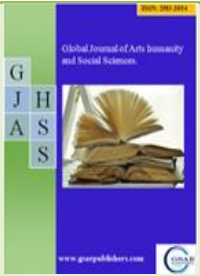
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A REVIEW ON THE LEGAL FRAMEWORK GOVERNING WITNESSES IN CRIMINAL JUSTICE SYSTEM IN TANZANIA

By

Jaines Kihwelo¹ & Dr. Neema B. Mwita²

¹ LLM St. Augustine University of Tanzania (SAUT), Mwanza, Tanzania

²Senior Lecturer, LLM St. Augustine University of Tanzania (SAUT), Mwanza, Tanzania



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Corresponding author
Jaines Kihwelo

Abstract

This article provides a review on the legal framework on witnesses in criminal justice system in Tanzania in which witnesses play a vital role in determining the truth and administering justice during a criminal trial. Tanzania's witness laws and institutions have provisions which provide issues such as protection for witnesses, evidentiary standards of witnesses and safeguards of witness testimony. The article looks at the current laws managing witnesses in Tanzania's criminal justice system, points out its flaws and difficulties to raise the system's standard and effectiveness of witnesses. It is majorly associated with the criminal justice system especially when the office of the prosecution wishes to fully prosecute their case as witness is one the important part in the criminal justice system. If witnesses are deposing under fear or intimidation or for favor or allurements, the foundation of administration of justice not only gets weakened, but it may even get obliterated. When witness is assured with Protection it is easy to Come in court and testify the information knows about offence accused is charged.

The article concludes that in Tanzania the laws and institutions which govern witness are not effective assurance of criminal justice system.

Keywords: Witness, Criminal Justice System, Legal Framework

2.1 Introduction

The criminal justice of Tanzania needs witnesses as essential during criminal trial during hearing of cases because they can testify against or in favor of the accused. In Examining the legislative framework that governs witnesses in Tanzania's criminal justice system, this article highlights its faults and difficulties while making reform suggestions. Judicial procedures frequently depend on the cooperation of witnesses, providing them with appropriate and sufficient protection can play a critical role in prosecuting offenders. The role of the witness is consequently crucial to the operation of any contemporary criminal justice system because it is not always possible to find adequate physical evidence. Furthermore, this is particularly true for adversarial systems, in which the defense may then contest. It goes without saying that in this case, the right of defense must be weighed against the application of protective measures, particularly those that obfuscate the identity of the witness. Since most people agree

that it is exceedingly difficult to successfully utilize traditional investigative tactics against closed-door criminal and terrorist organizations, witness protection plays a critical role in the war against organized crime and terrorism.¹ Offenders often try to keep witnesses from giving the information they have, especially in cases of more serious and coordinated crimes.

Witness frequently have a close relationship to the offenders, are occasionally involved in criminal conduct, and are thus frequently the target of legal action or punishment. This group is frequently referred to as cooperating witnesses, government witnesses, crown witnesses or republic witnesses. Hence, this article examines the law and institutions in governing witness in Tanzania by looking the position of the laws.

¹ Eniko, F., (2006) *The rising importance on the protection of witnesses in the European Union, Dans Revue internationale de droit pénal* 2006/1-2 (Vol. 77)



2.2 DESCRIPTION OF THE KEY TERMS USED ON WITNESS IN CRIMINAL JUSTICE SYSTEM

Witness

Witnesses are the one who provide testimony in court, it includes who may include those who are aware of a case that has proceeded to trial.² She or he is the Someone who in the event that a witness is unable to provide first-hand or expert testimony that would be useful in a case, gives sworn testimony in court or in a deposition that may be used in court. In a legal proceeding, a plaintiff or defendant may be asked to appear in court as a witness and testify.³ The Whistleblower and Witness Protection Act⁴ provides a witness as a person who speaks with law enforcement or gives their agreement to testify in front of a court or quasi-judicial authority. Thus, it is evident from this knowledge that victims in the criminal justice system are divided into several categories according to their roles in each case.⁵

First category is Eye Witness who's in a criminal justice system simply denotes to the person who has directly seen or experienced the event in question before a court of law. Second category is Expert witness connotes to a professional person with a specialized knowledge or expertism who provides an opinion to help clarify complex aspects in law in regard but more of expert witness denotes experts in forensic science psychologists, pathologists.⁶ Third category is Character witness also denotes to mean someone who testifies about the character or reputation of a person involved in a criminal trial in a liberal democratic state. However, Victim witness refers to the victim of the crime who provides testimonials about the incident occurred during the commission of an offence by the offender on the victim of crime.

In any criminal justice system in the world, witness plays a vital role in criminal litigations.⁷ The role of witness is crucial as their testimonials can significantly influence the outcome of a criminal trial. In a fair criminal justice system, witnesses are typically required to swear or take an oath or make an affirmation to the court and the public that what he/she will testify is the truth ensuring that the reliability of their witness in the court during determination of a case is acceptable norm of a court. In many liberal democratic jurisdictions, there are mechanisms and well stipulated laws that are put in place for the proper protection of witnesses and thus encourage participation in giving evidences and also safeguard them from intimidations or harm.

² <https://study.com/learn/lesson/witness-type-roles-lwa.html>

accessed in October 2024

³ <https://thelawdictionary.org/witness/> accessed in October 2024.

⁴ Section 3 of Cap. 446 R.E 2019

⁵ Brown A. B & Lee, C. *Protecting the Witness: Strategies and Challenges* (2nd ed.) Legal Insights Publishing. Pg 390

⁶ Op. Cit

⁷ Brown A. B & Lee, C. *Protecting the Witness: Strategies and Challenges* (2nd ed.) Legal Insights Publishing. Pg 390

Criminal Justice System

This means investigating criminal conduct, obtaining evidence, making arrests, filing charges, putting up defenses, holding trials, imposing sentences and administering punishment are all included in this all-encompassing term.⁸ The system with well-defined laws created by legislative bodies with the goals of maintaining social control, enforcing the law, and delivering justice. A society's judicial system for adjudicating individuals accused of crimes.⁹ The three separately structured agencies that comprise the criminal justice system as a whole are the police, courts, and corrections. Despite their distinct roles, they are all related. These and similar explanations are prosecution-focused, even if they are generally accurate and representative of the literature. Consequently, they fail to evaluate the whole range of adversarial conditions necessary to attain legal justice.¹⁰ However, a criminal justice system also has a correctional system. These correctional system in any liberal democratic state involves prisons and jails that are enhanced to facilitate offenders serve time as punishment for crime crimes committed. Probation and parole are alternatives to incarceration where offenders are monitored while living in the community under certain specific conditions that need not to be bleached. Prosecutors and defense attorneys present evidences to prove the defendant's guilt while the defense attorneys protect the rights of the accused and challenge the prosecution's case to ensure a fair trial. Rehabilitation as the last component in a correctional system in a criminal justice system that aims to reform offenders and help them reintegrate in the society as law abiding citizens who has been reformed.¹¹

In a criminal justice system in a democratic state there is presence of victim's services that offers assistance to victims of crime including the counselling, legal advocacy, and resources to help them navigate through justice process and recover from experience. However, a criminal justice system is paramount as it has various fundamental roles that it plays in the society for the sake of peace and tranquility in the state and thus the main goals of a criminal justice system is for the purposes to enforce law, help in public safety, rehabilitation, justice and fairness and restorative practices. In many jurisdictions from developing countries, criminal justice system faces great impede towards the proper administration of justice due to various reasons such as overcrowded prisons, disparities in sentences from countries either in the same region and continent but guided by the same international and regional laws, rehabilitation limitations¹². The

⁸ SENNA Joseph, (2012). *Essentials of Criminal Justice*. West Publishing Company. Minneapolis New York. Pg 459

⁹ <https://dictionary.cambridge.org/dictionary/english/criminal-justice-system> accessed in October 2024.

¹⁰ <https://www.sciencedirect.com/topics/psychology/criminal-justice-system> accessed in October 2024.

¹¹ SENNA Joseph, (2012). *Essentials of Criminal Justice*. West Publishing Company. Minneapolis New York

¹² BRAN Garner & CAMPEBELL Henry, (20090) *Black's Law Dictionary 9th ed.* St. Paul, MN, West

insufficient programs orchestrated for reforming and reintegrating the offenders. But more significant challenging aspect is on Access to legal representation that is a variable in the quality and aspect of a fair trial in a liberal democratic state.¹³

2.3 THE LEGAL FRAMEWORK GOVERNING WITNESS IN CRIMINAL JUSTICE SYSTEM IN TANZANIA

The Constitution of the United Republic of Tanzania, 1977

Witness protection is protected by a number of articles in the Constitution, which forms the basis of all national laws. Constitutional Article 13¹⁴ guarantees the person's right to personal liberty, which is what determines whether bail is available and other related rights that affect the person's capacity to exercise their rights. Also, Article 12 (1)¹⁵ declares that all people are created equal, free, and entitled to protection and equality under the law.¹⁶ Again the provision of Article 64 (5) declares that any law that contravenes the constitution is unlawful. A fair trial and the right to appeal are among the constitutional principles that the authorities must adhere to when creating laws and procedures. Other principles include innocent until proven guilty, the preservation of human equality in all criminal investigations and proceedings, as well as in any other matters for which a person is restrained or in the execution of a sentence.¹⁷ Also, Article 14 of the Constitution¹⁸ states that everyone has the legal right to life and that society will preserve that right. This includes the right to witness, personal privacy, family privacy, marriage privacy, and the right to have one's home and private communications respected and protected.¹⁹ Therefore, in accordance with the virtue of this article, witnesses must be shielded from any threat, intimidation or danger and not only for themselves.

Article 4(2) and Article 107A of the Constitution grant the Judiciary with judicial authority²⁰ with final decision in dispensation of justice,²¹ required to observe principle of impartiality,²² not to delay dispensation of justice unreasonably,²³ to award reasonable compensation to victims,²⁴ to promote and enhance dispute resolution between people,²⁵ and avoiding technicalities which may obstruct dispensation of justice.²⁶ Even during committal proceedings, the court has played a crucial role in

safeguarding witnesses and maintaining the confidentiality of the identities of individuals permitted to speak in court.

The Whistleblower and Witness Protection Act, Cap. 446

The Whistleblower and Witness Protection Act,²⁷ is a law that protects witnesses and whistleblowers from potential harm or reprisal, creates a legal framework for rewarding and compensating witnesses and whistleblowers and addresses other related issues. It also promotes and facilitates the reporting of organized crime, corruption, unethical behavior, abuse of office, and illegal and dangerous activities.²⁸ The Act protects witnesses and whistleblowers who reveal information about crimes committed in Tanzania, so it is the responsibility of the appropriate government to safeguard them.²⁹ Section 3 of the Act³⁰ states that a witness is a person who speaks to a law enforcement agency or agrees to testify before a court or quasi-judicial body.

The protection of witness is provided under the provision of section 11 of the Act³¹ in which the competent authority will refer the matter to an institution that can provide assistance when a witness feels that, based on the information gathered, he may be subject to termination, suspension, harassment, discrimination, or intimidation by his employer, or that his life or the life of someone with whom he has a close or personal relationship is in danger or likely to be in danger.

According to Tanzanian regulations, the DPP office and other law enforcement agencies are responsible for protecting Tanzanian witnesses and whistleblowers.

The Act under the provision of section 13 (4)³² allows the Police Force, the Prevention and Combating of Corruption Bureau, the Tanzania Wildlife Conservation Authority, the Tanzania Intelligence and Security Services Agency, and other similar institutions to operate. The law requires that witnesses and whistleblowers be protected because of the dangers of testifying in a criminal proceeding, even if it means relocating from their customary location.³³

Finally, in order to encourage whistleblowers and witnesses and to compensate them for any harm they may have suffered as a result of testifying in a criminal case, the law provides incentives and compensation.³⁴ and the minister is vested with the power to make guidelines on reward and compensation provisions under the Act. According to section 13 (4) of the Whistleblower and Witness Protection Act,³⁵ cites numerous law enforcement agencies, including the Police Force, the Tanzania Intelligence and Security

¹³ *Op. Cit*

¹⁴ *Cap. 2 of 1977.*

¹⁵ *Cap 2. Of 1977.*

¹⁶ *Ibid, Art. 13*

¹⁷ *Article 13 (6) (a) to (e) of Cap. 2 of 1977.*

¹⁸ *Cap. 2 of 1977.*

¹⁹ *Ibid, Art. 16*

²⁰ *Cap. 2 of 1977.*

²¹ *Ibid, Article 107A (1)*

²² *Ibid, Article 107A (2) (a)*

²³ *Ibid, Article 107A (2) (b)*

²⁴ *Ibid, Article 107A (2) (c)*

²⁵ *Ibid, Article 107A (2) (d)*

²⁶ *Ibid, Article 107A (2) (e)*

²⁷ *Cap 446 R.E 2022*

²⁸ *Long title of Cap. 446 [R.E 2022].*

²⁹ *Ibid, Part II*

³⁰ *Cap. 446 [R.E 2022].*

³¹ *Cap. 446 [R.E 2002].*

³² *Cap. 446 [R.E 2022]*

³³ *Ibid, Section 12*

³⁴ *Ibid, Section 13*

³⁵ *Cap 446 R.E 2022*



Services Agency, the Tanzania Wildlife Conservation Authority, and the Prevention and Combating of Corruption Bureau. The Tanzanian police have the authority to investigate criminal activities and make arrests. The police department is considered one of the most significant agencies in the witness protection process since they submit their accusations to the National Prosecution Services (NPS) office after an investigation.

A number of laws, including the Whistleblower and Witness Protection Act, mandate that the above stated law enforcement agencies³⁶ the Criminal Procedure Act,³⁷ the Prevention of Terrorism Act,³⁸ the Prevention and Combating of Corruption Act,³⁹ the Anti-Money Laundering Act,⁴⁰ and the Economic and Organized Crime Control Act,⁴¹ which are mandated with the duty to inspect, arrest, investigate, collect the evidence and then protect the witnesses who will testify before the court of law.

The Whistleblower and Witness Protection Regulations,⁴² made by the Minister for Constitutional and Legal Affairs, acting in compliance with section 15 of the Whistleblower and Witness Protection Act, aimed to protect whistleblowers and witnesses from potential victimization or retaliation, as well as to promote and facilitate the reporting of organized crime, corruption offenses, unethical behavior, official abuse, and unlawful and hazardous activities,⁴³

The Regulations supplement the existing framework on the subject by providing thorough guidance on matters relating to witness and whistleblower protection. The Regulations mandate that a competent body (the body) provide protection for witnesses when specific steps are required, either on its own initiative or in response to a witness's request. Within seven days of determining to grant protection, the Authority is required under Regulation 6 to sign a protection agreement with the witness,⁴⁴ where the standard protection agreement is in prescribed form No. 2.

The Regulations include a list of safeguards that the appropriate Authority may employ to protect witnesses in relation to the different types of protection. These precautions include safeguarding a person, his house, and his belongings; hiding a person's name and property ownership; supplying a weapon for self-defense; relocating; and granting immunity from prosecution for a crime for which a person testifies or provides information. hearing evidence while concealing one's identity, behind a screen, or through a camera; and techniques for voice and facial distortion.⁴⁵ According to the law, when determining what kind of

protection measures to use to protect a witness, consideration must be given to the witness's criminal history, the type of imminent danger to which the witness is exposed, whether the intended protection measure poses a risk to the public, the witness's competence, the cost of the protection, the potential damage from the intended protection, and other factors.⁴⁶ Under the Regulations, the Authority must apply to the Minister for witness identity concealment using the process outlined in Schedule Form No. 4.⁴⁷

Furthermore, the Regulations grant the Minister the power to mandate that a witness's name be kept secret following consultation with the Attorney General and confirmation that other security measures are not adequate to guarantee the witness's safety.⁴⁸ However, according to the legislation, identity concealment cannot affect maternity, marriage, paternity, or third-party rights. It also cannot be used to give a professional certificate that a witness does not actually possess. Apart from the previously mentioned, a protected person whose identity or property ownership has been hidden may take on legal obligations with the written consent of the Minister, which is provided in the manner specified in Form No. 5 of the Schedule to the Regulation.⁴⁹ Again, rule 21 allows the Authority to pay a witness who voluntarily provided the Authority with original information that enabled the Authority to effectively enforce the applicable administrative or judicial action.⁵⁰ The aforementioned reward may be money or another item that the Authority deems suitable. A witness who has been the victim of discrimination, demotion, or unlawful termination may also receive damages from the Authority upon discovery of the misbehavior, according to the Regulations.

Regarding confidentiality, the Regulations require that all documents and data relating to a protected person be handled and preserved in a way that is confidential. However, if a protected person consents, has already done so, or the protected person's testimony is needed to prove another suspect's innocence in a criminal case, or the information is needed to look into a crime that carries a sentence of more than seven years in prison or the death penalty, the Minister may divulge information.⁵¹ Lastly, the Regulations stipulate that if a protected person willfully neglects to return new identification or documents, provide true, accurate, or complete information to a case that is the subject of a protection agreement, or refrain from actions that could obstruct the protection measure, they are guilty of an offense that carries a maximum fine of Tanzanian Shillings One Million or a maximum sentence of 12 months in jail.⁵²

³⁶ Cap 446 R.E 2022

³⁷ Cap 20 R.E 2022

³⁸ Act No. 21 of 2022

³⁹ Cap 329 R.E 2022

⁴⁰ Cap 423 R.E 2022

⁴¹ Cap 200 R.E 2022

⁴² G.N. No 59 of 2023.

⁴³ *ibid*

⁴⁴ *Ibid*, Regulation 6 of G.N No. 59 of 2023

⁴⁵ *Ibid*, Regulation 12

⁴⁶ Regulation 13 of G.N No 59 of 2023

⁴⁷ *Ibid*, Regulation 14 (1)

⁴⁸ *Ibid*, Regulation 16 (1)

⁴⁹ *Ibid*

⁵⁰ *ibid*

⁵¹ Regulation 27 (2) (d) of G.N. No. 59 of 2023

⁵² *Ibid*, regulation 28

The Penal Code, Cap. 16

The Penal Code⁵³ was enacted to provide for offences and their punishments.⁵⁴ The Penal Code, which outlines the requirements that witnesses must meet in order to be called before a court of law, is an essential piece of legislation in Tanzania's criminal justice system. Only the violations and their corresponding fines are listed.⁵⁵

The Criminal Procedure Act, Cap. 20

The Criminal Procedure Act,⁵⁶ is a law passed to establish the protocol to be followed in criminal investigations, criminal trials, and other related activities.⁵⁷ The CPA does provide for the Section that governs concerns pertaining to witnesses generally. In accordance with Section 142, witnesses may be called and forced to testify in court regarding the offense. After that, the law empowers the court to deal with witnesses who disregard the court's order to appear in court,⁵⁸ and the court may issue warrant of arrest to the witness who disobey the order of the court⁵⁹ and sometimes detain the witness⁶⁰. Section 195 of the Act again allows for the summoning and questioning of witnesses who are brought before Tanzanian courts. If the court determines that a certain person is a material witness in the case, it may call them, interrogate them, and allow the parties to cross-examine them. Again, when bringing stubborn witnesses before the court, the court provides guidance on how to manage them.⁶¹ In the event that the accused is the sole witness in his case, section 200 of the Act allows him to testify and defend his position.⁶² The court also is mandated with the duty to record down the evidences adduced before the court or magistrate⁶³ and the court is allowed to examine the demeanour of the accused adduced before him⁶⁴. The law also allows the evidence of the professional witnesses to testify and give their testimonies before the court of law.⁶⁵

The provision of section 188 (1)(a), (b), (c) and (d) of the Act⁶⁶ which provide that, taking into consideration the witness's security, the non-disclosure of statements or documents that could be used to identify the witness, or any other safeguard the court deems necessary, a witness may testify by video conference before a charge or information is filed at any time during the proceedings.⁶⁷ The accused may once more be punished, found guilty, or

exonerated by the court after considering the evidence that has been provided and the testimony of the witnesses that have been summoned. Nevertheless, the CPA doesn't go into great depth concerning Tanzanian legislation protecting witnesses or how to ensure their safety during testimony.

The Evidence Act, Cap. 6

The Evidence Act⁶⁸ was enacted to declare the law of evidence.⁶⁹ Section 3 (2) (a),⁷⁰ makes it clear that in criminal trials, the prosecution must prove its case beyond a reasonable doubt. None of the evidence obtained by torture may be used, according to Section 27 of the Act. Chapter V of the Act addresses the competency, comparability, and privilege of witnesses in Part I; again, witness examination is covered in Part II of the same chapter. Although the examination is always subject to rules and procedures, it is nonetheless true that facts are established through the presentation of evidence rather than through compromise in a criminal trial. This kind of evidence could be oral or testimonial, documentary (related to the production of records), or actual or material (related to the creation of exhibits).

The Prevention of Terrorism Act, 2022

The Act,⁷¹ passed in order to provide comprehensive measures to combat terrorism, prevent terrorism, work with other states to suppress it, and address associated issues.⁷² In addition to outlining the punishments for terrorist offenses committed in Tanzania, the Act defines terrorism in Tanzania and prohibits any conduct related to it.⁷³ The Act once more forbids any cooperation with foreign terrorist organizations and anybody involved in the provision of weapons,⁷⁴ Promoting and abetting terrorists or acts of terrorism in Tanzania, he is subject to the Act's liability and, if found guilty, may face punishment.⁷⁵ The provision of section 34 (3)⁷⁶ which prohibits the publication of a witness's name, address, or portrait in any case where the witness is being tried or will be tried for a crime, as well as any evidence or other information that could be used to identify the witness.

The Prevention and Combating of Corruption Act, Cap. 329

In order to help identify or stop corruption, this Act looks into and offers advice on the procedures and practices of public, parastatal, and private organizations. Additionally, it offers the legal and institutional foundation needed to stop and fight corruption.⁷⁷ Encouraging public support for the fight against corruption, investigating and prosecuting crimes, collaborating with regional and international organizations, and disseminating information

⁵³ Cap 16 R.E 2022

⁵⁴ Long title of Cap. 16 [R.E 2022].

⁵⁵ Section 149 Of Cap. 16 [R.E 2022].

⁵⁶ Cap 20 R.E 2022

⁵⁷ Long Title of Cap. 20 [R.E 2022].

⁵⁸ Section 143 of Cap 20 R.E 2022

⁵⁹ Ibid, Section 144

⁶⁰ Ibid Section 145

⁶¹ Ibid, Section 199

⁶² ibid

⁶³ Ibid, Section 210

⁶⁴ Ibid, Section 212

⁶⁵ Ibid, Section 269, 203, 204 and 205

⁶⁶ Cap. 20 [R.E 2022].

⁶⁷ Section 188 (2) of Cap. 20 [R.E 2022].

⁶⁸[Cap. 6 R.E 2019]

⁶⁹ Long title of Cap. 6 [R.E 2022].

⁷⁰ See Section 110

⁷¹ Act No. 21 of 2022

⁷² Long title of Act No 21 of 2022.

⁷³ Ibid, Section 4

⁷⁴ Ibid, Section 20

⁷⁵ Ibid, Section 23

⁷⁶ Act No 21 of 2022.

⁷⁷ Cap 329 R.E 2022



about corrupt practices and detrimental customs and use are all goals of the Act.⁷⁸

The Prevention and Combating of Corruption Bureau (henceforth referred to as PCCB), an independent organization charged with taking the required actions to prevent and combat corruption in the public, parastatal, and private sectors, is established by Section 4 of the PCCB Act. In order to help detect or prevent corruption and secure the revision of work methods or procedures that appear to improve the efficiency and transparency of the institution in question, the Bureau will have the authority to review and advise on the practices and procedures of public, parastatal, and private organizations.⁷⁹

The Act mandates the Director General⁸⁰ having the power to bring criminal proceedings against anyone suspected of violating the Act's provisions against corrupt transactions within six months of the.⁸¹ which requires a witness in any proceedings for an offense for which he is considered an accomplice to tell an officer that a public official, business, or public body is or has been involved in an act of corruption and that the witness believes, on reasonable grounds, that the information he discloses may be true and of a nature that warrants an investigation, avoid civil or criminal liability as a result of the disclosure, and receive any payment or delivery by him or on his behalf of any advantage to the person accused. Light of the current trend in which the accused intimidates, threatens, or harms witnesses to keep them from testifying against the accused in court, the aforementioned section states that it is imperative to protect witnesses from corrupt transactions and other related offenses.

The Anti-Money Laundering Act, Cap. 423

The Act,⁸² creates a Financial Intelligence Unit, enhances current laws to detect and prevent money laundering, terrorist financing, and proliferation financing, and permits the disclosure of information on these subjects.⁸³ The Act lists the offenses that are forbidden and, as a result, subject to punishment under Part III, specifically Sections 12, 13, and 14.⁸⁴ The procedures for arrest, information gathering, trial, determination, confiscation, forfeiture, pecuniary penalty, restraining orders, and control of property subject to confiscation for the aforementioned offense may be carried out under Section 28 of the Act.⁸⁵

A reporting person, their partner or employee, or any other individual who provides information or filed a report in good faith may not be the target of criminal, civil or administrative procedures for breach of banking or profession as stated in section 22 of the Act. The statute safeguarding witnesses in instances

involving money laundering charges is essential since people who perpetrate crimes under the Act may be powerful individuals involved in severe crimes including terrorism, drug trafficking, human trafficking, and other crimes like piracy. As a result of carrying the witnesses, witnesses can be in danger.

The Economic and Organized Crime Control Act, Cap. 200

The Act,⁸⁶ was enacted, among other things, to strengthen provisions for the prevention and control of certain crimes and culpable non-criminal misbehavior. This was accomplished by recommending changes to the trial and investigative procedures, more criminal prohibitions, harsher punishments, and new remedies.⁸⁷ Because it contains provisions for both organizational and economic violations as well as processes, it is possible to claim that this law has both a substantive and procedural character. Section 3 of the Act mandates and establishes the Corruption and Economic Crimes Division of the High Court, as well as a Registry and sub-registries that may be designated by the Chief Justice. The High Court Judge has the power to handle cases involving economic and corruption-related matters.⁸⁸ If the DPP believes and desires to grant authority to a court other than the High Court to try economic offenses under the Act, the legislation grants him the authority to issue a certificate. Part III of the Act⁸⁹ enables the investigation of all economic offenses subject to a High Court trial in accordance with the guidelines set forth by the Criminal Procedure Act. According to the statute, the DPP must initiate any actions under the Act and is granted permission to do so. Additionally, it states that no economic offense trial may begin under this Act without the consent of the Director of Public Prosecutions.⁹⁰ Again under the provision of Part IV of the Act is provides for the procedures prior and during trial of any court which try any economic case.⁹¹

The process of arrest, seizure, search, charge preparation, certificate, and DPP consent, followed by witness examination up to the verdict, although the legislation once more permits the use of the Criminal Procedure Act and Penal Code regulations⁹² and the rules of Evidence Act.⁹³ Witnesses who testify in court are protected by the law, but they are also shielded from prosecution once they have done so.⁹⁴

The National Prosecutions Service Act, Cap. 430

The Act,⁹⁵ to make it possible for the NPS to be established in order to help coordinate investigations, monitoring, supervision, and prosecution planning in order to enhance and progress criminal

⁷⁸ *Ibid*, Section 4 of Cap. 329 [R.E 2022].

⁷⁹ Section 7 of the Cap 329 R.E 2022

⁸⁰ *Ibid*, Section 8

⁸¹ Cap. 329 [R.E 2022]

⁸² Cap 423 R.E 2022

⁸³ *Ibid*, Section 4

⁸⁴ *Ibid*

⁸⁵ Cap 256 R.E 2022

⁸⁶ Cap 200 R.E 2022

⁸⁷ Long title of Cap. 200 [R.E 2022].

⁸⁸ *ibid*

⁸⁹ *Ibid*, Section 20 (1)

⁹⁰ *Ibid*, Section 26 (1)

⁹¹ Part IV of Cap 200 R.E 2022

⁹² Cap 16 R.E 2022

⁹³ Cap 6 R.E 2019

⁹⁴ *Ibid*, section 54

⁹⁵ Cap 430 R.E 2019



justice administration. The DPP is chosen by the President of the United Republic of Tanzania to head the NPS.⁹⁶ According to section 9 of the NPS Act, the NPS is required to perform a variety of tasks as an independent and autonomous agency,⁹⁷ which among other duties is the power to prosecute or not to prosecute, and to conduct any criminal proceedings in Tanzania.⁹⁸

Although the Act does not expressly address witness protection during criminal proceedings, the Minister may, after consulting with the Attorney General, establish regulations covering this topic in Tanzania.⁹⁹ In order to ensure a smooth prosecution of the cases, the 2023 Witness Care and Protection Guidelines were developed in acknowledgment of the importance of protecting witnesses during criminal proceedings.¹⁰⁰ Aimed to provide rules for the NPS's day-to-day activities and how to protect the witnesses they regularly summon in court. Investigators and prosecutors can use these recommendations as a guide when implementing procedures for witness care and protection. Regarding the protection and care of witnesses, none of these principles are intended to alter any legally established legal procedure. The guidelines specify the duties of investigators and prosecutors to safeguard witnesses from the start of the investigation to the conclusion of the trial.

The National Prosecution Services (NPS) who is established under Article 59B (1) of the Constitution¹⁰¹ thus the constitution gives him power to institute, prosecute and supervise all criminal prosecution in the country,¹⁰² those powers can be exercised in his own capacity or on his directions by the public prosecutors and officers under him.¹⁰³ The constitution mandates that he be free from outside influence for the sake of administering justice, preventing abuse of the processes for doing so,¹⁰⁴ and for public interest.¹⁰⁵ The procedural measures for witness protection are provided in section 188 of the CPA.¹⁰⁶ Regulations give the DPP the authority to request witness protection orders in court, including those relating to video conferences, witness identity confidentiality, statement confidentiality, or any other necessary precautions as determined by the court. Despite the statutes' provisions protecting witnesses, investigators and prosecutors are not given any guidance on how to implement these regulations. Using the powers authorized by NPSA sections 18(1) and 24(2), the DPP filled this gap¹⁰⁷ which led to the making of Witness Care

and Protection guidelines to guide investigators and prosecutors in implementing witness protection measures.

3.1 Conclusion

In conclusion, there are serious restrictions on the legislative framework controlling witnesses in Tanzania's criminal justice system, which have a detrimental effect on the standard of justice. This article expounds on the effectiveness of the legal regime governing witness examine the laws, regulations, policies and institutions which focuses on the protection of witnesses under the criminal justice system in Tanzania. The article examined and analyze different laws in relation to witness domestic legal regime and different law enforcement agencies which includes the Police Force, Prevention and Combating of Corruption Bureau, Tanzania Intelligence and Security Services Agency, Tanzania Wildlife Conservation Authority and like institutions.

The article revealed the laws, regulations, policies and institutional framework governing the witness protection in Tanzania is not fully effective to the extent that witness who wish to testify in a criminal trial are free from any intimidation, dangers or threat. Thus the laws are mainly aimed at protecting the witnesses in Tanzania who are informer and the one who testify before the court of laws but does not provide for protection after trial. Reforms should concentrate on strengthening witness protection, establishing more precise evidence guidelines, and enhancing the skills and training of law enforcement and legal experts in order to enhance the criminal justice system. The Tanzanian criminal justice system can improve its ability to administer justice and advance public safety by tackling these problems.

⁹⁶ *Ibid*, Section 4 (2) and Article 58B of the Constitution of the United Republic of Tanzania of 1977

⁹⁷ *Ibid*

⁹⁸ *Ibid*, Section 9 (1) (a) and (b)

⁹⁹ *Ibid*, Section 28

¹⁰⁰ *National Prosecution Services: Witness Care and Protection Guidelines of May 2023*

¹⁰¹ *URT Constitution of 1977*

¹⁰² *Ibid*, Article 59B (2)

¹⁰³ *Ibid*, Article 59B (3)

¹⁰⁴ *Ibid*, Article 59B (4) (b)

¹⁰⁵ *Ibid*, Article 59B (4) (c)

¹⁰⁶ *Cap 20 R.E 2022*

¹⁰⁷ *Cap 430 R.E 2019*

