Witness Protection Measures in Transitional Justice Processes: Lessons for Ethiopia

Awet Halefom and Abreha Mesele[169]

Abstract

Witness protection is a critical concern in the prosecution of perpetrators in ordinary criminal proceedings as well as transitional justice processes involved in serious human rights violations, including war crimes, crimes against humanity, and genocide. This article offers a thorough analysis of the legal frameworks governing witness protection measures across international, regional, and national contexts, emphasizing the need to balance witness safety with the right to a fair trial. By examining the existing legal and institutional frameworks, this research finds that Ethiopia's current laws address only ordinary criminal proceedings, prioritizing "public interest," the typical focus of criminal law. Moreover, while the Ethiopian Transitional Justice Policy (ETJP) outlines the institutional set-up for various bodies under the policy, it fails to provide any policy framework for witness protection. Drawing on the experiences of other African countries, this study further reveals that separate legal and institutional frameworks are essential to the success of transitional justice processes, particularly in societies marked by polarized ethnic tensions and fragile state–society relations. Accordingly, the article recommends the establishment of a dedicated witness protection law and institutional structures that safeguard the rights of both witnesses and victims.

Keywords*:* Witness protection, Ethiopian transitional justice policy, human rights violations, conflict, victims

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[169] Awet Halefom Kahsay, Africa Fellow @ Harry Frank Gugienhime Foundation, New York; Former SVNP scholar at the Wilson Center, Washington D.C, email: awet.halefom@aau.edu.et
Abreha Mesele Zinabu: LLM (Addis Ababa University), LLB (Mekelle University), Assistant Professor of Human Rights Law at Mekelle University, School of Law. Email: abreha.mesele@mu.edu.et

Introduction

In any criminal litigation, evidence whether direct or indirect is not only fundamental to making decisions but also essential to the integrity of the justice process and the fairness of the procedure. Among the various forms of oral evidence, factual witnesses hold the highest probative value (Oyakhire 2023). In certain crimes, the testimony of such witnesses is crucial for establishing criminal accountability when gross human rights violations are committed. Without witnesses and in the absence of any other alternative evidence, it becomes difficult to substantiate the commission of some offenses.

The inability to provide proof often results in widespread impunity, which subsequently promotes injustice. On one hand, states have the obligation to protect individuals and provide remedy for rights violations and to prosecute perpetrators in order to uphold the public interest. On the other hand, they are equally responsible for respecting and ensuring the rights of suspects to a fair trial. Throughout this process, witnesses play a crucial role in the administration of justice.

Witnesses in ordinary criminal justice cases differ from those involved in the prosecution of perpetrators of gross human rights violations, which are part of the broader transitional justice (TJ) framework aimed at establishing judicial truth. Often, witnesses responding to gross human rights violations through TJ are themselves victims of these violations, including conflict-related sexual crimes.

Due to this, witness protection constitutes a foundational pillar of any credible TJ process, particularly when addressing serious crimes such as genocide, war crimes, and conflict-related Sexual and Gender Based Violence (SGBV). Its significance is heightened in contexts where witnesses are also victims of the crimes under scrutiny. The urgency becomes most acute in cases involving SGBV survivors, who face heightened risks of re-traumatization, stigmatization, and retaliatory violence. In African contexts, where oral testimony often constitutes the principal form of evidence, testimonial processes can expose

victims[170] and witnesses to personal and physical threats. Mahony (2010) warns that in many African TJ processes, protection is too often an "afterthought," resulting in fragmented, ad hoc arrangements that collapse under political pressure or resource scarcity. In fact, this is not new to Africa. The tension—between the need for robust evidentiary participation and the imperative of ensuring safety—lies at the heart of comparative debates on witness protection in TJ processes. The absences of robust witness protection policy worsen the situation in Africa. Yet, despite its otherwise expansive vision, the Africa Union Transitional Justice Policy(AUTJP) notably omits explicit provisions for witness protection. This silence reflects a wider lacuna in African TJ frameworks, where the legal and human rights dimensions of protection are acknowledged but rarely operationalized into practical safeguards.

This is not an abstract concern; the consequences of inadequate protection are already evident in past African experiences. In Rwanda as Mahony observes, "[t]he ICTR's[International Criminal Tribunal for Rwanda] design suffered from an absence of witness protection consideration… resulting in 99 witness murders" (Mahony 2010,x). Similar patterns were documented during the *Gacaca* courts process, where attacks on witnesses included poisoning, assault, rape, arson, and in some other cases the murder of family members or the destruction of their property.[171] Such incidents demonstrate how testimonial processes, if not accompanied by credible safeguards, can expose victims and their families to renewed victimization. For Ethiopia, a country where ethnic polarization and political division remain acute, these precedents sound a warning. In societies fractured by ethnic mistrust, the risks of reprisal and stigmatization are magnified, particularly for vulnerable groups that already bore the

[170] In this research we prefer to use the term victim to survivors because the term survivor hides, *inter alia,* the gross human rights violations that attracts accountability.

[171] Following the Kenya election violence in 2007 and the ICC witness testification process, the similar incidents reported see Families of Kenya violence witnesses threatened: ICC, December 3, 2010 available at Families of Kenya violence witnesses threatened: ICC | Reuters

brunt of war.

In Ethiopia there were prior attempts to transitional justice. During the downfall of the Derg regime, Ethiopia arguably experienced some trials related to transitional justice. Although the prosecution of former Derg officials was often described as victor's justice, it incorporated elements of TJ through prosecution (Marshet 2018). There were no special arrangements for witness protection. However, the Special Public Prosecutor Office (SPO) did not have any mechanism to protect witnesses. Notably, nearly all witnesses who testified in the Derg trials were factual witnesses rather than victims.[172] The second phase of Ethiopia's attempt at TJ arguably occurred with the rise to power of Abiy Ahmed, marked by the establishment of the Ethiopian Reconciliation Commission in 2018 by Proclamation No.1102 /2018. However, it ultimately proved to be an unsuccessful effort with no outcome.

Ethiopia has developed a new 'holistic 'transitional justice policy in 2024 encompassing four key components: prosecution, truth-seeking, reconciliation and amnesty, reparations, and institutional reform. Additionally, the country is currently working on a legal framework to establish transitional justice mechanisms aimed at addressing the grave human rights violations committed during the past and current conflicts including those related to the Tigray war. Witnesses are expected to play a crucial role in the implementation of TJ (ICJ, 2011). However, many of these witnesses are often victims of the conflict, which presents unique challenges. Existing scholarly literature addresses witness protection primarily from the perspective of ordinary criminal law and criminal justice administration rather than through the lens of transitional justice (Tadesse 2018; Wekgari 2017). Therefore, it is essential to evaluate and strengthen witness protection mechanisms within Ethiopia's TJ process, drawing on the experiences and best practices from other countries.

The first section of the article examines the legal framework for

[172] According to Marshet 2018, the wife of the celebrated Ethiopian Author, Bealu Girma, who testified for her husband, was the only exception.

witness protection at multiple levels; international, regional, and domestic. It reviews various human rights instruments to identify the specific rights underpinning witness protection. Essentially, this section assesses witness protection from a human rights perspective within the broader context of TJ mechanisms. The second section focuses on witness protection in TJ processes, drawing insights from the experiences of other jurisdictions such as South Africa and Sierra Leone. It aims to extract relevant lessons that can inform Ethiopia's TJ effort, which is currently addressing widespread human rights violations in the country. In the third section, the article analyzes Ethiopia's TJ processes with particular attention to their approach to witness protection beyond the mechanisms established under domestic laws for criminal justice administration. The final section highlights the fundamental pillars of witness protection in the context of TJ that Ethiopia should consider as it seeks to respond to the serious human rights abuses through its TJ policy framework.

1. Witness Protection in International and Regional Legal Frameworks

A witness is defined as any person "who sees, knows, or vouches for something; one who gives testimony under oath or affirmation in person, by oral or written deposition or by affidavit" (Garner 2009). A witness can simply either be a person who observed the commission of a crime or is a victim of the crime. There are three categories of witnesses: 1) justice collaborators, 2) victim witnesses, and 3) other types of witnesses, including innocent bystanders, expert witnesses, and others (UN 2008). As a result of the importance of witnesses in criminal justice administration in general and TJ specifically, they deserve protection by states from physical, psychological, or any other threats.

Since the late 1980s and early 1990s, TJ mechanisms have increasingly become the preferred approach in most post-conflict states, particularly in Latin America and Eastern Europe, as a response to widespread human rights and humanitarian law violations (Zunino, 2019). Among the various TJ toolkits, prosecution and truth-telling can be carried out, in part, through the use of witness testimony.

These witnesses may be victims of the crimes or individuals who have observed their commission. In many cases of widespread human rights violations during conflict, the witnesses are often victims of the same severe abuses. The responsibility to prosecute perpetrators of gross human rights violations and provide remedies to victims through various mechanisms, including TJ, lies with the state in implementing TJ processes.

In brief, we will examine the different rights of victims who may serve as witnesses in TJ processes, as well as the extent of protection granted to them under international, regional, and domestic human rights laws and instruments.

1.1 International legal frameworks

The International Covenant on Civil and Political Rights (ICCPR) under article 2(3a) states that each state party to the present covenant undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. To ensure the right to an effective remedy[173] when individuals' rights are violated, witnesses including victim-witnesses play a crucial role in the judicial process.

Each state party has the responsibility to prosecute offenders and provide remedies to victims, using evidence while respecting the perpetrators' right to a fair trial. The Human Rights Committee has also recognized the vital role that witnesses play in fulfilling the right to fair trial and has recommended that effective witness protection mechanisms be established as part of the State's obligation to protect these rights. Protection measures also play a key role in protecting an accused's right to a fair trial and a victim's right to an effective legal remedy (ICJ 2011).

Furthermore, the Human Rights Council resolution A/HRC/RES/21/7, which addresses the right to know the truth

[173] UN General Assembly Resolution 16 November 2005, A/RES/60/147 also recognizes victims' rights to an effective remedy against gross human rights violations.

about gross human rights violations and serious breaches of international humanitarian law, can be upheld through testimony from witnesses, who are often victims of these violations themselves. If there is a recognized right to know the truth, there must be individuals capable of revealing it; these individuals are victim-witnesses.

To ensure the truth is uncovered, each state has an obligation to implement measures that protect witnesses from harm, safeguarding both their physical and psychological well-being. In addition, UN General Assembly Resolution A/RES/60/147, adopted on 16 November 2005, offers comprehensive protection to victims who may also serve as witnesses in judicial or quasi-judicial proceedings. It states that state should take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victim.

Another international human rights instrument relevant to witness protection is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 13 of the Convention states that each state party shall take steps to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or *any evidence given (*emphasis added*)*. The phrase *any evidence given* certainly includes witness testimony to any judicial or quasi-judicial organs to prove or disprove the alleged facts.

In addition to the above human rights instruments, Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and its Optional Protocol encompasses provisions on witness protection. States are required to prevent, investigate and remedy acts of violence against women, and ensure that women have equal access to remedies, specifically in relation to acts of gender-based violence (CEDAW 2008).

The CEDAW is very much relevant in witness protection because most witnesses in conflict related gender-based violence are victims themselves. In cognizance of this, States Parties are required to incorporate a gender perspective in the design and implementation of witness protection measures (ICJ 2011).[174] Moreover, in a number of concluding observations, the Committee explicitly called for adequate witness protection measures, identifying witness protection as an essential element in efforts to realize the right to a remedy.[175] In addition to the main treaty, the Optional Protocol to CEDAW, which created an individual complaint mechanism, explicitly obliges States Parties under Article 11 to protect individuals who submit complaints to the Committee.

The Convention on the Rights of the Child (the CRC), the treaty-monitoring body attached to the CRC, the Committee on the Rights of the Child, has found witness protection mechanisms to be essential for preventing the violation of the rights of child witnesses.[176] The Committee has also emphasized a child's right to special protections during court proceedings, including those who are victims or witnesses.[177] Other instruments that incorporate witness protection measures include the International Convention for the Protection of All Persons from Enforced Disappearance (ICED), the Convention Against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, and the Protocol Against

[174] International Commission of Jurists. (2011). Witness Protection in Nepal: Recommendations from International Best Practices.p25

[175] CEDAW Committee, *Concluding Observations on Mongolia,* 2008, CEDAW/C/MNG/CO/7, paras. 27 and 28; *Concluding Observations on Russia,* UN Doc. A/57/38 (SUPP) (2002), para. 396; *Concluding Observations on Surinam,* UN Doc. A/57/38(SUPP), (2002), para. 50 bis; *Concluding Observations on Mongolia,* UN Doc. CEDAW/C/MNG/CO/7, (2008) para. 27; *Concluding Observations on Iceland,* UN Doc. CEDAW/C/ICE/CO/6, (2009), para. 23; *Concluding Observations on Nigeria,* UN Doc. CEDAW/C/NGA/CO/6, (2008), para. 26; and *Concluding Observation on Cameroon,* UN Doc. CEDAW/C/CMR/CO/3, (2009), para. 31.

[176] Committee on the Rights of the Child, *Concluding Observations on the Philippines,* UN Doc. CRC/C/PHL/CO/3-4, (2009), para. 52(d).

[177] Committee on the Rights of the Child, *Concluding Observations on Sierra Leone,* UN Doc. CRC/C/OPSC/SLE/CO/1, (2010). 38(b).

the Smuggling of Migrants by Land, Sea, and Air.

In addition to biding human rights treaties, there are also soft laws such as declarations, resolution, principles, and guidelines that include witness protection measures. These soft laws include the United Nations Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power, United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions[178], the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,[179] the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Guidelines on Justice in Matters involving Child Victims and Witnesses, the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers states, and the UN Basic Principles on the Role of Prosecutors**.**

In brief, most human rights instruments, some containing specific provisions and others reflected through committee concluding observations and general comments, recognize the need for witness protection and affirm the State Parties' duty to provide such measures to victims and witnesses, both in court proceedings and other contexts requiring the presentation of evidence.

1.2. Regional Legal Frameworks

The African Charter on Human and Peoples' Rights, adopted on June 27, 1981, and entering into force on October 21, 1986, encompasses various human rights provisions rooted in African values. While the Charter does not include specific provisions for the protection of victims and witnesses, there are a number of provisions protecting

[178] E.S.C. Resolution 1989/65, Annex, 1989 U.N. ESCOR Supp. (No. 1), p. 52, UN Doc. E/1989/89 (1989), Principle 15; and UN Principles on the Investigation of Torture, U.N.G.A. Resolution 55/89, Annex, UN Doc. A/Res/55/89 (22 February 2001), Principle 3(b)

[179] Which provides that effective measures shall be taken to ensure the security, physical and psychological well-being, and, where requested, the privacy of victims and witnesses who provide information to the commission.

rights of individuals during criminal justice administration including article 7 of the Charter where the issues of victim and witness protection is anchored. The fair trial principles are elaborated by another Guideline.[180]

Beyond this, the Rules of Procedure of the African Commission on Human and Peoples' Rights (2010) article 101(7) provides that [t]he Commission shall take the necessary measures to protect *the identity of experts, witnesses or other persons* if it believes that they require such protection and in instances where *anonymity* is specifically requested by such expert or witness (emphasis added). Moreover, this Rules of Procedure to the African Commission in article 103(3) stipulates that [t]he Commission shall ensure that State Parties grant the necessary guarantees to all persons who *attend a hearing* or who in the course of a hearing provide information, *testimony or evidence* of any type to the Commission. While not formally a binding instrument, the African Union Transitional Justice Policy Framework (AUTJPF), adopted in 2019, does not contain specific provisions on witness protection. Instead, it offers a form of protection specifically for children as vulnerable participants in criminal proceedings and victims in general.

Overall, the regional human rights instruments mentioned above acknowledge the presence of victim and witness protection mechanisms. However, these protections are not comprehensive and are primarily limited to the administration of criminal justice within the specific mandates of their respective institutions. Furthermore, there is no clear guidance on whether these protection measures apply to TJ processes. A discussion on protection mechanisms for victims and witnesses in the context of TJ will be provided in the following sections.

1.3.Witness protection measures in *ad hoc* tribunals and the ICC

The International Criminal Tribunal for the former Yugoslavia (ICTY)

[180] The African Commission on Human and Peoples' Rights', Principles and Guidelines on the Rights to a fair Trial and Legal Assistance in Africa, DOC/OS (XXX) 247 (2001).

was created in 1993 through United Nations Security Council Resolution 827, followed by the establishment of the International Criminal Tribunal for Rwanda (ICTR) in 1994 under Resolution 955. They addressed severe human rights abuses, including genocide, war crimes, and crimes against humanity, which occurred in the former Yugoslavia and Rwanda.

The ICTY Statute under article 22 clearly recognizes the need for the protection of victims and witnesses. In addition to the substantive provisions, the rules of procedure and evidence of the Statute[181] include measures for the protection of victims and witnesses.[182] Under Article 14 of its Statute, the ICTR adopted the procedures of the ICTY Statute for its own use, with any necessary modifications. Similarly, the Statute of the Special Tribunal for Lebanon established by an Agreement between the United Nations and the Lebanese Republic pursuant to Security Council resolution 1664 (2006) of 29 March 2006 provides greater protection to victims and witnesses. According to Article 12(4) of the statute, the Victims and Witnesses Unit (VWU) shall provide measure "to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses."

Within the domain of international criminal law, witness protection has come to be viewed as an essential component of the justice process (ICJ 2011,34). Unlike the *ad hoc* tribunals established by UN Security Council resolutions, the International Criminal Court (ICC) is an independent, permanent court created by the Rome Statute in 1998. Article 43(6) of the Rome Statute of the ICC required the Registry to set up a VWU to provide, in consultation with the Office of the Prosecutor, "protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses (UN 2002: Art 43(6)). Moreover, Article 68 of the Rome Statute sets out some of the assistance and protection mechanisms available such as *in camera* and video-link hearings. Sub Article 1 of

[181] Articles 15, 18(2), and 20(1) of the ICTY Statute
[182] Articles 17, 19, and 21 of the ICTR Statute

this Article requires that measures not be "prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." This article also stipulates that the Court take appropriate measures, not only in regard to the physical security of victims and witnesses but also to protect their "psychological well-being, dignity and privacy."

2 Witness protection in domestic legal framework: in search of broader protection?

Ethiopia has laws that govern witness protection. According to the FDRE Constitution, international conventions ratified by the country are considered an integral part of the national legal framework (FDRE 1995).[183] Additionally, the Constitution offers an interpretative framework concerning the human rights it recognizes (FDRE 1995). Furthermore, Chapter Three of the Constitution, which addresses human rights, explicitly acknowledges the rights of accused individuals in criminal justice, including the right to a fair trial.

To begin with, Article 20(4) of the FDRE Constitution guarantees the rights of accused persons to have full access to any evidence presented against them and to examine the witnesses testifying against them. Meanwhile, the Ethiopian Criminal Justice Policy establishes mechanisms for protecting witnesses and their families, outlining the justifications for providing such protection (FDRE 2011). The Policy also defines the extent of protection, which can continue even after judgment. This protection includes ensuring the physical security of witnesses, safeguarding their property, allowing changes to witnesses' identities, maintaining their anonymity/concealing, and permitting trials via video or in-camera sessions. The overarching goal of these protections is to ensure the effective and meaningful enforcement of criminal law and to bring suspects to justice. According to the Policy, witness protection is determined by the importance and length of protection required, along with the relevance of the testimony to promoting the public interest. Such protective measures may be implemented in cases involving crimes

[183] Article 9(4)

against the constitution and constitutional order, corruption, terrorism, and organized crime.

On one hand, refusing to assist justice is a crime under Article 448 of the FDRE Criminal Code (FDRE 2004). On the other hand, according to Article 444 of the same code, *assaulting, suppressing, or harming any person* who gives *information* or *evidence* to justice authorities or a *witness in criminal cases* is a punishable offense (emphasis added). The law aims to balance the duty of individuals to assist justice with the risk of harm that witnesses may face as a result of their involvement in criminal cases, which necessitates protection. However, the law also allows for justifiable reasons for failing to assist justice, which can exempt a witness from criminal liability by demonstrating sufficient cause for refusing to appear and testify in court. It remains unclear whether the lack of witness protection mechanisms qualifies as sufficient cause to refuse to testify.

Proclamation No. 699/2010 is a law specifically dedicated to protect witnesses and whistleblowers of criminal offenses. Additionally, certain criminal laws include provisions for witness protection. For example, the Anti-Terrorism Proclamation No. 652/2009, under Articles 10(1) and 32, offers protection to individuals who may serve as witnesses in terrorism cases and the court is empowered to decide on the application of witness protection either on its own initiative, upon the request of the public prosecutor, or at the witness's request if there is a credible threat to the witness's life. The court may then take necessary measures to withhold the name and identity of the witness.[184]

The witness protection law dedicated to protecting witnesses and whistleblowers of criminal offenses seeks to strengthen the criminal justice system by safeguarding oral testimony as a crucial form of

[184] The measures it takes may include holding of the proceedings at a place to be decided by the court; avoiding of the mention of the names and addresses of the witnesses in its orders, judgments and in the records of the case; issuing of any directions for securing that the identities and addresses of the witnesses are not disclosed; and ordering that all or any of the proceedings pending before the court shall not be published or disseminated in any manner.

evidence. It offers protection to witnesses and whistleblowers because of their vital role in preventing crime by exposing offenses that pose serious threats to the public. Consequently, this protection is not an inherent right of victims or witnesses but serves as a tool for crime prevention.[185]

The scope of the protection is applicable with respect to testimony or information given or investigation undertaken on a suspect punishable with rigorous imprisonment for ten or more years or with death without having regard to the minimum period of rigorous imprisonment: a) where the offence *may not be revealed or established by another means otherwise than by the testimony of the witness or the information of the whistleblower* ; and b) where it is believed that a *threat of serious danger exists to the life, physical security, freedom or property of the witness*, the whistleblower or a *family member of the witness or the whistleblower (emphasis added) (*FDRE 2010:Art.3).

The proclamation provides over twenty kinds of protective measures including physical protection of persons and property (FDRE, 2010:Art.4). Although the protection measures outlined in the proclamation are extensive, they are primarily designed to extract evidence or ensure the testimony of witnesses regarding the commission of crimes, nothing less nothing more. Furthermore, these protection measures are provided based on an agreement, rather than being grounded in the state's obligation to safeguard witnesses who are often victims themselves.

Therefore, the protection mechanisms provided to witnesses are not only inadequate but also narrowly confined to the realm of criminal law enforcement aimed at prosecuting and punishing offenders. This highlights the need for a legal framework beyond criminal law—one grounded in human rights and based on the government's duty to provide remedy and protection. Additionally, witness protection in the context of TJ differs from that in strictly criminal matters, requiring measures that also address other relevant areas, including the role and safeguarding of witnesses within TJ processes. This is

[185] From the careful reading of the preamble of the proclamation no. 699/2010

especially true because TJ involves not only prosecution but also truth-telling, reconciliation, amnesty, reparations, and institutional reform, all of which require the participation of victims who may also serve as witnesses.

3 Witness protection measures in Transitional Justice processes

The TJ process has increasingly become a policy priority for states seeking to address historical grievances and resolve ongoing conflicts. However, the concept, relevance, and effectiveness of TJ remain deeply contested in both scholarship and practice (Kymlicka 2011; Yusuf and Hugo 2022). In the Ethiopian context, where the Tigray war and ongoing conflicts in other regions have left legacies of atrocity and mistrust, a new TJ policy is now in place with the objective of addressing "recurring problems and ensure sustainable peace and justice, to overcome the structural challenges and threats posed by the unaddressed issues of the past" (FDRE 2024).

While the legal and human rights dimensions of witness protection have been examined in the first sections of this article, this section situates protection within the institutional frameworks of TJ. It does so through a comparative lens, drawing mainly on the Sierra Leonean experience supported by South African experiences, before turning to the emerging Ethiopian process.

The Sierra Leonean process, particularly through the Special Court, has been widely recognized for establishing one of the continent's most robust witness protection frameworks, often praised as a "legacy" for African states. By contrast, the South African experience, though less prosecutorial in orientation, is among the most extensively studied for its reconciliation-centered approach to addressing past atrocities and guiding the transition beyond apartheid. These comparative experiences are relevant to Ethiopia as the current TJ policy adopts both reconciliation and court processes.

4 Sierra Leone Transitional Justice process and Witness protection Measures

The Sierra Leone TJ process emanates from two arrangements. The first arrangement relates to the establishment of Special Court for

Sierra Lone (SCSL) to address massive human rights violations during the Sierra Leone civil war from 1991 to 2001. The Court was established by Security Council resolution 1315 (2000) of 14 August 2000 with the agreement of the UN and the Government of Sierra Leone. The SCSL was mandated to try those "bearing the greatest responsibility" for crimes against humanity, war crimes, other serious violations, and crimes under Sierra Leonean criminal law, as provided in the Court's establishing statute. On the restorative track, the Truth and Reconciliation Commission (TRC) was established in 2000 to promote healing and reconciliation related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement" (TRC 2000,6).

Both arrangements contained provisions on witness protection, though the SCSL developed far stronger rules and procedures. The TRC Establishment Act contained only a single sub-article on witness protection. It required the Commission to take into account "the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may wish to recount their stories in public," and further mandated the implementation of special procedures "to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations" (TRC 2000,7).

In the case of the SCSL, witness protection was governed by two key instruments: the Court's Statute and its Rules of Procedure and Evidence (RPE) (Jalloh, 2014). Witness protection was firmly embedded in the SCSL's legal framework and carried out through its Witnesses and Victims Support Section (WVS) (UN 2002). The Statute mandated that the WVS "shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses," and further required staffing "to include experts in trauma" to address cases of sexual violence and child victims (UN 2002,16(4)). The Rules of Procedure and Evidence

(RPE) strengthened these provisions by directing the WVS to design both short- and long-term protective measures "for their protection and support," and to ensure that witnesses "receive relevant support, counseling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children" (SCSL 2003,34).

Rule 69 of the RPE authorized anonymity "either of the parties may apply … to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise" and the Rules placed a presumption on public proceedings but, under Rule 79, permitted closed sessions where necessary. This obligation also extends to the trial and appeal chambers that they should ensure the trail process gives due regard for the protection of victims and witnesses.

In the Charles Taylor, former president of Liberia, case , the Trial Chamber articulated a three-part test solution for closing sessions: there must be a "real and specific risk to the witness and/or his family"; any protective measure must not impair "the rights of [the] accused to have [a] fair and public trial"; and "no less-restrictive protective measures can adequately deal with the witness's legitimate concerns." These standards were especially salient given the Court's proximity to witnesses, their families, and affected communities—proximity that "exposed them to intimidation and similar acts," and, at times, placed friends or relatives of both prosecution and defense witnesses at risk (Easterday 2010; also, DiBella 2014).

In practice, protection had been provided to witnesses across the pre-testimony, trial, and post-testimony phases. At the pre-trial stage, several mechanisms were employed to ensure the protection of witnesses. The WVS provided safeguards based on a comprehensive security threat assessment that considered factors such as the witness's status, level of exposure, and potential access by hostile actors. Protective measures included relocation to secure safe houses, financial assistance in the form of allowances, reimbursement of expenses (including medical costs), and, in high-risk cases, armed

protection (Simon *et al* 2008). In addition, the pre-testimony phase incorporated psychosocial support which involved both psychological counseling and familiarization with courtroom procedures.

During the trial stage, the institutions established under the founding statute provided a range of protection for witnesses. The most significant safeguard adopted by the SCSL was anonymity where "either of the parties may apply to a Judge of the Trial Chamber or the Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise" (SCSL 2003, 69). On the basis of this enabling rule, once anonymity was ordered by the Court, the witness's identity was withheld so that testimony was delivered behind a screen and excluded from public filming. Special protective measures were also provided for child witnesses, including closed sessions or the use of video links from a waiting room.

The third mechanism concerned post-testimony protection, which constitutes a critical but often overlooked phase of the witness protection process. The risks at this stage emerge in two principal ways: first, when confidentiality is breached or existing protective measures prove inadequate, thereby exposing witnesses to retaliation; and second, when the institutional framework itself ceases to function. During the operation of the SCSL, relocation was the principal measure employed when confidentiality was compromised, including transferring witnesses from Sierra Leone to other jurisdictions when security threats became acute. To address possible institutional lacuna, after the SCSL mandate expired, the UN and the Government of Sierra Leone jointly established the Residual Special Court for Sierra Leone (SCSL) in 2010. The court is empowered to carry out the functions of the SCSL including providing protection for witnesses and victims (Sierra Leone 2011).

Based on such practices and legal frameworks, SCSL provided better witness protection than other similar international tribunals. Mahony (2010, 77) stated that "while 25 per cent and 75 per cent of witnesses at the ICTY and the ICTR respectively were provided protection, 95 per cent of SCSL witnesses are provided some form of protection."

Anonymity, in particular, was a widely used measure which has been used to "protect around 95 per cent of witnesses before the SCSL without serious incident." It is worth noting that the limited mandate of the SCSL—targeting only top-level actors—created incentives to recruit insider witnesses, since their likelihood of facing prosecution was comparatively low.

A similar arrangement was set in the South African Transitional Justice process. A new witness protection was promulgated in 1996 specifically for the TNC process (South Africa, 1996). Like the Seira Leone case, protection is available "prior to, during, and after giving evidence at any hearing of the Commission" (South Africa 1996,8). The regulations safeguarded witnesses through relocation (including abroad), strict anonymity, and daily security oversight, while also providing material and psychosocial support. This included allowances, reimbursement of lost income, school expenses, clothing, medical care, and psychological or psychiatric counseling, with further aid for moving belongings and, in some cases, continued services after discharge.

The regulation addressed the issue of post dissolution protection states that "All protected persons still under protection upon the date of the dissolution of the Commission shall be further protected under the witness protection program of the Department of Justice" (South Africa 1996,15). These protections are accorded not only to the witness but also to the family of the witness. The best practices as well as the challenges during the process are identified by the TRC report. The engagement of NGOs at the grassroot level was successful in protecting witnesses whereas "the assignment of VIP protectors to protect witnesses in their own homes saved the costs of obtaining safe houses and ensured that witnesses' lives were not disrupted." Besides, unofficial nodal points and local structures were established to assist in the gathering of intelligence (TRC 1998).

Some of the notable lessons from the TRC's witness protection program included the relocation of certain high-risk witnesses beyond South Africa's borders, the strategic use of intelligence in security planning, resource allocation that enabled the protection of

approximately 600 witnesses for more than a year, and the engagement of non-state actors such as NGOs and community organizations to supplement state capacity. The Commission's reliance on intelligence was particularly innovative.

There were, however, important limitations in the TRC's witness protection program, many of which were acknowledged by the Commission itself. As the Commission candidly observed, "victims are unwilling to lay charges because of fear of reprisals from the persons whom they implicate. The current system of witness protection is dysfunctional and inhibits successful prosecutions," calling for the establishment of a more adequate program as a matter of urgency (TRC 1998,325).

At the end, despite its challenges, the TRC collected 21,296 testimonies and received over 7,000 amnesty applications, of which 2,500 were heard in public proceedings lasting 1,632 days (TRC 1998:202). While the TRC was widely criticized for failing to address the socioeconomic legacies of apartheid and for not holding its beneficiaries accountable, it is still recognized for its symbolic and practical contributions to national reconciliation. The SCSL is remembered for its "legacy" of accountability through prosecutions of those bearing the greatest responsibility.

5. Transitional Justice and Witness Protection in Ethiopia

5.1 Short background to Transitional Justice in Ethiopia

While the full package of transitional justice is new to Ethiopia, there have been attempts to implement certain elements of it. After the EPRDF came to power, a Special Prosecutor's Office (SPO) was established to bring accountability for atrocities committed during the Derg period. The SPO was mandated to record human rights violations and ensure accountability with the stated purpose of preventing "the recurrence of such a system of government" (TGE 1992, preamble). However, no special courts or benches were created, nor were there specific procedures or evidentiary rules tailored to this process. Instead, prosecutions were carried out "in Ethiopia, by Ethiopians under Ethiopian statutory law with very little assistance –

except right at the beginning – from jurists from the international community" (Tronvoll et al, 2009,10).

The salient feature of this process was its exclusive focus on accountability, with no parallel process of reconciliation (Yacob 1999; Marshet, 2018). According to Tronvoll (2009,8) "From the beginning, the TGE rejected the option of amnesty as a mechanism to deal with the violations of the Derg regime" on the grounds of the state's obligation to fight against impunity. The preamble of the proclamation reinforced this stance, leaving no door open for reconciliation. The government's subsequent response confirmed this approach. For instance, in 2004, Derg officials requested the prime minister "to accept our genuine request and to grant us a forum whereon we, on behalf of all those who stood on our side, and on our own behalf, can ask for forgiveness from our wronged compatriots," yet no response was given (The new Humanitarian, 2004). Over fourteen years, the process dealt with the cases of 5,119 accused persons, of whom 3,589 were found guilty and sentenced to death, life imprisonment, or fixed-term prison sentences (Isaac 2010).

The process attracted significant critiques, often dismissed as a form of "victor's justice," with concerns raised about the independence of the judiciary and the inadequacy of the Public Defender's Office to match the overwhelming number of accused (Marshet 2021). Among the most serious criticisms was that the process entirely ignored reconciliation and failed to provide meaningful reparations to victims of the Derg era (Befekadu, 2025). Witness protection was another major gap: no special arrangements were made despite 8,047 witnesses being heard and 15,214 pages of evidence collected (Isaac 2010).

The limited literature available rarely addresses how witnesses were safeguarded, and in practice, the issue appears to have been overlooked. On the prosecution side, the need for protection may not have been perceived as pressing, since the state itself, which controlled the prosecutorial machinery, was unlikely to allow reprisals against its own witnesses. Yet, what remains strikingly underexplored is the vulnerability of defense witnesses, especially those testifying on behalf of accused senior Derg officials. Even among critics of the trial who

often highlight questions of fairness, due process, and political influence, there is almost no issue of witness protection in these studies.

The second attempt at transitional justice in Ethiopia pursued the opposite approach prioritizing reconciliation over prosecutions, through the establishment of a Reconciliation Commission. The proclamation stated its aim was to foster reconciliation "based on truth and justice" by identifying and ascertaining "the nature, cause and dimension of the repeated gross violation of human rights," and to provide "victims of gross human rights abuses in different time and historical event with a forum to be heard and perpetrators to disclose and confess their actions as a way of reconciliation and to achieve lasting peace" (FDRE, 2019:preamble). Despite these ambitions, the commission produced no meaningful outcomes in either reconciliation or documentation. The process was flawed from the outset, as it was undertaken without genuine public consultation and lacked a proper institutional framework. The commission had no decision-making power and was limited to making recommendations to the public and government, which further undermined its effectiveness (Neima 2019).

Referring to the existing literature is important to demonstrate the availability of studies on transitional justice (TJ) and witness protection in Ethiopia. In addition to those mentioned above, a significant number of works have examined both the 1993 process and the post-2018 initiatives. In particular, numerous articles and theses have been published concerning the 1993 (see, e.g., Dadimos 2000; Jima 2013) as well as on the post-2018 TJ processes (Yohannes, 2025;.Henock, 2024). These studies have produced valuable insights into the broader prospects for justice peacebuilding as well as limitations and challenges of TJ in Ethiopia, thereby enriching the overall field. However, despite this substantial body of research, there has been no comprehensive assessment of witness protection from a TJ perspective, leaving a major gap in both scholarship and practice.

5.2.The 2024 TJ policy and witness protections

As the country case studies illustrate, TJ processes have generally taken two approaches to witness protection. Some have relied on existing domestic laws, which in most cases proved inadequate to address the realities on the ground. Others developed special witness protection programs tailored to the TJ process, arrangements that later helped shape or strengthen domestic jurisprudence on witness protection. Sierra Leone reflects both patterns: the Special Court established a dedicated protection unit with robust safeguards, while the TRC relied mainly on confidentiality clauses under ordinary law, leaving significant gaps. South Africa's TRC similarly exposed the limitations of relying on existing systems, prompting the enactment of a dedicated regulation on witness protection in 1996 originally designed for the transitional process, but later expanded into a broader domestic regime.

From these experiences, two precedents emerge. Where TJ is pursued through special courts or internationalized tribunals, it has become the norm to provide a specialized witness protection arrangement. By contrast, processes oriented primarily toward reconciliation and amnesty, such as truth commissions, tend to rely on domestic law, often with inadequate results. This divergence highlights a recurring weakness: while judicial mechanisms create precedents for long-term protection systems, reconciliation-based models frequently leave witnesses exposed, undermining both participation and legitimacy.

Taking these comparative experiences into account, it is evident that the institutional design of a TJ process often determines whether a separate legal framework for witness protection is needed. Under the ETJP, there are three institutions who runs the TJ process. Accountability is to be pursued through a special court established within the existing Federal High Court system. The policy explicitly prohibits the creation of separate, internationalized, or *ad hoc* tribunals, allowing foreign actors to contribute only technical assistance. For truth-seeking, disclosure, and reconciliation, the ETJP provides for the establishment of a Truth Commission, with a mandate that extends

beyond fact-finding to include the granting of amnesty and recommendations on reparations (FDRE 2024).

A third institution envisaged under the ETJP is a body tasked with leading institutional reforms, requiring a new law to establish its legal foundation. In terms of temporal jurisdiction, the special court is limited to prosecuting crimes committed since 1995, whereas the Truth Commission and related institutions may extend their inquiries further back, as far as information and evidence is available (FDRE 2024). The policy also recognizes the role of traditional institutions as a fourth pillar in the TJ process, entrusting them with supportive functions in truth-seeking, reconciliation, reparation, and even accountability. Notably, the ETJP makes no reference to the institutional set-up of witness protection or to directions on where such structures should be located. Nor does it contemplate the possibility of enacting a separate law to govern witness protection, even though it explicitly mentions the creation of new legal frameworks for other institutions.

As it mentioned in the first section of the article, there is no adequate legal protection for witnesses and victims in the context of TJ in Ethiopia. While the details of witness protection package of the TJ is yet to be seen in the coming establishing laws, the TJ policy hinted a direction about witness protection. Within its definitional section, the policy situates truth-seeking as a process dedicated to uncovering and disclosing the underlying causes, scope, and nature of gross human rights violations. This definitional grounding signals an intention to prioritize victims' narratives and place them at the center of the truth-seeking process. The policy does not operate in how victims and witnesses, particularly those testifying against perpetrators, will be protected in practice.

The rationale of the policy further reinforces this tension. It underscores the absolute necessity of implementing a comprehensive TJ framework that seeks truth, facilitates amnesty under defined preconditions, enables reconciliation, establishes reparations, and

reforms in ways that center victims. This holistic approach aligns with the best international practices, yet it embeds a contradiction: the demand for public truth-telling is highlighted as a core objective, but the risks this poses to victims and witnesses are not systematically addressed. Public disclosure, while vital for acknowledgment and collective memory, can expose victims especially of SGBV to renewed harm, stigmatization, or retaliation. In this sense, the Ethiopian framework privileges public truth over confidential safety, a prioritization that may discourage victims who are potentially witness to participate and ultimately undermine truth-seeking itself.

The policy offers a more direct recognition of this challenge by requiring that the TJ process ensure the security of all participants and protects them from harm, revictimization, or susceptibility to violence. This clause represents a commendable acknowledgment of the risks associated with participation in TJ mechanisms. However, no institutional arrangements, standards, or enforcement mechanisms are specified.

The strongest reference to witness protection emerges under the prosecution pillar of the policy. It stipulates that a comprehensive framework must be developed to protect and support victims and witnesses testifying against key perpetrators, ensuring their safety from retaliatory actions. The inclusion of such a framework marks an important step forward compared to other contexts, such as Sierra Leone's TRC, which struggled to safeguard witnesses effectively. Yet the ETJP remains vague: it does not clarify whether this framework will be implemented through an independent witness protection unit, whether it will rely on existing judicial institutions, or hybrid of them yet to be seen.

6. Witness Protection in Ethiopia: Issues for Considerations

Having examined both the existing legal provisions and the practice of witness protection in Ethiopia, the following section turns to the issues that demand special attention in light of the TJ policy. In this context,

it is essential to identify key gaps and propose considerations for the drafting of laws and institutional frameworks that will follow from the policy.

The first critical point relates whether Ethiopia needs a sperate legal regime on witness protection. Witness protection in Ethiopia's TJ framework currently lacks a dedicated mechanism, being limited to provisions applicable in ordinary criminal proceedings. Yet witnesses play a critical role in all TJ pillars. Comparative experiences confirm that TJ processes with a dedicated protection system—such as the Special Court for Sierra Leone—were more effective in safeguarding both victims and witnesses. In Ethiopia, the devastation of the Tigray war and ongoing conflicts elsewhere have eroded the social fabric and deepened mistrust between state and society (Abel 2023). This reality underscores that witness protection cannot be entrusted to compromised or overstretched institutions. Moreover, the parties to the recent conflict are expected to participate in the current transitional justice process, where each side could potentially face prosecution or be involved in other transitional justice mechanisms. What is needed is a separate, legally entrenched protection regime tailored to TJ, one that acknowledges the centrality of witnesses, operates independently of security organs implicated in abuses, and is capable of restoring trust in the process.

On institutional frameworks, Ethiopia's existing witness protection mechanisms remain embedded within state security and justice organs -Ministry of Justice or Federal Ethics and Anti-Corruption Commission. For TJ, these institutions cannot be relied upon—not only because they lack the capacity to meet the demands of victims and witnesses in transitional contexts, but also because such institutions may be implicated in past human rights abuses or subject to institutional reforms as part of the TJ process. Comparative experience demonstrates that independent protective institutions are not merely technical add-ons; they serve as political signals of autonomy and credibility. The country requires its own framework—one that insulates protection from partisan state organs and draws legitimacy from communities. Ethiopia's deep ethnic polarization and

recurring ethnic conflicts make this imperative even more urgent. The ETJP itself acknowledges the need for institutional reform, implicitly recognizing the failures of existing structures (FDRE 2024, 2.5). As the saying goes 'we cannot solve our problems with the same thinking we used when we created them,' equally applicable to the reliance on compromised institutions for witness protections.

The current legal framework for witness protection in Ethiopia is limited to criminal proceedings and primarily treats witnesses as instruments for gathering criminal evidence, as clearly outlined in Proclamation No. 699/2010, the Ethiopian Criminal Justice Policy, and the FDRE Criminal Code. This approach neglects the human rights dimension of witness protection, where the government's responsibility extends beyond evidence collection to include providing healing and support services for witnesses, many of whom are victims of serious human rights violations targeted by TJ processes. Consequently, there is a need not only for a dedicated witness protection mechanism but also for expanding its scope to encompass protection within the broader objectives of Ethiopia's TJ framework. Such mechanisms must consider the sensitive and volatile nature of ethnic issues during victim-witness disclosures, especially in the current era of social media, which can amplify risks and complicate protection efforts. Therefore, a comprehensive witness protection system should safeguard witnesses within the specific context of TJ, addressing both the underlying causes and nature of human rights violations amid the challenges posed by social media platforms.

Primary TJ processes should begin by establishing a platform that enables victim participation not only in the lawmaking process but also in the development of TJ policies. When developing policies on witness protection, it is essential to involve victims, allowing them to provide input on the types of protection measures needed. Victims should also have a say in defining the criteria for protection, as well as the sanctions for those who violate witness protection rules. The process of creating witness protection measures must ensure the meaningful and effective participation of victims in identifying key

areas of protection and determining who qualifies for such safeguards.

Witness protection in criminal proceedings is primarily aimed at securing evidence from witnesses, often relying on their testimony when no other evidence is available. If the necessary evidence can be obtained through other means, the witness may no longer receive protection. This creates a quid pro quo dynamic, where the government provides protection in exchange for the witness's disclosure against perpetrators. However, such a transactional approach should not apply within TJ processes. In TJ, the government has a broader obligation to protect victims as rights holders, regardless of whether they testify or not. The design of witness protection in TJ must reflect the overall objectives of TJ, which encompass more than just punishing wrongdoers by extracting evidence from witnesses, but also address the diverse and comprehensive goals of TJ mechanisms. Therefore, witness protection measures should be seen as fundamental human rights of victims of gross human rights violations in TJ processes including the ETJP.

7. Conclusion

The success of TJ depends not only on the adoption of general principles but also on a shared understanding of the process, clear governing laws, credible institutions, and a genuine commitment to endure what is often a difficult but ultimately constructive path. TJ cannot be imposed; it derives its legitimacy from inclusivity, consensus, and the extent to which its outcomes reflect the participation and protection of victims. Witness protection must be integrated into this process rather than treated as an afterthought. This study finds that Ethiopia's existing legal protections are confined to ordinary criminal proceedings, where institutions align with the narrow logic of criminal law rather than the broader needs of TJ. While the ETJP enumerates new institutional arrangements for truth-seeking, reconciliation and amnesty, accountability, and reform, it makes no equivalent provision for witness protection.

Comparative experiences demonstrate that separate witness protection frameworks significantly shape outcomes. Ethiopia, facing the legacies of the Tigray war and ongoing conflicts in other regions, cannot credibly pursue TJ without a dedicated legal and institutional framework for protecting witnesses—who are often also victims of human rights violations. Establishing such a framework would not only safeguard participation but also signal independence, rebuild trust between state and society, and ensure that TJ in Ethiopia achieves both legitimacy and durability.

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