

Failing witnesses in serious and organised crimes: policy perspective for witness protective measures in Malawi

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DRAFT SUBMISSION

**FAILING WITNESSES IN SERIOUS AND ORGANISED CRIMES: POLICY
PERSPECTIVES TO MALAWI'S HEEDLESSNESS FOR WITNESS PROTECTIVE
MEASURES**

Steven Kayuni^{*}

Edister Jamu^{**}

^{*} Doctoral Researcher, School of Law, Politics and Sociology, Freeman Centre, University of Sussex, Brighton, UK. Email: s.kayuni@sussex.ac.uk / skayuni@lawyer.com

^{**} Postgraduate Researcher, Leeds University Business School, University of Leeds, Leeds, UK. Email: bnesh@leeds.ac.uk / ejamu@cc.ac.mw / edisterj@yahoo.co.uk

ABSTRACT

Witness protection (procedural and non-procedural) concept has become firmly entrenched in modern criminal justice systems for purposes of securing the much needed testimony and amelioration of vulnerable witnesses' circumstances. Witness protective measures have been used mostly in serious and organized crime prosecutions. Notwithstanding this, Malawi's criminal justice system including its reforms has completely ignored this leaving witnesses vulnerable to tampering and intimidation. This article explores Malawi's circumstances by focusing on serious and organised crime such as corruption and money laundering. It further offers some recommendations and policy perspectives as to what can possibly be done to ameliorate the witness situation.

Key words: Criminal law, serious and organised crime, witness protection, policy-oriented jurisprudence, protective segregation

1.0 INTRODUCTION

In any crime that goes to court, the presence of a witness to testify against a suspect draws equal interest from both the prosecution and the defence. The interest of prosecution in obtaining a conviction mostly hinges on witnesses and other forms of evidence. On the other hand, the suspect is either interested in keeping witnesses from testifying or impeaching the creditworthiness of their testimony through various conventional and unconventional processes. Unconventional means such as witness harm, intimidation and interference are a common occurrence and a fundamental threat to the rule of law and operational strategies of any reliable criminal justice system.¹ These tendencies become complex and sophisticated during investigations, prosecutions and adjudication of serious and organised crimes.² Thus provision of procedural and non-procedural protective measures ensure that witnesses are fully protected and freely make available crucial evidence.³ Despite Malawi having the Penal Code,⁴ Corrupt Practices Act (CPA)⁵, Money Laundering, Proceeds of Serious Crime, Terrorist Financing Act (ML/TF),⁶ and Prisons Act⁷ as part of processes and strategies for fighting serious and organised crime, there are no sufficient provisions to protect witnesses from both physical and psychological threats arising from their contact with the criminal justice system. This article discusses the need for a legal and policy perspective that would urgently address the necessity for sufficient witness protection in Malawi. In its approach to the discussion, it embraces policy-oriented jurisprudence.⁸ Policy-oriented jurisprudence considers law as a decision-making process aimed at achieving human goods as cherished community values.⁹ Firstly, the article considers brief origins of witness protection using the United States and Italy as main examples for common law and civil law respectively. Secondly, it analyses the legal and psycho-social circumstances of witnesses in Malawi.

¹ O'Flaherty, B. & R, Sethi, 'Witness Protection' (2010) 39(2) Journal of Legal Studies, 399-432.

² F, Eniko, 'Rising Importance on the Protection of Witnesses in the European Union', (2006) 77 Revue Internationale De Droit Penal, 313-314

³ See generally, S, Glucic, *et. al*, *Protecting Witnesses of Serious Crimes-Training Manual for Law Enforcement and Judiciary*, (Strasburg, Council of Europe Publishing, 2006)

⁴ Chapter 07:01 of the Laws of Malawi, http://www.malawilii.org/files/mw/legislation/consolidated-act/7:01/penal_code_pdf_14611.pdf, accessed on 23 February 2015

⁵ Chapter 07:04 of the Laws of Malawi, http://www.malawilii.org/files/mw/legislation/consolidated-act/7:04/corrupt_practices_act_pdf_90548.pdf, accessed on 23 February 2015

⁶ Act Number 11 of 2006 of the Laws of Malawi, http://www.malawilii.org/files/mw/legislation/act/2006/11/money_laundering_act_2006_pdf_19156.pdf, accessed on 23 February, 2015

⁷ Chapter 09:02 of the Laws of Malawi,

⁸ M, McDougal, 'The Impact of International Law Upon National Law: A Policy-Oriented Perspective' (1959) 4 South Dakota Law Review, 25

⁹ H, D, Lasswell, & M, McDougal, 'Jurisprudence in Policy-Oriented Perspective', (1966-1967) 19 University of Florida Law Review, 486

Thirdly and in conclusion the article sums up the discussion and calls for reforms that would postulate the values that witnesses add to criminal trials.

2.0 BACKGROUND TO WITNESS PROTECTION

2.1 COMMON LAW JURISDICTIONS

In most common law jurisdictions, a person who gives a statement is required to physically testify as a witness during trial.¹⁰ Thus in order to achieve a successful prosecution, the role¹¹ which witnesses play in investigations and fear-free testimony is paramount.¹² Witness protective measures can be traced back to legal and policy framework of the United States Federal Government in the 1970s.¹³ During that time, many prosecutions of organised crimes were suspended¹⁴ because of murder of witnesses¹⁵ or withdrawal of testimony due to fears of reprisals.¹⁶ This eventually led to the establishment of a formal Witness Protection Program (WPP). The WPP, now known as Witness Security Program (WITSEC)¹⁷, authorized government to provide temporary or permanent protection for threatened witnesses.¹⁸ Although opponents initially described the program as complex, non-implementable and not beneficial to the public as it seriously affected due process of the law, protected criminals and excessively expensive,¹⁹ WITSEC became the most valuable and salient tool for fighting organized crime and major criminal activity.²⁰ By preventing witness interference,²¹ intimidation and deaths.²² It still exists up to date²³ extending to protection of

¹⁰ J.,M, Levin, 'Organized Crime and Insulated Violence: Federal Liability for Illegal Conduct in Witness Protection Program', (1985) 76(1) *Journal of Criminal Law and Criminology*, 208

¹¹ N, R, Fyfe, *et.al.*, 'Desperately Seeking Safety: Witnesses Experiences of Intimidation, Protection and Relocation', (2000) 40 *British Journal of Criminology*, 675

¹² W, Maynard, *Witness Intimidation, Strategies for Prevention, Police Research Group, Crime and Prevention* (London, Home Office – Police Department, 1994), 4

¹³ N, R, Slate, 'The Federal Witness Protection Program: Its Evolution and Continues Growing Pains', (1997) 16(2) *Criminal Justice Ethics*, 20

¹⁴ N, V, Demleitner, 'Witness Protection in Criminal Cases: Anonymity, Disguise or Other Options?' (1998) 46 *American Journal of Comparative Law Supplement*, 644

¹⁵ *US-v-Mastrangelo* 662, F.2d. 946, 949 (2nd Circuit 1981), 456 US 973 (1982)

¹⁶ *United States-v-Gravel*, 605F.2d 750, (5th Circuit, 1979)

¹⁷ <http://www.usmarshals.gov/witsec/>, accessed on 23 February, 2015

¹⁸ Levin, *Op. Cit.*, 209-210

¹⁹ M, R, Krasno, 'The Victim and Witness Protection Act of 1982–Does It Promise More Than The System Can Deliver?', (1982-1983) 66 *Judicature*, 469

²⁰ Slate, *Op. Cit.*, 20

²¹ T.M, Riley, 'Tampering with Witness Tampering: Resolving the Quandary Surrounding 18 U.S.C Sections 1503 & 1512', (1999) 77 *Washington University Law Quarterly*, 270-271

²² R, Goldstock, & D, T, Coenen, 'Controlling the Contemporary Loan sharks: Law of Illicit Lending and the Problem of Witness Fear', (1980) 65(2) *Cornell Law Review*, 206-208

²³ <http://www.usmarshals.gov/witsec/>, accessed on 23 February, 2015

those witnesses who are serving prison sentence in form of special housing administrative and segregated protection.²⁴

2.2 CIVIL LAW JURISDICTIONS

Due to domination of mass communications, Anglo-American cultural representations have penetrated all global areas.²⁵ This has turned the WITSEC into a paradigm programme²⁶ spreading and modernising many criminal justice systems in both common²⁷ and civil²⁸ law jurisdictions. The urge and need to fight a wave of organised crime in the early 1990s prompted several civil law jurisdictions to start considering the use and protection of insider witnesses as a strategic tool for combating organised crime.²⁹ There was need to modify Anglo-American protective measures to suit their needs.³⁰ For instance, the anti-mafia trials in Italy depended heavily on mafia gang members known as *pentiti* to provide organisational structure of the mafia world dealings.³¹ Former mafia associates would be supported in the witness protection program and reintegrated into the community only in exchange for their evidence.³² The WPP became Italy's secret anti-mob weapon that immensely advanced and sophisticated the fight against organised crime.³³ In other jurisdictions such as Germany³⁴ guidelines have been set down ranging from nature of protection for a witness, gravity of an offence, rights of an accused and impact of protective measures on both the accused and the witness³⁵ including his or her family members or other relatives at risk.³⁶

²⁴M, Schlanger, 'Regulating Segregation: The Contribution of the ABA Criminal Justice Standards on the Treatment of Prisoners', (2010) 47 American Criminal Law Review, 1421-1422

²⁵J., Hatchard, *et al*, 'Comparative Criminal Procedure: An Overview' in Hatchard, J., *et al.*, (Eds.) *Comparative Criminal Procedure*, (London: British Institute of International and Comparative Law, 1996), 1

²⁶See Generally L, Robert-Smith, (2000) *Review of the Western Australia Police Witness Protection Program*, (Volume 1: Perth, Government of Western Australia, 2000)

²⁷ Australia, Canada, Kenya, South Africa, Ireland, Jamaica, New Zealand, Philippines, Hong Kong China and many other commonwealth countries.

²⁸ Italy, Belgium, France, Germany, Austria, Hungary, Sweden, Denmark, Czechoslovakia, Bosnia and Herzegovina

²⁹F, Allum, &N, Fyfe, 'Developments in State Witness Protection Programmes: Italian Experience in an International Comparative Perspective', (2008) 2(1) Policing, 92

³⁰ UN, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organised Crime*, (UNODC, New York, 2008), 7-15

³¹N, Fyfe, &H, McKay, 'Police Protection of Intimidated Witnesses: A Study of the Strathclyde Police Witness Protection Programme', (2000) 10(3) Policing and Society: An International Journal of Research and Policy, 339

³²F, Allum, &N, Fyfe, *Op. Cit*, 93

³³F, Allum, <http://bigstory.ap.org/article/italys-secret-anti-mob-weapon-witness-protection>, accessed on 23 February, 2015

³⁴R, Vogler, *Germany: A Guide to the German Criminal Justice System*, (London, Prisoners Abroad, 1989), p.6

³⁵ UN, *Op. Cit*, pp.7-13

³⁶N, Fyfe, &J, Sheptycki, *Op. Cit*, .324

Common and civil law jurisdictions have had and still have challenges as regards protective measures for witnesses. In common law jurisdictions, there has been defective decision-making process that has little regard for all participants such as the witnesses themselves, the defence and the Court.³⁷ This has led to erratic assistance to witnesses and excessive expenditures.³⁸ Further, there has been an issue of over-admission and runaway costs³⁹ and lack of balance between public interest and the interests of the public within the program.⁴⁰ In civil law jurisdictions challenges have ranged from lack of statutory footing for the protective measures,⁴¹ coordination and effective working relationship among agencies involved in investigations and witness protection to bureaucratic and slow-paced decision-making.⁴² Further, there has been an outcry for misuse and threat to civil liberties of the accused person.⁴³ This has led to the rule of law being undermined.⁴⁴ For instance investigative judge's powers of restrictive witness, accused or public participation in trial through audio or video transmission, use of sworn affidavits in place of *viva voce* evidence⁴⁵ and hiding of

³⁷P, E, Hart, (2009) 'Falling Through the Cracks: The Shortcomings of Victim and Witness Protection Under Section 1512 of the Federal Victim and Witness Protection Act', (2009) 43 Valparaiso University Law Review, p.775

³⁸ One Case within 30 hours there was use of 13marshall officers , armoured vehicles, bullet proof trucks, smoke canisters, 5 trucks of electronic alarms in safe houses, Gao Report, <http://www.gao.gov/products/GGD-83-25>, accessed on 18 February 2015

³⁹Report of the Controller General of the United States, *Changes Needed in the Witness Security Program*, (Gao Report, 1983), 7-8, <http://www.gao.gov/products/GGD-83-25>, accessed on 24 February, 2015 In a Report to Congress Subcommittee, government accountability office reported that WPP in 1982 was designed to adopt no more than 50 witnesses per year but in practice it had accepted 4000 witnesses and over 8000 family members with a staggering USD 28 million annual cost; Between 1991 and July 1994, 79 witnesses and 150 family members had received its services at an average cost of \$20,000 for a family of 4 leading to a conviction of over 100 people, G, Schur, *Statement before the Senate Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary, House of Representatives, 103 Congress (2nd Session), 4 August, 1994*, (Washington: US Government Printing Office, 1994), 24 – 37; As of 2010, 16, 000 witnesses and their families were into the WITSEC with more than USD 25 million and 10 new participants admitted every month, J, S, Albanese, *Organized Crime in Our Times*, (New York, Mathew Blender & Company,2010), 286-288

⁴⁰R, J, Lawson, 'Lying, Cheating and Stealing at Government Expense: Striking a Balance Between the Public Interest and the Interests of the Public in the Protection Program', (1992) 24 Arizona State Law Journal, 1430-1431

⁴¹N, Fyfe, ,&J, Sheptycki,, *Op.Cit.*,325; *see also*R, Vogler, *France: A Guide to the French Criminal Justice System*, (London, Prisoners Abroad, 1989), 8-9; X, Zhang, 'The Emergence of 'Black Society' Crime in China', (2001) 1(2) Forum on Crime and Society,.53-72; G, Jin, 'The Protection and Remedies for Victims of Crime and Abuse of Power in China', (2006) 70 *Resource Material Series*, 148

⁴² Czech Republic system requires Supreme Court Judge as final decision maker on WPP admission, police or penitentiary president has temporal admission powers; F, Allum, &N, Fyfe, *Op.Cit.* ,96-97

⁴³J, Schneider,, &P, Schneider 'Suggestions from the Antimafia Struggle in Sicily' (2002) 75(1) *Anthropological Quarterly*,156

⁴⁴J, P, W, Hilger, 'Organized Crime/ Witness Protection in Germany', (2001) 58 *Resource Material Series*, 104

⁴⁵N, Fyfe, ,&J, Sheptycki, , *Op. Cit.*, 324

witness identity from both the public and the defence.⁴⁶ These have steered witnesses into sometimes precarious circumstances,⁴⁷ overlap and confusion of agency responsibility.⁴⁸

It has been argued that non-procedural protective measures have had the weakness of focusing on physical safety and completely disregarding the witness' psychological well-being and that of his or her family.⁴⁹ Witness relocation without regard to geographical considerations has been considered as alienating and disturbing.⁵⁰ Notwithstanding the challenges outlined above, it is suggested that witness protection introduction not only modernised many criminal justice systems but also ameliorated the human good and welfare of witnesses.

3.0 ARGUMENTS FOR WITNESS PROTECTIVE MEASURES IN MALAWI

3.1 LEGAL

For a long time, serious and organised crimes such as corruption and money laundering have been a threat and huge cost to Malawi. Series of organised crimes have rocked the country. Examples include the recent 2013 *cashgate heist* corruption scandal in public service where more than US \$30m was looted within 5 years from state coffers through fraudulent, corrupt and money laundering transactions leading to donor aid freeze,⁵¹ use of public money to fund wedding of a minister,⁵² *Field York* Note Book Scam in the Ministry of Education,⁵³ the Ministry of Education Corruption Scandal involving US \$5m⁵⁴, former oil executive

⁴⁶R, Arnold, *Op.Cit.*, 491

⁴⁷G, L, Certoma, 'Accusatory System –v- The Inquisitorial System – Procedural Truth –v- Fact?', (1981) Criminal Evidence Law Reform Proceedings, 83-91

⁴⁸Certoma, *Op.Cit.*, 83-91

⁴⁹F, Montanino, 'Protecting the Federal Witness: Burying Past Life and Biography', (1984) 27(4) American Behavioural Scientists, 50-528

⁵⁰Witnesses in the mafia trials were being relocated from the south to the northern Italy making it difficult for them to acclimatize to the new environment as it was not geographically and culturally conducive to them, F, Varese, 'How Mafias Migrate: The Case of the Ndrangheta in Northern Italy', (2006) 40(2)Law and Society Review, 411-444

⁵¹G, Mapondera, 'Malawi Official Jailed for Nine Years over 'Cashgate' Scandal', *Guardian News*, <http://www.theguardian.com/global-development/2014/nov/11/malawi-official-jailed-cashgate-scandal-aid>, accessed on 24 February 2015

⁵²*Yusuf Mwawa –v- Republic* Criminal Case Number 50 of 2006, (High Court), <http://www.malawilii.org/mw/judgment/high-court/2008/113> (last accessed on 24/02/2015)

⁵³*Sam John Lemos Mpasu –v- The Republic*, MSCA Criminal Appeal Number 1 of 2009 (Supreme Court of Appeal), http://www.malawilii.org/files/node/3845/28_pdf_29192.pdf, accessed on 23 February 2015

⁵⁴K, Munthali, 'K187m in contracts scam trial in June, 2001', , <http://www.sdn.org.mw/ruleoflaw/acb/news-03.html>, accessed on 22 February, 2015; M, Ng'ambi, 'Safuli convicted in K187m scam gets 2yrs IHL 3 others go to jail, 2006', <https://groups.yahoo.com/neo/groups/MALAWIANA/conversations/messages/10341>, accessed on 24 February 2015

corruption case involving US \$1.3m,⁵⁵ a pre-shipment contract to British Inspection firm ITS⁵⁶ amounting to \$8.5m⁵⁷ and a national identity cards contract to SECUCOM holdings of Switzerland amounting to US \$27m.⁵⁸ These are just few of the numerous examples demonstrating how serious and organised crimes have cost Malawi a lot of money. It is suggested that these cases would have been known to public officers but none could come forward and report the same. This is so despite the law bestowing a duty and obligation on public officers to make reports for suspicions of crime.⁵⁹ It is posited that this is probably due to lack of comprehensive legal protection for witnesses and whistle-blowers. Section 51A of the CPA is the only one that comes nearest to witness protection. It offers whistle-blowers protection such as concealment, obliteration, address and name details during inquiry or trial.⁶⁰ Further, any person who victimizes a whistle-blowers is liable to a fine and imprisonment.⁶¹ However, we submit that this is not satisfactory for witness protection as it does not really provide for the much needed protection. Further, even for the protection of whistle-blowers, the provision leaves a lot to be desired. There is no comprehensive framework as to how such whistle-blowers can be protected. It is a sham provision that requires review. There are some cases where convicted persons become witnesses and cooperate with the prosecution for purposes of bringing to justice those who bear greatest criminal responsibility.⁶² No non-procedural processes, mechanism or system exist in order to properly protect them while in penitentiary. The Malawi Prison Services⁶³ as regulated by the Prisons Act⁶⁴ only has mandate to provide for segregation and classification of prisoners for purposes of strict separation of males and females only.⁶⁵ Factors to consider for decision-making process of such male and female separation include, status of the prisoner (whether

⁵⁵*The State –v- Denis Spax John Kambalame* Criminal Case No. 108 of 2002 (High Court), <http://www.malawilii.org/mw/judgment/high-court-general-division/2003/6>, accessed on 21 February, 2015; see also Panapress, Corruption Trial of Former Malawi Oil Executive Begins, <http://www.panapress.com/Corruption-trial-of-former-Malawi-oil-executive-begins--13-468663-17-lang1-index.html>, accessed on 24 February 2015

⁵⁶ Intertek Testing Services (ITS); see also *In re: Ministry of Finance Ex-parte SGS Malawi Limited*, Civil Cause No. 40 of 2003, <http://www.malawilii.org/mw/judgment/high-court-general-division/2003/41>, accessed on 01 March, 2015

⁵⁷ Malawi Today, 'Negligence May Cost Malawi K40 Billion', (2013), <http://www.malawitoday.com/news/128681-negligence-may-cost-malawi-k40-billion>, accessed on 24 February 2015

⁵⁸*Ibid*,

⁵⁹ Section 36 of the Corrupt Practices Act (CPA)

⁶⁰*Ibid*

⁶¹ Section 51A(5) of the CPA

⁶² Such as organizational leadership

⁶³ Chapter XVII of the Constitution of the Republic of Malawi

⁶⁴ Prisons Act, Cap. 09:02 of the Laws of Malawi

⁶⁵ Section 64 (1) of Prisons Act

convicted or not), young prisoners, adults, first offenders, prisoners with previous convictions, prisoners suspected or certified as being of unsound mind and such other classes as the Commissioner may determine; and, so far as the prison accommodation renders it practicable, each such class shall be kept apart from the other classes.⁶⁶ There is no protective segregation for witnesses. Current law reform reviews⁶⁷ of the Prisons Act of 1966 considering its amendments have not considered this crucial area as well.⁶⁸ From the foregoing, it is posited that the absence of legal framework for the provision and regulation of witness protection leaves witnesses and the criminal justice system vulnerable.⁶⁹ A criminal justice system that has no procedural and non-procedural protective measures in place risks interrupted trials, reprisals, physical harm including murder, intimidation, interference and even testimony withdrawals.

2.2 PSYCHO-SOCIAL SUPPORT

Witness intimidation has always been a serious obstacle in the quest for law and order.⁷⁰ Alleged suspects have always used it as an ‘innovative defence’, a tool to instil fear, dissuade or stifle investigations and prosecutions of serious and organised crimes.⁷¹ Intimidation comes in so many forms such as straight forward threats or subtle and outwardly innocuous acts to witnesses and their families. Successful intimidation will result in injustice, prevent a witness or a victim from reporting, assisting in subsequent investigations or giving testimony at a hearing or trial of the suspect. In cases that are at an advanced stage, witnesses will claim contrary to their prior statements. They become refractory,⁷² ‘turncoats’ or ‘flipped-up’ witnesses pleading lack of personal knowledge, lack of current recollection, testify facts less than helpful, neutral or even damaging to the prosecution case. It is suggested that with the prevalence of serious and organised crimes in Malawi, witness intimidation is fast becoming one of the most ubiquitous and insidious problems faced by law enforcement officials. For

⁶⁶ Section 64(2) of the Prisons Act

⁶⁷ Malawi Law Commission’s law reform programmes, http://www.lawcom.mw/docs/Current_Law_Reform_Programmes.pdf (last accessed on 07/07/2015)

⁶⁸ According to the Law Commissioner, such reviews are solely focused on overcrowding in prisons, rights and privileges of prisoners, rights of prisoners with special needs, admission of pregnant women in prison, conjugal rights of prisoners and establishment of parole board; *see also* Kitta, T, (Malawi News Agency – MANA, 2015) Malawi Law Commission, Stakeholders Review the Prisons Act, <http://www.manaonline.gov.mw/index.php/component/k2/item/3231-malawi-law-commissions-stakeholders-review-the-prison-act> (last accessed on 07/07/2015)

⁶⁹ Weak and unreliable

⁷⁰ M, H, Graham, ‘Witness Intimidation’, (1984-1985) 12 Florida State University Law Review, 240

⁷¹ *Ibid*

⁷² Section 202 of the Criminal Procedure and Evidence Code, Chapter 7:03 of the Laws of Malawi

instance in a high profile attempted murder case, the country's Director of Public Prosecution (DPP) told the High Court that two state witnesses had 'disappeared' and unwilling to testify because they had been receiving threats from suspects.⁷³ The DPP accused the defence of employing 'mafia-like operations' to intimidate state witnesses.⁷⁴ Whether the threats are real or imagined, witnesses, especially those in cases involving high profile personalities are confronted with challenges requiring both physical and psycho-social support. Surprisingly, the subject of witness protection receives less attention than it deserves.⁷⁵ Notwithstanding this, the aftermath of intimidation or even a crime leaves witnesses with profound retentions. It is suggested that witnesses, and even staff working with victims and witnesses, may suffer physical, mental, emotional and financial harm. A special report on a seminar at the International Criminal Court notes the need to prevent re-traumatization of victims and witnesses and minimization of distress in staff dealing with these two groups.⁷⁶ A cross section of professionals at the seminar observed that staff members dealing with victims and witnesses are likely to exhibit stress reactions that mimic those of victims and witness. Although the above observation is with regards to staff, it is a clear manifestation of stress experienced by victims and witnesses, which if untreated, can lead to long term psychological or mental disturbances. One of the outcomes of the seminar was a recommendation that victims and witnesses be provided with easy access to 'on-call' personnel on a 24-hr basis to offer psychological assistance.⁷⁷

In cases where psycho-social support is not provided to witnesses, it is argued that some may not even recover from the psychological problems that they experience as witnesses.⁷⁸ While ensuring mental health of witnesses, the other benefit of satisfactory care and support to

⁷³N, Meki, 'State Struggles with witnesses in Mphwiyo Case' *Daily Times*, (Blantyre, 20 March 2015) 1, <http://timesmediamw.com/state-struggles-with-witnesses-in-mphwiyo-case/>, accessed on 8 April 2015

⁷⁴S, Khunga, 'Prosecution Protests 'Mafia-like' Operations', *Nation Newspaper*, (Blantyre, 19 March, 2015), 1, <http://mw-nation.com/prosecution-protests-mafia-like-operations/>, accessed on 8 April 2015

⁷⁵ Witness intimidation fears have been raised before the High Court but have received less attention; *vide The Republic –v- Dr. Cassim Chilumpha SC and Yusuf Matumula*, Criminal Case No. 13 of 2006 (High Court), <http://www.malawilii.org/files/mw/judgment/high-court/2008/6/6.pdf>, accessed on 25 February, 2015; a woman working at Accountant General's office which was the centre of *cashgate corruption scandal* murdered under suspicious time and circumstances. Allegations pointing to suspects in the corruption scandal and police failing to make headway with investigations, <http://www.mw/2014/04/08/cashgate-witness-murdered-malawi-police-confirms/>, accessed on 25 February, 2015

⁷⁶G, Framework, 'Protecting the Health and Welfare of Staff, Victims, and Witness: Report of a Seminar at the International Criminal Court', (2004) 74(4) *American Journal of Orthopsychiatry*, 571-576.

⁷⁷*Ibid*, 573

⁷⁸ UNODC, *Victim Assistance and Witness Protection*, (2015), <http://www.unodc.org/unodc/en/organized-crime/witness-protection.html>, accessed on 25 February 2015

witnesses is that witnesses are more likely to be willing and cooperative with the criminal justice system. It is argued that the laws in Malawi do not consider the psycho-social support to witnesses. The nearest reflection towards this subject is in section 71A of the Criminal Procedure and Evidence Code⁷⁹ on evidence by victims of sexual offence. It provides for procedural measures such as closed court and video-link proceedings, emotional support by another person (friend or relative) in the witness box.⁸⁰This provision is in recognition of the kind of trauma that sexual offence victims endure, and is aimed at preventing re-traumatization of the victims. Both the CPA and ML/TF have no provisions and guarantees for the psychological trauma or repercussions from the role of being an informer or a witness. Psycho-social support provisions and processes are conspicuously missing from the broader criminal justice system. It is suggested that the highlighted inadequacies above reflect a scenario where witnesses not only end up being re-traumatized by the system but also not able to access the services they need. There are no appropriate measures to protect the safety, physical and psychological well-being such as counselling (including trauma), assistance and dignity to witnesses who appear before the Malawi courts and others who are at risk on account of testimony given by such witnesses. It is thus suggested that the mere act of being a witness has a colossal impact and value to a person's life. It is a human good that should be cherished by all citizens.

Testimony and intimidation can have serious effect on the health of witnesses. Witnesses are likely to suffer from depression, anxiety and in some cases be suicidal depending on the nature of intimidation and testimony.⁸¹ The absence of witness protective measures within the criminal justice system leaves witnesses with no sense of safety as they fear retaliation especially when perpetrators of serious and organised crimes happen to be state actors or politically exposed persons. This is contrary to justice values that the Malawi community cherishes.⁸² The criminal justice system in Malawi has the duty to respect the vital rights of witnesses and assist them with their particular needs and protection from further harm. It should be able to create an enabling and safe environment that will make it easy to report cases, access justice, fair trials and combat impunity. After all, others have argued that legal

⁷⁹ Section 71A of the Criminal Procedure and Evidence Code, Cap:7:03 of the Laws of Malawi

⁸⁰ *Ibid*

⁸¹ W. S. Koedam, 'Clinical Considerations in Treating Participants in the Federal Witness Protection Program', (1993) 21(4) *The American Journal of Family Therapy*, 363

⁸² Constitutional order based on the need for access to justice, openness, democracy and accountability; see Constitution of Malawi preamble and section 11 of the Constitution

institutions alone are not enough to produce justice.⁸³ As such ensuring health and safety, including mental health and psychological wellbeing through provision of psycho-social support, of witnesses is an important element in justice delivery.

3.0 CALL FOR A MODERNISED CRIMINAL JUSTICE SYSTEM

It is argued that a criminal justice system should be able to accord dignity of witnesses in form of safety, health and welfare.⁸⁴ Thus it is suggested that any criminal justice system that does not take deliberate steps to strenuously secure the rights of witnesses cannot be categorised as a modernised criminal justice process. Therefore, Malawi's criminal justice system needs to take a turn and respect the right to dignity⁸⁵ for witnesses. Decision-makers need to consider a witness protection system for the country. There is need for proper consultations that are all inclusive of various participants in decision-making such as those involved in legislative framework,⁸⁶ rights advocates⁸⁷ and law interpreters.⁸⁸

These participants standing in their observational points should be able to come up with a system that can offer a variety of services to witnesses based on individual circumstances. It is suggested that such services can include assistance to witnesses and their families through temporary protection, relocation, new identities, documentation for new identities, limited financial and employment assistance and psycho-social assistance. Just like any other protection system, witnesses should be able to voluntarily relinquish their fundamental rights and personal autonomy.⁸⁹ Notwithstanding, the provision of protection and respect for human rights and freedoms enshrined in the Constitution, it is argued that the proposed witness protection system's decision-making mechanism regarding the welfare of witnesses should be able to restrict personal affairs such as freedom of association including freedom to form associations,⁹⁰ right to personal privacy,⁹¹ right to acquire property with others,⁹² right

⁸³B, O'Flaherty, &R, Sethi, 'Public outrage and criminal justice: Lessons from the Jessica Lal case', (2009) 5 New and Enduring Themes in Development Economics, 145.

⁸⁴S, Mass, 'The Dilemma of the Intimidated Witness in Federal Organized Crime Prosecutions: Choosing Among Fear of Reprisals, the Contempt Powers of the Court and the Witness Protection Program', (1982) 50(4) Fordham Law Review, 585-586

⁸⁵ Section 19 (1) of the Constitution of Malawi provides that: right to dignity for all persons shall be inviolable.

⁸⁶ Policy-makers, state actors and parliamentarians

⁸⁷ Non-state actors such as non-governmental organisations (NGOs), Witness & Victims lobbyists

⁸⁸ Judges, Prosecutors and Defence lawyers

⁸⁹J, R, Anderson, &P, L, Woodard, 'Victims and Witness Assistance: New State Laws and the System's Response', (1984-1985) 68(6) Judicature, 234-243

⁹⁰Section 32 of the Constitution of Malawi

to economic activity, to work and pursue livelihood anywhere in Malawi,⁹³ freedom of movement and residence,⁹⁴ relocation, identity and liberty.⁹⁵ Thus it is further posited that such restrictions are necessary for guaranteeing human good namely the dignity and safety of witnesses. It is argued that such restrictions or limitations are allowable as they shall be prescribed by law, reasonable, recognised by international human rights standards and necessary in an open and democratic society.⁹⁶

Because of associated challenges of the above restrictions, the proposed protection system will have to cater for all psychological problems emanating from possible exclusion from one's society or family ties. It should also cater for anticipated psychological problems or problems actually faced by witnesses due to their testimony or those emanating from intimidation. Catering for such psychological problems may require long term support for witnesses from counselling psychologists or other mental health professionals. Such support will help witnesses get on with life, help build a new life and get rid of paranoia, anxiety and suicidal tendencies.⁹⁷

It is further proposed that when it comes to witness relocation and community order preservation, a proper protection system should be able to balance the rights of protected witnesses and the rights of the community at large.⁹⁸ Utmost care and critical research should be undertaken to dig into the histories of the potential witness to be protected. This would preserve public order and human good as there will be informed decision-making process for the persons admitted into the protection system. Thus reduce likelihood of such admitted witnesses committing further crimes while in a protection system.⁹⁹ It is suggested that mandatory risk assessment of such witnesses to the communities they will live in should be conducted before admission.

⁹¹ Section 21(1) of the Constitution of Malawi; an intrusion to individual's interests in avoiding disclosure of personal matters; see also *Olmsted -v- United States* 277 US 438, 478 (1928), Justice Brandeis in dissenting opinion described it as "the right most valued by civilised men."

⁹² Section 28(1) of the Constitution of Malawi

⁹³ Section 29 of the Constitution of Malawi

⁹⁴ Section 39 of the Constitution of Malawi; witness cannot travel to places or areas where they will be recognised

⁹⁵ Mass, *Op. Cit*, 587; common occupations of life restricted

⁹⁶ Section 44(2) of the Constitution of Malawi

⁹⁷ Koedam, *Op. Cit*, 363

⁹⁸ Levin, *Op. Cit*, 212

⁹⁹ In the case of *Bergmann-v-United States* 526 F.Supp.443, while committing a burglary, WPP witness killed a police officer. It had been argued that there had not been proper background check of the witness before admission on the witness protection program

It is proposed that the Malawi criminal justice system should be able to set up standards for its protection system. A leaf can be borrowed from other jurisdictions that based admissions into protection programs on: the witness' value to the trial including a record of witness' minimum background, significance of their testimony, summary of the testimony, evidence and availability of other prospective witnesses and degree of witness threat.¹⁰⁰ Further, other considerations have been persons connected to witness, relocation recommendations (if any), witness assets and liabilities, witness and family views on relocation and cooperation.¹⁰¹ Estimated court appearance date, other witnesses granted protection, witness and family medical problems, parole restrictions and monetary needs have also hugely influenced decision-making as regards admission into protection program.¹⁰² Leaving out families from the range of protected persons will only create problems for the system¹⁰³ and will fall foul to the constitutional right to family and marriage as a natural and fundamental group unit of society needing such society and state's protection.¹⁰⁴

Admittedly, any criminal justice system with a witness protection program has challenges.¹⁰⁵ Modernising Malawi's criminal justice system has a load of anticipated challenges. The shoe-string budget for the judiciary which is less than 2% of the national budget¹⁰⁶ makes setting up a witness protection programme a daunting task in view of the likely runaway costs of administering a witness protection system. Other likely challenges, associated with finances, include costs of procuring basic CCTV cameras and video-link technologies, smooth running internet services and proper telephone network subscription. These are necessary tools for efficient procedural protective measures implementation. Considerations for the human good that go towards increased budgeting purposes for the judiciary is a postulation of the cherished values of the people of Malawi to have an efficient judiciary.

¹⁰⁰T, A, Pesce, 'Defining Witness Tampering Under 18U.S.C', Section 1512', (1986) 18 Columbia Law Review, 1417

¹⁰¹P.E, Hart, 'Falling Through the Cracks: The Shortcomings of Victim and Witness Protection Under Section 1512 of the Federal Victim and Witness Protection Act', (2009) 43 Valparaiso University Law Review, 775

¹⁰² Levin, *Op. Cit*, 215

¹⁰³J, McLaughlin, & M, Joshua, 'Obstruction of Justice', (2007) 44 American Criminal Law Review, 812

¹⁰⁴ Section 22 of the Constitution of Malawi

¹⁰⁵ Mass, *Op. Cit*, 216

¹⁰⁶ Judiciary (2010) Malawi Judiciary Strategic Plan 2010-2015, http://www.judiciary.mw/index.php?option=com_phocadownload&view=category&download=7:strategic-plan-malawi-judiciary&id=4:publications&Itemid=203, accessed on 02 March 2015

Further, it is suggested that there can be a modified approach toward implementation of procedural protective measures such as those used in the child protection courts in Malawi.¹⁰⁷ In the same vein of procedural protective measures, anonymous testimony by witnesses is likely to face the muster of constitutionalism from fair trial right advocates.¹⁰⁸ It is argued that the apparent abuses of the one party system and concept of justice in Malawi reinvigorated the framers of the Constitution to curve into law guarantees that would secure and postulate the cherished values for fair trial rights to the criminal justice system.¹⁰⁹ While the framers explicitly guaranteed the rights of accused persons during trial, no parallel constitutional safeties exist for witnesses. The only ever opportunity to have such witness rights secured was thrown out by the High Court for fear of slipping back into the den of no protections or guarantees for fair trial, public trial rights and press freedom.¹¹⁰ Thus it is suggested that any decision-maker confronted with competing interests of interpreting witness protective measures against fair trial rights of an accused person should take a balanced approach. This balanced approach will secure the safety of the witnesses and also take into account the right to fair trial. Even in anonymous testimony, the accused person or his counsel should be a zealous advocate for his or her client and still be able to cross-examine the anonymous witness. The ambit for fair trial right litigation has the potential of extending to redacted disclosures to the defence.¹¹¹ Incomplete disclosures¹¹² for purposes of preserving security and privacy of witnesses has been held to be an issue touching on the constitution in Malawi.¹¹³ Thus it is suggested that in trying to established the proposed witness protection system, there is need to consider and find a balancing act on the interplay and relationship between right to privacy, right to fair trial and right to information. It is further suggested that decision-makers should be able to determine for the sake of human good whether such redacted disclosures do impede on the accused person's efforts towards

¹⁰⁷ Child is in a different room and only prosecutor, defence lawyers and magistrate are in the room when such child is testifying. The child can be accompanied by a relative or support service. The accused person will usually be in the other room only hearing the testimony of the child without seeing such child.; see *JNN –v- The Republic*, MSCA Criminal Appeal No. 11 of 2008 (Malawi Supreme Court of Appeal), http://www.internationalresourcecentre.org/en_X2/Nwangwu_v._Republic.pdf, accessed on 02 March 2015

¹⁰⁸ Section 42 (2)(f) of the Constitution of Malawi

¹⁰⁹ B,P, Wanda, 'The Rights of Detained and Accused Persons in Post-Banda Malawi' (1996) 40(2) *Journal of African Law*, 221-233

¹¹⁰ *The Republic –v- Right Hon. Dr. Cassim Chilumpha, SC & Yussuf Matumula*, Criminal Case No. 13 of 2006, (High Court) (25th January, 2008), per Nyirenda, J., <http://www.malawilii.org/files/mw/judgment/high-court/2008/6/6.pdf>, accessed on 02 March 2015

¹¹¹ N, Demleitner, *Op. Cit*, 645

¹¹² In form of all evidence and *precis* of witness statements

¹¹³ *Right Hon. Dr. Cassim Chilumpha, SC & Yussuf Matumula –v- The Director of Public Prosecutions*, Criminal Case No. 13 of 2006, (High Court) (30th May, 2008), per Chief Justice Munlo, <http://www.malawilii.org/mw/judgment/high-court/2008/102> (last accessed on 02/03/2015)

investigating the creditworthiness of state witnesses and the right of an accused person to know the identity of his accusers. Thus it will be the duty of the trial court to exercise discretion on sufficient evidentiary basis as to such redacted disclosures.¹¹⁴ The judge becomes the unbiased umpire between the defence and the prosecution.¹¹⁵

Non-procedural measures are also likely to face numerous challenges. Possible misunderstanding as regards promises by prosecutors and law enforcement officers to those being admitted into the protection system. Thus decision-makers within the proposed system should be able to make it clear on a memorandum of understanding (MOU) as to the terms of the protection system. The only worrying thing will be whether on litigation emanating from such an MOU, the courts can have subject matter jurisdiction. It is suggested that the constitution of Malawi accords the High Court for the Republic unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law.¹¹⁶ Therefore, the High Court should be able to adjudicate over the shortfalls of the system as its sole purpose is to ameliorate the welfare of witnesses. Thus all official acts by officers operating the system should be immunized unless there such officers acted on the frolic of their own or deviation from guidelines that are set to protect and better the life of a threatened witness. As regards penitentiary or prison circumstances, it is posited that the law should always serve as a protective means for policy and decision-making. Convicted persons who have fully cooperated with the prosecution, provided their testimony and are in need of protection should be accorded safety processes and mechanisms while serving their prison sentence. This is a human good that a modernised criminal justice system should strive to embrace. It is therefore recommended that participants in law reform and amendments of the Prisons Act should consider this human good and accord dignity to these convicted persons. Non-procedural protective measures should mirror legal and policy formulation that will not only align them to the dictates of the constitution,¹¹⁷ but also applicable international law,

¹¹⁴*Dr. Cassim Chilumpha and Yusuf Matumula –v- Attorney General*, MSCA Constitutional Appeal Number 10 of 2009, (Malawi Supreme Court of Appeal), where the Court upholding the High Court decision held that disclosure of photographs of alleged assassin witnesses as requested by the defence was within the sole discretion of the trial court based on evidence and justification of the need

¹¹⁵P, Darbyshire, 'Criminal Procedure in England and Wales' in R, Vogler, ,&B, Huber,(Eds.) *Criminal Procedure in Europe*, (Max Planck Institute, Duncker & Humbolt, 2008),60

¹¹⁶ Section 108(1) of the Constitution of Malawi

¹¹⁷ The Malawi Constitutional Court has recognised the right to human dignity of those incarcerated as comprising *inter alia*, Sufficient and healthy diet including breakfast, sufficient clothing and accessories, sufficient cell equipment for purposes of sleeping, sufficient space in cells, visitation rights, human treatment,

principles of administration, governance and modern management of prisons and prisoners. Prison services should be able to process decision-making in a way that recognises the prisoners' special circumstances. Notwithstanding, resource constraints or limitations for a developing country such as Malawi, factor processes should postulate the following: (a) specialised and secure prison section with specialised guards and surveillance for the convicted witnesses; (b) for the sake of psycho-social well-being, protective segregation should only take place in least restrictive setting¹¹⁸ where such convicted witness should be able to mingle with fellow protected convicts; (c) upon witness agreement to testify, government agency¹¹⁹ should enter into negotiations with prison authorities for purposes of implementing non-procedural protective measures; (d) guards should be trained according to international standards and selected with consultations of the responsible protection agency; (e) no inter or intra prison guard changes and transfers should be made without consultation the responsible protection agency; (f) responsible protection agency must maintain direct and regular context with the guards; (g) responsible protection agency must regularly visit the witnesses;¹²⁰ (h) Responsible protection agency should monitor any visits to such witnesses.

Malawi should anticipate rectification of skills that are in short supply such as enough psychologists to run the system and properly trained law enforcement officers. By moving towards a modernised criminal justice system, it is only right and proper that such skills should be in abundance. A system cannot run if psychologists who are supposedly entrusted with the health and well-being of the witnesses are in shortfall.¹²¹ Further, lack of skills for those running the system can at times lead to breaches of witness security. Thus it is suggested that for a properly coordinated system to run and protect witnesses, decision-makers should be able to appreciate the need for refresher trainings so as to keep the officers operating the system with up to date skills as regards operational mechanisms for protecting witnesses and early detection with witness intimidation. It is posited that rectitude and respect among the protected witnesses and its officers can only thrive and advance the cherished

right to communication and access to medical care; see also *Gable Masangano (suing on his own behalf and of all prisoners in Malawi) –v- The Attorney General & Minister of Home Affairs and Internal Security & Commissioner for Prisons*, High Court of Malawi, Constitutional Case No. 15 of 2007 (Unreported), <http://www.malawilii.org/mw/judgment/high-court-general-division/2009/31> (last accessed on 07/07/2015)

¹¹⁸ Schlanger, *Op. Cit*, 1421

¹¹⁹ Directorate of Public Prosecutions (DPP) and Anti-Corruption Bureau (ACB) or a specialised Witness Protection Agency

¹²⁰ It is up to the protection agency to consider how many times this should be done

¹²¹ Koedam, *Op. Cit*, 361-368

goals of Malawi's criminal justice system if integrity is kept intact. Thus late and ineffectual new documentation for protected witnesses, inadequate employment¹²² assistance, inadequate financing or allowances, insensitivity to witness trauma and other psych-social glitches, proper complaint filing procedures within the system, misconduct¹²³ by protected witnesses while in the system, should be avoided at all cost. The architects of the system should be able to devise a mechanism that allows for the smooth running of the protective measures. This is the only way protected witnesses can remain confident and cherish their dignity.

4.0 CONCLUSION

It is proposed that the discussed challenges should be viewed as an ongoing concern for the proposed witness protection system involving innovative techniques that will continuously aim at achieving a workable system. Growing menace to intimidation and witness safety cannot be tolerated.¹²⁴ Modernising criminal justice system by establishing witness protection programs has been one way of ridding such menaces¹²⁵ with the option of relocating witnesses with crucial evidence involving serious and organised crime who are facing danger from the accused and their associates.¹²⁶ With the rise in serious and organised crime mainly involving corruption in Malawi, there is need to seriously consider witness protective measures. There may be need to establish a unit that would run the system with well-structured and strategic gate-keepers as decision-makers guaranteeing tactical¹²⁷ roles on admission, relocation, housing and psycho-social welfare.¹²⁸ Such protected witnesses will have to make an informed decision by signing an MOU confirming cooperation and setting out assistance expected. Thus policy and decision-making on financial costs will likely have a huge bearing on the witness and his or her family responsibilities, witness standard of living, changing nature of threats and how quickly they settle in new communities.¹²⁹ Relocation will possibly

¹²² It is trite that many criminals involved in serious or organised crime lack legitimate job skills. Further, considering how small and crammed-up Malawi economy is, highly skilled, highly educated or formerly highly salaried persons or those in responsible positions are likely to find it difficult to get alternative proper jobs

¹²³ Witnesses who misbehave or commit crimes while on the protection system should be thrown out. The decision-makers should be able to make decisions regarding enforcement of child custody, alimony, debt. It is their duty to protect the community from those within the system.

¹²⁴ I, Greig, 'The Growing Menace of Witness Intimidation: Terrorist Intimidation and threats to witnesses', (1994) 4(4) *Journal of International Security*, 153-158

¹²⁵ N, Fyfe, & H, McKay, *Op. Cit.*, 79; N, Fyfe, & McKay., *Op. Cit.*, 284

¹²⁶ N, Fyfe, & H, McKay, 'Police Protection of Intimidated Witnesses: A Study of the Strathclyde Police Witness Protection Programme', (2000) 10(3) *Policing and Society: An International Journal of Research and Policy*, 280-283

¹²⁷ Objectively verified threat assessment

¹²⁸ Fyfe & McKay, *Op. Cit.*, 283-284

¹²⁹ N, Fyfe, & J, Sheptycki, 'International Trends in the Facilitation of Witness Co-operation in Organised Crime Cases', (2006) 3(3) *European Journal of Criminology*, 331

leave witnesses apprehensive.¹³⁰ Sufficient numbers with proper skills will psychologically help ease the tension. Thus witnesses should be accorded the dignity and consistent protection that involves accountability measures through reports. Being an adversarial system,¹³¹ it is only logical for due regard to the accused person's rights¹³² through cross-examination be allowable.¹³³ For the system to be a success, there should be proper mechanisms for accountability of resources and operations as regards the system.¹³⁴ These reports should include relocations of protected witnesses as a critical point to the system.¹³⁵ Foreign citizens¹³⁶ and large families though a costly effort have to be included within the system. Efforts need to be made to ensure that the system is not marred with criminal recidivism¹³⁷ from previously career criminals.¹³⁸ From the above discussion, it is concluded that modernising Malawi's criminal justice system by incorporating witness protection system will immensely advance the fight against serious and organised crime in the country. Appropriate measures need to be taken to protect the safety, physical and psychological well-being, dignity and privacy of witnesses through security arrangements, counselling and assistance. This is one of the core symbols that should define a modernised criminal justice system. The pertinent social context Malawi should bear in mind decision process¹³⁹ that is aimed at goal clarification of fighting serious and organised crime, trend description of the country has previously grappled with serious and organised crime, examining conditions in which such fights have been operationalised, projection of future developments and policy alternatives designed to maximize the goal values of the nation. It is thus summed up that establishing witness protection system will go a long way in contributing to the fight.

¹³⁰N, Fyfe, & J, Sheptychi, 'Facilitating Witness Co-operation in Organised Crime Cases: An International Review', Home Office Online Report 27/05, (2005),. 27, <http://tna.europarchive.org/20100413151441/http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr2705.pdf>, accessed on 18 April 2014

¹³¹F, Nargorcka, *et.al*, 'Stranded Between Partisanship and the Truth—A Comparative Analysis of Legal Ethics in the Adversarial and Inquisitorial Systems of Justice', (2005) 29 Melbourne University Law Review, 449

¹³²C.A, Adams, 'White-Collar Crime: Fourth Survey of Law, Substantive Crimes, Witness Tampering', (1987) 24 American Criminal Law Review, 755–756

¹³³W.H, Jeffress, 'The New Federal Witness Tampering Statute', (1984) 22 American Criminal Law Review, 17

¹³⁴F, Allum, & N, Fyfe, 'Developments in State Witness Protection Programmes: Italian Experience in an International Comparative Perspective', (2008) 2(1) Policing, 98

¹³⁵N, R, Fyfe, *et.al*, 'Witness Intimidation, Forced Migration and Resettlement: A British Case Study', (2000) 25(1) Transactions of the Institute of Geographers, 85–86

¹³⁶T, Abdel-Monem, 'Foreign Nationals in the United States Witness Security Program: A Remedy for Every Wrong?', (2003) 40 American Criminal Law Review, 1250–1255

¹³⁷P, J, P, Tak, 'Deals with Criminals: Supergrasses, Crown Witnesses and *Pentiti*,' (1997) 5(1) European Journal of Crime, Criminal Law and Criminal Justice, 18–19

¹³⁸ A, J, Schreiber, 'Dealing With The Devil: An Examination of the FBI's Troubled Relationship With its Confidential Informants', (2000–2001) 34 Columbia Journal of Law and Social Problems, 321–337

¹³⁹M, McDougal, & H, Lasswell, 'Jurisprudence in Policy-Oriented Perspective', (1966–1967) 19 University of Florida Law Review, 486

Notes on Contributors

Steven Kayuni is currently a Doctoral Researcher (DPhil) (University of Sussex). He holds an LLB (Hons) (University of Malawi), and an LLM (University of Sussex). He is also a Commonwealth PhD Scholar, International Fellow of the National Attorneys General Training and Research Institute – NAGTRI (Washington DC), Senior Assistant Chief State Advocate (Ministry of Justice and Constitutional Affairs, Malawi). The interpretations and conclusions in this article are entirely those of the author. They do not necessarily represent the views of the Malawi’s Ministry of Justice, Attorney General or the institutions the office represents.

Edister S. Jamu is currently Postgraduate Researcher (PhD) (University of Leeds). He holds a Bachelor of Social Science (University of Malawi), MSc in (Psychology) (University of Western Australia) and Graduate Diploma (Psychology) (University of Western Australia). He is also a Commonwealth PhD Scholar and Lecturer in the Department of Psychology at Chancellor College, a constituent college of the University of Malawi. The interpretations and conclusions in this article are entirely those of the co-author. They do not necessarily represent the views of the Department of Psychology, University of Malawi.