

ETHIOPIAN WITNESS PROTECTION SYSTEM: COMPARATIVE ANALYSIS WITH UNHCHR AND GOOD PRACTICES OF WITNESS PROTECTION REPORT*

*Wekgari Dulume***

ABSTRACT

Witnesses play an indispensable role in the justice system. As Bentham says “Witnesses are the eyes and the ears of justice.” They assist the court in deciding the guilt or otherwise of the accused person. They are crucial in a criminal proceeding; from reporting of crime to its trial. The evidence by a witness is crucial for the conviction of offenders. At the same time, individual facing criminal investigation or prosecution wants to obstruct the justice administration and relief themselves of liability; by intimidating witnesses and/or their families to jeopardize the criminal proceeding. Hence, it becomes very important to protect the witnesses to make sure they are not intimidated in order not to fear revealing the truth in court. This article discusses the concept of witness protection in Ethiopia and analyzes its protection law; emphasizing on provisions that are very essential for effective implementation by making comparisons with UNHCHR, Good Practices of Witness Protection, UNODC draft model law and some countries’ laws where witnesses are protected well. From the comparative analysis factors affecting implementation of the law like lack of necessary fund, organized staff, awareness about the law is concluded. Awareness creations, allocating necessary budget for the protection program, enacting regulation, and courtroom protection procedural guideline are measures needed to be taken for effective implementation of the law.

1. INTRODUCTION

A number of factors have led to increased attention for the role of witnesses in criminal proceedings at international level during the last 10-15 years. Perhaps the two most important factors have been the emergence of interest in the status of victims and witnesses in criminal proceedings and the significant rise in terrorist and organized crime.¹ The legal obligation of a

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**LL.B (Haramaya University); LL.M Candidate (Arsi University), Legal Researcher at Oromia Justice Sector Professionals Training and Legal Research Institute; he can be reached at email address: wekgaridulume@yahoo.com.

¹FelföldiEnikő, “The Rising Importance on the Protection of Witnesses in the European Union”, *Revue internationale de droit penal* 2006/1 (Vol. 77), Pp. 313-322.

witness to testify in the criminal file is fair and equitable as long as there are no threats putting at risk the life, bodily integrity, freedom, asset or professional activity of the witness or any of his/her family members upon the fulfillment of an obligation.² The successful prosecution of crimes largely depends on securing reliable evidence, including the testimony of witnesses.³ When witnesses withdraw from proceedings due to intimidation or actual harm, securing convictions often becomes impossible. For this reason, the protection of witnesses remains a cornerstone of an effective criminal justice system. According to a review of Witness Protection Programs around the world, including the U.S., the protection of victims and witnesses is essential to acquire convictions and maintaining public confidence in the effectiveness of governments to protect their citizens.⁴ Consequently, it has become an important issue for both the academic and practical departments to protect the personal rights, property rights, action rights, etc. of the witness.⁵

Coming to Ethiopia, a proclamation to protect witness or whistleblower has come to force from 2010. It covers several measures in protecting witness and includes procedural laws for protecting witness or whistleblowers. This proclamation which serves as both substantive and procedural laws towards protecting witnesses or whistleblowers is widely blamed of some drawbacks that hinder its effective implementation. This article examines factors that affect its implementation by comparing it with good practices of witness protection, UNODC draft model law, and A/HRC/15/33 Report of the United Nations High Commissioner for Human Rights on the Right to the Truth; since countries are required to harmonize their protection laws in line with the spirit of the the report for holistic protection.

²Some Considerations on the Necessity of Witness Protection on the Territory of Romania <http://heinonline.org/HOL/LandingPage?handle=hein.journals/ejpons1&div=15&id=&page=> <Accessed on August 19, 2016>.

³Some Considerations on the Necessity of Witness Protection on the Territory of Romania <http://www.Issafrica.org/iss-today/witness-protection-the-missing-cornerstone-in-africas-criminal-justice-systems> <Accessed 25/7/2016>

⁴ Dr. YvonDandurand and Kirstin Farr N.P, *A Review of Selected Witness Protection Programs: Canada Law Enforcement and Policy Branch Public Safety Canada Research and National Coordination Organized Crime Division* (2010).

⁵Gong, W. L, *A Study on the Witness-Protection System in the Process of Investigating Crimes: In A Perspective of the Legalized Witness-Protection System in Taiwan*, Canadian Social Science (2015), Volume 1(3), Pp 110-115. Available at DOI: <http://dx.doi.org/10.3968/6224>.

For this, the article is organized into five sections. Following this introductory section, section two briefly traces the origin and how the idea of witness protection spread across the world. Historical background, legal basis of witness protection, and the right of the accused are all treated under this section. Section three briefly indicates Ethiopian witness protection legal framework before the enactment of separate proclamation. Section four comparatively analyses the Ethiopian witness protection law by pinpointing some important provisions. Finally, section five gives conclusions and recommendations.

2. WITNESS PROTECTION: GENERAL OVERVIEW

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.⁶ “Witness protection programme” which is referred to as witness protection is defined as formally established covert programme subject to strict admission criteria that provides for the relocation and change of identity of witnesses whose lives are threatened by a criminal group because of their cooperation with law enforcement authorities.⁷ Witness protection is the process in which witnesses who testify in criminal trials are provided with specific procedural and non-procedural protection measures aimed at effectively ensuring theirs and sometimes including their relatives' safety before, during and after their testimony.⁸ These given definitions have similar meaning stating measures necessary to protect witness so as to make sure that those cooperating with the justice system are not harmed because of their involvement to bring deviants to justice. In general, witness protection legal system which is

⁶JNjeri 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).

⁷UNODC *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](http://www.unodc.org/documents/organizedcrime/Witness-protection-manual-Feb08.pdf)

⁸ European community has made working document on the feasibility of EU legislation in the area of protection of witnesses and collaborators with justice; and in this working document witness protection is defined. However, the community reached the conclusion the time does not seem ripe for immediate legislative action at EU level in witness protection which binds all EU members as most of the EU members got their respective witness protection law either separately or in their criminal procedure.

equated with witness protection is contained within multiple subjects as constitutional jurisprudence, science of procedural laws and sociology.⁹ On one way or another, witness protection has a great link with constitutional, procedural and sociological matter. For instance, when we talk about anonymity of witness, there is no way to jump over constitutional issue i.e. the right of accused. It also involves science of procedural law; (in and out of court protection). Best witness protection starts as early as an investigation start which is out of court and during testimony in the court room to ensure witnesses testify free of intimidation. It is also the matter of sociology as witness protection involves social cohesion of the protected person. Scholars like Cheng, Mao and Zhu defined the concept of witness protection.¹⁰

The term witness protection is defined nowhere in Ethiopian Witness and Whistleblowers Protection Proclamation No. 699/2010 (here in after, WP). The Proclamation starts with why it is necessary to have witness protection law and simply defined what witness or whistleblower means and who protected person is.¹¹ The meaning of witness protection could be inferred from the definition given to who witness and protected person is. Thus, inferred meaning of witness protection is, measures that maybe taken in order to protect witness or whistleblower and/or families from intimidation

⁹ Dr. YvonDandurand and Kirstin Farr N.P, *Supra* note 4.

¹⁰ According to Cheng, Witness protection legal system refers to “the protection system that judicial offices implement to ensure the safety of a witness and his or her relatives in a certain range. In his view, judicial office implements protection measure. For instance, if the protection measure agreed is to anonymous testimony judicial officer will implement the same in proceeding provided it does not hamper right of the defendant. In the view of Miao, state has duty to implement witness protection to safe guard the interest of witnesses and their relative. This stand shows for protection measures like relocation, which demands construction of institution within state’s financial power. And therefore, it is better to give this duty to a state for its implementation. Zhu focused on the physical protection measure referring state implementation by avoiding the hinder of witness testify by means of violence and threats, or the retaliation behaviors of assault and insult on testified witness and relatives regarding their safety and interests.

¹¹ Providing protection to witness or whistleblower is important in the prevention of crime as it plays significant role in bringing offender to justice by uncovering crimes that causes serious threat to the public. This creates conducive environment for witnesses and whistleblowers from being intimidated testifying commission of crime. Article 2 (1&2) define who witnesses or whistleblower and protected person is. Accordingly, witness means a person who has given or agreed to give information, or has acted or agreed to act as a witness in the investigation or trial of an offence and protected person means a witness, a whistleblower or a family member of a witness or whistleblower who has entered into a protection agreement with the Ministry.

or threats against their life, security or property; because of cooperation with law enforcement or judicial authorities in the maintenance of justice.¹²

2.1. HISTORICAL BACKGROUND

Witness protection first came to prominence in the United State of America to dismantle Mafia style criminal organizations.¹³ Before its formal establishment by act, witness protection system started to protect people testifying against a member of **Ku Klux Klan**.¹⁴ An established formal program of witness protection in the United States dates back to organized criminal control act of 1970. This protection system is run by the United States marshal service. Earlier in the 20th century, the Federal Bureau of Investigation also occasionally crafted new identities to protect witnesses.¹⁵ Currently, many states, including California, Connecticut, Illinois, New York and Texas, as well as Washington D.C, have their own witness protection programs for crimes not covered by the federal program.¹⁶

In the United States, before witness protection funds can be sought, law enforcement must conduct an assessment of the threat or potential for danger. This assessment includes an analysis of the extent the person or

¹² Meaning of witness protection could be inferred from reading of Witness Protection Proclamation No. 699/2010, Art 2(1, 2), Art 3(1b) and Art 4.

¹³United Nations New York, Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, 2008.

¹⁴ The Ku Klux Klan (KKK) is the name of three distinct past and present movements in the United States that have advocated extremist reactionary currents such as; white supremacy, white nationalism, anti-immigration. This Klan historically expressed through terrorism aimed at groups or individuals whom they opposed. All three movements have called for purification of American society and all are considered right organizations. In the Enforcement Act of 1871, the President is empowered to suspend the writ of habeas corpus to combat the Ku Klux Klan (KKK) and other white supremacy organizations. And someone who testifies in the court for what they committed will be protected.

¹⁵ Gary T. Rowe Jr., 64, Who Informed on Klan In Civil Rights Killing, Is Dead states “He was buried under the name of Thomas Neal Moore, the identity that Federal authority helped him to assume in 1965 after he testified against fellow Klansmen.

¹⁶ California Witness Protection Program –California Bureau of Investigation – California Dept. of Justice – Office of Attorney General Archived February 20, 2008, Glaberson, and William (2003-07-06). “LIE OR DIE – Aftermath of Murder; Justice, Safety and the System: A Witness is slain in Brooklyn”. The New York Times, Unpublished: July 09, 1999 (1999-07-06). “Metro News Briefs: Connecticut; Witness Protection Plan Is Created by New Law”. Nytimes.com <Retrieved on 2013-01-04>.

persons making the threats appear to have the resources, intent, and motivation to carry out the threats and how credible and serious the threats appear to be.¹⁷ When threats are deemed credible and witnesses request law enforcement assistance, witness protection funds can be used to provide assistance to witnesses who help law enforcement, keep witnesses safe and help ensure witnesses appear in court and provide testimony.¹⁸

Today, witness protection is viewed as a crucial tool in combating organized crime, and a large number of countries around the world have established such specialized programmes or have legislated for their creation. Examples from different jurisdictions among many; Australia, for instance has introduced witness protection in 1983. In 1983, a Royal Commission highlighted the need in Australia for better use to be made of informers in the fight against organized crime and, accordingly, for lower-level players to be given an incentive to inform on organizers. At that time, arrangements for witness protection were a matter for individual police forces and approaches differed, with some placing emphasis on 24-hour protection and others preferring relocation of witnesses under new identities.¹⁹ Witness protection programmes have been in place in Germany since the mid-1980s.²⁰ They were first used in Hamburg in connection with crimes related to motorcycle gangs. In the following years, they were systematically implemented by other German Lander (federating units) and the Federal Criminal Police Office.

In Africa, where witness intimidation and harm have led to case dismissals and acquittals, justice fails in these circumstances.²¹ This demands responding appropriately to complex transnational and international crimes require a multifaceted approach that includes a robust criminal justice response.²² Protection for witnesses is, therefore, central to effective rule-of-law-based responses and robust criminal justice systems. In most of the

¹⁷Naveena Varghese, National University of Advanced Legal Studies, *Witness Protection: Problems Faced and Need for a Protection Programme in India* (2015), P8.

¹⁸ Matthew O'Deane, 'Gang'. *Gangs: Theory, Practice and Research*.

¹⁹UNODC (2008), *Supra* note 7.

²⁰*Ibid.*

²¹ Jemima NjeriKariri and UyoSalifu, *Witness Protection: Facilitating Justice for Complex Crimes* (2016), P 25.

²²*Ibid.*

African countries, witness protection is absent, or weak, or inconsistent. This seriously hampers efforts to successfully prosecute serious crimes.

A case in point is Nigeria, where, in April 2014, a crucial prosecution witness declined to testify during the trial of alleged Boko Haram member Dr. Muhammad Nazeef Yunus. The judge's earlier decisions to disallow the use of masks to conceal the identity of witnesses in favor of using a cubicle and to maintain an open court is likely to have resulted in the witness's withdrawal.²³ The trial is still to be finalized.²⁴ Similarly, the withdrawal of certain key protected and unprotected witnesses in the International Criminal Court (ICC)²⁵ case against the Kenyan President, Uhuru Kenyatta, relating to crimes committed during post-election violence in 2007/08 in Kenya led to postponements and the eventual withdrawal of charges for lack of evidence.²⁶ Some of those who withdrew are said to have been insider witnesses who represented substantial evidence for the prosecution's case. Kenyatta's lawyers have denied involvement in any form of witness intimidation.²⁷

Witness intimidation, and/or harming witnesses is believed to have played a role in the 2004 disappearance of Peter Mulamba, a key witness in the

²³Osazuwa, Boko Haram: Witness refuses to testify in open court, April 2014, www.nigeria-news-world.com/2014/04/-witness-refuses-testify-open-court.html#.Vkt9qXYrLIU.

²⁴Kogi Reports, Boko Haram: Absence of lead counsel stalls KSU lecturer's trial, 15 February 2016, www.kogireports.com/boko-haram-absence-of-lead-counsel-stallsksu-lecturers-trial. This information is true as of August 2016.

²⁵ Similarly, in September 2015 the ICC opened a case against Jean-Pierre Bemba Gombo for subverting the course of justice for, among other things, corruptly influencing witnesses to give false testimony in connection with the ICC case against Bemba for war crimes and crimes against humanity in the Central African Republic.

²⁶International Criminal Court, The Prosecutor v. Uhuru Muigai Kenyatta, ICC-01/09-02/11, 13 March 2015, www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/related%20cases/Icc01090211/court%20records/chambers/tcVb/Pages/1005.aspx.

²⁷N Kulish and M Simons, Setbacks rise in prosecuting the president of Kenya, 19 July 2013, www.nytimes.com/2013/07/20/world/africa/dwindling-witness-list-threatenscase-against-kenyan-president.html. On 5 April 2016 the ICC ruled that the Kenyan deputy president, William Samoeiarap Ruto, and his co-accused, a radio journalist, Joshua Arap Sang, had no case to answer for in the charges of crimes against humanity allegedly committed during the 2008 post-election violence. The termination of the case was due to interference with witnesses, recanting of testimonies, disappearances or as a result of political meddling and intimidation. The accused denied the allegations, despite an ICC warrant for the arrest of a Kenyan journalist, Walter OsapiriBarasa, in 2013 on charges of being involved in a 'witness interference scheme' in the same case.

corruption case against former Malawian Finance Minister, Friday Jumbe. Reports pointing to Mulamba's death surfaced but were allegedly untrue.²⁸ Preventing witnesses of serious crimes or crimes involving high profile or influential people from being intimidated or harmed is, therefore, central to witness protection. Individuals are more likely to testify if they can be guaranteed of their safety and that of their families. Nevertheless, harming, threatening, interfering with or intimidating witnesses are not sufficiently addressed, either in legislation or protection services, in most African countries. It is worth noting that justice processes other than criminal justice ones, such as transitional justice measures, are also subject to these concerns if witnesses do not feel safe to testify.²⁹ Insufficient funding, shortage of skill, weak political will/interest is among obstacles preventing practices of witness protection in Africa.

Currently, Africa has recognized the significance of witness protection; addressing serious crimes. Specifically; the African Union Model National Law on Universal Jurisdiction over International Crimes stipulates both prosecutorial and court responsibility to ensure the protection of witnesses.³⁰ The Rules of Procedure of the African Commission on Human and Peoples' Rights also acknowledge the need to prevent reprisal against witnesses. Other forums, such as the Africa Prosecutors Association, the East African Association of Prosecutors, and the East African Magistrates and Judges Association, also emphasize the crucial function of witness protection in fighting complex crimes.³¹ Despite these agreements and bodies, however, there is only limited provision for witness protection at the national level in many African countries.³²

²⁸African Financial Markets, Mulamba holds Jumbe, Mvula cases, 28 July 2009, www.africanfinancialmarkets.com/front-news-detail.php?News_ID=54051.

²⁹ ChrisMahony, *the Justice Sector Afterthought: Witness Protection in Africa*, Tshwane: Institute for Security Studies (2010), www.issafrica.org/publications/books/the-justice-sectorafterthought-witness-protection-in-africa.

³⁰ Report of African Union Model National Law on Universal Jurisdiction over International Crimes on July 2012.

³¹Institute for Security Studies; *Recommendations of the 3rd East African Magistrates and Judges Association Training Workshop on Responding to Terrorism, International and Transnational Crimes*, www.issafrica.org/uploads/Recommendations_third-EAMJA_training-workshop.pdf.

³² African Commission on Human and Peoples' Rights, *Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010*, www.achpr.org/instruments/rules-ofprocedure-2010/.

International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone are prominent institutions established in Africa to prosecute responsible persons for genocide crime, serious violation of international humanitarian law committed in Rwanda³³ and Sierra Leone³⁴ respectively. These tribunals employed witness protection in the process of investigation and making them responsible for atrocities happened in the country.

Months after the genocide ended in Rwanda, the UN Security Council created an International Criminal Tribunal to prosecute those responsible.³⁵ ICTR has played a pioneering role in the establishment of a credible international criminal justice system, producing a substantial body of jurisprudence on genocide, crimes against humanity, war crimes, as well as forms of individual and superior responsibility.³⁶ In the statute of International Tribunal for Rwanda, there is a provision for witness protection.³⁷ Witness and victim protection has already emerged as a major problem for the tribunal. This is especially true for prosecution witnesses as the ongoing violence in Rwanda has already claimed many genocide survivors who were both potential victims and witnesses. The United Nations Human Rights Field Operation in Rwanda (HRFOR) has investigated these attacks and uncovered chilling accounts of targeted killings to eliminate potential witnesses who could testify about the 1994 genocide in either Rwandese courts or the ICTR.³⁸ To protect witnesses who intends to bring perpetrator of the crime to justice, a chamber may hold an in camera proceeding to determine whether measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a

³³Statute of the International Tribunal for Rwanda, Art 1. According to this provision, the tribunal has the power to prosecute persons responsible for serious violation of international humanitarian law committed in the territory of Rwanda and Rwandan citizens in the Rwandan territory or neighboring states between 1 January and December 31, 1994.

³⁴Statute of the Special Court for Sierra Leone, Art 1. As per this article, the special court has the power to prosecute persons who bears greatest responsibility for serious violation of international humanitarian law and Sierra Leone law committed in the territory of Sierra Leone since 30 November 1996.

³⁵A Lawyers' Committee Report on the ICTR and National Trials July 1997 Prosecuting Genocide in Rwanda available at <http://www.unwatch.com/rwanda.html>.

³⁶United Nations Mechanism for International Criminal Tribunals <http://www.unictt.org/en/tribunal><Accessed on 12/ 18/2016>.

³⁷Statute of the International Tribunal for Rwanda, *Supra* note 33, Article 21.

³⁸HRFOR, Status Report/33/1/24 January, 1997, "Killings and other attacks against genocide survivors and persons associated with them, January to December 1996".

witness, or of persons related to or associated with him by such means as: Giving of testimony through image or voice-altering devices or closed circuit television³⁹ and the like. Protecting witnesses who are said to be eyes of justice system ICTR managed to indict 93 individual sentencing 62 of them.⁴⁰

The Special Court for Sierra Leone was established by an agreement between the Government of Sierra Leone and the United Nations in January 2002. Even though there is no explicit call provision for witness protection in its statute unlike that of statute for ICTR statute, the Special Court operates a witness-protection program that seeks to meet victims' and witnesses' needs, including psychological assistance, before, during, and after trial. Most of the witnesses used at the Special Court are children and to limit their vulnerability psychosocial support and identification of potential witnesses have been investigated. Even in some cases although witnesses were both over 18, they continued to benefit from special measures for children. This included granting pseudonyms and other measures to protect their identity. Closed circuit television was used to avoid confrontation in the courtroom and risks of re-traumatizing (although some preferred to testify in the courtroom).⁴¹ Most witnesses before the Court benefit from protective measures like relocation, either to neighboring countries (usually under informal arrangements) or overseas.⁴² Since Sierra Leone is a small country in which information travels quickly through informal networks, and ex-combatants of all factions remain in the community and the difficulty to find countries willing to conclude formal arrangements to host witnesses and their relatives, particularly so-called 'insiders', protecting witness remain challenging. In building complex criminal prosecutions, the office of Prosecution has interviewed hundreds of witnesses and placed dozens of them in various forms of protected custody. Many witnesses have required relocation. The costs of witness protection are inevitably high where

³⁹ICTR Rules of Procedure and Evidence Rule, 75(B (i c)).

⁴⁰*Supra* note 36.

⁴¹The report of prosecutor general at Special Court of Sierra Leon on Nov. 10-12, 2005 shows witness protection on going and most of them benefited as children; Luc Cote, "Prosecuting Child Related Crimes at the Special Court for Sierra Leone: A Mid-Term Assessment," presented at UNICEF Conference on Transitional Justice and Children, Florence.

⁴²*Ibid.*

relocation measure is taken that demands adequate fund. Therefore, Special Court raised fund from different donor countries.⁴³ This shows how crucial funding is for witness protection.

One of the most innovative aspects of the Special Court for Sierra Leone is its Defense Office, which may be a promising new model for defense services in international tribunals. Defense Office represents a considerable improvement over approaches in other criminal courts, where the defense has typically suffered a lack of institutional support and the trials have been plagued with issues of inequality of arms.⁴⁴ Currently, international observers agree that in general terms, the trials before the Special Court are in compliance with fair trial standards, which is largely due to the Defense Office's role. Although there have been valid complaints regarding late disclosure of materials by the Prosecutor (including revealing the identity of a witness 21 days before he was called), insufficient funding for investigators and experts, and problems of performance by individual defense counsel which steps have been taken to address some of these concerns. Generally, the Special Court was seen as an improvement in terms of implementing a narrow focus on "those bearing the greatest responsibility", which in turn would allow for a more limited and efficient approach. When evaluated on these terms, the Special Court is succeeding in rendering a measure of justice for some of the worst atrocities in Sierra Leone, as a number of prominent former faction leaders are facing trial⁴⁵ and therefore their experience is interesting in witness protection thereby resulting preservation of justice system.

⁴³Countries like Japan, Netherlands, Sweden, United Kingdom, U.S.A, Canada, Denmark, Finland, Germany, Ireland donated to the Special Court in 2003-2005 to the total approximately 15, 742,138 in 2002/2003, 21, 801, 390 in 2003/2004 and 18, 620, 444 and other countries supplied by the Special Court. Other donors to the Court, for smaller amounts, include Australia, Belgium, Chile, Cyprus, Czech Republic, Greece, Israel, Italy, Lesotho, Liechtenstein, Malaysia, Mali, Mauritius, Mexico, Nigeria, Oman, Philippines, Senegal, Singapore, South Africa, and Spain.

⁴⁴*Supra* note 36.

⁴⁵Tom Perriello and Marieke Wierda, Senior Associate at the International Center for Transitional Justice (ICTJ), Hybrid Courts Case Study the Special Court for Sierra Leone under Scrutiny pdf (2006), P1.

2.2. LEGAL BASES OF WITNESS PROTECTION

The issue of witness protection has been gaining attention by countries, not only as to how to better protect witness under threat but also how to better assist them during their contact with the criminal justice system.⁴⁶ The reasons for the attention may be due to both increase and globalization of crime which has affected countries. Additionally, the issue is being raised due to the jurisprudence and practice of the international tribunals and courts.⁴⁷ Witness protection has legal bases internationally, regionally as well as nationally in many countries.

At international arena United Nations General Assembly passed resolution that covers witness protection on transnational organized crime.⁴⁸ United Nations Office on Drug and Crime has drafted model law on witness protection with the purpose of protecting witness and their relatives whose life or safety is at risk because of their involvement in justice system.⁴⁹ United Nations Convention against Corruption Recognized Witness Protection.⁵⁰ European Union has addressed the issue of witness protection

⁴⁶Karen Kramer, protection of witnesses and whistle-blowers: how to encourage people to come forward to provide testimony and important information.

⁴⁷ Witness 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 (STL).

⁴⁸ United Nations Convention against Transnational Organized Crime, Resolution 55/25 of November 2000 Article 24. As per this provision, all parties to the convention are encouraged to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences... [Including], as appropriate; their relatives and other persons close to them." Specifically, it calls for the establishment of procedures "for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.

⁴⁹ UNODC model law on witness protection on its very article one states the purpose of the law is to provide the conditions and procedures for ensuring special protection on behalf of the state to witnesses in possession of important information, who are facing potential risk or intimidation arising from their cooperation in the judicial process.

⁵⁰ In order to have effective legal instrument against corruption, UN General Assembly adopted resolution 58/4 after series of negotiation on October 31, 2003 which became functional as of December 2005. On its Art 32, 33, 37 the States parties are called upon to take appropriate measures for the protection of witnesses against retaliation or intimidation for their testimony. Under the Convention, protection should be granted not just to witness collaborators but also to victims who become witnesses and it can extend to family members or persons close to the witness.

through principally two resolutions.⁵¹ Nowadays large number of countries all over the world have witness protection law.⁵² After all, witness protection has legal bases and is regulated by specific legislation in some countries and in some other the case isn't true in countries like Austria, Denmark, Finland, France, Greece, Ireland, Luxemburg, the Netherlands and Spain.⁵³ In the UK, witness protection evolved out of police practice, but was given statutory footing in 2005.

2.3. WITNESS PROTECTION AND THE RIGHT OF THE ACCUSED

Witness protection has been a key concern of the international criminal system since the establishment of international criminal tribunals in the decade before the ICC.⁵⁴ The ICTY and ICTR have incorporated in their statutes an explicit call for the protection of victims and witnesses, alongside respect for the rights of the accused. Therefore, protection should be made without jeopardizing the right of defender.⁵⁵ In the UNCAC, protection measures are mandatory for crimes covered by the convention, but only when appropriate, necessary, without prejudice to the rights of the defendant and within the means of the state.⁵⁶ As a result, the obligation to provide effective protection is limited to specific cases or specified conditions and officials have some discretion in assessing the level of threat and decide on protective measures accordingly.

⁵¹Resolution of the council of 23 of November of 1995, [http://europa.eu/smartapi/cgi/sga_doc?smartpi!prod!CELEXnumdoc&lg=EN&numdoc=31995Y1207\(04\)&model=guichett](http://europa.eu/smartapi/cgi/sga_doc?smartpi!prod!CELEXnumdoc&lg=EN&numdoc=31995Y1207(04)&model=guichett). It call on member states to guarantee proper protection of witness against all form of direct or in direct threats, pressure or intimidation, as well as during and after trials.

⁵²Naveena Varghese, *Supra* note 17, P1.

⁵³In some countries, including Austria, Slovakia and the UK, witness protection is associated with the police, in others (e.g. the Netherlands) the programmes operate within the executive or the judiciary. In Italy and Belgium WPPs are implemented by multidisciplinary bodies: respectively the Central Commission, composed of the Under-Secretary of State at the Ministry of the Interior, two judges or prosecutors and five experts in organized crime, and the Witness Protection Commission, composed of prosecutors, high-level police officers and representatives of the Ministries of Justice and the Interior.

⁵⁴*Witness Anonymity at the International Criminal Court: Due Process for Defendants, Witnesses or Both?* The Denning Law Journal (2011), Vol. 23, Pp 29-46.

⁵⁵UNODC, *Supra* note 7.

⁵⁶*Ibid.*

Protection measures also need to be within the means (resources and capacity) of the state.⁵⁷ Thus, constitutional values and rights of accused and any third party should not be affected under the guise of witness protection. This constitutional issue could be raised since one among witness protection measure could be witness anonymity which in turn affects the right of cross examination. There is great public interest in avoiding the protection of witnesses who might pose a threat or whose protection might alienate the rights of others to whom witnesses and the state owe a duty of care. These interests must be weighed against the public good of fighting forms of organized crime often resistant to rudimentary law enforcement procedures.⁵⁸ There are a number of situations where the right of the accused is compromised with witness protection at international standards resulting in the priority of public security at the risk of accused right of defense.

For instance, in *Prosecutor vs. Tadic* before the International Criminal Tribunal for the former Yugoslavia (ICTY), the court held that the identities of witnesses could be withheld indefinitely from the accused and the counsel.⁵⁹ This was an important and severely mitigating precedent for the rights of the accused. Justice Stephen's dissenting opinion, however, found the provision of anonymity would deny the accused's fair trial and may lead to convictions on the basis of tainted evidence. Authorities on international law, such as Christine Chinkin, err on the side of the majority in that 'other interests' need to balance an accused right to know and confront prosecution witnesses.⁶⁰ Clearly, these interests involve the safety of witnesses and victims. International instruments which instruct the accused right to a fair trial, such as article 14 of the International Covenant on Civil and Political Rights (ICCPR), should not, in practice or perception, appear to be

⁵⁷*Ibid.*

⁵⁸N kulish and M Simons, *Supra* note 27.

⁵⁹International Criminal Tribunal for the former Yugoslavia, *Prosecutor vs. DuskoTadic*, Decision on the prosecutor's motion requesting protective measures for victims and witnesses, Trial Chamber, UN Doc IT-94-1-T, 10 August 1995. The court further analyzed the "balancing exercise" now so familiar in this and other fields of the law must be undertaken. On the one hand, there is the public interest in the preservation of anonymity . . . On the other hand, there is the public interest that . . . the defendant should be able to elicit (directly or indirectly) and to establish facts and matters, including those going to credit, as may assist in securing a favorable outcome to the proceedings. There is also the public interest in the conduct by the courts of their proceedings in public.

⁶⁰ Christine Chinkin *Due Process and Witness Anonymity*, *The American Journal of International Law*, Vol. 91, Pp 75–79.

compromised. To do so, paint some protective measures as impeding a fair and equitable justice process at best, and, at worst, severely undermines the legitimacy of justice institutions and processes. Chinkin cites the novel dimension of protecting witnesses where large-scale violent conflict has taken place. In such circumstances she finds that a climate of fear and intimidation exists and that witnesses are spread across borders, thereby limiting protective capacity to engage normative measures.⁶¹

Under article 14 of the ICCPR, a fair trial includes the right to 'examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him'.⁶² Chinkin qualifies the clear abrogation of such rights through the provision of indefinite anonymity by citing article 14 as non-derogable, not absolute and, therefore, requiring qualification in a situation of public emergency. The anonymity of witness jurisprudence requires full disclosure to the defense, but not necessarily the public, prior to trial. This allows adequate defense preparation and witness cross-examination. In circumstances of great threat, pre-trial physical protection, particularly surrounding disclosure and testimony, is critical to achieving observation of the accused right to fair trial, as well as the physical and psychological wellbeing of witnesses.⁶³

According to Article 20(1) of the FDRE Constitution, accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. This right may be limited and the court may hear cases in closed session with the view of protecting the right of privacy of parties concerned, public morals and national security. Moreover, as per Article 20(4) of the Constitution, accused have the right to full access to the evidence presented against him and examine them. This right, however, may be derogated in case the attendance of witness may expose them to the threat to the life or property of the witness or relative merely because of aiding justice organs. When the issue of witness protection arises, it is not only protecting the witnesses or their relatives but also about perseverance of

⁶¹*Id.*, P76.

⁶²United Nations General Assembly, Article 14(3) (3) of the International Covenant on Civil and Political Rights, Resolution 2200A (XXI), New York, 16 December 1966, <http://www2.ohchr.org/english/law/ccpr.htm>.

⁶³Chinstine, *Supra* note 60, P77.

justice system and general public interest. This could be inferred from reading Art 3 (1(a & b)) of WP. Therefore, it is possible to trade the right of accused; mainly examinations of witness when it is believed a threat of serious danger exist to the life, physical security, freedom or property of the witnesses or their relatives.

Protection measures applicable to witness are listed under Article 4 of Ethiopian WP law. Among protection measures, producing evidence by electronic devices or any other method, hearing testimony behind screen or by disguised identity, non-disclosure of the identity of a witness until the trial process begins and witness testifies, hearing testimony in camera poses danger to the right of accused. Producing evidence electronically affects the right of the accused the most since there is no way to cross examine witness who testified against him/her. In order to protect the right of the accused to some extent, unlike that of ICTY where most of evidences produced electronically, ICTR and Special Court of Sierra Leone used direct witness testimony under protection. Like experiences of ICTR and Special Court of Sierra Leone shows, there could be possibility of limiting the right of accused for witness protection. Thus, issue of witness protection and right of the accused could be solved in the same way in our case, too; as far as constitutional right is concerned.

3. WITNESS PROTECTION SYSTEM IN ETHIOPIA

The idea of witness protection came to being by Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 235/2001. The Proclamation put duty on the Commission to provide physical and job security protection to witnesses and whistle blowers.⁶⁴ This proclamation simply made protecting witness and whistleblower duty of Federal Ethics and Anti-corruption Commission without listing procedures for protection and kinds of protection measures that may be taken. Because of that, protection under this proclamation could be judged incomprehensive to guarantee the protection of witness and whistleblower. Proclamation No. 433/2005, which revised Federal Ethics and Anti-corruption Commission Establishment Proclamation No. 235/2001; repeated the same issue adding

⁶⁴ Federal Ethics and Anti-Corruption Commission Proclamation No.235/2001, Art. 7(16).

the necessity of cooperation with other bodies. It made reference to law; in order to provide the protection. The problem here is non-existence of the law that provides protection at the time.

Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 236/2001 has provision that protect whistleblower. According to this proclamation, the objective of whistleblower protection is to encourage disclosure of corruption offences. Although, witness protection is equally important as whistleblower, the proclamation lacks witness protection provision. The amendment proclamation of 236/2001 i.e. Proclamation No. 434/2005 added witness protection and made reprisal against them illegal.⁶⁵ Under Article 38 (2) of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005, public prosecutor may apply to court keep identity of witness in secret during preparatory hearing and if court authorizes, the identity of witness will be kept secret. This could serve as a means of witness protection; however, nothing is said as to how long the witness identity could be kept undisclosed or whether it could extend to normal hearing. Therefore, protection under this proclamation could be judged as not comprehensive enough to protect witnesses.

With the introduction of Ethiopian Criminal Justice Policy in 2003 E.C. (Herein after (CJP)), witness protection got a vast coverage. According to the policy, most of the time witnesses refuse to testify even though they know commission of a crime and who committed it; due to fear of reprisal or threat of intimidation. Thus, protecting witness is the must work to be carried out. Under 3.19 of CJP, most of the time criminal justice fails due to lack of witness. This happens in most cases as witness refrain from testifying because of threat from offenders. So, if they are protected obviously justice would be served. In some cases the victims even fail to bring their cases to court as they face intimidation and threat from offenders or their relatives. To make sure victims bring their cases to justice overcoming fear of threat, the policy extended protection to victims of a crime.⁶⁶ In order to have effective criminal prosecution especially for heinous crimes, there is a need to protect witnesses who testify against such criminals. Taking protection

⁶⁵Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No.434/2005, Art.53 (1).

⁶⁶አብዛኛውን ጊዜ የወንጀል ድርጊቶች ቁልፍ ምስክር ሆነው የሚቀርቡት ራሳቸው የወንጀል ተጎድዎች በመሆናቸው ምክንያት ለምስክሮች የሚደረግ ጥበቃ ለእነሱም በተመሳሳይ መልኩ እንደሚያስፈልግ ይታወቃል።

measure starts at the time of crime investigation; continues during proceeding and may extend after conviction.⁶⁷ The policy has given direction for its implementation, by stipulating that provisions protecting witness shall be added in laws like criminal procedure code and other related one. Nowadays, Ethiopia has law that governs witness and whistleblower protection.

4. ETHIOPIAN WITNESS AND WHISTLEBLOWER PROTECTION PROCLAMATION

As stated in its preamble, the purpose of this enactment was to create conducive situation in order to ensure safety and security of the public by having criminal offenders brought to justice and sustain the right penalty.⁶⁸ This is needed for prevention of crime by disclosing crimes that may cause serious threat to the public; and to protect witnesses and whistleblowers of criminal offense from direct or indirect danger and attack they may face as a consequence thereof and thereby to ensure their safety.⁶⁹

The proclamation is applicable to witness who wishes to give testimony or whistleblower who gives information on suspect punishable with ten or more years rigorous imprisonment or with death. The proclamation put two grounds under which witness is protected. One is where offence may not be revealed without the testimony of the witness or whistleblower's information. The other is existence of serious danger to the life, physical security, freedom or property of the witness or whistleblower or their respective family.⁷⁰ The proclamation serves as both substantive and

⁶⁷በወንጀል ፍትሕ ሥርዓቱ ውስጥ በሚፈፀሙ ከባድና አደገኛ የሆኑ የወንጀል ጉዳዮች ላይ ሚዛናዊና ውጤታማ ከስ ማቅረብ እንዲቻል ለጥቃት የተጋለጡ ምስክሮችን ለመርዳትና ሥጋታቸውን ለማስወገድ የሚያስችል ሥርዓት መዘርጋት ተገቢ ይሆናል። በመሆኑም፤ ለወንጀል ምስክሮች የሚደረግ ጥበቃን አስመልክቶ በዘርፉ የሚወጡ ሕጎች የሚከተሉትን ፍሬ ጉዳዮች በዋናነት መያዛቸውን ማረጋገጥ ያስፈልጋል። The policy listed bundles of issues like at which time the protection will be made; which in this case shall start at prosecution and may extend to after conviction of criminal. The policy also stated protection may be physical and property protection; concealing identity; hearing the testimony of the witness through video are included in the policy, which make it good as of legal framework save its implementation.

⁶⁸Ethiopian Witness and Whistleblowers Protection of Criminal Offences, Proclamation No. 699/2010, Preamble.

⁶⁹*Ibid.*

⁷⁰The proclamation made criterion basing on which witness or whistleblower or their respective family are going to get protection. As per this proclamation, the base of crimes

procedural law. In the 1st and 2nd part, issues like who could be protected? What kinds of protection measure may be taken? Criteria used to determine necessary protection measures are broadly dealt. In this regard, the proclamation has established legal framework even though its protection is not quite broad.

In Taiwan which has model law that protects witness; protection is accorded to offences punishable with not less than three years.⁷¹ In our case protection is applicable to offences that entail ten or more years imprisonment. In our criminal law, crimes entailing ten and more years punishment are limited. Moreover, in UNCAC witness protection is envisaged which Ethiopia has also ratified. However, under our corruption law ten or more years imprisonment is very rare which results in non-applicability of witness protection scheme in some cases of corruption offences despite protection envisaged in the UNCAC. From the very nature of corruption offences which are committed most of the time by high officials; witnesses are susceptible to intimidation as the criminals could reach them easily. An experience of others countries shows witness protection law makes exception as to the applicability of the law to corruption offences but, such exception isn't made in WP. For instance, in Taiwan protection is accorded for witness testifying against corruption offence even where the crime entail less punishment envisaged in witness protection law.⁷² This shows some limitation of the proclamation even if this does not affect its implementation. Because, it is possible to apply protection measures envisaged in the WP proclamation with all its limitations. Witness may face some problems when protected. For instance, if protection measure taken is relocation, the witness may be isolated from families, social life, and there is possibility of adapting culture of the society where s/he relocated for protection purpose.

Protection measures that could be applied to protected person or families are listed in the WP. The majors are: physical protection of person and property, relocation, concealing identity and change of identity. There are more

that may result in the protection of witness is pretty broad that international standard is met by the Ethiopian witness protection proclamation.

⁷¹Gong, W. L., *Supra* note 5.

⁷²*Ibid.*

measures that could be taken in protecting a person.⁷³ According to A/HRC/15/33 report which helps developing comprehensive witness protection; programmes and measures for protecting witness and victims should start at early stage. At early stage, it should be emphasized witness and victim protection cannot be viewed in isolation, but must rather be considered a crucial part of a comprehensive system designed to effectively investigate and prosecute perpetrators of human rights violations. Protection measures will be ineffective if other parts of the criminal justice system do not function well. Every step of the process, from investigation through to conviction and punishment, should be analyzed to identify ways in which witnesses are placed at risk, and potential reforms designed to limit those risks.⁷⁴ According to the report, countries while developing their witness protection law have to add provisions that state protection shall start at early stage. For instance, Bosnia and Herzegovina witness protection law under Article 6 states during investigation, prosecution and after the indictment, court has to keep witness's personal details undisclosed.⁷⁵ From the reading of article 3 and 6 of WP, we can find the non-procedural protection; i.e. protection at the early stage as envisaged in A/HCR/15/33 report.

Countries are required to introduce procedural guideline for court room protection measure in order to protect witness from intimidation in the courtroom. Procedural guideline deals with how witness testifies in the courtroom without being exposed to threat. Among measures that may be taken in courtroom procedural guideline; testifying under a pseudonym, behind screen, removals of accused from court room at the time of testimony. Countries, like Bulgaria, Canada, Croatia, El Salvador etc. have introduced special method of courtroom procedure⁷⁶ as it enhances witness protection. This is missing in our WP and no guideline is drafted by the organ entrusted to work on the matter. When there is no courtroom protection procedural guideline, there is possibility of potential exposure of witness and the programme to risk. Not only is the witness likely to be

⁷³Protection measures listed under Art. 4 of proclamation no. 699/2010 in all or partially applicable to protected person whichever is necessary to guarantee protection of the witness of whistleblower or their families.

⁷⁴A/HRC/15/33/ Report of United Nation High Commissioner for Human Rights on the Right to the Truth.

⁷⁵“Official Gazette” of Bosnia and Herzegovina, 3/03, 21/03, 61/04, 55/05, Art. 6.

⁷⁶UNODC, *Supra* note 7.

vulnerable to intimidation and threats while physically present in the courtroom to give testimony, but sensitive information regarding the programme is liable to be exposed and tested by the parties (such as the identity and whereabouts of the witness or the security measures implemented). It is critical that any such risks be identified and addressed at the earliest opportunity through timely and appropriate consultation and liaison with the prosecution. Additional procedural protection measures may then be requested from the court for the duration of the testimony, such as the use of pseudonyms in witness statements or suppression of the identity of the witness if permissible under applicable law and if that does not so undermine the weight of the witness's testimony as to be counterproductive.

To determine appropriate protection measure, the nature of imminent danger the witness or whistleblower is exposed to, cost to be incurred while protecting person, health and living condition of protected person and etc. has to be investigated. Taking these and many more matters into consideration, appropriate protection measures like change of identity, relocation, physical protection, or other protection measures listed under article 4 of the WP will be applied. The question left unanswered here is who investigate the existence of threat? This aims at protecting who really deserves protection. United Nations Higher Commissioner demands the establishment of a specific body responsible to investigate assessment of threat. This body should be from multi-disciplinary team with strong investigation capacity. In WP the investigation and assessment of the threat is not properly dealt with; the proclamation simply says when application for protection is made, the minister shall solicit opinion of investigator or public prosecutor. Since the proclamation did not made any special investigator specifically on the matter; investigator envisaged here is no more than police who investigated commission of crime which application for protection measure is made. This shows there is no established system to investigate the existence of threat. Moreover, under the Proclamation No. 916/2015 Ministry of Justice is entrusted to ensure that whistleblowers and witnesses of criminal offences are accorded protection in accordance with the law. However, there is no organized staff responsible to work on witness protection and simply the prosecutors apply for protection if the witnesses

say they fear to testify.⁷⁷ The Ministry did not made witness protection one division or section which shows very little focus given by the ministry. This may lead to bias for those in need of protection. Unless it is investigated deeply, under the pretext of witness protection, some may benefit unduly. This hampers the successful application of the proclamation.

Fund is key issue in operation of witness protection. The cost associated with setting up and operating a witness protection programme may be deterrent to countries. Budgets differ from state to state,⁷⁸ depending on living costs, population size, crimes rates and other factors, and cost variations also result from several factors, including law enforcement activities, individual circumstances of the witness to be relocated, needs and safety of their family and close friends. However, cost must be weighed against benefits, which include combating impunity, strengthening rule of law and democracy, shorter investigation, more efficient prosecution, thus ensuring justice and integrity of the justice system. The UNODC on the draft model law urges state to allocate budget for witness protection.⁷⁹ This is crucial for effective application of witness protection program. The complexity of the operations involved in each case depends largely on whether witnesses need to be relocated alone or together with persons close to them. The concept of sustainability must be recognized. Funds need to be adequate to sustain the new identity and relocation of witnesses into the future coming.⁸⁰

In the good practices of witness protection which countries are required to follow to take a holistic approach to witness protection, funding is key point for effective witness protection. They identify a series of measures that may be adopted to safeguard from intimidation and threats against their lives the physical integrity of people who give testimony in criminal proceedings. That is why every country follows the good practice in developing one's own witness protection. The reason behind comparing Ethiopian witness

⁷⁷ Interview with Demoz Aman, Public Prosecutor at Ministry of Justice on December 4, 2009 E.C./Dec.14, 2016.

⁷⁸For example, South Africa's National Treasury allocated a fixed annual budget of 55 million rand (approx. US\$7.5 million) for the period 2006–2007 to the Witness Protection Programme. Source: UNODC, Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crimes, p. 52; See also South Africa, National Prosecuting Authority, Witness Protection Programme Unit, Annual Report 2004–2005 (Pretoria).

⁷⁹ The State shall include in the national budget the necessary allocations for funding and operating the Program.

⁸⁰*Supra* note 36.

protection with good practice and UNHRC report comes from the above scenario.

In countries where witness protection is functional and considered effective, there is budgetary procedures and the financial cost of witness protection. For example, in Australia, the Australian Federal Police submits budget bids to the Government each year. Some of the funds are tied and can only be used for defined activities. The budget is divided among broad functions. For witness protection, staff salary costs per financial year are about 4.5 per cent of the “Protection” staffing budget, and operating costs are about 9 percent of the “Protection” operating budget. The programme has about 20–30 active cases per year. In accordance with the Australian Federal Police report for the period 2005–2006 on witness protection to the Parliament, the programmes annual cost was 1 million Australian dollars (approximately 775,000 United States dollars).⁸¹ In United Kingdom, overall budget details are not available for the United Kingdom. However, in the period 2006–2007, the budget for the witness protection programme of the Merseyside police force, which covers the Liverpool area (population: 1.5 million), was 550,000 British pounds (approximately US\$ 1,080,000).⁸² In South Africa, the programme is registered as a sub-programme in the Department of Justice and Constitutional Development and was allocated a fixed annual budget of 55 million rand (approximately US\$ 7.5 million) for the period 2006–2007 by the National Treasury. About 80 per cent of the programme’s budget goes to operational expenses. On average, there are 250 witnesses and 300 related persons in the programme. In the period 2001–2002, witnesses were under the programme for about five years. In 2006, the cycle was reduced to 2.5 years through the fast tracking of witness protection cases in the criminal justice system.⁸³ Generally, countries where funding the protection program is available, it seems effective in protecting witness as well as punishing criminals.

⁸¹Australia, Australian Federal Police, *Witness Protection: Annual Report 2005–06* (Canberra, Team Leader Publications, 2006), P9.

⁸²Ethiopian Witness and Whistleblowers Protection of Criminal Offences Proclamation No.699/2010, the Preamble.

⁸³South Africa, National Prosecuting Authority, *Witness Protection Program Unit: Annual Report 2004–2005* (Pretoria, 2006).

In some states government enact statutory provisions allowing the program to be funded through the use of proceeds from property seized or confiscated for having been acquired through activity involving drug trafficking or organized crime. Under Republic Act No. 6981, ten million pesos is authorized to form any fund to national treasury for the purpose of witness protection.⁸⁴ Even where the activity is entrusted to certain institution, it is better to have fund reserved for protection program provided that institution have different activities. This is attention paid to questions of protection, taking due account of the lack of means and resources.⁸⁵

In Ethiopian witness protection law, there is no provision about budget for protection business. Absence of provision regarding budget affects its implementation as measures that may be taken to protect witness demands money. Ministry of Justice, which the protection law gave duty to give protection did not organized staffs necessary for the activity and did not allocated budget for this activity.⁸⁶ When necessary budget is not allocated for this business obviously it is difficult to withdraw money from any title when needed. This indirectly affects the implementation of the law. Attorney general, who replaced ministry of justice, is researching how to effectively organize witness protection program. Giving hope witness protection will be practiced well under Attorney General; the attorney general shall consider allocating necessary fund for witness protection program.

Qualified staffing is a crucial element for the success of any protection programme. Witness protection officers need to possess a particular set of qualities and skills. They are required to be vigilant protectors, interrogators and undercover agents, as well as innovative thinkers, social workers, negotiators and even counselors. One of the first tasks when establishing a programme is to decide where to find people with such qualifications.⁸⁷ The

⁸⁴Section 20 of an act providing for a witness protection security and benefit program and for other purposes. Accordingly, (p10,000,000) is here by authorized to be appropriate out of any funds in the national treasure not otherwise appropriated to carry into effect the purpose of this act.

⁸⁵Isabelle Fery, *Executive Summary of A study on the Protection of Victims and Witnesses in the Democratic Republic of the Congo (2012)*, P19.

⁸⁶Australia, *Supra* note 81.

⁸⁷According to good practices training is important in maintaining witness protection. Ongoing skills maintenance and development is the key to the effectiveness of a witness protection programme. Protection officers perform a number of functions that require aptitudes that are different and perhaps broader than normal police functions. As a result,

qualification needed could be gained through training which is envisaged in United Nations Higher Commissioner report.⁸⁸ The importance and necessity of training for public prosecutors was envisaged to facilitate better application of witness protection.⁸⁹ As far as the author's information is concerned, capacity building on this issue is not in action so far. In Oromia, the largest state of the country, no training is given to justice sector on the matter. I don't think even module is prepared let alone delivering training both at Federal Justice System and Research Institute and Oromia Justice Sectors Professionals Training and Legal Research Institute.

5. CONCLUSIONS AND RECOMMENDATIONS

Based on overall analysis, the following conclusions and recommendations can be drawn.

5.1. CONCLUSIONS

Even though the idea of witness protection exists in Federal Ethics and Anti-Corruption Commission Establishment Proclamation and proclamation that revised the same; as well as Anti-Corruption Special Rule and Evidence proclamation as a measure that could be used for protection, it wasn't comprehensive enough to protect witness and whistleblower. After enactment of CJP, wide coverage is given to witness protection. The CJP envisaged the enactment of necessary manual for its proper application and currently there is a separate law for witness protection.

training must be multidisciplinary in nature and cover diverse fields. Coordinated and standardized training in national witness protection programmes could increase the confidence of the authorities in the capacity of other countries to protect witnesses and lead to the strengthening of international cooperation on witness relocation.

⁸⁸ Although the witness protection mandate may be unified at the national level in one institution, many actors will continue to be involved in witness protection. Judges and prosecutors may not have adequate knowledge on how to handle vulnerable witnesses, or assistants (of judges and prosecutors) taking witnesses' initial statements may also lack basic training. The witness protection agency should create a strong training and capacity-building unit to keep its staff abreast of developments in the field, but also to train those persons who come into contact with vulnerable witnesses. Such training activities could gradually be integrated into the curricula of national judicial training institutions and involve, among others, Bar Associations.

⁸⁹የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ, የካቲት/25/2003፣ 3.19(ሐ).

WP has the details of who could be protected? How protection measure may be taken, procedure of its application and as to who and to whom application be made; organ responsible to take protection measures, rights and duties imposed on parties is dealt with in detail. With enactment of proclamation no. 943/2016 Ministry of Justice lost its legal personality and duty of witness protection is transferred to the Attorney General. At the time this article is on process, the organ entrusted for witness protection did not organized multidisciplinary staff necessary for protection program.

WP serves as substantive and procedural law with regard to witness and whistleblower protection. The protection law is not known that much to society and even to justice organ professionals. Measures taken to implement the proclamation is not convincing so far since there is no organized staff that works on protection, or that investigates the existence of threat. Most of the time, protection measures given for protected persons are providing self-defense weapon.

Government, except enacting law, necessary budget allocation to carry out the activity is hardly done. Unlike some countries' experience, there is no annual fixed allocation of budget for protection program; institution to which the work entrusted did not separately allocated budget for protection program. This affects the implementation of the law as the work requires adequate amount of money.

5.2. RECOMMENDATIONS

- To make the protection law pretty broad enough that covers enough criminal offences, there is a need to extend its application to crimes punishable with lesser years envisaged in the WP. Moreover, criminal offences like corruption need to be treated exceptionally; since it is susceptible for witness intimidation.
- Since protection of witness is crucial in maintaining justice, within its economic capacity, the government has to allocate necessary budget for the witness protection program. This could be done by allocating annually fixed amount of money for witness protection; or the organ to which this work is entrusted to may allocate necessary budget for the effective protection. Thus, Attorney General needs to make witness

protection a program; and has to organize multidisciplinary staff for the work allocating necessary budget for the protection measures to be applied.

- There is a need to have courtroom procedural guideline to make courtroom protection effective while maintaining the right of the accused and how the right could be limited in balancing general public interest.
- Training institutes in the country has to give training on the subject matter so as to enhance knowledge of justice professionals; to ensure the pivotal role of witness protection services among society and give awareness on the existence of such right thereby encouraging witness or whistleblowers who afraid to testify about a crime.