

Witness Protection In Rwandan Judicial System

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Abstract

The witness is universally considered to be one of the most important instruments to ascertain the truth in a justice system. However, by participating in the prosecution against alleged perpetrators of the 1994 Genocide perpetrated against the Tutsi in Rwanda, witnesses are exposed to the high-level risk of being the target of threats of intimidation, aggression and even murder. Throughout the genocide trials in post-genocide Rwanda, several cases of harassment and threats towards witnesses have been reported. It is in this regard that the Government of Rwanda has established a Witness Protection Programs. In fact, the Rwandan judicial system has two programs for witness protection: the Witness Protection Program within the National Public Prosecution Authority of Rwanda and the Witness Protection Program within the Supreme Court of the Republic of Rwanda. Both programs are available to ensure the safety and security of witnesses during and after the trials.

However, in prosecuting genocide perpetrators either in Rwandan domestic courts, Gacaca jurisdictions, ICTR or in other foreign courts; hundreds of thousands of Rwandans have testified on the crimes committed during the genocide. In giving their testimony, genocide survivors and witnesses face a wide range of threats such as being subjected to physical and verbal attacks. In addition, the experience of testifying about the atrocities of the genocide, often before a variety of judicial bodies, exposed many survivors to psychological disturbance. Through examining the challenges that genocide survivors and witnesses encountered, the Government of Rwanda established Witness Protection Programs. Thus, this paper shows the role of these programs in safeguarding witnesses in post-genocide Rwanda. It provides measures tailored to meet individual witnesses' needs and how they are oriented towards fulfilling international standards.

1. Introduction

From April 6th to July 4th, 1994, more than one million Tutsi and moderates Hutu were killed in the genocide perpetrated against the Tutsi in Rwanda (MINALOC, 2004, 21) [1]. The majority of perpetrators and victims were neighbours and in many cases, they were friends and family members. After the genocide, the Government of Rwanda strengthened the principle of individual accountability for the crimes of genocide. Most of the perpetrators were brought to justice for the country's commitment of 'Never Again'. To attain this mission, the government rebuilt and reinforced its judicial system, through reforming the judicial sector, the establishment of the Gacaca jurisdictions and drafting legislation to punish the crimes of genocide. These initiatives allowed the judicial sector to prosecute the genocide perpetrators in Rwanda. The International Criminal Tribunal for Rwanda (ICTR) was also established by the United Nations to judge the genocide fugitives, who are currently residing outside of Rwanda.

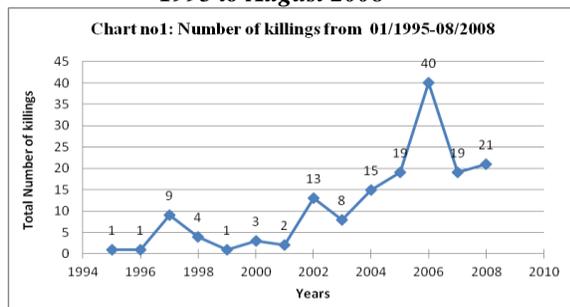
2. Rationale of Witness Protection Program in post-genocide Rwanda

People who witnessed the crimes of genocide provide testimonies before the national and international courts. A significant number of Rwandan witnesses have testified in genocide cases prosecuted on the basis of extraterritorial jurisdiction in Europe and America. In doing so, the willingness of witnesses to participate in the judicial proceedings and by openly testifying depends largely on the ability and willingness of the country to ensure and guarantee their safety.¹ By participating in the proceedings against the alleged perpetrators in the Rwandan domestic courts, Gacaca jurisdictions and in the ICTR, witnesses are exposed to a high risk of being targeted for intimidation, physical harm, insults, and verbal attacks, damage to their homes or property, and harassment or murder. According to a report from the National Public Prosecution Authority of Rwanda (NPPA), between January of 1995 to August of 2008, 120 genocide survivors and thirty-six

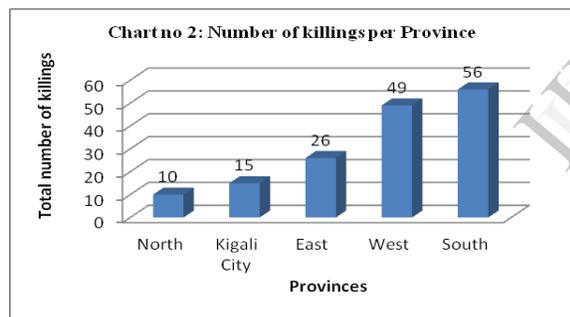
¹ Interview with witness in Gacaca Jurisdictions, Bugesera, March 29th, 2013

witnesses were killed because of their participation in genocide trials (NPPA, 2008, 13) [2]. The rationale of these murders is of former perpetrators who want to prevent witnesses from testifying against them. As Bizimana (2012, 57) [3] has observed, the perpetrators of these crimes want to retaliate against the witnesses, who revealed their crimes, and to intimidate future witnesses. The following charts depict the total number of killings per yearly against genocide survivors and witnesses, from January 1995 up to August 2008.

Chart N^o 1: Number of killings of genocide survivors and witnesses from January 1995 to August 2008



Source: NPPA, Report, 2008, 14 [2]



Source: NPPA, Report, 2008, 16 [2]

Human Rights Watch (2011, 87) [4], observed that the number of murdered witnesses increased dramatically in 2006, once the Gacaca trials became nationwide. The trial phase of Gacaca led to an increase number of threats and attacks against witnesses. The very nature of the Gacaca proceedings, all information was accessible by the public. As a result, the number of individuals rendered vulnerable to harassment or more serious threats increased substantially. The second graph depicts that the highest concentration of murders is in the southern part of the country. Note that, comparing the number of victims in all former prefectures of Rwanda, the highest number of victims of genocide, be 22.1%, was recorded in the Butare former prefecture located in the southern province of the country (MINALOC, 2004, 21) [1].

After realizing the vulnerability of genocide survivors and witnesses, the government found itself obliged to protect and assist them physically and psychologically. After discussions and exchange with judicial and administrative institutions, the Witnesses and Victims Assistance and Protection programs were introduced in Rwanda. The services provided by this program are operational within the NPPA and within the Supreme Court of the Republic of Rwanda.

The Witness Protection Programs were necessary in Rwanda after the genocide. This is because of the large number of witnesses who would provide eyewitness testimonial evidence, either oral or written, of what he or she knows about the genocide related cases. In addition, it was needed to serve the complexities of the post-genocide society in which convicted perpetrators, suspects, witnesses, survivors and their families live together in the same villages.

3. Role of the Witness Protection Program

The process of investigating and prosecuting offenses depends largely on the testimony of witnesses. As stated by Kramer (2011, 4) [5], witnesses are the cornerstones of successful national criminal justice systems. Prosecutors depend upon witnesses who are reliable, whose testimony can be accepted as truthful, accurate and complete. To ensure the safety of the evidences and the security of the witnesses, the Witness Protection Programs were established to protect witnesses from physical harm and intimidation throughout the trials. As Kramer (2011, 6) [5] started, the primary objective of any witness protection program is to safeguard witnesses in cases of threat. Moreover, while a witness may generally require protection until the conclusion of a trial, some threatened witnesses may be relocated to live out of their location under government protection (UNODC, 2008, 82) [6]. Statistical data from the NPPA describes that 619 witnesses were temporally relocated as a result of serious threats so far (NPPA, Report of Witness Protection Unit, 2008, 2009, 2010, 2011, and 2012) [7].

The ability of a witness to provide testimony in a judicial setting without fear of intimidation or reprisal is essential to maintaining the rule of law. Consequently, several countries are adopting policies to protect witnesses whose cooperation with judicial or testimony would endanger their lives or those of their families. It is in the same framework that in May of 2006, the Witness Protection Program was

established in Rwanda based in NPPA of Rwanda (NPPA, 2010, 6) [8].

The establishment of Witness Protection Program in post-genocide Rwanda helps facilitate the judicial process by making it possible for victims and witnesses to testify and/or participate in the proceedings on behalf of the prosecution, the defense or on their own right. It provides appropriate practical assistance, psycho-social support and protection to all witnesses testifying before courts at national and international level. These include the Rwandan domestic courts; the Gacaca jurisdictions, and the United Nations International Criminal Tribunal for Rwanda (ICTR) and other extraterritorial jurisdictions. The witness protection program endeavors to ensure respect for the dignity of victims and witnesses before the court and protect them against further harm.

4. Witness Protection Program within the NPPA of Rwanda

The Witness Protection Program within the NPPA was designed to be a neutral body that would provide adequate assistance and protection to both prosecution and defence witnesses during and after a trial. It has a threefold mission: (a) providing emotional and psychological support to witnesses; (b) protecting the safety and security of witnesses; and (c) accommodating witnesses in secure environments such as safe houses (NPPA, 2007, 1) [9]. A coordinator oversees and manages the program for the entire country.

The program provides impartial assistance and support to all or only to selected witnesses. Either the prosecution or defence may request assistance from the Witness Protection Program to locate the whereabouts of the witness, because of potential security problems. In each case, they provide the details of the witness such as their full name, physical address, phone number and any other requested information. Then after, the program staff members start to contact the witness. For testifying purpose, the Witness Protection Program provides all logistics facilities including transport, meals and even accommodation when necessary. For security concern, they perform a threat assessment. This assessment helps to identify threats, to assess and manage the risk and to investigate potential perpetrators. The outcome of the assessment allows for the creation of identifying strategies and for them to be put in place to ensure the safety of the witness.

The Witness Protection Program based in the NPPA comprises seventeen staff members, with one officer

in each of the former prefectures and five based in Kigali, including the coordinator, one member focusing on witness protection, one on victim protection, and a safe house manager. This staffs have different professional backgrounds and include lawyers, sociologists, psychologists and social workers. The Government of Rwanda requires that all professional staff members have a master or first degree in law, psychology, or social science, plus several years of practical work experience in the field. The Coordinator/Head of the Unit, for example, must hold either (a) a master or equivalent in law, psychology, or social science with 1-year working experience or (b) an undergraduate in law, psychology, social science or other relevant field with 3-years working experience. Similarly, a witness Assistance and Protection Officer must possess either (a) a master or equivalent in law, psychology, or social science or (b) an undergraduate in law, psychology, social science, or other relevant field with 2-years working experience, (Government of Rwanda, 2009) [10].

In addition, the Witness Protection Program requires all staff members to participate in ongoing professional trainings and certifications to further develop their expertise. For instance, the staff members have participated in various trainings programs such as:

- Witness and Victims Protection,
- Crisis Response Intervention,
- Implementation of Smooth Transition of ICTR Witnesses and Victims to Rwandan Institutions,
- Familiarization with the United Nations International Criminal Tribunal for Rwanda,
- Witness and Victim Support and Protection Program.²

Despite the efforts of the Government of Rwanda to ensure the safety of witnesses, however, having only one staff member in each of the twelve former prefectures reduces their capacity and available limited resources. In many cases, the staff members can only direct witnesses to other possible avenues for psychosocial assistance and support.³

² Personal experience as an expert with the Victims Assistance and Protection in the Rwandan National Public Prosecution Authority from October 2006 to March 2012.

³ Interview with Witness Protection Officer in Butare former prefecture of Rwanda, Huye, March 22th, 2013

5. Achievements of Witness Protection in Rwanda

In post-genocide Rwanda, the judicial system is dealing with the worst atrocities of the genocide. The experience of testifying on the horrific events of the genocide exposes many survivors to re-traumatisation. The witnesses that testify often have gone through and survived life threatening situations themselves. Remembering and discussing their stories may provoke experiences in which they relive their trauma. In this context, providing counseling to witnesses in order to facilitate their ability to participate safely in offering their testimonies in court cases is necessary for the carrying out of the rule of law. There is a need to strengthen different initiatives designed to provide witnesses with psycho-social support throughout the proceedings. Therefore, it has become a part of the NPPA's Witness Protection Program to minimize the risk of further harm, suffering, re-victimisation and/or re-traumatisation or significant inconvenience of the witnesses. This requires promoting the proper environment to decrease the level of stress for the witness.

In particular, the NPPA's program provides different services that address the emotional and psychological needs of both the victims and witnesses. Employees with a background in psychology, evaluate the mental and psychological health of each victim and/or witness to assess whether the individual requires or would benefit from medical, counseling or psychological services. When these services are deemed necessary, the program will arrange for the individual to receive outside professional services to address any physical or emotional needs. To this purpose, it cooperates with local health care providers. Statistical data from Witness Protection Program of NPPA depicts that from 2008 to 2012, they successfully arranged for 526 victims and witnesses to receive outside medical or psychological services provided by Rwandan local hospitals.

Table no 2: Number of witness referrals for outside medical or psychological services to local hospitals from 2008 to 2012

Years	2008	2009	2010	2011	2012	Total
Referrals	97	158	140	76	55	526

Source: NPPA, Report of Witness Protection Program, 2008, 2009, 2010, 2011 and 2012 [7]

The Witness Protection Program of NPPA has a proven track record of providing witness safety and security. It has developed a four-stage protocol for

responding to any reports of witness intimidation or other safety concerns. The response procedure varies, depending on the assessment of the seriousness of the threat or risk to the witness. The existence of a threat is determined by a *Threat Assessment*, which may be performed by NPPA's Witness Protection Program or in cooperation with the judicial police. This assessment is used to identify, to assess and manage the threat and investigate violence against a witness. This assessment may be carried out periodically in order to determine whether to continue, change, or discontinue protective measures. A threat assessment should address issues such as, the origin of the threat (group or person); the patterns of violence; the type of perpetrators; the perpetrators' capacity, knowledge and available means to carry out threats (UNODC, 2011, 62) [6].

The four stages developed by Rwandan witness protection programs for responding to witnesses' threat are as follows:

Stage One is called '*Advocacy Rendered*'. It applies to relatively low-level threats. At this stage, the Witness Protection Program advocates for the witness by filing a formal complaint with the local authorities against the party that is harassing the witness. They are then required to investigate the threat. After the complaint is made, it is followed up by the local authorities until the witness confirms that the situation has been remedied. In cases where a witness feels insecure, but there is no ascertainable risk of threat, the fear can be addressed by briefing the witness on personal security. This may include information on how to increase the security situation of their homes, such as fortifying locks and windows, ensuring that they have mobile phones and emergency contact numbers of an advocate or police officer that they can contact.

Stage Two is called '*Witness Security Awareness*'. This is the intermediate-level threat that arises, when a witness continues to be harassed or threatened after the filing of a formal complaint. At this stage, the Witness Protection Program informs the local police, military, and/or the local governmental administration that a witness has been threatened and that formal protection measures should be implemented. The responsible authority is then required to take affirmative steps to protect the witness, such as, posting a guard or increasing patrols around the witness's home. In some cases, when the neighbors are the source of the harassment, the local authorities may convene a community meeting to warn neighbors that such behavior will not be tolerated. These meetings are

in keeping with the Prime Minister's directive issued to local governments urging them to take strong measures to end incidents of witness harassment (Government of Rwanda, 2008, 1) [11].

Stage Three is called '*Placed under Security Protection*'. It applies to serious threats or those that persist despite prior warnings. Some of the usual protective measures are: close and severe protection including body guard or escort; regular patrolling around the witness's residence are organized; monitoring phone calls; and whatever other protection services are deemed needed. At this stage the police, military, or community policing patrol⁴ provide full on-site protection.

Stage Four is called '*Shifted provisionally*'. This contains the most serious category of threats towards a witness. At this stage, the witness will be temporarily removed from the hostile environment to another location, such as a Safe House⁵, in a secure area at the expense of the government. They are temporarily relocated in the country. As long as the threat persists, the witness is permanently relocated either domestically or abroad, where they will be provided with a new identity and personal documentation.

The following table summarizes the number of threats reported to the Witness Protection Program from 2008 to 2012 and the category of response that was provided:

Table no1: Number of threats reported to Rwandan Witness Protection Program: 2008 -2012

Years	Stage One	Stage Two	Stage Three	Stage Four	Total
2008	70	43	27	06	146
2009	62	39	40	03	144
2010	79	41	20	04	144
2011	51	14	05	03	73
2012	82	11	15	04	112
Total	344	148	107	20	619

Source: NPPA, *Report of Witness Protection Program, 2008, 2009, 2010, 2011 and 2012* [7]

⁴ The Community Policing is strategy developed by Rwanda National Police whereby local communities are involved in security management.

⁵ Safe house refers to the place where witnesses in danger may be safely protected prior to delivering testimony, during or even after testimony. Such a safe house is organized usually in remote location, and security measures are tight. Only a few people know the location of the house, since there is concern that discovery of location would lead to an attempt to harm the witness.

To ensure the security of the witness, the Witness Protection Program of NPPA participates actively in raising awareness of the rights of witnesses. Since 2006, a series of radio announcements and a television documentary have been broadcasted in Rwanda to raise awareness. They explain how and where witnesses can report cases of harassment. In 2009, the staff members of Witness Protection Program met with local authorities and police in each of the country's thirty districts to encourage sensitivity to witness protection (NPPA, *Report of Witness Protection Unit, 2009*) [12]. In addition, they have established a free telephone hotline for witnesses in case they need assistance.

Furthermore, they provide witnesses with safe accommodation in Safe Houses and transportation. The safe houses are fully equipped and operational. They are located in a secret and secure location, with restricted access for unwelcomed guests by security guards. The witnesses for either the defence council and/or the prosecution are accommodated separately. To ensure that witnesses are able to travel to and from the safe house or the place of trial without interference, vehicles and drivers are assigned to each safe house resident.

6. Contributions of Rwandan Witness Protection Program in international proceedings

The Rwandan Witness Protection Program provides and assists witnesses in international proceedings. It provides all the necessary arrangements for witnesses to travel and put them at ease in preparation for their testimony at the foreign court. Among the foreign states that the Witness Protection Program provides witnesses are Finland, Canada, Norway, Belgium, USA, Tanzania/ Arusha, Netherlands and France. For the foreign courts, sitting in Rwanda, Witness Protection Program assist them by locating the needed witnesses and to provide all other logistical needs such as travel, courtroom facilities, transportation and the security of the witnesses. Witnesses are even accommodated when it is deemed necessary. As an example, the Rwandan Witness Protection Program has assisted a Dutch investigation in arranging the examination of forty-eight witnesses. All these witnesses testified in Rwanda with the proceedings presided over by a Dutch judge in the presence of the Dutch prosecutor and defence counsel (ICTR, 2011, 7) [13]. Different witnesses were also heard at the Supreme Court of Rwanda by the Netherlands Court in prosecuting the case against Joseph Mpambara.

In different proceedings outside Rwanda, the Witness Protection Program assists witnesses to obtain travel documents, book the flight for Air ticket, and accompany witnesses to and from the Kanombe International Airport in Kigali, Rwanda. After taking the flight, the staff members of Witness Protection Program always communicate with the foreign authority, which requested the witness, to ensure their safe arrival.⁶ This support has been performed in several cases including Prosecution Case vs. Desiré Munyaneza in Canada, Prosecution Case vs Ephrem Nkezabera in Belgium, Prosecution Case vs. Joseph Mpambara in Netherland and in Prosecution Case vs. Enos Kagaba in United States who is already deported to Rwanda (NPPA, Witness Protection Program, 2010, 9-10) [14].

Furthermore, the Rwandan Witness Protection Program contributed in arranging videoconference⁷ testimony from Rwanda for cases that are pending before foreign courts. The utilization of video-conferencing has proven to be fully operational. In the 2009 Finland trial of François Bazaramba, in the district court of Porvoo, Bazaramba's defense team cross-examined witnesses in Rwanda via video-conferencing. Similarly, in the trial of Desiré Munyaneza, which took place in 2008 in the Montreal courthouse in Canada, different prosecution and defence witnesses testified from Rwanda by the utilization of video-conferencing (NPPA, 2009, 14) [15].

7. Witness protection program within the Supreme Court of the Republic of Rwanda

In addressing and ensuring the safety of witness during and after a trial, the President of Supreme Court issued the ordinance N°001/2008 of 15th December 2008, creating the Witness Protection Program within the Supreme Court. This program aims at ensuring the security of witnesses in cases transferred from ICTR and other extradited cases. The establishment of this institution was a direct result from the initial ICTR Rule 11*bis* decisions. The President of Supreme court ordered as follows:

⁶ Personal experience as from October 2006 to March 2012.

⁷ Videoconferencing refers to the use of interactive telecommunications technologies for witness testimony via simultaneous two-way video and audio transmissions. Via Videoconference, the testimony is broadcast to the courtroom where the prosecutor, defendant and public are present. In the courtroom, the judge, the defendant, the defence counsel and the prosecutor can ask questions to the witness and see, hear the witness's answers and demeanour in *real time transmission* (Fredric Lederer, 2009, 20) [21].

'The High Court and the Supreme Court at the appeal level must set up within their respective clerk's offices a service in charge of protecting witnesses, operated by one or several office clerks specially affected to it, under the direction and supervision of the Chief Office Clerk.'

The ordinance shows the responsibilities of the staff members of this program as follows:

- To receive, be attentive, orient witnesses, record their requests and report them to the court;
- To inform witnesses of their rights and of the conditions of their exercise;
- To provide technical advice to the Chief of Registrar and other relevant officials involved in Witnesses Protection Program;
- To implement protection measures ordered by the Court in conformity with the provisions of article 14 of Organic Law No 11/2007 of 16/03/2007 concerning case transfers to the Republic of Rwanda by the ICTR and by other states;
- To maintain contact with other services involved in the protection of witnesses, in order to ensure the follow up of the implementation of the protection measures ordered by the Court;
- Provides any other technical assistance in matters related to witness protection as maybe required by the judiciary.

Since its establishment, the Witness Protection Program within the Supreme Court is operating in close collaboration with the Witness Protection Program of the NPPA of Rwanda. According to the coordinator of the Witness Protection Program of NPPA:

'Witness Protection Program of the Supreme Court is there, operating from 2008. When they meet a problem, most of the time they get in touch with us to find the exhaustive solution to the problem. Because, in witness protection, we are more experienced than them. We have already established a strong network to handle problems of witnesses than them. In addition, the unit is staffed by personnel already employed within the Registry of the Supreme Court with other existing professional obligations. That why we always work in close collaboration to ensure the safety of our witnesses.'⁸

⁸ Interview with Théoneste Karenzi, the current coordinator of Witness Protection Program in NPPA of Rwanda, Kigali, March 28, 2013.

Witness Protection Programs remains in general a priority of the Rwandan judicial system. As Constant K. Hometowu, ICTR Appointed Monitor for the Jean Uwinkindi,⁹ noticed in a meeting held on December 5th, 2012 with Olivier Rukundakuvuga, the Chief Registrar of the Supreme Court of the Republic of Rwanda, ‘the Ministry of Justice is prioritizing all actions required to ensure that the Witness Protection Program of the Supreme Court fulfill its missions.’ In addition, the Chief Registrar mentioned that a Logatory Commission from Sweden was invited to provide advice and to work closely with the Ministry of Justice to empower and implement a comprehensive witness protection program that should respond to the requirement of the transfer law, (ICTR, 2012, 7) [16].

Some well-known genocidal fugitives were extradited to Rwanda, including Leon Mugesera, Jean-Bosco Uwinkindi and Charles Bandora, who were extradited respectively on January 24th, 2012 from Canada, April 19th, 2012 from ICTR and on March 10th, 2013 from Norway. To deal with all the witness related issues in these extradited cases; the mechanisms of the Witness Protection Program still need to be strengthened to meet the international standards of witness protection.

In general, the Witness Protection Program in post-genocide Rwanda should be strengthened and oriented towards meeting the international standards of witness protection. In this insight, clarification for witness protection strategies should be highlighted in policies of Rwanda’s legal framework. This is highly needed to specify services envisaged to witness. As an example, in Rwandan domestic law, such as criminal procedure codes and rules of court, need to provide better procedural protection of witnesses. At minimum, legislation should specify:

- The protection measures that may be used;
- The authority responsible for the program’s implementation;
- The rights and obligations of the parties;
- That the program’s operations are confidential;
- The providing penalties for the disclosure of information about protection arrangements or about the identity or location of protected witnesses.

⁹ Jean Uwinkindi currently under detention at Kigali Central Prison, 1930, is a genocide suspect. He was transferred to Rwanda from ICTR on 19th of April 2012 following the Appeals Chamber’s Decision on Uwinkindi’s Appeal against the Referral of his case to Rwanda and related Motions confirming the trial Chamber’s Referral Decision (ICTR, 2012, 1).

8. Safeguarding ICTR Witness in Rwanda after testimony

Most of the witnesses for the ICTR reside in Rwanda. Since the creation of the ICTR, several witnesses have traveled from Rwanda to testify at the Tribunal in Arusha, Tanzania. To ensure the security of their witnesses, the ICTR has established a Witness and Victims Support Section (WVSS). This section provides protection and assistance to witness throughout the trials. Both prosecution and defence witnesses residing in Rwanda receive support and protection from the WVSS during the pre-trial and throughout the phase of the testimony (ICTR, WVSS, 2009, 3) [17].

However, one of the challenges facing witnesses of the ICTR has been the issue of further victimization through intimidation and threats against witnesses. In an examination of the Victims and Witnesses Support Section of the ICTR, Human Rights Watch observed that many Rwandans who testified at the ICTR have encountered difficulties once they returned to Rwanda. There have been 216 witnesses out of a total 781 or 27% of Rwandans who testified at the ICTR between 2005 and 2010, who have complained of insecurity to the WVSS. In these circumstances, the ICTR does not have the protective measures in the witnesses’ home countries after they provided their testimony. This means, that ICTR has no effective power to offer protection to victims and witnesses once they return to Rwanda.¹⁰ In these conditions, the Witness and Victims Support Section of ICTR collaborates with the NPPA’s Rwandan Witness Protection Program to ensure the security of the witnesses. In addition, while survivors are testifying before the ICTR, they receive some form of psychosocial assistance and counseling. However, they do not continue to provide the service once the witness returns to Rwanda. The Rwandan Witness Protection Program offers an opportunity for more sustained and engaged support.

Furthermore, the Rwandan Government sought to meet international fair trial requirements in order to facilitate the transfer of cases from the ICTR and the extradition¹¹ of suspects from other countries to Rwanda. The ICTR’s transfer requirements have contributed to bringing Rwanda’s legislation in compliance with international standards. It is in this

¹⁰ Personal experience from October 2006 to March 2012.

¹¹ Extradition is the official process whereby one nation or state surrenders a suspected or convicted criminal to another nation or state. It is also referred to “The transfer of an accused from one state or country to another state or country that seeks to place the accused on trial” (Malanczuk, 1997, 117) [22]

insight that the Government of Rwanda passed the Organic Law N° 11/2007 of 16/03/2007: *Concerning Transfer of Cases to the Republic of Rwanda from the International Criminal Tribunal for Rwanda and from Other States*. Under the Article 14 of this Law, the Rwandan national prosecution has to facilitate the travelling of witnesses, including procurement of immigration documents, visas, and has to provide any necessary security and medical or psychological assistance. Protection and temporary immunity are awarded to witnesses who are residing outside Rwanda. They are guaranteed protection and temporary immunity even if the witness is actually a target for prosecution or is a fugitive. The law states:

‘All witnesses who travel from abroad to Rwanda to testify in the trial of cases transferred from the ICTR shall have immunity from search, seizure, arrest or detention during their testimony and during their travel to and from the trials,’ (Art. 14).

In general, this legislation aimed at meeting the criteria set by Rule 11bis¹² of the ICTR’s Rules of Procedure and Evidence (ICTR, 2010, 9) [18]. Rule 11 bis (C) states that

‘In determining whether to refer the case in accordance with paragraph (A)¹³, the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned and that the death penalty will not be imposed or carried out’.

Under the Rule 11bis, the ICTR Trial Chamber must be satisfied that the domestic courts employ a legal framework that criminalises the alleged conduct and it provides the appropriate punishment for the offence, adequate conditions of detention and fair trial guarantees. Rule 11bis was designed to facilitate the ICTR’s closure through transferring intermediate and lower ranking accused who are already indicted by the Tribunal, ‘to competent national jurisdictions, as appropriate, including Rwanda.’ In cases that the crime for which extradition is required is punishable by the death penalty in the applying state, the extradition shall not be granted unless the applying

country produces formal guarantees that the death penalty will not be exercised. This stems from Rwanda abolishing its death penalty, ‘the death penalty will no longer be imposed on the accused if convicted of the crimes with which he is charged. The death penalty is substituted by life imprisonment or life imprisonment with special provisions,’ (Organic Law N° 31/2007 of 25/07/2007 relating to the abolition of the death penalty) [19].

In general, witnesses of the ICTR and foreign courts are in the responsibility of Rwanda’s domestic Witness Protection Programs. In collaboration with WVSS of ICTR, the safety of witnesses is secured. The Rwandan Witness Protection Program is oriented towards meeting the international expectations of the ICTR and other external courts of countries where genocide fugitives are residing. That is why it contributed in the facilitating of the transfer of several cases from the ICTR and other foreign countries to Rwanda.

9. Conclusion

Witnesses are the cornerstone of all trials. As started by Bentham, “witnesses are the eyes and the ears of justice,” (Romina, 2011, 1) [20]. It is in this regard that the purpose of this paper is to explore the challenges that witnesses face in providing testimony on crimes committed during the genocide perpetrated against the Tutsi. It also aims at assessing the strength of protection by the Rwandan two Witness Protection Programs.

Rwandan Hutu extremists performed a genocide directed towards the Tutsi population. In prosecuting genocide perpetrators, in post-genocide Rwanda, several witnesses have testified before the Rwandan domestic courts, Gacaca jurisdictions, ICTR and even before foreign state jurisdictions. Witnesses provide their testimony on genocide and other related cases based on their own will with the desire to advance the course of justice. However, the proximity of convicted genocide perpetrators, suspects, witnesses, survivors and their families creates a serious security problem for witnesses. They are subsequently subjected to various types of threats from physical harm, verbal intimidation to murder. In response, the Government of Rwanda put in place the Witness Protection Programs.

These programs were established to ensure the safety and security of witnesses throughout the trials. It also has to respond to the psychosocial needs of witnesses during and after the trial. The achievements of the Rwandan’s Witness Protection Program are of

¹² Referral of the Indictment to another Court

¹³ The paragraph A of Rule 11 bis states: If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State: (i) in whose territory the crime was committed; or (ii) in which the accused was arrested; or (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

paramount importance. Different strategies have been put in place to ensure the security of witnesses by following up on threats. Staff members of the Witness Protection Programs are also psychologically close to the witness to ensure that they receive the proper psycho-social assistance.

The safety and security of witness should be considered as a basic requirement to be able to testify in a courtroom without fear. Witnesses should receive assistance that they need to enable them to appear and testify freely as required by the courts. Balancing the domestic needs and practical constraints on witness protection in Rwanda with the international standards is crucial for achieving an effective Witness Protection Program in post-genocide Rwanda.

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