

# **An urgent call for the Enactment of a Witness Protection Law in Uganda**

## **A Civil Society Policy Paper**

**Prepared by**

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## 1.0 Preamble

Uganda signed the United Nations Convention Against Corruption (UNCAC) on 9 December 2003 and deposited its instrument of ratification with the Secretary-General on 9 September 2004. Treaties ratified by Uganda are not self-executing but need to be implemented by legislation in order to be translated into domestic law (Article 123 of the Constitution of the Republic of Uganda and the ratification of Treaties Act Section 2). Uganda has made some progress towards implementing the UNCAC. Specific steps have been taken towards implementation of Chapters II and V of the UNCAC, including: enacting legislation<sup>1</sup>, setting up relevant institutions<sup>2</sup>, and putting in place other measures geared towards implementation of the UNCAC.

Uganda has a National Anti-Corruption Strategy which covers the activities of public and private sectors and civil society in the fight against corruption. In addition, Uganda has carried out a number of administrative and legislative reforms in relation to the fight against corruption and the implementation of the UNCAC. These include the Zero Tolerance to Corruption Policy, the Anti-Corruption Act (ACA) which is the main implementation law for the UNCAC. The ACA contains provisions on the criminalization of corruption, on the powers of the Inspector General of Government and the Director of Public Prosecutions and on jurisdiction, restraint and confiscation among other administrative and legislative reforms.

However, the lack of a comprehensive legal and institutional framework on witness protection has adversely affected the implementation of Articles 11 and 13 of the UNCAC; the lack of a substantive legal, policy and institutional framework on asset recovery has affected the implementation of articles 5, 52, 53, and 57 of the UNCAC; and the lack of a Mutual Assistance Frameworks, has also adversely affected implementation of Articles 54, 55, 56, 57, and 59 of the UNCAC. The national review processes for Uganda and the CSOs shadow report have recommended government to make steady-fast observations and considerations towards the implementation of the UNCAC.

Therefore, this paper has been developed through a consultative process involving various civil society organizations, spearheaded by Anti-Corruption Coalition Uganda. This activity is tailored towards strengthening implementation of the UNCAC in Uganda. This position paper is an output from several CSO engagements coordinated by Anti-Corruption Coalition Uganda with financial support from UNCAC Coalition<sup>3</sup>.

## Introduction

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<sup>1</sup> The Anti-Corruption Act, 2009 (as amended), The Whistle Blowers Protection Act, 2010, The Leadership Code (Amendment) Act, 2018, The Leadership Code (Amendment) Act, 2021, The Public Finance Management Act, 2015 (as amended), The Anti-Money Laundering Act, 2013 (as amended), The Access to Information Act, 2005, The Public Procurement and Disposal of Public Assets Act, 2003 (as amended), The Computer Misuse Act, 2011. Policies including: Zero Tolerance to Corruption Policy of 2019, National Values and Ethics Policy of 2013. Anti-corruption strategies including; the National Anti- Corruption Strategy.

<sup>2</sup> Directorate for Ethics and Integrity (DEI), Inspectorate of Government (IG), State House Anti-Corruption Unit (SHACU), Anti-Corruption Division of the High Court (ACD), Internal Auditor General (IAG), Public Service Inspection Unit (PSIU), Public Procurement and Disposal of Public Assets Authority (PPDA), Office of the Auditor General (OAG), Office of the Director of Public Prosecutions (ODPP), Parliamentary Accountability Committees and the Finance Intelligence Authority (FIA).

<sup>3</sup> This position paper is an output from several CSO engagements coordinated by Anti-Corruption Coalition Uganda with financial support from United Nations Civil Society Coalition on the Convention Against Corruption under the framework of Strengthening Implementation of the United Nations Convention Against Corruption (UNCAC) in Uganda.

Witness Protection is more than improving an individual's ability to testify before courts or guaranteeing administration of justice in Uganda. Witness protection is defined as the set of measures aimed at protecting individuals who provide testimony or evidence in legal proceedings, particularly in cases involving organized crime, corruption or significant criminal activity. Witness Protection is designed to ensure the safety of people who may be at risk of retaliation or harm due to their cooperation with the law enforcement. Countries should recognize the special role of witnesses in a criminal justice process, it is important to note that because witnesses have a civic duty to testify, states have the duty to protect them.

There is no witness protection where citizens fear the system, see it as alien and do not access it; where institutions are financially inaccessible; where individuals have no protection mechanisms, where they do not have information or knowledge of rights; or where there is a weak Justice system. Witness Protection involves normative legal protection, legal awareness, adjudication, enforcement and civil society oversight.<sup>4</sup> The Hill Justice Needs Report 2023 showed that 80 percent of Ugandan citizens have experienced difficulty in resolving justice problems in a period of four years, this is because witness pull out/withdraw of the criminal cases in fear of their lives being threatened. The study also found Uganda's Witness Protection System complex to navigate, and in many cases not capable of producing fair outcomes<sup>5</sup>.

An enacted Witness Protection Bill will act to consolidate, update, and modernize the legal and policy framework on witness protection in Uganda; to codify government's obligation in relation to the provision of protection to witnesses in crimes; to create a designated government agency responsible for providing sustainable and substantive witness protection on behalf of Government; repeal the Poor Persons Defence Act; to make provision for the grant of witness protect services to persons involved in capital and classified crimes; to make provision for eligibility for the grant of protection, to make provision for the termination of protection among others.

The Witness Protection Bill has been in the offing since 2015. However, there has been no effective and tangible process towards its enactment into law. Since 2017, ACCU and other CSOs have been advocating for the Bill's enactment as well as the establishment of a comprehensive witness protection mechanism in Uganda.

## **Background**

Witness protection comprises of methods of protecting someone who may be in danger as a result of agreeing to cooperate with the police in their investigations or agrees to testify before the courts about what they know concerning the alleged crime.

The laws governing witness protection in Uganda include; the Constitution of the Republic of Uganda, 1995 (as amended), the Civil Procedure Act, Cap 71, the Children Act, Cap 59, the Evidence Act, 2006, the Penal Code Act, the Administration of Justice Act and the Advocates Act. These are supplemented by international legal instruments Uganda has acceded to including the Universal Declaration of Human Rights (1948) International Covenant on Civil and Political Rights (1966) the United Nations Convention Against Corruption and other non-binding instruments such as the United Nations Principles and Guidelines on Witness Protection in Criminal Justice Systems. These legal and policy frameworks are limited in scope and are not up to date with the international

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<sup>4</sup> UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power A/RES/40/34.

<sup>5</sup> Hill Report on Justice Needs and Satisfaction in Uganda, 2024.

best practices. Therefore, the Witness Protection Bill seeks to consolidate, update, and modernize the law on witness protection in Uganda codifying government's obligation toward the fight against corruption in Uganda.

Chapter 4 provides a foundational legal framework for protection and fulfilment of human rights (article 28 providing for a fair hearing). The constitution sets the stage for laws on protection of witnesses; other laws dealing with witnesses in Uganda, such as the Evidence Act, Magistrate Courts Act, Trial on Indictments Act and Whistleblowers Protection Act, do not address witness protection holistically. Different institutions use different measures to ensure protection. For example, courts would consider the needs of children or vulnerable victims by hearing them in chambers. The ODPP formulated guidelines to assist prosecutors to determine the witness protection parameters and the scope of protection during investigations, trial and after trial.

## **Objective of the Position paper**

The major objective of the CSO Position Paper is to provide targeted recommendations for consideration to fast track the enactment of the Witness Protection Bill 2015.

The other objective of the position paper is to present key issues and recommendations for consideration by state actors to enable processes to fast track the enactment of the Witness Protection Bill 2015.

## **Challenges to Uganda's Witness Protection Mechanism**

Uganda faces challenges in the protection of witnesses especially under the criminal justice mechanism, which hampers the implementation of articles 11 and 15 of the UNCAC. In circumstances where a whistle blower is made a witness, article 28 of the constitution of the republic of Uganda warrants protection of individuals (witnesses) under a fair hearing. However, the absence of a robust mechanism to identify and document threats and requirements for witness protection affects government's constitutional obligations towards witness protection.

The significant challenges to Uganda's witness protection process includes; (i) the absence of policy and institutional framework for witness protection, despite being recommended under international frameworks such as UNCAC i.e article 11 and 15 of the UNCAC ; (ii) absence of a substantive legal framework for witness protection i.e. the Witness Protection Bill 2015, which aims to address existing gaps, has faced delays in its enactment and; (iii) the limited information on the financial implications for the establishment a witness protection mechanism.

Commonwealth countries like Canada, South Africa, Indonesia, Ireland, Hong Kong adopted and domesticated a Best Practice Guide for the Protection of Witness in the Criminal Justice Process.<sup>6</sup> This guide takes a holistic approach, looks not only at the physical safety but at the general well-being and comfort of witnesses, and requires that measures taken by different actors for example judges, prosecutors, investigators are complementary. It recognises that the criminal justice system needs to adjust flexibly to the needs of the case. These needs must be established by threat and risk assessments as there is no standard approach that fits all witnesses. In 2008, the United Nations Office on Drugs and Crime (UNODC) published a good practice manual for protection of

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<sup>6</sup>Commonwealth Secretariat, LMM (11)14, Victims of Crime in the Criminal Justice Process.

witnesses involving organized crime<sup>7</sup>. UNODC's Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime (UNCATOC) and the Protocol thereto also contains chapters on protection,<sup>8</sup> have been considered for domestication by states.

However, the existing gaps still include; the lack of formal facilities, such as two way mirrors for suspect identification; the lack of separate waiting areas in the court for witnesses; insufficient knowledge among duty-bearers, witnesses and the public; and the lack of legislation. Witnesses regularly withdraw from cases because of threats as well as actual physical and mental harm. Despite the fact that the state has the responsibility to protect, duty-bearers who fail to meet this obligation have not faced consequences in cases where witnesses were threatened and/ or subjected to harm.

Whereas the notion of witness protection is recognized under the laws of Uganda and various international human rights instruments acceded to by Uganda, there is no legal framework to effectively consolidate, coordinate and sustainably streamline the provision of witness protection and support in Uganda, there is lack of a clear government policy on access to witness protection beyond what the Constitution guarantees. Considering that the government is not under any legal obligation to provide witness protection to any other person in Uganda, has negatively affected the fight against corruption in Uganda.

## **Recommendation:**

- i. **Expedite the enactment of the Witness Protection Bill 2015:** The enactment of a Witness Protection Bill in Uganda is crucial for the integrity of the justice system and the safety of individuals who offer testimony in criminal proceedings: (i) enacting the witness protection bill to include establishing of various protection measures tailored to individual cases, including relocation, anonymity, secure housing, financial support, and psychological counselling for witnesses and; (ii) ensuring robust inter-agency collaboration between law enforcement, the judiciary to support the witnesses throughout the legal process.
- ii. **Establish Whistle blower and Witness Protection Agency:** It is also recommended that government should establish a witness protection agency to protect whistle blowers and witnesses, independent from the Police or Directorate for Public Prosecutions.
- iii. **Enact the Witness Protection Bill to Support Section 117 of the Evidence Act 200:** The provisions on witness protection under section 117 of the Evidence Act 2006 are not explicit enough to offer protection of witnesses providing evidence in criminal cases; The Witness Protection Bill envisaged mechanisms of identifying threats, documentation requirements for protect. Since the Witness Protection Bill compliments the fight against corruption, state agencies should emphasize fast tracking its enactment.

## **Conclusion:**

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<sup>7</sup> UNODC, Good practices for the protection of witnesses in criminal proceedings involving organized crime, 2008, available at: <https://www.unodc.org/documents/organized-crime/Witness-protectionmanual-Feb08.pdf>.

<sup>8</sup> UNODC, Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocol Thereto, 2004, available at: [https://www.unodc.org/pdf/crime/legislative\\_guides/Legislative%20guides\\_Full%20version.pdf](https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf). 16 Rome Statute, Art. 68(1).

By implementing these recommendations, Uganda can create a robust and effective witness protection framework that not only enhances the safety of witnesses but also strengthens the overall justice system by encouraging cooperation and preventing crime including combating corruption.