



LAWS OF KENYA

THE WITNESS PROTECTION ACT

CHAPTER 79

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CHAPTER 79

THE WITNESS PROTECTION ACT

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CHAPTER 79

THE WITNESS PROTECTION ACT

2 of 2010.

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

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title and commencement.
L.N. 110/2008.

Interpretation.
2 of 2010, s. 3.

Cap. 446.

Cap. 149.

Cap. 149.

1. This Act may be cited as the Witness Protection Act, 2006, and shall come into operation on 1st September, 2008.

2. 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;

“Committee” means the State Corporations Advisory Committee established under the State Corporations Act;

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

“Minister” means the Minister for the time being responsible for matters relating to witness protection;

“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;

“register of births” means a register of births maintained under the Births and Deaths Registration Act;

“register of deaths” means a register of deaths maintained under the Births and Deaths Registration Act;

“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;

“Tribunal” means the Witness Protection Appeals Tribunal established by section 30;

“witness” has the meaning ascribed to that expression by section 3;

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

3. (1) For the purposes of this Act, a witness is a person who needs protection from a threat or risk which exists on account of his being a crucial witness, who—

Meaning of
“witness”.
2 of 2010, s. 4.

- (a) has given or agreed to give, evidence on behalf of the State in—
 - (i) proceedings for an offence; or
 - (ii) hearings or proceedings before an authority which is declared by the Minister by Order published in the Gazette to be an authority to which this paragraph applies;
- (b) has given or agreed to give evidence, otherwise than as mentioned in paragraph (a), in relation to the commission or possible commission of an offence against a law of Kenya;
- (c) has made a statement to—
 - (i) the Commissioner of Police or a member of the Police Force; or
 - (ii) a law enforcement agency, in relation to an offence against a law of Kenya;
- (d) 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 shall be a protected person for the purpose of this Act if that person qualifies for protection—

(a) by virtue of being related to a witness; or

(b) on account of a testimony given by a witness; or

(c) for any other reason which the Director may consider sufficient.

2 of 2010, s. 5.

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

A. The Witness Protection Agency

Establishment of the Agency.
2 of 2010, s. 5.

3A. (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.

Object and purpose of the Agency.

3B. (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.

3C. (1) The functions of the Agency shall be to—

Functions of the
Agency.
2 of 2010, s. 5.

- (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.

3D. (1) The Agency shall have power to—

Powers of the
Agency.
2 of 2010, s. 5.

- (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.

Director of the Agency.
2 of 2010, s. 5.

3E. (1) There shall be a Director of the Agency who shall be appointed by the Agency on the recommendation of the Board on terms and conditions as the Minister may, in consultation with the Committee, 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, practiced 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.

(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.

(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 misbehavior;

(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) Where the question of the removal of the Director arises, on grounds set out in paragraphs (a) (b) or (c), the Chief Justice shall, by notice in the Gazette, appoint a Tribunal which shall consist of a chairperson and two other members selected by the Chief Justice from among persons who hold or have held office as judges of the High Court.

(8) The Tribunal appointed under subsection 7 shall inquire into the matter and report on the facts to the Chief Justice and recommend whether or not the Director ought to be removed from office.

(9) The Chief Justice shall upon receipt of recommendations of the Tribunal under sub-section (8), communicate the same to the President.

(10) Where the question of the removal of the Director has been referred to a Tribunal under subsection (7), the President may suspend the Director from the performance of his functions.

(11) Where the Tribunal recommends to the President that the Director should not be removed from office, the President shall, where

the Director is on suspension under subsection (10), lift the suspension and reinstate the Director in office.

(12) The Director shall be afforded appropriate opportunity to defend himself before the question of his removal is referred to the Tribunal, and, where the Tribunal has commenced proceedings against him, during the proceedings.

Staff of the
Agency.
2 of 2010, s. 5.

3F. (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 Minister may, in consultation with the Committee, approve.

(2) The staff referred to in subsection (1) may include deputy directors, assistant directors, protection 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 Committee 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.

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

Independence of the
Agency.
2 of 2010, s. 5.

3G. (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 Minister on the overall fulfillment of its object and purpose and the performance of its functions under this Act.

3H. (1) Except as otherwise provided in section 31, the expenditure of the Agency shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

Sources of
funding.
2 of 2010, s. 5.

(2) Without prejudice to subsection (1), there may be made to and accepted by the Agency such grants, gifts, donations or bequests as the Minister may approve where the grants, gifts or donations are not made on condition that the Agency perform a function or discharge an obligation other than that specified under this Act.

3I. (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.

Victims
Compensation
Fund.
2 of 2010, s. 5.

(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;
- (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 Minister, 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 Minister may, by regulations, provide for the management and administration of the Fund and for anything incidental to or connected therewith.

3J. (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 within three months before the commencement of the financial year, 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) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Minister and the Treasury for approval.

(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 Minister.

3K. (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, 2003, without prejudicing the integrity or security of the Agency's operations. No. 12 of 2003.

3L. (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. Annual reports. 2 of 2010, s. 5.

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

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

3M. 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. Director etc. to have powers of a police officer. 2 of 2010, s. 5.

3N. (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. Identity certificate and appointment. 2 of 2010, s. 5.

(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.

3O. (1) Upon the commencement of this Part, the Witness Protection Unit existing immediately before the commencement, shall stand dissolved. Dissolution of Witness Protection Unit, savings. 2 of 2010, s. 5.

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

- (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.

B. The Witness Protection Advisory Board

Establishment and membership.
2 of 2010, s. 5.

3P. (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 Minister as chairman;
- (b) the Minister responsible for matters relating to Justice;
- (c) the Minister responsible for matters relating to Finance;
- (d) the Director-General, National Security Intelligence Service;
- (e) the Commissioner of Police;
- (f) the Commissioner of Prisons;
- (g) the Director of Public Prosecutions; and
- (h) the Chairperson of the Kenya National Commission on Human Rights.

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

Functions and Powers.
2 of 2010, s. 5.

3Q. (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.

3R. Members of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance. Allowances.2 of 2010, s. 5.

3S. (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. Meetings and procedure of the Board. 2 of 2010, s. 5.

(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.

3T. (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. Disclosure of interest, etc. 2 of 2010, s. 5.

(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.

C. The Witness Protection Appeals Tribunal

Establishment of the
Witness Protection
Appeals Tribunal.
2 of 2010, s. 5.

3U. (1) There is established a tribunal to be known as the Witness Protection Appeals Tribunal.

(2) The Tribunal shall consist of—

- (a) a chairman who shall be a person qualified to hold or who has held the office of a Judge of the High Court of Kenya, who shall be appointed by the President on the recommendation of the Attorney-General; and
- (b) two other members appointed by the Minister, who shall be persons possessing, in the Minister's opinion, expert knowledge of the matters likely to come before the Tribunal.

(3) A member of the Tribunal shall hold office for a period not exceeding five years and is eligible for re-appointment for one further term.

(4) The Tribunal shall review and determine grievances by persons not satisfied with the decisions or orders of the Agency relating to admissions or terminations of placement into the programme.

(5) The procedures for the conduct of the affairs of the Tribunal shall be in accordance with rules made by the Chief Justice.

(6) The President or the Minister, as the case may be, may remove the chairman or a member of the Tribunal if the chairman or the member—

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment for a term of not less than six months without the option of a fine;
- (c) is incapacitated by prolonged physical or mental illness, or is otherwise unfit to discharge the functions of his office.

(7) The Attorney-General shall designate a public servant to be the secretary to the Tribunal.

(8) The members of the Tribunal shall be paid such allowances and be reimbursed for such expenses as may be determined by the Minister.

(9) The expenses of the Tribunal, including the allowances of the members of the Tribunal shall be paid from the Consolidated Fund.

(10) The decision of the Tribunal shall be final.

PART II—THE WITNESS PROTECTION PROGRAMME

4. (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. Protective Action.
2 of 2010, s. 6.

(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;
- (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.

5. (1) The decision to admit into or exclude any person from the programme, shall be the responsibility of the Director. Inclusion in
witness Protection
Programme.
2 of 2010, s. 7.

(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;
- (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 Minister 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.

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

Assessing witness for inclusion in the programme.

2 of 2010, s. 8.

- (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 2 of 2010, s. 8.)*
- (e) *(Deleted by 2 of 2010, s. 8.)*
- (f) whether there are viable alternative methods of protecting the witness;
- (g) *(Deleted by 2 of 2010, s. 8.)*

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.

7. (1) A memorandum of understanding shall—

Memorandum of understanding.

2 of 2010, s. 9.

- (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;
- (h) marriage, family maintenance, taxation, welfare or other social or domestic obligations or relationships;
- (i) any other obligations of the participant;
- (j) consequences of the participant's failing to comply with the provisions of the memorandum of understanding; and
- (k) 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 of 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.

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

9. (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.

Temporary protection pending full assessment.
2 of 2010, s. 11.

(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.

10. (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.

Cessation of protection and assistance.
2 of 2010, s. 12.

(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.

11. 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.

Suspension of protection and assistance.
2 of 2010, s. 13.

12. 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.

Notice of involuntary termination or suspension.
2 of 2010, s. 14.

PART III—PROTECTING WITNESSES FROM IDENTIFICATION

Identifying documents.
2 of 2010, s. 15.

13. 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.

Application for court order.
2 of 2010, s. 16.

14. (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.

Court proceedings under this Part to be closed to public.

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

Power of High Court to make order.

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

Effect of witness protection order. 2 of 2010, s. 17.

(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).

18. (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.

Effect of entries made under this Act. 2 of 2010, s. 18. Cap. 149.

(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.

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

Special provision in case of marriage of participant. 2 of 2010, s. 19.

(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.

Restoration of former identity.
2 of 2010, s. 20.

20. (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.

Offences in relation to documents.

21. 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.

Information not to be disclosed.
2 of 2010, s. 21.

22. (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 an investigation by the Attorney-General, the Police Force or another law enforcement agency; 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.

23. (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.

Non-disclosure of former identity of participant.
2 of 2010, s. 22.

Identity of participant not to be disclosed in legal proceedings.

24. (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 or any other law or rule of evidence.

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

Cap. 102.

Documentation restrictions.
2 of 2010, s. 23.

(a) has a qualification which he does not have; or

(b) is entitled to a benefit to which he is not entitled.

26. 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.

Special commercial arrangements by Agency.
2 of 2010, s. 24.

27. (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—

Dealing with rights and obligations of participant.
2 of 2010, s. 25.

(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.

28. (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—

Avoidance of obligations by participant.
2 of 2010, s. 26.

(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.

Payments under witness protection programme.
2 of 2010, s. 27.

29. (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.

PART IV—MISCELLANEOUS

Disclosures concerning participants.

30. 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.

Prohibition of false representation.
2 of 2010, s. 28.

30A. 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.

Offences in connection with staff of the Agency.
2 of 2010, s. 28.

30B. 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.

30C. 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—

Obstruction of the staff of the Agency. 2 of 2010, s. 28.

- (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.

30D. (1) The Minister 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.

Prohibition of access to premises of the Agency. 2 of 2010, s. 28.

(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.

30E. (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.

Prohibition on disclosure without consent. 2 of 2010, s. 28.

(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.

Disclosure by
participants and
others.
2 of 2010, s. 29.

31. (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).

Non-compellability
of witnesses.
2 of 2010, s. 30.

32. 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.

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

Protection of witnesses.

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

34. 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.

Immunity from legal proceedings.

35. The Attorney-General may delegate all or any of his functions under this Act, other than this power of delegation, to an officer within his administration.

Delegation.

36. (1) The Minister 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.

Regulations and rules.

(2) The Chief Justice may 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.

[Subsidiary]

SUBSIDIARY LEGISLATION

L.N. 10/2009.

THE WITNESS PROTECTION REGULATIONS, 2009

Citation.

1. These Regulations may be cited as the Witness Protection Regulations, 2009.

Interpretation.

2. In these Regulations, except where the context otherwise requires—

No. 16 of 2006.

“Act” means the Witness Protection Act;

“Head of Unit” means a person appointed by the Attorney-General under regulation 3(3);

Cap. 242.

“medical officer” has the same meaning as in section 2 of the Public Health Act;

“officer” means a protection officer designated by the Head of Unit under regulation 11 (*b*);

“Unit” means Witness Protection Unit established under regulation 3.

Establishment of
Witness Protection
Unit.

3. (1) There is established a unit in the Office of the Attorney-General to be known as the Witness Protection Unit.

(2) The Unit shall be composed of such a number of public officers as the Attorney-General may deem fit appointed by the Attorney-General.

(3) The Unit shall be headed by the Head of Unit who shall be a public officer appointed by the Attorney-General.

Functions of the
Unit.

4. The Unit shall—

- (a) ensure that proper protective measures are put in place for a witness;
- (b) recommend to the Attorney-General the adoption of protective measures and advise the relevant agencies of such measures;
- (c) make applications to the High Court for a witness protection order under section 14 of the Act;
- (d) assist witnesses in obtaining medical, psychical and counseling support services or any other services that the Unit may deem fit;
- (e) co-operate with other agencies where necessary in providing any of the protective measures stipulated in section 4 of the Act;
- (f) advise and direct witnesses on where to obtain legal services for the purpose of protecting their rights, status and obligations, particularly in relation to their testimonies;

[Subsidiary]

- (g) assist witnesses when called to testify before a court of law;
- (h) take gender sensitive measures to facilitate the testimony of sexual violence victims at all stages of proceedings; and
- (i) perform any other functions connected to the protection of a witness as may be assigned to the Unit by the Attorney-General from time to time.

5. In performing its functions under regulation 4, the Unit—

- (a) shall give due regard to the particular needs of children, elderly persons and persons with disabilities; and
- (b) may assign, as appropriate, with the consent of parents or legal guardian, a child support person to assist the child through all stages of the proceedings.

Needs of children,
elderly persons
etc.

6. The Unit shall ensure that—

- (a) its staff maintains confidentiality at all times;
- (b) it acts impartially when working with other parties;
- (c) administrative and technical assistance is available for witnesses who are at risk on account of testimonies given by such witnesses, during all stages of the proceedings and thereafter; and
- (d) its staff are trained with respect to the security of witnesses, integrity, dignity and gender sensitivity.

Duties of Unit.

7. (1) The Attorney-General may appoint persons with expertise in various fields as he may deem fit to assist the Unit in the performance of its functions.

Appointment of
experts.

(2) The terms of service of any person appointed under paragraph (1) shall be determined by the Attorney-General in the instrument of appointment or in writing from time to time.

8. (1) A written request for the inclusion of a witness in the programme made to the Attorney-General under section 5(3) of the Act shall be in the prescribed form as provided for under paragraph (2) of this regulation.

Request for witness
protection.

(2) Where the request is made by—

- (a) a member of the police force, a law enforcement agency or legal representative of the witness, it shall be in Form A;
- (b) a witness or prospective witness for himself or any member of his family or household, or dependant, it shall be in Form B;

[Subsidiary]

(c) a minor, it shall be in Form C, in the First Schedule.

(3) Subject to the provisions of this Act the Attorney-General or an officer designated by the Attorney-General shall evaluate the request for protection and may accept or reject the request.

Inclusion of witness in programme.

9. A Memorandum of Understanding signed by the Attorney-General for a witness to become included in the programme as provided for under section 7 (5) shall be in the form prescribed in the Second Schedule.

Transfer or relocation.

10. (1) The Head of Unit may, upon entering into an agreement with a witness, where he reasonably believes that a witness is or is potentially at risk in the current place of safety or protective custody, make an order for transfer or relocation of such witness to another place of safety or protective custody.

(2) The relocation or transfer agreement entered into under paragraph (1) between the Head of Unit and the witness shall be in prescribed form as provided in the Third Schedule.

Instructions to protected witness.

11. An officer may give such instructions to a protected witness as he may deem necessary in the circumstances to achieve efficient security or contribute to the safety of the witness, the officer or any other person.

Duties of the Head of Unit.

12. The Head of Unit shall—

- (a) be in-charge of the day to day affairs of the Unit;
- (b) designate a protection officer to take care of the safety of a protected witness;
- (c) take necessary measures for the continuous safety of a witness and give or cause to be given further orders in this regard to the relevant officer;
- (d) take the measures necessary for the safe keeping of all monies or valuables or any other article in the possession of a witness if a witness so requests and it is deemed necessary or desirable;
- (e) determine the place where a witness shall be placed for protection in accordance with the Act;
- (f) ensure that an ill or injured witness is attended to and examined by a public medical officer or a private medical practitioner and that the orders of the medical officer or the witness private medical practitioner in relation to the witness are complied with:

Provided that the costs of such attention and examination by a private medical practitioner shall be paid by the witness;

- (g) ensure that a witness physical and mental needs are satisfied as far as possible; and

[Subsidiary]

(h) make sure that any matter which a witness wishes to bring to the attention of the Attorney-General is conveyed to him forthwith.

13. (1) Subject to regulation 14, a witness shall, for the period during which he is included in the programme, be entitled to a daily allowance, if the witness does not receive any income as a result of being in the programme, to be determined by the Head of Unit. Financial assistance to protected witness.

(2) A daily allowance paid under paragraph (1) shall be less any amount which a witness may receive as witness fees.

(3) Where a witness satisfactorily proves to the Head of Unit that—

(a) he has forfeited income as a result of the fact that he is in the programme, the Head of Unit may order that an allowance equal to the amount of income so forfeited be payable to the witness, less the daily allowance or witness fees payable under this regulation;

(b) his being in the programme has resulted in financial hardship to himself or to a family member or a dependant, the Head of Unit may authorize that the amount payable under sub-paragraph (a) be exceeded.

14. Any financial assistance provided to a witness shall not be higher than the sum necessary to cover costs of living and inclusion into an unfamiliar environment unless authorized by the Head of Unit in accordance with these Regulations. Limit to financial assistance.

15. (1) A witness may be provided with sufficient clothing and other necessary requirements to a maximum amount to be determined by the Head of Unit, if the Head of Unit is satisfied that the witness has insufficient funds including the allowances and witness fees paid to him under these Regulations, to purchase sufficient clothing and other related requirements. Provision of clothing to witness.

(2) Any expenses incurred by the State under paragraph (1) may be brought into account before an allowance or witness fee is paid under regulation 13.

16. Subject to the Act, any person who fails to comply with these Regulations shall be liable to disciplinary action as may be determined by the Head of Unit. Failure to comply with Regulations.

[Subsidiary]

FIRST SCHEDULE

FORM A

(r. 8 (2) (a))

Application No: ____/____

WITNESS PROTECTION PROGRAMME

**REQUEST FOR WITNESS PROTECTION BY POLICE OFFICER/
LAW ENFORCEMENT AGENT/LEGAL REPRESENTATIVE**

PART 1

Name and particulars of the Applicant:
.....
.....

I

Investigators name:

Case Number/particulars:.....

Others at risk:

(List names of others who are considered to be at risk as a result of the association to the Protected Witness)

PART 2 SUMMARY OF INVESTIGATION

PART 3 CRITERIA

(I) The seriousness of the offence to which this application for protection relates.

<i>ACCUSED</i>	<i>STATUS</i>	<i>CRIME/OFFENCE</i>
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(II) The nature and importance of any relevant testimony, statement or information.

(III) The nature of the perceived danger to the witness.

Desire:

Expectance:

Knowledge:

Resources:

(IV) Protected Witness' Profile:

Are there other alternative measures for protecting the witness?

(V) Temporary Protection Measures implemented by Investigator:

PART 4

1. Person to be protected

Name:

Aliases:

Male/Female:

Date of birth:

Age:

Place of Birth:

Current address:

Nationality:

Status in Country of Residence:

Marital status: (Single, Married, Separated, Divorced, Widowed)

Mother tongue:

Language(s) spoken:

Language(s) written/read:

Religion:

Passport/ National Identity Card No:

Country of Issue:

List all identity documents:

Criminal Record: **YES/NO**

Criminal Record No: (**Attach criminal record**)

Outstanding court commitments (criminal/civil): (**Own matters**)

Bail/Probation: **YES/NO**

Conditions of Bail/Probation:

Court Orders:

Occupation:

Name of employer:

Address of employer:

If not employed detail source of income:

Unemployment benefits: YES/NO

Personal Identification (P.I.N) No:

[Subsidiary]

2. Details of children and other dependants

Name:

Date of birth:

Age:

Current address:

Relationship to applicant:

(Repeat for each child or dependant)

3. Medical status of Applicant

National Hospital Insurance Fund (N.H.I.F) No:

Illnesses:

Ongoing medical treatment:

Ongoing dental treatment:

Phobias:

Doctors Name:

Address:

Medication:

Any dependency e.g. drugs/alcohol:

4. Assets status

Property:

(Houses; land; vehicles; furniture; businesses; stocks, shares etc)

Animals/Livestock:

PART 5

1. Source of threat:**(Complete one for each threat – individual or organisation)**

Name: (Individual or organisation)

Male/Female:

Date of birth:

Age:

Address: (or area of operation)

In Custody: YES/NO

Bail/Probation: YES/NO

Conditions of Bail/Probation:

Place of Birth:

Nationality:

Status in Country of Residence:

Marital status: (Single, Married, Separated, Divorced, Widowed)

Mother Tongue:

Language(s) spoken:

Language(s) written/read:

Religion:

Passport No:

Country of Issue:

Criminal Record: YES/NO

Criminal Record No:

(Attach criminal record)

Areas of threat and influence:

Did this person/organisation offer the threat: YES/NO

If NO, please indicate relationship between witness and threat.

[Subsidiary]

PART 6

Referring Investigators

(Primary Officer)

(Secondary Officer)

Signature:

Signature:

Name:

Name:

Telephone:

Telephone:

Mobile:

Mobile:

Fax:

Fax:

Location:

Location:

Team Leader:

Signature:

Name:

Telephone:

Mobile:

Fax:

Location:

Recommendation:

Protection Unit

Date received:

Signature:

Name:

FORM B

(r. 8 (2) (b)

WITNESS PROTECTION PROGRAMME

REQUEST FOR PROTECTION BY A WITNESS FOR HIMSELF/
FAMILY MEMBER/DEPENDANT

1. I,.....(a)
Hereby make an application that-

(i) I

*and

(ii)
.....(b)

My.....
.....(c)

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
.....(e)

2. I—

(i)* gave or shall gave evidence on(f)

At(g)

or

* (ii) Shall possibly give evidence on(h)

At.....(i)

* (iii) have material information at my disposal and am willing to
testify in a criminal court,

In the case against(j)
with regard to the offence of

.....
.....(k)

[Subsidiary]

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

.....

.....

.....

.....

.....

.....

.....

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 Applicant)

Remarks:

- a) State name and surname of witness.
- b) State name and surname of members of the family of the family/
household in respect of whom protective custody is required.
- c) State relationship.
- 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 protective custody 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.

* Delete whichever is applicable

FORM C

(r. 8 (2) (c))

WITNESS PROTECTION PROGRAMME

REQUEST FOR WITNESS PROTECTION BY A MINOR

- 1. I,(a)
- a(b)
- of(c)

*(i) be admitted into the witness protection Programme

or

- 2. I have the following physical injuries:
.....
.....
..... (d)

- 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,
*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)

(Full name)

{Designation (Rank)}

.....
.....
.....
.....
(Address of employment)

Remarks:

- a) State name of the member of the family or household of the witness or prospective witness who requires protection.
- b) State relationship to witness or prospective witness.

[Subsidiary]

SECOND SCHEDULE

(r.9)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between Witness Protection Unit (hereinafter referred to as "the Unit") and [.....] (hereinafter referred to as "the Witness") (both of whom are hereinafter jointly referred to as "the Parties")

The present Memorandum of Understanding and its annexes which form part of the Memorandum of Understanding sets forth the duties, obligations and responsibilities of the Parties with respect to the Witness's entry into the Unit's Protection Programme (hereinafter referred to as "the Programme") whose purpose is to protect witnesses, who appear before the Court, Tribunal, or Commission on account of their testimony. The Parties acknowledge that the Programme is the last resort in the scale of protection measures adopted by the Unit for the safety and security of witnesses, who appear before a Court, Tribunal or Commission on account of their testimony.

The Parties agree as follows:

Following a thorough threat and psycho-social assessment, the Unit has determined and the Witness has agreed to enter into the Unit's Programme and to remain in the Programme until such time as the protection and assistance provided pursuant to this Memorandum of understanding is terminated, subject to the following terms and conditions:

The Responsibilities of the Witness

- 1. The Witness accepts:
 - a. that he/she is willing to accept certain restrictions on his/her normal living conditions until the risk to him/her and his/her family has, in the opinion of the Unit, passed, or until such time as the protection and assistance provided to him/her is terminated in accordance with the terms of the present Memorandum of Understanding;
 - b. that any representations or promises previously made to him/her by representatives of the Unit or the Defence regarding his/her participation in the Programme shall be null and void, with the exception of those set forth in the present Memorandum of Understanding;
 - c. that he/she shall inform the Unit of any information which may affect his/her protection;
 - d. that he/she shall meet all his/her civil and criminal liabilities, as set forth in Annex A. He/she shall not be shielded from civil or criminal litigation initiated prior to or subsequent to his/her entry into the Programme, and he/she shall inform the Unit of any matters or court proceedings commenced against him/her prior or subsequent to entry into the Programme;

[Subsidiary]

- e.* that he/she and his/her accompanying family members shall each be required to undergo a medical examination;
- f.* that he/she shall reside at a location designated by the Unit;
- g.* that any item provided to him/her by the Unit shall remain the property of the Unit and shall be surrendered on demand;
- h.* that he/she may be provided with limited financial and other assistance as deemed necessary and as set forth in Annex B; as per the Witness Protection Regulations 2008;
- i.* that the Unit shall not be responsible for his/her past or future debts;
- j.* that the Unit shall not be liable for any financial loss to him/her or be responsible for any injury, damage or loss which the Witness or his/her family may suffer arising from his/her involvement in the Programme;
- k.* that his/her relationship with the Unit is not one of employee and employer, and that he/she shall be responsible for finding employment as soon possible following resettlement;
- l.* that he/she shall obey orders of the Protection Officer/s and reasonable and lawful directions of the Unit;
- m.* that he/she may be visited by representatives of the Unit, and that he/she may be required to allow such representatives access to the premises in which he/she is located;
- n.* that he/she shall inform the Unit as soon as possible of any change in circumstances affecting his/her security;
- o.* that he/she shall immediately inform the Unit of any dealings with the police, including his/her arrest;
- p.* that he/she shall designate the Unit to act as his/her agent for the service of process;
- q.* that he/she shall obtain the Unit's permission prior to telephoning, writing a letter to or otherwise communicating with anyone connected with this case or anyone who may jeopardise the security of this matter;
- r.* that a number of other special restrictions and conditions may be placed on him/her to ensure his/her protection, as set forth in Annex C;
- s.* that he/she shall never talk about or otherwise reveal any information about the Programme either during or after his/her participation in the Programme. He/she shall never directly or indirectly disclose or communicate to another individual any of the following:

[Subsidiary]

- i. the fact that he/she or a member of his/her family has entered into the Programme and the present Memorandum of Understanding;
 - ii. the details of this or any other such Memorandum of Understanding;
 - iii. information relating to the protection measures or procedures undertaken by the Unit;
 - iv. information about any representative of the Unit gained by him/her as a result of his/her participation in the Programme.
- t. that, every 12 months, the Unit shall conduct an assessment to review his/her continued participation in the Programme.

TERMINATION

2. The Witness accepts that his/her protection may be terminated in the event:
 - i. that the threat diminishes or his/her protection is no longer required;
 - ii. that he/she fails to abide by the terms of the present Memorandum of Understanding;
 - iii. that he/she commits any crime;
 - iv. that he/she fails to fully disclose any information relevant to his/her protection or resettlement;
 - v. that he/she acts in such a way as to increase the risk to him-/herself or his/her family; or
 - vi. that he/she acts in such a way as to jeopardise the integrity of the Programme.

The Rights of the Witness

3. The Witness'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.
4. In addition, the Witness shall have the following rights in respect of the Programme:
 - a. to bring to the attention of the Director of Witness Protection Unit perceived inappropriate conduct by Unit representatives in relation to the matters covered within the present Memorandum of Understanding;
 - 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 of Witness Protection Unit, 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.

The Responsibilities of the Witness Protection Unit

- 5. The Unit shall take all reasonable measures to protect the Witness.
- 6. The Unit shall, from time to time review the security situation and risks to the Witness and assess the continued need for protection given to the Witness, including as necessary, a change in the terms and condition of participation or further resettlement of the Witness.
- 7. The Unit shall make every effort to maintain the confidentiality of information relating to the Witness and his/her family.

Channel of Communication

- 8. The Liaison Officer shall be the channel of communication between the Witness and the Unit.
- 9. The Witness shall be provided with the contact numbers of Unit staff to allow for 24 hour access to such personnel as needed.

Consultation

- 10. Where either party identifies problems which may impede the implementation of this Memorandum of Understanding, that party shall consult with the other without delay in order to resolve such problems.

Amendment and Entry into Force

- 11. The present Memorandum of Understanding may be amended with the consent of the Parties.
- 12. The present Memorandum of Understanding shall enter into force on the date of its signature by both Parties and shall remain in force until terminated by one of the Parties in accordance with the provisions of the Memorandum of understanding.

Date

DIRECTOR WITNESS PROTECTION UNIT

The Witness acknowledges that he/she has read the contents of this document or has had the contents of this document read aloud to him/her in a language which he/she fully understands and agrees to be included in the Programme in accordance with the terms specified above.

Name _____

Witness _____

Date

[Subsidiary]

THIRD SCHEDULE

(r.10 (2))

RELOCATION AGREEMENT

Day of 20

Excellency,

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

I have the honour to confirm on behalf of the Unit 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 Unit, and others at risk on account of testimony given by witnesses of the Unit. 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 Unit to be part of the family unit.

(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”

[Subsidiary]

(7) Requests shall be accompanied by the Unit’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.

(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.

[Subsidiary]

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 Unit, 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.

(17) Notwithstanding any provision of this Exchange of Letters, unless the Unit 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 Unit andshall 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 Attorney General 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 Unit and

IX. Representatives of the Parties

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

(23) A representative to be chosen by and communicated to the Unit 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 Unit will be the Director of the Witness Protection Unit, 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.

