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## **Protection of Victim-Witnesses of Human Rights Violations in Criminal Prosecutions in Nigeria**

**By**

**Suzzie Onyeka Oyakhire\***

### **Abstract**

*The protection of victims of crime and witnesses in criminal trials from intimidation is gradually being recognised in Nigeria as a critical aspect of criminal justice administration. Policing activities leave a record of widespread human rights violations committed by law enforcement and security personnel. Attempts to investigate and prosecute these violations are impeded by acts of intimidation or threats of reprisals against the victim who testifies as a witness in criminal proceedings against the perpetrators. This expository paper brings to the fore the importance of interrogating the issues of protection for victim-witnesses participating in criminal proceedings and ensuring accountability for the human rights violations of state actors in Nigeria. The paper concludes that there is hardly any information about the practice of witness protection in prosecutions involving human rights violations in Nigeria. It proposes a system to facilitate the protection of victim-witnesses testifying against perpetrators of human rights violations.*

### **1. Introduction**

The year 2020 will go down in history as the year the world faced a global pandemic from the coronavirus disease or Covid-19.<sup>1</sup> In the wake of the pandemic, a lot of shortcomings within the political, social, economic, health, environmental and legal systems in several societies were exposed.<sup>2</sup> Life as we once knew it changed drastically. In tackling the pandemic, governments,

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<sup>1</sup> In March 2020, the World Health Organization (WHO) declared COVID-19 as a pandemic. See World Health Organization (“WHO”), News Release, “WHO Timeline-COVID-19” (27 April 2020), online: <<https://www.who.int/news/item/27-04-2020-who-timeline---covid-19>>.

<sup>2</sup> Ngozika Anthonia Obi-Ani et al, “Covid-19 pandemic and The Nigerian primary healthcare system: The leadership question” (2021) 8:1 *Cogent Arts & Humanities* 1. See also, WHO, News Release, “Impact of COVID-19 on people’s livelihoods, their health and our food systems- Joint Statement by ILO, FAO, IFAD and WHO” (13 October 2020), online: <<https://www.who.int/news/item/13-10-2020-impact-of-covid-19-on-people’s-livelihoods-their-health-and-our-food-systems>>. See also Sanni Yaya, Akaninyene Otu & Ronald Labonte, “Globalisation in the

corporations, and individuals confronted the lingering effects of the virus on their everyday existence. Given the urgency of tackling the pandemic, several countries adopted measures to control the spread of the virus within their territories. The most common measures taken were the lockdowns and stay-at-home directives by various governments to their citizens.

Things were not much different in Nigeria. The federal and several state governments made regulations pursuant to the Quarantine Act<sup>3</sup> which included stay-at-home and social distancing directives limiting the number of individuals at social events to a specified number of people.<sup>4</sup> Security personnel comprising a task force of the Police Force, Armed Forces and the Nigeria Security and Civil Defence Corps (NSCDC) were authorised to enforce the lockdown and stay-at-home directives as part of their statutory duties to preserve law and order in Nigeria. There is an expectation that these duties are exercised within the confines of the rule of law. However, reports of human rights violations by the task force, leading to unlawful detentions, infliction of physical violence and, in extreme instances, extrajudicial killings of people suspected to be in breach of the pandemic directives, were made.<sup>5</sup>

The reported incidences of human rights violations by the security personnel generated legal and political debates among commentators about the implications of the lockdown directives by the government or their effects on the fundamental human rights of Nigerians.<sup>6</sup>

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time of COVID-19: repositioning Africa to meet the immediate and remote challenge” (2020) 16:51 Global Health, online: <<https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-020-00581-4#citeas>>.

<sup>3</sup> *Quarantine Act*, [Nigeria], Laws of the Federation of Nigeria 2004.

<sup>4</sup> See, for example, section 8 (1) of the *Edo State Infectious Disease (Emergency Prevention) Regulations 2020*.

<sup>5</sup> See, for example, Richard A. Aborisade, “Accounts of Unlawful Use of Force and Misconduct of the Nigerian Police in the Enforcement of COVID-19 Measures” (2021) 36 *J of Police & Crim Psychology* 450, online: <<https://link.springer.com/content/pdf/10.1007/s11896-021-09431-4.pdf>>. See also, “Coronavirus: Security forces kill more Nigerians than Covid-19”, *BBC News* (16 April 2020), online: <<https://www.bbc.com/news/world-africa-52317196>>.

<sup>6</sup> National Human Rights Commission, News Release, “National Human Rights Commission Press Release on COVID-19 Enforcement So Far Report on Incidents of Violation of Human Rights” (15 April 2020), online: <<https://www.nigeriarights.gov.ng/nhrc-media/press-release/100-national-human-rights-commission-press-release-on-covid-19-enforcement-so-far-report-on-incidents-of-violation-of-human-rights.html>>. See also “Article 19- Joint

While some legal issues and direct results of the human rights violations reported are obvious, the events present an opportunity for criminal justice reformers to reflect on the indirect consequences of the human rights violations. For example, although there have been assurances by the appropriate authorities to hold the erring security personnel accountable for their misconducts,<sup>7</sup> there is an underlying concern for the protection of individuals providing information about human rights violations.

Generally, witnesses are reluctant to cooperate with law enforcement agencies because of acts of intimidation and threats of reprisals against them by the offenders they testify against or their associates.<sup>8</sup> It is more problematic where the source of intimidation is a police officer or his colleagues who ordinarily have the primary responsibility to investigate crime. The problem of police brutality and human rights violations by law enforcement and security personnel in Nigeria is not peculiar to the enforcement of Covid-19 regulations because there have been reported incidences over the years.<sup>9</sup> Nonetheless, the pandemic provides an opportunity to review a wide

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Statement”, *Article 19* (01 May 2020), online: <<https://www.article19.org/resources/nigeria-covid-19-response-should-not-be-used-to-violate-the-right-to-life-and-intimidate-journalists/>>. See also, “World Report 2021: Nigeria”, *Human Right Watch*, online: <<https://www.hrw.org/world-report/2021/country-chapters/nigeria>>.

<sup>7</sup> Haleem Olatunji, “#EndSARS: Sanwo-Olu inaugurates judicial panel to probe cases of police brutality”, *The Cable* (15 October 2020), online: <<https://www.thecable.ng/endsars-sanwo-olu-inaugurates-judicial-panel-to-probe-cases-of-police-brutality>>. See also, Ifeoluwa Adediran “#EndSARS: Panel awards N16 million to four victims”, *Premium Times* (27 March 2021), online: <<https://www.premiumtimesng.com/news/top-news/451628-endsars-panel-awards-n16-million-to-four-victims.html>>.

<sup>8</sup> The issue of witness intimidation is extensively discussed in Nicholas R Fyfe & Heather McKay, “Desperately seeking safety- witnesses’ experience of intimidation, protection and relocation” (2000) 40 *Brit. J. of Criminology* 675; Teresa M. Garvey, “Witness Intimidation: Meeting the Challenge” (2013) *Aequitas: The Prosecutors’ Resource on Violence Against Women*, online: (pdf) <<https://mn.gov/law-library-stat/archive/urlarchive/a170543.pdf>>. See also, Anne-Marie de Brouwer, “The Problem of Witness Interference before International Criminal Tribunals” (2015) 15:4 *Int’l Crim L Rev* 700.

<sup>9</sup> There are several reports in Nigeria highlighting different incidents of human rights abuses by the police in Nigeria over the years. See, “Nigeria: Crackdown on Police Brutality Protests”, *Human Rights Watch* (16 October 2020), online: <<https://www.hrw.org/news/2020/10/16/nigeria-crackdown-police-brutality-protests>>; Amnesty International, “Nigeria: Security Forces: Serving to protect and respect human rights?” (2002) AI Index: AFR 44/023/2002, online: <<https://www.refworld.org/pdfid/3f15241e4.pdf>>. See also Owolola Adebola, “1000 Nigerians killed recklessly by Police in 10 years-Investigation”, *The Point* (6 January 2017), online: <<https://www.thepointng.com/1000-nigerians-killed-recklessly-by-police-in-10-years-investigation/>>; John Emerson, “Everyone’s in on the Game”-Corruption and Human Rights Abuses by the Nigeria Police Force”, *Human*

range of legal issues such as witness protection concerns from acts of intimidation arising from law enforcement and its implication on criminal justice administration in Nigeria.

This paper examines the utility of witness protection in investigations and prosecutions for human rights violations committed by police officers in Nigeria. It highlights the conceptual issues underlying witness protection practices within the context of prosecutions for human rights violations. In developing the analysis, the paper answers the following questions: is there an international legal framework for protecting victim-witnesses<sup>10</sup> of human rights violations; is there a statutory basis for protecting victims-witnesses of human rights violations in Nigeria; if there is none, under what circumstances can a legal framework of witness protection for human rights violations be developed in Nigeria?

## **2. The Importance of Witness Protection and its Significance in Nigeria**

Adversarial justice systems such as Nigeria's, require that in criminal prosecutions, the guilt of an accused person be proved beyond reasonable doubt.<sup>11</sup> This entails providing all the facts and evidence, including the oral testimonies of witnesses to prove that an accused person committed the crime under consideration. A witness is defined as any person "who sees, knows, or vouches for something; one who gives testimony under oath or affirmation in person, by oral or written deposition or by affidavit."<sup>12</sup> Witnesses could be either simple observers of a crime or the

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*Rights Watch* (17 August 2010), online: <<https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force>>.

<sup>10</sup> In this paper, the word 'victim-witnesses' connotes the victim of a crime who is also participating as a witness in a criminal proceeding. The legal issues raised, and recommendations made in this paper can apply to other categories of 'witnesses' such as bystanders and eyewitnesses participating in criminal prosecutions against perpetrators of human rights violations. The paper however emphasizes that for human rights violations, the primary witnesses are victims of the crime.

<sup>11</sup> *Evidence Act*, vol.98, 2011 [Nigeria], Government Notice No.162, s. 135.

<sup>12</sup> *Black's Law Dictionary*, 9th ed, *sub verbo* "witness".

victims of the crime.<sup>13</sup> Their role as victims<sup>14</sup> is particularly essential in court proceedings involving human rights violations and inquiries about killings, torture and other forms of violence whether committed by private individuals or state officials.<sup>15</sup> This is because in this instance, the victims are also the primary witnesses to the wrongdoing in question.<sup>16</sup>

In Nigeria, the reports provided by victims and witnesses about crime are the main source of information for the police and are the basis for subsequent actions of the criminal justice system.<sup>17</sup> Victim-witnesses are, however, at times reluctant to report crimes or testify in criminal prosecutions because they fear possible reprisal attacks from the perpetrators. Often, victim-witnesses, especially those whose identities are known, become exposed and vulnerable to intimidation, threats of reprisals or actual harm, to stop them from cooperating with law enforcement agencies.<sup>18</sup> Dedel notes that the aim of intimidation is to discourage witnesses

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<sup>13</sup> United Nations Office on Drugs and Crime, “Tool 5:17-Law Enforcement and Prosecution” in *Toolkit to Combat Trafficking in Persons* (New York: United Nations, 2008) 245 at 247, online(pdf): [http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_5-17.pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_5-17.pdf).

<sup>14</sup> A victim is defined as any person who individually or collectively suffered harm including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights. See *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, 96th plenary meeting, (November 1985) at article 1, online: <https://www.ohchr.org/en/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>. [hereafter “the Declaration of Basic Principles”]

<sup>15</sup> Office of the High Commissioner for Human Rights and The International Bar Association, “Chapter 15- Protection and Redress for Victims of Crime and Human Rights Violations” in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* 749 at 799, online (pdf): <https://www.un.org/ruleoflaw/files/training9chapter15en.pdf>.

<sup>16</sup> Literature on witness protection broadly recognises different categories of persons who can be protected from intimidation. These are victims, informants, whistle-blowers, eyewitnesses as bystanders/observers of a crime and justice collaborators. The word victim-witnesses connotes instances where the victims of crime participate in criminal prosecutions and testify as witnesses in a criminal proceeding in court. Oyakhire provides an in-depth analysis of these categories of protected persons and the circumstances necessitating their protection. See, Suzzie Onyeka Oyakhire, “Developing a Legal and Institutional Framework for Witness Protection in Nigeria: Reflections from International Perspectives” (2020) University of Cape Town Dissertation online (pdf): [https://open.uct.ac.za/bitstream/handle/11427/32319/thesis\\_law\\_2020\\_oyakhire%20suzzie%20onyeka.pdf?sequence=1&isAllowed=y](https://open.uct.ac.za/bitstream/handle/11427/32319/thesis_law_2020_oyakhire%20suzzie%20onyeka.pdf?sequence=1&isAllowed=y).

<sup>17</sup> Victor Eze, Michael Chika Dikoye & Innocent Idoko, “Investigating the Impact of Crime Reporting on Crime Control in Gwagwalada Area Council Abuja North Central Nigeria” (2019) 1:3 Int’l J of Academic Research in Business, Arts & Science 36 at 38, online: <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=6487&context=libphilprac>.

<sup>18</sup> See generally, Peter Finn & Kerry Murphy Healey, “Preventing gang and drug related witness intimidation” *U.S. Department of Justice- Office of Justice Programmes National Institute of Justice: Issues and Practices* (November

generally from reporting crime to the police or from cooperating with prosecutors.<sup>19</sup> Witness intimidation is therefore, especially considered by criminal justice stakeholders as a challenge to the rule of law and the criminal justice process because it undermines crime control efforts of the state and fosters impunity.<sup>20</sup>

In Nigeria, the problem of witness intimidation is unquestionable and cooperating witnesses believe that they do so at their own risk.<sup>21</sup> They worry that if the perpetrators know that they reported a crime, they could be in danger. Nigerians are therefore unwilling to cooperate with law enforcement agencies.<sup>22</sup> Like in other jurisdictions, the adverse impacts of witness intimidation on effective criminal justice administration has necessitated the need to establish protective measures<sup>23</sup> to guarantee the safety of witnesses in Nigeria, and to minimise the possibility of harm or risks to them for their cooperation with law enforcement.<sup>24</sup> Consequently, witness protection has become a necessary tool to combat impunity arising from the inability to hold criminals accountable for their crimes because of the effects of intimidation, on witnesses.<sup>25</sup>

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1996) at 1 online (pdf): <<https://www.ncjrs.gov/pdffiles/163067.pdf>>. See also, Elsa Y Chen, "Victim and Witness Intimidation" in Helen Taylor Greene & Shaun L. Gabbidon, eds, *Encyclopaedia of Race and Crime* (Thousand Oaks: Sage Publications, 2009) 837.

<sup>19</sup> Kelly Dedel, "The Problem of Witness Intimidation Guide no. 42", *Arizona State University Centre for Problem-Oriented Policing* (2006), online: <<https://popcenter.asu.edu/content/witness-intimidation-0>>.

<sup>20</sup> Finn & Healey *supra* note 18.

<sup>21</sup> See, for example, Ikechukwu Nnochiri, "Our witnesses are afraid to testify against Nyako, son EFCC tells court" *Vanguard* (13 July 2015), online: <<http://www.vanguardngr.com/2015/07/our-witnesses-are-afraid-to-testify-against-nyako-son-efcc-tells-court/>>.

<sup>22</sup> See "Country Survey," online: <<http://www.afrobarometer-online-analysis.com/aj/AJBrowserAB.jsp>>

<sup>23</sup> For an in-depth discussion on the importance of witness protection, see United Nations Office on Drugs and Crime, *Good practices for the protection of witnesses in criminal proceedings involving organised crime* (New York: United Nations, 2008), online (pdf): <<http://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>>.

<sup>24</sup> Finn & Healey, *supra* note 18.

<sup>25</sup> United Nations Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, 12th sess, UN Doc A/HRC/12/19, August 2009 at para 67, online: <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-19.pdf>>.

The protection of witnesses is an emerging area of law and practice in Nigeria. Recent developments in criminal justice administration have brought witness protection concerns to the fore.<sup>26</sup> Over the years, Nigeria's criminal justice administration has been confronted with witness intimidation. At various times, the country included witness protection provisions in some laws to provide a statutory basis for protecting witnesses.<sup>27</sup> These laws provide protective measures for crimes such as terrorism, economic and financial crimes, human trafficking, and sexual offences. Oyakhire notes that the practice of witness protection in Nigeria is evolving within the limited scope of investigations and prosecutions involving economic and financial crimes and terrorism cases.<sup>28</sup> This is because judicial decisions favour the practice of witness protection within the scope of terrorism<sup>29</sup> and economic and financial crimes.<sup>30</sup> Accordingly, because of the significant dependence on witness testimonies in prosecuting those kinds of crimes and the level of intimidation arising therefrom, protective measures have been adopted to facilitate witness cooperation in Nigeria.

Over the years, reports<sup>31</sup> by human rights advocacy groups have documented the long history of human rights violations by security personnel, particularly the police, including arbitrary arrests, unlawful detentions, physical and sexual violence, torture, and extrajudicial

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<sup>26</sup> See Oyakhire, *supra* note 16.

<sup>27</sup> *Administration of Criminal Justice Act No. 86*, vol. 102, 2015 [Nigeria], Government Notice No 89, s. 232 (4).

<sup>28</sup> Oyakhire, *supra* note 16.

<sup>29</sup> See, *Federal Republic of Nigeria v Nnamdi Kanu & 3 others* (2016), Federal High Court, Charge No FHC/ABJ/CR/383/2015. The Court made an order for the protection of prosecution witnesses pursuant to section 232 of the ACJA 2015 and section 34 of the *Terrorism (Prevention) (Amendment) Act*, 2013[Nigeria].

<sup>30</sup> See, *FRN v Sambo Dasuki* (2017), Federal High Court Abuja, Charge No FHC/ABJ/CR/319/2015. The Court upheld the protection of witnesses for economic and financial crimes. See also, *Col. Mohammed Sambo Dasuki (RTD) v FRN* (2018), Court of Appeal of Nigeria, **LCN/12392(CA)**.

<sup>31</sup> EASO, "Country of Origin Information Report- Nigeria Country Focus" (June 2017) at 20, online (pdf): *European Asylum Support Office* <<https://www.easo.europa.eu/sites/default/files/publications/EASO-Country-Focus-Nigeria-June2017.pdf>>; United States Department of State, Bureau of Democracy, Human Rights and Labour, "Nigeria 2019 Human Right Report" (2019) at 1-2, online (pdf): <<https://www.state.gov/wp-content/uploads/2020/02/NIGERIA-2019-HUMAN-RIGHTS-REPORT.pdf>>.



killings. There is evidence to show that these human rights violations in Nigeria are routine and widespread.<sup>32</sup> Unfortunately, most of these violations are rarely reported to the appropriate authorities, and when they are reported, they are rarely investigated or prosecuted.<sup>33</sup> According to the reports, victims of police abuse often cite intimidation or fear of further victimization as a reason for not reporting those abuses.<sup>34</sup>

The witnesses in these cases are usually the direct victims of the human rights violations. Knowledge about the facts of the violations makes them prone to intimidation and the victim's life or those of their family members are threatened.<sup>35</sup> The failure or unwillingness to hold erring police officers accountable for their actions has encouraged impunity among them. This has been identified as “one of the biggest single obstacles to the reduction of torture and other serious abuses by police in Nigeria.”<sup>36</sup> It appears that the practice of witness protection in prosecutions involving human rights violations by security personnel in Nigeria is non-existent or at least not apparent within the literature.

Historically, witness intimidation and witness protection concerns are associated with terrorism and organised crime prosecutions.<sup>37</sup> However, emerging jurisprudence demonstrates

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<sup>32</sup> Human Rights Watch, News release, “Rest in Pieces: Police Torture and Deaths in Custody in Nigeria” (27 July 2005), online: <<https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria>>. See also, Ndubuisi J Madubuike-Ekwe & Olumide K. Obayemi, “Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria” (2019) 23:1 Annual Survey of Int’l & Comparative L 19 at 29-30.

<sup>33</sup> Emerson, *supra* note 9.

<sup>34</sup> *Ibid.*

<sup>35</sup> United Nations Human Rights Office of the High Commissioner, *The Protection of Victims and Witnesses: A Compilation of Conference Reports and Consultations in Uganda* (2010) at 30 online (pdf): <<http://www.uganda.ohchr.org/Content/publications/WitnessAndVictimProtectionInUganda.pdf>>.

<sup>36</sup> “Rest in Pieces”, *supra* note 32.

<sup>37</sup> Council of Europe, PA, 2015 Ordinary Sess (First Part), *Witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe*, Committee of Ministers Reply to Recommendation 2063, Doc. 13647 at para 1 & 2, online: <<https://pace.coe.int/pdf/ed039179f2e334c7c97d4bcb33d50504bd45feac1267c7e5038001c1f8b6da54/doc.%2013848.pdf>>. See also Yorik van Lent, “Legal Regulation of Witness Protection in the European Union” (2018) 21 Public Security and Public Order 139 at 142, online: <<https://ojs.mruni.eu/ojs/vsvt/article/download/5494/4721>>.

the relevance of witness protection in prosecutions for human rights violations, especially where the perpetrators are state actors.<sup>38</sup> The subsequent discussions in this paper highlight the circumstances that could necessitate witness protection within this context.

### **3. Conceptual Clarifications Underlying Witness Protection for Human Rights Violations**

This section highlights the nature of witness protection within the context of human rights violations. What type of crimes or threats are evident in human rights violations, necessitating the protection of victims participating in criminal prosecutions as witnesses? This section attempts to answer this question by examining the conceptual claims underlying the arguments made in this paper.

#### **a. *A Different Type of Crime***

As indicated earlier,<sup>39</sup> historically, witness protection is associated with crimes such as terrorism and organised crime. However, the instances necessitating protection are of a different nature where human rights violations are involved. Within the international human rights and international humanitarian law jurisprudence, terms such as gross violations of human rights or serious violations of international humanitarian law are common. A handbook by the International Commission of Jurists describes these types of human rights abuse as “violations that affect in qualitative and quantitative terms, the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person.”<sup>40</sup>

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<sup>38</sup> HRC 12<sup>th</sup> Session *supra* note 25 at para 19.

<sup>39</sup> *Supra* note 37,

<sup>40</sup> International Commission of Jurists, “The Right to a Remedy and Reparation for Gross Human Rights Violations- A Practitioners’ Guide No 2 Revised Edition” (22 November 2018), online (pdf): *International Commission of Jurists* <<https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>>.

Human rights violations occur under both conflict and non-conflict conditions. They are however especially egregious in transitional situations such as when a country is recovering from internal strife, war etc. As Mendez and Bariffi explain, human rights violations in transitional justice systems “presupposes the existence of massive or systematic human rights violations taking the form of the most abhorrent international criminal offences...”<sup>41</sup> They are likely to occur in post-conflict situations marked by the end of political violence or the cessation of hostilities and include torture, forced disappearances or crimes against humanity.<sup>42</sup>

In Nigeria, although the human rights violations which occur in the everyday policing and law enforcement by police officers are not in the magnitude envisaged in transitional justice situations, still, the violations recorded are widespread, and contravene the rights recognised and protected under international human rights instruments and the Nigerian Constitution.<sup>43</sup> These include extrajudicial killings, torture, arbitrary executions, forced disappearances, murder, arbitrary arrest and inhuman treatment in police stations throughout the country.<sup>44</sup> The United Nations Human Rights Committee considers the recurrence of these human rights violations and abuse of power by the police in Nigeria as a problem of impunity.<sup>45</sup>

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<sup>41</sup> Juan E Mendez & Francisco J Bariffi, “Truth, Right to, International Protection” (2012) online(pdf): *Max Planck Encyclopedia of Public International Law* <<http://www.corteidh.or.cr/tablas/r17382.pdf>>.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Constitution of the Federal Republic of Nigeria (CFRN) 1999*, as amended, C 23, [Nigeria] Laws of the Federation of Nigeria 2004. Sections 33, 34, 35 guarantee the right to life, the respect for dignity of the person and the right not to be subjected to torture, inhuman and degrading treatment, and punishment, respectively.

<sup>44</sup> Amnesty International Nigeria Security Forces *supra* note 9. See also, Network on Police Reform in Nigeria, *Criminal Force-Torture, Abuse and Extrajudicial Killings by the Nigeria Police Force* (New York: Open Society Institute, 2010), online: (pdf) <<https://www.justiceinitiative.org/uploads/8063279c-2fe8-48d4-8a17-54be8ee90c9d/criminal-force-20100519.pdf>> [“NOPRIN”]; See also, Adebola *supra* note 5.

<sup>45</sup> United Nations See Human Rights Committee, *General Comment No. 31 on the Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, 18th sess, UN Doc CCPR/C/21/Rev.1/Add.13, May 2004 at para 18, online: <<https://www.refworld.org/docid/478b26ae2.html>>.

Witnesses of human rights violations are mainly victims of the crimes to which they testify, rather than co-perpetrators or former associates of the accused perpetrators<sup>46</sup> as is usually the practice for conventional crimes. Witness protection concerns for victims of human rights violations testifying as witnesses, have commonly emerged in prosecutions instituted in international tribunals such as the International Criminal Court or ad hoc tribunals set up in specific circumstances.<sup>47</sup> However, the United Nations Office on Drugs and Crimes (UNODC) acknowledges that witness protection for human rights violations is not exclusive to transitional justice systems. It observes that it is the responsibility of States to ensure that victim-witnesses and other categories of witnesses cooperating with the State in prosecutions of human rights violations are protected in order to prevent impunity.<sup>48</sup>

**b. *A Different Kind of Threat and a Different Type of Perpetrator***

Although witness intimidation occurs in numerous contexts and in several forms,<sup>49</sup> the propensity to intimidate increases where the offender can exercise power or influence over a witness.<sup>50</sup> Unlike conventional crimes such as terrorism or organised crime, committed by people in their private capacity; whether as individuals or organised criminal groups, the victims of abuse of power and human rights violations come up against perpetrators who are often state

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<sup>46</sup> *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Report of the United Nations High Commissioner for Human Rights on the Right to the truth*, United Nations Human Rights Council, 15th sess, UN Doc A/HRC/15/33, July 2010 at 19, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/151/73/pdf/G1015173.pdf?OpenElement>>; *Extrajudicial, summary or arbitrary executions- Note by the Secretary General*, United Nations General Assembly, 61st sess, UN Doc A/63/31, August 2008 at para 12, online: <<http://www.unhcr.org/refworld/docid/45c30c0c0.html>>.

<sup>47</sup> See *Situation in the Republic of Burundi*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi” 25 October 2017, ICJ Pre-Trial Chamber III, online: <[https://www.icc-cpi.int/CourtRecords/CR2017\\_06720.PDF](https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF)>.

<sup>48</sup> UNODC, *Handbook on Police accountability, oversight and integrity-Criminal Justice Handbook Series* (New York: United Nations, 2011) at 42, online: (pdf) <[https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_police\\_Accountability\\_Oversight\\_and\\_Integrity.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf)>.

<sup>49</sup> Michael H Graham, “Witness Intimidation” (1984) 12:2 Florida State U L Rev 239 at 242.

<sup>50</sup> Garvey *supra* note 8.

agents or individuals working in acquiescence with the state. Such perpetrators normally wield power to prevent any course of justice that may implicate them through acts of intimidation.<sup>51</sup> These include police officers and other law enforcement officials who are expected to protect the rights of the individuals rather than violate them. For this reason, it is usually difficult to gather evidence against the perpetrators. This is attributed to *esprit de corps* among police officers who cover up the violence perpetrated by their colleagues by obstructing justice.<sup>52</sup>

As it stands, all complaints of police misconduct, including human rights abuse by police officers, are referred to the police force for investigation as the primary investigative authority in Nigeria.<sup>53</sup> Where a victim of human rights violation seeks accountability, a report by the Network on Police Reform in Nigeria (NOPRIN) reveals that “police management routinely subverts such efforts by transferring the responsible officers to other parts of the country; destroying evidence, including the bodies of victims of extrajudicial killings; and tolerating intimidation and violence directed at complainants or witnesses.”<sup>54</sup> The victims who wish to testify as witnesses are intimidated and harassed and the nature of intimidation include threats to kill them, framing them for crimes and charging them with those crimes, harassment by persons believed to be working for the perpetrators, and conniving with judicial officers to throw out the case or outright bribing of the victim’s family to coerce the victim to drop their complaints.<sup>55</sup>

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<sup>51</sup> See also, HRC 15th Sess, *supra* note 46 at 19.

<sup>52</sup> Benjamin Chukwuka Nnadozie, “Public Perceptions of Nigeria Police Monetary Bribery in Awka, Nigeria” (2021), Walden University Doctoral Dissertation at 14, online: <<https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=11433&context=dissertations>>. See also, Victor Aniekan Usoh, *Course Guide: Policing and Law Enforcement in Nigeria* (National Open University of Nigeria: Abuja, 2012) at 79, 192, online (pdf): <<https://nou.edu.ng/sites/default/files/2017-03/CSS%20341.pdf>>.

<sup>53</sup> “Rest in Pieces”, *supra* note 32.

<sup>54</sup> NOPRIN, *supra* note 44.

<sup>55</sup> “Rest in Pieces”, *supra* note 32.

The police officers as perpetrators of human rights abuses are powerful offenders with the resources to obstruct the criminal justice process.<sup>56</sup> With the power to investigate crime, the police officers can frame their victims for any crime, leading to their unwillingness testify against police officers. Accordingly, in the absence of witness testimony, there are hardly prosecutions. This leads to reduced confidence in the police and the rule of law, and to more human rights violations and worsening impunity.<sup>57</sup> Witness protection, including measures to ensure the physical security and psychological wellbeing of the victim-witnesses are important in situations of systemic impunity.<sup>58</sup> The absence of witness protection in this circumstance is an obstacle to the aims of justice.<sup>59</sup>

#### **4. The International Legal Framework for Protecting Victim-Witnesses of Human Rights Violations**

Human rights law recognizes the rights of every human being, and States have an obligation under international law to ensure the enjoyment of these rights within their jurisdiction.<sup>60</sup> There is a duty on States to take necessary steps to ensure the effective enjoyment of human rights by adopting all necessary legislative and other measures to protect those rights.<sup>61</sup> In discharging their statutory function of preserving law and order, there is an obligation on the police as an agency of the state to act within the confines of the rule of law and to respect human rights.

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<sup>56</sup> Simon Hallsworth and John Lea, “Reconstructing Leviathan: Emerging contours of the security state” (2011) 15:2 *Theoretical Criminology* 141 at 147; “Rwanda: Justice after Genocide-20 years on”, *Human Rights Watch* (28 March 2014), online: <<https://www.hrw.org/news/2014/03/28/rwanda-justice-after-genocide-20-years>>.

<sup>57</sup> NOPRIN, *supra* note 44. See also, Daniel Egiegba Agbiboa, “Protectors or Predators? The Embedded Problem of Police Corruption and Deviance in Nigeria” (2013) 47:3 *Administration & Society* 244.

<sup>58</sup> International Commission of Jurists, “Witness Protection in Nepal: Recommendations from International Best Practices” (August 2011), online (pdf): <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Nepal-witness-protection-analysis-brief-2011.pdf>>.

<sup>59</sup> HRC 12<sup>th</sup> Sess, *supra* note 25 para 19.

<sup>60</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR], in accordance with Article 49 & Article 2; OHCHR, *CCPR General Comment No.3: Article 2 (Implementation at the National Level) Adopted at the 13<sup>th</sup> Session of the Human Rights Committee* (29 July 1981) at para 1, online: <<https://www.refworld.org/pdfid/453883fe0.pdf>>.

<sup>61</sup> See Article 2 (2) ICCPR.

Accordingly, article 5 of the UN Code of Conduct for Law Enforcement Officials, provides that “no law enforcement official may inflict, instigate, or tolerate any torture or other cruel, inhuman or degrading treatment or punishment...”<sup>62</sup> in exercising their statutory duties.

Unlike situations involving victims of conventional crimes, international human rights law specifies the responsibility of states in relation to abuse of powers that constitute human rights abuses.<sup>63</sup> Where human rights are violated, victims have a right to effective remedy and reparation.<sup>64</sup> In providing effective remedy and reparation to victims, there is an obligation on states to investigate, prosecute and punish perpetrators of human rights violations.<sup>65</sup> However, it has been established that investigating these acts of violence by the police is difficult considering that gathering evidence to identify the perpetrators is often met with difficulties. As indicated in the previous section, a specific difficulty experienced is the unwillingness of victim-witnesses to testify against the perpetrators because of fear of reprisal, retaliation or actual attack against them or their families by the perpetrators or their associates.

There is no universal international instrument for protecting witnesses of conventional crimes or human rights violations, for testifying in criminal prosecutions. The UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power,<sup>66</sup> requires State parties to take measures to ensure the safety of victims, as well as that of their families from intimidation

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<sup>62</sup> Nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability, or any other public emergency as a justification of torture or cruel, inhuman or degrading treatment or punishment.’ See *Code of Conduct for Law Enforcement Officials*, GA Res34/169, OHCHR (1979), online:

<<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>>.

<sup>63</sup> Chapter 15-Protection and Redress, *supra* note 15 at 773.

<sup>64</sup> See *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 at Article 8; ICCPR, *supra* note 60 at Article 2 (3) (b); *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law*, GA Res 60/147 (2005) at para 3 (d), online:

<<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>>.

<sup>65</sup> Reparation Declaration, *ibid* at para 4.

<sup>66</sup> The Declaration *supra* note 10.

and retaliation. This Declaration provides a persuasive soft law code recognising a duty to protect victims of human rights abuse and a right to such protection.<sup>67</sup> Human rights institutions such as the United Nations Human Rights Council (UNHRC)<sup>68</sup> rely on general international human rights instruments to infer a framework for protecting victim-witnesses of human rights violations. According to Oyakhire, this has been acknowledged in the practice of judicial institutions within the international law system, which recognises and supports the need to create witness protection systems to provide a wide range of physical and psychological protection to victim-witnesses of human rights violations.<sup>69</sup>

Although most international human rights instruments do not expressly recognise a universal right to protection for victims cooperating with law enforcement agencies and participating as witnesses in criminal proceedings, a right to protection is nonetheless derived from other express human rights: such as the right to a fair trial, the right to life, security, justice, and the right to effective remedy. The right to protection is therefore regarded as a pre-requisite to the enjoyment of these rights.<sup>70</sup> To the UNHRC, norms relating to the provision of an effective remedy for victims as stipulated in Article 2 of the International Covenant on Civil and Political Rights (ICCPR) require effective investigation and punishment of offenders and provides a basis for witness protection.<sup>71</sup>

Consequently, witness protection is understood as a right available to any person cooperating with law enforcement authorities.<sup>72</sup> The absence of protection is regarded as a

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<sup>67</sup> *Ibid* at para 6 (d) & 12 (b).

<sup>68</sup> HRC 15<sup>th</sup> Sess, *supra* note 46 at 5. See also, OHCHR Conference Compilation, *supra* note 35.

<sup>69</sup> See Oyakhire, *supra* note 16 at 55-57. The practice of the international criminal tribunals for Rwanda and Yugoslavia shows the reliance on protective measures in criminal proceedings before these courts to protect witnesses from intimidation arising for their cooperation.

<sup>70</sup> *Ibid* at 56.

<sup>71</sup> HRC 12<sup>th</sup> sess, *supra* note 25 at para 34.

<sup>72</sup> Oyakhire, *supra* note 16 at 56.



violation of the victim's right to an effective remedy.<sup>73</sup> The rationale is that if national laws, by relying on witness testimonies, force witnesses to put their life and wellbeing at risk by participating in criminal proceedings, there is an equal obligation on States to provide adequate protection that counters that risk.<sup>74</sup>

Nevertheless, two international human rights instruments expressly provide for the protection of victim-witnesses of human rights violations in specific circumstances. By article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation because of his complaint, or any evidence given.<sup>75</sup>

Also, the International Convention for the Protection of all Persons from Enforced Disappearance<sup>76</sup> provides that,

Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.<sup>77</sup>

These two instruments apply specifically to persons intimidated in prosecutions involving torture or enforced disappearances where the perpetrators are typically state organs, agents of the state

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<sup>73</sup> HRC 12<sup>th</sup> sess, *supra* note 25 at para 34.

<sup>74</sup> Jonathan Hadley, "Witness Intimidation and Protection Practices: A frontline View from Helsinki, Consideration of Finnish Police Law and Review of Research in the UK" (2006) at 59, online: *Poliisiammattikorkeakoulun tiedotteita*. <[https://www.theseus.fi/bitstream/handle/10024/86795/witness%20intimidation\\_tiedotteita54.pdf?sequence=1](https://www.theseus.fi/bitstream/handle/10024/86795/witness%20intimidation_tiedotteita54.pdf?sequence=1)>.

<sup>75</sup> *Convention against Torture, Cruel, Inhumane and Degrading Treatment*, GA Res 39/46, 39th Sess, 1465 UNTS 85, 113 (entry into force 26 June 1987).

<sup>76</sup> *International Convention for the Protection of All Persons from Enforced Disappearance*, GA Res A/61/177 (2006), online: <<https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>>.

<sup>77</sup> *Ibid*, article 18 (2).

or anyone acting with the support or authorization of the state,<sup>78</sup> such as police officers and other security personnel.

The International Commission of Jurists, notes that the international standards concerning victims of conventional crimes also apply to victims of human rights abuses since these violations generally constitute crimes recognised within the national criminal law.<sup>79</sup> From the available literature, other than for organised crimes and terrorism, witness protection is “crucial in any effective investigation and prosecution of perpetrators of human rights violations, be it in criminal justice or transitional justice processes.”<sup>80</sup> Accordingly, the UN Committee on Human Rights recommends that criminal sanctions are the primary obligations of states regarding human rights violations.<sup>81</sup> In Nigeria, for example, by section 103 of the Police Act, police officers are legally responsible for any crimes committed by them,<sup>82</sup> including those committed in the course of their duty. Mendez and Bariffi propose that since witness protection is common within national criminal justice systems for crimes generally, they could be modified to accommodate the specific needs of victim-witnesses of human rights violations.<sup>83</sup>

As indicated earlier, international instruments, including international human rights instruments create obligations for States which they are bound to fulfil under international law.<sup>84</sup> Nigeria is a party to the United Nations Convention against Torture and Other Cruel, Inhuman or

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<sup>78</sup> See Article 1 of the Torture Convention and Article 2 of the Enforced Disappearance Convention respectively.

<sup>79</sup> ICJ Right to Reparation, *supra* note 34 at 240.

<sup>80</sup> See Zimbabwe Human Rights NGO Forum, “The Need for Witness Protection and Transitional Justice in Zimbabwe” (2015) at 8, online(pdf): <<http://www.hrforumzim.org/wp-content/uploads/2015/10/Witness-protection-and-Transitional-Justice-in-Zimbabwe.pdf>>.

<sup>81</sup> See HRC Comment 31, *supra* note 45 at para 18.

<sup>82</sup> Police Force (Establishment) Act 2020 [Nigeria] Laws of the Federation of Nigeria 2004.

<sup>83</sup> Mendez & Bariffi, *supra* note 41 at 3.

<sup>84</sup> See *Vienna Convention on Diplomatic Relations*, 18 April 1961, 500 UNTS 95, Can TS 1966 No 29 arts 7-9 (entered into force 24 April 1964) at article 26 and 27.

Degrading Treatment or Punishment<sup>85</sup> and the International Convention for the Protection of all Persons from Enforced Disappearance,<sup>86</sup> and is therefore bound under international law to take appropriate measures to protect victim-witnesses testifying in these prosecutions from intimidation. Furthermore, the right to fair trial, the right to life and the right to an effective remedy that are all guaranteed by international human rights instruments are also protected by the Nigerian Constitution.<sup>87</sup> Accordingly, the effective protection of these rights necessitates the right to protection from harm and supports the view that witness protection is a pre-requisite to enjoying these rights.

### **5. Is there a Legal Framework for Protecting Victim-Witnesses of Human Rights in Nigeria?**

As indicated earlier, the protection of witnesses, including victim-witnesses is an emerging area of law and practice in Nigeria.<sup>88</sup> There is no established legal framework or system for witness protection even though justification for protecting intimidated witnesses have been included overtime in different legislations.<sup>89</sup> Although there is no comprehensive witness protection legislation in Nigeria generally, the statutory basis for protecting victim-witnesses of human rights violations from intimidation, can be inferred from the legislations discussed below:

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<sup>85</sup> Nigeria became a signatory to the Convention in July 1988 and ratified it in June 2001, see “Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (2021) online: <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en)>

<sup>86</sup> Nigeria acceded to the Convention in July 2009, see “Status of the International Convention for the Protection of All Persons from Enforced Disappearance” (2021), online <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4)>.

<sup>87</sup> See Chapter IV CFRN, *supra* note 37.

<sup>88</sup> See section 2 of this paper.

<sup>89</sup> For example, section 64 *Corrupt Practices and other Related Offences (ICPC) Act* (2000) and section 34(1) of the *Terrorism (Prevention) (Amendment Act)* (2013).

***a. The Administration of Criminal Justice Act (ACJA) 2015***

Section 1 of the ACJA provides that a primary objective of the Act is to ensure the protection of the rights and interests of victims of crime. Section 232 broadly provides for the protection of victims and witnesses in criminal prosecutions. The scope of protective measures is limited to procedural measures applicable in court settings such as video link, the use of screens or masks, and other anonymity and confidentiality measures that conceal the names, identity, address and telephone numbers of the victim-witnesses.<sup>90</sup> Although section 232 (4) (a-d) of the Act specifically limits the scope of crimes to sexual offences, economic and financial crimes, terrorism and trafficking in persons, paragraph (e) expands the scope to other crimes that permit the use of protective measures.

I argue, therefore, that the Violence Against Persons Prohibition Act 2015 and the National Human Rights Commission (Amendment) Act 2010, are within the purview of paragraph (e) which provides a basis for protecting victim-witnesses of human rights violations arising from the enforcement of those laws.

***b. The Violence Against Persons Prohibition Act (VAPPA) 2015***

The VAPPA was enacted to “eliminate violence in public life, to prohibit all forms of violence against persons, to provide maximum protection and effective remedies for victims and the punishment of offenders.”<sup>91</sup> It penalises acts of violence broadly defined in section 46 to include physical, sexual, psychological, verbal, or economic harm which occurs in private or public life, in peace time and in conflict situations. These acts generally reflect the type of violence that

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<sup>90</sup> See section 232 (2) & 232(3).

<sup>91</sup> See the aims and objectives of the Act as specified in the long title of the law, *The Violence Against Persons Prohibition Act (2015)*, [Nigeria]

could be interpreted as human rights violations which, typically include physical and sexual violence.

The VAPPA prohibits violence in the public sphere which, means any act or attempted act perpetrated by state and non-state actors in conflict or war *or non-conflict* situations that threatens peace, security and wellbeing of any person or the nation.<sup>92</sup> The acknowledgment of the VAPPA that violence can occur also in peace time supports the arguments made earlier that, human rights violations are not peculiar to transitional justice systems marked by conflict situations. The Act defines state actors as “group of persons; structured or organised institutions and agencies.”<sup>93</sup> State actors tend to be the primary perpetrators in human rights violations based on previous analysis in this paper.

Furthermore, the Act specifically prohibits intimidation, defined to mean the uttering or conveying of a threat or causing any person to receive a threat, which induces fear, anxiety or discomfort.<sup>94</sup> Intimidation also includes acts which frustrate the investigation and prosecution of offenders under the Act which prescribes a term of imprisonment and payment of fines for such behaviour.<sup>95</sup> The types of protection prescribed under this Act include protection orders,<sup>96</sup> access to medical, psychological, social and legal assistance, including providing for a safe place or shelter to the victim, rehabilitation and reintegration programmes and other forms of assistance provided to the victims through government agencies;<sup>97</sup> arresting the suspect who has committed

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<sup>92</sup> See section 46.

<sup>93</sup> *Ibid.*

<sup>94</sup> See section 18 (1) & 46.

<sup>95</sup> See section 7.

<sup>96</sup> See section 28.

<sup>97</sup> See section 32 (1) (a-d); 38 (1) (a-c).

acts of violence against the victim<sup>98</sup> and prohibiting the publication of information which reveals the identity of the parties during trial.<sup>99</sup>

These protective measures in the ACJA and the VAPPA are like analysed in existing literature on witness protection,<sup>100</sup> especially those available for victim-witnesses of human rights violations within the international criminal justice system. They are, primarily, procedural measures adopted in court to provide physical and psychological protection to the victim-witnesses. They also include measures to guarantee the safety of the victim-witnesses outside the court such as provision of temporary relocation in safe places. These measures aim at minimising the risks victim-witnesses are exposed to for participating in criminal justice processes, especially prosecutions in court.

***c. Challenges within the Existing Framework - What kind of Administrative System is Most Appropriate?***

The VAPPA vests the police with the duty of providing protection for victims of violence.<sup>101</sup>

This strikes at the confidentiality, autonomy and independence required as integral to facilitating witness protection objectives,<sup>102</sup> since the same police officers who are the perpetrators of the violation have the role of protecting the victims. As Human Rights Watch reports, current internal police mechanisms for filing complaints against police misconducts and ensuring

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<sup>98</sup> See section 32 (2).

<sup>99</sup> See section 39 (1).

<sup>100</sup> See for example Law Commission of India, "Consultation Paper on Witness Identity Protection and Witness Protection Programmes" (August 2004), online (pdf):

<http://lawcommissionofindia.nic.in/Consultation%20paper%20on%20witness%20identity%20Protection%20and%20witness%20protection%20programmes.pdf>; Asa Rydberg, "Case Analysis- The Protection of the Interests of

Witnesses- The ICTY in Comparison to the Future ICC" (1999) 12 Leiden J of Int'l L 455 at 466.

See also, Goran Sluiter, "The ICTR and the Protection of Witnesses" (2005)

3:4 J Int'l Crim Just 962. Elaine Pearson, "The need for effective witness protection in the prosecution of traffickers: a human rights framework for witness protection," (Delivered at the First Pan-African Regional Conference on Trafficking in Persons Abuja, Nigeria 19-23 February 2001), online: (pdf)

<http://old.antislavery.org/archive/other/witnessprotection.pdf>.

<sup>101</sup> See section 32 (1).

<sup>102</sup> OHCHR Conference Compilation, *supra* note 35 at 47.

accountability are ineffective<sup>103</sup> as they are biased against victims. International best practices on witness protection suggests that an agency independent of the police, should be responsible for witness protection.<sup>104</sup> This is because, since they have a stake in the investigations, their objectivity is flawed.

As indicated earlier, in certain post-conflict situations, prosecution for human rights violations are instituted by international criminal tribunals that have an independent Victim Witness Unit, whose responsibility is to protect witnesses testifying before the tribunals.<sup>105</sup> Although information about the practice of witness protection for human rights violations within national jurisdictions is scanty, the available literature favours the creation of a system independent of the police force.<sup>106</sup> For example, in post-apartheid South Africa marked with reports of abuse of power and human rights violations by the apartheid police, a Truth and Reconciliation Commission administered protection for witnesses. In Brazil, a Witness Protection Programme (PROVITA) emerged as tool to protect victims and witnesses of murders committed by the police and other organised criminal groups.<sup>107</sup> The Brazilian security forces were repeatedly accused of human rights violations and authorities constantly experienced difficulties in investigating and prosecuting those cases. Eyewitnesses refused to testify about the

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<sup>103</sup> Emerson, *supra* note 9. See also, “Rest in Pieces”, *supra* note 32.

<sup>104</sup> OHCHR Conference Compilation, *supra* note 35.

<sup>105</sup> *Rome Statute of the International Criminal Court*, 17 July 2008, 2187 UNTS 3854 (entered into force on 1 July 2002) at Article 43 (6) vests the Victim Witness Unit with the power to provide protection for victim-witnesses testifying in the ICC. See also *Rules of Procedure and Evidence of the International Criminal Court* (2000), UN Doc. PCNICC/2000/1/Add.1, Rules 16-19 and 87-88.

<sup>106</sup> Jenny Irish, Wilson Magadhla, Kevin Qhobosheane & Gareth Newham, “Testifying Without Fear: A Report on Witness Management and the National Witness Protection Programme in South Africa” (October 2000), *Centre for the Study of Violence and Reconciliation*, online (pdf): <http://www.csvr.org.za/docs/policing/testifyingwithoutfear.pdf>.

<sup>107</sup> Fabiola Ortiz, “Brazil: Red Tape Undermines Witness Protection-Part 2”, *Inter Press Service* (27 May 2011), online: *Inter Press Service, News Agency* <<http://www.ipsnews.net/2011/05/brazil-red-tape-undermines-witness-protection-ndash-part-2/>>.

events they witnessed because of fear of possible reprisals.<sup>108</sup> The frequent incidents of witness intimidation and the inability to successfully prosecute human rights violations by security personnel generated witness protection concerns, led by human rights groups. These concerns and the increasing police intimidation led to conscious efforts to include witnesses of gross human rights violations in the witness protection programme.<sup>109</sup>

The South African and Brazilian examples show that a separate system of protection is preferable for victim-witness of human rights violations. This system can be managed jointly by a government agency, notably the Human Rights Commission, in partnership with Non-Governmental Organizations (NGOs) and individuals in civil society.<sup>110</sup> While most services could be provided by the protection unit of the national human rights commission, support services and even relocation assistance could be provided by NGOs.<sup>111</sup> An advantage of this system is that NGOs often have better resources than government institutions as well as knowledge of local conditions and cultures, and are best suited to gain the trust of the civil society.<sup>112</sup>

#### *d. Recommendations for Nigeria*

A report by the UNODC<sup>113</sup> which examined the practice for accountability for human rights violations by state actors across several jurisdictions, shows that the interests of victim-witnesses are best managed by National Human Rights Institutions. In Nigeria, Section 1 of the National Human Rights Commission (Amendment) Act 2010, establishes the National Human Rights

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<sup>108</sup> Organization of American States, Inter-American Commission on Human Rights, *Chapter III: Police Violence, Impunity and Exclusive Military Jurisdiction for the Police in the Report on the Situation of Human Rights in Brazil*, OR OEA/Ser.L/V/II.97 (1997), online: <<http://www.cidh.org/countryrep/brazil-eng/chaper%203.htm>>.

<sup>109</sup> Karen Kramer, "Witness protection as a key tool in addressing serious and organised crime" (2012) at 11, online (pdf): < [https://www.unafei.or.jp/publications/pdf/GG4/Fourth\\_GGSeminar\\_P3-19.pdf](https://www.unafei.or.jp/publications/pdf/GG4/Fourth_GGSeminar_P3-19.pdf) >.

<sup>110</sup> OAS Report, *supra* note 108.

<sup>111</sup> Kramer *supra*, note 109 at 10.

<sup>112</sup> *Ibid* at 10-11.

<sup>113</sup> UNODC Handbook, *supra* note 48 at 34.



Commission (NHRC) which is empowered to deal with all matters relating to the protection of human rights in Nigeria, assist victims of human rights violations and seek appropriate redress and remedies on their behalf.<sup>114</sup> The Act strengthened the Commission's power with respect to the promotion and protection of human rights, investigations of alleged violations of human rights and enforcement of its decisions.<sup>115</sup> Within the existing external accountability mechanism of the Police, the NHRC already plays a role.<sup>116</sup>

Accordingly, this paper recommends that the NHRC should take up the responsibility of facilitating protection for victims participating as witnesses in proceedings involving human rights violations especially when perpetrated by state actors. This will reduce the likelihood of connivance between the investigator, prosecutor, protector, and perpetrators of these violations to derail the investigation as is currently the practice. Involving the NHRC would also ensure that existing structures are strengthened and that the proliferation of State institutions with similar mandates is reduced. This system should be separate from any proposed framework for protecting witnesses in terrorism, economic and financial crimes, human trafficking, and other serious crimes.<sup>117</sup>

In facilitating protection as is being recommended, the NHRC should guarantee the physical and psychological safety of the victim-witnesses. This includes providing security escorts for victim-witnesses when going to court, providing safe houses and shelters, video

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<sup>114</sup> See section 5 (a) & (c).

<sup>115</sup> National Human Rights Council, "The NHRC Mandate", online:<[https://www.nigeriarights.gov.ng/about/nhrc-mandate.html#:~:text=The%20NHRC%20\(Amendment\)%20Act%2C,rights%20and%20enforcement%20of%20decisions](https://www.nigeriarights.gov.ng/about/nhrc-mandate.html#:~:text=The%20NHRC%20(Amendment)%20Act%2C,rights%20and%20enforcement%20of%20decisions)>.

<sup>116</sup> NOPRIN, *supra* note 44.

<sup>117</sup> See Federal Ministry of Justice, "Proposal of the Nigerian Senate to establish a Witness Protection Programme in the Public Interest Disclosure Bill and Witness Protection Bill 2017" online (pdf): <<http://www.justice.gov.ng/documents/PUBLIC%20INTEREST%20DISCLOSURE%20AND%20%20%20WITNESS%20PROTECTION%20BILL,%202017%20FINAL%20040417.pdf>>.

conferencing technology, using shields, pseudonyms and other protective measures during trial.<sup>118</sup> There is evidence to suggest that the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) has safe houses and shelters for victims of human trafficking testifying in prosecutions against their traffickers.<sup>119</sup> Accordingly, the NHRC can create its own safe-houses to protect their victim-witness from intimidation and reprisal attacks. There would also be a need for the NHRC to collaborate and seek inter-agency support from the NAPTIP and human rights NGOs, with the requisite experience in assisting victims of crime, to help the Commission in setting up safe houses, cater for the needs of victim-witnesses, and provide other skills needed to protect them.

Furthermore, the NHRC could apply to the courts during proceedings involving human rights violations, to impose protective measures for victim-witnesses in accordance with the provisions of the VAPPA and ACJA.<sup>120</sup> Prosecutors have successfully adopted these measures in prosecutions involving terrorism and economic and financial crimes.<sup>121</sup> These, in addition to witness assistance measures, such as financial support for transportation, accommodation, and briefing witnesses on what to expect and the basic aspects of a criminal trial,<sup>122</sup> should be provided by the NHRC to facilitate the protection of victim-witnesses.

However, there is a need for government to allocate adequate resources and funding to ensure that these protective measures are readily available. The cooperation by other

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<sup>118</sup> See Oyakhire, *supra* note 21 at 127-130.

<sup>119</sup> See section 11 (d) NAPTIP Act 2015. See also, Suzzie Onyeka Oyakhire, “Expanding the Scope of “Appropriate Measures”: Do Traditional Institutions Play a Role in Facilitating the Protection of Witnesses of Trafficking in Persons?,” (2019) 6:2 JCLA 87.

<sup>120</sup> See section 232 (2 &3) ACJA and section 39 (1) VAPPA,

<sup>121</sup> See the cases of *FRN v Nnamdi Kanu*, *supra* notes 29 and *Sambo Dasuki v FRN*, *supra* note 30.

<sup>122</sup> UNODC, *supra* note 23 at 27-28

stakeholders in the criminal justice sector, including donor agencies, in partnering with the NHRC to provide the requisite skills and resources needed cannot be overemphasised.

## **6. Conclusion**

This paper examined the problem of intimidation in the context of prosecutions involving human rights violations by law enforcement authorities in Nigeria. Although there is no established framework for witness protection in Nigeria, there are however indications of policy discussions about formally developing a witness protection framework in Nigeria as part of criminal justice reform initiatives.

Human rights arguments which have influenced the evolution of the concept and practice of witness protection over the years suggest that in investigations and prosecutions involving human right violations, victim-witnesses have a right to witness protection. This right is inferred from the obligations of states in international human rights instruments to protect fundamental human rights. Although there is no evidence of an established right to witness protection in prosecutions involving conventional crimes such as organised crimes and terrorism, the utility of the right to protection for victim-witnesses of human rights violations given the peculiarities of the perpetrators who are state actors or individuals associated with the state, is pragmatic and should be considered for Nigeria. Witness protection in human rights violations cases is also important as part of accountability mechanisms for security personnel in terms of their obligations under international human rights law and international humanitarian law.

This paper advocates for a separate system of protection suited for victim-witnesses of gross human rights violations given the unique nature of the threat they face and the perpetrators. The level of intimidation against witnesses who testify against police officers and the impunity arising from the inability to successfully prosecute and punish perpetrators justifies the need for a witness protection system for victim-witnesses of human rights violations in Nigeria. The ACJA 2015, the VAPPA 2015 and the NHRC (Amendment) Act 2010 accordingly provide a legislative basis and a legal framework for protecting victim-witnesses of human rights violations participating in criminal proceedings. While the ACJA and VAPPA provide a range of measures for their physical and psychological protection, the NHRC Act provides the administrative framework and empowers the NHRC as the agency responsible for facilitating protection for victim-witnesses of human rights violations perpetrated by state actors.

Since the NHRC has the mandate to 'liaise and co-operate with local and international organisations on human rights with the purpose of advancing the promotion and protection of human rights,<sup>123</sup> opportunities for collaboration between the NHRC, the proposed Witness Protection Agency in Nigeria, other law enforcement institutions, NGOs, civil society groups and international donors, to achieve the aims of facilitating witness protection should be considered.

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<sup>123</sup> See section 5 (g).