

PROTECTION AND TREATMENT OF VICTIMS, WITNESSES AND OFFENDERS



Tool 5.14 Seeking the collaboration of offenders

Overview

This tool presents the provisions of article 26 of the Organized Crime Convention relating to important practices in involving offenders in investigation and prosecution.

The investigation and prosecution of traffickers can be greatly assisted by the cooperation of members of criminal organizations involved in trafficking activities. It is important that effective systems are established to cultivate, recruit, register, manage, pay and control offenders as informants. Under certain circumstances, these offenders can be encouraged to collaborate with law enforcement, possibly by mitigating their punishment or granting them immunity from prosecution.

Criminals as informants and witnesses

The investigation and prosecution of members of sophisticated transnational criminal groups can be greatly assisted by the cooperation of some of these members. The same applies to the prevention of serious crimes and victimization, when inside information leads to the foiling of planned criminal operations.

These are special witnesses, as they are subject to prosecution themselves for their direct or indirect participation in an organized criminal group. Some States have sought to promote the cooperation of such witnesses through the mitigation of punishment or the granting of immunity from prosecution under certain conditions, which vary from State to State.

The Convention requires that States take measures to encourage such cooperation in accordance with their fundamental legal principles. The specific steps to be taken are left to the discretion of the States, which are asked but are not obliged to adopt leniency or immunity provisions.

Article 26 of the Organized Crime Convention Measures to enhance cooperation with law enforcement authorities

In accordance with article 26 of the Organized Crime Convention:

1. Each State part must take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

- (a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:
- (i) The identity, nature, composition, structure, location or activities of organized criminal groups;
 - (ii) Links, including international links, with other organized criminal groups;
 - (iii) Offences that organized criminal groups have committed or may commit;
- (b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
 3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.