

## Legal Guarantees For The Protection Of Witnesses In Criminal Proceedings: A Comparative Study

Russul B. Taher  
*University Of Sumer, Iraq*

Intisar, R. Harb  
*University Of Sume, Iraq*

---

### **Abstract:**

*The study explores the legal guarantees created for witnesses in criminal proceedings, acknowledging them as crucial auxiliaries of justice whom courts depend on to investigate truthfulness and fulfill criminal justice. Given that witness performance can play a crucial role in establishing criminal culpability, protections for these individuals and preservation of their rights are fundamental to the integrity and efficacy of the judicial machinery. This study seeks to elucidate the legal basis of witness protection and illustrate its role in motivating witnesses to give testimony voluntarily, without fear of victimization, coercion or undue influence. It points to the lack of adequate protection mechanisms that could contribute to reluctance to testify or distorted evidence and, ultimately, a miscarriage of justice. Moreover, the study examines which types of substantive (objectively) and procedural protection legislatures provide/implement most importantly. Such substantive protections include measures aimed at ensuring the life, physical integrity, privacy and dignity of witnesses (for example criminalising threats or retaliation against them) as well as special security arrangements. Conversely, procedural protections are those which exist in the judicial process per se, such as withholding witnesses' identities in sensitive cases or permitting audiovisual testimonies, closed hearings when appropriate or relocation/identity protection programs for serious crimes. The research also highlights deficiencies in the existing legal system, such as legislative gaps, the limited scope of protection measures, lack of comprehensive witness protection programs and inadequate alignment with international standards especially contained in international conventions addressing organized crime and corruption. Using the limited comparative method, this research adopts the analytical approach and critically examines whether the existing provisions of legislation provide appropriate protection for witnesses, where such protection is effective and practical. The comparative approach of the study enables to assess best practices and recognize areas where national legislation could be reformed, through examination of different legal systems. This study ends that there is an urgent need to upgrade development of legislative instruments, in line with international standards, and for facilitating the implementation of a comprehensive, effective witness protection program which will be consistent with following up mechanisms. The final section of the study presents a series of recommendations aimed at shoring up confidence in the judiciary, improving cooperation with law enforcement in appropriate cases and promoting proper exercise of criminal justice.*

**Keywords:** *Witness Protection, Criminal Proceedings, Legal Guarantees*

---

Date of Submission: 16-03-2026

Date of Acceptance: 26-03-2026

---

### **I. Introduction**

Testimony is considered one of the oldest and most vital methods of proof in almost every branch of law. It is a primary bit of evidence that allows the courts to determine facts and settle disputes based on a direct account of events witnessed by witnesses. Testimony frequently constitutes the decisive evidence in criminal proceedings, and is particularly important when testifying about alleged crimes where material or forensic evidence is scarce or lacking (Roberts & Zuckerman, 1984). Literature on law highlights that systems of evidentiary proof rely on witness accounts as components of a larger structure of criminal evidence propositions and judicial reasoning (Damaška, 1997). Although testimony is equally important in civil and personal status cases, it becomes a more sensitive topic when dealing with criminal judgment given the potential penalties passed down by criminal judgments such as deprivation of liberty and loss of reputation. This development was further internationalized by the establishment of procedural safeguards pertaining to witness testimony, so as to preserve the right to a fair trial while ensuring mechanisms for effective prosecution (Jackson, 2012). As a result, the reliability and availability of witness testimony is increasingly recognized by modern criminal justice systems as being shaped by the presence or absence of appropriate mechanisms for legal protection. However, the need for

witness protection stems from the possible dangers that may confront witnesses while testifying in criminal proceedings. Witnesses and their families may be intimidated, threatened or retaliated against in cases of organized crime, terrorism, corruption or serious violent offenses. This concern has been recognized in international legal instruments, which emphasize the duty of States to take appropriate measures in order to provide with effective protection to witnesses involved in criminal hearings (United Nations Convention against Transnational Organized Crime, 2000). Geared towards practical implementation, guidelines created at the international level lay out additional aspects of witness protection programs in further detail; for example physical security, relocation, identity change and confidentiality mechanisms (UNODC, 2008). Regional standards have also recognized the protection of witnesses and justice collaborators as an indispensable component of fair and effective criminal justice systems (Council, 2005). There are comprehensive witness protection laws in enactment in several legal systems on a national scale. The United States, for example, has a formal witness security program created by the Witness Security Reform Act of 1984 that offers relocation and identity protection in high-risk cases (Witness Security Reform Act, 1984). Laws governing domestic criminal procedure also contain provisions governing witness testimony and procedural guarantees during criminal trials, such as the Iraqi Criminal Procedure Law No. 23 of 1971 (as amended). Additionally, this human rights dimension of witness protection is reflected in wider international norms and standards relating to victims and all those engaged in the criminal process, particularly the need to be protected from intimidation and retaliation (UN, 1985). In response to the outlined challenges, this study will address the adequacy of existing legal provisions regarding the protection of witnesses and their families in particular, and ultimately even places of residence. Can we expect the current legislative texts to provide effective and practical protection? Or do gaps and ambiguities in legislation discourage witnesses from testifying, undermining courts' ability to resolve criminal matters? Inadequate safeguards may erode confidence in the courts and contribute to public distrust of justice, especially when those who commit crimes avoid accountability due to lack of evidence. The concept of fair trial under international and national human rights jurisprudence necessitates a balance between the right of the accused as well as protection to witnesses (European Court of Human Rights, 2015). This study, to remedy this situation, uses a comparative-analytical approach. It analyses the relevant legal provisions on witness protection in Iraqi laws and compares them to selected domestic and international norms. In doing so, the study aims to expose the strengths and weaknesses of existing legislation and assess how far it nests with contemporary international witness protection trends. The research is concerned with one of the main groups in the justice system witnesses and with the rules determining what rights they have as well as what is expected from them. It discusses the balance that needs to be struck between witness security and ensuring fairness of process namely, the requirements for presence in court and testimony under oath. Hence, the paper is divided according to two main sections. The first one analyzes the legal idea of testimony and separates it from other methods of proof, as in inspection and confession. The second part analyzes guarantees for the protection of witnesses, including both personal and spatial protective measures, authorities responsible for their implementation, and obligations of witnesses within the scope of legal protection guarantees. The research via this structure endeavors to add towards the enforcement of efficiency in criminal justice and while restoring confidence in the judicial system.

## **II. The Legal Concept Of Testimony And Its Distinction From Other Means Of Proof**

Historical Perspective: Testimony has been considered one of the most important eras of evidence if not the mainest for centuries. It continues to be an important legal evidence tool invoked by courts in civil and criminal matters alike. Legal science regularly reinforces that testimony represents direct evidence based on one's own senses, and the probative potential increases in the presence of procedural and substantive guarantees (Nabil, 2018; Ali, 2019). In criminal justice, testimony is a critical tool in truth-seeking and ensuring that individuals receive just trials when physical evidence is unavailable or vague. As the witness is from where testimony issues, it becomes necessary to characterize the legal nature and status of the witness in the procedural system. The witness is not only a passive spectator but an active agent in bringing about the causes of justice. Exclusively, this chapter deals with testimony as not just a proof, but also a legal and moral duty which serves to protect both the rights of an individual, societal interests, or ensuring crime deterrent. The divine and moral bases also underscore the duty of truthful testimony, among which is Qur'anic injunctions regarding testifying to the truth. Because witnesses are potentially subject to intimidation or pressure that may interfere with their ability to serve as witnesses, it is important for the law to clearly outline who constitutes a witness and how testimony is situated within criminal procedural law. Hence, this chapter linguistically and legally investigates the concept of testimony, elucidates its position in Iraqi legislation and comparative legislation, and distinguishes between it and other means of evidence like confession and judicial inspection. It is crucial to establish this theoretical framework prior to considering the guarantees for witness protection in the following chapters.

## **The Concept of Testimony**

Testimony is at the center of modern evidentiary systems, and it retains one of the most potent forms of proof that judges touch on as they develop judicial conviction. Its impact has remained significant throughout a variety of legal traditions within evidentiary law. Aside from its legal aspect, testimony is widely conceived to be a moral and ethical duty on the part of people before it was also merely procedural (Nabil,2018). Because of the central nature of testimony to criminal proceedings, jurists and legislators have spent significant energy on definitions of it. An unequivocal definition is the entry point to understanding its legal nature and differentiating it from other types of evidence. Thus, this section discusses basically the linguistic and technical definition of testimony in addition to mentioning the instance of some sources in jurisprudential and legislative fields.

### **Definition of Testimony**

- 1. Linguistic Definition:** In linguistic terms, “testimony” has many meanings: explanation, declaration and presence. A witness is so called for the reason that he clarifies truth and differentiates right from wrong. Bayyinah, the word rendered as “evidence” here, literally refers to proof or argument hence the well-known legal maxim: The burden of proof lies upon him who asserts. Additionally, testimony renders the meaning of “witnessing,” as stated in the Noble Verse: “and they had been witnesses over whatever they were doing to those believers” (Ali, 2019). Thus, testimony linguistically means alluding to an event that has previously been perceived through one’s senses and is presented before a competent authority (Nabil,2018).
- 2. Jurisprudential and Judicial Definitions:** A statutory definition of testimony is not included in Egyptian legislation, which does not constitute a legislative deficiency since legal systems do not define terminology but leave this to jurisprudence and judicial interpretation. Testimony has been defined by jurists as the evidence of a fact through verbal declarations made by an individual, based on what they saw, heard or perceived through one of their senses. Significantly, testimony does not need to be directly related to the core fact in dispute; it can be about circumstances relevant to proving or evaluating the crime. It is also sufficient if the testimony assists logically, along with other elements of proof, in arriving at the truth (Ashraf, 2010) the Egyptian Court of Cassation defined the witness as “a person who has personally observed the matter with his/her own eyes” (Ashraf, 2010). Jurists also characterize testimony as the sharing of that sensory phenomenon which belongs to a witness and refers to a legal fact, so it can be visually auditory testimony or any other type of sensory testimony depending on how you perceive it (Maamoun, 1971).
- 3. Legislative Definitions in Iraqi and Comparative Law:** The Iraqi Law on the Protection of Witnesses, Experts, Informants and Victims No. (58) of 2017 gives a legal definition under Article (1/First), which states that “the witness is a person who provides information about a crime he has perceived through one of his senses whether this information relates to proving the crime or the circumstances in which it happened or surrounding conditions” (Iraqi Law, 2017) . In addition, Iraqi law dictates that the witness should testify solely to facts that he observed directly and may not give any conclusions or inferences, even if an expertise is at hand. According to the Evidence Law No. (107) for the year 1979, it is emphasized that sworn testimony must be based on direct perception (Iraqi Evidence Law, 1979). Moreover, Article (67) of the Iraqi Code of Criminal Procedure No. (23) for 1971 (and its amendments) outlines the procedural track for listening to witnesses before investigative and judicial authorities (Iraqi Code of Criminal, 1971). In contrast, the U.S. defined witness under the Victim and Witness Protection Act of 1982 as a natural person who has information about any fact relating to the existence or nonexistence of a crime (including individuals who reported crimes or are called to appear in front of competent authorities). By analogy, under English law, section (6–72) of the relevant procedural rules defines a witness as “any person who appears before court in accordance with rules of procedure to give testimony or evidence of any kind; whether such evidence actually is given at all.” In summary, testimony could be summarized as knowledge emitted in front of certain investigative or judicial authorities by someone who directly observed an event through one of his senses. Thus, a witness is a person who has been placed by happenstance in a position where he was able to see or hear an event, with no reference to whether the individual had any interest in the case (Nabil,2018; Maysan, 2018).

### **Types of Testimony**

In this subsection, we provide a breakdown of the different forms of testimony catered to legal doctrine and comparative legislation. This analysis mainly focuses on two concepts when used in practice; that is, direct versus indirect testimony and hearsay testimony versus reputation-based testimony. These categorizations are critical to dictating the probative value and admissibility of witness statements in front of the court.

#### **First: Direct and Indirect Testimony**

The rule of thumb is that testimony should be direct, and a witness can testify only to facts he personally perceived through sight or hearing. In direct testimony, this is ordinarily oral, as the witness is expected to testify based on memory rather than verbatim notes. However, under certain legislations like Egyptian and Kuwaiti law,

the witness is allowed to refer to writings by memoranda but only with the permission of the court or its delegate. It is the first and supposed to be complete form of testimony. With this type, the investigator obtains information directly from the witness, with no intermediary. The witness personally experienced or perceived the event at issue, and recounts it based on memory. Thus, direct testimony is the information a witness gives as a consequence of his or her own sensory experience about the fact to be proven, in other words, what he/she personally saw or heard concerning the case subject matter (Omar, 2017). Indirect testimony also known as second-degree testimony is a statement made by someone who did not directly observe the fact in dispute, but is only relaying what he heard from another person. This case is one in which the individual means that this witness did not see or hear the event themselves but rather learned about it only through an individual believed to have witnessed it. This type of testimony is generally referred to as hearsay. The more intermediaries involved when leading testimony, the less probative it becomes and the further away you are from proof of the fact itself (Omar, 2017). French jurists have claimed that indirect testimony is admissible only if certain conditions implicit in the direct one's incapacity to testify (e.g., death or absence), delegation by the direct witness, full legal capacity of the reporting witness, and corroboration from a minimum of two people are all met. Such conditions are meant to mitigate potential dangers from dependency on mediated knowledge.

### **Second: Hearsay Testimony and Testimony by Public Reputation**

Hearsay testimony, from the 1st statement: refers to statements made by other people that will prove or disprove a matter of fact. The testimony here is drawn from a specific source who alleges direct experience of the event ((Nabil, 2019). Testimony by way of public reputation (or general repute), however, is of a different character. Here the witness is not relaying information from a particular person, or specifically about a discrete event. The testimony, rather, is at least a reflection of what is gossip among the people or commonly believed in the community. Such testimony is generally not admissible, save for some extraordinary situations that are specifically set forth by statute (Nabil, 2019; Saad., 2020) Some statutes permit testimony of common reputation in specific, narrow settings. French law, for instance, permits public reputation suffice in certain civil matters such as proving ownership of marital property where no official documentation exists. Some jurists like Garçon contend that this testimony should add something evidentiary, which requires witnesses to testify about matters known personally rather than just used as a source of hearsay. Italian criminal law scholar Picar argues that, "evidence strengthens evidence when each piece is independent of the other," reinforcing the importance of corroboration (Saad., 2020)

### **Distinction Between Testimony and Inspection (Judicial Examination)**

Inspection (also known as judicial examination) is the direct observation and inspection by the investigative authorities of a place, person or object related to the committed crime in order to establish an act of documenting the condition of a scene and determining material evidence (Saad., 2020) . The first practical step in the removal of this ambiguity and the obtaining of relevant material regarding the offense. Such decisive proceedings may include arresting the accused or hearing witnesses at the scene of crime to avoid forgetfulness or external influence (Saad., 2020), which can be included in the inspection. Article (Nabil, 2019) of the Egyptian Criminal Procedure Law pandemic predominantly obligates judicial officers to get clarifications and conduct necessary inspections that facilitate investigation of reported incidents. Inspection is vital because it allows investigative and judicial authorities to obtain a complete picture of the location where a crime occurred, as well as its physical characteristics and material traces. Its evidentiary usefulness is particularly evident in crimes that produce concrete physical consequences, such as homicide, theft and traffic offences. On the contrary, for crimes like defamation, inspection might not have much use 26. The Egyptian law also empowers the investigating judge to visit wherever he finds it necessary to verify the condition of places or objects or individuals and to prove the material existence of the crime (Ashraf, 2010). The Criminal Procedure Law does not govern in detail the inspection link at the trial stage, and there is no explicit provision for whether it can be carried out during the filing of a request. Also when necessitated (Moajab, 2003; Jalal. 2004) the court may even assign one of its members or some other judge to conduct such inspection. The Iraqi Evidence Law No. (107) of 1979 stipulates in Article (125) that inspection is a preparatory decision that the court should issue based on the verification and conviction of its necessity. The court may, on motion of any party or on its own initiative, order the inspection. If there is good evidence, it might even withdraw that decision provided it gives reasons for doing so. If an inspection is ordered, it must be carried out within two weeks in principle unless there is a legitimate obstacle (Ramsis, 1978). A written report of the inspection must be prepared, documenting all procedures during the inspection and signed by the judge, clerk and present parties. While the absence of required signatures has been considered as a basis for invalidity in Iraqi jurisprudence, it does not have an explicit address under legislation to the same detailed level as Article (131) of the Egyptian Evidence Law No. (25) of 1968 (Moajab, 2003 ; Iraqi Evidence Law ; 1979). Both inspection and testimony are considered admissible means of proof. These must all be done immediately, inspection to maintain material evidences of the crime, and statement to avoid memory loss

or external pressure on witness. Testimony, however, is different in that it relies on the neutrality and credibility of someone who has sworn an oath to tell the truth and who we assume has no dogs in the fight. Nevertheless, the judge may exercise discretion where testimony involves a sensory deficiency like poor hearing or vision. Iraqi judicial practice reassures us that hearsay does not possess the same evidentiary weight as direct (ocular) testimony. When the proof is per hearsay, it will not be enough especially in a case where there is uncertainty as uncertainty ought to be taken against the charged. Where relevant, courts may refer the witness to medical experts to assess sensory capacity (Egyptian Evidence Law, 1968; Iraqi Evidence Law ; 1979).

### **Distinction Between Testimony and Confession**

Confession is among the two proven way of proof in criminal matters. It is an acknowledgment of the truth of the facts attributed to him, and can result in his criminal liability. While confession generally has a powerful impact on the court and can lurch in the direction of conviction, it is not called the “master of evidence.” Instead, similar to other types of evidence, it is left to the discretion of the judge who can consider it as a whole, partially rely upon it or entirely ignore it (Abdul Salam, 2021; Iraqi High Judicial Council, 2012). Judicial practice confirms that confession has to be examined freely by the court. That confession, while significant, does not bind the court unless it is corroborated with other evidence and meets criteria for validity (Abdul Salam, 2021). Legal doctrine reflects this as well, stressing that the value of confession should not be overstated, even when apparently clear-cut and voluntary. A confession may not always be motivated by the desire to tell the truth; it could also arise from a desire to protect another person, secure sympathy, evade responsibility for a worse crime or even due to mental health issues. In some cases, confession can be the product of coercion or threat making it unreliable (Iraqi High Judicial Council, 2012).

Part of Egyptian jurisprudence has provided that confession itself may be sufficient to effectuate a conviction if it lies within the ambit of the freedom of belief in law. In contrast, another perspective consistent with French jurisprudence holds that a person cannot be convicted solely based on a confession without further supporting evidence like testimony. This was the first approach generally adopted by Egyptian and French legislators, enabling courts to base their findings solely on confession where they are convinced of its authenticity (Bakri, 2012; Egyptian Criminal Procedure Law; 1950). Article (271) of the Egyptian Criminal Procedure Law No. 150 for the year 1950 (as amended) provides that if the accused confesses to the act attributed to him, then it is permissible for the court to issue a judgment without hearing witnesses. Likewise, French law not only recognizes confession but also treats it as something among many things, and leaves the evidentiary value of a confession to the judge (Bakri, 2012). Both Iraq and Egypt’s constitutions contain clear prohibitions against torture or any form of physical or psychological coercion. The 2005 Iraqi Constitution Article (37/Third) states that no confession extracted under duress should be considered valid and every injured party has the right to compensation (Egyptian Criminal Procedure Law; 1950). Similarly, article (126/A) of the Iraqi Code of Criminal Procedure No 23 for 1971 (as amended) criminalizes coercive measures and invalidates confessions thus obtained (Constitution of the Republic of Iraq, 2005). And therefore, a coerced confession is excluded from the pool of admissible evidence because it violates constitutional guarantees and fundamental principles of justice. Unlike witnesses, the accused is not sworn in unless testifying against a co-accused. He is not required to answer questions and has the right to remain silent, and such silence cannot be interpreted as evidence against him. Similar within the Egyptian rules, Iraqi legislation does allow for Judicial division of confession; such that from that confession only relies on whatever was not part of its punishment. So if it is the sole evidence in the case, it should not be fragmented or interpreted to distort his meaning (Article 219 of the Iraqi Code of Criminal Procedure) (Constitution of the Republic of Iraq, 2005 ). Confession is seen as more powerful than testimony because it is a finding against one’s own interest. Whereas testimony is information offered by one person against another, confession is an admission made by a person of rights or facts to the detriment of his own side. Additionally, confession can include good and bad aspects while testimony must come from a person who is legally competent; therefore, both reliable and non-reliable (Iraqi Code of Criminal Procedure, 1971). However, confession is generally not compulsory; the accused has the right whether to confess or not. Yet coerced confessions do come about from illegal investigative pressure, which is why there are constitutional and statutory safeguards in place. On the other hand, testimony is a legal duty imposed upon the witness who testifies under oath and may be punished for perjury. False confessions, it should be noted, are not punishable in the same criminal sense as false testimony. Egyptian Penal Code No. 58 of 1937 Articles (294) and (300) classify perjury and coercion of witnesses as a crime too, while Iraq's law penalizes false testimony (Mohammed, 2022; Egyptian Penal, 1937 ). Argumentative bias is a major concern that could be avoided if the court wanted to keep things fair in regards to both confession and testimony, since they are still evidentiary tools subject to judicial discretion, only distinct on nature source of information and legal outcomes. Confession is an accused person’s own statement against himself, freely given and can be retracted under certain circumstances; testimony is a legally compelled public declaration made by someone other than the accused sworn to tell the truth.

## **Guarantees for the Protection of Witnesses**

In many criminal cases, testimony represents the bedrock a straightforward and essential way to uncover truth and serve justice. Yet testifying is not always straightforward, especially when a witness faces direct or indirect threats from people connected to the case, often by perpetrators themselves or their associates. This reality highlights the need for witness protection as a real precondition to enhancement of public confidence in judiciary and justice delivery. When a witness takes the stand, he is doing a public service that aids in convicting criminals, deterring crime, and protecting the public peace. Yet this positive role can become too much of a burden for the witness if he or she does not feel sufficiently protected from reprisals, threats to physical integrity or psychological pressure. As a result, legal systems have tended to create broad frameworks that protect witnesses from the time of the giving of testimony until the end of proceedings. Comparative legislations provide this protection in various types and mechanisms. Some states have gone so far as to adopt elaborate systems involving identity change, relocation and financial and psychological assistance; others have settled for generalized or procedural safeguards. The international models in American, French, Iraqi and Egyptian systems have different levels of comprehensiveness in witness protection which can be analyzed and compared. This chapter thus explores the main types of legal guarantees governing witness protection. The chapter is divided into two parts: the first analyzes personal protective measures and authorities mandated to extend them; while the second explores spatial protective mechanisms, including protection of residence and related procedures, as well as legal obligations on witnesses who receive such protection.

## **Personal Protection of the Witness and Competent Authorities**

A major legal means of providing physical and mental security for the witness is personal protection. Proof of anonymity, remote testimony and technological arrangements boost the witness' faith in the judicial system further leading him to render honest testimony without fear. Implementation of such measures is a responsibility for specific national authorities, dependent on the legal traditions in each country.

## **Personal (Individual) Protection of Witnesses**

Witness protection seen as pivotal for encouraging witnesses to cooperate with the state in fighting crime. The witness performs a public service in the interest of the community and, thus, protecting him from injury is a basic right (Egyptian Penal, 1937). French law has already taken interesting steps in this direction. Under Article (706-58) of the French Code of Criminal Procedure, courts may authorize the concealment of a witness's identity in cases involving serious felonies or misdemeanors with a potential sentence of at least three years' imprisonment. These conditions are that protection can only be provided for serious conspiracy charges and if there is a risk of physical harm to the witness or their relatives; if they have fulfilled confidentiality requirements and at the public prosecutor's motivated request (Nabil, 2019). However, French law is mainly focused on the admission of protection without sufficiently detailing procedures for its withdrawal or measures after disclosure. Videoconferencing technology has also been used in France to protect witnesses during testimony (Egyptian Penal, 1937 ). The United States boasts one of the most sophisticated witness protection programs. Previous protective measures have included courtroom screens for child witnesses (garnering support across various types of sensitive cases, e.g. sexual assault), closed-circuit television testimony, and video-recorded statements to protect minors from psychological harm (Mahmoud , 1992). Under the Organized Crime Control Act (Section 501)( Egyptian Penal, 1937; Mahmoud , 1992), in 1971, the Attorney General was authorized to establish protective programs for witnesses in cases involving organized crime, including relocation and permanent change of identity as well as financial assistance. Although successful, these strategies could have psychological and social implications for protected witnesses because of their change in identity and social isolation. In the United States, police units responsible for witness protection work under the supervision of prosecutors and have a strict policy to keep cases private. These programs work to ensure extensive security both before and during trial. On the other hand, Egyptian law hasn't developed an analogous comprehensive system considering witness status as consistently aggravating circumstances in criminal offenses like murder or assault 46. Egyptian law grants some limited protections. Should a misdemeanor be committed against a witness in the court session, courts can instigate proceedings without delay. For felonies, referral is required to the prosecution (Saad, 2016). While these measures do protect the court, they provide only limited pre-trial protection. even though Egypt signed the United Nations Convention against Corruption in 2005, its domestic laws are not yet aligned with international requirements for effective witness protection systems (Ahmed, 2006). The 2014 Egyptian Constitution (Article 96) establishes the duty of the state to provide protection for witnesses. Moreover, Articles (298) and (300) of the Egyptian Penal Code prohibit bribery or coercion of witnesses and afford penal protection to protect a testimony (Mohammed, 2022; Egyptian Penal, 1937). However, in 2017 amendments to the Egyptian Criminal Procedure Law only brought procedural anonymity measures without a complete witness protection framework (Ahmed, 2006). Law No. 33 of 2008 on Informant Rewards is also enacted in Iraq for crimes reporting and specifically corruption offenses(Rania , 2020). The later Law No. 58 of 2017 concerning Protection of Witnesses, Experts,

Informants and Victims brought a more formalized approach to witness protection and indicated a growing legislative recognition of the need for effective protections.

### **Personal Protection of Witnesses (Iraqi Legislation)**

Under the provisions of the Code of Criminal Procedure No. 23 Of 1971 (as amended), the Iraqi legislator granted a witness timely receipt and compensation because it was present before judicial or investigative bodies. They may be awarded upon the witness's request or by order of the investigating judge (Ashraf, 2010). This is consistent with a legislative understanding that testimony is a public service that may impose an economic burden on the witness, and therefore be appropriately paid for in kind. In addition, a witness who is insulted inside the courtroom by one of the litigants may demand compensation for damage (Ammar, 2009). This is to protect the integrity of the witness and to uphold respect for judicial proceedings. Moreover, where assault is committed against the witness because of such testimony, Iraqi legislation provides for compensation for this witness or, in case of his death (due to the injury inflicted on him), to his heirs if (his) death is linked to the subject-matter of the case in which he had given a testimony. The same approach exists in Article (2) of the Egyptian Witness Protection law, which recognizes the right to protection and compensation for damage as a result of testimony (Iraqi Code of Criminal Procedure, 1971).

Indeed, while Iraqi law acknowledges the right for compensation, it does not define the conceptual justifications behind that right. On the contrary, when looking as a reference to Article (9/First) of Law No. 58 of 2017 on the Protection of Witnesses, Experts, Informants and Victims— at what has been adopted by the Iraqi legislator here it is noted that he was following what may be described as “material liability theory”. With this approach, the Dawn is legally liable to compensate any damage suffered by the witness without having fault. Harm itself is the necessary ingredient for compensation, therefore damage forms the basis of liability, where it exists whenever there is harm and where does not exist when there is no harm (Iraqi Code of Criminal Procedure, 1971; Iraqi Evidence Law; 1979). In addition, many countries already have a general law in their country that amends an incrimination for physical and functional protection of the informant about corruption offenses, which creates a prohibitive effect including against dismissal, demotion or transfer, where applicable (or threats to public employees who report violations immediately or before (Iraqi Law, 2017). Although it is laudable for the Iraqi legislator to make such provisions, further regulatory development is required in order to establish complete and operative enforcement measures. In Iraq, the General Directorate for Human Rights in the Ministry of Interior is tasked with enforcing witness protection measures. Such protection is granted in accordance with a decision taken by the investigating judge or the competent court. The law relates to criminal and terrorist cases and provides protection for relatives up to the second degree. While the law makes general reference to criminal cases and specifically mentions cases involving terrorism, it leaves detailed specification of relevant offenses to regulations issued by the Council of Ministers (Nabil, 2019; Iraqi Law, 2017). Article (6) of Law No. 58 of 2017 and its related provisions set forth security protection measures for those who are subjected to them, such as changing personal data while preserving original records at the agency executing the measure; monitoring communication or concealment of facial features; or replacing identity data in the relevant case files. Protected information is confidential and can only be released as allowed by law. The persons who disclose protected data are subject to punishment and that can be an aggravating circumstance in the crimes committed against protected persons. Moreover forcing, threatening or bribing an eyewitness is a crime under the Iraqi Law; it will grievously be punished when the testimony relates to terrorism crimes and state security (Nabil, 2019; Iraqi Law, 2017). However, Iraqi legislation does not provide comprehensive regulations on measures of administrative or employment-based protection, which is a serious regulatory gap when compared to better-developed protection regimes.

### **Spatial Protection of Witnesses**

As testimony is one of the most powerful pieces of criminal evidence, adequate protection for the witness and his family is very much required to encourage people and lessen fear towards retaliation. Spatial protection refers to protecting the home and whereabouts of the witness. French Law No. 15 of 2001 (as amended) allows for the witness's address to be omitted from procedural records. In France, as stated in Article (706-57) of the French Code of Criminal Procedure, protection is granted to witnesses based on making their domicile secret at all stages of proceedings, whether if the police investigation or judicial inquiry were going on (Iraqi Law, 2017). In addition, Article (706-97) of the French Code of Criminal Procedure provides for extending certain protective measures to individuals who are not suspected of committing or planning to commit the crime in question, thus preventing unnecessary exposure of cooperating persons. These measures are meant to preserve privacy but also to mitigate the risks of making personal data public. Spatial protective measures are potentially relocating, precluding any addresses from being confirmed or revealed and prohibiting access to procedural filings with identifying data. These measures help ensure the safety of the witness and maximize their ability to provide accurate testimony, which ultimately protects the integrity of the judicial process.

### **Spatial Protection of Witnesses (Comparative Perspective)**

A noteworthy exception to this principle is found in the procedure of French legislation, which makes possible when people have crucial pieces of evidence but cannot be suspected of committing or attempting the crime; their address might make possible to register (instead using their official residence) as being at the police station or security directorate where they belong. Prior authorization from the Public Prosecutor or the Investigating Judge is required for this measure. The address is protected and the special register prepared for this sole purpose, with initials of the signatures. The French legislator notably excluded witnesses who were suspected of participation in the crime from such protection. The legislative goal may need to balance the protection of witnesses with providing prosecution access to information relevant in severe offenses (such as corruption, drug or human trafficking) for which witnesses possess key evidence (Ziyan, 2020; French Code of Criminal Procedure). In addition, French law provides that a witness who does not wish to disclose his residence must be granted approval by the Public Prosecutor or Investigating Judge. In those instances, the official address recorded is that of the police station or security authority. The authorization must coincide with the date when a witness indicates that he wants confidentiality. Moreover, the Public Prosecutor or Investigating Judge, on their initiative and having determined from the nature of the investigation that disclosure of the address would expose a witness or relatives to an undue risk of pressure to bear witness against him/her or to threats or harm, may issue such a nondisclosure order. French Conseil d'État (Council of State) has issued decrees on the conditions for application of witness protection provisions, punishable by criminal sanctions and fines for any unauthorized disclosure of protected data. The International Criminal Tribunal for the former Yugoslavia adopted similar principles (Ziyan, 2020; French Code of Criminal Procedure). Likewise, the United States has some strong spatial protection measures in place. Such security units help to protect witnesses by relocating them and, if necessary, changing their permanent or temporary address depending on the threat. Relocation arrangements under federal guidelines: 1. Avoid associating with people known to the accused; 2. Make sure hosts are willing, reliable and have a clean record; 3. Provide about \$15,000 in immediate financial assistance for initial relocation costs. Witness Assistance Programs are round the clock and patrol units with rapid response capabilities. The efficacy of such programs is generally credited to generous and sustained budgetary investments (Ziyan, 2020; Nabil, 2019). The aforementioned Egyptian legislation, provided for by the Law on the Protection of Witnesses, Whistleblowers and Experts, establishes means of communication between a protected person and protection authorities; assignment of personal guards to such persons; and any other measures necessary to prevent harm which may be deemed appropriate by the Public Prosecution. However, that Article (7) of the law stipulates that protection measures are in effect until a final judgement is issued in the criminal case, and the Public Prosecution can terminate protection measures earlier by a well-reasoned decision. Within three days from the notification, the interested person may contest termination before to the competent appellate court (Amin, 2010; Nabil, 2019). But Egyptian law only grants protection at the litigation stage before criminal courts, although threats can come before that point or to administrative investigators or disciplinary bodies. Because many corruption cases proceed through administrative or disciplinary authorities before they reach the criminal prosecutor, broadening its scope of protection to include such proceedings would make it more effective. Although detailed penalties are established by the Egyptian Penal Code in both cases of perjury and inducement of witnesses (Amin, 2010; Nabil, 2019), the procedural protection framework still remains relatively limited. For example, Article (6) of the Iraqi Law on the Protection of Witnesses No. 58 for Year 2017 provides for other measures such as (monitoring a witness's telephone, changing their workplace or residence either temporarily or permanently in coordination with relevant authorities, providing special emergency contact numbers secured by the provided security during transporting to and returning from court sessions) (Iraqi law, 2017). The enactment of these laws reflects an intention on the part of the legislature to secure not just personal, but also spatial safety. This type of protection, which is grossly inadequate in the current Iraqi legislation, needs a lot of development to be sufficient against retaliation attacks on witnesses and their families as well. We advise that Iraq should develop more satisfactory mechanisms based on comparative international legislations. At the same time, legislation should explicitly provide that protected witnesses must not misuse protection measures to engage in unlawful conduct, as abuse of that protection erodes public confidence in the justice system.

### **Duties of Witnesses**

Witnesses have legal rights and protections, but they are also subject to obligations that are critical to the functioning of the justice system. Investigative bodies can show proper respect for witnesses, building trust and avoiding coercion or threats that can shape testimony inappropriately. The statements are supposed to be recorded without adding, deleting anything and shall be signed by investigator, clerk, and witness upon verification. Witness rights based on Islamic and statutory law include treatment with dignity, protection from harm and reimbursement of expenses incurred in duty (Nabil, 2019).

### **Obligation to Appear**

Generally speaking, testimony must be provided in the presence of the parties of a case. For Justice, any individual who receives a summons to testify must comply with that summons. Even where someone is legally exempt from testifying, the duty to appear can still differ from the duty to testify. Article (59) of the Iraqi Code of Criminal Procedure No. 23 of 1971 states: that witnesses will be summoned by written notice during investigation and in-prison cases they can also be summoned orally. Judicial Officers can hold people at the scene until a report is made (Article 44) (Egyptian Law; 1968). If a witness does not appear, the Investigating Judge may issue an arrest warrant. Nonetheless, Iraqi legal framework does not clearly codify scenarios where the witness voluntarily shows up before executing of the warrant and has a reasonable excuse. Legislation clarifying judicial authority to cancel such warrants in these circumstances would be prudent. Article (67) requires the judge to go to the witness's location and write down his testimony if he is sick or unable to attend the court (Egyptian Law; 1968). The trial stage: Articles (171) and (173) grant courts the right to summoning any person they deem helpful for revealing the facts. Penalties for failing to appear may be imposed in accordance with Article (238) of the Iraqi Penal Code No. 111 of 1969. Articles (174) and (176) also allow for arrest and fines if a person refusing to testify does not provide lawful justification (Rania, 2020). Egyptian law similarly mandates attendance. Egyptian Criminal Procedure Law requires summoned witnesses to attend (Article 208), and failure to comply may result in fines or compulsory appearance. Articles (217) and related provisions regulate repeated summons and enforcement measures (Iraqi Code of Criminal Procedure, 1971). In similar fashion, French law highlights the duty of witnesses to appear before investigative and judicial authorities in order to comply with fair trial aspects.

### **Taking the Oath**

As stated, the oath is a serious moral agreement in front of a holy authority and when undertaken the witness promises to speak the truth knowing that he/she is responsible for lying (Iraqi Code of Criminal Procedure, 1971). According to Iraqi law, a witness who has attained the age of fifteen must be sworn in before giving testimony, while minors may testify without being under oath for the purpose of evidence guidance (Articles 59 and 67, Iraqi Code of Criminal Procedure) (Egyptian Law, 1968). The oath acts as a procedural assurance that testimony may be relied on; it reminds the witness of the seriousness of revealing women Truth. Under Egyptian law, only witnesses who are fourteen years of age or older can swear the oath (Articles 116 and 283), as minors may testify without oath for guidance purposes. French Criminal Procedure Law (Articles 103,466,536 and131/1) prescribes the oath to investigative judges and a criminal court (Iraqi Code of Criminal Procedure, 1971). However, failure to administer the oath where required may lead to procedural defects in testimony; historical legislative provisions had pointed to its essential character. The oath raises the witness's consciousness of moral and legal duty, and enhances judicial confidence in testimony. However, it is exclusively within the province of the judge to ultimately determine credibility, and to weigh testimony against all evidence.

## **III. Conclusion**

Finally, after the study on the guarantees of legally protected witnesses in criminal proceedings was completed, it is essential to indicate the main findings agglomerated and subsequently provide basic recommendations that would assist strengthening and implementing efficiently mechanisms for the protection of witnesses within the framework of criminal justice.

### **First: Findings**

- 1. Absence of Comprehensive Protection in Iraqi Legislation:** The Iraqi Law on the Protection of Witnesses (No. 58, 2017) is an important step in terms of legislation but lacks comprehensive protection from frustration and dismissal at the administrative and employment levels. Furthermore, it does not specifically address every type of crime / criminal act, which could undermine witness attendance in the conduct of criminal proceedings.
- 2. Limited Use of Modern Technological Means:** Legislation in Iraq and Egypt does not contain clear, written provisions that would allow the systematic application of modern technologies such as videoconferencing, remote testimony, or even secure concealment of a person's digital identity. Unlike the advanced and practical systems adapted by the French and American justice systems, which keep pace with technological developments while ensuring witness security.
- 3. Insufficient Psychological and Social Protection:** An apparent gap in the legislative framework for both Iraq and Egypt is that neither directly addresses the psychological and social implications of being a witness, responding to concerns with fear of identification or consequences arising from a change of identity or relocation. In contrast, within the very American system there is integrated assistance program that takes into account the long-term psychological and social consequences of protection measures.
- 4. Variation in the Evidentiary Value of Testimony Across Jurisdictions:** Direct and indirect testimony differ in how they are treated. The Iraqi courts often accord more evidentiary weight to direct (ocular) testimony than

hearsay testimony, which tends to diminish various forms of credible but indirect evidence that are at odds with factual reality.

5. **Insufficient Judicial Authority in Ordering Immediate Protection:** Iraqi law does not give investigating judges or courts sufficiently clear and urgent powers to impose protective measures. Such a gap in legislation could also put witnesses at risk before formal decisions on protection can be made.
6. **Limitation of Protection in Egyptian Law to the Trial Stage:** Egyptian legislation tends to link witness protection with the prosecution and generally provides for the only judicial proceeding before Courts, which raises concerns about the vulnerability of witnesses during investigatory stages or prior to formal prosecution in particular in cases of corruption or organized crimes.

## **Second: Recommendations**

1. **Reformulation of the Iraqi Witness Protection Law:** The Iraqi legislator ought to amend Law No. 58 of 2017 in a way that includes administrative, employment and psychological protection and that clearly defines the categories covered which could include as well protection for the periods before, during and after trial.
2. **Mandatory Integration of Modern Technological Measures:** Videoconference testimony; Secure audio-visual recording systems; Electronic anonymity measures to conceal witness identity.
3. **Establishment of an Independent Witness Protection Authority:** For this, a specific body should be established not under the Ministry of Interior but with judicial supervision to assure institutional neutrality. This authority should encompass security, psychological and legal personnel professionally trained in witness protection.
4. **Adoption of Clear Standards for Exemption from Direct Court Appearance:** Specific protective measures should be put in place for vulnerable witnesses, in particular children and victims of moral or sexual crimes (for example the use of screens or testimony via video link).
5. **Reconsideration of Penalties for Offenses Against Witnesses:** Attacks, threats or coercion against witnesses should be aggravating circumstances of the crime in sentencing someone, particularly if it is terrorism or organized crime.
6. **Expansion of Protection to All Procedural Stages:** Instead, protection mechanisms should also cover administrative investigations, disciplinary proceedings and fact-finding committees, especially in corruption-related cases.
7. **Judicial Obligation to Order Protective Measures Upon Detection of Risk:** Judges should be required by law to issue protection orders at the moment that they see risk, and in the absence of any request on behalf of the witness, so as to prevent harm from occurring.
8. **Creation of a Confidential National Register for Protected Witnesses:** Create a secure national registry to assist in relocating inter-regional witnesses, with the understanding that identities remain confidential.

Ultimately, the efficacy of both criminal justice and truth finding is predicated not only on the substantive legal provisions but also on the extent to which those who assist in bringing about a realization of whatever “truth” exists are afforded protections. Furthermore, witness protection is neither a procedural safeguard nor a formality; it is the foundation for enhancing public trust in the judiciary and facilitating the proper administration of justice.

## **References**

- [1]. Abdul Salam Sabri Mohammed, “Inspection As A Means Of Judicial Proof,” *Journal Of The College Of Law For Legal And Political Sciences, University Of Kirkuk*, Vol. 10, Issue 37, Part 2, 2021, P. 391.
- [2]. Ali Zaki Al-Arabi Pasha, *Fundamental Principles Of Criminal Procedures*, Vol. 1, Dar Al-Nahda Al-Arabiya, P. 56, 2019
- [3]. Ammar Abbas Kazem, “The Legal Regulation Of Informant Rewards,” *Risalat Al-Huquq Journal, University Of Karbala*, Vol. 1, Issue 1, 2009, P. 72 Ff.
- [4]. Article (1/First), *Iraqi Law On The Protection Of Witnesses, Experts, Informants, And Victims No. (58) Of 2017*.
- [5]. Article (125), *Iraqi Evidence Law No. 107 Of 1979*.
- [6]. Article (126/A), *Iraqi Code Of Criminal Procedure No. 23 Of 1971 (As Amended)*.
- [7]. Article (131), *Egyptian Evidence Law No. 25 Of 1968*.
- [8]. Article (2), *Iraqi Law On The Protection Of Informants (Regarding Protection From Dismissal, Demotion, Transfer, Or Threats For Reporting Violations)*.
- [9]. Article (238), *Iraqi Penal Code No. 111 Of 1969*.
- [10]. Article (271), *Egyptian Criminal Procedure Law No. 150 Of 1950 (As Amended)*.
- [11]. Article (298), *Egyptian Penal Code No. 58 Of 1937*.
- [12]. Article (37/Third), *Constitution Of The Republic Of Iraq, 2005*.
- [13]. Article (66), *Iraqi Code Of Criminal Procedure No. 23 Of 1971 (As Amended)*.
- [14]. Article (67), *Iraqi Code Of Criminal Procedure No. (23) Of 1971 (As Amended)*.
- [15]. Article (706-57) And Article (706-97), *French Code Of Criminal Procedure*.
- [16]. Article (9/First), *Iraqi Law On The Protection Of Witnesses, Experts, Informants, And Victims No. 58 Of 2017*.
- [17]. Article (90), *Egyptian Criminal Procedure Law No. 150 Of 1950 (As Amended)*.
- [18]. Article (90), *Iraqi Evidence Law No. 107 Of 1979 (As Amended)*.
- [19]. Articles (128–129), *Iraqi Evidence Law No. 107 Of 1979*.
- [20]. Articles (171), (173), (174), And (176), *Iraqi Code Of Criminal Procedure No. 23 Of 1971*;

- [21]. Articles (208) And (217), Egyptian Criminal Procedure Law No. 150 Of 1950.
- [22]. Articles (294) And (300), Egyptian Penal Code No. 58 Of 1937.
- [23]. Articles (59), (44), And (67), Iraqi Code Of Criminal Procedure No. 23 Of 1971.
- [24]. Articles (6) And (7), Egyptian Law On The Protection Of Witnesses, Whistleblowers, And Experts.
- [25]. Articles (6, 12, 13, 14, 15), Iraqi Law No. 58 Of 2017 On The Protection Of Witnesses, Experts, Informants, And Victims.
- [26]. Ashraf Ayad Al-Labib, The Criminal Responsibility Of The Witness In The Stages Of Public Prosecution, Master's Thesis, Alexandria University, 2010, P. 6.
- [27]. Council Of Europe, Recommendation Rec(2005)9 On The Protection Of Witnesses And Collaborators Of Justice, 2005.
- [28]. Damaška, M., Evidence Law Adrift, Yale University Press, 1997.
- [29]. Dr. Ahmed Youssef Al-Sawlia, Criminal And Security Protection Of The Witness (Comparative
- [30]. Dr. Amin Mostafa Mohammed, Witness Protection In Criminal Procedure Law, Dar Al- Matbouat Al-Jami'iya, 2010, P. 47.
- [31]. Dr. Bakri Youssef Bakri, Criminal Responsibility Of The Witness, Dar Al-Fikr Al-Jami'i, 1st Ed., 2011, P. 45.
- [32]. Dr. Jalal Tharwat, Systems Of Criminal Procedures, Al-Saadani Press, 2004, P. 427 Ff.
- [33]. Dr. Mahmoud Naguib Hosni, Jurisdiction And Evidence In Criminal Procedure Law, Dar Al- Nahda Al-Arabiya, 1992, P. 99.
- [34]. Dr. Nabil Shuaibath Al-Miyahi, Civil Protection Of The Witness In Corruption Crimes, Op. Cit., P. 22 Ff.
- [35]. Dr. Ramsis Bahnam, Criminal Procedures: Foundation And Analysis, Vol. 2, منشأة المعارف, Alexandria, 1978, P. 301.
- [36]. European Court Of Human Rights, Guide On Article 6 ECHR (Criminal Limb), 2015.
- [37]. Iraqi Criminal Procedure Law No. 23 Of 1971 (As Amended).
- [38]. Iraqi Evidence Law No. (107) Of 1979.
- [39]. Iraqi High Judicial Council, Criminal Judgment No. 10, Dated 28/8/2012, Federal Court Of Cassation.
- [40]. Jackson, J. D., & Summers, S. J., The Internationalisation Of Criminal Evidence, Cambridge University Press, 2012.
- [41]. Maamoun Mohammed Salama, Criminal Procedures In Libyan Legislation, Vol. 2, 1st Ed., 1971, P. 201.
- [42]. Maysan Research Journal, Vol. 14, Issue 28, 2018, P. 6.
- [43]. Moajab Bin Maadi Al-Huwaigil, Guide To Criminal Investigation And Inquiry, Naif Arab Academy For Security Sciences, 1st Ed., 2003, P. 54.
- [44]. Mohammed Mohi El-Din Awad, Proof Of Hudud, Qisas And Ta'zir In Sharia And Law, Naif Arab University For Security Sciences, 1st Ed., 1417H, P. 107, 2022
- [45]. Nabil Ibrahim Saad, Evidence In Civil And Commercial Matters, Dar Al-Nahda Al-Arabiya, Beirut, P. 171, 2019
- [46]. Nabil, M. O.H., The Witness Between Criminal Responsibility And Legal Protection, Phd Thesis, Helwan University, 2018, P. 6.
- [47]. Omar Fakhri Al-Hadithi, "Protection Of Witnesses In The Bahraini Criminal Procedure Law," Journal Of Legal Sciences, Vol. 132, Issue 2, 2017, P. 275.
- [48]. Rania Taher Mohammed Taher, The Authority Of The Criminal Court In Hearing And Evaluating Witness Testimony, Phd Thesis, Mansoura University, 2020, P. 2002 Ff.
- [49]. Roberts, P., & Zuckerman, A., Criminal Evidence, 2nd Ed., Oxford University Press, 2010.
- [50]. Saad Shaaban Jassim Al-Hussein, Criminal Responsibility Of The Witness (A Comparative Study Between Egyptian And Kuwaiti Law), Master's Thesis, P. 53, 2020
- [51]. Sahira Mousa Dar Oak, "Liability Arising From Insulting A Witness Before The Court," Wasit Journal For Human Sciences, Vol. 1, Issue 27, 2014, P. 545.Study), Dar Al-Fikr Al-Arabi, 2006, P. 334.
- [52]. The Holy Qur'an, Surah Al-Buruj (85), Verse 7.
- [53]. UN Declaration Of Basic Principles Of Justice For Victims Of Crime And Abuse Of Power, 1985.
- [54]. United Nations Convention Against Transnational Organized Crime, 2000.
- [55]. UNODC, Good Practices For The Protection Of Witnesses In Criminal Proceedings Involving Organized Crime, 2008.
- [56]. Witness Security Reform Act, 18 U.S.C. §§ 3521–3528, 1984.
- [57]. Ziyani Rachida, "The Legal Framework For Encouraging And Protecting Whistleblowers Against Corruption In Mauritanian, Moroccan, Palestinian And Iraqi Legislation," Journal Of Law And Society, Vol. 8, Issue 1, 2020, P. 144.