

**RUAHA CATHOLIC UNIVERSITY**

**FACULTY OF LAW**



**RUCU**

**COMPARATIVE ANALYSIS ON THE LAW AND PRACTICE RELATING TO  
WHISTLEBLOWER AND WITNESS PROTECTION IN TANZANIA AND KENYA**

**A Research submitted in partial fulfillment of the award of ( LL.B) Degree of Ruaha  
Catholic University (RUCU)**

**By**

**Marwa Monica**

**657/LLB/T/2017**

**Prepared under the supervision of**

**Mr. Cosmas B. Masimo**

**At the Faculty of Law**

**June, 2021**

**CERTIFICATION**

I certify that, I have read and recommend for acceptance by the Ruaha Catholic University a research paper titled: **COMPARATIVE ANALYSIS ON THE LAW AND PRACTICE RELATING TO WHISTLEBLOWER AND WITNESS PROTECTION IN TANZANIA AND KENYA:** In partial fulfillment of the requirement for the award of Bachelor Degree of Law (L.L.B) of Ruaha Catholic University.

Signed on..... day of.....2021

.....

Supervisor

Mr. Cosmas B. Masimo

**DECLARATION**

I, **MONICA MARWA**, do hereby declare that this research is my original work and where other people's textbooks and materials have been used. I have acknowledged them, and this has been and it is not currently being submitted in any other university.

Date: .....

Signature: .....

Monica Marwa

(Researcher)

## **COPYRIGHT**

This research is a copyright material protected under the Berne Convention, the copyright and Neighboring Act of 1999 R: E 2002 and others International and national enactments in that behalf on intellectual property. It may not be produced by any means, in full or part, except for short extract in fair dealing, for research or private study, critical scholarly review or discourse with an acknowledgment, without the written permission of Ruaha Catholic University on behalf of the author.

## **ACKNOWLEDGEMENT**

First and far most, I would like to thanks Almighty God for the strength and protection mentally and physically in all of my presence. Also, I would like to express my deep gratitude to those who in one way or another helped me to accomplish in writing this research.

Secondly, my gratitude goes to my lovely mother Helena Shoto Matata and my brother Alex Marwa Mwita for their love and support such as financial support, moral support, material support and encouragement through the whole period of my study. May our Almighty God keep on providing for them. Much gratitude to my lovely son Samwel Raymond Byombalirwa who inspire me to work hard, also his patience during the whole period of conducting research make it possible for me to finish this research, since I didn't effectively fulfill my duty as a mother to him during the time of doing this research. I don't have any thing to pay him may our almighty God keeping on protect him. I love you and am so proud of you son.

Thirdly, I would like to express my appreciation to my internal supervisor, Mr. Cosmas B. Masimo for his support, cooperation, technical assistance and constructive recommendations and suggestions regarding this research. Further, I would like to express my gratitude to the Faculty of Law at Ruaha Catholic University and my lecturers for imparting in me the knowledge of laws, which is being evidenced in this research paper. Without forgetting, I would like to thank Madam Angelina Mpinda, Dr. Stella Nyana, Dr. Ana Luis Haule, Mr. Rwezaura Kaijage, Madam Scolastica Mality, Madam Renada and all who are not mentioned here I would like to say thank you all for your support.

Fourth, I would like to thank Mr. Nehemia Mbwilo for his love and support during the time I prepare this research. I don't have anything to pay him, may our Almighty God bless him.

Lastly, but not least, my sincere thanks go to my friend's George Maganya, Irene Mhuwa Peter, Yusufu Marwa, Revocatus Kafumu and Mr. Raymond Byombalirwa to their support and encouragement regarding this research. I have nothing to pay them but our almighty God will pay them.

## **DEDICATION**

This research is devoted to my family especially to my parents, my late father Mr. Samwel Marwa Mwita and my mother Mrs. Helena Shoto Matata for brought me into this world and taking care of me. Also, their dream to see me graduate from University with a Bachelor Degree motivate me to study hard. Am so happy and proud to fulfill their dream. Secondly, this research is dedicated to my lovely brother Mr. Alex Marwa Mwita for his love and support, also his encouragement and trust enabled me to believe in myself and work hard so that I won't disappoint him, I love u brother. Lastly, I dedicate this research to my son Samwel Raymond Byombalirwa as an inspiration to him.

“Dad may your Soul Rest in Eternal peace. Amen.”

## TABLE OF CONTENTS

<b>CERTIFICATION.....</b>	<b>i</b>
<b>DECLARATION .....</b>	<b>ii</b>
<b>COPYRIGHT.....</b>	<b>iii</b>
<b>ACKNOWLEDGEMENT .....</b>	<b>iv</b>
<b>DEDICATION .....</b>	<b>vi</b>
<b>TABLE OF CONTENTS .....</b>	<b>vii</b>
<b>ABSTRACT .....</b>	<b>xii</b>
<b>LIST OF ABBREVIATIONS.....</b>	<b>xiii</b>
<b>LIST OF INSTRUMENTS .....</b>	<b>xiv</b>
<b>LIST OF CASES.....</b>	<b>xv</b>
<b>CHAPTER ONE .....</b>	<b>1</b>
<b>GENERAL INTRODUCTION .....</b>	<b>1</b>
1.0. Background of the problem .....	1
1.1 Statement of the problem. ....	3
1.2 Literature review .....	4
1.3 Hypothesis.....	8
1.4 Objective of the research. ....	8
1.4.1. General objective.....	8
1.4.2. Specific objective. ....	9
1.5 Significance of the research .....	9
1.6 Research methodology.....	10
1.6.1 Primary sources and primary data collection. ....	10
1.6.2 Secondary Source and secondary data collection. ....	10



1.7. Scope of research .....	10
1.8. Limitation of the research .....	10
1.9. Conclusion .....	11
<b>CHAPTER TWO .....</b>	<b>12</b>
<b>CONCEPTUAL FRAMEWORK ON WITNESS PROTECTION IN TANZANIA .....</b>	<b>12</b>
2.0. Introduction.....	12
2.1. The Concept of witness.....	12
2.1.1. Eye Witness.....	13
2.1.2. Justice Collaborator.....	14
2.1.3. Hostile Witness .....	14
2.1.4. Expert Witness. ....	15
2.1.5. Victim-Witness.....	15
2.2. Whistleblower .....	18
2.4. Witness tampering .....	18
2.5. Concept of Witness Protection.....	19
2.5.1. Administrative or operational measures.....	20
2.5.2. Procedural measures (judicial protection).....	20
2.5.3. The concept of witness protection in Tanzania prior to the enactment of the Whistleblower and Witness Protection Act No. 20 of 2015. ....	20
2.5.4. The concept of witness protection after the enactment of Whistleblower and Witness Protection Act No. 2015.....	21
2.6. Concept of Witness Protection Programme .....	22
2.7. Witness Protection Unit .....	23

2.8. Witness Protection Authority.....	23
2.9. Witness Protection Application .....	23
2.10. Witness Protection Fund .....	24
2.11. Memorandum of Understanding.....	24
2.12. The Concept of Witness Protection Program in connection to Right to Fair Trial.....	25
2.13. The Concept of Witness Protection and Human Right. ....	26
2.14. Importance of Witness Protection Program .....	27
2.15. Reasons for witness Protection Program .....	28
2.16. Conclusion .....	28
<b>CHAPTER THREE.....</b>	<b>30</b>
<b>LEGAL FRAMEWORK RELATING TO PROTECTION OF WITNESS IN TANZANIA</b>	
<b>.....</b>	<b>30</b>
3.0. Introduction.....	30
3.1. International Instruments .....	30
3.1.1. United Nations Convention Against Corruption of 2003.....	30
3.1.2. United Nations Convention Against Transnational Organized Crime of 2000. ....	31
3.2. Regional Instrument.....	32
3.2.1. African Union Convention on Preventing and Combating Corruption of 2003. ....	32
3.3. Domestic Legislations.....	32
3.3.1. The Constitution of the United Republic of Tanzania of 1977 Cap 2 as amended from time to time.....	33
3.3.2. Whistleblower and Witness Protection Act No. 20 of 2015 .....	33
3.3.2. Economic and Organized Crimes Control Act [CAP 200 R.E. 2019] .....	33

3.3.3. Prevention and Combating of Corruption Act [CAP 329 R.E 2019].	34
3.3.4. Penal Code [CAP 16 R.E. 2019]	34
3.3.5. The Criminal Procedure Act [ CAP 20 R.E. 2019].	34
3.3.6. The Evidence Act [ CAP 6 R.E. 2019]	35
3.3.7. The Anti-Money Laundering Act [CAP 423 R.E 2019].	35
3.3.8. The Prevention of Terrorism Act No. 21 of 2002.	35
3.4. LEGAL FRAMEWORK RELATING TO PROTECTION OF WITNESS IN KENYA...	35
3.4.1. The Constitution of the Republic of Kenya of 2010.	35
3.4.2. The Witness Protection Act [CAP 79 R.E 2012]	36
3.4.3. The Victims Protection Act No. 17 OF 2014.	36
3.5. Conclusion	37
<b>CHAPTER FOUR</b>	<b>38</b>
<b>A COMPARATIVE ANALYSIS ON THE WHISTLEBLOWER AND WITNESS PROTECTION IN TANZANIA AND KENYA</b>	<b>38</b>
4.0. Introduction	38
4.1. Analysis of the Whistleblower and Witness Protection Act No. 20 of 2015	38
4.2. The analysis of the Kenya Witness Protection Act [ CAP 79 R.E 2012]	40
4.3. A comparison analysis of the laws	41
4.3.1. Witness Protection Unit.	41
4.3.2. Witness Protection Application	42
4.3.3. Witness Protection Fund	42
4.3.4. Witness Protection Authority	43
4.3.5. Protective measures	43

4.3.6. Comprehensive of the law .....	44
4.3.7. Memorandum of Understanding .....	45
4.5. Test of the Hypothesis .....	46
4.6. Conclusion .....	47
<b>CHAPTER FIVE .....</b>	<b>48</b>
<b>5.0. CONCLUSION AND RECOMMENDATION.....</b>	<b>48</b>
5.1. Conclusion .....	48
5.2.1. Enactment of the comprehensive law.....	49
5.2.2. Establishment of designated Institution. ....	49
5.2.3. Developing Witness Protection Guidelines.....	50
5.2.4. Developing Witness Protection Charter.....	50
5.2.5. Raising Public Awareness .....	51
5.2.6. Learning study from other countries with effective Witness Protection Programme. .	51
<b>BIBLIOGRAPHY.....</b>	<b>54</b>

## **ABSTRACT**

Witness Protection Programme is a tool used to fight against organized crimes. This is used all over the world in sense that there is international and regional instruments which encourage the member states to enact legislative and provide institutional framework which will be responsible to offer protection to witnesses and whistleblowers who are at risk of being subjected to harsh treatment as the result criminal proceeding.

Witness protection is the constitutional right and the state has an obligation to ensure the safety of its citizen. The duty of state to protect its citizen is mandatory and must be accorded to the witnesses who participate in criminal proceeding, since they remain the citizens of the state. The state must establish witness protection programme to provide protection on its behalf. This research explain the aspect of witness protection in Tanzania, since it is the member state to international and regional instruments which require to set legislation and framework for witness protection. The research explain the framework available for witness protection in Tanzania and the discrepancies existed in the current legislation framework regarding witness protection.

Therefore, the research discussed the lacuna and biasness exist in our law relating to witness protection in Tanzania and suggest what should be done to cure the mischief or lacuna exist in our law so as to have an effective witness protection. The researcher provide recommendations on what can be done to have effective witness protection programme in Tanzania and one of them is that Tanzania can learn to other countries which have effective witness protection by establish witness protection programme.

## **LIST OF ABBREVIATIONS**

DPP	Director of Public Prosecution
ODPP	Office of Director of Public Prosecutor
WPP	Witness Protection Program
WPG	Witness Protection Guideline
NPS	National Prosecution Services
NPSA	National Prosecution Service Act [CAP 230 R.E 2019].
ONPS	Office of the National Prosecution Service
CJ	Chief Justice
MoU	Memorandum of Understanding
WPA	Witness Protection Authority.
WPF	Witness Protection Fund
CA	Competent Authority
WPU	Witness Protection Unit.
IGP	Inspector General of Police.
CAP	Chapter of the Law.
UN	United Nations.
V	Versus

## **LIST OF INSTRUMENTS**

### **International Instruments**

United Nations Convention Against Transnational Organized Crime of 2000.

United Nations Convention Against Corruption of 2003

### **Regional Instrument**

African Union Convention on Preventing and Combating Corruption of 2003.

### **Laws of Kenya**

The Constitution of the Republic of Kenya of 2010.

The Victims Protection Act No. 17 OF 2014.

The Witness Protection Act [CAP 79 R.E 2012]

Witness Protection Regulations of 2011

The Witness Protection Rules of Courts, 2014

### **Domestic laws**

The Constitution of the United Republic of Tanzania of 1977 Cap. 2 as amended from time to time.

Penal Code [CAP 16 R.E. 2019]

The Criminal Procedure Act [ CAP 20 R.E. 2019]

The Evidence Act [ CAP 6 R.E. 2019]

Whistleblower and Witness Protection Act No. 20 of 2015.

The Anti-Money Laundering Act [CAP 423 R.E 2019].

The Prevention of Terrorism ActNo.21 of 2002.

Economic and Organized Crimes Control Act [CAP 200 R.E. 2019]

## LIST OF CASES

*Hatibu Gandhi v. Republic* [1996] T.L.R.13.

*People's Union for Civil Liabilities v. Union of India* AIR 2004 SC456.

*NHRC v. State of Gujarat* 2003 (9) SC 329

*Zahira Habibulla H. Sheikh and Another V. State of Gujarat* 2004 (4) SCC 158 SC

*Mahender Chawla and others v. Union of India and others* Writ petition (Criminal) No. 156 of 2016

*Prosecutor v. Katanga and Ngudjolo*, Case No. ICC-01/04-01/07-475 May 13, 2008.

.



## CHAPTER ONE

### GENERAL INTRODUCTION

This chapter include the background of the research, the statement of the problem, the literature reviews, hypothesis, objective of the research which are general objective and specific objectives, the significant of the research, the research methodology and the scope and limitations of the research and lastly the conclusion of the chapter.

#### 1.0. Background of the problem

Witness protection refers to the protection measures offered by the state to the witnesses who testify before the court of law and whistleblowers who report crime to the authority from retaliation by the person who has been convicted based on the testimony of such witness. Protection must be accorded to witnesses and whistleblowers before, during and after the trial<sup>1</sup>. While witness protection programme refer to the formal programs established to ensure the safety of the key witness before, during and after testifying in court. The programme provides protection to witnesses who are endanger on behalf of the state by determine the criteria for admission, assess the risk and determine the protective measures to be applied<sup>2</sup>.

The concept of witness protection come into the practice in 1970's in the United States of America whereby it was the legal procedure used to dismantling Mafia-style criminal organizations so up to that time there was unwritten code of silence among the members of the Mafia which known as *omerta*'. The members sworn not to betray the organization and cooperate with the police, therefore, there was a threat of death to anyone who broke the code of silence or ranks and cooperate with the police. So, at that time important witnesses could not be persuaded to testify for

---

<sup>1</sup>Garner Bryan. A., (Ed) Black's Law Dictionary, 17<sup>th</sup>edn, West Group, St. Paul, Minnesota,1596

<sup>2</sup> J. Samaha, *Criminal Justice, Sixth Edition*, Thomson Learning Academic Resource Center, London, 2003, 53.

the state and the key witnesses who were willingly to cooperate with the police were killed by the criminal bosses or criminal masterminds to stop them from cooperate with the police to prosecute them. Due to the failure of dismantling the code of silence the United States Department of Justice convinced that there is a need of instituting the witness protection programme<sup>3</sup>. So up to date witness protection program is seen as a crucial tool in fighting against organized crimes and many countries make an effort to establish their witness protection program or enact legislation to regulate the matter.

The concept of witness protection program it is very important in dispensation of justice and the fight against crime in the world that why there are international and regional instruments which encourage the member states to come up with the effective mechanism for witness protection. so the member states to these regional and international instruments must set legislation which will provides for the appropriate measures to offer protection to witnesses, expert witnesses, justice collaborator, victims and informant as provided under Article 24<sup>4</sup>, also Article 32 & 33<sup>5</sup> and Article 5(5)<sup>6</sup> impose obligation to the member states to adopt legislative and other measures for the protection of witnesses and informant.

The United Nations Office on Drugs and Crime (UNODC) has emphasize on the important of witness protection program and that the member states are required to enact legislation which will provide legislative framework for the purpose of provide protection to witnesses, justice collaborator (criminal who decide to collaborate with the prosecutor to bring the perpetrators to

---

<sup>3</sup>I. F. Montanino, Unintended Victims of Organized Crime Witness Protection, 2 *Criminal Justice Policy Review*, 4, (1987) 393.

<sup>4</sup>The United Nations Convention against Transnational and Organized Crime, 2000.

<sup>5</sup>The United Nations Convention against Corruption, 2003.

<sup>6</sup> The African Union Convention on Preventing and Combating Corruption, 2003.

justice upon agreement between him and the state), victims of crime and third party witnesses such as expert witnesses<sup>7</sup>.

Witnesses should be protected from the wrath of the accused person during investigation, during the proceeding and after the proceeding,<sup>8</sup> The Honorable Supreme Court cemented on the needs of witness protection program and the importance of grant protection to witnesses as stated in the case of *People's Union for Civil Liberties v. Union of India*<sup>9</sup> whereby the court of law stated that, “*the need for the existence and exercise power to grant protection to a witness and preserve his or her identity, anonymity in criminal trial has been universally recognized*”

Tanzania as the member state of these international and regional instruments enacted the Whistleblower and Witness Protection Act No. 20 of 2015 in order to comply with the obligation imposed to it under international law. The law enacted provides for protection of whistleblowers and witnesses. But the law is inadequate since it does not provide for institutional framework and mechanisms to enforce the law, also the law is bias.

### **1.1 Statement of the problem.**

In Tanzania the Whistleblower and Witness Protection Act No. 20 of 2015 was enacted purposely to provide protection to witness and whistleblower who are at risk of being subjected to harsh treatment or victimized as the result of their cooperation in investigation and judicial proceeding. The Act is still insufficient since it fails to establish institutional which will be responsible to establish and maintain witness protect programme which will protect witness against the reprisal of accused person as the result of their cooperation with the law enforcement agencies.

---

<sup>7</sup> United Nations Office on Drugs and Crime(UNODC) report on “Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime”, Vienna, New York, 2008, 5.

<sup>8</sup> P. Dhār, Witness Protection and Justice Delivery System in India- a Critique, iv *Gorgotias Journals of Legal Studies*, 1, (2016) 23.

<sup>9</sup> AIR 2004 SC456.

Whereby section 10 & 11<sup>10</sup> provides for the protection of whistleblower and witness who are at risk. Although the Act no. 20<sup>11</sup> was enacted to guarantee protection to witnesses and whistleblowers but the Act is silent on the important aspects of witness protection programme since it does not establish a WPP and other aspects are not covered by the Act. Compare to the Act of Kenya<sup>12</sup> which provide for the sufficient aspects of having effective witness protection as discussed in this research. Also, the research discussed the shortfall on the protection of ordinary citizens in the law of Tanzania since it bases on the protection of witnesses and whistleblowers who are employees under public and private institution.

## **1.2 Literature review**

Various authors have written on the issues on the witness protection program to show the importance of witness protection in dispensation of justice.

Monir,<sup>13</sup> in addressing the issue of witness protection the author state that witness protection is important in dispensation of justice since it assures fair trial and also go further and provide that when the witness is incapacitated to testify before the court of law and decide to turn hostile as the result of coercion, threats , intimidation, inducement, harassment or fear for his or her safety will lead to unfair trial to the victim. Since witness are eyes and ears of justice and played vital role to help the court of law to reach a decision. so, the author state that it's important for the State to grant witness protection to the witness and victim so as to avoid the miscarriage of justice and the incapacitation of witness which lead to unfair trial.

---

<sup>10</sup> The Whistleblower and Witness Protection Act no. 20 of 2015

<sup>11</sup> *Ibid.*

<sup>12</sup> The Witness Protection Act [ CAP 79 R.E 2012]

<sup>13</sup> C.J M. Monir, *Textbook on the Law of Evidence*, Universal Law Publishing Co., New Delhi- India, 2013<sup>9</sup>, 491.

The author seems that the witness protection program is a constitutional right where the witness has the right to life, protection of his or her property also the property of his or her relatives and the right to fair trial.

Samaha,<sup>14</sup> the author prescribes that the witness protection program is a crucial and important to be taken into consideration, simply because some of the state have established witness protection program and are usually supervised by the prosecutor and the witness protection program provides the services like transportation services to the witness by taking them to the court and return them to the safe house, escort services through escorting witness to court and staying with them during the proceedings also emotional support by giving support during their ordeals with crime and with the criminal justice proceeding also provision of food, shelter and accommodation to the witness this is through the program of personal advocacy.

Hails,<sup>15</sup> the author explains about the threat of witness by the defendant himself or his accomplice with the intention to discourage the witness from participating on investigation and testify before the court of law, also to discourage the whistleblowers to report crimes. So, this threat can be given at the time when the crime is committed or in the scene of crime and after the commission of crime or after the accused left the scene of crime, the author did not write about the witness protection directly but according to what he had explain there is a need to have witness protection program which is efficient and effective to ensure the safety of the eye witnesses and the whistleblowers or informants.

---

<sup>14</sup> J. Samaha, *Criminal Justice, Sixth Edition*, Thomson Learning Academic Resource Center, London, 2003, 53.

<sup>15</sup> H. Judy, *Criminal Evidence*, Wadsworth Cengage Learning USA, 2009<sup>6</sup>, 104.

Dhar,<sup>16</sup> the author in her writing prescribes that witness protection program is the constitutional right, since the accused person has the right to fair trial on the other hand the victim also has the right to fair trial where by this imply that when the victim and witnesses are harassed a lot, intimidated, threatened or induced not to testify before the court of law it will amount to miscarriage of justice and unfair trial. Also, the author explains that the right to witness protections is universal and the state has obligation to provide protection to witnesses, victims and whistleblowers so that to promote and facilitate fight against crime.

Suresh,<sup>17</sup> The author in his writing was on the opinion that witness protection is an important aspect sense it will restore the human dignity and therefore there is an urgent need of bring the bill of right to preserve and protect witnesses' and victim's rights, justice and due process of the trial. So, witnesses and victim shall be free from intimidation, harassment or abuse during the criminal justice process. So, he was on the opinion that there is a need of new law which will establish the witness protection program (institution) which will be responsible to guarantee the protection of witnesses and victims so that to make sure that they will participate in the criminal trial proceeding without any fear and so that to ensure dispensation of justice.

Rahangdale,<sup>18</sup> the author in his writing stipulated that witness are backbone in criminal justice system since they play an important role in helping the court to reach a decision. So, witnesses assist the court to reach a decision through the testimony and the evidence adduced in the court. Although the witnesses help the court to reach a decision but these witnesses encounter many problems such as harassment, intimidation, threats and have been pressurized by the accused

---

<sup>16</sup> P. Dhār, Witness Protection and Justice Delivery System in India- a Critique, iv *Gorgotias Journals of Legal Studies*, 1, (2016) 10.

<sup>17</sup> H. Suresh, New Law Needed for Witness Protection, 4 *Combat Law*, 1, (2005), 20.

<sup>18</sup> P. Rahangdale, Witness Protection: A Comparative Analysis of Indian and Australian Legislation, 21 *Gujarat Research Society*, 3, (2019), 142

person himself or his family member to testify on the favour of the accused, so due to inadequate of witness protection program during and after the trial result to the witnesses to turn hostile due to fear, whereby the hostility of the witness lead to miscarriage of justice and unfair trial. So, there is a need of adopt an effective witness protection law or policy and establishment of an institution which will be responsible to offer protection to witnesses before, during and after the trial.

Dr. Jayasekara,<sup>19</sup> the author explain that the witness protection is the right of witnesses since in order for the court to reach a decision the cooperation of the witness and victim is important and it ensure that there is fair trial and justice will be saved. So, he went further, by explain that in order to procure the cooperation of witnesses and victims of crime to appear before the court and testify without fear there must be a legislation that establish effective mechanisms to protect witnesses, victims and informant of crime and also ensuring integrity of those who implement these mechanisms. Therefore, for the purpose of having fair trial and effective criminal justice system the state must provide an effective institutional framework which will be responsible to protect witnesses, informants of crimes and victims against intimidation, attacks and reprisal from accused himself or his family members.

Bhushan,<sup>20</sup> the author explains the reason why witnesses turn hostile it because there is no effective witness protection programmer to protect them against the reprisal from the accused person, so witnesses are intimidated by the accused himself or his family member to discourage them to assist the court in dispensation of justice. So, he went further by state that witnesses are the clue which help the court to reach a decision, so the government has the duty to protect its citizens and enforce the law in the society, therefore, for the purpose of protect its citizen the government must establish

---

<sup>19</sup> Dr. I. K. Jayasankar, Right of Witness Protection: A Comparative Overview, 1 *Bharati Law Review*, (2012), 73.

<sup>20</sup> T. Bhushan, Witness Protection in India and United States: A Comparative Analysis, 2 *International Journal of Criminal Justice Sciences*, 1, (2007),13

an effective witness protection program so that to ensure that the witnesses who assist the court in dispensation of justice are safe so as their family too.

Rahangdale,<sup>21</sup>the author describes that for the purpose of having effective and efficient criminal justice system it is important to have witness protection program to guarantee the cooperation of witness in the trial. So, he went further by state that witnesses are eyes opener for judges since they rely on their testimony to punish the wrongdoer and impart justice to the victim.

The author was on the view that since the witnesses encounter many problems like being threatened, harassed, intimidated and even inducement, so the government must establish the witness protection program which is adequate and efficient in provide protection to witnesses, also must come up with the guidelines and comprehensive policy on witness protection program.

### **1.3 Hypothesis.**

It seems that in Tanzania the current law which provides for witness and whistleblowers protection is inadequate compared to the law of Kenya.

### **1.4 Objective of the research.**

#### **1.4.1. General objective**

Intended to make analysis of the Whistleblower and Witness Protection Act in regard to effective witness and whistleblower protection in Tanzania compared to the Witness Protection Act of Kenya

---

<sup>21</sup> P. Rahangdale, Witness Protection: An Important Measure for the Effective Functioning of Criminal Justice Administration, 22*Quarterly Journal*, 4, (2019), 129.



#### **1.4.2. Specific objective.**

To analyze the lacuna existed in the current law in Tanzania for whistleblowers and witness protection and how to cure its defective.

The research analyze the biasness exist in the Whistleblower and Witness Protection Act.

The research analyzes on the causes of witness turning hostile or give low quality evidence and why people does not report crime.

#### **1.5 Significance of the research**

The research will have the following significance in Tanzania and the public in general as provided here under;

**First**, to enable law makers to correct the discrepancies existing in our law governing the whistleblowers and witness protection.

**Second**, the research will advise the law makers to make amendment or to insert some sections to the existing law that will establish an independent institution and legal framework which will govern the witness protection programme.

**Third**, to create awareness to the general public about the matter of witness protection programme and the important of having a designated institution that deals with the matter of witness protection. So as to remove fear to the witnesses and whistleblowers to cooperate with law enforcement agencies by report crimes and testify.

**Forth**, the research will be important because is going to provide the recommendations to be relied on by the government when set up witness protection programme.

## **1.6 Research methodology**

This research will adopt a qualitative approach in data collection whereby in conducting research the researcher will use both primary data collection and secondary data collection.

### **1.6.1 Primary sources and primary data collection.**

The researcher applied documentary review. The primary source of data collection includes the use of the authoritative laws which are international and regional instruments which impose obligation to member states to make effective measures to guarantee protection to witnesses and whistleblowers. Also, the domestic instruments, cases and online materials.

### **1.6.2 Secondary Source and secondary data collection.**

The researcher uses secondary data sources as another way of collecting data. Therefore, under secondary data sources the researcher will use books, articles and journals. The researcher preferred to use these methods of primary and secondary data collection due to the fact that they enabled the researcher to cover wide areas.

## **1.7. Scope of research**

The research based on comparative analysis on the law and practice relating to whistleblower and witness protection in Tanzania and Kenya. This because Tanzania as the member state to international and regional instruments which impose obligation to the member states to provide effective mechanism for witness protection as important aspect in dispensation of justice and fight against crimes include organized crimes, terrorism, corruption and money laundry.

## **1.8. Limitation of the research**

The limitation which the researcher encounters during conducting this research is the limitation of pages since the research topic cover the whole topic of witness protection and therefore the

researcher found it to be problem. Also the researcher encounters lack of materials especially thesis which have been done by other researcher on this topic.

### **1.9. Conclusion**

Tanzania witness protection regime has been through a long journey of discovery and learning. It is also evident that there is still a lot to be done to reach satisfactory results since the current whistleblower and witness protection offered in Tanzania since it has a lot of short flaws and needs to be revamped. So, the discussion in this study reveals why current measures are not the answer and highlight measures to be taken in order to successfully address the matter of whistleblower and witness protection in Tanzania.

## **CHAPTER TWO**

### **CONCEPTUAL FRAMEWORK ON WITNESS PROTECTION IN TANZANIA**

#### **2.0. Introduction**

In this chapter provide for the conceptual framework in respect of witness protection in Tanzania and Kenya basing on the following aspect, the term witness, expert witness, whistleblower, justice collaborator, hostile witness, victimization, witness tampering, the concept of witness protection and the concept of witness protection program. Then the chapter will focus on the concept of witness protection prior and after the enactment of Whistleblower and Witness Protection Act No. 20 of 2015 and finally, the chapter will conclude with general observations on the legal framework and practical applicability of witness protection in Tanzania.

#### **2.1. The Concept of witness**

Witness refers to the person who has information which is important to prove the guilty of the accused person in criminal proceeding. So, witness is any person who has the knowledge of the facts of the case and is able to testify before the court of law under oath and his or her testimony is accepted by the court as evidence.<sup>22</sup> In other word witness is the person who is competent to testify before the court of law and has the knowledge of the facts of the case and also give testimony under oath or affirmation and his or her testimony is accepted by the court of law as evidence<sup>23</sup>.

The term witness was defined under the Black's Law Dictionary to mean "any person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, "witness" has acquired the sense of a person who is present at and observes a

---

<sup>22</sup> P. B. Gerstenfeld, *Criminal Justice; Volume 3*, Salem Press Inc. California, 2006,1175.

<sup>23</sup> Section 127 (1) of The Evidence Act [CAP 6 R.E 2019].

transaction”<sup>24</sup>. According to this definition witness is the person who is the eye witness to mean a person who was present at the crime scene and witness the commission of an offence.

Definition of witness according to the Whistleblower and Witness Protection Act No. 20 of 2015, means “any person who gives or agrees to give evidence before a court or quasi-judicial body or makes a statement to a law enforcement agency” this is provided under Section 3 of the said Act.

Witness can be any person who witness the crime (eye witness), an expert witness and also can be justice collaborator to mean a person who is a criminal but decide to collaborate with the prosecutor to bring the perpetrator into justice, so he or she to give evidence against the criminal master mind under the agreement between him or her with the state (prosecutor)<sup>25</sup>.

### **2.1.1. Eye Witness**

Eye witness this refer to the witness who was present at the scene of the crime and witness the crime when was committed by the accused person. Therefore, the testimony of the eye witness is called a direct evidence<sup>26</sup>. So the testimony of the eye witness is considered to be the best evidence since it does not need corroboration and play a virtue role in criminal proceeding since court reach a verdict base on the evidence adduced<sup>27</sup>. This also mean that witnesses play important role in administration of criminal justice since the court convict the accused person base on the weight of evidence adduced before it and due to the fact that witness are important in administration

---

<sup>24</sup> Garner Bryan. A., (Ed) Black’s Law Dictionary, 1596, 17<sup>th</sup>edn, West Group, St. Paul, Minnesota, 1596.

<sup>25</sup> United Nations Office on Drugs and Crime(UNODC) report on “Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime”, Vienna, New York, 2008, 5.

<sup>26</sup> H. Judy, *Criminal Evidence*, Wadsworth Cengage Learning USA, 2009<sup>6</sup>, 104

<sup>27</sup> A. Omar, *Comparative Study on Witness Protection in India and Other Nations* of 2016 Retrieved from <https://racolblegal.com/comparative-study-on-witness-protection-in-india-and-other-nations/> (Accessed on 10 December 2020)

of justice, so the accused person can tamper with the witness testimony by threat the witnesses, impose fear, intimidate, influence or harassing the witnesses so that they won't reveal the truth in court and turn hostile<sup>28</sup>.

### **2.1.2. Justice Collaborator**

This refer to the person who was part of the criminal organization or has participate in the commission of the offence but decide to cooperate with the prosecutor to bring the remained perpetrators to justice, so the justice collaborator must have knowledge regarding the operation, structure and the connection of the criminal organization has with other criminal organization. Justice collaborator testifies against the members of criminal organization upon the agreement between him and the state that his sentence will be reduced, that himself and his family will be protected by the state<sup>29</sup>. Therefore, justice collaborator is key witnesses used by the state to dismantle the criminal organizations and brought the perpetrators to justice. So, in order the state to effectively fight against organized crimes there must be an effective witness protection program since these justice collaborators are the main participants in witness protection programme.

### **2.1.3. Hostile Witness**

Is the person who testify against the party which called him to the court of law to testify in his favour. In other word hostile witness is the witness who testify on favour of the adverse party, also hostile witness can be called "adverse witness" or "unfavourable witness" to mean a person who give a false testimony regarding the facts of the case and the fact in issue which he obvious

---

<sup>28</sup> N. Varghese, *Witness Protection: Problems Faced and Need for a Protection Programme in India* of 2015, Retrieved from <https://www.lawctopus.com/academike/witness-protection-problems-faced-and-need-for-a-protection-programme-in-india/> (Accessed on 10 December 2020).

<sup>29</sup> United Nations Office on Drugs and Crime(UNODC) report on "Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime", Vienna, New York, 2008, 19.

know<sup>30</sup>. Hostile witness can be defined to mean a person who biased against the examining party also is a person who is unwilling to testify or who is identified with an adverse party<sup>31</sup>. Witnesses are eyes and ears of justice, since they play importance of primacy of the orality of the trial process, eye-witness account would require a careful independent assessment and evaluation for their credibility<sup>32</sup>.

#### **2.1.4. Expert Witness.**

Expert witness is defined to mean the testimony given by those qualified people to speak with authority regarding scientific, technical or professional matter<sup>33</sup>, for example an expert witness can be medical expert (forensic expert) or handwriting expert as provided under Section 47<sup>34</sup>.

This refers to a person who testify before the court of law based on the professional judgement, so expert witness gives an opinion base on the field which he or she has skills and knowledge and experience in the field which he has been called to give opinion before the court of law when the court think it necessary to be given such professional judgement by the expert witness<sup>35</sup>. Tanzania as a member state to United Nations Convention Against Corruption of 2003 is also obliged to enact law which provides effective protection to expert witness who testify before the court of law from being victimize by the accused<sup>36</sup>.

#### **2.1.5. Victim-Witness**

Victim can be defined to mean a person who suffer injury as the result of offence committed by the accused. The victim must be a natural person and also can be the one who the crime was

---

<sup>30</sup> C.J M. Monir, *Textbook on the Law of Evidence*, Universal Law Publishing Co., New Delhi- India, 2013<sup>9</sup>, 488.

<sup>31</sup> Garner Bryan. A., (Ed) Black's Law Dictionary, 17<sup>th</sup> Ed, West Group, St. Paul, Minnesota, 1633.

<sup>32</sup> Dr. A Singh, *Principle of the Law of Evidence*, Central Law Publications, Allahabad, 16<sup>Ed</sup>, 2007,489.

<sup>33</sup> United Nations Human Rights Office of the High Commissioner, *The Protection of Victims and Witnesses*,2010,63.

<sup>34</sup> The Evidence Act [CAP 6 R.E 2019]

<sup>35</sup> J. Hails., *Criminal Evidence*, 6<sup>th</sup> Edition, Cengage Learning, Ohio, 2010,69.

<sup>36</sup> Article 33 of the United Nations Convention Against Corruption of 2003.

committed against (direct victim of crime) or the relatives of the person who suffer injury as the result of the crime committed<sup>37</sup>. Victims are the ones who report crime and are the witnesses of the prosecution during court proceeding, so it is important for victims to be accorded a proper protection so as to enable them to report crimes committed against them and to testify during proceeding.

Therefore, a victim can be the one who has been harmed direct or indirect by an action of the accused person, also can be a parent or legal guardian when a victim is a minor or incompetent, family members or relative when the victim is deceased or incapacitated. But the most important thing is that he or she must be harmed by a crime or suffers direct or threatened physically, emotionally or financially harm as the result of the commission of a crime<sup>38</sup>.

The victim play vital role in criminal justice since victims are the ones who report crime and also give information or evidence before the court of law, so the testimony of victims and witness enable the court to arrive at the appropriate punishment for the accused or offend and assure fair trial.<sup>39</sup> So because of their role in criminal justice therefore victim must be accorded with protection so as to guarantee a fair trial and dispensation of justice. As it was stated by The Honorable Supreme Court in the case of *NHRC v. State of Gujarat*<sup>40</sup> held that “the trial must be fair not only to the accused but also to the victim. Protection of victim and witness becomes necessary in several cases.”

---

<sup>37</sup> Section 2 of the Victim Protection Act no. 17 of 2014.

<sup>38</sup> Cliff R & Frank S., “*Criminal Law Today; An introduction with capstone cases*, Third Edition” Pearson education Inc., New Jersey, 2006,85.

<sup>39</sup> United Nations Human Rights Office of the High Commissioner, *The Protection of Victims and Witnesses*, A Compilation of Reports and Consultations in Uganda of 2010,21.

<sup>40</sup>2003 (9) SC 329.



### **2.1.5.1. Victimization.**

Means any act or omission that renders a person or community a victim, so victimization can be an offence which cause physical, emotion, or financial injuries, to the victim<sup>41</sup>. Witness protections are important to avoid victimization of witness in sense that when witness are harassed, threatened, bribed, or intimidated by the act of accused person to not appear or adduce the evidence before the court that lead to unfair trial as provided under Section 3(b)(v)<sup>42</sup>. Also, victimization is an offence which is punished for conviction and sentence to fine of five hundred Tanzanian shillings or to imprisonment to a term not exceed one year or both<sup>43</sup>.

### **2.1.5.2. Victim Impact Statement**

This refers to the statement given by the victim which describe the psychological, emotional, physical, economic or social impact of the crime committed against the victim this is provided under Section 2<sup>44</sup>. So, it can be defined to mean a written document which describe the trauma, losses and injuries suffered by the victim's family or relatives, this statement it used to inform the judge about the financial, physical and psychological injuries as an impact of the crime on the victim and victim family. Also, this statement is used as a guideline to guide the court to reach an appropriate punishment to the offender<sup>45</sup>. Also, this is provided under section 12 of the Victim Protection Act no. 2014.

---

<sup>41</sup> Victim Protection Act no. 17 of 2014.

<sup>42</sup> *Ibid.*

<sup>43</sup> Section 52 (3) (4) of Prevention and Combating of Corruption Act [CAP 329 R.E 2019]

<sup>44</sup> *Ibid.*, 41.

<sup>45</sup> Cliff R & Frank S., "*Criminal Law Today; An introduction with capstone cases*, Third Edition" Pearson education Inc., New Jersey, 2006,86.

## **2.2. Whistleblower**

Whistleblower can be referring to mean an employee who give information regarding the wrongdoing of his or her employer, to the government agency or law enforcement agency<sup>46</sup>. Therefore, whistleblower can be said as a person who disclose the offence committed by an employer within the office and such disclosure is reported to the government or law enforcement agency. Section 3<sup>47</sup> define whistleblower to mean any person who makes the disclosure of wrongdoing in accordance with the provision of this Act.

## **2.3. Informant**

This refer to the person who give information about the commission of an offence or disclose the intention of the person to commit crime. also can be a person who have critical information or evidence<sup>48</sup>. Whereby the law impose duty to any person who is aware of the offence committed or is about to be committed to report such incidence to the police, so every person has the duty to report crime or give information about the crime as provided under Section 7(1)<sup>49</sup>. Also the law protects the informant from civil or criminal proceeding against him for damage incurred as the result of the information disclosed<sup>50</sup>. Also section 51<sup>51</sup> protects the identity of the informers from being disclosed to the public.

## **2.4. Witness tampering**

Witness tampering, means the act of obstructing justice by intimidating, harassing or influence the witness from testify before the court of law and discourage the people to report

---

<sup>46</sup> Garner Bryan. A., (Ed) Black's Law Dictionary, 17<sup>th</sup> Ed, West Group, St. Paul, Minnesota, 1627.

<sup>47</sup> The Whistleblower and Witness Protection Act no. 20 of 2015.

<sup>48</sup> United Nations Office on Drugs and Crime (UNODC) report on "Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime", Vienna, New York, 2008, 5.

<sup>49</sup> The Criminal Procedure Act [ CAP 20 R.E 2019]

<sup>50</sup> Section 7(2) of the Criminal Procedure Act [ CAP 20 R.E 2019].

<sup>51</sup> Prevention and Combating of Corruption Act [CAP 329 R.E 2019]

crimes<sup>52</sup>. Witness tampering amount to an offence of obstruction of justice contrary to Section 110(a) and Section 114(1)(f)<sup>53</sup>. Witness protection programme is important since it reduce the risk of witness tampering and encourage witness and victims to attend court proceeding and adduce the evidence.

## **2.5. Concept of Witness Protection**

Witness protection this refer to the protection measures applicable at any stage of criminal proceedings which are offered by the state to the witnesses who testify before the court of law, protection is offered to witness who are at risk so as to guarantee the physical safety of witness in order to ensure the effective cooperation in providing testimony before the court of law, also protection can be offered to the whistleblowers who report crime to the authority from retaliation by the employer<sup>54</sup>. So, the state has the obligation to offer protection to witnesses who are compelled by the law or on their own accord testifies before the court of law, so that the witnesses won't suffer any damage or injury as an act of retaliation of the offender who was convicted based on the testimony of that witness. Protection shall be offered during investigation process or before trial, during the trial and after the trial<sup>55</sup>.

Protection measures which are offered to the witness must be proportional to the threat or risk posed by the offender to the witness or victim for the reason of procure non-appearance of such witness or victim in court proceeding and also the value of the evidence or information held by the witness in facilitating the fair trial.<sup>56</sup> There are major two protective measures which can be

---

<sup>52</sup> Garner Bryan. A., (Ed) Black's Law Dictionary, 17<sup>th</sup> Ed, West Group, St. Paul, Minnesota, 1596.

<sup>53</sup> The Penal Code Act [ CAP 16 R.E 2019]

<sup>54</sup> United Nations Human Rights Office of the High Commissioner, *The Protection of Victims and Witnesses*, A Compilation of Reports and Consultations in Uganda of 2010,53.

<sup>55</sup> *Ibid*, 52.

<sup>56</sup> *Ibid*, 54.

accorded to the witness or victim who is at risk of being intimidated or threatened or harassed due to his participation in criminal proceeding those measures are;

### **2.5.1. Administrative or operational measures**

This are measures which are offered by competent authority or designated institution such measures may include the relocation of the witness to another residence, assign new identity to the witness, provide transportation service to witnesses by taking them to the court and taking them back to their residence and all other necessary service which the witness is entitled<sup>57</sup>.

### **2.5.2. Procedural measures (judicial protection)**

This are protective measures which are done by the court to protect witness who may be in danger as the result of him agreed to cooperate with the authority in their investigation or agree to testify before the court those measures include protection of identity whereby the court may make an order to not disclose the true identity of the witness and the where about of the witness<sup>58</sup>, the witness testimony may be given through the use of communication technology such as conference or other adequate means<sup>59</sup> and also the court may conduct trial in camera without the presence of the public for the purpose of protect the safety of the witness or victim against the reprisal of the accused person<sup>60</sup>.

### **2.5.3. The concept of witness protection in Tanzania prior to the enactment of the Whistleblower and Witness Protection Act No. 20 of 2015.**

The concept of witness protection is not a novel concept in Tanzania simply because the elements of witness protection existed in different legislations prior to the enactment of the

---

<sup>57</sup> J. Samaha, *Criminal Justice, Sixth Edition*, Thomson Learning Academic Resource Center, London, 2003, 53.

<sup>58</sup> Section 188 (1) & (2) of the Criminal Procedure Act [CAP 20 R.E 2019].

<sup>59</sup> Section 22 of Anti-Money Laundering Act [CAP 423 R.E 2019].

<sup>60</sup> Section 34 (4) of the Prevention of Terrorism Act No. 21 of 2002.

Act.<sup>61</sup> Also, there is a case which was decided to emphasis on the elements of witness protection in our legislation in the case of *Hatibu Gandhi v. Republic*<sup>62</sup>. Whereby in this case the name of witnesses was not disclosed because of witness's security concern.

The Criminal Procedure Act is one among other legislation which contain the element of witness protection since it provide for the order which is issued by the court to prohibit publication of names and identity of witness for security measures to ensure the effective administration of justice<sup>63</sup> and many other legislations which contains the elements of witness protection including the conducting of trial in camera and also allow witness to testify through means of communication technology like video conference<sup>64</sup>.

#### **2.5.4. The concept of witness protection after the enactment of Whistleblower and Witness Protection Act No. 2015.**

Despite the fact that the law was enacted to regulate the aspect of whistleblower and witness protection in Tanzania but the Act is not sufficiently providing for the effective witness protection in Tanzania, since the law does not provide for the designed institution to offer protection to witness and whistleblowers in sense that the law impose obligation to Competent Authority to offer protection to witness and whistleblowers. Whereby the definition of Competent Authority means the head of private or public institution where the wrongdoing committed and reported, or the person who has the obligation to investigate the wrongdoing when the wrongdoing is committed outside the public or private institution as provided under section 3<sup>65</sup>. Therefore, this definition

---

<sup>61</sup> A. Y. Mwenda., Witness Protection in Tanzania, Resource Material Series No. 86,68 pg. 67 retrieved from <https://www.unafei.or.jp/publications/pdf> (Accessed on 12 September, 2020).

<sup>62</sup> [1996] T.L.R.13.

<sup>63</sup> Section 188 of the Criminal Procedure Act [CAP 20 R.E 2019].

<sup>64</sup> Section 22 (2) of Anti-Money Laundering Act [CAP 423 2019] & Section 34 (4) of the Prevention of Terrorism Act No. 21 of 2002.

<sup>65</sup> The Whistleblower and Witness Protection Act No. 20 of 2015.

does not make practical sense simply because by imposing obligation to various institution to offer protection to whistleblowers and witnesses is impracticable.

## **2.6. Concept of Witness Protection Programme**

Witness Protection Program this refer to the institution created for the purpose of offer protection to the witnesses who are in endanger or at risk of being harassed or intimidated or threaten due to their participation in crime investigation or testifying before the court of law<sup>66</sup>. So witness protection program ensures the safety of the witness, victim and whistleblower, since witnesses are ears and eyes of justice simply because it helps the court to dispense justice and also guarantee of fair trial so that the criminals are bring in for justice. As cemented in the case of *Zahira Habibulla H. Sheikh and Another v. State of Gujarat*<sup>67</sup> where the Honorable Supreme Court stated “that once the witness is incapacitated to testify before the court of law as the result of intimidation, harassment of forced to give false evidence that would not result to fair trial.

Witness Protection Programme provides for the guideline and procedure for a person to be accepted at the program, whereby it provides for the manner in which the application for protection is made and the authority which have the mandate to determine the application made to it by assessing the risk of danger posed to such witness and the value of information possessed by such witness,<sup>68</sup> also the program shall determine the protective measures to be employed to ensure the safety of such witness those measures include relocate the witness to another resident, to assign new identity to witness, escort the witness to the trial, transportation service and any other

---

<sup>66</sup> P. B. Gerstenfeld, *Criminal Justice; Volume 3*, Salem Press Inc. California, 2006, 1173

<sup>67</sup> 2004 (4) SCC 158 SC

<sup>68</sup> Section 5 & 6 of the Witness Protection Act [CAP 79 R.E 2012]

necessary measures to ensure protection to witness<sup>69</sup>. So, after the witness is accepted to the programme he or she must sign the memorandum of understanding

## **2.7. Witness Protection Unit**

This refer to the Unit which has been entrusted with the mandate to implement a witness protection programme and also responsible to take care of the protective measures pass by the WPP include physical security, relocation to another residence or employment and change of identity of the protected person (a person included under the program)<sup>70</sup>. In Kenya the WPU is established under section 3A of the Act<sup>71</sup>. On the other hand, Tanzania has no witness protection unit to establish and implement the WPP.

## **2.8. Witness Protection Authority**

This refer to the authority which has been entrusted with the power to oversee, coordinate and implement the WPP, also has the mandate to determine the criteria for admissions. So, Director of the WPA is the authority which make the decision on the matter of admission to and removal of the person from the program, duration of the protection, protective measures to be taken, procedures of the programme and other related matters regarding the operation of the program<sup>72</sup>.

## **2.9. Witness Protection Application**

This refer to the application made by the witness or a person related to the witness who believe that his safety is at risk or may be under threat or endanger made such application to the WPP to be included in the programme<sup>73</sup>. The application for protection can be made by the witness

---

<sup>69</sup> P. B. Gerstenfeld, *Criminal Justice; Volume 3*, Salem Press Inc. California, 2006, 1174

<sup>70</sup> United Nations Office on Drugs and Crime (UNODC) report on “Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime”, Vienna, New York, 2008, 5.

<sup>71</sup> The Witness Protection Act [CAP 79 R.E 2012]

<sup>72</sup> *Ibid*, 70.

<sup>73</sup> *Idem*, 69.

himself, also can be made by the public prosecutor, legal representative, parent or legal guardian of the witness, intermediary or law enforcement agency when the witness is unable to make such application because of any specific reason<sup>74</sup>.

#### **2.10. Witness Protection Fund**

This refers to the special funds allocated to the WPP to cover the financial activities of the programme and the expenses incurred during the operation of the programme. Since, the activities of guarantee protection to witnesses or his relatives, whistleblowers and victims who are endangered involves high financial activities with high cost, therefore it requires a special fund to cover the expenses of the programme like setting up the programme, build safe house, relocate witness to another residence and even conduct public awareness campaigns and other operations of the WPP<sup>75</sup>.

#### **2.11. Memorandum of Understanding.**

This refers to the voluntary agreement entered between the witness and the WPP where by the witness agreed to be included in the programme and agree to give information and to testify before the court regarding to the proceeding in hand. The memorandum of understanding sets the terms and conditions of the protection, the details of the witness who is included under the program, details of the protection and assistance offered by the program, the rights and duties of the witness and also the termination of protection and any other information necessary to the protection program<sup>76</sup>.

---

<sup>74</sup> Rule 5 (1) (2) of the Witness Protection Regulations, 2011.

<sup>75</sup> United Nations Office on Drugs and Crime (UNODC) report on “Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime”, Vienna, New York, 2008, 50.

<sup>76</sup> Section 7 of the Witness Protection Act [ CAP 79 R.E 2012].



When the witness who has been included under the witness Protection Program breach the memorandum of understanding therefore such witness will be removed from the witness protection program<sup>77</sup>. Something to note is that memorandum of understanding is concluded between the witness and all other participants in the protection program and witness must be above the age of eighteen years or it can be signed by the parent or guardian of the witness where such witness is below eighteen years or lacks legal capacity<sup>78</sup>. The MoU is provided under Section 7<sup>79</sup>. Memorandum of understanding can be termed as the protection agreement as provided under Section 11<sup>80</sup>.

## **2.12. The Concept of Witness Protection Program in connection to Right to Fair Trial**

Tanzania follows an adversarial system of justice administration where it is the duty of the prosecutor to prove the case beyond reasonable doubt as provided under section 110 (1) (2)<sup>81</sup>, so in proving the guilty of the accused person the prosecutor relies on the evidence and testimony adduced by witness before the court. This means witness are eyes and ears of justice as it was stated by English Philosopher Jeremy Bentham, also he said that witness is the important aspect in dispensation of justice and the quality of fair trial is guaranteed by the presence of witness<sup>82</sup>.

In assuring fair trial the witness and the accused person must be granted the right to be heard before the court of law in this context the accused person and victim are entitled to fair trial as provided under Article 13 (6) (a)<sup>83</sup>. Therefore, victim's right to fair hearing is achieved through witness protection program since it will guarantee the fair trial, in sense the witnesses will testify

---

<sup>77</sup> Cliff R & Frank S., "*Criminal Law Today; An Introduction with Capstone cases*, Third Edition" Pearson Education Inc., New Jersey, 2006,1175.

<sup>78</sup> Section 5 (2) (c) of the Witness Protection Act [CAP 79 R.E 2012].

<sup>79</sup> *Ibid*, 78.

<sup>80</sup> Witness Protection Act 112 of 1998 of South Africa.

<sup>81</sup> The Evidence Act [CAP 6 R.E 2019]

<sup>82</sup> Dr. A. Singh, *Principles of the Law of Evidence*, Darbhanga Colony, Allahabad, Central Law Publication, 16<sup>ed</sup>, 2007,489.

<sup>83</sup> The Constitution of the United Republic of Tanzania of 1977 Cap 2 as amended from time to time.

without any intimidation, harassment, coercion, influence, manipulation or threatening as the reprisal of the accused person to tamper with the witnesses and result to the witness turning hostile due to fear of his life or the life of his relatives and the properties<sup>84</sup>. As it was stated by The Honorable Supreme Court in case the of *NHRC v. State of Gujarat*<sup>85</sup> held that “the trial must be fair not only to the accused but also to the victim. Protection of victim and witness becomes necessary in several cases.”

Also, in the case of *Mahender Chawla and others v. Union of India and others*<sup>86</sup>. Where by the court said that witness protection is the constitutional right since witness are eyes and ears also backbone in decision making, witness protection must be offered to witnesses since witness suffer harassment a lot sometime threatened or even bribed as the result witnesses turning hostile and lead to unfair trial and miscarriage of justice. So, the state has an obligation to grant protection to the witness and victims.

### **2.13. The Concept of Witness Protection and Human Right.**

State has been vested with obligation to protect the right and welfare of the citizen where by victim and witness have the right to protection under all human rights international instruments and regional instruments. Whereby, they do not lose the right to such protection because of being involved in judicial or non- judicial proceedings so the state have an obligation to adopt the specific measures to protect the rights of victims and witness from being threatened, reprisal and to violation of their right to dignity as provided under Article 10<sup>87</sup>. Not only that but also the concept of witness and victim protection is provided under Article 6<sup>88</sup>. This article addresses the matter of witness

---

<sup>84</sup> P. Dhār, *Witness Protection and Justice Delivery System in India- a Critique*, iv, Gorgotias Journals of Legal Studies1, (2016) 23.

<sup>85</sup> 2003 (9) SC 329.

<sup>86</sup> Writ petition (Criminal) No. 156 of 2016.

<sup>87</sup> International Covenant on Civil and Political Rights of 1966.

<sup>88</sup> The Convention on the Elimination of All forms of Discrimination Against Women of 1981.

protection. And provided that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence or to unlawful attacks on his honor and reputation” this is provided under Article 17<sup>89</sup>. Also the Appeals Chamber of the International Criminal Court recently ruled

That protection should be in the principle, be available to any one put at risk by the investigation of the prosecution and noted that “the specific provision of the statute and the rules for protection not only of witness, victim and members of the families, but also other persons at risk on account of the activities of the court, are indicative of an overarching concern to ensure that persons are not unjustifiably exposed to risk through the activities of the court”<sup>90</sup>.

#### **2.14. Importance of Witness Protection Program**

It will facilitate effective administration of criminal justice in sense that by offer protection to witness and victim it will procure the participation of witness in criminal investigation and give testimony in the court of law, also victim will be encouraged to report crimes and participate in court proceeding without any fear of retaliation or reprisal of the accused person. So, by establishing an efficient and effective WPP it will ensure fair trial to the victim, since the witnesses and victims will participate to the court proceeding without fear of being harassed, intimidated or threatened by the accused person<sup>91</sup>.

Also, WPP is the tool used to fight against organized crimes and other serious crimes like money laundering, terrorism, corruption, murder and other great human right violation. So, the program is important in sense that its protective measures defend the witnesses and victims from being subjected to the harsh consequence of the trial. Therefore, through the protective measures offered by the program whistleblowers will be encouraged to report the crimes committed within

---

<sup>89</sup> International Covenant on Civil and Political Rights of 1966.

<sup>90</sup> *Prosecutor v. Katanga and Ngudjolo*, 13 May 2008 (ICC-01/04-01/07-475)

<sup>91</sup> P. Dhār, *Witness Protection and Justice Delivery System in India- a Critique*, iv, Gorgotias Journals of Legal Studies1, (2016).

the public offices and private offices which help to fight against crimes. Also, since the witnesses and victims will be free from intimidation, coercion, harassment, threats and bribe it will facilitate their participation in investigation and give testimony before the court which help the court to reach a corrective judicial decision and the perpetrator will be punished, also it will reduce the rate of crimes in the society<sup>92</sup>.

### **2.15. Reasons for witness Protection Program**

The state has the duty of care to protect the rights and security of its citizens. So, the witnesses and victims who are at the risk of being threatened or harassed or intimidated as retaliation of the accused due to their participation in investigation and trial against such accused are also the citizens of state, therefore they are entitled to the protection guaranteed by the state<sup>93</sup>. The state by create a good and safe environment for the witness and victim to participate in criminal investigation and in trial by give testimony it ensures the fair trial and rule of law. So, rule of law is achieved through proper judicial process, therefore by offer protection to witnesses and victims will enable the victims to report crimes and witnesses will give testimony without any fear of being subjected to harsh consequence of trial. This will contribute in maintaining the rule of law and also dispensation of justice<sup>94</sup>.

### **2.16. Conclusion**

This Chapter has provided a deep discussion on all issues relating to witness protection program. However, the chapter has discussed the situation prior and after the enactment of the Whistleblower and Witness Protection Act No. 20 Of 2015 and also the crucial aspect on the matters relating to

---

<sup>92</sup>United Nations Human Rights Office of the High Commissioner, *The Protection of Victims and Witnesses*, A Compilation of Reports and Consultations in Uganda of 2010,55.

<sup>93</sup> Article 13 (1) & 16 (1) of the Constitution of the United Republic of Tanzania of 1977 Cap 2 as amended from time to time

<sup>94</sup> *Ibid*, Article 13 (6) (a) and 107A

Witness Protection Program. Also, the under this chapter there are many terms which has been discussed like witness, whistleblower, victim-witness, justice collaborator, witness protection and witness protection program and other concepts. Also, this chapter discussed the importance of witness protection program and the reason for witness protection program. These concepts will help the reader to understand this study in the next chapters to come.

## **CHAPTER THREE**

### **LEGAL FRAMEWORK RELATING TO PROTECTION OF WITNESS IN TANZANIA.**

#### **3.0. Introduction**

This chapter examine the laws relating to witness and whistleblower protection available in Tanzania and Kenya. So this chapter will look at the laws start with international instruments, regional instrument and domestic legislations and finally the conclusion of the chapter.

#### **3.1. International Instruments.**

Under International Instruments the concept of whistleblowers and witness protection is explained as hereunder the following instruments.

##### **3.1.1. United Nations Convention Against Corruption of 2003.**

This Convention was adopted by the UN General Assembly on 2003 which it is a multilateral treaty against corruption. impose duties to the member states to take necessary measures to protect witnesses, victims, experts' witnesses and the relatives of witnesses from potential retaliation or intimidation by the accused person. Whereby the protective measures include the relocation and non- disclosure of the witness identities this is provided under Article 32.

Also, the Convention impose duty to the member states to incorporate protective measures to offer protection to whistleblower who report crimes from being subjected to unjustifiable treatment due to their disclosure made to the competent authority or law enforcement agency this is provided under Article 33.

Furthermore, the Convention impose duty to the member states to take necessary measure to encourage and protect justice collaborator to cooperate with the law enforcement agency by disclose information which is essential to the competent authority to investigate and collect substantial evidence regarding the offence of corruption against the suspect of crime, this is stipulated under Article 37. Also, the Convention require the member states within their domestic legal system to enact legislation which will create offence and provide punishment against the person intentionally who wants to obstruct the dispensation of justice by tampering with the witness as provided under Article 25.

### **3.1.2. United Nations Convention Against Transnational Organized Crime of 2000.**

This Convention was adopted by the UN General Assembly resolution 55/25 on 2000, the Convention was adopted against transnationals organized crimes such as money laundry and corruption. This Convention impose requires the member states to provides effective protection of witnesses and their relatives as one of the effective means in combating or preventing organized crimes, not only that but also the convention require the member country to enact the evidential rules that permit giving testimony by using communication technology for the purpose of protecting the witnesses this is provided under Article 24.

The Convention also oblige the member states to take appropriate protective measures to accord protection to victims and also provide assistance to victims for the purpose of encourage victims to report crimes and participate on the investigation and give testimony during court proceeding. Also, to provide appropriate procedures for them to get compensation and restitution as provided under Article 25.

Furthermore, the Convention requires the member states to make appropriate measures to encourage justice collaborator to participate in investigation through disclose the identity, nature,

composition, structure, location or activities of the organized criminal groups, the links of those organized criminal groups and the offences committed by those groups. So, the state shall offer protection to justice collaborator *mutatis mutandis* as what provided to witnesses as provided under Article 26. Also, the Convention require the member states to enact legislation within the legal system to penalize the offence of obstruction of justice through witness tampering as provided under Article 23.

### **3.2. Regional Instrument.**

Under Regional level the concept of whistleblowers and witnesses' protection is described as hereunder;

#### **3.2.1. African Union Convention on Preventing and Combating Corruption of 2003.**

This Convention was adopted by the AU on 2003 to fight rampant political corruption on the Africa continent. So it imposes an obligation to member states to adopt legislative and other necessary measures for protection of witnesses and informants in corruption and related offences including protection of their identities. Also, the member states ensure the safety of the whistleblower who report crimes by provides protective measures to whistleblowers so that they are not subjected to harsh consequences as the result of the disclosures as provided under Article 5(5) & (6).

### **3.3. Domestic Legislations.**

Under domestic level there are various laws that are basically regulate the matter of whistleblowers and witness protection although are still deficient in protecting witnesses and their implementation as prescribed hereunder;



### **3.3.1. The Constitution of the United Republic of Tanzania of 1977 Cap 2 as amended from time to time.**

The Constitution guarantee the fair trial to both victim and accused in sense that it requires that any person who is rights or duties is determined by the court or any tribunal shall be entitled to a fair trial as provided under Article 13(6) (a). The Constitution also guarantee protection to citizens and every person is entitled to respect and protection of his person, the privacy of his own person, and his family. So, the citizens are entitled security including witnesses, whistleblowers and victims who participate in criminal proceeding<sup>95</sup>.

### **3.3.2. Whistleblower and Witness Protection Act No. 20 of 2015.**

This is the legislation that govern the protection of witness in Tanzania, the Act was intended to regulates all matters surrounding witness protection during investigation, prosecution and after conclusion of the case basically the scope of protection under this Act is broader in the sense that it goes well beyond witness protection in court it covers reward, compensation and relocation of witness<sup>96</sup>.

### **3.3.2. Economic and Organized Crimes Control Act [CAP 200 R.E. 2019]**

This Act was enacted to regulate the matter of economic and organized crime whereby Section 53 allows the IGP in consultation with the Director of Public Prosecutions to arrange for provision of security. Further, section 53(2) permits application of other laws on witness protection. The provision is limited in scope. It is confined to a single aspect of protection that is security.

---

<sup>95</sup> Article 16 (1) & 13 (1) of the Constitution of the United Republic of Tanzania of 1977 Cap 2 amended from time to time.

<sup>96</sup> Section 12 & 13 of the Whistleblower and Witness Protection Act No.20 2015.

### **3.3.3. Prevention and Combating of Corruption Act [CAP 329 R.E 2019].**

This Act criminalizing corruption offence and it is applicable to corruption offences only. The Act introduces partial protection under Section 52 of the said Act provide immunity for witnesses, experts and victims from being subjected to criminal or civil proceeding as the result of their disclosure. Also it went further and criminalize the acts of victimization by impose punishment for any person victimize the witness or informant or victim as provided under section 52 (3) (4). Among other thing the Act protects the identity of informers from being disclosed to the public as provided under section 51 of the Act.

### **3.3.4. Penal Code [CAP 16 R.E. 2019]**

This Act is main penal law since it defines crimes and provide punishment, whereby under Section 110 criminalizes acts that are intended to obstruct the due course of justice by preventing a person from appearing and giving evidence. Also, Section 114(g) criminalizes acts that are done against a witness in revenge of evidence he gave and prohibits employer from dismissing a servant on the ground that he has given evidence in court.

### **3.3.5. The Criminal Procedure Act [ CAP 20 R.E. 2019].**

This is the main procedural law in criminal matters. It governs all criminal proceedings in subordinate courts and High court except in primary court. It is applicable in all criminal matters save where it expressly and specifically under Section 188 has introduced aspects of witness protection. The section also allows witness to testify via communication technology such as video conference in the sense that it mitigates the fear of witness to physically face the accused while in dock. However, the provision also caters for the protection of witness identity and whereabouts of the witness.

### **3.3.6. The Evidence Act [ CAP 6 R.E. 2019]**

The Act enacted specifically to cover on the rules of evidence and the matter on adducing evidence in the court of law, under Section 133(1) of the said Act permits non-disclosure of source of information in respect of commission of an offence. The witness while testifying in court is not compelled to mention a source of the information. In words the provision is intended to protect informer (whistleblower).

### **3.3.7. The Anti-Money Laundering Act [CAP 423 R.E 2019].**

This Act was enacted specifically to deals with the offence of money laundry whereby under Section 22 provides for the immunity from criminal and civil liabilities to a witness. It also allows the witness to give evidence distantly (through use of communication technology). Moreover, it permits non-disclosure of identity and whereabouts of the witness.

### **3.3.8. The Prevention of Terrorism Act No.21 of 2002.**

This is the specific legislation that regulates the matter of terrorism in Tanzania whereby under Section 34(3), the Court may make an order preventing from publishing the name and other particulars of witness. Section 34(4) empowers the court to order the proceedings to be in camera.

## **3.4. LEGAL FRAMEWORK RELATING TO PROTECTION OF WITNESS IN KENYA.**

Kenya has enacted some legislation that basically deals with witness protection as prescribed hereunder;

### **3.4.1. The Constitution of the Republic of Kenya of 2010.**

The Constitution provides that the parliament shall enact legislation for the purpose of protection of victims, the right of victims and welfare of victim. Also, it stipulates that the case can

be held in camera when it convenient for the protection of witness. This signify that the spirit of witness protection and victim originate from the constitution and also its guarantee fair trial<sup>97</sup>.

### **3.4.2. The Witness Protection Act [CAP 79 R.E 2012]**

This Act establishes, amongst other things, the Witness Protection Agency whose functions are to establish and maintain a witness protection programme, determine criteria for admission to and removal from the programme. The Agency also determines type of protection measures to be applied<sup>98</sup>. According to Section 3 the protection may extend to relatives and friends who, by virtue of their ties with a witness, may be in danger. Furthermore, the law, under Section 3I introduces Witness Compensation Fund of which fund is used to compensate the victim or his family, amongst other things. The Act also provide for the source of fund which is from the Consolidated Fund which will be used to cover the expenses and operations of the Agency as provided under section 3H.

### **3.4.3. The Victims Protection Act No. 17 OF 2014.**

The purpose of this Act is to provide protection to victims of crime in particular to provide for reparation and compensation to victims of crime in relation to the crime committed by the offender. This Act provides for the rights of victims. Therefore, this Act is put into place to provide protection and assistance to victims of crimes.

---

<sup>97</sup> Article 50 (1) (8) (9) of the Constitution of the Republic of Kenya of 2010

<sup>98</sup> Section 3A, 3B, 3C & 3G of the Witness Protection Act [CAP 79 R.E 2012]

### **3.5. Conclusion**

This Chapter has presented a critical analysis of international instruments, regional instrument and domestic legislation of Tanzania and Kenya which governing the matter of witness and whistleblower protection in both countries.

## **CHAPTER FOUR**

### **A COMPARATIVE ANALYSIS ON THE WHISTLEBLOWER AND WITNESS PROTECTION IN TANZANIA AND KENYA**

#### **4.0. Introduction**

This chapter consist of the analysis of the laws regarding the witness protection whereby it will compare the laws governing the concept of witness protection program between Tanzania and Kenya. Therefore, this chapter will provide the critical analysis of the laws regulate the concept of witness and whistleblower protection in Tanzania and Kenya. So, this chapter will answer the research objectives and hypothesis.

#### **4.1. Analysis of the Whistleblower and Witness Protection Act No. 20 of 2015**

This Act was enacted specifically to regulate and oversee the matter of whistleblower and witness protection in Tanzania as the measures to ensure the safety of witnesses and whistleblowers who are at risk or threat of reprisal by the accused due to their participation on investigation and court proceeding. Also, the protection is extended to the relatives of the witness or whistleblower. It provides protective measures such as relocation and transfer of witness or whistleblower, also cover the matter of payment of reward and compensation for the purpose of promoting and facilitating report of wrong doing.

This Act was enacted with objective of promote and facilitate reporting of organized crimes, corruption offences, unethical conduct, abuse of office, illegal and dangerous activities and also to provide for witness and whistleblowers protection against potential retaliation or victimization.

Furthermore, the Act provide for legal mechanism to reward and compensate whistleblowers and witnesses and to provide for other related matter.

This Act offer protection to whistleblowers and witness as provided under Section 9 & 11 of the said Act, where by whistleblower is protected against criminal or civil proceeding in respect of the discloser he made to the competent Authority. This Act extend protection to the relatives or person close to the witness or whistleblower who may be in endanger or is likely to be endangered because of the participation of such witness or whistleblower with the law enforcement agencies.

The Act also provide the circumstance which entitle the protection to whistleblower and witness which includes that, the witness or whistleblower may be subjected to dismissal, harassment. Suspension, discrimination, intimidation or any form of victimization by his employer or member of staff. Also the life or property of the witness or whistleblower or the relatives and other person close to is endangered or likely to be endangered. The Act provide for protective measures to be offered to the witness or whistleblower who is at risk of victimization which includes relocation to another place of residence or transferred to another employment as provided under Section 10, 12 and 13 of Act. Notwithstanding the Act protect the identity of whistleblower through impose punishment of imprisonment for term not less than five years or fine of not less than 15 million shillings or both for the CA or any person under the CA who disclose the information relating to the identity of whistleblower.

The Act is insufficient since it does not provide for designed institution (WPU) which will be responsible for establishing and maintain WPP which shall take reasonable measures to protect the safety and welfare of witness and whistleblower against victimization, not only that but also the Act is bias since it guarantees the protection to witness and whistleblower who are employees

under public and private institutions or offices and is silent on the matter of protecting ordinary citizens. Also the law is silent on the matter of protection of victims of crime.

The Act does not establish a specific designated institution to take care of witness instead it entrusts the obligations to protect witness to CA which is defined under Section 3 to mean every head of institution where a witness or whistleblower is working. The definition of the Competent Authority does not make practical sense because by imposing obligation to protect witness to various institutions (CA) in fact takes away the sense of responsibility. It hampers the initiatives to report wrongdoings and testifying. Under these circumstances it is inconceivable that people would be willing to report wrongdoings committed at their working places. Also since the law is silent on the protection of ordinary citizen it hampers the cooperation of informant in reporting crime and also the procure key witness to testify before the court of law or key witnesses may turn hostile or give low quality evidence because of fear of being subjected to harsh consequences due to their participation in criminal proceeding

#### **4.2. The analysis of the Kenya Witness Protection Act [ CAP 79 R.E 2012]**

This is an Act of parliament which enacted for the purpose of provide protection of witnesses who are involved in criminal cases and other proceedings. The Act provide for the designated institution which is an independent Agency called Witness Protection Agency which establish and maintain the WPP vested with obligations to determine the criteria for admission to and removal from WPP and determine the type of protection measure to be applied this is provided under Section 3A, 3C, 3G and 4 of the said Act.

Among other thing the Act provide for WPF where by the expenditure of the agency shall be charged on and issued out of Consolidated Fund and establish Victims Compensation Fund to compensate the victims of crimes who were pleased under WPP as provided under Section 3H and



3I. The law is not bias since it does not specify the criteria to be included in WPP by basing on the employment status of a person rather the criteria to be included in WPP is based on the possession of important information regarding the case at hand and potential risk or intimidation such witness face due to his cooperation with the prosecution or other law enforcement agencies.

### **4.3. A comparison analysis of the laws.**

This part covers the comparatives analysis of the law relating to whistleblower and witness protection in Tanzania and Kenya based on the key aspects of having effective WPP.

#### **4.3.1. Witness Protection Unit.**

In Tanzania the law deals with witness and whistleblower protection<sup>99</sup> does not establish an institution which will be responsible to provide protective measures to witness, victim and whistleblower against the intimidation, coercion and retaliation from the accused person because of their participation in investigation and proceeding. So, the Act provides for the protective measures include relocation and transfer to another residence or employment but it is impracticable because there is no an institution to take charge of these issues. Therefore, due to lack of assurance of their security witness refuse to cooperate with the law enforcement agencies.

In Kenya the Act establish the Agency which is an independent institution to mean has the power to perform its function without interference from any authority<sup>100</sup>. The Agency has the mandate to provide protection to witness and implement the WPP, in sense that it provide framework and procedures to be applied when offer protection to witnesses who cooperate with the law enforcement agency or prosecution and those persons who have important information and

---

<sup>99</sup> Whistleblower and Witness Protection Act No.20 of 2015

<sup>100</sup> Section 3A & 3G of the Witness Protection Act [CAP 79 R.E 2012]

facing potential risk which endanger the safety of such witness and the relatives of the witnesses or the property of witness at risk of being destroyed by the accused as retaliation.<sup>101</sup>

#### **4.3.2. Witness Protection Application**

In Kenya the Act stipulate on the matter of witness protection application by provides who can make application for inclusion in the programme, also explain the forms used when make an application whereby when the witness make application himself and related persons he use Form A enabled through regulation 4(5)(a), when the application is made by the family member or related person to a protected witness the form used will be Form B enabling under regulation 4(5) (b) and when the application is made by the child witness the form the witness will use Form C under regulation 4(5)(c)<sup>102</sup>. On the other hand in Tanzania the Act<sup>103</sup> does not explain clearly on the matter of witness protection application nor the person who can make application, also does not stipulate the manner and the forms which will be used to make such application.

#### **4.3.3. Witness Protection Fund**

In Kenya the Act is straight forward on the aspect of WPF whereby it provides that the Fund of the programme shall be charged on and issued out of the Consolidated Fund and also under the approval of the Minister the Agency may accept grants, gifts, donations or bequests<sup>104</sup>. Compare to Tanzania where the Act<sup>105</sup> does not specify the source of fund. Moreover, the Act introduces several activities with financial implications such as relocation and compensation but

---

<sup>101</sup> *Idem*, Section 3 (2), 3B & 4.

<sup>102</sup> First Schedule of the Witness Protection Regulations, 2011

<sup>103</sup> The Whistleblower and Witness Protection Act No.20 of 2015

<sup>104</sup> Section 3H of the Witness Protection Act [CAP 79 R.E 2012]

<sup>105</sup> *Idem*, 103.

does not state the sources of fund so at this context there is a need for the government to take into consideration this matter.

#### **4.3.4. Witness Protection Authority**

In Tanzania the Competent Authority is the WPA to determine the matter of witness and whistleblower protection whereby the CA is the head or senior of the institution, but there is no establishment of WPP<sup>106</sup>. On the other hand in Kenya the Director of the Agency is the WPA entrusted with the power to oversee and implement the WPP<sup>107</sup>. The programme is managed by the Director who has the responsibility to admit into or exclude any person from the programme<sup>108</sup>, conduct assessment on the risk which endanger the safety of witness before include such witness into the programme<sup>109</sup> and then after assessment the witness must sign MoU to be accepted to the programme and the Director of the programme has the power terminate or suspend the protection and assistance<sup>110</sup>.

#### **4.3.5. Protective measures**

The Act provides for administrative measures to witness or whistleblower which are transferred to another employment or relocated to another resident<sup>111</sup>, but it does not provide for other measures including change of identity when the danger posed to the witness or whistleblower is high to require the new identity to the witness, physical and armed protection and judicial protective measure. Also, the law is silent on the matter of protection of victims of crime.

---

<sup>106</sup> Section 3, 10 and 11 of the Whistleblower and Witness Protection Act No. 20 of 2015

<sup>107</sup> Section 3A, 3C & 4 of the Witness Protection Act [CAP 79 R.E 2012]

<sup>108</sup> *Idem*, Section 5.

<sup>109</sup> *Idem*, Section 6.

<sup>110</sup> *Idem*, Section 10 & 12.

<sup>111</sup> *Idem*, Section 12.

In Kenya, the Witness Protection Act<sup>112</sup>, provides for the judicial protection measures and administrative protective measures to witness and victim<sup>113</sup> among the protection measures include the change of identity when it is important to ensure the safety and security of witness, relocation, physical and armed protection, request to the court that the case to be held in camera, conceal the publication of the identity and the information of the witness.

#### **4.3.6. Comprehensive of the law**

The law regulating the matter of witness and whistleblower protection in Tanzania is not comprehensive since it does not cover for the protection of ordinary citizens who are not employed and also fail to establish the designated institution to maintain the operation of the WPP. Among other thing the Act is more administrative than judicial. It does not cover the in-court protection such as the rights to withhold identity and testifying by using communication technology. Further, it is more focusing on whistleblower than witness who come and testify in court. Though Section 15 empowers the minister to make regulations for better carrying on the provisions of the Act, there are no regulations in place at the moment.

On the other hand, the Witness Protection Act of Kenya it seems comprehensive since it provides for the Agency which cover the aspect of witness protection, also the Minister has pass Regulations<sup>114</sup> which supplement the operation of the Act since it covers the aspect of witness protection application and the forms used for application, also provides for the matter of MoU. Furthermore, the CJ make rules of the court<sup>115</sup> under the power delegated under section 36(2) of the Act, whereby this rules cover the protection of witnesses during court proceedings.

---

<sup>112</sup> The Witness Protection Rules of Courts, 2014.

<sup>113</sup> Section 4 of the Witness Protection Act [CAP 79 R.E 2012].

<sup>114</sup> Witness Protection Regulations of 2011

<sup>115</sup> *Ibid*

#### **4.3.7. Memorandum of Understanding**

The Witness Protection Act of Kenya provides for the issue of MoU whereby after the witness is accepted to be included into the programme, he must sign the MoU which provides for the details of the protected witness, the rights and duties of the witness. Also, the witness must enter into the programme voluntary and must be signed by the witness himself or the guardian or parent when the witness is a minor or does not have legal capacity as provided under section 7 of the Act and Rule 5 and the Schedules.<sup>116</sup> While in the WWP does not cover for this aspect, so this prove that the law is not comprehensive on the important aspect of WP.

#### **4.4. Finding on the Research Objectives**

This part covers the general findings of the research and answers the findings of each general objective and specific objectives.

Findings on research general objective is intended to make analysis of the Whistleblower and Witness Protection Act in regard to effective witness and whistleblower protection in Tanzania compared to the Witness Protection Act of Kenya. The researcher found that the Law of Tanzania regarding Whistleblower and Witness Protection is insufficient since it fails to establish an independent designed institution to maintain and manage the WWP and also it biases since it concerned with the protection of witnesses and whistleblower who are employees, therefore Tanzania can learn from Kenya regarding the law and practice stipulated by the Act of Kenya.

Finding on specific objective number one which is to analyze the lacuna existed in the current law in Tanzania for whistleblowers and witness protection and how to cure its defective. The researcher found that there is a lacuna in the Whistleblower and Witness Protection Act since

---

<sup>116</sup> Witness Protection Regulations of 2011

it fails to establish an independent designed institution which will have the mandate to establish and maintain WPP compare to the law of Kenya which establish Agency which is empowered to establish and maintain WPP. So, in order to cure this, defect the law maker shall amend and insert provisions which will provide for the establishment of the designated institution oversee and maintain WPP.

In relation to specific objective number two which state that the research intends to make analysis on the biasness exist in the Whistleblower and Witness Protection Act, where the researcher found that the law is bias since it offer protection to witness and whistleblower who are employed and who disclose the wrongdoing of his employer or who testify against the interest of the employer. But it does not carter for the protection of informant and witnesses who are ordinary citizens.

In relation to specific objective number three which is to analyze the reasons to why witness turning hostile or give low quality evidence and why people does not report crime the researcher find that one major reason which cause witness to turn hostile is the lack of witness protection program since witnesses are not protected from the external threats of the witness life or the life of his relatives or destruction of property, intimidation, inducement and other methods of manipulation by the accused person himself or his family members or his defense advocate. Also, another reason is that people fear for their life or safety.

#### **4.5. Test of the Hypothesis**

The research is guided by the hypothesis that It seems that in Tanzania the current law which provides for witness and whistleblowers protection is inadequate compared to the law of Kenya.

From the findings of the research it affirms or confirm that the Whistleblower and Witness Protection Act is bias since it does not protect the ordinary citizens due to the fact that the law only provides protection to witnesses and whistleblowers who are employees against the reprisal of the employer. Also, the Act does not establish an independent designated institution to establish and maintain WWP which will provide protection to witnesses and whistleblowers on behalf of the state.

Compare to the Witness Protection Act of Kenya which establish an Agency which has been vested with mandate to establish and maintain WPP and among other things the Act provide protection to both witnesses, victims and even whistleblowers who agree to be witnesses regardless the employment status of such witness.

Therefore, the researcher reach to the conclusion regarding the hypothesis guide the research that the current legal framework does not effectively protects witnesses so, it needs amendments or enactment of a specific law on the protection of informants, victims of crime and witnesses so as to cover the protection of witnesses who are not covered by the Act.

#### **4.6. Conclusion**

This chapter presented data which was collected from various laws, articles and online materials. whereby the data collected by the researcher through the conduct analysis of the law has showed that the law inadequate since it does not effectively offer protection to whistleblowers, witnesses and more so it does not talk about the protection of victims.

## **CHAPTER FIVE**

### **5.0. CONCLUSION AND RECOMMENDATION**

#### **5.1. Conclusion**

Whistleblower and witness protection is an important aspect in the fighting against crimes and to ensure the effective administration of justice in Tanzania. So, in order to procure the cooperation of witnesses in the judicial proceeding there must be an effective mechanism to ensure that witnesses are free from intimidation, threats, coercion, and even bribe, so the protection must be accorded to the witnesses who may be likely to be subject to harsh treatment by the accused due to the cooperation of the witness with the investigators and prosecutors.

Also whistleblower must be guaranteed protection so that to encourage them to report the wrong doing committed to the public and private sector so public and private sector there must be assurance of the safety of the whistleblower and his family and also the assurance of the employment of such whistleblower who disclose the wrongdoing committed by the employer.

The findings in this study verified that the legal and operational shortcomings that are present in the Act enacted to regulate the aspect of witnesses and whistleblower protection in Tanzania. since the Act does not establish the designed institution which shall be responsible to establish and manage the witness protection programme. Also in absence of WPP there is no any guidelines to provide the procedures to be followed by the investigators and prosecution and prosecutors in assess the risk imposed to the witness and also the determination of the protective measures to be applied to ensure the safety of witnesses and also of the relatives of the witnesses. Due to lack of comprehensive law regulating witnesses and whistleblower protection and the absence of WPG it causes an impact to the administration of justice since the investigators and prosecutors fail to procure the key witnesses which lead to acquittal of the accused person.



## **5.2. Recommendation**

Based on the findings of the research which was conducted through appraisal of the national legislations, international and regional instruments as well as look on the practice of other countries the research reach up with the following recommendations.

### **5.2.1. Enactment of the comprehensive law.**

As discussed under chapter three which entails that in Tanzania witness protection measures are scattered in different legislation. The researcher recommend that the legislature should enact a comprehensive law which will cover the important aspect of WP like establishing WPU, WPA, MoU and other important aspects and judicial protection measures should be incorporated in one legislation or under the Criminal Procedure Act [CAP 20 R.E 2019]. The law to be enacted should cover the protection of victims of crime, informant and witnesses who are not covered by the current law or existing law, also to add more protective measures like physical and armed protection, change of identity and other suitable measures to ensure safety of witnesses. The Minister should make regulations to supplement the operation of the Act.

### **5.2.2. Establishment of designated Institution.**

The researcher recommends that there must be an establishment of the designate institution which shall be vested with the power to establish and manage the WPP. This institution will have the power to determine the application for protection, assess the risk, determine the criteria for inclusion in and removal from the program, the determination of the protective measures to be employed to ensure the safety of the witness and whistleblower. The designated institution will be responsible to implementing WPP, it will require professional personnel that will ensure that protection is provided accordingly, therefore the institution must be accorded with the special fund to cover the expenses of the institution since the nature of the activities of the WPP is expensive so it will require special funds to operate it.

### **5.2.3. Developing Witness Protection Guidelines**

At the moment where there is no WPP, so the office of the National Prosecution Service which has been given the power to institute and prosecute criminal cases, to develop witnesses protection guidelines that will be used as the point stick to guide the protective measures to be applied, the power to provide and developed guidelines is provided under Section 18 of the National Prosecutions Service Act<sup>117</sup> whereby the provision entails that the DPP may issue guidelines that will guide the officers and state attorneys under the office of NPS when perform their function and also Section 28 provides for the cooperation between prosecutors and investigators. This guideline will provide uniform standard on the matter of assessment or risk, collection of relevant information for witness protection and determination of the protective measures to be applied this will promote the cooperation of witnesses and whistleblowers with the state agencies.

### **5.2.4. Developing Witness Protection Charter**

The researcher recommend that the ONPS should develop a Charter which will be used as the tool to disseminate information on the rights and obligations of the witnesses. So, the Charter will be the used to educate the general public on their rights and obligations in administration of criminal justice, whereby the Charter will educate the citizens on their responsibility to report crimes and to testify before the court of law, also it will spell the rights of witnesses which include the right to protection and the right to security and free from intimidation, threats or reprisal of the accused person. Also, the language used in the Charter should be friendly in sense that it will not

---

<sup>117</sup> [CAP 430 R.E 2019].

threats or deter the witnesses since the unfriendly language will discourage witnesses to cooperate with the investigators and prosecutors.

#### **5.2.5. Raising Public Awareness**

The researcher recommend that the law enforcement agencies should use the television, radio programme, journals and seminars to educate the citizens and raise awareness to the general public about the statutory obligations imposed to the citizens to report crimes and testify before the court of law to cooperate in judicial process. since, the administration of criminal justice requires the contributions of the citizens simply because many citizens believe that it is the duty of law enforcement agencies to fight crimes and also it is the duty of the prosecutors to prosecute crimes while doesn't know that the successful of prosecution require the participation of witnesses.

#### **5.2.6. Learning study from other countries with effective Witness Protection Programme.**

The research recommends that before establishing the WWP, shall make a study visit to countries which has effectively establish the witness protection programme and has a successful functioning, so that to have knowledge on the establishment and operation of the program so as to have an effective and functioning program. so it is important for the NPS to conduct research by looking the experiences from other countries which has effective WPP.

##### **5.2.6.1 South Africa**

In South Africa WPP is regulated by the Witness Protection Act<sup>118</sup> whereby it establish Office for Witness Protection which is an independent office under the Department of Justice which deals with the matter of witness protection by determine the criteria for inclusion in the programme and the removal from the programme, determination of the protective measures, to conclude

---

<sup>118</sup> No. 112 of 1998

protection agreement with the protected person before enter into the programme.<sup>119</sup> also judicial protection I covered by the Criminal Procedure Act<sup>120</sup> which permits criminal proceeding to be held in camera, prohibit the publication of the names of witnesses or protect the witness identity or anonymity and also permit the witness to give testimony through communication means.<sup>121</sup> Tanzania can learn from South Africa on the aspect of WPP.

#### **5.2.7.2. Uganda**

Currently in Uganda there is no legislation to cater for witness protection framework but the ODPP has been vested with the mandate to offer protection witnesses and victims of the crime. So in implementing this duty the DPP develop and adopt standard guidelines which govern the prosecutors to determine the witness protection perimeters and scope of protection. The guidelines launched by the ODPP is called Victim's Rights and Empowerment Guidelines and Witness Protection Guidelines of 2019<sup>122</sup>. Tanzania can learn from Uganda under this aspect of witness protection guidelines, in sense in Uganda there is WPG which impose obligation to the ODPP to assess the witness threats, determine the criteria for witness and victims to be admitted in ODPP Witness Protection Arrangement and determine who should be protected and also the protective measures to be employed to protect the safety of witnesses, whistleblowers and victims<sup>123</sup>.

#### **5.2.7.3. Colombia**

The concept of witness protection programme originate from the Constitution of Colombia whereby the Office of the Attorney General of the National is vested with the duty to protect

---

<sup>119</sup> Section 2, 7, 10, 11 & 13 of the Witness Protection Act No. 112 of 1998

<sup>120</sup> The Criminal Procedure Act No. 51 of 1977

<sup>121</sup> *Ibid*, Section 153 & 154

<sup>122</sup> <https://www.dpp.go.ug>. (Accessed on May 20, 2021)

<sup>123</sup> Office of the Director of Public Prosecutions Witness Protection Guidelines of 2019.

witnesses, victims and other parties to criminal proceedings this is stipulated under Article 250 (6)&(7)<sup>124</sup>. Therefore, Tanzania can learn from Colombia by specify in the constitution<sup>125</sup> and impose obligation on the office of DPP to take reasonable measures to protect witnesses, victims and any other person who is in danger as the result of his participation in criminal proceeding.

---

<sup>124</sup> Colombia's Constitution of 1991 as amended 2005.

<sup>125</sup> The Constitution of the United Republic of Tanzania of 1977 [Cap. 2] as amended from time to time.

## **BIBLIOGRAPHY**

### **BOOKS**

Cliff, R., & Frank, S., “*Criminal Law Today; An Introduction with Capstone cases*, Third Edition” Pearson Education Inc., New Jersey, 2006.

Judy. H., *Criminal Evidence*, Wadsworth Cengage Learning USA, 2009.

Monir. C.J.M., *Textbook on the Law of Evidence*, Universal Law Publishing Co., New Delhi- India, 2013.

Samaha. J., *Criminal Justice, Sixth Edition*, Thomson Learning Academic Resource Center, London, 2003

Shivji. G. I., Mtaki, C & Majamba, I., *Constitutional and Legal System of Tanzania*, A Civics source book, Mkuki na Nyota Publishers, Dar es Salaam 2001.

Dr. Singh, A., *Principles of the Law of Evidence*, Darbhanga Colony, Allahabad, Central Law Publication, 16<sup>ed</sup>, 2007.

### **ARTICLE**

Mwenda. A.Y., Witness Protection in Tanzania, Resource Material Series No. 86,68 of 2016.

Omar, A., *Comparative study on Witness Protection in India and Other Nations* of 2016.

Varghese, N., *Witness Protection: Problems Faced and Need for a Protection Programme in India* of 2015.

### **JOURNALS**

Bhushan. T., Witness Protection in India and United States: A Comparative Analysis, 2  
*International Journal of Criminal Justice Sciences*, 1, (2007),13-21

Dhār. P., Witness Protection and Justice Delivery System in India- a Critique, iv *Gorgotias Journals of Legal Studies*, 1, (2016.)21-30.

Dr. Jayasankar. I. K, Right of Witness Protection: A Comparative Overview, 1 *Bharati Law Review*, (2012), 73-86.

Rahangdale. P., Witness Protection: A Comparative Analysis of Indian and Australian Legislation, 21 *Gujarat Research Society*, 3, (2019), 142-150

Rahangdale, P., Witness Protection: An Important Measure for the Effective Functioning of Criminal Justice Administration, 22 *Quarterly Journal*, 4, (2019), 129-135.

## **DICTIONARY**

Garner Bryan. A., (Ed) Black's Law Dictionary, 17<sup>th</sup>edn, West Group, St. Paul, Minnesota.

## **REPORTS**

Office of the Director of Public Prosecutions Witness Protection Guidelines of 2019

United Nations Human Rights Office of the High Commissioner, *The Protection of Victims and Witnesses*, A Compilation of Reports and Consultations in Uganda of 2010.

United Nations Office on Drugs and Crime (UNODC) report on “Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime”, Vienna, New York, 2008.

## **INTERNATIONAL INSTRUMENTS**

United Nations Convention Against Transnational Organized Crime of 2000.

United Nations Convention Against Corruption of 2003

## **REGIONAL INSTRUMENT**

African Union Convention on Preventing and Combating Corruption of 2003.

## **FOREIGN LAWS**

Colombia's Constitution of 1991 as amended 2005.

Constitution of the Republic of Kenya of 2010.

Criminal Procedure Act No. 51 of 1977.

Witness Protection Act [CAP 79 R.E 2012].

Witness Protection Act No. 112 of 1998.

Witness Protection Regulations of 2011.

Witness Protection Rules of Courts, 2014.

Victims Protection Act No. 17 OF 2014.

## **DOMESTIC LAWS**

Anti-Money Laundering Act [CAP 423 R.E 2019].

Constitution of the United Republic of Tanzania Cap. 2 as amended from time to time.

Criminal Procedure Act [ CAP 20 R.E. 2019]

Economic and Organized Crimes Control Act [CAP 200 R.E. 2019]

Evidence Act [ CAP 6 R.E. 2019]

Whistleblower and Witness Protection Act No. 20 of 2015.

Penal Code [CAP 16 R.E. 2019].

Prevention and Combating of Corruption Act [CAP 329 R.E 2019].

Prevention of Terrorism ActNo.21 of 2002.

## **LIST OF CASES**

*Hatibu Gandhi v. Republic* [1996] T.L.R.13.



*Mahender Chawla and others v. Union of India and others* Writ petition (Criminal) No. 156 of 2016

*NHRC v. State of Gujarat* 2003 (9) SC 329

*People's Union for Civil Liberties v. Union of India* AIR 2004 SC456.

*Prosecutor v. Katanga and Ngudjolo*, 13 May 2008 (ICC-01/04-01/07-475)

*Zahira Habibulla H. Sheikh and Another V. State of Gujarat* 2004 (4) SCC 158 SC

## **WEBSITES**

<https://www.unafei.or.jp/publications/pdf> (Accessed on 12 September, 2020)

<https://www.unafei.or.jp/publications/pdf> (Accessed on 12 September, 2020)

<https://www.dpp.go.ug>. (Accessed on May 20, 2021)

<https://racolblegal.com/comparative-study-on-witness-protection-in-india-and-other-nations/>  
(Accessed on 10 December

<https://www.lawctopus.com/academike/witness-protection-problems-faced-and-need-for-a-protection-programme-in-india/> (Accessed on 10 December 2020).