Book Review of Witness Protection and Criminal Justice in Africa: Nigeria in International Perspective by Suzzie Onyeka Oyakhire

By:

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How does the state provide effective witness protection where the witness-protection architecture is almost non-existent? How is effective protection of witnesses achieved when suspected criminals are in charge of security? How can witness protection programs be made effective without a comprehensive legal and policy framework? In contexts where potential witnesses and suspected criminals live communally and are known to each other, what does effective witness protection look like?

Suzzie Onyeka Oyakhire's new book titled Witness Protection and Criminal Justice in Africa: Nigeria in International Perspective' used the context of

Nigeria to navigate the challenges of witness protection paused by the questions above. These challenges are marked with ambiguity about the precise meaning of witness protection as different domestic and international jurisdictions accord different meanings and therefore interpretations to the concept, though with an ultimate goal of supporting the adjudication of crimes.

Stark differences between developed and developing country contexts, regarding the development and administration of witness protection exist. The developing world still remains challenged by palpable reprisal attacks against witnesses, threats, or actual intimidation especially where state protection is not fully felt because witness protection is not fully developed. In the developing world, criminal prosecutions are largely unsuccessful mostly due to the unwillingness and absence of witnesses to testify in criminal investigations especially when protection of witness is not guaranteed. For Nigeria, contextual challenges exist in investigations and prosecutions due to incessant acts of terrorism, together with economic and financial crimes where witnesses are intimidated thereby affecting the rights and interests of witnesses to participate. Where high-profile individuals are involved as potential suspects, investigators and prosecutors have reported mysterious deaths of their witnesses, thereby instilling fear in other prospective witnesses (pg.8).

The contestations and ambiguity that surround witness-protection as a concept subjects its practice to diverse interpretations. There equally exists a challenge of assessing the witness protection architecture from the perspective of the developed world where the concept originates, without a clear attention to the unique challenges of the developing world's security architecture. This laxity in attending to the unique security challenges of the developing world mirrors a wrong diagnosis of a caricature of witness protection frameworks in this part of the world, which is partly a predicament that Oyakhire's book engages. This perspective assumes the existence of capacity to fund expensive protective measures for a functioning state security and justice sector. In countries like Nigeria where structures of governing security are not treated as complementary but independent of each other, this limits the courts' capacity to provide the needed effective protection by witnesses. Oyakhire's book responds to this challenge by providing recommendations which consider the practical limits in which witness-protection can be proposed for developing countries like Nigeria (pg.9).

Oyakhire's adopted definition of witness protection employs all methods of providing security to individuals cooperating with law enforcement, especially those exposed to harm for testifying in court, to ensure their safety in exchange for their testimonies. By this definition, it is practically difficult to protect witnesses where programs are not fully developed with the intention of protecting witnesses, but only loaned to fulfil this purpose for which they are not oriented. The other challenge rests in who controls the process of protection especially where it is typical that suspects may oversee the state's security architecture that carries the witness protection mandate.

An effective witness protection program should be one that motivates and encourages witnesses to report threats advanced to them, but also encourages them to participate in the justice process as a source of protection. When this fails, witnesses are subjected to double victimization in the hands of the judiciary through the process of open confrontation especially when victims also double as witnesses. This is true of societies like Nigeria to which this book is dedicated irrespective of the constitutional protections, its international obligations, and human rights, and criminal justice justifications that warrant protection of witnesses.

A robust witness protection architecture is one that infers protective measures to witnesses before, during, and after the trial, to guarantee the security of witnesses at all stages and all times of a criminal proceeding. However, witness protection programs advanced by the existing legal framework, for instance in Nigeria, are limited to procedural measures available to witnesses during criminal prosecution in court as illustrated in the third chapter of Oyakhire's book (Chapter 3: 3.2). In the pre-trial phase, during investigations, and at the post-trial stage, witnesses are left at the mercy of other state forces that are, more often than not, the sources of both perceived and existential threats to witnesses. Factoring in the needed physical, psychological protective measures in all phases of the justice process is not only critical to advancing a comprehensive approach to witness protection, but also guaranteeing the effectiveness of the judicial processes in administering their mandates. This is because the success of the judicial processes is anchored on the availability of supporting testimonies from the witnesses that deserve this comprehensive protection.

In Nigeria, Oyakhire's book demonstrates a fragmentation of the witness protection role administered by different law enforcement agencies, including the Police, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), the Independent Corrupt Practices Commission (ICPC), and the Economic and Financial Crimes Commission (EFCC) whose powers are limited by the scope of the specific legislation empowering them to protect witnesses (pg.145). This facilitates ambiguity in the distribution of roles regarding witness protection whose solution can only be found in learning from other countries that are effective in witness protection and implementing lessons customized to the Nigerian context. This is because dealing with this ambiguity begs for dealing with the informality that exists in contexts with nascent witness protection frameworks. This situation warrants a move to an independent witness protection agency which Oyakhire emphasizes must be provided for within formal witness protection systems through deliberate legislations to empower a specific law enforcement agency with the responsibility of providing witness protection services.

However, with this approach comes challenges of inadequate funding, lack of trained personnel and inadequate infrastructure to guarantee effective witness protection especially in contexts where the witness protection architecture is emerging or does not exist. Added to this challenge is the political interest in providing for witness protection, political interference with the witness protection structure, and corruption which is displayed in the form of witness protection officers breaching confidentiality for political favours and economic interests.

Oyakhire's book, like other contributions to witness protection, at least agree that witnesses are an integral part of the justice process. Therefore, the witness protection framework should at least strive to achieve two goals: 1) the participation of witnesses, and 2) the protection of witnesses before the court process, during, and after adjudication. Witness protection assumes the presence of threats to the physical and psychological safety of witnesses, whether perceived or existential. Therefore, an effective witness protection architecture must protect witnesses from any form of threats advanced by the state, individuals, and other sub-state actors, or any type of violent crime.

In the context of Nigeria, which is the focus of Oyakhire's ground-breaking research around witness protection, guaranteeing witnesses community security means protecting them from inter-ethnic violence, religious violence, together with the physical and psychological loss of traditional relationships and values, and from sectarian and ethnic violence. This is because societal relationships are fused within the "*we versus them*" rapports to the extent that a witness testimony against a member of a certain identity may be seen as an attack on that group especially when a witness is from another group. Community security views witnesses as minority groups that are often threatened by members of groups supporting individuals on trial.

Political security is another dimension that an effective witness protection architecture must consider. Witness protection must keep witnesses free from political repression and human rights abuses by creating an environment of respect for basic human rights, keeping witnesses away from systematic torture, and ill treatment or disappearance. Therefore, this witness protection framework must enhance the safety of witnesses, and where witnesses are victims, empower them to recover from violations. The referent of any witness protection architecture must therefore be witnesses based on the role they play by aiding investigations and information gathering, and testifying before judicial prosecutions. Witnesses indeed remain the eyes and ears of justice without which the criminal justice system is blind, deaf, and essentially incapacitated.

Because witnesses face unique challenges that must be contextualized, a difference in country jurisdictions demands for diverse approaches in petty crimes and high-level cases. The nature of protection provided in cases where witnesses have more power is not the same for prosecutions that involve people that command high influence in society. Contexts where suspected criminals in positions of authority, such as politicians, senior government officials, police or army officers, or when the accused is part of a criminal network or syndicate or a criminal organization, call for more tailor-made approaches to guarantee an effective witness protection program. They call for more funding, political will, together with high ethics and professionalism to maintain confidentiality. This then can act as a motivation for witnesses to cooperate in prosecutions and law enforcement investigations without fear of or threat of intimidation or reprisal. Oyakhire's book is therefore a timely

production of knowledge in witness protection, which is a critical area of the criminal justice process. Whereas Nigeria is used as a case study, this book is a catalyst for the thinking process around developing the much more needed witness protection architecture in other country contexts beyond Nigeria. It is a call to reflect on witness protection programs elsewhere and advance its importance in societies where witness protection programs do not exist.

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