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COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW GRADUATE PROGRAM

**“Physical Protection as a Witness Protection Measure in Ethiopia:
Assessing its Procedural and Enforcement Challenges”**

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DECLARATION

I, Ermias Tadesse Birhanie, hereby declare that this thesis is my original work, which it has not been submitted for a degree in any other university, and that, to the best of my knowledge and belief, all sources of materials used for the thesis have been properly acknowledged.

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ACRONYMS

AAPC	Addis Ababa Police Commission
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
E.C	Ethiopian Calendar
EFP	Ethiopian Federal police
FDRE	Federal Democratic Republic of Ethiopia
FHC	Federal High Court of Ethiopia
FPP	Federal Public Prosecutor of the MoJ
MoJ	Ministry of Justice of Ethiopia
MoU	Memorandum of understanding
Rome Statute	Rome Statute Establishing the International Criminal Court
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crimes
UNCTOC	United Nations Convention against Transnational Organized Crimes
WPD	Witness and Whistleblower Protection Directorate in the MoJ
WWPP	Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation No.699/2010

ABSTRACT

Physical protective measures are crucial to protect the safety and security of witnesses who may be in danger as a result of their cooperation to the criminal justice system. This study looks at the application of Ethiopian law on physical protection of witnesses. The study's objectives are evaluating the decision making process and enforcement of physical protection decisions under Ethiopian law and pinpointing what challenges witnesses and law enforcement organs encounter in carrying out these decisions. Data from important stakeholders, such as public prosecutors, police, and witnesses, are gathered for the study. The findings indicate that there are gaps both in the decision making process and enforcement of physical protection measures in Ethiopia. Such difficulties have been exacerbated by several factors, including inadequacy of existing legislation, lack of resources, skilled personnel, strong institutional structures and collaboration. To solve these problems, the study recommends strengthening legal and institutional frameworks, capacity building and public awareness campaigns concerning witness protection, training law enforcement authorities, and increasing resources for witness protection. Generally, this study is hoped to contribute to the expanding body of literature on witness protection and offers insightful information on the challenges facing efforts to safeguard witnesses Ethiopia.

Key words: witness, witness protection, physical protection, threat assessment, protection measures

CHAPTER ONE

INTRODUCTION

1.1 Background of the Research

Witnesses are vital in the criminal justice system, providing crucial evidence that determines a suspect's conviction or acquittal. However, fear of intimidation can lead to refusal to cooperate for law enforcement, which in turn could lead to the failure of the criminal justice system and the void of criminal cases in prosecution.¹ Witness protection is therefore a crucial public policy. Generally, witness protection serves two purposes:² ensuring administration of criminal justice, and fulfilling international obligations under treaties like the Rome Statute of the ICC, the UNCAC, and the UNCOTC, which require state parties to take appropriate measures to protect witnesses.

Witness protection emerged in the 1970s in the US as a legal procedure for dismantling Mafia-style criminal organizations.³ It is not incorporated into international human rights instruments until the Convention against Transnational Organized Crimes (UNCOTC), which is the first international instrument requiring state parties to provide effective protection of witnesses in cases involving transnational organized crimes.⁴

“Witness protection is the process by which witnesses who testify in a criminal trial are provided specific procedural and non-procedural protective measures aimed at effectively ensuring their

¹ Joshua M. Levin, ‘Organized crime and insulted violence: Federal liability for illegal Conduct in the Witness Protection Program’ (1985) 76 *Journal of Criminal Law & Criminology* 208.

<<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6475&context=jclc>> Accessed 20 November 2023.

² David Baxter Bakibinga, ‘Witness Protection in the Criminal Justice System of the Bahamas’ [2020] *Revista Acadêmica Escola Superior do Ministério Público do Ceará* 167.<<https://www.mpce.mp.br/wp-content/uploads/2020/08/ARTIGO-167-194.pdf>> Accessed 20 Nov. 2023.

³ UNODC, *Good Practice for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (2008), p. 7.

⁴ UNCTOC, adopted on 25 November 2000, Article 24.

and sometimes their relatives safety before, during, and after testimony.”⁵ It consists of three categories: Physical (police) protection, judicial/procedural protection, and witness protection programs. Procedural measures proceedings include anonymous testimony, psychological support, shields, disguises, pre-trial statements, closed-circuit television or videoconferencing, and removal of the defendant or public from the courtroom. ⁶ Witness protection programs are post-trial measures to ensure the safety of witnesses by relocation and identity change.

Physical protection is a crucial measure used by police to safeguard people and property from unauthorized access, espionage, sabotage, terrorism, damage, and criminal activity.⁷ Police provide full or partial-time guards at the witness's residence, workplace, or property location, depending on the threat. These measures include body guards, regular patrols, escorts, security devices, monitoring mail and phone calls, and temporary residence changes.⁸ The choice of these services depends on the threat, pricing, and available resources.⁹

In Ethiopia, corruption, organized crime, and ethnic conflicts are prevalent issues, necessitating urgent action for effective witness protection measures. Ethiopia's criminal justice system relies heavily on witnesses, as the investigation process is not sophisticated. Hence, witness protection is crucial for the integrity of the judicial process and societal trust in law enforcement and the legal system.

The Witness Protection Proclamation No. 699/2010 (hereafter WWPP) was enacted to protect witnesses and whistleblowers. The proclamation aims, on the one hand, to ensure public security by presenting the offenders to justice and sustaining the right penalty, and on the other hand, to

⁵ Wekgari Dulume, ‘Ethiopian Witness Protection System: Comparative Analysis with UNHCR and Good Practices of Witness Protection Report’ (2017) 6 Oromia Law Journal 124. <<https://www.ajol.info/index.php/olj/article/view/158563>> Accessed 22 Nov 2023.

⁶ UNODC (n 3), p. 30-31.

⁷ Introduction to Physical Security and Roles (Center for Development of Security Excellence 2015), p.1. <https://www.usna.edu/HRO/_files/documents/Public%20%20Docs/Training/Physical%20Security%20Training.pdf> Accessed 7 April 2024.

⁸ UNODC (n 3), p. 29-30; Yvon Dandurand and Kirstin Farr, ‘A Review of Selected Witness Protection Programmes’ (University of the Fraser Valley 2010), p. 61. <https://publications.gc.ca/collections/collection_2011/sp-ps/PS4-96-2010-eng.pdf> Accessed 20 Nov 2023.

⁹ Ibid., Yvon Dandurand and Kirstin Farr, p. 12.

protect witnesses and whistleblowers from direct and indirect threats and attacks they may encounter due to their collaborations in criminal justice.¹⁰

Physical protection of persons and property is among the various procedural and non-procedural protection measures stipulated in the WWPP.¹¹ However, neither the WWPP nor any other subsidiary legislation aims to define the terms or types of physical protection. Physical protection requires an agreement between a witness and the protecting authority.¹²

The provision of physical protection and certain other protection measures stipulated in the WWPP requires three preconditions to be met:¹³ the witness's testimony must be given to a suspect facing ten years or more regular imprisonment, the offence cannot be proven using other methods than the witness's testimony, and there must be a reason to believe the witness or their family member is exposed to serious danger.

The Ministry of Justice (hereafter MoJ) is empowered to run the Ethiopian witness protection system, including enforcement of physical protection¹⁴, and the Witness Protection directorate (hereafter WPD) was organized in August 2018 to operate it.

Despite Ethiopia having laws and an institution/unit to protect witnesses, there are still several challenges in practice. The MoJ (WPD) has been providing or at least decided to provide physical protection to those who qualify.¹⁵ However, there are reports of unfair rejection or ineffective enforcement of this measure. Numerous witnesses have reportedly experienced dangers, which have weakened their determination to assist law enforcement, ultimately resulting in case drops. The country's legal framework often fails to adequately address problems of physical protection. Moreover, law enforcement officials entrusted with enforcing the current witness protection laws sometimes lack the resources and training required.

This thesis aims to evaluate the procedural and enforcement challenges related to physical protection in Ethiopia. By reviewing existing policies, interviewing stakeholders, and analyzing cases and files, this research seeks to pinpoint weaknesses in the current protection system and

¹⁰ Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation (WWPP), 2010, Proc. No. 699, Fed. Neg. Gaz., Year 17, no.16, preamble paragraph 1-3.

¹¹ Ibid., Article 4.

¹² Ibid., Article 8(1).

¹³ Ibid., Article 3(1).

¹⁴ Ibid., Article 27 & 28. We can infer its power from an implied reading of these articles.

¹⁵ WPD, 'The Five Years Plan Performance Reports', (June 2011-June 2015 E.C.).

provide practical solutions. The lack of prior research on these issues necessitates doing this study.

1.2 Statement of the Problem

In Ethiopia, laws and institutions protecting witnesses exist, but there are still gaps in implementation, especially regarding physical protection. Witnesses claim that their requests for protection are handled incorrectly or are unfairly turned down.¹⁶ Witnesses also have expressed dissatisfaction with the physical protection issued to them, claiming it has not been properly enforced or fulfilled.¹⁷ There are also instances where witnesses are unwilling to testify unless they have been provided a proper protection. The MoJ/WPD has attempted to resolve these claims using its resources, but the claims persist, particularly in cases of physical protection, a reality that is more prevalent in the ground.¹⁸

Based on the statements of the respondents mentioned above, it can be deduced that there is a grey area in the decision-making process and enforcement of physical protection. The lack of a thorough evaluation of the implementation and procedural aspects of physical protection measures in Ethiopia results in a significant knowledge gap on how to safeguard witnesses effectively. This study intends to close this gap by investigating the challenges in implementing physical protection and discovering viable solutions that can improve the effectiveness of witness protection efforts in Ethiopia.

1.3 Research Question(s)

1.3.1 General Question

What are the gaps and challenges in the decision making and enforcement processes of physical protection of witnesses in Ethiopia?

¹⁶ Interview with witnesses whose applications for protection are rejected: Mr. Anonymous, 29 March 2024; Mr. Samson Dak, 1 April 2024; Mr. Tadesse G/wold (phone), 28 March 2024.

¹⁷ Interview with witnesses whose applications for protection are accepted and provided with physical protection: Mr. Anonymous, 29 February 2024; Mrs. Anonymous, 29 February 2024; Mergeta Moges Tamiru, 23 February 2024; Mr. Shukur Mustofa, 23 February 2024.

¹⁸ Interview with Mrs. Wubet Gashaw, Director of the WPD at the MoJ, 7 March 2024.

1.3.2 Specific Questions

- i. Is a proper assessment undertaken before, during, and after provision of physical protection? If not, why not?
- ii. How practical has a protection agreement been in the administration of provision of physical protection? If not, why not?
- iii. Are there standard criteria used for selecting the type of protection measure, including physical protection? If there is one, has it been followed in practice?
- iv. How practical have the physical protection measures been? If not, why not?
- v. If there are gaps in providing physical protection, what are the underlying causes?

1.4 Objectives of the Study

1.4.1 General Objective

The general objective of the study is to examine the decisional and enforcement challenges of physical protection of witnesses in Ethiopia.

1.4.2 Specific Objectives

The study has the following specific objectives:

- i. To evaluate whether there exists a proper threat assessment undertaken before, during, and after the provision of physical protection of witnesses.
- ii. To assess the practicability of protection agreements in the provision of physical protection and the reasons thereof if it is not practical.
- iii. To assess existence of standard criteria used in selecting the type of protection to be given to a witness and the practical applicability?
- iv. To evaluate how practical have the physical protection measures been and the reasons if it is not practical.
- v. If the findings indicate that there have been gaps of providing physical protection, then evaluate the underlying causes for the gaps.

1.5 Research Methodology

1.5.1 Research Design

Qualitative methods allow researchers to generate rich descriptions of complex phenomena that cannot be captured solely through numerical data. Hence, this study uses qualitative methods to explore the experiences, perceptions, attitudes, beliefs, and motivations of prosecutors, police officers, and witnesses themselves who are involved in determining and implementing physical protection measures.

1.5.2 Data Collection Methods

The study has used both primary and secondary data sources to address the research objectives and questions. Primary data includes conducting interviews with relevant stakeholders, reviewing protection application files and court cases, and reviewing legislation, primarily the WWPP and other relevant domestic and international legislation. The name of the protection application files is not freely cited for confidentiality reasons. The researcher also reviewed secondary sources of data, such as books, reports, academic articles, research works, legal dictionaries, and other relevant legal documents.

The researcher interviewed heads, public prosecutors, and police officers, from the MoJ, Ethiopian Federal Police (hereafter EFP), and Addis Ababa Police Commission (hereafter AAPC), all involved in witness protection. The researcher also interviewed witnesses of serious crimes, regardless of the acceptance of their protection application.

Qualitative research uses interviews to gather rich, reliable information from respondents. Hence, an interview question guide is utilized to yield maximum relevant data. Qualitative interviews are informal and less structured, allowing participants to share their experiences and perspectives on relevant topics. Hence, the researcher used open-ended questions to encourage participants to elaborate on and provide sufficient information. Interviews were conducted face-to-face, except for one conducted by phone, to ensure convenience for the respondents. The research methods are used to address each research question as follows:

Research Question i: Is a proper assessment undertaken before, during, and after the provision of physical protection? If not, why not?

Interviews are conducted with witness applicants and key informants to get insights into whether or not proper threat assessments have been conducted. Their accounts of any perceived challenges or limitations in conducting threat assessments shed light to address this research question.

Research Question ii: How practical has a protection agreement been in providing physical protection? If not, why not?

Since informants of WPD are responsible for concluding and implementing agreements, including physical protection, an interview with them is conducted to gain firsthand knowledge and evaluate their practical implications. Insights gathered from such informants' highlighted problems and the reasons for such problems.

Research Question iii: Are there standard criteria used for selecting the type of protection measure, including physical protection? If there is one, has it been followed in practice?

Since informants of the WPD are responsible for choosing protective measures, an interview with them is conducted. Such informants provided real-life examples of how criteria for choosing protection measures were determined and applied, and whether these standards were applied in practical situations.

Research Question iv: How practical have the physical protection measures been? If not, why not?

Interviews with witness applicants and key informants of the WPD, as well as the police, are employed to gain personal observations and experiences regarding the difficulties experienced in applying physical protection measures effectively.

Research Question v: If there are gaps in providing physical protection, what are the underlying causes?

For determining this question, triangulation of evidence from multiple sources is essential. To yield a more comprehensive understanding of this question, integrated evidence is gained from witness applicants and key informant interviews, legal analysis, and a literature review. Such integrated sources provide a more holistic understanding of the complex factors contributing to the gaps and suggest possible improvements.

1.5.3 Sampling Method (Identification of Respondents for the Interviews)

The sources of information are protection applicant witnesses, and heads, prosecutors, and police officers from the MoJ, EFP, and AAPC. The researcher targets key informants from the three directorates (the WPD, Corruption Crimes Directorate, and Organized and Trans-boundary Crimes Directorate) of MoJ, as they are the primary units associated with witness protection. The WPD runs the system, while the other two directorates prosecute and follow up on serious crimes involving witness protection. The informants from these directorates are chosen for interview based on their expertise, experience, exposure to witness protection, and unique perspectives on the physical protection process. The same applies to the selection of departments and informants from the EFP and AAPC. Witness respondents are firstly categorized based on their application outcomes (accepted vs. rejected) to gather perspectives into their experiences. Then, those who persistently claim to face serious threats are selected from a diverse range of participants from the two categories to gather diverse experiences and perspectives about their cases, practical protection status, and challenges they faced in the process. Hence, purposive sampling is employed to select the key informants and witness respondents. Snowball sampling method has also been used, as the researcher has been referred by the selected informants to the former director of WPD and Corruption Crimes Directorate, Mr. Gebru Gebeyehu, who has more knowledge and experience on the subject matter.

A total of eleven MoJ informants have been interviewed, comprising the heads of the three directorates, two WPD public prosecutors, and three public prosecutors from each of the other two directorates. Five informants from EFP and two from AAPC, including department heads, have been interviewed. A total of seven witnesses have been interviewed.

1.6 Scope of the Study

The WWPP stipulates both out-of-court (non-procedural) and in-court (procedural) protection measures, and, the focus of this study is limited to out-of-court protection measures. Even from out-court protection measures; the study's attention is primarily on physical protection. The study is restricted to witnesses who testified or will testify on crimes under the jurisdiction of federal courts and who fulfill requirements of protection stipulated under article 3(1) of WWPP. The study's geographic scope is Addis Ababa. This is because the primary staff and operations of the MoJ, EFP, and AAPC are all located in Addis Ababa. Given that these institutions have all

the necessary data on witness protection in Ethiopia, the geographical scope is considered adequate.

1.7 Significance of the Study

This study is believed to have the following significances: First, it provides policymakers and law enforcement organs with evidence-based recommendations to improve the policy, legal, and practical environment for effective witness protection in Ethiopia. Second, since there is limited research on witness protection in Ethiopia, it will enhance existing literature and particularly provide valuable insights for legal professionals, and researchers by analyzing challenges related to physical protection. Third, it will promote public awareness about the significance of safeguarding witnesses, particularly those who have faced significant risks due to their involvement in the criminal justice system. Finally, it will provide a solid foundation for future studies in this emerging area of law in Ethiopia.

1.8 Limitation of the Study

Witness protection is a relatively new concept in Ethiopia, with few aware of it. Hence, purposive sampling is used to identify highly informative respondents, but this unscientific technique may introduce bias. To reduce biases, cross-referencing data from one informant with another within the same department is used. The frequency of receiving the required protection, the frequency of witnesses declining to testify due to inadequate protection, or the number of cases that are dropped due to witness intimidation and threats are not well documented statistically. However, the researcher has tried to solve this problem by discussing about it with the informants and demonstrating practical issues and scattered reports. The researcher faces challenges in tracing witness respondents and obtaining consent, resulting in a problem with the sample size. To address this, the researcher discusses with those traced and willing in detail and finds that the key informants are sufficient to fill the limitation.

1.9 Ethical Considerations

The researcher maintains the highest standard of confidentiality, obtaining consent from respondents about the purpose of the interview and using their information only for academic purposes. The researcher acknowledges and respects respondents, even in disagreements, and avoids deception or exaggeration. The researcher aims to gain trust and only reveal relevant facts

to address research questions. The researcher does not disclose respondents' names without consent.

1.10 Organization of the Study

The study is divided into five chapters, each with its own section. The first chapter presents the research proposal, outlining the background, problem statement, literature review, research questions, objectives, methodology, scope, significance, limitations, ethical considerations, and organization. The second chapter explores the nature and concept of witness protection, along with other related concepts. The third chapter discusses international, regional, and domestic normative frameworks. The fourth chapter delves into the results and analysis, focusing on practical gaps in physical protection in Ethiopia and the underlying causes. The last chapter provides a conclusion with recommendations.

CHAPTER TWO

CONCEPT AND SIGNIFICANCE OF WITNESS PROTECTION

2.1 Concept of Witness protection and Witness protection Programme

The UNCOTC mandates governments to protect witnesses, victims, and experts, but it does not define 'witness' and describes it as dependent on state procedural law.¹⁹ Legal systems define it differently from a protection perspective. The UNODC's best practice manual defines 'witness' or 'participant' as any person eligible under a country's legislation or policy for admission to a

¹⁹ UNODC (n 3), p. 19.

witness protection program.²⁰ The term 'protected person' is commonly used in legal systems to describe a witness who benefits from protection against intimidation or reprisals,²¹ but it is primarily used to refer to witnesses covered by a formal witness protection program.²²

Witness protection refers to a set of procedural and non-procedural measures designed to protect witnesses before, during, and after their testimony.²³ Witness protection initially aimed to protect the physical security of witnesses, but has evolved to include psychological, health, and socioeconomic aspects.²⁴ Measures include good or witness-sensitive practices during investigation and prosecution phases, monitoring security concerns, maintaining investigative confidentiality, offering anonymity, refusing bail, prosecuting intimidation, and offering in-court protection measures.²⁵

The Council of Europe expressed "protection measures" as individual procedures to protect witnesses and justice collaborators from intimidation and retaliation, while "protection programmes" as specific protection measures in an agreement between authorities and protected persons.²⁶ A witness protection programme is a covert program aimed at protecting threatened witnesses through admission to a formal programme involving relocation, and identity change.²⁷

These programmes are designed to protect not only the witness's physical safety but also ongoing criminal investigations and legal procedures.²⁸ Witness protection programmes admit witnesses based on factors such as case significance, personality or family circumstances, relevance of testimony, and the likelihood of the relevant information being unavailable elsewhere.²⁹ However, witness protection programs are costly and disruptive, often used when necessary for

²⁰ UNODC (n 1), p.4.

²¹ Yvon Dandurand and Kirstin Farr (n 8), p.7.

²² Ibid.

²³ Weghari Dulume (n 5), p.126.

²⁴ *Chris Mahony*, *The Justice Sector Afterthought: Witness Protection in Africa* (Institute for Security Studies 2010), p. 1&2. < <https://www.legal-tools.org/doc/f476e7/pdf/> > Accessed 30 Nov 2023.

²⁵ Ibid.

²⁶ Yvon Dandurand and Kirstin Farr (n 8), p.12.

²⁷ Chris Mahomy (n 24), p. 1.

²⁸ Yvon Dandurand and Kirstin Farr (n 8), p.12.

²⁹ Stephen Monterosso, 'Shortcomings in the Operation and Coordination of Witness Protection in Australia: Where to from Here?' [2022] *Criminal Law Forum* 256 , p.256 <<http://dx.doi.org/10.1007/s10609-022-09438-4>>

vital prosecution testimony. Without formal protection programs, it is nearly impossible for nations to safeguard witnesses.

2.2 Importance and principles of Witness protection

The primary determining element in the conviction or acquittal of a suspect or an accused is their testimony throughout the investigation and trial phases. The unwillingness of witnesses to cooperate with law enforcement and judicial bodies out of fear of reprisal or intimidation is the main challenge, which logically could be a sufficient cause for failure of the criminal justice system and void of criminal cases in prosecution.³⁰ Furthermore, the protection of witnesses from any kind of threat or attack is the duty of the government that emanated from international obligations.³¹ Generally, the protection of witnesses can be seen as serving two purposes:³² ensuring administration of criminal justice, and fulfilling international obligations under treaties like the Rome Statute of the ICC, the UNCAC, and the UNCOTC, which require state parties to take appropriate measures to protect witnesses.

Witness protection aims to protect witnesses based on principles that guide decision-making and formulation. The role of investigator/prosecutor and protector should be clearly separated, with witness protection not intended as a reward or incentive.³³ Protection programs should be tailored to each witness and community based on their unique situation and level of danger. The success of the prosecution should not prioritize the witness's safety, and minor interests should be taken into separate consideration. Public accountability is necessary to preserve operational confidentiality. Witness protection legislation should include explicit protection criteria, voluntary participation, respect for other parties' rights, and preventing the witness from being in a better position than before enrolling in the programme.

The success of a witness protection program is influenced by five main factors:³⁴ its independence structure; financial, security, and political hurdles; its capacity to obtain

³⁰ Joshua M. Levin (n 1).

³¹ David Baxter Bakibinga (n 2).

³² Ibid., (n 2).

³³ Frank Vincent, Review of the Witness Protection Act 1991 (Government of Victoria 2016),p.3-4 <https://files.justice.vic.gov.au/2021-06/review_of_witness_protection_act_1991.pdf > Accessed 8 December 2023.

³⁴ *Chris Mahony* (n 24), p.4.

cooperation from state and non-state actors; the effectiveness and efficiency of the legal system; and the type and extent of the threat to witnesses.

2.3 Witness Intimidation

Intimidation is a threat that can interfere with a witness's willingness to testify or react against someone.³⁵ The Council of Europe defines it as any threat, direct or indirect, that might result in interference or repercussions for a witness's or collaborator's testimony.³⁶ This can include intimidation stemming from a restricted social group's perceived vulnerability or the presence of a violent criminal organization.³⁷ Indirect intimidation can occur when friends, family, or relatives are the focus of intimidation.³⁸

Witness intimidation is a significant issue in criminal justice systems, particularly in cases involving organized crime identities. Organized crime groups often practice witness intimidation to avoid investigation and prosecution, maintain their standing and function, and generate risks of collaboration for witnesses.³⁹ Both explicit and implicit intimidation can occur, and witnesses may feel afraid even without any threat.⁴⁰ There is no perfect relationship between the likelihood of being a victim of crime and the fear of crime itself, nor between witness fear and the likelihood of becoming a victim as a result of cooperating with authorities.⁴¹

2.4 Threat Assessment

A witness's level of risk determines the protective measures needed, and a proper threat assessment is crucial for strategically allocating limited protection resources.⁴² Threat assessment refers to “investigative and operational techniques used by law enforcement authorities to identify, assess, and manage the risk and potential perpetrators of targeted violence against a

³⁵ Stephen Monterosso (n 29), p. 8.

³⁶ Council of Europe Recommendation Rec (97)13 Concerning Intimidation Of Witnesses And the Rights of the Defence, adopted on 10 September 1997.

³⁷ Ibid.

³⁸ Yvon Dandurand and Kirstin Farr (n 8), p.8.

³⁹ Ibid.

⁴⁰ Ibid., p.11.

⁴¹ Ibid.

⁴² Yvon Dandurand and Kirstin Farr (n 8), p.35.

witness”.⁴³ A witness protection unit, working with the police or independently, may conduct a threat assessment to determine if there is a threat⁴⁴ and whether to accept a witness for a program or offer alternative types of protection⁴⁵.

It is important to distinguish between "risk" and "threat". Threat assessment identifies if the witness's life is in imminent danger and should cover issues like threat origin (person or group), violent patterns, the kind of organization and its culture, and the group's ability, expertise, and available resources to carry out threats.⁴⁶ However, a risk assessment examines the chances of the threat materializing and assesses how it can be mitigated. Risk assessments are conducted according to set standards and using a matrix and action is taken to reduce the probability of the threat being carried out. Protection programmes often require a thorough risk assessment to ensure tailored protection for witnesses.⁴⁷ However, these assessments can be challenging due to their lack of clarity and reliance on dubious data.

The nature of the crime, accused characteristics, witness vulnerability, direct threats made by the suspect or known associates, and evidence of prior attempts to intimidate witnesses or justice officials are all considered when assessing a threat.⁴⁸ Potential risk is often dynamic and too complicated to be easily evaluated using a straightforward technique. Periodic assessments should be carried out to witnesses to provide them with a realistic picture of the dangers they could encounter without ignoring their feelings of fear and anxiety.⁴⁹

2.5 Types of Witness Protection Measures

Threat assessment leads to the selection of protection measures, ranging from low-cost security to formal witness protection programmes. These measures can be categorized into physical (police protection), judicial (procedural) measures, and covert protection programmes. Some

⁴³ Ibid., p.61.

⁴⁴ Ibid., p.62.

⁴⁵ Karen Kramer, ‘Witness Protection as a Key Tool in Addressing Serious and Organized Crimes’ (2016). <https://www.unafei.or.jp/publications/pdf/GG4/Fourth_GGSeminar_P3-19.pdf> Accessed 30 November 2023.

⁴⁶ UNODC (n 3), p. 62.

⁴⁷ Ibid.

⁴⁸ Yvon Dandurand and Kirstin Farr (n 8), p. 35.

⁴⁹ Ibid.

usual police protective measures are close (body guard) protection, regular patrolling around the witness's residence and place of work, escort to and from the court, installation of security devices at the witness's home and perhaps the place of work, monitoring mail and phone calls, and temporary change of residence etc.⁵⁰

Procedural protection measures include: anonymous testimony or referring to them by numbers, expunging witness names and other information that may allow them to be identified from records, presence of an accompanying person for psychological support, shields, disguises or voice distortion , use of pre-trial statements, testimony via closed-circuit television or videoconferencing, and removal of the defendant or public from the courtroom.⁵¹ Relocation and identity change are the two basic protection measures offered by a formal witness protection program.⁵²

Physical protection of a person and property:

Physical security is a crucial method used by police to protect people and property from unauthorized access, espionage, sabotage, terrorism, damage, and criminal activity.⁵³ It involves active and passive measures and equipment designed to deny unauthorized access to facilities and protect individuals and property from harm.⁵⁴ These measures can range from CCTV surveillance to protective barriers, metal detectors, locks, intrusion detection sensors, and security guards.⁵⁵ The primary purposes of a physical security program are prevention and protection.

Physical security is crucial in protecting against various threats, including robberies, fires, terrorist attacks, natural disasters and other attacks.⁵⁶ It offers benefits such as preventing asset

⁵⁰ Ibid., p. 30.

⁵¹ Ibid., p. 31.

⁵² Ibid., p.5.

⁵³ Introduction to Physical Security and Roles (n 7).

⁵⁴ Elizabeth D. Steiner, Andrea Phillips, Pauline Moore, Brian A. Jackson, Catherine H. Augustine, 'Challenges in Implementing Physical Security Measures in K–12 Schools' (Homeland Security Operational AnalysisCenter (HSOAC) 2021) , p 3. <https://www.rand.org/content/dam/rand/pubs/research_reports/RR1000/RR1077-2/RAND_RRA1077-2.pdf> Accessed 7 April 2024.

⁵⁵ Ibid.

⁵⁶ <<https://www.linkedin.com/pulse/what-physical-security-meaning-measures-best-practices-axxonsoft-beegf>> Accessed 7 April 2024.

loss, protecting individuals from harm, and providing a secure environment for work, study, and leisure.⁵⁷ However, the cost of installing advanced security measures, such as biometric access control and alarm systems, can be a challenge.⁵⁸ Balancing privacy and security can be challenging, especially in residential or educational areas.⁵⁹ Strategic placement of access control and surveillance cameras is essential to prevent intrusion. A comprehensive understanding of security technology is necessary to respond to new threats. Combining physical security measures with digital security procedures can make planning and execution more challenging.⁶⁰ Police provide full or partial-time guards at the witness's residence, workplace, or property location, depending on the threat. This may include regular enhanced patrols, escorts, personal alarms, emergency relocation aid, surveillance, 24/7 police protection, monitoring of emails and phone calls, changing phone numbers, installing security devices like alarms and fencing, and minimizing public contact with the witness.⁶¹ The choice of these services is contingent upon pricing and available resources.⁶²

2.6 An Institution Mandated to Run witness protection

After deciding a necessity of witness protection programme, policymakers should decide on its location, financing source, and supervisory body.⁶³ The choice of whether a programme should be within or outside the police force depends on the country's approach to witness protection. Some countries view it as a police role, while others prioritize separating protection from the investigation to ensure impartiality and minimize the risk of unintentional false testimony by witnesses, as per the police or prosecution's needs.⁶⁴

Programmes are located within police in countries like Australia, Austria, Canada, Hong Kong Special Administrative Region of China, New Zealand, Norway, Slovakia, and the United Kingdom, and admissions, funding, recruitment, and other decisions are managed by the police

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ UNODC (n 3), p. 29-30; Yvon Dandurand and Kirstin Farr (n 8), p. 61.

⁶² Yvon Dandurand and Kirstin Farr (n 8), p.12.

⁶³ UNODC (n 3), p. 45.

⁶⁴ Ibid.

commissioner(Chief Executive).⁶⁵ Witness protection agencies (units) cohabiting with police can lead to uneasy relationships, and information security may be compromised due to the inquisitiveness of the police.⁶⁶ The isolation and autonomy of the covert unit responsible for implementing the programme from the rest of the police force are crucial.⁶⁷

Programmes are located in the Ministry of Justice, the Ministry of the Interior, or the State Prosecutor's Office and are kept apart from the police force in countries like Colombia, the Netherlands, the Philippines, South Africa, and the United States.⁶⁸ The decision-making authority for admission and activity supervision rests with the chief executive of the respective institution.⁶⁹

A third group of nations, which includes Italy, has established a multidisciplinary organization with senior officials from the government, judiciary, prosecution, and law enforcement sectors.⁷⁰ This board decides whether to grant or revoke witness protection, supervises its execution, and submits budget requests to the government.⁷¹

Given that all three groupings contain states with established and effective programmes, the question of whether or not the programme should be placed within the police seems to be less relevant.⁷² Regardless of the program's location, organizational autonomy from regular police, confidentiality of operations and procedures, and independence from investigations are critical components of their effectiveness.⁷³ Wherever the programme is located, most people agree that the unit in charge of witness protection should operate independently of the one handling investigations or prosecutions.⁷⁴

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid, p. 46

⁶⁹ Ibid.

⁷⁰ Ibid

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Yvon Dandurand and Kirstin Farr (n 8), p.14

2.7 Financial and Human Resources

Countries may be reluctant to implement witness protection programmes due to the high startup and running costs, and such costs vary by country, influenced by factors like living expenses, population density, crime rates, and others.⁷⁵ However, these costs can be offset by benefits like integrity of the criminal justice system, dismantling of organized criminal networks, shorter investigations, and more efficient prosecutions.⁷⁶ Sufficient and regular funds should be allocated in government budgets to guarantee the program's viability and the availability of resources during the course of the protection, including emergency budgets.⁷⁷ When forecasting budgets, various factors such as alternative police arrangements, procedural protections, admission requirements, sociocultural context, average case number and length of stay, criminal justice system effectiveness, witness living standards, organized criminal networks' reach, and inflation should be considered.⁷⁸ For witness protection, governments can allocate annual funds or establish statutory measures to use revenues from property seized or confiscated.⁷⁹ However, relying solely on different funding sources, which can vary depending on seizure outcomes, could compromise protection's effectiveness.⁸⁰ Lack of resources is a major difficulty facing witness protection programmes.⁸¹ Regionally coordinated funds may be able to support the funding of witness protection initiatives and encourage international collaboration.⁸²

Staffing is crucial for the success of any protection programme, and witness protection officers need specific qualities and skills, such as being vigilant, interrogators, undercover agents, innovative thinkers, negotiators, and even counsellors.⁸³ Other recommended expertise includes

⁷⁵ Ibid., p. 50.

⁷⁶ Ibid., p. 50.

⁷⁷ Ibid.

⁷⁸ Ibid., p.51.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Enny Irish, Wilson Magadhla, Kevin Ghobosheane and Gareth Newham, 'Testifying Without Fear: a Report on witness Management and the National Witness Protection Programme in South Africa' (Cape Town: CSVr 2000)), p. 44 < <http://www.csvr.org.za/docs/policing/testiyingwithoutfear.pdf>> Accessed 20 December 2023; UNODC (n 3), p. 28.

⁸² UNODC (n 3), p. 51.

⁸³ UNODC (n 3), p.47.

knowledge of legal and administrative matters, human rights, humanitarian law, psychology, psycho-social skills, working with children, healthcare, physical fitness, personal skills, time management, flexibility, tactical skills, and the ability to integrate and discriminate.

Strict recruitment criteria and vetting procedures should be established to ensure the confidentiality and security of information.⁸⁴ Some common elements of recruitment and training for programme personnel include qualifications, integrity, psychological profile, full-time force, volunteer force, tenure, salaries and benefits, training, outsourcing, and outsourcing.⁸⁵ Training is vital for witness protection programs, as officers perform diverse functions requiring multidisciplinary skills.⁸⁶ Continuous training ensures protection staff have the necessary skills to provide physical security and meet witness psychological needs⁸⁷, thus training institutions should enhance knowledge and awareness among criminal justice officials⁸⁸.

2.8 Protection Agreements and Cooperation

As formal contracts between witnesses and the State, protection agreements are crucial parts of witness protection programmes. They, however, often take the form of MoU in European programmes, which are not the same as contracts.⁸⁹ All protected persons, including witnesses and their close family members, must sign and they might not get copies of the agreement in some programmes for security considerations.⁹⁰

However, in other nations, it may be legally binding, and judiciary scrutiny may be required before it is implemented. The legality of a Memorandum of Understanding (MoU) depends on whether protection units are responsible for damages or injuries caused by inadequate protection. In the US, statutory authorities establish a protection programme, absolving employees of

⁸⁴ Ibid., p. 48.

⁸⁵ Ibid., p.49.

⁸⁶ Ibid.

⁸⁷ Enny Irish, Wilson Magadhla, Kevin Ghobosheane and Gareth Newham (n 81), p.54 ; Weghari Dulume (n 5) p. 147.

⁸⁸ Weghari Dulume (n 5), p. 150.

⁸⁹ Yvon Dandurand and Kirstin Farr (n 8), p. 44.

⁹⁰ Ibid., p. 45.

obligation.⁹¹ Protection units must establish procedures for addressing grievances, including actions taken and instances of authority abuse or misuse.⁹²

Successful policing is necessary to guarantee the effectiveness of witness protection schemes, as witness protection cannot end crime on its own.⁹³ Protection programmes should not function in a vacuum; rather, they should be integrated into a larger national and international network of governmental organizations, non-governmental organizations, and the private sector.⁹⁴ The effectiveness of witness protection relies on the level of cooperation between public and private sectors, with ineffective service delivery potentially resulting from a lack of cooperation.⁹⁵ The UNODC manual encourages government agencies to support witness protection schemes whenever necessary for effective and efficient service delivery.⁹⁶

⁹¹ UNODC (n 3), p. 64-65.

⁹² Ibid.

⁹³ *Chris Mahony (n 24), p 166*; Enny Irish, Wilson Magadhla, Kevin Ghobosheane and Gareth Newham (n 81), p. 33.

⁹⁴ Council of Europe Recommendation Rec (97)13 (n 36), p 6; Nicholas R. Fyfe & Heather McKay, 'Police Protection of Intimidated Witnesses: A Study of the Strathclyde Police Witness Protection Program' (2000) 10 *Policing and Society an International Journal* 276, p 287; UNODC (n 3), p, 28. <https://doi.org/10.1080/10439463.2000.9964844>.

⁹⁵ Yvon Dandurand & Kirstin Farr (n 8), p. 56.

⁹⁶ UNODC (n 3), p. 80.

CHAPTER THREE

HISTORICAL BACKGROUND AND LEGAL FRAMEWORKS OF WITNESS PROTECTION

3.1 Historical Background

Witness protection initially gained prominence in the US as a means of dismantling Mafia-style criminal organizations. The organized criminal control act of 1970 created a statutory programme of witness protection (WITSEC) in the US, which is now administered by the US Marshals Service (USMS).⁹⁷ The main target was to dismantle these mafia criminal groups in the whole states of America. The primary forms of protection offered by such an act and programme were witnesses who testified against “persons involved in organized crime activity or other serious offences” being relocated and having their identities changed.⁹⁸ A number of factors led to the revision of this programme in 1984, one of which was the realization that witness and family assistance are essential for maintaining both an emotional and financial stability in addition to protection.⁹⁹ The USMS, a division of the Department of Justice (DOJ), is now regarded as the world's preeminent authority on training and direction, handling matters pertaining to witness protection and assistance.¹⁰⁰

Germany, Italy, Colombia, Australia, and China are among the countries that have established protection programme for witnesses involved in relation to organized crimes, terrorism, and mafia groups.¹⁰¹ In Africa, witness protection is still a relatively new idea, and the legal and investigative frameworks of many of the states do not support its use.¹⁰² Out of 55 African

⁹⁷ UNODC (n 3), p. 8.

⁹⁸ U.S Department of Justice, United States Attorneys manual 9-21.020 (1997).

< <https://www.justice.gov/archives/usam/united-states-attorneys-manual>> Accessed 20 December 2023.

⁹⁹ Pete Earley and Gerald Shur, WITSEC: Inside the federal witness protection programme (Bantam Books 2002), p. 2. <<https://search.worldcat.org/title/witsec-inside-the-federal-witness-protection-program/oclc/47803688>> Accessed 15 Dec 2023.

¹⁰⁰ U.S. Marshals Service. < <https://www.usmarshals.gov/who-we-are>> Accessed on 24 Nov 2023.

¹⁰¹ International Bar Association, ‘Balancing Rights: The International Criminal Court at a Procedural Crossroads’ (IBA/ICC Monitoring and Outreach Programme 2008).<<https://www.ibanet.org/document?id=May-2008-Balancing-Rights>> Accessed 22 November 2023.

¹⁰² Chris Mahony (n 24), p. 11.

nations, just three—South Africa, Kenya, and Rwanda—have witness protection programmes in place, with South Africa leading the way.¹⁰³ While some nations are creating new laws, others, including Ethiopia, Cabo Verde, Mozambique, and Morocco, already have laws in place. The Sierra Leone special court model, the first in the same nation where crimes occurred, is viewed as a new international criminal justice paradigm for protecting African witnesses through psycho-social assistance.¹⁰⁴

South Africa has established a programme for witness protection to assist witnesses and victims. Initially, the South African Police Services (SAPS) detained and forced witnesses to testify. Before 1992, police personnel were tasked with providing security to witnesses who were deemed vulnerable under the terms of the Criminal Procedure Act 51 of 1977.¹⁰⁵ The current Office of Witness Protection (OWP) was established in 2000 under the Witness Protection Act 112 of 1998, implemented nationally in nine provinces.¹⁰⁶ The Act placed the OWP under the Department of Justice and Correctional Services, but since its inception, it has been under the National Prosecuting Authority (NPA).¹⁰⁷ The Act allows potential witnesses who believe their safety is threatened to apply for protection from police officers, prison officials, public prosecutors, or registered social workers.¹⁰⁸ Admission is voluntary, and the programme director may enlist the assistance of other government agencies when necessary.¹⁰⁹ South Africa, as a pioneer in witness protection, continues to coach other African nations to launch similar programs.¹¹⁰

¹⁰³ Lucy Nthepa Mphaphuli, 'Experiences and Challenges of Witnesses in the Witness Protection Programme in South Africa: Guidelines for Coordinated Service Delivery Developed from a Social Work Perspective' (Doctoral dissertation, University of South Africa 2020), p.4.

<https://uir.unisa.ac.za/bitstream/handle/10500/27521/thesis_mphaphuli_ln.pdf?sequence=1&isAllowed=y>

Accessed on 21 Nov 2023.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid. p. 64 - 65.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., p. 5.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., p.64-65.

¹¹⁰ Ibid.

In 2006, the Rwandan government established a neutral Witness Protection Programme, operating within the National Public Prosecution Authority (NPPA) and the Supreme Court of Rwanda, following the risk on witnesses of the 1994 Rwandan genocide.¹¹¹ The Programme within the NPPA is a neutral body that provides protection and assistance to prosecution and defense witnesses during and after trials, including providing emotional and psychological support to witnesses, protecting their safety and security, and providing secure accommodations in safe houses.¹¹² A coordinator manages the programme nationwide.

Kenya's Witness Protection Act, enacted in 2006, entails admission decisions by the Attorney-General.¹¹³ A technical advice task force was established, followed by seconded personnel from police, intelligence service, and immigration in 2009.¹¹⁴ The act was implemented in 2008, and a unit was established in 2009.¹¹⁵ Kenya established a Witness Protection Agency (WPA) in 2010 (2010 Amendment Bill) due to the failure of its previous structure, transferring the program from the Attorney General's office to an independent agency.¹¹⁶ The Bill also established a Witness Protection Advisory Board, including the chairman of the Kenya National Commission on Human Rights, Police Commissioners, Public Prosecutions Director, and Justice and Finance Ministers.¹¹⁷

3.2 The International Legal Frameworks

The UN charter mandates universal respect for human rights and fundamental freedoms.¹¹⁸ An obligation to protect witnesses may also stem from ratified conventions and other international

¹¹¹ Donatien Nikuze, 'Witness Protection In Rwandan Judicial System International' (2013) 2 Journal of Engineering Research & Technology (IJERT) 2738, p.2738-2740. < 10.17577/IJERTV2IS4828 > Accessed 30 May 2024.

¹¹² Ibid.

¹¹³ Wilson Kiprono, 'Challenges Facing Implementation of Witness Protection Program in Kenya' (Doctoral dissertation, Egerton University 2016), p.5.<<http://irlibrary.egerton.ac.ke/jspui/handle/123456789/2044> > Accessed 3 May 2024.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ United Nations Charter, adopted on 26 June 1945, Article 55.

instruments. Hence, witness protection should not be seen as a favor for those afraid or threatened, but as a state's obligation to protect its citizens and those residing on its territory as part of its sovereign function.¹¹⁹

The CAT requires states to protect complainants and witnesses from maltreatment or intimidation, and retaliation as a result of the complaint or evidence given.¹²⁰ However, this provision is confined to witnesses who come forward with information about torture without referring to witness protection in general criminal proceedings.

The UNCTOC mandates state parties to provide adequate protection and assistance to victims and witnesses of crimes, including mechanisms for physical safety, relocation, identity confidentiality, evidentiary rules, and international collaboration.¹²¹ The UNCTOC-supplemented trafficking protocol emphasizes witness protection, requiring measures to safeguard victims' privacy and identity, and the protocol against migrant smuggling addresses this issue too.¹²²

The UNCAC mandates states parties to safeguard witnesses, experts, and relatives in crimes like money laundering, bribery, embezzlement, abuse of power, and illicit enrichment from retaliation and threats, with particularly requiring each party to consider measures to protect these individuals.¹²³ These measures include physical protection, non-disclosure of information, and provision of evidentiary rules for safe testimony, such as using communication technology like video.

Key protections are also included in the Rome Statute.¹²⁴ The statute under Article 68 authorized the ICC to take appropriate action to safeguard the Safety, physical and psychological well-

¹¹⁹ Report of the United Nations High Commissioner for Human Rights on the Right to the truth(A/HRC/15/33),2010.

¹²⁰ CAT, adopted on 10 December 1984, Article 13.

¹²¹ UNCTO, Article 24 & 25.

¹²² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000, article 6 & 7; The protocol against the Smuggling of Migrants by Land, Sea, and Air ,adopted on 15 November 2000 ,article 5 & 16.

¹²³ UNCAC, article 32 & 37(4) , adopted on 31 October 2003

¹²⁴ Rome Statute establishing the International Criminal Court, adopted at a diplomatic conference in Rome, Italy on 17 July 1998 and it entered into force on 1 July 2002.

being, dignity, and privacy of witnesses and victims. Article 43 mandates the registrar to establish a victims and witnesses unit, while article 54(3) (f) mandates the prosecutor to take necessary actions to protect individuals.

The Rules of Procedure and Evidence of the ad hoc courts of the former Yugoslavia (ICTY) and Rwanda (ICTR) included particular rules on how to protect and assist witnesses and victims of the genocide and other crimes committed in those countries. The Rome Statute's witness protection provisions are essentially a reflection of the innovative organization, practice, and jurisprudence of these courts in protecting the victims and witnesses of such heinous crimes.¹²⁵

The UN Declarations, Guidelines and Principles also discuss witness protection. The UN's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emphasizes the importance of protecting witnesses and their families from intimidation or retaliation.¹²⁶ The Guidelines on Justice in Matters Relating to Child Victims and Witnesses of Crime emphasize the need for protection and assistance throughout the investigation and trial process.¹²⁷ The Updated Set of Principles for the Protection and Promotion of Human Rights emphasizes the security, physical, and psychological well-being of victims and witnesses in cases of sexual assault.¹²⁸ Measures include allowing voluntary testimonies, allowing social workers or mental health-care practitioners to assist victims, covering expenses, and protecting confidential information. The Principles and Guidelines on the Right to Remedy and Reparation for Victims also reaffirm the need for states to ensure the safety of witnesses and others from intimidation and retaliation before, during, and after judicial, administrative, or other proceedings.¹²⁹

¹²⁵ UNODC (n 3), p. 16.

¹²⁶ The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted 29 November 1985.

¹²⁷ United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (resolution 20/2005), adopted by ECOSOC on 22 July 2005.

¹²⁸ Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1), adopted by ECOSOC on 8 February 2005, principle 10.

¹²⁹ 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 (General Assembly resolution 60/145), adopted on 15 Dec 2005.

3.3 Regional Instruments

The European Union lacks primary legislation on witness protection, which is regulated using secondary legislation.¹³⁰ The Council of Europe recommends special attention to victims and their families for effective protection against intimidation and retaliation.¹³¹ In resolutions adopted in 1995¹³² and 1996¹³³, the Council asked EU member states to implement policies to safeguard witnesses in the fight against terrorism and organized crime. Recommendation (97)13 provide fundamental guidelines for creating laws and policies, addressing vulnerable witnesses, particularly in family crime situations. Recommendation (2005) further addresses the protection of witnesses and collaborators of justice.¹³⁴ Both recommendations emphasize the importance of balancing witnesses' procedural protections with defense right.

Africa has discussed witness protection and has put in place a number of structures to make sure it is successful, including the following:¹³⁵ The African Union Model National Law on Universal Jurisdiction over International Crimes (2012) places a strong emphasis on the prosecutions and the courts' obligations to protect witnesses. The African Commission on Human and People's Rights Rules (2010) emphasizes witness protection from retaliation. The African Prosecutors Association (2003) seeks to improve collaboration across African prosecution institutions. The purpose of the East African Association of Prosecutors (1995) is to foster mutual trust and knowledge sharing about drug trafficking prosecution and investigation. The East African Magistrates and Judges Association (2000) holds yearly conferences to advance good practice

¹³⁰ Yorik van Lent, 'Legal Regulation of Witness Protection in the European Union' (2018) 21 Mykalo Romerio Universtetas, p. 142. <<https://ojs.mruni.eu/ojs/vsvt/article/view/5494/4721>> Accessed 15 Dec 2023.

¹³¹ Council of Europe Recommendation Rec (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure, adopted on 28 June 1985, part I, paragraph (16).

¹³² Council of Europe Resolution on the Protection of Witnesses in the Fight against International Organized Crime ((95/C 327/04)), adopted on 23 November 1995.

¹³³ Council of Europe Resolution on individuals who cooperate with the judicial process in the fight against international organized crime (97/C 10/01), adopted on 20 December 1996.

¹³⁴ Council of Europe Recommendation Rec (2005)9 on Protection of Witnesses and Collaborators of Justice, adopted on 20 April 2005.

¹³⁵ Lucy Nthepa Mphaphuli (n 103), p. 64.

and the rule of law. But because of a lack of expertise, political will, and insufficient funding, witness protection in Africa is still nonexistent, inconsistent, or weak.¹³⁶

3.4 The Ethiopian Legal Framework and Procedure

3.4.1 Legal Frameworks

a) The FDRE Constitution

The Ethiopian constitution lacks a clause addressing witness protection, and physical protection.¹³⁷ The Constitution under Article 20(1) allows in-camera proceedings to protect national security, public morals, and the privacy of 'parties', but this cannot be applicable to witnesses. The accused has an unlimited right to know and examine testimonies or evidence produced against them without considering the well-being of the witnesses, who could be subject to harassment and even at the risk of their lives. The current arguments about the constitutionality of some provisions of the witness protection law (e.g. witness anonymity) stem from the nonexistence of parallel and balanced safeguards for the protection of witnesses in the constitution. Policymakers and lawmakers have been dragging their efforts to address this socially pressing issue.

b) The WWPP

The Criminal Justice Policy (CJP) recognizes Witness protection as a critical component of criminal justice.¹³⁸ The proclamation that dealt with the Definition of Powers and Duties of the Executive Organs of the FDRE (a repealed one) gives the MoJ the powers and duties to ensure that witnesses to criminal cases are accorded protection, as necessary.¹³⁹ The Anti-Corruption Commission Establishment Proclamations (Proc. No. 235/2001 and Proc. No. 433/2005) require

¹³⁶ Ibid.; Waghari Dulume (n 5), p.130.

¹³⁷ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia,1995, Fed. Nega. Gaz. Proc.No.1,Year 1, no. 1.

¹³⁸ FDRE Criminal Justice Administration Policy, March 2010, Article 3.19.

¹³⁹ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia,2005, Article 23(5), Fed. Neg. Gaz. Proc.No.471, Year 12, no.1 Addis; See minutes of WWWP, p. 6.

providing witnesses and whistleblowers physical and jobbing security protection.¹⁴⁰ Nevertheless, neither of these previous legislations addressed protective procedures or structure. Furthermore, the judiciary's involvement is required, and witness protection is expensive.¹⁴¹ The WWPP was adopted on February 4, 2010, and became effective on February 11, 2011 to deal with these issues.¹⁴² Hence, the WWPP is a comprehensive proclamation with both substantive and procedural provisions, all of which focus on protecting witnesses and whistleblowers.

The lawmaker's purpose for enacting this proclamation is twofold: to ensure public safety by presenting offenders to justice and ensuring the right penalty for themselves and others, and to protect witnesses and whistleblowers from threats and attacks due to their collaboration in law enforcement and criminal justice. The WWPP defines a whistleblower or witness as someone who provides information or acts as a witness in the investigation or trial of an offense.¹⁴³ This definition includes informants, justice collaborators, undercover agents, expert witnesses, and anyone who provides testimony to both the criminal investigation office and the judicial authority. However, the WWPP does not provide a definition for witness protection. The WWPP, under Article 4(1), provides physical protection as one type of protection measure without defining or specifying the types of physical protection measures.

c) The Criminal Justice Policy (CJP), Criminal Code and Draft Criminal Procedure and Evidence Law

The Ethiopian criminal code criminalizes assault, suppression, or harm towards individuals who provide information or evidence to law enforcement or serve as witnesses in criminal proceedings.¹⁴⁴ The Draft Criminal Procedure and Evidence Code also address witness protection. This code merely stipulates that the public prosecutor will grant witness protection “in accordance with the law”.¹⁴⁵ It doesn't specify how, when, or to what extent such protection

¹⁴⁰ Federal Ethics and Anti-Corruption Commission Establishment Proclamation, 2001, Article 7(16), Proc. No.235, Fed. Neg. Gaz. Year 7, no.23; Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation, 2005, Article 7(8), Proc. No.433, Fed. Neg. Gaz., Year, 11 no.18.

¹⁴¹ Minute of the WWPP (n 139).

¹⁴² Ibid.

¹⁴³ WWPP (n 10), Article 2(1&2).

¹⁴⁴ Criminal Code of Ethiopia, 2005, Article 444, Proc. No. 414.

¹⁴⁵ Ethiopian Draft Criminal and Evidence Law, Proc. No...../2017, Article 20(9).

should be granted. Thus, the public prosecutor has the authority to provide witness protection under WWPP.

The CJP emphasized witness protection as a critical component of the criminal justice. It recognizes the lack of witnesses due to fear of intimidation or retaliation as a factor for criminal justice failures, emphasizing the importance of witness protection for successful prosecutions, especially in serious offenses.¹⁴⁶ The policy introduced witness protection, which commences with an investigation, continues throughout the legal process, and may persist even after a conviction.¹⁴⁷ In addition, it stipulates that legislation such as the Criminal Procedure Code and other relevant ones must include measures protecting witnesses to provide guidance for their execution. The policy recognizes various forms of protection to witnesses, including their lives and property, through methods like giving testimony in camera and behind screens, concealing one's identity, and providing evidence through electronic devices.¹⁴⁸

d) Other Legislations

The repealed Anti-Corruption Commission Establishment Proclamation No. 235/2001 gave rise to the concept of witness protection in Ethiopia. The Proclamation required the Commission to give witnesses and whistleblowers physical and job security protection, and its repealing Proclamation (Proc. No. 433/2005) provided the same.¹⁴⁹ However, both did not detail the procedures and structure of the protection system. Both such proclamations and the proclamation amending the latter one criminalize any attempt to influence, harm, or punish a witness or informant.¹⁵⁰ However, witness protection mandate of the Commission is lapsed since such mandate is not included by the current establishment proclamation¹⁵¹ and the powers are transferred to the Federal Attorney General ¹⁵²(now MoJ).

¹⁴⁶ FDRE Criminal Justice Administration Policy, 2010, Article 3.19.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Proc. No. 235/2001(n 140); Proc. No. 433/ 2005 (n 140).

¹⁵⁰ Proc. No. 235/2001(n 140), Article 22(1); Proc. No. 433/2005 (n 140), Article 27(1); Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation, 2015 Article 18(1), Proc. No.883, Fed. Neg. Gaz., Year 21, no.38.

¹⁵¹ Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation, 2021, Proc. No.1236, Fed. Neg. Gaz., Year 27, no.15.

¹⁵² Federal Attorney General Establishment Proclamation,2016, Proc.No.943, Fed. Neg. Gaz., Year 22, no.62.

The repealed Anti-Corruption Special Procedure Proclamation No. 236/2001 aimed to protect whistleblowers by prohibiting retaliation and included protection clauses like suspension of reprisal measures and immunity from prosecution. However, it did not include a witness protection clause. Conversely, the Revised Anti-Corruption Special Procedure Proclamation No.434/2005 and its amending proclamation both forbid retaliation against witnesses and contain protection clauses like suspension of reprisal measures, immunity from prosecution, and requesting the court to keep a witness's identity confidential during a preliminary hearing.¹⁵³

Both the anti-terrorism proclamations, a repealed one and the current one, make witness inducing, suppressing, threatening, assaulting, and harming a punishable crime. Moreover, both proclamations permit the court to protect their identity by using measures like changing the venue, not publishing or recording the court proceedings in part or in whole, or releasing them in any form.¹⁵⁴

The Anti-Trafficking in Persons Proclamation No. 909/2015 has been repealed, making it crime to intimidate or bribe a witness to obstruct their testimony¹⁵⁵. The current proclamation strengthens and criminalizes any interference to prevent a witness from giving information or evidence using sabotage, violence, threat, undue advantage, inducements, or other methods against the witness or their close relationship.¹⁵⁶ Both proclamations under articles 26 and 14, address the right of victim witnesses to protection and support services, including information about proceedings, health, psychological, and social services, and cross-refer to the applicability of WWPP to such crimes.

¹⁵³ Revised Anti- Corruption Special Procedure and Rules of Evidence, Proclamation, 2005, Article 38(2), 43, 53 & 54, Proc. No. 434, Fed. Neg. Gaz., Year 11, no.19; Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation, 2015, Article 14, Proc. No.882, Fed. Neg. Gaz. Year 21, no.37.

¹⁵⁴ Anti-Terrorism Proclamation, 2009, Article 10(1) & 32(1), Pro. No. 652, Fed. Neg. Gaz., Year 15, no. 57; Prevention and Suppression of Terrorism Proclamation, 2020, Article 12 & 16(2), Pro. No. 1176, Fed. Neg. Gaz. Year 26, no.20.

¹⁵⁵ Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, 2015, Article 10 Pro. No. 909, Fed. Neg. Gaz., Year 21, no. 67.

¹⁵⁶ Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation, 2020, article 14, Pro. No. 1178, Fed. Neg. Gaz. Year 26, no.31.

3.4.2. Legal Procedures to Provide Protection Measures

As stated earlier, the WPP contains both substantive and procedural provisions. Furthermore, most of them refer to the WWPP application. The WWPP is therefore fundamental legislation to be addressed, and the legal procedures from application to decision-making and agreement conclusion are points of special attention.

Witnesses themselves, an investigator, a public prosecutor, or any other interested party may apply for witness protection on behalf of them.¹⁵⁷ At a minimum, an application should include the identity and address of the person eligible for protection, the offence connected to the testimony that has been or will be given, the risk or threat that the witness may face, any criminal charges or civil cases, debt, or ruling from a court that deprives him of rights that have been brought against him prior to his application for protection.¹⁵⁸

Protection is contingent upon the fulfillment of three cumulative preconditions.¹⁵⁹ First, the testimony should be given into a suspect who may be subject to rigorous imprisonment for a term of ten years or longer, or to death, without taking into account the minimum period of rigorous imprisonment. Second, the offence cannot be discovered or proven by any other method than the witness's testimony (indispensability/cruciality of witness); third, if there is reason to believe that the witness or a family member of the witness is exposed to serious danger to their lives, physical security, freedom, or property. This indicates that Ethiopian law protects witnesses by using both factual and legal components. Regarding the legal criterion, the degree of the penalty of the particular crime against which the witness testifies or agrees to testify is taken into account rather than the listing of different types of crimes. Factual criterion addresses the cruciality of the witness and the gravity of danger or threat against the witness's life, physical security, freedom, property, and family members.

The WWPP states that the MoJ would speak with the public prosecutor or investigator before determining whether to grant or reject protection, with a decision to be made within 30 days.¹⁶⁰

¹⁵⁷ WWPP (n 10), Article 6 (1(a & b)).

¹⁵⁸ Ibid., Article 6(2).

¹⁵⁹ Ibid., Article 3(1). However, as stipulated under article 3(2), other protection measures, such as suspension or withdrawal of retaliatory administrative measures and advice provision, do not require such preconditions as long as the applicant is a witness to the case.

¹⁶⁰ Ibid., Article 7(1 & 2).

However, the proclamation doesn't say which department or official within the MoJ decided whether to accept or reject the applications. The Minister is the one who reviews the decision made by the witness protection officer.¹⁶¹

Article 4(1) of the WWPP provides both procedural and non-procedural protection measures. Non-procedural measures include physical protection of persons and property, secure residence and relocation, identity change, concealment of identity and ownership, self-defense weapons, immunity from prosecution, free medical services, counseling, employment and education opportunities, and covering the cost of living in case of loss of capacity to work due to reprisal measures. Procedural measures include withholding witness identity, taking testimony in camera or behind a screen, disguising identity, and providing evidence via electronic devices.¹⁶²

The WWPP under article 5 outlines standards for selecting appropriate protection measures for witnesses, considering factors such as the eminent nature of the danger, witness's criminal record, the protection's impact on third parties, witness's health and living condition, their competence to adapt, protection cost, legal limitations, and other MoJ-provided considerations. These standards should be applied to strict protection measures like identity changes, relocation, and physical protection.

The WWPP requires conclusion of an agreement between the witness and the protective organ (MoJ), to provide physical protection of person and property, safe housing and relocation, identity change and concealment of identity and ownership.¹⁶³ The MoJ is authorized to establish agreements with federal or regional state organs to implement protection granted, and the government can also establish bilateral or multilateral international treaties to ensure effective protection for witnesses and whistleblowers.¹⁶⁴ Everyone is required to cooperate for the Proclamation's implementation, including physical protection.¹⁶⁵

¹⁶¹ Ibid., Article 25

¹⁶² Ibid., Article. 4(1)(d, h, I & j)

¹⁶³ Ibid., Article 8(1). Contrary interpretation of this provision suggests that there is no requirement to sign a protection agreement when the MoJ chose to provide other types of protection measures listed under Article 4 (1(e-t)), such as the providing of self-defense weapons, immunity from prosecution, and others.

¹⁶⁴ Ibid., Article 27.

¹⁶⁵ Ibid., Article 28.

CHAPTER FOUR

RESULT AND ANALYSIS

This chapter consists of 5 parts. The first briefs the formation of the WPD and its operation; the second highlights the description of data; the third examines practical gaps in providing physical protection, the fourth examines the factors for the gaps in providing physical protection, and the last pinpoints the impacts of gaps in enforcing physical protection.

4.1. Background on the Formation of the WPD and Its Operation

4.1.1 Background on the Formation of the WPD

In September 2017, six and a half years after the proclamation was enacted, a joint committee from the Federal Attorney General (now MoJ) and the Federal Ethics and Anti-Corruption Commission was formed to study and develop potential structures for witness protection in Ethiopia. 166

The Committee stipulated both internal and external driving forces for the necessity of preparing a structure for witness protection. The implementation of an effective and efficient criminal

¹⁶⁶ Abat G/Tsadik, Girma Worku, Amanuel Getachew, Nigussie Tizazu, ‘A study Document on the Structure of Witness Protection Program’, Sep 2017, p.1. (unpublished). ‘የወንጀል ምክክሮች እና ጠቁሚዎች ጥበቃ ፕሮግራም አደረጃጀት የጥናት ሰነድ’ ጳጉሜ 2009 ዓ.ም ገጽ 1.

justice policy; the reality and the country's unique geopolitical situation all count as internal factors.¹⁶⁷ The suitability of Ethiopia's strategic location for terrorist organizations and other organized crime groups, including those involved in cross-border human trafficking, corruption, and money laundering is another internal factor.¹⁶⁸ The external factor was Ethiopia's ratification of the majority of international agreements about transnational organized crime, which imposes obligations on state parties to enact domestic legislation and establish programmes for witness protection.¹⁶⁹

Then, the committee formulated two options on the structure of the unit and presented it to the Attorney General's management council for approval.¹⁷⁰ The first was to create an agency under the attorney general's control to provide protection. The committee suggested this alternative because, among many other reasons, an agency is the most effective means of carrying out the protection mission in terms of impartiality, autonomy, budget distribution, administration, and confidentiality. The creation of a witness protection department or directorate within the attorney general's office was the second option.

The committee did not endorse the second option by bringing up a number of practical reasons, including the lack of an independent budget and resources for such an expensive programme, problems to the confidentiality and privacy of the protection system; additionally, conflicts of interest and other issues could compromise the program's independence and impartiality.¹⁷¹ However, the Management council chose a second option by a majority vote, setting up the WPD within the Federal Attorney General¹⁷², despite the committee's recommendation for autonomous structure.

¹⁶⁷ Ibid. p 2-5.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid., p. 5.

¹⁷⁰ Ibid.,p. 17-20.

¹⁷¹ Ibid.,p. 20.

¹⁷² Minute of the Federal Attorney General (FAG) Management Council, 29/02/2010 E.C. The Council was the highest administrative decision-maker of the FAG, which was comprised of the Attorney General, Deputy Attorney Generals, and Directors of each Department. The total members were 16 in which 4 vote the creation of an agency, whereas 12 vote establishment of a witness protection department or directorate within the Attorney General's Office.

In August 2018, the WPD was formally organized and started its operation, with a director and a deputy director appointed, and public prosecutors and other officers seconded from other departments.

4.1.2 Operations of the WPD

The WPD receives applications from witnesses themselves, investigative officers, and prosecutors. Following the opening of a file, the director forwards the application for consideration to the prosecutor in the WPD. After that, the prosecutor assesses the fulfillment of both legal and factual requirements stipulated under Article 3(1) of the WWPP(I.e., whether the applicant is a witness to a case that poses a penalty equal to and above ten years of rigorous punishment and whether the witness is crucial or not by speaking to an investigative officer or a prosecutor who follows up on the case and whether there is a serious danger or threat against the witness's or his close family's life, body, or property.¹⁷³

If protection is to be provided, the officer (public prosecutor) additionally decides the kind of protection, considering factors such as the nature of the imminent danger & the cost of protection. Review of decision of the WPD is done by the Deputy Minister of Prosecution department, up on the delegation given by the minister of MoJ.

The WPD rendered decisions of rejection, acceptance or other relevant orders on 588 files (1460 applicants) of protection applications in five fiscal years (from July 2011 - July 2015 E.C).¹⁷⁴ Most of the protection measures decided were; physical protection, suspension and revocation of various kinds of retaliatory administrative measures by governmental and non-governmental organizations, providing self-defense weapons, and providing/assisting to have secure residence and job opportunity by relocation.

Table 4.1.2.1: The number of protection application files decided by the WPD from July 2011 - July 2015 E.C¹⁷⁵

Type of decision on protection applications	No. of files decided

¹⁷⁴ Plan Performance Reports of WPD (15).

¹⁷⁵ Ibid., (2011 report, p. 10-11; 2012 report, p. 6-7; 2013 report, p. 11; 2014 report, p. 8-10; 2015 report, p. 7-9)

Rejection	225
Decisions of protection	339
other orders	24
Total	588

Table 4.1.2.2: The types of protection measures mostly provided by the WPD from July 2011 - July 2015
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Type of protection provided	No. of applicants provided with
physical protection	138
safe housing	41
self-defense weapons	41
job security	107
Others	12
Total	339

Physical protection decisions are typically sent to federal, regional, or Addis Ababa police organs for execution.¹⁷⁷ However, there are reports of unfair rejection or ineffective enforcement. The next parts analyze gaps in the provision of physical protection, particularly procedural and enforcement gaps, and their underlying causes based on WWPP and collected data.

4.2 Description of Data

4.2.1 Description of Respondents

25 respondents in total—18 key informants from different institutions and 7 witness respondents—provided general information for the study's sample data. The key informants were drawn from the Ministry of Justice (MoJ), the Ethiopian Federal Police (EFP) and the Addis Ababa Police Commission (AAPC).

Table 4.2.1.1: Distribution of key informants by source institution

¹⁷⁶ Ibid.

¹⁷⁷ Interview with Wubet Gashaw (n 18).

Institution	Number of respondents
MoJ	11
EFP	5
AAPC	2
Total	18

The informants had extensive experience in criminal litigations, criminal investigations, law enforcement, crime prevention and handling witness protection. All informants had over 8 years working experience in these four areas under review, with a half of the respondents (50%) being in the 11-15 years' experience bracket.

Table 4.2.1.2: Distribution of sample respondents from Institutions by level of experience

Experience(years)	Number of respondents	% of the Total
8-10	4	22.22%
11-15	9	50%
16-20	3	16.67%
over 20	2	11.11%
Total	18	100%

The sample witness respondents include both whose application for physical protection is accepted or rejected.

Table 4.2.1.3: Distribution of sample witness respondents who applied for physical protection

Type of decision on application	Number of respondents	% of the Total
accepted	4	57.14

rejected	3	42.85
Total	7	100

4.2.2 Description of sample files of physical protection

From July 2011 to July 2015 E.C, 138 applicants were granted physical protection decisions.¹⁷⁸ Several applicants are included in a single file. However, data on the number of application files pertaining to these 138 applicants is unavailable. The study reviewed 34 files, comprising 62 applicants.

4.3 Practical Gaps in Providing Physical Protection

This section discusses about the procedural and enforcement gaps of physical protection. The procedural gaps include assessment gaps (i.e., gaps in selecting a crucial witness, assessing threats, and selecting a protection measure) and agreement-related gaps.

4.3.1 Procedural Gaps

a) Gaps in Identification of a Crucial Witness

Three informants from the prosecution directorates of the MoJ responded that there has been an attempt to identify crucial witnesses even if they did not show the mechanism to do it.¹⁷⁹ However, five informants from both the MoJ directorates and the WPD responded that there is no any attempt to identify crucial witnesses, and all witnesses in a case are considered crucial even if they prove a similar issue, so identifying crucial witnesses is dependent on the prosecutor's disposition.¹⁸⁰ They further stated that the focus is on severity of the crime and level

¹⁷⁸ Plan Performance Reports of WPD (n 15).

¹⁷⁹ Interview with: Mr. Gebreegziabher Weldegebrael, Assistant Deputy Attorney General at the Corruption Crimes Directorate General of MoJ, 1 March 2024; Mr. Siraj Zeynu, Senior Prosecutor at the Corruption Crimes Directorate General of MoJ, 1 March 2024; Mr. Yayeh Yenealem, Senior prosecutor at the Organized and Trans-boundary Crimes of MoJ, 21 February 2024.

¹⁸⁰ Interview with: Mr. Anonymous informant, Senior prosecutor at the Organized and Trans-boundary Crimes Directorate General of MoJ, 1 March 2024; Mr. Belsti Temesgen, Senior Prosecutor at the WPD of MoJ, 13 March 2024; Gedefaw Bantie, Senior prosecutor at the Organized and Trans-boundary Crimes Directorate General of MoJ,

of threat, not on the cruciality of witnesses' statements to the case.¹⁸¹ This is due to lack of experience, time, and attention, and to avoid disappointment of witnesses.¹⁸² There is no guideline or standard for identifying crucial witnesses. Improper consideration of all witnesses in a file as crucial(including those that prove similar issue) can cause an extra burden on the MoJ/WPD's capacity (e.g., cost) to respond and also jeopardize the interests of other crucial witnesses who are in genuine need of protection.¹⁸³

Hence, it can be understood that there is a gap in identifying crucial witnesses, and it can have a chilling effect on the capacity of the MoJ and the interests of other crucial witnesses.

b) Gaps in Threat Assessment

The WPD has not conducted a comprehensive threat assessment since its inception, though there are attempts since recently.¹⁸⁴ The assessment is limited to receiving witness statements, which is not satisfactory. All the 3 informants to this issue agreed as there is no inclusive assessment as to the security, economic, cultural, legal, psychosocial, and other aspects of the witness.¹⁸⁵ They also disclosed that periodic assessments before, during, and after protection are not carried out.¹⁸⁶ They attribute this failure to a lack of skills, training, experience, and exposure.¹⁸⁷ Assessing 11 protection application files¹⁸⁸, most lack comprehensive threat assessment reports other than receiving statements from witnesses regarding their personal identification, particulars of the case they testified or will testify, threat type, and the kind of protection they are requiring. From these, three files¹⁸⁹ show the existence of a practice of hearing testimonies regarding the threats, and this is a good start. However, the reliability of such testimonies is not cross-checked with further evidence. From this, it can be construed that there is a gap in the assessment of threats.

1 March 2024; Mrs. Wubet Gashaw (n 18); Mrs. Yaynabeba Biyazen, Assistant Deputy Attorney General at the WPD of MoJ, 27 February 2024.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Interview with Wubet Gashaw (n 18).

¹⁸⁵ Interview with: Mr. Belsti Temesgen (n 180); Wubet Gashaw (n 18); Yaynabeba Biyazen (n 180).

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ The names of the files are not freely cited since I am not permitted for confidentiality reasons.

¹⁸⁹ The names of the files are not freely cited since I am not permitted for confidentiality reasons.

This gap in threat assessment is evident since protection applications are accepted or rejected without strict and periodic assessments. Additionally, once protection is provided, there is no monitoring mechanism whether the threat continues or not so that the witness may benefit from the protection even in the absence of threats. Such situation can affect other witnesses who are in need of genuine protection as resource for protection is limited.

c) Gaps in determining a Protection Measure

All the 3 informants on this matter stated that the criteria under the WPP are not being taken into account by the WPD in selecting the relevant protection measure/s, and there is no any other standard criteria issued and practiced by the MoJ/WPD.¹⁹⁰ In all the 34 files I have reviewed, the reason for the selection of physical protection is not included in the content of the decision. For example, in one case (file)¹⁹¹, an applicant requests protection by mentioning particulars of the danger against the witness. However, the WPD decides on physical protection without mentioning why it selected physical protection over other protection measures. The content of the decision does not deal with whether the grounds of selection are the eminent nature of the danger, the witness's criminal record, the protection's impact on third parties, the witness's health and living condition, the witness's competence to adapt, the protection cost, legal limitations, or any other. The decision simply states the date of application for protection, against whom and in what kind of crime the witness will testify, the type of threat the witness is encountered with, and the institution's general belief that particulars of the situation can put the applicant in danger so that physical protection is provided.

All the 3 informants on this matter also agreed that the WPD often chooses to provide physical protection, perceiving that it is less costly as compared to other protection measures.¹⁹² However, in reality, it is costly, and the WPD's wrong perception is derived from unawareness about it that emanates from practical non-implementation. Hence, choosing the right protective measure is inconsistent because there is no measurement involved.

¹⁹⁰ Interview with: Mr. Belsti Temesgen (n 180); Mrs. Wubet Gashaw (n 18); Mrs. Yaynabeba Biyazen (n 180).

¹⁹¹ The name of the file is not freely cited since I am not permitted for confidentiality reasons.

¹⁹² Interview with: Mr. Belsti Temesgen (n 180); Mrs. Wubet Gashaw (n 18); Yaynabeba Biyazen (n 180).

d) Gaps in concluding protection Agreement

All the 3 informants on this matter agreed that there is no practical agreement regarding physical protection, even if the law requires it.¹⁹³ As indicated in the previous table 4.1.2.2, the WPD decided to provide physical protection for one hundred thirty-eight (138) applicants in five fiscal years (from July 2011 E.C. to July 2015 E.C.). However, no agreement is reached with any of them. The reasons for the failure of the MoJ/WPD to agree to provide physical protection are: Firstly, if the MoJ or WPD agrees, such an agreement creates an obligation of execution on them, forcing them to take on extra burden in enforcing the protection. Hence they simply decide, excluding agreeing. Secondly, since the decision-making and enforcing organs in practice are different, it is difficult to determine with which organ the witness agrees. Secondly, the law gives the MoJ the power to enforce and conclude the agreement. However, since the enforcing organ in practice is the relevant police, confusion exists as to which organ witnesses agree with (i.e., with the relevant enforcing police or the MoJ).

The absence of an agreement has an impact on the effectiveness of physical protection. Since the MoJ/WPD does not take an obligation, there is no responsibility for enforcement failure. Because of this, many witnesses claim so many times that they do not want to be witnesses afterward, and they even persuade others not to be a witness.¹⁹⁴ However, the presence of an agreement cannot totally solve the problem of enforcement as long as other main problems such as institutional structure, budget, and human resources exist.¹⁹⁵

4.3.2 Enforcement Gaps

Some witnesses view protection as a benefit and approach the WPD even in the absence of genuine threats, and the WPD sometimes decides physical protection without strictly assessing the threat to avoid confrontation with them, even if such a decision is not enforced.¹⁹⁶ Gebru stated that “some witnesses’ behavior is of needs benefit, and because of this, we told them as

¹⁹³ Ibid.

¹⁹⁴ Interview with Mr. Anonymous witness (n 17).

¹⁹⁵ Interview with Wubet Gashaw (n 18).

¹⁹⁶ Interview with Mr. Gebru Gebeyehu, now advisor to the Minister of MoJ (*formerly, Director of the Corruption Crimes Directorate General two months before this interview and Director of WPD two years before this interview*), 27 March 2024.

they were searching for their killers”.¹⁹⁷ In other words, some witnesses request protection based on the mere fact that they are witnesses without any genuine threats, even knowing that the perpetrators do not know whether they are witnesses against them.¹⁹⁸ Such a situation erodes the confidentiality of their identity and can expose them to attack.

Deciding protection may not challenge for witness’ interests as it is given without further assessment. Physical protection is decided most frequently as compared to other protection measures.¹⁹⁹ The reason for this is a belief by the WPD that physical protection is not enforced, so the WPD relieves itself from persistent complains of witnesses by simply rendering decisions and forward such witnesses to ask the police for enforcement.²⁰⁰ However, the problem is making it enforced. Both minor and major protections are not practically provided as compared to the necessity, the number, and the threats against witnesses. The enforcement is low and does not go beyond mere promise.²⁰¹ However, there is no organized data regarding the frequency of receiving the requested protection.²⁰²

The WPD forwards decisions of physical protection to the federal, Addis Ababa, and regional police for enforcement. In principle, physical protections include regular enhanced patrols, personal alarms, emergency relocation aid, surveillance, 24/7 police protection, monitoring of emails and phone calls, changing phone numbers, installing security devices like alarms and fencing, and minimizing public contact with the witness.²⁰³ However, any of such protections are not provided in practice.²⁰⁴ The usual practice of the police is to give phone numbers to

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Interview with: Mr. Belsti Temesgen (n 180).Mrs. Wubet Gashaw (n 18); Mrs. Yaynabeba Biyazen (n 180).

²⁰⁰ Interview with Mrs. Wubet Gashaw (n 18).

²⁰¹ Interview with Mr. Yayeh Yenealem (n 179).

²⁰² Interview with Zerihun Bogale, Deputy Director of the Organized and Trans-boundary Crimes Directorate General of MoJ, 1 March 2024.

²⁰³ UNODC (n 3), p. 29–30; Yvon Dandurand and Kirstin Farr (n 8), p. 61

²⁰⁴ Interview with: Mr. Anonymous witness (n 17); Mrs. Anonymous witness(n 17); Mr. Belsti Temesgen (n 180); Mergeta Moges Tamiru((n 17); Mr. Shukur Mustofa (n 17); Mrs. Wubet Gashaw (n 18); Mrs. Yaynabeba Biyazen (n 180); Commander (anonymous), Head of the Office of Federal Police Investigative Bureau, 5 April 2024; Commander (anonymous), Head of the office of Arada sub city Police Department Traffic Crimes Investigation Division in the Addis Ababa Police Commission, 11 April 2024; Chief Sergeant (anonymous), Head of the office of Lideta sub city Police department in the Addis Ababa Police Commission, 11 April 2024;

witnesses so they can contact them when they encounter problems.²⁰⁵ Witness respondents further claimed that the police do not repeatedly respond to calls while they have called to them in case of dangers. Even staffs from the WPD and police are unaware of the types of physical protection measures.²⁰⁶ Hence, physical protection is not strictly enforced, and this is a common problem.²⁰⁷

The WPD is responsible for ensuring the threat is stopped or continued for further measures, as protection is not permanent but contingent on the threat's existence. However, the follow-up on the continuation of the threat as well as enforcement of physical protection is poor. Once a decision is given, there is no monitoring mechanism to determine whether the threat continues or not or whether the decision is enforced or not. Police informants claim that relevant police re-send WPD decisions to subordinate units for enforcement, but they do not notify the WPD, making follow-up more problematic. All the three informants of the WPD argued that the WPD misperceived that unless witnesses claim non-enforcement, the decision is considered enforced. However, witnesses may remain silent due to danger or lack of trust in their protection. There was an attempt to prepare and conclude a MoU with the police to solve problems of enforcement, though it is not currently being practiced still now.²⁰⁸

From these facts, it can be concluded that physical protection is not more than exchange of letters.

4.4 Factors for the Gaps in Assessment and Enforcement of Physical Protection

This section explores the procedural and enforcement gaps in providing physical protection, dividing them into two categories: common factors for procedural and enforcement gaps and factors attributed to physical protection only. The factors are legal, factual, or both.

²⁰⁵ Ibid.

²⁰⁶ Interview with: Wubet Gashaw (n 18); Yaynabeba Biyazen (n 180); Commander (anonymous) (n204); Commander (anonymous) (n 204); Chief Sergeant (anonymous) (n 204).

²⁰⁷ Interview with: Mr. Anonymous witness whose application for protection is rejected, 29 March 2024; Mr. Anonymous witness (n 17); Mrs. Anonymous witness (n 17); Mergeta Moges Tamiru (n 17), Mr. Shukur Mustofa (n 17).

²⁰⁸ Interview with Wubet Gashaw (n 18).

4.4.1 Common Factors for the Gaps

a) Location and Institutional Structure

Most informants stated that the practical execution of protection decisions today is primarily related to programme location and structure, with other challenges such as finance, qualified human power, technology, and cooperation. To effectively assess threats and enforce protection measures, such as physical protection, finance, multidisciplinary staff, and an independent protection organ/unit from the prosecution/investigative department are required. However, the current structure of the MoJ/WPD or police organs does not allow them to make independent decisions, collect and administer finances, own property, or hire multidisciplinary staff. These factors cause problems in assessing threats and enforcing protection measures including physical protection. In politically sensitive cases, protection is provided by direct order of the head of the prosecution department without further assessment. Most informants suggest mandating witness protection to an independent organ with the power to collect and administer finance, own property, hire human resources and have necessary facilities. They further state that if an independent organ is not feasible, the MoJ could convince the Civil Service Minister to permit them to recruit of necessary personnel.

Some informants from other MoJ directorates, on the other hand, argue that mandating the MoJ is not related to the current execution problems. They believe lawmakers are right in mandating the MoJ because prosecutors in this institution are involved in every step of the process, are sensitive to witnesses' difficulties, and can provide protection quickly. However, they argue that the MoJ's lack of commitment to the WPD's functionality is the main challenge of execution. They suggest the MoJ should collaborate with law enforcement organs and other relevant parties to enable the effective execution of the WPD's decisions.

Establishing an independent organ is a preferred option because it overcomes the practical shortcomings of option two and offers the following advantages: It allows for greater discretion in budget management and funding for effective protection measures. It also strengthens witness protection by creating a robust protective structure. Its independent institutional structure allows for quick integration with stakeholders. It improves accessibility by creating branches. It maintains confidentiality by carrying out administrative and operational functions within its exclusive authority. Additionally, it offers a better opportunity to recruit interdisciplinary

personnel for proper assessments and enforcement. Overall, the independent organ offers a more efficient and effective approach to protecting witnesses.

b) Absence of Regulation and Directive

The WWPP is generic and has enabling clauses for the issuing of regulations and directives.²⁰⁹ There was an attempt to draft such documents, though it had yet to be finalized. These documents are needed to regulate the WPD's structural arrangement, the expertise and experience of necessary staff, and procedures for enforcing physical protection. They are also essential to creating detailed standards on the particulars of assessing threats, selecting a crucial witness, selecting the appropriate protection measure, and concluding a protection agreement. The absence of such documents makes providing practical protection services, including physical protection, difficult.²¹⁰ Hence, these documents should be issued, and the MoJ should take the initiative.²¹¹

c) Lack of Funding and Resources

The WWPP does not address where the funds or resources for witness protection would come from. Additionally, budgets at the MoJ are still centralized in the main office, and there is no any budget that is assigned on the accounting titles of departments, including the WPD.²¹² The MoJ lacks any necessary resources for protection services, including basic self-defense weapons, safe housing, stand-alone data base systems etc. No specified resource or budget is allocated either by the MoJ or by the police to enforce the physical protection of witnesses. There is also no budget to conduct every procedural assessment necessary for providing physical protection.

The WPD informants concurred that the law has to be changed to address several difficulties, including determining the source of funds for such an expensive undertaking and owning or possessing properties like houses, weapons, and others.²¹³ Particularly, Belsti stated that the MoJ needed to allocate an annual budget for protection under the accounting title of WPD, as well as purchase or rent homes under a false name to offer safe housing.²¹⁴ The budget allocated for

²⁰⁹ WWPP (n 10), Article 31(1&2).

²¹⁰ Interview with: Mr. Belsti Temesgen (n 241); Commander (Anonymous from Federal police) (n 204).

²¹¹ Interview with Mr. Gebreegziabher Weldegebrael (n 179).

²¹² Interview with: Belsti Temesgen (n 180); Mrs. Wubet Gashaw (n 18).

²¹³ Interview with: Mr. Belsti Temesgen (n 180); Mrs. Wubet Gashaw(n 18); Mrs. Yaynabeba Biyazen(n 180).

²¹⁴ Interview with Mr. Belsti Temesgen (n 180).

immediate protection and assistance of witnesses must operate quickly and efficiently, minimizing red tape in the government financial system to ensure timely and efficient service delivery.

d) Lack of Skilled Human Resource

The WPD has staffs with only legal backgrounds. In what practical sense can the MoJ/WPD that consists of staffs possessing only legal knowledge and expertise physically protect witnesses? The police also do not have skilled professionals to protect witnesses physically. All informants agreed on the necessity of multidisciplinary staffing qualified in weapon handling, surveillance, counter-surveillance, psychology, etc., regardless of whether the MoJ or police enforce physical protection. For instance, a victim was a witness against his neighbors²¹⁵, who have been accused of attempting to commit grave homicide against him. However, he committed suicide before testifying against the accused wrongly perceiving that they would kill him if he testified against them.²¹⁶ The witness was feeling internal disturbances or anxiety and required psychological advice. But, no one treats him when he came to the WPD as there is no skilled psychological professional. Additionally, there is no skilled human power to assess threats.

Hence, multidisciplinary personnel such as lawyers, psychologists, security people, and police officers etc. are required for pragmatic implementation of the protection measures, including physical protection.

e) Lack of Collaboration Initiatives with Stakeholders

The MoJ has not reached any agreements with key stakeholders such as police, security organs, courts, psychologists, financial institutions, housing institutions, and other relevant organizations for carrying out protection orders. This lack of cooperation is a challenge for the WPD in implementing protection measures, including physical protection. Particularly since the police force is essential to enforcing physical protection and conducting comprehensive threat assessment, an agreement must be reached with the police.

²¹⁵ FPP v. Nahom Sisay (2022) , FHC, File No 280381.

²¹⁶ WPD, 'Impact Assessment Report on the Dangers against Witnesses', (August 2022). The MoJ commissioned the WPD to do an impact assessment report on witness protection dangers based on practical situations to persuade higher management to reconsider the structure of system.

4.4.2 Other Factors for the Gap in Enforcing Physical Protection

a) Meaning of Physical Protection and Its Enforcing Mandate

The non-mandating of the police to enforce physical protection and the uncertainty of WWPP and the MoJ/WPD decisions regarding the types of physical protection to be provided are factors for the gap. The WWPP mandates the MoJ to enforce witness protection, including physical protection, but not to police. In practice, the WPD/MOJ forwards decisions on protection to relevant police for enforcement. However, the police claim they have no mandate since their responsibility to do so is not stipulated in the law.²¹⁷ The WWPP, under Article 27, stated the duty of cooperation for every person in the application of the proclamation, but it cannot be a ground to force them as it is a loose statement.

The decisions forwarded are generic and consist of the phrase “provide the witness with physical and property protection” without stating how or which type of physical protection is to be enforced. Furthermore, some informants understand physical protection as surveillance, others as escort, regular crime prevention, or bodyguard protection. Hence, there is misunderstanding about concept and types of physical protection to be enforced, leading to confusion among police²¹⁸.

b) Lack of Commitment and Accountability

The MoJ prioritizes case effectiveness over witness safety, often neglecting their safety post-testimony.²¹⁹ Witness protection is often considered a secondary task.²²⁰ This may be due to a lack of awareness about witness importance and potential dangers. Two witness respondents stated that we were treated well by the prosecution department of MoJ and we were promised as we will be treated well, but every treatment has been stopped immediately after the testimony.²²¹ Accountability is not guaranteed, and there is no check and balance mechanism as to the

²¹⁷ Interview with Commander (Anonymous from Federal Police) (n 204).

²¹⁸ Interview with: Chief Sergeant (Anonymous) (n 204); Commander (Anonymous from Addis Ababa Police) (n 204).

²¹⁹ Interview with: Mr. Anonymous Prosecutor (n 180); Gedefaw Bante (180); Yayeh Yenealem (n 179); Mr. Zerihun Bogale (n 202).

²²⁰ Interview with: Mr. Belsti Temesgen (n 180); Mrs. Wubet Gashaw(18); Mrs. Yaynabeba Biyazen(n 180).

²²¹ Interview with: Anonymous witness respondent (n 1); Mergeta Moges Tamiru (n 17).

enforceability protection measures, including physical protection.²²² The MoJ and police lack a monitoring and evaluation mechanism for enforcing protection measures, leading to poor enforcement.

c) Non Accessibility

Enforcing physical protection is challenging due to lack of accessibility. Witness cases are widespread, but the MoJ/WPD and federal police, centered in Addis Ababa, make it difficult for witnesses to access protection.²²³ Moreover, regional security forces often favor perpetrators, especially in ethnic conflicts.²²⁴ Witnesses also face additional burdens like transportation and other costs. These factors forced some witnesses to remain silent.

4.5. Effects of Gaps in Enforcing Protection

Most witnesses seek protection after court testimony²²⁵, with those seeking it before often failing to testify due to non-enforcement.²²⁶ The dangers resulting from practical difficulties of protecting witnesses include psychological threats, displacement, an attempt to forcefully disappear, false accusations, property loss, job security loss, body injury, and threats of death or killings against witnesses and their families.²²⁷

Mr. Gedefaw provided his views on witness threats as follows, based on his experiences in his prosecution career:²²⁸

Witnesses cooperate for the sake of justice, not for their personal benefits. But they face dangers from the mere fact of being witnesses. I feel immoral to be a prosecutor looking for witnesses to be threatened, ignored, pressured, crying, and killed since they cooperate with justice. Hence, witness protection is very crucial.

Practical difficulties in providing protection and enforcing physical protection pose significant threats to witnesses, leading to a drop in cases.²²⁹ However, there are no statistics as to the reason

²²² Interview with: Mr. Belsti Temesgen (n 180); Mrs. Wubet Gashaw(18); Mrs. Yaynabeba Biyazen(n 180).

²²³ Interview with Mr. Anonymous Prosecutor (n 180).

²²⁴ Ibid.

²²⁵ Interview with: Mrs. Wubet Gashaw (n 18); Mr. Zerihun Bogale (n 202).

²²⁶ Interview with: Mr. Belsti Temesgen (n 180); Mr. Gedefaw Bantie (n 180).

²²⁷ Interview with Mrs. Wubet Gashaw (n 17).

²²⁸ Interview with Mr. Gedefaw Bantie (n 180).

²²⁹ Interview with: Mr. Belsti Temesgen (n 180); Mr. Gedefaw Bantie (n 180).

or the frequency of declinations to testify, the number of files dropped, or the number of witnesses endangered due to failure to enforce protection measures, particularly physical protection. Hence, data from interviews, impact assessment reports, and specific cases is used to analyze this part.

4.5.1 Effects of the Gaps in Protecting Witnesses

Practical difficulties in protecting witnesses have caused drop of files. For example, from 2010–2014 E.C., charges against 3528 accused were dropped because of witness non-appearance, and charges against 527 accused were dropped due to threats and intimidation that prevented witnesses from appearing in court.²³⁰ An informant who participated in this assessment also confirmed such facts.²³¹ Witnesses also decline to testify because of a lack of trust in the protection system.²³² Prosecutors provide wrong promises to save cases, but when these promises are not fulfilled²³³, witnesses fail to testify, leading to case drops. Mr. Gedefaw stated that “in one case in which a witness’s husband is killed, the witness failed to testify to the case, stating that ‘I don’t want to put my family at extra risk without any protection and keeping that I cannot return my husband’”.²³⁴

Practical difficulties in protecting witnesses have also caused dangers to witnesses. For instance, in the terrorism charge brought against Haile Asmar and 17 other members²³⁵ of the Tigray Peoples Liberation Front (TPLF) (designated by the Ethiopian parliament as a terrorist group), one witness has been provided with self-defence weaponry as protection. However, the witness has been killed in his residence, South Wollo Zone Tenta Woreda, a year after his testimony, as retaliation.²³⁶ In another case that occurred in Kemisse, Ali Husien and 217 other members²³⁷ of

²³⁰ Organized and Trans-boundary Crimes Directorate General of MoJ, ‘An Impact Assessment Report on Witnesses and Accused Appearance, Particularly Related to Cases of Terrorism and Ethnic Conflicts’, July, 2022. (Unpublished).

²³¹ Interview with Mr. Anonymous informant (n 180).

²³² Interview with Mr. Belsti Temesgen (180).

²³³ Interview with Mr. Gedefaw Bantie (180).

²³⁴ Ibid.

²³⁵ FPP v. Asmar Haile et al. (2023), Amhara Regional State Supreme Court, File No. 0207938.

²³⁶ Interview with Mr. Gedefaw Bantie (n 180).

²³⁷ FPP v. Ali Husien et al. (2023), Amhara Regional State Supreme Court, File No. 0203181.

Oneg Shene (designated by the Ethiopian parliament as a terrorist group) were accused of terrorism crimes. However, a witness to the case was kidnapped and killed one week after his testimony.²³⁸ Furthermore, the following facts show the consequences of practical difficulties in protecting witnesses:²³⁹

- In a kidnapping of students at Dembi-Dolo University, Kelifa Abdurrahman and 17 others were accused of participating in the crime.²⁴⁰ One witness, who lived in the surrounding area and saved one of the kidnapped students by hiding, was killed immediately after he testified in the case. Other direct witnesses failed to testify because of threats and intimidation, and only 5 of the accused were convicted as a result of the witnesses' failure to testify.
- A person was a supplier of bread to the Ethiopian defense forces in Wellega. Because of this, members of "Oneg Shene" burned his body by kidnapping him. After he testified against the crime they committed against him, 2 members of his family were killed as a retaliatory measure. Finally, he escaped and came to Addis Ababa, where he applied for a safe house and work opportunity for himself and his family. However, since his application was not accepted, his family was forced to live in another place, leaving Wellega.
- A witness to a serious terrorist incident who was residing in Qellem Wellega moved to Burayu after receiving threats and harassment. The threats persisted, and he received calls from Ethiopia and abroad threatening to kill him if he testified. A weapon for self-defense was provided to him by the MoJ. But a fake charge is prepared against him and his firearm was disposed away by local authorities who prioritize their personal interests. His home in Qellem Wellega caught fire. When the kidnapers dug a hole to kill and bury his sister because of retaliation, the Ethiopian Defense Force arrived to save her.
- In a case in which higher officials of Benshangul Gumuz Regional State were accused of "inciting a civil war", witnesses who testified were displaced, their property and land was looted.²⁴¹ When they brought their complaint to the relevant authority, they were told that

²³⁸ Interview with Mr. Gedefaw Bantie (n 180).

²³⁹ WPD Impact Assessment Report (n 216).

²⁴⁰ FPP v. Kelifa Abdurrahman et.al(2020) , FHC, File No 255390

²⁴¹ FPP v. Abdumunem Abdulewahib et.al (2021), FHC, File No 225472.

they could not live there after witnessing it, and finally, they were compelled to leave the place where they lived.

- For a crime committed in the Benshangul Gumuz Regional State, Metekel Zone, Wonbera Woreda, where Derabi Kumbi and 36 others²⁴² were charged with “terrorism and subverting the constitutional order”, over 20 witnesses lost their lives and their property were destroyed in retaliation.

4.5.2 Effects of Gaps in Enforcing Physical Protection

Practical difficulties in enforcing physical protection have caused danger to witnesses and a drop in cases too. For example, in a case in which Abdi Mohammed Oumer (Abdi Ele) and others²⁴³ were accused of “subverting the constitutional order and inciting civil war”, witnesses have been forced to leave their residence and lose their jobs, and one witness has become mentally ill and is still suffering from such illness because of threats and intimidation as well as psychological distress despite physical protection is provided to them.²⁴⁴ Moreover, one witness to this case became hostile after getting a decision on physical protection, stating that “it is better to be imprisoned by changing his statement than to lose his life for testifying”²⁴⁵. In some cases, there is an attempt to change the physical protection to another protection measure when it becomes ineffective. For example, in one case in which physical protection was provided, witnesses were severely intimidated, including an attempt to kidnap since the police could not protect them; afterward, they were provided with self-defense weaponry, and they feel safe and then testified.²⁴⁶

Moreover, the following facts of an assessment report demonstrate the results of a gap in enforcing physical protection:²⁴⁷

- In 2010 E.C, there was a fight between the Wolaita and Sidama ethnic group members in Hawasa. Tewodros Gebiba was charged with inciting a civil war together with thirty-

²⁴² FPP v. Derabi Kumbi et.al (2022) , FHC, File No. 255629.

²⁴³ FPP v. Abdi Mohammed Oumer et.al, FHC, File No. 231812.

²⁴⁴ Interview with: Anonymous witness (n 207); Yaynabeba Biyazen (n 180).

²⁴⁵ Interview with Mr. Belsti Temesgen (n 180).

²⁴⁶ Interview with Mrs. Wubet Gashaw (n 18).

²⁴⁷ WPD Impact Assessment Report (n 216).

three other people.²⁴⁸ Nevertheless, the majority of witnesses experienced severe harassment and threats, and 1 witness's home and property were set on fire right away after he has testified. This danger against witnesses occurred despite being provided with a decision on physical and property protection.

- On July 11, 2111 E.C., members of the Sidama ethnic group organized an opposition movement named "11/11/11," claiming to be a regional independent state. Killings and property losses occurred, with a specific focus on other ethnic groups. Suspected of as prominent actors, Amanuel Kyro with 123 others, Zenebe Dawucha with 50 others, and Matewos Senkele with 104 others, were accused of inciting civil war in several files.²⁴⁹ But most of the accused were set free, and the case was dropped as the witnesses had been coerced and threatened not to testify. Such situation occurred despite physical and property protection was provided and forwarded to the local police organs.
- Gemechu Genfe et.al were accused of taking part in a civil war in an ethnic conflict between the ethnic "Konso" and "Derashe" of southern Ethiopia, and the witnesses testified against them. A letter of physical protection was addressed to the local security office to protect the witnesses, who were facing serious danger and intimidation. However, more than 65 of them, including their families, were killed despite the physical protection provided to them.

In conclusion, this section highlights the challenges witnesses face due to physical protection issues, leading to their inability or unwillingness to attend court or deliberate disappearance due to defendants' conspiracies. This has resulted in dropouts, potentially affecting the criminal justice system.

²⁴⁸ FPP v. Tewodros Gebiba et. al (2020), FHC, File No. 218916.

²⁴⁹ FPP v. Amanuel Keyro et.al (2020) , FHC, File No 242121; FPP v. Zenebe Dawucha et.al (2020) , FHC, File No 246094; FPP v. Mathewos Senkele et.al (2020) , FHC, File No 246109.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

Evaluating the application of physical protection measures for witnesses in the light of Ethiopia's witness protection laws and practices, as well as the UNODC's best practice document, the following conclusions can be drawn:

A witness protection organ's ability to achieve its goals is dependent on several factors, including the substantive and procedural contents of relevant laws, its autonomy from unwarranted interference by individuals and institutions, an adequate budget, the diversity of its personnel in terms of knowledge and experience, and more. Security personnel with specialized expertise and training in weapon handling, surveillance, counter-surveillance, and physical fitness, such as police, intelligence, and others, are required for witness protection, particularly for the operation and physical protection components.

Ethiopia issued the WWPP to administer witness protection. The MoJ is mandated to carry out witness protection in Ethiopia, including physical protection measures, and it establishes the WPD to execute such a task. The practical implementation of physical protection is found to be challenging and defective, attributed to various factors. The study identified the following procedural and enforcement gaps/defects:

The procedural gaps identified are assessment-related (i.e., gaps in selecting a crucial witness, assessing threats, and selecting a protection measure) and agreement-related. The lack of experience and standardization in identifying crucial witnesses among potential ones highlights a significant gap, often influenced by the prosecutor's disposition. Such a gap can strain the MoJ's capacity and the interests of other crucial witnesses.

Threat assessment is another issue, with no standard or procedural guideline found to carry it out. The WPD does not carry out a comprehensive assessment of threats other than receiving statements from witnesses, leading to inconsistent decisions on protective measures. Periodic threat assessments before, during, and after protection are also not carried out. Determining the protection measure to be provided is another assessment-related issue. The WPD's selection of witness protection measures, particularly physical protection, does not take into account factors such as threat severity, family dynamics, health, or cost of protection. Physical protection is frequently chosen due to its cost-effectiveness, but this reasoning is often uninformed due to practical non-implementation. The absence of a witness protection agreement regarding physical protection is a significant issue, as it hinders the resolution of complaints, enforcement of protection, and responsibility-taking. This lack of agreement has led to many witnesses claiming that the MoJ/WPD does not take an obligation to protect them and has no responsibility in case of failure.

Enforcement of physical protection is also a concern, with both minor and major protections, particularly physical protection, not being practically executed compared to the necessity, number, and threats against witnesses. The WPD decides on physical protection and forwards them to the police for enforcement. However, these protections are not enforced, and the police give little attention. The WPD is responsible for ensuring that threats are stopped and physical protection is enforced, but there is no practice of follow-up on these matters.

The procedural and enforcement challenges of physical protection have been exacerbated by several factors, including problems in location and institutional structure, absence of standards, a

lack of skilled personnel, a lack of allocated finances, and unwillingness on the part of other stakeholders to collaborate. The location and institutional structure of the protecting organ are major contributors to the procedural and enforcement gaps of physical protection. The absence of regulations and directives that govern who, how, and what kind of protection should be given contributed to the non-enforcement of physical protection. The absence of such documents also contributed to the procedural gaps. The MoJ/WPD lacks the necessary financial resources to effectively decide and enforce physical protection. The MoJ lacks skilled human resources, such as psychologists, security personnel, and police officers. There is no cooperative framework and practice with key stakeholders. In particular, the police force's role in enforcing physical protection and conducting comprehensive threat assessments necessitates a cooperative agreement with them.

Besides, the following factors contributed to the gaps in enforcing physical protection: The uncertainty of the WWPP as well as the decisions of the MoJ and WPD as to the types of physical protection to be provided is one factor. The MoJ/WPD simply forwards decisions to the police by stating the general phrase “provide them with physical and property protection” without stating how or which type of physical protection is enforced. Such facts forced the police to be uncertain regarding the type of physical protection to be provided, ultimately leading to the enforcement problem.

The mandate of enforcing physical protection is another factor for the enforcement gap. The WWPP mandates the MoJ to enforce witness protection measures, including physical protection. However, in practice, the MoJ/WPD sends its decisions on physical protection to relevant police for enforcement. To this end, the police challenged it by reasoning that the WWPP does not mandate them to do so. Lack of commitment and accountability is a significant challenge for the WPD in implementing protective measures. Witness protection is often considered a secondary task, and the MoJ lacks commitment to the well-functioning of witness protection. Accessibility to witness cases is also a factor. Since the MoJ/WPD is centered in Addis Ababa and lacks regional branches, it is difficult for witnesses to access the WPD, resulting in practical dangers.

These shortcomings in providing physical protection led to dangers against witnesses and case drops, which can eventually lead to the criminal justice system malfunctioning.

5.2 Recommendation

The study recommends the following measures to deal with the aforementioned gaps and factors contributing to the gaps:

- ❖ To ensure that physical protection is enforced as effectively as possible, Ethiopia should amend the WWPP:
 - The WWPP should be amended to give the authority and mandate to operate and enforce witness protection for an institution made up of multidisciplinary entities such as the police/security units, prosecution units, courts, and human rights commissions.
 - The provisions of the WWPP should be amended to determine sources of finance and to empower the protecting organ to own essential materials, including safe homes, weaponry, and secured cars. Gifts, donations, aid, or the seizure of the spoils of criminal activity should be included in the revised law as possible funding sources.
 - The phrase “physical protection of witnesses” should be clearly defined by the revised law.
- ❖ Until the revision of the WWPP:
 - A special unit for witness protection should be established in the relevant Police Institutions.
 - The MoJ must make necessary adjustments to its total budget to allocate a sufficient budget for witness protection purposes to enable the WPD to run the protection swiftly and easily. In particular, the MoJ should share such a budget with relevant police organs for the enforcement of physical protection.
 - Clear and enforceable regulations, directives, or standards should be framed and strictly applied to determine how and in what situations a threat assessment should be conducted, crucial witnesses are identified, an appropriate protection measure is determined, and physical protection is enforced. The MoJ should carry out threat assessment consistently and efficiently by giving priority to the kinds of cases for which protection is intended to be employed.
 - There is a need for capacity building and training regarding concepts and the applicability of physical protection, for the officials and officers (prosecutors) in the MoJ, WPD, and

relevant police who are engaged in physical protection. It is important for all parties engaged in this process to understand the goals and purposes of physical protection.

- The MoJ must show a great deal of dedication and initiative to cooperate and reach agreements with the relevant federal, state, or other stakeholders. It should conclude a MoU with the relevant federal and regional police to cooperate in assessing threats and enforcing physical protection.
- The MoJ should open witness protection branches or satellite offices at least in the headquarters of every regional state to mitigate accessibility issues.

BIBLIOGRAPHY

1. Legislation

1.1 Domestic

- Anti- Corruption Special Procedure and Rules of Evidence, Proclamation, 2001, Proc. No. 236, Fed. Neg. Gaz., Year 7, no. 24.
- Anti-Terrorism Proclamation, 2009, Pro. No. 652, Fed. Neg. Gaz., Year 15, no. 57.
- Criminal Code of Ethiopia, Proc. No. 414 /2005.

- Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 2005, Fed.Nega.Gaz. Proc.No.471, Year 12, no. 1Addis.
- Ethiopian Draft Criminal and Evidence Law, proc. No..../2017.
- FDRE Criminal Justice Administration Policy, 2010.
- Federal Attorney General Establishment Proclamation, 2016, Proc. No.943, Fed. Neg. Gaz., Year 22, no. 62.
- Federal Ethics and Anti-Corruption Commission Establishment Proclamation, 2001, Proc. No.235, Fed. Neg. Gaz., Year 7, no. 23.
- Minutes of WWWP.
- Prevention and Suppression of Terrorism Proclamation, 2020, Pro. No. 1176, Fed. Neg. Gaz., Year 26, no. 20.
- Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, 2015, Pro. No. 909, Fed. Neg. Gaz., Year 21, no. 67.
- Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation, 2020, Pro. No. 1178, Fed. Neg. Gaz., Year 26, no.31.
- Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation, 2010, Proc. No. 699, Fed. Neg. Gaz., Year 17, no.16.
- Revised Anti-Corruption Special Procedure and Rules of Evidence, Proclamation, 2005, Proc. No. 434, Fed. Neg. Gaz., Year 11, no. 19.
- Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation, 2015, Proc. No. 882, Fed. Neg. Gaz. Year 21. no. 37.
- Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation, 2005, Proc. No.433, Fed. Neg. Gaz., Year 11, no. 18.
- Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation, 2015, Proc. No.883, Fed. Neg. Gaz., Year 21. no.38.
- Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation, 2021, Proc. No.1236, Fed. Neg. Gaz., Year 27, no.15.
- Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1995, Fed. Neg. Gaz., Proc.No.1, Year 1, no. 1.

- Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation, 2010, Proc. No. 699, Fed. Neg. Gaz., Year 17, no.16.

1.2 International

- Council of Europe Recommendation Rec (97) 13 Concerning Intimidation of Witnesses and the Rights of the Defence, adopted on 10 September 1997.
- Council of Europe Recommendation Rec (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure, adopted on 28 June 1985.
- Council of Europe Recommendation Rec (2005) 9 on Protection of Witnesses and Collaborators of Justice, adopted on 20 April 2005.
- Council of Europe Resolution on individuals who cooperate with the judicial process in the fight against international organized crime (97/C 10/01), adopted on 20 December 1996.
- Council of Europe Resolution Res 1784(2011) on Protection of Witnesses as a Cornerstone for Justice and Reconciliation in the Balkans, adopted on 26 Jan 2011.
- Council of Europe Resolution on the Protection of Witnesses in the Fight against International Organized Crime (95/C 327/04), adopted on 23 November 1995.
- International Covenant on Civil and Political Rights (ICCPR), adopted on 16 Dec 1966.
- Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography, adopted on 25 May 2000.
- Rome Statute of the International Criminal Court, adopted on 17 July 1998.
- United Nations Charter, adopted on 26 June 1945.
- United Nations Convention Against Corruption (UNCAC), adopted on 31 October 2003.
- United Nations against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted on 10 December 1984.
- United Nations Convention against Transnational Organized Crime (UNTOC), adopted on 25 November 2000.
- United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted on 18 December 1979.
- United Nations Convention on the Rights of the Child (CRC), adopted on 20 November 1989.
- United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted 29 November 1985.

- United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, adopted by ECOSOC on 22 July 2005 with Resolution 20/2005.
- Universal Declaration of Human Rights (UDHR), adopted on 10 Dec 1948.
- Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1), adopted by ECOSOC on 8 February 2005.

2. Interviews

2.1 Key Informants

- Interview with Mrs. Wubet Gashaw, Director of the WPD at the MoJ, 7 March 2024.
- Interview with Mr. Gebru Gebeyehu, Advisor to the Minister of MoJ (*formerly, director of Corruption Crimes Directorate General 2 months before this interview and director of WPD 2 years before this interview*), 27 March 2024.
- Interview with Mr. Zerihun Bogale, Deputy Director of the Organized and Trans-boundary Crimes Directorate General of MoJ, 1 March 2024.
- Interview with Commander (Anonymous), Head of the Office of Federal Police Investigative Bureau, 5 April 2024.
- Interview with Commander (Anonymous), Head of the office of Arada Sub City Police Department Traffic Crimes Investigation Division in the Addis Ababa Police Commission, 11 April 2024.
- Interview with Mr. Belsti Temesgen, Senior Prosecutor at the WPD of MoJ, 13 March 2024.
- Interview with Mrs. Yaynabeba Biyazen, Assistant Deputy Attorney General at the WPD of MoJ, 27 February 2024.
- Interview with Mr. Gebreegziabher Weldegebrael, Assistant Deputy Attorney General at the Corruption Crimes Directorate General of MoJ, 1 March 2024.
- Interview with Mr. Girmachew Nigussie, Senior Prosecutor at the Corruption Crimes Directorate General of MoJ, 20 February 2024.
- Interview with Mr. Siraj Zeynu, Senior Prosecutor at the Corruption Crimes Directorate General of MoJ, 1 March 2024.
- Interview with an Anonymous informant, Senior Prosecutor at the Organized and Trans-boundary Crimes Directorate General of MoJ, 1 March 2024.

- Interview with Mr. Gedefaw Bante, Senior prosecutor at the Organized and Trans-boundary Crimes Directorate General of MoJ, 21 February 2024.
- Interview with Mr. Yayeh Yenealem, Senior prosecutor at the Organized and Trans-boundary Crimes Directorate General of MoJ, 21 February 2024.
- Interview with an Anonymous informant, Head of Corruption Crimes Investigation Main Division of Federal Police, 22 March 2024.
- Interview with Inspector (Anonymous), Head of Miscellaneous crimes Investigation Main Division of Federal Police, 22 March 2024.
- Interview with Inspector (Anonymous), Head of Organized Crimes Investigation Main Division of Federal Police, 22 March 2024.
- Interview with Inspector Mr. Sefiw Endalew, Head of Human Trafficking Crimes Investigation Sub-division in the Organized Crimes Investigation Main Division of Federal Police, 22 March 2024.
- Interview with Chief Sergeant (Anonymous), Head of the Lideta Sub-city Police Department Office in the Addis Ababa Police Commission, 11 April 2024.

2.2 Witnesses Applicants

- Interview with Mrs. (Anonymous) whose application for protection is accepted and provided with physical protection, 29 February 2024.
- Interview with Mr. (Anonymous) whose application for protection is accepted and provided with physical protection, 29 February 2024.
- Interview with Mergeta Moges Tamiru, a witness whose application for protection is accepted and provided with physical protection, 23 February 2024.
- Interview with Mr. Shukur Mustofa, a witness whose application for protection is accepted and provided with physical protection, 23 February 2024.
- Interview with an Anonymous witness whose application for protection is rejected, 29 March 2024.
- Interview with Samson Dak, a witness whose application for protection is rejected, 1 April 2024.
- Interview (phone) with Tadesse G/wold, a witness whose application for protection is rejected, 28 March 2024.

3. Cases

- FPP v. Abdi Mohammed Oumer et.al, FHC, File No. 231812.
- FPP v. Abdumunem Abdulewahib et.al (2021), FHC, File No. 225472.
- FPP v. Ali Husien et al. (2023), Amhara Regional State Supreme Court, File No. 0203181.
- FPP v. Amanuel Keyro et.al (2020), FHC, File No. 242121.
- FPP v. Asmar Haile et al. (2023), Amhara Regional State Supreme Court, File No. 0207938.
- FPP v. Derabi Kumbi et.al (2022), FHC, File No. 255629.
- FPP v. Kelifa Abdurahman et.al (2020), FHC, File No. 255390.
- FPP v. Mathewos Senkele et.al (2020), FHC, File No. 246109.
- FPP v. Nahom Sisay (2022), FHC, File No. 280381.
- FPP v. Tewodros Gebiba et.al (2020), FHC, File No. 218916.
- FPP v. Zenebe Dawucha et.al (2020), FHC, File No. 246094.

4. Reports

- International Bar Association, ‘*Balancing Rights: The International Criminal Court at a Procedural Crossroads*’ (IBA/ICC Monitoring and Outreach Programme 2008). <https://www.ibanet.org/document?id=May-2008-Balancing-Rights> Accessed 22 November 2023.
- Irish E., Magadhla W., Ghobosheane K. & Newham N., ‘Testifying Without Fear: a Report on witness Management and the National Witness Protection Programme in South Africa’ (Cape Town: CSVr 2000). <http://www.csvr.org.za/docs/policing/testiyingwithoutfear.pdf> Accessed 20 December 2023.
- Organized and Trans-boundary Crimes Directorate General of MoJ, ‘An Impact Assessment Report on Witnesses and Accused Appearance, Particularly Related to Cases of Terrorism and Ethnic Conflicts’, July, 2022.
- Steiner D. E., Phillips A., Moore P., Jackson A. B., Augustine H. C., ‘Challenges in Implementing Physical Security Measures in K–12 Schools’ (Homeland Security Operational Analysis Center (HSOAC) 2021). https://www.rand.org/content/dam/rand/pubs/research_reports/RRA1000/RRA1077-2/RAND_RRA1077-2.pdf Accessed 7 April 2024.
- Witness and whistleblowers Protection Directorate (WPD), ‘Impact Assessment Report on Dangers against Witnesses’, (August 2022).

- Witness and whistleblowers Protection Directorate (WPD), ‘The Five Years Plan Performance Reports (June 2011- June 2015 E.C)’.

5. Books

- Bakowski P., *Witness Protection Programmes: EU Experiences in the International Context* (Library of the European Parliament 2013).
https://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130408/LDM_BRI%282013%29130408_REV2_EN.pdf
- Earley P. and Shur G., *WITSEC: Inside the federal witness protection programme* (Bantam Books 2002) <<https://search.worldcat.org/title/witsec-inside-the-federal-witness-protection-program/oclc/47803688>> Accessed 15 Dec 2023.
- Introduction to Physical Security Physical Security and Roles (Center for Development of Security Excellence 2015).
<<https://www.usna.edu/HRO/files/documents/Public%20%20Docs/Training/Physical%20Security%20Training.pdf>> Accessed 7 April 2024.
- Kariri N.J. and Salifu U., ‘Witness Protection: Facilitating Justice for Complex Crimes’ (Institute for Security Studies 2016).
<<https://issafrica.s3.amazonaws.com/site/uploads/policybrief88.pdf>>
- Mahony C., *The Justice Sector Afterthought: Witness Protection in Africa* (Institute for Security Studies 2010). <<https://www.legal-tools.org/doc/f476e7/pdf/>> Accessed 30 Nov 2023.
- United Nations Office on Drugs and Crime, *Good Practice for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (2008).
<<https://www.ohchr.org/en/publications/policy-and-methodological-publications/manual-human-rights-monitoring-revised-edition>>
- U.S Department of Justice, *United States Attorneys manual 9-21.020* (1997). <<https://www.justice.gov/archives/usam/united-states-attorneys-manual>> Accessed 20 Dec 2023.
- Vincent F., *Review of the Witness Protection Act 1991* (Government of Victoria 2016).
<https://files.justice.vic.gov.au/2021-06/review_of_witness_protection_act_1991.pdf> Accessed 8 December 2023.

6. Journal Articles

- Bakibinga B.D., ‘Witness Protection in the Criminal Justice System of the Bahamas’ [2020] *Revista Acadêmica Escola Superior do Ministério Público do Ceará* 167.

<https://www.mpce.mp.br/wp-content/uploads/2020/08/ARTIGO-167-194.pdf>> Accessed 20 Nov. 2023.

- Dulume W., ‘Ethiopian Witness Protection System: Comparative Analysis with UNHCR and Good Practices of Witness Protection Report’ (2017) 6 *Oromia Law Journal* 124. <https://www.ajol.info/index.php/olj/article/view/158563>> Accessed 22 Nov 2023.
- Fyfe R. N. & Heather McKay, ‘Police Protection of Intimidated Witnesses: A Study of the Strathclyde Police Witness Protection Program’ (2000) 10 *Policing and Society an International Journal* 276. <https://doi.org/10.1080/10439463.2000.9964844>>.
- Lent van Y., ‘Legal Regulation of Witness Protection in the European Union’ (2018) 21 *Mykalo Romerio Universtetas*.< <https://ojs.mruni.eu/ojs/vsvt/article/view/5494/4721> > Accessed 15 Dec 2023.
- Levin M.J., ‘Organized crime and insulted violence: Federal liability for illegal Conduct in the Witness Protection Program’ (1985) 76 *Journal of Criminal Law & Criminology* 208. <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6475&context=jcl> > Accessed 20 November 2023.
- Melaku T., ‘The Right to Cross-examination and Witness Protection in Ethiopia: Comparative Overview’ (2018) 12 *Mizan Law Review* 303. <https://doi.org/10.4314/mlr.v12i2.3>>
- Monterosso S., ‘Shortcomings in the Operation and Coordination of Witness Protection in Australia: Where to from Here?’ [2022] *Criminal Law Forum* 256. <http://dx.doi.org/10.1007/s10609-022-09438-4>>
- Nikuze D., ‘Witness Protection In Rwandan Judicial System International’ (2013) 2 *Journal of Engineering Research & Technology (IJERT)* 2738, p.2738-2740. < [10.17577/IJERTV2IS4828](https://doi.org/10.17577/IJERTV2IS4828) > Accessed 30 May 2024.

7. Research, Thesis and Dissertations

- Dandurand Y. & Farr K., ‘A Review of Selected Witness Protection Programmes (University of the Fraser Valley 2010). https://publications.gc.ca/collections/collection_2011/sp-ps/PS4-96-2010-eng.pdf> Accessed 20 Nov 2023.

- G/Tsadik A., Worku G., Getachew A., Tizazu N., ‘A study Document on the Structure of Witness Protection Program’, Sep 2017, p 2-4 (unpublished). “የ ወንጀል ምስክሮች እና ጠቋሚዎች ጥበቃ ፕሮግራም አደረጃጀት የ ጥናት ሰነድ” ዲፕሎማ 2009 ዓ.ም.
- Kiprono W., ‘Challenges Facing Implementation of Witness Protection Program in Kenya’ (Doctoral dissertation, Egerton University 2016), p.5.
<<http://irlibrary.egerton.ac.ke/jspui/handle/123456789/2044> > Accessed 3 May 2024.
- Kramer K., ‘Witness Protection as a Key Tool in Addressing Serious and Organized Crimes’ (2016). <https://www.unafei.or.jp/publications/pdf/GG4/Fourth_GGSeminar_P3-19.pdf> Accessed 30 November 2023.
- Mphaphuli N. L., ‘Experiences and Challenges of Witnesses in the Witness Protection Programme in South Africa: Guidelines for Coordinated Service Delivery Developed from a Social Work Perspective’ (Doctoral dissertation, University of South Africa (2020). <https://uir.unisa.ac.za/bitstream/handle/10500/27521/thesis_mphaphuli_ln.pdf?sequence=1&isAllowed=y> Accessed on 21 Nov 2023.
- Tilahun M., ‘*The Two Competing Interests: Equality of Arms vis-à-vis Anonymity of Witness: The Case of Ethiopia*’ (2020).
https://www.abysinialaw.com/online_resources/researches/criminal-law>

8. Websites

- <<https://www.linkedin.com/pulse/what-physical-security-meaning-measures-best-practices-axxonsoft-beegf>> Accessed 7 April 2024.
- U.S. Marshals Service. < https://www.usmarshals.gov/who-we-are_> Accessed on 24 Nov 2023.

ANNEX -INTERVIEW GUIDE

I) Introduction Letter and Identification Questions

Greetings, responder I am a master's student at Addis Ababa University studying Public International Law for my Master's degree (LL.M.). I'm working on a research project titled **“Physical Protection as a Witness Protection Measure in Ethiopia: Assessing Its Procedural and Enforcement Challenges”** as a part of partial fulfillment for the degree.

Because of this, I would be grateful if you could give me a few minutes of your time to ask you some questions about Ethiopia's witness protection) system. The details gleaned from this interview will be kept confidential, and unless you specifically agree, your name will never be mentioned in the study. Furthermore, the data will only be utilized for this research and for no other reason. Your help in making the study achievable will be much valued.

I'm grateful in advance.

Regards,

Ermas Tadesse

Yours devotedly,

LL.M Student

This interview's purpose is to evaluate Ethiopia's witness protection system's gaps and, should the results show gaps, identify the underlying causes (challenges). I'd like to start by asking you the following identification questions:

a) For Informants of Institutions

1. Name_____
2. Gender_____
3. Location _____
4. Institution _____
5. Position held _____
6. Experience in the Institution_____

b) For Witnesses

- 1.Name_____
- 2.Gender_____
- 3.Age_____
- 4.Location _____
- 5.Educational background _____

II) Main Questions

A) For Key Informants of the WPD in the MoJ

a) Assessments and Procedure- Related

1. How is the presence of threat that calls for witness protection assessed? Is there a threat assessment (periodic) before, during, and after provision of protection, including physical protection? If not, why not?
2. The proclamation provides a mandatory criterion that ‘the offence not to be discovered or proven by any other method than the witness's testimony’ as a precondition to provide protection. Is the fulfillment of this criterion strictly assessed before deciding to provide physical protection? If not, why not?
 - If not assessed, does the failures to assess the existence of the precondition impact on the effectiveness of physical protection?
3. Does the WPD abide by the criteria provided in the proclamation, or does it have any other standard criteria for selecting a decision of physical protection?

4. If yes, are the criteria provided by the law or standard criteria set by the WPD (if any) followed strictly and consistently?
5. The proclamation mandates the conclusion of an agreement with a protected witness while there is a decision to provide physical protection. Is there a practice of concluding an agreement in such situations? If not, why not?
 - Does absence of agreement impact on the effectiveness of witness protection?

b) Enforcement of Physical protection and Effects of Failure

6. How often do witnesses get the requested physical protection?
7. To what extent have the physical protection measures been enforced? If not, why?
8. Which kind of physical protection is practically provided?
9. Tell me about the follow-up and evaluation procedure for the enforcement of decisions for physical protection.
10. How serious is the danger or risk to different interests or rights of witnesses in criminal proceedings?
11. Do witnesses always testify once physical protection is provided? Are there instances where they decline to testify despite grant of physical protection?
12. How often witnesses decline to testify or how often they face threat and intimidation because of lack of effective witness protection in general physical protection in particular?

c) Enforcement Challenges- Related

13. Tell me if there have been challenges for the MoJ to enforce physical protection.
 - Which institution is required by law to execute the decision of MoJ/WPD to provide physical protection?
 - What does the practice look like in this regard?
 - If there is inconsistency between the law and the practice in this matter, what can justify this inconsistency?
14. Do you think that organizational structure, finance, staffing, and cooperation are challenges in enforcing physical protection? How?
15. What are your suggestions on how the WPD/MoJ can improve the system in response to the challenges of physical protection?

B) For Key Informants from other MoJ Directorates, EFP and AAPC

a) Assessment- Related

1. The proclamation provides a mandatory criterion that ‘the offence not to be discovered or proven by any other method than the witness's testimony’ as a precondition to provide protection. Is the fulfillment of this criterion strictly assessed before providing physical protection? If not, why not?
 - If not assessed, does the failures to assess the existence of the precondition impact on the effectiveness of physical protection?

b) Enforcement of Physical Protection and Effects of Failure

2. How often do witnesses get the requested physical protection?
3. To what extent have the physical protection measures been enforced? If not, why?
4. Which kind of physical protection is practically provided?
5. Tell me about the follow-up and evaluation procedure for the enforcement of decisions for physical protection.
6. How serious is the danger or risk to different interests or rights of witnesses in criminal proceedings?
7. Do witnesses always testify once physical protection is provided? Are there instances where they decline to testify despite grant of physical protection?
8. How often witnesses decline to testify or how often they face threat and intimidation because of lack of effective witness protection in general physical protection in particular?

c. Enforcement Challenges- Related

9. Tell me if there have been challenges for the MoJ to enforce physical protection.
10. Do you think that organizational structure, finance, staffing, and cooperation are challenges in enforcing physical protection? How?
11. What are your suggestions on how the WPD/MoJ can improve the system in response to the challenges of physical protection?

C) For Witness Respondents

a) For those whose applications are Rejected

1. What kind of intimidation or threat forced you to apply for protection? How serious is the danger or risk to you?
2. Tell me about why your application was rejected. Is proper consideration given to your level of threat?

3. How does the threat continue after the rejection of the application?
4. What measures do you take after rejection of your application?
5. What are your suggestions on how the WPD/MOJ can improve its assessment of applications for physical protection?

b) For those whose applications are accepted and provided a decision of physical protection

1. What kind of intimidation or threat forced you to apply for protection? How serious is the danger or risk to you?
2. Do you practically have protection after a decision about physical protection?
3. How did your life change when you became protected?
4. What challenges do you experience after receiving physical protection?
5. How do you cope with such challenges?
6. How can the WPD or police assist you in facing experiences and challenges?
7. Tell me about any follow-up by WPD or police after the decision on protection.
8. What are your suggestions on how the WPD/MOJ can solve your challenges that continue after receiving physical protection?