

THE WITNESS PROTECTION ACT, 2006

No. 16 of 2006

Date of Assent: 30th December, 2006

Date of Commencement: 1st September, 2008

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AN ACT of Parliament to provide for the protection of witnesses in criminal cases and other proceedings

ENACTED by the Parliament of Kenya as follows -

PART I—PRELIMINARY

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

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

Interpretation.

2. In this Act, unless the context otherwise requires—

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

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

Cap. 149.

“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;

“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;

“witness” has the meaning ascribed to that expression

by section 3;

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

Meaning of
“witness”.

3. (1) For the purposes of this Act, a witness is—

(a) a person who 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) a person who 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) a person who 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) a person who—

(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,

is required to give evidence in a prosecution or inquiry held before a court or tribunal outside Kenya; or

- (e) a person who, for any other reason, may require protection or other assistance under this Act.

(2) A person shall be deemed to be a witness for the purposes of this Act if, because of a family or other relationship with, or any association with, a person to whom subsection (1) applies, he may require protection or other assistance under this Act.

PART II—THE WITNESS PROTECTION PROGRAMME

Protective action.

4. (1) The Attorney-General, through the establishment and maintenance of a witness protection programme, shall take such action as he thinks necessary and reasonable to protect the safety and welfare of a witness.

(2) Such action may include any of the following—

(a) making arrangements necessary—

(i) to allow the witness to establish a new identity; or

(ii) otherwise to protect the witness;

(b) relocating the witness;

(c) providing accommodation for the witness;

- (d) providing transport for the property of the witness;
- (e) providing reasonable financial assistance to the witness;
- (f) providing to the witness services in the nature of counselling and vocational training services;
- (g) doing any other things which the Attorney-General considers necessary to ensure the safety and welfare of the witness.

Inclusion in witness protection programme.

5. (1) The Attorney-General shall have the sole responsibility of deciding whether to include a witness in the programme, even in cases where a legal representative of the witness, a member of the Police Force or another law enforcement agency has requested that a witness be included in the programme.

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

- (a) the Attorney-General has decided that the witness be included;
- (b) the witness 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 witness, if the witness 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 witness, if the witness otherwise lacks legal capacity to sign it.

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

- (a) the witness; or
- (b) any law enforcement agency.

(4) The Attorney-General shall respond to a request under subsection (3) within seven days of receiving it.

(5) 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 Attorney-General may require the witness to sign the memorandum.

Assessing witness for inclusion in the programme.

6. (1) In deciding whether to include a witness in the programme, the Attorney-General 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) the nature of the witness's relationship to other witnesses being assessed for inclusion in the programme;
- (e) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness's suitability for inclusion in the programme—that examination or evaluation;
- (f) whether there are viable alternative methods of protecting the witness;
- (g) whether the witness has a criminal record, particularly a record of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the programme,

and may have regard to such other matters as the Attorney-General considers relevant.

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

Memorandum of understanding.

7. (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;
- (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
- (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 Attorney-General about the conduct of any officer 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 Attorney-General of an officer designated by the Attorney-General for the purposes of this section.

(5) A witness becomes included in the programme when the Attorney-General or an officer designated by him signs the memorandum of understanding.

(6) The Attorney-General shall, as soon as practicable after a memorandum of understanding is duly signed,

notify the relevant participant that it has been signed.

Variation of memorandum of understanding.

8. A memorandum of understanding may be varied with the consent of the participant and the Attorney-General.

Temporary protection pending full assessment.

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

(2) The Attorney-General 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.

Cessation of protection and assistance.

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

(2) Protection and assistance provided under the programme may be terminated by the Attorney-General 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 Attorney-General, 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 Attorney-General is of the opinion that, in the circumstances of the case, the protection and assistance should be terminated.

Suspension of protection and assistance.

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

Notice of involuntary termination or suspension.

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

PART III—PROTECTING WITNESSES FROM IDENTIFICATION

Identifying

13. Without limiting the powers of the Attorney-

The Witness Protection Act, 2006

documents. General 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.

14. (1) The Attorney-General 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 Attorney-General 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

16. The High Court may make a witness protection

order.

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.

Effect of witness protection order.

17. 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 Attorney-General 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).

Effect of entries made under this Act.
Cap. 149.

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.

(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 Attorney-General directing that the entry be cancelled.

Special provision in case of marriage of participant.

19. (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 Attorney-General 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 Attorney-General evidence which establishes that the contemplated marriage is not contrary to law; and

- (c) the participant has given to the Attorney-General a statutory declaration to the effect that there is no legal impediment to the marriage and the Attorney-General 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.

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 Attorney-General 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 Attorney-General shall take reasonable steps to notify the former participant of a decision under subsection (1).

(3) If the Attorney-General—

- (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 Attorney-General 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 Attorney-General 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.

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 Attorney-General 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.

Non-disclosure of former identity of 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 Attorney-General 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 Attorney-General.

(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.

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.

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

Documentation restrictions.

25. The Attorney-General 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.

Special commercial arrangements by Attorney-General.

26. The Attorney-General 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.

Dealing with rights and obligations of participant.

27. (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Attorney-General 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 Attorney-General 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.

Avoidance of obligations by participant.

28. (1) If the Attorney-General 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 Attorney-General 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 Attorney-General that the obligations will be dealt with according to law or the restrictions will be complied with, the Attorney-General 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.

29. (1) The Attorney-General 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.

Disclosure by participants and others.

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 Attorney-General 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 seven years.

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

- (a) has been authorised by the Attorney-General;
- (b) is necessary for the purposes of an investigation by the Attorney-General, the Police Force or another law enforcement agency; 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 Attorney-General

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).

Certain persons
not to be required
to disclose
information.

32. (1) Except as otherwise provided by order of the High Court, no person who is or has been—

- (a) the Attorney-General or an officer under the Attorney-general;
- (b) the Commissioner of Police, a member of the Police Force or a person employed in its administration;
- (c) the registrar having charge of a register of births, deaths or marriages;
- (d) a person employed in the administration of the Births and Deaths Registration Act or any law under which marriages are registered or recorded;
- (e) the Attorney-General or any member of his staff;
or
- (f) a person or body (or an employee of a person or body) providing services to or for a participant on request made by or on behalf of the Attorney-General,

Cap. 149.

shall be compellable in any proceedings in a court,

tribunal or commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the exercise of functions under this Act or the protection of witnesses included in the programme.

Protection of witnesses.

33. (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) 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.

Immunity from
legal proceedings.

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.

Delegation.

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.

Regulations and
rules.

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.

(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.

LEGAL NOTICE NO. 10 of 2009

THE WITNESS PROTECTION ACT (No. 16 of 2006)

IN EXERCISE of the powers conferred by section 36 of the Witness Protection Act, the Attorney-General makes the following Regulations: -

THE WITNESS PROTECTION REGULATIONS, 2008

- Citation. **1.** These Regulations may be cited as the Witness Protection Regulations, 2008.
- 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;
- (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.

Needs of children,
elderly persons
etc.

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.

Duties of Unit.

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.

Appointment of
experts.

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.

(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.

Request
witness
protection.

for

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.

(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;

(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
witness
programme.

of
in

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
relocation.

or

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

Financial
assistance to
protected witness.

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.

(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 subparagraph (a) be exceeded.

Limit to financial assistance.

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.

Provision of clothing to witness.

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.

(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.

Failure to comply with Regulations.

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.

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:

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.

Part 6

Referring Investigators

(Primary Officer)

Signature:

Name:

Telephone:

Mobile:

Fax:

Location:

(Secondary Officer)

Signature:

Name:

Telephone:

Mobile:

Fax:

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)

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.

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;
 - e. that he/she and his/her accompanying family members shall each be

The Witness Protection Act, 2006

- 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:
 - 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.

The Witness Protection Act, 2006

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

Date

Witness

The Witness Protection Act, 2006

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ANNEX B

FINANCIAL AND OTHER ASSISTANCE

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The Witness Protection Act, 2006

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ANNEX C

SPECIAL RESTRICTIONS AND CONDITIONS

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The Witness Protection Act, 2006

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**THIRD SCHEDULE
(2))**

(r.10

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”

(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.

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.

Attorney General,

**AMOS WAKO,
*Attorney-General.***

Made the 15th January, 2009.