A Review of the Book-Witness Protection and Criminal Justice in Africa: Nigeria in International Perspective

By:

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'Witness Protection and Criminal Justice in Africa: Nigeria in International Perspective', by Dr Suzzie Onyeka Oyakhire, provides an important contribution to the processes aiming to establish witness protection concepts, legislation, and requisite structures for the Nigerian criminal justice system.

As Oyakhire points out the challenges in institutionalising witness protection in Nigeria are abundant. For this reason, solid academic research such as her book, will be essential in assisting law makers in drafting a law that on one hand appropriately regulates how witness protection is applied at different stages of proceedings within the specific Nigerian legal, socio-economical, and cultural context and consciously considers what benefit international and national practices and standards could provide to the process on the other.

Oyakhire’s caution against applying a ‘one size fits all approach’ and recommendation to be aware of the risk of importing ideas from abroad without due consideration to the national context is highly relevant. This is essential in trying to ensure that whatever system Nigerian authorities decide to implement, it must first and foremost be appropriately adopted to respond to national needs. Some principles for practical implementation of witness protection measures, such as how to mitigate risks through prevention, deterrence, and avoidance, will be similar regardless of the geographical location but finding the appropriate solution to these practical challenges will need to have a local flavour.

The book emphasises important themes that from a practitioner’s viewpoint are essential. Oyakhire advocates focusing witness protection efforts only to those witnesses who provide evidence during prosecution. Such a restriction would help the state to allocate protection resources to those witnesses who matter most in the cases brought by the state before the courts to address the type of criminality that causes most damage to the society. These are mainly organised crime, corruption, and violations of human rights. Herein also lies a key challenge that the book highlights. The concept of witness protection is often conflated or misunderstood. Subsequently, if this risk is not averted there is a danger of creating a non-functional witness protection system for Nigeria. Delineation of terms and subsequent decision who may benefit from certain types of protection measures and at what stage is, therefore, critical. In that regard, as indicated in the book, the proper understanding of the practical implications of the application in the law of the different justifications for witness protection, especially human rights justifications, and criminal justice justifications, is essential for law makers.

Even though the two justifications appear substantially quite different they are by no means contradictory as explained below. For any criminal justice system to work properly and to contribute to the maintenance of rule-based order in a society any person, regardless of the status of the person (victim, witness, expert, or informant), must be able to exercise that function in safety and security when interacting with criminal justice system practitioners. Conversely, this requires that the practitioners have a proper understanding of the situation of the person, the potential risks involved and are sensitive to the needs of the person. The key element of any decision relating to protection measures be it

the investigations, pre-trial, trial or post trial stage is the proper understanding of who are the threats to witnesses, what level of risk is caused by the threats and how to mitigate them. Any protective measure taken needs to be proportional to the assessed risk and cause least amount of inconvenience possible to the witness. Oyakhire's book divides the possible protective measures to three classes: operational, procedural, and psychological measures. It would be perhaps useful to consider approaching the measures slightly differently and consider classifying them by who is responsible for taking these measures. It would bring clarity as to who may benefit from these measures, what the limitations are, and who is responsible for specific measures. Applying this approach would bridge the seemingly wide gap between the human rights and criminal justice justifications.

In line with human rights principles, the investigative and prosecutorial authorities are responsible for ensuring that no witness or victim would be put into danger because of the actions by the authorities when preparing for the trial. This necessitates that these authorities are obliged to operate in a manner that avoids exposing witnesses to potential risks. The prerequisite for this is that the authorities have a proper understanding of who are the persons or entities that are potential threats to witnesses in each criminal case. Such approach would encompass all victims and witnesses the authorities interact with before, during and post proceedings. Such an approach would also meet the aims of criminal justice justification to improve overall administration of justice. This would also meet the indirect constitutional requirements for witness protection referred to by Oyakahire.

Procedural measures, as indicated in the book, would be applied under the authority of the competent judges at the appropriate procedural stage based on a justified application by a party, merits of which are then subsequently deliberated at the court. The challenge here is that courts are not necessarily used to assessing the level of risk. The parties obviously have their own motivations to apply or object to certain measures that do not necessarily have anything to do with the concerns for the wellbeing of witnesses. Courts could be assisted in their decision if they either had access to or requested a witness protection agency to conduct an independent threat and risk assessment in respect of a specific case or witnesses.

Long term protective measures necessitating relocation and possible change of identity can only be handled by a specialised witness protection agency. In many jurisdictions the witness protection legislation addresses only the establishment, powers and functioning of the witness protection agency but remains silent on other aspects of witness protection. In an ideal setting a witness protection legislation would cover all these three different sets of measures as well as the establishment of a national witness protection agency in a single piece of legislation. The challenge that no state appears to have cracked this is the overlap between the criminal procedure code and the requirement to synchronise the two legislations in line what is included in the witness protection legislation. Such an approach, albeit very challenging to implement, would go long way to address the inconsistent application of witness protection provisions during the proceedings as indicated by Oyakhire.

The literature and case law review adopted in the book is extensive and impressive. It would have been useful to refer more substantially to the EU Victims Directive in the research as it currently is globally perhaps the most advanced instrument obliging EU Member States to be more sensitive and comprehensive in addressing the needs of victims in criminal proceedings as well as facilitating their participation in criminal proceedings. The standards established in the Directive to recognise and treat victims in a respectful, sensitive, tailored, professional and non-discriminatory manner and that they receive appropriate information, support and protection is something that also witnesses should benefit from. As a side note, the list of references includes incorrectly the EU Directive and another European Union document under Council of Europe. They should have been under the heading of European Union, as the two are different but interlinked entities.

In conclusion, this book provides important background material and insight to the challenges the Nigerian authorities will have to consider in drafting the law and constructing a witness protection system that meets the needs of the society, but which is also concretely implementable. Her book is essential reading for anyone involved with the process.

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