

Enhancing Witness Protection in Tanzania's Criminal Justice System: A Proposal for Legal and Operational Reform

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Abstract

This research article aims to evaluate the effectiveness of Tanzania's witness protection framework in relation to international standards, identifying gaps and challenges that hinder the protection of witnesses in the criminal justice system. It seeks to propose actionable recommendations to enhance legal protections and operational practices.

Utilizing a qualitative legal research methodology, this study employs both doctrinal and empirical approaches. The doctrinal method involves reviewing relevant legal documents, including statutes, case law, and international legal instruments. Empirical data are gathered from secondary sources such as books and journal articles. This comprehensive analysis helps assess the compliance of Tanzania's witness protection measures with international norms.

The findings reveal significant deficiencies in Tanzania's witness protection system, including inadequate legal provisions, a pervasive culture of fear among potential witnesses, insufficient funding, and inconsistent implementation of protective measures. These challenges discourage witness cooperation and compromise the integrity of the judicial process.

This research contributes to theory by integrating criminal justice and human rights frameworks, highlighting the necessity of viewing witness protection as both a procedural and fundamental human right. Practically, it emphasizes the adoption of international best practices, advocating for specialized training for law enforcement to enhance witness safety. Policy recommendations call for legislative reforms to establish a dedicated witness protection agency and improve public awareness about witness rights. By addressing these areas, the study aims to align Tanzania's practices with global standards, thereby fostering a more effective and trustworthy criminal justice system.

Keywords: Witness Protection, Tanzania, Human Rights, Legislative Reforms, Criminal Justice

1.1 Introduction

Witnesses are pivotal in criminal trials, providing critical testimony that significantly shapes judicial outcomes. However, in Tanzania, witnesses often face intimidation, harassment, and physical harm, which hinder their ability to testify freely and undermine the fairness of legal proceedings. This article delves into the historical evolution and present challenges of witness protection within Tanzania's legal framework, advocating for urgent reforms to enhance witness safety, uphold justice, and align with international human rights standards.

The issue of witness protection has garnered global attention due to the rise of transnational crime and its impact on countries worldwide. Moreover, international tribunals and courts have influenced this focus through their jurisprudence and practices.¹ Witness protection is supported by legal frameworks at international, regional, and national levels across numerous countries.

Effective witness protection is essential for upholding the credibility of any criminal justice system. International legal standards, including the UN Convention against Transnational Organized Crime (UNTOC), the International Covenant on Civil and Political Rights (ICCPR), and UN Security Council resolutions such as No. 34/73 and No. 40/34,² underscore the obligation of member states, including Tanzania, to safeguard witnesses from threats. This obligation is underscored by cases like *Director of Public Prosecutions vs Juma Omary Kibwana Msabila and 4 Others* (Misc. Criminal Application 7 of 2022).³ Nevertheless, the absence of clear and comprehensive witness protection mechanisms directly violates international standards, notably Article 68(1) of the Rome Statute, Rule 87 of the ICC Rules of Procedure and Evidence, Article 86, and Rule 17(2)(vi) of the Rules of Procedure and Evidence for the International Criminal Court.

1.2 Witness Protection Overview in Tanzania

The term ‘witness protection’ denotes a range of actions applicable at any stage of criminal proceedings to safeguard witnesses and thereby ensure their effective cooperation in providing testimony.⁴ Witness protection is supported by legal frameworks at international, regional, and national levels across numerous countries.⁵

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1.3 Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania is the supreme law of the country, establishing foundational principles for governance and human rights. It outlines the framework for government

¹Witness protection got attention in international arena; such as the International Criminal Court, the Extraordinary Chambers in the Courts of Cambodia (ECCC), the International Criminal Tribunal for Rwanda (ICTR) and the former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) and the Special Tribunal for Lebanon

²*Director of Public Prosecutions v Said Adam Said & 11 Others* [2019] Misc Criminal Application No 94 (HC Tanzania).at page 10, 11 and 6

³ Exparte ruling pronounced by Hon. Y. J. Mlyambina., J on date of 27.05.2022, at pp 5-36

⁴Njeri, J Witness protection: The Missing Cornerstone in Africa’s Criminal Justice Systems, (2014) [www. issafrica.org/iss-today/witness-protection-the-missingcornerstone-in-africas-criminal-justice-systems](http://www.issafrica.org/iss-today/witness-protection-the-missingcornerstone-in-africas-criminal-justice-systems)

⁵UNODC Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime (2008), <http://www.unodc.org/documents/organizedcrime/Witness-protection-manual-Feb08.pdf>

⁶ I bid

⁷ I bid

operations while enshrining key rights that indirectly support witness protection.

Notably, all human beings are born free and equal, emphasizing that every person is entitled to recognition and respect for their dignity. This principle underscores the importance of ensuring that witnesses receive equal rights and protections under the law, so their status does not expose them to additional risks. By safeguarding the dignity of witnesses, the legal system affirms that their contributions are valued and that they should not face discrimination or threats as a result of their participation in legal proceedings. This commitment to equality and respect is essential for fostering a just and safe environment for all individuals involved in the judicial process.⁸

All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law. The civic rights, duties, and interests of every person and community shall be protected and determined by the courts of law or other state agencies established by or under the law. Furthermore, state authority shall establish procedures that take into account the following principles: when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to other legal remedies against the decision of the court or the relevant agency. The Constitution not only guarantees equality before the law but also ensures that all individuals have access to justice and legal recourse, reinforcing the protection of witnesses and the integrity of the legal process.⁹

Every person has the right to live and to the protection of their life by society and the law. This provision is vital for the safety of witnesses, highlighting their entitlement to protection from threats and harm.¹⁰

The right to freedom of opinion and expression protects individuals, allowing them to disclose information without fear of retribution. This is crucial for encouraging whistleblowers and witnesses to come forward with information vital to legal proceedings. It guarantees that individuals can seek, receive, and disseminate information freely, regardless of national boundaries.¹¹

The right to own property and the protection of that property under the law states that it is unlawful for any person to be deprived of their property without the authority of law, which includes provisions for fair and adequate compensation. This contributes to the broader context of personal security that supports witness protection.¹²

The duty of every citizen to protect and maintain the independence and unity of the nation underscores the collective responsibility to uphold the law and supports the idea that all individuals, including witnesses, have a role in safeguarding societal integrity.¹³

By incorporating these principles, the Constitution provides a critical underpinning for the witness protection framework, even though specific protective measures remain underdeveloped. Together, these articles create a legal environment that fosters the safety and empowerment of witnesses in Tanzania, reinforcing the importance of protecting those who contribute to the judicial process.

1.4 Legal Basis for Witness Protection in Tanzania

UNODC emphasizes that witness protection programs should be developed under a specific legislative basis.¹⁴ The Criminal Procedure Act and Rules of Court, particularly Section 188(3) of the Criminal

⁸ Article 12 of the Constitution of United Republic of Government of Tanzania, 1977 As Amended Time to Time.

⁹ Article 13 (3)(6)(a)

¹⁰ Article 14

¹¹ Article 18

¹² Article 24

¹³ Article 28

Procedures Act,¹⁵ may require review and updating to ensure they provide adequate procedural protections.¹⁶ According to UNODC guidelines, legislation should specify protection measures available, including criteria and procedures for their application and admission. Designate the authority responsible for implementing the program. Establish criteria for terminating a witness from the program. Define the rights and obligations of all parties involved. Mandate confidentiality of the program's operations. Include penalties for disclosing information about protection arrangements or the identities of protected witnesses.¹⁷

The Whistleblower and Witness Protection Act No. 20 of 2015,¹⁸ focuses on safeguarding individuals who report wrongdoing or assist in investigations related to corruption, organized crime, or unethical conduct. It prohibits disclosures that could prejudice state sovereignty, integrity, security, or other specified interests, aiming to create a safe reporting environment free from retaliation. The Whistleblower and Witness Protection Regulations, 2023¹⁹ provide detailed guidelines for implementing witness protection measures under the Act. These regulations specify processes for assessing risks to witnesses, determining appropriate protection measures, and coordinating with relevant authorities. They encourage reporting of organized crime, corruption, and unethical conduct by assuring protection to whistleblowers and witnesses. Witness Care and Protection Guidelines issued by DPP in Tanzania, May, 2023²⁰ have been developed to streamline procedures and guide investigators and prosecutors in implementing effective witness protection measures. Provides outline care and protection measures, providing guidance on determining and applying appropriate measures to support and safeguard witnesses.

1.5 Development of Witness Protection

Witness protection programs have evolved globally as critical instruments in combating organized crime, corruption, and other serious offenses. The concept gained significant traction in the United States in the 1970s with the establishment of the Witness Security (WITSEC) Program. This initiative aimed to dismantle Mafia organizations that thrived on a culture of silence, known as omertà, and intimidation.²¹ Similar programs have emerged in various countries, including Australia, Canada, and South Africa, each adapting their frameworks to address unique local challenges and criminal landscapes.

In Tanzania, witness protection has developed more recently, primarily in response to the pressing challenges of corruption and organized crime. Prior to 2007, the Prevention of Corruption Act of 1971

¹⁴ UNODC Good Practices, p.44

¹⁵ Cap 20 Revised Edition 2022

¹⁶ In this context of Tanzania, witness protection is governed by Section 34(3) of the Prevention of Terrorism Act No. 21 of 2002, as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, 2018. This provision empowers the court, upon an ex-parte application by the Director of Public Prosecutions, to order that proceedings proceed in accordance with Section 188 of the Criminal Procedure Act. Section 188(1)(a)-(d) and (2) of the Criminal Procedure Act outlines specific protective measures

¹⁷ UNODC Good Practices, p.44-45.

¹⁸ Government Notice No. 461, published on June 24, 2022, presented a Revised Edition of the Whistleblower and Witness Protection Act, Chapter 446, effective until June 15, 2022, under Section 4 of the Laws Revision Act, Chapter 4.

¹⁹ Government Notice No. 59 published on. 10/2/2023

²⁰ Guidelines for witness care and protection have been issued by the DPP pursuant to Sections 18(1) and 24(2) of the National Prosecutions Service Act, Cap 430 for purposes of guiding investigators and prosecutors in the implementation of witness care and protection measures.

²¹ Montanino F, "Unintended Victims of Organized Crime Witness Protection" (1987) 2 Criminal Justice Policy Review 392–408.

lacked adequate provisions for protecting witnesses, enabling perpetrators to intimidate and threaten individuals, thus undermining justice. The introduction of the Prevention and Combating of Corruption Act in 2007 marked a significant legislative shift, reflecting a growing commitment to improving witness protection.²²

The enactment of the Whistleblower and Witness Protection Act in 2016 marked a pivotal moment in Tanzania's efforts to safeguard witnesses.²³ This Act aimed to extend protections to individuals who provide crucial testimony. However, the Law Reform Commission of Tanzania has noted that existing laws inadequately address the challenges in protecting witnesses, leading many to withhold cooperation and statements from investigators and law enforcement agencies.²⁴

To address these gaps, Government Notice No. 461, published on June 24, 2022, presented a Revised Edition of the Whistleblower and Witness Protection Act, Chapter 446, which was effective until June 15, 2022, under Section 4 of the Laws Revision Act. Furthermore, Government Notice No. 59, issued on February 10, 2023, introduced the Whistleblower and Witness Protection Act (Cap. 446) Regulations, made under section 15. These regulations may be cited as the Whistleblower and Witness Protection Regulations, 2023, and provide for decisions on applications for the protection of witnesses and establish protective measures.

In conjunction with these legislative frameworks, the Director of Public Prosecutions (DPP) issued Witness Care and Protection Guidelines in 2023 under Sections 18(1) and 24(2) of the National Prosecutions Service Act, Cap. 430. These guidelines assist investigators and prosecutors in taking proactive measures to enhance witness protection within Tanzania's criminal justice system.

In contrast, countries like Australia and South Africa have established more comprehensive witness protection frameworks that offer broader and more adaptable protections to witnesses across various contexts. This disparity highlights the ongoing need for Tanzania to strengthen its witness protection mechanisms to ensure the safety and cooperation of individuals who play a vital role in the judicial process.

Effective witness protection relies heavily on thorough threat assessments to evaluate the safety of individuals who come forward. In the U.S., this assessment process is integral to the WITSEC Program, ensuring that resources are allocated based on the credibility of threats against witnesses.²⁵ Similarly, nations such as Canada and the United Kingdom have developed protocols for evaluating threats. While Tanzania has made progress with recent guidelines for witness care, challenges remain in effectively executing these assessments due to gaps in its legal and institutional frameworks.

Witness protection programs worldwide face common challenges, particularly concerning witness reluctance to testify due to fears of retaliation. In the U.S., although the WITSEC Program has seen success, issues such as the psychological impact of relocation and new identities continue to affect

²² The Prevention of Corruption Act of 1971, was replaced in 2007 by the Prevention and Combating of Corruption Act, following recommendations from the Law Reform Commission. This revision aimed to address deficiencies in witness protection. Government Notice No. 153 of 2007 introduced a Revised Edition of the Prevention and Combating of Corruption Act, Chapter 329, on June 15, 2022, pursuant to Section 4 of the Laws Revision Act

²³ Michael Karanicolas, 'Tanzania: Whistleblower Protection Law Welcome but Needs Improvement' (Centre for Law and Democracy, 14 July 2016) <https://www.law-democracy.org/live/tanzania-whistleblower-protection-law-welcome-but-needs-improvement/> accessed on 20 September 2024.

²⁴ The Law Reform Commission of Tanzania; Report on the Review of Evidence Law in Tanzania; Ref. No. CA.72/194/02/65 date of 10th May, 2019, p99

²⁵ United Nations Office on Drugs and Crime, Good Practice of the Protection of Witnesses in Criminal Proceedings Involving Organized Crime (UNODC, New York 2008) 8.

witnesses.²⁶ Similarly, Tanzania's recent reforms show promise, but many witnesses remain hesitant to cooperate with law enforcement due to perceived inadequacies in protections and support mechanisms. By learning from the historical experiences of witness protection programs worldwide, Tanzania can enhance its approach to safeguarding witnesses. Continued legislative and practical improvements are essential for ensuring that witnesses can testify freely and safely, ultimately contributing to the integrity of the judicial process and the fight against corruption and organized crime.

1.6 Procedures of adopting International Standards of Witness Protection

Article 63(3) of the Constitution of the United Republic of Tanzania, 1977, provides a key framework for ratifying and implementing international treaties. This means that any treaty must be approved by the National Assembly, allowing for democratic oversight and accountability.

To align national law with international agreements, the process typically involves several steps. First, the government reviews the proposed treaty to see how it affects existing laws and policies. After this review, a draft bill is created to outline the changes or new laws needed to implement the treaty.

Once the draft legislation is ready, it is presented to the National Assembly for discussion and approval. This step is important to ensure that the new laws meet the country's commitments under international law, especially regarding witness protection. After passing through the National Assembly, the legislation must receive presidential approval to become law.

Tanzania has the chance to adopt international standards for witness protection set by treaties such as the United Nations Convention against Transnational Organized Crime (2000), the United Nations Guidelines on the Role of Prosecutors (1990), and the Rome Statute of the International Criminal Court (1998). By ratifying these treaties and putting their provisions into practice, Tanzania can strengthen its witness protection system, ensuring that witnesses receive adequate safeguards.

Additionally, Tanzania has made important progress through various laws. The Prevention and Combating of Corruption Act of 2007 laid the groundwork for protecting whistleblowers. The Whistleblower and Witness Protection Act of 2016 was then enacted to specifically protect those who give important testimony in court. More recently, the Whistleblower and Witness Protection Regulations of 2023 were introduced to detail how witnesses can apply for protection and what measures are available.

Moreover, the Guidelines for Witness Care and Protection (2023) from the Director of Public Prosecutions provide clear instructions for law enforcement and legal professionals on how to support and protect witnesses throughout the legal process.

By adopting these measures and aligning national laws with international standards, Tanzania not only upholds human rights but also builds trust in the judicial system. This encourages witnesses to come forward and cooperate with law enforcement, strengthening the overall legal process.

1.7 Institutions framework on witness protection in Tanzania

This section examines the roles and responsibilities of various institutions involved in witness protection in Tanzania, it is very important to have mechanism for protection of witness, the proper protection of witness and victim in criminal matter is highly reliant on a criminal justice system that function soundly, through proper investigation, competent prosecution and a well-functioning judiciary that can ensure speedy trial.

²⁶ California Bureau of Investigation, California Witness Protection Program (California Department of Justice, archived).

Witness protection is structured into three main categories: first, police protection and operational strategies to enhance security; second, prosecutorial measures implemented before, during, and after trials, including collaboration with witness protection units; and third, judicial procedural safeguards designed to ensure witness safety during court proceedings.

1.7.1 Police

According to Section 53 of the Economic and Organized Crime Control Act,²⁷ the Inspector-General of Police may determine, upon reasonable grounds, that there is a danger or a real possibility of interference with any case under this Act due to threats or harm to a witness or potential witness. In such cases, the Inspector-General can arrange for security for the affected witnesses and their families. Importantly, the provisions of the Whistleblower and Witness Protection Act, along with any other relevant laws, apply to matters relating to witness protection under the EOCCA.

Section 54 addresses witness immunity.²⁸ It stipulates that, without prejudice to any written law conferring a right to refuse to disclose official secrets, if a witness in any proceeding under this Act refuses to answer questions on the grounds of self-incrimination or privilege, the court may order the witness to comply. Should the court require the witness to answer, the witness cannot refuse the order; however, any compelled testimony or information cannot be used against the witness in criminal cases, except in prosecutions for perjury or providing false statements. Additionally, any party in the proceedings may request an order compelling a witness to answer questions if it appears the witness may refuse based on self-incrimination or privilege, and those compelled receive the same immunity outlined in this section.

The police bear primary responsibility for ensuring the safety and security of all citizens, including witnesses. This involves maintaining strict confidentiality during investigations and minimizing direct contact between witnesses and uniformed police or prosecutors. The police are also tasked with promptly informing prosecutors and judges about any threats or intimidation faced by witnesses, particularly during critical stages such as bail hearings. They provide essential security advice to witnesses, including guidance on enhancing home security and establishing emergency contact protocols. To further safeguard witnesses, the police implement a range of protective measures, include deploying close protection details, conducting regular patrols in vulnerable areas, providing escort services when necessary, and installing security devices at their residences or workplaces.

1.7.2 National Prosecution of Services

Article 59B of the Constitution empowers the Director of Public Prosecutions (DPP) to oversee criminal prosecutions, facilitating the implementation of measures that secure testimony and maintain judicial integrity. This alignment between constitutional protections and the DPP's authority is essential for enhancing witness protection.²⁹

The National Prosecutions Service Act³⁰ establishes crucial guidelines for prosecuting cases, incorporating specific provisions related to witness protection. This legislation ensures that prosecutors adhere to best practices when handling cases involving protected witnesses, safeguarding their identities and overall safety throughout the judicial process. By implementing a comprehensive legislative

²⁷ Economic and Organized Crime Control Act [CAP. 200 R.E. 2022]

²⁸ Ibid, Section 54

²⁹ The Constitution of the Government of United Republic of Tanzania, 1977 As Amended Time to Time, Cap 2

³⁰ Cap 430 R.E 2022

framework, the Act supports a coordinated approach to witness protection, emphasizing the responsibility of prosecutors to prioritize the safety and rights of witnesses in their legal strategies.

According to Section 18,³¹ the DPP has the authority to issue orders, guidelines, or instructions to all officers within the Service, as well as officials referred to in Section 17(1).³² These directives may restrict prosecutions for specified offenses or classes of offenses, ensuring that such matters are referred directly to the DPP. Compliance with any directives issued by the DPP is mandatory, underscoring the importance of uniformity in prosecutorial practices.

Additionally, the DPP is tasked with coordinating the investigation of crimes, as stated in Section 24.³³ In consultation with investigative organs, the DPP is responsible for developing guidelines that facilitate effective participation in the investigative process. This coordination is vital for ensuring that witness protection measures are integrated into investigations from the outset, reinforcing the overall safety framework for witnesses.

The National Prosecutions Service Act plays a crucial role in fostering a legal environment where witness protection is prioritized. By empowering the DPP to issue binding guidelines and coordinate investigations, the Act enhances the integrity of the prosecutorial process while safeguarding the rights and safety of witnesses involved in criminal proceedings.

These protective measures can be implemented at the request of the prosecutor, the witness, or at the court's discretion to ensure that witnesses can testify free from intimidation. Among these protections is the option for anonymous testimony, where the witness's identity is concealed from both the accused and the public, especially when the content of their testimony does not necessitate revealing their identity. Additionally, procedural protections may involve the use of shields, disguises, or voice distortion during testimony to obscure the witness's appearance or voice. Alternatively, witnesses may testify via closed-circuit television or videoconferencing to maintain confidentiality and ensure their safety

1.7.3 The Judiciary

The Judiciary in Tanzania, as established by Article 107A of the Constitution, serves as the final authority in administering justice, ensuring that courts deliver impartial decisions in civil and criminal matters. This includes principles aimed at avoiding undue delays, awarding reasonable compensation to victims, promoting dispute resolution, and dispensing justice without technical hindrances. Article 107B emphasizes the independence of the judiciary, requiring courts to operate solely in accordance with the Constitution and the laws of the land.³⁴

Central to Tanzania's criminal justice system is the role of witness testimony, articulated in Section 127(1) of the Evidence Act³⁵, which affirms that every individual is competent to testify unless deemed incapable due to reasons such as age or mental condition. The necessity for witness protection is reinforced by judicial measures that safeguard their safety during court proceedings. Courts utilize various procedural safeguards, including screens or shields to protect witnesses from direct contact with defendants and video conferencing technology to allow testimony from secure locations, enhancing safety while facilitating cross-border legal assistance.

Witness protection in Tanzania is further supported by Section 34(3) and (4) of the Prevention of Terrorism Act No. 21 of 2002 and provisions in the Criminal Procedure Act. This framework allows the

³¹ Ibid, Section 18

³² Ibid, Section 17

³³ Ibid, Section 24

³⁴ The Constitution of the United Republic of Tanzania, 1977 As Amended Time to Time. Cap 2

³⁵ Tanzania Evidence Act [Chapter 6 R.E 2022]

court to request non-disclosure of a witness's identity and conduct proceedings in camera, thereby shielding witnesses from potential threats. The Director of Public Prosecutions (DPP) plays a crucial role, as illustrated in the case of *Director of Public Prosecutions vs. Yahya Twahiru & 12 Others*,³⁶, emphasizing the importance of affidavits in supporting applications for witness protection.

In addition, courts are mandated to ensure that witnesses are treated fairly during testimonies. In *Mwalimu vs. Republic*,³⁷ it was clarified that assessors in a criminal trial do not cross-examine witnesses but may pose questions to assist in the fair dispensation of justice. This delineation of roles is vital, as assessors are meant to support the trial judge rather than challenge the credibility of witnesses. The Court of Appeal reinforced this in *Abdallah Bazamiye & Another vs. Republic*,³⁸ stating that assessors' duties focus on providing clarification rather than engaging in cross-examination. The Evidence Act further delineates the roles of judges and assessors, emphasizing that questioning should be aimed at clarification. *The Court of Appeal's ruling in Mapuji Mtogwashinge vs. Republic*,³⁹ reiterated that the primary objective of cross-examination is to challenge the accuracy of witness testimonies, which is not the function of assessors.

Despite established protections, cases like *Director of Public Prosecutions v. Ramadhani Hassan Makai @ Makair & Ors*⁴⁰ highlight ongoing threats to witness safety. Public Prosecutors have increasingly sought court orders to conceal witness identities and sensitive information, acknowledging the significant risks that witnesses face, including threats to their lives. This underscores the urgent need for robust witness protection measures, as articulated in Section 188 of the Criminal Procedure Act, ensuring that individuals willing to testify can do so without fear of retribution.

Similarly, in India, the case of *Mahender Chawla and Others vs. Union of India & Others*⁴¹, exemplifies the challenges faced by witnesses in the criminal justice system. The Indian system relies heavily on witness testimonies, which are critical for securing convictions and upholding the rule of law. However, witnesses frequently confront intimidation, threats, and violence, jeopardizing their safety and obstructing justice. The landmark judgment in *Mahender Chawla vs. Union of India (2018)* highlighted the necessity for a more robust witness protection framework.

This case involved multiple petitioners, including Mahender Chawla, who survived a murder attempt related to a high-profile criminal case, along with others who faced threats due to their roles as witnesses or journalists. The Supreme Court was informed that the lack of adequate witness protection created a chilling effect on the criminal justice system, dissuading witnesses from coming forward and enabling perpetrators to act with impunity.

The petitioners argued that witness intimidation undermines the rule of law, jeopardizes fair trial rights, and contravenes India's international obligations to protect human rights. The Court recognized the gravity of the issue, citing organized crime, the influence of powerful individuals, and a lack of awareness among witnesses as significant contributing factors.

The 2016 judgment marked a pivotal moment, urging the Central Government to establish a comprehensive witness protection program, referencing successful models from other countries, and

³⁶ (Misc. Criminal Application No. 22 of 2022) High Court of Arusha

³⁷ Criminal Appeal No.147 of 2008 Court of Appeal of Tanzania at Dodoma Registry (2009) (Unreported).

³⁸ [1990] TLR. No. 42

³⁹ Criminal Appeal No. 162 of 2015 (Unreported)

⁴⁰ [2021] Misc Econ CA No 1 (HC Tanzania).

⁴¹ (Criminal Original Jurisdiction Writ Petition No. 156 of 2016)

directing states to implement interim protective measures. Following this, the Witness Protection Scheme (WPS) was drafted and implemented in 2018 to address the concerns raised in the Chawla case. The Witness Protection Scheme (WPS) includes measures for identifying threatened witnesses, assessing their risk, and implementing protection strategies based on threat levels. These measures range from regular police patrols for low-threat witnesses to complete relocation and identity changes for those facing high threats. The scheme emphasizes witness anonymity and the use of special courts to facilitate safer testimony.

1.7.4 Prevention and Combating of Corruption Bureau (PCCB)

The Prevention and Combating of Corruption Bureau is established as an independent public entity dedicated to combating corruption within the United Republic.⁴² The Bureau is tasked with collaborating with law enforcement agencies and national authorities to investigate and prosecute offences under the Prevention and Combating of Corruption Act.⁴³ It has the authority to grant immunity to individuals who cooperate in investigations and may proactively inform relevant authorities when there are reasonable grounds to believe that offences have occurred.

To ensure effective whistleblower protection, the Bureau guarantees that the identities of informers are kept confidential, preventing the disclosure of their names and addresses in any civil or criminal proceedings.⁴⁴ Furthermore, witnesses who provide information regarding corruption are protected against victimization, harassment, or retaliation. The Government is committed to providing reasonable protection, compensation, and assistance to any informer who suffers reprisals, thereby fostering a secure environment for those who come forward with information.⁴⁵ This comprehensive framework aims to promote transparency and accountability in combating corruption.

1.8 Legal challenges to witness protection

Although Tanzania has made significant strides in enacting legislation and implementing procedural safeguards for witness protection, several challenges persist. Inadequate funding remains a primary concern, limiting the resources available for training, security personnel, and technological infrastructure needed to support witness protection programs effectively in the court building. Limited inter-agency coordination also undermines the seamless implementation of witness protection measures across different regions and jurisdictions, leading to inconsistencies in the level of protection provided to witnesses.⁴⁶ Furthermore, there is a lack of public awareness about witness protection rights and the importance of supporting witnesses in criminal proceedings, which may deter individuals from coming forward to testify.

1.9 Recommendations for Legal and Operational Reforms

To address the challenges facing witness protection in Tanzania, the government should implement several legal and operational reforms aimed at strengthening the witness protection framework and ensuring compliance with international standards.

⁴² Section 5 of the Prevention and Combating of Corruption Bureau Act [Cap 359 R.E 2022]

⁴³ Ibid, Sections 9-10

⁴⁴ Ibid, Section 51

⁴⁵ Ibid, Section 52

⁴⁶ <https://www.mwananchi.co.tz/mw/habari/kitaifa/jicho-letu-mahakamani-shahidi-marehemu-walilazwa-chini-na-kupigwarisasi-43--3339376>

1.9.1 Legislative Amendments

Legislative amendments should focus on enhancing protective measures for witnesses, clarifying procedural guidelines for requesting protection, and imposing stricter penalties for threats against witnesses. While current laws provide some benefits, they often lack the robustness needed for comprehensive protection.

1.9.2 Review and Amend Legislative Provisions

National laws must align with international human rights standards by providing comprehensive protective measures. For example, the Sexual Offences Special Provisions Act No. 4 of 1998 mandates in-camera proceedings for child witnesses but fails to adequately address intimidation or coercion. The absence of physical barriers between the child and the accused, coupled with potential bribery or intimidation of parents, underscores the need for more comprehensive protective measures.

Similarly, the Anti-Money Laundering Act No. 12 of 2006 offers some protections, such as immunity for reporting individuals and measures like video conferencing. However, its discretionary language ("may" instead of "shall") results in inconsistent application of these protections. Amending this section to mandate protective measures would enhance uniformity and comprehensiveness in witness protection. The Prevention and Combating Corruption Act No. 11 of 2007 provides limited protections, primarily preventing witnesses from being labeled as accomplices. While Sections 52(2) through (4) offer some protection against retaliation, they may not fully prevent intimidation. Broader and more robust measures are needed to ensure effective witness protection.

1.9.3 Establish Clear and Effective Enforcement Mechanisms

Effective enforcement mechanisms are essential for the consistent application of protective measures. Current laws often allow discretionary approaches that undermine uniformity. Establishing independent oversight bodies responsible for monitoring and enforcing witness protection would align Tanzania's practices with international standards, ensuring that protections are both available and applied consistently.

1.9.4 Establish a Dedicated Witness Protection Agency

A dedicated witness protection agency should be established within the Ministry of Constitution and Legal Affairs. This agency would focus solely on witness protection, developing tailored strategies to safeguard witnesses while coordinating closely with law enforcement and judicial entities. Given the Ministry's role in promoting good governance and justice, this agency's establishment would ensure a comprehensive approach to supporting vulnerable individuals.

1.9.5 Enhance Training and Capacity Building

Regular training programs should emphasize best practices in witness protection, focusing on the importance of safeguarding witnesses and effectively implementing protective measures throughout legal proceedings. Lessons learned from successful witness protection programs in countries such as South Africa, Kenya, and the United States should inform these training initiatives.

1.9.6 Public Awareness Campaigns

Public awareness initiatives are vital for creating a supportive environment for individuals willing to provide information. Outreach programs should educate communities about the crucial role of witnesses in the justice system and the protections available to them, thereby reducing fears of retaliation.

1.9.7 Monitoring and Evaluation of Existing Measures

Regular assessments should be conducted to identify gaps in current witness protection measures and areas for improvement. An independent oversight committee could facilitate transparent evaluations of

witness protection programs, ensuring they remain effective and aligned with evolving international standards.

1.9.8 Enhance Resource Allocations for Witness Protection

Adequate funding is essential for implementing protective measures, including financial assistance for housing, relocation, and psychological counseling for witnesses. Prioritizing this funding in national budgets will ensure that witness protection is adequately resourced and sustained over time.

1.9.9 Courtroom Renovations for Witness Safety

Renovating courtrooms to enhance the safety and security of witnesses is crucial. This includes constructing glass separation walls in open courtrooms to maintain a secure yet transparent environment. Installing modern technology, such as secure audio-visual systems, will facilitate remote testimony and protect witness identities. Additionally, creating secure waiting rooms for witnesses, separate from the general public, will provide a safe space before they testify.

1.9.10 Enhance Security Measures

Establishing police presence for inspections and utilizing detection devices to screen individuals entering the courtroom will help prevent potential threats and create a more secure atmosphere for witnesses and all participants in the judicial process.

1.9.11 Provide Legal Aid and Support Services

Ensuring that witnesses understand their rights and the protections available to them can empower them to testify without fear of repercussions. Legal aid services should be established to guide witnesses through the judicial process, helping them navigate the complexities of the legal system.

1.10 Operational Reforms:

Operational reforms should focus on improving inter-agency collaboration among law enforcement agencies, prosecutors, and judicial authorities to streamline the implementation of witness protection measures. This could involve establishing a **Witness Protection Unit** within the National Prosecution Service, tasked with overseeing the implementation of witness protection programs and assessing their efficacy. This unit could provide comprehensive support services, including psychological counseling, relocation assistance, and legal aid, ensuring the well-being of witnesses throughout and after their involvement in legal proceedings. Additionally, implementing dedicated budgetary procedures, similar to successful models in countries like Australia, South Africa, and Italy, would ensure sustainable financial support for witness protection initiatives in Tanzania. Public awareness campaigns should also be launched to educate citizens about witness protection rights and the importance of supporting witnesses in criminal proceedings.

1.11 International Standards Compliance:

To align Tanzania's witness protection framework with international human rights obligations, the government should draw from international standards outlined in instruments such as the **Rome Statute** and various **United Nations Conventions**. By reviewing and amending existing legislative provisions, establishing clear enforcement mechanisms, and improving operational practices, Tanzania can create a more effective and responsive witness protection system. This would not only enhance the safety of witnesses but also strengthen the integrity of the criminal justice system as a whole.

1.12 Conclusion:

Effective witness protection is essential for the integrity and credibility of Tanzania's criminal justice system. To ensure that witnesses can testify without fear of retaliation or harm, it is imperative to enhance existing witness protection mechanisms. Addressing challenges such as inadequate funding, limited inter-agency coordination, and insufficient public awareness will significantly strengthen the framework.

Comprehensive legal and operational reforms are necessary. Legislative amendments should aim to enhance protective measures, clarify procedural guidelines for requesting protection, and impose stricter penalties for threats against witnesses. Current laws, while providing some protections, often lack the robustness needed for comprehensive safeguarding. Establishing clear enforcement mechanisms and a dedicated Witness Protection Unit within the National Prosecution Service will centralize efforts and improve coordination among law enforcement and judicial entities.

Operationally, improving inter-agency collaboration is vital for effective implementation. Regular training programs focused on best practices in witness protection will equip law enforcement and judicial personnel with the necessary skills to safeguard witnesses effectively. Public awareness campaigns are also crucial; educating citizens about the importance of witness participation and the protections available can foster a supportive environment for those willing to come forward.

Strengthening partnerships with international organizations, such as the United Nations Office on Drugs and Crime (UNODC) and INTERPOL, will provide additional resources, expertise, and best practices to enhance witness protection in Tanzania. Such collaborations can facilitate knowledge transfer and offer innovative solutions tailored to the local context.

By implementing these reforms, Tanzania can enhance the safety and effectiveness of its witness protection system, uphold human rights, and foster greater public trust in the criminal justice process. These efforts will contribute to fairer legal proceedings, combat impunity, and reinforce the rule of law in the country.

Furthermore, reinforcing constitutional protections related to personal privacy, safety, and freedom of expression is essential. Articles 14, 16, and 18 of the Constitution emphasize the state's responsibility to protect individual rights, which directly supports the principle of witness protection. By ensuring that these constitutional guarantees are upheld in practice, Tanzania can provide a safer environment for witnesses, enabling them to testify freely and truthfully.

This comprehensive approach, integrating legal reforms, operational improvements, public awareness initiatives, and constitutional protections, will help create a more effective and trustworthy criminal justice system in Tanzania, ultimately ensuring the protection of those who play a vital role in upholding justice.

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