



Witness protection impact on criminal justice system in Kenya

*By Mr. John Muthini Nyanzwii
Ag. Deputy Director Operations/Chief Protection Officer,
Witness Protection Agency*

The phenomenon of witness protection may sound alien to those with little fidelity to the criminal justice system. Its effectiveness has more often than not been doubted and its impact in terms of reforms in the criminal justice system termed cosmetic.

Witness protection is recognized as a fundamental human right, by various instruments of both International and National law, in the administration of justice. Article 50 of the Constitution of Kenya, under the Bill of Rights, not only provides for the protection of identity of witnesses and vulnerable persons in the interests of fair hearing before a court or tribunal, but also for enactment of legislation providing for the protection, rights and welfare of victims of offences.

The protection of victims and witnesses is of importance also in regard to prosecution of serious violations of human rights and of international humanitarian law. In some countries, actors involved in committing organized and serious crimes may also be responsible for human rights violation.

Kenya boasts of being the only country in Africa apart from South Africa of having a robust and functional witness protection legislation and protection programme. The Witness Protection Act, 2006 (as amended by Act No. 2 of 2010) established the Witness Protection Agency and outlined its mandate, powers, staffing, the Witness Protection Programme, the protection measures available to threatened and intimidated witnesses and the role of Advisory Board. The object and purpose of the Agency is to provide special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.

Great strides have been made since inception of witness protection in the criminal justice system. More and more witnesses have had courage to come out and give testimony in serious crimes such as murder, terrorism and economic crimes. In all criminal justice systems the process of investigating and prosecuting criminal offences depends largely on the information and testimony of witnesses. As such, witness protection measures and programs have been developed over time to ensure that evidence is preserved and heard during court proceedings. It is important to note that a strong and fair criminal justice system asserts the rule of law and gives effect to the rights of all citizens. Sound investigations, effective prosecutions and adjudication that are free from external interference are integral to ensuring that justice is served, so that impunity does not gain a foothold. Strong and fair justice systems assure citizens that the state is willing and able to take action against criminals.

The stable entrenchment of witness protection over time has improved faith in the criminal justice system. For instance applications for witness protection rose from 60 in 2009 when the Witness Protection Agency (WPA) was established to over 800 this year. Since inception, WPA has admitted over 300 witnesses and 1100 dependents into the witness protection programme where over 200 have successfully testified. Previously, serious criminal cases dragged in court for long and sometimes ended in acquittals due to lack of testimony from witnesses who feared for their lives. For instance, last year over 18 cases involving witnesses who are protected were concluded and judgment delivered compared to 12 the previous year. The convictions ranged from death sentence, life imprisonment to a number of years in prison representing a 82% conviction rate.

Funding remains a challenge because of the heavy financial capital involved in protecting witnesses and providing for their daily upkeep together with their dependents. The Agency spends slightly over Sh 2.5 million which is an equivalent of USD 24,271/Euros 20,243 per witness annually. The Government has continued to support the Agency in meeting its financial obligations. For instance, the Government increased its funding allocation in 2016 from Ksh369 million (USD 3,582, 524/ 2,987,854 Euros) to Ksh388 million (USD 3,766,990/Euros 3,141,700) in 2017. However, the budget allocation is still inadequate to sustain the large number of witnesses in the programme. The Agency additionally gets support from existing collaborations and partnerships with donors and development partners. For instance, the South Africa and Israel Witness Protection Agency's have been instrumental in technical and training support to WPA. Development partners such as United Nations Office on Drugs and Crime (UNODC) and European Police (Europol Network) have assisted WPA in training of its staff abroad.

Remarkable success in the witness protection programme has greatly contributed to exponential in the criminal justice system. Such trust has enhanced access to justice by aggrieved citizens by coming forward to give testimony as witnesses without fear of reprisals and risks to their lives. This is indeed a sure way of ending impunity and enhancing the Rule of Law in Kenya.

The author is a retired Detective and Senior Superintendent of Police with the Directorate of Criminal Investigations in the National Police Service, Kenya. He is a holder of a degree in Forensic Investigations from the University of South Africa (UNISA) and currently a postgraduate student pursuing a Master's Degree in Criminology and Social Order at the University of Nairobi, Kenya.