CHALLENGES FACING IMPLEMENTATION OF WITNESS PROTECTION PROGRAM IN KENYA

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DECLARATION AND RECOMMENDATION

Declaration

This research thesis is my original work and to the best of my knowledge has not been presented to any university for the award of a degree or diploma.

Signature..... Date.....

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REG No.: AD17/0389/13

Recommendation

This thesis has been submitted with our approval as university supervisors

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DEDICATION

I dedicate this study to my family, close friends and to the Lord Almighty for his grace that enabled me to go through the course successfully.

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This study is as a result of hard work in which I have been supported by many people to whom I am sincerely indebted. First and foremost, I would like to thank the Almighty God for the grace that he gave me to undertake and complete this study.

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ABSTRACT

Witnesses in highly sensitive cases are often intimated and physically harmed by people they are witnessing against or their associated. Kenyan government has enacted witness protection laws as results of pressure from International Criminal Court as part of conditions in prosecution of Post-Election Violence (PEV). This study sought to identify and document challenges facing implementation of witness protection program in Kenya. Specifically, this current study sought to achieve following objectives: to evaluate capacity gaps in Witness Protection Program and underlying causes; to explore adequate legal threshold and practice in Kenya's criminal justice system that expressly protects witnesses in court; to assess infrastructure-related challenges prevailing in protection of witnesses and to investigate socio-cultural barriers influencing protection of witnesses. This study is premised on structural functionalism theory. Case study research design was utilized in this study as it aided in gaining of in-depth information on issue of witness protection program. This study's target population were witness protection program officers working in diverse organizations including Attorney General's office, Law Society of Kenya, Directorate of Public Prosecution, Kenya Police, Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, Children's Court, and representatives from National Assembly. Purposive sampling method was utilized to identify key informants from each of the organization totalling 40 respondents at five respondents per organization. Findings reveal a number of challenges which impede successful implementation of witness protection program in Kenya. They include: inadequate training due to limited resources and trainers; financial constraints due to inadequate funding by treasury; unclear witness protection procedures and poor infrastructural procedures of reaching witnesses. Infrastructure related challenges included: lack security, lack of physical facilities such as safe houses, escort services and audio gargets to protect witnesses. Also, major courts being located in major cities limits access to legal systems by rural folk and reluctance of some witnesses to leave their homes for the witness protection program. In establishing socio-cultural barriers influencing protection of witnesses, the study found that some cultures do not allow witnesses to testify in an open court especially offences related to intimacy. Recommendation is made for further research that will investigate ways of instituting effective programs which will focus on specific crimes

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LIST OF ABBREVIATIONS AND ACRONYMS

CCTV	-	Closed Circuit Television
ICC	-	International Criminal Court
ICTR	-	International Criminal Tribunal for Rwanda
KNCHR	-	Kenya National Commission on Human Rights
NIS	-	National Intelligence Service
NWPP	-	National Witness Protection Program
SCSL	-	Special Court for Sierra Leone
UNEP	-	United Nations Environment Programme
UNODC	-	United Nations, Office for Drug Control and Crime Prevention
WPA	-	Witness Protection Agency
WPP	-	Witness Protection Programme

CHAPTER ONE
INTRODUCTION

1.1 Background to the Study

This study examined challenges associated with witness protection program in Kenya. Witnesses in sensitive court cases often face diverse challenges that are threat to their lives and those of their families and close associates. Sensitive court cases involves cases involving people in power such as government officials and ministers, cases involving organized crimes, terrorism cases, cases involving drugs and cases involving serious crimes such as murder and corruption cases. In such cases witnesses to these crimes may be intimated not to give their testimonies and in extreme cases they may receive physical harm including to their families and close friends.

There are several cases of witnesses' intimidation and perpetration of physical harm to witnesses across the world. For example, in United States of America (USA), Bessman Okafor was convicted to death in Florida for shooting dead, Alex Zaldivar, who was a witness to a separate court case facing him. Cases of witness intimation and killing are rampant in Pakistan. For example in 2011, a total of six witnesses in a case involving murder of 28 year old Wali Khan Babar, who was journalist, were killed. The trial lawyer in the case had to flee and seek asylum in United States due to threat to his life. In Pakistan, the murder case of 11th Prime Minister of the country, Benazir Bhutto, lost a key witness prosecution witness who refused to testify fearing for his life. This led to his earlier statements to be discarded in subsequent court proceedings.

Kenya has faced high profile court cases such as International Criminal Court proceedings that has placed the concept of witness protection into sharp focus. The prosecutor of ICC cases against Kenyans said to have organized and perpetrated Post Election Violence (PEV) in Kenya blamed collapse of some of cases on witness intimidation and interference. Case of murder of directors of Kihiu Mwiri, a land buying company in Murang'a placed need for witnesses' protection in domestic cases into focus in Kenya. Sixteen suspects had been held and prosecuted for murders of four directors of land buying company. The Director of the Public Prosecutor (DPP) appearing in court case in 2015, argued against release of suspects on bail due to threats posed on prosecution witnesses who they came from same locality. Given the

gravity of their cases and the complexities involved in the court cases, the DPP argued that apprehension was real and not imaginary. Earlier in the court case, a witness to the case had been killed and his witness statement in the police file missing. In 2015, five witnesses being transported on a police vehicle in Lamu to record a statement against Sheikh Khalid Mohamed Ali were killed. The police vehicle was bombed and sprayed with bullets in Bodhei in Lamu County. Sheikh Khalid Mohamed Ali was being prosecuted for belong to a terrorism group.

These cases of witnesses' intimidation and physical harm demonstrate the need for witness protection programs to ensure the safety of the witnesses in highly sensitive cases. Witness protection may be as simple as providing a police escort to the courtroom, offering temporary residence in a safe house or using modern communications technology (such as videoconferencing or voice distortion) for testimony. There are other cases, though, where cooperation by a witness is critical to successful prosecution but the reach and strength of the threatening criminal group is so powerful that extraordinary measures are required to ensure the witness's safety. In such incidences, the resettlement of the witness under a new identity in undisclosed residence, either locally or abroad, may be the only viable alternative (United Nations Office on Drugs and Crime, 2008). Initially, the primary objective of witness protection was to protect the physical security of witnesses 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 considerations have taken on a more prominent role in the engagement and protection of witnesses prior to, during and after testimony (Lyon, 2007).

There are five key elements that determine the functioning of the state and internal criminal justice witness protection programmes. These elements include financial, security and political parameters which a protection programme functions, structure and independence of protection mechanism and the extent to which a programme is able to procure cooperation from state and non-state institutions locally and internationally (Republic of Kenya, 2011). Other elements include efficacy and efficiency of justice system or institution as a whole and the nature and scale of the

threat to witnesses (Republic of Kenya, 2011). These elements are critical in a country's efficiency of the witness protection programme all stages of dispute resolution process from being harmed (Republic of Kenya, 2011).

Different countries are developing legal mechanisms for witness protection programs. In Developed countries such as US, UK, Australia witness protection has been well developed and put in place. On the other hand, witness protection in Africa has been relegated to the periphery and has been a rare phenomenon. Sierra Leone and Uganda are tentatively considering the idea of witness protection whilst South Africa is the only African state with a formal protection program.

Witness protection first came into prominence in the United States of America, in the 1970s, as a legally sanctioned procedure to be used in conjunction with a programme for dismantling *Mafia-style* criminal organizations. Until that time, the unwritten "code of silence" among members of the *Mafia* – known as *omertà* – held unchallenged sway, threatening death to anyone who broke ranks and cooperated with the police. Important witnesses could not be persuaded to testify for the state and key witnesses were lost to the concerted efforts of crime bosses targeted for prosecution. That early experience convinced the United States Department of Justice that a programme for the protection of witnesses had to be instituted (Montanino, 1987).

In 1970, the Organized Crime Control Act empowered the United States Attorney General to provide for the security of witnesses who had agreed to testify truthfully in cases involving organized crime and other forms of serious crime. Under the Attorney General's authority, the Witness Security (WITSEC) Program of the United States ensures the physical security of at-risk witnesses predominantly through their resettlement to a new, undisclosed place of residence under a changed name and new identity details. In 1984, after more than a decade of operations, a number of shortcomings that the WITSEC Program had experienced were addressed by the Witness Security Reform Act. The issues dealt with under the Act are still considered to lie at the heart of all witness protection programmes, namely: Strict admission criteria, including an assessment of the risks that relocated former criminals may pose to the public; creation of a fund to compensate victims of crimes committed by participants after their admission to the programme; signature of a memorandum of

understanding outlining the witness's obligations upon admission to the programme; development of procedures to be followed in case the memorandum is breached by the participant; establishment of procedures for the disclosure of information regarding programme participants and penalties for the unauthorized disclosure of such information; protection of the rights of third parties, especially the honouring of the witness's debts and any non-relocated parent's custody or visitation rights (Montanino, 1987). For a witness to qualify for the WITSEC Program, the case in question must be extremely significant, the witness's testimony must be crucial to the success of the prosecution and there must be no alternative way of securing the witness's physical safety. There are also other conditions, such as the witness's psychological profile and ability to abide by the rules and restrictions imposed by the programme. Over the years, eligibility for coverage under the WITSEC Program has been extended from witnesses to *Mafia-style* crimes to include witnesses to other types of organized crime, such as those perpetrated by drug cartels, motorcycle gangs, prison gangs and violent street gangs.

The actual experience of giving testimony in the court can vary greatly and has a considerable impact on the witnesses' overall evaluation of the experience. The legal focus on facts and data prevents witnesses from telling the story in the way they want to (Stover; 2005; Dembour and Haslam, 2004; Wald, 2002). The information which is important to them is not necessarily important to the court, and being directed only to give factual information can be frustrating to witnesses who want to tell the court what happened in their community, and what happened to their relatives and friends who were killed or disappeared. The way court personnel interact with witnesses can also have an impact on their experience during the trial process and after. Judges may admonish witnesses who try to talk about issues deemed irrelevant, or can respond to witnesses in an unsupportive or impatient way (Dembour and Haslam, 2004). The adversarial nature of the trial, especially a cross-examination which attempts to undermine the credibility of the witness, can be distressing (Stover, 2005).

For many witnesses, testifying will involve confronting the person responsible for the harm that was done to them. This can be an intimidating prospect to some, whilst for others it is one of their main motivations for testifying. The witnesses interviewed by Stover (2005) reported various emotions when they saw the accused in court

(awestruck, angry, superior, calm), whilst the confrontations between witness and perpetrator at the South African TRC were intense and, in many cases, painful (Byrne, 2004). In domestic court settings, direct confrontation with the perpetrator (along with cross-examination by the defence lawyer) has generally been identified as the worst aspect of testifying (Herman, 2003). Wald (2002) and others have noted the intense emotions triggered in witnesses who have to relive traumatic experiences in a courtroom setting, 'they break down on the stand, they cry, sometimes they curse the defendants in the dock (and their counsel as well)' (Wald, 2002: p. 235). The emotional toll of participating in the South African TRC has been referred to as a negative aspect of the experience by witnesses (e.g. Byrne, 2004), and Herman (2003) found that the majority of victim-witnesses who testified in domestic courts reported some negative emotional consequences at the time of their hearings, even when they testified in an affirming and supportive environment. This affirms the reason why some witnesses may need protection before and after the trial process.

The Kenyan government enacted the witness protection legislation in 2006, but the creation and implementation of a protection mechanism has since progressed slowly. The Attorney-General established a task force, which provided technical advice, gathered from the ICC, the Commonwealth Secretariat and the UNODC on structure and staff requirements. Personnel from the police, intelligence service and immigration were seconded in February and March 2009 to operationalize the unit that has premises and equipment but is yet to begin protecting witnesses.

The Witness Protection Act 2006 came into force in September 2008, with the unit commissioned on 3 March 2009, its terms of reference and functions delegated by regulations. The unit composed its initial regulations itself. The regulatory and legislative amendments have been compiled with assistance from the UNODC. Important key provisions of the Witness Protection Act 2006 provide for anonymity and criminalize disclosure of witness identity or location. Another critical provision grants the Attorney-General 'sole responsibility' for decisions on admission. However, the Witness Protection (Amendment) Bill 2010 that was recently passed by parliament removes the program from the office of the Attorney-General, creating a Witness Protection Agency (WPA). The amendments also confer the Attorney-General's powers in terms of the 2006 Act to the Witness Protection Agency's

Director, give the director admission responsibility, and create a Witness Protection Advisory Board to approve the unit's budget and advice on the exercise of agency power. The board would comprise the Ministers of Justice and Finance, the Director-General of the National Security Intelligence Service, the Commissioner of Police, the Prisons Commissioner, the Director of Public Prosecutions, and the chairperson of the Kenya National Commission on Human Rights (KNCHR).

Hereunder is the chronology of events following the enactment of Kenya's Witness Protection program: In February 2010, after the ICC prosecutor and donor community expressed concern with the situation, the Kenya government approved and presented amended legislation to Parliament. On 7th of April 2010, the Witness Protection Bill was approved by parliament and later assented into law by the president. This positive development came five months after the government's September 2009 deadline for delivering a progress report to the ICC prosecutor on Kenya's intention to try cases arising from the 2007-08 post-election violence domestically. The ICC declared its intention to investigate and prosecute 'those most responsible', while a domestic 'special tribunal' would deal with other perpetrators. In November 2009, the ICC Prosecutor announced he would formally request the court's judges to authorize the investigations. On 3rd of March 2010 the prosecutor provided a confidential list of names of senior political and business leaders associated with Kenya's two leading political parties and who are allegedly linked to the pre-election violence, to ICC judges. In less than a month later (31st March 2010), the judges at the ICC approved the prosecutor's request to begin investigations of alleged crimes against humanity committed between 1st of June 2005 (when the ICC's Rome Statute came into force in Kenya) and 26th November 2009 (when the prosecutor filed the request with the judges). On first of April 2010, the prosecutor had announced that he would visit Kenya in May to meet victims, and that witnesses would be independently protected by the court. Officially, the government welcomed the ICC investigations and pledged cooperation with the court, but the nature of this cooperation remained ambiguous. Kenyan justice minister suggested that the ICC sits in Kenya so that the Kenyan state could hold indicted persons. It remained unclear if Kenya was willing to send suspects to The Hague. The role of a domestic program in protecting ICC witnesses was also uncertain.

In late September 2009, the Director of Public Prosecutions had stated that Kenya was ready to assist the ICC with witness protection, citing ICC confidence in the Kenyan protection unit evidenced by an ICC memorandum of understanding with the unit. This enthusiasm had been bolstered by the presentation to parliament and passage of amendments to the Witness Protection Act. The amendments have since received assent into law by the president. Kenyan Civil Society Organizations and those involved in the witness protection unit's creation had little confidence that the unit will have sufficient capacity in the near future to admit post-election violence witnesses, irrespective of personnel seniority. The unit would likely begin by focusing on cases that are not politically sensitive. Cases of fraud, corruption, economic crime, organized criminal syndicates, organized militia groups and those relating to post-election violence were to be initially excluded. This study examines Kenya's efforts to create witness protection, the obstacles and opportunities ahead, as well as domestic and international pressures that have shaped the Kenyan approach.

The amendment bill also establishes a compensation fund for victims of crime committed by witnesses while under protection, and a witness protection appeals tribunal comprising a high court judge and two experts who will review grievances relating to non-admission of witnesses and the termination of protection. The 2006 act empowers the Chief Justice to make accompanying in-court rules of procedure and evidence. The Penal Code prescribes a three-year sentence for witness intimidation, specifically criminalized for sexual offences by the Sexual Offences Act, which also provides for witness anonymity and other protective measures. The current absence of any admission-decision review mechanism is of concern. Another concern is the long- and short-term ambiguity of protective provision. The witness protection director cites the regulations as the most instructive operational framework for unit function, despite the importance of a protection mechanism enshrined in law.

1.2 Statement of the problem

The Kenyan government has recognized the challenges that the prosecution witnesses faces in high profile cases due to largely to the concerns around the ICC witnesses and capacity enhancement of the ICC offices. In response to the concerns from the ICC offices on the protection of the witnesses especially in relations to the Post Election Violence, the Kenyan government developed and instituted legal provisions

for witness protection. This involved the passing of a witness protection bill in 2010 into law. However, despite the legal provisions for witness protection and institutions in support of witness protection, the efficiency of witness programs and legal provisions has been shown to fail by numerous lapses on the ground. This study examines the challenges facing the witness protection program in the country.

1.3 Objectives

1.3.1 Broad Objective

The broad objective of this study was to examine challenges facing the implementation of witness protection program in Kenya.

1.3.2 Specific Objectives

Specific objectives of this study were as follows:

i) To evaluate the capacity gaps in the Witness Protection Program and the underlying causes;
ii) To explore the adequate legal threshold and practice in the Kenya's criminal justice system that expressly protects witnesses in court;
iii) To assess the infrastructure-related challenges prevailing in protection of witnesses and
iv) To examine the socio-cultural barriers influencing protection of witnesses.

1.4 Research Questions

This study sought to answer the following research questions:

i) Why are there capacity gaps in the Witness Protection Program
ii) To what extend is the legal threshold and practice in the Kenya's criminal justice system inadequate to expressly protect witnesses in court?
iii) How do the infrastructure-related challenges hinder protection of witnesses?
iv) What are the socio-cultural barriers hindering protections of witnesses?

1.5 Justification of the Study

Firstly, without witness protection there can be no fight against impunity. Without witness protection, victims of human rights abuse who complain and seek justice face serious threats leading to physical, psychological, social harm and death of

themselves or their loved ones. This violence is brought about onto them by people in authority or well politically connected individuals. The study is thus, timely considering the involvement of Kenya with ICC and desire for protection of witnesses involved.

Secondly, within the court context, care should be provided in a specially modified environment, such as witness-friendly courts. The justice system should be modified to deal with witnesses in a sensitive and constructive way. Court officials who come into contact with witnesses and their families should be specially trained, and those who work in the courts - from judicial officers to administrative clerks - must be carefully screened, selected and thoroughly trained to equip them with the skills and sensitivity necessary to create a witness-friendly environment. Special education for officials should include social context training for judges and magistrates to further equip the justice system to function effectively. However, the justice system cannot function in isolation, and the provision of support services is essential, witnesses in crisis need counselling, on-going investigation and evaluation, and their families may benefit from mediation and conciliation procedure (Owens, 2003).

Thirdly, protection of witnesses straddles the professional spheres of policing and other investigative operations like counsel, particularly the prosecution, and the judiciary (UNDOC, 2010). For this reason, few coherent analyses of witness protection have been conducted. This study sought to provide a primarily descriptive and analytical contribution to inform policymakers and stimulate further research. For practitioners in the civil society organizations, this study would re-define an ideal situation characterized by sustainable development, the rule of law, human rights, democracy, gender parity, children's agenda and collaborative security in respect to witness protection. This study also informs future research in institutions undertaking applied research, training and capacity building; collaboration and partnership; policy formulation and implementation (collection, and dissemination of information and networking at national, regional and international levels. findings from this study will also increase the existing knowledge to the already existing structures and frameworks on witness protection in Kenya's criminal justice system.

Finally, findings from this study strive to serve as a reference that will inform policy makers and implementers on gaps and opportunities within the Kenyan criminal justice system regarding witness protection and highlight the best practices and lessons learnt from across the globe.

1.6 Scope and Limitations of the Study

The geographical scope of the study was in Nairobi region. This is because the institutionalization of the witness protection is highly centralized in nature with the key personnel on diverse aspects of witness protection found in the Attorney General office, Law Society of Kenya, Directorate of Public Prosecution, Kenya Police, Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, Children's Court, and representatives from National Assembly in Nairobi. This geographical scope was deemed sufficient given that these offices have all the needed information of the witness protection in Kenya. The time scope of this study is six years from 2010 to date. This is because the witness protection mechanism is a new phenomenon that has only been practiced in the country from 2010. The period is sufficient to given the necessary information required for the study.

The study was limited in the context of the data collection. The concept of witnesses' protection is relatively new in the country and as such there is limited number of people with information regarding the program. This led to purposive sampling with a view of identifying information rich key informants. Purposive sampling being unscientific sampling method may introduce bias in the information given. This was mitigated through counterchecking information from a given informant against another informant in the same department to eliminate or minimize any biases.

1.7 Definition of Terms

Child Witness

Michels (2006) notes that the term "child" was always understood to mean persons under age 18 in accordance with the international practice who gives testimony in criminal proceedings.

Justice

This refers to the judgment involved in the determination of rights and the assignment of rewards and punishments.

Participant

Any person, irrespective of his or her legal status (informant, witness, judicial official, undercover agent or other), who is eligible, under the legislation or policy of the country involved, to be considered for admission to a witness protection programme.

Procedural measures

Action taken by the court during testimony to ensure that witnesses may testify free of intimidation or fear for their life; such measures include, but are not limited to, videoconferencing, voice and face distortion techniques and the withholding of details of a witness's identity.

Witness Protection

This refers to the need for special consideration for witnesses in judicial proceedings as widely recognized under given domestic international law.

Witness protection authority

A government, police, prosecutorial or judicial authority overseeing and coordinating implementation of the witness protection programme and making decisions on such matters as admittance, duration of protection, measures to be applied, operational policies and procedures.

Witness protection programme

A formally established covert programme subject to strict admission criteria that provides for the relocation and change of identity of witnesses whose lives are threatened by a criminal group because of their cooperation with law enforcement authorities.

Witness protection unit

A covert unit authorized to implement a witness protection programme which is responsible for the physical security, relocation to a new place of residence and change of identity of programme participants.

Witnesses

It can be inferred from treaties and case laws that witnesses are parties giving testimony in criminal proceedings while guided by some rules and guidelines.

CHAPTER TWO
LITERATURE REVIEW AND THEORETICAL FRAMEWORKIntroduction

The purpose of literature review was to set this study subject in a broader context through investigation of relevant literature and other sources. The literature review examines the challenges facing implementation of witness protection programs in a broader perspective and across different geopolitical areas. The review covered issues and concepts of witness protection, international practices, the Kenyan case, theoretical framework, and conceptual framework. Key aspects and arguments in the literature were to be identified and amplified with various commentators and academics opinions and interpretations. Any differences in approach as well as areas of consensus was presented and weaknesses in arguments and potential criticism would be specified.

1.9 Literature Review

The literature review examines the research objectives in details as well as examining the witness protection programs across the world.

1.9.1 Capacity gaps in the Witness Protection Program and the underlying causes

The capacity gaps touch on the aspects that undermine the effectiveness of the witness protection programs. There are several capacity gaps that have a direct influence on the witness protection program including the staffing capacity, technology capacity, financial resources availability, and treatment of special groups such as children.

Staffing of the critical component organs of the witness program is of importance to its functions. The staffing element involves the actual number of staff in these departments of witness programs and their professional competence to undertake their functions. Witness protection being a relatively new concept in a majority of the

countries often receives poor staffing levels from the government as a result of lack of the appreciation of the importance of the department within a judiciary system. The aspect of professional capacity of the staff at diverse organs of witness protection programs also undermines its efficiency. The staff composing the witness protection programs often is seconded from other law enforcement organs such as the police, prosecution offices, and judicial officers in diverse capacities. In this context, the staff lack specialized and formal training on witness protection thus depends on the skills from their seconding departments and the existing policy guidelines. Some of the key skills required in witness protection include Very Important Person (VIP) protection, counselling, information management, covert operations and human rights, amongst other skills.

The witness protection by its covert operations nature depends on technology to keep its operations confidential including the identity and location of witnesses. The best practices in information management such as access, security and retrieval play a critical role in ensuring the integrity of the witness protection programs. Technology is also used in safe houses, in courts during the giving of evidence as well as transportation of the witnesses. A majority of law protection agencies in developing countries use low levels of technology in their functions unlike their western counterparts. This plays to undermine the overall functionality and integrity of the witness protection.

The lack of sufficient funds and resources is also a major impediment on the efficiency of the witness protection programs in diverse countries. The availability of resources affects the witness protection in diverse ways including the attracting and retaining of highly skilled professionals, training of the human resource including conferences and acquisition of best practices in other jurisdictions, procurement of covert technologies, daily operations, transport, and compensation of witnesses for lost income and construction of safe houses. Over time, strained resources and greater experience will allow for stricter criteria to be applied to limit the number of participants. Even so, it is not easy to predict how many cases in the future will require the services of a protection programme. For these reasons, it is important that when preparing a budget, the concept of sustainability must be factored in. Funds need to be adequate to sustain relocation of witnesses for some years. As protection is

a long-term commitment, expenses are cumulative. Even after the end of the initial resource-intensive period of relocation, some aftercare is often provided through periodic threat assessment and emergency responses to counter any unexpected resurgence of the threat. Countries where a family unit means an extended family face higher costs per witness. In some cases, even where the number of cases decreases, costs can remain stable or even increase. This can occur because attention is focused on more important case where strong criminal groups are involved, making the application of protection measures more vigorous and hence, more expensive.

There are also capacity gaps in the witness protection in relations to special groups such as children witnesses. Most children who testify in criminal court are doing so about alleged activities perpetrated on them, and in particular, they are testifying about alleged abuse. The primary reason that this is the case is not because children fail to witness other crimes, but because they are simply not ideal witnesses. Additionally, the process of investigative interviewing may, for some children, be perceived as an extra stressor. In other types of crimes (e.g., theft or assault), other witnesses or other types of evidence are likely to be present and are generally preferable types of evidence to statements made by young children. Even in allegations of child physical abuse, the children's bodies can be used as corroboration of their reports, but in physical or sexual abuse cases, medical corroboration or other witnesses are generally not available. Thus, when we speak of child witnesses we are most commonly addressing concerns relevant to child physical or sexual assault cases.

Jurors have a reasonably accurate perspective about many areas of eyewitness research, but jurors, and even judges, have misconceptions about a number of witness issues, including misconceptions about child sexual abuse. For example, both jurors and judges believe that eyewitness confidence is related to accuracy, which is often not the case (Rahaim and Brodsky, 1982). Jurors rely too heavily on minute details and underestimate the importance of effective indicators of eyewitness accuracy, such as how long the witness was able to view the perpetrator (e.g., whether the perpetrator was wearing a disguise) and what other perceptual conditions were present (e.g., was it light enough to realistically observe a detailed face?). Jurors often lack knowledge about factors that interfere with accurate retention, such as the impact of stress on

perception and memory, and are insensitive to biases that are introduced during a criminal investigation (Sven-Ake, 1992).

In addition to misconceptions about eyewitnesses generally, jurors have stereotypes about child witnesses and sexual assault that affect their deliberations. The findings on jurors' age-related stereotypes are mixed. In this context, an age-related stereotype is an expectation about what a child of a particular age is capable of remembering, saying, etc. Some studies have found that child witnesses are perceived as more credible than adults while still others have found that child witnesses are perceived as less credible than adults (Bottoms and Goodman, 1994). Beyond general beliefs about child witnesses' abilities, effects of jurors' own gender on their perceptions of child witnesses are ubiquitous. Researchers have found that women are more conviction prone in sexual assault cases, believe children more than men, find children more credible, and are more likely to recommend that the defendant serve the entire sentence. Finally, case characteristics also affect jurors' perceptions about child witnesses, with some evidence that children are viewed as more credible in civil cases than criminal cases and in sexual assault cases than in robbery cases (Bottoms and Goodman, 1994).

There are three major areas of child protection research namely child memory, children's suggestibility, and diagnosing abuse. In regard to child memory, the prosecution ought to know that young children are capable of accurately recalling autobiographical events over relatively long time periods. There are numerous studies that highlight the strengths of young children's memories when asked neutral questions, including after longer delays, and suggest that by age 2.5, children are capable of long-lasting memories of salient events (Fivush, 1998). Even in the suggestibility literature, most studies report that children in the control group (i.e., no suggestion) recall events with high rates of accuracy (Leichtman and Ceci, 1995). Evidence from both sets of data indicates that in the absence of suggestion even very young pre-schoolers can provide highly accurate reports.

Young children's reports of past events are susceptible to distortion via adults' suggestions. This susceptibility is called "suggestibility" and can be defined as the degree to which the encoding, storage, retrieval, and reporting of events can be

influenced by a range of internal and external factors that can be present before or after the event. Factors such as question repetition, yes/no questions, misleading questions, repeated interviewing, plausible suggestions, stereotyping, anatomical dolls, and invocation of peer conformity have been associated with errors in children's reports to adult interviewers (Debra and Lamb, 1998).

"Child victims and witnesses" denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders. In criminal justice systems, victims of crime are often forgotten. A fair, effective and humane criminal justice system is one that respects the fundamental rights of suspects and offenders, as well as those of victims, and that is based on the principle that victims should be adequately recognized and treated with respect for their dignity. Those categories of victim, including children, who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, should benefit from measures tailored to their situation.

The principle of the best interests of the child is not limited to criminal justice; it is often proclaimed in a generic way, embracing all aspects of the child's life. Civil matters, including family law, are often considered the main field of application of this principle. Although it is important to apply the principle to those matters, it is crucial that domestic judges, as well as other criminal justice officials and every adult in a decision-making position, give it primary consideration when determining issues related to the involvement of child victims and witnesses in criminal proceedings.

Protecting the child's best interests means not only protecting the child from secondary victimization and hardship while involved in the justice process as victim or witness, but also enhancing the child's capacity to contribute to that process. Giving the best interests of the child primary consideration is therefore consistent with safeguarding the interest of justice and in conformity with the Convention on the Rights of the Child. According to the United Nations, Office for Drug Control and Crime Prevention (UNODCC), secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim (UNODCC, 1999; p.9).

The victim's right to be treated with dignity and compassion lays the foundation for the sensitive treatment of all victims and witnesses, particularly children. This would imply that a child is given a meaningful role throughout the justice process, in accordance with his or her evolving capacities. It may in turn contribute to the child's willingness to assist in the investigation and judicial process, while diminishing the risk of their experiencing secondary victimization. The concept of evolving capacities is central to the balance between recognizing children as active agents in their own lives, entitled to be listened to, respected and granted autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth. It provides the framework for ensuring an appropriate respect for children's agency, without exposing them prematurely to the full responsibilities normally associated with adulthood; and takes into consideration children's needs, age, gender, disability and level of maturity (Gerison, 2005).

One way of ensuring the application of the right of child victims and witnesses of crime to be treated with dignity and compassion is to enshrine such a right in domestic legislation. State practices vary in terms of the ways and implications of doing so. The protection of child dignity is most often upheld by law, but sometimes enshrined in the constitution itself; however, although this has an important bearing on the whole domestic system of the State, it does not address the specific situation of child victims and witnesses and therefore needs to be complemented by other, more specific, provisions of law. In numerous States, such a right is recognized for victims, regardless of their age. Such recognition has two limitations: first, by not differentiating between adults and children, it fails to emphasize the particular needs and evolving capacities of the latter; second, the law remains silent with regard to witnesses. Other domestic regulations provide the same right for all those who happen to intervene in criminal or civil proceedings, thereby correcting the second flaw, but not the first. Another approach is to define child dignity in law, regardless of its involvement in the judicial process; although a welcome step, such a provision still misses the required specificity in order to ensure that the vulnerable position of child victims and witnesses of crime is duly taken into account by law enforcement officials, judicial authorities and other concerned institutions. Respect for child dignity is also sometimes found in relation to children in conflict with the law, which,

although it should be encouraged, is not directly relevant to the situation of child victims and witnesses of crime and should be complemented by other provisions (UNODCC, 2009).

Recognition of the dignity of child victims and witnesses should be promoted as the only way to ensure with a sufficient level of certainty that this principle is respected. The best approach is to provide specific regulations addressing the situation of child victims and witnesses of crime and ensuring their right to be treated with dignity and compassion. The domestic legislation of some States goes beyond the mere recognition of the right to be treated with dignity by providing a definition of the right to respect and dignity. Such a definition is especially relevant when it is designed for children, as in Brazil's Law on Statute of the Child and Adolescent, 1990. According to Brazil, Law on Statute of the Child and Adolescent, 1990, articles 17 and 18: "The right to respect consists of the inviolability of the physical, psychic and moral integrity of the child and adolescent, encompassing the preservation of the image, identity, autonomy, values, ideas and beliefs, personal spaces and objects. …It is the duty of all to watch over the dignity of the child and adolescent, preserving them from any inhuman, violent, terrorizing, vexing or coercive treatment."

The right to be treated with dignity implies that the child shall be treated as a human being with full rights and not as a passive recipient of adult care and protection. This may be achieved by treating the child according to his or her individual needs and evolving capacities. Children should be treated according to their age and level of maturity, for their understanding of the situation may differ from that of an adult, while still having the potential to be accurate. Children also have the right to be treated with compassion, which implies understanding and being sensitive to their feelings, needs, beliefs, communicative style and individual experiences. Anyone dealing with child victims and witnesses of crime should recognize that the child may not be in a position at a given time to fully understand and recount events that happened or to comprehend the full impact of the crime. Appropriate support should be provided to the child in this respect. Having an understanding of the evolving capacity of the child and its impact on the justice process may help to anticipate what services children require in their particular situation in order to preserve or gain integrity. Justice professionals, be they law enforcement officials, prosecutors or

judges, will require, beyond their professional training, special multidisciplinary training on how to deal with children in a child-friendly manner. Another practical measure that can enhance child victims' right to be treated with dignity and compassion is to make sure that only specially trained law enforcement officials can interview children. This guarantee may be applied at every stage of the proceedings (UNODCC, 2009).

Another critical area of concern in child witness protection is medical examination. Medical examination, especially in the case of sexual abuse, can be a highly stressful experience for children: such an examination should be ordered only where it is absolutely necessary for the investigation of the case and is in the best interests of the child and it should be minimally intrusive. In such cases, a single examination should be made. A good practice in ensuring child-sensitive medical examinations can be found in Portugal (Portugal, Law for the protection of children and young people in danger, No. 147/99 (1999), article 87). The law requires that the examination be ordered only where indispensable or in the interests of the child and be carried out by a duly qualified medical professional. Access to psychological support, including the presence of one of the child's parents or a support person should be guaranteed. The consent of the child or, where the child is deemed unfit to understand his right to decline such an examination, the consent of his or her legal guardian is required in Germany (Germany, Code of Criminal Procedure, art. 81c). The legislation should allow the child to choose the gender of the medical staff and to refuse any examinations after being informed of the consequences of his or her refusal. The parents' involvement should be denied where the best interests of the child so require and when the child so decides.

Quas and McAuliff (2009) present information on children's involvement in the criminal justice system. They emphasize both the necessity of having children in court and also the potential impact of that participation on children's well-being. They present data on the kinds of stressors that can occur when children are involved in legal procedures and the kinds of accommodations that might be made to mitigate those stressors. Some of those stressors include lack of legal knowledge, repeated interviews especially by different people whom the children do not know, testifying, facing the perpetrator in court, case length, and case outcome. Relatively non-

controversial interventions that have addressed some of these stressors include providing information about the legal process to child witnesses, coordinating investigations through the use of child advocacy centres (CACs), and providing support persons. Other, more controversial changes to procedures have included the use of videotaped testimony and testimony outside the courtroom via closed circuit television.

Quas and McAuliff (2009) referred in particular to data about child victims of sexual abuse who become witnesses since much of the research on children's involvement as witnesses in both the criminal and juvenile systems has been done with this population. They note that there are many factors common to child sexual abuse cases that are also common in other kinds of criminal cases. These include case length, repeated interviews, testifying, and case outcomes. However, there are important factors central to sexual abuse cases that may not be found in other situations where children might testify. Primary among them is that most children who testify in sexual abuse cases are the victims. Most often, they have a prior relationship with the perpetrator who uses that relationship to involve the child in sexual activity. Since children rarely disclose sexual abuse immediately (if ever) the abuse has often continued over a significant period of time (Lyon, 2007; Roesler and Wind, 1994). Because of these factors and the sexual nature of the crime, child victim/witnesses commonly experience lasting feelings of responsibility, shame, embarrassment, and guilt (Sgroi, 1982; Roesler and Wind, 1994). They often feel guilty for the abuse itself, for the disruption caused by the disclosure, and for the consequences to the perpetrator whom the child may care about. Also, it is not uncommon for them to risk relationships with other family members by virtue of the disclosure. Therefore, child sexual abuse cases, while likely being the most common situation in which children testify, and while providing most of the available data on the impact of legal proceedings on children, present additional stressors that may not be present in other types of cases where children might testify.

Regarding the consequences of legal involvement on children, Quas and McAuliff (2009) enumerated a number of areas that may cause stress or trauma for children. The first area they discuss is legal understanding. They note that children are limited in both general legal knowledge and also about the specifics of their case. The

question becomes how this lack of knowledge impacts both children's ability to participate fully as witnesses and the level of distress that they feel. Children who are maltreated often feel partly responsible for the maltreatment and may assume that the legal involvement signifies that they are in trouble or that they are causing trouble for others. Children who are fearful that they are in trouble may disclose less information and experience more confusion and stress during the process. Because providing children with information regarding legal proceedings would not negatively impact those proceedings, it would appear to be a straightforward way to enhance children's participation and potentially reduce stress. Children need information both about how the court system works in general and about the specifics of their case. This may reduce their level of anxiety and contribute to the perception that the process is fair (Melton et al., 1992).

Research efforts might refine our understanding of the kinds of legal information that are important to children of particular age groups, the best method for delivery, and how to assess whether children truly understand the information they need. For example, there has been significant research in the medical field on the utility of preparing children prior to medical procedures (Cardona, 1994). Some of those studies have looked at parents providing the information and the use of videotapes of children explaining the procedures to children, which the children have found helpful in reducing their anxiety and in helping them cope with the procedure itself (Pinto and Hollandsworth, 1989). As with adults, keeping children informed regarding the specifics of their case and why things take as long as they do is important. Children's perception of time is different from adults' sense of how long things take. It is also harder for especially young children to keep track of the passage of events. Therefore, they need more support and on-going information to understand the status of their case.

Another potential source of stress that Quas and McAuliff review is the impact of repeated interviews on children. Certainly, at the investigative stage, there is significant concern regarding the impact of repeated interviews on children (Poole and Lamb, 1998; Ceci and Bruck, 1995; Olafson, 2007). This concern stems from the need for accuracy and from sensitivity to the impact of the process on children. The modifications in the investigative process that have been recommended, including

minimizing unnecessary multiple interviews and the use of child advocacy centres, reflect the recognition that repeated questioning of children has the potential for affecting the quality of information as well as the child's experience (Faller, 2007). Although children report that the experience of multiple interviews is negative (Tedesco and Schnell, 1987; Quas et al., 2005), research efforts might focus on the impact of such interviews when they have been conducted in a child friendly, developmentally appropriate manner. It can be quite a relief for children to finally talk about on-going abuse, a burden they often bear in secret. Also, children are fairly flexible when the reasons for adult actions are explained. Thus, if repeated interviews are necessary to gather or clarify relevant information, or to prepare for court, children might be able to handle them fairly well if they are done appropriately, the reason is explained, and the children understand the process.

Quas and McAuliff (2009) noted that testifying appears to be the most stressful act of legal involvement for children. Testifying is difficult for both children and adults. A major source of stress for children in the courtroom has to face the defendant. Facing the perpetrator – in sexual abuse cases it is most likely someone with whom the child has had a trusted relationship – is what children say is the most stressful part of being in court (Goodman et al., 1992a). When children don't understand the protections that are in place, they may fear that the perpetrator may be able to approach them in the courtroom. Even when children recognize that they are physically safe in the courtroom, they worry about what the perpetrator may be able to do to them outside of court, which in some cases is not unrealistic. Since most of the child victim/witnesses who have been studied have been in extended abusive relationships with the perpetrator, they often continue to feel vulnerable and anxious even when their physical safety is assured. Aside from fear (realistic and unrealistic), child victim/witnesses often feel guilty about testifying against a parent, relative, or friend. Also, they are embarrassed about having to talk about sexual matters in open court. Again, many of these factors are unique to the population most often studied.

Children are anxious about facing the perpetrator, even in therapeutic settings. However, particularly in sexual abuse cases, facing the perpetrator and expressing their distress about what happened to them is an important part of the healing process for victims. This process acknowledges the reality of the abuse and who is responsible

for it. It is especially important that the non-offending parent, usually the mother, acknowledges the reality of the abuse, condemns it, and is supportive of the victim. When the perpetrator takes responsibility for his behaviour and, hopefully, apologizes, it is even more therapeutic for the victim. That raises the question of whether or how testifying in court can attain some of these same therapeutic gains. It is possible that testifying in open court could be a way for the child to openly declare the reality of the experiences that they have had. It is also a way for adults to listen to and take seriously what the child has to say, with a much formalized procedure. Grown-ups are listening carefully to the child and asking questions to understand better. Even cross examination, which can be confusing for both adults and children, is an acknowledgment of what the child has said. If children can be taught how to manage difficult cross examination, that further validates what they have to say. Research that informs our ability to create procedures that support the child's ability to respond adaptively to cross examination would enhance the children's well-being and their ability to contribute to an effective process of adjudication.

A related issue that Quas and McAuliff (2009) noted is the manner and question type used in cross examination. A major focus of training for those who investigate child abuse and child sexual abuse is how to talk to children in a developmentally appropriate, non-leading manner (Poole and Lamb, 1998). Cross-examination, if anything, is often the opposite. Questions can be confusing and highly suggestive. The language is often inappropriate for the child's age and experience. As they point out, these kinds of questions are often difficult for adults and beyond the ability of children to comprehend. Accommodations are already made for individuals who are deaf and for those who do not speak English. It might be worth studying what kinds of courtroom linguistic accommodations would promote the ability of children to testify as accurately and completely as possible. Presumably, such accommodations would also reduce confusion and therefore distress for those children. Professionals who provide expert testimony often pursue extensive training in preparing to testify effectively. Perhaps some analogous form of training would assist many children in increasing their level of accuracy and in reducing the amount of distress they experience.

One of the factors that affect how children react to testifying is maternal support. Children who do not receive maternal support during legal proceedings function significantly more poorly over time (Goodman et al., 1992b). Similarly, children who receive maternal support are likely to disclose sexual abuse earlier and experience less distress (Elliott and Briere, 1994; London, et al., 2005; Olafson and Lederman, 2006; Shaw et al., 2001). Previous research has found that children's perceptions of the legal process may very well be mediated by the perceptions of their caretakers (Good man et al., 1992b). Thus, it is possible that some of the anxiety that children feel about testifying and their negative feelings about the process may be a reflection of what they are hearing from their parents or sensing about their parents' emotions.

Although much consideration has focused on what to do for children directly, both during the investigative and testimony phase, it appears that a significant mitigator of distress throughout the legal process is the presence of a supportive adult, most usually the mother in child sexual abuse cases. Therefore, another important avenue for supporting children in legal settings should focus on the role of the parent or adult support person and on identifying the kinds of interventions that would enhance their effectiveness with the children. If parents are less anxious, if they thoroughly understand the legal process and if they feel the process is fair, their attitudes will likely influence their children's perceptions. This would be particularly true for the youngest and therefore most vulnerable children.

Possible ways of preventing children from experiencing the stress of testifying in open court include the use of videotaped testimony or closed circuit television. Quas and McAuliff (2009) outlined the research in this area and note that these accommodations, while possibly reducing the stress on children, remain highly controversial because they require significant modification of trial court proceedings and may impinge upon the right of the defendant to cross-examine the child. These rarely used modifications to courtroom procedures, while reducing immediate stress, may have longer term unintended consequences for children. As noted, children most often testify because they have been abused, most frequently in the form of sexual abuse. However, with any abuse, children typically feel guilty about what has happened to them. The abuse is usually kept secret which, aggravates its psychological effect on the child. The use of videotaped testimony which keeps the

child out of court may eliminate the stress of the child having to appear in court, but may perpetuate the sense that what has happened to the child should be kept secret because it is shameful. The same concerns are relevant to the use of closed-circuit television to allow children to testify outside the open courtroom. It may reinforce the notion that children need to hide from both the perpetrator and the embarrassment of what has happened to them. Being able to testify in open court about what has happened to them may have the potential to be therapeutic for some children. In the studies from other countries that compared closed-circuit testimony with open court testimony, were the children who testified in open court properly prepared to do so? The degree and quality of preparation might substantially influence the relative stressfulness of testifying via closed-circuit television and of testifying in open court.

In their conclusion, Quas and McAuliff (2009) referenced therapeutic jurisprudence and recognized that law is a social force that can bring about therapeutic or anti-therapeutic outcomes for those involved. They noted that we cannot eliminate all stress for children who participate in legal procedures. We should question, however, whether we should want to eliminate all stress. It is important in reflecting upon this question and this literature that we distinguish between stress and trauma. Often when we look at information on the impact of court procedures on children, stress and trauma seem to be used interchangeably. The mere fact that something creates anxiety or stress does not mean that it will cause trauma. Trauma "is an emotional wound or shock that creates substantial, lasting damage to the psychological development of a person …" (American Heritage, 2000). When individuals face stressful situations and are able master them, such experiences have the potential to increase coping skills and a sense of self-efficacy (Bandura, 1986). Therefore, we should ask whether the stress of legal procedures, specifically testifying, is necessarily bad for children if they have the proper tools with which to manage that stress? We should certainly modify those aspects of legal proceedings that cause unnecessary stress, such as unnecessary repeat interviews, lack of knowledge, and other sources of such unnecessary stress. However, children might be best served by teaching them how to cope with the distress and difficulties involved in dealing with the court process. Children also might be well served by educating their caretakers about how to cope with their child's stress and with their own. Therefore, assisting the children and their caretakers

in managing the stress of testifying may substantially influence the long-term effects of participation in the legal process.

Francis et al. (2006) suggest that inter-agency cooperation varies between different agencies in different geographical areas. Equally, differing agencies have different values, cultures and interpretations and language about risk; levels of trust and confidence in other agencies may thus be low. These authors particularly singled out the divide between social work and education in Scotland in relation to child protection training and procedures, where they described these variations in practice as 'deep-seated differences in professional values, culture, language and attitudes' (ibid: 9). They find, amongst others, that thresholds of risk vary not only across agencies but also within agencies, notably with older, more experienced workers operating at a higher threshold of risk than their recently trained counterparts. Likewise, Gold et al. (2001) found that the age and experience of the workers resulted in differing assessment outcomes. A further study (Brown and White, 2006) assessed the literature on integrated working in children's services and similarly found cultural differences between professionals. They also suggested that integrated working demonstrated limited evidence of improving outcomes for children and families.

In their comparative study of risk assessment practice in Canada and Israel, Gold et al. (2001) found that whereas Canada prioritises the rights of children over the centrality of the family, Israel still prioritises the rights of the family to care for their own children. As a result of these differing philosophies, assessments and interventions reflected the professional, political and social mood in both countries. In terms of children's versus family rights, in the UK the paramount interest is the child's rights, not least because it is possible that involving the family in a risk assessment may create further harm or anxiety for the child (Marshall, 2006; pers. comm.). Hayes and Houston (in press) argue that in decision making in child protection within a family group conference arena, there may be power struggles between the child and the family and between the family and the professionals. However, these authors argue that such an arena tends to be seen favourably by both professionals and families and challenges the often risk-averse nature of child protection work. A further Canadian study of family group conferencing found that bringing the various parties together served to 'interrupt' thinking on how to reduce family abuse and engendered a strategy

for the future and a commitment to the programme of work (Pennell and Burford, 2004: 126). This review did not, however, uncover any specific literature relating to risk assessment or management in family group conferencing and the primacy given to the rights of children versus their families. It is ironic, perhaps, given that New Zealand is the birthplace of family group conferencing, that Stanley suggests New Zealand is moving away from a family-oriented approach to one of child protection, albeit currently combining 'family-centred decision-making with a forensic eye on child protection' (2005: 38). The move towards a child protection approach in New Zealand came with the introduction in 1992 of the Paramountcy Principle, which privileges child protection in situations where the rights of parents are in conflict with the rights of the child. Social workers are mandated, through the Children, Young Persons and Their Families Act 1989 to remove children at 'serious risk of harm'.

Horwath (2005) notes that the role of the social work team in determining the focus of an assessment, the definition of neglect used and the subjective factors within individual social workers may all impact on assessments. She also states that while the Irish do not have a child protection register, they do have a child protection notification system and she found three different approaches to risk assessment in her sample of social workers in Eire: assessments which merely confirm that abuse took place; assessments which confirm whether the child has or will suffer harm; and assessments which confirm not only potential harm but also the impact of that harm on the child's future well-being.

In a vignette exercise undertaken by Horwarth's sample of social workers, 50 per cent of respondents focused on the present crisis (abuse), 22 per cent considered the context and the pragmatics of the situation; and 18 per cent considered the child's wishes and longer-term well-being (Horwath, 2005). Horwath found that over half of the actual cases in her sample of child neglect incidents were closed because the neglect was unconfirmed or carers/agencies did not respond to requests for information. However, this study took place before a framework for assessment was developed in Eire. Horwarth also notes that child neglect is more prevalent than other forms of child abuse in the western world but research is limited, mainly to the USA and UK.

Taylor and Meux (1997) also suggest that the identification of risk is influenced by the occupation to which professional respondents belong. Britner and Mossler (2002) argue that good child protection practice should encompass the rights of the child, the integrity and rights of the family and the duties and powers of the state. Different professionals represent those three interest groups and yet little research to date has explored the differences between professionals in the factors which influence their decision making (Stanley, 2005). Britner and Mossler (2002) found different professionals assessed risk not according to the characteristics or circumstances of the client but of the organisation within which they worked. Their study found that the different professionals involved in the same cases placed different emphasis on factors influencing the risk assessment process and outcome.

1.9.2 Legal threshold and practice that protect witnesses in court

The legal definition of a witness and consequently the person eligible for witness protection is of importance to the study. The definition of "witness" may differ according to the legal system under review. For protection purposes, it is the function of the witness – as a person in possession of information important to the judicial or criminal proceedings – that is relevant rather than his or her status or the form of testimony. With regard to the procedural moment at which a person is considered to be a witness, the judge or prosecutor does not need to formally declare such status in order for protection measures to apply. Witnesses can be classified into three main categories: justice collaborators; victim-witnesses; and other types of witnesses (innocent bystanders, expert witnesses and others) (UNODC, 2008).

A justice collaborator is a person who has taken part in an offence connected with a criminal organization and possesses important knowledge about the organization's structure, method of operation, activities and links with other local or foreign groups. An increasing number of countries have introduced legislation or policies to facilitate cooperation by such people in the investigation of cases involving organized crime. These individuals are known by a variety of names, including cooperating witnesses, crown witnesses, witness collaborators, justice collaborators, state witnesses, "supergrasses" and *pentiti* (Italian for "those who have repented"). There is no moral element involved in their motivation to cooperate. Many of them cooperate with the expectation of receiving immunity or at least a reduced prison sentence and physical

protection for themselves and their families. They are among the main participants in witness protection programmes. The combination of lenience in (or even immunity from) prosecution with witness protection is considered a powerful tool in successful prosecution of organized crime cases (United States Department of Justice, 2006). However, this practice can raise ethical issues as it may be perceived as rewarding criminals with impunity for their crimes. To address these concerns, a growing number of legal systems provide that the "benefit" to collaborators is not complete immunity for their involvement in criminal activities but rather a sentence reduction that may be granted only at the end of their full cooperation in the trial process (Fyfe & Sheptycki, 2006).

The second category of witnesses is the victim witnesses. In accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), "victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative in Member States, including those laws proscribing the criminal abuse of power. Victims play a central role in the criminal process. They may be the complainant initiating the proceedings or they may be witnesses for the prosecution. Because of the victims' vulnerability, there is general agreement that they should receive assistance before, during and after their participation in a trial. To ensure their physical safety, general police and in-court protection measures may be applied (for instance, testimony via videoconferencing, safe houses and use of shields). Victim witnesses may also be included in a witness protection programme if all other conditions are fulfilled (such as value of testimony, absence of other effective means of protection, existence of serious threat, and personality of the witness) (UNODC, 2008). Recognizing the need to provide for the well-being of victim-witnesses and aware that the admission criteria of witness protection programmes are overly rigid, a number of countries have introduced special witness assistance or support schemes that are distinct from witness protection. Implemented in close cooperation with law enforcement, judiciary and immigration authorities and civil society, such schemes aim to create the conditions that would allow vulnerable witnesses not only to testify in physical security but to avoid re-victimization as well. They include: police

protection, temporary relocation to safe areas, evidentiary rules of protection measures when testifying in court (anonymity, shielding, videoconferencing), and moderate financial assistance.

The third category of witnesses is the "other participants". Some countries consider inclusion in witness protection programmes not only witnesses but also other categories of people whose relation to a criminal case may put their lives in danger, these are people like such as judges, prosecutors, undercover agents, interpreters and informants. The use of informants and intelligence providers by the police is an important element in the investigation and prevention of crimes. Their role is different from that of witnesses; because they are not called to testify in court and in some countries, it is not even necessary to disclose the assistance they provide. In Australia, Austria, Canada, Latvia, the Netherlands, Norway and the United Kingdom of Great Britain and Northern Ireland, informants can be admitted to witness protection programmes. The situation is different in Germany, Slovakia and the United States, because only those witnesses who enter the criminal procedure and testify may be eligible for witness protection. Police officers who use informants as sources keep their names and identification details confidential and, under certain conditions, provide them with physical protection on an ad hoc basis. Informants admitted to a protection programme should discontinue their relationship with investigation and intelligence agencies. In most countries, it is only in exceptional circumstances that judges, prosecutors, undercover agents, expert witnesses and interpreters are included in witness protection programmes. Intimidation or threats against their lives are considered to relate to their posts and the performance of their duties. They can qualify for special police protection, job transfers or early retirement, but their protection differs in nature from the protection measures intended for at-risk witnesses (UNODC, 2008).

As far as the criminal justice administration is concerned, a victim of a crime has two significant roles to play, example as a complainant/informant and as a informant for the prosecution. Regarding how a criminal offence becomes a 'case' a victim is usually the person who brings the case to the relevant authorities. In doing so, the victim has to give statements to the officials as a witness as well. At this stage, the investigation of a crime may not come to a logical conclusion without the victim's

active participation. Furthermore, if the case is brought to court, the victim's testimony in court is usually accepted as the best piece of evidence that can be used against the accused. More specifically to the victims who are women and children, it is likely that they are relatively sensitive to the feeling of threat unless they are well treated.

Witnesses make a vital contribution to many criminal cases. Their role is particularly significant in Anglo-American legal systems where the focus of trial proceedings is on oral evidence (Egglestone, 1978). Witnesses' accounts in court can be a decisive factor in determining the outcome of a case. Increasingly, inquisitorial systems are also relying on oral evidence from witnesses (as is clear from the line of cases regarding witnesses that have been referred to the European Court of Human Rights) The role of the witness can be a demanding and stressful one. Research in a variety of jurisdictions has demonstrated that witnesses seldom find witnessing a positive experience (Rock 1993; Stafford & Asquith 1992; Goodman et al. 1992b). They may not know what is expected of them and most are unlikely to find the laws of evidence and procedure easy to understand. Some may complain of aggressive and intensive cross-examination. They may have to wait for long periods in uncongenial surroundings and they may have little guidance about what is likely to happen or explanations for the decisions and outcome in their case. Reluctant witnesses, who may have genuine reasons for fearing retaliation if they give evidence, are not infrequently treated as recalcitrant and penalized accordingly (Fyfe and McKay, 2000).

In spite of these difficulties, the position of witnesses in most jurisdictions revolves around responsibilities rather than rights (Mackarel *et al.*, 2001). For instance, in Scotland at the present time witnesses must give statements to the police when asked to do so. In serious cases they must agree to be interviewed by the prosecutor and in all cases they must allow the defence to interview them. They must give their names and addresses even in circumstances where they would prefer to remain anonymous because of fear of intimidation. In addition, they must make themselves available to be examined and cross-examined in court, regardless of whether the date, location and mode of giving evidence are suitable for them. The requirement to comply with a witness citation to appear in court in a serious case has been strengthened in various

countries by certain provisions, where witness's arrests are to be issued in special cases, for example, as it is the case in Scotland.

Some recognition however, has been given to the problems faced by certain witnesses in giving evidence. For example, the Council of Europe has acknowledged the needs of intimidated witnesses, particularly in cases of organized crime or crime against the family, in a wide-ranging Recommendation on the Intimidation of Witnesses and the Rights of the Defence (Moody, 2005). In Scotland, alternative ways of giving evidence (using what are called "special measures") have been available to children since 1990. Children (defined on those aged less than 16 years old) may in any criminal case, give their evidence from behind a screen, by CCTV, or by means of a commissioner, subject to judicial approval. In 1997, this legislation was extended to include a limited range of vulnerable adults, namely those with certifiable mental illnesses or with severe learning disabilities. A complete revision of this area took place between 1998 and 2003, involving an extensive consultation exercise with interested parties (Scottish Office, 1998; Scottish Office, 2002) and culminating in the Vulnerable Witnesses (Scotland) Act 2004.

The crucial part played by witnesses in bringing offenders to justice is central to any modern criminal justice system, since the successful conclusion of each stage in criminal proceedings, from the initial reporting of the crime to the trial itself, usually depends on the cooperation of witnesses. Their role at the trial is particularly important in adversarial systems, where the prosecution must prove its case by leading evidence, often in the form of oral examination of witnesses, which can then be challenged by the defence, at a public hearing. Psychological studies of evidence-giving (Memon et al., 1998; Dent and Flin, 1992) suggest that court appearances can be highly stressful for witnesses, even in comparatively minor cases. The layout of the courtroom designed to be imposing and even intimidating, can be a source of fear but even more daunting is the nature of the proceedings, which may be incomprehensible to lay witnesses (Rock, 1991).

Examination and cross-examination is of necessity and demanding but can leave witnesses feeling bruised and vulnerable, especially when judges do not intervene to prevent harassment of witnesses (Ellison, 1998). Yet it is also clear from studies on

giving evidence at all stages of the criminal process, but more particularly in court, that witnesses who are relaxed and who feel secure are more likely to recall key events accurately and to give their evidence in a lucid and consistent way (Memon et al., 1998).

1.9.3 Infrastructure-related challenges prevailing in protection of witnesses

There are several infrastructure related concerns that have the ability to undermine the efficiency of the witness protection programs in any country. The nature of the witness protection is covert in nature and highly secretive thus requiring elaborate physical facilities and related set-ups that would aid in changes to the identity of witnesses and make them out of reach from any potential enemies or manipulation. The physical facilities should be easy to secure and ideally not shared with other institutions so as not to compromise its operations. There should also be a well-coordinated transport and logistics mechanisms.

Some of the witness protection require, identity change in contexts in which the threat against witness's life cannot be averted through temporary relocation or other measures. It consists of the creation of a new personal profile for the witness, hiding his or her original identity by issuing personal documents under a new name, resettling him or her in a new area and creating a substitute life history. The witness's previous status (age, marital status, profession, religion etc.) is mirrored, to the fullest extent possible, in his or her new identity. The fundamental principle is that the witness protection programme should be neither of benefit nor detrimental to the witness. Despite advances in biometric identification, ordinary physical characteristics are those most used to identify people. In some countries, the law allows plastic surgery to be used as a means of giving a witness a new identity by altering his or her facial features. Such provisions usually refer to the removal of distinguishing marks on the face or body such as tattoos, moles and birthmarks. These measures including the necessary facilities and technical expertise are often lacking in developing countries hence undermining the witness protection program.

The court's infrastructure may also lack basic facilities that make it conducive for the witnesses under the state protection to give their testimony without compromising their identities. The courts in which the sensitive cases are being handled should be

constructed in a way that the protected witnesses have their identification obstructed and their voices distorted to avoid the witnesses from being identified by their adversaries. The courts may also fail to have the required technology for video conferencing and voice distortion that are critical elements of witness protection.

1.9.4 Socio-cultural barriers influencing protection of witnesses

There are several socio cultural barriers that influence the protection of the witnesses in any given countries. If a protected witness is placed in a new community, the assumed identity must be able to stand up to scrutiny. Understanding the socio-cultural context and the potential existence of strong family ties in a society are crucial for ensuring the success of the operation. In closed societies outsiders stand out, making integration difficult. Even in multicultural and multinational environments, informal ties exist among the various ethnic groups and people tend to gravitate towards their kin, making an information leak likely. Again, diligence is the key factor. The challenge is greater in smaller countries, where tracing a person's movements is particularly easy. In such cases, creating a new identity for a protected witness may be technically possible but impractical as an effective means of protection. In those situations, some witness protection units have shifted their emphasis from permanent relocation and identity change to physical protection and continuous moving of the protected witness. Participants are accommodated in secure areas under close protection for periods ranging from a few weeks to several months, after which time they are moved again. Obviously, such practices are resource-intensive and have severe implications for the witness's psychological status. Relocation overseas may be the only long-term option available.

Witnesses cannot be separated from their family members forever. In the early year of witness protection, little attention was given to the maintenance of relations between witnesses and the persons close to them. As a result, participants would often walk out of the programme or compromise security by trying to contact relatives or partners. Witness protection programmes have adapted to meet that need by extending protection to the witness's family members, cohabitants and other persons close to him or her. The number of persons that may accompany a witness in the programme depends, in part, on factors such as family traditions and social culture. Witnesses with strong social and family links pose a range of additional difficulties that must be

considered during the assessment process. Ultimately, other measures may have to be taken to ensure protection. Alternatively, the decision may be taken to exclude that person as a witness. One key group that must be considered when relocating persons close to the witness is young children, who may compromise the programme by revealing confidential details to outsiders. Witnesses cannot be separated from their family members forever. In the early years of witness protection, little attention was given to the maintenance of relations between witnesses and the persons close to them. As a result, participants would often walk out of the programme or compromise security by trying to contact relatives or partners.

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1.9.5 Witness Protection Across the World

Today, witness protection is viewed as a crucial tool in combating organized crime, and a large number of countries around the world have established such specialized programmes or have legislated their creation. Examples from different jurisdictions that have decided to establish witness protection programmes and their main elements are provided below.

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 report 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 (Australia Parliamentary Joint Committee on the National Crime Authority, 1988).

The Act 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 programme. It also 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. It 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. It safeguards the integrity of Commonwealth identity documents (tax file numbers, passports) by providing that identity documents for participants in sub-national witness protection programmes 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. It 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. The Act 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 (Australia Federal Police, 2006).

The following states and territories of Australia have also 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; and Western Australia: Witness Protection (Western Australia) Act 1996.

In response to a call from the police for reform in 1994, the Hong Kong Police Force set up an ad hoc witness protection programme. A similar programme 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 programmes established by the Hong Kong Police Force and ICAC.

The Ordinance establishes a witness protection programme 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 programme 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. It stipulates that the person authorized to make decisions on the management of the programme and the inclusion or removal of witnesses is to be designated in writing by the Police Commissioner and the ICAC Commissioner. That authority lays with the Director of Crime and Security at the Police Force and with the Director of Investigation (Government Sector) at ICAC. The ordinance further defines the criteria for admission to the programme and the grounds for early termination, outlining the obligations of witnesses. It also 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 programme, including changing their identity details. It establishes an appeals procedure against decisions that disallow inclusion of a witness in the programme, terminate protection or determine that a change of identity would not be among the applicable measures. A special board having the power to confirm or reverse the

original decision reviews the appeal. Nothing in the legislation prevents a witness from challenging further a decision of the original authority or the review board by means of judicial review. Finally, it penalizes the disclosure of information about the identity and location of a witness who is or has been a participant in the programme or information that may compromise the security of a witness.

Colombia's witness protection programme 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 programmes 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 programme is managed by a special directorate headquartered in Bogotá and with regional offices in Barranquilla, Cali, Cúcuta and Medellín. 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 programme, and a security group responsible for implementing all the protection measures ordered by the Directorate following the threat assessment. The third programme 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 programme for any of the following reasons: unjustified refusal to submit to judicial procedure; refusal to accept plans or programmes for their resettlement;

commission of wrongful acts that seriously affect the protection procedure; and voluntary withdrawal.

Witness protection programmes 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, other German states and the Federal Criminal Police Office systematically implemented them. In 1998, the Witness Protection Act was promulgated. The Act included provisions that regulated criminal proceedings, with a focus on: use of video technology for interviewing at-risk witnesses (especially children testifying as victims); improved possibilities for ensuring the confidentiality of personal data of witnesses at all stages of criminal proceedings; and provision of legal assistance for victims and witnesses. Also in 1998, the Criminal Police Task Force developed a witness protection concept outlining for the first time the objectives and measures to be implemented by agencies involved in witness protection. That led to the issuance of general guidelines for the protection of at-risk witnesses by the federal and state ministries of the interior and justice (Hilger, 2001).

Until the adoption in 2001 of the Act to Harmonize the Protection of Witnesses at Risk, the guidelines served as the main basis for Germany's witness protection programme. In May 2003, the guidelines were aligned with the legal provisions of that act and now serve as the implementing provisions of the Act for all witness protection offices in Germany. The 2001 Act was introduced to harmonize legal conditions and criteria for witness protection at the federal and state levels. Its main provisions cover four areas. The first entails the categories of witnesses entitled to consideration for inclusion in the programme and the respective admission and removal criteria. Under the Act, admission may be granted to persons who are in danger because of their willingness to testify in cases involving serious crime or organized crime. Participants must be both suited and willing to enter the programme. The second entails decision-making and implementing authority. While the Act provides that the protection unit and public prosecutor should take decisions on admission jointly, it also recognizes that witness protection units should hold decision-making authority on measures to be applied independently, using for that purpose such criteria as the gravity of the offence, the extent of the risk, the rights of the accused and the impact of the measures. The third entails 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. The fourth entails the conditions for the issuance of a cover identity and supporting personal documentation and the allowances to be provided for the duration of protection (Hilger, 2001).

Germany's witness protection programme 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: preparation of an annual report on the witness protection programme; organization and conduct of training and continuing education; organization of regular conferences involving the directors of federal and state witness protection offices; cooperation between states, federal agencies and offices located abroad; and 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 programme, creation of a standardized catalogue of requirements for witness protection caseworkers and common concepts for training and continuing education (Hilger, 2001).

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. 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 programme. 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 programme a separate structure for justice collaborators.

The main provisions of Decree-Law No. 82, as amended in 2001, are fivefold. The first outlines the persons eligible for protection. These include witnesses and informants in drug-related, Mafia or murder cases; witnesses to any offence carrying a sentence of between 5 and 20 years; and individuals close to collaborators who are in danger. The second provision outlines the types of protection. These include a "temporary plan" involving relocation and subsistence for 180 days; "Special measures" involving protection and social reintegration plans for relocated individuals; and a "special protection programme" which provides relocation, provisional identity documentation, financial assistance and (as a last resort) new legal identities. The third provision outlines that 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 programme. The fourth provision requires that the decisions on admission are taken by a central commission comprised of: the Under-Secretary of State at the Ministry of the Interior; two judges or prosecutors; five experts in the field of organized crime; and finally the last provision outlines that the changes in identity must be authorized by the Central Protection Service, which is responsible for the implementation and enforcement of protection measures.

Described as ‘the paradigm programme’ (Roberts-Smith, 2000) on which many other countries’ witness protection programmes are modelled, the US Federal Witness Security Program (WITSEC) was established by the 1970’s Organized Crime Control Act. The background to the Act was the limited success in the 1960s of the Justice Department’s attempts to tackle Italian–American organized crime and, in particular, the problems created by the *Mafia* code of *omerta*, the code of silence, which created difficulties in securing convictions against members of ‘the mob’ (Earley and Schur, 2002). By providing a high level of security to mob witnesses, including secret relocation and a change of identity, WITSEC became the key to breaking *omerta*.

WITSEC has provided an important ‘model’ for other countries. US-style witness protection programmes have become a new feature of the criminal justice landscape in a variety of European jurisdictions over the past 10 to 15 years and are now viewed by many as a crucial tool in cases involving problems of organized crime and terrorism. Variations in the nature and extent of these problems, as well as differences in legal systems mean that the precise form of witness protection arrangements varies from country to country

Four main differences can be identified. First there are differences in legislation governing the operation of witness protection programmes and in some instances, like the UK, it is only very recently that moves have been made to place it on a statutory footing. The publication in March 2004 of a UK Government White Paper entitled *One Step Ahead: A 21st century strategy to defeat organized crime* included a raft of new anti-organized crime measures including witness protection, witness immunity and plea-bargaining (Home Office, 2004) that were subsequently incorporated into the Serious Organized Crime and Police Act 2005. Despite these differences in legislative context, however, the eligibility criteria for witness protection measures are broadly similar. Protected witnesses need to be giving evidence in relation to the most serious crimes and those who are close to the witness who might be endangered are also eligible for protection. The forms of protection available are also quite similar (regardless of specific legislation) and normally involve the relocation of a witness and his or her close family, the possibility of formally changing their identity, and help with social and economic assimilation in the communities to which they are moved.

A second important difference within Europe is that some countries, including the UK, view witness protection as largely a police function (Fyfe 2001), whereas others give a key role to the judiciary and government ministries. In Belgium, for example, a Witness Protection Board, comprising public prosecutors, senior police officers and members of the ministries of Justice and the Interior, takes decisions about who is protected. In Italy a Central Commission takes the decisions, chaired by the Under-Secretary of State at the Ministry of the Interior. By contrast, traditionally in the UK, decisions about inclusion on protection programmes have been taken by a senior police officer.

A third difference is that in some countries, most notably Italy, the nature and scale of organized crime means that there are thousands of participants on witness protection programmes, whereas in other countries there are probably no more than a few hundred. In The Netherlands and Germany, for example, the number of participants on witness protection programmes is estimated to be between one and three people per million inhabitants (in Germany about 650 people a year are taken on to witness protection programmes); in Italy there are currently about 91 participants in such programmes per million inhabitants, equivalent to over 5000 people in total, of whom slightly more than 1000 are witnesses while the remainder are their close relatives (Van der Heijden 2001; Italian Ministry of the Interior 2001).

Despite these differences there have been clear attempts to harmonize aspects of witness protection arrangements across Europe (Council of the European Union 1995, 1997). A European Liaison Network, co-ordinated by Europol and comprising the heads of specialist witness protection units, was established in 2000. As a Europol document explains, the main goal of the Network is 'to create a useful, common platform for future cooperation and to give those Member States in which the implementation of witness protection is still underway the great chance to avoid waste of time in "reinventing the wheel" again' (Europol 1999). More recently the Council of the European Union (2005) adopted a recommendation on 'the protection of witnesses and collaborators of justice' which acknowledges the need for 'member states to develop a common crime policy in relation to witness protection'. In developing such a policy, the Council of Europe urges member states to be guided by

particular principles, including organizing protection of witnesses before, during, and after the trial, and finding alternative methods of giving evidence which protect witnesses from face-to-face confrontation with the accused. In terms of protection measures and programmes, the Council of Europe recommends a range of initiatives from using audio-visual recording of statements made by witnesses or devices that would protect the identification of witnesses at court, through to relocation or change of identity but only when 'no other measures are deemed sufficient to protect witnesses' (Council of the European Union). Where witness protection programmes are established, the 'main objective of these programmes should be to safeguard the life and personal security of witnesses/collaborators of justice, and people close to them, aiming in particular at providing the appropriate physical, psychological, social and financial protection and support'.

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 first 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. It then regulates the functions and duties of the Director, including the power to decide on admission to the programme. 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 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. It also 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 (South Africa, 2002, 2006).

The Act further 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. It continues to define offences and severe penalties for any disclosure or publication of information regarding persons admitted to the programme or officials of the Office for Witness Protection so as to ensure the safety of protected witnesses and programme 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. Finally, it 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 programme. Any such relocation requires ministerial approval (South Africa, 2002, 2006).

The Special Court for Sierra Leone (SCSL) was established jointly by the Government of Sierra Leone and the United Nations. It was mandated to try those who bore the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The SCSL was established as an international body that was independent of any government or organisation.

As at the end of 2009, nine persons associated with all three of the country's former warring factions stand indicted by the SCSL. The three factions are the Civil Defence Force (CDF), the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF). The indictees were charged with war crimes, crimes against humanity, and other serious violations of international humanitarian law. Specifically, the charges include murder, rape, extermination, acts of terror,

enslavement, looting and burning, sexual slavery, conscription of children into an armed force, and attacks on United Nations peacekeepers and humanitarian workers, among others. Indictments against two other persons were withdrawn in December 2003 due to the deaths of the accused. A third detainee, Hinga Norman, died on 22nd February 2007. Two of the trials (CDF and AFRC) have now been completed, and the five accused have been found guilty and sentenced. Trial against three members of the RUF, was concluded and those found guilty convicted. The fourth trial, against Charles Taylor (the former president of Liberia) began in January 2008; this trial was held in The Hague rather than in Freetown but remained a SCSL trial. In early 2013, Charles Taylor was found guilty by the Hague-based international criminal court (ICC) and was sentenced for 50 years in prison.

The need for safety and security is a basic human need (Maslow, 1943), and is a significant concern for SCSL witnesses. Sierra Leone is a small country, with only 5 million inhabitants, and the majority of those who perpetrated violence during the civil war are now living in the same communities as witnesses. A minority of witnesses in the SCSL testified openly, but most witnesses' identities were concealed for their own protection. In some cases, even witnesses' own family members did not know they had testified. Similar issues affected witnesses in the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and, according to Stover (2005), ICTY witnesses primarily feared recriminations against themselves or their families when, after testifying, they returned to the area in which both they and the accused live. There was a particular problem for witnesses who testified in the ICTY in this regard, since the court, and the witness support services, were not located in their home country, and when they returned home there were limited support and protection services available. The majority of protected witnesses interviewed by Stover (2005) said the protection measures failed to guard their anonymity, which put them at risk when they returned home. In the SCSL, one of the aims of setting up the Witness & Victims Section (WVS) was to ensure, as far as possible, that witnesses' security was not negatively affected by the fact that they testified (Horn, Charters and Vahidy, 2009).

1.10 Theoretical Framework

Structural Functionalism Theory

Structural functionalism, or simply functionalism, is a framework for building theory that sees society as a complex system whose parts work together to promote solidarity and stability (Macionis, 2010). This approach looks at society through a macro-level orientation, which is a broad focus on the social structures that shape society as a whole, and believes that society has evolved like organisms (DeRosso, 2003). This approach looks at both social structure and social functions. Functionalism addresses society as a whole in terms of the function of its constituent elements; namely norms, customs, traditions, and institutions. A common analogy, popularized by Herbert Spencer, presents these parts of society as "organs" that work toward the proper functioning of the "body" as a whole (Urry, 2000). In the most basic terms, it simply emphasizes "the effort to impute, as rigorously as possible, to each feature, custom, or practice, its effect on the functioning of a supposedly stable, cohesive system". For Talcott Parsons, "structural-functionalism" came to describe a particular stage in the methodological development of social science, rather than a specific school of thought (Talcott, 1975; Bourricaud, 1975). The structural functionalism approach is a macro sociological analysis, with a broad focus on social structures that shape society as a whole (Macionis, 2010).

While one may regard functionalism as a logical extension of the organic analogies for societies presented by political philosophers such as Rousseau, sociology draws firmer attention to those institutions unique to industrialized capitalist society (or modernity). Functionalism also has an anthropological basis in the work of theorists such as Marcel Mauss, Bronisław Malinowski and Radcliffe-Brown. It is in Radcliffe-Brown's specific usage that the prefix 'structural' emerged. Radcliffe-Brown proposed that most stateless, "primitive" societies, lacking strong centralised institutions, are based on an association of corporate-descent groups (Rice, 2012). Structural functionalism also took on Malinowski's argument that the basic building block of society is the nuclear family, and that the clan is an outgrowth, not vice versa (Rice, 2012). Crimes are known to distort almost all equilibriums, implying that human beings have to devise means of controlling excessive distortions or surviving the crime effects. The theory clearly recognizes interdependence of parts and individual’s contribution into the proper functioning of a system as a whole. In order to survive,

social institutions must have some control over their environment. The witness faced by the injustice threats from the criminal justice systems have to devise means of containing such threats so as to survive and form viable parts of the community. The measures to implementation of child witness protection in criminal justice systems have to be constantly reviewed overtime to ascertain their functional capacity to ensure that fairness prevails for all.

Émile Durkheim was concerned with the question of how certain societies maintain internal stability and survive over time. He proposed that such societies tend to be segmented, with equivalent parts held together by shared values, common symbols or, as his nephew Marcel Mauss held, systems of exchanges. Durkheim used the term 'mechanical solidarity' to refer to these types of "social bonds, based on common sentiments & shared moral values, that are strong among members of pre-industrial societies" (Macionis, 2011). In modern, complex societies, members perform very different tasks, resulting in a strong interdependence. Based on the metaphor above of an organism in which many parts function together to sustain the whole, Durkheim argued that complex societies are held together by organic solidarity, i.e. "social bonds, based on specialization and interdependence, that are strong among members of industrial societies" (Macionis, 2011). This argument emphasizes on the need for all societies to set goals and decide on priorities, which are institutionalized in form of political system. Lack of fair and just systems disrupts any of these institutions whichever it targets by destabilizing the economic base of the whole. The principle in operation is that of individuals being dependent on the system in the immediate social environment. According to the theory, once disturbance has been introduced into an equilibrated system, there will tend to be a reaction to this disturbance that tends to restore the system to equilibrium. The many cases of child witness being unprotected in criminal justice systems around the world are therefore assumed to have caused some levels of adjustment towards containing such future disturbances; the extent to which this study aims at establishing from within the Kenyan justice system.

These views were upheld by Durkheim, who, following Comte, believed that society constitutes a separate "level" of reality, distinct from both biological and inorganic matter. Explanations of social phenomena had therefore to be constructed within this level, individuals being merely transient occupants of comparatively stable social

roles. The central concern of structural functionalism is a continuation of the Durkheimian task of explaining the apparent stability and internal cohesion needed by societies to endure over time. Societies are seen as coherent, bounded and fundamentally relational constructs that function like organisms, with their various (or social institutions) working together in an unconscious, quasi-automatic fashion toward achieving an overall social equilibrium. All social and cultural phenomena are therefore seen as functional in the sense of working together, and are effectively deemed to have "lives" of their own. They are primarily analysed in terms of this function. The individual is significant not in and of himself, but rather in terms of his status, his position in patterns of social relations, and the behaviours associated with his status. Therefore, the social structure is the network of statuses connected by associated roles. It is simplistic to equate the perspective directly with political conservatism (Fish, 2005). The tendency to emphasise "cohesive systems", however, leads functionalist theories to be contrasted with "conflict theories" which instead emphasize social problems and inequalities.

Talcott Parsons was heavily influenced by Émile Durkheim and Max Weber, synthesizing much of their work into his action theory, which he based on the system-theoretical concept and the methodological principle of voluntary action. He held that "the social system is made up of the actions of individuals." His starting point, accordingly, is the interaction between two individuals faced with a variety of choices about how they might act, choices that are influenced and constrained by a number of physical and social factors (Parsons & Shills, 1976; Parsons, 1961; Craib, 1992). Parsons determined that each individual has expectations of the other's action and reaction to his own behaviour, and that these expectations would (if successful) be "derived" from the accepted norms and values of the society they inhabit. As Parsons himself emphasized, in a general context there would never exist any perfect "fit" between behaviours and norms, so such a relation is never complete or "perfect" (Parsons & Shills, 1976; Parsons, 1961).

The structural functionalism theory explains the relations between various parts of a system. For instance in mechanical systems, interrelationship of the parts are based on energy transfer. While in social cultural systems, interrelationships are based on information exchange. There is a degree of dependence between interrelated parts of a

system, which this study intends to evaluate as concerns witness protection within the Kenyan criminal justice system. The ministry of justice could be assumed to have a goal of completely eradicating the mishandling of child witnesses by prosecutors during interrogations. The feedback from the frequency of cases notable is therefore assumed to enable them develop even more preventive and control mechanisms; the extent to which this study aims at confirming. The weakness of the theory is that it fails to explain the reasons why internal system mechanisms fail. This study will reinforce this weakness by using the conceptual model below to establish further inter-relationship among various variables under review.

1.11 Conceptual Framework

The purpose of this study was to assess the factors influencing the implementation of the witness protection programme especially with the focus on minors.

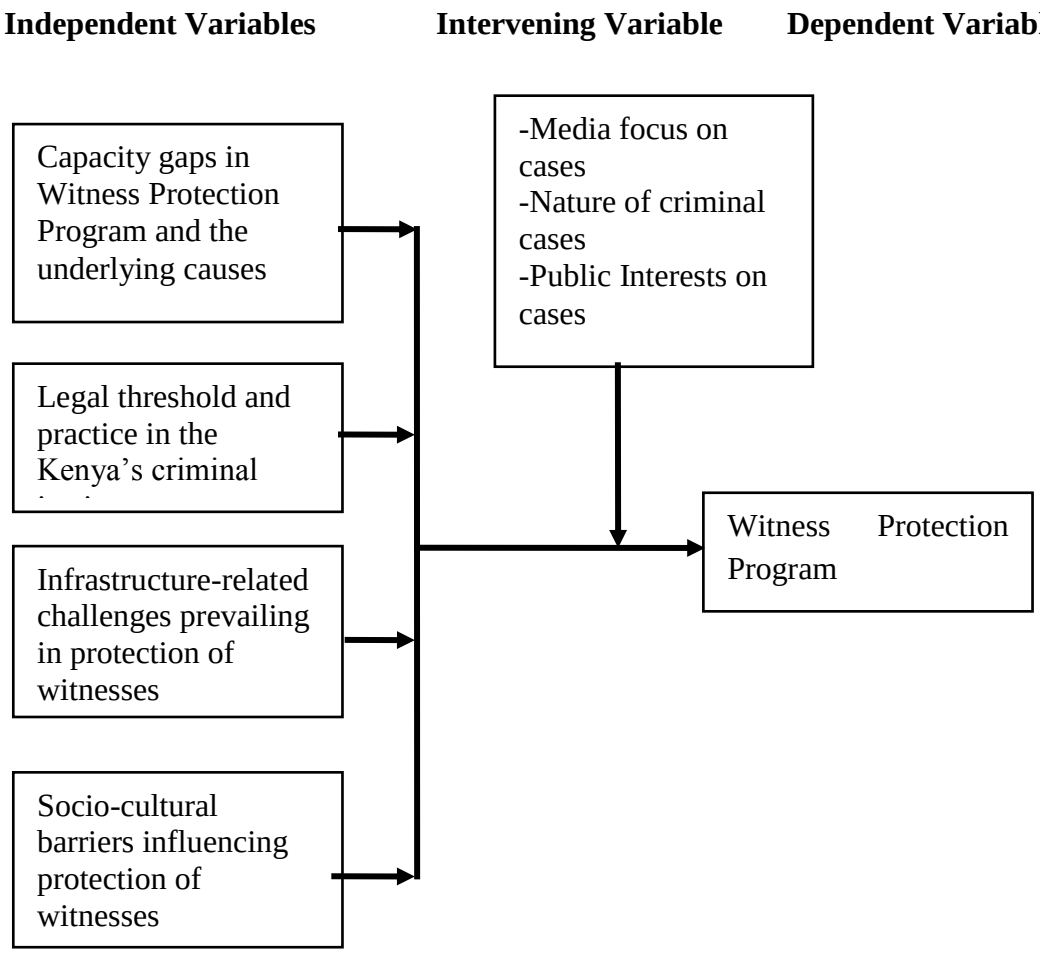

Figure 2:1: Conceptual Framework

The study conceptualized that implementation was attributed to aspects of: the capacity in terms of personnel and technologies; nature of the existing legal framework and practices; the level of investment in supporting infrastructure; and the cultural barriers inhibiting participation of witnesses in criminal justice systems. The study considered these four as the independent variables of the study. The dependent variable was the implementation of the witness protection programme. Figure 2.1 above shows the relationship between the dependent and the independent variables. The independent variables in the conceptual model above are unpacked below:

Capacity in Terms of Personnel and Technologies

Protection of witnesses requires skilled expertise and technical experience. In Kenya, experts from all over the world including the United Kingdom, the United States, the Netherlands, South Africa, the International Criminal Tribunal for Rwanda, International Criminal Court, and the Special Court for Sierra Leone have all come in to assist Kenya implement and operationalize its Witness Protection Act. In 2009, during the launch of the witness protection unit in Nairobi, its directorate confirmed that lack of capacity to implement the Act was a major challenge facing its operationalization. This variable helped to expose the capacity gaps in the Witness Protection Program and the underlying causes.

Nature of the Existing legal Framework and Practices

Since its inception in 2006, the Witness Protection Unit (WPU) has experienced some operational difficulties attributable largely to its lack of statutory independence and autonomy under the current legislation. Coupled with the fact that it is difficult for this program to be administered as a unit of government, its ability to recruit personnel and mobilize resources has been very difficult. Hence, there has been a proposal to the executive to de-link the two units.

Witness protection Act is considered by many as a landmark legislation in the criminal justice system not just in Kenya but in Africa. Its objective is to protect witnesses and their families from threats, intimidation and even death for cooperating with the law.

WPU was officially launched on March 4, 2009. Its functions under section 4 of the Witness Protection Act and Regulation 3 of the same Act are: To operationalize the witness protection act and regulation by ensuring that proper protective measures are put in place for a witness; cooperate with other agencies where necessary in providing any of the protective measures stipulated in section 4 of the Act; advise and direct witnesses on where to obtain legal services for the purpose of protecting their rights; and assist witnesses when called to testify before a court of law. This variable sought to gauge the legal threshold and practice in the Kenya's criminal justice system that expressly protects witnesses in court.

The Level of Investment in Supporting Infrastructure

The nature of infrastructure required in protection of witnesses include the physical facilities and related set-ups that would aid in changes to the identity of witnesses and make them out of reach from any potential enemies or manipulation.

This variable was sought to expose the infrastructure-related challenges prevailing in protection of witnesses. Identity change is an exceptional measure applied only when the threat against the witness's life cannot be averted through temporary relocation or other measures. It consists of the creation of a new personal profile for the witness, hiding his or her original identity by issuing personal documents under a new name, resettling him or her in a new area and creating a substitute life history. Witness's previous status (age, marital status, profession, religion etc.) is mirrored, to the fullest extent possible, in his or her new identity.

The fundamental principle is that the witness protection programme should be neither of benefit nor detrimental to the witness. Despite advances in biometric identification, ordinary physical characteristics are those most used to identify people. In some countries, the law allows plastic surgery to be used as a means of giving a witness a new identity by altering his or her facial features. Such provisions usually refer to the removal of distinguishing marks on the face or body such as tattoos, moles and birthmarks. The fact that this variable sought to unpack was the extent to which Kenya is prepared by way of infrastructure to aide in making such strides.

Socio-Cultural Barriers

If a protected witness is placed in a new community, the assumed identity must be able to stand up to scrutiny. Understanding the socio-cultural context and the potential existence of strong family ties in a society are crucial for ensuring the success of the operation. In closed societies outsiders stand out, making integration difficult. Even in multicultural and multinational environments, informal ties exist among the various ethnic groups and people tend to gravitate towards their kin, making an information leak likely. Again, diligence is the key factor.

The challenge is greater in smaller countries, where tracing a person's movements is particularly easy. In such cases, creating a new identity for a protected witness may be technically possible but impractical as an effective means of protection. In those situations, some witness protection units have shifted their emphasis from permanent relocation and identity change to physical protection and continuous moving of the protected witness.

Participants are accommodated in secure areas under close protection for periods ranging from a few weeks to several months, after which time they are moved again. Obviously, such practices are resource-intensive and have severe implications for the witness's psychological status. Relocation overseas may be the only long-term option available. This variable sought to unpack the socio-cultural barriers influencing protection of witnesses in Kenya, considering the existing cultural and beliefs diversity.

1.12 Emerging Issues

This study aims to fill the several research gaps inherent in the research gaps. The available literature on the legal provisions on the witness protection largely documents the chronology of the enactment of the various witness protection laws in diverse in different countries. The literature fails to document the inadequacy or the weakness of the existing legal framework in effectively dealing with the issue of weakness protection. For example, the available literature doesn't document circumstances or examples in which there were cases of inadequate legal framework to deal with the arising witness protection aspects. Similarly, the legal capacity in

relations to Kenya has also exhaustively examined the chronology of the events leading to the enactment of the witness protection laws as well as the various legislations that have been put in place. The literature doesn't point out inadequacies of the law, if any, to deal with arising issues. These are the gaps this study will examine. In the context of the capacity gaps in witness protection, the available literature exclusively examines the aspect of witness protection in relations to children. The available literature gives an impression that the only capacity gap involved in the witness protection is challenges associated with children. The available literature fails to document capacity gaps in terms of institution policies, human resources skills and availability amongst other factors. This study therefore wishes to examine capacity dynamics in dealing with the witness protection. There is thin literature of the sociocultural challenges to witness protection which this study focused on

CHAPTER THREE

METHODOLOGYIntroduction

This chapter focused on the research design used in the study. The issues described in this chapter includes the target population, the sampling techniques, the research design, a description of instruments or tools used to collect data, sample size and the techniques used in data analysis.

1.14 Research design

The descriptive research design was used for this study. The descriptive research design explains the phenomenon of the study as it is on the ground without any manipulation of variables. This research design uses descriptions to explain the phenomenon in detail and as such was ideal for this study as the study seeks to examine the challenges of the witness protection programs without any variable manipulation.

1.15 Study Area

This study was carried out at the judicial and legal institutions within Nairobi region. Nairobi being the headquarters of the judiciary it was easy to access the necessary and reliable information. This study was focusing on the following institutions or departments: the Attorney General office, Law Society of Kenya, Directorate of Public Prosecution, the Kenya Police, Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, Children's Court, and representatives from National Assembly. Secondary data was collected from case related legislative provisions and reports from national and international agencies advocating for human rights.

This study considered this scope to be sufficient because most of these institutions have their headquarters within the Nairobi region, the offices in the region handle are highly influential on matters of policy formulations and implementation, and they handle the highest number of cases relating to participation of children in criminal proceedings.

Figure 3:2: The Study Area – Nairobi

Nairobi region includes the city of Nairobi (Nairobi central), Athi-River municipality, Ngong municipality, Thika municipality, Kikuyu municipality, Limuru municipality, Kiambu municipality and Ruiru municipality. This was arrived at based on the assumption that the research findings in Nairobi and surroundings easily be related to those of other areas of Kenya. Figure 3.1 below shows the map of the study area.

1.16 Population Size

The target population was officials working in witness protection programs from Attorney General's office, Law Society of Kenya, Directorate of Public Prosecution, Kenya Police, Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, Children's Court, and representatives from the National Assembly.

1.17 Sampling Procedure and Sample Size

Sample size was guided by Lincon and Guba's (1985) recommendation that the size of the sample is determined by 'informational considerations'. In this study, the number of participants was determined by those who were likely to yield information being sought.

Top five informants were selected from each agency since they are better placed to give the relevant information. 40 key informants were drawn from the following: the Attorney General's office, the Law Society of Kenya, the Directorate of Public Prosecution, the Kenya Police, The Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, the Children's Court, and the representatives from the National Assembly. Five informants who are directly dealing with witness protection were obtained from each of the above areas as illustrated on Table 3.1 below.

Sampling in field study involves 'the selection of research site, time, people and events (Burgess in Miriam 1998, p.76). This is a qualitative study, therefore, non-probability sampling was used to allow the researcher solve a qualitative problem. Purposive sampling was used. Purposive sampling is based on the assumption that the researcher wants to discover, understand and gain insight into the phenomenon under study and therefore must select a sample from which most can be learned (Merriam,

1998). In this study therefore, the sample was picked because they presented "information rich cases" (Merriam, 1998, p.61).

able 3:1: Respondent Distribution and Sample Design

S/no	Agency		No.
1.	AG Office	AG; State Counsels; Records officers; Solicitor general; Deputy solicitor general	5
2.	Law Society	LSK Chairman LSK V/Chairman and three Council members	5
3.	Directorate of public prosecution	DPP, Secretary Public Prosecution, and the three Deputy Directors Public Prosecution	5
4.	Ministry of Gender & Social Services	Principal Secretary Min of Gender & sports; Chief Social Services Officer; Welfare Services Officers and Heads of Departments;	5
5.	Directorate of witness protection agency	Director Witness Protection Agency; Deputy Director (Operations); Chief Legal Officer; Chief Witness Protection Officer; Deputy Chief Witness Protection Officer	5
6.	Children's court	Two magistrates and three children's lawyers	5
7.	Kenya police	CS Min of Interior Inspector General of Police Principal Secretary Min of Interior Deputy inspector General Deputy Director CID	5
8.	National Assembly	Five members of parliament	5
	Total		40

1.18 Units of Analysis

According to Schutt (1996:593), unit of analysis is "the level of social life on which the research question is focused". The unit of analysis is thus the category across

which the study's variables vary. The major units of analysis for study were the challenges facing implementation of witness protection programme in Kenya. The unit of observation were the informants drawn from across various governmental "gatekeeper" agencies tasked with pursuit of justice as well as human rights protection.

According to Schutt (1996:593), unit of analysis is the organization, or entities upon which the study is based on. The unit of analysis for this study is the AG office, Law Society, Directorate of Public Prosecution, Ministry of Gender and Social Services, Directorate of Witness Protection Agency, Children's court, Kenya Police, and National Assembly. The unit of observation were the informants drawn from across various governmental "gatekeeper" agencies tasked with pursuit of justice as well as human rights protection.

1.19 Data Collection Methods

Primary data for the study was collected from the key informants drawn from the Attorney General office, Law Society of Kenya, Directorate of Public Prosecution, Kenya Police, Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, Children's Court, and representatives from National Assembly.

The study spent considerable time at aforementioned offices identifying key informants (including key strategists) who were involved with the formulation of the witness protection programmes, reading the current and past correspondence dealing with the formulation of policies leading to the programme, and having extensive discussions with the key informants.

In qualitative research, interview is extensively used because it facilitates an interaction with the interviewer and the interviewee with a defined objective of gathering 'information rich' and reliable data. In general, qualitative interviews are informal and less structured interviews. During the interviews sessions, the researcher attempts to gain the participants' meaning and perspective of relevant topics. While collecting data, the researcher provides an opportunity to the participants to describe their experiences and simultaneously discuss their opinions regarding the level of success of the activities. In this study, the process of interviewing allowed the

participants to describe and reconstruct details. Open-ended questions were asked to enable the interviewee to elaborate and to recall additional information. Also, the researcher was able to probe the participants for more in-depth insights (Gay, Mills & Airasian, 2006).

Validity refers to the ability of the data collection instrument to measure what it purports to measure or to answer the research objectives. On the other hand, reliability of the data collection instrument refers to the ability of the data collection instrument to replicate the given results if the study was repeated under similar circumstances. The aspects of the validity and reliability were examined using a pilot study involving a respondent from each of the departments forming the target population that is the Attorney General's office, the Law Society of Kenya, the Directorate of Public Prosecution, the Kenya Police, The Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, the Children's Court, and the representatives from the National Assembly. Care was undertaken not to include these respondents in the final study.

1.20 Data Analysis

The collected data using interview method was qualitative in nature. The data was analysed using thematic analysis. The thematic analysis involves the examination, pinpointing and recording patterns or themes within data. Themes are patterns across data sets that are important to the description of a phenomenon and are associated to a specific research question. Once emergent themes have been identified, the same were coded and analysed using the quantitative data analysis methods such as the use of frequencies in a multiple responses set up.

1.21 Ethical Considerations

Ethical considerations like ensuring confidentiality of responses were taken care of before the data collection commences. This was necessary because it encouraged the respondents to be honest. No respondent was forced to take part in this study. The authority to visit the respective offices was sought from the respective Directorates. A study permit was also sought from the National Council for Science and technology.

CHAPTER FOUR

RESULTS AND DISCUSSIONS Introduction

The broad objective of this study was to examine the challenges facing the implementation of witness protection program in Kenya. Specifically, this study sought to achieve the following objectives: investigate the capacity gaps in the Witness Protection Program and the underlying causes; establish the legal threshold and practice in the Kenya's criminal justice system that expressly protects witnesses in court; assess the infrastructure-related challenges prevailing in protection of witnesses; and to examine the socio-cultural barriers influencing protection of witnesses.

This chapter specifically presents findings on the data gathered from the key informants. The rest of the chapter is organized as follows: Section 4.2 outlines the general profile of the sample; Section 4.3 presents the identified capacity gaps in the witness protection program and the underlying causes; Section 4.4 presents findings on the legal threshold and practice in the Kenya's criminal justice system that expressly protects witnesses in court; Section 4.5 outlines the infrastructure-related challenges prevailing in protection of witnesses; and Section 4.6 provides data on the socio-cultural barriers influencing protection of witnesses.

1.23 Results

1.23.1 General Information of the Sample

Data for this study was collected from 40 key informants who directly handle witness protection issues. The sample was largely male-dominated with 85% of the sampled respondents being male respondents and the remainder of 15% being female. The gender distribution is shown in Table 4.1.

Table 4:2: Distribution of Sample Respondents by Gender

Gender Category	**Frequency**	**% of the Total**
Male	34	85.0%
Female	6	15.0%
Total	40	100.0%

The respondents were drawn from the Attorney General's office, the Law Society of Kenya, The Directorate of Public Prosecution, the Kenya Police, The Ministry of Gender (Children's Department), Directorate of Witness Protection Agency, the Children's Court, and the representatives from the National Assembly. The stuydy spent considerable time at offices identifying key informants (especially key strategists) who were involved with the formulation of the witness protection programmes, reading the current and past correspondence dealing with the formulation of policies leading to the programme, and having extensive discussions with key informants. Table 4.2 indicates the distribution of the respondents by the source institutions from where they were sampled from.

Table 4:3: Respondent Distribution by Source Organization

Agency	**Number of Respondents**
Attorney General Office	5
Law Society	5
Directorate of public prosecution	5
Ministry of Gender	5
Directorate of witness protection agency	5
Children's court	5
Kenya police	5
National Assembly	5
Total	**40**

A majority of the sample respondents had extensive experience in civil and criminal litigation issues, public policy formulation, and legislative procedures. The target respondents had extensive experience in civil and criminal litigation issues, public

policy formulation, and legislative procedures. All respondents had over 3 years working experience in each of these three core areas under review, with a majority of the respondents (60%) being in the 6-10 years' experience bracket. These results are tabulated in Table 4.3 below.

Table 4:4: Distribution of Sample Respondents by Level of Experience

Years of Experience	**Number of Respondents**	**% of the Total**
0 – 2 years	-	-
3 – 5 years	6	15.0%
6 – 10 years	24	60.0%
Over 10 years	10	25.0%
Total	**40**	**100.0%**

1.23.2 Capacity Gaps in the Witness Protection Program

Findings reveal a number of gaps in the witness protection program. These gaps are discussed in the ensuing sub-headings.

1.23.3 Inadequate Staffing Capacity

This study sought to establish the gaps in the Witness Protection Programme in regard to availability of staff. A majority of the interviewed informants (95%) revealed that one of the major challenges facing the roll out of the witness protection programme in Kenya is inadequate staffing capacity. The findings are tabulated in Table 4.4 below.

Table 4:5: Effect of Staff Capacity

Is inadequate capacity a challenge in the Kenyan Witness Protection Programme?	**Number of Respondents**	**% of the Total**
Yes	38	95.0%
No	2	5.0%
Total	**40**	**100.0%**

The findings further revealed that there are few experts available in the field of Witness Protection in Kenya. As shown in Table 4.5 below, 27% of the respondents did not have relevant training in the tasks they are undertaking in their respective

departments. However, the remainder of the respondents (73%) reported that they are adequately trained in their respective tasks. The results further indicate that specific relevant areas that the respondents reported to have been trained in.

Table 4:6: Possession of Relevant Training Aligned to Allocated Tasks

Do you have relevant training that is adequate to execution of the tasks assigned?	**Number of Respondents**	**% of the Total**
Yes	29	73.0%
No	11	27.0%
Total	**40**	**100.0%**
If YES, briefly specify the relevant training you have?	**Number of Respondents***	**% of the Total**
Workplace Assessment	12	41.4%
Public Safety Training	26	89.7%
Operations and court security management	22	75.9%
Firearms operation and tactics	24	82.8%
Advanced driving	29	100.0%
Physical fitness	18	62.1%
Child Protection and Investigation	24	82.8%
Scenes of Crime Operations & Management	28	96.6%
Forensic services	29	100.0%
Witness relations management	29	100.0%
Witness protection measures	29	100.0%

*** Results based on multiple responses**

Various factors were attributed to have affected availability of staff. The findings are tabulated in Table 4.6 below.

Table 4:7: Staffing Challenges Reported by the Sampled Informants

What are the staffing related challenges facing the Kenya Witness Protection Programme?	**Number of Respondents***	**% of the Total***
Seconding inexperienced staff from other departments	16	40.0%
Inadequate funds to engage technical skilled persons	10	25.0%
Lack of training institutions for learning	8	20.0%
Inaccessibility of the staffs	8	20.0%
Poor record keeping on available qualified personnel	8	20.0%
Limited or no awareness of the WP program	6	15.0%

*** Each row is based on multiple responses (out of 40 sampled informants)**

Excerpt 4:1 presents interview responses from one of the informants who at the time of interview held a senior administrative position with the newly- established Witness Protection Agency. The findings underscore that the capacity of the WPA to fully undertake its mandate because it is constrained by lack of adequate financial and human resource expertise. Other challenges include: shortage of technical staff, lack of staff with specific witness protection advisory skills; few experts available and lack of professionally trained staff to man the program since it's a new concept in Kenya.

Excerpt 4:1: Interview with one of the Informants on the WPA

"The Agency, established in 2009 by an Amendment to the 2006 Witness Protection Act, is mandated to maintain a witness protection programme. It is also responsible for determining the criteria for admission and removal of witnesses from the programme, as well as determining the type of protection measures to be applied. We as the Agency, reiterate the Government's position to protect the witnesses and their relatives and urge those feeling threatened to report to the Agency or other state security organs. Through the witness protection program, the Government acknowledges the need for security to witnesses as a basic human right and thereby strengthening the criminal justice system. The Agency has faced numerous

challenges since its launch in 2011, with lack of adequate funding topping the list. Although we had requested for Sh450 million, the agency only received Sh196 million last year. Being a new concept in the country, getting qualified staff has been a challenge. The Agency still depends on the resource allocated to us by the National treasury. Earlier in the year, we appeared before Parliamentary Committee on Legal Affairs where we expressed the need to be allocated the required amount of money, but we were not successful." Key Informant

1.23.4 Low Investments in Technological Capacity

Witness protection programmes are covert units meaning all information about witnesses and the operational actions taken by the programme must be kept confidential and have their own databases for storing information .

Table 4:8: **Technological Capacity Level of the WPA**

Type of Technology Available / Invested in	**Available**	**Operational**
Desktop Computers	Yes	Yes
Laptop Computers	Yes	Yes
Data Servers / Data Management Units	Yes	Yes
Affidavits management systems	No	No
Threats monitoring systems	No	No
Witness financial management systems	No	No
Human resource management systems	Yes	Yes
Forensic computing systems	No	No
Technical surveillance systems	No	No
Physical surveillance systems	Yes	Yes
Digital video conferencing facilities	No	No
Voice recording and distortion facilities	No	No

Since the greatest risk of compromise to a programme is the human element, all staff, including administrative personnel, must be vetted to ensure the highest possible level of security. Only by setting the highest professional standard can those responsible for the programme (and for the lives of the protected witnesses) meet its demanding requirements. This is where investments in high end technologies would be critical.

The current technologies available for witness protection are tabulated in the Table 4.7 above. The results show that the following are available and operational: desktop computers; laptop computers; data servers / data management units; human resource management systems; physical surveillance systems.

The results further show that gaps exist in the following areas (based on best practices comparison from countries such as USA, Italy, Australia and South Africa): affidavits management systems; threats monitoring systems; and witness financial management systems. The findings reveal that the Witness Protection Agency has invested very little on the technological frontier, largely due to the small size of the budgetary allocation by the National Treasury.

1.23.5 Shortage of Expertise and Poor Training of Personnel

Staffing is a crucial element for the success of any protection programme. Witness protection officers need to possess a particular set of qualities and skills. They are required to be vigilant protectors, interrogators and undercover agents, as well as innovative thinkers, social workers, negotiators and even counsellors. One of the first tasks when establishing a programme is to decide where to find people with such qualifications. To ensure the confidentiality and security of information, protection agencies need to establish strict recruitment criteria and vetting procedures. The following are common elements of the recruitment and training of programme personnel (UNODC, 2008): A minimum of five years of service and adequate security clearance according to applicable laws and regulations are among the basic conditions; Officers and administrative staff employed by witness protection units should be of high moral standards and have among their personality traits both integrity and the ability to maintain confidentiality; Recruitment needs to be based on a psychological assessment of candidates, and counselling should be available to personnel for the duration of their service; The core staff of the unit should be a full-time force in order to reduce the risk of compromise and ensure high-level protection services through constant training. Part-time personnel could be available and used on a call-up basis for physical protection against lower threats at the regional or local level; and on-going skills maintenance and development is the key to the effectiveness of a witness protection programme.

Table 4.8 presents some of the current experts seconded to the agency as well as the gap levels when compared to best practices across the globe. The results indicate that gaps are openly evident in expertise areas such as: counsellors, human rights specialists, criminologists, forensic analysts, and VIP protection. This may be attributed to the fact that the Kenya's WPA is still in the formative stages. On-going skills maintenance and development is the key to the effectiveness of a witness protection programme. Protection officers perform a number of functions that require aptitudes that are different and perhaps broader than normal police functions. As a result, training must be multidisciplinary in nature and cover diverse fields. Coordinated and standardized training in national witness protection programmes could increase the confidence of the authorities in the capacity to protect witnesses.

Table 4:9: Expertise Level at the WPA

Expert Category	**Number Available in Kenya**	**Number in USA**	**Number in South Africa**
Counsellors	0	14	5
Police Constables	8	26	16
Police Investigators	22	52	32
System Engineers	1	4	4
Human Rights Specialists	0	8	6
Criminologists	0	23	8
Forensic Analysts	0	9	4
VIP Protection	0	16	6

Excerpt 4:2 below presents the excerpts from the interview with some of the informants from the Directorate of Witness Protection Agency.

The findings indicate that there is a severe shortage of experienced trainers in Kenya on matters of witness protection. The findings further indicate that the Kenya's WPA is populated with expertise whose background is mainly law, security, and intelligence gathering. Considering that witness protection is a new concept in the Kenyan context, the respondents were of the view that the government ought to have

hired expatriates from foreign countries that have vast experience in setting up and managing witness protection programmes.

Excerpt 4:2: Key Informant's Interview on Training at the WPA

"At the beginning officers were secured from the DPP, AG and inspector General. These officers had not undergone any training and Kenya has no institution offering training on the subject. The officials of the programme are trained mostly from the disciplined forces, the Kenya police, provincial administration, the NSIS etc and there is no formal training reasonably undertaken but the use of basic skills of the organization learned during the initial training. The trainers are self-proclaimed experts and have largely learned from the internet or plain leading from the books relating to the programs. Overall, there is lack of sufficient training personnel and lack of trainers to train personnel. There are no training facilities and Kenya has not found the need to hire trainers from countries/jurisdiction which developed such programmes." WPA sampled Key Informant

Source: Key informant

1.23.6 Inadequate Financial Allocations from the National Government

The informants from the WPA reported that in the 2012/13 financial year, the agency was allocated Kshs. 800,000,000 which is by far very inadequate. The government does not allocate enough funds in this field. The respondents indicated that there is poor funding of the agency and that most funds are directed to more urgent needs.

Scarce resources mean that witnesses are often asked to take their own steps to protect themselves. This is naturally much less effective than the security the WPA can offer. According to a senior informant at the WPA, in the 2013/2014 financial year, the agency received only 196 million Kenyan shillings (2.2 million US dollars) of the 500 million (six million dollars) that it asked for. "This is barely enough to cater for the 50 high-level witnesses currently under the agency's protection," she said. "In the 2013/2013 financial year, the agency received more than 300 applications from witnesses seeking protection, and it does not have the funds to help them all. It is not just witnesses who need protection, but also their families, meaning that the total figures for individuals needing help are far higher". The highest costs come from

relocating witnesses and providing them with compensation for the disruption to their lives. They also receive an allowance for daily expenses.

The costs associated with setting up a witness protection programme are among the main reasons countries hesitate to begin. There is no doubt that the costs for such programmes are expensive and this is the main reason why such programmes must be aimed at only the most important cases and within these, only for those witnesses who meet other criteria previously discussed. The costs needs to be weighed against the possible benefits, such as disruption or dismantling of criminal groups by being able to get to their leaders, shorter investigations and more efficient high level prosecutions. In the beginning, witness protection programmes tend to be too ambitious and seek to cover too many witnesses.

Over time, strained resources and greater experience will allow for stricter criteria to be applied to limit the number of participants. Even so, it is not easy to predict how many cases in the future will require the services of a protection programme. For these reasons, it is important that when preparing a budget, the concept of sustainability must be factored in. Funds need to be adequate to sustain relocation of witnesses for some years. As protection is a long-term commitment, expenses are cumulative. Even after the end of the initial resource-intensive period of relocation, some aftercare is often provided through periodic threat assessment and emergency responses to counter any unexpected resurgence of the threat. Countries where a family unit means an extended family face higher costs per witness. In some cases, even where the number of cases decreases, costs can remain stable or even increase. This can occur because attention is focused on more important case where strong criminal groups are involved, making the application of protection measures more vigorous and hence, more expensive.

Basic costs include: Premises, equipment and training; Staff salaries and overtime; Travel costs; Psychological assessment and counselling for witnesses (and for staff) if a person who can do these is not hired on a full-time basis; Financial allowances/payments to witnesses; and other costs of support, such as vocational, education, language training. Expenses differ from state to state, and are dependent upon some of the following variables: Existence of and use of alternative police

arrangement for emergency and temporary security provisions; Admission criteria; Socio-cultural environment which will impact how many family member will generally need to accompany a witness; The duration of stay in a programme; Cost of living, including in relocation areas; Fast and significant changes in the inflation rate; Overreaching ability of organized criminal groups (for how long? Inside the entire country as well as in other jurisdictions?); The efficiency of a criminal justice system, which means how long a person has to be protected before the trial can greatly increase the need for protection and its costs. In order to fund a programme, it is important to have a regular source of funding and to have some emergency funds in reserve. Funding might also come from the proceeds from the assets that witnesses entering the program are obliged to hand over if acquired by illegal means. However, it is inadvisable to fund programmes solely through sources that could vary year to year such as through proceeds of asset forfeitures. In Kenya, the prevailing challenges in WP have persisted due to laxity from the National Government to allocate enough funds to the program.

1.23.7 Legal Threshold and Practice in the Kenya's Criminal Justice System

The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. Most criminal justice systems have five components-law enforcement, prosecution, defence attorneys, courts, and corrections, each playing a key role in the criminal justice process. Law enforcement officers take reports for crimes that happen in their areas. Officers investigate crimes and gather and protect evidence. Law enforcement officers may arrest offenders, give testimony during the court process, and conduct follow-up investigations if needed. Prosecutors are lawyers who represent the state or federal government (not the victim) throughout the court process-from the first appearance of the accused in court until the accused is acquitted or sentenced. Prosecutors review the evidence brought to them by law enforcement to decide whether to file charges or drop the case. Prosecutors present evidence in court, question witnesses, and decide (at any point after charges have been filed) whether to negotiate plea bargains with defendants. They have great discretion, or freedom, to make choices about how to prosecute the case.

Defence attorneys defend the accused against the government's case. They are ether hired by the defendant or (for defendants who cannot afford an attorney) they are assigned by the court. While the prosecutor represents the state, the defence attorney represents the defendant. Courts are run by judges, whose role is to make sure the law is followed and oversee what happens in court. They decide whether to release offenders before the trial. Judges accept or reject plea agreements, oversee trials, and sentence convicted offenders. Correction officers supervise convicted offenders when they are in jail, in prison, or in the community on probation or parole. In some communities, corrections officers prepare pre-sentencing reports with extensive background information about the offender to help judges decide sentences. The job of corrections officers is to make sure the facilities that hold offenders are secure and safe. They oversee the day-to-day custody of inmates. They also oversee the release processes for inmates and sometimes notify victims of changes in the offender's status. The criminal justice system can be overwhelming, intimidating, and confusing for anyone who does not work within it every day. As a victim, you will need to know what to expect and have support throughout the process. This study focus was on the prosecutorial and courts' arms of the criminal justice system since these are the ones involved in day to day interactions with the witnesses.

1.23.8 Legal Basis of Witness Protection in Kenya

Currently, the Witness Protection (Amendment) Act, 2010 is operational as an override Act of Parliament to amend the Witness Protection Act, 2006. The main purpose of the current Act was to establish a Witness Protection Agency and provide for its powers, functions, management and administration, and for connected purposes. However, despite the law being in place, its implementation is yet to be felt with some level of significance.

According to the informants "There is a witness protection law in place and a Witness Protection Agency that administers it. The said law clearly states the persons who qualify for witness protection and how such protection can be invoked. The office of DPP (Director of Public Prosecutions) works closely with the (Witness Protection Agency) where threats to witnesses come to its knowledge in the course of prosecution." The excerpt below shows a case example of a lady in Bungoma Kenya who was brutally murdered with her three daughters after testifying in a case where

the accused was acquitted due to lack of sufficient evidence. This happened in April 2014, four years into the implementation of the WPA Act 2010.

Excerpt 4:3: Case of Lack of Witness Protection for Highly Vulnerable Witnesses

The case of a woman who was killed along with her three daughters after she gave evidence in a criminal trial in Kenya has raised the alarm about the procedures used to protect witnesses. The attack happened in April 2014 after the 45-year-old woman, Agneta Imbaya, and one of her daughters testified against a man at a court in the town of Bungoma in western Kenya. The man was on trial for a violent robbery carried out in Imbaya's home village in 2013, and he had openly threatened her and her daughter in the courtroom. He warned them that if they did not withdraw their testimony, he would exact revenge. The suspect was in custody during the trial, but was released after the case collapsed. Police believed that days later he went to Imbaya's house and murdered her and her three daughters, and went on the run. Despite the threats made against Imbaya in court, her family were not included in the national witness protection programme. The police commissioner for Bungoma County, Maalim Mohammed, defended his officers' actions. He told local media that his force had not received a report that the suspect had been released from custody, or that he posed a threat. In response to the matter, Kenya's deputy director of public prosecutions, Kioko Kamula, said that current legislation sets out clear procedures for handling such matters. Under the Witness Protection Amendment Act 2010, witnesses themselves, a law enforcement agency, a public prosecutor or a legal representative can request protective measures. Alice Ondiek, director of the national Witness Protection Agency (WPA), criticised the Bungoma court for not alerting her office to the threat made against Imbaya and her daughter. Ondiek said that courts generally do not pay enough attention to witness safety. In this instance, the suspect was released after the trial collapsed. But Ondiek noted that criminal suspects are often not remanded in custody during proceedings even if they may pose a threat to society, or are liable to abscond. The long duration of trials which often drag on for years also works against efforts to protect a witness over a sustained period of time. "Criminals have disappeared when out on bond, and others threatened the safety of witnesses when out on bail," she said.

Source: Institute of Peace and War Reporting (2014)

Findings further reveal the general position of the Kenyan law in regard to protection of witnesses in the criminal justice system, where there are witnesses as well (See Table 4.9). The respondents explained that the act provide for the protection of such witnesses by ensuring that the Agency shall consider the needs of such witnesses and where necessary assign a person to assist such a person throughout all the stages of the protection program (Sec.6 of the witness Protection Regulations).

Table 4:10: Strengths of the Witness Protection on the Basis of the Law

Strengths	**Number of informants**	**% of the total (N=40)**
The board of WPA has no control over the running of the agency	13	32.5%
A witness should be provided protection at all times.	15	37.5%
Any person who has victim of crime may seek protection.	12	30.0%
The law provides that an individual who feel fit for the programme shall apply and possible measures for protecting him/her is put in place	10	25.0%
Gaps or Weaknesses in the WP laws	**Number of informants**	**% of the total (N=40)**
The law has not separated state agencies from active operational laws with the agency	32	80.0%
The law has not provided for financial autonomy of the agency, away from dependence to the National Treasury	36	90.0%
The law widely allows the agency to seek the services of the National Police Service while at times, the police officers are the culprits hence eroding confidence in the agency	8	20.0%

*** Each row is based on multiple responses (out of 40 sampled informants)**

1.23.9 Strengths of the Legal Framework

As noted in the literature (e.g. UNODC, 2008), witness protection programmes have commonly developed because of need. Perhaps as a result, some countries progressively developed witness protection capabilities and programmes without a specific legislative basis, such as the Netherlands, Norway and New Zealand. In these countries, policy, coupled with the agreements signed with witnesses admitted to the programme, provide a sufficient and adequate framework for the programme's operations. It is further interesting to note that countries without a specific legal basis include both common law as well as civil law countries that would normally require a legal basis. However, it is recommended that covert protection programmes be grounded in policies and a legal framework due to their impact on the rights of the accused, the life of the protected persons and due to the financial resources needed to fund such programmes.

In addition, other laws, such as criminal procedure codes and rules of court, will likely need to be reviewed and updated in order that they can provide for procedural protections (if not contrary to other laws). At minimum, legislation should specify: i) protection measures that may be used; ii) application and admission criteria and procedures; iii) the authority responsible for the programme's implementation; iv) criteria upon which a witness may be terminated from the programme; v) the rights and obligations of the parties; vi) that the programme's operations are confidential; vii) provide for penalties for the disclosure of information about protection arrangements or about the identity or location of protected witnesses.

The findings presented in Table 4.10 below reveal major strengths in the Witness Protection Act. These are the program's comprehensive nature and provision for protection of witnesses as indicated by 70% of the respondents. Independence of office holders being well defined in the statutes was mentioned by half of the sampled informants. Finally, the clarity of witness protection issues was mentioned by 40% of the respondents.

Table 4:11: Notable Strengths of the WP Legal Framework

What are the Strengths of the Legal Framework that Defines the Kenya Witness Protection Programme?	**Number of Respondents***	**% of the Total***
The law is very comprehensive	28	70.0%
The provisions in the law are adequately articulated	28	70.0%
Independence of office holders well defined	20	50.0%
Witness protection issues are clear	16	40.0%

*** Each row is based on multiple responses (out of 40 sampled informants)**

1.23.10 Weaknesses of the Legal Framework

Findings reveal that the Witness Protection Act in a way is discriminating in its definition of "witness". The findings also revealed a number of gaps in respect to law enforcement approaches. As shown in Table 4.11 below, 22.5% of the informants reported that most people are not aware of the existence of the program. Another 22.0% indicated that there are no clear legal provisions covering witness protection and that new law is not well implemented. In addition, 32.5% of the informants were of the view that the national police service did not have sufficient gender desks to cater for gender specific needs.

Table 4:12: Notable Weaknesses of the WP Legal Framework

What are the Strengths of the Legal Framework that Defines the Kenya Witness Protection Programme?	**Number of Respondents***	**% of the Total***
Most people are not aware of the programme existence	9	22.5%
There are no clear legal provisions covering witness protection	9	22.0%
The new law is not well implemented	9	22.0%
National police service does not have sufficient gender desks to cater for gender specific needs	13	32.5%

*** Each row is based on multiple responses (out of 40 sampled informants)**

One of the respondents attributed the gap to the tendency of the Agency to rely on officers seconded from inspector general. It was also indicated that the police force, the officials of the provincial administration, the NSIS among others have been accused of having used excessive force in the post-election violence and therefore could not be expected to offer protection to give victims giving evidence against them.

1.23.11 International Legal Perspective Regarding Protection of Witnesses

This study sought to establish whether there are some aspects of international law governing protection of participating as witnesses in the criminal justice system. The findings are presented in Table 4.12 below.

Table 4:13: Aspects of International Laws Governing Witness Protection

	By Agencies…			
	Par	**DPP**	**AG**	**NPS**
The Kenyan criminal law system is not so much related to international law	-	3	1	1
In Kenya there are such aspects but hard to implement due to want of resources, lack of affected persons in the criminal justice system especially police for protection	-	3	-	-
Many witnesses feel they have not gotten any value for efforts they make to bring criminal to book.	-	-	-	3
Principles of witness protection both in the international law and in the national are the same	2	1	1	-
Council on economic and social rights under resolution 2005/20 of July 2005 set guidelines on justice in matters involving child victims and witness of crime	-	1	1	-
There are no aspects of international law governing protection of participating as a witness	3	3	3	1

Key: DPP (Directorate of Public Prosecution); AG (Attorney General); NPS (National Police Service); Par (Parliament)

1.23.12 Infrastructure-related Challenges Prevailing in Protection of Witnesses

1.23.13 Infrastructure Challenges

Findings revealed that some of the challenges facing WPP are related to the infrastructure in place. The findings are tabulated in Table 4.13 below

Table 4:14: Infrastructure-related Challenges Prevailing in Protection of Witnesses

Cited Challenges	**Number of Respondents**	**% of the Total**
Lack of isolated office blocks	11	27.5%
In adequate isolation chambers	11	27.5%
Technological systems	7	17.5%

*** Each row is based on multiple responses (out of 40 sampled informants)**

1.23.14 Organizational Challenges

Findings also reveal that there are instances where the employees or agents of WPP become targets of threats and that at times it was difficult to keep track of witnesses because of the length of time taken to begin the case. From the data collected 27.5% of the respondents mentioned lack of privacy. Another 17.5% mentioned strict rules of Evidence Act. In addition, 27.5% indicated that presently our court system is that of an open court victims many at times feel intimidated by accused persons. The findings are tabulated in Table 4.14 below.

Table 4:15: Organizational-related Challenges Prevailing in Protection of Witnesses

Cited Challenges	**Number of Respondents**	**% of the Total**
Lack of privacy	11	27.5%
Open court rooms	11	27.5%
Strict rules of Evidence Act	7	17.5%
Lack of physical facilities	8	20.0%
Safety of witnesses in remote courts	8	20.0%
Geographical/regional diversity	10	25.0%

*** Each row is based on multiple responses (out of 40 sampled informants)**

1.23.15 Socio-Cultural Barriers Influencing Protection of Witnesses

Witnesses cannot be separated from their family members forever. In the early year of witness protection, little attention was given to the maintenance of relations between witnesses and the persons close to them. As a result, participants would often walk out of the programme or compromise security by trying to contact relatives or partners. Witness protection programmes have adapted to meet that need by extending protection to the witness's family members, cohabitants and other persons close to him or her. The number of persons that may accompany a witness in the programme depends, in part, on factors such as family traditions and social culture. Witnesses with strong social and family links pose a range of additional difficulties that must be considered during the assessment process. Ultimately, other measures may have to be taken to ensure protection. Alternatively, the decision may be taken to exclude that person as a witness. One key group that must be considered when relocating persons close to the witness is young children, who may compromise the programme by revealing confidential details to outsiders. Witnesses cannot be separated from their family members forever. In the early years of witness protection, little attention was given to the maintenance of relations between witnesses and the persons close to them. As a result, participants would often walk out of the programme or compromise security by trying to contact relatives or partners.

Witness protection programmes have adapted to meet that need by extending protection to the witness's family members, cohabitants and other persons close to him or her. The number of persons that may accompany a witness in the programme depends, in part, on factors such as family traditions and social culture. Witnesses with strong social and family links pose a range of additional difficulties that must be considered during the assessment process. Ultimately, other measures may have to be taken to ensure protection. Alternatively, the decision may be taken to exclude that person as a witness. One key group that must be considered when relocating persons close to the witness is young children, who may compromise the programme by revealing confidential details to outsiders. Findings reveal that socio-cultural beliefs and practices affect the implementation of the WPP. The findings are tabulated in Table 4.15 below.

Table 4:16: Socio-Cultural Barriers Influencing Protection of Witnesses

Cited Barriers	**Number of Respondents**	**% of the Total**
Strong cultural bonds among kinsmen	13	32.5%
Fear of possible identity change	7	17.5%
Victims/ witnesses may not be cooperative	12	30.0%
Prohibited cultural topics of discussion	8	20.0%
Perceived prohibition for women to testify	4	10.0%
Curse threat on testifying against practices	2	5.0%

*** Each row is based on multiple responses (out of 40 sampled informants)**

Today, in organized crime cases, witness intimidation is becoming so widespread that if there are not several witnesses to the crime, prosecutors do not pursue a court case. Persuading witnesses to testify on behalf of the prosecution sometimes becomes one of the most important obstacles prosecutors encounter in court cases when the defendant has an association with an organized crime group.

Table 4:17: Ways in Which Cultural Diversity Influences Witness Participation

Cited Barriers	**Number of Respondents**	**% of the Total**
Cultures prohibit open courts testifying	16	40.0%
Cultures prohibit women to testify	7	17.5%
Young men do not testify against old men	7	17.5%
Co-operation with law enforcers a taboo	7	17.5%
Tribalism: perceived tribal rivalry	12	30.0%

*** Each row is based on multiple responses (out of 40 sampled informants)**

Organized crime groups have effectively paralyzed the criminal justice system by threatening retribution toward anyone who attempts to testify against them. This study also sought to identify ways in which cultural diversity influence the appearance and testifying of witnesses within the court process. The findings are tabulated in Table 4.16 above.

1.24 Discussions

1.24.1 Capacity Gaps in the Witness Protection Program

1.24.2 Inadequate Staffing Capacity

This study sought to establish the gaps in the Witness Protection Programme in regard to availability of staff. A majority of the interviewed informants (95%) revealed that one of the major challenges facing the roll out of the witness protection programme in Kenya is inadequate staffing capacity.

The Kenyan witness protection unit is presently located in the office of the DPP which falls under the authority of the attorney-general. The location of the unit has been a contentious issue due to its perceived politicisation and incapacity. The DPP has further been weakened by the allocation of its personnel to the witness protection unit. For instance, the current staffing of the WPA is broken down as follows: top management (excluding non-executive board members) are 8; middle level managers are 18 while the operational level officers and clerks are 36. The rest are complemented as needs arise with officers from the Kenya Police Service and Office of the DPP. This sheer number of officers is meant to handle all the mandates of the WPA. Preliminary interviews with key informants revealed that a well-equipped WPA should have a minimum of 60 operational level officers, and permanently stationed for optimal results to be achieved. Others were of the view that in future, this should be expanded to the regional devolved levels of governance.

Various factors were attributed to have affected availability of staff. According to 40% of the sampled respondents, the staff available were drawn from or seconded by various governmental departments with no clue on the program and they are mostly civil servants and/or government employees. Other challenges include: inadequate fund to engage technical skilled persons; lack of training institutions for learning;

inaccessibility of the staffs; lack of proper records to ascertain the number of staff and lack of awareness of the program.

The findings of the study on staffing concur with various empirical studies (UNODC, 2008; Brown and White, 2006; Fyfe and McKay, 2000) that witness assistance services should be administered and delivered by professionals who are independent from the investigation and prosecution services. Their competencies and functions should be clearly defined and integrated within State welfare support networks, paying special attention to such aspects as confidentiality of shared information and suitability of persons directly or indirectly involved in the case. Personnel engaged in providing assistance to witnesses should be trained and acquire skills in: Knowledge and skills for working with witnesses who may be vulnerable but without discussing the case or coaching them in any way; Knowledge and understanding of criminal legislation, police procedures and court rules (UNODC, 2008); and ability to liaise with family members and agencies likely to be associated with the judicial process (for instance, social welfare agencies, non-governmental organizations and others)[Fyfe and McKay, 2000). The findings showed that the Kenya's WPA is currently not able to fully undertake its mandate because it is constrained by lack of adequate financial and human resource expertise; shortage of technical staff, lack of staff with specific witness protection advisory skills; few experts available and lack of professionally trained staff to man the program since it's a new concept in Kenya.

1.24.3 Low Investments in Technological Capacity

Changing criminal practices and advancing technologies present a continuing challenge in ensuring the safety of witnesses. Witness protection programmes are covert units meaning all information about witnesses and the operational actions taken by the programme must be kept confidential and have their own databases for storing information. Since the greatest risk of compromise to a programme is the human element, all staff, including administrative personnel, must be vetted to ensure the highest possible level of security. Only by setting the highest professional standard can those responsible for the programme (and for the lives of the protected witnesses) meet its demanding requirements.

One of the informants from the National Police Service revealed that today's witness protection program faces the added burdens of the digital age. Facebook, Google, texting and the instant access to information via the Internet and smartphones provide new challenges to keep the identities of witnesses a secret. "The modern world of technology, because there is more information out there, it's that much more important for our people to be vigilant and for us to be vigilant," said the informant. The emergence and evolution of social media poses a real threat to witness protection for any country world over. The Kenya's WPA has not put in place advanced technological infrastructure as yet to counter this problem.

Another informant from the Directorate of Public Prosecution revealed that measures readily used in developed countries include: testimony by video-conference. Videoconferencing refers to the real-time transmission of video (visual) and audio (sound) transmission between two locations. It allows the virtual presence of a person in the territory over which the state or entity has jurisdiction. This technology allows witnesses to testify from a room adjoining the courtroom via closed-circuit television or from a distant or undisclosed location.

In the courtroom setting, it means that a judge, the defendant, the defence counsel and the prosecutor can ask questions of the witness and see and hear the witness's answers and demeanour in real time transmission." Video conferencing equipment can permit the concurrent transmission of computer images, such as documents [and photos] so that video can be displayed on one screen and the computer data on another. In other words, a remote witness can be seen on a big screen while the document being discussed by the witness can be visible simultaneously also to the judge/jury on screen monitors. The witness revealed that such measures are yet to be deployed by the Kenya's WPA.

Findings further reveal that remote testimony via videoconferencing is admissible in the context of mutual legal assistance between nations. It is also used to take the testimony of protected witnesses. In this regard, video conferencing can be used either to avoid direct contact between the witness and the defendant and hence has value for some vulnerable witnesses when the physical security of a witness at a particular court or jurisdiction cannot be adequately addressed. Video conferencing technology

has advanced to allow for transmission with no interruption or delay and with excellent visual displays. It is deemed reliable and once up and running, relatively easy and cost effective to use. Moreover, the transmissions can be encrypted so as to prevent the identification of locations of the videoconference.

A case example of how modern technologies can enhance witness protection was evidenced on 14th February 2013 when President Uhuru Kenyatta of Kenya attended the status conference for a case at the International Criminal Court in Netherlands via a video link from Nairobi, Kenya. The sampled informants commented that the Kenya's WPA can exploit such technologies to enhance participation of protected witnesses from remote locations.

At the international level, the use and acceptance of video-conferencing is rising at the international criminal courts and tribunals which use it to take the testimony of victims, vulnerable witnesses or for witnesses who are unable to travel to the court's location for physical or psychological reasons, as well as for protection purposes. A majority of the informants acknowledged that there is very little technological investment done by the state in regard to modern technological facilities for facilitating protection of witnesses in the Kenyan criminal justice system. The respondents added that most Kenyans are ignorant of the current technological applicable. This is likely lead to lack of achievement of WPP goal of protecting the witness in the best way possible.

In article 18, paragraph 18, of the Organized Crime Convention, States parties are called upon to introduce domestic legislation allowing testimony by videoconference or through other technological means, such as devices and software for image and voice distortion, to prevent the revealing of a witness's identity to the defendant and the public. The above findings show that Kenya is yet to make a noticeable stride towards incorporating modern technologies in witness protection program.

1.24.4 Shortage of Expertise and Poor Training of Personnel

Staffing is a crucial element for the success of any protection programme. Witness protection officers need to possess a particular set of qualities and skills. They are required to be vigilant protectors, interrogators and undercover agents, as well as innovative thinkers, social workers, negotiators and even counsellors. One of the first

tasks when establishing a programme is to decide where to find people with such qualifications. Since the roll out of Kenya's WPA in 2012, little has been achieved in regard to training of the agency's personnel on witness protection. This has led to increased impunity and failure to handle the witness in the right way.

1.24.5 Inadequate Financial Allocations from the National Government

Running a witness protection programme is a costly affair for any criminal justice system world over. According to the informants from the Attorney General's office, the witness protection programme is very expensive and must be funded from the consolidated fund. He suggested that the agencies can also receive donations as well as gifts and grants and added that if the government fails to fund the witness protection program, it would lead to erosion of confidence by the witness to testify against criminals. One informant from the national assembly attributed poor allocation of financial resources to slow economic growth amidst competing budgetary priorities from within the National Treasury reserves.

The cost associated with setting up and operating witness protection programmes can be a reason why countries hesitate to establish them. Expenses differ from country to country, depending on living costs, population size, crime rates and other factors, and must be weighed against the return: dismantling of organized criminal networks, shorter investigations, more efficient prosecutions, integrity of the criminal justice system. Even in absolute figures, witness protection is usually a small percentage of the total police budget in countries where such programmes exist. Basic costing includes:

- One-time expenses to set up the programme (equipment for the unit, premises);
- Relocation costs;
- Staff salaries and overtime;
- Travel;
- Allowances for witnesses;
- Psychological assessments and counselling.

The majority of the expenses are accounted for by staff salaries, overtime and travel. Relocation expenses can be considerable but vary depending on the benefits that

witnesses are entitled to in each particular programme. In New Zealand, for example, witnesses as a rule go onto social security and the programme only occasionally tops up their entitlements.

Adequate and regular funding should be appropriated by government budgets to ensure the programme's sustainability and the availability of resources for the duration of protection. Budget forecasting should make allowances on a number of variable and interrelated factors, such as:

- Existence of alternative police arrangements for emergency and temporary security
- provisions;
- Success of procedural protection measures in reducing the number of witnesses that need to enter protection programmes;
- Strictness of criteria for admission to witness protection programmes;
- Sociocultural environment, which determines the number of family members who need to accompany the witness in the programme;
- Average number and duration of stay of witnesses and family members in the programme;
- Efficiency of the criminal justice system;
- Witness's living standards based on average standards in relocation communities or, if imprisoned, any special added prison costs;
- Reach of organized criminal networks in the country;
- Inflation, which has a direct impact on operational costs.

The complexity of the operations involved in each case depends largely on whether witnesses need to be relocated alone or together with persons close to them. The concept of sustainability must be recognized. Funds need to be adequate to sustain the new identity and location of witnesses into the future. As protection is a lifelong commitment, expenses are cumulative and increase the overall budget each year. Even after the end of the initial resource-intensive period of relocation under the programme, some on-going support is often provided in the form of occasional threat assessments and an emergency response mechanism to counter any unexpected resurgence of the threat.

The findings of the study are in concurrence with findings from the literature that even though confidentiality and operational autonomy are the guiding principles, successful witness protection programmes are anchored on the level of resources and investments allocated towards the programme (Scottish Office, 1998; United States Department of Justice, 2006; and Goodman et al., 1992b). The success of WPPs is also based on building partnerships with government agencies and the private sector to provide witnesses with the wide range of services required (new identification documents, housing, financial support, medical care, education for children etc.). Even though witness protection programmes are expensive, the costs prove minor when compared with the programme's contribution to the effectiveness of prosecutions in cases involving serious crime. The costs are directly related to, among other things, the number of witnesses approved for inclusion and the financial benefits granted to the participants. It is interesting to note that in the initial phase, witness protection programmes are usually overambitious in that they seek to cover a wide range of witnesses and crimes. With the passage of time, however, the serious strain they come under as a result of the large number of participants and the increasing costs leads to the application of stricter conditions for admission to ensure the programme's efficiency and viability.

1.24.6 Legal Threshold and Practice in the Kenya's Criminal Justice System

1.24.7 Legal Basis of Witness Protection in Kenya

According to the law, the board of WPA has no control over the running of the agency. They don't even know the witnesses under protection. This is meant to guarantee its operational independence. However, the law has not provided a mechanism for financial independence or autonomy of the Agency. The Agency continues to rely on financial allocations from the National Treasury.

Law requires that a witness's lifestyle prior to being placed under protection be maintained while the witness is under protection. Where funding has fallen short, the WPA has had to devise alternative ways of protecting some witnesses. In such instances, it may advise them to change their name, get a new mobile phone number, and keep a low profile. When witnesses are asked to bear the cost and inconvenience of protective measures, they often fail to do so. According to a senior informant from

the agency, “We are forced to play an advisory role, telling witnesses how to behave, to keep a low profile, to cut down our expenses. Protecting the witness is the work of WPA. The witness should not have to worry about their safety.”

The law as currently constituted has not separated state agencies from active participation in the WPA. This has led to lack of full confidence in the agency from the members of the general public that would otherwise seek protection. For instance, law provides that is a person feels threatened; the first step is to report to the police who shall then refer the matter to the Agency. The unfortunate bit of this procedure is that the police are sometimes the culprits. In assessing the protection of witness in criminal justice system, this study sought to establish the general position of Kenyan Law in terms of strengths and weaknesses (See Table 4.9).

Respondents indicated that the Witness Protection Act No.16 of 2006 as amended by Act No.2 of 2010 is in place and at least there is a legal Framework. It was mentioned that witness protection act was enacted in 2010, wherein the object and purpose of the agency is to provide the framework and procedures for giving special protection on behalf of the state and it provides the criteria for admission into the programme. Respondents pointed out that Section 4 of the Witness Act give protection on, physical and armed protection, relocation, change of identity, i.e. a witness should be provided protection at all times. The participants indicated that fundamentally, the objective of the Witness protection law is to ensure that the due administration of justice in criminal and related proceedings is not prejudiced by witnesses not being prepared to give evidence without protection from violence or other criminal re-crimination. However, the respondents claimed that the new act on Witness Protection is still not fully implemented or understood by stakeholders. It was provided that the general position is to have the witness report to police and that it is an emergency like any other care. It was also indicated that Kenyan law provides for the protection of witness in the criminal justice system by virtue of the witness Protection Act Chapter 9 laws of Kenya which is, itself comprehensive is already operational.

The Act provides protection as a matter of law. Any person who has victim of crime may seek protection. It was also pointed out that there is no provision which provided witnesses who are victims and the Act provide for witness generally. Respondents

explained that in this instance the law is not clear but they believed that the same witnesses are covered under the witness protection Act. In addition to this it was explained that there is no marked difference between a witness and the one whom are a victim and the approach in Kenya is the same and that there is no clear policy/provision on the protection of witnesses who are also victims and it provides for witnesses generally.

Respondents mentioned that the law provides that an individual who feel fit for the programme shall apply and possible measures for protecting him/her is put in place. This may include physical security among others. On the same issue it was added that witness who gives evidence and feels that his life would be in danger, shall apply to be protected and the witness protection agencies should provide protection forthwith.

Respondents were asked to indicate the position of the Kenyan law in regard to protection of witness in the criminal justice system (See Table 4.9). Those who responded indicated that Kenyan law ensures that the due administration of justice is not prejudiced by any factor like intimidation and that witnesses who wish to give evidence be granted the possible security. On the same, the respondents pointed out that, as a witness a person qualifies on account of his/her testimony and if there is threat or risk to her life because she is important/ key witness.

In regard to the position of the Kenyan law concerning to protection of witnesses in criminal justice system, where there are witnesses as well, respondents pointed out that, in Kenyan law, a person who is a victim of crime and a witness as well may seek protection from the witness protection Agency if her life is in danger on the account of the testimony and as evident, any person whether a victim or an informant or any other person must be regarded as important and the witness be protected against any threat for giving the said testimony or evidence.

The evidence adduced from the findings above concurs with best practices in from a number of countries. The findings agree that various aspects of witness protection ought to be anchored to the law of the land. This includes issues such as: procedures of entering witness protection; decision-making authorities; criteria for admission as a witness deserving state protection; and responsibilities of the parties. In the Hong

Kong Special Administrative Region of China, the Witness Protection Ordinance of 2000 provides for the creation of the witness protection programme stipulates that the approving authority should provide witnesses with protection and other assistance when, due to their status as witnesses, their personal safety or well-being is at risk. However, in Kenya, this provision concurs to provisions of witness protection legislation in countries such as South Africa, USA and Italy in that it allows a witness to be included in the programme on the basis of the existence of a serious threat against his or her well-being, not only against his or her life. On witness detention, the Kenyan law and the South African law are in tandem that witnesses must voluntarily agree to enter a witness protection programme and may not be held, not even as a protection measure, in a prison or police cell.

1.24.8 Strengths of the Legal Framework

On the same Act the respondents pointed out that the law now exists i.e. Witness Protection and Act No. 16 of 2006 is amended by Act No. 2 2010. As indicated by one respondent was that the director was appointed following the formation of an independent Agency for the protection of the witnesses and the Agency has power in control and supervises its staffs, administrator, funds and assets.

There is also the support of the government and the donors. It was also indicated that the legal framework provides for protection of the witness and also for change of identity of witness e.g. name. The respondents mentioned that a witness can be moved to unknown place by the adversarial and this is strength on existing laws. In addition measures have been put in place to ensure the safety of witnesses while they testify in court, for her the fact that a witness, who is pending assessment of inclusion into the programme, may be afforded temporary protection. They also pointed out that the strength is the establishment of the office of the Director and the director as the head of the agency replaces the AG as the head of the programme.

The office takes away the entire programme from the government. Control as director determines who get into the programme and not the attorney general. However, they said that the only strength if it can be called as such, is that the promise to witnesses and victims that everything possible would be done to protect them. The findings

suggested that if well implemented, protection of witnesses will advance justice. He added that the society is alive to the need of protecting witnesses.

1.24.9 Weaknesses of the Legal Framework

Findings reveal that the Witness Protection Act in a way is discriminating in its definition of "witness". There has not been any sensitization of the said Act and that many victims and witnesses don't know its existence. The respondents indicated that the Agency is not decentralized as it's not present in counties. It was also indicated that the director of the witness Protection Agency does not enjoy security of tenure.

In addition, witness protection agency Act has placed a lot of powers in the director of the agency, with regard to deciding who may be included in the witness protection programme. As indicated by the respondents, the existing legal frameworks do not provide how witnesses are protected at the investigation stage. One of the respondent added that it does not provide how law enforcement agency is to collaborate on witness protection.

In terms of resource base, it was pointed out that there are limited financial resources, lack of technological advancements, trained experts in the field, training facilities and enough resources to cater for the witnesses. There is also lack of structural and statutory autonomy as the programme comprises of among others the National Intelligence Service (NIS) and the Inspector General of Police, while the police force is suspected of atrocities giving a case of post-election violence. They pointed out that "directors shall unilaterally determine whether or not an individual is admitted to the programme" as provide in the Act, leaving room for abuses of this provision.

Respondent added that the composition of the Advisory Board has the potential of weakening the agency. Of the services to protect the witness, it was indicated that, a witness is transferred to a new place which has a different culture and that a witness is disconnected from his original family members in a wider sense many dependants remain to suffer. They suggested that protection of the witness ought to have been entrenched in our constitution. Due to of this, it has weakened the agency and also making some people to suffer as a result of shifting some witnesses who are the bread winners.

1.24.10 Infrastructure-related Challenges Prevailing in Protection of Witnesses

1.24.11 Infrastructure Challenges

Findings revealed that some of the challenges facing WPP are related to the infrastructure in place. Infrastructural challenges identified include: lack of proper mechanism of accessing witnesses, lack of transport (vehicles), office space to meet or accommodate witnesses and staff to attend to the witnesses; lack of an isolated building (WPA shares offices with other agencies which poses a risk to witnesses under protection); and lack of a well formulated logistics management system. Although challenges which were revealed that do not emanate from the infrastructure include: dishonesty among witnesses; high expectations by the witnesses from the program as compensation of evidence given; unwillingness to give evidence because of fear for their lives; compromise – some witnesses are compromised during transit and end up withdrawing from the witness protection program; socio-cultural issues.

Basic elements of legal infrastructure are missing in Kenya. Courts often leave witnesses minimally protected, their identities subject to disclosure. The prisons are ineffective at holding perpetrators, who may easily liaise with outsiders to track down witnesses for harming. Few safe houses exist to provide havens for those who wish to testify against their perpetrators. Too few trained judges, prosecutors, and private lawyers exist to try cases of capital nature in a timely fashion. Any viable infrastructure is often distant from villages where many of the dangerous events occur, e.g. the PEV of 2007. Few medical professionals and psychologists exist to provide essential services to witnesses in Kenya. This has led to poor attention to those who require medical services while at the programme.

Study thus far indicates that victim/witness protection depends not only on the mechanical aspects of courts and other facilities, but also on the existence of communities that support accountability for sexual violence. Widespread prejudice against victims and witnesses leads to stigma and physical harm especially if adequate protection is not provided. Programs to support witnesses; even if they function effectively, will operate in a vacuum if the entire community is not engaged to

promote a broader understanding of why accountability for justice is critical in the society we live in.

At the same time, different crimes, and the distinctive needs of victims and witnesses, require a customized approach to witness protection programs, superimposed on the basic principles. In cases of organized crime and crimes against humanity, "insider" witnesses (those who are part of the criminal enterprise or military organization who agree to testify against their former colleagues), may have particular needs because of the deep, mutual knowledge of witness and perpetrator.

In the context of the criminal justice system, victims may have a range of psychological, medical, and other social needs arising out of the singular trauma of the events at the crime scenes e.g. rape. Other differences exist as well. In the international criminal landscape, witnesses may have less of a personal and individual stake in seeing their individual perpetrator prosecuted, whereas, in domestic sexual violence cases, the victims and witnesses are often seeking accountability for someone who has committed a crime directly against her.

1.24.12 Organisational Challenges

Findings also reveal that there are instances where the employees or agents of WPP become targets of threats and that at times it was difficult to keep track of witnesses because of the length of time taken to begin the case.

The key informants in this indicated that there is lack of rules relating on how a witness can be protected in court who suggested that court should hide a protected witness in a room where he cannot be seen by the accused. They indicated that our court environment is very colonial. They are not friendly to the witnesses and indeed witnesses fear that they may make a mistake and find themselves in the cells. Courts are yet to be demystified despite the reforms currently being undertaken by the judiciary. They added that the court environments are often too professionals and looks too serious hence can be intimidating to first time witness. It was mentioned that the court room lacks the required facilities for child victim such as toys and that there are no play guards to accommodate child witnesses who may also be victims themselves.

This study pointed out that security in most cases is not available that is there is usually one orderly per court which is usually crowded. It was also indicated that a growing number of criminal justice system provides a range service to victims as well as to vulnerable witness e.g. information about the right of victims, roles of actors etc. Witness protection is to achieve efficiency protection and avoid secondary victimization. Also, certain, swift and harsh punishment for offenders reduces such threats and there are orders by court to law enforcement agencies to deal with claims of threat.

Research findings reveal that if there was availability of physical facilities, witnesses would feel protected and their safety ensured. Of the sample, 20% of the respondents mentioned that there are no physical facilities (See Table 4.14). They gave examples of such facilities as safe houses and escort services and added that physical security and escorts services should be made paramount for witness which has not been provided due its demand for high funding. The respondents recommended that adequate safe houses be provided to the witnesses when admitted into the program. They suggested that Audio Gadgets would change the witness voice while hearing camera/privacy would assist. As indicated by other respondents a protected witness usually is placed in rental houses which are not safe with time. It was added that no court in Kenya has facilities where witnesses can testify without being physically seen and that proceedings in-camera is ever fought by defence. This has been contributed by the state not investing in this area and where defence has influence and want to intimidate the witness.

Research findings further reveal that location of facilities make witnesses feel protected, that is it may encourage or discourage the witness from joining the programme. They mentioned that the location of the facility from the home of the witness the easier the implementation of witness protection. As also indicated in Table 4.14, 20% of the respondents indicate that most of the courts are in major town/centres and witnesses have to travel there. They added that a few counties still face the challenges of enough accessible courts to enable witness attend court if required.

Where there are facilities in courts, the respondents reported that these facilities are not conducive for witness protection. About 40% of the respondents did give

suggestion that the locality of the facilities should be kept secret. Rental houses are usually located in dangerous areas where even the accused can access and rent a house and can easily come into contact with the witness and hence put the witness into risk. It was indicated by the respondents that individuals with credible evidence like the post-election violence in Kenya live in difference geographical areas where the facilities may not be found hence fear for their security in involving themselves in such critical activities. The respondents claimed that staff members of the agencies are not credibly involved with the said witness.

Geographical/regional diversity emerged as a key infrastructural challenge to witness protection in Kenya. Findings reveal that some witnesses may not want to move from their homes, as provided by 25% of those who responded (see Table 4.14), while other 22% provided that some witnesses are reluctant to support the program due to relocation. It was suggested that, 1) the facilities should be decentralized in all regions of Kenya wherein the witnesses who are more of a risk should be relocated far from the access from the accused during the trials proceeding located in these regions, 2) Expenditure incurred by the witness as a result of participating in this activity of justice may influence the programme, 3) there should be transport reimbursement and hospital fees should be covered by the agency. It was also indicated by the respondents that some areas has severe climate which affect the witness in case of relocation. Another respondent mentioned that geographical area of court's jurisdiction is very vast e.g. Turkana District and North Eastern and there may be a problem to know the exact place, home and region for a witness.

1.24.13 International Legal Perspective Regarding Protection of Witnesses

This study sought to establish whether there are some aspects of international law governing protection of participating as witnesses in the criminal justice system. The following were given by the respondents as the aspects.1) The Kenyan criminal law system is not so much related to international law. 2) In Kenya there are such aspects but hard to implement due to want of resources, lack of affected persons in the criminal justice system especially police for protection.

Many witnesses feel they have not gotten any value for efforts they make to bring criminal to book. 3) Principles of witness protection both in the international law and in the national are the same. 4) Council on economic and social rights under

resolution 2005/20 of July 2005 set guidelines on justice in matters involving child victims and witness of crime. These guidelines represent good practice based on the consensus in international and regional norms, standards and principles and are meant to provide practical frameworks for achieving the objective of justice. However the informants claimed that there are no aspects of international law governing protection of participating as a witness. This is likely to abused by people in power and those connected to them.

Significant differences exist among the legal traditions, political environment, stage of development, society and culture, and levels and types of criminality in different countries. Those differences reflect the type and extent of protection that each country is able to provide. In most jurisdictions, witness protection is associated with simple police measures, such as the temporary placement of witnesses in safe houses or the provision of psychological support.

1.24.14 Socio-Cultural Barriers Influencing Protection of Witnesses

Research findings reveal that socio-cultural beliefs and practices affect the implementation of the WPP. The findings are tabulated in Table 4.15. The findings show that 32.5% of respondents were of the opinion that strong cultural bonds where people may want to live together with their kinsmen may make it difficult for a witness to reallocate to safe homes. It was also indicated that some witness may experience cultural shock if moved to another locality. Results also show that 17% of the respondents mentioned that in some cultures, people may not want to change their identity. In addition, 30% of the respondent claimed that victims/witnesses may not be cooperative and end up not giving evidence due to cultural bonds. At last, 20% of the respondents reported that most victims, one giving sexual harassment victims as an example, would not openly testify because in some cultures sex-related discussion is a taboo.

It was also reported that curse threats (e.g. for cases of a witness testifying against forced female genital mutilation FGM), even if assured of protection they may not cooperate for the fear of curse. Some cultures prohibit their women to testify and cannot act without elder's permission as it was pointed out. Some fear the law enforcement hence may fail to give evidence.

This study also sought to identify ways in which cultural diversity influence the appearance and testifying of witnesses within the court process. The findings are tabulated in Table 4.16. Findings reveal that some cultures do not allow witnesses to testify in open court especially when they are issues related to and offence of intimacy (according to 40% of the respondents).

Results showed that 17.5% of respondents were of the view that some cultures prohibit their women to testify; and that young men are prohibited to testify against the old men. These two situations may impede the process of witnesses testifying in court. Respondents mentioned that in some cultures, victims have more reverence to justice and punishment that result from culture, practices and beliefs than from court. In addition, 17.5% responded that in certain group and segment of society, cooperation with law enforcement is considered a taboo and that cultural expressions that glorify illegal activities also demonize law enforcement and those who associate with it. At last, 30% of the respondents mentioned about the issue of tribalism they independently indicated that it is a requirement in some culture that one will at all-time uphold the best interest of his culture and those following it.

One added that some do not give incriminating evidence against their members or people they know. It was also mentioned that in some culture, a revenge attack is considered as a way to justice e.g. raiding communities. Respondents provided that in some cultures, cases have been settled locally through fine, a herd of cattle as a fine was given an example, hence preventing justice for the victim. The respondents indicated that witnesses do not understand English or Kiswahili, languages often used in courts. It was also mentioned that some cultures do not allow people to relocate from their ancestral locations hence witness relocation may be difficult. He added that some do not allow change of identity as people cannot accept to abandon the family name and that extended families and people with many wives cannot relocate. The respondents indicated believe in witchcraft to punish the offender may influence the programme. Also, some issues are sensitive for some cultures to be mentioned openly in court by witness, as indicate by several informants. This may hinder the efforts of WPP in protecting the witness due to some cultural beliefs and activities of some of the witnesses.

CHAPTER FIVE
SUMMARY, CONCLUSIONS AND RECOMMENDATIONSIntroduction

This chapter presents the key findings of the study. Conclusion relating to the weaknesses and strengths of the WPP is given and recommendations towards improvement of the program and further research are made.

1.26 Summary

1.26.1 Capacity gaps in the Witness Protection Program

Findings from this study reveal the gaps and the causes of those gaps in the witness protection program. The gaps in the WPP include: inadequate technical support who also lack technical knowledge of their work, insufficient technological facilities, lack of training resources and financial constraints. The gaps in WPP are caused by a number of factors. They include: inadequate or total lack of training for the personnel who work in the WPP, insufficient funding from the government and the fact that most of the personnel are not fully aware of what their duties entail.

1.26.2 Legal Threshold and practice in Protection of Witnesses

Findings reveal the strengths and weaknesses of the legal threshold and practice in protection of witnesses. The strengths include the existence of the witness protection act (WPA) which was enacted in 2010 and provides legal protection for witnesses; the existence of the office of the Director of public prosecution which limits government interference in the program; and support from both the government and donors.

The weaknesses in the legal threshold and practice in WPP include: ignorance by the personnel implementing the program of how it should be implemented; the WPA does not provide a clear cut between a witness and a victim who testifies in court; weak or remote links between the Kenyan law and the international law and the intellectual law; and last but not least, inadequate physical and financial resources.

1.26.3 Infrastructure related challenges

Findings from this study reveal infrastructural challenges that affect the witness protection program. They include: lack of awareness by witness of the existence of

the program, hostile court environment (lacks privacy, it's too professional which intimidate witnesses), lack security, lack of physical facilities such as safe houses, escort services and audio gargets to protect the witness. Also, major courts being located in major cities limits access to legal systems by the rural folk and the reluctance of some witnesses to leave their homes for the witness protection program.

1.26.4 Socio-Cultural Barriers Influencing Protection of Witnesses

In establishing the socio-cultural barriers influencing protection of witnesses, the study found that some cultures do not allow witnesses to testify in an open court especially offences related to intimacy. It was also found that in certain cultures some groups such as women and youths are prohibited to testify in court.

There is the issue of tribalism and ethnicity where a witness cannot testify against the members. It was also found that in some cultures justice is served through revenge mission especially the raiding communities hence prevent due course of the programme. It was found that some cultural practices glorify illegal activities such as forced FGM and that cases are settled locally. The study also found that some cultures do not allow relocation and change of identity. Language barrier was also found affecting the implementation of the programme.

Findings from the study reveal that some socio- cultural beliefs and practices prohibited witnesses to testify in open courts especially on intimate matters and testimonies from women and youths are barriers to the witness protection program. Some barriers revealed in the study include: ethnic loyalties which prohibit one to testify against tribesman, seeking legal justice through revenge missions such as raids, glorification of illegal activities, language barrier as well as cultural prohibition of relocation from cultural land and change of identity.

1.27 Conclusions

1.27.1 Theoretical Conclusions

Formal witness protection programs offer a way to safeguard the investigation, the criminal trial, and the security of witnesses. Their main objective is to safeguard the lives and personal security of witnesses and collaborators of justice, as well as people close to them. The programs include procedures for the physical protection of

witnesses and collaborators of justice such as, to the extent necessary and feasible, relocating and re-documenting them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the new identity and whereabouts of such persons. Even if it is not uncommon for a witness to be rewarded for cooperation with law enforcement authorities (financially, by charge reduction as a result of plea bargaining, or leniency at the time of sentencing), witness protection programs are not in principle meant to reward a witness for cooperating with the authorities.

There is a growing consensus internationally that it is preferable for witness protection to be kept separate from the agency conducting the investigation or prosecution. Best practices indicate that it is important to separate witness protection agencies from investigative and prosecutorial units, with respect to personnel and organization. This is necessary in order to ensure the objectivity of witness protection measures and protect the rights of witnesses. The independent agency is responsible for admission into the protection program, protective measures, as well as continued support for the protected witnesses. Since the investigative agency is usually most knowledgeable about the criminal background of the applicant, the nature of the investigation, and the crime involved, the agency often assists the protection service in the assessment of the threat to the applicant and his or her immediate relatives.

A review of existing programs in Europe identified three main necessary characteristics of agencies charged with implementing witness protection: (1) they must cooperate very closely with law enforcement agencies, presumably on the basis of well-defined protocols; (2) the agency (or the part of the law enforcement agency) responsible for witness protection should operate independently of the other elements of the organization to protect the confidentiality of the measures taken to protect a witness; and, (3) the staff dealing with the implementation of the protective measures should not be involved either in the investigation nor in the preparation of the case for which the witness is to give evidence.

1.27.2 Empirical Conclusions

This study, concludes that capacity gaps exists in Witness Protection Programs; Based on the study findings, this study makes a number of inferences relating to the

challenges facing the witness protection program, the challenges emanate from the program as well as the community of the witnesses. It is clear that the Witness Protection Programs in Kenya is still weak and not well established. The present state of Witness Protection Programs is caused by a number of factors: infrastructure, capacity development and resources.

It is also evident that most people do not fully understand the existence and the role of the program, including those who work in the program. This makes it hard for the program to adequately execute its mandate and also makes it easy to be manipulated as seen in the current Kenyan cases at the ICC.

This study also reveals key socio-cultural issues which hamper successful implementation of Witness Protection Programs and the discharge of justice in Kenya. For instance, there are tribal loyalties which prohibit one to testify against another tribesman; prohibition of female and youths from testifying in public and especially on intimate matters such as sex and rape and language barriers. These are serious challenges especially when viewed from the Kenyan courts where most crimes against humanity have been perpetuated along tribal lines, where women and the youth are gang-raped and where majority of the rural folk, who in most cases are victims of crime are illiterate or semi – literate.

This situation makes it hard to apprehend criminals, report crimes committed against women and children or to present a case the way it happened because of possible distortion during translation. While the WPP meets the legal threshold expected of any program of that nature, it has its challenges too. Lack of clarity between the treatment of witnesses of victims of crime as well as ignorance of the role of the role of the program, hamper the program.

1.28 Recommendations

In view of the findings of this study, the following two sets of recommendations; namely policy recommendations and areas for further research, would be appropriate:

1.28.1 Policy Recommendations

Capacity Building

Personnel to be fully trained on what that work entails and equipped with ICT skills. Recruitment of staff that have done course on WPP to be employed, discourage secondment from other department or institutions. Mentorship programs for WPP benchmarks in countries with successful witness protection programs need to be adopted. Suggestions were made on what the agencies engaged should do to enhance the capacity in protection of witness in Kenya. Civic educations especially to stakeholders should be done. It was also recommended that international cooperation should be enhanced.

There should be coordinated activities among various agencies. Regarding the technical staffs, it was suggested that training programs targeting officers in the agencies should be put in place. Concerning technological support, the respondents suggested that such support should be provided where necessary. Two participants recommended that Government should be actively engaged. In respect to financial support it was recommended that it should be sought where necessary. It was also suggested that there need to be cooperation with developed countries for this program Civic education to the public was recommended as paramount in distributing in creating awareness.

Vetting of the advisory board members and admittance to the program was suggested and should be based on a witness meeting self-criteria and that the defense of witness should also be expanded.

Infrastructural Development of WPP

It should be fully developed to facilitate easy access and efficiency. Government to adequately fund the program to facilitate its development and acquisition of adequate resources. Need for the program to diversify to the rural areas- after all, it is where most cases against humanity occur.

Respondents were asked to give recommendations in regard to enhancement of infrastructure and facilities for protection of witnesses in Kenya. 20% of those who responded suggested that more facilities and resources need to be provided for witness protection. One added that agencies to be provided with sufficient and sustainable fund. 4% suggested the government to allocate more funds for the improvement of

infrastructure and ensure the constructions/renovation of the roads implemented in order to ease access to the witness when and if need arises. It was also suggested that courts should be designed in a way to have screens/ or facilities where witness can testify with their voice being heard only.

Rooms ought to be provided where witness can be accommodated before they testify instead of mixing with defendants before they give evidence and that courts to construct a special structure where to keep the witness to avoid exposure to the accused. Respondents suggested that agencies should seek government assistance in having facilities improved. It was also recommended that there should be sensitization of the program.

Legal Threshold of WPP

The respondents were asked to give recommendations in regard to enhancement of legal threshold for protection of witnesses in Kenya. They suggested that the witness protection funds should not be under the government control. They should have the money set aside during a financial year to meet the need when a case arises. It was also suggested that there should be enacted a law which caters for the dependants who are left behind. The respondent also suggested that the wishes of the witness about to be transferred should be considered.

To the Agency, it was suggested that the structural measures should be put in place in the agency itself as well as in the Act to ensure the agency will be independent and not influenced by any authority including the executive arm of government and also in discharging its function, particularly that of providing security to the witnesses in the program, the Agency should ensure its staff meets a strict criteria which should include not having worked for the police of Kenya, NIS, criminal investigation department or any other state security outfit. Core education on existence of the program and its responsibilities need to be emphasized.

About the witness, the respondents suggested provision for protection of witnesses in court and after giving evidence. Also there should be proper definition of a witness/victim in need of protection and there should be a clear policy on who qualifies to be protected. The respondent suggested that there should be civic

education to create awareness and every citizen of this country (because he is a potential witness) be sensitized of the existence of this Agency.

It was also recommended that punishment to be defined and enhanced for offenders who threaten witness. As suggested, legislatives on types of protection available and compensation for injured/ killed victims and for their families is necessary. One of the respondent suggested that some of the powers the director has in regard to ascertaining who is given witness protection be curtailed, and may be shared out with other relevant officers so that a decision to grant a witness protection be discussed saintly by several key officers. It was also suggested that the director of the Agency be given security of tenure so as to give the Agency autonomy.

The respondents also suggested, entrenchment of the Witness Protection Agency/legal framework in the constitution, and provision to create a director general to represent the whole country and each county be represented by director of the Witness Protection. It was also suggested that the legal threshold to provide for who should determine the protection of witnesses before testifying any investigation stage. Also, provision be equitably implemented especially with respect to compensation of the witness and suggested that the act be amended to include a more comprehensive definition of "witness"

Socio- Cultural Barriers

Issues to be addressed in this regard include: expanding natural adhesion to fight tribalism; inculcate moral values among Kenyans; let them recognize that a crime is a crime even when perpetrated by tribesmen; trained translators to invest in equipment for example, audio and video recorders; ensure confidentiality and privacy of witnesses and victims of crime. Civic education and awareness campaign was also a major recommendation, as suggested by 62% of the respondents.

Respondents mentioned about sensitizing Kenyans on the advantages of witness protection and the need to give evidence as required. Kenyans should work hand in hand with security organs, and their attitude towards the program should be targeted. Negative feelings about the law enforcement should be discouraged. Education on elimination of negative cultural practices should be paramount.

Respondents suggested that police and other law agencies must be friendly with the general public to encourage community policy in the fight against crime. Agencies should take advantage on the many vernacular radio and television stations and sensitize people on witness protection program and decentralize to the smallest unit i.e. sub-locations and ensures the local understand their mandates.

It was also suggested that witness to be informed on cultural change in case of relocation. Also, proper explanation to the witness of the court process after recording a statement. It was also suggested that negative cultural activities that impede justice to be discouraged.

1.28.2 Areas for Further Research

In Kenya, the Witness Protection Act of 2006 was adopted to respond to the difficulties the country had experienced over the years in investigating and prosecuting those involved in high-level corruption (e.g. the Goldenberg Case), in the 2007-2008 bout of post-election violence and in cases of terrorism (e.g. the bombings of the United States Embassy in Nairobi and of a hotel in Mombasa).

Failure to successfully prosecute those responsible for these and other significant crimes has been largely due to the unwillingness of witnesses and victims to cooperate for fear of reprisal. This led to revision of the Act in 2010 to establish the witness protection agency. However, the current study shows that the WPA and other agencies asked with witness protection in Kenya do not have adequate capacities in terms of resources and staff.

Further studies may be done to deeply assess the institutional capacities of the bodies tasked with protection of witnesses in Kenya. Further studies may also be done to interrogate the gaps identified in the current legal framework that still hinder effective operationalization of the witness protection program in Kenya.

Effective and comprehensive witness protection programs that provide access to justice as well as to crucial psychological and medical services help challenge the

impunity that enables criminality to thrive. The importance of well-designed witness protection programs to combat crime is clear.

What requires further investigation is precisely how to institute effective programs with the necessary focus on various types of crimes. To do so is no small task: governments must develop outreach and education programs; amend laws and policies; build expertise amongst law enforcement, judicial, and government sectors; connect to medical and psychosocial services providers; and muster considerable political will and financial resources.

It is obvious that victim/witness protections must become a priority, because without victims who are willing to come forward and assist, there will be no prosecutions. And with no prosecutions, impunity—and the continued commission of crimes—is assured.

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APPENDICES

APPENDIX I: LETTER OF INTRODUCTION

Dear respondent,

I am a Doctorate student at the Egerton University, pursuing a PhD degree in Sociology (Criminology). As part of partial fulfilment for the degree I am conducting a research study on: **CHALLENGES FACING IMPLEMENTATION OF WITNESS PROTECTION PROGRAM IN KENYA.** For this reason, I would appreciate if you would kindly spare a few minutes of your time to ask you a few questions in regard to witness protection program in Kenya.

The information from this interview will be treated with confidentiality and in no instance will your name be mentioned in this research. In addition, the information will not be used for any other purpose other than for this research. Your assistance in facilitating the same will be highly appreciated.

Thank you in advance.

Yours Faithfully

_____ _____

Wilson Kiprono

PhD Student Supervisor

APPENDIX II: INTERVIEW GUIDE FOR KEY INFORMANTS

The purpose of this interview is to assess the challenges facing implementation of witness programme in Kenya. I will start by asking you the following:

1) Gender
   a. Male ☐
   b. Female ☐
2) Institution _____
3) Location _____
4) Position held _____
5) Experience in the organization/ Institution _____

SECTION A: CAPACITY GAPS

6) What are the gaps in the Witness Protection Program with reference to witnesses in regard to the following aspects?

a. Availability of technical staff and experts

_____

_____

_____

_____

b. Technological support

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_____

_____

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c. Training of personnel

_____

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_____

d. Availability of financial resources

_____

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_____

_____

e. Law enforcement approaches

_____

_____

_____

_____

7) What recommendations would you make in regard to enhancement of capacity by agencies engaged in protection of witnesses in Kenya?

_____

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SECTION B: LEGAL FRAMEWORK AND PRACTICE

8) What is the general position of the Kenyan law in regard to protection of witnesses in the criminal justice system?

_____

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_____

_____

9) What is the general position of the Kenyan law in regard to protection of witnesses in the criminal justice system, where they are the victims as well?

_____

_____

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_____

10) What is the position of the Kenyan law in regard to protection of witnesses in the criminal justice system?

_____

_____

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_____

11) What is the position of the Kenyan law in regard to protection of witnesses in the criminal justice system, where they are the victims as well??

_____

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_____

12) Are there some aspects of international law governing protection of participating as witnesses in the criminal justice system?

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13) What are the strengths and weaknesses in the existing legal frame works that seek to protect witnesses?

a. Strengths

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b. Weaknesses

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_____

14) What recommendations would you make in regard to enhancement of legal threshold for protection of witnesses in Kenya?

_____

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SECTION C: INFRASTRUCTURE

15) What are some of the challenges facing the witness protection agency while working with witnesses?

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16) In what ways do the following aspects influence the implementation of witness protection in Kenya?

a. The court environment

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b. Availability of physical facilities

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_____

c. The locality of facilities

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_____

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_____

d. Geographical/ regional diversity

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_____

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_____

17) What recommendations would you make in regard to enhancement of infrastructure and facilities for protection of witnesses in Kenya?

_____

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_____

_____

SECTION D: SOCIO-CULTURAL BARRIERS

18) In what ways does cultural diversity influence the appearance and testifying child witnesses within the court process?

_____

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_____

19) In your opinion, how does culture influence the implementation of the witness protection programme?

_____

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_____

20) What recommendations would you make in regard to the cultural aspects influencing the protection of witnesses in Kenya?

_____

_____

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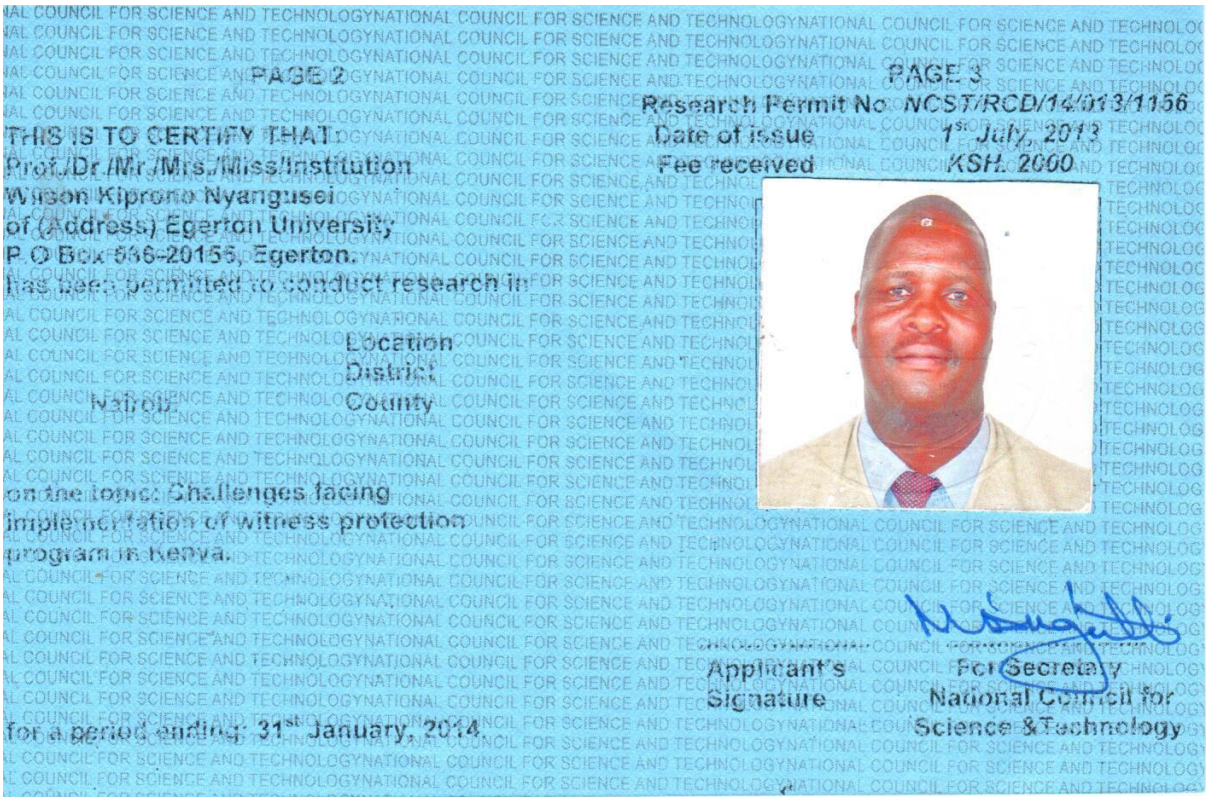
_____-

_____

Thank you for your responses

APPENDIX III: RESEARCH PERMIT



PAGE 2

THIS IS TO CERTIFY THAT:
Prof./Dr./Mr./Mrs./Miss/Institution
Wilson Kiprono Nyangusei
of (Address) Egerton University,
P.O Box 536-20155, Egerton.
has been permitted to conduct research in
Location
District
County
Nairobi
on the topic: Challenges facing
implementation of witness protection
program in Kenya.
for a period ending: 31st January, 2014

PAGE 3

Research Permit No NCST/RCD/14/013/1156
Date of issue 1st July, 2013
Fee received KSH. 2000

Applicant's Signature

For Secretary
National Council for
Science & Technology