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**WITNESS PROTECTION ACT**

NO. 16 OF 2006

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**NO. 16 OF 2006**

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**NO. 16 OF 2006**

**WITNESS PROTECTION ACT**

[Date of assent: 30th December, 2006.]

[Date of commencement: 1st September, 2008.]

**An Act of Parliament to provide for the protection of witnesses in criminal cases and other proceedings to establish a Witness Protection Agency and provide for its powers, functions, management and administration, and for connected purposes**

[Act No. 16 of 2006, L.N. 110/2008, Act No. 2 of 2010, Act No. 45 of 2016, Act No. 18 of 2018, Act No. 20 of 2020.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Witness Protection Act.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**Agency**” means the Witness Protection Agency established by section 3A;

“**Board**” means the Witness Protection Advisory Board established by section 3P;

“**Commission**” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“**Committee**” means the Witness Protection Complaints Committee established under section 3U of this Act;

“**Director**” means the Director of the Agency appointed under section 3E;

“**law enforcement agency**” means a government agency responsible for the enforcement of the law;

“**Minister**” *deleted by Act No. 18 of 2018, Sch.;*

“**participant**” means a witness who is included in the programme;

“**programme**” means the witness protection programme established and maintained under section 4;

“**protected person**” means a person who has been placed under protection in accordance with the provisions of sections 3(2), 5 and 9;

“**protection officer**” includes an officer of the agency charged with the responsibility of protecting a witness;

“**public interest**” means matter affecting the welfare of the state or the rights, health, or finances of the general public;

“**register of births**” means a register of births maintained under the Births and Deaths Registration Act (Cap. 149);

“**register of deaths**” means a register of deaths maintained under the Births and Deaths Registration Act (Cap. 149);

“**register of marriages**” means—

- (a) a register maintained under any Act in which marriages are registered or recorded; or
- (b) an index, maintained under any Act, of certified copies of any such registers;

“**threat**” means the possibility of adverse consequences for a witness as a result of giving evidence in the proceedings and includes any danger, physical or psychological, that may result from the involvement of the person in the proceedings;

“**risk**” means the likelihood or possibility that a threat may occur;

“**security officer**” means a person who has been trained on security matters charged with the responsibility of ensuring physical safety.

“**Tribunal**” *deleted by Act No. 45 of 2016, s. 2;*

“**witness**” means a person who has made a statement or has given or agreed to give evidence in relation to an offence or criminal proceedings in Kenya or outside Kenya, and requires protection on the basis of an existing threat or risk.

“**witness protection order**” means an order of the High Court under Part III.

[Act No. 2 of 2010, s. 3, Act No. 45 of 2016, s. 2, Act No. 18 of 2018, Sch.]

### 3. Application

(1) This Act shall apply to—

- (a) a witness in criminal proceedings; and
- (b) a witness who is required to give evidence in a prosecution or inquiry held before a court, commission, or tribunal outside Kenya—
  - (i) for the purposes of any treaty or agreement to which Kenya is a party; or
  - (ii) in circumstances prescribed by Regulations made under this Act.

(2) A person is a protected person for purposes of this Act if that person qualifies for protection—

- (a) by virtue of being related to a witness;
- (b) on account of a testimony given by a witness; or
- (c) for any other reason which the Director may consider sufficient.

[Act No. 2 of 2010, s. 4, Act No. 45 of 2016, s. 3.]

## PART IA – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE WITNESS PROTECTION AGENCY, ADVISORY BOARD AND TRIBUNAL

### *A. The Witness Protection Agency*

#### 3A. Establishment of the Agency

(1) There is established an Agency to be known as the Witness Protection Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) holding and alienating movable and immovable property;

- (c) borrowing and lending money; and
- (d) doing or performing all such other acts or things as may be lawfully done by a body corporate.

[Act No. 2 of 2010, s. 5.]

### **3B. Object and purpose of the Agency**

(1) The object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.

(2) The nature of the special protection referred to in subsection (1) shall entail the power of the Agency to acquire, store, maintain and control firearms and ammunition and electronic or other necessary equipment, despite the provisions of any other law.

[Act No. 2 of 2010, s. 5.]

### **3C. Functions of the Agency**

(1) The functions of the Agency shall be to—

- (a) establish and maintain a witness protection programme;
- (b) determine the criteria for admission to and removal from the witness protection programme;
- (c) determine the type of protection measures to be applied;
- (d) advise any Government Ministry, department, agency or any other person on the adoption of strategies and measures on witness protection; and
- (e) perform such other functions as may be necessary for the better carrying out of the purpose of this Act.

[Act No. 2 of 2010, s. 5.]

### **3D. Powers of the Agency**

(1) The Agency shall have power to—

- (a) control and supervise its staff in a manner and for such purposes as may be necessary for the promotion of the purpose and the object for which the Agency is established;
- (b) administer the funds and assets of the Agency;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursement therefrom;
- (d) enter into association with such other persons, bodies, or organizations within or outside Kenya as it may consider desirable or appropriate in furtherance of its object and purpose;
- (e) enter into confidential agreements with relevant foreign authorities, international criminal courts or tribunals and other regional or international entities relating to the relocation of protected persons and other witness protection measures;
- (f) open bank accounts for the funds of the Agency;
- (g) collect, analyze, store and disseminate information related to witness protection;

- (h) give such instructions to a protected person as the Agency may consider necessary;
- (i) search the protected person and their property and seize items regarded by the Agency to be a threat to the protected person or another person or the integrity of the programme;
- (j) summon a public officer or other person to appear before it or to produce a document or thing or information which may be considered relevant to the functions of the Agency within a specified period of time and in such manner as it may specify;
- (k) invest the funds of the Agency not currently required for its purposes.

(2) A person who fails to comply with a direction of the Agency issued under subsection (1)(i), commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or both.

(3) A person who disobeys a summons issued by the Agency commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 4.]

### **3E. Director of the Agency**

(1) There shall be a Director of the Agency who shall be appointed by the Advisory Board on such terms and conditions as the Board may, in consultation with the Commission, approve.

(2) The Director shall have all the powers necessary or expedient for the performance of his functions under this Act.

(3) A person shall not be appointed as Director under this section, unless that person—

- (a) is a citizen of Kenya;
- (b) is of high moral character and proven integrity; and
- (c) is an advocate of the High Court of Kenya, and has since qualification, practised law in the public or private sector or has been engaged in the teaching of law or research for a period of not less than ten years, and has performed duties of an administrative nature for not less than five years.
- (d) meets the requirements of Chapter Six of the Constitution.

(4) The Director shall—

- (a) be the chief executive of the Agency and shall be responsible for carrying out the policy decisions of the Agency, its day to day administration and management and control of other staff of the Agency;
- (b) be an *ex-officio* member of the Board;
- (c) cause to be kept minutes of the meetings of the Board and other records as the Agency may direct;
- (d) ensure that, in conducting its affairs, the Agency is guided by the Laws of Kenya and international best practices which shall include, but not be limited to, the development and implementation of information



security measures, technical and administrative competence, and the principles of impartiality, confidentiality, objectivity and integrity; and

(e) perform other functions as may be assigned by the Board.

(4A) The Director may, in writing, delegate any power or function conferred to the office under this Act to a senior officer of the Agency.

(4B) An officer of the Agency to whom a power or function has been delegated under subsection (4A) shall exercise that power or perform that function subject to the general directions of the Director.

(4C) The Director may at any time in writing withdraw a delegation under subsection (4A).

(4D) The delegation of any power or function does not prevent the Director from exercising or performing that power or function in person.

(5) The Director shall hold office for a period of five years and shall be eligible for re-appointment for one further term.

(6) The Director may be removed from office for—

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) misconduct or misbehaviour;
- (c) incompetence; or
- (d) conviction for a criminal offence attracting a term of imprisonment of not less than six months without the option of a fine.

(7) A person desiring the removal of the Director shall present a petition to the Board which shall be in writing, setting out the alleged facts constituting the grounds for removal of the Director.

(7A) The Board shall consider the petition and, if it is satisfied that it discloses the existence of a ground under subsection (6), the Board shall dismiss the Director.

(7B) Notwithstanding subsection (7A), the Board shall afford the Director an appropriate opportunity to defend himself against any allegation made against him before taking any action under that subsection.

(8) *Deleted by Act No. 45 of 2016, s. 5(f).*

(9) *Deleted by Act No. 45 of 2016, s. 5(g).*

(10) *Deleted by Act No. 45 of 2016, s. 5(h).*

(11) *Deleted by Act No. 45 of 2016, s. 5(i).*

(12) *Deleted by Act No. 18 of 2018, Sch.*

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 5, Act No. 18 of 2018, Sch.]

### **3F. Staff of the Agency**

(1) The Agency may, for the proper discharge of its functions, appoint professional and technical staff and other staff upon such terms and conditions as the Attorney-General may, in consultation with the Commission, approve.

(2) The staff referred to in subsection (1) may include deputy directors, assistant directors, protection officers, security officers and other officers as the Agency may determine.

(3) A number of public officers may be transferred or seconded to the Agency as the Agency may, in consultation with the Public Service Commission, determine,

for specified periods of time and on such terms and conditions as may be agreed upon between the Agency and the Public Service Commission.

(4) For the purposes of this Act, a public officer who is transferred or seconded to the Agency under subsection (3) shall be regarded as a member of the staff of the Agency and subject only to the control and direction of the Agency.

(5) In determining the terms and conditions of service for the Director and staff, the Minister and the Commission shall be guided by the following principles—

- (a) that witness protection falls in a strategic sector in the administration of justice process of the country and the nature of the service entailed requires commensurate compensation; and
- (b) that the nature of the operations of the Agency requires probity, integrity and incorruptibility.
- (c) that the remuneration and conditions of service may differ from those applicable in the public service.

(6) The Agency shall, with the approval of the Cabinet Secretary responsible for Finance, establish a suitable social security scheme for the Director and staff of the Agency.

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 6, Act No. 18 of 2018, Sch.]

### **3G. Independence of the Agency**

(1) The Agency shall have all the powers necessary or expedient for the performance of its functions under this Act without interference from any authority.

(2) The Agency shall for the purposes of accountability, report to the Attorney-General on the overall fulfilment of its object and purpose and the performance of its functions under this Act.

[Act No. 2 of 2010, s. 5, Act No. 18 of 2018, Sch.]

### **3H. Funds of the Agency**

(1) Except as otherwise provided in section 3I, the expenses incurred by the Agency in accordance with this Act shall be charged and issued out of the Consolidated Fund and the appropriation for the expenses shall be included in the Appropriation Bill introduced in the National Assembly to authorize the withdrawal from the Consolidated Fund.

(2) Without prejudice to subsection (1), there may be made to the Agency grants, gifts, donations or bequests towards the achievement of the objects of the Agency.

(3) The Agency shall not accept any grant, gift, donation or bequest made on any condition that the Agency performs any function or discharges any duty or obligation other than duties under this Act.

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 7.]

### **3I. Victims Compensation Fund**

(1) There is established a fund to be known as the Victims Compensation Fund (hereinafter referred to as “the Fund”) which shall vest in and be operated by the Agency.

(2) There shall be paid into the Fund—

- (a) such moneys as may be provided pursuant to section 3H for the purposes of the Fund;

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- (b) such moneys as may be realized from any property forfeited to the Government in connection with a crime referred to in subsection (4);
- (c) grants, gifts, donations or bequests made to the Fund by any person and received by the Agency with the approval of the Attorney-General, where such receipt does not occasion a conflict of interest in the performance of the Agency's functions under this Act;
- (d) moneys earned or arising from any investment of the Fund;
- (e) all other moneys which may in any manner become payable to, or vested in, the Fund.

(3) Where under subsection (2)(b), any immovable property is assigned to the Fund, the Agency shall deal with the property in such manner as it thinks fit and may sell the property and use the proceeds of sale for the purposes for which the Fund is established.

(4) There shall be paid out of the Fund—

- (a) restitution to a victim, or to the family of a victim of a crime committed by any person during a period when such person is provided protection under this Act;
- (b) compensation for the death of a victim of a crime committed by any person during a period when such person is provided protection under this Act, to the family of such victim; and
- (c) any moneys required to meet expenses relating to any other matter incidental to or connected with the matters stated in paragraphs (a) and (b).

(5) Unless the Treasury directs otherwise, the receipts, earnings or accruals of the Fund and the balances of the Fund at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Fund.

(6) Subject to this section, the Cabinet Secretary may, by regulations, provide for the management and administration of the Fund and for anything incidental to or connected therewith.

[Act No. 2 of 2010, s. 5, Act No. 18 of 2018, Sch.]

### **3J. Estimates of Expenditure**

(1) The financial year of the Agency shall be the period of twelve months ending on the thirtieth day of June in each year.

(2) The Agency shall in accordance with the law relating to the public finance management prepare annual estimates of the expenditure of the Agency and the Board for that financial year.

(3) The annual estimates shall make provision for all estimated expenditure of the Agency and the Board for the financial year to which they relate, including a reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(4) *Deleted by Act No. 20 of 2020, Sch.*

(5) Expenditure shall not be incurred by the Agency except in accordance with the annual estimates provided under subsection (2) or in pursuance of an

authorization of the advisory Board given with prior written approval of the Cabinet Secretary responsible for finance.

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 8,  
Act No. 18 of 2018, Sch, Act No. 20 of 2020, Sch.]

### **3K. Accounts and audit**

(1) The Agency shall keep books, and other proper records of accounts of the expenditure, assets and liabilities of the Agency, which shall be classified in accordance with the information security policy of the Agency and shall be preserved or disposed of in accordance with that policy.

(2) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the Public Audit Act, (No. 34 of 2015), without prejudicing the integrity or security of the Agency's operations.

(3) The legislative and regulatory provisions on the auditing of national security organs shall apply *mutatis mutandis* to the Agency.

(4) The legislative and regulatory provisions on classified procurement and disposal of assets shall apply *mutatis mutandis* to the Agency.

[Act No. 2 of 2010, s. 5, Act No. 18 of 2018, Sch, Act No. 20 of 2020, Sch.]

### **3L. Annual reports**

(1) The Agency shall within four months after the end of each financial year, make a report to the Board on the activities and operations of the Agency during the financial year.

(2) The Board shall submit the annual report to the Attorney-General within fourteen days of receipt of the report.

(3) The Attorney-General shall within fourteen days after receipt of the report from the Board, submit the report to the President.

[Act No. 2 of 2010, s. 5, Act No. 18 of 2018, Sch.]

### **3M. Director etc. to have powers of a police officer**

For the purposes of their functions under the Act, the Director, assistant directors and protection officers shall have the powers, privileges and immunities of a police officer in addition to any other powers they may have under the Act.

[Act No. 2 of 2010, s. 5.]

### **3N. Identity certificate and appointment**

(1) The Director shall issue to every member of staff of the Agency on appointment, a certificate of identity and appointment in such form as the Agency may prescribe, which shall be evidence of the appointment for the purposes of this Act.

(2) A person appointed as a member of staff of the Agency and issued with an appointment certificate referred to under subsection (1) shall have authority to carry concealed official firearms and ammunition.

[Act No. 2 of 2010, s. 5.]

### **3O. Dissolution of Witness Protection Unit, savings**

(1) Upon the commencement of this Part, the Witness Protection Unit existing immediately before the commencement, shall stand dissolved.

(2) Notwithstanding the provisions of subsection (1) —

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- (a) a person who, immediately before the commencement of this Part, was the Head of the Witness Protection Unit is, for the purposes of this Part, the Director of the Agency until a Director is appointed under this Act;
- (b) a valid contract entered into on behalf of the Witness Protection Unit before the commencement of this Part, shall continue to be in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of the Act;
- (c) movable and immovable property and the rights and liabilities previously attaching to the Witness Protection Unit and property held by any person on behalf of the Witness Protection Unit before the commencement of this Part shall, upon such commencement, vest in the Agency.

[Act No. 2 of 2010, s. 5.]

*B. The Witness Protection Advisory Board***3P. Establishment and membership**

(1) There is established a board to be known as the Witness Protection Advisory Board.

(2) The Board shall be an unincorporated body consisting of—

- (a) the Solicitor General as chairperson;
- (b) the Principal Secretary responsible for matters relating to foreign affairs;
- (c) the Principal Secretary responsible for matters relating to finance;
- (d) the Chief Registrar of the Judiciary;
- (e) the Director-General of the National Intelligence Service;
- (f) the Inspector-General of the National Police Service;
- (g) the Commissioner-General of Prisons;
- (h) the Director of Public Prosecutions; and
- (i) the Chairperson of the Kenya National Commission on Human Rights.

(3) The Director shall be the secretary of the Board.

(4) A member of the Board may in writing designate an officer not below the level of Director or equivalent to represent him on the Board.

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 9, Act No. 18 of 2018, Sch.]

**3Q. Functions and Powers**

(1) The principal function of the Board shall be to advise the Agency generally on the exercise of its powers and the performance of its functions under the Act and shall, in particular but without prejudice to the generality of the foregoing—

- (a) advise on the formulation of witness protection policies in accordance with the current law and international best practices;
- (b) have general oversight on the administration of the Agency;
- (c) approve the budgetary estimates of the Agency; and
- (d) perform any other functions as may be conferred by this Act or any other law.

(2) The Board may establish committees consisting of members of the Board to carry out any of its functions.

[Act No. 2 of 2010, s. 5.]

### **3R. Allowances**

Members of the Board shall be paid such allowances as may be determined from time to time by the Cabinet Secretary responsible for finance in consultation with the Commission.

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 10.]

### **3S. Meetings and procedure of the Board**

(1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(2) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(3) The quorum at the meeting of the Board is five members of the Board or a greater number determined by the Board in respect of an important matter.

(4) The chairman shall convene and preside at meetings of the Board or in the absence of the chairman, by the vice-chairman or in both their absence, by a member of the Board elected by the members present from among their number.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(6) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members.

[Act No. 2 of 2010, s. 5.]

### **3T. Disclosure of interest, etc.**

(1) A member of the Board or a person present at a meeting of the Agency who has interest in a matter for consideration by the Board or by the Agency shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board or the Agency in respect of that matter unless the Board or the Agency decides otherwise.

(2) A member of the Board, the Director of the Agency or a member of staff of the Agency shall not transact any business or trade with the Agency.

(3) A member or a person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding three years or both.

[Act No. 2 of 2010, s. 5.]

#### *C. The Witness Protection Complaints Committee*

### **3U. Establishment of the Witness Protection Complaints Committee**

(1) There is established a committee to be known as the Witness Protection Complaints Committee.

(2) The Committee shall consist of—

- (a) a chairperson who shall be a person qualified to be appointed a judge of the High Court; and
- (b) four other members—

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- (i) one of whom shall be an advocate of the High Court of five years standing;
- (ii) two members with relevant experience in handling complaints relating to human rights and intelligence respectively; and
- (iii) one member who shall either be a retired senior witness protection officer or a person with experience in witness protection.

(3) The chairperson and members of the Committee shall be appointed by the Attorney-General and shall serve on part-time basis.

(4) A person shall not be qualified to be appointed as a chairperson or a member of the Committee if that person—

- (a) is a member of the public service or is a member of a governing body of a political party; or
- (b) has not met the requirements of Chapter Six of the Constitution.

(5) The chairperson and members shall hold office for a non-renewable term of six years.

(6) The Attorney-General may—

- (a) by regulations provide guidelines for the operation of the committee; and
- (b) designate staff to facilitate the operations of the Committee.

[Act No. 2 of 2010, s. 5, Act No. 45 of 2016, s. 12.]

### **3V. Functions of Committee**

(1) The Committee shall receive, consider and determine—

- (a) appeals from decisions of the Director under this Act; and
- (b) complaints against staff of the Agency.

(2) A person aggrieved by the decision of the Committee may, within thirty days of that decision, appeal to the High Court.

[Act No. 45 of 2016, s. 13.]

## **PART II – THE WITNESS PROTECTION PROGRAMME**

### **4. Protective action**

(1) The Agency shall establish and maintain a witness protection programme and shall take such action as may be necessary and reasonable to protect the safety and welfare of the protected persons.

(2) Without prejudice to the generality of subsection (1), the action taken under subsection (1) may include but not be limited to—

- (a) physical and armed protection;
- (b) relocation within or outside Kenya;
- (c) change of identity; or
- (d) any other measure necessary to ensure the safety of a protected person;

(3) The Agency may request the courts, in support of the programme, to implement protection measures during court proceedings which measures may include but not be limited to—

- (a) holding *in camera* or closed sessions;

- (b) the use of pseudonyms;
- (c) the reduction of identifying information;
- (d) the use of video link; or
- (e) employing measures to obscure or distort the identity of the witness.

(4) The Agency shall put in place support measures to facilitate the integration of the protected person.

[Act No. 2 of 2010, s. 6, Act No. 45 of 2016, s. 14.]

#### **5. Inclusion in witness protection programme**

(1) The decision to admit into or exclude any person from the programme, shall be the responsibility of the Director.

(2) A person may be included in the programme only if—

- (a) the Director has decided that the witness be so included;
- (b) the person agrees to be included; and
- (c) a memorandum of understanding in accordance with section 7 is signed by the witness or by—
  - (i) a parent or guardian of the person if the person is under the age of eighteen years; or
  - (ii) a guardian or other person who is usually responsible for the care and control of the person, if the person otherwise lacks legal capacity to sign it.

(3) Where a person has not been offered protection under the programme, a written request for his inclusion in the programme may be made to the Director by—

- (a) the witness; or
- (b) a law enforcement agency;
- (c) a public prosecutor; or
- (d) a legal representative or any other intermediary.

(4) An application for the protection of a person below the age of eighteen may, in circumstances as the Attorney-General may specify in Regulations, be made without the consent of the person's parent or guardian.

(5) The Agency shall process the request under subsection (3) without undue delay.

(6) Where—

- (a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under the age of eighteen; and
- (b) the memorandum is still operating after the witness turns eighteen,

the Agency may require the witness to sign the memorandum.

(7) The inclusion of a witness or protected person in the programme shall not be treated as a reward or a means of persuading or encouraging the witness to give evidence or to make a statement.

(8) A person admitted into the programme shall be protected for as long as the danger or risk to their safety persists.

[Act No. 2 of 2010, s. 7, Act No. 45 of 2016, s. 15, Act No. 18 of 2018, Sch.]



**6. Assessing witness for inclusion in the programme**

(1) In deciding whether to include a witness in the programme, the Director shall have regard to—

- (a) the seriousness of the offence to which any relevant evidence or statement relates;
- (b) the nature and importance of any relevant evidence or statement;
- (c) the nature of the perceived danger to the witness;
- (d) *deleted by Act No. 2 of 2010, s. 8;*
- (e) *deleted by Act No. 2 of 2010, s. 8;*
- (f) whether there are viable alternative methods of protecting the witness;
- (g) *deleted by Act No. 2 of 2010, s. 8;*
- (h) the public interest in the prosecution of the case;
- (i) ability of the person to adapt to the programme and its measures.

and may have regard to such other matters as the Director considers relevant.

(2) The Director shall not include a witness in the programme if the Director does not, in his opinion, have enough information to assess the matters referred to in this section in relation to the witness.

[Act No. 2 of 2010, s. 8, Act No. 45 of 2016, s. 16.]

**7. Memorandum of understanding**

(1) A memorandum of understanding shall—

- (a) set out the basis on which a participant is included in the programme and details of the protection and assistance which are to be provided; and
- (b) contain a provision to the effect that protection and assistance under the programme may be terminated if the participant deliberately breaches a term of the memorandum of understanding or a requirement or undertaking relating to the programme.

(2) A memorandum of understanding in relation to a participant may also contain provisions relating to any one or more of the following—

- (a) any outstanding legal obligations of the participant and how they are to be dealt with;
- (b) any legal obligations which the participant may or may not enter into;
- (c) the surrender and issue of passports and other identification documents;
- (d) the taking, provision and retention of photographs of the participant;
- (e) the issue of any documents relating to the new identity of the participant;
- (f) the prohibition of the participant from engaging in specified activities;
- (g) marriage, family maintenance, taxation, welfare or other social or domestic obligations or relationships;
- (h) any other obligations of the participant;
- (i) consequences of the participant's failing to comply with the provisions of the memorandum of understanding; and

- (j) any other matter for which it may be necessary or expedient to make provision in the circumstances of the case.

(3) A memorandum of understanding shall contain a statement advising the participant of his right to complain to the Director about the conduct of any member of staff in relation to the matters dealt with in the memorandum.

(4) A memorandum of understanding shall be signed by or on behalf of the witness in the presence of the Director or a member of staff designated by the Director for the purposes of this section.

(5) A witness becomes included in the programme when the Director or a member of staff designated by him signs the memorandum of understanding.

(6) The Director shall, as soon as practicable after a memorandum of understanding is duly signed, notify the relevant participant that it has been signed.

[Act No. 2 of 2010, s. 9.]

### **8. Variation of memorandum of understanding**

A memorandum of understanding may be varied with the consent of the participant and the Director.

[Act No. 2 of 2010, s. 10.]

### **9. Temporary protection pending full assessment**

(1) The Director may include in the programme on a temporary basis a witness who, in the Director's opinion, is in urgent need of protection.

(2) The Director may require an interim memorandum of understanding to be signed by or on behalf of the witness.

(3) Sections 5 and 6 shall not be construed as preventing the exercise or performance of any power or function under this section but, in so far as the requirements of those sections have not been complied with before the witness is included in the programme, they shall be complied with as soon as practicable after the witness's inclusion.

[Act No. 2 of 2010, s. 11.]

### **10. Cessation of protection and assistance**

(1) Protection and assistance provided under the programme to a participant shall be terminated by the Director if the participant requests in writing that it be terminated.

(2) Protection and assistance provided under the programme may be terminated by the Director if—

- (a) the participant deliberately breaches a term of the memorandum of understanding or a requirement or undertaking relating to the programme;
- (b) anything done or intended to be done by the participant is, in the opinion of the Director, likely to threaten the security or compromise the integrity of the programme; or
- (c) the circumstances which gave rise to the need for protection and assistance for the participant have ceased to exist,

and the Director is of the opinion that, in the circumstances of the case, the protection and assistance should be terminated.

[Act No. 2 of 2010, s. 12.]

**11. Suspension of protection and assistance**

Protection and assistance provided under the programme to a participant may be suspended by the Director for a reasonable period determined by the Director if he is satisfied that the participant has done or intends to do something which limits the ability of the Director to provide adequate protection to the participant.

[Act No. 2 of 2010, s. 13.]

**12. Notice of involuntary termination or suspension**

If protection and assistance provided under the programme to a participant are terminated or suspended under section 10 or 11, the Director shall notify any law enforcement agency which is interested in the decision.

[Act No. 2 of 2010, s. 14.]

**PART III – PROTECTING WITNESSES FROM IDENTIFICATION****13. Identifying documents**

Without limiting the powers of the Director under section 4, he may apply for any documents necessary—

- (a) to allow a witness to establish a new identity;
- (b) otherwise to protect the witness; or
- (c) to restore a former participant's former identity.

[Act No. 2 of 2010, s. 15.]

**14. Application for court order**

(1) The Agency may, in a manner to be prescribed by rules of court, apply to the High Court for an order authorising a specified person, or a person of a specified class or description—

- (a) to make a new entry in a register of births or a register of marriages in respect of a witness;
- (b) to make a new entry in a register of deaths in respect of a witness or a relative (by blood or marriage) of a witness; or
- (c) to issue in the witness's new identity a document of a kind previously issued to the witness.

(2) The Agency shall provide such evidence as the High Court may require to satisfy itself as to the matters specified in section 16.

[Act No. 2 of 2010, s. 16.]

**15. Court proceedings under this Part to be closed to public**

All business of the High Court under this Part shall be conducted *in camera*.

**16. Power of High Court to make order**

The High Court may make a witness protection order if it is satisfied that—

- (a) the person named in the application as a witness—
  - (i) was a witness to or has knowledge of an offence and is or has been a witness in criminal proceedings relating to the offence; or
  - (ii) is a person who, because of his relationship to or association with a person to whom subparagraph (i) applies, may require protection or other assistance under this Act;

- (b) the life or safety of the person may be endangered as a result of his being a witness;
- (c) a memorandum of understanding has been entered into by the witness in accordance with section 7; and
- (d) the person is likely to comply with the memorandum of understanding.

**17. Effect of witness protection order**

On the making of an order of the kind referred to in section 14(1)(a) or (b)—

- (a) a person authorised to do so by the order may make such entries in a register of births, deaths or marriages as are necessary to give effect to the order;
- (b) the appropriate registrar having charge of the register of births, deaths or marriages shall afford the person so authorised full access to the relevant register and give him such assistance as he may require; and
- (c) the Agency shall maintain records showing details of the original birth, death or marriage of each person in respect of whom an entry is made under paragraph (a).

[Act No. 2 of 2010, s. 17.]

**18. Effect of entries made under this Act**

(1) An entry made under this Act in a register of births, deaths or marriages has effect as if it were a valid entry made in accordance with the law governing the register.

(2) An entry made under this Act in a register of births, deaths or marriages can only be cancelled by the Registrar-General or an appropriate registrar if the High Court, after being satisfied that the witness is no longer included in the relevant programme, has made an order on the application of the Agency directing that the entry be cancelled.

[Act No. 2 of 2010, s. 18.]

**19. Special provision in case of marriage of participant**

(1) A participant who has been provided with a new identity under the programme shall not marry unless—

- (a) the participant has given to the Agency evidence which establishes the identity of the participant and shows that the participant is of marriageable age;
- (b) if the participant has been married previously the participant has given to the Agency evidence which establishes that the contemplated marriage is not contrary to law; and
- (c) the participant has given to the Agency a statutory declaration to the effect that there is no legal impediment to the marriage and the Agency is not aware of any such impediment.

(2) A person who contravenes this section is guilty of an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or both.

[Act No. 2 of 2010, s. 19.]

**20. Restoration of former identity**

(1) Where—

- (a) a participant has been provided with a new identity under the programme; and
- (b) protection and assistance afforded to him under the programme have been terminated,

the Agency may, if he considers it appropriate to do so, take such action as is necessary to restore the former participant's former identity.

(2) The Agency shall take reasonable steps to notify the former participant of a decision under subsection (1).

(3) If the Agency—

- (a) takes action under this section to restore the former identity of a person who was a participant; and
- (b) notifies the former participant in writing that he is required to return to the Agency all documents provided to the former participant that relate to the new identity provided under the programme,

the former participant shall not, without reasonable excuse, refuse or fail to return those documents to the Agency within fourteen days after receiving the notice.

(4) A person who contravenes subsection (3) is guilty of an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or both.

[Act No. 2 of 2010, s. 20.]

**21. Offences in relation to documents**

While an entry made under this Act in a register of births, deaths or marriages continues in force, a person in respect of whom the entry is made who uses or obtains any document issued by a registrar having charge of a register of births, deaths or marriages which is based on the previous entry is guilty of an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or both.

**22. Information not to be disclosed**

(1) A person who, either directly or indirectly, makes a record of, or discloses or communicates to another person, any information relating to the making of an entry under this Act in a register of births, deaths or marriages, unless it is necessary to do so—

- (a) for the purposes of this Act;
- (b) for the purposes of investigation by the Director of Public Prosecutions, the National Police Services or other law enforcement agencies; or.
- (c) to comply with an order of the High Court,

is guilty of an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years, or both.

(2) Notwithstanding subsection (1), the Agency may disclose the former identity of a participant or former participant for the purpose of obtaining documents relating to the new identity of the participant or former participant.

[Act No. 2 of 2010, s. 21, Act No. 45 of 2016, s. 17.]

**23. Non-disclosure of former identity of participant**

(1) Where—

- (a) a participant who has been provided with a new identity under the programme would, apart from this section, be required by or under a law of Kenya to disclose his former identity for a particular purpose; and
- (b) the Director has given the participant permission, in the form prescribed by regulations made under this Act, not to disclose his former identity for that purpose,

the participant is not required to disclose his former identity to any person for that purpose.

(2) If a participant has been given permission under subsection (1) not to disclose his former identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose, under or in relation to the relevant law of Kenya to claim that his new identity is his only identity.

(3) It shall be the duty of each person who is or has been associated with the administration of the programme, and who has obtained access to information or a document relevant to the programme, not to disclose that information or publish that document except as authorised by the Director.

(4) In this section, “**participant**” includes a person who—

- (a) was provided with a new identity under the programme; and
- (b) is no longer a participant but retains that identity.

[Act No. 2 of 2010, s. 22.]

**24. Identity of participant not to be disclosed in legal proceedings**

(1) If, in any proceedings in a court, tribunal or commission of inquiry, the identity of a participant is in issue or may be disclosed, the court, tribunal or commission shall, unless it considers that the interests of justice require otherwise—

- (a) hold that part of the proceedings which relates to the identity of the participant in private; and
- (b) make such order relating to the suppression of publication of evidence given before the court, tribunal or commission as, in its opinion, will ensure that the identity of the participant is not disclosed.

(2) If in any proceedings in a court, tribunal or commission of inquiry, a participant or former participant who has been provided with a new identity under the programme is giving evidence, the court, tribunal or commission may hold that part of the proceedings *in camera*.

(3) The court, tribunal or commission before which any proceedings referred to in subsection (1) or (2) are conducted may, if it thinks fit, by order direct—

- (a) that no question shall be asked in the proceedings which might lead to the disclosure of a protected identity of a participant or former participant or of his place of abode;
- (b) that no witness in the proceedings, including a participant or former participant, can be required to answer a question, give any evidence, or provide any information, which may lead to the disclosure of a protected identity of the participant or former participant or of his place of abode; and

- (c) that no person involved in the proceedings shall, in the proceedings, make a statement which discloses or could disclose a protected identity of a participant or former participant or his place of abode.

(4) In subsection (3), “**protected identity**” means an identity of a participant or former participant that is different from the identity under which he is known in or in connection with the proceedings concerned.

(5) This section shall have effect notwithstanding any provision of the Commissions of Inquiry Act (Cap. 102) or any other law or rule of evidence.

#### **25. Documentation restrictions**

The Agency shall not obtain documentation for a participant which represents that the participant—

- (a) has a qualification which he does not have; or
- (b) is entitled to a benefit to which he is not entitled.

[Act No. 2 of 2010, s. 23.]

#### **26. Special commercial arrangements by Attorney-General**

The Agency may make commercial arrangements with a person under which a participant is able to obtain a benefit under a contract or arrangement without revealing his former identity.

[Act No. 2 of 2010, s. 24.]

#### **27. Dealing with rights and obligations of participant**

(1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Agency shall take such steps as are reasonably practicable to ensure that—

- (a) those rights or obligations are dealt with according to law; or
- (b) the person complies with those restrictions.

(2) Such action may include—

- (a) providing protection for the participant while the participant is attending court; or
- (b) notifying a party or possible party to legal proceedings that the Agency will, on behalf of the participant, accept process issued by a court, a tribunal or a commission of inquiry and nominating an office for the purpose.

[Act No. 2 of 2010, s. 25.]

#### **28. Avoidance of obligations by participant**

(1) If the Director is satisfied that a participant who has been provided with a new identity under the programme is using the new identity—

- (a) to avoid obligations which were incurred before the new identity was established; or
- (b) to avoid complying with restrictions which were imposed on the person before the new identity was established,

the Director shall give notice in writing to the participant stating that he is so satisfied.

(2) The notice shall also state that, unless the participant satisfies the Director that the obligations will be dealt with according to law or the restrictions will

be complied with, the Director will take such action as he considers reasonably necessary to ensure that they are dealt with according to law or complied with.

(3) Such action may include informing a person who is seeking to enforce rights against the participant of the details of any property, whether real or personal, owned by the participant under his former identity.

[Act No. 2 of 2010, s. 26.]

## **29. Payments under witness protection programme**

(1) The Director may, at his discretion, certify in writing that the whole or part of an amount held by a participant represents payments made to the participant under the programme.

(2) An amount so certified cannot be confiscated or restrained, and cannot be applied in payment of pecuniary penalties, under any law.

[Act No. 2 of 2010, s. 27.]

## **PART IIIA - RECIPROCAL PROTECTION ARRANGEMENTS WITH FOREIGN COUNTRIES**

### **29A. Admission of witnesses from foreign countries on reciprocal basis**

(1) The Director, in consultation with the Attorney-General, may on the basis of any treaty or convention ratified by Kenya enter into a written agreement with a competent authority from a foreign country—

- (a) to admit, on reciprocal basis, qualifying witnesses from that country into the witness protection programme under this Act; or
- (b) to have Kenyan witnesses protected under the witness protection regime of that foreign country.

(2) The particulars for the agreement referred to under subsection (1) shall include—

- (a) personal particulars and relevant documentation with respect to the witnesses sought to be protected;
- (b) the reasons for their protection, and the nature of the risk or threat they are facing;
- (c) the period of protection;
- (d) the source of funding to meet their protection costs; and
- (e) any other relevant particulars.

[Act No. 45 of 2016, s. 18.]

### **29B. Application for admission of a foreign witness**

(1) An application for protection under this Part shall be in the prescribed form.

(2) Upon receipt of an application under subsection (1), the Director shall assess and, after consultation with the Attorney-General, determine whether or not to admit the witness into the programme.

(3) Before a foreign witness is admitted into the programme under this section, the Director shall—

- (a) request to be furnished with such further information as may be necessary; and
- (b) confirm that the foreign authority requesting for such protection shall provide all the resources and other material necessary for the protection.



(4) Where it is decided to admit a foreign witness in the programme, the Director shall liaise with the Cabinet Secretary responsible for immigration for the necessary permits.

(5) The Agency may make Regulations to give full effect of this Part.

[Act No. 45 of 2016, s. 18.]

### **29C. Admission of witnesses at request of international court, or tribunal, to which Kenya is a party**

(1) Subject to the provisions of any other law, the Director may upon request from an international court, tribunal, commission, institution or organisation to which Kenya is a party, and after consultations with the Attorney-General, admit any witness to the programme.

(2) The provisions of this Part relating to the protection of foreign witnesses shall, with necessary modifications, apply to a request made pursuant to this section.

[Act No. 45 of 2016, s. 18.]

## **PART IV – MISCELLANEOUS**

### **30. Disclosures concerning participants**

A person who, without lawful excuse, discloses information—

- (a) about the identity or location of a person who is or has been a witness or participant; or
- (b) which compromises the security of such a person,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

### **30A. Prohibition of false representation**

A person who, without prior written approval of the Agency, in connection with an activity carried on by him takes, assumes, uses or in any manner publishes a name, description, title or symbol conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that the activity is carried on under or by virtue of the provisions of this Act or on behalf of the Agency, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

[Act No. 2 of 2010, s. 28.]

### **30B. Offences in connection with staff of the Agency**

A person, who—

- (a) not being the Director or a member staff of the Agency, by words, conduct or demeanour falsely represents himself to be the Director or member of staff of the Agency;
- (b) exercises or attempts to exercise undue influence over the Director or staff of the Agency which is calculated to prevent the Director or staff from carrying out their duties or encouraging them to perform an act which is in conflict with their duties; or
- (c) is an accomplice to the commission of an act whereby a lawful order given to a member of staff or a regulation or directive or other rule may be evaded,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

[Act No. 2 of 2010, s. 28.]

### **30C. Obstruction of the staff of the Agency**

A person who assaults, resists or willfully obstructs a member of staff of the Agency or a person acting under the direction of that member of staff in the due execution of his duties under this Act, commits an offence and is liable on conviction—

- (a) for a first offence, to a fine not exceeding one million shillings; and
- (b) for a second or subsequent offence, to imprisonment for a term not exceeding five years.

[Act No. 2 of 2010, s. 28.]

### **30D. Prohibition of access to premises of the Agency**

(1) The Cabinet Secretary responsible for internal security may, on the request of the Director, by notice in the *Gazette* or in any other manner as it may be necessary in the circumstances, prohibit or restrict access to land or premises under the control of the Agency.

(2) The Agency may take or cause to be taken measures as it may consider necessary for the security of, or the application of, a prohibition of or a restriction on access to land or premises referred to in subsection (1), and may in connection with measures taken cause notices to be published or warning notices to be erected as it may, in each particular case, consider necessary.

(3) A person who enters upon or is on land or premises in contravention of a prohibition or restriction under subsection (1) commits an offence and is liable on conviction to a fine of not less than five hundred thousand shillings, or to imprisonment for a term not exceeding three years or to both.

[Act No. 2 of 2010, s. 28, Act No. 18 of 2018, Sch.]

### **30E. Prohibition on disclosure without consent**

(1) Subject to section 31(2), a person shall not, without the written consent given by or on behalf of the Agency, publish or disclose to another person the contents of a document, communication or information which the Agency itself has not made public and which has come to the persons knowledge in the course of his duty or association with the Agency under this Act, or, having information which has been published or disclosed without the authority, publish or communicate that information to another person.

(2) The limitation on disclosure in this section shall not be construed to prevent the disclosure of criminal activity by the Director or staff of the Agency.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to imprisonment for a term of not less than ten years.

[Act No. 2 of 2010, s. 28.]

### **30F. Prohibition against intimidation, harassment etc.**

(1) A person shall not intimidate, harass, obstruct, threaten, hinder or prevent a witness with intention to subvert the course of justice.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a term of imprisonment not exceeding five years.

[Act No. 45 of 2016, s. 19.]

### **31. Disclosure by participants and others**

(1) A person who is or was a participant or a witness considered for inclusion in the programme and who directly or indirectly discloses or communicates to another person—

- (a) the fact that he or a member of his family has entered a memorandum of understanding under section 7;
- (b) details of the memorandum of understanding;
- (c) information relating to anything done by the Director or any officer under this Act; or
- (d) information about any officer gained by the person as a result of anything done under this Act,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) This section shall not apply to a disclosure or communication which—

- (a) has been authorised by the Agency;
- (b) which has been determined by the Agency for purposes of investigation; or
- (c) is necessary to comply with an order of the High Court.

(3) For the purposes of subsection (1), a person is a witness considered for inclusion in the programme if—

- (a) the person is a witness who is the subject of consideration under section 5 for inclusion in the programme (even if the Director subsequently decides not to include the witness); or
- (b) the person is a witness included in the programme temporarily under section 9 (even if the witness does not go on to be included in the programme).

[Act No. 2 of 2010, s. 29.]

### **32. Non-compellability of witnesses**

Except as otherwise provided by an order of the High Court, a person who acquires knowledge or information as a result of association or connection, duty or service with the programme or the Agency shall not be compellable, in proceedings in a court, tribunal or commission of inquiry, to produce any document or to divulge or communicate a matter or a thing related to the exercise of functions under this Act or the protection of witnesses included in the programme.

[Act No. 2 of 2010, s. 30.]

### **33. Protection of witnesses**

(1) No action or proceeding, including a disciplinary action, may be instituted or maintained against a witness in respect of—

- (a) any assistance given by the witness to the court or to a law enforcement agency;

(b) a disclosure of information made by the witness to the court or to a law enforcement agency.

(2) Subsection (1) does not apply with respect to a statement made by a witness who did not believe it to be true.

(3) No person shall be required to identify, or provide information that might lead to the identification of, a witness who assisted or disclosed information to the court or law enforcement agency.

(4) In any proceedings before a court, the court shall ensure that information that identifies or might lead to the identification of a person who assisted or disclosed information to the court or law enforcement agency is removed or concealed from any documents to be produced or inspected in connection with the proceeding.

(5) Subsections (3) and (4) shall not apply to the extent determined by the court to be necessary to ensure that justice is fully done.

#### **34. Immunity from legal proceedings**

No person shall be liable to any action, claim, suit or demand whether criminal or civil in respect of any thing done or omitted to be done by him in good faith in the exercise or purported exercise of a function conferred by or under this Act.

**35.** *Repealed by Act No. 45 of 2016, s. 20.*

#### **36. Regulations and rules**

(1) The Attorney-General may make Regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) The Chief Justice may, in consultation with the Director, make such rules of court as may be required or permitted by this Act to be made or as may be necessary or expedient to be made for carrying out or giving effect to this Act.

(3) Without prejudice to subsections (1) and (2) the nature and scope of the Regulations and rules shall—

- (a) be in line with the general purpose and objectives of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under this Act.

[Act No. 45 of 2016, s. 21.]

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**NO. 16 OF 2006**

**WITNESS PROTECTION ACT**

SUBSIDIARY LEGISLATION

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**WITNESS PROTECTION REGULATIONS, 2008**

[L.N. 10/2009.]

***Revoked by L.N. 99/2011, r. 13.***

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**WITNESS PROTECTION REGULATIONS, 2011**

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THIRD SCHEDULE —	MEMORANDUM OF UNDERSTANDING: WITNESS
FOURTH SCHEDULE —	KENYA WITNESS PROTECTION AGENCY OATH OF OFFICE
FIFTH SCHEDULE —	KENYA WITNESS PROTECTION AGENCY RELOCATION AGREEMENT

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[Subsidiary]

**WITNESS PROTECTION REGULATIONS, 2011**

[L.N. 99/2011.]

**1. Citation**

These Regulations may be cited as the Witness Protection Regulations, 2011.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

“**classified information**” means information of such a sensitive nature and value that the unauthorized publication or disclosure thereof would pose a security risk to the state;

“**medical officer**” has the meaning assigned in section 2 of the Public Health Act (Cap. 242);

“**security clearance**” means an authorization that entitles a person to have access to information of a determined sensitivity or classification;

“**security vetting investigation**” means a systematic procedure used to examine and appraise a person to determine his or her security competence, including the continued monitoring;

“**sensitive information**” includes any information, material or resources of which the unauthorized disclosure, loss, compromise, misuse or damage is likely to—

- (a) cause serious harm to a person, a government or the legitimate activities of a Department, agency, Commission or institution;
- (b) be prejudicial to the establishment and maintenance of lawful methods for the maintenance of public safety; or
- (c) affect the defense, security or international relations of Kenya;

“**vulnerable witness**” means a witness who, for justified reasons, should be interviewed or allowed to testify in a special manner and includes children, victims of sexual and gender based violence, the elderly, persons who are ill or any other person who has been declared a vulnerable witness due to the personal characteristics of the witness, the type of offence committed or relationship between the witness and the perpetrator or other circumstances;

“**witness protection officer**” means a protection officer designated or appointed by the Director in accordance with the Act.

**4. Application for witness protection**

(1) A witness or a person who is related to a witness, who has reason to believe that his safety is or may be under threat by any person or group of persons, whether known to him or not, by reason of him being a witness or related to a witness, may apply for inclusion into the programme established pursuant to section 4 of the Act.

(2) Where the witness or the person related to the witness is for any reason not able to make an application under paragraph (1) and there is reason to believe that the safety of a witness or a person who is related to a witness may be threatened, an intermediary, legal representative, parent or legal guardian, public prosecutor or the law enforcement agency may, make an application on behalf of the witness or the person related to a witness.

(3) An application may be made on behalf of a child without the consent of his guardian or parent where the applicant, the investigator or the public prosecutor can prove to the Director that there are exceptional circumstances that warrant the application to be made without the consent.

(4) A law enforcement agency, public prosecutor, legal representative or intermediary to whom a report that the life of a witness is in danger has been made, shall immediately investigate the report and if the report is found credible—

- (a) assist such a person with his or her application;
  - (b) inform the Director of the application; and
  - (c) submit the application to the Director or a protection officer.
- (5) An application—
- (a) by witness shall be made in Form A set out in the First Schedule;
  - (b) by a person who is related to a witness shall be made in Form B set out in the First Schedule;
  - (c) an application on behalf of a child, shall be made in Form C set out in the First Schedule:

Provided that where parental or guardian consent cannot be obtained, the application shall be accompanied by a notice of declination of protection in Form E set out in the First Schedule and a sworn statement stating the reasons for the declination; and

- (d) any other form, document, report or information that is necessary.

(6) The witness protection officer from whose jurisdiction an application under this regulation originates shall submit a report, regarding every application for protection to the Director who shall consider each application, taking into account the matters specified in regulation 6.

(7) The witness protection officer shall, after undertaking a threat and risk Assessment, make recommendations in the report submitted under paragraph (6), on whether the application should be accepted, denied or deferred.

(8) Where the witness protection officer recommends that an application should be accepted, the witness protection officer shall also make recommendations relating to—

- (a) nature of the protection to be provided;
- (b) expected duration of protection; and
- (c) any particular circumstances that should be taken into account in the placement under such protection.

(9) A witness protection officer shall, where he recommends that an application should be—

- (a) denied, provide the reasons for the recommendation and also recommend, where necessary, any alternative arrangements that can be made;
- (b) deferred, provide the reasons for the recommendation and also recommend the period within which the application should be finalised.

## **5. Inclusion of a witness or related person in the Witness Protection Program**

(1) A witness or a person related to the witness shall participate in the programme voluntarily.

(2) A witness or a person related to a witness shall not be included in the program unless all the conditions for inclusion into the witness protection program have been met and the witness or the person related to the witness has signed the Memorandum of Understanding referred to in sections 5, 6 and 7 of the Act.

(3) The Memorandum of Understanding relating to inclusion into the programme on a temporary basis is set out in the Second Schedule.

(4) The Memorandum of Understanding relating to admittance to the Witness Protection Program is set out in the Third Schedule.

(5) Where a witness or a person related to a witness decides, after consultation with the Agency, not to pursue an application for inclusion into the programme, the witness or a person related to the witness shall submit a declination in Form D or in the case of a child in Form E set out in the First Schedule.

(6) Where an application has been made for the inclusion of a child into the

*Witness Protection*

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[Subsidiary]

programme—

- (a) in accordance with regulation 4(3);
- (b) in respect of proceedings where the parent or guardian of the child is a suspect;
- (c) when the guardian or parent is not available; or
- (d) when the parent or guardian of the child has unreasonably withheld or is unable to give consent,

the child may be placed, if the Director is satisfied that it is necessary for the security and safety of the child, under temporary protection without the consent of the parent or guardian.

(7) The Director shall, within seven days of including a child into the programme, apply to the High Court for a protection order under section 16 of the Act.

(8) The Memorandum of Understanding shall, after a protection order has been made under paragraph (7) become a binding protection agreement.

(9) Where the High Court declines to grant a protection order, after considering an application made under paragraph (7), the Director shall discharge such child from the programme.

(10) The Director shall, where a child has been included in the programme without the consent of the child's parent or guardian, become the *curator ad litem* of the child.

(11) Where a witness who wishes to terminate the protection or assistance provided under section 10 of the Act or the Director has suspended the protection or assistance provided under section 11 of the Act, the witness or a person related to a witness shall complete the witness discharge in Form F set out in the First Schedule.

## 6. Needs of vulnerable witnesses

In performing its functions under Act, the Agency—

- (a) shall consider the particular needs of vulnerable witnesses including children, elderly persons and persons with disabilities; and
- (b) may assign, where necessary, a person to assist the vulnerable witness through all stages of the Witness Protection Program.

## 7. Resettlement or relocation

The Director shall, on the resettlement or relocation of a witness or a person related to a witness protected under the Act, negotiate on a case by case basis and complete a resettlement agreement set out in the Fifth Schedule.

## 8. Instructions to protected persons

(1) A witness protection officer may give, a witness who has been included in the programme, such instructions as he may consider necessary in the circumstances.

(2) A witness who does not adhere to the instructions given under paragraph (1) may be removed from the Witness Protection Program in accordance with section 10 of the Act.

## 9. Financial assistance to protected persons

(1) A witness or a person related to a witness who has been included in the programme shall, for the entire period of inclusion in the programme, be entitled to such allowances and support necessary to ensure that the dignity and basic human rights of that person are upheld.

(2) The Director shall determine the allowances payable under paragraph (1) based on the needs of that person and the principle that the economic conditions of the protected person shall be similar to their situation before admittance to the programme, considering the legal sources of income:

Provided that the economic conditions shall not be above the usual social minimum scale of Kenya.

- (3) The Director may, where necessary, pay—
- (a) a subsistence or daily allowance to enable the protected person to cater for basic living expenses;
  - (b) a situational allowance to allow for payment of any costs that are related to the specific needs of the protected person; or
  - (c) program payments to allow for the payment of any costs that are related to the protection of the protected person.

(4) The financial assistance provided to a witness or person related to a witness who is included into the programme shall, unless authorized by the Director, not exceed the amount necessary to cover costs of living and inclusion into an unfamiliar environment.

- (5) The Director may, after considering the evidence proving that—
- (a) the witness has forfeited income as a result of being included into the programme; or
  - (b) the inclusion into the programme has resulted in financial hardship to the witness or to a person related to the witness or dependant,

authorize the payment of an allowance that is equal to the income forfeited be made payable to the witness, less witness fees payable under any other regulation or authorize the payment of an amount that exceeds the amount necessary to cover costs of living and inclusion into an unfamiliar environment.

## **10. Confidentiality**

(1) Any documentation and information generated by the Agency shall be regarded as sensitive and be classified in accordance with the security policies and procedures of the Agency.

- (2) The Agency shall implement the following measures to ensure confidentiality—
- (a) vet all persons who have been identified to take up positions in the Agency;
  - (b) require the Director and every member of staff to apply to the Agency for security clearance and submit themselves to a security vetting investigation, before taking up duty;
  - (c) provide for mandatory vetting and re-vetting in accordance with the security policy of the Agency in the employment contract of all staff, contractors, or seconded staff;
  - (d) a member of staff who is found to be unfit to be issued with the required security clearance, shall not be eligible for employment by the Agency;
  - (e) a person who is already employed by the Agency, and who fails the vetting, may be removed from the Agency immediately effect and be dealt with in terms of the rules and regulations governing employment in the Agency;
  - (f) the Director and every member of the Agency shall, upon taking up their office take an oath or make an affirmation set out in the in the Fourth Schedule.

(3) A member of staff of the Agency shall not disclose any information to any third party without the specific authorization of the Director in accordance with section 30E of the Act.

(4) Where the High Court has issued an order compelling a person to provide information relating to the exercise of functions under this Act or the protection of witnesses included in the programme, in terms of section 32 of the Act, the Director shall—

- (a) take the necessary steps to secure the protected person;
- (b) specify security measures relating to the handling of the information after disclosure; and
- (c) inform the protected person of such a disclosure:

Provided that such a disclosure may not be made if, in the opinion of the Director such notification may jeopardize the purpose for which the information is to be disclosed.

[Subsidiary]

(5) In determining whether information may be disclosed as provided for in section 31(2), the Director shall consider—

- (a) the reason for the disclosure;
- (b) whether the need for disclosure can be effectively met by other means;
- (c) the probability that the disclosure may endanger the life of the protected person, any unprotected person who is related to a protected person, or the integrity of the program;
- (d) whether there are effective means to limit the further disclosure of the information;
- (e) specific security measures regarding the handling of the information after disclosure;
- (f) any other factor that, according to the Director, is necessary.

#### **11. Non disclosure of former identity of applicant**

A participant who has been provided with a new identity under the programme may, pursuant to section 23(1)(b) of the Act, request the Director for permission not to disclose his former identity in Form G set out in the First Schedule.

#### **12. Failure to comply with Regulations**

A member of staff of the Agency who does not comply with these Regulations shall be liable to such disciplinary action as may be determined by the Director.

#### **13. Revocation of L.N. 10/2009**

The Witness Protection Regulations, 2009, are revoked.

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FIRST SCHEDULE

FORM A

(r. 4 (5) (a))

APPLICATION FOR PROTECTION WITNESS PROTECTION PROGRAMME  
REQUEST FOR PROTECTION BY A WITNESS FOR HIMSELF AND RELATED  
PERSON(S)

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- This document consists of two Sections, Section A and Section B.
- Both sections have to be completed:
  - Section A by the applicant as defined in section 3 of the Witness Protection Act; and
  - Section B by the investigating officer/police officer/legal representative or other person assisting the applicant or receiving the application.
- In the event that the applicant is a child, please note that in terms of Regulation 4 (5) of the Witness Protection Regulations 2011, a Form C should accompany this application.
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable\*.
  - (a) State name and surname of witness;
  - (b) State age;
  - (c) State name and surname of members of the family of the family/household in respect of whom protective custody is required & their relationships;
  - (d) State particulars of the person /persons who threatens/threaten the safety of the person/person in respect of whom prospective custody is required (if known).
  - (e) State the circumstances as a result of which protection is required (e.g. death threat);
  - (f) State date of trial (if known);
  - (g) State place of trial (if known);
  - (h) State name of person who committed the offence if known;
  - (i) State all charges;
  - (j) Full description of type, location and full extent of injury (if any);

SECTION A:

(1) I, (a).....  
 Identity Card Number: .....Passport number:..... or  
 DOB: .....an adult \*male/female, (b) ..... years old,  
 hereby make an application that—

Witness Protection

[Subsidiary]

(i) I

\*and

(ii) (c)

Name	Surname	Age	ID Card Number/DOB	Relationship to applicant

be included in the Witness Protection Programme. I have reason to believe that \*my safety/ and \*the safety of the above-mentioned \*persons/persons is being threatened by (d)

.....  
.....  
.....

in that (c) .....

2. I—

(i)\* have given or shall give evidence on (f) .....

At (g) :.....

or

\* (ii) Shall possibly give evidence on (f) .....

At (g) .....

or

\* (iii) have material information at my disposal and am willing to testify in a criminal court in the case against (h).....

with regard to the offence of (i) .....

3. The nature of the evidence that I \*may/shall give is as follows:

.....  
.....  
.....

4. I have the following physical injuries: (j) .....

.....



Witness Protection

[Subsidiary]

5. I,.....hereby declare that the above-mentioned information is to the best of my knowledge, true complete and correct and that I am aware of the fact that it is an offence if I willfully furnish information or make a statement which is false or misleading.

.....  
Signature/Mark/ Right thumbprint of Applicant)

Place: ..... Date: .....

SECTION B:

Full names	
Surname	
Relationship to applicant	
Position	
Rank/Title	
Work address	
Work Telephone number.	
Cell Phone number.	

1. I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.
2. I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....  
Signature of Official

Place: ..... Date: .....

Additional Remarks:

.....

\_\_\_\_\_

[Subsidiary]

FORM B

(r.4(5)(b))

APPLICATION FOR PROTECTION WITNESS PROTECTION PROGRAMME  
REQUEST FOR PROTECTION BY A FAMILY MEMBER, DEPENDANT OR  
RELATED PERSON TO A PROTECTED WITNESS:

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- This document consists of two Sections, Section A and Section B.
- Both sections have to be completed:
  - Section A by the applicant as defined in section 3 of the Witness Protection Act, and
  - Section B by the investigating officer/police officer/legal representative or other person assisting the applicant or receiving the application.
- Please note that this application should be completed by every adult member of the family, dependant or related person to the protected witness;
- In the event that the applicant is a child, please note that in terms of Regulation 4 (5) of the Witness Protection Regulations, 2011, a Form C should accompany this Application.
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable\*.
  - (a) State name and surname of applicant;
  - (b) State age;
  - (c) State relationship to the protected witness;
  - (d) State name and surname of the protected witness;
  - (e) State name and surname of members of the family of the family/household in respect of whom protective custody is required & their relationships;
  - (f) State particulars of the person /persons who threatens/threaten the safety of the person/person in respect of whom prospective custody is required (if known).
  - (g) State the circumstances as a result of which protection is required (e.g. death threat);
  - (h) Full description of type, location and full extent of injury (if any).

SECTION A:

(1) I, (a).....,  
 Identity Card Number: .....Passport number:..... or  
 DOB: .....an adult \*male/female, (b) ..... years old,  
 hereby declare that I am a \*dependant of / are related to / have the following relationship  
 (c) ..... to (d) .....  
 make an application that—

Witness Protection

[Subsidiary]

(i) I

\*and

(ii) (e)

<i>Name</i>	<i>Surname</i>	<i>Age</i>	<i>ID Card Number/DOB</i>	<i>Relationship to applicant</i>

be included in the Witness Protection Programme.

I have reason to believe that \*my safety/ and \*the safety of the above-mentioned \*persons/persons is being threatened by (f)

.....in that (g) .....

.....

.....

2. I, have the following physical injuries: (h) .....

.....

.....

.....

.....

3. I,.....hereby declare that the above-

mentioned information is to the best of my knowledge, true complete and correct and that

I am aware of the fact that it is an offence if I willfully furnish information or make a

statement which is false or misleading.

.....

Signature/Mark/ Right thumbprint of Applicant)

Place: ..... Date: .....

SECTION B:

Full names	
Surname	
Relationship to applicant	
Position	
Rank/Title	

Witness Protection

[Subsidiary]

Work address	
Work Telephone number	
Cell Phone number.	

- I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.
- I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....  
 Signature of Official

Place: ..... Date: .....

**Additional Remarks:**

.....

.....

.....

.....

.....

FORM C (r.4 (5) (c))

APPLICATION FOR PROTECTION: CHILD WITNESS WITNESS PROTECTION PROGRAMME

REQUEST FOR WITNESS PROTECTION BY A CHILD WITNESS:

- Instructions for completion:
- Please read the instructions carefully on how to complete this document.
  - This document consists of two Sections, Section A and Section B.
  - Both sections have to be completed:
    - Section A by the child applicant as defined in section 3 of the Witness Protection Act, as assisted by his/her parent or guardian, and
    - Section B by the investigating officer / police officer / legal representative or other person assisting the applicant or receiving the application.
  - Please note that this application should be completed by a child witness or on behalf of the child as contemplated in section 5(3)(b)-(d) of the Act – whether

Witness Protection

[Subsidiary]

such a child will be accompanied into the Witness Protection Program by an adult parent or guardian, or not;

Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable\*.

- a) State name and surname of applicant;
- b) State age;
- c) State name and surname of members of the family of the family/household in respect of whom protective custody is required & their relationships;
- d) State particulars of the person /persons who threatens/threaten the safety of the person/person in respect of whom protection is required (if known).
- e) State the circumstances as a result of which protection is required (e.g. death threat);
- f) State date of trial (if known);
- g) State place of trial (if known);
- h) State name of person who committed the offence if known
- i) State all charges
- j) Full description of type, location and full extend of injury.(if any)
- k) Full home address;

SECTION A:

I) I,

(a).....

Identity Card Number: ..... Passport number:..... or

DOB: .....a child \*male/female, (b) ..... years old,

hereby make an application that-

(i)\* I alone or

(ii) \*I and (c)

Name	Surname	Age	ID Card Number/DOB	Relationship to applicant

be included in the Witness Protection Programme. I have reason to believe that \*my safety/ and \*the safety of the above-mentioned \*person/persons is being threatened by (d)

.....  
.....  
.....

in that (e)

.....  
.....

Witness Protection

[Subsidiary]

.....  
.....

2. I –

(i)\* have given or shall give evidence on(f) ..... at (g) .....  
or  
\* (ii) Shall possibly give evidence on (f) ..... at (g) .....  
or  
\* (iii) have material information at my disposal and am willing to testify in a criminal court, in the case against (h) .....with regard to the offence of (i) .....

3. The nature of the evidence that I \*may/shall give is as follows:

.....  
.....  
.....

2.I have the following physical injuries: (j) .....

.....  
.....

3. I, ..... hereby declare that the above-mentioned information is, to the best of my knowledge, true, complete and correct and that I am aware of the fact that it is an offence if I willfully furnish information or make a statement which is false or misleading.

.....  
(Signature/mark/thumbprint of deponent)

4. I, ..... Identity Number: .....  
Passport number:.....or DOB: .....  
an adult \*male/female, (b) ....., years old, of: (k) .....

Work address: .....  
Tel nr (h): ..... Tel nr (w): .....  
Cell phone nr: ..... E-Mail address: .....  
hereby declare that I, as the parent / guardian of the above-mentioned person hereby give authorization for the above-mentioned witness to be so protected.

.....  
(Signature/mark/thumbprint of parent/guardian)  
Place: ..... Date: .....

Witness Protection

[Subsidiary]

SECTION B:

Full names	
Surname	
Relationship to applicant	
Position	
Rank/Title	
Work address	
Work Telephone number	
Cell Phone number.	

1. I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.
2. I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....

Signature of Official

Place: ..... Date: .....

Additional Remarks:

.....  
.....

Witness Protection

[Subsidiary]

FORM D

(r. 5(5))

DECLINATION FORM (ADULT) WITNESS PROTECTION PROGRAMME

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- This document consists of two Sections, Section A and Section B.
- Both sections have to be completed:
  - Section A by the applicant as defined in section 3 of the Witness Protection Act; and
  - Section B by the Witness Protection Officer or other member of the Witness Protection Agency that interviewed the witness;
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable\*.
  - a) State name and surname of witness;
  - b) State age;
  - c) State name of the relevant investigation or prosecuting authority applicable;
  - d) State particulars of the person / organization who committed the offence;

SECTION A:

- 1) I, (a)..... Identity Card Number: .....  
 Passport number: ..... or DOB: .....  
 an adult \*male/female, (b) ..... years old, hereby state:
2. I understand that as a result of my \*cooperation and / or pending testimony for the office of the \* Director of Public Prosecution, Kenya or (c) in the matter against (d) ....., my life may be in danger.
3. I understand that I may be eligible for protection and relocation by the Kenya Witness Protection Agency and that my family can also be relocated and protected with me.
4. I have been offered the option of applying for Witness Protection with the understanding that, if accepted into the Witness Protection Program, the Kenya Witness Protection Agency will provide me with protection and relocation.
5. I hereby decline to apply for that program.
6. I understand the danger to me and my family if I do not accept the protective services the Witness Protection Agency might offer.

.....  
 Signature/Mark/ Right thumbprint of Applicant)  
 Place: ..... Date: .....

SECTION B:

Full names	
Surname	
Relationship to applicant	
Position	



Witness Protection

[Subsidiary]

Rank/Title	
Work address	
Work Telephone number	
Cell Phone number	

- I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.
- I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....Signature of Official  
 Place: ..... Date: .....  
 Additional Remarks:  
 .....  
 .....  
 .....

FORM E

(r. 4(5), 5(5))

DECLINATION FORM (CHILD CONSENT) WITNESS PROTECTION PROGRAMME

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- This document consists of two Sections, Section A and Section B.
- Both sections have to be completed:
  - Section A by the applicant (as supported by his/her parent or legal guardian) as defined in section 3 of the Witness Protection Act; and
  - Section B by the Witness Protection Officer or other member of the Witness Protection Agency that interviewed the witness;
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable\*.
  - State name and surname of Parent or guardian;
  - State age;
  - Full home and work addresses including contact telephone numbers;
  - State name and surname of child witness;

Witness Protection

[Subsidiary]

- e) State name of the relevant investigation or prosecuting authority applicable;
- f) State particulars of the person / organization who committed the offence;

SECTION A:

6. I(a), ..... Identity Card Number: .....  
 Passport number: ..... or DOB: .....  
 An adult \*male/female, (b) .....years old, of: (C) .....

Work address: .....  
 Tel nr (h): ..... Tel nr (w): .....  
 Cell phone nr: ..... E-Mail address: .....

Hereby declare that I, am the \*parent /guardian of the following child witness (d):  
 Identity Card Number: .....  
 Passport number: ..... or DOB: .....  
 a child \*male/female, (b) ..... Years old. I further more state the following.

6. I understand that as a result of the \*cooperation and / or pending testimony of the above mentioned child witness, for the office of the \* Director of Public Prosecution, Kenya or (e)

....., In the matter against (f) .....  
 the life of the child witness and my life may be in danger.

3. I understand that I and the above mentioned child witness may be eligible for protection and relocation by the Kenya Witness Protection Agency and that my family can also be relocated and protected with me.

4. I have been offered the option of applying for Witness Protection with the understanding that, if accepted into the Witness Protection Program, the Kenya Witness Protection Agency will provide us with protection and relocation.

5. \*I hereby decline to apply for that program, and / or,  
 \*I hereby decline to give permission for the child witness (d),  
 .....to be admitted in the Kenya Witness Protection Program;

6. I understand the danger to me, the child witness and my family if I do not accept the protective services the Witness Protection Agency might offer.

.....  
 Signature/Mark/ Right thumbprint of Parent / Guardian)  
 Place: ..... Date: .....  
 I have taken notice of the declination by my \*parent/ guardian.

.....  
 (Signature/mark/thumbprint of parent / guardian)  
 Place: ..... Date: .....

Witness Protection

[Subsidiary]

SECTION B:

Full names	
Surname	
Relationship to applicant	
Position	
Rank/Title	
Work address	
Work Telephone number	
Cell Phone number	

- I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.
- I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....  
 Signature of Official  
 Place: ..... Date: .....

Additional Remarks:  
 .....  
 .....

(r. 5(11))

FORM F: WITNESS DISCHARGE FORM WITNESS PROTECTION PROGRAMME

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- This document consists of three Sections, Section A, Section B and Section C.
- All the sections have to be completed:

Witness Protection

[Subsidiary]

- o Section A & C by the protected person (as supported by his/her parent or guardian if applicable) as defined in Section 3 of the Witness Protection Act; and
- o Section B by the Witness Protection Officer or other member of the Witness Protection Agency that interviewed the witness;
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable\*.
  - a) State name, surname full identifying details of the protected person;
  - b) State age;
  - c) Specify exact dates as agreed to by the Director Witness Protection ;
  - d) Please provide as much as possible detail. Continue on a separate page if necessary.
  - e) Full forwarding address. This is the address where the witness will be transported to on leaving the program and provision thereof is mandatory.
  - f) State full name, surname and identifying details of parent or legal guardian.
  - g) Full home and work addresses including contact telephone numbers if the parent or legal guardian was not protected with the witness on the Witness Protection Program.

SECTION A:

1. I(a), ..... Identity Card Number: .....  
 Passport number:..... or DOB: .....  
 an \*adult/ child, \*male/female (b) ..... years old, that is currently a  
 protected witness on the Witness Protection Program, hereby declares:

2. \*I hereby wish to be unconditionally released from the Witness Protection Program,  
 Or

\*I hereby wish to be unconditionally released from the Witness Protection Program for  
 the following period of time (c): ..... to .....

3. The reasons for my request are (d): .....  
 .....  
 .....

4. My forwarding address is (e):.....  
 .....

5. I shall not hold the Witness Protection Agency, or the Government of Kenya or any  
 other person liable in respect of any harm which may be or could be caused to me or my  
 dependants after my release from the witness protection program.

6. I \*am satisfied/ am not satisfied with my treatment whilst on the program.  
 (Please provide reasons if you were not satisfied with the treatment you received) (d):  
 .....  
 .....  
 .....

Witness Protection

[Subsidiary]

.....  
 Signature/mark/thumbprint of Witness)  
 Place: ..... Date: .....  
 As supported by his /her parent or legal guardian (f):  
 .....  
 Identity Card Number: ..... Passport number:  
 ..... or DOB: .....  
 Of: (g)Home address: ..... Work address:  
 .....  
 ..... Tel nr (h): ..... Tel nr (w):  
 .....  
 Cell phone nr: ..... E-Mail address:.....

.....  
 Signature/Mark/ Right thumbprint of Parent / Legal Guardian)  
 Place: ..... Date: .....

SECTION B:

Full names	
Surname	
Relationship to applicant	
Position	
Rank/Title	
Work address	
Telephone nr. (W)	
Cell Phone nr.	

Witness Protection

[Subsidiary]

SECTION C:

Quality of Treatment Questions			
Was the condition and quality of any accommodation provided satisfactory?	Yes		No
Were you at all times treated with dignity and respect by Protection Officers?	Yes		No
Were you at all times treated with dignity and respect by the Investigating Officer that you interacted with during your time on the program?	Yes		No
Were you at all times treated with dignity and respect by the Prosecutor that you interacted with during your time on the program?	Yes		No
Do you think that improvements can be made in the following areas?			
The length of time spent on the program?	Yes		No
The type and standard of accommodation provided?	Yes		No
The allowances paid to you whilst on the program?	Yes		No
The care that you received during your time on the program?	Yes		No

Please provide further information in the space below (d):

.....  
 .....

.....  
 (Signature/mark/thumbprint of Witness)

Place: ..... Date: .....

\*As supported by his /her parent or legal guardian (f):

.....  
 Identity Card Number: ..... Passport number:  
 ..... or DOB: .....

Of: (g)Home address: ..... Work address:  
 .....

..... Tel nr (h): ..... Tel nr (w): .....  
 Cell phone nr: ..... E-Mail address: .....

.....  
 Signature/Mark/ Right thumbprint of Parent / Legal Guardian)

Place: ..... Date: .....

Witness Protection

[Subsidiary]

(r. 11)

FORM G: PRESCRIBED FORM UNDER SECTION 23(1)(b) OF THE WITNESS PROTECTION ACT 2006

AUTHORISATION OF NON-DISCLOSURE OF FORMER IDENTITY OF A PARTICIPANT.

On the (a)..... day of ....., (b) ....., the participant, was provided with a new identity by the Witness Protection Agency in Kenya's Witness Protection Program. The Participant \*is now / has been, required by (c)..... under a law of the Republic of Kenya, namely,(d) .....to disclose \*his/her former identity for a particular purpose, namely, (e) ..... Pursuant to section 23(1)(b) of the Witness Protection Act, 2006 (f)..... the Director of the Witness Protection Agency, hereby permits the Participant not to disclose,\* his/her former identity to any person as required by (c) .....under (d) ..... for the purpose of (e) .....

THE DIRECTOR, Witness Protection Agency \_\_\_\_\_ Date \_\_\_\_\_

NOTE: Section 23(2) of the Act provides that having been given permission under section 23(1) of the Act not to disclose his identity for the purpose described above, it is lawful for the Participant, in any proceedings or for any purpose, under or in relation to the relevant law described above, to claim that his new identity is his only identity. This authorisation remains valid while the Participant retains his new identity and is not invalidated by reason of the Participant no longer being a participant in the Witness Protection Program, provided that new identity is retained.

However, where a decision is made to terminate the Participant's participation in the Witness Protection Program and action is taken by the Director of the Witness Protection Agency or his delegate to restore the Participant's former identity this document must be surrendered in accordance with any notice issued under section 20(3)(b) of the Act. Unauthorised use of this document may lead to prosecution in terms of the Witness Protection Act.

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- Please note that this document can only be signed by the Director Witness Protection Agency in terms of Section 23(1)(b) of the Witness Protection Act, 2006;
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable\*.
  - (a) Date
  - (b) State new identity: name and surname of the protected person;
  - (c) State clearly who requires the information;
  - (d) State section of the relevant Act;
  - (e) State purpose;
  - (f) State Full names of the Director of Witness Protection

*Witness Protection*

[Subsidiary]

## SECOND SCHEDULE

[Rule 5(3).]

## MEMORANDUM OF UNDERSTANDING

## TEMPORARY PLACEMENT: WITNESS

## WITNESS PROTECTION PROGRAMME

*PLACING UNDER TEMPORARY PROTECTION IN TERMS OF SECTION 9(2) OF THE WITNESS PROTECTION ACT, 2006**(witness and official to initial next to every point and bottom of every page)*

**A.** I ..... confirm that I have been placed under temporary protection to enable the Director of Witness Protection Agency to conduct an evaluation to determine whether I or any related persons qualify for admission to the Witness Protection Programme.

**B.** I further understand that such temporary protection is subject to the following conditions and will be terminated should I fail to comply with them :

- (1) I am obliged to make a full disclosure of my knowledge of the facts surrounding the case in which it is sought to place me as a witness to both the members of the unit which is investigating the case as well as members of the Witness Protection Agency, as may be required.
- (2) I am obliged to co-operate with the investigation unit in the investigation of the case in which it is sought to place me as a witness.
- (3) I am obliged to subject myself to a security check which may include:
  - (i) having my fingerprints / photograph taken,
  - (ii) subjecting myself to a polygraph test and / or other psychological or medical examination, and
  - (iii) making a full disclosure of any previous investigations and/or cases which is relevant to my application for protection in this case including whether I have ever previously been placed on a Witness Protection Programme.
- (4) I am obliged to make a full disclosure of my financial circumstances including all sources of income, liabilities, and assets as well as those of any related person where their particulars are within my knowledge. I confirm that I have been informed that such information will be relied upon to determine whether I or any related person qualifies for an allowance. I am furthermore required to waive my right to confidentiality referred to in section of the Income Tax Act and to authorize the Director and / or his Delegate to obtain information held by the Kenya Revenue Services in order to verify the stated income. I am aware that the willful disclosure of any false or misleading information will render me guilty of a criminal offence and any allowances fraudulently acquired will be recovered from me.
- (5) I am obliged to surrender any items, which in the opinion of the protection officers are not necessary to be in my possession while I have been placed in temporary protection. Should I fail to surrender the items and they are either stolen, damaged or destroyed, the Government shall not be responsible for any such loss or damage.
- (6) I am not permitted to be in possession of any dangerous weapons, illegal substances and any items, which have been unlawfully obtained.
- (7) I am obliged to submit myself and my property to a search if requested by a witness protection officer and any member who is responsible for my safety.
- (8) I may not abuse alcohol or narcotic substances or indulge in violent or disorderly or other anti social behaviour while under temporary protection or harass any other person who may also be at the place of safety.



*Witness Protection*

[Subsidiary]

- (9) I may not commit any offences while under protection.
- (10) I may not at any stage reveal to any other person the location of the safe house where I may be lodged, the identities or other particulars of any protected person or my handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. I confirm that it has been explained to me that render myself guilty of a criminal offence should I make such a disclosure and I will be liable for the costs incurred should it be necessary to close down the place of safety.
- (11) I may not bring any persons to the place of safety.
- (12) I may not communicate with persons specified by either the investigating officer of my case or the members of the Witness Protection Agency.
- (13) I may not damage the place of safety or any property in or at such place of safety. I confirm that it has been explained to me that I will be liable for any such damage, which I have willfully or negligently caused.
- (14) I may not indulge in any conduct, which may endanger the security or other aspects of the operation of the Witness Protection Programme or which may endanger my life, or that of any other person.
- (15) I am obliged to comply with any orders given to me by anyone responsible for my safety, which orders are necessary for efficient security or which may contribute to the safety of the members of the Witness Protection Agency, a protected person or any other person in the place of safety concerned. I confirm that it has been explained to me that I render myself guilty of a criminal offence should I disobey any such orders.
- (16) I am obliged to disclose full particulars concerning any civil proceedings, which are or may be instituted by or against me or in which I am otherwise involved.

**(C)** I confirm that over and above the above-mentioned conditions, the following has been explained to me and I understand, that : -

- (i) My placement in temporary protection does not absolve me from my existing debts and any further debts, which I may incur.
- (ii) My temporary protection does not absolve me from any legal obligations incurred by myself including any obligations regarding the custody and maintenance of children and taxation obligations.
- (1) Should I be placed under protection and given an allowance such allowance will be in accordance with the amounts prescribed by the policies of the Agency in terms of the Witness Protection Act, 2006 and that the following will be taken into account :-
  - (a) The amount of income earned at the time of the admission to the programme.
  - (b) No income acquired from unlawful means will be considered.
  - (c) No income not declared for tax purposes will be taken into account.
  - (d) Living expenses that I or the related persons had prior to being placed under temporary protection which will no longer be incurred will be deducted from the determination of my income.
  - (e) Benefits provided by the Witness Protection Programme, including payments made to other related persons would be deducted from the determination of my income.
- (2) Should I require medical counseling or treatment this will be provided for by medical practitioners or institutions approved by the Director or his delegate.
- (3) The Witness Protection Programme may not place me in a better financial position than prior to my admission to the programme.

Witness Protection

[Subsidiary]

- (4) No promises made to me by any member of the investigation unit are binding on the Director.
- (5) I hereby declare that I am aware of the fact that I may not at any stage, during or after I have left Witness Protection, reveal any of the following information to any person :
  - (a) the address or location of a safe house,
  - (b) the identity or particulars of any protected or formerly protected person,
  - (c) the identity or particulars of any official or person employed by the Witness Protection Agency or their vehicles, or
  - (d) any other information that may hamper the Witness Protection Agency's security.
- 6. I hereby acknowledge that it has been explained to me and that I understand that if I disobey any of the conditions as explained in Paragraph 5 above, I might render myself guilty of a criminal offence and that I will be held responsible for any expenses incurred as a result of such an action or utterance.

Dated at ..... this .....day of ..... 20.....

.....  
SIGNATURE OF WITNESS

I..... holding the position of .....in the Witness Protection Agency confirm that I have explained each and every condition set out in B above subject to which the witness has been placed under temporary protection as well as the information set out in C above to the witness who has indicated that he / she understand and has initialed against each provision and affixed his / her signature at the designated place on this document. I further confirm that the provisions of this document was properly translated into....., by ..... for the benefit of the witness.

.....  
SIGNATURE Designation

Dated at ..... this .....day of ..... 20 .....

\_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
TEMPORARY PLACEMENT: RELATED PERSON

Witness Protection Programme

*PLACING UNDER TEMPORARY PROTECTION IN TERMS OF SECTION 9(2) OF THE WITNESS PROTECTION ACT, 2006*

*(witness and official to initial next to every point and bottom of every page)*

**A.** I ..... confirm that I have been placed under temporary protection in order for the Director: Witness Protection (hereafter called the Director) to conduct an evaluation in order to determine whether I qualify as a related person for admission to the Witness Protection Programme.

**B.** I further understand that such temporary protection is subject to the following conditions and will be cancelled should I fail to comply with them :

- (1) I am obliged to subject myself to a security check which may include :
  - (i) having my fingerprints / photograph taken,
  - (ii) subjecting myself to a polygraph test and / or other psychological or medical examination, and
  - (iii) making a full disclosure of any previous investigations and / or litigation which .is relevant to my application for protection in this case including whether I have ever previously been placed on the Witness Protection Programme.
- (2) I am obliged to make a full disclosure of my financial circumstances including all sources of income, liabilities, and assets as well as those of any related person where their particulars are within my knowledge. I confirm that I have been informed that such information will be relied upon to determine whether I or any related person qualifies for an allowance. The willful disclosure of any false or misleading information will render me guilty of a criminal offence. Any allowance fraudulently acquired will be recovered from me. I am furthermore required to waive my right to confidentiality referred to in section ..... of the Income Tax Act ..... and to authorize the Director and / or his Delegate to obtain information held by the Kenya Revenue Services in order to verify the stated income.
- (3) I am obliged to surrender any objects, which in the opinion of the security officers are not necessary to be in my possession while I have been placed in temporary protection. Should I fail to surrender the items and they are either stolen, damaged or destroyed the State will not be responsible for any such loss or damage.
- (4) I am not permitted to be in possession of any dangerous weapons, illegal substances and any items, which have been unlawfully obtained.
- (5) I am obliged to submit myself and my property to a search if requested by a witness protection officer and any member who is responsible for my safety.
- (6) I may not abuse alcohol or narcotic substances or indulge in violent or disorderly or other anti social behaviour while under temporary protection or harass any other person who may also be at the place of safety.
- (7) I may not commit any offences while under protection.
- (8) I may not at any stage reveal to any other person the location of the safe house where I may be lodged, the identities or other particulars of any protected person or my handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. I confirm that it has been explained to me that I render myself guilty of a criminal offence should I make such a disclosure and I will be liable for the costs incurred should it be necessary to close down the place of safety.

*Witness Protection*

---

[Subsidiary]

- (9) I may not bring any persons to the place of safety.
- (10) I may not communicate with persons specified by either the investigating officer of my case or the members of the Witness Protection Agency.
- (11) I may not damage the place of safety or any property in or at such place of safety. I confirm that it has been explained to me that I will be liable for any such damage, which I have willfully or negligently caused.
- (12) I may not indulge in any conduct, which may endanger the security or other aspects of the operation of the Witness Protection Programme or which may endanger my life, or that of any other person.
- (13) I am obliged to comply with any orders given to me by anyone responsible for my safety, which orders are necessary for efficient security or which may contribute to the safety of the members of the Witness Protection Agency, the protected person or any other person in the place of safety concerned. I confirm that it has been explained to me that I render myself guilty of a criminal offence should I disobey any such orders.
- (14) I am obliged to disclose full particulars concerning any civil proceedings, which are or may be instituted by or against me or in which I am otherwise involved.

**C.** I confirm that over and above the above-mentioned conditions, the following has been explained to me and I understand

- (i) My placement in temporary protection does not absolve me from my existing debts and any further debts, which I may incur.
- (ii) My temporary protection does not absolve me from any legal obligations incurred by myself including any obligations regarding the custody and maintenance of children and taxation obligations.
- (1) Should I be placed under protection and given an allowance such allowance will be in accordance with the amounts prescribed in the regulations promulgated in terms of the Witness Protection Act and that the following will be taken into account:
  - (a) The amount of income earned at the time of the admission to the Programme.
  - (b) No income acquired from unlawful means will be considered.
  - (c) No income not declared for tax purposes will be taken into account.
  - (d) Living expenses that I or the related persons had prior to being placed under temporary protection which will no longer be incurred will be deducted from the determination of my income.
  - (e) Benefits provided by the Witness Protection Programme, including payments made to other related persons would be deducted from the determination of my income.
- (2) Should I require medical counseling or treatment this will be provided for by medical practitioners or institutions approved by the Director or his delegate.
- (3) The Witness Protection Programme may not place me in a better financial position than prior to my admission to the Programme.
- (4) No promises made to me by any member of the investigation unit are binding on the Director.
- (5) I hereby declare that I am aware of the fact that I may not at any stage, during or after I have left Witness Protection, reveal any of the following information to any person:
  - (a) the address or location of a safe house,
  - (b) the identity or particulars of any protected or formerly protected person,

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- (c) the identity or particulars of any official or person employed by Witness Protection or their vehicles, or
  - (d) any other information that may hamper Witness Protection's security.
- (6) I hereby acknowledge that it has been explained to me and that I understand that if I disobey any of the conditions as explained in Paragraph 5 above, I might render myself guilty of a criminal offence and that I will be held responsible for any expenses incurred as a result of such an action or utterance.

Dated at ..... this ..... day of ..... 20 .....

SIGNATURE OF RELATED PERSON

I .....holding the position .....of in the Office for Witness Protection confirm that I have explained each and every condition set out in B above subject to which the witness has been placed under temporary protection as well as the information set out in C above to the witness who has indicated that he / she understands and has initialed against each provision and affixed his / her signature at the designated place on this document. I further confirm that the provisions of this document was properly translated into....., by ..... for the benefit of the witness.

.....	.....
SIGNATURE	RANK
.....	.....
SIGNATURE (TRANSLATOR)	RANK

Dated at ..... on ..... day of ..... 20 .....

\_\_\_\_\_

Witness Protection

[Subsidiary]

THIRD SCHEDULE
[Rule 5(4).]
MEMORANDUM OF UNDERSTANDING
WITNESS
WITNESS PROTECTION PROGRAMME

PLACING UNDER PROTECTION IN TERMS OF SECTION 7 OF THE WITNESS PROTECTION ACT, 2006

(witness and official to initial next to every point and bottom of every)

Protection Agreement in terms of Section 7 of the Witness Protection Act, 2006

Entered into between ..... of the Witness Protection Agency (duly authorized in terms of section 7(4) ) and ..... year old adult male / female. (herein after referred to as the witness)

- 1. The witness has been admitted to the witness protection programme (herein after referred to as the programme) in order for him / her to give truthful and reliable evidence on behalf of The Government of Kenya / ..... in the criminal case of .....vs....., in this regard the witness is required to irrevocably waive any privilege which he or she may otherwise lawfully raise in a court of law when required to testify.
2. The protection extends to the date upon which the witness concludes his / her testimony where upon a further evaluation will take place to determine whether further protection is necessary.
3. The protection will be immediately terminated and the witness will be required to leave the programme in the event of the prosecutor informing the Director of the Witness Protection Agency (hereinafter referred to as the Director) that the witness's evidence was untruthful or unreliable or by the court trying the case making such a finding. If the witness was compelled in terms of Section 128 of the Evidence Act, Chapter 80, to incriminate himself / herself the protection will also be terminated in the event of the court declining to order the witness indemnity from prosecution.
4. Notwithstanding the undertaking in paragraph 2 above the protection will be terminated and the witness will be obliged to leave the programme if anyone of the following circumstances occur.
(1) The Prosecuting Authority decides not to institute or discontinues the criminal proceedings in respect of which the witness was admitted to the programme or;
(2) The witness is not required to give evidence or;
(3) In the opinion of the Investigating or Prosecuting Authority the witness is no longer at risk, or
(4) In the opinion of the Director the witness is able to make alternative arrangements for his / her safety without remaining on the programme; or

*Witness Protection*

[Subsidiary]

- (5) The witness when applying for protection willfully furnished false or misleading information, particulars or makes a statement which is false or misleading in any material respect or willfully failed to disclose any material relevant to his / her application.
- (6) The witness is arrested for any criminal offence; or
- (7) The witness absconds from the programme.
- (8) The protection is subject to the witness complying with the following conditions and the witness's protection will be immediately terminated and the witness removed from the programme in the event of any one of the following conditions being breached.
  - (a) The witness is obliged to make a full disclosure of his / her knowledge of the facts surrounding the case in which he / she has been placed as a witness to both the members of the unit which is investigating the case as well as members of the Witness Protection Agency as may be required.
  - (b) The witness is obliged to co-operate with the investigation unit in the investigation of the case in which / he she has been placed as a witness.
  - (c) The witness is obliged to subject himself / herself to a security check which may include:
    - (i) having his / her fingerprints / photograph taken,
    - (ii) subjecting himself/ herself to a polygraph test and / or other psychological or medical examination, and
    - (iii) making a full disclosure of any previous investigations and / or litigation which is relevant to his / her protection in this case including whether he / she has ever previously been placed on the Witness Protection Programme.
  - (d) The witness is obliged to make a full disclosure of his / her financial circumstances including all sources of income, liabilities, and assets as well as those of any related person where their particulars are within his / her knowledge. The witness confirms that he / she has been informed that such information will be relied upon to determine whether he / she or any related person qualifies for an allowance. He / She is furthermore required to waive his / her right to confidentially referred to in section ..... of the Income Tax Act ..... and to authorize the Director and / or his Delegate to obtain information held by the Kenya Revenue Services in order to verify the stated income. The witness is obliged to immediately disclose any changed circumstances. The willful disclosure of any false or misleading information will render him / her guilty of a criminal offence and

*Witness Protection*

[Subsidiary]

any allowance fraudulently acquired will be recovered from him / her.

- (e) The witness is obliged to surrender any objects, which in the opinion of the witness protection officers are not necessary to be in his / her possession while he / she is under protection. Should he / she fail to surrender the items and they are either stolen, damaged or destroyed The Government will not held be responsible.
- (f) The witness is not permitted to be in possession of any dangerous weapons, illegal substances and any items, which have been unlawfully obtained.
- (g) The witness is obliged to submit himself / herself and his / her property to a search if requested by a witness protection and any member who is responsible for his / her safety.
- (h) The witness may not abuse alcohol or narcotic substances or indulge in violent or disorderly or other anti social behavior while under protection or harass any other person who may also be at the place of safety.
- (i) The witness may not commit any offences while under protection.
- (j) The witness may not at any stage reveal to any other person the location of the safe house where he / she may be lodged, the identities or other particulars of any other protected person or his her handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. He / She confirms that it has been explained to him / her that he / she renders himself / herself guilty of a criminal offence should he / she make such a disclosure and he / she will be liable for the costs incurred should it be necessary to close down the place of safety.
- (k) The witness may not bring any persons to the place of safety or let the place of safety out to other persons. The witness may not leave the place of safety without authority.
- (l) The witness may not communicate with persons specified by either the investigating officer of his / her case or the members of the Witness Protection Agency. The witness may not communicate with the accused and / or their supporters nor may he / she return to the area where the offences were committed without authority.
- (m) The witness may not damage the place of safety or any property in or at such place of safety. He / She confirms that it has been explained to him / her that he / she will be liable for any such damage, which he / she has willfully or negligently caused. The



witness must keep the place of safety in a clean and tidy condition.

- (n) The witness may not indulge in any conduct, which may endanger the security or other aspects of the operation of the Witness Protection Agency or which may endanger his / her life, or that of any other person.
- (o) The witness is obliged to comply with any orders given to him / her by anyone responsible for his / her safety, which orders are necessary for efficient security or which may contribute to the safety of the members of the Witness Protection Agency, the protected person or any other person in the place of safety concerned. He / She confirms that it has been explained to him / her that he / she may renders himself / herself guilty of a criminal offence should he / she disobey any such orders.
- (p) The witness is obliged to disclose full particulars concerning any civil proceedings, which are or may be instituted by or against him / her or in which he / she are otherwise involved.
- (q) The witness is obliged to ensure that his / her child dependants who have been admitted to the programme will comply with conditions (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) above.
- (r) The witness is obliged to resume a normal life, without any assistance from the programme at the earliest possible moment.
- (s) The witness is obliged to enter into this protection agreement with the Director or his delegate.

5. The following facts have been brought to the attention of the witness.
- (1) The witness's admission to the programme does not absolve him / her from his / her existing debts and any further debts, which he / she may incur.
  - (2) The witness's admission to the programme does not absolve him / her from any legal obligations incurred by him / her including any obligations regarding the custody and maintenance of children and taxation obligations.
  - (3) Any allowance due to the witness will be in accordance with the amounts prescribed in the policy documents of the Agency and that the following will be taken into account:
    - (a) The amount of income earned at the time of the admission to the programme.
    - (b) No income acquired from unlawful means will be considered.
    - (c) No income not declared for tax purposes will be taken into account.

Witness Protection

[Subsidiary]

- (d) Living expenses that the witness or the related persons had prior to being admitted to the programme which will no longer be incurred will be deducted from the determination of the witness's income.
- (e) Benefits provided by the Witness Protection Programme, including payments made to other related persons will be deducted from the determination of the witness's income.

(4) Any allowance will be terminated in the event of the witness's absconding from the programme.

(5) The Witness Protection Programme may not place the witness in a better financial position than prior to his her admission to the programme, nor is the programme obliged to provide the witness with employment or housing upon his / her discharge from the programme.

(6) No promises made to the witness, by any member of the investigation unit are binding on the Director.

(7) The witness may in writing and to the person responsible for his safety make representations to the Director concerning the amendment of any of the conditions of the protection agreement.

(8) The Director or his delegate shall for the duration of Protection:

(1) Provide the witness with such protection, which is necessary according to the risk assessment supplied by the investigating authority and is within the resources of the Agency.

(2) Provide the witness with necessary medical treatment or counseling at an institution or by medical practitioners approved of by the Director or his delegate. The witness may receive treatment from a doctor of his / her choice if he / she (the witness) accepts full responsibility for payment of the account for treatment.

(3) In accordance with the prescribed policies regulations and the information supplied by the witness, the Witness Protection Agency, shall pay ..... per month to the witness while in catered accommodation or ..... per month to the witness while in self catering accommodation. The amount may be reviewed in terms of the Regulations and should the witness's financial position have altered after admission to the programme

.....  
.....

(for witness's who earned a salary).

(4) The Witness Protection Agency may pay any expense for which provision is made in terms of the Regulations and in respect of which the witness makes a specific application.

Witness Protection

[Subsidiary]

- (5) Receive on behalf of the witness any court process for any litigation in which the witness may be involved.

The Rights of the Participant

- 1. The Participant's involvement in the Programme shall be voluntary, and he/she may withdraw at any time provided that he/she makes such a request in writing to the Director of the Witness Protection Agency.
- 2. In addition, the Participant shall have the following rights in respect of the Programme:
  - a. to bring to the attention of the Director perceived inappropriate conduct by Witness Protection Agency representatives in relation to the matters covered within the present Agreement;
  - b. to be notified of any change in the threat assessment or the decision to terminate his/her participation in the Programme; and
  - c. to appeal, to the Director, the decision to terminate his/her participation in the Programme. He/she shall file such an appeal within 14 days of having received the notice of termination.

I .....the witness referred to above confirm that the above has been fully explained to me and I undertake to comply with all the terms and conditions set out in this agreement.

Dated ..... this ..... day of ..... 20.....

.....  
WITNESS

I ..... of the Witness Protection Agency confirm that I fully explained and properly translated each and every paragraph of the protection agreement to the witness who understands each and every paragraph. I further confirm that the witness agreed to comply with each and every term and condition

.....  
Dated ..... this ..... day of ..... 20....

.....  
Director: WITNESS PROTECTION AGENCY

Witness Protection

[Subsidiary]

Memorandum of Understanding:  
RELATED PERSON  
Witness Protection Programme

**PLACING PROTECTION IN TERMS OF SECTION 7 OF THE WITNESS PROTECTION ACT, 2006**

*(witness and official to initial next to every point and bottom of every)*

Protection Agreement in terms of Section 7 of the Witness Protection Act, 2006,  
Entered into between ..... of the Witness Protection Agency  
(duly authorized in terms of section 7(4) of the Witness Protection Act, 2006)  
and

..... year old adult male / female. (herein  
after referred to as the related person).

1. The related person has been admitted to the witness protection programme (herein after referred to as the programme) in order for the witness to give truthful and reliable evidence on behalf of ..... in the criminal case of .....versus .....
2. The protection extends to the date upon which the witness concludes his / her testimony where upon a further evaluation will take place to determine whether further protection is necessary.
3. The protection will be immediately withdrawn and the related person will be required to leave the programme in the event of the prosecutor informing the Director: Witness Protection (hereinafter referred to as the Director) that the witness's evidence was untruthful or unreliable or by the court trying the case making such a finding. If the witness was obliged in terms of ..... to incriminate himself / herself the protection will also be cancelled in the event of the court refusing to grant the witness indemnity from prosecution.
4. Notwithstanding the undertaking in paragraph 2 above the protection will be withdrawn and the related person will be obliged to leave the programme if anyone of the following circumstances occurs.
  - (1) The Prosecuting Authority decides not to institute or discontinues the criminal proceedings in respect of which the witness was admitted to the programme or;
  - (2) The witness is not required to give evidence or;
  - (3) In the opinion of the Investigating or Prosecuting Authority the witness is no longer at risk, or
  - (4) In the opinion of the Director the witness is able to make alternative arrangements for his / her safety without remaining on the programme or
  - (5) The related person when applying for protection willfully furnished false or misleading information, particulars or makes a statement which is false

*Witness Protection*

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- or misleading in any material respect or willfully failed to disclose any material relevant to his / her application or
- (6) The related person and / or witness is arrested for any criminal offence or
  - (7) The related person and / or witness abscond from the programme.
5. The protection is subject to the related person complying with the following conditions and the related person's protection will be immediately cancelled and the related person removed from the programme in the event of any one of the following conditions being breached:
- (1) The related person failed to make a full disclosure of his / her knowledge of the facts surrounding the case in which he / she has been placed as a witness to both the members of the unit is investigating the case as well as members of the Office for Witness Protection as may be required.
  - (2) The related person failed to co-operate with the investigation unit in the investigation of the case in which he / she has been placed as a witness.
  - (3) The related person is obliged to subject himself / herself to a security check which may include:
    - (i) having his / her fingerprints/photograph taken,
    - (ii) subjecting himself / herself to a polygraph test and / or other psychological or medical examination, and
    - (iii) making a full disclosure of any previous investigations and / or litigation which is relevant to his / her protection in this case including whether he / she has ever previously been placed on the Witness Protection Programme.
  - (4) The related person is obliged to make a full disclosure of his / her financial circumstances including all sources of income, liabilities, and assets as well as those of the witness where their particulars are within his / her knowledge. The related person confirms that he / she has been informed that such information will be relied upon to determine whether he / she qualifies for an allowance. The willful disclosure of any false or misleading information will render him / her guilty of a criminal offence. Any allowance fraudulently acquired will be recovered from him / her. He / She is furthermore required to waive his / her right to confidentially referred to in section ..... of the Income Tax Act ..... and to authorize the Director and / or his Delegate to obtain information held by the Kenya Revenue Services in order to verify the stated income. The related person is obliged to immediately disclose any changed circumstances.
  - (5) The related person is obliged to surrender any objects, which in the opinion of the security officers are not necessary to be in his / her possession while he / she is under protection. Should he / she fail to surrender the items and they are either stolen, damaged or destroyed The State will not be responsible for any such loss or damage.

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- (6) The related person is not permitted to be in possession of any dangerous weapons, illegal substances and any items, which have been unlawfully obtained.
- (7) The related person is obliged to submit himself / herself and his / her property to a search if requested by a security officer and any member who is responsible for his / her safety.
- (8) The related person may not abuse alcohol or narcotic substances or indulge in violent or disorderly or other anti social behavior while under protection or harass any other person who may also be at the place of safety.
- (9) The related person may not commit any offences while under protection.
- (10) The related person may not at any stage reveal to any other person the location of the safe house where he / she may be lodged, the identities or other particulars of any other protected person or his her handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. He / She confirms that it has been explained to him / her that he / she renders himself / herself guilty of a criminal offence should he / she make such a disclosure and he / she will be liable for the costs incurred should it be necessary to close down the place of safety.
- (11) The related person may not bring any persons to the place of safety or let the place of safety out to other persons.
- (12) The related person may not communicate with persons specified by either the investigating officer of his / her case or the members of the Witness Protection Agency. The related person may not communicate with the accused and / or their supporters nor may / he she return to the area where the offences were committed without authority. The related person specially may not communicate with the following persons. (See attached annexure).
- (13) The related person may not damage the place of safety or any property in or at such place of safety. He / She confirms that it has been explained to him / her that he / she will be liable for any such damage, which he / she has willfully or negligently caused. The related person must keep the place of safety in a clean and tidy condition.
- (14) The related person may not indulge in any conduct, which may endanger the security or other aspects of the operation of the Witness Protection Programme or which may endanger his / her life, or that of any other person.
- (15) The related person is obliged to comply with any orders given to him / her by anyone responsible for his / her safety, which orders are necessary for efficient security or which may contribute to the safety of the members of the Witness Protection Agency, the protected person or any other person in the place of safety concerned. He / She confirms that it has been explained to him / her that he / she may renders himself / herself guilty of a criminal offence should he / she disobey any such orders.

(16) The related person is obliged to disclose full particulars concerning any civil proceedings, which are or may be instituted by or against him / her or in which he / she may otherwise be involved.

(17) The related person is obliged to ensure that his / her child dependants who have been admitted to the programme will comply with conditions (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) above.

(18) The related person is obliged to resume a normal life, without any assistance from the programme at the earliest possible moment.

(19) The related person is obliged to enter into a protection agreement with the Director or his delegate.

6. The following facts have been brought to the attention of the related person.

(1) The related person's admission to the programme does not absolve him / her from his / her existing debts and any further debts, which he / she may incur.

(2) The related person's admission to the programme does not absolve him / her from any legal obligations incurred by him / her including any obligations regarding the custody and maintenance of children and taxation obligations.

(3) Any allowance due to the related person will be in accordance with the amounts prescribed in the regulations promulgated in terms of the Witness Protection Act, 2006 and that the following will be taken into account :

- a. The amount of income earned at the time of the admission to the programme.
- b. No income acquired from unlawful means will be considered.
- c. No income not declared for tax purposes will be taken into account.
- d. Living expenses that the witness or the related persons had prior to being admitted to the programme which will no longer be incurred will be deducted from the determination of the related person's income.
- e. Benefits provided by the Witness Protection Programme, including payments made to other related persons will be deducted from the determination of the related person's income.

(4) Any allowance will be terminated in the event of the related person's absconding from the programme.

(5) The Witness Protection Programme may not place the related person in a better financial position than prior to his her admission to the programme, nor is the programme obliged to provide the related person with employment or housing upon his / her discharge from the programme.

(6) No promises made to the related person, by any member of the investigation unit are binding on the Director.

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- (7) The related person may in writing and to the person responsible for his safety make representations to The Director concerning the amendment of any of the conditions of the protection agreement.
- (8) The Director or his delegate shall for the duration of protection
  - (1) Provide the related person with such protection, which is necessary according to the risk assessment supplied by the investigating authority and is within the resources of the State.
  - (2) Provide the related person with necessary medical treatment or counseling at an institution or by medical practitioners approved of by The Director or his delegate. The witness may receive treatment from a doctor of his / her choice if he / she (the witness) accepts full responsibility for the account.
- (7) In accordance with the prescribed regulations and the information supplied by the related person the Director of Public Prosecution's office through the Witness Protection Agency, will pay
  - ..... per month to the related person while in catered accommodation or ..... per month to the witness while in self catering accommodation. The amount may be reviewed in terms of the regulations and should the related person's financial position have altered after admission to the programme
  - .....
  - .....
  - (for related person's who earns a salary).
- (8) The Witness Protection Agency will pay any expense for which provision is made in terms of the Regulations and in respect of which the related person makes a specific application.
- (9) Receive on behalf of the related person any court process for any litigation in which the witness may be involved.

The Rights of the Participant:

- 1. The Participant's involvement in the Programme shall be voluntary, and he/she may withdraw at any time provided that he/she makes such a request in writing to the Director: Witness Protection.
- 2. In addition, the Participant shall have the following rights in respect of the Programme:
  - a. to bring to the attention of the Director: Witness Protection perceived inappropriate conduct by Witness Protection Agency representatives in relation to the matters covered within the present Agreement;
  - b. to be notified of any change in the threat assessment or the decision to terminate his/her participation in the Programme; and



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- c. to appeal, to the Director, the decision to terminate his/her participation in the Programme. He/she shall file such an appeal within 14 days of having received the notice of termination.

I ..... the related person referred to above confirm that the above has been fully explained to me and I undertake to comply with all the terms and conditions set out in this agreement.

Dated ..... this ..... day of ..... 20.....

.....  
**RELATED PERSON:**

I ..... of the Witness Protection Agency ..... Confirm that I fully explained and properly translated each and every paragraph of the protection agreement to the related person who understands each and every paragraph. I further confirm that the witness agreed to comply with each and every term and condition .....

Dated ..... this ..... day of ..... 20.....

.....  
**WITNESS PROTECTION AGENCY**

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Witness Protection

[Subsidiary]

FOURTH SCHEDULE

[Rule 10(2)(f).]

KENYA WITNESS PROTECTION AGENCY

OATH OF OFFICE

I.....  
(full names) do hereby swear by the almighty God / solemnly and sincerely affirm, that I shall honour the obligation of confidentiality imposed upon me by the Witness Protection Act, 2006 and the Regulations thereto, and shall not, without due authority, disclose or make known to any person any information acquired by me by reason of the duties performed by me on behalf or under the direction of the Witness Protection Agency or by reason of any office or employment held by me pursuant to the Witness Protection Act, 2006.

So help me God.

.....  
Signature :

I hereby certify that the above oath of office was sworn to/ affirmed by the deponent in my presence at .....

On this day, .....

.....  
Signature  
(Full names) .....

Designation: .....

Witness 1: ..... Witness 2: .....

Name: .....

Date: .....

\_\_\_\_\_

FIFTH SCHEDULE

[Rule 7.]

KENYA WITNESS PROTECTION AGENCY

RELOCATION AGREEMENT

DAY ..... MONTH ..... 20 .....

Excellency,

I have the honour to refer to the discussions held between the Republic of Kenya represented by .... and the Government of ..... (hereinafter: "....."), concerning arrangements between the Agency and..... for the relocation to the territory of ..... of Witnesses of the Agency, and, where necessary, their Close relations.

I have the honour to confirm on behalf of the Agency the following understanding:

..... agrees, subject to the terms of this letter and its reply (hereinafter: "Exchange of Letters"), to accept for Relocation, Witnesses and, where necessary, their Close relations, as defined in Part I below, and to provide such persons with Relocation Services, as defined herein.

I. As for purpose of this Exchange of Letters:

- (1) "Relocation" is understood to refer to the relocation to ..... of Witnesses and their Close relations.
- (2) "Relocation Services" means the facilities and benefits, described in Part III below, to be provided to Witnesses, and their Close relations who are subject to the provisions of this Exchange of Letters.
- (3) "Witnesses" means witnesses in the witness protection programme, victims who appear before the Agency, and others at risk on account of testimony given by witnesses of the Agency. This includes but is not limited to an appearance either in the course of the prosecution or of the defence of an accused.
- (4) "Close relations" means—
  - (a) the partner of a Witness; and
  - (b) dependants who are considered by the Agency to be part of the family Agency.
- (5) "Relocated Person(s)" refers to those Witnesses and Close relations who have been provided with Relocation Services according to this Exchange of Letters.

II. As to the procedure for providing Relocation Services to Witnesses and, where necessary, their Close relations

- (6) Where the Director considers that a Witness requires Relocation, he/she shall make such request, in writing, to ..... which relocation request shall hereinafter be referred to as "Request" that ..... accept such Witness and his/her Close relations which witnesses and their close relations shall hereinafter be referred to as "Subjects".
- (7) Requests shall be accompanied by the Agency's psycho-social and threat assessment and the Subject(s) full details as set out in Annex 1 of this Exchange of Letters. The Director may provide any further information as may be requested by ..... provided such information does not constitute testimony of the Witness or other confidential information that cannot be disclosed.

Witness Protection

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FIFTH SCHEDULE—continued

- (8) Where the Director considers that in addition to the Relocation Services provided herein, protective measures are necessary to ensure the protection of the Subject(s) which protective measures shall hereinafter be referred to as "Protective Requirement", such requirement shall be indicated in the Request.
- (9) ..... shall consider the Request without delay, and shall respond within two months from the date when such Request is made. However, where the Director considers that circumstances require the Subject(s) to be relocated immediately, ..... following consultations with the Director, shall consider the Request immediately.
- III. As to the nature of the Relocation Services to be provided to Subjects accepted for Relocation by ..... pursuant to this Exchange of Letters
  - (10) Where ..... agrees to a Request, the Director shall arrange for the transfer of the Subject(s) hereinafter referred to as relocated persons after their relocation to country X to the territory of .....
  - (11) ..... shall provide to the Relocated Person(s) the facilities, benefits and entitlements to which persons are entitled under the definition of "refugees" under Article 1 of the 1951 Convention on the Status of Refugees, as amended by the 1967 Protocol thereto.
  - (12) In addition to the services provided pursuant to Paragraph (11) above, ..... shall provide the Relocated Person(s) with such facilities and services that would allow the Relocated Person(s) to fully integrate into the society of ..... Such facilities and services shall, *inter alia*, include—
    - (a) housing;
    - (b) education, including skills and language training, where necessary, for purposes of gaining employment;
    - (c) health and social services, including specialist medical care where necessary;
    - (d) access to opportunities to obtain employment;
    - (e) documents to enable travel to and from .....; and
    - (f) any other applicable facilities and benefits.
 Such services and facilities provided under this Exchange of Letters shall be without prejudice to any rights which the Relocated Person(s) would be entitled to under the laws of .....
  - (13) If, upon receipt of a Request pursuant to Paragraph (8) herein, ..... agrees that a Protection Requirement exists, it shall, in consultation with the Agency, take whatever measures deemed necessary to protect the Subject(s). If appropriate, ..... shall enter the Subject(s) into the ..... witness protection program.
- IV. As to the status of Relocated Person(s)
  - (14) ..... shall grant Relocated Person(s) with legal status, in accordance with its national law.
  - (15) ..... will immediately notify the Director if it is informed that a Relocated Person has died or if his/her whereabouts are unknown.
- V. As to the termination of Relocation Services:
  - (16) (a) The Director shall make assessments hereinafter referred to as "Assessment") on a regular basis to determine whether the risk and/or threat to life of the Relocated Person(s) under this Exchange of Letters still continue.
  - (b) If the Director concludes from such Assessment that Relocation Services are no longer required, the Director shall inform ..... accordingly. may then either terminate or continue with the Relocation Services herein.

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FIFTH SCHEDULE—continued

(17) Notwithstanding any provision of this Exchange of Letters, unless the Agency and the Relocated Person express their consent in writing, ..... shall not return any Relocated Person to the territory of a State identified as one in whose territory the Relocated Person's life or well-being would be at risk, on the basis of his/her nationality, religion, race or political conviction or in whose territory he/she would risk measures causing insupportable mental pressure.

(18) If, at any time after the entry into force of this Exchange of Letters and the transfer of the Relocated Person to ....., for any legal or practical reasons, further provision of services and security has become impossible, the Agency and ..... shall promptly consult to resolve the matter. .... shall continue to provide the Relocation Services until such time when the matter is resolved.

VI. As to the costs related to the provision of Relocation Services:

(19) All the costs and expenses incurred in connection with the provision of Relocation Services pursuant to this Exchange of Letters shall be borne by .....

VII. As to the duration of the provisions of this Exchange of Letters:

(20) (a) The provisions of this Exchange of Letters shall enter into force on the day the Director of Public Prosecution of the Republic of Kenya receives ..... confirmation of this Exchange of Letters.

(b) The provisions of this Exchange of Letters shall remain in force until terminated by either Party providing the other Party with six months written notice of termination. Such termination shall be carried out without prejudice to the status of any Relocated Person(s) and Close relations relocated in ..... at the time of termination.

VIII. As to the resolution of disputes

(21) Any dispute, controversy, or claim arising out of, or relating to, this Exchange of Letters shall be settled by negotiation or by a mutually agreed mode of settlement between the Agency and .....

IX. Representatives of the Parties

(22) The Director, or his/her authorised designate, shall represent the Agency in all matters relating to this Exchange of Letters.

(23) A representative to be chosen by ..... and communicated to the Agency shall represent ..... in all matters relating to this Exchange of Letters.

X. Operational Points of Contact

(24) The Parties agree that each shall designate an official to be the point of contact for all operational matters relating to implementation of this Agreement.

(a) The operational point of contact on behalf of the Agency will be the Director of the Witness Protection Agency, or any authorised designate; and

(b) The operational point of contact on behalf of ..... will be .....

I would be grateful if you would confirm that the above is also the view of the Government of .....

Please accept, Excellency, the assurances of my highest consideration.

.....  
Director, Witness Protection Agency



**WITNESS PROTECTION RULES, 2015**

ARRANGEMENT OF RULES

*Regulation*

1. Short title and commencement.
  2. Interpretation.
  3. Application of Rules.
  4. Protection of witnesses
  5. Protection measures.
  6. Duration of protective measure.
  7. Variation of a protective order.
  8. Public hearing.
  9. Closed or *in camera* hearing.
  10. Testimony by means of audio or video link technology.
  11. Qualifications for evidence of audio and video recorded interview.
  12. Video recorded evidence-in-chief.
  13. Evidence through an intermediary.
  14. Protecting the identity of a witness.
  15. Record of proceedings and record of evidence.
  16. Prohibition of publication of certain information relating to the proceedings.
  17. Application to Court.
-

[Subsidiary]

**WITNESS PROTECTION RULES, 2015**

[L.N. 225/2015.]

**1. Short title and commencement**

These rules may be cited as the Witness Protection Rules, 2015 and shall come into operation thirty (30) days after publication in the *Gazette*.

**2. Interpretation**

In these rules, unless otherwise the context requires—

“**Act**” means the Witness Protection Act;

“**Agency**” means the Witness Protection Agency established by Section 3A of the Witness Protection Act;

“**appropriate person**” means any court official or any other person at the court point and the remote point who is required to be, or may be, present at the proceedings, including the presiding officer, the prosecutor, the accused, the accused’s advocate, technical assistance, police officer, court clerk, any witness and members of the public who are entitled to be present;

“**audio-link**” means a live telephone link between the court point and the remote point which are both equipped with facilities which will enable audio communication between all appropriate persons at the court point and the remote point;

“**audio-visual link**” means a live television link between the court point and the remote point which are both equipped with facilities which will enable all appropriate persons at the court point and the remote point to follow the proceedings and see and hear all the appropriate persons;

“**child**” means a person who has not attained the age of eighteen years;

“**Court**” means a court of competent jurisdiction;

“**court point**” means the court room, or other place where the court having jurisdiction is sitting;

“**intermediary**” means a person appointed by the Court on account of their experience or expertise to assist the witness or vulnerable witness to give their evidence in Court and may include a parent, relative, doctor, psychologist, counselor, guardian, children officer, probation officer or social worker;

“**intimidated witness**” means anyone suffering from fear or distress in relation to testifying in a case before Court, or commission or Tribunal, or anyone whose quality of testimony is likely to be diminished by fear or distress in connection with testifying;

“**police officer**” has the same meaning assigned to it under the National Police Service Act, 2011 (No. 11A of 2011);

“**protection officer**” means a person appointed as such under section 3N (1) of the Witness Protection Act;

“**publication**” has the same meaning assigned to it under the Interpretation and General Provisions Act (Cap. 2);

“**redaction**” means the removal of any identifying information from a document;

“**Registrar**” means a registrar of the relevant court;

“**remote point**” means the room or place at the designated place where the accused person or the witness, appearing through audio-visual link is located;

“**Rules**” means the Witness Protection Rules, 2015;



“**threatened witness**” means a witness who fears that a threat which is express or implied of an intention to inflict harm, pain or misery will be carried out in circumstances in which a reasonable person would fear that the threat would be carried out;

“**Tribunal**” means the Witness Protection Appeals Tribunal established under section 3U of the Witness Protection Act, or other tribunal of competent jurisdiction;

“**vulnerable witness**” includes a child, person with mental disability or learning disability, physical disorder or disability, people likely to suffer fear or distress in giving evidence because of their own circumstances or those relating to the case and persons who are vulnerable depending on the nature of the crime; and

“**protection order**” means an order of the Court directing protection of a witness.

### 3. Application of Rules

These Rules shall apply to the proceedings with respect to a protected witness in accordance with section 36(2) of the Witness Protection Act (No. 16 of 2006).

### 4. Protection of witnesses

(1) The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of witnesses by having regard to all relevant factors, including age, gender, health and nature of the crime.

(2) The Court shall, on its own motion or upon application made by the Agency or the prosecution make appropriate orders for the protection of a witness.

(3) The Court may make a protection order if it is satisfied that—

- (a) the person before the Court or named in the application is a witness;
- (b) the person was a witness to, or has knowledge of an offence and is, or has been a witness in criminal proceedings relating to the offence;
- (c) the person was or is a witness in any other proceeding;
- (d) the person is a person who, because of their relationship to, or association with, a person to whom subparagraph (a), (b) and (c) applies, may require protection or other assistance;
- (e) the life or safety of the person may be endangered as a result of being a witness;
- (f) the protection measures alone or in combination shall most likely maximize and improve the quality of the eligible witness's evidence in the circumstance of the case;
- (g) a memorandum of understanding has been entered into by the witness in accordance with section 7 of the Act.

(4) In determining whether the protection order should be granted, the Court shall take into account all the circumstances of the case, the eligibility criteria set out in this rule, and whether or not the protection order in question is likely to inhibit the evidence being effectively tested by any party to the proceedings or is not contrary to the interest of justice.

(5) The Court shall hold *in camera* proceedings to determine whether to make the protection order.

(6) Where the Court refuses to give an order for the protection of a witness, it shall record its reasoning for the refusal.

### 5. Protection measures

(1) The Court may make a protection order for any or a combination of the following appropriate measures to facilitate the testimony of a protected witness—

- (a) measures to prevent disclosure to the public or media of the identity or whereabouts of a witness, or of persons related to or associated with a witness by such means, including—

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- (i) expunging identifying information from the Court's public records;
  - (ii) redacting identifying information from the materials, statements and information disclosed to the accused or their advocate;
  - (iii) giving testimony through image or voice distortion or alteration devices or behind a screen;
  - (iv) assigning a pseudonym;
  - (v) closed session in accordance with rules on closed sessions;
  - (vi) prohibiting any party in the proceedings from disclosing any information to a third party of the protected witness; or
  - (vii) assigning a separate waiting room for a witness.
- (b) measures to allow production of evidence in the physical absence of the witnesses, including—
- (i) using audio-visual technology, in particular, video conferencing and closed circuit television;
  - (ii) video recording evidence-in-chief and interviews; or
  - (iii) using the sound media or a live link;
- (c) measures that aid in the giving of evidence, including—
- (i) using communication aids;
  - (ii) giving evidence through an intermediary;
  - (iii) changing the trial venue, or hearing date;
  - (iv) hearing a case on a day to day basis until completion; or
  - (v) permitting the expedited testimony of a protected witness where it is necessary in circumstance of the case to meet the ends of justice.

(2) Any measure allowed by the Court for the protection of a witness shall not prejudice the rights of an accused person to fair trial.

(3) The Registrar shall make available facilities and equipment to protect the safety, physical and psychological well-being, dignity and privacy of witnesses as ordered by the Court.

## **6. Duration of protective measure**

A measure ordered by the Court in respect of a witness in any proceedings before the trial Court shall last throughout the trial, or such period as maybe determined by the Court.

## **7. Variation of a protective order**

(1) The Court may on its own motion, or on application by either party, apply for the protection order to be varied or discharged.

(2) Before the Court makes an order under sub-rule (1), a party shall show that there has been a significant change of circumstances of the witness since—

- (a) the Court made the order; or
- (b) an application for it to be varied was last made.

(3) The Court shall state, in open court, its reasons for giving, varying or discharging a protection order or rejecting such an application.

## **8. Public hearing**

A hearing shall be held in open court in the presence of the accused, or the accused's advocate and the public unless otherwise provided for in these rules.

## **9. Closed or *in-camera* hearing**

(1) The Court may exclude a person, the press or public from all, or part of proceedings and order the proceedings to be held *in camera* for the following reasons—

- (a) protecting the rights of the accused or a witness;
- (b) public order or morality;
- (c) safety, security, privacy or non-disclosure of the identity of a witness as provided for in rule 4;
- (d) maintaining the dignity and decorum of the proceedings;
- (e) protecting the interests of justice; or
- (f) security of the State.

(2) In any proceedings pending before the Court, the Court may, at the request of the Agency, or the prosecutor direct that any person whose presence is not necessary at the proceedings, or any person, or class of persons mentioned in the request shall not be present at the proceedings.

(3) Despite sub-rule (2), judgment shall be delivered and sentence passed in open court if the Court is of the opinion that the identity of the person concerned shall not be revealed.

(4) Where a witness before the Court is a child, the Court may on its own motion, direct that no person, other than a parent, or guardian or a person in *loco parentis* shall be present at the proceedings unless the person's presence is necessary in connection with the proceedings, or is authorized by the Court.

(5) An application under this subrule may be made orally, or in writing and shall be heard *in camera*.

(6) The Court shall make public the reasons for its orders.

#### **10. Testimony by means of audio or video link technology**

(1) Where it is in the interest of justice to do so, a trial court may, by an order on application of the Agency or the prosecution, dispense with the attendance of a witness whether resident in Kenya or outside the country, whose evidence is necessary but whose attendance cannot be secured without undue delay, expense or convenience.

(2) The evidence referred to in sub-rule (1) may be given through video-link.

(3) An application for the taking of such evidence through video-link technology shall be heard *in camera* and shall indicate—

- (a) the whereabouts of that person whose evidence is sought;
- (b) the date and place at which the evidence is to be taken;
- (c) a statement of the matter on which the person is to be examined; and
- (d) the circumstances justifying the taking or the giving of such evidence through video link.

(3) The Court may allow a witness to give oral evidence by means of audio or video technology.

(4) Despite sub-rule (3), the technology shall permit the witness to be examined by the prosecutor, the defence, or by the Court, at the time that witness testifies.

(5) The Registrar shall ensure that the venue chosen for the conduct of the audio or video link testimony is conducive to—

- (a) the giving of evidence;
- (b) the safety, physical and psychological well-being of the witness; and
- (c) the dignity and privacy of the witnesses.

(6) For evidence given under this rule to be admissible, it must satisfy the provisions of rule 11.

#### **11. Qualifications for evidence of audio and video recorded interview**

(1) The Court shall ensure that audio and video recording meet the technical requirements set out in sub-rule (2) for purposes of proceedings by way of audio-visual link.

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(2) The court point and the remote point must be equipped with facilities that enable appropriate persons—

- (a) at the court point to see and hear a person appearing before the court or making submissions, or any other appropriate person at the remote point and to follow the proceedings; and
- (b) at the remote point to see and hear all appropriate persons at the court point and to follow the proceedings.

(3) The Court may, subject to sub-rule (4) below, direct that a matter is adjourned to the next court day in the event of—

- (a) an interruption of an audio-visual link;
- (b) an audio-visual link being of poor quality which, in the Court's opinion, is not in the interest of justice to continue the proceedings by way of audio-visual link; or
- (c) any equipment malfunctioning.

(4) The Court may, in order to ensure a fair trial, give directions in any case as it may deem necessary.

(5) The directions referred to in sub-rule (4) shall not be inconsistent with these Rules.

**12. Video recorded evidence-in-chief**

(1) The prosecution or the defence may apply to the Court for leave to admit into evidence video recorded evidence-in-chief.

(2) The Court may allow the introduction of previously recorded audio or video evidence of a witness, or the transcript or other documented evidence of such testimony—

- (a) if the witness who gave the previously recorded evidence is not present before the Court, both the prosecution and the defence had the opportunity to examine the witness during the recording; or
- (b) if the witness who gave the previously recorded testimony is present before the Court, does not object to the submission of the previously recorded testimony and the prosecution, the defence and the Court have the opportunity to examine the witness during the proceedings.

**13. Evidence through an intermediary**

(1) Whenever proceedings are pending before any Court and it appears to the Court that it would expose any witness to undue mental stress, or suffering if the witness testifies at the proceedings, the Court shall, on its own motion or upon an application and subject to sub-rule (4), appoint a competent person as an intermediary in order to enable the witness give evidence through that intermediary.

(2) No examination, cross examination or re-examination of any witness in respect of whom a Court has appointed an intermediary under subsection (1), except examination by the Court, shall take place in any manner other than through the intermediary.

(3) An intermediary shall, if the Court so directs, convey the general purport of any question to the relevant witness.

(4) An intermediary shall accompany a witness when that witness is testifying in Court.

(5) When an intermediary accompanies a witness who is testifying in Court, the intermediary shall remain visible to the Court except when the Court makes an order that prevents the intermediary from being visible to the Court, or any other person present before the Court.

(6) An intermediary shall swear or affirm to the Court that the intermediary shall—

- (a) assist the witness to the best of the intermediary's ability; and
- (b) not interfere with the witnesses, or the evidence of the witness.

- (7) In performing the functions of an intermediary, an intermediary may—
- (a) accompany, stand or sit near the witness;
  - (b) give the witness the physical or psychological support that the witness may require;
  - (c) stand, or sit in the full view of the witness; or
  - (d) draw the attention of the Court if the witness is in distress.
- (8) An intermediary shall not instruct a witness regarding the giving of evidence.
- (9) In the interest of justice and for the protection of a witness, the Court may direct that an intermediary—
- (a) shall not do any act in relation to a witness; or
  - (b) shall take such action in relation to a witness as the Court may require.
- (10) Where the Court appoints an intermediary for a witness, it shall inform an accused person, in writing, and shall give the accused person an opportunity to be heard regarding the appointment of the intermediary.
- (11) If a Court appoints an intermediary under sub-rule (1), the Court may direct that the relevant witness shall give evidence at any place—
- (a) that is informally arranged to set the witness at ease;
  - (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
  - (c) which enables the Court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through electronic or other media, that intermediary as well as that witness during their testimony.
- (12) The Court shall provide reasons for refusing any application, or request by the prosecution for the appointment of an intermediary.
- (13) An intermediary appointed by the Court in terms of sub-rule (1) shall be summoned to appear in Court on a specified date and at a specified place and time to act as an intermediary.
- (14) If, at the commencement of, or at any stage before the completion of the proceedings concerned, an intermediary appointed by the Court—
- (a) is for any reason absent;
  - (b) becomes unable to act as an intermediary in the opinion of the Court; or
  - (c) dies,
- the Court may, in the interest of justice and after due consideration of the arguments put forward by the accused or the accused's advocate and the prosecution —
- (a) postpone the proceedings in order to obtain intermediary's presence;
  - (b) summon the intermediary to appear before the Court to provide a reason for being absent;
  - (c) revoke the appointment of the intermediary and appoint another intermediary; or
  - (d) revoke the appointment of the intermediary and order that the proceedings continue in the absence of an intermediary.
- (15) The Court shall immediately give reasons for any direction, or order referred to in sub-rule 14 (d) which reasons shall be entered into the record of the proceedings.

#### **14. Protecting the identity of a witness**

- (1) The Agency may apply to the High Court *ex parte* for an order for any document necessary—
- (a) to allow a witness to establish a new identity; or
  - (b) to restore a protected person's former identity.

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(2) The application shall be made in writing and shall be heard *in camera*.

(3) The Court shall make the order upon the Agency satisfying the requirements of rule 4 of these rules.

(4) The Court may make an order authorizing a specified person to—

- (a) make a new entry in the register of births or register of marriages in respect of the witness;
- (b) make a new entry in a register of deaths in respect of the witness, or a relative by blood or marriage of the witness; or
- (c) issue in the witness's new identity a document of a kind previously issued to the witness.

**15. Record of proceedings and record of evidence**

(1) The Registrar shall cause to be made and preserved a full and accurate record of evidence of all proceedings, including audio recordings, transcripts and, when required by the Court, video recordings.

(2) The Court, after giving due considerations to any matter relating to witness protection, may order the disclosure of all, or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.

(3) The Registrar shall retain and preserve all physical evidence produced during the proceedings subject to any practice direction, or any other order which a court may at any time make with respect to the control or disposition of physical evidence offered during the proceedings before the Court.

(4) Photography, video recording or audio recording of the trial, otherwise than by the Registrar may be authorized by the Court.

**16. Prohibition of publication of certain information relating to the proceedings**

(1) Where the Court under these Rules or on any ground referred to in rule 9 directs that the public, the press or any class of persons shall not be present at any proceedings, or part of the proceedings, the Court may direct that no information relating to the proceedings, or part of the proceedings held behind closed doors shall be published in any manner.

(2) A direction by the Court under sub-rule (1) shall not prevent—

- (a) prevent the publication of information of the name and personal particulars of the accused;
- (b) the charge preferred;
- (c) the plea;
- (d) the verdict; and
- (e) the sentence,

unless the Court is of the opinion that the publication of any part of such information might defeat the object of its direction under rule 4 in which event the Court may direct that such information shall not be published.

(3) No person shall publish any information which reveals, or may reveal the identity of an accused person under the age of eighteen years.

(4) Despite sub-rule (3), the Court, or the Registrar may authorize the publication of information as the Court or the Registrar may find necessary if the publication would in their opinion be just and equitable in the interest of any particular person.

(5) No prohibition or direction under this rule shall apply with reference to the publication in the form of a bona fide law report of—

- (a) information for the purpose of reporting any question of law relating to the proceedings in question; or

- (b) a decision or ruling given by a Court on such question if the report does not mention—
  - (i) the name of the person charged;
  - (ii) the person against whom, or in connection with whom the offence in question was alleged to have been committed;
  - (iii) any witness at the proceedings; or
  - (iv) the place where the offence in question was alleged to have been committed.

**17. Application to Court**

- (1) An application to Court under these Rules shall be made by the Agency, the prosecution, the investigating officer or any other investigative agency in the proceedings.
  - (2) An application to Court may be made orally or in writing at the discretion of the Court.
  - (3) An application may be made to the Court at any time during the trial.
  - (4) A written application under these Rules shall be made by notice of motion.
  - (5) An application under these Rules shall specify the special measure sought and the reasons for the application
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