

WITNESS PROTECTION IN TANZANIA

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I. EFFECTIVE LEGISLATION AND MEASURES TO PROTECT WITNESSES IN TANZANIA

While in my office sometime in May 2011, a retired woman who resides in Mara region with her husband, a retired civil servant, and their only granddaughter, a secondary school girl aged 16 years old, came to speak to me. Having introduced herself, she told the story that brought her to my office.

On 7 May 2011 her granddaughter, while on her way home from school, was raped by a young man from a neighbouring school; she screamed for help, to no avail. As her assailant was familiar to her, she reported the incident to the police and the suspect was arrested and charged with rape before the resident magistrate court. The woman's concern before me was for her granddaughter's security; she narrated that one day her granddaughter, while at school, saw the rapist with his friend, roaming around her school compound as if they were searching for her whereabouts. She was frightened and told her grandmother about the incident upon her return home. As if that was not enough, three days later, the grandmother was summoned by her granddaughter's school headmaster and was informed that the alleged rapist's father complained to him (the headmaster) that her granddaughter had concocted a rape story against his son and that he wanted the headmaster to persuade her to discontinue the case, which was already filed in court. She refused and that as there is no witness protection unit in the country, she decided to transfer her granddaughter to another school in a different district.

In another criminal case at Musoma Resident Magistrate Court, an accused person was facing a charge of grievous harm. When the case was fixed for hearing and summonses to appear and testify issued, witnesses failed to appear. Following a prolonged adjournment, the case was dismissed for want of prosecution viz. s.225 [5] of the Criminal Procedure Act; intelligence revealed that witnesses compromised with the accused's relatives not to appear and testify.

Also, in another case in the same court's registry, an accused who was arraigned for illegal fishing jumped bail; his sureties were also not found. It was then learnt that the accused was related to a rich and famous political figure who is believed to have bribed the said witnesses and relocated them to another area.

These cases show how in Tanzania witness protection is a rare phenomenon. Tanzania, like other countries, is not spared the challenges obtaining in both ordinary and new forms of organized crimes. More rampant crimes are those related to corruption, sexual and gender-based violence, terrorism, money laundering, etc. It is increasingly observed that the perpetrators of these crimes are not easily traced and, once traced, the investigative and prosecution processes encounter a number of obstacles because key witnesses feel insecure, due to the threats posed to them and their families by the offenders or their relatives. Witnesses don't show or offer to court material evidence known to them because they are intimidated. Successful administration of justice in criminal matters, like in other judicial proceedings, requires investigation and prosecution processes to collect cogent evidence and have it adduced in court through reliable and credible witnesses. Currently, Tanzania experiences a series of adjournments in criminal cases, which finally either result in dismissal or acquittal of the accused due to non-attendance of witnesses.

As opposed to some other countries, like South Africa, where legislation for witnesses' protection has been enacted, in Tanzania, none exists, although patches of provisions from different acts bear elements of witness protection.

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Section 22 of The Anti-money Laundering Act No.12 of 2006 states:

“(1) Notwithstanding any other written law, no action, suit, or other proceeding shall lie against any reporting person or any director, officer, employee or representative of a reporting person on ground of breach of banking or professional secrecy or by reason of any loss resulting from an investigation, prosecution or other legal action taken against any person, following a report or information transmitted in good faith under this part whether or not the suspicion proves to be well founded.

(2) In any criminal proceedings brought under this Act, the court may, upon an application by the Attorney General, order

- (a) Witness testimony be given through the use of communication technology such as video conferencing”.
- (b) Non-disclosure of or limitation as to identity and whereabouts of witness, taking into account the security of the informer or the witness, or
- (c) Any other protection as the court may upon application by the Attorney General order’.

(3) The provisions of subsection (1) of this section shall apply equally to the victim in so far as are witnesses.”

The problem with the wording of this section, especially the use of the word “may”, is that the courts are vested with discretion of either issuing the said orders or not; there is a need to amend this section and make it mandatory for courts to issue the said orders upon application by the Attorney General by inserting the word “shall” in lieu of “may”.

Another piece of legislation that provides for witness protection is The Sexual Offences Special Provisions Act No. 4 of 1998. Section 28 of this Act, which amended Section 3 of The Children and Young Person’s Act, Cap 13 reads:

“where a child of less than eighteen years of age is a witness or victim.....in a case involving sexual offence...the evidence of the child shall be adduced in proceedings conducted in camera”.

This provision of the law does not provide adequate protection to the victim/witness for the following reasons:

- (i) The child is exposed to the accused person as there are no curtains between them, thus he or she or his or her parents are subjected to threats/intimidation;
- (ii) Most parents of victims are bribed and refrain from taking their victim children to testify before the court of law.

In the Prevention and Combating Corruption (PCCA) Act, 2007, Section 52 provides for protection of whistle-blowers and witnesses:

“(1) No witness shall in any proceeding for an offence under this Act be regarded as an accomplice by reason only receiving or making payment or delivered by him or on his behalf of any advantage to the person accused or, as the case may be by reason of receiving or making any payment or delivery of any advantage by or on behalf of the accused to or from him.

(2) Where a person

- (a) discloses to an officer that a public officer, body corporate or public body is or has been involved in an act of corruption; and
- (b) at the time he makes the disclosure believes on reasonable grounds that the information he discloses may be true and is of such a nature to warrant investigation under this act he shall not incur civil or criminal liability as a result of such disclosure

(3) any person who victimizes a person who has made a disclosure under subsection 2 commits an offence

and upon conviction be liable to a fine not exceeding 500,000 Tanzanian Shillings or to imprisonment to a term of not exceeding one year or both

(4) In this act victimization means an act:

- (a) Which causes injuries or loss;
- (b) Of intimidation or harassment;
- (c) Of discrimination, disadvantage or adverse treatment in relation to person's employment;
- (d) Amounting to threat of reprisal."

The protection and immunity provided to victims of crime and informers under Section 52 of the Prevention and Combating of Corruption Act of 2007 (PCCA); Section 22 of the Anti-Money Laundering Act No. 6/2006; and Section 28 of the Sexual Offences Special Provision Act No.4 of 1998, to mention but a few, have not yet solved the challenges faced by law enforcement agencies.

Apart from the acts mentioned above, there is other legislation i.e. The Penal Code Act, and Cap 16 of the Laws and the Tanzania Evidence Act that sound unfriendly to witnesses: they provide for punishment against witnesses who either refuse to testify or turn hostile. These provisions pose a problem as most of the eye witnesses do refrain from cooperating to issue their statements before the police and other law enforcement agents.

To me, these pieces of legislation would be of great significance if the legislation for witness protection would come into play; here, whatever happens in court as far as perjury and giving false information to public officers is concerned, the party to blame is the state, for failure to enact the law to ensure safety and security for witnesses.

II. PROBLEMS RESULTING FROM ABSENCE OF LEGISLATION FOR WITNESS PROTECTION

A. Civilians taking the Law into their own Hands

In Tanzania, civilians have developed tendencies to punish suspects by either assaulting or killing them under the pretext of so-called mob justice. They do so for the reason that once a suspect is arraigned in court they will be released for want of prosecution. This led to the Court of Appeal of Tanzania to make the following statement in one of its decisions:

"We wish to observe as far as we know there is no civilized country in the World in which the so called mob justice is regarded as justice. Depending upon the particular facts of the case, an attack in the course of administering mob justice which results in the death of the victim may under the law of the country constitute murder, provided common intention existed, it would not matter who inflicted the fatal wound or wounds".

B. Discharge of Accused Persons in Courts

Following prolonged adjournments of cases for non-appearance of witnesses, Section 225 of the Criminal Procedure Act, Cap 20, empowers courts to discharge accused persons.

C. Economic Hardship to Witnesses

Some witnesses who receive threats of harm tend to quit their jobs and go to hide in places where it is hard to acquire new jobs, causing economic hardship to them and their families. For example, In one case at Musoma Resident Magistrate Court, the key witness, who was a watchman at a robbed hotel, received threats from the accused's relatives which made him quit his job. He went to hide at a village where he cannot find work. His family is suffering as he is the sole breadwinner for the family.

D. Increased Number of Habitual Offenders

Discharge of accused persons in courts of law tends to encourage other people/offenders to get involved in criminal acts.

III. GOVERNMENT EFFORTS TO ESTABLISH A WITNESS PROTECTION UNIT

In November 2009, the United Nations Office on Drugs and Crimes (UNODC), with the assistance of the Office of the Attorney-General of Kenya, held the first Witness Protection Conference in East Africa. The purpose of the conference was to, *inter alia*, introduce witness protection programmes as a highly effective crime fighting tool to countries in Eastern Africa; to determine the current legislative and operational capacities and resources available for the protection of vulnerable and threatened witnesses and to establish what needs, if any, are available in the region with regard to witness protection related issues.

The results and deliberations in regards to witness protection were discussed during the Regional Ministerial Conference on Promoting the Rule of Law and Human Security in Eastern Africa, held in Nairobi from 23–24 November 2009. The Ministers and Heads of Delegations who participated in the Conference had endorsed the “Regional Programme 2009-2012 on Promoting the Rule of Law and Human Security in Eastern Africa”, through the “Nairobi Declaration” (hereafter called the Regional Programme).

The purpose of the Regional Programme is to support the efforts of States in the Eastern African region to effectively respond to evolving security threats of, among others, organized crime, illicit trafficking, corruption, terrorism, drug abuse, HIV and Aids, and to promote the rule of law and human security.

One of the priority needs identified in the Regional Programme is the provision of technical assistance in strengthening or establishing witness protection programmes.

A request for such support was received from the Director of Public Prosecutions for Tanzania. As such, the assessment was auctioned with the following objectives:

- 1) Assess the witness and victim protection situation in Tanzania based on interviews and meetings with identified relevant national role-players;
- 2) Raise awareness and foster discussion between these and some external role players in regards to witness and victim protection by means of workshops;
- 3) Identify the areas of possible technical assistance to Tanzania in strengthening and/or establishing witness and victim assistance and protection mechanisms and explore the possibility of mobilizing the financial resources needed to implement this programme.

The preparatory assistance mission developed a number of recommendations on the provision of possible UNODC interventions focusing on technical assistance in strengthening or establishing witness protection measures and a witness protection programme in Tanzania.

The proper protection of witnesses and victims in criminal matters is highly reliant on a criminal justice system that functions soundly, through proper investigations, competent prosecution and a well-functioning judiciary that can ensure a speedy trial. Witness protection measures start at the investigation phase through police protection and good investigative practices in the field. In court, this is followed by judicial protection measures and if these two measures fail, the availability of special protection measures like the witness protection programme should be available to intervene and secure the witness and his or her testimony. For this reason, the UNODC also identified related training and resource needs within the greater Tanzanian criminal justice system. These additional issues cover, in very wide terms, the specific needs of actors within the criminal justice system in relation to their being able to fulfil their obligations under national legislation on corruption, anti-money laundering, terrorism, trafficking and organized crime. Specific institutions that mentioned their inherent lack of training are the police, prosecutors and judiciary. UNODC promised to support the office of the Director of Public Prosecutions Tanzania, the Office of the Public Prosecutor Zanzibar, the Tanzanian Police Force and the judiciary with the following interventions.

A. Legislative and Policy Needs

The following legislation and supportive policies and or rules of court need to be developed.

- *Witness and Victim Rights and Protection (including video link evidence)*
 - *Sexual offences;*
 - *Plea-bargaining legislation.*

In developing this legislation in the Tanzanian mainland and Zanzibar, UNODC reviews current legislation to identify possible conflicting sections and to address that at the same time.

1. Witness and Victim Rights and Protection

There is no legislation or specific policies that deal with witness or victim protection or that acknowledge the rights of victims and witnesses. Although there are provisions in selective legislation that provide for some measures, there is a general acceptance that these measures do not provide sufficient recourse and protection. As such, it is suggested that a comprehensive law is developed to acknowledge the rights of witnesses and victims to protection and to provide extensive options for protection measures before, during and after court testimony. This should also include legislation and rules of court to provide for special measures of protection such as use of video link testimony and a witness protection programme.

With the long term costs of witness protection programmes being extremely high, the focus should be on providing more sustainable interventions that reach the same goals, such as the use of video link testimony.

Once legislation has been passed, this should be followed by training of all actors that would use the legislation during the different phases of the criminal justice process.

2. Sexual Offences

There is no law on family violence, special sexual offences legislation or gender-based violence investigations, and thus no specific policies on dealing with the victims' and witnesses' interaction with the criminal justice system in these matters.

Sexual offences and their investigation, as well as lack of support mechanisms and protection measures for witnesses, are having a negative effect on prosecutions. As such, any new programmes should focus on policies and the building of capacity within the criminal justice system in investigation and prosecuting sexual offences in relation to the support and protection services offered by police, prosecution services and judiciary.

3. Plea-bargaining Legislation

There is currently no provision for the use of plea-bargaining within the criminal justice system of Tanzania and it has been identified as a crucial tool lacking in the armoury of the public prosecutors. Plea-bargaining legislation has obvious benefits as it relieves court congestion; reduces the risks and uncertainties in a trial; and it has great information-gathering value – especially in intelligence-driven operations where the police and prosecutor would want to use the testimony of a collaborator of justice. The combination of intelligence-driven investigations, plea-bargaining and witness protection has been used in many countries to successfully prosecute terrorism, corruption, organized crime and mass organized human rights violations.

B. Setting up of a Union Witness Protection Unit

It is suggested that a specialized Witness Protection Unit is created within the Tanzanian Police Force whose sole task and purpose will be to provide special protection to threatened witnesses and victims in terms of a covert witness protection programme - set up and managed in terms of internationally accepted best practices.

The creation of this capacity would need to be negotiated with all the relevant state departments as successful witness protection programmes require inter-departmental commitment and ownership. Witness protection in Tanzania would thus need to be an inter-departmental operation between the Tanzanian Police Force as a Union entity, and the separate Directors of Public Prosecutions.

The suggested comprehensive Witness Protection Act should provide for the creation and special powers of such a Unit and should be developed for both territories in accordance to their unique circumstances.

Following those suggestions, a separate process of consultations was launched to consult all sectors within the criminal justice system on mainland Tanzania and Zanzibar.

C. Capacity-building of Presiding Officers (Magistrates and Judges)

Magistrates in subordinate courts need training on their general duties as Magistrates and in regards to victims and witness rights and protection. However, before training is done, legislative provision should be introduced on victims' and witnesses' rights and protection.

D. Capacity-building of Prosecutors

The prosecution service (mainland Tanzania and Zanzibar) with a great number of young and newly appointed prosecutors, need a lot of specialized training in specialized fields. This would include training on victims' and witnesses' rights and protection once legislation has been passed.

Based on those findings, UNODC prepared a proposal for extensive consultations and sensitization with key stakeholders in Tanzania & Zanzibar on creating special witness protection legislation, providing for special protection measures of video link testimony and to create a national or union witness protection unit; this proposal was then forwarded and discussed by the ministerial cabinet to find ways of implementing those proposals. The outcome is yet to be known but we expect drafting of the witness protection legislation will commence soon.