



The Protection of Victims and Witnesses

A Compilation of Reports
and
Consultations in Uganda

2010



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

The Protection of Victims and Witnesses

A Compilation of Conference Reports
and
Consultations in Uganda

2010

Copyright © 2010 UN Office of the High Commissioner for Human Rights

For more information contact:

UN Human Rights Office of the High Commissioner
Uganda Country Office
Plot 24, Prince Charles Drive, Kololo
P.O. Box 7184, Kampala, Uganda
Tel: +256 417 744 500 +256 417 744 563
Fax: +256 414 346 130
Website: www.uganda.ohchr.org

Preface

Witnesses and victims' right to protection occupies a prominent place in contemporary criminal justice and serves a crucial role in combating impunity, ensuring accountability, serving justice and achieving reconciliation. The victims and witnesses who provide testimony against crime perpetrators, who in most cases are powerful and influential in society, need to be assured of safety and security and should not suffer repercussions for their participation in judicial or non-judicial accountability proceedings.

The concept of witness protection essentially seeks to ensure that victims and witnesses cooperating with accountability mechanisms, in judicial or non-judicial setting, are ably protected and facilitated to the greatest extent possible. This is premised on the understanding that assurances for safety of such victims and witnesses is fundamental to the credibility of such processes and instrumental in the fight against impunity. The State, therefore, has a duty to protect victims and witnesses who are under threat of possible harm, their property or family on account of their willingness to provide testimony. They do not lose their right to be protected simply by offering to participate in justice processes.

With reference to experiences from Kenya, South Africa and Burundi as well as good practices from international courts and regional ad hoc tribunals like the ICTR, ICTY and the ICC, this publication seeks to share relevant knowledge with national actors on the importance of witness protection in the overall administration of justice and cites examples of protection measures that can be instituted at the domestic level. This publication underscores the fact that there exist huge challenges in the absence of a framework for victim and witness protection and in this respect, deliberate measures need to be put in place to adopt appropriate legislation and policy guidelines for the determination of witness protection parameters and advance coherent institutional practices.

While noting that Uganda does not have a specific law for the protection of witnesses, ongoing efforts to adopt witness protection law and policy measures towards the development of a witness protection program in the long-term will only be useful and effective once they are in line with international human rights and criminal justice standards and take into account witness protection best practices. It is hoped, this publication will provide the needed guidance and reference material for national stakeholders as they work towards ensuring adequate protection for victims and witnesses within the justice system. This publication is a compilation of three specific reports;

- (i) A Consultant's Report on The Protection of Victims and Witnesses in Uganda, which outlines the existing legal framework and institutional arrangement in Uganda related to the protection of witnesses, victims, intermediaries and others concerned who are cooperating, with judicial, non-judicial and transitional justice proceedings. The report makes recommendations on a legal framework and comments on the appropriate implementation methods and operating doctrines.
- (ii) A report of the National Practitioners' Conference on Victims and Witness Protection, which was convened by OHCHR on 13-14 September, 2010 targeting various professional and technical actors within the justice delivery system. The report highlights key issues pertaining to the development of a formal witness protection framework for Uganda and proposals relating to the structure and criteria for providing witness protection in the country.
- (iii) A report of the High-Level Expert Seminar on Victims and Witness Protection, which was hosted by the Uganda Law Reform Commission in collaboration with OHCHR and UNODC and supported by UN Women.

This report builds on interventions by respective institutions such as the findings of the ULRC report on witness and victim protection in Uganda, OHCHR's consultant's report on victim and witness protection as well as the outcomes of the practitioners conference, to develop more concrete proposals on witness protection for Uganda with the help of experiences and lessons on witness protection from other African countries. This report also introduces a unique aspect to the discourse by reflecting on the particular needs of women and children participating as victims or witnesses during accountability proceedings.

Preface.....	iii
Acknowledgements.....	vi
List of Acronyms.....	vii
REPORT I: Protection of victims and witnesses in Uganda	1 - 21
1.1 Introduction	5
Key Concepts and definitions.....	6
1.2 State obligations towards the protection of witnesses	8
1.2.1 International human right law framework.....	8
1.2.2 Regional legal framework.....	9
1.2.3 National legal framework.....	10
Protection references in Ugandan laws.....	10
Specific provisions on witness protection measures in the court room.....	11
1.3 Witness and victim protection models	11
1.3.1 Criminal justice protection programs relevant to the administration of criminal justice.....	11
1.4 Witness protection and transitional justice in Uganda.....	12
1.5 Key features of national witness and victim protection programs.....	13
1.5.1 Independency of the program.....	13
1.5.2 Formation of a comprehensive body.....	14
1.5.3 General responsibility of law enforcement.....	14
1.6 Recommendations.....	15
Annex 1: List of organisations consulted.....	18
Annex 2: Areas to be considered for inclusion in the witness protection.....	19
REPORT II – Practitioners conference on victim and witness protection	23-40
2.1 Introduction	24
2.1.1 Conference methodology.....	24
Expert guidance.....	25
Group work and plenary.....	25
2.2 Summary of introductory remarks and panel presentations	25
2.2.1 Remarks from OHCHR.....	25
2.2.2 Remarks from Chief Guest Speaker.....	26
2.2.3 Remarks from Uganda Law Reform Commission.....	26
2.2.4 Discussions on ULRC study on witness protection.....	27
2.2.5 Perspectives from civil society.....	28
2.3 Summary of institutional gaps relating to witness protection	29
2.4 Summary of proposals for victims and witness protection and participation program	30
2.4.1 Legislation on protection.....	30
2.4.2 Body to deal with witness protection issues.....	31
2.4.3 Resources to effect protection.....	31
2.4.4 Public awareness.....	32
2.4.5 Support for victims and witnesses.....	32
2.5 Summary of recommendations	34
2.6 Closing remarks	35
Annex I: Group scenarios.....	37
Annex II: Discussion guide for syndicate groups.....	39

REPORT III – High level conference on victim and witness protection	41-107
3.1 Introduction	42
3.2 Session One: Summary of introductory remarks	45
3.2.1 <u>Remarks from Uganda Law Reform Commission</u>	45
3.2.2 <u>Remarks from OHCHR</u>	45
3.2.3 <u>United Nations Office of Drugs and Crime</u>	48
3.2.4 <u>Speech from representative of Minister of Justice</u>	49
3.3 Session Two: The status of victim and witness protection in Uganda	50
3.3.1 <u>Summary of findings of the ULRC Study on witness protection</u>	51
3.3.2 <u>Human rights perspective to witness and victim protection</u>	51
3.4 Session 3: Victim and witness protection: An introduction and international best practices	54
3.4.1 <u>The Criminal Justice approach from UNODC</u>	54
3.4.2 <u>Witness Protection from a human rights perspective</u>	60
3.4.3 <u>Protecting witnesses in Rwanda and building national capacities in a post-conflict society</u>	61
3.4.4 <u>Witness protection programs and lessons learned from international courts</u>	67
3.5 Session 4: Gender mainstreaming in witness and victim protection	70
3.5.1 <u>Remarks on Burundi experience</u>	70
3.5.2 <u>Special protection measures for child witnesses</u>	72
3.6 Session 5 – The importance of setting up witness protection programs	74
3.6.1 <u>National experiences and lessons learned from South Africa</u>	74
3.6.2 <u>National experience and lessons learned from Kenya</u>	76
3.7 Plenary discussions on witness protection in Uganda	78
3.7.1 <u>Recap Session: Key considerations on witness protection and challenges to address</u>	78
Conclusion and way forward	87
<u>Annex 1: Concept note</u>	89
<u>Annex 2: National legislations relating to witness and victim protection in Uganda</u>	94

Acknowledgements


This publication is a compilation of three different reports on witness protection; Report I was written by Mr. Gary Madden, OHCHR Consultant on witness protection; Report II was written by Mr. Joseph A. Manoba, a Legal Practitioner and Legal Advisor of Uganda Victims Foundation and; Report III was compiled by Florence Nakazibwe, OHCHR Legal Officer, assisted by Paula Simas Malgahaes and Bernard Amwine who contributed to the editorial work.

OHCHR wishes to thank all those individuals who dedicated their time and resources to be part of the series of meetings held on witness protection. Most especially our counterparts in government, particularly; the Justice, Law and Order Sector member institutions (JLOS) specifically, Uganda Law Reform Commission, which has led government efforts in researching and drafting a witness protection bill, the Ministry of Justice and the Uganda Human Rights Commission.

To the international experts from the various UN agencies and ad hoc tribunals who participated at the high-level forum, OHCHR wishes to recognize your support and technical advice, which will contribute immensely in directing subsequent efforts to develop effective witness protection measures in Uganda.

Special thanks are extended to the expert consultant, Mr. Gary Madden for his role in the research study and report on witness protection in Uganda. OHCHR is similarly grateful to Mr. Joseph A. Manoba for his tremendous contribution during the practitioners' conference and his assistance in compiling the conference report.

Great appreciation is extended to the UN Women Office in Uganda whose funds under the Women's Access to Justice Program were used to facilitate gender focal persons and specialists to participate in the debates and forums on witness protection. UNODC ROEA and UNICEF are also acknowledged for their valuable contribution and active participation during the conferences. Much gratitude is also expressed to all UN partner agencies that have lent their support to this project through allocation of funds under the UN joint programmes to facilitate the implementation of the project activities and made this publication possible.



Birgit Gerstenberg,
Country Representative
Office of the High Commissioner for Human Rights in Uganda

List of Acronyms

ACHPR	African Commission on Human and Peoples Rights
ACTV	African Centre for Treatment and Rehabilitation of Torture Victims
CBOs	Community Based Organisations
CCPR	Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CFPU	Child and Family Protection Unit
CID	Criminal Investigations Department
CSOs	Civil Society Organisations
DFID	Department for International Development of the United Kingdom
DPP	Director of Public Prosecutions
DRC	Democratic Republic of Congo
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOSOC	Economic and Social Council
FIDA	Federation of Women Lawyers
HR	Human Rights
HRC	Human Rights Committee
HURIFO	Human Rights Focus
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICCPR	International Covenant on Civil and Political Rights
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IGG	Inspector General of Government
IGOs	International Governmental Organisation
IHL	International Humanitarian Law
JLOS	Justice and Law Order Sector
JSC	Judicial Service Commission
LRA	Lord's Resistance Army
MoJCA	Ministry of Justice and Constitutional Affairs
MoU	Memorandum of Understanding

NGOs	Non Governmental Organisations
OAU	Organisation of African Union
OHCHR	Office of the High Commissioner for Human Rights
OWP	Office of Witness Protection in South Africa
PSU	Police Standards Unit
RLP	Refugee Law Project
SCSL	Special Court for Sierra Leone
SGBV	Sexual Gender Based Violence
SIP	Strategic Investment Plan
TJ	Transitional Justice
UCRNN	Uganda Child Rights NGO Network
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
ULRC	Uganda Law Reform Commission
ULS	Uganda Law Society
UN CAT	UN Convention against Torture, Cruel, Inhuman and Degrading Treatment
UN HRC	United Nations Human Rights Council
UN Women	UN Women (formerly UNIFEM)
UN	United Nations
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNODC	United Nations Office of Drugs and Crime
UNODC ROEA	UNODC (Regional Office for East Africa)
UNTOC	United Nations Convention against Transnational Organized Crime
UPF	Uganda Police Force
USAID	United States Agency for International Development
WCD	War Crimes Division of the High Court of Uganda
WFP	World Food Program
WP	Witness Protection
WPP	Witness Protection Program

REPORT I:

Protection of Victims and Witnesses in Uganda

1.1 Introduction

United Nations Human Rights Council Resolution A/HRC/12/12 encourages “States to design programs and other measures to protect witnesses and individuals who cooperate with judicial bodies and mechanisms of a quasi-judicial or non-judicial nature, such as human rights commissions and truth commissions”.

Without appropriate provisions for the protection of witnesses and victims, including their physical and psychological integrity, privacy and dignity, their reputation and even their lives may be at risk as a consequence of their connection to judicial or non-judicial proceedings. Securing the testimony of witnesses and victims is essential to ensuring that victims obtain justice and the right to know the truth, which those responsible for human rights violations and other crimes are held to account, and potential abusers deterred.

This report focuses on the existing legal and operational frameworks that are relevant to human right protection in Uganda, and how it directly impacts on the protection of witnesses and victims. The report also considers the issues relevant to the protection needs of those individuals, such as human rights defenders, whistleblowers, civil society representatives, who cooperate with various accountability mechanisms, including non-judicial processes; and assist victims and witnesses in this regard. It also highlights difficulties surrounding witness and victim protection in transitional justice processes in a post-conflict environment for combating impunity; and the possible measures for witness and victim protection in the short, medium and long term. It is also emphasized that some immediate measures should be put in place to meet the needs in the post conflict setting in Uganda.

All legal frameworks must be considered in the context to which they apply, having a bearing on the capacity of the country’s judicial and other official mechanisms for implementing those legal frameworks. Too often, legislation is passed, stating that victims and witnesses will be protected, without any specific reference as to: who will provide the protection, who will be protected, how they will be protected and how it will be funded. Uganda has a commendable and impressive record of human rights supportive legislation. The same vigour should be applied to the legislation within the context of witness protection.

Another major consideration is the issue of impunity and corruption affecting the trust and confidence of the population, in particular of witnesses and victims. Whilst they present unique challenges, there have been many successful programmes set up around the world to combat and defeat these challenges. There is a broad range of generic, international good practice in respect of vetting and selection of personnel required to investigate acts of impunity and corruption. The United Kingdom employ a management vetting scheme which carries out due diligence of each applicant within the selection process. This vetting is in addition to any previous institutional vetting systems, which may have already been applied to the applicant. A similar system could be taken into consideration.

The current practice of witness protection doctrines is too restrictive and narrow in its approach to the people who are involved in judicial processes relevant to some serious crimes against territorial integrity and security such as organized crimes and terrorism etc. Many advocates of existing systems highlight the limitations of capacity and resources for such a restrictive approach. However, any system of protection should have the ability to encompass all persons who are facing potential risk or intimidation arising from their cooperation in the various processes in combating impunity. At the bare minimum, this should form the basic criteria for selection of beneficiaries for the programme.

The practice and jurisprudence of international and regional human rights bodies, as well as international tribunals and courts, demonstrate that the protection of witnesses and victims is the cornerstone in combating impunity, providing justice and ensuring effective remedy. In addition, witnesses and victims of gender and sexual based violence require specific expertise, which may not always be provided by the conventional model of the witness protection system and therefore creating new demands. Similarly,

special measures are required for the child victims and witnesses. In some instances, these measures can be provided by either specialist teams within law enforcement, such as the special units dealing with domestic violence, child protection or teams responsible for addressing sexual offences, human trafficking and corruption. In many countries, these requirements are also carried out by specialized government organisations such as victim support bodies, refugee centers, criminal injuries compensation authority etc. These organisations are pivotal to the general protection response, and an essential element in the provision of different levels of protection and specialized assistance.

At this early stage, it should be emphasized that witness and victim protection cannot be viewed in isolation, but must rather be considered a crucial part of a comprehensive justice and protection system designed to effectively investigate and prosecute perpetrators of human rights violations and other crimes. Protection measures will be ineffective if other parts of the criminal justice and protection system do not function well. Every step of the process, from investigation through to conviction and punishment, should be analyzed to identify ways in which witnesses are placed at risk, and potential reforms designed to limit those risks.

Objectives and Methodology

In order to better assist the Government of Uganda and other relevant stakeholders, OHCHR Rule of Law and Democracy Section, in consultation with OHCHR Uganda Office decided to undertake a thorough evaluation of the existing witness and victim protection capacity. In this regard, this project was implemented. The project had the following specific objectives:

- a) To assess the current laws, programs and projects on witness and protection, focusing on human rights cases,
- b) To explore the views of various relevant entities, regarding the development of a comprehensive legal and operational framework on witness protection,
- c) To promote understanding of the human rights frameworks for witness and victim protection
- d) To provide recommendations on how to improve and better coordinate the institutional and operational arrangements for witness protection in human rights trials.

Research

An in-depth review of available literature on witness and victim protection, and specifically on national and international experiences (including legislation), has been undertaken. The growing body of UN literature dealing directly or indirectly with witness and victim protection has also been reviewed. Documentation produced by the Uganda Law Reform Commission, OHCHR-Uganda and other relevant institutions, has been studied.

A legal analysis of existing laws, decrees and resolutions relevant to witness and victim protection in Uganda has been carried out, in comparison with international standards and laws from other countries. The actual and potential contribution of the institutions dealing with witness and victim protection, including civil society, has been assessed.

Consultations

The methodology used in this project was participatory. Over fifteen interviews were held, and the opinion of key stakeholders was sought and taken into consideration in the report and its recommendations.¹ Regular consultations were held with OHCHR Rule of Law and Democracy Section in Geneva. The author of this report also participated, as a technical advisor, in three events on witness and victim protection organised by Uganda Law Reform Commission, OHCHR and other UN Agencies in Kampala.

¹ Please see the attached annex 1 (List of meetings held)

Summary of Meetings

The following findings are the result of meetings that the author had with the named State Institutions.

1. *Justice Law and Order Sector (JLOS)*

The main entity in Uganda in respect of the rule of law is the Justice Law and Order Sector (JLOS), which has working groups and technical committees, set up to look at law and order reform. The two relevant groups in the context of this paper are the; Criminal Justice Working Group and Transitional Justice Working Group. The JLOS annual performance report 2009/2010² is extensive and reports on many aspects of legal judicial reform. JLOS explained that the Ugandan Law Reform Commission (ULRC) is continuing their work to develop witness protection legislation. JLOS³ was not in a position to confirm the nature of proposed protection mechanisms that will be adopted by the country or who would implement them but stated the Government of Uganda would be receptive to technical assistance/guidance as to where this should be included. Currently, ULRC – as a member institution of JLOS, is in charge of drafting the witness protection law/policy that JLOS will focus on. JLOS also support transitional justice processes and played a central role in the drafting of the International Criminal Court Act. The Act, as explained above, does not however provide any mechanism for witness and victim protection.

2. *Uganda Law Reform Commission (ULRC)*

The Uganda Law Reform Commission is mandated to develop and make new laws responsive to the changing needs in Uganda.⁴ They have been tasked by JLOS to draft Witness Protection Legislation. Whilst the type of programme to be adopted is not yet clarified, it is evident, that the study is centered on a Criminal Justice Protection programme. The Commission needs to widen their study to include all protection requirements. More emphasis also has to be placed on underpinning the role of the judicial system in the support of victims and witnesses to make the process more comprehensive and effective.

3. *Uganda Police Force (UPF)*

Policing strategy is generally guided by Government policing priorities, which can be varied from time to time. However, regardless of the priorities, the core policing responsibility to protect life should always remain the most important consideration. The Uganda Police Force (UPF) is undergoing a reform process, which is focusing on building community trust and confidence. While certain measures have been taken to provide protection to witnesses in some high-profiled and sensitive cases, the Police force still has a very long way to go in respect of its provisions for the victims and witnesses and the treatment of women and children, even at the very basic level of interaction.

4. *Criminal Investigation Department*

The UPF do provide an ad hoc response to witness and victim protection, which operates under the intelligence function of the Criminal Investigation Department. This amounts to a couple of personnel who have other policing functions, supervising the protection of individuals. The number of people protected both currently and in the past is believed to be in single figures. In addition, there has been no specific training for the personnel. The UPF were also criticized for being politically influenced as to whom they should protect.

5. *Child and Family Protection Unit*

The Child and Family Protection Unit (CFPU) of the UPF was established in 1998 and has continued to try and improve the police response to victims particularly Women and Children. According to CFPU, the main issue is providing refuge or accommodation for the victims in order to manage their protection.⁵

² <http://www.jlos.go.ug/uploads/Annual%20Performance%20Report%202009-2010.pdf>

³ Based on interview with JLOS's legal advisor on transitional justice, Ms. Rachel Odoi-Musoke

⁴ Section 10 (c) of the Ugandan Reform Commission Act Cap 25

⁵ Based on interview with current head of CFPU, Ms. Florence Kirabira

Currently they only have one official location, which was described as a large dormitory with bunk beds and cooking facilities at the Central Police station in Kampala. This large dormitory was the only place they could place victims, including children. Supt. Kirabira did acknowledge the work of NGO's in this area but said this resource was limited and could normally only be called upon in extreme cases. She stated that more often than not, the only option open to them was to mediate the victims going back to the family home.

The unit stated that police officers in outlying areas that have no facilities, had on occasions, taken children to their own homes as a short term measure. The UPF are taking steps to improve their response in these areas with the appointment of a family officer at each police station. What the CFPU staff need, is a structured system of referral to other agencies and the ability to provide short-term emergency respite for victims, in suitable conditions until an appropriate long- term solution can be found.

6. *Non Governmental Organisations (NGOs)*

The Uganda Association of Women Lawyers (FIDA), whilst supporting the newly passed Domestic Violence Act, felt that the legislation didn't go far enough to address the issues of protection of Women. Whilst their focus is on advocacy for women, they are actively engaged in dialogue with key actors around the pertinent protection issues. It is vividly clear that despite their enormous experience and interest, the main challenge faced by NGOs' is obtaining funding for their work. Given their vital role, coordination and formal recognition by the Government of Uganda is essential. For instance, there is no doubt that the Transitional Justice process will have to rely heavily on the NGO's response to victims and witnesses and these need to be highlighted in any Government response and avenues for collaboration explored.

7. *Other relevant organisations*

The author of this report also met with donor communities in Kampala. The Ireland and the Netherlands Embassies, which are the some of the main donors to JLOS, raised concerned about the existing protection response but to date have not been informed of a specific requirement to implement and establish a witness and victim protection programme in Uganda.

Key Concepts and Definitions

1. *Procedural and operational measures*

Witness and victim protection can be divided into procedural and operational measures. Procedural protection measures are the measures granted by the judge(s) or the applicable judicial authority. In general, operational measures are taken by the investigative agency and/or the competent witness protection authority following the objective assessment of the assessed level of risk deriving from an identified source of threat.

Operational protection measures may be as simple as providing a police escort to the courtroom, offering temporary residence in a safe place or using modern communications technology (such as video conferencing) for testimony. There are other situations, though, where cooperation by a witness or victim is critical to successful prosecution but the reach and strength of the perpetrator of human rights violations or threatening criminal group is so powerful that extraordinary measures are required to ensure safety of witnesses and victims. In such cases, resettlement of the witness and victim under a new identity in a new, undisclosed place of residence in the same country or even abroad may be the only viable alternative.

Operational measures aim to protect the witness and victim through keeping the witness' and victims' interaction with accountability mechanisms confidential and/or through physical measures such as increasing the physical security of the residence of the witness and victim, providing access to a response system or, as measure of last resort, relocating the witness and victim in order to ensure that the threatening agents are not able to act upon their malicious intent.

It is important to ensure that both procedural and operational measures are applied in a coherent and complementary manner.

2. *Witness*

What constitutes a witness? There are several legal definitions in respect of witnesses. UNODC defines “witness” or “participant” as “any person, irrespective of his or her legal status (informant, witness, judicial official, undercover agent or other), who is eligible, under the legislation or policy of the country involved, to be considered for admission to a witness protection programme.”⁶ The UNODC Model Law limits admission to witness protection to witnesses as well as their family members or persons close to them.⁷ This aspect causes the most difficulty as in some countries like say in Africa where family members may include large extended family relatives. There is an economic consideration which has to be balanced. Ultimately this should be a matter subject to determination by an independent, professional and representative decision-making body that is free from bias or prejudice and the decision open to appeal or review by a superior oversight body.

The use of informants and intelligence providers by the investigative authorities, i.e. police or prosecutor, is an important element in the investigation and prevention of crimes and human rights violations. Their role is different from that of witnesses; however, as they are not called to testify in court and, in some countries, it is not necessary to disclose the assistance they provide. However, they can be admitted to witness protection programmes (such as in Australia, Austria, Canada, Latvia, the Netherlands, Norway and the United Kingdom). The situation is different in Italy, Germany, Slovakia and the United States, where only those witnesses who participate in the criminal proceedings and testify may be eligible for witness protection. Investigative officers who use informants as sources keep their names and identification details confidential and, under certain conditions, provide them with physical protection on an ad hoc basis. Provisions should be provided in a protection system for persons who assist the authorities and as a consequence are subjected to threats and intimidation.

The definition of “witness” may differ according to the legal system under review. Apart from the witness himself, his family members and other persons close to the witness are usually included in protection programs as well. The general rule is any person who the witness is financially responsible for. A very broad application can be found in the witness protection law of Kenya and should be considered for adoption in Uganda.

Under the Ugandan current legislation, the definition of “witness” is strictly limited to judicial proceedings, and one who appears before the court. According to the Evidence Act Cap.6, all persons are competent witness unless court considers that they are prevented from understanding the questions put to them or unable to give rational answer to the questions by reason of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind.⁸

3. *Victim*

In accordance with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁹ “*Victims*” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. Furthermore, the Declaration states that a person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.

The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent

⁶ UNODC Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, p4

⁷ UNODC Model Law on Witness Protection: Explanatory Note, 2008, p3

⁸ Section 117, Evidence Act Cap.6

⁹ Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power 29th November 1985 A/Res/40/34

victimization. Furthermore, the Basic Principles defines “Victims of abuse of power” which means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

Under the current laws of Uganda, there is no definition of ‘victim’. Legal authorities should adopt a clear definition of the term ‘victim’ in domestic legislation to allow legal clarity guided by the definitions cited above.

4. *Intermediaries and other persons*

The recent practice shows that the protection measures should not be exclusive to witnesses and victims, but should include other persons who have suffered as a result of intervening on behalf of the victim. This is common in human rights violations where human rights defenders (also referred as intermediaries) offer direct support to victims and as a consequence they themselves suffer harm, threats and intimidation.

The International Criminal Court (ICC) in the case of the *Prosecutor v. Thomas Lubanga Dyilo Democratic Republic of the Congo* 19th March 2010¹⁰ ruled against the disclosure of the identities of intermediaries who are not victims or witnesses. The judges of the ICC Trial Chamber comprehensively described the role of intermediaries, why they are so essential to the delivery of justice and why they should be protected. The Judges observed that the assistance of intermediaries is critical to the effective work of the Court and is not confined to the investigations in DRC. They carry out certain tasks in the field that staff members of the Prosecution cannot carry out without creating suspicion. They have access to remote locations. They know the members of the community and have information, to which Prosecution investigators cannot possibly have access, to assist in identifying potential witnesses.

The assistance of intermediaries does not end with the bringing of charges, and the use of threats and intimidation does not end simply because the trial starts. Persecution and intimidation often carries on after the proceedings have been concluded. The ruling concludes that the Victim and Witness Section of the Court will have to include the intermediaries in the International Criminal Court Protection programme (ICCPP).

5. *Transitional justice processes*

The notion of “transitional justice” comprises the full range of processes and mechanisms associated with societies attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include either judicial or non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth seeking, institutional reform, vetting and dismissals, or a combination thereof.¹¹

In respect of TJ processes where survivors, victims and witnesses number in the hundreds or even thousands, it is clear that a fully customised set up similar to previous TJ processes in other countries such as Sierra Leone and Rwanda should be developed. This will provide an appropriate response for these unique needs. Most existing criminal justice models are not equipped nor designed to deal with this. Nevertheless given that these arrangements are in the main temporary in nature, a national programme capable of continuing to assist those provided for by these tribunals into the future must be established. This is being undertaken in Sierra Leone where the United Nations has established a legacy project which is assisting in establishing a national system of witness and victim protection to cater for the witnesses to the special court which is due to complete its work by 2011.

¹⁰ International Criminal Court Prosecutor v. Thomas Lubanga Dyilo Democratic Republic of the Congo 19th March 2010 ICC-01/04-01/06-2362

¹¹ See para 8, S/2004/616

6. *Victim focused program*

The law enforcement system and the administration of justice of any country should always aim to be victim focused. They should ensure that victims are dealt with appropriately and according to their individual needs. The setting up of witness care/liaison units both at police stations, and at courts is commonplace. This is one way of ensuring a consistent approach and will give confidence to the community, to come forward and assist. For instance, in Sierra Leone a proposal was made to have two distinct systems for looking after people: (a) “Witness Protection Programme” and (b) “Witness Assistance Programme” the witness assistance programme related to the mandated police response whilst the witness protection programme dealt exclusively with witnesses to the Special Court.

There is no doubt that the Witness Assistance Programme proposed by the Sierra Leone model is in effect, the normal police response, albeit strengthened, with dedicated units with particular expertise. It is imperative that that the policing response is included in any system. This could only follow after due consideration to training resourcing and where appropriate, personnel vetting.

1.2 **State obligations towards the protection of witnesses**

1.2.1 **International human right law framework**

International law has many references to the right of victims and witnesses to be protected from threats and reprisals, and to have their inherent dignity in the pursuit of justice respected. Uganda is a State party to all core international human rights instruments including;

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of Discrimination against Women
- Convention on the Rights of the Child
- Convention on the Elimination of Racial Discrimination
- Convention against Torture, Cruel, Inhumane and Degrading Treatment
- International Covenant on the Rights of People with Disabilities

The International Covenant on Civil and Political Rights refers to “respect for the inherent dignity of human persons”¹² and states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honour and reputation.”¹³ States have a general obligation to undertake necessary steps “to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant.”¹⁴

There are specific references on witness protection in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁵ the Convention for the Protection of All Persons from Enforced Disappearance¹⁶ and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.¹⁷ Uganda is notably a signatory to all those treaties and as such, placed with the binding obligation to comply with the obligations specified therein.

The Committee on the Elimination of Discrimination against Women, in its Concluding Observations, addresses issues related to witness and victim protection essentially under article 6 of the CEDAW

¹² International Covenant on Civil and Political Rights (CCPR), article 10.

¹³ Ibid. Article 17.

¹⁴ Ibid, Article 2.

¹⁵ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 13.

¹⁶ Convention for the Protection of All Persons from Enforced Disappearance (CED), article 12.4

¹⁷ Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP- CRC-SC), article 8.1(a)

Convention. They state that States shall take all appropriate measures, including legislation, to suppress all forms of human trafficking of women and exploitation through the prostitution of women. Victims of trafficking for sexual exploitation face the same psychological and physical trauma as other victims of long lasting sexual violence. However, they also face multiple forms of discrimination on grounds of their national or ethnic origin and their status of undocumented migrants. This makes them particularly vulnerable to their traffickers and reluctant to seek justice through existing avenues of redress in the countries where they are trafficked.

The obligation to protect victims and witnesses can also be found in several key human rights instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,¹⁸ the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol),¹⁹ the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,²⁰ and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.²¹

References to the protection of victims and witnesses can also be found in the international law related to transnational organised crime. The United Nations Convention against Transnational Organized Crime²² and its two protocols, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,²³ and the Protocol against the Smuggling of Migrants by Land, Sea and Air,²⁴ address the protection of victims and witnesses of organized crimes.

Witnesses' and victims' right to protection occupies a prominent place in recent international criminal practice and procedure. Ensuring that witnesses can testify in a safe and secure environment is crucial for the implementation of the mandates of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). The statutes and rules of the Tribunal for the former Yugoslavia, the Tribunal for Rwanda and the International Criminal Court contain provisions for the protection of witnesses and victims participating in proceedings.²⁵ Similarly, the statutes and rules of the Special Court for Sierra Leone (SCSL)²⁶ and the Extraordinary Chambers in the Courts of Cambodia (ECCC)²⁷ contain provisions for the protection of victims and witnesses. Noteworthy is that Uganda's efforts to enact ICC domesticating legislation as the 4th country among the 31 African member states to the Rome Statute indicates some good will that is conducive for effective witness protection.

1.2.2 Regional legal framework

Uganda is also a party to the main regional human rights instruments. Uganda has ratified the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights and ratified the Protocol to the African Charter on the Rights of Women in Africa commonly known as the Maputo Protocol.

Principles and Guidelines on the right to a fair trial and legal assistance in Africa, that was adopted by the African Commission of Human Rights in 2001, has several references to the protection of victims and witnesses and measures which can be taken in court, particularly in respect of child witnesses and victims of sexual assault. The African Convention on Preventing and Combating Corruption deals with the protection of witnesses in corruption and related offences, including protection of their identities.²⁸

¹⁸ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power paragraph 6(d)

¹⁹ Istanbul Protocol, paragraph 3(b).

²⁰ UN Doc. E/CN.4/2005/102 (2005), Add.1, principle 10.

²¹ UN Doc. A/RES/60/147, Annex, Paragraph III (5).

²² UN Doc. A/RES/55/25, Annex 1, Articles 24, 25 and 26

²³ Ibid., annex II, Articles 6 and 7.

²⁴ Ibid., annex III, Articles 5 and 16.

²⁵ See ICTY Statute, article 22; ICTR Statute, article 22; Rome Statute, articles 68 and 87.4; also ICC Rules of Procedure and Evidence, rules 16, 50 and 86.

²⁶ SCSL Statute, article 16.4; SCSL Rules of Procedure and Evidence, rule 34.

²⁷ Law on the Establishment of ECCC, article 33; ECCC Internal Rules (rev.5), rule 29.

²⁸ African Union Convention on preventing and combating corruption Article 5(5)

Given that Uganda was a British colony, the English Common law legal system and law are predominant in Uganda. The Ugandan legal system is based on English Common Law and African customary law. However, customary law is in effect only when it does not conflict with statutory law. The laws applicable in Uganda are statutory law, common law; doctrines of equity and customary law. These laws are stipulated by the Judicature Act. (Section 16 Judicature Act 1996)

The Constitution is the Supreme law in Uganda and any law or custom that is in conflict with it is null and void to the extent of the inconsistency. Uganda has adopted 3 constitutions since her independence. The first was the 1962 Constitution which was adopted at the time of independence in 1962 and later replaced by the 1967 Constitution, during Obote's rule that started in 1966. During President Idi Amin's rule in 1971-1979, Uganda had no Constitution but was ruled by way of military Decrees pronounced by the Executive. In 1995, Uganda adopted a new Constitution, based on recommendations made after a nationwide consultative process led by the Justice Benjamin Odoki Constitutional Commission.²⁹ The current Constitution was promulgated on October 8, 1995 under President Yoweri Museveni's rule and set in motion the current democratic system. This Constitution, under Article 51, established the current national human rights institution complemented by an expansive bill of rights under Chapter 4 – which consolidates the legal effect of international HR treaties ratified by Uganda. It among others, guarantees fundamental rights to life,³⁰ protection of personal liberty,³¹ respect for human dignity and protection from inhumane treatment;³² the right to privacy³³ as well as the right to fair hearing,³⁴ all of which are pertinent to witness protection measures.

When considering the national legal framework in relation to the protection of witnesses and victims, it should be acknowledged that it is the obligation of State authorities, in particular the law enforcement authority, to provide protection to all citizens without any discrimination. States, however, have the obligation to adopt specific measures to protect the rights of victims and witnesses.

Reference to witness and victim protection, within the Ugandan national laws, can be found in; Laws on Criminal Procedures, Laws and Rules of Evidence and Police Laws, Laws on various Commissions established by the State, such as the Uganda Human Rights Commission Act, the Anti-Corruption Law, the various Acts with reference to the protection of witnesses. Specific legislation in relation to victims and witnesses is essential to ensure that they are protected in the first instance by law. However, the legislation is ineffective without an effective mechanism.

Protection references in Ugandan laws

The Judicial Service Commission (JSC) was established by the Constitution of Uganda, 1995, and brought into operation by the Judicial Service Act, 1997.³⁵ The role of the Commission is not only to oversee the appointment, discipline and removal of judicial officers but also to provide a link between the judiciary and the public. Section 20 Judicial Services Act 1967 provides Immunities and privileges for witnesses as if they were a witness before the High Court. This is the first step towards dealing with difficulties within the judiciary.

The Inspectorate of Government also known as the IGG's³⁶ function, is to promote and foster strict adherence to the rule of law, and principles of natural justice in administration and to eliminate and foster the elimination of corruption and abuse of authority. Section 34 of the constituting Act briefly talks about the protection of informers and witnesses. Anti- Corruption Act 2009, section 44 details the

²⁹ In 1989, the Odoki Commission, officially known as the Uganda Constitutional Commission, was formed to draft a new constitution. The Odoki Commission worked on outreach programs to the Ugandan public and received over 25,000 submissions of suggestions for the new constitution, which was eventually adopted and promulgated on the eve of Independence Day in 1995.

³⁰ Article, 22 1995 Constitution of Uganda

³¹ Article 23, id.,

³² Article 24, Id.,

³³ Article 27, Id.,

³⁴ Article 28, Id.,

³⁵ Judicial Services Act 1967 Cap 14 Sec 20

³⁶ Inspectorate of Government Act 2002 sec 34

protection of Informers in that they do not have to be disclosed by others appearing at the court.

The Prevention of Trafficking in Persons Act³⁷ section 12 (1) – (11) refers to the Victims and the assistance they could be afforded. Interestingly again Para 12(11) states; “*The protection, assistance and support subscribed in this section shall be provided by Government and other agencies*”.

The War Crimes Division of the High Court was established to prosecute war criminals pursuant to existing penal legislation as well as the newly enacted **International Criminal Court Act**.³⁸ The aforementioned law has various provisions in respect of witness and victim protection. While the Act provides for the protection of witnesses, there is no specific mention of an agency with an exclusive mandate for witness protection.

In a key note speech to the practitioner’s conference on victims and witnesses protection in Uganda 14th September 2010, the Hon. Lady Justice Elizabeth Ibanda Nahamya (judge of the War Crimes Division of the High Court) said:

“In order to effectively ensure that the administration of a witness protection programme that will be established succeeds, an independent body outside of the political structures should handle witness protection. The body should be mandated to provide protection to both witnesses and victims with powers to provide restrictions and compensation. There should be a penalty for disclosures by members of that body. A clear recommendation for an independent National system which should cater for both witnesses and victims.”

Whistle Blowers Protection Act 2010³⁹ states that if the whistleblower feels that his or her life is endangered, or the life of a member of their family, they may request state protection and the state shall provide the protection considered adequate.⁴⁰ There are currently no formal state mechanisms in Uganda for protection of witnesses and victims. In the absence of a specific recognized legal body/entity, the obligation to provide protection under the Uganda Whistle Blowers Protection Act would fall under the law enforcement agency of Uganda, i.e. the Uganda Police Service. Whilst this can be appropriate for short-term protection, the ability of the Police Service to provide long-term protection is extremely limited if not impossible at this time.

Specific provisions on witness protection measures in the court room

The trial on Indictments Act⁴¹ and the Magistrates Courts Act⁴² contain several references to measures which can be applied in the court room. These references deal principally with ‘in camera’ hearings and media reporting. There are currently no legal provisions which deal specifically with the wide range of others measures which should be available such as anonymity, use of pseudonym, face distortion, voice distortion and video link testimony etc. Overall, caution must be taken to ensure that the defendants’ rights are not jeopardised by such protective measures. The right to fair hearing is a central component of justice and the rule of law and should not be compromised in any circumstance.

1.3 Witness and victim protection models

1.3.1 Criminal justice protection programs relevant to the administration of criminal justice

The traditional witness protection program within the criminal justice system (i.e. a criminal justice model) is used by most countries of the world. Such programs are designed to offer protection to the highest threat levels associated with organized crime and more recently terrorism. In the main, the protected person has to be able and willing to provide essential evidence in relation to the most serious of offences and, to whose safety, a real and immediate threat exists. In addition, the protection is

³⁷ The prevention of Trafficking in persons Act 2009 sec 12

³⁸ ICC section 58 (1) Protecting victims and witnesses and preserving evidence.

³⁹ Uganda Whistle Blowers Protection Act 2010 11(1)

⁴⁰ Section 11(1) b

⁴¹ Trial on Indictment Act 1971

⁴² Magistrates court Act cap 16 1971

provided on the basis that the person will give evidence, which is a condition of continuing protection in most programmes. In reality, this offers a very narrow approach to a distinctly wide and growing phenomenon.

It is a fact that the vast majority of witnesses in the criminal justice programs are perpetrators and collaborators who choose to collaborate with the court against their associates in hope for a lighter sentence or financial reward or whose safety has been compromised as a result of exposure of their involvement with law enforcement agencies. In Italy, between 1995 and 2002 the protection programme managed 1162 individuals, 62 were witnesses and 1098 were informants or assisting collaborators.⁴³

The alleged criminal background makes these witnesses extremely difficult to manage. They are in the main, habitual criminals who find it extremely difficult to adjust and conform to the requirements of the programme, often resulting in them opting out and returning to their criminal past. It is important that this real distinction is recognised and catered for in any protection system.

It also follows that this programme exists only to support a robust judicial process which has an established well trained investigative body supported by sound prosecution and defence mechanisms. Whilst these systems are continuing to be successful in the fight against organised crime they are not equipped to deal with large-scale protection requirements associated with post conflict investigations.

1.4 Witness protection and transitional justice in Uganda

Successful transitional justice programs recognize the centrality of victims and their special status in the design and implementation of such processes. The stakeholders must respect and advocate for the interests and inclusion of victims where transitional processes are under consideration. Placing victims at the centre of TJ processes also requires ensuring that there is development of specific capacities to assist, support and protect victims and witnesses, among others.

In Uganda, several transitional justice processes and initiatives are ongoing. These processes include the drafting of a Bill on National Reconciliation and strategies for the adoption and use of traditional justice mechanisms. Uganda is also soon to commence trials of serious crimes such as War Crimes and grave breaches of the Geneva Conventions Act, Genocide and Crimes against Humanity under the newly established War Crimes Division of the High Court of Uganda.⁴⁴

Witnesses, victims and other groups including intermediaries who ultimately will engage with the transitional justice process may require protection prior to, during or after their participation in whatever capacity. They are particularly vulnerable owing to the nature of the crimes and the capacity of alleged perpetrators to cause harm.

In transitional justice processes, witnesses and victims may include children and other vulnerable groups of persons such as the elderly, women and victims of sexual or gender based violence (SGBV). The protection needs of every individual must be assessed holistically. The protection needs of vulnerable victims in particular are not solely based on account of the testimony given or information in their possession but also due to their specific needs, past experiences and current situation.

There is a need to safeguard the dignity and privacy of the person, as well as to protect the person from the possibility of re-traumatisation. The protection needs are not just physical, but also encompass psycho-social and material realities. Detailed and specific guidelines exist regarding the treatment of child witnesses in justice processes.⁴⁵

Other groups such as intermediaries and members of civil society organisations may also be put at risk for their involvement in the assistance of victims and witnesses to participate in formal and transitional

⁴³ Italian Witness protection Commission presentation

⁴⁴ See International Criminal Court Act, 2010, Section 2, Purpose, subsection c) “to make further provision in Uganda’s law for the punishment of the international crimes of genocide, crimes against humanity and war crimes”

⁴⁵ See UN Guidelines on Justice Matters involving Child Victims and Witnesses, adopted, 22 July 2005. Also REDRESS, Victims, Perpetrators and Heroes? Child Soldiers before the International Criminal Court, discusses best practice standards in relation to all phases of international criminal specifically in relation to the rights of children, available at <http://www.redress.org/downloads/publications/childsoldiers.pdf>

justice mechanisms or in associating with such victims. The above reasons are critical for the development of a comprehensive legal and institutional framework on protection for victims and witnesses who will be engaged in the transitional justice processes.

This has major implications, not only for the investigative mechanism but also in regard to establishing a witness and victim programme. In respect to combating impunity, the challenge is to set up a programme, which has the confidence of witnesses and victims and is free from any corrupt interference from any party, whilst still being representative of the communities involved.

In order to engage and be involved, the community must have a basic confidence that the programme has the ability to respond appropriately to their needs and that they have genuine opportunities to become involved on their own terms. This confidence building can be assisted enormously by civil society and NGOs which can not only advise, but can, in certain circumstances play a very direct role in the provision of protection such as refuge centers/shelters. This is crucial in any post conflict situation.

Witness and victim protection programs in a transitional justice setting would require some specialized measures and trained professionals. No victim or witness program can function without a very strong psychological support element specialised in the protection of victims of severe trauma and its aftermaths. It is also imperative that the staff recruited to carry out the protection functions are (a) representative of the communities, (b) with specific language skills where applicable and (c) specific cultural awareness. In addition all victims, particularly women and children should have a voice, and should be consulted at every stage of the process from design to implementation.

Transitional justice mechanisms are in general temporary set ups which are intensive at the start and inevitably are scaled down and closed when its work is done. Whilst this assistance is rendered commensurate with the threat and needs, in most cases it will be scaled down and where appropriate withdrawn. There will however be occasions when witnesses will continue to need support for the rest of their lives. Regardless of this need, there remains the constant possibility of further compromise and threats in the future which will have to be dealt with. For this reason any protection programme has to continue indefinitely. In this regard, the South Africa Witness Protection Model can be considered a good practice model. The South Africa Truth and Reconciliation Commission set up witness and protection mechanism within its own structure, which later led to establishing a fully fledged witness protection program under the National Prosecuting Authority of the South Africa. The programme which is permanent is overarching and caters for all categories' of witnesses.

1.5 Key features of national witness and victim protection programs

1.5.1 Independency of the program

Generally the witness protection program sits with the law enforcement entity being the main investigative body in most countries. Increasingly with the advent of high level impunity, there is a greater need to ensure independence in order to re-assure witnesses and victims that the program has the ability to look after them without political interference or intimidation.

In many countries, independent units have evolved to deal specifically with witnesses involved in corruption cases or a separate unit has been created within the program. For instance, the Central Protection Service in Italy, although it has one program, has two operational sections, one dealing with informants and the other deals with witnesses. They have recognized the different approach required between these two groups. In addition, they have a referral mechanism to a normal law enforcement response where appropriate, another reminder that the Police have to play a role.

The UN High Commissioner,⁴⁶ in the address to the University of Nairobi, June 8, 2010 said; *ultimately, it is an independent, credible and efficient national judicial system which can best safeguard the rights of individuals and communities, deter further abuse, and instil confidence in governmental institutions. Indeed, the principle of accountability for unlawful and abusive conduct underpins good governance*

⁴⁶ Ibid

and societal cohesiveness. Conversely, impunity and corruption may—and routinely do— corrode public trust in the rule of law and in justice.”

Furthermore, in her report to the UN Human Rights Council, the High Commissioner stated that “no matter the placement of the witness protection agency, the law should ensure that the witness protection body enjoys full organizational and financial independence in the exercise of its functions”. There is no doubt that an independent system offers the best hope of gaining public confidence.

1.5.2 Formation of a comprehensive body

National systems often incorporate a witness protection board or commission who are responsible for deciding who comes into the program (admission criteria and procedure). The members are taken from a variety of disciplines having an interest in the protection of witnesses. For instance, in Turkey, the Witness Protection Board has eleven members made up of representatives of both the Minister of Interior, Minister of Justice and includes senior judges and other judicial personnel⁴⁷ In Italy, the decisions about the protection program is taken by a central commission composed of nominated representative of the Minister of Interior and the Minister of Justice. The president of the Commission is the Deputy Minister of Interior. The members also include two judges and five experts in organised crime.⁴⁸

In Argentina the Bill of Protection requires that the advisory board has human rights representation. The Kenya Witness Protection (amendment Act) 2010⁴⁹ also stipulates who should be represented on the board including the National Human Rights Commission of Kenya.

1.5.3 General responsibility of law enforcement

Whilst this report focuses on transitional justice mechanisms in respect of protection of witnesses and victims, the care of witnesses and victims in everyday domestic criminal activity is equally important and has to be considered. It is accepted globally that no National witness protection programme can deal with the majority of victim and witnesses requiring care. So the investigation of crimes and the care of victims and witnesses also rests with country law enforcement agencies in particular the Police of Uganda.

The Law enforcement entity cannot solve crime without the assistance, support and confidence of the community from where witnesses come from. The courts cannot try cases unless the police agencies gather the evidence and arrest and charge suspects. So the whole process relies on an effective Police response. It would be failing the Police service of Uganda to simply talk about new witness protection legislation without understanding the Police ability to implement it. One police officer interviewed in Kampala spoke of an extreme lack of funding, for example, he was allocated one tank of fuel per week to carry out his duties. This meant that travelling for long distances to investigate crimes and deal with witnesses was impossible. It also meant that he had no option but to prioritise which crimes he could realistically investigate.

The only way to guarantee that general victims and witnesses (who do not fit the criteria to enter a National programme) get the service they deserve is to properly train and equip the law enforcement agencies in Uganda. There needs to be a complete Police reform in Uganda which will entail changing the Police philosophy of their new role in a post conflict setting, establishing their independence from untoward government interference and re establishing the consent of the community and civil society. Combating crime and disorder, and bringing offenders to justice is dependent on the cooperation and support of members of the community.

A national programme will have to rely on a robust threat and risk assessment in order to ensure an appropriate and proportional response to minimise/mitigate the risk. There needs to be a credible threat with associated risk assessment. Human rights crimes, corruption and whistle blowing are particularly

⁴⁷ Turkey Witness protection Law No 5726 2008

⁴⁸ Law No 82 15 March 1991 as amend by Law No 45 13th February 2008

⁴⁹ Kenya Witness protection (Amendments) Act 2010 Cap B 3P(2)

difficult, given the obviously high potential/capability of the source of the threat. Nevertheless, there has to be an objective threat/risk assessment based on all of the information, intelligence or evidence known about the source. Currently the police/investigation teams are the main repository of data bases in respect of criminal records, intelligence etc. There needs to be a secure way in which a National programme can access these records to enhance their own intelligence product.

Elijah Dickens Mushemeza from the Cranfield Security Sector Management Team Cranfield University UK, in a paper; Policing in Post-Conflict Environment: Implications for Police Reform in Uganda,⁵⁰ concluded a comprehensive reform programme will entail; increasing the size of the police service, providing proper and timely training, equipping the police with the correct tools and equipment and underpinning this with the appropriate policing philosophy. On the non-operational side, the service must reform key areas, particularly the legal framework, public relations, community policing, logistics and supplies, human resource development and management, financial management, gender mainstreaming, and establishment of civilian oversight bodies.”

1.6 Recommendations

A. Immediate response

Recommendation: *The government of Uganda should consider setting up an interim protection program to support immediate transitional justice process*

It is recommended that the Government of Uganda start the process of setting up an interim protection programme now, in order to start to provide the essential services to victims and witnesses. The legislation is unlikely to go through Parliament until the end of next year if not later, given the impending elections. Though it is essential to have a sound legal framework for a body responsible for witness and victim protection, a witness and protection unit could be set up on an ad hoc basis through bye-laws of the relevant entities. For instance, in the United Kingdom, the witness protection programmes operated for over ten years before legislation came into force in 2005. The programme was run on a series of protocols and guidance documents.

A small group of individuals should be recruited after appropriate vetting and intensive training to perform the role. In this regard, international assistance could be sought. National Budget should allocate necessary funding, and if required, international financial assistance could be sought to get the programme up and running. The programme should also look to recruit the necessary experts who could assist in the training and development of the programme.

B. Mid-Term response

Recommendation: *Necessary amendments should be introduced to court procedures to allow judges to apply relevant protection measures suitable in the courtroom and court procedures.*

In-court protection measures can play a major role in the protection of vulnerable witnesses and victims, as the regular criminal procedure could prove distressing to the witness and, in some cases, have an impact on his or her security. Most in-court protection measures are not covered in existing Uganda legislation though judges have sometimes used their discretionary powers in the courtroom to adopt some of them. Conflicts between the rights of the witnesses and those of the defendants may arise, and tribunals all over the world have had to balance these rights effectively. The right of an accused to confront an adverse witness is basic to any civilised notion of a fair trial.

There is no doubt that a major aspect of protecting witnesses is the protection of their identities at various levels. From not having to share their identity at the disclosure/discovery stage, where documents and statements are shared with interested parties, to having the cover of a pseudonym in the initial contact and through the investigation stage, until such time as a formal application is made to the court.

⁵⁰ Journal of Security Sector Management Volume 6 Number 3 November 2008

Legislation should be drafted to allow formal applications for anonymity to be made. For instance, the UK Anonymity Act 2008 amended by the Coroners & Justice Act 2009⁵¹ allows application to be made at the investigation stage for anonymity. Crown prosecution Service UK⁵² codes of practice for witness and victims are relevant in this regard.

C. Long Term Response

Recommendation C-1: *Uganda should consider establishing a national programme of witness and victim protection*

Uganda should strongly consider a national witness and victim protection programme in Uganda, capable of the protection of any person who cooperates with various judicial and non-judicial authorities. The programme should also be supervised by an advisory board with representatives of the relevant State institutions. In addition, the board should include Human Rights representatives and relevant civil society groups and NGO's. This would be an overarching system which would cater for any person who needs to be protected. The programme needs a very high degree of autonomy whilst still maintaining the required accountability.

Recommendation C-2: *The Ugandan law reform commission task force should continue its consultative process in respect of a Witness protection programme.*

The ULRC task force should continue its consultative process to obtain the views of all sections of the Ugandan society who have a bearing or interest in the protection of individuals or groups. Representatives of Government, human rights institutions, civil society and non-government organisations should also be consulted. This will go some way to reassuring the public who in turn will have the confidence to come forward as witnesses to play their part in securing a safe environment for all Ugandans.

Recommendation C-3: *Uganda should prepare over arching protection legislation*

The Uganda Law Reform Commission have set up a national task force to look at existing legislation relevant to witness and victim protection, and the drafting of a specific witness and victim protection law. The consultant wishes to acknowledge the excellent preparatory work undertaken by the Uganda Law Reform Commission. However the task force should seriously consider widening its remit to look at all the protection issues in Uganda including post conflict protection and not just confine itself to protection in criminal cases.

There is no doubt that the position in Uganda in the last two years has changed dramatically in respect of protection with the advent of four new Acts of law in 2009/2010; International Criminal Court Act 2010⁵³, Anti-Corruption Act 2009⁵⁴, Whistle Blowers Act 2010⁵⁵ and Prevention of Trafficking Act 2009⁵⁶. All of these Acts require a protective agency/entity to be able to carry out their requirements to protect witnesses. The legislative review commenced by the Uganda Law Reform Commission is already looking at the various requirements to witness protection legislation in respect of criminal cases. Such initiative should be extended to cover all types of crimes, including gross human rights violations and serious violations of international humanitarian law, which may be particularly important in the context of the War Crimes Division.⁵⁷

Annex 2 is a general guide to what the legal framework should encompass. It is not designed to be a comprehensive list nor is it to be regarded as complete. In addition, the consultant caveats that these areas are suggested with reference to his own experiences in the field and various best practice documents provided by the EU and the UN.

⁵¹ Coroners & Justice Act 2009 enacted 1st January 2010 see Minister Of Justice Circular UK MOJ 2009/8

⁵² http://www.cps.gov.uk/victims_witnesses/resources/index.html

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ (See Para 69, A/HRC/15/33)

Recommendation C-4: *Uganda should completely review how Child Victims and Witnesses are assisted*

When children come into contact with the authorities in respect of being a victim or witness their vulnerability should be born in mind. Children should be consulted at all stages and their participation needs to be consensual at all times. They should also be afforded special measures from initial contact to giving evidence and beyond.

There are several UN documents relating directly to the treatment of Children as Victims and Witnesses such as UN guidelines on Justice Matters involving Child Victims & Witnesses of Crime, which should be referred to in drafting child-friendly witness protection legislation.⁵⁸

Recommendation C-5: *Uganda should completely review how women who are witnesses and victims are assisted*

Every effort should be made to ensure that any protection system takes into account the requirement to deal effectively with female survivors. Witness and victims of sexual and gender-based violence require especially sensitive treatment due to the particular trauma and alienation that they may have suffered. The law should provide for such special measures. The witness and victim protection agency should have the authority to engage specialized personnel and establish specific procedures to deal with these vulnerable witnesses. Several United Nations documents could be useful to legislators and policy-makers in ensuring that the law reflects their needs. Judges should regularly make use of special in-court protection measures to protect particularly vulnerable categories of witnesses, applying less restrictive criteria than in ordinary circumstances. There should be additional protocols setting out a wide range of measures available to the courts to protect witnesses borrowing from best practices elsewhere. Furthermore, gender implications of various witness protection measures should be assessed.

Recommendation C-6: *The government of Uganda should consider setting up a victim's compensation scheme funded by government.*

As part of the legislative review in relation to victim witness protection the government should consider setting up a permanent compensation scheme.⁵⁹

⁵⁸ UN resolution 2005/20 UN guidelines on Justice Matters involving Child Victims & Witnesses of Crime

⁵⁹ In the UK the Criminal Injuries Compensation scheme exists, good practices should be shared from this experience

Annex 1: List of organisations consulted

1. Uganda Law Reform Commission (ULRC)
2. Uganda Law Society (ULS)
3. Ministry of Justice and Constitutional Affairs (MoJCA)
4. Directorate of Ethics and Integrity (Office of the President)
5. Justice Law and order Sector (JLOS)
6. Governance programme Embassy of Ireland
7. The Uganda Association of Women Lawyers (FIDA)
8. Uganda Police Force (UPF)
9. Uganda Police (Child and Family Protection Unit)
10. Police Reform (USAID)
11. International Criminal Court- Uganda Office (ICC)
12. International Centre for Transitional Justice (ICTJ)
13. African Centre for the treatment and Rehabilitation of Torture Victims Refugee (ACTV)
14. Refugee Law Project (RLP)

Annex 2: Areas to be considered for inclusion in the witness protection

Definitions: An elaborate interpretation section that defines; Programme, Board, Witness, Victim, Definition of Threat and Risk looked for should focus on “real and immediate threat to life”⁶⁰ Definition of “Protected Person” and “Protection”.

Governing Body: Include Board composition (Human rights representation should be emphasized among others). Selection and qualifying conditions for selection to the board, Vetting of Members, terms of engagement, and offences of disclosure etc by board member; confidentiality contract, tenure of office, funding source and management of resources i.e. accountability and reporting channels, functions and powers of the Body.

Protection Programme Governance: Appointment of a programme Director, qualifying conditions, roles and responsibilities should be stated.

Who is eligible for referral: Criteria established for who can be admitted – this should not be too narrow. Most programmes also admit people who are not witnesses perse. The UK Serious Organised Crime and Police act 2005, lists those persons who can be admitted to the programme. This list includes judicial staff, police officers, and immigration officers, prison officers a person who is or has been a Covert Human Intelligence Source (criminal informant/collaborator). This is a good practice that Uganda, which also operates under a Common law system, could learn from.

There are also occasions when the defendant’s human rights have to be protected in this way. In a case in the UK, a Judge, on application, made a permanent order protecting the new identity and whereabouts of Jon Venables due to compelling evidence of a threat to his safety. Venables and another man, Thompson, had been convicted of the murder of a child in 1993 when they were both minors. Following their release they were both given new identity’s to protect their lives from revenge attacks.⁶¹ Venables was arrested this year for another offence and the Judge ruled that the permanent anonymity order should continue.

Referral protocols: Which entities/bodies can refer victims/witnesses for assessment to be included into the programme and the protocol for referral. The following information is required for the referral process: full background and involvement including a detailed Threat/Risk Assessment. (No referring agency should refer a person without completing a detailed Threat/Risk assessment.) The referral body would be the best entity to provide this information. Witness protection programmes do not have the capacity to investigate and determine threats. In addition, it is highly recommended that the programme maintains absolute independence from the investigative process to negate any collusion/coaching allegations)

Assistance from other Government bodies: Government assistance protocols in relation to any government agency required to assist the programme such as the Ministry responsible for official identity documentation, if any and official data bases. Also Immigration, customs, Police and intelligence services etc.

Assistance from prison service: Stipulate a covert liaison protocol and mutual assistance between prisons/correctional institutions and the program.

Ability to make formal arrangements with outside bodies: The program should be authorised to enter into agreements with external bodies when necessary to provide services to witnesses such as health care, education and potential employers.

Autonomous/Covert Operating: Description of operating ethos to include agreement on use of covert measures where required and adherence to strict confidentiality. There should be provisions on legal obligations in respect of disclosure of material leading to the identity of the witness, as well as provision on interference from outside persons or institutions.

Description of protection Measures which can be employed: A brief description of the protection measures which can be employed in the programme from basic security advice and monitoring to identity change and where appropriate, relocation abroad.

⁶⁰ Osman v United kingdom(1998) Application No 00023452/94

⁶¹ Times July 31 2010

Funding: Funding stream – The independence of the funding of a programme is vital to ensure confidence in the ability of the programme to operate without undue political pressure. Kenya have amended their protection legislation to place the responsibility under an independent structure with separate funding.

Audit: There should be also be directions on a review/audit process which protects confidential information in relation to the Witnesses whilst satisfying audit requirements. In Kenya for instance the audit process is carried out by a special unit normally tasked with reviews of sensitive organs such as President’s office intelligence services etc. Such reports can be shared with Parliament either by the Auditor-General or the Chair of the Agency.

Program Structure: How the programme is organised should include provisions on departments within such as;

- (i) **Witness Assessment & Physiological support section**, which addresses the initial assessment for inclusion and identifies the physical needs, mental health issues, trauma and psychological needs of the programme beneficiaries, with emphasis on care of women and children.
- (ii) **Witness Management section** responsible for day to day support of the witnesses informed and assisted by the physiological section,.
- (iii) **Protocol liaison section**, which should deal with Judicial/investigative/bodies, Police etc Government and International liaison.
- (iv) **Legal and training section**, which should deal with in house legal training and guidance to associated bodies such as investigative entities and court services who would either use the service or interact with it to promote understanding and cooperation. Dealing with legal documentation including Memorandum of Understandings (MoU’s) property/asset issues etc, Immigration and identity change issues.
- (v) **Administration section** responsible for, data protection, IT, accounts, personnel, reporting etc.
- (vi) **Security section** responsible for in house security, vetting, training and programme Risk assessments. Also providing cover in High threat movements.

Programme Staff: Include the selection process and qualifications for staff working in the Program, vetting requirements, terms and conditions of employment, which should include tenure of post, duties, disciplinary procedures, etc. The law should include conditions of engagement for personnel seconded from other agencies such as the Police, immigration etc. There should be provisions on offences relating to unauthorised disclosure by staff and penalties. Recruitment has to be in accordance with the principles of equal opportunity, race and diversity.

Staff remuneration: It is important that a realistic approach is taken with regards to staff remuneration. It is a very demanding role physically and physiologically, constantly having to work out of hours, at night and at the weekends, dealing with witness crisis. The provision of benefits such as healthcare, access to the Program’s vehicles and so on, in addition to the regular public service salary, is essential to ensure that personnel maintain a standard of living commensurate with the role and conversely, keep them beyond the reach of bribery.

Assessment process: Provide detailed description of requirements for person referred to the programme who should submit voluntarily to the assessment which includes among others; Medical, Physiological background enquiries and financial checks etc

Emergency protection procedures prior to formal acceptance: The law should provide for action to be taken in respect of an urgent request/need for protection before formal acceptance is granted.

Memorandum of understanding: There should be a requirement for any person referred to the programme to enter into an MOU between them and the programme as to understand what is expected of them and what they can expect from the programme including reasons for exclusion.

Offences of Disclosure: The unauthorised disclosure of any information relating to the program, its officers or witnesses should be a criminal offence.

Process for exclusion: All programmes are required to have a system of warnings ultimately leading to exclusion from the programme in respect of those witnesses who do not conform to the conditions of acceptance. This sanction commences with verbal warnings for minor infractions to a formal letter of warning and then written notice of expulsion from protection allowing a period of time to appeal usually 21 days before protection is withdrawn.

Appeals Process: Appeals process normally referred to a higher authority who are able to hear all the information used in determining the withdrawal of formal protection. This could be incorporated into an existing appeal court structure, which may be set up differently when addressing appeals on wit-pro determinations.

REPORT II:

Practitioners'
conference on
victim and witness
protection

2.1 Introduction

In September 2010, the UN Office of the High Commissioner for Human Rights with funds from the UN Access to Justice Fund for Women and the UN Joint Programme on Gender convened a two-day conference on victim and witness protection in Uganda. The conference, which was attended by participants drawn from diverse professional settings including: the medical, social, administration of justice, and judicial entities as well as civil society, was premised on the understanding that victim witness protection serves a crucial role in combating impunity, ensuring accountability, serving justice and achieving reconciliation.

The conference was convened at a strategic time when Uganda is transitioning from conflict to peace and recovery in the northern parts of the country, which faced internal armed conflict over two decades. During this transitional process, criminal proceedings against state and non-state actors are envisaged in line with the Juba Peace Agreement and its annexure on Accountability and Reconciliation hence the necessity for the development of a comprehensive victim and witness protection program to complement the emerging processes. Other transitional justice processes such as the traditional justice mechanisms are likely to emerge and therefore, a comprehensive victim and witness protection program would be relevant for these mechanisms once they are operational and fully resourced.

The Conference was informed by a study by the Uganda Law Reform Commission relating to the legal frameworks for witness protection and independent works done by other groups. The objectives of the Conference were to;

- i) Reach and promote understanding of the human rights frameworks for witness/victim/survivor protection and participation in formal and transitional justice;
- ii) Facilitate discussion and consultation between practitioners and technical experts from the various stakeholders and agencies on victim/survivor and witness protection in justice and transitional justice processes and mechanisms in Uganda;
- iii) Facilitate discussion and consultation on special mechanisms for witness and survivors of GBV.

These were the focus of the deliberations at the conference, and were further enhanced with thought-provoking presentations and participatory group work discussions contextualised around the pre-eminence of victim witness protection in effective delivery of justice processes.

This report highlights a summary of outcomes of the discussions in which the overwhelming consensus affirmed the need for a comprehensive and cross-cutting protection policy for all persons likely to be at risk and or facing threats arising from their participation and, or engagement with formal and transitional justice mechanisms.

The valuable recommendations and proposals from the practitioners reflected in this report will further be instructive in the next phase of discussions and subsequent implementation of a witness protection program in Uganda.

2.1.1 Conference Methodology

The two day practitioners' conference was designed to target participants from several disciplines as well as professionals and representatives from government institutions and departments. It was planned to stimulate interest, discussion and interaction amongst the participants with a view of drawing from their rich expertise and practical experiences.

The strategy to ensure active individual participation involved the presentation of a panel discussion whose task was to provide vital orientation around the conference theme as well as inform the participants about existing mechanisms for victim/ witness protection in Uganda drawing from experiences of other legal jurisdictions on the one hand; and provoking rich discussions amongst the participants on the other hand.

The organisers of the conference engaged an expert consultant on victims and witness protection whose task was to advise on strategies on how to develop a framework for a protection model for victims and witnesses. Guidelines were developed to inform group discussions relating to the needs of victims / witnesses vis a vis professional bodies that engage with them.

Participants were also engaged in practical exercises, in which they applied the theoretical knowledge on witness protection to practical case studies from real life experiences.

Group Work and Plenary

Bearing in mind that participants were drawn from various disciplines, six groups were designed specifically to respond to the guidelines and case studies developed for the conference. The composition of each group was selected taking into account the various disciplines and or professional bodies sufficiently represented to maximise on their practical experiences. Group work was designed to be conducted in syndicate sessions with each group addressing specific case scenarios. Feedback on their findings propositions and views were made during the plenary.

With a total number of 90 participants, these were divided into 6 syndicate groups of 15 people each. Each syndicate group had a representative from the following professional groupings; Judiciary, Psychiatrist, Social welfare, Law enforcement, UN, CSOs, DPP, Media/Advocacy institution, UHRC/ULRC/JLOS.

2.2 Summary of the Introductory Remarks and Panel Presentations

2.2.1 Remarks from OHCHR⁶²

This conference is set to mark the beginning of a dialogue process on victim and witness protection in Uganda. In 2009 OHCHR issued a needs assessment questionnaire to civil society with the aim of garnering a cross section of views from the public about the utility of holding a conference on victim and witness protection and participation. During this exercise, civil society expressed a keen interest in the proposed debate on witness protection citing developments in the field of transitional justice in Uganda such as the formation of the War Crimes Division (WCD) of the High Court, the need to address the existing gaps in victim and witness protection as a justification for the development of a comprehensive and inclusive strategy on victim and witness protection and participation. Additionally, the respondents to the questionnaire underlined the need for comparative studies from other jurisdictions in order to address the myriad and multiple challenges in ensuring protection and making victim and witness participation in justice proceedings effective.

Witness protection has a direct impact on a number of fundamental rights and the lack of such protection amounts to a violation of victims' rights to an effective remedy. The need for protection of life, physical and psychological integrity, and privacy and reputation of those who agree to testify before courts is more generally required under relevant provisions of the International Covenant on Civil and Political Rights, particularly the right to life, prohibition of torture and inhuman or degrading treatment.

The *UN Basic Principles and Guidelines for Victims of Serious Violations of International Human Rights Law and Gross Violation of International Humanitarian Law*⁶³ defines victims as:

“...persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights... Where appropriate and in accordance with domestic law, the term victim also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation”.

With respect to their treatment in the justice process, the aforementioned UN Basic Principles provide that:

⁶² By Birgit Gerstenberg, Country Representative for the Office of the High Commissioner for Human Rights in Uganda.

⁶³ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; adopted by the General Assembly, 21 March 2006, A/RES/60/147.

“Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatisation in the course of legal and administrative procedures designed to provide justice and reparation.”⁶⁴

From a human rights perspective, victims and witness protection should be non-discriminatory. This means in some cases challenges have to be overcome with respect to vulnerable, marginalised, neglected and discriminated groups like the poor, women, street children, displaced persons, prisoners, human rights defenders, disabled, persons living with HIV/AIDS, prostitutes, homosexuals and others who might not benefit from the same public acceptance and institutional protection.

2.2.2 Remarks from Chief Guest Speaker⁶⁵

The concept of witness protection in Africa is a recent phenomenon as may be noted from the fact that South Africa and Kenya are the only countries to date who have developed a witness protection program and related legislation.

The Interpretation Act Cap 3, the Police Act Cap 303, the Criminal Procedure Act Cap 116, the Judicature Act Cap 13, the Trial on Indictment Act Cap 23, the Evidence Act Cap 6, and the Penal Code Act Cap 120, do not define the term witness. Chris Mahony,⁶⁶ defines a witness as;

“a person other than the defendant, having knowledge of a fact (possessing information) to be ascertained in criminal; proceedings or summoned by the judicial authority to provide testimony.”

In discussing the role of a witness in a trial process it should be noted that;

- A witness is important in assisting police during investigations and as well as in giving evidence in court. (Nicholas R. Fyfe and Heather McKay)
- A witness is very important for a trial and an indispensable part of the justice delivery system of any country (Swapneshwag).
- ‘Although during the last thirty years a wide range of evidential tools have become available, witness have invariably had a key role in criminal proceedings. Witness statements are indispensable to the success of the investigation and trial.’
- Following the Indian case of *Swaran Singh V State of Punjab*, a witness by giving evidence relating to the commission of an offence, performs a sacred duty of assisting the court to discover the truth.

In addressing the problems faced by witnesses it is important to note that;

- There has been growing concern about the intimidation of witnesses aimed at deterring them from reporting crime or giving evidence.
- There is also the problem of the way witnesses are treated when they appear in court. Some key examples she referred to were the absence of a prescribed place or safe environment for witnesses to stay while waiting to testify; and failure to orient witnesses to the court process in particular the act of being subjected to harassment during cross examination.

2.2.3 Remarks from Uganda Law Reform Commission⁶⁷

The functions of the ULRC as set out in the Uganda Law Reform Commission Act include; developing new areas in the law by making the laws responsive to the changing needs of the society in Uganda.

⁶⁴ UN Basic Principles, op.cit. Chapter VI. TREATMENT OF VICTIMS, Principle 10.

⁶⁵ By Lady Justice Ibanda Nahamya, a Judge of the High Court of Uganda and one of the Judges constituting the War Crimes Division. She has previously worked with the International Criminal Tribunal for Rwanda.

⁶⁶ Author, ‘The Justice Sector Afterthought: Witness Protection in Africa, 2010, Institute for Security Studies.

⁶⁷ By Jackie Akuno, a senior Legal Officer at the Uganda Law Reform Commission

In this regard, one of the projects that the Commission has undertaken is to carry out a study to initiate legislation on witness protection in Uganda.

According to the ULRC witness protection is important because;

- The provision of witness protection is fundamental to the credibility of any justice system and to the battle against impunity;
- The proper functioning of a state's justice system depends on the willingness of victims to come forward and report crimes committed against them and the availability of witnesses to provide information and testify as to what they saw in a full and impartial manner;
- The need for a strong witness protection mechanism has also been emphasised by international human rights bodies, as in 2003 when the UN HRC, examining Uganda's combined fourth and fifth periodic report, stated that;
- Though the need for witness protection has been evident for many years, no concrete steps have been taken to fill this lacuna in our law;
- A witness protection program is critical in combating organized crime.

The ULRC advanced a number of reasons to justify the development of legislation for witness protection and these include;

- providing measures which will ensure psychological, social and professional protection to witnesses under threat and vulnerable witnesses in judicial proceedings;
- Uganda's criminal justice system suffers from a dearth of successful prosecutions. One reason often cited for this is the failure of witnesses to come forward to give evidence, in particular when the State has been implicated in a crime;
- Failure to testify and withdrawal from trial are occur specifically due to well documented harassment and killings of victims and witnesses who have been brave enough to risk their lives to seek justice;
- The key to a witness protection program is the safety and security of witnesses before, during and after trial;
- A witness protection program is critical in combating organized crime;
- There is need to identify the rights and responsibilities of witnesses with the intention of allowing witnesses to enjoy their rights alongside accused persons without compromising the criminal justice system;
- There is need to support witnesses as victims of crime;

In its study report on witness protection, ULRC distinguishes victims from witnesses and discusses the need for witness protection and how such protection can be provided to those witnesses in need with the help of comparative country experiences such as Kenya and South Africa and reference to international standards and best practices.

2.2.4 Discussions on ULRC Study on Witness Protection⁶⁸

In discussing the study report presented by the ULRC on witness protection, Dr. Onoria argued that there is need to appreciate what witness protection entails and why the need for protection. He stated that witness protection is essential for ensuring credibility of the evidence during an accountability process and reinforcing the right to a fair hearing at the different stages of the court process particularly during examination in chief and cross examination.

It was noted that the Commission may additionally need to consider how far witness protection can go in respect of;

⁶⁸ By Dr.Henry Onoria, an Associate Professor of law at Makerere University Kampala

- a) Organised crime (e.g. trafficking in persons, drug dealings etc)
- b) Heinous crimes (e.g. Crimes against humanity, war crimes, human rights violations – torture).
- c) Corruption: The Commission should look at the OAU and UN Instruments on corruption and on torture. The Uganda Anti-Corruption Act which addresses the need to protect witnesses in corruption cases is similarly useful to inform the Commission’s work. The whistle Blowers Protection Act, 2010 is also another piece of legislation that makes good provisions for whistle blowers which may be essential to review in the development of comprehensive national protection legislation.

The ULRC study demonstrates evidence of the need for protection but there are more lessons to draw from the whole concept of protection. Questions relating to transitional justice processes for example on how to deal with witnesses in post conflict situations cannot be ignored.

Regarding protection measures, it should be noted that as far back as the 1950’s, victims’ identities were never disclosed but other measures such as pseudonyms (e.g. “A” *versus* “The State”) were used. The African Commission on Human and Peoples Rights, allows for communications (complaints) to be admitted without particulars of the identities of victims being disclosed. This has been possible because the Charter provides for other persons including organisations to bring complaints on behalf of the victims of violations.

There is need for protection measures for vulnerable groups such as children, and also the use of protective screens, and in post-trial situations there may be need for safe places etc. Witness protection is borne out of the state’s duty to protect under international human rights law.

There is need to define which specific institutions will deal with the issue of protection. In this context, the ULRC report highlights that in some cases the Ministry of justice or the policing authorities are mandated to deal with protection of witnesses.

2.2.5 Perspectives from Civil Society⁶⁹

Any existing witness protection framework in the country is still sub-standard. There are two issues of concern and challenges relating to the prospects of witness protection in Uganda;

- i) The State, which monopolises the prerogative to protect in ordinary circumstances, is not only unable to meet its obligations by omission but rather it is by commission a perpetrator. In this context, protection is not by omission the challenge on the part of the State but rather, the fact that citizens are witnesses to state infractions. This is particularly critical in the context of human rights violations dealt with by the Uganda Human Rights Commission and by the courts of law.

Related to the above is the argument that legislation and policy making generally in Uganda responds to external pressures rather than internal demands. Accordingly the speaker highlighted the enactment of the International Criminal Act and the Whistle Blowers Act as good examples of responses from donor pressure albeit each providing for protection of victims and witnesses and whistle blowers respectively.

- ii) The diverse nature of our communities, the nature and magnitude of criminality, and the complexities of living in multi-ethnic societies. In neighbouring Kenya for instance, witnesses of violence were reportedly accused of betraying their ethnic communities (following a leakage of the identities of the witnesses from a previous closed door inquiry).

There is a thorny social and legal issue which relates to the protection of witnesses who constitute a minority in society and whose vulnerabilities overlap with real or perceived moral issues for instance Lesbians, Gays, Bisexual, Transgender and Intersex individuals. Wherever these contradictions have emerged, most protection officials and human rights activists have tended to approach the question with a degree of caution and diplomacy respectively, in effect protecting themselves and their institutional interests, rather than victims and witnesses.

⁶⁹ By Moses Chrispus Okello, an Officer with the Refugee Law Project

2.3 Summary of institutional gaps relating to witness protection

Using case scenarios annexed to this report, participants were tasked to identify existing gaps in the prevailing laws in order to inform the discussions. The following are the pertinent institutional gaps that were identified for which a proposed protection frame work would address;

- **Setting up protection:** there exist huge challenges in the absence of a framework for protection. It is not defined who may be entitled to protection, its nature and when it may be provided. It is equally challenging without an independent and accountable body to contemplate protection for example where the state is the aggressor as in many instances in Uganda's recent history.
- **Information:** victims and witnesses often have physical, psychosocial, social, economic needs. The challenge however that bothers witnesses is who provides for these needs? Victims and witness lack information about available services and where these can be obtained. The existing institutions namely the police, army, courts of law etc do not provide information to the public, which contributes to the ignorance of the public.
- **Perception:** Victims and witness are often treated as objects of the criminal justice process and not as rights holders. There is a lack of understanding for the victim and witness' needs and consequent actions such as being handled professionally by empathising with the witness and or providing them assurance of acting in their interest.
- **Confidentiality:** Some law enforcement and professional bodies have poor record keeping and therefore may lead to risk of the information leaking and exposing a witness. There is similarly limited understanding of processes by victims and witnesses relating to the provision of information on process, psychological, physical treatment/assistance, legal needs.
- **Public Awareness:** There is a general public ignorance of existing legislation and lack of capacity issues for professionals involved with victims and witnesses. This lack of information impacts on the way a victim and or witness is treated or dealt with during an accountability process which may be traumatic and or unhelpful in achieving justice.
- **Courts of Law:** Court interventions are very instrumental in the protection of victims and witnesses however in many situations where victims and witnesses are engaged with the court processes, there is little or no protection before, during and or after the court process. In situations where some protection is extended for example through injunctions, these are violated or abused and follow up is problematic hence not providing the needed protection.
- **Safe Places:** Many if not all victims of human rights violations and or witnesses have no guarantees for protection or secure and convenient places of aboard when engaged with various professional institutions and bodies. Moreover such victims often travel long distances from their homes in the pursuit of local remedies. Victims of GBV are much worse off given their predicament in society.
- **Referral Systems:** The lack of institutional capacity notwithstanding, there is very pronounced lack of coordinated referral systems amongst the law enforcement bodies and other professional groups. This problem impacts severely on the victims and witnesses.
- **Resources:** A victim and witness protection programme requires resources to implement. The police have often been cast with the responsibility to provide protection is often underfunded and therefore unable to provide protection. For example the police in many places around the country rarely respond urgently to a call for rescue/investigation/protection etc and hence evidence is compromised, life is endangered, property is destroyed, records are lost etc.

In some cases, CBO's, NGO's, IGO's and private persons have assumed the responsibility to provide a degree of protection to victims and witnesses relying on donor funding and private sponsorship which is not only insufficient but unsustainable in the long term.

- **Medical Facilities:** Medical facilities which are very essential in victim and witness protection before, during and after engaging with the formal justice process are ill equipped and lack proper management. Accountability by responsible persons in some cases is non-existent or is not respected

hence exposing victims and witnesses to diverging challenges.

- **Lack of functional emergency response mechanism:** This problem is tied to the lack of resources and the general lack of accountability in government institutions and bodies including in some professions.

2.4 Summary of proposals for victims and witness protection and participation program

2.4.1 Legislation on Protection

Uganda lacks a specific legislation on Protection for victims and witnesses of human rights violations and crimes who may wish to engage with criminal justice processes on the one hand and other transitional justice mechanisms on the other.

However, there exists several pieces of legislation including; the Whistle Blowers Act, the Penal Code Act, the Anti-Corruption Act etc; which make provision for protection issues within the areas, that the said laws legislate.

The Constitution of Uganda⁷⁰ like the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and other International instruments provides for the right to life and other fundamental human rights. The Constitution thus obliges the state to protect and ensure the respect for the right to life and other non-derogable fundamental human rights by taking steps to give effect to those rights through provisions of the law. These steps include making provision for procedural rights to remedies such as investigations and prosecutions and compensation or other forms of reparation; these being integral to the substantive rights to which they attach. In addition to individuals' rights to protection from crime and the procedural rights associated, those participating in the justice process also have rights to protection, including physical, psychosocial and material.

Uganda is soon to commence trials of serious crimes such as war crimes and grave breaches of the Geneva Conventions Act, Genocide and Crimes against Humanity under the newly established War Crimes Division of the High Court of Uganda.⁷¹ At the same time, several transitional justice processes and initiatives such as the drafting of a Bill on National Reconciliation, strategies for the adoption and use of traditional justice mechanisms are on-going. Witnesses, victims and other groups including intermediaries who ultimately will engage with formal justice mechanisms or with transitional justice processes will and or may require protection owing to threats arising from their participation and provision of testimony to the bodies set up for a particular purpose; owing to their vulnerability and or owing to the nature of crimes in issue at a given process.

The witnesses and related risks referred to above include;

- a) experts such as medical practitioners and other professionals who on account of their testimony in a formal justice process or transitional justice process may be put at risk and threat to their personal life, that of their family/relatives or to their jobs.
- b) Direct victims of human rights violations or crimes and by reason of their knowledge and or possession of information relating to the violations, their life is threatened or that of their family members/relatives;
- c) Defence witnesses, their families or relatives.

Direct victims may include children and other vulnerable groups such as the elderly, women and, or victims of sexual and gender based violence (SGBV). The protection needs of every individual must be assessed holistically. The protection needs of vulnerable victims in particular are not solely based on account of the testimony given or information in their possession but due to their specific needs, past experiences and current situation. There is a need to safeguard the dignity and privacy of the person, as well as protect the person from the possibility of re-traumatisation, or the need to protect the childhood of the person, etc. Thus, protection needs are not just physical, but they encompass psycho-social and

⁷⁰ See laws of Uganda, 2000 Edition, Cap 01.

⁷¹ See International Criminal Court Act, 2010, Section 2, Purpose, subsection c) "to make further provision in Uganda's law for the punishment of the international crimes of genocide, crimes against humanity and war crimes"

material realities. Detailed and specific guidelines exist regarding the treatment of child witnesses in justice processes.⁷²

Other groups such as intermediaries and members of civil society organisations may also be put at risk for their involvement in the assistance of victims and witnesses to participate in formal and transitional justice mechanisms or in associating with such victims.

These reasons are critical for the development of a comprehensive legislation on protection for victims and witnesses of human rights violations and crime, but also those that engage with either the formal justice process or participate in the transitional justice process that may be established.

2.4.2 Body to deal with witness protection issues

In a formal justice process, several individuals, institutions and bodies engage with victims/witnesses of crime at unique and different stages. These institutions include the law and order/security sectors such as the police, the medical doctors and other medical professionals, social scientists such as counsellors or psychologists and others such as religious leaders and elders, legal professionals such as lawyers and lastly Magistrates and Judges who often preside over the justice process.

At the transitional justice stage, notwithstanding the particular mechanism in issue, several professional bodies and individuals may be engaged with victims to provide assistance. These may also include the law and order/security sectors such as the police, medical doctors and other medical professionals, social scientists such as counsellors or psychologists and others such as religious leaders and elders, legal professionals such as lawyers and lastly Magistrates and Judges.

Bearing in mind that at various levels victims and witnesses engage widely with professional bodies, it is important that a victim and witness protection legislation should provide for an independent body charged with ensuring effective protection both physical and psychosocial, with qualified staffing including expertise of gender crimes and trauma.

The provision for an independent body to provide protection may be conceived to be centrally located however recognising that victims and witnesses will not necessarily be in the same central location, there may be a need to consider the establishment of regional units to respond to the protection needs of victims and witnesses whenever these arise.

The body to be charged with responsibility may be a new creation under statute or may be created under an existing legal frame work. The advantages that accrue from setting up an independent body include maintaining professionalism in dealing with victims and witnesses, ensuring accountability of the individuals charged with specific responsibilities of protection, efficient management of resources etc.

It is also important to ensure that victims are not made an object of the formal justice process but as interested parties with rights to engage with the accountability mechanisms. This may accordingly entail establishing victims and witnesses units independent of the Prosecution and Defence within the judiciary or other transitional justice processes using the experiences of existing international mechanisms such as the ICC.

2.4.3 Resources to effect protection

An effective protection mechanism must in addition to being established by legislation be supported by sufficient resources both financial and human. The financial resources required must be from a secure source such as the Government consolidated fund which may promote sustainability of a protection programme - as a government's duty to her citizens. These resources must be substantial to ensure that protection schemes that may be adopted for victims and witnesses such as relocation of a witness and his family temporary to another part of the country or provision of safe places for victims and witnesses etc is sustainable.

⁷² See UN Guidelines on Justice Matters involving Child Victims and Witnesses, adopted, 22 July 2005. Also REDRESS, *Victims, Perpetrators and Heroes? Child Soldiers before the International Criminal Court*, discusses best practice standards in relation to all phases of international criminal proceedings specifically in relation to the rights of children, available at <http://www.redress.org/downloads/publications/childsoldiers.pdf>

Living allowances, medical support, transportation needs, food, communication and other costs relating to victim and witnesses' engagement with the formal and transitional justice processes must be catered for by the resources provided in a protection scheme.

On the other part of the equation, are the human resources. A multi-disciplinary team of professionals is required to efficiently manage a victim and witness mandated protection body. Victims and Witnesses who opt to engage with the formal and transitional justice mechanisms will have varying needs including physical, mental, medical, psychological, legal etc. In this regard therefore, human resources employed full time in the independent body will be essential for the effective running of a developed protection programme.

2.4.4 Public awareness

There is a link between public information about judicial processes and safety. Victims have the right to know about judicial processes: public process, transparency and information about judicial development in relation to cases all reinforce safe environment for victims and witnesses. Lack of information, leads to disinformation, increased uncertainty, volatility and risk.

The lack of specific legislation on Protection in Uganda notwithstanding, a general ignorance of the need to provide and ensure protection for victims and witnesses at various levels of interaction by law and order/security sectors such as the police, medical doctors and other medical professionals, social scientists such as counsellors or psychologists and others such as religious leaders and elders, legal professionals such as lawyers and Magistrates and Judges is undeniable.

In the same vein there is the need to build the capacities of the professionals by undertaking specialised trainings for these groups of persons interacting with victims at different levels.

Protection for victims and witnesses is essential because without assurances for their physical and psychosocial safety then there cannot be effective participation and without effective victims and or witness participation then the formal and transitional justice mechanisms will have challenges executing their respective mandates. Accordingly public awareness about the rights of victims to protection during the interaction with formal and transitional justice process is paramount.

2.4.5 Support for victims and witnesses

To ensure the effective participation of victims and witnesses during an accountability process, it is essential to make provision for supporting such persons to attend the sessions by providing transportation and accommodation facilitation, and other related personal welfare effects. Provision for waiting rooms for the victims during trial processes should be considered; familiarization tours of court rooms and the processes involved in both formal and transitional justice processes are useful for victims and witnesses to avoid situations likely to lead to intimidation and embarrassment.

Care needs to be taken especially within the formal justice processes to ensure that the support provided to the victims/witnesses is not interpreted to refer to an inducement measure to testify against an accused person as this is likely to be detrimental to the fair trial rights of an accused - where the support is perceived so and could also jeopardise the entire trial.

Support for victims may also relate to immediate or current needs of the victims and witnesses before they are able to engage with the accountability processes. These needs may arise from investigations, pre-trial, trial and post-trial stages of a given process and may include risk assessment, counselling, medical aid/support etc.

Victims, witnesses and other intermediaries as the case may be, will require timely information and or updates from the processes of accountability that will be in issue; whether it is the formal or transitional justice processes.

Confidentiality

In dealing with victims and witnesses, it is important to be guided by the principle of confidentiality. This principle relates to the relationship between the victim/witness on the one hand and the professional institution/persons on the other. It relates to the protection of information provided by the victims and witnesses; including particulars and identity of the victims/witnesses; proceedings of courts and other processes.

Ensuring confidentiality may require taking unique measures dependent on the victim/witness and circumstances in issue. The measures may range from restraining orders by courts, restrictions on media and press coverage, use of redacted versions of official transcripts, criminalising of negligent acts that expose victims and or witnesses thru careless handling of data etc.

All persons dealing with victims/witnesses ought to be alive to confidentiality issues but more so for professionals such as Lawyers, medical practitioners and other professionals, social scientists, nongovernmental organisation workers, law enforcement officers etc. As some professionals have codes of conduct there is need to encourage the observance and respect for these codes and in so doing reinforce protection standards.

Who needs protection

The determination of who needs to be extended the protection service will require ascertaining a number of issues including;

- a) The risk and threats or potential risk and threats paused;
- b) The degree of risk and threats or potential risk and threats;
- c) The source of the risk and threats paused;
- d) In the circumstances what can be the mitigating factors;
- e) The place where the risk or threats originates;

Upon the establishment of these issues, an informed decision by the respective body could be taken to provide protection for the victim and or witness as the case may be but also to a wider group of persons which could include families, intermediaries, expert witnesses etc. In some situations such as those involving vulnerable groups like children and or victims of SGBV, it will be necessary for the institutions in direct contact with these victims to make an assessment and provide guidance or in the alternative, take measures which are intended to protect these victims from exposure and trauma.

When to provide protection

In principle, protection must be available prior, during and after trial. The provision of protection to a victim by an established independent body may not necessarily be automatic because one has been victimised or is likely to be a witness. Like in determining who needs protection, deciding to provide protection will require undertaking an assessment of the risks and threats paused and in the circumstances what nature of protection will be required for a victim or witness or other intermediary whether it is prior, during or after an accountability process.

The nature of protection

The nature of protection to be extended to a victim, witness or other intermediary varies from one person to another as well as the nature of victimisation suffered or likely to be suffered. Victims of sexual violence such as rape, if they are to engage in a criminal trial process, may need to receive support such as pre-trial and post-trial counselling to protect or minimise the potential for them to break down or suffer possible re-traumatisation. They may also require protection from the courts especially where degrading and or embarrassing questions are paused during cross examination.

Others like children may require an adult person to accompany the child with the view that the person must be in a position to assess the ability of the child to cope with the trial process and where necessary advise the court for the need to take a recess and resume later.

Other protection methods may include use of anonymity, closed sessions, redacted transcripts, screen shields and audio-visual recordings as and when these may be used and dependent on the nature of proceedings. Courts may be given the discretion to determine when these may be employed based on the professional advice from the protection body.

The crucial and important factor is that an assessment of the needs of the victims, witnesses or other intermediaries is necessary before a decision of the nature of protection to be provided is made. This may also require an efficient consultation and referral system within the various professional institutions in issue at a given time to ensure that the protection is effective.

Why protection

Protection for victims, witnesses or other intermediaries is necessary prior, during and after formal and transitional justice processes because of a number of reasons to wit;

- a) The life of a suspect, victim or witness or other intermediary may be at risk through disclosure and or exposure of information provided by the victim, witness and other intermediary;
- b) There is risk for potential re-traumatisation of a victim and or witness on the one hand as well as a risk of trauma for a suspect who is found not guilty;
- c) Ensure justice is done through the confirmation of facts by a victim or witness;
- d) Enable a victim or witness be heard through the provision of space to air their views;
- e) Securing documentary and other evidence including exhibits;
- f) Empower the victim, witness and other intermediary to be assured of their safety in order for them to participate freely in a given process.

How to ensure effective protection

Acknowledging the need for protection is insufficient in itself. A protection scheme must be comprehensive enough by ensuring that it is well capacitated through professional staffing on the one hand and making the scheme accountable as a public body to government authority such as the Ugandan Parliament or other defined authority on the other.

Like other institutions providing a public service, a protection scheme may be well regulated by reason of it being created under a specific legislation such as an Act of Parliament in which the mandate is defined. The legislation may provide for independence of the protection scheme notwithstanding that it may be staffed by members of professional bodies such as the police who may have allegiance to their superiors.

The beneficiaries of the protection scheme may need to be consulted to get their consent where they have to make undertakings to be provided with protection. Consent is critical and will require a victim and or witness executing an agreement to go under protection.

It is pertinent also to ensure that the general public is made aware of the protection scheme in place such that victims, witnesses, suspects and other groups such as intermediaries take informed decisions to engage in a formal or transitional justice process.

2.5 Summary of recommendations

The following is a summary of recommendations proposed by the various groups in respect of protection needs identified;

- Law on Victim and Witness protection – at the moment piecemeal, needs to be reviewed and a comprehensive and coherent law developed. The law should include mechanisms to address intimidation of witnesses etc.
- Any developed law should be made known and disseminated through awareness campaigns.
- An Independent body /unit to carry out protection needs to be established.
- A Comprehensive risk assessment should be undertaken.
- A Comparative study of laws – best practices in other jurisdictions ought to be appreciated.
- Cultivation of trust in police, judiciary and its workings. Fair and just legal system – confidence in legal system.
- Community policing –(PSU have toll free numbers) – build confidence in police
- Strengthen JLOS subcommittee at local levels of administration.
- Strengthen institutions responsible for witness protection by specifically;
 - Defining accountability guidelines.
 - Enforce penalty regimes.
 - Undertake capacity building for the relevant stakeholders on witness protection.
- State cooperation should be improved in case of relocation of witnesses.
- Consider reform of existing institutions so as to ensure accountability on the one hand and efficiency and access to justice on the other.
- Consider creating an inter-ministerial committee to carry out the institutional reforms.
- Undertake further community consultations on the protection issue in an effort to make the protection relevant to in the country.
- Engage with the media through the sharing of relevant information.
- Provide for funding mechanisms for the victims and witness protection.
- Encourage the state to plan, develop and provide shelters/safe places for survivors of SGBV.
- Ensure that there is adequate protection of witness throughout the different stages of the case;
- The general public should be sensitised about SGBV issues;
- Uganda should domesticate and implement relevant international conventions dealing with the protection of women and children’s rights.

2.6 Closing remarks⁷³

There are gaps in the existing protection laws that have been identified in the course of the conference and will inform the work the ULRC is engaged in developing legislation on protection. Issues, such as who a victim/witness is, came up in the opening remarks and as such these will need to be addressed. However most issues are covered by the existing laws for example the intimidation of witnesses.

Issues of bail also arise in cases of serious crime. There is a directive from the executive that bail should not be granted in serious crimes. The Commission is looking at this seriously and will recommend this in the course of developing legislation. The Commission is also looking at untouchables in society in the context of transitional justice.

⁷³ By Prof. Joseph M. N. Kakooza, Chair, ULRC

Under the Juba Peace Agreement, anybody can testify against a government official under the existing laws without fear of potential violations however in respect of transitional justice.

The following include some of challenges on witness protection in respect to transitional justice processes in Uganda;

- i) Problems related to the harmonisation of traditional mechanisms with the formal mechanisms. The ULRC is conducting research on the traditional justice mechanisms for example looking at how countries such as Canada and Australia have applied their own mechanisms. Once the research is completed, the commission will hope to make proposals for amendments.
- ii) Lack of sufficient medical professionals in communities to respond to needs of victims. There is thus, need to keep this in mind.
- iii) Reconciliation. The ULRC is aware of efforts to nationalise reconciliation and the Commission is looking at this aspect.
- iv) Time limits for the law on reconciliation.
- v) Gender issues. The law does not discriminate against women save in customary law e.g. customary practices in dealing with crimes.

The way forward

- a) The ULRC will continue to carry out research to approve findings and recommendations to inform the drafting process for the Bill. Once the Bill on witness Protection is drafted and presented for discussion, the Commission will look to engage with the Parliamentary Committee on Legal and Parliamentary Affairs.
 - b) The Commission will look to get support from all professional groups in developing this law on witness protection.
 - c) There may be need to look further to issues such as participation and reparations hence the law may not necessarily cover protection but other issues – as such it may entail changing the name of the Law to take into consideration other issues out of protection but relating to victims and witnesses.
-

1. Transitional Justice – (Facilitators: Refugee Law Project – Kene Esom and OHCHR)

During the height of the conflict, a 14 year old girl named Loretta Oyella was taken from her home in Bibia village by the rebels who operated in the region. She was taken across the border to Sudan where she became the “wife” of one of the senior rebel commanders. She spent 2 years in captivity during which time she was forced to participate in atrocities crossing back into Uganda every so often. On one occasion, early on in her captivity, she was ordered to return to her community to participate in a massacre. She stood on guard while the others conducted the killings in her presence. After this, she was considered “baptised” into the rebel organisation and was given a place as the “wife” of a senior commander. She later managed to escape during a battle between the rebels and the government army. She returned to her community with her child who she was able to escape with seeking to take advantage of the provision amnesty to those renouncing armed rebellion. Her community has turned against her accusing her of being a rebel although she insists she was a victim as well. She has been receiving threats from a gang of youth in the community who keep reminding her of the recent lynching of another former rebel girl in the next village who was accused of stealing a bicycle. A truth commission has been established and Loretta is willing to testify but she is afraid of the repercussions. She is stigmatised and her family do not want anything to do with her or her child.

2. Sexual crime/domestic violence and Gender based violence (Facilitators: UNFPA Anna Mutavati and Mary Kusambizi)

Asibo, 25, was gang raped last night while returning home from the market and was rescued by some neighbors who happened to be near the bush where the atrocity was committed. The neighbors had feared to help because the perpetrators were known to be private security guards and had a gun and kept shouting that they had instructions from a local councilor and she had better cooperate. As a result of the rape, Asibo suffered persistent anal and vaginal bleeding and could no longer control her bladder or bowels. She had a lot of pain in her abdomen and pelvic area. The people from that community fear reporting because incidences like those have happened in their community before and there was no justice received, instead the victims were subjected to more suffering, pain and fear including threats to their lives by people connected to the alleged perpetrators. They are now afraid to seek redress from the justice system they believe sanctions the violations. Asibo is traumatized and does not know what to do, now that even her husband has sent her away.’

3. Child rights abuse – a child who is a victim of child sacrifice – (Facilitators: UNICEF/UCRNN)

Mzee Kizito of Luuko village visited a witch doctor, Nsonga in search of wealth. He was ordered to get a child that is not circumcised, cut off his head and bring it to him as a sacrifice to the gods. Mzee Kizito went to the next village, Lugya, where he met a 4-year old boy called Kamule and enticed him with a sweet in order to convince the boy to follow him. The boy obliged and followed Mzee Kizito. Mr. Kityo, a farmer who is well-known in the village and a family friend of Kamule’s family by-passed them as they moved to an unknown destination.

Mr. Kityo thinking that Mzee Kizito was a relative to Kamule’s family did not suspect anything was wrong. Later, Kamule’s family report that he is missing. Later, Kamule’s body is found in a bush near the village well without a head. The family reports this to the police for their investigation. Meanwhile Mr. Kityo is afraid to let them know that he last saw the boy with a man whom he thought was their relative and was involved in witchcraft. Mr. Kityo is receiving death threats from Mzee Kizito’s aides.

4. Organised crime – Trafficking of people in Karamoja – (Facilitators: UNODC Gerhard Van Rooyen and Matheo)

Basilisa Arakat aged 16 years went into Kileleshwa Police Station this morning having escaped from two men who have forced her to beg on the streets of Kampala. She explained that she lived in Moroto with her parents and two younger sons aged 8 and 10. Her mother was approached by a local business man who offered to take Basilisa to Soroti where he would get her work. He said she would then be able to help

support them by sending money back. The parents paid shillings 300 to the man who stated this money was needed to pay for her transport. In fact Basilisa was taken to Ocorimongin market in Katakwi where she was sold on to another man for shillings 3,000 and taken to Kampala. There she is forced to work in a garden without pay – turned into a captive domestic worker who is denied payment and sometimes food. She is further threatened to be arrested and charged for theft if she attempts to escape. Arakat is confused and does not know what to do. The mother and father have not heard from their daughter Arakat for 6 months and ask a family elder to help them find her. After weeks of searching the Elder advised them not to delve any deeper into the matter because the people involved are powerful and have strong connections to a syndicate of underground business ring who are also involved in trading prostitutes. Finally, desperate to know if their daughter is alright they contact the police to investigate.

5. Human rights defenders – (Facilitators: Eastern Horn of Africa Human Rights Defenders – Wanjala Yona)

James Ochan, a journalist with a popular private newspaper participates in a radio talk show where he vehemently criticises government policies and programs. He is immediately arrested by the police and taken to an unknown location and tortured in order to get information from him regarding his sources, which he refused to disclose. He remains in custody. The host of the radio talk show, Ola is afraid to report the matter since the people who arrested Mr. Ochan were policemen. He is worried and fearful that he will be targeted next, should he report. One night on his way back home, a car from behind advanced in front of him and stopped him. Three men in plain clothes get out of the car and approach his car and pull him out. He is beaten up severely and warned not to say anything or else he would suffer the same fate as James Ochan. The next day, Mrs. Ochan came to the radio station to talk to Ola. She was frantic. She told him that a stranger came into their house and searched it for certain documents. The stranger told her to warn her family and her husband’s friends against criticising government, or else “they will be no more.” She has still not heard from her husband for 3 weeks and she is contemplating reporting the matter to the Human Rights Commission. She wants Ola to support her. He tells her he is afraid to get involved and he will not do it for fear of his security.

6. Human rights violation– (Facilitators: Amnesty Int’l - Godfrey Odong and HURIFO – Goretti Okello)

The wife of Joseph Kalema, a prominent business man in Kazo, is murdered in cold blood on her way back home. The murder took place in front of her gate as her guard, Kodjo, tried to open for her to drive in. Mrs. Kalema was a vocal advocate for an opposition party and she was following up with a high profile corruption case that implicated several politicians serving in government. During the investigations, it comes to light that three of the politicians who Mrs. Kalema was investigating for corruption were behind the murder. A case of murder is opened in court and the three politicians are defendants. Musisi, one of the hired killers, is a key witness in the case. The Prosecution has approached him and he has agreed to testify against the three politicians. The night before his testimony, he is approached by some men, who are unknown to him, threatening to kill him should he proceed to testify in court.

Group One

A. Needs/risks

The group will identify the **risks** that victims/witnesses face during the **investigation of crimes** and **the response** of the police and prosecution during this process

The group should also identify **the needs of the victims/witnesses** during police investigation and in the prosecution of the crime (emphasis should be on the duties of the police and prosecutors and not the judiciary)

B. Institutional Response of the police and prosecution

The group will also need to identify the **institutional response** of the police and the prosecution pointing out the **institutional gaps/needs** and the various needs, if any, of the institutions (in this case the police and the prosecutors)

C. Opportunities/roles

Identify any **existing opportunities** (are there any processes that the victims /witnesses can take advantage of to ensure their safety, what are the roles of these institutions and what they can do to ensure victims/witnesses protection)

Group Two

A. Needs/risks

The group will identify the **risks** that victims/witnesses face during the **trial before the judiciary/tribunals**

The group should also identify **the needs of the victims/witnesses** during trial (emphasis should be on the roles of the court/judiciary and not the prosecutors)

B. Institutional Response of the police and prosecution

The group will also need to identify the **institutional response** of the judiciary clearly pointing out the **institutional gaps/needs** and the various needs, if any, of the institutions (in this case the police and the prosecutors)

C. Opportunities/roles

Identify any **existing opportunities** (are there any processes that the victims /witnesses can take advantage of to ensure their safety, what are the roles of the courts/judiciary and what they can do to ensure victims/witnesses protection)

Group Three

A. Needs/risks

The group will identify the **risks** that victims/witnesses face generally in the criminal and Transitional justice processes. The group should also identify **the needs of the victims/witnesses**

B. Institutional Response of the police and prosecution

The group will need to identify the **institutional response** of the civil society organisation clearly pointing out the **institutional gaps/needs** and the various needs, if any, of the institutions (in this case the civil society organisations)

C. Opportunities/roles

Identify any **existing opportunities** (are there any processes that the victims /witnesses can take advantage of to ensure their safety, what are the needs of the civil society organisations and what can they do to ensure victims/witnesses protection)

Group Four

A. Needs/risks

The group will identify the **risks** that victims/witnesses face during the **truth telling processes and prosecution of mass atrocities** and **the response** of the various institutions during this process.

The group should also identify **the needs** of the victims/witnesses in the process of truth telling and prosecution of mass atrocities.

B. Institutional Response of the police and prosecution

The group will also need to identify the **institutional response** in the process of truth telling processes and prosecution of mass atrocities pointing out the **institutional gaps/needs** and the various needs, if any, of the institutions

C. Opportunities/roles

Identify any **existing opportunities** (are there any processes that the victims /witnesses can take advantage of to ensure their safety, what are the roles of these institutions and what can they do to ensure victims/witnesses protection)

Group Five

A. Needs/risks

The group will identify the **risks** that victims/witnesses of SGBV and children face in the prosecution of crimes

The group should also identify **the needs** of the victims/witnesses during the prosecution of the SGBV crimes and crimes involving children

B. Institutional Response

The group will also need to identify the **institutional response** of the various institutions involved pointing out the **institutional gaps/needs** and the various needs, if any, of the institutions

C. Opportunities/roles

Identify any **existing opportunities** (are there any processes that the victims /witnesses can take advantage of to ensure their safety, what are the roles of these institutions and what can they do to ensure victims/witnesses protection)

Group Six

A. Needs/risks

The group will identify the **risks that victims/witnesses** face under the traditional justice processes and what the institutional responses of the institutions are towards victims/witnesses

The group should also identify **the needs** of the victims/witnesses in the traditional justice process.

B. Institutional Response of the police and prosecution

The group will also need to identify the **responses of the institutions** during traditional justice processes pointing out the **institutional gaps/needs** and the various needs, if any, of these institutions

C. Opportunities/roles

Identify any **existing opportunities** (are there any processes that the victims /witnesses can take advantage of to ensure their safety, what are the roles of these institutions and what can they do to ensure victims/witnesses protection)

REPORT III:

High Level Conference
on Victim and Witness
Protection

On 9-10 November 2010, the Uganda Law Reform Commission (ULRC), in partnership with the United Nations Office of the High Commissioner for Human Rights (UN-OHCHR) and the United Nations Office on Drugs and Crime (UNODC), hosted a high level expert seminar on witness protection. The expert seminar followed the national practitioners' conference on witness and victim protection held on 13-14 September 2010 in Kampala.

As part of ensuring a coherent approach to emerging discussions on witness protection in Uganda, the Expert Seminar brought together senior Ugandan policy makers and prominent national and international technical experts to discuss the key issues surrounding a potential witness protection framework for Uganda, and to exchange experiences and lessons learned from other African countries. The Seminar focused holistically on the protection of witnesses, victims and other individuals who cooperate both with judicial and non-judicial proceedings in Uganda, including transitional justice processes.

Key ideas and observations that emerged from this Expert Seminar are outlined as follows;

- 1. Relevance:** Witness protection is not a favour to witnesses but rather a duty that falls on the state to protect all persons without discrimination.⁷⁴ There are clear international obligations falling on the State to protect those who participate in justice processes as victims or witnesses. Witness protection measures are essential not just in the ordinary criminal justice system but also in transitional justice processes, which entail non-judicial approaches to post-conflict situations. Witness protection programs should therefore be comprehensive in design to extend protection to individuals who are cooperating with accountability mechanisms, be it of a quasi and non-judicial nature, and should take into account the specificities of each programme.
- 2. Structural Considerations:** A distinction must be maintained on the nature of demands and needs of witness protection measures provided under the criminal justice system and those relating to gross human rights violations characterized during conflict situations. Witnesses to human rights violations, are particularly vulnerable since they seek to testify against State agents and oftentimes feel traumatised by these experiences. In this case, the specific nature of protective measures provided to such witnesses must be carefully designed and provide a full range of protective measures including psychological support.
- 3. Forms of protection:** There are two basic sets of protection measures that can be followed to ensure protection of witnesses in the judicial process and these include; (a) witness protection measures that courts and investigating authorities can put in place, employ or follow to facilitate the testimony or participation of a threatened, intimidated or traumatized witness or victim and; (b) special measures as provided by the witness protection programs, which represent formalized systems designed to provide a much higher level of physical, mental and security of person that cannot be attained by general witness protection measures. This marks the distinction between witness protection measures and a witness protection program, which constitutes an intervention that is applied as a last resort and follows a threat and risk assessment.
- 4. Role of the law:** Legislative guidelines on witness protection measures are important foremost to guide courts on the range of protective measures to avail witnesses appearing before them; to criminalise witness /victim/defendant intimidation and to ensure that the rights of the accused are maintained and not unjustifiably infringed upon. In addition, in the context of a witness protection program, it is important to provide a framework and legislative base that mandates the witness protection authority and witness protection implementation agency to provide specialised security

⁷⁴ Key reference frameworks in this regard include the International Covenant on Civil and Political Rights (ICCPR), Articles 2, 10 and 17; the UN Convention against Torture, the CEDAW (Women's Convention), the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the United Nations Convention on Transnational Organised Crime and the supporting protocols especially on Trafficking in person and smuggling of migrants, the United Nations Convention Against Corruption and the economic and Social Council (ECOSOC) Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime that calls for the adoption of special measures to protect child victims and witnesses whose safety may be at risk and the Constitution of Uganda, among others

interventions and support intrinsic to witness protection programs that include describing the recipients of protection, the process of decision making, regulating admission and removal processes, funding, human resources, powers and mandates, special provisions in regards to confidentiality, security, enforcement of confidentiality, additional support services and to provide for clear guidelines, roles and responsibilities, both for participants and program hosts, to name a few.

5. **Vulnerable witnesses:** Protection for victims and witnesses is very much more peculiar due to the distinct circumstances they find themselves that are often a source of trauma or potential victimisation by their offenders. Witness Protection Programs must take into account the special needs of vulnerable groups such as children, women more especially victims of sexual gender based crimes who need special treatment that is ordinarily not provided in justice systems. The law should provide for such measures guided by international instruments such as *OHCHR's Guidelines for Action on Children in the Criminal Justice System* and the *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* on the appropriate protection measures for such groups.
6. **Witness Protection demands:** A Witness Protection Program is by nature costly, time consuming, highly specialised and labour intensive. It can be all-inclusive but should be kept modest, strictly regulated but should also maintain a certain degree of flexibility to protect those faced with serious risks to life. It is important to keep it modest, strictly regulated but maintain a certain amount of flexibility to protect those in need.
 - The key principle for protection is the **'do no harm principle.'** Ideally, a witness protection program, is a special intervention of last resort that should be focused on the real protection needs of a country and provide protection only to those witnesses (including victim witnesses) or victims (if acknowledged by the judicial or non judicial mechanism involved) who needs protection based on their cooperation with the justice process as a participant (witness or victim) who is under threat and in need of protection and cannot be protected in any other way.
 - *Category of protected persons:* protected persons can include a victim, witness, his/her family, a human rights defender as intermediary if in at life risk as being a witness or on account of the testimony of a witness or even a collaborator of justice who needs to be protected from any form of retaliation. Legislation must set out clear criteria as to who should benefit and who makes such a determination based on what.
 - *Key Partnerships:* States are advised to take a modest approach to manage public expectations and forge partnerships with private actors such as CSOs/NGOs to provide supplementary assistance and protective measures to deserving witnesses as alternatives to formal witness protection programs. The key guiding principle for such partnerships should be the service that can be rendered by the partner and their ability to preserve the required confidentiality on the nature of their involvement, support or any identifying features relating to the witnesses or victims so supported.
7. **Key actors:** Witness protection is a technical field with a wide mandate and strict confidentiality requirements that could involve various units and stakeholders in providing protective and support measures. Police often play a primary role in protecting witnesses but emphasis must be placed on ensuring their independence in order to safeguard the interests of the victims/witnesses they protect. In the absence of an independent Police Service, it is imperative that an autonomous specialised witness protection security agency are established to render the witness protection program. Such a body should enjoy full organisational and financial independence in the exercise of its functions without any direct control from State mechanisms and resourced with competent staff and a strong training capacity building unit.
8. **Special Considerations:** In order to have a comprehensive approach to witness protection, witness protection processes must be gender sensitive and where applicable, special provision for protection should be made on the basis of the gender based prejudice that informs a heightened threat and risk to the female participant in a prosecution. witness protection must be gender-aware. This entails

confronting cultural prejudices that tend to alienate women from justice processes, identifying the special needs of women as vulnerable persons in order to ensure their voluntary and active participation in the justice process. The importance of women's participation in justice processes has been echoed in the UN SC Resolution 1325.

9. Appropriateness: There is no single model that fits all. For witness protection measures and programs to be effective it must be tailored to the local needs and demands – witness protection efforts should be tuned to finding a Ugandan solution to address Ugandan problems. Witness protection should not be perceived as an isolated concept but as a single part of an overall approach to the justice system among several other inter-dependent measures, which include; proper investigative processes, availability of judicial protection, speedy trials and well-resourced, corruption free justice institutions among others. In the absence of this ideal system, witness protection agencies are under pressure to perform and as such need to become more autonomous and self-reliant as the environment calls for a more pragmatic approach.

10. Key Standards: The United Nations has developed a wide resource base on witness protection and expertise that could be referred to in designing a well-structured national witness protection strategy and corresponding legislative framework(s). Uganda could benefit from the legal frameworks developed by UNODC through its model law and drafting principles, the UNODC *Good Practices in the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*, which provide a continuum of protection measures that may be undertaken to safeguard the physical integrity of witnesses as well as the normative contributions developed by various UN agencies such as the UN-OHCHR, UNICEF and UN Women for a more specialised perspective on human rights, child friendly and gender sensitive approaches.

In a nutshell, witness protection forms a central part of any credible justice system be it a judicial, quasi-judicial or non-judicial process that depends on witness testimony. Uganda needs to take a pragmatic approach in setting up a witness protection program guided by internationally accepted good practices and learned experiences from the region but also mindful of its contextual realities. Any witness protection framework must be developed around the specific local needs, dynamics and cultural realities of Uganda and should ensure a child-friendly, gender responsive and rights based approach. While witness protection legislation is important, it should not curtail any interim protection measures that can be instituted immediately.

The meeting agreed that consensus be built within government and development partners to undertake a project that would aim at the following:

- 1) Raise awareness amongst judges, prosecutors and police on their roles and the possible measures that can be used to support and provide protection to witnesses;
- 2) Support the development of a sound legal framework, including procedural measures, that will include the establishment of a holistic institutional capacity for the support and protection of victims and witnesses;
- 3) To strengthen the capacity of the police on the midterm to protect witnesses and victims whilst a decision is pending on the location and structuring of a protection structure capable of serving all justice mechanisms in the long run; and
- 4) Supporting the set-up and operationalize a long term witness protection authority and executing agency.

The four outcomes above would be accomplished with the guidance of a technical assistance program jointly developed by the UNODC ROEA and UN-OHCHR - Uganda to be funded through the JLOS program by development partners and implemented with the assistance of a multi sectoral task team.

3.2.1 Remarks from Uganda Law Reform Commission⁷⁵

The meeting highlighted the importance of the work of the Uganda Law Reform Commission (ULRC) towards the development of a legal framework on witness and victim protection for Uganda. Apart from the ordinary criminal justice system, Uganda would benefit from witness protection legislation being in place to guide war crimes prosecutions that would be handled by the War Crimes Division of the High Court of Uganda and could also be of relevance to the truth commission, which is intended to facilitate reconciliation of victims and perpetrators of the Northern Uganda conflict. The Expert Seminar was a timely intervention necessary to help inform relevant stakeholders on how to handle witnesses participating in the various processes and in the long-term, achieve the overriding objectives of ensuring accountability and justice for victims of crimes.

3.2.2 Remarks from OHCHR⁷⁶

The meeting stressed one of the main strategic priorities for the Office of the High Commissioner for Human Rights which is to encourage states to take practical means to tackle impunity for gross violations of human rights and humanitarian law through investigations and possible prosecution. Witness and victim protection is highly technical and state authorities, who constitute the relevant actors, often lack the means to offer solutions. States therefore request OHCHR for assistance for witnesses and victims at risk when they are carrying out sensitive investigation and prosecutions. Similar requests are received from international and national commission of inquires, international courts which also request OHCHR to facilitate the relocation of high value witnesses and sometimes request the names of the protected witnesses for the purpose of their own investigations.

Witnesses and victims are entitled to protection just like any individual under international human rights law. They do not lose the right to such protection simply by being involved in judicial or non-judicial proceedings, either as a witness or a victim. Key human rights treaties and instruments that provide for the right of victims and witnesses to be protected include the following;

1. International Covenant on Civil and Political Rights Art. 10 refers to “respect for the inherent dignity of human persons” and Art 17 states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honour and reputation.” In accordance with the Covenant, States have a general obligation to undertake necessary steps “to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant.” (ICCPR, Art. 2).
2. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
3. The Convention on the Elimination of All Forms of Discrimination against Women,
4. The Convention for the Protection of All Persons from Enforced Disappearance and;
5. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

All the above, make reference to States’ obligations to adopt specific measures to protect witnesses and victims.

Other key human rights instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,

⁷⁵ By Prof. Joseph Kakooza, Chairman, ULRC

⁷⁶ By Mr. Ibrahim Wani, Chief of Africa Branch, OHCHR Geneva

and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law also emphasize the State duty to protect.

Most witnesses and victims involved in investigations and prosecutions of human rights and international crimes cases retaliation because of the volatile and insecure environments they face where their human rights could easily be violated. In the absence of appropriate safety nets for their protection their physical and psychological integrity, privacy, dignity, their reputation and even lives may be at risk and this could potentially undermine the whole capacity of a country to render justice to the victims and end impunity for past and current abuses.

The documentation, investigation, and prosecution of gross human rights violations and international crimes rely on the ability to independently, objectively and impartially collect relevant information, confirm its veracity, and to analyse this information to produce credible evidence about violations, their causes and effects, as well as their perpetrators. When other sources of information are not available or have been lost or destroyed, the documentation of human rights violations may then depend exclusively on the memory of the surviving victims, witnesses and other knowledgeable sources.

United Nations mechanisms have been actively engaged in stimulating standards, measures and programs serving the purpose of witness and victim protection. The UN General assembly Resolution 63/182 on extrajudicial, summary or arbitrary executions acknowledges the importance of ensuring the protection of witnesses and it encourages OHCHR to develop practical tools designed to stimulate and facilitate greater attention to this issue.

During the Universal Periodic Review, the UN Human Rights Council has recommended to more than 80 UN member states to adopt adequate laws, set up programs, and ensure appropriate funding for witness and victim protection. Notably, Uganda has received similar remarks from the UN Committee against Torture, which recommended the adoption of appropriate legislative and administrative measures to ensure that all persons who report acts of torture or ill-treatment are adequately protected in Uganda.

There are two relevant **sets of protection measures** that need to be put in place to enable witnesses to come safely forward to collaborate with justice systems. These are;

- (i) Procedures that trial chambers can put in place while taking testimony which can include; authority to introduce measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness, controlling the manner of questioning to avoid any harassment or intimidation as well as taking special consideration of victims of sexual assault and other vulnerable witnesses, such as a child, an elderly person or a victim of sexual violence whose unique traumatising experiences affect their ability to express themselves in public and thus demand special measures.
- (ii) Formal witness protection programs to provide safeguards that are usually provided before, during and after judicial proceedings. Such systems are designed to grant a full range of physical protection and psychosocial support and assistance to program participants, be they witnesses, victims or associated persons. These programs are designed to provide a much higher level of physical security than the protective measures in the court rooms. Admission to such a program traditionally involves assessment, physical protection, relocation, change of identity or measures of disguising identity and ownership, resettlement, integration into a community, and a pathway out of the program once a trial is completed and/or the threat has diminished. Such programs must be carefully designed and anchored in appropriate legal frameworks. Within a Witness Protection Program, there exists the option of international relocation as a separate protection measure that may also become necessary although mostly considered as the last resort since it can be an extremely traumatic event.

The lack of a legal basis setting out clear roles and responsibilities for both participants and program hosts tends to lead to considerable problems of litigation, and sometimes loss of life in some jurisdictions. In

order to minimize risks to the safety and physical and psychological well-being of the witness, the threat and risk assessment process must first determine what level of protection is appropriate to these tasks.

An extremely sensitive issue is providing adequate protection to witnesses who are particularly vulnerable, such as child witnesses. To this effect, the UN Economic and Social Council adopted in 2005 the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. The guidelines recommend care and treatment best suited to the needs and particular traumas of these victims before, during and after the trial. They also invite States to factor these particular needs into their legislation, procedures, policies and practices.⁷⁷

Similarly, measures aimed at providing special protection to witnesses and victims of sexual and gender based violence must also be put in place. States must ensure that the practice of assistance to victims tied to their cooperation as a witness in the prosecution of sexual and gender based violence does not undermine the safety and rights of victims.

Witness and victim protection within the framework of criminal procedures relating to gross human rights violations or serious violations of international humanitarian law requires particular elements because;

- a) Witnesses to human rights violations are frequently victims of the crimes which they testify, rather than co-perpetrators or former associates of the accused perpetrators. States therefore have additional obligations towards witnesses and victims in such cases, considering that traditional witness protection programs are usually not designed to meet those particular needs.
- b) Human rights crimes are perpetrated by State actors or individuals associated with State or State-like powers. In some cases, individuals who subsequently occupy State positions, such as rebel leaders or their associates, are alleged perpetrators. They are individuals who are or have been in a position of power and can exert considerable influence. As such, the witnesses testifying against them are particularly vulnerable. In such cases, witness and victim protection mechanisms should not be associated with State agencies such as the police, security agencies and the military when these agencies may have political and ideological allegiances to the accused implicated in the proceedings, and the capacity to influence the prosecution.

Key Recommendations

- a) A system of witness protection independent from State mechanisms is a better option to inspire the confidence and trust of all those concerned. It is indeed more relevant in the post conflict setting. Such a system could be funded by the State, but not closely controlled by the machinery of State organs as is the case now in Kenya, which has recently established an independent witness protection authority.
- b) There is a clear need to refine the effectiveness of witness and victim protection methods through the provision of adequate financial, technical and political support for programs at the national level. This seminar can play an important role in conveying this message to both international actors and national authorities.
- c) The clout and wisdom of national witness and victim protection entities from the region should also be taken into consideration in devising similar program in Uganda. For its part, OHCHR, UNODC and other UN agencies could contribute good offices, expertise and technical assistance to bolster such endeavours.
- d) Witness protection programs should also be designed to protect individuals who are cooperating with other accountability mechanisms, include those of a quasi and non-judicial nature, such as human rights commissions and truth and reconciliation commissions.

⁷⁷ Resolution 2005/20

- e) Witness and victim protection measures should be consistent with the principle of the right to fair trial, consistent with the rights of the accused and forming an integral part of the justice sector strategy.
- f) Finally, in view of the overarching objective of combating impunity, the specific nature of witness and victim protection should be carefully examined while considering investigation and prosecution of gross human rights violations.

3.2.3 United Nations Office of Drugs and Crime ⁷⁸

Witnesses are the cornerstone of successful criminal justice systems and protecting them from the threats or risks they face as a result of participating in judicial processes is critical for the maintenance of law and order and is essential in combating organised crime. Key legal standards on witness protection in a criminal justice system include;

1. The *United Nations Convention against Transnational Organized Crime (UNTOC)*, which calls upon state parties to take appropriate measures to protect witnesses in criminal proceedings from threats, intimidation, corruption or bodily injury, and to strengthen international cooperation in this regard; the *United Nations Convention against Corruption*, which provides for the protection of witnesses, experts and victims and obligates States parties to take appropriate measures in accordance with their domestic legal system, and within their means, to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with the Convention. More importantly that such protection extends, as appropriate, to their relatives and other persons close to them.
2. Other witness protection measures prescribed under the UN Anti - Corruption Convention include; relocation, non-disclosure or limitations on the disclosure of the witnesses' identity or whereabouts, evidentiary rules which permit witnesses and experts to give evidence in a manner that is secure for instance conducting proceedings in camera, using communications technology such as video links or other adequate means. The Convention exhorts the Parties to also consider entering into agreements or arrangements with other States for the relocation of witnesses and victims. The Speaker however cautioned that admittance to a witness protection program and subsequent relocation should be a measure of last resort because of its intrusive nature.

There are existing tools and frameworks on witness protection developed by the UNODC to support member states to develop and operate special programs to support and protect witnesses of crime. These tools include;

- UNODC *Good Practices in the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* launched in 2008 provide a continuum of protection measures that may be undertaken to safeguard the physical integrity of people who give testimony in criminal proceedings from threats against their life and intimidation, starting with the early identification of vulnerable and intimidated witnesses, moving through the management of witnesses by the police and enactment of measures to protect their identity during court testimony and culminating with the adoption of the exceptionally severe measures of permanent relocation and the issuing of new identity. The guidelines were developed with the active participation from experts in law enforcement, prosecutions and judicial authorities of the United Nations Members states and reflect experience from different geographical regions and legal systems.
- The UN *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, adopted by the United Nations Economic and Social Council (ECOSOC) in July 2005. These guidelines provide a practical framework to assist in the review of national and domestic laws, procedures and practices to ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child, by parties to that Convention;

⁷⁸ By Ms. Loide Lungameni UNODC Regional Office for Eastern Africa Representative

assist Governments, in designing and implementing legislation, policy, programs and practices which address key issues related to child victims and witnesses of crime; guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; and assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

The Guidelines further oblige Governments to ensure that adequate training, selection and procedures are put in place to protect and meet the special needs of child victims and witnesses of crime, where the nature of victimization affects categories of children differently, such as sexual assault of children, especially girls.

- UNODC's *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime*, which was developed in cooperation with UNICEF and the International Bureau for Children's Rights, also provides useful guidance on legal provisions concerning assistance to and the protection of child victims and witnesses of crime, particularly within the justice process. This includes the protection of children not willing or not able to testify or provide information and child suspects or perpetrators who have been victimized, intimidated or forced to act illegally or who have done so under duress. The Model law also takes into account the specificities of national legislation and judicial procedures, the legal, social, economic, cultural and geographical conditions of each country and the various main legal traditions. The model law is complimented by a commentary that is intended to serve as guidelines for interpretation and implementation.
- UNODC's *Handbook for Professionals and Policymakers on the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* also developed in cooperation with the United Nations Children Fund (UNICEF) and the International Bureau for Children's Rights incorporates international best practices in the treatment of child victims and witnesses of crime by the criminal justice system. It is intended to serve as guidance for policymakers and professionals dealing with child victims and witnesses of crime, such as judges, medical and support staff, law enforcement officials, prosecutors, social workers, staff of non-governmental organisations and teachers.

In terms of technical assistance on witness protection, UNODC Regional Office for Eastern Africa in Nairobi, under its 4-year Program on *Promoting the Rule of Law and Human Security in Eastern Africa*, provides capacity building to the countries in the region. Under this Program, UNODC has provided the Government of Kenya with an embedded Witness Protection Adviser, to assist the then Witness Protection Unit of the State Law Office to set-up the recently established autonomous Kenyan Witness Protection Agency. Such assistance is also available to other countries in the region including Uganda, upon request.

There is difficulty of protecting witnesses because creating witness protection program forms just one part of an entire process within the criminal justice system, which requires cooperation and coordination of multiple criminal justice actors, civil society as well as regional and international stakeholders. This process is of direct importance to Uganda's efforts in developing a witness and victim protection system that must conform to internationally accepted standards in order to strengthen Uganda's criminal justice system and most importantly provide a better service to the people of Uganda.

3.2.4 [Speech from representative of Minister of Justice](#)

Uganda is in the process of adopting a national legal framework on witness protection and establishing corresponding mechanisms for its implementation. The Uganda Law Reform Commission has been at the forefront in mapping the legal and policy environment on witness protection in Uganda. It is important for local actors to understand and draw from practical experiences of other national jurisdictions and international bodies that have advanced in implementing formal witness protection programs.

Uganda's commitment in protecting witnesses who assist in the administration of justice is undisputed. Uganda is a member of the UN Human Rights Council and a State Party to key human rights instruments, which encompass the State's obligation to protect witnesses. Victims and witness protection is at the centre of Uganda Government's commitment in fighting impunity and corruption, ensuring accountability for crimes and promoting public security as well as the enjoyment of fundamental rights and freedoms by its citizens.

Uganda is yet to enact a specific law that elaborates comprehensive and clear procedures, criteria and institutional mechanisms necessary for the protection of witnesses. The Constitution of Uganda forms the bedrock for the protection of fundamental human rights and freedoms. The bill of rights under Chapter 4 of the Constitution outlines a wide scope of human rights and fundamental freedoms that are crucial in the enforcement of a witness protection program and measures in Uganda. There are a number of laws providing ad hoc witness protection measures in Uganda such as the Evidence Act, the Whistleblowers Act, the Anti-Corruption Act, the Domestic Violence Act, the Prevention of trafficking in Persons Act and the Prohibition of the Female Genital Mutilation Act. The ICC Act, which was adopted into law in May, 2010, also has a certain elaboration on victim participation and witness protection.

While Uganda needs a robust witness protection law and program to provide specific procedural and non-procedural protection measures, there are prevailing challenges in the administration of justice that could easily hamper the success of a victim witness protection system. For instance; the public trust in the impartiality, integrity and effectiveness of the courts and the police and the immense backlog of cases might further curtail the successful implementation of a witness protection program in Uganda.

Participants were urged to discuss and propose solutions to the complexities surrounding victim and witness participation and protection and provide strategic recommendations that would aid the establishment of a victim and witness protection framework in Uganda. This would contribute in improving accountability for crimes and human rights violations, combating impunity and guaranteeing public security, in the long-term.

3.3 Session Two: The status of victim and witness protection in Uganda

Chair, Ms. Roselyn Karugonjo-Seggawa, Director, Monitoring and Investigations Unit, Uganda Human Rights Commission

3.3.1 Summary of findings of the ULRC study on witness and victim protection⁷⁹

The Uganda Law Reform Commission (ULRC) initiated the national process to institutionalise witness protection through a study whose findings would inform the subsequent formulation of a witness protection law or policy for Uganda. The study sought to establish whether there is need to have a specific legislation for witness protection in Uganda and the form that such protection should take.

The Commission in conducting its study carried out fieldwork in 4 target Districts – Kampala, Masaka, Soroti and Gulu. The fieldwork canvassed for public views on a range of issues necessary for the Commission to inform itself on the various elements to take into account for a witness protection framework such as; assessment of witnesses who need protection, the nature of offence for which protection should be offered, circumstances under which protection should be offered, the form and extent of protection which should be offered, who should offer protection and punishment for failure to protect, the duration of the protection, handling of court proceedings involving the protection of witnesses, protection of witnesses testifying against the Government as well as the necessity of providing protection of prosecutors and investigators.

Furthermore, the Commission established a Task Force to spearhead the discussions of the findings, which were centred on witnesses in need of protection. ULRC has adopted a methodology that distinguishes witnesses and victims and intends to undertake a separate study for victims of crime with the intention of developing a separate legislation or policy for victims.

⁷⁹ By Frank Nigel Othembi

While Uganda does not have a specific law that deals with the protection of witnesses called upon to testify in court, Ugandan courts use their inherent powers to protect witnesses for instance by conducting trials in camera. Prevailing challenges of witness protection include witnesses who come out to testify but do not have adequate facilitation, threats or intimidation of witnesses forcing them to fail to appear during proceedings when required.

The following provisional recommendations were highlighted;

- Adopt legislation that provides for the protection of witnesses whose safety is at risk or may be at risk. Witness protection should be provided for by specific legislation and such legislation should also protect the rights of the accused and promote fair trials.
- Adopt institutional policy directions on witness protection for key players in the justice system such as lawyers, police, prison authorities, judiciary, public prosecutions, inspectorate of Government, police surgeons and quasi-judicial bodies like the Uganda Human Rights Commission.
- Non-compulsion; people should not be compelled to reveal the identity of a protected witness and as such, relevant sections of the Evidence Act, Magistrates Courts Act & rules of procedure should be amended to afford anonymity of witnesses.
- Maintain institutional autonomy in case of Institutions that can offer similar or superior protection, these should have the right to opt out of the national witness protection program
- Guarantee immunity for protected witnesses to ensure that the testimony and evidence they provide is not used against them.
- Criteria for protection to target serious and grave offences but also offer flexibility in case of less serious cases where there is a demonstrated risk to the life of the witness.
- Sustain protection of witnesses as long as there is immediate danger or risk to their lives – there should be guidelines for assessing need for protection and withdrawal of protection.
- Extend outreach in form of counselling to family members of the protected witness.
- Institute penalties for failure to offer protection and for revealing the identity of a protected witness.
- Establish an independent neutral institution with a mandate to offer protection to witnesses who testify against the Government. This can be an existing institution whose mandate can be widened or a new institution altogether as long as its independence to protect witnesses, even those testifying against the state, can be guaranteed.
- Establish guidelines to determine who needs protection. These guidelines can also include extending protection to key players in the justice system – judicial officers, police, and prosecutors.
- Conduct a needs-assessment through commissioning a further study on financial implications of the witness protection law and policy implementation.

3.3.2 [Human rights perspective to witness and victim protection](#)⁸⁰

Witness protection programs conventionally refer to very specific acceptance criteria and target witnesses and victims in criminal justice systems and proceedings. The role of a witness to support the prosecution by giving evidence forms the main criteria for protection.

Managing a witness protection program in criminal justice where the majority of witnesses are perpetrators and collaborators is a serious challenge because those individuals choose to cooperate with the prosecution and give evidence against their associates in return for a lighter sentence or financial reward or because their safety has been compromised as a result of exposure of their involvement with

⁸⁰ By Gary Madden, OHCHR Consultant

law enforcement agencies. Such witnesses are difficult to manage because they are mainly, habitual criminals who find it extremely hard to adjust and conform to the requirements of the program, often resulting in opting out and returning to their criminal past. Transitional justice mechanisms in contrast deal with a broader range of witnesses and victims.

Who needs to be protected?

The overriding principle for protection should be that human rights protection is accorded to everyone from a victim, witness, human rights defender intermediary, to a suspect or defendant who needs to be protected from retaliation or mob justice. The guiding principle for witness protection from a human rights perspective is that all human beings have an absolute right to be protected without exception.

A victim under the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* is still a victim regardless of whether the perpetrator has been identified, investigated and prosecuted. This is a key innovation that allows a victim to be protected notwithstanding the uncertainty about his/her offender.

The definition further extends beyond the direct victim to his or her immediate family and any intermediary who assist the victim. The ICC in **Prosecutor v. Thomas Lubanga Dyilo Democratic Republic of the Congo**⁸¹ ruled against the disclosure of the identities of intermediaries who are not victims or witnesses recognising their crucial role in case adjudication and prosecution of cases. The ruling described their role and why they are so essential to the delivery of justice and more importantly why they should be protected. The ruling also stated that disclosure has the potential to present very serious security concerns that will require intrusive protective measures, chiefly relocation, affecting the life and well being of the intermediaries and members of their families. It concluded that the court victim and witness section will have to include the intermediaries in the International Criminal Court Protection program.

The alienation of victims in ordinary criminal justice proceedings such as in the UK where a victim is just another part of court system which focuses mainly on the accused person and ignores the needs of the victims. He distinguished the victims' physical needs from wants and noted that a victim of human rights abuses does not consider punishment of perpetrators as his/her first priority.

From the ICTY experience, the motivations behind witnesses cooperating with the court are mainly four and they include;

- To speak for the dead,
- To look for justice in the present,
- To help the truth be known by the world and;
- finally all in the hope that such crimes can be prevented in the future

The approach of one size fits all does not apply, because there is no national protection system in the world that is capable of dealing with all victims' survivors and witnesses who are under threat. That would be physically impossible. For instance, in the UK where there are 150,000 cases in the London Crown Court, this implies that 2/3 witnesses for each case would amount to 500,000 witness ideally in need of protection by the State. The Metropolitan Police Service, Criminal Justice Protection Program, which covers only London, protects, on average, 70 witnesses per year while many others do not fit into the acceptance criteria.

Again, there is a challenge of witnesses with special needs that cannot be provided by non-specialised witness protection programs. For instance, women and children involved in Gender and sexual abuse require specific expertise which cannot be provided by mainstream protection agencies. These needs are generally fulfilled by either specialist teams within law enforcement, such as; the Domestic Violence, Child Protection unit or civil society such as Victim Support Organisations, Rape Crisis Centres,

⁸¹ International Criminal Court Prosecutor v. Thomas Lubanga Dyilo Democratic Republic of the Congo 19th March 2010 ICC-01/04-01/06-2362

Support Organisations for Victims of Torture etc. These organisations are vital and pivotal to the national protection response and are an essential element of providing different levels of protection and specialist care. What they often need is recognition, support and funding by government.

Key recommendations raised for Uganda;

- The State should consider a national witness protection program capable of protecting anyone in need of protection and commensurate to the threat they face.
- The program should also be covered by an advisory board with representatives from across government. In addition, the board should include Human Rights representatives and relevant civil society groups and NGO's.
- The program will require a very high degree of autonomy while still maintaining the required accountability to Government. The models in South Africa and Kenya should be considered.
- Uganda should prepare over-arching legal framework on witness protection that clearly stipulates on who will provide the protection, who will be protected, how they will be protected and how it be will funded. In this regard, he commended the ULRC for its preparatory work on protection issues in Uganda.
- ULRC should broaden the scope of its research so as not to be confined to protection in criminal cases. In particular, the Commission should refer to the International Criminal Court Act 2010, Anti-Corruption Act 2009, Whistle Blowers Act 2010⁸² and Prevention of Trafficking Act 2009. Legislation relating to protection measures at courts should also be drawn up to compliment the witness protection program legislation.

However, legislation should not be a pre-condition for a viable witness protection system, which in ordinary circumstances can work even without legislation in place.

- Uganda should also review how Child Victims Women and other vulnerable persons are assisted in the whole judicial process from initial contact with police through the court system and beyond.

Plenary discussion

- There was a general concern on how to deal with victims of LRA conflict who are likely to become witnesses and the scope of ULRC study report in that regard. Additionally, how would victims of LRA soldiers who served as rebel wives and produced children for the rebels be treated?
- Is it feasible for victims to be protected for life if they testify against multiple suspects some of whom might still be at large? This was noted as a challenge to deal with witnesses in transitional justice mechanisms when they are part of the community. An example is Sierra Leone where 100,000 witnesses appeared and participated in the program. An alternative for such witness protection challenges is resorting to the Police who should have powers to deal with those issuing threats against witnesses by arresting and prosecuting them before law courts.
- An observation was made that victims of rape and defilement are ashamed of reporting in light of public repercussions and stigma, which makes them feel permanently traumatised. While the overall objective is that the witness protection program is designed to enable the beneficiaries to sustain their lives independently, there are some witnesses that may need long period of protection sometimes for life and this may take the form of identity change or relocation options. Special consideration must be accorded to witnesses/victims faced with peculiar vulnerabilities.
- It was further observed that since there is a cross-section of players in justice system that may need protection, what criteria is used elsewhere to determine who participates in such programs? Is it possible to include lawyers, who may face intimidation from the State because they are willing to

82 Ibid

defend persons accusing the state? Is it necessary to create two separate programs, one catering for witnesses and another for judiciary and other key players in the justice system?

- The meeting noted that the witness protection program should be all inclusive in order to protect all those under threat as a result of their participation in justice processes but due to resource constraints, the selection must be streamlined so as not to make it unmanageable. There needs to be formal criteria for identifying beneficiaries of the witness protection program since it is not practically possible to protect everyone. The basic criterion is that authorities respond to those facing real and immediate threat to life and be able to draw that distinction of credible threat to accommodate physical reality of harm. Other agencies and supporting legislation should be referred to in order to fill in the gaps of the program.
- There is the need for the witness protection program to maintain a balance that would cater for the accuser's side and the accused. In reality, most witness protection programs don't cater for defence witnesses. This has implications on the principle of being inclusive.
- Since witness protection is a challenging undertaking, the best practice is to separate protection measures for professionals like lawyers and judges from that of witnesses providing evidence in court. In South Africa for example, the Judiciary have an administrative arrangement that offers protection to judges separate from the witness protection agency.
- In case of a national witness protection program, how do you maintain a sense of autonomy for the Program and also make it accountable to Government? Sometimes it is rather difficult to maintain autonomy especially if there is the need for government oversight. Officials tend to act in fear of reprisals and oftentimes, their funding can be interfered with by the State in order to influence program activities. It is in this context that an independent oversight body should be put in place. It is important to put in place a witness protection program with clear guidelines on how the actors function (legislature and administrative structure) and to make them aware of the consequences of their actions. There should be a framework for procedural measures. This can be a legal or policy instrument depending on the local context.
- **Recommendation:** Since Witness Protection Programs under Transitional Justice mechanisms are temporary and operate under a time limit, there should be an overarching institution that can take over from the transitional unit.
- **Recommendation:** *Sensitisation* - Since the focus of criminal justice system has been more on accused persons than on victims' rights, there is a need to sensitise prosecutors, judiciary and the general public. The activities should be focused on sensitisation and attitude change.

3.4 Session 3: Victim and witness protection: An introduction and international best practices

Chair: Ms. Birgit Gerstenberg, Country Representative, UN-OHCHR

3.4.1 The Criminal Justice approach from UNODC⁸³

Witness protection, as a concept must be distinguished from witness protection program which is only a measure or form of witness protection. The two terms are different but related.

Witness protection as a concept refers to a range of methods / measures that can be applied to ensure the safety and security of witnesses and victims that are required by law or on own accord, are prepared to testify in a court of law, in or out of court, before, during or after testimony. The protection required or afforded should be **proportional** to the threats & risks faced by the witness due to their role in cooperating and adducing evidence against the accused to facilitate a fair trial.

Witness Protection Program (WPP) on the other hand can be defined as “a program regulated by

⁸³ By Gerhard Van Rooyen, UNODC

legislation aimed at the protection of witnesses and victims in cases of serious intimidation which cannot be addressed by other protection measures, and where the testimonies of such witnesses are of special significance for criminal proceedings.” [Council of Europe: “Training manual for law enforcement and judiciary: Protecting Witnesses of serious crime” dated September 2006]. When a witness is threatened or intimidated not to testify before a competent authority with the purpose of allowing the competent authority to act in regards to common law or statutory crimes, the only way to ensure that the testimony of the witness is heard, is for the Government to intervene in a structured way to eventually safeguard that testimony and uphold the basic foundations of a safe and secure society through ensuring the rule of law. WPP is therefore an intervention.

The UNODC derives its mandate from the *UN Convention against Transnational Organized Crime* and the *UN Convention against Corruption*. This mandate is operationalised in three main forms; (i) Assist national actors with expertise to draft legislation and developing key tools, (ii) capacity-building and (iii) Conduct activities that assist countries to develop witness protection programs.

UNODC’s witness protection program seeks to strengthen the rule of law in the country it supports through support to the office of the AG / DPP in the creation and implementation of an effective, efficient and sustainable witness protection program. In Kenya, UNODC aims to achieve this by focusing on the setting up of an autonomous Witness Protection Agency in accordance to internationally accepted standards, by creating a capacity for the provision of Judicial Protection Measures and by supporting the development of Basic Protection measures through the provision of protection related training to the Police and legally created Investigative bodies.

UNODC is also creating a regional co-operation framework to assist the countries in their task and to ensure sustainable development of regional partnerships in witness protection. This multi-tier and multi discipline approach should enhance the capacity of all the vital role players directly involved in working with threatened witnesses or possible witnesses, to ensure the protection of these witnesses.

Why protect witnesses?

There are two basic reasons on the need to protect witnesses;

1. There is an existing **duty of care**. There is a duty of care on the State to protect its citizens. This same duty applies to threatened or intimidated persons such as witnesses who form part of the category of citizens that State institutions interact with in a given setting.
2. In caring for its citizens, the Government creates this safe environment amongst others by ensuring that society is governed by the **rule of law**. The principle of the rule of law is upheld by inter alia ensuring a proper judicial process. He further emphasized that securing the testimony of intimidated or threatened witnesses and victims is an important and critical step to ensure a proper judicial process since witnesses represent an irreplaceable source of information in criminal proceedings. Intimidation of witness prevents reporting of crime and stop witnesses from giving free testimony resulting in failed prosecution. Protection of witnesses therefore safeguards the testimony and supports prosecution in the long run which contributes to maintaining the rule of law.

Stages of protecting witnesses

There are different stages of witness protection. In particular, protection of witnesses in criminal matters is based on **three building blocks** complimenting and supporting each other with the most complete system being a mixture of all three disciplines. These include;

1. **Good Practices**; the way you use the information collected during the investigative process or how you interact with witnesses in the field might identify the witnesses. It is therefore important to consider protection of witnesses from the beginning of the contact with the witness;

Witness protection starts with basic police protection and good operational practices (non-procedural

measures) that create a sound basis for the protection of witnesses, victims and related persons. He noted that the primary responsibility for ensuring safety and security of all citizens thus lies with the Police. In this regard, good investigative practices and basic police protection provide the basis of all other protection measures for example keeping the investigation confidential, police patrols or the escort of the witness to and from court by the investigation or a police official.

- 2. Protective measures;** the above step is followed or complemented by judicial protective methods. Judicial protective measures that could be utilized are for example incarceration of the accused, rules of court to provide for assistance to vulnerable witnesses; special measures like no bail to accused, proceedings in camera, methods, evidence adduced, video testimony, facial distortions and anonymity. Part of these could also be administrative measures like assisting witnesses through process waiting rooms and safe passage within the court for intimidated and or vulnerable witnesses and victims.

If these are effective, there is no need for a witness protection program except if there are any direct threats and no suitable remedy that calls for the specialised intervention as represented by the Witness Protection Program.

- 3. Witness Protection Program** (a mix of the above plus special covert intervention actions) is a specialised intervention and remedy of last resort that is employed to protect witnesses, related person or persons at risk on account of the testimony by witnesses where the risk to the witness is so severe, that the witness cannot be protected by any other measure than the witness protection program. A witness protection program is defined as a formally established covert program subject to strict admission criteria that provides for the relocation and change of identity of witnesses whose lives are threatened by a criminal group or persons because of their cooperation with law enforcement authorities and where no other remedy are available or sufficient to protect the witness, his family or those at risk on account of his testimony.

Witness Protection Program is an expensive exercise that should be the last resort in the range of measures aimed at ensuring the protection of witnesses and related persons.

In modern States, one finds a proper investigative process, the availability of judicial protection and a speedy trial that adequately complement witness protection. In developing countries there is need for a more pragmatic approach. It is important to take into account different legal systems such as the Kenyan example and learn from good practices and learned experience. The UNODC good practices guideline provide key elements of witness protection programs involving organised crime including the legal framework for setting up such programs.

Considering the above options, witness protection as a concept requires a different approach to current procedures that are employed to secure and facilitate court attendance by witnesses. An evaluation of the current process and provide more witness and victim support, the subjective need for protection felt by especially vulnerable witnesses are addressed. Looking after the needs of witnesses, especially those that are intimidated by using a new approach in the process to achieve the same thing is less costly. This calls for a paradigm shift of doing old things differently.

The purpose of a WPP is to support the judicial process and enable the Police, other investigative bodies and the State Law office / Director of Prosecutions to effect a fundamental change in prosecution through securing the testimony and evidence of threatened and intimidated witnesses in high profile and serious crime cases. It is about achieving value for money since the bigger the case, the higher the burden to protect and secure a conviction. He therefore recommended that admission to WPP should be restricted to high-profile cases of Organised crime, Corruption, terrorism , local priority crimes or crimes where Government officials are the accused.

Structure of legal framework on witness protection

The UNODC model law and drafting principles are key tools that guide States in drafting legislation on witness protection. Some key considerations when drafting witness protection legislation are;

- **The Witness** – who would be regarded as a witness and the expected trauma or secondary victimisation that may take place - who is forced to face an adversarial system and recounting a traumatic experience, often leads witnesses to break down in court. The court system may also be a new experience that brings tension. Also the value of the testimony of the witness and whether the testimony is crucial or important to the case – the consideration being that if trauma or threat/risk can be avoided by excluding the witness from the case that it should be the first consideration;
- **The Crime** – this is about deciding which crimes to include or focus on, nature of crime etc.
- **Legislative base** - It is important to refer to legislative best practice since legislation can get controversial. UNODC drafting principles are good practice example since they reflect experience from different legal systems and entail learned experiences.

The legislation should include;

- Operational principles – WPP are powerful institutions with confidential guidelines. Once they use covert system, rules then become very important. For instance the Director of Witness Protection Kenya has the same powers as the Police with authority to carry concealed firearms, disseminate their own intelligence information and interact with all witnesses on cases against Government.
- Location of the Program – here, it is important for the agency to be autonomous in its operations and follow the principle of confidentiality whereby information is shared on a need to know basis. The State needs to decide where the WPP should be located - whether it is with the Police, the Ministry of Justice or the a National Human Rights Commission. Overall, WPP should be totally autonomous and independent from influence by powerful state institutions or members of Government;
- Personnel – must be multi-skilled bearing a strong character and high level of integrity for effective handling of protected witnesses and protection issues but also equipped with soft skills to deal with witnesses under their protection – especially vulnerable witnesses like children and victims of gender based violence.
- Finances – it is extremely important to determine who provides the budget. It is recommended that funding should come directly from the Consolidated Fund and not through the line ministry because of the structures of public procurement, which might expose witness identities or the Program. The Program should use a covert financial system, which however creates possible challenges of corruption. The Program must be accountable but its accountability procedures should be different from those of the public sector.

Structure of Witness Protection Program

All successful Witness Protection Programs are built on four pillars:

- Operational autonomy & capability - WPP can't make witness wait long to be secured or be provided with emergency medical care like plastic surgery. It should be an expeditious process.
- Covert Capability; - WPP should be capable of carrying out its activities in a concealed manner nationally and regionally.
- Confidentiality and;
- Accountability

These pillars demand the Witness Protection Program to be a highly specialized field that operates in a highly confidential environment. There is no other similar job category in the public service as it entails a combination of tasks, mixing together skill sets intrinsic to the judiciary, the investigation of crime, high risk armed reaction, High Risk armed personal protection, forensic social workers and covert operatives all operating in a highly confidential environment. It is thus important that staff are trained and skilled in constantly assess threat and risk to advise the appropriate protective measures to ensure the protection measures in place meet the identified threat/risk whilst ensuring a safe environment in which supplementary measures could be deployed - such as ensuring the children in a protected family are able to go to school.

The WPP main activity cycle includes;

- Creating a confidential environment to enable the Agency to conduct assessment activities, employ protective measures and render supplementary services that consist of :-
 - 24/7/365 standby service of protection officers who are available to international covert relocations.;
 - Local and international covert relocations
 - High Risk armed intervention and Personal Protection
 - Psycho-social and medical support
 - Operational and logistical assistance
 - Advice on protection, support and well-being
 - Training and good practice.
 - Internal operations and relocations etc

Recommended **basic admission criteria** includes an assessment of the following aspects;

- Nature of evidence
- Nature of threat & risk related to testimony
- No other protection available
- Willingness to submit to rules
- Expected time period
- Psychosocial adaptability.

Witness Protection Programs are in nature extremely expensive and resource intensive - requires a highly skilled workforce whose services are available all the time. It is also life changing since security measures that are utilized force the protected persons to break all ties with the area of risk - the area that is known to him/her and that forms an integral part of their support system. It requires the witness to break all social ties and alienate him/herself from their family and friends for the sake of the protection. It is for this reason that WPP is often regarded as social death.

The option for name change is also difficult and complex because it affects cultural identity.

The possibility for admission of witness to the witness protection program should only be extended to those witnesses **really at life's risk and in matters that address the real crime priorities of the country.** This is why the WPP is the last resort in a range of inter-dependant protection methods.

Some of the key challenges faced by witness protection measures include;

- **Funding** - sufficient funding to support this possible expensive exercise;
- **Political will** – to force reform in the criminal justice system at large and effectively address organised crime, grand scale corruption, terrorism and human rights abuses through prosecution;
- Creation of a **robust confidential agency**. He recommended that the best approach should be to look at it as a Ugandan problem that requires Ugandan solutions. It is important to follow but also create new international best practice that best suits the Ugandan local context, withstand interference, be safe & accountable; clear rules for staff identification, employment; training, protection and retention; maintain integrity and public confidence, exclude staff from army or police if they affect public confidence; Operational autonomy and skill's development; Develop sound operational practices that are better than Organised Crime Groups.
- **Networking**: within the country, regional and with international partners especially those dealing in transnational operations. Fully functioning witness protection programs require the ability to relocate and re-identify witnesses temporarily or permanently. Most states/territories are not able to relocate witnesses internally - either because they are too small in geographic size or population or for other reasons. Instead, they must cooperate with other states for this purpose. Cooperation between witness protection programs requires mutual understanding about each other's programs and challenges to protecting witnesses within the country/location and trust(need for confidentiality). One needs to develop this understanding. Trust is built through regular contacts through informal/formal networks/meetings/exchanges and evaluating each other's systems
- **New Forms of Crimes** – Trans National Organized Crime Groups & suburban gangs, motorcycle gangs, religious groups involved in terrorism, piracy, money laundering, human trafficking and migrant smuggling and often use complex and unconventional methods to commit crime that make it difficult to investigate.
- New global village where biometrics offer key identification marks relating to signature, gait analysis, voice recognition, finger print, facial recognition, facial recognition, hand structure. Internet also offers a growing source to track witnesses of serious crime for instance, 'Stop Snitching' is a website that identifies witnesses of organised crimes, Google street view, social networking sites such as face book, blackberry, twitter, YouTube, are all internet resources that expose potential witnesses to attack since they make users provide daily update of life experiences.

The protection of witnesses is only possible, if;

- There is a proper investigative process that employs good practices in the field and provide for basic protection;
- Judicial protection methods are available and the speedy trials are prioritised;
- There is a properly resourced covert and autonomous witness protection program set up and managed in accordance to internationally accepted best practices. This calls for new technology and lateral measures.

Providing for a Witness Protection Program without re-engineering the investigative and judicial capacity and processes, in effect, is planning to fail.

The basic good practice principle applied in witness protection is ‘**don’t do any harm to witnesses and victims**’.

The history behind OHCHR’s involvement in witness protection which dates back in 2008 when the UN Human rights Council passed **Resolution 9/11 and 12/12** instructing OHCHR to develop a comprehensive study on best practices for the effective implementation of the right to truth including, in particular, programs for the protection of witnesses and other persons involved in trials connected with gross violations of human rights. Subsequently, two reports were submitted to UN Human Rights Council; the *Annual Report of the UN OHCHR and Reports of the Office of the High Commissioner and the Secretary General on the Right to Truth, [A/HRC/12/19 – August, 2009]* and; **the Report of the United Nations High Commissioner for Human Rights on the Right to the Truth, [A/HRC/15/33 – July 2010]**

The latter report studied witness protection programs in several countries, interviewed several human rights mechanisms such as UN Human Rights Council special procedures, international tribunals and courts – such as International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Criminal Court and the Special Court for Sierra Leone. There are other UN agencies with relevant expertise on witness protection such as UNODC, UNICEF and UNIFEM, all dealing with key thematic issues that contribute to the underlying principles of witness protection and useful partners to engage at the national level.

In 2008, OHCHR also participated in UNODC’s consultations to draft the model law on witness protection. A key question that was asked was whether witness protection should only be limited to judicial process or extend to non-judicial proceedings like Truth Commission. The UN Human rights Council advocated for witness protection to extend to non-judicial truth commission or national human rights commission, an approach that is clearly more extensive and different from UNODC’s criminal justice approach.

The need for witness protection in non-judicial proceedings

It is important to extend protection to witnesses participating in non-judicial settings since accountability for crimes starts from the investigation stage and truth commissions are often at the beginning of that process. Non-judicial mechanisms are often very much involved in investigation of international human rights violations, serious violations of international humanitarian law that could be useful evidence for further prosecution of culprits. For instance, the Darfur Commission of enquiry report was subsequently used by the International Criminal Court (ICC).

The law on witness protection should obligate all relevant institutions to protect witnesses at all stages of criminal proceedings right from the investigations. This obligation falls on the prosecution office. At the ICC, the Office of the Prosecutor is responsible for developing witness protection strategy.

Truth commissions, commissions of enquiry and human rights commissions need to provide witness protection. This could be in the form of a legal framework that provides witness protection and ensures the well-being of the witnesses. It should consider the safety, physical and psychological wellbeing of the witness, which also has to do with the way the information provided, is used.

Specific considerations in drafting witness protection legislation and program design

There should be a witness protection legislation that incorporates a variety of protective measures including arrangements to facilitate the appearance of witnesses before the courts, arrangements to provide them with psychosocial support, special protection measures where appropriate when they are testifying, and protection to ensure the safety of witnesses outside the court. Additionally, the law could provide for court specific measures such as giving testimony outside the courtroom by closed-circuit

⁸⁴ By Mr. Zaved Mahmood, OHCHR

television or out of view persons capable of creating an intimidating atmosphere, from behind the screen, testifying under a pseudonym or banning publication of any information that might reveal the identity of the witnesses.

There should be a review of existing judicial measures that can be utilised to guarantee witness protection.

Another consideration is the category of crimes that warrant protection. The UNODC approach focuses only on high-profile crimes, however, it is unclear what qualifies as high profile or serious enough before protection can be provided.

Key considerations to take into account in establishing witness protection mechanisms that comply with international human rights standards include;

- **All-Inclusive:** From a human rights perspective, victim protection centres should be inclusive enough to also target defence witnesses who may face danger. The approach should be much broader, comprehensive and ensure that it does not create new victims in the process. .

The Witness Protection Agency, which administers the protection program, should have a mandate to protect and assist both victims and witnesses. He gave an example of the Sierra Leone Special Court where a large number of victims and witnesses were involved with 60% of witnesses admitted to its witness and victim protection program being victims, 3% child soldiers, 6% international experts and 31% insiders.

- **Institutional independence:** OHCHR's 2009 report on witness protection noted that a system of witness protection that is independent from State mechanism is better placed to inspire public confidence and trust. Such organ can be funded by the State but not closely controlled by the machinery of State organs. In particular, the witness protection mechanism should not be accountable to the Executive but to Parliament as the most suited body to provide oversight. The choice between Parliament and Judiciary as the oversight body should be in the context of the country, which should refer to other comparative experiences in making such a determination.
- **Legislative basis:** It is important that the law clearly provides for personnel of the program based on strict criteria of competence and merit. Another key consideration is strengthening the training capacity of WPP staff members.
- **Eligibility criteria:** Threats and risks should form the key criteria instead of having eligibility criteria that focuses on organised crime or serious crimes. This should form the procedure and criteria for admission and also for exit – i.e. the threat and risk involved.
- **CSO Partnerships:** CSOs can also play a very effective role in the implementation of a witness program. In Argentina, the court ordered CSO to support WPP for example through psychological, medical assistance which play a complementary role. However, he maintained that confidentiality and protection of witness and victims should form the basis of such cooperation.

Witness protection should not be considered in an isolated manner. Rather, it is should viewed as an integral part of justice sector that aims to strengthen the judicial system. Witness protection needs to be at the centre of that discussion in order to be effective.

3.4.3 [Protecting witnesses in Rwanda and building national capacities in a post-conflict society](#)⁸⁵

The objectives of ICTR are to find out the truth about what happened during the Rwanda genocide, to punish the perpetrators and to bring justice to the people of Rwanda to enable reconciliation. This is done through an independent body providing impartial services to Prosecution and Defence witnesses and thus, ensures that any potential conflict of interest does not exist.

⁸⁵ By Ms. Sylvie Becky-Kakou, Chief of Witness Victim Support Section, ICTR

Witness protection is a strategic tool in the prosecution of individuals accused of serious violations of international humanitarian law committed in Rwanda and in the neighbouring countries during the genocide in 1994. It further ensures fair, transparent and equitable justice to both the victims and the accused persons and enables participation of victims and witnesses to ICTR judicial process.

The Witness Victim Support Section (WVSS) at the ICTR is under the authority of the Registrar and has considerably evolved over the past 15 years. The witness protection unit was established from the very start in 1996 and operates, until to date, as a fully functioning operation which enables the testimony of more than 2500 witnesses coming from more than forty countries to be shared.

There are complexities around protecting victims, witnesses, perpetrators living in the same community as the case is in Rwanda. The ICTR is required to protect witnesses in a former conflict zone through its Field Office in Rwanda and in other countries besides Rwanda, where witnesses have found refuge irrespective of their status through its main office in Tanzania. The ICTR, Witness Support and Protection Program, is tailored around the Great Lakes Region environment and takes into account local and multifaceted dynamics. This creates the need to assess the security and impact on witnesses during their transit from Rwanda, Burundi to Tanzania. This is made possible by having adequate personnel that are skilled and competent.

WVSS has 24 staff in its Rwanda sub-office with some international staff from Tanzania with the same language, culture and proximate location near the country of origin of many of the Rwandan witnesses. This helps the witnesses to work in a familiar environment and reduces any tension.

The Statute and the Rules of Procedure and Evidence of the ICTR provide a legal framework for the management of witnesses and victims' participation, protection and support before, during and after the trial proceedings.

Mandate of Witness Victim Support Unit of ICTR

The mandate of the WVSS has three components which include:

1. Provision of direct support to Trial Chambers' activities; This includes availing witnesses for their testimony during judicial proceedings within the set judicial calendar in a timely manner; implementing Court decisions on protective measures, transfer of detained witnesses, *Subpoena*, investigations; Recommending the adoption of measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused and; Responding to Trial Chambers upon consultation in the determination of protective measures for victims and witnesses;
2. Provision of impartial assistance to witnesses' calling Parties (Prosecution and Defence) during trial phases; Such assistance covers Witnesses' calling parties: Prosecutor, Defence Counsel, Trial Chamber, Appeals Chamber; Assistance in locating and transporting their witnesses to the seat of the Tribunal within the respect of the indicated order of appearance; Constant liaison and interaction with WVSS to ensure that required and appropriate support is provided;
3. Management of a Witness Protection Program; the Registry has adopted a holistic approach to witness protection and support in order to ensure that witnesses and victims are:
 - Fully protected;
 - Their rights are respected;
 - Not subject to further traumatism;
 - Handled with respect and dignity.

The WVSS protects any witness constituting an **individual** who was **physically present** at a location when a specific event occurred and **personally saw or heard** the event. Given the **direct personal**

experience, a witness can be called upon to **testify in court**, to give a **firsthand account** or to **verify** the authenticity of another person's account of the event.

The categories of witnesses participating in ICTR proceedings include;

(i) **Factual witness** (people with direct knowledge of an event or occurrence as a result of having experienced it or having been present when it happened. They are not allowed to state their **personal opinions** before the Chambers). Factual witnesses constitute the majority of ICTR witnesses and include; victims, including victims of rape and gender-based violence; detainees, convicted persons; ICTR accused or convicted person to testify as a witness in the case of another accused person (Defence witness) or as prosecution witnesses in cases involving guilty pleas and confessions and witness of events.

(ii) **Expert witness** – are those qualified under Rule 94bis to give their opinions based on their great knowledge and experience in the field and; are remunerated for the service rendered to the Tribunal.

The management of witness protection at the Witness Victim Support Section is regulated by key principles that govern the nature of testimony provided at the ICTR. These include; the principle that witnesses should be heard in court and in exceptional circumstances, a witness can be heard by other means such as deposition or video link (witness is linked to the courtroom by satellite); Written statements in lieu of oral testimony may be allowed as evidence by the Chamber: Rule 92 (bis) of the Rules of Procedure and Evidence. The testimony should be voluntary although in some instances, the Trial Chambers may issue *subpoenas* to compel reluctant or unwilling witnesses to testify in the interest of justice.

Overall, WVSS provides impartial support and protection services to all witnesses/victims (Prosecution and Defence) residing in Rwanda during pre-trial, trial (when witnesses testify by video-link from Rwanda) and post trial phases. It also safeguards the integrity of the witnesses' vis-à-vis the judicial proceedings and serves the best interest of all concerned parties.

WVSS ensures that the testimony of witnesses is provided in a safe and conducive environment where they are provided with required security (protecting the privacy and ensuring the security and safety of all witnesses) and; assistance (diplomatic, administrative, logistic, legal, medical, psychological especially counselling in cases of rape and sexual assaults); and any other required support within the mandate of the WVSS.

WVSS also develops short, mid and long term plans for the protection of witnesses who have testified before the ICTR when they face fear or threat to their lives, property or family. It also implements appropriate measures for the protection of witnesses and where applicable in collaboration with the UNHCR and National organs.

There are a range of working procedures relating to ICTR's experience and best practices in witness protection programming in Rwanda. These include;

Decision-making processes

- The decision to protect a witness residing in Rwanda is taken by a Judge or a Trial Chamber and can be extended to family members;
- Individuals on a Prosecution or Defence list of protected witnesses scheduled to testify, are protected, even if later they testify or not.
- The Registry decides on how to protect the witness. In this regard, due consideration is given to various elements: the background/status of the witness (victim, ex-detainee, detainee), his/her connection or not with the accused person, threat assessment, risk assessment, level of security in the area where the witness resides; psychological and physical state of the witness;

- The consent of the witness, his need and the appropriate measures are taken care of. This is important as it determines who participates in the program because witnesses who don't cooperate might divulge confidential information about the program.
- Some of ICTR witnesses have dual status: testified as protected witnesses before the ICTR and openly before the Gacaca. This is a challenge to the protection offered by WVSS since protective measures are compromised.
- Defence witnesses can assist Trial Chambers in uncovering the truth, for example by showing that an accused was not at the crime scene or by proving that the crime was committed by someone else. They are therefore admitted to the program in recognition of the fact that they face threat of a different nature and therefore need protection and psychological assistance that may be caused by traumatic experiences.
- Defence witnesses also deserve delicate treatment similar to Prosecution witnesses because they are also subject of threats, intimidation and reprisals for purporting to testify in defence of alleged *genocidaires*;

Cooperation with national Governments

The ICTR's cooperation with national Governments is important since it does not have a police force nor law enforcement agencies and operates on the territory of Rwanda through its Field Office.

Cooperation with the Rwandan Government was initiated prior to the involvement of the WVSS in the field. The ICTR Registrar engaged diplomatic negotiations with Rwanda as the country with a duty care on all citizens and residents on his territory; and worked out a Security arrangement by which the Government agreed to set up a security referral for matters encountered by ICTR witnesses and agreed on the methodology to address such issues including investigating, facilitating easy travel and documentation.

Within this operational framework, the Government appointed a focal point to handle all cooperation requests as regards ICTR protected witnesses; including; security issues, facilitating expeditious issuance of travel documents and clearance to witnesses without going through the cumbersome normal procedures and respect of confidentiality.

Witness protection is a wide mandate that involves various units and stakeholders involved in protective measures and those who support the program. This may necessitate conducting joint threat assessments, where applicable, and verification of information on alleged security threats. For purposes of meeting these logistics;

- ICTR establishes successful methodology for soliciting cooperation from Rwanda in conducting joint threat assessments, where appropriate and in relocating vulnerable witnesses; obtains the cooperation of Rwanda, where the security situation is uncertain, in facilitating the field access of ICTR Officers to witnesses; Escort of detainee witnesses by Government officials who also have a duty to address any security concerns at the national level.
- ICTR signs contracts with external medical facilities through the grants and other voluntary contribution of Member States. Provision of medical and psychological care to its witnesses in Rwanda, including victims of gender based war crimes and sexual violence and rape and those affected by HIV/AIDS and referral of sick witnesses to external medical facilities with the strict confidentiality principle;
- Implementation of Court Decisions with the cooperation of government authorities. This entails the Ministry of Justice and Ministry of Internal Security (Immigration) - Obtaining Travel Documents; the Ministry of Internal Security (National Prisons Service) - Documentation and Transfer of Detainee

witnesses; the Ministry of Internal Security (National Judicial Police) – Security/Protection of witnesses; the Office of the Prosecutor General – Witness Protection Unit- Protection issues, Service of Subpoenas to witnesses and the Immigration and Airport Authorities - Movement of witnesses at the Airport.

- Confidentiality: WVSS protects its source of information as well as information received, which may be disclosed only to facilitate its protection and support work;
- The ICTR program has made provision for special assistance to victims of gender based war crimes and this pioneering work of the ICTR has highlighted its contribution to ending impunity for gender crimes.
- Continuous monitoring of the security situation of protected witnesses done through the implementation of follow up mechanisms or when witnesses report alleged threats;
- Any relocation of vulnerable witnesses is implemented with the assistance of the witnesses' host Governments which conduct the monitoring of the security situation of the witness in the post-trial phase.
- Preventive measures to minimize witnesses exposures such as;
 - Covert operations
 - Extra Care while establishing contact with witnesses for the first time and during the course of witness travel preparation
 - Arrangement for alternative transportation means for the witness
 - Temporary/Transit accommodation of witnesses in a new area prior to travel Advance planning and mobilization of resources for witnesses with special needs, including medical;
 - Encourage witness to relocate to a relative within in own community for a while or media protection measures to sensitise the media to protect witness identity
 - Thorough briefing of witnesses on operations being carried out by WVSS, measures available for their protection which require their full collaboration. This enables WVSS to reduce High or unjustified expectations from witnesses and victims;

Witness obligations

- Witnesses on the program have the obligation to adhere to its rules and regulations.
- Trial Chambers rely on witnesses to give truthful testimony and may instruct either the Prosecutor or *amicus curiae* to investigate allegations of false testimony and institute proceedings against the witness, if necessary. (Art 91)
- ICTR Protected witness “GAA” pleaded guilty to giving false testimony before the Appeals Chamber and was sentenced to nine months’ imprisonment.
- ICTR does not tolerate witness interference. The Trial Chambers may hold in contempt those who “knowingly and wilfully interfere with its administration of justice,” (Rule 77) including: witnesses who refuse to answer questions, those who violate court orders, and those who threaten, intimidate, injure or bribe witnesses or otherwise interfere with the witness’ testimony. The Speaker gave an example of a Defence Investigator Nshogoza was condemned at 10 months imprisonment for interfering with a prosecution witness. He was found guilty of “repeatedly meeting with and disclosing the protected information of witnesses in knowing violation of, or with reckless indifference to” protective measures ordered by the court”.

- Several *amicus curiae* have recently been appointed by the Registrar of the ICTR at the request of Trial Chambers or Appeals Chamber to investigate allegations of intimidation, retaliation, interference or bribery of witnesses.

ICTR capacity building and outreach activities

The WVSS undertakes strengthening national capacity in witness protection through training. This training is aimed at enhancing knowledge of the tools offered by the ICTR Witness support and protection program by equipping officers with relevant skills and methodologies in the strategic approach towards successful management of the protection and support of witnesses such as;

- Training to transfer knowledge and skills in the area of witness protection; sharing of experience on how to best protect witnesses.
- Building Rwanda institutional capacity to receive cases from the ICTR in the event that the Prosecutor is successful in obtaining the Judges' approval for transfer of cases to Rwanda. ICTR Judges have acknowledged the tremendous efforts made by Rwanda in fostering the guarantees for fair trial. However, they expressed concern over the unfettered right of the Defence to call witnesses, particularly those living abroad, should trials be organized in Rwanda. The Rwanda Witness Protection Unit that is based within the national prosecution authority does not accord impartial treatment to defence and prosecution witnesses. She emphasized the need to advocate for an independent unit.
- Raising awareness on the role of the police, investigators of CID at an early stage in protecting the identity of potential witnesses (preventive measures) but also to investigate alleged intimidation or harassment of witnesses.
- Raising awareness on the role of judges in witness protection (the order of protective measures, the questioning of witnesses, the control of audience, the assignment of pseudonym, order closed sessions
- Putting in place approved Standard Operating Procedures and guidelines to ensure equal treatment to all witnesses.
- Enabling national understanding on the imperative for Rwanda to establish a credible and reliable program for witness protection, which will provide effective responses to protection matters.
- Although the overall core and basic principles guiding witness protection programs are the same, Rwandan national program is tailored around the specific needs, culture, dynamics and realities of its own environment.

The ICTR, through its outreach program has actively partnered with NGOs, UN Agencies and Rwanda Government in enhancing and strengthening the capacity of national legal and judicial systems in:

- Combating gender-based crimes and violence;
- Integrating into national legal systems the best practices for witness protection and administration of justice;
- Reforming and drafting of national rules of procedure and evidence;
- Mainstreaming legal aid for indigent accused persons;
- Promoting reparation for violations of human rights and international law;
- Domesticating international criminal justice developments through national strategic plans on domestic violence of impunity;

Some of the recommendations arising from the ICTR trainings include:

- Sensitization of the media on the need to respect protective measures;
- Sensitization of the population, including potential witnesses through the media, on witness protection matters;
- Indispensable collaboration between the two existent Witness Protection Units: The Supreme Court Unit in charge of Witness protection to deal with ICTR cases if transferred to Rwanda and the Witness Protection Unit under the National Prosecuting Authority;
- Teamwork and communication between all witness protection stakeholders;
- Training /awareness on witness protection should target Prisons Officers, Registrars and all judicial officers;
- Organize visits of stakeholders to Arusha to familiarize themselves with the ICTR;

Witness Protection Program is a major component of any credible criminal justice system and it is widely accepted that witnesses, under most national jurisdictions, may be targets for threats or reprisals from organized criminal groups or criminals of all kinds.

- Witnesses play a vital role in the judicial process at the Tribunal. Without the participation of Prosecution and Defence witnesses, Trial Chambers would not be able to ascertain the truth about the 1994 genocide in Rwanda;
- The protection of witnesses should be considered as a basic right for those who have accepted to contribute towards justice delivery and should not be compromised at any given time.
- Rwanda has not yet closed the chapter on the trials for genocide. Witness protection is still important in cases where victims and alleged criminals or their close associates are still living on the same hills.
- The ICTR experience has also shown that the witness protection is an expensive service that requires a strong political will from a country;

Since the ICTR is an ad hoc tribunal and in process of phasing out, its legacy needs to be supported by the creation of a credible residual mechanism that shall guarantee the continuation of the protection of its witnesses after the end of its mandate. This will require a full cooperation of Member States. There are two options; first is to have a residual mechanism approved – this will require capacity-building of Rwanda witness protection practitioners or to create programs to provide psychological support to ensure sustainability.

3.4.4 Witness protection programs and lessons learned from international courts⁸⁶

It is important to set up a system to mitigate the risk that exists against witnesses otherwise it is useless to set up witness protection structures for the sake of. Witness protection is a tool to make criminal justice system function better (as a means to an end) and not an end in itself.

The protection system should aim to target those most at risk considering how financially demanding a witness protection program may be. Italy has the most expensive witness protection system set up as a reaction to the mafia activities and runs an annual budget of 65million Euros.

It is important to take into account the experience of international courts to a national system for the following reasons;

- International courts had to go through the experience of having to set up new witness protection mechanisms from scratch in a unique setting. Such courts have been able to set up sophisticated processes and centralized a mechanism which is not often the case at the national level.

⁸⁶ By Mr. Simo Vaatainen, Chief, Victims and Witness Unit, Special Tribunal for Lebanon

- The nature of the crimes dealt with by international courts is different for instance gross violations of human rights which in Uganda may be relevant in respect to the LRA conflict.
- Ability to utilize lessons learned from other organisations.
- Quick succession of courts has potential for lessons learned.
- Different cultural, legal and geographical influences.
- Bringing together different legal experiences and some key principles emerged from that experience that could be valuable to any system.

Key Protection Principles

Key protection principles to consider;

- Risk-driven process; it is important to have a formalised risk assessment procedure within criminal justice system.
- Any protection measures including the court process, the program itself and investigations have to be proportional to the risk.
- The protection is associated with the risk resulting from the cooperation with the criminal justice system not social justice or security system so the measures must correspond to those specific interactions. Particularly in post conflict societies where there is weak infrastructure and insecurity, protection should only tackle the risk related to the particular case. It must be emphasised that witness protection is not a general social protection mechanism.
- Perception of the risk is also important to guard against misguided assumptions. There should be a response mechanism in place, access to information and the process should be explained to stakeholders.
- Full informed consent of the witness is necessary.
- Best interest of the witness - No harm principle. This might be difficult to address because sometimes the best interest of the victim may be not to testify even if his/her testimony is important for the global picture.
- There should be a holistic approach of protection and support – one of the main elements of a witness protection system is that there should be no separation of protection from support. The option is to exclude the person from criminal justice process or protect them from threat while also addressing the needs of that person that will enable him or her to testify effectively. Support should address needs of a traumatised person to feel safe and secure.

Tools – Commonwealth Guide TOR

The Commonwealth commissioned an expert team to draft Terms of Reference for a Commonwealth Guide, which provides an overview of witness and victim support and protection during different stages of criminal proceedings. These recommend appropriate measures to facilitate the testimony of victims who are witnesses in a criminal trial; allowing systematic review of established structures and evaluating the need to enhance these structures.

The underlying principles of the Commonwealth Guide include;

- Witnesses' contribution is considered essential for the proper functioning of a criminal justice system;

- Empower witnesses and recognize their needs with a view of achieving justice;
- Any witness who's not able to testify is a loss to the system – almost every witness is able to testify provided that adequate support and protection is available and;
- Criminal justice systems function better if witness issues are addressed in system wide manner.

Key elements of the Commonwealth Guide are that;

- Protection and support should be addressed in a holistic manner;
- Sensitivity to individual circumstances – witnesses and type of crime - and ability to adjust accordingly;
- System wide approach from pre-investigation to the trial and beyond;
- All actors need to be aware of the importance of these issues and their own responsibility in that regard.

Checklist of practical recommendations

It is equally important for States to consider the following key steps;

- Conducting system wide evaluation
- Legislation/administrative framework
- Investigations
 - Baseline assessment/Individual Personal Assessments/Good practices/training/response systems/local measures
 - Support/early determination/training/involvement of specialized staff/specialized care
- Trial
 - Procedural / special measures
 - Assessment/adjusting courtroom/adjusting questioning
 - Disclosure regime
 - Training
 - Court facilities
- Protection program

Stakeholders must recognise that court process is a difficult process that requires empowerment of witnesses on their role in the process and recognising their need to achieve justice. The foremost focus should be how the investigations are conducted at the first point. There should be a system wide manner to address witness issues right from the moment of investigations to the trial. The key element is that sensitivity is tailored to individual circumstances of the witnesses and the ability to adjust and assessment of overall risk to witnesses. On the type of crime that justifies the need for protection, the focus should be on serious crimes like organised crime.

Overall, witness protection program is only one part of the overall approach that a criminal justice system should have to protection. Many other steps can be implemented in a cost effective manner. Awareness is the key.

Plenary discussion

- Children play a key role in transitional justice process and constitute key partners in reconciliation and peace building process. To this end, peace process, truth and reconciliation should involve children proactively and address crimes committed by children. Children should not be forced to serve as witnesses. She advocated for child-friendly procedures to ensure consent. There should be simultaneous efforts addressing victims, survivors and perpetrators.

Key questions to ask on child protection measures include;

- What protection measures exist for children?
- Who decides what is in the best interests of the child? and;
- How do you ensure confidentiality?

Dealing with children requires specific expertise for investigation as well as trained expertise for courts dealing with children. Child soldiers are able to testify if their needs are taken into account at all times. Dealing with them at a practical level can be very difficult and requires specific expertise with investigators and training for court officials on how to deal with children.

Qn. Whether it is best practice to maintain current court practice which involves attacking character of the witness or whether these are medieval and should be abandoned?

The meeting acknowledged that the existing court procedure has to be maintained although tools would be used to allow flexibilities in given circumstances. This might not necessarily be on the question of anonymity – for one not to face their accuser, but other measures would be employed such as delivering testimony on their own behalf. Special measures must be justified and applied for.

Overall, the determination of whether the victim should face the perpetrator should be made on a case by case basis. Measures should be taken for an independent assessment of that individual to determine what is convenient in the circumstances. In the alternative, screen testimony could be adopted or change of location of witnesses in the court room to avoid intimidation.

3.5 Session 4: Gender mainstreaming in witness and victim protection

Chair: Laura Nyirikindi, FIDA-Uganda

3.5.1 Remarks on Burundi Experience⁸⁷

Gender issues within the justice system are usually related to women as victims of rape. It is important to look beyond this concept because most survivors are women and yet most of those testifying are men. Women are meant to be the educative agents and transmission hubs for peace and reconciliation. Therefore gender perspectives are important as they will permit women to participate in court process and at all stages of justice system.

There are structurally embedded-challenges such as the definitional aspects of the term ‘witness’ is interpreted from a masculine sense. There are existing latent cultural and traditional practices that restrain women from participating in court process hence curtailing the pursuit of justice.

A gender perspective goes beyond victims of rape. Women should be involved as survivors and key players in peace building and conflict resolution processes as recognised in **UN Security Council Resolution 1325**.

For example in Sierra Leone, 82% of witnesses were male while only 18% constituted women and yet, women form the majority of survivors who are transmitters of peace messages and reconciliation

⁸⁷ By Ms. Francoise Ngendahyo

and yet excluded because of cultural prejudices. In reality, victims are potential witnesses but not all witnesses are victims. It is important to clarify how many witnesses have been identified by court or Government and how many were selected to be interviewed during the investigation, for participation, trial and reparations. There is need for a balanced view so information should be collected from both men and women.

It should be noted that justice is something different in the post conflict setting. In most cases, justice is not a priority to certain constituencies in the immediate aftermath of conflict. Often women will look to survival, shelter, education for children. In Burundi culture, women don't build houses and yet these gender roles vary in a post-conflict setting. There is fear of being re-victimized, fear of retaliation, fear of being discriminated, which often drives many people not to look for justice or access court system. It is therefore important to identify the opportunity provided to both women and men to participate in the justice system.

A good example is when prosecutors at the ICTR proactively went out to seek witnesses and provided support particularly for women. There were concerns of inducement taking place, but there was then change in rules of procedure of court, which led to creation of unit to provide support to witnesses and potential witnesses. Sometimes, there is need for inducement of women potential witnesses who are in need of basic rehabilitation and medical assistance.

One of the good practice initiatives undertaken by gender advocates with the support of Justice Navi Pillay at the ICTR included the revision of Rule 34 of the ICTR's procedural rule of evidence to make room for appropriate gender measures and support witnesses appearing before the court. The ICTR Witness Support program to witnesses and potential witness was also established in ICTR with the help of Justice Navi Pillay.

It is also important to integrate gender considerations during the investigations to address existing gender gaps by asking the following questions;

- Who is doing the investigation (this is not necessarily man or woman but also aims at assessing their gender knowledge and sensitivity)
- How is she/he conducting investigation?
- Is the investigation gender-sensitive? (does it retain cultural stereotypes)

It is important not to make any assumptions that women feel more comfortable working with female investigators. An example is the Guinea investigations where women found more comfort being interviewed by white men in the interest of keeping their identities anonymous.

Lack of counselling and medical care especially for HIV + female patients remains a big challenge. In Akayesu's case, women witness expressed their forgiveness upfront for Akayesu but stated that their body scars are a lasting reminder of their traumatic experiences. They simply requested for penicillin medication.

Terminologies used are also important to orient women on the process. Sexual violence in some cultures is interpreted as positive while in some local words rape and marriage have the same word. Again, during trials at the ICTR women witnesses who doubled as victims were afraid to refer to certain sexual language. This demonstrates the need to sensitise women on formalities of the court process.

At the post-trial stage, the national set-up for transitional justice mechanisms such as the truth reconciliation commission in Burundi and the Special tribunal for Burundi. Some key gender sensitive measures arising from this process will include; collective as well as individual reparations and public monuments recognising the harm faced by the victims. It is important that the gender perspectives should be taken into account.

Recommendations

- Actors should think globally and act locally taking into account the gender disparity and latent discrimination of women as embedded in culture.
- Strategic sensitisation opportunities are equally useful as they will entice and attract women to participate as witnessed in Guinea, where trained educated women were proud to associate themselves with the process while some were afraid for their security.
- There is no single model fits all. It is important to identify if the proposed measures are suitable to Ugandan cultures and traditions for women and men to access mechanisms equally.
- It is also important to involve NGOs, women associations who are trained in justice, protection and appearance before the court.

There is a key resource on ICTR's outreach program titled; *Testifying before the ICTR* that should be studied for more information.

3.5.2 [Special protection measures for child witnesses](#)⁸⁸

The UN Guidelines on Justice for Child Victims and Witnesses of Crime is one of the UN standards and norms on crime prevention and criminal justice. It draws upon existing provisions of regional and international standards, norms and principles, including the UN Convention on the Rights of the Child and the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. It provides guidance on desirable practices which can be applied in different circumstances and provides a practical and user-friendly tool to ensure that child victims and witnesses of crime fully enjoy their rights and are treated fairly and with dignity as well as ensure that child witnesses and victims of crime are free to share their experiences and participate without coercion. It is also part of recognising and protecting populations at risk – women and children are marginalised and victimised yet they have to access justice institutions.

Child soldiers are the most difficult group to deal with for the complexities of their situation and that they present. Sometimes it is important to change the system to be able to really listen and understand children.

There is a cross-range of fundamental rights of child victims that need to be protected including:-

- The right to be treated with dignity and compassion
- The right to be protected from discrimination
- The right to be informed
- The right to express views and concerns and to be heard
- The right to effective assistance
- The right to privacy
- The right to be protected from justice process hardship
- The right to safety
- The right to reparation
- The right to special preventive measures.

The aforementioned UN guidelines are child friendly and available in all 6 UN languages. They provide

⁸⁸ By Gerhard Van Rooyen, UNODC

practical framework that is necessary to;

- (i) Guide professionals and volunteers working with child victims and witnesses of crime in their practice in the adult and juvenile justice process at the national, regional and international levels;
- (ii) Assist in the review of national and domestic laws, procedures, and practices so that these ensure full respect for the rights of child victims and witnesses of crime and fully implement the Convention on the Rights of the Child;
- (iii) Assist governments, international organisations, public agencies, non-governmental and community-based organisations and other interested parties in designing and implementing legislation, policy, programs and practices that address key issues related to child victims and witnesses of crime;
- (iv) Assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

Key overriding principles for child-friendly witness protection frameworks

During the drafting stage of the UN Guidelines, the following principles were followed:-

- 1. Dignity.** Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.
- 2. Non-discrimination.** Every child has the right to be treated fairly and equally, regardless of his or her or the parent or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- 3. Best interests of the child.** Every child has the right to have his or her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development:
- 4. Participation.** Every child has the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes and to have those views taken into consideration.

The *UNODC Model Law (and its Commentary) on Justice in Matters Involving Child Victims and Witnesses of Crime* is a tool available to assist States in adapting their national legislation to the provisions contained in the Guidelines and in other relevant international instruments; a tool for drafting legal provisions concerning assistance to and the protection of child victims and witnesses of crime. He mentioned that care was taken to reflect the need to accommodate the specificities of national and judicial procedures;

The UNODC Witness Protection Implementation Handbook is another key resource aimed at informing policy makers and practitioners of existing practices, and provides a reference to existing legislation and; a guide on practical measures that different professionals should be taking in relation to each of the rights: judges, law enforcement officers, prosecutors, medical and support staff, social workers, religious and cultural leaders, staff of non-governmental organisations and other community members .

In addition, UNODC has online training modules that consists of two separate training packages: 'General Training Package' for all 'Justice for Children Professionals', which includes one specific module on child-sensitive interviewing techniques and 'Special Training Package' for each Group of 'Justice for Children Professionals' with seven training modules targeted at Police Officers; Prosecutors; Judges; Social Workers; Health Staff; Lawyers; Informal Justice Providers. All these are designed to assist professionals who work with child victims and child witnesses of crime in their daily practice, through the provision of a self-learning tool and to encourage the development of a fair and effective Justice for Children system that safeguards their rights at all phases of the justice process and increase awareness and understanding of the fundamental rights of child victims and child witnesses of crime.

Plenary discussion

- The meeting recommended the adoption of mechanisms that are child friendly. There are a number of good practices that could be followed such as conducting special sessions for a child to be interviewed (not interrogated) before a judge, social worker, defence and prosecution. Consensus can be gained to have the questions and response given to be used as evidence in court; ensure that the child should be accompanied by a relative to ask judge to adjourn where session is discomfoting.
- How is monetary facilitation given to witnesses perceived? It is viewed as inducement or facilitation? It was emphasized that witnesses should volunteer to testify and should not be driven by money/ inducement to confirm their participation or cooperation. The ICTR/ICC for instance has clear policy directives on facilitation of witnesses participating in court proceedings to facilitate their accommodation and living expenses and in some cases, compensation for loss of income due to absence from work.
- The approach in integrating a gender perspective in Burundi was to engage both men and women in the sensitisation activities. The ICTR through its Victim Witness Support Unit has also established its own clinic with a psychiatrist who deals with witnesses appearing before the tribunal.
- ICTR initially had challenges because gender perspective had not been prioritised. As such, it is important to assess the gender implications of each measure starting from legislation. Admission of women into program has gender implications that should be taken into account. Women should be given the opportunity to talk sometimes, sometimes separating men and women to determine their priorities.

3.6 Session 5 – The importance of setting up witness protection programs

Chair: Miriam Magala, Private Legal Practitioner

3.6.1 National experiences and lessons learned from South Africa⁸⁹

In the criminal justice system, witness protection plays a vital supporting role in combating localised and transnational organised and other crime, including corruption, human rights violations and terrorism.

Pre-requisites for effective witness protection

These include;

- (i) the Constitution and its corresponding bill of rights as well as relevant laws on drugs and drug trafficking, organised crime (racketeering), money laundering, corruption, terrorism & financing of terrorism, human trafficking other contraband smuggling and asset forfeiture (criminal & civil).
- (ii) Commitment and service delivery that cuts across the political, law enforcement, prosecution and judiciary
- (iii) Capacity
- (iv) Resources and;
- (v) Witness protection legislation and program

In South Africa, the Witness Protection Office provides protection, support and related services to vulnerable witnesses and related persons in judicial proceedings. The measurable objectives are to protect and support vulnerable and intimidated witnesses by ensuring that no witnesses are harmed or threatened while on the witness protection program. In this respect, it is to the credit of the South African witness protection office that no witness has ever faced harm or threats while at the program.

⁸⁹ By Mr. Lucas Nesengani, South Africa Office of Witness Protection

The witness protection office also seeks to reduce the percentage of witnesses that walk off the program from 16% in 2008/09 to 10 per cent in 2011/12. In 2010, the second term walk-off figure has been 9%.

General values of the witness protection program include; all witnesses and related persons must be treated with: - humanity, fairness, dignity, sensitivity and respect.

Key strategies and initiatives undertaken by the Office of Witness Protection include;

- Cooperation and liaison with relevant partners and stakeholders
- Protectors will be available on a 24/7 basis to expeditiously meet the demand for services
- The turnaround times will be closely monitored and mechanisms put in place to improve thereon
- A holistic approach to protecting witnesses is followed, taking care of both their physical and mental wellbeing
- Factors that can lead to witnesses walking off the program will be identified and dealt with speedily. The witness protection office is, in accordance with the United Nations Human rights Council Resolution 7/28 and internal processes for missing persons, is involved in trace witnesses who unilaterally aborts the program to prevent them from being killed or harmed. In addition, all such cases are reported to the South African Police service.
- Intervention by investigators and prosecutors will always happen on neutral ground to prevent the compromising of places of safety
- The OWP will ensure that the witness is timeously brought to court (or other forum) to testify. Prosecution has to ensure that cases are adjudicated timeously with the help of the Judiciary. Government has a duty to ensure program has adequate resources to ensure program runs effectively.

The South African Witness Protection resource plan covers an annual budget of R126, 140million (equivalent of US\$16, 818m), half of which funds witness protection activities. This is to support activities such as the new structure and human resource plan, training plan and appropriate equipment and vehicles. He noted that the international best practice for the ratio of protector to witness is 1:1. The proposed resourcing plans that have been and will be developed will attempt to bring the component closer to this ideal. The witness protection office currently has 152 staff.

Record-keeping and archiving process of the South African witness protection office takes the following procedures. First, admission takes place at regional level. A copy of case docket/file is cloned and secured. The cloned copy is kept at headquarters. All records are indexed as required under the National Archives Act and Regulations. The records are kept in secure facilities and access is restricted to authorised personnel only. All records relating to witnesses classified “secret.” Despite secret classification the “need to know” principle is applied to the identity of witnesses and safe houses

The procedure for staff recruitment at the South Africa witness protection office is that vacancies are advertised with clear job specifications, short listing and preliminary vetting follows then interviews, selection and appointments, induction of successful staff that are subsequently taken through full security vetting at “top secret”, undergo training on the operating module and operational deployment.

Protection methodology

The South Africa Witness Protection Office protection methodology takes the following forms;

- Application & initial assessment
- Temporary (provisional) protection

- Establishing danger area(s)
- Threat assessment
- Permanent protection
- Removal/relocation/accommodation - safe area
- Medical care/employment/education/ financial assistance
- 24/7/365 protector assistance - once witness is assigned, protector works independently.
- Court preparation
- En route and court protection
- Discharge from program
- Resettlement in safe area for those not able to return to own homes.
- After-care service (provide help with accommodation, employment, medical care, identity change). The South Africa, witness protection legislation allows facial change through plastic surgery however, identity change, which interferes with lifetime qualifications is a last resort.

Some of the lessons learnt on witness protection in South Africa include the following;

- Expensive
- Time consuming
- Labour intensive
- Stakeholder/partner relations/ management vital
- General lack of understanding
- Independence
- Covert structure viewed within the criminal justice system. Not an open book for all to know the procedure
- Intelligence capability

The alternative/additional means of protection that could be provided include;

- Police protection
- Regular police visits and patrols
- Relocation to family/friends without entering Witness Protection Program and;
- Electronic surveillance - South Africa currently exploring electronic surveillance

Some of the challenges faced by the South Africa Witness Protection are that it outsources psychologists which are high risk to confidentiality. The plan is to integrate such services in the program. The meeting emphasized the need for law and the establishment of an independent mechanism.

3.6.2 National experience and lessons learned from the Kenya⁹⁰

Witness protection is a closely-knit area where the operational principles, procedures, legislative

⁹⁰ By Alice Ondieki, Acting Director, WPA, State Law Office

requirements are generally the same. Not being able to protect witnesses on the other hand contributes to lack of trust in rule of law and impunity

The Kenya Witness Protection Act No. 3/2006 was amended in May 2010. The development of this law was influenced by a number of factors. She gave an example of a woman witness who was killed and her family members raped because of her testifying in a case. 11 years down the line, no witness protection legislation had been passed. The Organised Crime Act – outlawed militia but when the US terrorist bombing experience happened, there was no capacity to address the consequences. Similarly, when the 1998 Mombasa bombing occurred, Kenya had no terrorism Act. Three people were charged with attempted murder and some for murder. The key witness was a Muslim who offered to collaborate with police but placed conditions for his relocation which the state had no capacity to provide and so lost the case. While the Kenya Witness Protection Act was in existence in 2005, it only came into force later in Sept. 2008 mostly because of the post-election violence. The Chief Prosecutor of the ICC is presently carrying out investigations that would also have implications on witness protection.

The witness protection law should look at autonomy/independence of the institution and have funding delivered from consolidated budget because it is a very financially heavy program and should not be subject to other competing priorities within one ministry or branch of Government.

New elements brought in the new Witness Protection Act relate to the witness protection tribunal – and also victim compensation fund, advisory board to have an oversight role over the agency since it has operational independence. The Witness Protection Unit was originally under the Attorney General and obliged to follow the same public procurement procedures with no autonomy, no direct funding but with a budget three times more than that of the A.G. Office. The reviewed Act amended this and made provision to create an autonomous Witness Protection Agency.

The main objective is to delink the Protection Agency from the A.G. Office and receive funds directly from the Consolidated Fund for purposes of confidentiality. Since witness protection is resource-intensive, it is prudent not to have shared resources. Interestingly, no objection was made to these amendments by Parliament.

New provisions in the Kenya Witness Protection Act include:

- No appeal system for those who apply and are denied. The Tribunal reviews and determines decisions
- Victim compensation fund; those beneficiaries that are habitual criminals can commit crime with financial implications, which might be compensated using such funds.
- Advisory board – plays an oversight responsibility over the Agency. No role on management of witnesses but director who admits, removes and manages witness protection

She recommended for the following;

- Recruitment of the right people is crucial. How you carry out your intelligence is also important, sometimes witnesses themselves need to be vetted.
- Having a regional block can be an important element to share costs and facilitate relocation of some witnesses.

Plenary discussion

- A question was asked relating to the composition of the Kenyan Tribunal how and who establishes it? Additionally, who appoints the advisory board of the WP? In Kenya, the Appeals Tribunal is an independent unit from the Witness Protection Agency. It is to be headed by a High Court judge appointed by the President on the recommendation of the AG, plus two members selected by the line implementing Ministry. Funded from consolidated budget as well.

The Witness Protection Advisory board includes the Police Commissioner, Director of National Intelligence, the national human rights institution, prisons, DPP, Minister in charge of witness protection and Minister of Finance. This composition and criteria is intended to enhance confidentiality of the system. Additionally, the members are appointed by Statute to act in person and cannot delegate. This is all included in the Kenya Witness Protection Act.

The protection office's annual budget is 1.2 million Kenya shillings derived directly from the Consolidated Fund. This is the initial budget and might change based on current conditions of staffing. There are 91 staff members in first year in five regional offices and one national office. Half of annual budget covers for witness related expenditure (directly to witnesses in securing, relocating, allowances, etc) and the rest is cost.

- A question was raised about definition of witness in the Kenyan Witness Protection Act. The Act describes a witness as a person who has agreed to give evidence or made a report to the police. Witness protection is offered regardless of, who or for whom, a witness is presenting information.
- A question was asked about the number of staff at the South Africa Witness Protection Program when it started and; the reasons why people leave the program?

The South African Witness Protection Program started with 28 staff, the bulk of which were appointed in 2007 and these are usually former members of South Africa police force who were seconded. South Africa Witness Protection Office provides quarterly reporting on the number of participants in the program, and as per the last quarter report end of September, they had 217 witnesses excluding family members but with family members included, it goes slightly to above 500.

On the reasons for leaving the program, he mentioned that the Program is in itself a traumatic experience, where one is placed away from their social setting of families and friends. Other reasons are purely financial, 80% of witnesses are core criminals that have agreed to testify but they do not get the same amount of income that they used to getting from organized crime.

- How safe are safe houses in South Africa witness protection programs?

Identification of safe house is a highly protected and structured process that is only known to the Program personnel. Participants sign a certificate to maintain confidentiality and protect the covert structure.

3.7 Plenary discussions on witness protection in Uganda

Chair: Birgit Gerstenberg, OHCHR Country Representative

3.7.1 Recap Session: Key considerations on witness protection and challenges to address⁹¹

The focus of the discussions is to develop a framework to help practitioners deal better with witnesses alongside victims and; to determine the way forward based on the previous discussions of Day one. Participants were tasked to determine where they are going and how they want to get there by proposing immediate actions and the long-term plans for Uganda to develop witness protection mechanisms.

A summary of key points of day one's discussions;

- Witness protection is important in the administration of justice but practitioners in Uganda are faced with challenges in attaining this.
- A number of witness protection measures currently exist in Uganda both in law and practice BUT there is no specific law that deals with WP and neither are such measures well-coordinated. Existing mechanisms such as the CID-Police Department offers protection under devise schemes and measures that are not protected by law.

⁹¹ Moderated by Shem Byakagaba

- It was agreed that Uganda needs a Witness Protection policy and legislation. This may start with the strengthening of the current measures as the process of enactment of the new legislation and protocols proceeds.
- ULRC with support from JLOS has conducted a study on the need to develop a witness Protection policy and enact witness protection legislation as the springboard in preparation for such measures.
- For suitability and ownership, the policy and legislation should be unique to Uganda cognizant of the local conditions in effect, providing local solutions to local problems.
- A distinction must be maintained between witness protection and witness protection program as distinct but related concepts. This is important for the appropriate application of the measures. WP is a new way of doing things and its impacts are life changing. It requires a total paradigm shift for the practitioners and the witnesses/ victims
- By its nature, the WPP needs regional and international cooperation. Regional networks such as the NEPAD, UN networks and forums, the East African Community and SADC should be utilised to garner good practices on witness protection. The question is how will Uganda utilize the existing regional and international organisations, protocols, treaties, etc
- Policy and legislation should take advantage of best practices from countries like Kenya and South Africa and the experiences and guidance of the UNODC and OHCHR. UN guidelines and the UNODC model law and drafting principles and good practices are quite instructive on this. Many conventions serve as a basis.
- A good Witness Protection law should be consistent with Human Rights concerns and should not oust the rights of an accused (Right to a fair trial. Examination of witnesses, etc)

Key legal and policy issues to consider and discuss:

- The choice and criteria witnesses to be protected (should it be all inclusive or restricted?)
- The nature of crimes
- The operational principles of the program
- The location of the program
- The personnel (Number, nature and recruitment processes)- it must be good value for money
- The quantum and source of funding
- Accountability by the program/ Agency
- The nature of protection to be offered
- How to mainstream gender
- How to handle vulnerable witnesses like children – Capacity of institutions like the courts, public prosecution, police etc.
- How to deal with the cultural issues/ mindsets – Corruption and bribery, varying definitions of rape and marriage in cultural settings
- How do we ensure the formulation and enactment of a strong policy and legislation?
- Should we distinguish between witness protection and victims of crime?
- Political will is essential. How do we galvanize it?

- Given the existing measures, how do we strengthen them and transit to a fully fledged legislation
- Should we create an independent institution or use existing ones?
- Capacity of investigators, prosecutors and the Judiciary is key for the success of WPP. How do we build capacity and what areas should we focus on?
- The program needs to be owned by the victims, experts, practitioners through the administration of justice chain. What sensitization and public awareness programs can be undertaken? Is sensitisation on the need to know basis?

Plenary discussion: Challenges on witness protection

Qn: Emphasis of the Seminar has been on witnesses but not victim protection. Should we have different laws on the 2 issues or have one law on witness and victim protection?

Response: This depends on the applicable court system and whether court process allows victims to participate in proceedings in their individual capacity or whether victim participation is only allowed as a witness? In case of the latter, it means the law of witness protection should automatically apply to a victim. In Uganda, victims participate in the criminal justice process only as far as they are providing evidence as witnesses. A law of witness protection would therefore encompass them as witnesses in that right. Protective measures that judges can grant would be under the criminal procedure - that element should be under the same legislation.

It was emphasised that actors should take into account the limited resources, which demand for a narrower approach that is centred on witnesses only. It is also important to manage public expectations. A different framework for victims can send the wrong message. However, since Uganda is going through a reform process to address ICC related crimes by the local war crimes court, victim participation is a core principle in the Rome Statute that might influence domestic changes and cater for gaps relating to victim protection and participation.

Witness protection, as understood in a human rights perspective, is meant to combat impunity and that can set the framework for understanding who should be protected under the program, whether victims, witnesses or other figures contributing to the process. Whoever is at risk whether victim, witness should be protected that should form the criteria. Also, within the legislation, there can be a caveat that states that ‘any other person the directorate deems necessary’ could be included.

Updating already existing legislation according to international standards can be an important element to ensure the rights of victims and witnesses. Witness Protection programs should be sensitive to particular groups who need protection especially children and women, gender, etc and this should be reflected in the legislation. Key action to take is to conduct a gap analysis on existing legislation on rights of witnesses and victims in general and develop guidelines on the same.

Article 68 of the Rome Statute refers to victim participation referred to as victim and witness protection. Since Uganda has ratified and domesticated the Statute, it is an important instrument to focus on. It gives a good basis for witness protection and key aspects of reparations that extend beyond the direct victim to his/her immediate family. It was recommended that Uganda should not differ from this.

The Kenyan Director of Witness Protection Office argued in favour of maintaining a distinction between victims and witnesses by referring to Kenya which only protects witnesses as per the country’s Witness Protection Act. Kenya only deals with victims as far as they are affected by actions of witnesses on the program. In this case, it is important to have comparative analysis of the different witness protection legislation. The ICC and US system where they have US Marshalls witness protection and Judicial Service Protection but they also have victims support unit that deals with victims only - this analysis could be important to identify what is good for Uganda’s local context and the available funding.

The US Marshall Service deals with various tasks and not just witness protection but also transfer of prisoners etc, offered by separate units. Uganda might consider doing victim impact statements.

An alternative could be to have one in an agency like the Justice Ministry and another on victim support within the courts.

In South Africa, protection for Judges and prosecutors is provided separately by the Risk and Security Unit – which assigns body guards to magistrates and judges. This is an administrative arrangement led by the Justice Ministry. Witness protection on the other hand requires undercover operations. Operations not known by the public so playing dual role exposes their cover and affects the victims' identity. Northern Ireland also provides witness protection for judges, Magistrates and Prosecutors.

Qn: Whether witness protection is confined to criminal justice system or others? Do quasi-judicial organs like the Uganda Human Rights Commission require a separate legal framework or would the legislation apply generally to all organs?

Witnesses for non-judicial processes or quasi-judicial processes should also be protected (i.e Commission of inquiry or Human rights Commissions) since these are at the first stage of the process to combat impunity towards eventual prosecution of identified culprits. But at this stage, existing witness protection programs don't allow for protection for this group. Kenya is different because it allows for protection for witnesses coming forward to the Commissions. It is a good practice but also expensive. It is important to recall as well that witness protection was developed in the context of combating organized crime and now there are more dealings with human rights violations. The bottom line is that all witnesses are witnesses, but the reason it is important to emphasize the 'victim' within the framework is because it is important for the Program personnel to be aware of the kind of assistance the program will need to provide to its witnesses. Organized crime insiders have different needs than for example a victim of human rights violations who may need victim support and wellbeing. At some point it is important to make that distinction.

Key Recommendation: *The moderator emphasized that ULRC research should delve deeper in conflict situations and have a wider perspective of what this program should entail.*

It is important to also note that other countries like Australia don't have Human rights Commissions or Truth Commissions so there is no need to include such issues. Africa on the other hand has different problems and situations and there is need to be context-specific. The problem in Kenya for example during the post-election violence, Human Rights Defenders didn't handle testimonies as evidence and failed to follow good practices. After the Commission's proceedings, these witnesses dumped their reports in open public places which practically compromised the security of the witnesses who became intimidated after the process.

Key Recommendation: *It is important to train all key agencies including truth commissions on how to interact with witnesses same for police, judiciary to abide by rules of confidentiality.*

Qn: How do you tackle the challenge of political will?

Political will is about money. If you take the example of Kenya, the Witness Protection agency is a very powerful institution unlike in other countries. The Kenya Witness Protection Agency has powers of a police officer with direct powers to enter Agreements, Protocols, determine use of funding and their new law has created a better model than the original agency that was under the A.G. and Minister of Justice.

Government must be advised on the possible merits derived from having an independent, effective witness protection agency from the justice perspective. Placing the Agency under the control of any Executive Ministry is an indication of compromise that should not be allowed.

Key Recommendation: *It was recommended to develop a basic system of Witness Protection for Uganda that is autonomous both administratively and financially but accountable to either Parliament or the Judiciary. Place it under an Executive agency should not be allowed.*

Qn: What about the issue of accountability? Taking the example of Kenya, where the WPA is an influential institution, how do you account for your actions in such cases?

In Kenya, there is no room for any malpractice since the Act is very clear as far as accounting procedures are concerned. The auditing process is classified in accordance with the agency's security policy (internal policy). All money received has to be audited - the difference is that this agency has internal accounting policies with security implications to account to a certain procedure developed internally to produce necessary certificates. There are internally developed procedures and auditors need to know that they are handling sensitive information. The auditors have to sign certificate of confidentiality and non-disclosure and may incur personal liability for non-compliance. This does not compromise security of the agency or its beneficiary

Secondly, the Kenya WPA are not power unto themselves but follow a clear accountability chain that reports to the advisory board followed by Parliament then to the President. The advisory Board is responsible for approving budget and witness protection programs It was recommended that legislation should have a provision on internal mechanisms to ensure that the agency works within standards. The accountability focuses on the Director of the Witness Protection Agency and the Appeal tribunal for certain decisions.

On the appointment of staff of the Kenya Witness Protection Agency; there is a vetting process first before any appointment. It is a competitive process. Re-appointment is based on performance agreement assessment, which if unsatisfactorily can lead to loss of post. The Office personnel reflect a multi-agency approach. There is security of tenure whereby top management have contracts for 5 years renewable once; others have permanent contracts for sustainability. Personnel swear a confidentiality oath at start and end of contract.

In South Africa, Office of Witness protection reports to Minister of Justice and Standing Committee on Justice in Parliament. The Program is audited by office of the Auditor General on an annual basis. Within the Office there is a security unit which is responsible for auditing the Office of the President and Security intelligence, which also audits the witness protection office. The Witness Protection Office report would not be distributed to everyone for consumption. If there are issues that are raised within the Auditor General's report then it would require follow-up actions.

Uganda's CID Director also noted that Police deals with witness protection even in the absence of a law. He provided a ground situation of 40 or more witnesses currently under their safety. He noted the issue of voluntarism, which in practice seems to be qualified. He noted that witnesses tend to attach conditions before 'volunteering' to join the Witness Protection Program because they know these are high profile cases of state interest and so make conditions such as asking for relocation and enrolment of their children in certain high ranking schools. They tend to see this as an avenue to solve their poverty problems rather than a voluntary experience. How do you reconcile the two?

There is a challenge on the criteria used to decide which kind of witnesses are to be protected. Once politicians know about this facility, then they oblige the Police to take up certain individuals and if such individuals are excluded then it will have serious consequences for the Police.

The moderator noted the need to develop clear regulations in order to tame peoples' expectations, have clear rules and guidelines on admission criteria so that everyone knows what is acceptable and what is not.

Professor Kakooza noted that witnesses need protection in order to participate effectively in the justice process. However, it is important to ask what makes people reticent to turn up? Financial considerations are important but also due to cultural issues for example fear of the untouchable persons, witchcraft and

so on. So how do we protect witnesses in that kind of situation? Can we endorse the employment of witch doctors or spiritualists? Again, how can people honour the law if their challenges/needs are not addressed?

Other questions arising from plenary

- How do we build the capacity of all agencies involved including judiciary?
- Before the law is adopted what practical steps should be taken on immediately?
- What does witness protection mean and for what purposes?
- What has contributed to people leaving the witness protection program in South Africa or refuse to join it?

It was noted that witness protection is meant to allow witnesses participate in justice system without fear. Witnesses opt out of the programs for financial reasons, cultural prejudices, fear of harm that may be commissioned by offenders in powerful positions etc.

- Where witnesses could appear incognito is that sufficient protection to disguise identity? Is video link evidence enough protection?
- How do people own the law? If it does not address their daily experiences like witchcraft which is deeply entrenched in communities in Southern and Western Africa?

There is a challenge faced with witnesses being protected by ICTR whereby some testify openly in Gacaca and yet they are meant to be protected witnesses in the ICTR. In Rwanda, if they expose themselves there is a Witness Protection program and police can take action on reported cases. The problem is in the assessment of the threat - whether it is real or passive (case of a person that testifies against their neighbour) - the court does not have the capacity to monitor these witnesses so agreements with the government are important.

With regard to the issue of voluntariness, it is important from day one to determine why these persons need protection (economic or life risk). It is important to reduce expectations regarding the witness protection program so there is need to sensitize the population, especially in area with several victims and potential victims, regarding the need to participate in justice, as well as know the nature of protection offered.

Protection cannot be seen as a green pasture. Becoming a witness does not entitle you to demand economic status and country where you want to live. There is need to explain the limitation for instance on relocation based on the choices available. In all cases, the overriding factor is the security element

Another challenge is that the State would like to prioritise its own witnesses and ensure that they get all they demand, in which case the State is ready to bend the law. In some cases, the witness is not cooperative but wants public exposure. The problem is worsened with slow pace of trial.

Admission to the program should be voluntary and if one doesn't follow the rules then they must be expelled immediately for instance a witness breaking the law. The criteria for admission are important regardless of who one is, there needs to be a very strict regulated program. Admission should be based on consent signing MoU to follow rules to protect credibility of the agency. On the issue of witchcraft-you don't legislate on this but it relates to practical implementation of protection. Sometimes a change of location of the witness to a more comfortable setting would be an appropriate solution. There is also the need for practical measures to address the realities surrounding witchcraft. A given strict rule is that on admission to program no traditional medicine with them.

Witness protection program for any participant is a management risk. There are no easy clients on a Witness Program because they are going through life changes. The key principle is that nobody should

impose a witness to the program because you lose leverage on the witness. Some witnesses might be a crucial position with needed information so there might be room to negotiate. In this case, assess the witness; sensitise them on the process of what can or cannot be offered and implications of participating in the program, in other words, the realities of the new situation, which is sometimes regarded as a 'social death', to create a realistic picture for the witness to volunteer and decide whether to enter.

Emphasis was also made on the need to keep the human rights perspective when determining if a person should be removed from the program. Specific procedure of exit should be thoroughly checked on its implications because risks are real and even if people are not abiding to all terms of the program, there can be a real impact after removal. An example of a victim of SGBV who was admitted to program, refused to follow strict procedure and was exited and re-victimised. A child soldier witness who is not cooperating with the court, investigator or protector. There is need to assess consequences of exiting such a person. Threat and risk assessment and management should not be based solely on failure to abide strictly by the rules.

Another view was that there has to be a possibility to terminate the involvement of the person from the program. Non-compliance issues need to be discussed and warnings given to witness. When participation in the program is terminated it is a controlled process. Programs cannot on the other hand be hostage to the whims of witnesses. There is also an alternative of the witnesses to refer to police protection after exit from program.

The overriding principle is threat/risk witnessed. It has happened that people left program and were then re-admitted because threat level increased again.

Commentary: *Witness protection programs need to be proactive in terms of the messages to transmit before beginning operations. In cases of post-conflict mechanisms, there is need for mapping of the environment of areas where witnesses are most likely to be and concentrate sensitization programs there through media, video especially to people at grassroots. Political will is important to come from local authorities and expressed through their political statements during sensitization. There is also the need to be innovative vis-a-vis the situation and threats in the country.*

Group discussions on thematic areas

Participants were divided into groups to discuss more concretely on various themes. Four groups were created and each tasked to discuss one of the following themes;

- Institutional framework
- Advocacy and Awareness
- Criteria for witnesses and nature of crimes and;
- Nature of protection and capacity-building.

Group 1 - *Institutional framework i.e.; location, funding, autonomy, reporting, accountability and staffing.*

Location of Witness Protection Program in Uganda should be an independent institution exercising its own autonomous powers but with the Ministry of Justice exercising oversight on the body. It should be obligated to report to an advisory institution such as the line Minister and to Parliament on an annual basis as the case in Kenya.

Staff should be recruited through an open competitive process based on merit and competence. It should be a multi-disciplinary agency that engages a wide range of professional disciplines but with focus on personnel with law enforcement background.

Feedback from plenary

- *UHRC*: The agency should report to Parliament instead of a line ministry because it can complicate issues given that the Minister of Justice is also the Attorney General.
- Staff appointment should be contractual and not permanent and regularly assessed.

Group 2 - *Advocacy and public awareness on; the nature of programs, target groups, advocacy with government, the role of NGOs and Parliament.*

- The key stakeholders to lobby include; Government especially key JLOS institutions such as the Attorney-General/Ministry of Justice, Ministry of Internal Affairs, (police and prisons). Witness protection should be a cross cutting concept in all JLOS institutions. Ministry of Justice – key partners (proposed oversight ministry). **How?** Undertake cost benefit analysis to create incentive for Government through lobby messages dwelling on access to justice, rule of law and fight against impunity.
- Lobbying in Parliament should target the Legal and Parliamentary Affairs Committee to market policy on witness protection.
- Lobbying the Judiciary should target key stakeholders like the Chief Justice, Chief Registrar, Judicial Studies Institute and the Principal judge
- For purposes of legal development, institutions such as the Uganda Human Rights Commission, Uganda Law Reform Commission should be targeted.
- CSO working on access to justice, children and women, human rights and media should serve as partners
- Target accountability mechanisms to include; Inspector General of Government, Auditor-General and all those handling private investigations and prosecutions by their mandate
- Continuing legal education and sensitisation of academia to transfer knowledge in schools and universities curriculum especially law schools course modules like Law of Evidence and Human rights. Key partners should be academic institutions and professional associations like the Uganda Law Society to conduct public lectures and continuing legal education on victims' right to justice and witness protection.
- Community sensitisation through working with CSOs to conduct advocacy, sensitisation, media work, and address issues of accountability.

Feedback from Plenary

- The role of civil society was not adequately addressed in the group presentation. An important role that CSOs could play is to participate in the recruitment process.
- The involvement of CSOs in the development of the institutional process was contested by some participants who noted that perhaps it would not be right to have CSOs in the discussion of structures and administrative issues of the Program. The Kenyan representative however argued against CSOs being involved in the administrative structure – it should be strictly a Government owned process.

Group 3 – *criteria for witness and nature of crime; type of witnesses to admit (admission guidelines), definition of high-profile and vulnerable groups (children, women, victims of HR)*

Types of witnesses: Witness should be able to give evidence on a crime committed and there has to be a threat to the person's life, family or property.

Admission criteria: Use Article 7 of UNODC Model Law. For one to be in the program, there should be a crime, he/she should be a potential witness whose life is in danger and there is a threat, intimidation or risk.

High profile crimes: Group decided to do away with this definition because it is too specific and too exclusive. They recommended the authorities to adopt a wider definition to just include any crime under which the earlier stated conditions should apply because using high profiles crimes as a condition is subjective and too broad.

Vulnerable groups: children, women and victims of human rights violations. Children should be dealt with separately using Article 7.1(d) of UNODC Model Law but also include special provisions for this group with the help of experiences from Sierra Leone and Australia. Group emphasized that there should be a clear definition of vulnerable group. In the preamble of the law, it should define the purpose of the Act to include *the protection of victims of human rights crimes, child witnesses, vulnerable witnesses and other serious crimes*.

On the definition of victims of human rights violations, the Group recommended the definition applied in the ICC Act of Uganda, 2010 and other international human rights instruments.

Feedback from plenary

- Type of witnesses to protect should include related persons, financial dependents and others possibly at risk due to their testimony.

Group 4 – *Nature of protection and capacity building*

Under protection program look at the protection measures to be instituted at the various stages of the justice process.

Procedural measures

- i) At the investigation stage, identity of the witness should not be disclosed
- ii) Prosecution level - Conduct baseline assessment of risk and how to mitigate it
- iii) Specific Court procedures –disclosure rules and orders by Judicial officers on how traumatized witnesses should be protected, how to manage the transcripts from proceedings, how to secure court room and layout, defence counsel and investigators
- iv) Physical protection against reprisals. **Who protects:** responsibility falls on the whole criminal justice system but with emphasis on prosecutors, judicial officers and staff, prison authorities, local communities and anyone with access to the witnesses.
- v) **Levels of protection:** these should be procedural , program and local measures
 - With regards to **non-judicial situations**, it is important to highlight that vetting of personnel should be rigid given that oftentimes the accusations are against the State.
 - **Training** - use best practices and international experience at the ICTR, ICC and Sierra Leone. Target groups such as investigators, prosecutors, defence counsels, prison officers and media.

Feedback from plenary

- One aspect of the program that was not addressed is the assistance that should be given to the witnesses (i.e. psycho-social, legal, etc). It is important to address it. In relation to assistance, the role of CSOs is clearly referenced under the UNODC model law whereby the Program can enter into agreements with non-government actors or private institutions (i.e. academic institutions, etc). Also important to

consider is how these arrangements should take place

- Another issue that was not addressed in the presentations was at the last stage – there is need for resettlement of the witness after testimony.

Proposed way forward

- We need to identify strategic partners; both local and international.
- There is need for a multi-sectoral and multi-disciplinary approach that engages the whole public service sector.

Conclusion and way forward

Action plan on the way forward

Who are the agencies and individuals responsible for moving process forward and on what?

- Further and widen research necessary (ULRC): on-going process but a product should be available for the taskforce to consider by end of March 2011
- Taskforce of the ULRC should consider the findings of the research and from this workshop - by March 2011
- Need to document and harmonize witness protection measures that are already in place - this would be under the responsibility of ULRC and First Parliamentary Council to map initiatives under the Police and Judiciary by end of June 2011. The process also partly contributes to the development of the Witness Protection Bill and consequential amendments.
- Need to amend the existing legislations and enact new laws (Witness Protection Bill) - International assistance on legislative drafting can be provided with the support of partners in the UN (UNODC; OHCHR and UNICEF)
- Advocacy and sensitization on Witness Protection Bill with (MPs, Judiciary and Government) - lead responsibility ULRC/JLOS - July/August 2011; Cabinet paper/approval – ULRC/MoJCA/FPC
- Possible creation of a technical committee that would involve wider number of orgs to work on advocacy, etc (include actors like DPP, etc) - this could actually be the work of the taskforce since it includes various actors. ULRC could beef up/review composition of the taskforce.
- Ultimately the Ministry of Justice needs to take responsibility for the implementation, while the law is being developed. It could be interesting to have the Ministry on board to lead a multi-sectoral process to work and address protection concerns within the work of the War Crimes Court with current measures/resources available.
- Consideration of the creation of an Interim Protection Unit (this could be based on an instruction by IGP to create a special unit and can elaborate a program to support this unit in capacity building. In this instance Internal Affairs would have to be the lead agency or at the very least involved. Kenya representative advised that after enactment of the Act, establish a multi-sectoral team from different departments with clear Terms of Reference to be able to bring the process forward
- This work plan needs to be factored in within the wide JLOS work plan - need to include in new SIP III of JLOS
- UNODC/UN-OHCHR technical assistance project to be developed to support the above processes with specific outcomes. As a result of this meeting, it should be agreed with the government and development partners, that it would be beneficial to undertake a project that would aim at the following:

- (1) Raise awareness amongst judges, prosecutors and police on their roles and the possible measures that can be used to support and provide protection to witnesses;
- (2) Support the development of a sound legal framework, including procedural measures, that will include the establishment of a holistic institutional capacity for the support and protection of victims and witnesses;
- (3) To strengthen the capacity of the police on the midterm to protect witnesses and victims whilst a decision is pending on the location and structuring of a protection structure capable of serving all justice mechanisms in the long run; and
- (4) Supporting the set-up and operationalize a long term witness protection authority and executing agency.

The four outcomes above would be accomplished with the guidance of a technical assistance program jointly developed by the UNODC ROEA and UN-OHCHR (Uganda) to be funded through the JLOS program by development partners and implemented with the assistance of a multi sectoral task team.

High Level Expert Seminar on Witness & Victim Protection in Uganda

9-10 November 2010, Kampala, Uganda

Introduction

- 1 The Uganda Law Reform Commission (ULRC), in partnership with the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Office of Drugs and Crime (UNODC), is organizing a high level expert seminar on witness protection in Kampala on 26 -27 October 2010. The expert seminar will bring together senior Ugandan policy makers and prominent national and international technical experts to discuss the key issues surrounding a potential witness protection framework for Uganda, and to exchange experiences and lessons learned from other jurisdictions. The expert seminar will focus on the protection of witnesses, victims and other individuals who are cooperating with the judicial and non-judicial proceedings in Uganda, including transitional justice processes.
- 2 The proposed expert seminar follows a recent national conference on witness and victim protection held on 13-14 September 2010 in Kampala. This conference engaged government officials representing the administration of justice and relevant national commissions, and civil society on key issues pertaining to the development of a formal witness protection framework for Uganda. Topics of discussion included: the legal framework for witness protection proposed by the ULRC, the substantial work undertaken by civil society on witness protection, and the relevant programs that are carried out by various UN agencies, including OHCHR's technical assessment mission in Uganda.
- 3 By exchanging experiences and lessons learned on witness protection from other African countries, the expert seminar to be held on 26 October will be an important further step in Uganda's process to establish a witness protection framework.

Human rights and the international legal framework for witness and victim protection

- 1 Successful witness and victim protection is at the core of any efficient investigation and prosecution of perpetrators of human rights violations. The failure to provide protection to witnesses, victims and others concerned can severely affect their fundamental rights, such as the right to justice and the right to the truth, as well as the right to "effective remedy". Witness protection program should be in consistent with principles of the right to fair trial.
- 2 Witnesses and victims have the right to protection under all human rights instruments and they do not lose the right to such protection simply by being involved in a judicial or non-judicial proceeding, either as victim or witness. States have the obligation to adopt specific measures to protect the rights of victims and witnesses. A close review of the key human rights treaties and other key instruments reveals few, but clear and unambiguous references to the right of victims and witnesses to be protected from threats and reprisals, and to their rights to dignity in the pursuit of justice respected. The International Covenant on Civil and Political Rights refers to "respect for the inherent dignity of human persons"⁹² and provides that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honour and reputation."⁹³ Since Uganda is a State Party to the International Covenant on Civil and Political Rights the Government has a general obligation to undertake necessary steps "to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant."⁹⁴
- 3 Within the framework of international human rights law, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁹⁵ the Convention on the Elimination of All Forms of Discrimination against Women,⁹⁶ the Convention for the Protection of All Persons from

⁹² International Covenant on Civil and Political Rights (CCPR), article 10.

⁹³ Ibid., article 17

⁹⁴ Ibid., article 2.

⁹⁵ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 13.

⁹⁶ In its Concluding Observations, the Committee on the Elimination of Discrimination against Women addressed witness protection under article 6

Enforced Disappearance⁹⁷ and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography⁹⁸ make clear reference to States' obligations to adopt specific measures to protect witnesses and victims.

- 4 References to the obligation to protect victims and witnesses is also found in several other human rights instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,⁹⁹ the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol),¹⁰⁰ the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,¹⁰¹ and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.¹⁰²
- 5 The practice and jurisprudence of international and regional human rights bodies, as well as international tribunals and courts demonstrate that the protection of witnesses and victims is the cornerstone on which combating impunity, providing justice and ensuring effective remedy rest.¹⁰³
- 6 Practice and jurisprudence of international *ad hoc* criminal tribunals, special hybrid courts (Sierra Leone) and the International Criminal Court have also emphasized the importance of protecting the individuals who are involved in the investigation and prosecution of cases within their jurisdiction. For example, the Appeals Chamber of the International Criminal Court recently ruled that protection should, in principle, be available to anyone put at risk by the investigation of the Prosecutor, and noted that “the specific provisions of the Statute and the Rules for the protection not only of witnesses, victims and members of their 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.”¹⁰⁴
- 7 Discussion on witness protection within the human rights framework benefit from the legal frameworks developed by both the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. Both conventions contain provisions requiring or encouraging measures of protection for witnesses giving testimony concerning offences under those treaties.
- 8 Article 24 of the United Nations Convention against Transnational Organized Crime places an obligation on each State party to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by the Convention and, as appropriate, for their relatives and other persons close to them. Article 24 also stresses that protective measures should not prejudice the rights of the defendant, including the right to due process. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the Convention include specific provisions (article 6 and article 5, respectively) that stipulate a series of protective measures for victims of trafficking and smuggling; and have been interpreted and applied in conjunction with the aforementioned provisions of the parent Convention on the protection of victims and witnesses.

of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). See A/57/38 (SUPP) (2002), paragraph 396; A/57/38 (SUPP) (2002), paragraph 50; A/57/38 (SUPP) (2002), paragraph 311; A/63/38(SUPP), 12/08/2008, paragraph 329; A/61/38(SUPP) 25/08/2006, paragraph 107.

⁹⁷ Convention for the Protection of All Persons from Enforced Disappearance (CED), article 12.4.

⁹⁸ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC), article 8.1(a).

⁹⁹ Declaration, paragraph 6(d).

¹⁰⁰ Istanbul Protocol, paragraph 3(b).

¹⁰¹ UN Doc. E/CN.4/2005/102 (2005), Add.1, principle 10.

¹⁰² UN Doc. A/RES/60/147, annex, paragraph III(5).

¹⁰³ For a detailed discussion on the relevant international human rights framework, see REDRESS, Ending Threats and Reprisals Against Victims of Torture and Related International Crimes - A Call to Action, December 2009, available at <http://www.unhcr.org/refworld/docid/4c46c73e2.html>.

¹⁰⁴ International Criminal Court, Prosecutor v. Katanga and Ngudjolo, 13 May 2008 (ICC-01/04-01/07-475).

Key operation elements of witness and victim protection

- 1 A good-practices report published by UNODC discusses key elements of witness protection programs involving organized crime, including the legal framework for establishing such programs.¹⁰⁵ The specific nature of witness protection must be carefully examined when considering investigation and prosecution of gross violations of human rights and serious violations of international humanitarian law. In the context of prosecutions dealing with organized crime, witnesses often include system insiders. The opposite is almost invariably true for witnesses of human rights violations, who are mainly victims of such crimes. The Special Court for Sierra Leone, for example, reported that 60 per cent of witnesses admitted to its witness and victim protection program were victims, 3 per cent child soldiers, 6 per cent international experts and 31 per cent insiders.¹⁰⁶
- 2 A discussion on key elements of a legal framework for witness and victim protection would include a comprehensive approach to programming, including: definition of participants (witness, victims, intermediaries) of the program, placement of the program, selection and vetting process of the staff of the program, the crimes for which admission of the program could be sought, procedure and criteria for admission to and exit from the program, risk and threat assessment and investigation procedure, protection and assistance measures (physical protection, identity changes, relocation, medical assistance, psychological assistance, legal support), reporting obligation appeal process and the role of civil society and other institutions. Such discussion would also focus on the specific needs of witness protection programs in trials related to gross violations of human rights and serious violations of international humanitarian law.

Witness and victim protection programs worldwide

- 1 Witness and victim protection programs are formal systems designed to provide a full range of physical protection, psychological support and other assistance to beneficiaries. A best-practice study, prepared by the UNODC,¹⁰⁷ indicated that formal witness protection programs first came to prominence in the United States of America as a legally sanctioned procedure to be used in conjunction with a program for dismantling organized crime. Today, witness protection is viewed as crucial in combating impunity in several countries including: Albania, Argentina, Australia, Azerbaijan, Bulgaria, Cambodia, Canada, Croatia, Cyprus, El Salvador, Finland, Greece, Guatemala, Indonesia, Italy, Japan, Kazakhstan, Kenya, Latvia, Mexico, Montenegro, Norway, Panama, Paraguay, Qatar, Russian Federation, Sierra Leone, South Africa, Switzerland, Thailand, Trinidad and Tobago, Ukraine, Uruguay, United Kingdom and United States, have established such specialized programs. These States have included protection provisions in their constitutions, penal codes, or specific witness protection laws.
- 2 While countries such as Sierra Leone tentatively consider the idea of witness protection, South Africa is the only African state with a formal protection program. Kenya is also creating a domestic protection unit where proposed amendments to enabling legislation were recently approved by parliament. Kenya has been encouraged to accelerate the founding of its protection unit for witnesses of the 2007-08 post-election violence under conditions agreed with the ICC. Other than the South African and Kenyan cases, protection of witnesses in Africa has been a matter for the international criminal tribunals, including the ICC, International Criminal Tribunal for Rwanda, and Special Court of Sierra Leone.¹⁰⁸

¹⁰⁵ UNODC, Report on Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, pp. 19-22, 43-47.

¹⁰⁶ See Special Court for Sierra Leone, *Best-Practice Recommendations for the Protection & Support of Witnesses*, 2008.

¹⁰⁷ UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*, 2008.

¹⁰⁸ For a detailed discussion on witness protection on Africa, see *The Justice Sector Afterthought: Witness Protection in Africa*, Chris Mahoney, Institute of Security Studies, South Africa, 2010

Ugandan initiatives on witness and victim protection

- 1 Government Initiatives for witness protection in the justice system:** Currently in Uganda there is no enacted law that provides the legal framework for the protection of witnesses and victims that are called upon to testify in court. The courts using their inherent powers to ensure that the ends of justice are met usually devise means to ensure some level of protection. Recently, the Uganda Law Reform Commission launched a study on witness protection in order to identify the need for a policy and legislative framework for protection of witnesses. The overall objective of the study is to map the policy and legal framework relating to witness protection with a view to making appropriate legal and extra-legal recommendations. The Uganda Human Rights Commission (UHRC), mandated to investigate complaints of human rights violations, has long been advocating for witness protection policy and law, keeping in mind that many of the complaints they investigate are against state agents, particularly law enforcement agencies. An effective protection mechanism on victim and witness protection would enhance the Commission's capacity to protect human rights, but generally it would improve the justice process in the country for victims of crime and human rights violations to attain an effective remedy.
- 2 Government Initiatives for witness protection in Transitional Justice:** Witness protection is particularly crucial where transitional justice processes involve truth recovery from persons and organisations who had a role in the recruitment of children into armed groups or in other serious offences and international crimes. The International Criminal Court has also emphasized the importance of witness protection in recent decisions, demonstrating that witness protection is a key concern of the ICC.¹⁰⁹ After the Juba peace talks¹¹⁰ stalled, the Government created a Justice Law and Order Sector Transitional Justice Working Group demonstrating its commitment to implement the peace agreement, particularly the Accountability and Reconciliation sub-agreement. Led by Justice James Ogoola – Principal Judge Special Division of the High Court, significant steps have been taken. In May 2008, the Government of Uganda announced the establishment of a War Crimes Division of the High Court and commenced the legislative process to enact legislation on the jurisdiction of that court along with applicable penal sanctions. The International Criminal Court Act has now been passed into law after receiving Presidential ascent in May 2010. In parallel, a National Reconciliation Bill proposing the establishment of a national truth and reconciliation commission has been put forward by a national coalition of civil society organisations and is currently under consideration by the Uganda Law Reform Commission. In addition, community leaders in the areas most affected by the LRA conflict in northern Uganda are advocating for the integration of local traditional reconciliation measures in transitional justice. The question of victim participation in transitional justice mechanisms and processes is a crucial issue that is pending greater discussion in policy making circles.
- 3 Civil Society initiatives on witness protection:** Recognising the need for participation and input from a wide range of civil society perspectives, OHCHR disseminated a needs assessment questionnaire to key civil society organisations working on transitional justice. The aim of the questionnaire was to garner a cross section of views from civil society organisations on the utility of holding a conference or roundtable and the critical issues to address. Respondents articulated that discussions on victim and witness participation and protection were timely and that initiating a debate on this issue at this juncture was critical. Highlighting recent developments in the field of transitional justice, for e.g. the formation of the War Crimes Division of the High Court.

¹⁰⁹ See: ICC-01/04-01/07 OA7, para. 66.

¹¹⁰ The Juba talks were a series of negotiations between the government of [Uganda](#) and the [Lord's Resistance Army](#) rebel group over the terms of a ceasefire and possible peace agreement. The talks, held in [Juba](#), the capital of autonomous [Southern Sudan](#), began in July 2006. The talks had resulted in a ceasefire by September 2006.

Expert Seminar objectives and outputs

The objectives of the expert seminar are:

- To reach and promote understanding of various applicable frameworks, including human rights frameworks, for witness and victim protection in judicial and non-judicial proceeding, including transitional justice;
- To share good practices, experience and lessons learned on witness and victim protection programming from the Africa region;
- To facilitate discussion and consultation between senior policy makers and technical experts from key State institutions on the next steps towards witness and victim protection policy making in Uganda.

Methodology, Participants

The activity is proposed as a high level expert seminar two-day seminar for approximately 30 persons. Discussion will focus on the normative framework of witness and victim protection, broader issues to be addressed while developing a witness and victim protection program in Uganda and on experiences and lessons learned from other jurisdictions. The first day will take the form of pre-prepared presentations from a select group of experts (mentioned below), followed by questions and answer sessions.

A more informal discussion with the Uganda Law Reform Commission will be held on the following day and will be dedicated to a technical discussion on various key elements on witness and protection programming with the participation of experts from the Uganda Law Reform Commission, including various State institutions and other relevant organisations, as well as non-government organisations.

On day one, invited participants will be high-level Government representatives including: Minister of Justice and Constitutional Affairs/ Attorney General, Honourable Khiddu Makubuya; Minister of Internal Affairs, Honourable Kirunda Kivejinja; Solicitor General, Ms Lwabi Harriet; The Director of Public Prosecution, Mr. Richard Butera; Inspector General of Police, Colonel Kale Kayihura; Commissioner General of Prisons, Dr Johnson Byabashaija; Chair or Secretary of the Uganda Human Rights Commission, Mr. Medi Kaagwa, Secretary of the Uganda Law Reform Commission, Professor Joseph Kakooza; Members of Parliament (Social Services, and Legal & Parliamentary Affairs Committees, Business Committee); High Court Division Justices (Criminal, Corruption, Family and Children and War Crimes).

On day two, invited participants will be from the high technical level of government and should come from the following institutions: Uganda Law Reform Commission, JLOS Secretariat / Technical Committee, Judiciary, Judicial Studies Institute, Ministry of Justice and Constitutional Affairs (1st Parliamentary Counsel), Ministry of Gender, Labour and Social Development, National Planning Authority, Uganda Human Rights Commission, (Complaints Investigation and Litigation Directorate; Monitoring and Legal/Complaints Directorate), Uganda Law Society, Sector Ministries in social service areas (Public Service Commission, Health), NGOs: HURIPPEC, HURINET, FHRI, RLP, FIDA, UCRNN, REDRESS, Action Aid Uganda. Donors to be invited: DANIDA, SIDA, USAID, DFID etc, and UN agencies in social service sectors (UNIFEM, UNICEF, OHCHR, UNDP, UNODC).

Program

Experts are invited to prepare brief papers or presentations that canvas the issues assigned to them.

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Constitution of the Republic of Uganda, 1995	1995	<p>Article 212 – Functions of the Uganda Police Force</p> <p>The functions of the Uganda Police Force shall include the following—</p> <p>(a) to protect life and property;</p>
Police Act, Cap 303	1994	<p>Section 24 – Arrest as preventive action</p> <p>(1) A police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person—from causing physical injury to himself or herself or to any other person;</p> <p>(a) from suffering physical injury;</p> <p>(b) may arrest and detain that person.</p>
Disciplinary Code of Conduct (Schedule to the Police Act)	1994	<p>Clause 2 – Obligations of police officers</p> <p>A member of the force shall—</p> <p>(d) treat humanely all persons at his or her disposal without discrimination;</p> <hr/> <p>Clause 24 – Unlawful or unnecessary exercise of authority</p> <p><i>A police officer is guilty of unlawful or unnecessary exercise of authority if he or she — (b) uses any unnecessary violence to any prisoner or any person with whom he or she may be brought into contact in the execution of his or her duty;</i></p> <hr/> <p>Clause 34 – Power to summon witnesses</p> <p>(1) The person conducting an inquiry into a disciplinary offence under the provisions of the Act may require any person to attend and give evidence before him or her and may require the production of any documents relating to the offence by any person attending before him or her except that no person so required to attend shall be obliged to answer any question which may tend to incriminate him or her or render him or her liable to any forfeiture or penalty.</p> <p>(2) A person required to attend under subparagraph (1) of this paragraph who without reasonable excuse fails to attend when notified to do so shall be arrested and brought before the police court to show cause why he or she should not be charged with disobeying lawful orders contrary to section 117 of the Penal Code Act.</p>
Police (Amendment) Act	2006	<p>New Section 27A – Procurement of information and attendance of witness</p> <p>(1) A police officer not below the rank of assistant inspector of police making an investigation into an offence may, in writing—</p> <p>(a) require the attendance before him or her of any person whom he or she has reason to believe has any knowledge which will assist in the investigation; and</p> <p>(b) require the production of any document, matter or thing relevant to the offence under investigation.</p> <p>(2) The attendance required under subsection (1) may be required at the nearest police station or police office situated within the area in which that person resides or, for the time being, is found.</p>
Evidence Act, Cap 6	1909	<p>Section 117 – Who may testify</p> <p>All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.</p> <p>Explanation — A lunatic is not incompetent to testify, unless he or she is prevented by his or her lunacy from understanding the questions put to him or her and giving rational answers to them.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
		<p>Section 118 – Dumb Witnesses</p> <p>A witness who is unable to speak may give his or her evidence in any other manner in which he or she can make it intelligible, as by writing or by signs; but the writing must be written and the signs made in open court. Evidence so given shall be deemed to be oral evidence.</p> <hr/> <p>Section 130 – Production of documents which another person having possession could refuse to produce</p> <p>No one shall be compelled to produce documents in his or her possession, which any other person would be entitled to refuse to produce if they were in his or her possession, unless the last-mentioned person consents to their production.</p> <hr/> <p>Section 131 – Witness not excused from answering on ground that answer will incriminate</p> <p>A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to the question will incriminate, or may tend directly or indirectly to incriminate, the witness, or that it will expose, or tend directly or indirectly to expose, the witness to a penalty or forfeiture of any kind, or that it may establish or tend to establish that he or she owes a debt or is otherwise subject to a civil suit; but no such answer, which a witness shall be compelled to give, shall subject him or her to any arrest or prosecution, or be proved against him or her in any subsequent criminal proceeding, except a prosecution for giving false evidence by that answer.</p> <p>Explanation — A person who is charged with an offence who applies to be called as a witness shall not be excused from answering any question that may tend to incriminate him or her as to the offence charged.</p>
<p>Children Act, Cap 59</p>	<p>1997</p>	<p>Section 16 – Procedure in family and children court</p> <p>(1) The procedure of the family and children court in all matters shall be in accordance with rules of court made by the Rules Committee for the purpose, but subject to the following—</p> <p>(b) proceedings shall be held in camera;</p> <hr/> <p>Section 34 – Exclusion order</p> <p>(1) A family and children court may, in addition to, or in proceedings for a supervision order, care order, interim supervision or interim care order, make an exclusion order prohibiting a named person from having contact with the child or with the child and persons looking after the child.</p> <p>(2) Before making an exclusion order, a family and children court shall be satisfied that it is necessary for the protection of the child and to safeguard the child’s welfare.</p> <p>(3) The family and children court may specify the duration of the exclusion order.</p> <hr/> <p>Section 102 – Protection of privacy and restriction on publication</p> <p>(1) The child’s right to privacy shall be respected throughout the court proceedings in order to avoid harm being caused to him or her by undue publicity; and no person shall, in respect of a child charged before a family and children court, publish any information that may lead to the identification of the child except with the permission of court.</p> <p>(2) Any person who contrary to subsection (1) publishes—</p> <p>(a) the name or address of the child;</p> <p>(b) the name or address of any school which the child has been attending; or</p> <p>(c) any photograph or other matter likely to lead to the identification of the child, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding six months or to both.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Prison Act	2006	<p>Section 67 – Prisoners required as witnesses</p> <p>(1) Whenever the presence of a person confined in a prison is required by a court or other competent authority, the court or competent authority may issue an order addressed to the officer in charge requiring production before the court or other competent authority of the person in proper custody at a time and place to be named in the order.</p> <p>(2) The officer in charge shall cause the person named in the order to be brought up as directed and shall provide for safe custody during his or her absence from prison.</p> <p>(3) A court or competent authority may endorse on the order requiring the person named in the order to be again brought up at any time to which the matter in which the person is required may be adjourned.</p> <p>(4) A prisoner taken from a prison in pursuance of an order made under this section shall, while outside the prison, be kept in custody as the officer in charge may direct and while in custody shall be deemed to be in lawful custody.</p>
Domestic Violence Act	2010	<p>Section 10 – Application for a protection order</p> <p>(1) A victim or the representative of a victim may apply to a Magistrates court for a protection order.</p> <p>(2) The application for a protection order shall be supported by an affidavit and any reports or documents to be relied upon shall be attached to the application.</p> <p>(3) The application shall be in Form 1 specified in the Third Schedule.</p> <p>(4) The court shall, on receiving an application under this section, issue summons to the respondent directing him or her to appear in court on the date named in the summons in Form 2 specified in the Third Schedule.</p> <p>(5) An application for a protection order shall be heard by the court within forty eight hours after the filing of the application.</p> <p>(6) An application may be brought outside ordinary court hours or on a day which is not an ordinary court day, where the court is satisfied that the victim may suffer undue hardship if the application is not dealt with immediately.</p> <hr/> <p>Section 11 – Issue of interim protection order</p> <p>(1) The court shall issue an interim protection order, where the court is satisfied that, prima facie—</p> <p>(a) the perpetrator has committed, is committing or is threatening to commit an act of domestic violence; and</p> <p>(b) it is necessary or desirable to issue an immediate order to protect the victim from harm or discomfort or inconvenience, as a result of such domestic violence.</p> <p>(2) An interim protection order may, where appropriate, contain any direction, prohibition or award.</p> <p>(3) An interim order shall specify a hearing date for the application for a protection order.</p> <p>(4) The maximum duration for an interim order is three months, but the court may prescribe a lesser period.</p> <p>(5) The court shall serve the victim or the victim’s representative with a certified copy of an interim protection order or forward the order to the person responsible at the police station nominated by the victim or the victim’s representative.</p> <p>(6) An application for a protection order shall not in any way bar criminal proceedings against a perpetrator.</p> <p>(7) Where appropriate, the court may, in addition to any other remedy provided for under this Act, order that the victim and the perpetrator and any other affected member of the family be subjected to counselling, mediation or any other intervention that the court deems fit.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
		<p>Section 12 – Issue of protection order</p> <p>(1) On the hearing date specified in an interim protection order, the court may issue a protection order where the court is satisfied that an act of domestic violence has been committed, is threatened or is being committed by the perpetrator.</p> <p>(2) A protection order may be issued ex parte if the court is satisfied that the perpetrator has been served with notice of the application for the order.</p> <p>(3) A protection order shall be served upon the respondent immediately, but not later than forty eight hours.</p> <p>(4) The court shall supply a certified copy of a protection order issued under subsection (1) to—</p> <p>(a) the victim or the victim’s representative; and</p> <p>(b) the responsible person at the police station nominated by the victim or the victim’s representative.</p> <hr/> <p>Section 13 – Contents of protection order</p> <p>(1) A protection order may, where appropriate—</p> <p>(a) prohibit the perpetrator from committing or enlisting the help of another person to commit an act of domestic violence;</p> <p>(b) direct the perpetrator to stay away from the premises or place where the victim resides or any part of the premises, if the prohibition is in the best interest of the victim;</p> <p>(c) prohibit the perpetrator from entering or approaching any place or premises where the victim works, frequents, attends or any part of the premises or place;</p> <p>(d) direct the perpetrator to pay maintenance in respect of the victim’s needs or the needs of any child or dependent of the perpetrator, including necessities;</p> <p>(e) award the temporary custody of any child or dependent of the perpetrator to any person or institution and regulate rights of access by the perpetrator to the child or dependant;</p> <p>(f) direct the perpetrator to afford the victim or any child or dependent of the victim, access to their place of residence and use of the facilities associated with it;</p> <p>(g) direct the perpetrator to do or omit to do any act or thing which the court considers necessary or desirable for the well being of the victim or any child or dependant of the victim.</p> <p>(2) The court may in issuing a protection order, where it considers it expedient to do so, issue an order to the perpetrator to vacate the matrimonial home or other home.</p> <p>(3) An order to vacate premises may only be issued by the court after consideration of a social report prepared by the social welfare officer.</p> <p>(4) A protection order shall remain in force until it is varied or revoked by a competent court.</p> <hr/> <p>Section 14 – Application for variation, revocation or discharge of orders</p> <p>(1) A court may vary, revoke or discharge an interim protection order or a protection order on an application on notice by a complainant or respondent.</p> <p>(2) Where an application is made under this section for the variation, revocation or discharge of an interim protection order or protection order, the court shall fix a hearing date as soon as practical but not later than thirty days after the filing of the application, except where there are special circumstances.</p> <p>(3) Where the court is satisfied that good cause has been shown, it may vary, revoke or discharge any interim protection order or protection order or it may extend the order.</p> <p>(4) The court shall give notice to interested parties of any revocation, variation or extension granted under this section.</p> <p>(5) An application under this section shall be in Form 3 specified in the Third Schedule.</p> <hr/> <p>Section 15 – Issue of copies of orders</p> <p>A victim, a victim’s representative or a police officer may apply to the court for a certified copy of an interim protection order or a protection order, if the copy which was previously issued is lost or destroyed.</p> <hr/> <p>Section 16 – Enforcement of orders</p> <p>(1) Where the perpetrator breaches any term or condition of an interim protection order or a protection order, the victim or the victim’s representative may apply to court for a remedy.</p> <p>(2) An application made under subsection (1) shall be accompanied by one or more affidavits made by a person or persons who can depose to the facts alleged.</p> <p>(3) The application under subsection (2) shall be in Form 4 specified in the Third Schedule.</p> <p>(4) A person who fails to comply with the terms and conditions of an order commits an offence and is liable on conviction to a fine not exceeding forty-eight currency points or imprisonment not exceeding two years or to both.</p> <p>(5) Notwithstanding subsection (4), the court may give any other remedy as it considers fit.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Whistleblowers Act	2010	<p>PART V – PROTECTION OF WHISTLEBLOWERS</p> <p>Section 9 – Protection from victimisation</p> <p>(1) A person shall not be subjected to any victimisation by his or her employer or by any other person on account, or partly on account, of having made a protected disclosure.</p> <p>(2) A whistleblower shall be considered victimised on account of making a protected disclosure where—</p> <p>(a) the whistleblower being an employee is—</p> <ol style="list-style-type: none"> i. dismissed; ii. suspended; iii. denied promotion; iv. demoted; v. made redundant; vi. harassed; vii. intimidated; viii. threatened with any of the matters set out in (i) to (vii); ix. subjected to a discriminatory or other adverse measure by the employer or a fellow employee; or <p>(b) not being an employee, the whistleblower is subjected to discrimination or intimidation by a person or an establishment affected by the disclosure.</p> <p>(3) A whistleblower who honestly and reasonably believes that he or she has been victimised as a result of his or her disclosure may make a complaint to either the Inspectorate of Government or the Uganda Human Rights Commission for redress.</p> <p>(4) Notwithstanding subsection (3) a whistleblower may seek redress for victimisation by bringing a civil action in a court of law.</p> <p>(5) A complaint made under subsection (3) shall contain the following particulars—</p> <ol style="list-style-type: none"> (a) the name, description and address of the whistleblower; (b) the name, description and address of the whistleblower’s employer or any other person who the whistleblower claims has victimised him or her; and (c) the specific acts complained of as constituting victimisation. <p>(6) A whistleblower shall not be considered victimised if the person against whom the complaint of victimisation is directed—</p> <ol style="list-style-type: none"> (a) has the right in law to take the action complained of; (b) the action is demonstrably unrelated to the disclosure made.

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
		<p>Section 10 – Protection against court action</p> <p>A whistleblower shall not be liable to civil or criminal proceedings in respect of a disclosure that contravenes any duty of confidentiality or official secrecy law where the whistleblower acts in good faith.</p> <hr/> <p>Section 11 – State protection</p> <p>(1) A whistleblower who makes a disclosure and who has reasonable cause to believe that—</p> <p>(a) his or her life or property; or</p> <p>(b) the life or property of a member of the whistleblower’s family is endangered or likely to be endangered as a result of the disclosure, may request state protection and the state shall provide the protection considered adequate.</p> <p>(2) “Family” for the purposes of this section means spouse, father, mother, child, grandchild, brother and sister.</p> <hr/> <p>Section 12 – Application to court for assistance</p> <p>Where in the course of an investigation under section 8, the investigator has reasonable grounds to believe—</p> <p>(a) that evidence or documents relevant to the investigation are likely to be destroyed, concealed, tampered with; or</p> <p>(b) that a person willing to provide information relevant to the investigation is being restrained by pressure of obligation to a confidentiality agreement with the persons or official secrets law to which the disclosure relates, the investigator may apply to the court for an order to preserve the evidence or documents or to release the person willing to provide the information from the perceived restraint.</p> <hr/> <p>Section 13 – Void employment contracts</p> <p>(1) A provision in a contract of employment or other agreement between an employer and an employee is void if it—</p> <p>(a) seeks to prevent the employee from making a disclosure;</p> <p>(b) has the effect of discouraging an employee from making a disclosure;</p> <p>(c) precludes the employee from making a complaint in respect of victimisation;</p> <p>(d) prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of victimisation; or</p> <p>(e) if it has the effect of creating fear or discouraging the employee from making a disclosure.</p> <p>(2) Subsection (1) shall apply to a contract of employment or agreement in existence on the commencement of this Act.</p> <hr/> <p>Definition of Protected Disclosure</p> <p>Section 1 – Interpretation</p> <p>“protected disclosure” means a disclosure made to—</p> <p>(a) an authorised officer;</p> <p>(b) an employer;</p> <p>(c) a nominated disclosure officer;</p> <hr/> <p>PART VI—OFFENCES AND PENALTIES</p> <p>Section 14 – Disclosing the identity of a whistleblower</p> <p>A person who unlawfully discloses, directly or indirectly, the identity of a whistleblower, commits an offence and is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.</p> <hr/> <p>Section 15 – Disclosing the details of the disclosure</p> <p>Where a person to whom the disclosure is made fails to keep confidential the disclosure, the person commits an offence and is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.</p> <hr/> <p>Section 16 – Victimisation of a whistleblower</p> <p>A person who either by himself or herself or through another person victimises a whistleblower for making a disclosure commits an offence and is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Anti-Corruption Act	2009	Section 44 – Protection of informers
		(1) Except as hereafter provided, a complaint to an offence under this Act shall not be admitted in evidence in any civil or criminal proceeding, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his or her discovery.
		(2) If a book, a paper or other document, or a visual or a sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in court or other authority as referred to in subsection (1), contains an entry or other matter in which the informer is named or described or shown, or which might lead to his or her discovery, the court before which the proceedings are held shall cause all those parts of them or passages from them to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect that person from discovery.
		(3) If on a trial for any offence under this Act, the court, after full inquiry into the case, is of the opinion that the informer willfully made in his or her complaint a material statement which he or she knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully dispensed between the parties to the proceeding without the discovery of the informer, the court may require the production of the original complaint, if in writing, permit inquiry and require full disclosure concerning the informer.
		(4) Subsection (1) shall not have effect where a prosecution is instituted against any person for an offence under section 45.
The Prevention of trafficking in Persons Act	2009	PART III—PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS
		Section 11 – Non Discrimination of Victims of Trafficking in Persons
		(1) Measures for the protection, assistance and support to victims of trafficking in persons shall be interpreted and applied in a way that is not discriminatory to persons on the basis of race, religion, belief, age, family status, culture, language, nationality or gender.
		(2) Any person who applies the measures for protection, assistance and support of victims in a discriminatory manner commits an offence and is liable to a fine of five hundred currency points or imprisonment for six months.

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
		<p>Section 12 – Protection, Assistance and Support for Victims of Trafficking</p> <ol style="list-style-type: none"> (1) A victim of trafficking shall be legally recognized as such and shall not be penalized for any crime committed as a direct result of his or her trafficking. (2) A victim of trafficking shall be informed in a language that he or she understands about the different stages of any proceedings, and about her/his rights and duties. (3) A victim of trafficking shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the proceedings. (4) The institution of a criminal charge arising from acts of trafficking in persons shall not affect the rights of a victim to pursue a civil case for damages. (5) A person instituting proceedings under this section shall be exempted from payment of any filing fees required under civil procedure laws. (6) A victim of trafficking in persons will be accorded the available health and social services, medical care, counseling and psychological assistance, on a confidential basis and with full respect of his/her privacy, in a language she/he understands. (7) A victim of trafficking shall be considered for provision of safe and appropriate accommodation and material assistance, where necessary and possible. (8) Public officers and any other person involved in the detection, investigation, prosecution or trial of offences under this Act shall whenever necessary, refer victims to appropriate organisations and institutions for assistance and support. (9) The protection, assistance and support to children shall be provided in accordance with their special needs, especially with regard to accommodation, education and care. (10) A victim of trafficking shall be entitled to information on the nature of protection, assistance and support he or she is entitled to and the possibilities of assistance and support. (11) The protection, assistance and support subscribed in this section shall be provided by Government and other agencies. <p>Section 13 – Confidentiality</p> <ol style="list-style-type: none"> (1) At any stage of the investigation or trial of an offence under this Act, law enforcement officers, prosecutors, judicial officers and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the victim of trafficking. (2) For the purpose of (1), proceedings of the court shall be conducted in camera, outside the presence of the media, in cases involving children, sexual exploitation, and other cases where the court considers this appropriate. (3) Any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry, or any person utilizing tri media facilities or information technology who publishes or causes publicity of the names and personal circumstances or any other information tending to establish the victim’s identity without authority, commits an offence and is liable to a fine of two hundred and fifty currency points.
		<p>Section 14 – Repatriation of Victims of Trafficking In Persons</p> <ol style="list-style-type: none"> (1) The Minister in cooperation with the appropriate government agencies shall be responsible for the facilitation of repatriation of victims of trafficking in persons to and from Uganda. (2) Where the repatriation of a Ugandan victim is likely to expose the victim to greater risks or to compromise his or her safety, the Minister may through the relevant office negotiate with the host government for the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect the victim. (3) Where the repatriation of a foreign victim is likely to expose the victim to greater risks, to compromise his or her safety, or where presence of the victim is necessary for court proceedings, the Minister may facilitate the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect, assist and support the victim. (4) On getting notice of a victim of trafficking in persons in a foreign country, the minister shall verify whether the victim is a citizen or a permanent resident of Uganda and shall; where a victim is proved to be a Ugandan or a permanent resident without proper documentation, issue the relevant documents and other relevant authorization to facilitate the repatriation of the victim to or from Uganda.
<p>The Prohibition Of Female Genital Mutilation Act</p>	<p>2010</p>	<p>Section 14 – Special powers of court</p> <ol style="list-style-type: none"> (1) A magistrate’s court may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order. (2) Where the protection order is issued in respect of a child, the Family and Children Court may issue appropriate orders for the child as it deems necessary.

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Uganda Human Rights Commission, Cap 24		Section 18 – Attendance allowance (1) Any person summoned by and appearing before the commission as a witness is entitled to be paid by way of reimbursement of his or her expenses such allowances as are payable to a witness appearing before the High Court in criminal proceedings. (2) Any other person invited by the commission to attend any meeting of the commission to assist the commission may be paid by the commission such allowances as the commission may consider reasonable.
		Section 19 – Immunities and privileges of witnesses A witness appearing before the commission shall have the same immunities and privileges as if he or she were a witness before the High Court.
Judicial Services Act, Cap 14	1997	Section 20 – Immunities and privileges of witnesses A witness before the commission shall have the same immunities and privileges as if he or she were a witness before the High Court.
Inspectorate of Government Act	2002	Section 34 – Protection of informers and witnesses (1) A person who provides information to the Inspectorate shall be protected and his or her identity shall not be disclosed and may be rewarded for his or her information and paid an amount of five percent of the money recovered consequent upon his or her information to the Inspectorate. (2) A person who in good faith gives any information to the Inspectorate or assists it in the exercise of its functions shall not be punished in any way for doing so. (3) A person who unlawfully discloses the identity of an informer or victimizes a person for giving information to or assisting the Inspectorate commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding one hundred currency points or both.
Local Council Court Act	2006	Section 42 – Utilisation of fees and fines (1) A local council court shall keep proper books of accounts and other records in respect of receipts and expenditure of funds paid as fees and fines to the court. (2) Monies received from fees and fines of court shall be utilised by the local council court— <i>(b) to pay for witness transportation where necessary;</i>
Magistrate Court Act, Cap 16	1971	PART XII—WITNESSES AND EVIDENCE
		Section 96 – Warrant for witness in first instance If the court is satisfied by evidence on oath that such person will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be specified in the warrant.
		Section 97 – Mode of dealing with witness arrested under warrant When any witness is arrested under a warrant the court may, on the witness furnishing security by recognisance to the satisfaction of the court for his or her appearance at the hearing of the case, order him or her to be released from custody, or shall on the witness failing to furnish that security, order him or her to be detained for production at the hearing.
		Section 98 – Power of court to order prisoner to be brought up for examination (1) A magistrate’s court desirous of examining as a witness, in any case pending before it, any person confined in any prison may issue an order to the officer in charge of that prison requiring him or her to bring the prisoner in proper custody, at a time to be named in the order, before the court for examination. (2) Where an order is directed to an officer in charge of a prison beyond the local limits of the jurisdiction of the court issuing it, the court shall send the order for endorsement to a magistrate within the local limits of whose jurisdiction the order is to be executed. (3) That endorsement shall be sufficient authority to the officer in charge of the prison to whom the order is directed to execute the order. (4) The officer in charge, on receipt of the order, shall act in accordance with it <u>and shall provide for the safe custody of the prisoner during his or her absence from the prison for the purpose of the order.</u>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Trial on Indictment Act, Cap	1971	<p>PART V—WITNESSES AND EVIDENCE</p> <p>Section 33 – Summons for witness</p> <p>(1) If it is made to appear that material evidence can be given by or is in the possession of any person, the High Court may issue a summons to that person requiring his or her attendance before the court or requiring him or her to bring and produce to the court for the purpose of evidence all documents, writings or things in his or her possession or power which may be specified or otherwise sufficiently described in the summons.</p> <p>(2) Any exhibit produced before the court may be retained until thirty days after the conclusion of the trial at which it was produced, and in the event of an appeal for such further period as the court to which the appeal is made shall direct.</p> <p>(3) Nothing in this section shall be deemed to affect section 122 or 123 of the Evidence Act.</p>
		<p>Section 34 – Warrant for witness who disobeys summons</p> <p>If, without sufficient excuse, a witness does not appear in obedience to the summons, the High Court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him or her before the court at such time and place as shall be specified in the warrant.</p> <p>Section 35 – Warrant for witness in first instance</p> <p>If the High Court is satisfied by evidence on oath that the person will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be specified in the warrant.</p> <p>Section 36 – Mode of dealing with witness arrested under warrant</p> <p>When any witness is arrested under a warrant, the High Court may, on his or her furnishing security by recognisance to the satisfaction of the court for his or her appearance at the hearing of the case, order him or her to be released from custody, or shall on his or her failing to furnish the security, order him or her to be detained for production at the hearing.</p> <p>Section 37 – Power of court to order prisoner to be brought up for examination</p> <p>(1) If the High Court is desirous of examining as a witness, in any case pending before it, any person confined in any prison, it may issue an order to the officer in charge of that prison requiring him or her to bring the prisoner in proper custody, at a time to be named in the order, before the court for examination.</p> <p>(2) The officer so in charge, on receipt of the order, shall act in accordance with it and shall provide for the safe custody of the prisoner during his or her absence from the prison for the purpose set forth in subsection (1).</p>
Uganda Peoples Defence Act	2005	<p>Section 214 – Witness and Advocates at military courts</p> <p>(1) The Commanding Officer or the Officer commanding the accused and a military court shall take all necessary action to promote the attendance of the witness whom the prosecution or the accused person or both request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured.</p> <p>(6) Every person required to give evidence before a military court may be summoned by a summons issued by a member of the Unit Disciplinary Committee or the court martial or the summary trial authority as the case may be.</p> <p>(8) A witness summoned or attending to give evidence before a military court shall be paid such witness fees and allowances for expenses of attendance as are prescribed by regulations.</p> <p>(10) Upon receipt of a certificate signed by a member of the Unit Disciplinary Committee or court martial or the summary trial authority as the case may be, that a witness has not appeared before a military court in obedience of summons issued under this section, a civil court shall, on proof of the proper service of the summons at a reasonable time before, issue a warrant to bring the witness before the civil court at the time and place specified in the warrant.</p> <p>(11) Where a witness is arrested under a warrant issued under sub-section (10), the civil court may, on his or her furnishing security by recognisance, to the satisfaction of the civil court for his or her appearance before the military court at the hearing of the case, order him or her to be released from custody or shall, on his or her failure to furnish security, order him or her to be detained for production at the hearing.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Access to Information Act	2005	<p>Section 44 – Protection of persons releasing information</p> <p>(1) No person shall be subject to legal, administrative or employment related sanction, regardless of any breach of legal or administrative obligation, for releasing information on wrongdoing, or information that would reveal a serious breach of health, safety or the environment, as long as that person acted in good faith and in reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.</p> <p>(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or maladministration regarding a public policy.</p>
		<p>Section 45 – Protection of officers</p> <p>A public officer, information officer or other person acting on the directions of such a person is not subject to any civil or criminal liability for any act done or omitted to be done in good faith in the exercise of performance of any power or duty under this Act.</p>
International Criminal Court Act	2010	<p>Section 16 – Interference with witnesses or officials</p> <p>A person is liable on conviction to imprisonment for a term not exceeding 7 years who, in Uganda or elsewhere</p> <p>(a) dissuades or attempts to dissuade any person, by threats, force, bribery or other means, from giving evidence for the purposes of a proceeding before the ICC or in connection with a request made by the ICC; or</p> <p>(b) makes threats or uses force against any Judge, the Registrar, Deputy Registrar, or any official of the ICC with intent to influence or punish that person, in request of an act –</p> <p>(i) done or omitted by that person or any Judge, the Registrar, a Deputy Registrar, or any official of the ICC, on his or her official capacity; or</p> <p>(ii) to be done or omitted by that person or any Judge, the Registrar, a Deputy Registrar, or any official of the ICC, in his or her official capacity; or</p> <p>(c) intentionally attempts in any other way to obstruct, prevent, pervert or defeat the course of justice, in relation to any proceedings, request, or other matter referred to in the Statute.</p>
		<p>Section 20 – requests for assistance</p> <p>(1) This part applies to a request by the ICC for assistance that is made under-</p> <p>(a) Part 9 of the Statute, namely –</p> <p>(vi) facilitating the voluntary appearance of persons as witnesses or experts before the ICC;</p> <p>(xi) the protection of victims and witnesses and the preservation of evidence;</p>
		<p>Section 23 – Confidentiality of request</p> <p>(2) If the ICC requests that particular information that is made available with a request for assistance be provided and handled in a manner that protects the safety and physical or psychological well-being of any victim, a potential witness, and his or her family, the Ugandan agency dealing with the request shall use its best endeavours to give effect to that request.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
		<p>Section 46 – Protection of witnesses</p> <p>(1) The applicable law with respect to compelling a person to appear before a Registrar under section 44 or section 45 and to give evidence or answer questions, or to produce documents or other articles, is the law specified in subsection (2); and that law applies with any necessary modifications</p> <p>(2) For the purposes of subsection (1), the applicable law is the law of Uganda that applies to giving evidence or the answering of questions or the production of documents or other articles on the hearing of a charge against a person for an offence against the laws of Uganda.</p> <p>(3) Nothing in subsection (1) shall be construed as requiring a person to give evidence or answer any question or produce any document or article that the person could not be compelled to give or answer or produce in an investigation being conducted by the prosecutor or in any proceedings before the ICC.</p> <hr/> <p>Section 49 – Request for voluntary appearance of witnesses</p> <p>(1) Where the ICC requests assistance under articles 19(8), 56, 64 or 93 (1) (e) of the Statute in facilitating the voluntary appearance of a witness before the ICC the Minister shall give authority for the request to proceed and transmit the request to the appropriate Ugandan agency if the Minister is satisfied that there are reasonable grounds to believe that the witness is or maybe in Uganda.</p> <p>(2) In this section and in section 50 and 51, ‘witness’ includes a person who may give expert evidence; but does not include-</p> <p>(a) a person who has been accused of a crime in the proceedings to which the request relates; or</p> <p>(b) a prisoner who is detained in relation to an offence against the law of Uganda.</p> <hr/> <p>Section 50 – Consent required</p> <p>The Ugandan agency to which a request is transmitted under Section 49 shall make such inquiries as may be necessary to ascertain whether the prospective witness consents to give evidence or assisting the ICC.</p> <hr/> <p>Section 51 – Minister may facilitate appearance</p> <p>(1) The Minister may assist in the making of arrangements to facilitate a witness’ attendance before the ICC if the Minister is satisfied that-</p> <p>(a) the prospective witness has consented to giving the evidence or assistance requested; and</p> <p>(b) the ICC has given any assurance requested by the Minister in respect of the witness including but not limited to an assurance that the witness will not be prosecuted or detained by the ICC in respect of any specified act or omission that occurred before the witness’ departure from Uganda.</p> <hr/> <p>(2) The Minister may-</p> <p>(a) approve and make arrangements for the travel of the witness to the ICC at the cost of the ICC; including but not limited to, the obtaining of such approvals, authorities, and permissions as are required for that purpose, including, in the case of a person who although not liable to be detained in a prison is subject to a sentence-</p> <p>(i) the variation, discharge, or suspension of the conditions of the person’s release from prison; or</p> <p>(ii) the variation, cancellation, or suspension of the person’s sentence, or of the conditions of the person’s sentence; and</p> <p>(b) take such other action for the purposes of subsection (1) as the Minister thinks appropriate.</p> <p><i>Temporary transfer of prisoners</i></p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
		<p>Section 52 – Request for temporary transfer of prisoner</p> <p>Where the ICC requests assistance under article 93(1)(f) of the Statute in facilitating the temporary transfer to the ICC of a Uganda prisoner, the Minister shall give authority for the request to proceed and transmit the request to the appropriate Ugandan agency, if the Minister has reasonable grounds to believe that the prisoner’s assistance is sought for the purpose of identification or obtaining evidence or other assistance.</p> <hr/> <p>Section 53 – Consent required and assurance may be sought</p> <p>Where the Minister authorises and transmits a request under Section 52, the appropriate Ugandan agency shall make such inquiries as may be necessary to ascertain whether the prisoner will consent to the transfer.</p> <hr/> <p>Section 54 – Minister may arrange for transfer</p> <p>(1) The Minister may authorise the temporary transfer of a Uganda prisoner to the ICC if the Minister is satisfied that-</p> <p>(a) the prisoner has consented to giving the evidence or assistance requested; and</p> <p>(2) the ICC has given any assurances requested by the Minister including but not limited to an assurance that the prisoner will not be released without prior approval of the Minister.</p> <p>(3) Where the Minister authorises the temporary transfer of the prisoner to the ICC, the Minister may-</p> <p>(a) direct that the prisoner be released from the prison in which that prisoner is detained, for the purpose of the transfer to the ICC; and</p> <p>(b) make arrangements for the prisoner to travel to the ICC in the custody of a person authorised for the purpose by the ICC.</p> <p>(4) A direction given by the Minister under subsection (2) in respect of a prisoner is sufficient authority for the release of the prisoner from the prison in which the prisoner is detained, for the purposes of the transfer.</p> <p>(5) Every person released under a direction given under subsection (2) shall be treated, for the purposes of Section 109 of the Penal Code Act (which relates to escaping from lawful custody) and for that purpose only, as continuing to be in the legal custody of the officer in charge of a prison from which he or she is so released, while in Uganda during the period of that release.</p> <p>(6) Where there is any inconsistency between subsection (4) and the Prisons Act, subsection (4) prevails.</p> <hr/> <p>Section 55 – Effect of transfer on prisoner’s sentence</p> <p>Where a prisoner who is serving a sentence for a Uganda offence is transferred to the ICC-</p> <p>(a) the prisoner shall be treated, while in custody outside Uganda in connection with the request, as being in custody for the purposes of the sentence imposed for the Uganda offence which shall continue to run; and</p> <p>(b) The Minister-</p> <p>(i) may at any time notify the ICC that the prisoner is no longer required to be kept in custody; and</p> <p>(ii) shall notify the ICC if the prisoner is no longer liable to be detained in a Uganda prison.</p> <hr/> <p>Section 58 – Protecting victims and witnesses and preserving evidence</p> <p>(1) Where the ICC requests-</p> <p>(a) assistance under article 93(1)(j) of the Statute in protecting victims and witnesses or preserving evidence;</p> <p>(b) assistance under article 19(8), or paragraphs (2) or (3) of article 56, in preserving evidence,</p> <p>the Minister shall give authority for the request to proceed and transmit the request to the appropriate Ugandan agency if the Minister has reasonable grounds to believe that the assistance requested is not prohibited by Uganda law.</p> <p>(2) Where the Minister authorises and transmits the request under subsection (1), the appropriate Ugandan agency shall without delay-</p> <p>(a) use its best endeavours to give effect to the request;</p> <p>(b) make such report on its endeavours as it considers to be appropriate in the circumstances; and</p> <p>(c) deliver the report to the Minister.</p>

Annex 2: National legislations relating to Witness and Victim Protection in Uganda

LEGISLATION	YEAR	SECTION REFERENCE
Penal Code Act	2005	<p>Section 101 - Deceiving witnesses</p> <p>Any person who practises any fraud or deceit or knowingly makes or exhibits any false statement, representation, token or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, commits a misdemeanor.</p> <hr/> <p>Section 103 - Conspiracy to defeat justice and interference with witnesses</p> <p>Any person who—</p> <ul style="list-style-type: none"> (a) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert or defeat the course of justice; (b) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or (c) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal, commits an offence and is liable to imprisonment for a term not exceeding five years. <hr/> <p>Section 107 - Offences relating to judicial proceedings</p> <p>(1) Any person who—</p> <ul style="list-style-type: none"> (f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he or she has given evidence, in connection with such evidence; commits a misdemeanor.

The protection of victims and witnesses is at the core of any effective and credible justice system.

It constitutes the cornerstone upon which combating impunity, providing justice and ensuring effective remedy rest and; forms a prerequisite for the fulfillment of fair trial rights.

This publication, in emphasizing this crucial fact, contains a compilation of three different reports on witness protection resulting from different dialogues and consultative meetings held in Uganda in 2010.

It highlights good practices, relevant standards and key considerations to guide national actors in the development of proper witness and victim protection strategies, laws and policies in Uganda.