "**1st Meeting of the Working Groups of Experts on Victims and Witnesses of the Ibero-American Association of Public Prosecutors, AIAMP**" organized by the Office of the Public Prosecutor of Chile (seat of the AIAMP Permanent General Secretariat) and sponsored by EUROsociAL Justice.

At that event, the document known as the "**Santiago Guidelines**" (in honor of the hosting venue) was officially released. The Guidelines contain concrete recommendations for General Attorneys to facilitate the promotion of the conditions needed within prosecutors' offices to protect victims of crime, ensuring such care in a timely, comprehensive, efficient fashion.

In a crucial decision for the future of the project, the contexts of the document were unanimously approved by the members of AIAMP later that month at the 16th General Assembly of AIAMP held in Punta Cana, Dominican Republic.

Two months later, in an effort to disseminate the **Santiago Guidelines** and as part of the members' commitment to their implementation, the **Attorney General's Office of Colombia** and AIAMP held a seminar in Cartagena, Colombia entitled "**Meeting of Prosecutors Offices of Ibero-America on Victims: Victims in the Ibero-American Criminal Procedure.**"





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Follow Up: Phase Two for the Santiago Guidelines

The ratification of the **Santiago Guidelines** by the members of AIAMP and their commitment to adhering to these best practices constitutes phase one of the project. Phase two is a follow-up effort within each participating institution.

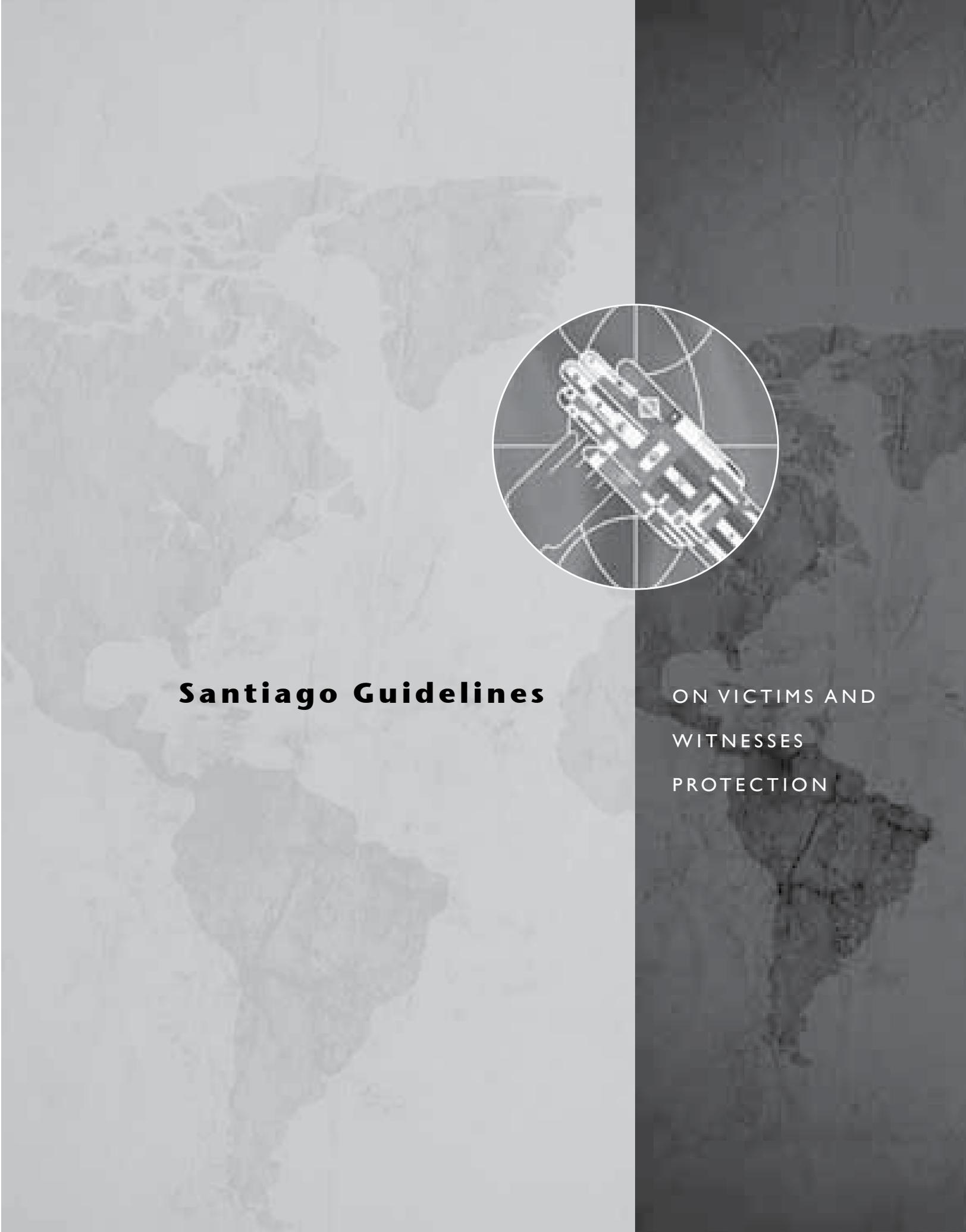
Within that context, on April 15-17, 2009 a meeting was held in Mexico City entitled **"2nd Meeting of the Working Groups of Experts on Victims and Witnesses of the Ibero-American Association of Public Prosecutors, AIAMP: Follow-Up to the Santiago Guidelines"** to define procedures for monitoring the implementation of the Guidelines.

On that occasion, organized by the Attorney General's Offices of Mexico and Spain, the UNODC and sponsored by EUROsociAL Justice, representatives of Spain, Chile, Costa Rica, Honduras, Mexico, Colombia and Uruguay established the baselines required of each member country, including questionnaires, compliance supervision and the exchange of salient information among members on methods for implementing these standards.



AIAMP hopes that the Santiago Guidelines will serve as an international standard and tool for best practices in the care and protection of victims and witnesses of crime, thereby contributing to social cohesion, the consolidation of human rights and the strengthening of international cooperation. The underlying principles that inspire the Guidelines are applicable not only to prosecutors offices, but also to all institutions and organizations, domestic or international, public or private, including NGOs, active in the field of victim and witness care and protection. AIAMP invites all such organizations to familiarize themselves with the contents of the document and implement these best practices in an effort to contribute to quality access of justice for all victims, especially the most vulnerable.





Santiago Guidelines

ON VICTIMS AND
WITNESSES
PROTECTION

Santiago Guidelines / ON VICTIMS AND WITNESSES PROTECTION

Santiago Guidelines

DOCUMENT APPROVED AT THE 16TH ORDINARY GENERAL ASSEMBLY OF THE IBERO-AMERICAN ASSOCIATION OF PUBLIC PROSECUTORS (AIAMP)

DOMINICAN REPUBLIC, JULY 9-10, 2008 Punta Cana

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This document was approved by AIAMP on July 10, 2008 in the Dominican Republic, pursuant to the following resolution:

"The members of the Ibero-American Association of Public Prosecutors, gathered at the Ordinary General Assembly held July 9-10, 2008 in Punta Cana, Dominican Republic:

RESOLVE:

1. To approve the document on guidelines for victim and witness protection by the Ibero-American Association of Public Prosecutors – "Santiago Guidelines on Victim and Witness Protection," prepared by the working group gathered in Santiago, Chile in June 2008; to congratulate the members of said group for the work effected; and give special recognition to the work done by United Nations Office on Drugs and Crime (UNODC) on matters related to the protection of witnesses which served as a basis for the drafting of the final document.
2. To undertake the application of these standards in each of the Public Prosecutors Offices belonging to the Association, to the extent that their domestic legal systems and budgets so allow, and submit their actions to Association review in keeping with the follow-up mechanism contained in the document."



INTRODUCTION

The Ibero-American Association of Public Prosecutors (AIAMP), meeting in Lima on December 1 and 2, 2005, agreed through its Technical Committee to design a Work Plan for the period 2006 to 2010, further agreeing to delve into the topic "*The Protection of Victims and Witnesses*" in 2007. In the context of this decision, a seminar was held following the 15th General Assembly of the Association in Madrid, Spain on October 24 – 25, 2007 entitled "*Protection of Victims and Witnesses. The Role of the Attorney General's Office.*" The event was organized by AIAMP, the Office of the Attorney General of Spain, Office of the Public Prosecutor of Chile and EUROsocial Justice with the participation of UNODC. The seminar brought together 80 prosecutors from a range of Ibero-American countries.

In light of the extraordinary relevance of the topic of the seminar, participants agreed that the study of the role of prosecutor's offices in protecting victims and witnesses should not be circumscribed to that gathering. Instead, pursuant to the Biannual Work Plan presented by the Chair of the Assembly, they proposed that this topic be addressed by the working groups envisioned under article 21 of the AIAMP Statutes approved at the Madrid Assembly. The project was again wholeheartedly supported by EUROsocial Justice.

Two working groups were convened -- one on victim protection and another to address the protection of witnesses – each composed of eight members appointed by the General Prosecutors. Group members were appointed from different countries, seeking to ensure the greatest possible pluralism. A representative of the UNDOC joined the working group on witnesses.

The working groups concluded their efforts at a meeting held June 16-18, 2008 in Santiago, Chile. The final document contained two separate chapters linked by a common goal: a public commitment by Association members to respect the best practices and guidelines for victim and witness care and protection proposed by AIAMP.

Based on the premise that the objectives of victims and witnesses are similar but not exactly the same and given the exhaustive documentation on the latter prepared by the United Nations Office on Drugs and Crime, the guidelines prepared for each group herein differ.

Together, the two documents seek to provide orientation for the decisions made by the prosecutor's offices of Ibero-America with regard to their internal organization and actions aimed at strengthening the rights of victims and witnesses. Specifically, the guidelines aspire to assist prosecutors in contributing to the real, effective recognition of victim and witness' universally-recognized rights.

Thus, the two documents contain concrete recommendations aimed specifically at National Prosecutors so that they may promote conditions within their organizations to allow for appropriate protection of witnesses and victims in keeping with the measures proposed.

AIAMP is cognizant that the promotion of improved treatment of victims and witnesses does not fall exclusively to Prosecutors Offices. Rather, it includes the active participation of other institutions as well. In this context, the Association shall



endeavor to disseminate these recommendations, which further seek to reflect the principles set forth in the Brasilia Rules on access to justice by vulnerable persons. With the support of EUROsocial Justice, following approval, these documents will be edited and forwarded to the leading networks active in the administration of justice in Ibero-America, with a view toward their use by competent organizations, supplemented by the obligations inherent to other entities involved in victim and witness care and protection.

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CHAPTER ONE VICTIM TREATMENT

INTRODUCTION

This paper seeks to contribute to a common goal based on shared criteria. While the authors acknowledge that conditions in each country differ and the legislative and organizational solutions employed vary widely in the different legal systems around the region, they believe that common ground can be established.

Thus, it is precisely our common legal culture that has led us to explore the range of experiences in our countries with a view toward improving the solutions implemented by our Prosecutors Offices in seeking to protect victims of crime. Victim protection and reparations have become, in all our jurisdictions, a matter of widespread importance, no longer limited to victims themselves but rather an issue of interest to society at large.

Nonetheless, the myriad legislative options have led to widely varying solutions, even though victims share a single vision cross all jurisdictions: a view of entitlement vis-à-vis the judicial system, one that goes beyond the mere prospect of justice.

The authors also fully believe that cooperation policies should favor the most disenfranchised and should facilitate access to at least certain minimum standards of service. They acknowledge, however, that resources are limited, returns must be maximized and that savings in the support provided are paramount.

The authors also call readers' attention to the importance and authority of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations pursuant to Resolution 40/34 of November 29, 1985, which contains fundamental values on the concept of "victim," access to justice and fair treatment, restitution, compensation and assistance.

1. Scope of the concept of "victim"

The legal systems and structures within which the Prosecutors Office operates cannot take a restrictive view of the concept of victim, limiting it to that of a passive target of criminal conduct. The reality of crime is that both direct and indirect victims exist, meaning that any person affected by the commission of a crime is a victim. In sum, a victim is any individual who has suffered harm as a result of a crime.



This definition has several effects:

1. The existence of different categories of victims means that there will be different levels of risk and protection needs. This distinction further means that victims will play different roles during the investigation and case proceedings and will have different expectations of the Prosecutor's Office. Said office must adapt and adjust its interactions and relationship with victims based on those distinctions.

The Prosecutor's Office shall approach its relationship with victims based on the principles of affirmative action in keeping with their level of vulnerability. That vulnerability shall fundamentally be conditioned by the type of crime, the relationship between the victim and aggressor, the availability of means of support and assistance and a psychological, economic, social and mood analysis of the victim. Based on these parameters, the Prosecutor's Office shall adjust the format and intensity of its actions on victims' behalf.

2. The Public Prosecutors offices, in keeping with their respective substantive and procedural legal frameworks as well as the corresponding functions assigned to their institutions, shall seek to further the creation of victim care mechanisms that meet, at a minimum, the following standards:
 - A) Provide for an assessment of the degree of assistance and protection victims require.
 - B) Establish means of communications with victims in order to receive and transmit the messages referred to in subsequent paragraphs.
 - C) Within the framework of each Prosecutor's Office legal mandate, provide for most effective participation of the victim in the process, bolster the efficacy of ties to the prosecutor and enhance opportunities for reparations of the effects of the crime committed.
 - D) Establish communications with the different players involved in victim care in each country in order to familiarize prosecutor's offices with their actions and contribute to greater efficacy.
 - E) Establish straightforward protocols for action with other players (e.g. law enforcement, health and other services, NGOs) when they are involved in order to ensure that homogenous support is provided to victims across the respective country.
 - F) Establish an informational and statistical mechanism that records the actions of the Prosecutor's Office in this regard, in order to record the action undertaken, its progress and other indicators that facilitate subsequent evaluation of the impact and quality of each action.
 - G) In keeping with the role the Prosecutor's Office plays in the investigation within the different procedural systems, victim care teams shall be multidisciplinary, based on the needs and financial capabilities of each system.
 - H) The care structure should take active steps to ensure that neither the objectivity nor the impartiality of the institution is affected or that the purity of the victim's testimony is impaired. Toward this end, the authors recommend that victim care services be run by government agencies other than the Prosecutor's Office or, in those cases where such offices do form part of the prosecutorial structure, be fully independent of the prosecutor handling the case and respond to a separate chain of command.



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2. Victim Information Systems: the right to information as a concept and a reality

The Prosecutor's Office shall seek to ensure that victims be readily informed and kept abreast of the following:

1. Their status as victims.
2. Their rights as victims, as well as how to exercise such rights.
3. The role of the Public Prosecutor's Office as an institution and in ensuring compliance with those rights, as well as the role other institutions or organizations can play in that same capacity.
4. Victims' options for reporting the crime and the consequences of failing to do so, as well as the role they can play as victims in different judicial proceedings.
5. The framework of available safety and assistance measures, based on the victim's individual needs.

Each legal system places the Prosecutor's Office in different stead vis-à-vis the timing of initial contact with victims. As a general rule, however, in AIAMP member nations that first contact takes place at the following locations:

- Police Stations
- Health Care Facilities
- Centers for the Administration of Justice
- Non-Governmental Organizations
- Educational Facilities
- Other private or public sector institutions that may become aware of events of this nature.

Independent of specific circumstances in each country, the Public Prosecutor's Office shall seek to ensure that information provided to victims and their awareness of their rights is effective. Toward that end, prosecutors shall facilitate the drafting of protocols to guide the actions of different players, as appropriate in each case. Each nation shall, therefore, provide a bona fide network of information and assistance, based on their legal systems and material capabilities. The information provided at establishments involved in the network shall follow the parameters provided above. In those cases in which employees of said facilities are legally mandated to report the alleged crime to the authorities, victims shall be made aware of such requirement.

The procedural needs of the prosecutor's office with regard to the victim notwithstanding, the nature of the information provided initially shall place an accent on the fact that victims are right-holders and that the prosecutor's office –on behalf of the people–also represents the greater good, that is, the interests of society at large as the offended party in any crime.

3. Victim Safety: action protocols and safety mechanisms

Except in those cases in which human and material resources are allocated to the Prosecutor's Office, said offices shall not be directly responsible for providing for victims' safety. Nonetheless, the prosecutor's office may identify safety issues sur-



rounding the victim and require other institutions to provide appropriate measures on a priority basis.

In any case, the prosecutor's office should hold procedural legitimacy or sufficient power to urge law enforcement or appropriate judicial entities to provide safety and security measures for victims.

In procedural terms, the authors believe it is helpful to articulate such measures through injunctive relief or precautionary security measures during the proceedings or after their conclusion and the sentencing of the offending party.

Such measures shall be adapted to conditions in each State and on individual country's ability to bring them to fruition. Specifically, such measure should seek to bar communications between the defendant and the victim and his/her environment, limit the presence of hostile circumstances within an environment of protection or make the location of the victim known. Technology can provide low-cost options for the effective oversight of these measures. Such supervision may be provided by external entities on an ad hoc basis. In any case, law enforcement shall be made specifically aware of the measure to help enforce it and/or respond quickly and effectively in case of violation.

In order to adapt procedures to local conditions, each country shall create networks of governmental and non-governmental organizations the prosecutor's office can turn to for support. Toward that end, the prosecutor's office may wish to sign memoranda of understanding with such organizations to facilitate its efforts.

The Prosecutor's Office is obligated to act in a fashion that does not unduly compromise the safety and security of the victim and shall therefore place a high value on victim's privacy and identity. Those individuals tasked with managing and implementing the prosecutor's offices' communications policies shall be expressly instructed about the need to balance these principles adequately. In any case, under these circumstances, it shall be understood that victims' privacy and security are the responsibility of the Public Prosecutor's Office and that said office must seek to preserve them.

4. Training of participants in victim protection: areas in which training and specialization are particularly salient.

The Public Prosecutor's Office is obligated to train all employees working at their offices and facilities with regard to the following:

- Victims' rights to protection pursuant to law.
- Available assistance and safety options beyond those offered by the prosecutor's office itself.
- Basic skills for working with victims of crime.

Given that the Prosecutor's Office is required to inform victims of their rights and treat them in such a fashion as to avoid additional victimization, a code of minimum standards shall be drafted and distributed among AIAMP members. Compliance with said minimum standards shall be reviewed.



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Beyond this direct obligation, the training of other participants in the process does not fall within the purview of the Prosecutor's Office. However, prosecutorial staff should facilitate and cooperate with third parties in order to better train their personnel and trainers and cooperate in the drafting of relevant texts for dissemination.

5. The role of the victim during the proceedings: the Victims' Statute and guidelines for action

For these purposes, "proceedings" shall be construed as the set of actions undertaken between the time news is received of the event in which a person becomes a victim through the conclusion of the legal consequences of the crime allegedly committed. As such, "proceedings" as used here includes the investigation, trial and enforcement of judgment.

Victims are entitled to live throughout the proceedings in a pressure-free climate so that they may exercise their rights, respond adequately to their obligations in the administration of justice and to avoid revictimization that may harm their recovery process.

The Victim's Statute during the proceedings includes the following rules and principles:

- a. Victims have the right to be heard and to participate in the investigative phase, providing evidence and collaborating in identifying the consequences of the crime in terms that respect their dignity and privacy.

Extreme caution shall be utilized to ensure that victims and aggressors do not cross paths at any offices while waiting to be heard.

The investigation must not alter the security of the victim. During the course of the investigation, whenever possible, the option of advance testimony shall be considered so that said evidence can be provided in the presence of all parties without creating subsequent secondary victimization or conditions under which the victim feels pressured to abandon the free exercise of his or her rights.

The victim is entitled to be kept abreast of the course of the investigation in such a fashion that does not obstruct or impinge upon the efficacy of said investigation. Independent of the system in place in each State, victims should have the option of providing new information and knowledge during the course of the investigation.

- b. Independent of the system in force in each State, victims are entitled to be kept abreast of proceedings, access information and judicial rulings and, in general, have access to all information that may refer to the protection of their safety and interests.

- c. Victims are entitled to understand the content of proceedings in keeping with their personal conditions, language and culture. As such, communications with victims shall fall within appropriate parameters and unnecessary legal jargon shall be avoided.



The Prosecutor's Office shall utilize alternative communications mechanisms when dealing with disabled persons. Toward that end, the office shall work with public and private sector institutions seeking to engage such individuals fully into society in order to provide training and mutual assistance.

- d. Victims are entitled to participate in proceedings in keeping with domestic legislation and to do so in a fashion that does not impose upon them an expense they are unable to bear or expenses that would impede such participation in such a manner as to constitute a means of impunity for the perpetrator.

Within the context of due process safeguards for all parties, research shall be undertaken on the use of the technologies each State may be in a position to employ that would facilitate the participation of the victim at the lowest possible cost and burden.

As necessary, AIAMP may set forth a policy objective aimed at cooperation in the creation of networks that would contribute to such cost reduction and increased victim participation.

- e. Victims' participation in the proceedings shall not constitute a risk to their personal safety or that of their families. The public nature of the proceedings must nonetheless respect victims' privacy and confidentiality and in-house measures shall be taken to oversee the means used during the investigation and the proceedings themselves in order to avoid leaks of information.
- f. The broad array of procedural systems in place in AIAMP countries at present precludes uniform recommendations on victims' involvement at trial. However, where such participation does occur and in keeping with the principles of due process for all parties, victims shall be treated respectfully in order to avoid further victimization and to ensure that fear of such an encounter does not lead victims to abdicate their rights.
- g. AIAMP would also like to advocate on behalf of certain obligations for victims. Although victims are entitled to choose whether to report events affecting them, once they have done so and once the case has commenced and is being conducted in the context of due process and a constructive climate, victims shall be obligated to be truthful and to cooperate with the prosecutor's office to establish the facts and assist in punishing those responsible.

6. Victim compensation: what to compensate, mechanisms for redress and legal systems.

Among the AIAMP member States, a variety of procedural systems and myriad functions exist with regard to the responsibilities that fall to the Prosecutor's Office in terms of victim compensation.

Crimes can, of course, involve physical and psychological harm and injury, material damage, expenses, lost income and pain and suffering that affect a victim's private affairs, cause anxiety and reduce their enjoyment of life.

In the broad definition of "victim," such aspects can affect both the person involved



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in the crime and the people surrounding him or her, who may or not be family members.

That said, however, there is considerably disparity regarding the fashion and timing of the filing of civil and criminal actions in AIAMP countries. In some cases, endeavoring to secure restitution by such means does not even fall within the purview of the Prosecutor's Office.

Despite this legal diversity, however, we can recommend that the Prosecutor's Office, in general terms, undertake concrete tasks in certain areas, such as:

- Informing the victim of means of redress.
- Facilitating restitution agreements and mediation pursuant to the mechanisms provided for in domestic legislation. Such actions may include, *inter alia*, deferred adjudication, reduced sentences, or conditional discharge. The authors understand that, in the case of victim protection and without committing decisively to mediation as a means of resolving criminal disputes, such mechanisms may be an appropriate means of securing the redress to which victims aspire.

The existence of crime and of citizens harmed by criminal action should increasingly be perceived as due to a lack of social protection to which everyone is entitled. However, not all criminal acts should be construed as being the result of a defective provision of the security States are obligated to provide to their citizens. Rather, an accent should be placed on the progressive creation of mechanisms for social solidarity with a view toward establishing systems in which the contributions made by all help to develop mechanisms that provide a degree of redress to certain victims.

Each country, based on its specific sensitivities and budgetary possibilities, establishes its own priorities with regard to the role the State will play in facilitating victim compensation. As a general rule, these are administrative measures, in principle not directly connected to the criminal proceedings, although certainly related to them.

The Prosecutor's Office should be familiar with all available mechanisms, integrate them into their procedures, inform victims of them –as appropriate – and play an active role whenever possible, including administrative fora, in securing such compensation.

7. Special mention: victims of human trafficking

Human trafficking affects women and men, adults and children and adolescents. The purpose of such trafficking is to exploit human beings and involves their objectification and the abolition of their freedom. Such exploitation often takes the form of financial benefit by means of their use in the sex trade, manual labor and even the use of their bodies as merchandise. This crime increasingly takes the form of so-called "sex travel" or "sex tourism."

Within the AIAMP region, certain legislative deficiencies are apparent with regard to the definition of these crimes, leading to legal loopholes. This is particularly true for illegal trafficking in labor and the use of minors for such purposes. Clear distinction



is required between administrative wrongdoing and crimes under the criminal code, based on the principles of specialty and proportionality.

Victims of these crimes are often hesitant to contact appropriate authorities and to entrust them with the facts, prosecution and their personal recovery processes. In many cases, victims are torn from their home environment and are very difficult to relocate, particularly since they may well be undocumented in the host country. The option of repatriation is thwarted both by a lack of safety for victims upon their return and by the material needs of such an effort.

The Prosecutor's Office must enlist the presence of these victims in the proceedings in the understanding that their predisposition toward cooperation is limited and their availability usually fleeting. As such, prosecutors must seek to identify timely options for the early rendering of testimony, with full respect for due process safeguards for all participants, so that criminal prosecution can be effective, victims are not revictimized, and the delay and repetitiveness of actions does not constitute a risk to either the victim's safety or the efficacy of the proceedings.

The collaboration of external agencies, such as non-governmental organizations and the International Organization for Migration, will be critical to successful prosecution in such cases.

8. Special mention: victims of domestic violence

The Prosecutor's Office shall especially consider the following factors in dealing with domestic violence victims:

1. The underlying fact that there is a relationship between victim and aggressor is a crucial factor that affects all such proceedings and the actions that may be undertaken on the victim's behalf. These victims are particularly vulnerable, as there may be strong emotional ties to the aggressor and, in many cases, a natural resistance to making the events public. In dealing with protection measures, such victims often act in a contradictory fashion, particularly as compared to the stereotypical scheme that defines relations between aggressors and victims.
2. While taking care to avoid excesses and possible instrumentalization, the Public Prosecutor's office, as well as other players, should act with a special sensitivity to the extent of the phenomena –subject to negative cultural perceptions in our societies—as well as to the fact that it is particularly difficult to measure the real risk to the victim, which tends to be unpredictable and uncontrollable. This means that the protection actions undertaken by the Prosecutor's Office and the judicial system are necessarily unstable.

Nonetheless, the following measures are proposed:

1. Awareness-raising among all players through the design of protocols for action, especially for law enforcement, health care workers and other support entities.



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2. Working in coordination with other social entities involved in the issue.
3. In keeping with possibilities in each country and in light of the obstacles described above, AIAMP-member States should seek to identify indicators to allow prosecutors and related professionals to identify and weigh risk factors for the victim and potential consequences for other members of the victim's direct environment.
4. Avoid all unnecessary delays in processing from the time of the event through the corresponding actions by the prosecutor's office. This is particularly important since in very few other crimes is prompt action as crucial as it is in domestic violence cases in order to minimize risk to the victim and bolster the possibility of effective investigation and prosecution.
5. The active participation of the victim is crucial, both so that they understand clearly the importance and consequences of the proceedings and so they may better appreciate the protection measures available to them.
6. It is important to keep a record of the identity of the persons involved in these events, given that repetition is a key element in determining the significance of events and in risk assessment. Cooperation policies are possible in this area in order to provide less fortunate States with stable structures for statistical and information management.

9. Special mention: child and adolescent victims

Children and adolescents are among the most vulnerable of victims, due both to their age as well as the fact that quite often the perpetrators of the crimes against them are the people closest to them.

These circumstances lead to high levels of impunity. Moreover, the people involved in these crimes usually exercise ironclad control over the victim, a victim who is thus unable to perceive the reality of the crime against them, report it, facilitate its discovery or move about freely during the investigation and punishment. Furthermore, in many cases, treatment and reparation measures involve separating the victim from his/her environment, one that has been natural despite the occurrence of the crime. Thus, reparation necessarily involves displacement and the construction of an entirely new basic environment.

With regard to underage victims, prosecutors must especially consider the guidelines provided in the document on "Justice in Matters involving Child Victims and Witnesses of Crime" adopted by the Office of Rights of the Child (Canada, 2003).

The participation of underage victims in the process is characterized by several factors:

1. Harm to the reputation of the victim as such, given that adults often perceive the world in keeping with adult parameters and tend to justify events as a result of the mischief or exploits of the victim. This process leads to revictimization and, to a certain extent, to harm or detriment to the minor.



2. The exploitation of juveniles by people close to them, which often leads to disgrace for the victim.
3. The participation of juveniles must always take place in the context of the utmost safeguards for their identity, image and privacy. When child testimony and cross-examination are necessary, all efforts shall be taken to avoid revictimization, including the following safeguards:
 - The child victim shall be accompanied by an appropriate family member or, when necessary, by a qualified professional.
 - A clear explanation shall be provided --in terms intelligible to the victim-- of the need for their intervention.
 - Questioning shall be conducted by professionals especially trained to in working with child witnesses.
 - Confrontation or visualization of any other individuals implicated in the investigation, especially the defendant, shall be avoided.
 - The timing and location of such proceedings shall be adapted to ensure the most hospitable environment possible.
 - Child victims and witnesses should be required to testify or otherwise tell their story on an exceptional basis, with a minimum number of repetitions (preferably only once). Procedures involving children and adolescents should be expedited to the greatest extent possible so that the minors are not subject to the instability generated by pending proceedings and so that personal and psychological reintegration can commence as soon as possible.
4. When child victims or witnesses are involved in an investigation, other legal and judicial institutions are likely to be involved. All efforts shall be made to ensure that the principle of concentration is respected so that the case is heard on a single occasion and children do not get the impression that they are trudging about from court to court, as this leads to uncertainty and anxiety.

Special attention shall be paid to those cases in which children are both victims and aggressors. Victims criminally attacked by their peers suffer from added anxiety, particularly when they move in similar circles or have reason to seek to maintain contact or a relationship with the aggressor.

Furthermore, the legal procedures applicable in the case of juvenile delinquents focus predominantly on providing guidance and reform opportunities. As such, victims are often relegated to a secondary plane, as the system does not perceive them as a priority. Moreover, the range of options available in these cases tends to be broader for the young offenders than for their victims. Thus, the decisions made by the prosecutor's office should bear in mind that child victims are also entitled to certain rights and should be treated with at least the same consideration as juvenile offenders.

In those cases in which the offender is so young that only protection and not correctional measures apply, the prosecutor's office --where empowered to do so-- must act judiciously to protect and treat both aggressor and victim.

There is one type of juvenile that merits special attention in this chapter and that is the so-called "hired gun." These children are hired or used by adults to commit criminal acts on their behalf, in a veritable act of objectification. The Prosecutor's



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Office must be particularly aware of such behavior with a view toward identifying such conduct and reprogramming and rehabilitating the minor involved. Such action may go hand in hand with their prosecution for criminally relevant acts, but must necessarily involve:

- The participation of specialized professionals in the proceedings.
- Accelerated proceedings to reduce anxiety.
- Full removal of the juvenile from his/her adult criminal environment so that the rehabilitation process can commence as soon as possible.
- Efforts to avoid re-contamination as a result of the appearance of adults attempting to use the children for their own benefit in the proceedings. Efforts should further be made to keep the child from being used or exploited in the investigation and proceedings carried forth against said adults.

10. Special mention: foreign victims

Foreign victims are, in principle, additionally vulnerable due to several factors:

- Foreign victims, as they are outside the scope of their natural environment, suffer from a deficit of information on appropriate steps to take. In addition, their displacement increases anguish when grappling with the unfortunate circumstance of having been a victim of crime.
- When victims are present in the country only for a limited time or for a specific purpose, they may not be available throughout the entire procedure. This means that their contribution to the investigation, advance testimony and the timely exercise of their rights are crucial.
- When the above circumstances are combined with imperfect migratory status, the risk of impunity increases as victims seeks to distance themselves from the authorities.

Under such conditions, Public Prosecutor's Offices should undertake the following actions:

1. Information provided to victims should be particularly effective and geared toward overcoming language, cultural and social barriers with regard to the process and their rights.
2. Such information shall be adapted to the customary movements and presence of foreigners and made available at locations they are likely to frequent, such as points of entry and departure, transportation centers, support facilities, etc.
3. AIAMP-member nations, under the principles of solidarity, protection of citizens and reciprocity, shall establish minimum care standards and means of cooperation among Prosecutors' Offices or the appropriate structures in each country specializing in victim care.
4. The participation of foreign victims in the process should be characterized by the following features:
 - Procedural expediency.
 - The use of actions and approaches that can subsequently be used as advanced testimony or evidence.



- Agile use of international cooperation mechanisms including technology to allow the victim to participate from a remote location, as long as due process safeguards are respected.
 - The availability of offices in foreign countries that can serve as intermediaries between the victim and their home nation.
 - Accelerated procedures to recover and transfer property deemed a vestige of the crime committed.
5. Legislation regulating the presence and rights of foreigners in each State should adequately contemplate the possibility of criminal cases involving non-domestic victims, seeking to strike a balance between the potential need for a foreigner to extend his/her stay to participate in proceedings and cases of a fraudulent effort to remain in-country as a result of alleged victimization.

11. Special mention: indigenous population victims

The presence and status of indigenous populations in a substantive portion of AI-AMP-member States suggests that this group should be addressed as particularly vulnerable. While respecting the principles of equality and differential fact, the approach afforded indigenous victims of crime should meet the following minimum standards:

1. The existence of a sovereign State that exercises the rule of law in an egalitarian universal fashion for all benefits from the respect for the habits and customs of this sector of society, rather than being encumbered by such consideration.
2. Technical consultants are crucial to determining in each case the best "fit" between events and a given ethnicity's cultural parameters, both to weigh the importance of the event itself and to evaluate the expectations of the people involved.
3. Language should never be an obstacle. Thus, interpretation shall be made available that not only allows for communication among the parties, but also enables the victim to comprehend the specialized legal environment surrounding them.
4. The fundamental principles and rights of all parties notwithstanding, protection measures, settlement options and any other measure that may involve the victim in the proceedings shall be adapted, to the extent possible, to cultural criteria. Moreover, in the absence of specific legislation on indigenous peoples, efforts shall be made to equate these communities' social structures to the tools provided by law and, in where such legislation is available, it shall be applied.
5. In cases involving indigenous and non-indigenous people, special care shall be taken to avoid discrimination against or in favor of any of the parties.

12. Victims of terrorism, war, social violence and similar offenses

Although there is no single definition of the concept of such victims, they do share certain common elements, including:



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1. Not all AIAMP-member States are affected by such circumstances, although prior experience can provide ideas for joint or individual approaches to the issue.
2. Such events have an impact beyond the legal framework and involve political and historic dimensions that affect all branches of government. As such, the role of the Prosecutor's Office may be temporarily adjusted as States seek to grapple with these issues.
3. Nonetheless, it is possible to envision how such events could affect rights protected by criminal law. As such, independent of other factors, the concept of victim remains largely unchanged in these cases from the generally-applicable definition used in cases of ordinary crime.

As such, in these cases, the following principles should be respected:

1. Victim safety and security is of the utmost importance in these cases, especially during investigation and trial. This is because victims' vulnerability generally stems from the power and dangerous nature of the perpetrators of criminal acts and their degree of organization which seeks in part to attain impunity by abolishing victims' ability to react.
2. Conflict resolution criteria, as applicable in each State, should seek to strike a balance in the exercise of victims' rights and provide appropriate safeguards for such action.
3. Under these circumstances, the State is particularly justified in taking on an additional role in providing reparations to victims of such crimes, based on criteria of equality and objectivity, in keeping with budgetary possibilities and not withstanding the victims' right to sue. The AIAMP-member countries believe that this is an area in which international cooperation can provide substantive, priority support where resources are lacking in individual States.

13. Alternative dispute resolution mechanisms

It is a given that procedures vary across AIAMP-member countries with regard to the use of alternatives to criminal investigation of alleged crimes and the punishment of the responsible perpetrator in standard proceedings. Alternative measures only make sense when prosecutorial discretion is an option and the system allows for the myriad criminal conducts to be classified as eligible or ineligible for alternate resolution mechanisms.

Naturally, it is also a given that each State is sovereign to admit or bar alternative resolution mechanisms and to define the scope of their applicability.

Where such options exist, however, it is vital to keep in mind the victim and his/her interests when opting for mediation, conciliation or other resolution mechanisms.

Despite the systemic differences, certain minimum standards can be identified for victim care in ADR settings, including:



- The final objective is the greatest, best, most expedient reintegration of the victim to the conditions in place when the crime occurred.
- Decisions on the crimes eligible for such resolution should not focus solely on the degree of public interest involved, but rather should be based on criteria that allow victims the greatest freedom and assurances in defending their interests and primary concerns, free of duress. The system should ensure, however, that the victim cannot grossly contort the application of criminal law to meet his/her own interests to the detriment of society at large.
- Victims should be fully and clearly briefed on the impact such a decision will have on them and on other parties, particularly the resignation of certain rights, the preclusion of certain expectations or procedural options.



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CHAPTER TWO WITNESS TREATMENT

INTRODUCTION

Whereas all of the nations of Ibero-America have ratified the United Nations Convention against Organized Transnational Crime;

Whereas witness protection constitutes a fundamental tool in effective prosecution of crime, pursuant to article 25 of said instrument;

The United Nations Office on Drugs and Crime, in its capacity as custodian of the Convention and related Protocols, has promoted the creation of a Model Law on Witness Protection for Latin American countries. Several prosecutors offices from the region participated in the drafting of the latter document which was officially presented at the 15th General Assembly of AIAMP held in Madrid, Spain in October 2007;

Whereas the Model Law serves as a guideline for minimum standards of protection for witnesses and pursuant to AIAMP's Biannual Plan, as approved at the 15th General Assembly in Madrid, a group of International Experts representing the office of the public prosecutor of Chile, Colombia, Costa Rica, Honduras, México, Nicaragua, Uruguay and the UNODC met in Santiago, Chile on June 16-18, 2008 to draft a document containing practical rules for the implementation of the contents of the model law.

Methodologically, the gathering used the exchange of experience among the prosecutors' offices represented on the working group to identify the following realms of action for witness protection:

- 1) Legislation
- 2) Political-Institutional Sphere
- 3) Technical-Operational Sphere
- 4) Inter-institutional Cooperation
- 5) International Cooperation
- 6) Human Resources
- 7) Finances



The working group of experts hereby submits to the consideration of the representatives of the member organizations of AIAMP the following rules:

1. Legislation

In the legislative arena, the representatives of AIAMP-member prosecutor's offices shall:

- Adopt measures with a view toward incorporating a Law on Witness Protection into their legal systems that contains at least the minimum standards of the "Model Law on Witness Protection for Latin American Countries;"
- Ensure that the direction and management of the "Witness Protection Program" called for in said model law comes under the purview of the prosecutor's office;
- Track legislative efforts in this regard from drafting through publication and, once approved, ensure proper implementing legislation.

2. Political-Institutional Sphere

In the political-institutional sphere, the representatives of AIAMP-member prosecutor's offices shall:

- In the absence of national legal regulations in this regard, ensure the protection measures needed to safeguard the integrity of at-risk witnesses. For these purposes, said offices shall issue pertinent regulations for the implementation of a "Witness Protection Program;"
- As competent authority, draft, manage and implement "Witness Protection" programs and measures;
- Encourage inter-institutional agreements with public or other agencies, as needed to meet program objectives; and,
- Prefer non-testimonial forms of evidence, when available and eligible to verify the facts.

3. Technical-Operational Sphere

In the technical-operational sphere, the representatives of AIAMP-member prosecutor's offices shall:

In the area of security:

- Petition competent authorities for protective measures to minimize risk to victims while their candidacy in the program is being evaluated. These measures may consist *inter alia* of police patrols, surveillance, monitoring; and,
- Through the protection program, adopt exceptional protection measures of an immediate or regular nature.

Immediate protection is provided prior to threat assessment in order to protect the life and integrity of the candidate for protection;



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Regular protection is provided when a candidate conditions his/her cooperation with the judicial system to the provision of protection;

- Adopt regular measures once the candidate has been admitted to the program. These measures may include:
- Removal from area at risk
- Removal to a site chosen by the program away from the risk area
- Protective detail
- Disguise
- Change of identity
- Special protection measures during hearings
- Comprehensive national or International relocation

In the area of assistance:

- Implement supplementary measures in addition to the protection measures required to provide coverage for basic needs. This may consist of:
- Health Care
- Legal Assistance
- Food
- Housing
- Clothing
- Education
- Recreation
- Social reactivation

4. Inter-Institutional Cooperation

In inter-institutional cooperation, the representatives of AIAMP-member prosecutor's offices shall:

- Promote cooperation and coordination with public and non-public organizations, by means of appropriate agreements or arrangements, in order to ensure implementation of the support measures protected witnesses require; and,
- Ensure that, to the extent possible, it is the program itself that implements security or other measures as noted above in order to maintain the highest levels of secrecy regarding the identity and location of the witness and the fact that they are participating in a criminal investigation.

5. International Cooperation

In the area of international cooperation, the representatives of AIAMP-member prosecutor's offices shall:

- Implement legally and operationally the contents of the guidelines, making particular use of mutual legal assistance and other mechanisms provided for pursuant to the United Nations Convention against Organized Transnational Crime, especially those associated with the international relocation of witnesses and the availability of domestic witnesses to testify abroad and of foreign witnesses to testify locally;



- Appoint, if such appointment is still pending, a Central Authority for the implementation of the United Nations Convention against Organized Transnational Crime and its Protocols with the specific mandate of resolving all petitions from member countries for international relocation of witnesses and/or such procedural steps as may require the rendering of testimony;
- Promote the organization of and participate in bilateral, regional and international activities designed to encourage the exchange of best practices among victim protection programs;
- Adopt and utilize the model legal instruments, guidelines and manuals prepared by the United Nations Office on Drugs and Crime (UNODC) regarding witness protection in its capacity as the depository agency for the United Nations Convention against Organized Transnational Crime;
- Draft joint proposals and regional strategies to attract international resources to fund technical cooperation efforts in witness protection; and
- Seek to harmonize legal and operational procedure in witness protection.

6. Human resources

In the area of human resources, the representatives of AIAMP-member prosecutor's offices shall:

- Adopt selection criteria for the team of people responsible for managing the witness protection program;
- Adopt criteria for the selection, recruitment, promotion, evaluation, payment and dismissal of people responsible for witness protection;
- Endeavor to ensure that the team responsible for witness protection and care is multidisciplinary, preferably including people with backgrounds in: law, research, security and safety, social work, health care, project management, inter-institutional relations, financial and human resources;
- To the extent possible, ensure that the staff responsible for witness protection reflects a balance in terms of gender and ethnic origin;
- Preferably include personnel responsible for protected witnesses' physical security and safety on the program's staff;
- Ensure the selection of witness protection unit staff under strict requirements for entry, continuity and dismissal in order to safeguard program privacy and security;
- Draft evaluation and promotion protocols for personnel responsible for witness protection and the establishment of administrative, civil and criminal liability of those staff members who violate the principle of confidentiality or other fundamental principles and are thus removed from the protective service;
- To the extent possible, ensure job stability, competitive salaries and incentive packages for program personnel, based on rank and the volume of information to which they have access;
- Foster and permit the participation of unit staff in regular training activities, including those that encourage the exchange of good professional practices with other protection services around the region and the world; and
- Establish clear rules to ensure the confidentiality of information.



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7. Finances

In the financial arena, the representatives of AIAMP-member prosecutor's offices shall:

- Request that specific, sufficient resources from the national budget be allocated to the protection program to provide for sufficient autonomy and ensure that the program is not subject to financial oversight that could restrict its independence;
- Seek to ensure that the financial system is sufficiently solvent so as to provide effective witness protection during both implementation and follow-up of necessary measures as well as in the hiring and training of qualified personnel.
- Seek to ensure respect for the powers of competent authorities to allocate expenditures within the institution's budget and establish financial priorities;
- Ensure that the information provided with regard to operational expenses reflects only general information and not data that can be linked to the identity or location of witnesses; and,
- Encourage the creation of a special contracting system for goods and services separate from regular procedures to ensure expedient program operations.





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CHAPTER THREE FOLLOW-UP ACTIONS

1. The Permanent General Secretariat of AIAMP shall create a section on the website containing a series of texts provided by the working groups as well as this document.
2. Through the Permanent General Secretariat, the Prosecutors Offices agree to incorporate onto the website existing documents from their domestic legislation or internal instructions from institutions associated with victim and witness protection. The Secretariat shall index the documents based on a minimum thesaurus to facilitate searches.
3. Each member country shall designate a point of contact including name, position and contact information (at least an email address). Such information shall be listed on the website and updated through the webmaster.
4. Prior to the next AIAMP meeting, a survey shall be conducted to ascertain the status and degree of compliance with the guidelines contained herein. The surveys shall be drafted by the teams of three people working in conjunction with EUROsocial. Preferably, the people appointed to said working groups shall have been members of the drafting committee. The drafts shall be forwarded to representative, reliable, independent institutions in each country for further feedback. The results of the questionnaires shall be reviewed and analyzed by each working group, which shall draft a report on each of the national systems evaluated. Said assessment shall be communicated simultaneously to the President and General Secretary of AIAMP as well as to the senior official of the Prosecutor's Office in the corresponding country. The documents shall, in general, be of a public nature. However, each Prosecutor's Office may determine whether to publish the results of their national survey or not.

The surveys shall place a particular accent on the following topics, but may include others as well:

- Regulations of any scope or nature reflecting the contents of these guidelines and their effective implementation. The latter aspect shall be particularly germane.
- Any impediments or obstacles to effective implementation.
- A description of actual substantive cases involving different types of victims and witnesses.
- Recommendations.
- Proposals for additional support through cooperation or International efforts to strengthen the system.



5. The working groups tasked with follow-up and compliance assessment shall provide a status update during the next AIAMP meeting. The resulting materials shall be made available to all National Representatives but may not be necessarily be subject to discussion.



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