

Presentation by Frank .N. Othembi
on the
Uganda Context on Victim and Witness Protection
at a Judicial Workshop on Witness Protection
held in
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Background and Context.

ULRC, in pursuit of its legal mandate embarked on a research process aimed at putting in place a defined Legal frame work in respect to Witness Protection. The reform process was initiated on the background of the need to have the law to protect witnesses against harassment, harm, psychological and bodily injury, and sometimes death that has been proved to have a direct bearing on the Criminal Justice System in Uganda.

ULRC identified a variety of reasons for development of Legislation for protection of witnesses and, among others;

- (a) to provide measures that will ensure psychological, Social and Professional protection to witnesses in Judicial proceedings;
- (b) to give confidence to witnesses who might come up to give evidence because of fear of reprisals and those who withdraw from the Legal process after commencement of the trial due to threats and intimidation;
- (c) to motivate witnesses in situations like our own where there is well documented harassment and killings of victims of crime and those who have been brave enough to risk their lives to seek justice;
- (d) to provide safety and security to witnesses before, during and after trial;
- (e) To ensure a witness protection program to combat organised crime the perpetrators of which are the usual Mafia dons and die hard criminal elements indulging in nefarious anti-national activities like arms and drugs smuggling, human trafficking, terrorism and money Laundering.

- (f) Identification of the rights and responsibilities of witnesses with the intention of allowing witnesses to enjoy their rights alongside accused persons without compromising the Criminal Justice system.
- (g) Offering psychological, spiritual and physical support to witnesses.

It is against this background and understanding the challenges and dangers of having no legal framework on witness protection, and further that there are glaring gaps in the current witness protection measures initiated and being implemented by some of the institutions in the Uganda Criminal Justice System that ULRC undertook the study to put in place a witness protection legal framework in place.

Current Legal framework.

Currently, there is no specific law that deals with the protection of witnesses in Uganda. There are however some provisions in some of our laws that can remotely be linked to witness protection.

- (a) The Evidence Act Cap. 6 empowers Courts to forbid Indecent or scandalous questions to witnesses (S.150) and questions that appear to be intended insult or any of which are offensive in form (S.151). These two provisions do not protect the Identity of the witness. Under S. 124, police officers may not be compelled to disclose some sources of their information. The section extends to protect the identity of some witnesses. However under S.131, a witness is not excused from answering any question on the ground that the answer will incriminate him/her. S.142 on leading questions and S. 145 on a witnesses' position in life all compromise the protection that would have been enjoyed by the witness. There is also S.147 (2) which provides for considerations of the court in deciding when questions may be answered and when a witness may be compelled to answer.

- (b) The Judicature Act which provides for an order of Judicial review of mandamus which may be used to compel the production of a protected witness. In the course of our research, we did not come across any precedent on such an order being sought but who knows what might happen in future?
- (c) The MCA and TIA provides for trials in Camera. These provisions may protect the Identity of witnesses. But the record of proceedings becomes a public document to be accessed by all.
- (d) The Whistle Blower Protection Act No. 6 of 2010 provides for the procedures by which individuals both in the private and public sector may disclose information related to corrupt practices and their protection against Victimization.

In addition to the above, there are non-legal but policy measures that have been put in place by Criminal Justice Institutions such as Police, DPP, IGG and Courts to address the problem of witness protection. But since there is no legal framework, some of the policy measures have not yielded much.

The need for legislation

ULRC carried out a comparative study with other jurisdictions. The study revealed that many jurisdictions have specific laws on witness protection. e.g.

- Witness protection Act (1998) -South Africa
- Witness protection Act - Kenya
- Witness protection Act (1996)- Canada
- Witness Security Reform Act, (1984) - USA
- Witness Protection Act (2000) - Taiwan
- Witness Protection Act (1998) - Germany
- Witness protection (Security and Benefit) Act No. 6981 - Philippines.

In addition to the above, there are a number of International Instruments that provide for witness protection. A case in point is the Rome Statute on the ICC. This has been domesticated by Uganda. Several International cases have stressed and emphasised the need for witness protection Schemes.

It is the feeling of ULRC that a Law on witness protection for Uganda would make Uganda match the International Standards and guard against the most common unceremonious acquittals for want of evidence.

The Legislative Process

The ULRC has completed a study on witness protection and the need to have a witness protection Legislative framework. A study report has been compiled. It contains many findings and recommendations.

The summary of the findings in the report is that lack of a witness protection Scheme has grossly contributed to miscarriage of justice in judicial proceedings and exposed witness to dangers of intimidation, harassment and sometimes death, which has scared them away from Courts. The major recommendation is to have a witness protection legal framework that matches the International standards for Uganda to successfully investigate, prosecute and judiciously adjudicate most serious and heinous crimes that continue to threaten the Country and the Criminal Justice system.

ULRC is currently drafting a bill on witness protection. It focuses on, majorly, the following areas;

- (a) Assessment of witnesses who need protection
- (b) The nature of offences for which protection should be offered
- (c) The circumstances under which protection should be offered
- (d) The form and extent of protection which should be offered

- (e) Who should offer protection and punishment for failure to offer such protection
- (f) The duration of the protection
- (g) Handling of Court proceedings involving witness protection
- (h) Protection of witness testifying against the Government or their employers
- (i) Protection of Prosecutors and Investigators.

Future Plans

After completing the drafting of the Bill, ULRC in collaboration with UNOHCHR, is planning to carry out validation workshops on the draft bill. The purpose of the validation workshops is to promote extensive Stakeholders debate, participation and consensus building in the development and formulation of the Witness protection Legal framework.

The workshops are intended to involve Legal practitioners and the Judiciary as the major stakeholders. ULRC will be honoured to have your participation in the planned workshops, the details of which will be communicated to you.

Thank you.