

DEBRE MARKOS UNIVERSITY SCHOOL OF LAW

LEGALFRAME WORK OF WITNESS PROTECTION UDER THE ETHIOPIAN LEGAL SYSTEM.

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JANUARY, 2010 E.C

DEBREMARKOS, ETHIOPIA

Title: **LEGALFRAME OF WITNESS PROTECTION UNDER THE ETHIOPIANLEGAL SYSTEM**

A Thesis Submitted in partial fulfillment of the Degree of Laws (LLB) to the School of Law, Debre Markos University.

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January,2010 EC

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Declaration

I, the undersigned, declare that the thesis comprises my own work. In with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation /fabrication of any idea/data/fact/source will consistent sufficient grouped for disciplinary action by the university and can also evoke criminal sanction from the state and list action from the sources which have not been properly cited or acknowledged**.**

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January 2010E.C

ACKNOWLEDGEMENT

Words are not enough to express my heart felt gratitude to my almighty God and his mother St. Virgin merry without whom I am nothing. Next thanks go to my advisor Mahilet Abraham she spent her time advising my research paper. Special thanks also deserve to my beloved family who are always in my side and without their all rounded support I wouldn't have been as I'm now. Lastly I went to say thanks our best frinds, Genzebu Alemu,Kidus Admasu,Biruk Hailu,Kaleb Ache,Fikru Feleke and others.

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PREFACE

The ability of the criminal justice system to prosecute crimes of any kind largely depends on obtaining cooperation of victims and witnesses and witness protection in order to obtain important information and evidence about the commission of such criminal matters. This paper is mainly concerned with exploring what protection measures are available in Ethiopia, the eligibilities for someone to acquire the status of a protected witness. Last but least the paper also touches on the challenges the Ethiopian witness protection is facing.

ACRONYMS

1) ACJHR----- the African court of justice and human rights.
2) APA---------Africa prosecutors association.
3) ECCC-------the extraordinary chambers in the court of Cambodia.
4) ECOSOC-------the economic and social council.
5) ICAC----------the independent commission against corruption.
6) ICC----------the international criminal court.
7) ICTR--------the international criminal for Rwanda.
8) ICTY-------the international criminal tribunal for the former Yugoslavia.
9) SCSL-------the special court of Sierale one.
10) UN--------the United Nations.
11) UNCAC------ the United Nations convention against corruption.
12) UNCTOC--------the United Nations convention against transitional organized crime.
13) UN GA----------the United Nations general assembly.
14) UNODC---------the United Nations office on drugs and crime.

WPA----------the witness protection act.

CHAPTER ONE

Introduction

1.1. Back ground of the stud

Witness protection is protection of a threatened witness involved in the justice system, including defendants and other clients, before, during, and after a trial, usually by police. While a witness may only require protection until the conclusion of a trial, some witnesses are provided with a new identity and may live out the rest of their lives under government protection. Witness protection first come in to prominence in the United States of America, in the 1970's as a legally sanctioned procedure to be used in conjunction with a program for dismantling a mafia style criminal organizations. Until that time, the unwritten "code of silence" among the members of the mafia-known as Omerrta-held unchallenged sway, threatening death to anyone who broke ranks and cooperated with the police[1]. The notion of witness protection as understood today arose from the notorious Valachi case of 1962 In the United States .Joe Valachi, himself a man with criminal record, had agreed to give evidence by breaking Omerta,the code of silence, about the inner workings of the mafia. His cooperation was driven by the fear that he would be murdered by Vito Genovese, a powerful mafia family boss. When Valachi before the committee, he was guarded by 200 US marshals. He was the first person in US to be offered protection for testimony prior to a formal witness protection program .Valachi entered in to protective custody and remained in prison until the end of his natural life. The prosecution was an important one with extensive implication for the general effectiveness of law enforcement. Generally Valachi was highly likely to be murdered by his former associates before he could appear in court. From that case there developed the US witness protection program of 1970,which by 2005,had taken in to care more than 7500 witnesses thought to be at risk along with more than 9600 family members[2]. The **United States Federal Witness Protection Program**, also known as the **Witness Security Program** or **WITSEC**[3] is a witness protection program administered by the United States Department of Justice and operated by the United States Marshals Service that is designed to protect threatened witnesses before, during, and

[1] Antonio Maria, supra note 2

[2] Ibid.

[3] http://www.usmarshals.gov/witsec/index.html

after a trial. The WITSEC program was formally established under Title V of the Organized Crime Control Act of 1970, which in turn sets out the manner in which the United States Attorney General may provide for the relocation and protection of a witness or potential witness of the federal or state government in an official proceeding concerning organized crime or other serious offenses. See 18 U.S.C.A 3521, *et. seq.* The federal government also gives grants to the states to enable them to provide similar services. WITSEC was originally created as the Federal Witness Protection Program in the mid-1960s by Gerald Shur, when he was Attorney in Charge of the Intelligence and Special Services Unit of the Organized Crime and Racketeering Section of the United States Department of Justice[4].Most witnesses are protected by the United States Marshals Service, while protection of incarcerated witnesses is the duty of the Federal Bureau of Prisons. Witness protection may be as simple as providing escort police to the court room, offering temporary residence in a safe house or using modern communication technology such as video conferencing for testimony. Even though, witness is critical for successful prosecution but the reach and strength of the threatening criminal group is so powerful that extraordinary measures are required to ensure the witness safety. In such cases resettlement of the witness under new identity, undisclosed place of residence in the country or even abroad may be the only viable alternative[5].The primary objective of witness protection was to protect the physical security of witness for the purpose of securing their testimony in a criminal justice process .However, as protective practice has developed; improving witness related conduct throughout the justice system has become important because of the need to achieve witness cooperation at each phase of the justice process. Psychological, health and socio economic consideration have taken on a more prominent role in the engagement and protection of witness prior to, during and after testimony[6].Providing protection for witnesses of criminal offences plays a significant role in order to ensure the safety and security of the public by having criminal offenders brought to justice and sustain the right penalty and uncovering crimes that may cause serious threat to the public as a whole[7].Witness constitutes a person who has given or agreed to give information or has acted or agrees to act as a witness in the investigation or trial of an offence.

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[4] Pete Early and Gerald Shur. WITSEC: Inside the Federal Witness Protection Program. Bantam Books, Hardcover February 2002, ISBN 0-553-80145-7, Paperback April 2003, ISBN 0-553-58243-7/

[5] https;//www.unodc.org/.../.the importance of witness protection criminal purposeh

[6] Ibid

[7] https;//chilot.me/tag/ witness-protection

1.2 .Statement of the problem

Prevalence of justice is unthinkable without the due and proper protection of witness. For prevalence of justice to be ensured we need to have a sophisticated system of protection of witness [8].In Ethiopia it is common that hundreds of perpetrators of serious crimes continue to evade accountability. History and experience told us that numerous criminals were left free due to lack of witness. This can further be demonstrated by government's failure to adequately address witness protection issues. The government is required to come up with measures of witness protection which includes the enactment of laws[9].The intended purpose of ensuring the safety and security of the public will not be achieved in case if the government fail to come up with protection policies and programs. Government is expected to exhaust all protection measures that are being utilized by another developed country with relatively advanced witness protection program.

Lack of budget, protection programs, protective authority and legislative measures are among the bottle necks that hinder the achievement of the intended purpose of securing the safety of witness and ultimately the public at large.

1.3. Research question

The issues I want to address in this paper are:

What are the challenges facing in relation to witness protection in Ethiopian legal system?

What kind of support and assistance is given for witnesses (the measures taken)?

Is there any witness protection authority or program in Ethiopia?

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[8] www.ilo/dyn//hatlex/natlex4/detail?p-long-en and p-isn-89590 and p

[9] Ibid

1.4. Scope of the study (research)

The scope of this paper is limited to witnesses of criminal offences .This paper is dealing with what protection measures are available under the Ethiopian legal system for the one who has given or agrees to give information or has acted or agrees to act as a witness in the investigation process or trial of an offence.

1.5. Objective of the study

1.5.1. General objective

The general objective of this paper (research) is to browse the available witness protection measures under Ethiopian legal system.

1.5.2. Specific objective

- ✓ To show the challenges facing in relation to witness protection under Ethiopian legal system.
- ✓ To study as to what kind of measures are being taken to assist and support witnesses.
- ✓ To show if there are any witness protection authorities and programs in Ethiopia.

1.6. Significance of the study

The paper has the following contributions to make:

- ✓ It would identify the witness protection problems in Ethiopian legal system;
- ✓ This paper helps to set out the witness protection programs if any;
- ✓ It may serve as an input for further research;
- ✓ This paper creates awareness for readers as to how witness protection is important for the dispensation of justice.

1.7. Organization of the study

The first chapter of the study gives a general back ground describes the research problem; provides justification for why the study has to be carried

out and why it is significant; and explains the method used as well as limitation of the study.

The second chapter reviews different literatures on witness protection. It also looks in to how witness protection plays a pivotal role in the dispensation of justice.

The third chapter deals with brief history of witness protection in Ethiopia. To this end it describes witness protection and limitations under the Ethiopian legal system.

The fourth chapter forwards concluding remarks and recommendations.

1.8. Methodology

The study is about witness protection in Ethiopian legal system. It is a doctrinal research. Beginning from the Federal democratic republic of Ethiopian constitution going down ward to the witness protection proclamation, criminal procedure code will be analyzed as relevant literatures. Journals, articles will also be highlighted if any.

1.9. Limitation of the study

The fact that there is no enough time and budget allotted makes or forces the writer not to go in to deep analysis of witness protection under Ethiopian legal system

CHAPTER TWO

Conceptual foundation of witness protection

2.1 witness protection an over view

Witness protection plays a pivotal role in the dispensation of justice in general and prosecution of criminals in particular. In most circumstances, if there is no witness the criminal justice system will be at difficulty of prosecuting serious crimes that pose danger to the public at large. Therefore, for the sake of dispensation of justice in general and prosecution of criminals in particular the criminal justice system shall give adequate protection for witnesses. The criminal justice system shall guarantee witnesses against any form of retaliation by those against whom the testimony is given. In general it is the duty of justice system to protect witnesses. The criminal justice system is duty bound to provide protection measures for witnesses of criminal offence so that they can freely give their testimony. Witnesses will cooperate freely with law enforcement investigations without fear of any reprisal if and only if the justice system

serves as a watch dog of their life and property. The ability of witnesses to give testimony in judicial setting to cooperate with law enforcement investigations without fear of intimidation or reprisal is essential to maintain rule of law. The maintenance of rule of law will almost remain a mere wish in the absence of a witness who can freely appear and testify before court. To achieve this purpose of maintenance of rule of law countries are required to come up with laws, policies and programs that are capable of giving adequate protection for witnesses. Witness protection programs serve many purposes. They provide opportunities for victims and witnesses to participate in a criminal process with the expectation that they and their families will not be put in danger. They offer the hope of accountability and threatened witnesses away to seek shelter from the scene of victimization. Witness protection provides a space in which individual traumas may be treated and enables a victim/witness to regain more control over their life it can also lead to a serious disruption of the life style of the witness and any person accompanying them in to the program. It may even have implication on third parties. For these reasons witness protection programs must have a good foundation in legislation or policy[10]. increasingly countries are adopting polices or enacting legislations to protect witness whose cooperation with law enforcement authorities or testimony in court of law would endanger their lives or those of their families[11].Criminal activities that have a profound impact on human security and development, such as corruption, drug trafficking, serious and organized crime, human rights violation and terrorism will not be prevented at least to its minimum level without according adequate protection of witnesses[12]. Consequently the ability criminal justice systems to investigate and prosecute such forms of serious crime are often very limited. One of the

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[10] Koren, Elaine (2014), Research number. 43 witness programs in selected countries: Annotated Bibliography.Ottawa,on:public safety Canada.

[11] Antonio Maria Costa, executive director United Nations office on drugs and crime, good practices for .the protection of witness in criminal proceeding involving organized crime-Vienna-January 2008.

challenges for many is in obtaining the cooperation of witnesses and victims and witness protection in order to obtain important evidence and information about such criminal matters[13].One way of sorting out this problem is by guaranteeing witnesses life and property against reprisal by the accused or his relative by coming up with witness protection programs.

The successful prosecution of crimes largely depends on securing reliable evidence, including the testimony of witnesses. And it is obvious that reliable evidence cannot be secured in case the state failed to guarantee the witnesses not to be subject to reprisal by those who are prosecuted as a result of the witnesses' testimony. When witnesses withdraw from proceeding due to intimidation or actual harm, securing conviction often becomes impossible. For this reason the protection of witnesses remains corner stone to an effective criminal justice system. Experience shows, however that individuals are not willing unless they have confidence that the state will protect their rights and safety as well as those of their immediate family This would be nothing if we do not come up with the comprehensive definition of what witness and witness protection program is. The following section will try to look in to the definition of these terms.

2.1.1. Witness and witness protection program defined

Different literatures define witness differently. To begin with:

Witness is any person who according to law on criminal procedure, has the role of witness, and possesses information for the committing of the crime, the perpetrator, and other relevant circumstances, i.e. data and information relevant for the criminal procedure which are necessary and crucial for proving the criminal act, by which revealing the life, health, freedom,

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[12] Karen Kramer, witness protection as key tool in addressing serious and organized crime.

[13] Wilson Kiprono,Kibet Nigetich,Wokebi Mwangi , Challenges facing to criminal justice system in relation to witness protection in Kenya-IOSR journal of humanities and social science Vol20.

physical integrity or property of higher amount of the witnesses are exposed to danger[14].

Witness refers to any persons irrespective of his or her legal status [informant, witness, judicial official undercover agent or other], who is eligible under the legislation or policy a country involved, to be considered for admission to a witness protection program[15].

Witness is someone that gives evidence regarding matters of fact under inquiry or someone who is legally qualified to testify in a cause or to give evidence before a judicial tribunal[16].

Witness protection program on the other hand refers to a formally established covert program subject to strict admission criteria that provides for the relocation or change of identity of witnesses who lives are threatened by a criminal group because of their cooperation with law enforcement authorities[17].

Witness protection program is a federal or state program in which a person who testifies against a criminal is assigned a new identity and relocated to another part of the country as a result of such testimony[18].

Witness protection refers to range of measures which can be applied at any stage of criminal proceedings, to ensure the safety of witnesses to gain their cooperation in obtaining testimony. This includes concealing the identity of witnesses through the use of image and voice distortion, video conferencing and pseudonyms while giving testimony, and anonymous testimony[19]. Other measures relates to the physical protection of witnesses or members of

[14] Law on witness protection, unofficial translation in compliance with official gazette No.38/2005 courtesy of the OSCE mission to Skopje

[15] Ibid.

[16] Webster third new international dictionary, page 2627

[17] Wilson, Supra note 4.

[18] Black’s law dictionary, 8th edition.

[19] Wilson Supra note 4.

their families. This may include their temporary or permanent relocation, changing their identity, and-in extreme circumstances-cosmetic surgery to alter their physical appearance. The covert nature of witness protection is paramount in encouraging witnesses to come forward[20]. Guaranteeing the protection of physical witnesses in such crimes gives courts the opportunity to listen to their testimony and evaluate the evidence .This especially is true in cases involving powerful individuals with links to influential networks and institutions.

2.2. International developments on witness protection

The importance of witness protection is recognized through various legal regimes, policies and declarations. Different international and regional human right instruments has accorded protection for witnesses to enable them cooperate with the law enforcement organs for the maintenance of rule of law. The UN has several instruments that promote cooperation in witness protection area[21]. For example, both the UN Convention against Corruption, and the UN Convention against Transitional Organized Crime [UNTOC], and its protocols calls upon state parties to provide protection and support of witnesses and victims. This includes among other measures, special arrangements for giving evidence and the consideration of relocation agreements[22].The UNTOC also calls upon each state party to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony[23]. The UN Convention against Transitional and Organized Crimes requires state party to take appropriate measures to provide effective protection from retaliation or intimidation for

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20 Ibid.

21 OAS General secretariat study on the cooperation-on the protection of victims and witnesses

22 Arts.24&25 of the UNTOC.

23 Antonio Maria supra notes 2.

witnesses who give testimony in cases involving transitional organized crimes[24].

State party to this conventi0n are required to take appropriate measures to encourage persons who participate or participated in organized criminal groups to cooperate with law enforcement authorities for investigative and evidentiary purpose[25].

The protection of witness is also explicitly addressed in the protocol to the organized crime convention, especially in the protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN convention against Transitional Organized Crimes[26]. And the protocol against smuggling of migrants by Land, sea and Air supplementing the UN Convention against Transitional Organized Crime[27].On the recommendation of the commission on crime prevention and criminal justice, the Economic and Social Council encouraged member state to exchange their experience with and information on action taken to provide effective protection for witnesses in criminal proceedings involving transnational and national organized crime and for their relatives and all other persons close to them[28].

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in 1985, and the UN Economic and Social Council Resolution 2005/20 also include provisions for witness protection .Similarly, International Criminal tribunal and special courts also have special provisions geared towards the protection of witnesses. These include the ICC, the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for

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24 Art.24 of UNTOC, General Assembly resolution 55/25, annex 1.

25 Art.26 of UNTOC.

26 General Assembly resolution 55/25,annex 2 Arts.6&7

27 General Assembly resolution 55/25,annex 3 AArts.5&16

28 Economic and Social Council resolution 2005/16

Rwanda (ICTR), the Special Court of Sieraleone (SCSL), and the extraordinary chambers in the court of Cambodia (ECCC)[29].

The UN office on Drugs and Crime (UNODC) has also published important comprehensive materials to support witness protection. The UNODC recommends minimum requirements for protection of witness including legislations, protection measures to be used; application and admission criteria and procedures, termination criteria, confidentiality of its operations and penalties for disclosure[30].

In Africa, the importance of effective witness protection in prosecution of international crimes has also been asserted through the recently amended statute of African Court of Justice and Human Rights (ACJHR), and the AU Draft Model National law on Universal Jurisdiction over international crimes. The African Prosecutors Association, through its various declarations, also seeks to promote effective witness protection in Africa. At the national level, however, formalized witness protection in Africa is not well developed. In 1998, South Africa becomes the first African country to promulgate a comprehensive witness protection law. Kenya, also took this important step and amended the witness protection act of 2006, and now has amended witness protection act of 2010, there by enacting witness protection legislation that among other things, established a dedicating and independent witness protection agency. Ethiopia, Rwanda, morocco and Mozambique also have witness protection laws[31].

Witness protection is administratively expensive and complex. It needs to include physical pr0tection,provision for daily living requirement of witness and, in many cases their families, ensuring the witness abide by the set of rules to protect their safety guarding against interference by authorities and others, and ensuring that custodians of the operation are trustworthy.

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29 Antonio Maria supra note 2

30 Ibid.

31 Wilson, supra note 4.

Especially these days due to the advancement of technology witnesses are becoming victims of danger[32].

2.3. Witness protection, Brief history

Witness protection first come in to prominence in the United States of America, in the 1970's as a legally sanctioned procedure to be used in conjunction with a program for dismantling a mafia style criminal organizations. Until that time, the unwritten "code of silence" among the members of the mafia-known as Omerrta-held unchallenged sway, threatening death to anyone who broke ranks and cooperated with the police.[33]The notion of witness protection as understood today arose from the notorious Valachi case of 1962 In the United States .Joe Valachi, himself a man with criminal record, had agreed to give evidence by breaking Omerta,the code of silence, about the inner workings of the mafia. His cooperation was driven by the fear that he would be murdered by Vito Genovese, a powerful mafia family boss. When Valachi before the committee, he was guarded by 200 US marshals. He was the first person in US to be offered protection for testimony prior to a formal witness protection program .Valachi entered in to protective custody and remained in prison until the end of his natural life. The prosecution was an important one with extensive implication for the general effectiveness of law enforcement. Generally Valachi was highly likely to be murdered by his former associates before he could appear in court. From that case there developed the US witness protection program of 1970,which by 2005,had taken in to care more than 7500 witnesses thought to be at risk along with more than 9600 family members[34].

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[32] Ibid.

[33] Antonio Maria, supra note 2.

[34] Ibid.

2.4. Witness protection in specific countries

Today witness protection is viewed as a crucial tool in combating organized crime, and a large number of countries around the globe has established such specialized program or have legislate their creation[35].

Examples from different jurisdictions that have decided to establish witness protection programs and their main elements are provided here in below[36].

2.4.1. Witness protection in South Africa

Prior to the adoption of the 1996 National Crime Prevention Strategy, witness protection in South Africa was governed by section 185A of the Criminal Procedure Act of 1977. The relevant provisions were repressive in nature and were used during the apartheid regime as a means to coerce witnesses to give evidence. The 1996 strategy recognized witness protection as a key tool in securing evidence from vulnerable and intimidated witnesses in judicial proceedings and acknowledged that witness protection was, at the time, a weak link in the criminal justice system. In 2000, Witness Protection Act 112 of 1998 was promulgated, replacing the old system. The new law:

(A) Established the national Office for Witness Protection under the authority of the Minister of Justice and Constitutional Development. The Office is headed by a national director at the country level and has branch offices in South Africa's nine provinces. Although legislative amendments have yet to be made, in 2001 the Office
Was provisionally reorganized as part of the National Prosecuting Authority and has since been known as the Witness Protection Unit;

(b) Regulates the functions and duties of the Director, including the power to decide on admission to the programmed. The Director's decision is based on the recommendations of the branch office head and the relevant officials from law enforcement agencies and the National Prosecuting Authority. The

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35 Ibid.

36 Antonio Maria, supra note 2.

Director's decision to refuse an application or to discharge a person from protection may be reviewed by the Minister of Justice and Constitutional Development;

(c) Defines the types of crimes for which witnesses may request protection, the procedure to be followed and the persons eligible to apply. The list of offences is not exclusive as the Director has the discretion to approve protection for a witness in respect of any other proceedings if satisfied that the safety of the witness warrants it;

(d) Provides that civil proceedings pending against a protected witness may be suspended by a judge in chambers, under an ex parte application, to prevent disclosure of the identity or whereabouts of the witness or to achieve the objectives of the Act. The Office for Witness Protection is the address at which legal proceedings may be instituted with regard to such a witness;

(e) Defines offences and severe penalties for any disclosure or publication of information regarding persons admitted to the program or officials of the Office for Witness Protection so as to ensure the safety of protected witnesses and program officials. The decision whether any information is to be disclosed lies with the Director, after consideration of representations and without prejudice to any other applicable law;

(f) Provides that the Minister of Justice and Constitutional Development may enter into agreements with other countries or international organizations regulating the conditions and criteria for the relocation of foreign witnesses to South Africa and their admission to South Africa's witness protection program. Any such relocation requires ministerial approval[37].

2.4.2. Witness protection program in Germany

Witness protection programs have been in place in Germany since the mid-1980s.They were first used in Hamburg in connection with crimes related to motorcycle gangs. In the following years, they were systematically

[37] Wilson , supera note p15.

implemented by other German states and the Federal Criminal Police Office. In 1998, the Witness Protection Act was promulgated. The Act included provisions that

Regulated criminal proceedings, with a focus on:

(a) Use of video technology for interviewing at-risk witnesses (especially children testifying as victims);

(b) Improved possibilities for ensuring the confidentiality of personal data of witnesses at all stages of criminal proceedings;

(c) Provision of legal assistance for victims and witnesses. Gravity of the offence, the extent of the risk, the rights of the accused and the impact of the measures;

(d) Confidentiality of information relating to the personal data of protected witnesses within witness protection units and other government and non-state agencies. The files on protected witnesses are maintained by the protection units and are not included in the investigation files, but they are made available to the prosecution on request; Conditions for the issuance of a cover identity and supporting personal documentation and the allowances to be provided for the duration of protection. Germany’s witness protection program consists of witness protection offices established at the federal level and in each state. The Federal Criminal Police Office is responsible for the protection of witnesses in federal cases and for coordinating functions at the

National and international levels, including:

(a) Preparation of an annual report on the witness protection program;

(b) Organization and conduct of training and continuing education;

(c) Organization of regular conferences involving the directors of federal and state witness

Protection offices;

(d) Cooperation between states, federal agencies and offices located abroad;

(e) International cooperation.

In addition, the Federal State Project Group on Quality Assurance in the Field of Witness
Protection – comprised of the directors of seven state witness protection offices and chaired by the Federal Criminal Police Office – ensures effective cooperation through the development of a uniform nationwide procedure for admission to the program, creation of a standardized catalogue of requirements for witness protection caseworkers and common concepts for training and continuing education[38].

2.4.3. Witness protection in Italy

As far back as 1930, the Italian Criminal Code provided for partial or total immunity from punishment if the offender made reparations for criminal damage or cooperated with authorities in cases of political conspiracy or gang-related activities.

In the 1970s, the violent rise of the Red Brigades, a Marxist-Leninist terrorist group, propelled the enactment of a series of laws to encourage dissociation from terrorist groups and collaboration with the authorities. Although those measures are considered to have been instrumental in the dismantling of the Red Brigades, none of those laws provided collaborators with formal witness protection per se.
It was not until 1984, when the Sicilian Mafioso Tommaso Buscetta turned against the Mafia and started his career as a justice collaborator, that witness protection became formalized. Buscetta was the star witness in the so-called Maxi-Trial, which led to almost 350 Mafia members being sent to prison. In exchange for his help, he was relocated under a new identity. Those events spurred more Mafia members to cooperate, with the result that by the end of the 1990s the Italian authorities had benefited from the services of more than 1,000 justice collaborators.

[38] Antonio Maria, supra note 2. p 12

At the same time, the Italian process was increasingly being criticized for the questionable credibility of witnesses and their motivations, and there were allegations of disorganization and mismanagement of the witness protection program. In response, a comprehensive revision to Decree-Law No. 82 of 15 March 1991 was undertaken and entered into force in January 2001. One of the main components of the revised legislation was to create within the witness protection program a separate structure for justice collaborators[39].

The main provisions of Decree-Law No. 82, as amended in 2001, are as follows:

(a) Persons eligible for protection:
(I) Witnesses and informants in drug-relate Mafia or murder cases;
(ii) Witnesses to any offence carrying a sentence of between 5 and 20 years;
(iii) Individuals close to collaborators who are in danger;
(b) Types of protection:
(I) A “temporary plan” involving relocation and subsistence for 180 days;
(ii) “Special measures” involving protection and social reintegration plans for
Relocated individuals;
(iii) A “special protection program” which provides relocation, provisional Identity documentation, financial assistance and (as a last resort) new legal Identities;
(c) Justice collaborators who receive prison sentences must serve at least a quarter of
Their sentence or, if they have a life sentence, 10 years in prison before they are
Admitted into the protection program;
(d) Decisions on admission are taken by a central commission comprised of:
(I) the Under-Secretary of State at the Ministry of the Interior;
(ii) Two judges or prosecutors;

[39] Ibid.p14

(iii) Five experts in the field of organized crime;
(e) Changes in identity must be authorized by the Central Protection Service, which is responsible for the implementation and enforcement of protection measures.

2.4.4. Witness protection in Australia

In 1983, a royal commission highlighted the need in Australia for better use to be made of informers in the fight against organized crime and, accordingly, for lower-level players to be given an incentive to inform on organizers. At that time, arrangements for witness protection were a matter for individual police forces and approaches differed, with some placing emphasis on 24-hour protection and others preferring relocation of witnesses under new identities. In 1988, a joint parliamentary committee conducted a comprehensive inquiry into the issue of witness protection and its report2 led directly to the introduction at the Commonwealth level of the Witness Protection Act 1994 and the enactment of mirror legislation in several states and the Australian Capital Territory. The Act:
(a) Establishes the National Witness Protection Program (NWPP) and sets threshold criteria for a person to be considered a witness eligible for inclusion in NWPP. A witness becomes a “participant” once accepted into the program;
(b) Vests the Australian Federal Police with the authority to govern the placement of witnesses under and their removal from NWPP, including the signing of memorandums of understanding, the creation of new identities and the restoration of former identities;
(c) Mandates the establishment of a register of participants currently or previously under NWPP, which must contain information such as the person’s name and new identity and details of offences of which the participant has been convicted;
(d) Safeguards the integrity of Commonwealth identity documents (tax file numbers, passports) by providing that identity documents for participants in sub national witness protection programmers may not be issued unless

complementary legislation and ministerial arrangements are in place in the state or territory relating to the issue of identity documents;
(e) Provides mechanisms to ensure that participants do not use their new identity to evade civil or criminal liability and stipulates that witnesses may not be included in NWPP as a means of encouraging or rewarding them for giving evidence or making a statement;
(f) Creates offences relating to the unlawful divulging of information about participants and creates offences for participants who disclose information related to NWPP.
In 1997, the Act was amended to allow NWPP participants to make disclosures for the purpose of filing a complaint or providing information to the Commonwealth Ombudsman. In 2002, the Act was further amended to permit the inclusion of persons in NWPP at the request of the International Criminal Court. The process for considering a person nominated by the Court for admission to NWPP is similar to the process for the inclusion of foreign nationals or residents in NWPP[40].

- As of this writing, the following states and territories of Australia had enacted regional witness protection schemes complementary to NWPP:
- Australian Capital Territory: Witness Protection Act 1996
- New South Wales: Witness Protection Act 1995
- Northern Territory: Witness Protection (Northern Territory) Act 2002
- Queensland: Witness Protection Act 2000
- South Australia: Witness Protection Act 1996
- Tasmania: Witness Protection Act 2000
- Victoria: Witness Protection Act 1999
- Western Australia: Witness Protection (Western Australia) Act 1996

2.4.5.. China: Hong Kong Special Administrative Region

In response to a call from the police for reform in 1994, the Hong Kong Police Force set up an ad hoc witness protection program. A similar

[40] Ibid. page 9.

program was set up in 1998 under the Independent Commission against Corruption (ICAC). In 2000, the Witness Protection Ordinance was enacted to provide the basis for protection and other assistance to witnesses and persons associated with witnesses. This single piece of legislation provides uniform criteria for the operation of the witness protection program established by the Hong Kong Police Force and ICAC. The Ordinance[41]:

a) Establishes a witness protection program to provide protection and other assistance to persons whose personal safety or well-being may be at risk as a result of their being witnesses. The program is implemented, at the Police Force, by the Witness Protection Unit and, at ICAC, by the Witness Protection and Firearms Section. A third unit is currently being established by the Customs and Excise Department;
b) Stipulates that the person authorized to make decisions on the management of the program and the inclusion or removal of witnesses is to be designated in writing by the Police Commissioner and the ICAC Commissioner. As of this writing, that authority lay with the Director of Crime and Security at the Police Force and with the Director of Investigation (Government Sector) at ICAC;
c) Defines the criteria for admission to the program and the grounds for early termination, outlining the obligations of witnesses
d) Authorizes the officer with approval authority to take necessary and reasonable action to protect the safety and welfare of witnesses who have been assessed or are being assessed for admission to the program, including changing their identity details;
e) Establishes an appeals procedure against decisions that disallow inclusion of a witness in the program, terminate protection or determine that a change of identity would not be among the applicable measures. The appeal is reviewed by a special board having the power to confirm or reverse the original decision. Nothing in the legislation prevents a witness from challenging further a

[41] Antonio Maria, supra note 2.Page 10.

decision of the original authority or the review board by means of judicial review;

f) Penalizes the disclosure of information about the identity and location of a witness who is or has been a participant in the program or information that may compromise the security of a witness.

2.4.6. Witness protection in Colombia

Colombia's witness protection program has its origins in the Constitution of 1991, which listed among the main functions of the Office of the Attorney General the obligation to provide protection for witnesses, victims and other parties to criminal proceedings. Law No. 418 of 1997 established three distinct witness protection programs accessible upon application to the Office of the Attorney General. The first provides witnesses with information and recommendations for their own safety; the second provides limited monitoring of witnesses situations; and the third involves a change of identity and covers victims, witnesses, parties to proceedings and officials of the Office of the Attorney General. The third program is managed by a special directorate headquartered in Bogota and with regional offices in Barranquilla, Cali, Cucuta and Medellin. There are two divisions: one for operations and one for administrative matters. A special team of investigators is responsible for evaluating criminal investigations, studying witness participation in proceedings and ultimately assessing the level of risk and threat that arises as a direct consequence of such participation. In addition, there is an assistance group (made up of physicians and dentists), a support network with administrative responsibility for persons already covered by the program, and a security group responsible for implementing all the protection measures ordered by the Directorate following the threat assessment.

The third program is open only to witnesses in cases involving kidnapping, terrorism and drug trafficking and provides for the permanent relocation inside Colombia and change of identity for witnesses at risk. Witnesses receive financial assistance to start a new life, together with psychological

support, medical care, counselling and assistance with resettlement and the issuance of new personal documents.

Under the law, participants may be removed from the protection program for any of the following reasons:

a) Unjustified refusal to submit to judicial procedure;
b) Refusal to accept plans or program for their resettlement;
c) Commission of wrongful acts that seriously affect the protection procedure;
d) Voluntary withdrawal.

CHAPTER THREE

WITNESS PROTECTION UNDER ETHIOPIAN LEGAL SYTEM

3.1. General introduction

So far, in the preceding chapter, I have been discussing witness protection from international perspective. I have been discussing United Nations human right instruments on witness protection particularly UNTOC. Moreover, I have discussed witness protection in different countries. Witness protection as I have discussed on the conceptual foundation part of the paper is a recent phenomenon to which Ethiopia is not an exception with this regard. The concept and importance of witness as opposed to witness protection however is not a recent one. Different grand legal literatures in Ethiopia including Fetha Negest also called the law of kings have incorporated a provision governing witness. However witness protection as a tool prevalence of justice in general and prosecution of criminals in particular is a new development. The 2004 criminal code of Ethiopia under one article has addressed the issue of witness protection crudely[42].

Based on a call made by united nation human right instruments like United Nations Convention against Crime (UNCAC) and United Nations Convention against Transitional Organized Crime (UNCTOC) up on states, to which Ethiopia is a party, to take appropriate measures for the protection of witnesses, experts and victims against retaliation or intimidation as a result of their testimony. These may include measures to insure the physical and psychological protection of witnesses as well as for providing evidentiary rules allowing a witness to testify in a manner that ensures his or her safety[43]. It is based on this international call and the pressing need to give

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[42] Art. 444 of criminal code of the federal democratic republic of Ethiopia (FDRE).

[43] Art. 24 of the United Nation Convention against Crime (UNCAC).

adequate protection for witnesses and whistleblowers that Ethiopia come up with a comprehensive law governing witness safety.
At minimum, legislation should specify the authority responsible for the programs implementation admission, termination criteria and procedures the protection measures that may be used and the rights and obligations of the parties , ensure that the programs operation are confidential; and provide adequate penalties for the disclosure of information about the identity or location of the protected witness. It is all about this that I am supposed to deal with under this chapter.

Under this chapter I am going to explore the legal frame work of witness protection under Ethiopian legal system. Whether witness protection has constitutional foundation or not and what other subsidiary laws says about witness protection is the main concern of this chapter.

3.2. FDRE CONSTITUTION:

The relevant provision of FDRE constitution with regard to witness protection is Art.29 (2).
Art.29 (2)…Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.
Therefore, witnesses like any other individuals have this kind of right of freedom of expression. As you can see from the article this right of freedom of expression includes three freedoms under it. That is freedom to seek information and ideas of all kinds, freedom to receive information and ideas of all kinds and freedom to impart information and ideas of all kinds which has very much importance to our discussion.to impart means to transmit or give whatever information, idea, knowledge….that you have to third party. Therefore witnesses like any other individual has this constitutional right give any information they know about the commission of a certain criminal

offence. Hence, witnesses while testifying about the commission of a certain criminal act they are just exercising their freedom to impart information and ideas of all kinds which is an inbuilt element of the freedom of expression. Therefore it is cogent to argue that the idea of witness protection has a constitutional basis or foundation under the Ethiopian legal system.

Art.13 (1) of the constitution:

All federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions this Chapter. The very incorporation of this article under Chapter three of the constitution imposes a duty upon every organs of the government of both level to enforce and respect this very article. The constitution is making a call upon organs of government at both level to play their utmost duty and responsibility to ensure that the safety of witnesses and whistle blowers who provide information about the commission of a certain crime and ultimately support the maintenance of rule of law. Therefore it is fair to conclude that witness protection has a constitutional foundation in Ethiopia.

3.3. Witness protection under the criminal code of FDRE

Under this section of the paper I am going to see whether the 2004 criminal code of Ethiopia has something to say about witness protection.

Art.444. - Crimes against Whistleblowers or Witnesses.

(1) Who ever assaults, suppresses or harms any person who gives information or evidence to justice authorities or is a witness in criminal cases, is punishable with simple imprisonment or fine.

(2) Where the crime has entailed grave harm to the body or health of the victim or his death, the relevant provision concerning such matters shall apply concurrently.

The law clearly criminalizes individuals who assault, suppress or harm a witness or whistleblower who gives information or evidence to justice authorities about the commission of a certain criminal offence. Witness

protection as a pillar or cornerstone for the maintenance of rule of law in general and prosecution of criminals in particular is dully incorporated under the 2004 criminal code of the federal democratic republic of Ethiopia though crudely. So far, under this chapter we have been looking at about the constitutional foundation of witness protection and its incorporation under the criminal code and I am concerned at exploring whether we have a proclamation specifically devoted to witness protection. Yes, we do.

3.4. Witness protection; under the witness and whistleblowers of criminal offences proclamation no.699/2010 and the anti-terrorism proclamation no.652/2009

Art.2 (1) 'whistleblower or witness' means a person who has given or agrees to give information or has acted or agrees to act as a witness in the investigation or trial of an offence. Before defining as to whom witnesses or whistleblowers are the proclamation has stipulated a general objective for having witness protection legislation in Ethiopia. The general objectives are here in order;

A) having criminal offenders brought to justice and sustain the right penalty so that the safety and the security of the public at large will be ensured. This objective is also re iterated under the preamble of the proclamation on anti-terrorism which strives to maintain the right of the people to live in peace, freedom and security and be protected from the threat of terrorism. To achieve this general objective both proclamations come up with witness protection provisions.

b) Provision of protection for witnesses and whistleblowers of criminal offence plays a significant role for the prevention of crimes by uncovering crimes that may cause serious threat or danger to the public. It is to materialize this end that the House of Peoples and Representatives (HPR) with a witnesses and whistleblowers protection proclamation. Having said this much about the general objective that the witnesses and whistleblowers proclamation in one hand and the anti-terrorism proclamation on the other

hand had in mind, it is now better to look at the scope of protection this proclamations give.

3.4.1. Scope of application

Who are the witnesses eligible for protection under these two proclamations will be dealt with this subsection.

Art.3 of the witnesses and whistleblowers proclamation is all about its scope of application.

1) The protection under this proclamation shall be applicable with respect to testimony or information given or investigation undertaken on a suspect punishable with rigorous imprisonment for ten or more years or with death without having regard to the minimum period of imprisonment:
   a) where the offence may not be revealed or established by another means otherwise than by the testimony of the witness or the information of the whistleblower; and
   b) Where it is believed that a threat of serious danger exists to the life, physical security, freedom or property of the witness, the whistleblower or a family member of the witness or the whistleblower.

2) Notwithstanding the provisions of sub article (1) of this article, the ministry and the commission may also extend the protections provided under sub article (1),

(l), (m), (o), (p) and (t) of article (4) of this proclamation to witnesses and whistleblowers who are not protected persons.

This very article provides three (3) criteria for witnesses to be eligible for protection under this proclamation.

a) Nature of the crime:

The testimony or information given or investigation undertaken on a suspect must be punishable with rigorous imprisonment for ten or more years or death without having regard to the minimum period of imprisonment. As to this article not all commission of crimes reported by a witness entitle him a protection under this proclamation. The provision has

clearly provided as to what kind of crimes, if a witness has given information may be entitled protection. The suspect revealed by the help of the information of the witness or whistleblower must be punishable with rigorous imprisonment for ten or more years. The last phrase of Art.3(1) ….without having due regard to the minimum period of rigorous imprisonment…seems to tell us that the minimum period of imprisonment may be lesser than ten what really matters is whether the person(suspect) can be punished with ten years rigorous imprisonment or more, death. The minimum limit of punishment is insignificant here. Let say for example a certain crime 'x' is punishable with rigorous imprisonment of 8 to 12 years .therefore, a witness who testifies the commission of this crime cannot be exempted from protection under this proclamation under this proclamation for the mere fact that the minimum limit of punishment is lesser than ten years.

b) Nature of the information revealed;

The information revealed by the witness shall be such nature that cannot be established by another means otherwise than by the testimony of the witness or the information of the whistleblower. The information of the whistleblower or testimony of the witness must be very indispensable without which it is very less probable to uncover the allegedly committed crime.

c) Threat of serious danger;

When it is believed that as a result of his testimony of the witness or information of the whistleblower is at serious danger of his life, physical security, freedom or property of the witness, the whistleblower or the family member of the witness or the whistleblower. However this proclamation fails to qualify as to what constitutes serious danger? What extent of believe is required to show that such serious dander do exist? The article precisely stipulated as to who are the beneficiaries of the protection regime. The witness or the whistleblower, his life, physical security, freedom or property

of the witness and their family are beneficiaries of protection under this proclamation.

Art.2 (7) of the same proclamation has defined as to what constitutes family: Family includes the spouse or cohabitant, the children, parents, siblings and the children of the spouse or cohabitant of a person. Therefore this all lists are beneficiaries of protection under this proclamation. As to my understanding the word cohabitant under the said article refers to the party to an irregular union. The protection under this proclamation is not limited to legitimate children but also includes the illegitimate ones. The three listed eligibilities for witness protection under the witnesses and whistleblowers proclamation are cumulative in which all must coexist for a witness or whistleblower to get protection under this proclamation.

As can be easily inferred from Art.2 (2) the witnesses and whistleblowers proclamation for a witness or whistleblower to get protection under this proclamation must be entered into a protection agreement with the ministry of justice.

Art.3(2) of the proclamation notwithstanding the provision s of sub article one the ministry of justice and the federal ethics and anti-corruption commission may extend the scope of protection under Art 4(1)(l)(m)(o)(p)(t) to witnesses and whistle blowers who are not protected persons. For instance, the ministry and the commission may order the relocation cost to be covered when the protection measure entails relocation even if the person is not protected under this proclamation. Therefore, this article has given the ministry and the commission a discretionary power to extend the scope of applicability of the protection measure to non-protected only under the sub articles of article four listed under Art 2(3).

Art 32 of the anti-terrorism proclamation no.652/2009 is about protection of witnesses.

1) Where the court on its own motion or on application made by the public prosecutor or by the witness, is satisfied that the life of such witness is in danger it may take the necessary measure to enable the withholding of the

name and identity of the witness. The measures it takes may, in particular, include:

a) Holding of the proceeding at the place to be decided by the court;
b) Avoiding the mention of the names and addresses of the witnesses in this orders, judgments and in the records of the case;
c) Issuing of any direction for securing that the identities and addresses of the witnesses are not disclosed; and
d) Ordering that all or any of the proceedings pending before the court shall not be published or disseminated in any manner

2)Any person who contravenes any decision or order issued under sub article (1) of this article shall be punishable with rigorous imprisonment from five to ten years and with fine from birr 10000 to birr 30000.

The scope of protection proclamation to be given under this proclamation seems narrower compared with the witnesses and whistleblowers proclamation. Under this proclamation it is only if the life the witness of such witness is at danger that she/he will be entitled to protection. Here no protection is given for the physical security, freedom or property of the witness and even for their families. Are they out of the realm of this proclamation or are we going to cross refer to the witness protection proclamation? For me witness of a terrorist act requires no lesser protection than witnesses we have discussed under the witnesses and whistleblowers proclamation.

For the following basic reasons, I am arguing that a witness to a terrorist act shall at least be provided with equal protection with witnesses under the witnesses and whistleblowers proclamation;

a) Due to the high level of cooperation required to avert terrorist act and which without giving larger protection for the witness who testify is unattainable;

b) The danger that terrorism poses to the public peace and development of the country in particular and the globe in general;

c) The extent of danger to which the life of the witness is to be exposed is high.

The protection accorded under the anti-terrorism proclamation generally seems insufficient which makes people reluctant to cooperate with the justice enforcement agencies to avert terrorist acts.

3.4.2. TYPES OF PROTECTION MEAURES

The witnesses and whistleblowers proclamation has provided a slew of protection measures for witnesses who testify and whistleblowers that provide information and entered in to the protection agreement accordingly. Protection measures are measures that are needed to be implemented by the ministry and commission to ensure the safety of the witness or whistleblower.

The protection measures listed under Art.4 (1) of the witnesses and whistleblowers proclamation can be employed to a person separately or in combination as the case may be.

The following protection measures may be employed for a protected person as the case may be:

a) Physical protection of a person and property;
b) Providing a secure residence including relocation; Art 2(3) has precisely defined as to what constitutes relocation. Relocation means a type of protection measure that involves temporary or permanent resettling of the protected person by the ministry in a place with in the country or overseas, other than his place of residence or if the protected person is undergoing a penalty entailing loss of liberty, the transfer of him to another penitentiary.

c) Concealing identity and ownership: means a type of protection measure that involves temporary creation and use of documents relating to the identity and property of a protected person[44].
d) Change of identity: as to Art 2(4) of the witnesses and whistleblowers proclamation means a type of protection method that involves modifying and adjusting parts or entire personal data of a protected person to a new situation and may include plastic surgery where necessary.
e) Provision of self-defence weapon;
f) Immunity from prosecution for an offence for which he renders information;
g) Prohibiting an accused person from reaching the protected persons residence, work place or school before or after a final judgment is delivered on the crime for which information is given;
h) Not to disclose the identity of the witness until the trial process begins and the witness testifies;
i) Hearing testimony in camera;
j) Hearing testimony behind screen or by disguising identity;
k) Producing evidence by electronic devices or any other method;
l) Unless it is deemed confidential, providing information regarding the progress of investigation on what has been whistle blown and advice to a witness;
m) Providing transport allowance and per diem to a witness summoned to testify ;
n) Covering relocation cost where the protection measure entails relocation;
o) Suspension or revocation of retaliatory administrative measures or taking any other compensatory measure;
p) Provision of medical treatment free of charge at government hospitals in case of injury sustained as a result of retaliatory measure;

[44] Art. 2(6) proclamation No.699/2010 A proclamation to provide for the protection of witnesses and whistleblowers of criminal offences

q) Covering costs of basic needs in case of incapacity to work as a result of retaliatory measure;
r) In case of death as a result of retaliatory measure, covering funeral expenses and provision of pecuniary subsidy to family;
s) Assisting the protected person to secure opportunity;
t) Providing and causing the provision of counselling service to the witness or whistleblower.

Notwithstanding the provisions of sub article (1) of article 4 a protected person may not be issued with professional certificate that he/she does not rightly possess for the sake of protection.

Art.32 of the anti-terrorism proclamation provides an illustrative list of measures that has to be taken to safeguard the life of the witness whose life is at danger. These include;

a) holding of the proceedings at the place to be decided by the court;

b) Avoiding of the mention of the names and addresses of the witness in its orders, judgments and the records of the case;

c) Issuing of any directions for securing that the identities and addresses of the witnesses are not disclosed; and

d) Ordering that all or any of the proceedings are pending before the court shall not be published or disseminated in any manner. Very interestingly sub article (2) of this article provides a punishment for a person who contravenes any decision or order issued under this sub article.

3.4.3. DETERMING THE TYPE OF PROTECTION MEASURES

This part addresses issues that need to be taken in to consideration while determining the type of protection measure to be provided for a protected person. There are specific measures needed to be provided for a specific protected person. The issues needed to be taken in to account are provided here in below. Art.5 of the witnesses and whistleblowers proclamation;(1) nature of the imminent danger to which the protected person is exposed shall be taken seriously in to account while determining the type of protection measure for example relocation of the witness permanently to a foreign country may fall under this category;

(1) Where the protected person has a criminal record, whether or not the intended protection measure entails risk to the public. Whether or not if the protected person is provided with such protection measure concomitant further crime is the issue need to be considered here. For example if we provide the witness, with a previous criminal record, with a defence weapon he may commit further crime which is a threat to the public in such circumstances we shall resort to other protection measures;

(2) The damage that the intended protection measure may cause to the rights and lawful benefits of another shall also be considered. I think this is the extension of the principle of personal nature of crimes which is inculcated under the criminal code of Ethiopia. The crime committed by someone shall not have an effect on the rights and benefits of another third party;

(3) The health and living conditions of the protected shall also be taken in to consideration. For example if the protected person is economically weak or poor protection measures like covering basic needs may be appropriate. In case the witness becomes incapacitated due to retaliatory measure.

(4) Competence of the protected person to adopt himself with the intended protection measure. The provision of self-defence measure shall take in to account this matter. If he is for example very weak person may be due to senility it may not be appropriate to provide him with self-defence weapon;

(5) Cost to be incurred for the protection measure shall also be taken in to account. As much as possible protection measures shall be cost efficient. You do not need to provide him with the most expensive measure while you can protect the witness with another cheaper measure;

(6) The relationship of the protected person with other protected shall also be taken in to consideration;

(7) Obligations and limitations imposed on the protected person according to law, if any; furthermore, the ministry may come up with other similar measures that it deemed is important.

The anti-terrorism proclamation again failed to provide that need to be taken in to account while determining the protection measure for witnesses. But it is obvious that the measures are not arbitrarily to be imposed, they need to have a reference point for their application.

Having this much about the eligibilities for witnesses and whistleblowers to be beneficiary of protection under both proclamations, the type of protection measure and the points needed to be taken in to account while determining such protection under both proclamations it is now better to say a few points on the application for protection agreement.

3.4.4. APPLICATION FOR PROTETION MEASURES

In this paper I have stated that a witness or a whistleblower or their families to attain the status of protected person must enter in to protection agreement with the ministry.

3.4.5. WHO IS ENTITLED TO APPLAY?

According to Art 6(1) of the witnesses and whistleblower's proclamation the person eligible for application is;

1) The witness or whistleblower himself or herself;
2) In case of inability to apply, by investigator, a public prosecutor or any interested person on behalf of such person may apply. In case of the anti-terrorism proclamation Art 32(1) states the court on its own motion, or on application made by the public prosecutor or by the witness….therefore, under this proclamation application may be made ;
    a) By the witness himself;
    b) By the public prosecutor or interested third party or
    c) By the court himself on its own motion. Upon receiving of the application the ministry shall decide within 30 days. It may take urgent protection measures where it believes that grave danger is

likely to occur to the life, physical security or property of the applicant until decision is given on the application.

3.4.6. TERMINATION OF PROTECTION AGREEMENT

It is all about for how long a protection agreement shall last or stay in effect. Art 12 of the witnesses and whistleblowers proclamation governs this issue. A protection agreement shall terminate on the following grounds;

a) Upon the expiry of the validity period fixed in the agreement;

b) Upon the death of the protected person;

c) Where the protected person voluntarily renounces the agreement;

d) in the case of an agreement concluded under sub article(2) of article 8 of this proclamation, where termination of the agreement is demanded , in writing, by the parent or guardian of the protected person;

e) Where a minor or judicially interdicted person refuses, upon succession of his legal incapacity to consent to the continuation of the agreement in accordance with sub article (3) of article 8 of this proclamation;

f) Where the circumstances that necessitated the protection ceases to exist prior to the expiry date of the agreement;

g) Where the conduct of the protected person renders in effective the protection measure of himself or the others; or

h) Where the protected person violates his obligations under sub article (1) of article 11 of the proclamation.

3.5. Challenges facing to Ethiopian witness protection program

People who witness crime, corruption and human right abuses play a crucial role in law enforcement efforts to bring the perpetrators in to justice. Often, however, we see being under mined this important role played by witnesses which is attributable to different reasons. Some of the challenges that the Ethiopian witness protection program is facing can be related to lack of capacity, socio-cultural and economic challenges, level of financial investment by the national government to the witness protection program. As discussed somewhere in this paper witness protection is a recent

phenomenon to which Ethiopia is not an exception. This fact triggers another issue for instance there could be unawareness on the part of the society as there is such protection program in Ethiopia. Witness protection measures, especially some of them, are very expensive that they may need huge capital investment on the part of the government which might be sometimes unaffordable. Lack of extensive witness protection programs which help promote the confidence of witness in the cooperation with law enforcement agencies can also be taken as another challenge. Awareness creation programs should have been prepared by the government. Failure to have a specialized organ which aims at overseeing the enforcement of the witness protection measures incorporated in the witness protection proclamation in addition to the human right commission.

CHAPTER_ FOUR

CONCLUDING REMARKS AND RECOMMENDATION

4.1. CONCLUSSION

Cognizant of the pivotal role that witness plays in the dispensation of justice in general and the prosecution of criminals, who are serious threat to the public at large, in particular Ethiopia has come up with a comprehensive law dealing with protection of witnesses. This proclamation provides a guarantee for the life, property and integrity of witnesses who testify the commission of serious crimes against any form of retaliation that may be forwarded against them. The witnesses and whistleblowers proclamation has provided a range of protection measures to be applied for witnesses who has given their testimony about the commission of certain criminal offences in which their application depends on circumstances.

The close examination of the Ethiopian witness protection law in general and the witness and whistleblowers proclamation in particular however, reveals that protection is accorded for limited witnesses who testify the commission of certain serious crimes. This, nonetheless, does not seem adequate to realize the intended level of cooperation required by witnesses. The objectives listed under the two proclamations discussed above to be fully realized there should not only be an extensive level of protection measures but also to be included numerous types of crimes so long as the

one who testifies life or something is at serious threat. This limited protection does not also seem the spirit of the constitution which imposes duty up on all federal and state legislative, executive and judicial organs at all levels to respect and enforce this right to impart of every one of his or her knowledge, idea, and information of any kind which is found under the chapter three of the constitution.

4.2. RECOMMENDATIONS

From this what I recommend is;

1. The legislator, with regard to law of witness protection, must give protection even for witnesses who testify commission of crimes other than those under the proclamation so long as such testimony exposes that person in to serious threat of his life, property and bodily integrity and that of their families. As to me emphasis shall be given to the seriousness of the danger to which the witness is potentially to be exposed to.
2. To equip well the witness protection authority materially, finance is needed that will help it put in to action the intended protection measures. Allocation of sufficient budget is indispensable for the actualization of the protection measures.
3. Establishing formal organized agency for closely overseeing the implementation of the witness and whistleblowers is needed in the proclamation and the anti-terrorism proclamation and promoting awareness creation issues of such measures is crucial.

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