

CHAPTER 79

THE WITNESS PROTECTION ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. The Witness Protection Regulations.....	3
2. The Witness Protection Rules.....	39

THE WITNESS PROTECTION REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
4. Application for witness protection
5. Inclusion of a Witness or related person in the Witness Protection Program
6. Needs of vulnerable witnesses
7. Resettlement or relocation
8. Instructions to protected persons
9. Financial assistance to protected persons
10. Confidentiality
11. Non disclosure of former identity of applicant
12. Failure to comply with Regulations
13. Revocation of LN 10/2009

SCHEDULES

FIRST SCHEDULE —

FORMS

MEMORANDUM OF UNDERSTANDING

THIRD SCHEDULE —

MEMORANDUM OF UNDERSTANDING
RELATING TO ADMITTANCE

OATH/AFFIRMATION OF OFFICE

RELOCATION AGREEMENT

THE WITNESS PROTECTION REGULATIONS

[Legal Notice 99 of 2011]

1. Citation

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

2. Interpretation

In these regulations, unless the context otherwise requires—

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

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

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

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

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

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

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

"witness protection officer" means a protection officer designated or appointed by the Director in accordance with the Act;

4. Application for witness protection

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

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

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

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

- (a) assist such a person with his or her application;

Witness Protection

[Subsidiary]

- (b) inform the Director of the application; and
- (c) submit the application to the Director or a protection officer.

(5) An application—

- (a) by witness shall be made in Form A set out in the First Schedule;
- (b) by a person who is related to a witness shall be made in Form B set out in the First Schedule;
- (c) an application on behalf of a child, shall be made in Form C set out in the First Schedule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Needs of vulnerable witnesses

In performing its functions under Act, the Agency—

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

7. Resettlement or relocation

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

8. Instructions to protected persons

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

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

9. Financial assistance to protected persons

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

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

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

- (3) The Director may, where necessary, pay—

Witness Protection

[Subsidiary]

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

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

(5) The Director may, after considering the evidence proving that—

- (a) the witness has forfeited income as a result of being included into the programme; or
- (b) the inclusion into the programme has resulted in financial hardship to the witness or to a person related to the witness or dependant,

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

10. Confidentiality

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

(2) The Agency shall implement the following measures to ensure confidentiality—

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

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

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

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

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

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

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

11. Non disclosure of former identity of applicant

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

12. Failure to comply with Regulations

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

13. Revocation of LN 10/2009

The Witness Protection Regulations (Sub.leg), are revoked.

FIRST SCHEDULE

FORMS

FORM A

(r. 4 (5) (a))

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

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- This document consists of two Sections, Section A and Section B.
- Both sections have to be completed:
 - Section A by the applicant as defined in section 3 of the Witness Protection Act; and
 - Section B by the investigating officer/police officer/legal representative or other person assisting the applicant or receiving the application.
- In the event that the applicant is a child, please note that in terms of Regulation 4 (5) of the Witness Protection Regulations 2011, a Form C should accompany this application.
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable*.

(a) State name and surname of witness;

(b) State age;

(c) State name and surname of members of the family of the family/household in respect of whom protective custody is required & their relationships;

(d) State particulars of the person /persons who threatens/threaten the safety of the person/ person in respect of whom prospective custody is required (if known).

Witness Protection

[Subsidiary]

- (e) State the circumstances as a result of which protection is required (e.g. death threat);
- (f) State date of trial (if known);
- (g) State place of trial (if known);
- (h) State name of person who committed the offence if known;
- (i) State all charges;
- (j) Full description of type, location and full extent of injury (if any);

SECTION A:

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

- (i) I *and
- (ii) (c)

Name	Surname	Age	ID Card Number/DOB	Relationship to applicant
-------------	----------------	------------	---------------------------	----------------------------------

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

in that (e)

2. I —

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

At (g)

Or

- (ii) * Shall possibly give evidence-on (f)

At (g)

or

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

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

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

.....

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

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

.....

Signature/Mark/ Right thumbprint of Applicant)

Place: Date:

SECTION B:

- Full names
- Surname
- Relationship to applicant
- Position
- Rank/Title
- Work address

Work Telephone number
Cell Phone number

1. I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.

2. I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....
Signature of Official

Place: Date:

Additional Remarks

.....
.....

FORM B (r. 4 (5)(b))
**APPLICATION FOR PROTECTION WITNESS PROTECTION PROGRAMME
REQUEST FOR PROTECTION BY A FAMILY MEMBER, DEPENDANT OR
RELATED PERSON TO A PROTECTED WITNESS:**

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
- This document consists of two Sections, Section A and Section B.
- Both sections have to be completed:
 - o Section A by the applicant as defined in section 3 of the Witness Protection Act, and
 - o Section B by the investigating officer/police officer/legal representative or other person assisting the applicant or receiving the application.
- Please note that this application should be completed by every adult member of the family, dependant or related person to the protected witness;
- In the event that the applicant is a child, please note that in terms of Regulation 4(5) of the Witness Protection Regulations, a Form C should accompany this Application.
- Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable*.

- (a) State name and surname of applicant;
- (b) State age;
- (c) State relationship to the protected witness;
- (d) State name and surname of the protected witness;
- (e) State name and surname of members of the family of the family/household in respect of whom protective custody is required & their relationships;
- (f) State particulars of the person /persons who threatens/threaten the safety of the person/ person in respect of whom prospective custody is required (if known).
- (g) State the circumstances as a result of which protection is required (e.g. death threat);
- (h) Full description of type, location and full extent of injury (if any).

Witness Protection

[Subsidiary]

SECTION A:

(1) I, (a).....

Identity Card Number: Passport number or

DOB: an adult *male/female, (b) years old, hereby declare that I am a *dependant of / are related to / have the following relationship (c) to (d) make an application that—

(i) I

*and

(ii) (e)

Name	Surname	Age	ID Card Number/DOB	Relationship to applicant
------	---------	-----	--------------------	---------------------------

be included in the Witness Protection Programme.

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

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

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

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

Place: Date:

SECTION B:

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

1. I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.

2. I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

Signature of Official
Place: Date:

Additional Remarks:
.....

FORM C (r. 4(5)(c))
APPLICATION FOR PROTECTION: CHILD WITNESS WITNESS PROTECTION PROGRAMME
REQUEST FOR WITNESS PROTECTION BY A CHILD WITNESS:

Instructions for completion:

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

o Section A by the child applicant as defined in section 3 of the Witness Protection Act, as assisted by his/her parent or guardian, and

o Section B by the investigating officer / police officer / legal representative or other person assisting the applicant or receiving the application.

• Please note that this application should be completed by a child witness or on behalf of the child as contemplated in section 5(3Xb)-(d) of the Act — whether such a child will be accompanied into the Witness Protection Program by an adult parent or guardian, or not;

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

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

SECTION A:

1) I, (a)

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

DOB:..... a child *male/female, (b) years old hereby make an application that—

- (i) * I alone or
- (ii) *I and (c)

Name	Surname	Age	ID Card Number/DOB	Relationship to applicant
------	---------	-----	-----------------------	------------------------------

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

.....

in that (e)

.....

2. I —

- (i) * have given or shall give evidence on (f) at (g).....

Witness Protection

[Subsidiary]

or

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

.....

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

.....

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

.....

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

.....

(Signature/mark/thumbprint of deponent)

4. I, Identity Number:

Passport number: or DOB:

an adult *male/female, (b), years old, of: (k)

Work address:

Tel no (h): Tel no (w):

Cell phone no: E-Mail address:

hereby declare that I, as the parent/guardian of the above-mentioned person hereby give authorization for the above-mentioned witness to be so protected.

(Signature/mark/thumbprint of parent/guardian)

Place: Date:

SECTION B:

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

1. I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.

2. I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....

Signature of Official

Place: Date:

Additional Remarks:

FORM D (r. 5(5))
DECLINATION FORM (ADULT) WITNESS PROTECTION PROGRAMME

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
 - This document consists of two Sections, Section A and Section B.
 - Both sections have to be completed:
 - o Section A by the applicant as defined in section 3 of the Witness Protection Act; and
 - o Section B by the Witness Protection Officer or other member of the Witness Protection Agency that interviewed the witness;
- Please ensure that all the requested details are provided in full as required by every section and delete, whatever is not applicable*.

- (a) State name and surname of witness;
- (b) State age;
- (c) State name of the relevant investigation or prosecuting authority applicable;
- (d) State particulars of the person/organization who committed the offence;

SECTION A:

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

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

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

SECTION B:

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

1. I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.

[Subsidiary]

2. I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

Signature of Official

Place:

Date:

Additional Remarks:

FORM E (r. 4(5), 5(5))
DECLINATION FORM (CHILD CONSENT) WITNESS PROTECTION PROGRAMME

Instructions for completion:

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

o Section A by the applicant (as supported by his/her parent or legal guardian) as defined in section 3 of the Witness Protection Act; and

o Section B by the Witness Protection Officer or other member of the Witness Protection Agency that interviewed the witness;

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

- (a) State name and surname of Parent or guardian;
(b) State age;
(c) Full home and work addresses including contact telephone numbers;
(d) State name and surname of child witness;
(e) State name of the relevant investigation or prosecuting authority applicable;
(f) State particulars of the person / organization who committed the offence;

SECTION A:

6. I(a),, Identity Card Number:
Passport number: or DOB:
An adult *male/female, (b) years old, of: (C)
Work address:
Tel no. (h):..... Tel no. (w):.....
Cell phone no:..... E-Mail address:.....
Hereby declare that I, am the *parent /guardian of the following child witness (d):
..... Identity Card Number:
Passport number or DOB:

Witness Protection

[Subsidiary]

a child *male/female, (b) Years old. I further more state the following.

6. I understand that as a result of the *cooperation and/or pending testimony of the above mentioned child witness, for the office of the * Director of Public Prosecution, Kenya or (e), In the matter against (f), the life of the child witness and my life may be in danger.

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

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

5. *I hereby decline to apply for that program, and/or,

*I hereby decline to give permission for the child witness (d), to be admitted in the Kenya Witness Protection Program;

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

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

Place: Date:

I have taken notice of the declination by my *parent/guardian.

.....
(Signature/mark/thumbprint of parent/guardian)

Place: Date:

SECTION B:

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

3. I hereby certify that, in assisting the applicant with this application to be admitted to the Witness Protection Program, I am aware of the fact that I now have knowledge of information that are classified in accordance to the Witness Protection Act.

4. I also declare that I have taken notice of the contents and instruction as per section 30 of the Witness Protection Act that states that it is an offence to unlawfully disclose the identity or location of a person who is or has been a witness or participant, in the Witness Protection Program or which compromises the security of such a person and that, if found guilty, is liable to imprisonment for a term not exceeding seven years.

.....
Signature of Official

Place: Date:

Additional Remarks:

.....

[Subsidiary]

FORM F (5 (11))
WITNESS DISCHARGE FORM WITNESS PROTECTION PROGRAMME

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
• This document consists of three Sections, Section A, Section B and Section C.
• All the sections have to be completed:
o Section A & C by the protected person (as supported by his/her parent or guardian if applicable) as defined in Section 3 of the Witness Protection Act; and
o Section B by the Witness Protection Officer or other member of the Witness Protection Agency that interviewed the witness;
• Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable*.

- (a) State name, surname full identifying details of the protected person;
(b) State age;
(c) Specify exact dates as agreed to by the Director Witness Protection ;
(d) Please provide as much as possible detail. Continue on a separate page if necessary.
(e) Full forwarding address. This is the address where the witness will be transported to on leaving the program and provision thereof is mandatory.
(f) State full name, surname and identifying details of parent or legal guardian.
(g) Full home and work addresses including contact telephone numbers if the parent or legal guardian was not protected with the witness on the Witness Protection Program.

SECTION A:

- 1. I(a), Identity Card Number:
Passport number: or DOB:
an *adult/ child, *male/female (b) years old, that is currently a protected witness on the Witness Protection Program, hereby declares:
2. *I hereby wish to be unconditionally released from the Witness Protection Program, Or
*I hereby wish to be unconditionally released from the Witness Protection Program for the following period of time (c): to
3. The reasons for my request are (d):
4. My forwarding address is (e):
5. I shall not hold the Witness Protection Agency, or the Government of Kenya or any other person liable in respect of any harm which may be or could be caused to me or my dependants after my release from the witness protection program.
6. I *am satisfied/am not satisfied with my treatment whilst on the program.
(Please provide reasons, if you were not satisfied with the treatment you received) (d):
.....
Signature/mark/thumbprint of Witness)
Place: Date:
As supported by his /her parent or legal guardian (f):

Witness Protection

[Subsidiary]

.....
 Identity Card Number: Passport number: or
 DOB:
 Of: (g) Home address: Work address:
 Tel no. (h): Tel no. (w):
 Cell phone no: E-Mail address:

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

SECTION B:

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

.....
 Signature of Witness Protection Official)
 Place: Date:
 Additional Remarks:

SECTION C:

Quality of Treatment Questions		
Was the condition and quality of any accommodation provided satisfactory?	Yes	No
Were you at all times treated with dignity and respect by Protection Officers?	Yes	No
Were you at all times treated with dignity and respect by the Investigating Officer that you interacted with during your time on the program?	Yes	No
Were you at all times treated with dignity and	Yes	No

Witness Protection

[Subsidiary]

respect by the Prosecutor that you interacted with during your time on the program?

Do you think that improvements can be made in the following areas?

The length of time spent on the program?	Yes	No
The type and standard of accommodation provided?	Yes	No
The allowances paid to you whilst on the program?	Yes	No
The care that you received during your time on the program?	Yes	No

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

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

Place: Date:

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

.....

Identity Card Number: Passport number: or
DOB:

Of: (g) Home address:

..... Work address:

Tel no (h): Tel no (w):

Cell phone no: E-Mail address:

.....

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

Place:..... Date:

FORM G (r. 11)
PRESCRIBED FORM UNDER SECTION 23(1)(b) OF THE WITNESS
PROTECTION ACT (Cap. 79)
AUTHORISATION OF NON-DISCLOSURE OF FORMER IDENTITY OF A
PARTICIPANT

On the (a) day of, (b), the participant,
was provided with a new identity by the Witness Protection Agency in Kenya's Witness
Protection Program.

The Participant *is now / has been, required by (c) under a law of the
Republic of Kenya, namely,(d) to disclose *his/her former identity for a
particular purpose, namely, (e) Pursuant to section 23(1)(b) of the Witness

Witness Protection

[Subsidiary]

Protection Act (f) the Director of the Witness Protection Agency, hereby permits the Participant not to disclose,* his/her former identity to any person as required by (c) under (d) for the purpose of (e)

THE DIRECTOR, Witness Protection Agency

NOTE: Section 23(2) of the Act provides that having been given permission under section 23(1) of the Act not to disclose his identity for the purpose described above, it is lawful for the Participant, in any proceedings or for any purpose, under or in relation to the relevant law described above, to claim that his new identity is his only identity.

This authorisation remains valid while the Participant retains his new identity and is not invalidated by reason of the Participant no longer being a participant in the Witness Protection Program, provided that new identity is retained.

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

Instructions for completion:

- Please read the instructions carefully on how to complete this document.
• Please note that this document can only be signed by the Director Witness Protection Agency in terms of Section 23(1)(b) of the Witness Protection Act;
• Please ensure that all the requested details are provided in full as required by every section and delete whatever is not applicable*.

- (a) Date
(b) State new identity: name and surname of the protected person;
(c) State clearly who requires the information;
(d) State section of the relevant Act;
(e) State purpose;
(f) State Full names of the Director of Witness Protection

SECOND SCHEDULE

[r. 5(3)]

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING
TEMPORARY PLACEMENT: WITNESS
WITNESS PROTECTION PROGRAMME

PLACING UNDER TEMPORARY PROTECTION IN TERMS OF SECTION 9(2) OF THE WITNESS PROTECTION ACT (Cap. 79)

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

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

Witness Protection

[Subsidiary]

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

- (1) I am obliged to make a full disclosure of my knowledge of the fact surrounding the case in which it is sought to place me as a witness to both the members of the unit which is investigating the case as well as members of the Witness Protection Agency, as may be required.
- (2) I am obliged to co-operate with the investigation unit in the investigation of the case in which it is sought to place me as a witness.
- (3) I am obliged to subject myself to a security check which may include:
 - (i) having my fingerprints/photograph taken,
 - (ii) subjecting myself to a polygraph test and/or other psychological or medical examination, and
 - (iii) making a full disclosure of any previous investigations and or cases which is relevant to my application for protection in this case including whether I have ever previously been placed on a Witness Protection Programme.
- (4) I am obliged to make a full disclosure of my financial circumstance including all sources of income, liabilities, and assets as well as those of any related person where their particulars are within my knowledge. I confirm that I have been informed that such information will be relied upon to determine whether I or any related person qualifies for an allowance. I am furthermore required to waive my right to confidentiality referred to in section, of the Income Tax Act (Cap. 470), and to authorize the Director and/or his Delegate to obtain information held by the Kenya Revenue Services in order to verify the stated income. I am aware that the willful disclosure of any false or misleading information will render me guilty of a criminal offence and any allowances fraudulently acquired will be recovered from me.
- (5) I am obliged to surrender any items, which in the opinion of the protection officers are not necessary to be in my possession while I have been placed in temporary protection. Should I fail to surrender the items and they are either stolen, damaged or destroyed, the Government shall not be responsible for any such loss or damage.
- (6) I am not permitted to be in possession of any dangerous weapons, illegal substances and any items, which have been unlawfully obtained.
- (7) I am obliged to submit myself and my property to a search if requested by a witness protection officer and any member who is responsible for my safety.
- (8) I may not abuse alcohol or narcotic substances or indulge in violent or disorderly or other anti social behaviour while under temporary protection or harass any other person who may also be at the place of safety.
- (9) I may not commit any offences while under protection.
- (10) I may not at any stage reveal to any other person the location of the safe house where I may be lodged, the identities or other particulars of any protected person or my handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. I confirm that it has been explained to me that I render myself guilty of a criminal offence should I make such a disclosure and I will be liable for the costs incurred should it be necessary to close down the place of safety.
- (11) I may not bring any persons to the place of safety.
- (12) I may not communicate with persons specified by either the investigating officer of my case or the members of the Witness Protection Agency.
- (13) I may not damage the place of safety or any property in or at such place of safety. I confirm that it has been explained to me that I will be liable for any such damage, which I have willfully or negligently caused.
- (14) I may not indulge in any conduct, which may endanger the security or other aspects of the operation of the Witness Protection Programme or which may endanger my life, or that of any other person.

Witness Protection

[Subsidiary]

- (15) I am obliged to comply with any orders given to me by anyone responsible for my safety, which orders are necessary for efficient security or which may contribute to the safety of the members of the Witness Protection Agency, a protected person or any other person in the place of safety concerned. I confirm that it has been explained to me that I render myself guilty of a criminal offence should I disobey any such orders.
- (16) I am obliged to disclose full particulars concerning any civil proceedings, which are or may be instituted by or against me or in which I am otherwise involved.

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

- (i) My placement in temporary protection does not absolve me from my existing debts and any further debts, which I may incur.
- (ii) My temporary protection does not absolve me from any legal obligations incurred by myself including any obligations regarding the custody and maintenance of children and taxation obligations.

(1) Should I be placed under protection and given an allowance such allowance will be in accordance with the amounts prescribed by the policies of the Agency in terms of the Witness Protection Act and that the following will be taken into account—

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

(2) Should I require medical counseling or treatment this will be provided for by medical practitioners or institutions approved by the Director or his delegate.

(3) The Witness Protection Programme may not place me in a better financial position than prior to my admission to the programme.

(4) No promises made to me by any member of the investigation unit are binding on the Director.

(5) I hereby declare that I am aware of the fact that I may not at any stage, during or after I have left Witness Protection, reveal any of the following information to any person:

- (a) the address or location of a safe house,
- (b) the identity or particulars of any protected or formerly protected person,
- (c) the identity or particulars of any official or person employed by the Witness Protection Agency or their vehicles, or
- (d) any other information that may hamper the Witness Protection Agency's security.

(6) I hereby acknowledge that it has been explained to me and that I understand that if I disobey any of the conditions as explained in Paragraph 5 above, I might render myself guilty of a criminal offence and that I will be held responsible for any expenses incurred as a result of such an action or utterance.

Dated at this day of 20

.....

SIGNATURE OF WITNESS

I holding the position of in the Witness Protection Agency confirm that I have explained each and every condition set out in B above subject to which

Witness Protection

[Subsidiary]

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

..... SIGNATURE

..... Designation

Dated at on day of 20

MEMORANDUM OF UNDERSTANDING
TEMPORARY PLACEMENT: RELATED PERSON
Witness Protection Programme

PLACING UNDER TEMPORARY PROTECTION IN TERMS OF SECTION 9(2) OF THE WITNESS PROTECTION ACT (Cap. 79)

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

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

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

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

Witness Protection

[Subsidiary]

or my handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. I confirm that it has been explained to me that I render myself guilty of a criminal offence should I make such a disclosure and I will be liable for the costs incurred should it be necessary to close down the place of safety.

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

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

- (i) My placement in temporary protection does not absolve me from my existing debts and any further debts, which I may incur.
- (ii) My temporary protection does not absolve me from any legal obligations incurred by myself including any obligations regarding the custody and maintenance of children and taxation obligations.

(1) Should I be placed under protection and given an allowance such allowance will be in accordance with the amounts prescribed in the regulations promulgated in terms of the Witness Protection Act and that the following will be taken into account:—

- (a) The amount of income earned at the time of the admission to the Programme.
- (b) No income acquired from unlawful means will be considered.
- (c) No income not declared for tax purposes will be taken into account.
- (d) Living expenses that I or the related persons had prior to being placed under temporary protection which will no longer be incurred will be deducted from the determination of my income.
- (e) Benefits provided by the Witness Protection Programme, including payments made to other related persons would be deducted from the determination of my income.

(2) Should I require medical counseling or treatment this will be provided for by medical practitioners or institutions approved by the Director or his delegate.

(3) The Witness Protection Programme may not place me in a better financial position than prior to my admission to the Programme.

(4) No promises made to me by any member of the investigation unit are binding on the Director.

(5) I hereby declare that I am aware of the fact that I may not at any stage, during or after I have left Witness Protection, reveal any of the following information to any person:

- (a) the address or location of a safe house,
- (b) the identity or particulars of any protected or formerly protected person,

Witness Protection

[Subsidiary]

- (c) the identity or particulars of any official or person employed by Witness Protection or their vehicles, or
- (d) any other information that may hamper Witness Protection's security.

(6) I hereby acknowledge that it has been explained to me and that I understand that if I disobey any of the conditions as explained in Paragraph 5 above, I might render myself guilty of a criminal offence and that I will be held responsible for any expenses incurred as a result of such an action or utterance.

Dated at this day of 20

.....

SIGNATURE OF RELATED PERSON

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

.....

SIGNATURE RANK

.....

SIGNATURE (TRANSLATOR) RANK

Dated at on day of 20

THIRD SCHEDULE

MEMORANDUM OF UNDERSTANDING RELATING TO ADMITTANCE

(r. 5(4))

**Memorandum of Understanding:
WITNESS
Witness Protection Programme**

PLACING UNDER PROTECTION IN TERMS OF SECTION 7 OF THE WITNESS PROTECTION ACT (Cap. 79)

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

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

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

1. The witness has been admitted to the witness protection programme (herein after referred to as the programme) in order for him / her to give truthful and reliable evidence on behalf of The Government of Kenya /..... in the criminal case of..... vs , in this regard the witness is required to irrevocably waive any privilege which he or she may otherwise lawfully raise in a court of law when required to testify.
2. The protection extends to the date upon which the witness concludes his / her testimony where upon a further evaluation will take place to determine whether further protection is necessary.
3. The protection will be immediately terminated and the witness will be required to leave the programme in the event of the prosecutor informing the Director of the Witness Protection Agency (hereinafter referred to as the Director) that the witness's evidence was untruthful or

unreliable or by the court trying the case making such a finding. If the witness was compelled in terms of Section 128 of the Evidence Act (Chapter 80) to incriminate himself / herself the protection will also be terminated in the event of the court declining to order the witness indemnity from prosecution.

4. Notwithstanding the undertaking in paragraph 2 above the protection will be terminated and the witness will be obliged to leave the programme if anyone of the following circumstances occur.

- (1) The Prosecuting Authority decides not to institute or discontinues the criminal proceedings in respect of which the witness was admitted to the programme or;
- (2) The witness is not required to give evidence or;
- (3) In the opinion of the Investigating or Prosecuting Authority the witness is no longer at risk, or
- (4) In the opinion of the Director the witness is able to make alternative arrangements for his / her safety without remaining on the programme, or
- (5) The witness when applying for protection willfully furnished false or misleading information, particulars or makes a statement which is false or misleading in any material respect or willfully failed to disclose any material relevant to his / her application.
- (6) The witness is arrested for any criminal offence; or
- (7) The witness absconds from the programme.
- (8) The protection is subject to the witness complying with the following conditions and the witness's protection will be immediately terminated and the witness removed from the programme in the event of any one of the following conditions being breached.
 - (a) The witness is obliged to make a full disclosure of his / her knowledge of the facts surrounding the case in which he / she has been placed as a witness to both the members of the unit which is investigating the case as well as members of the Witness Protection Agency as may be required.
 - (b) The witness is obliged to co-operate with the investigation unit in the investigation of the case in which / he she has been placed as a witness.
 - (c) The witness is obliged to subject himself / herself to a security check which may include:
 - (i) having his / her fingerprints / photograph taken,
 - (ii) subjecting himself/ herself to a polygraph test and / or other psychological or medical examination, and
 - (iii) making a full disclosure of any previous investigations and / or litigation which is relevant to his / her protection in this case including whether he / she has ever previously been placed on the Witness Protection Programme.
 - (d) The witness is obliged to make a full disclosure of his / her financial circumstances including all sources of income, liabilities, and assets as well as those of any related person where their particulars are within his / her knowledge. The witness confirms that he / she has been informed that such information will be relied upon to determine whether he / she or any related person qualifies for an allowance. He / She is furthermore required to waive his / her right to confidentially referred to in section.....) of the Income Tax Act and to authorize the Director and / or his Delegate to obtain information held by the Kenya Revenue Services in order to verify the stated income. The witness is obliged to immediately disclose any changed circumstances. The willful disclosure of any false or misleading information will render him / her guilty of a criminal offence and Kenya Subsidiary Legislation, 2011 403 any allowance fraudulently acquired will be recovered from him / her.

Witness Protection

[Subsidiary]

- (e) The witness is obliged to surrender any objects, which in the opinion of the witness protection officers are not necessary to be in his / her possession while he / she is under protection. Should he / she fail to surrender the items and they are either stolen, damaged or destroyed The Government will not held be responsible.
- (f) The witness is not permitted to be in possession of any dangerous weapons, illegal substances and any items; which have been unlawfully obtained.
- (g) The witness is obliged to submit himself / herself and his / her property to a search if requested by a witness protection and any member who is responsible for his / her safety.
- (h) The witness may not abuse alcohol or narcotic substances or indulge in violent or disorderly or other anti social behavior while under protection or harass any other person who may also be at the place of safety.
- (i) The witness may not commit any offences while under protection.
- (j) The witness may not at any stage reveal to any other person the location of the safe house where he / she may be lodged, the identities or other particulars of any other protected person or his her handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. He / She confirms that it has been explained to him / her that he / she renders himself / herself guilty of a criminal offence should he / she make such a disclosure and he / she will be liable for the costs incurred should it be necessary to close down the place of safety.
- (k) The witness may not bring any persons to the place of safety or let the place of safety out to other persons. The witness may not leave the place of safety without authority.
- (l) The witness may not communicate with persons specified by either the investigating officer of his / her case or the members of the Witness Protection Agency. The witness may not communicate with the accused and / or their supporters nor may he / she return to the area where the offences were committed without authority.
- (m) The witness may not damage the place of safety or any property in or at such place of safety. He / She confirms that it has been explained to him / her that he / she will be liable for any such damage, which he / she has willfully or negligently caused. The witness must keep the place of safety in a clean and tidy condition..
- (n) The witness may not indulge in any conduct, which may endanger the security or other aspects of the operation of the Witness Protection Agency or which may endanger his / her life, or that of any other person.
- (o) The witness is obliged to comply with any orders given to him / her by anyone responsible for his / her safety, which orders are necessary for efficient security or which may contribute to the safety of the members of the Witness Protection Agency, the protected person or any other person in the place of safety concerned. He / She confirms that it has been explained to him / her that he / she may renders himself / herself guilty of a criminal offence should he / she disobey any such orders.
- (p) The witness is obliged to disclose full particulars concerning any civil proceedings, which are or may be instituted by or against him / her or in which he / she are otherwise involved.
- (q) The witness is obliged to ensure that his / her child dependants who have been admitted to the programme will comply with conditions (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) above.
- (r) The witness is obliged to resume a normal life, without any assistance from the programme at the earliest possible moment.

Witness Protection

[Subsidiary]

- (s) The witness is obliged to enter into this protection agreement with the Director or his delegate.

5. The following facts have been brought to the attention of the witness.

- (1) The witness's admission to the programme does not absolve him /her from his / her existing debts and any further debts, which he / she may incur.
- (2) The witness's admission to the programme does not absolve him / her from any legal obligations incurred by him / her including any obligations regarding the custody and maintenance of children and taxation obligations.
- (3) Any allowance due to the witness will be in accordance with the amounts prescribed in the policy documents of the Agency and that the following will be taken into account:
 - (a) The amount of income earned at the time of the admission to the programme.
 - (b) No income acquired from unlawful means will be considered.
 - (c) No income not declared for tax purposes will be taken into account.
 - (d) Living expenses that the witness or the related persons had prior to being admitted to the programme which will no longer be incurred will be deducted from the determination of the witness's income.
 - (e) Benefits provided by the Witness Protection Programme, including payments made to other related persons will be deducted from the determination of the witness's income.
- (4) Any allowance will be terminated in the event of the witness's absconding from the programme.
- (5) The Witness Protection Programme may not place the witness in a better financial position than prior to his her admission to the programme, nor is the programme obliged to provide the witness with employment or housing upon his / her discharge from the programme.
- (6) No promises made to the witness, by any member of the investigation unit are binding on the Director.
- (7) The witness may in writing and to the person responsible for his safety make representations to the Director concerning the amendment of any of the conditions of the protection agreement.
- (8) The Director or his delegate, shall for the duration of Protection:
 - (1) Provide the witness with such protection, which is necessary according to the risk assessment supplied by the investigating authority and is within the resources of the Agency.
 - (2) Provide the witness with necessary medical treatment or counseling at an institution or by medical practitioners approved of by the Director or his delegate. The witness may receive treatment from a doctor of his / her choice if he / she (the witness) accepts full responsibility for payment of the account for treatment.
 - (3) In accordance with the prescribed policies regulations and the information supplied by the witness, the Witness Protection Agency, shall pay per month to the witness while in catered accommodation or per month to the witness while in self catering accommodation. The amount may be reviewed in terms of the Regulations and should the witness's financial position have altered after admission to the programme

.....
.....

(for witness's who earned a salary).

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

Witness Protection

[Subsidiary]

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

The Rights of the Participant

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

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

Dated this day of 20

.....

WITNESS

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

Dated this day of 20

.....

Director: WITNESS PROTECTION AGENCY

**Memorandum of Understanding:
RELATED PERSON
Witness Protection Programme**

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

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

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

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

1. The related person has been admitted to the witness protection programme (herein after referred to as the programme) in order for the witness to give truthful and reliable evidence on behalf of in the criminal case of versus
2. The protection extends to the date upon which the witness concludes his / her testimony where upon a further evaluation will take place to determine whether further protection is necessary.

3. The protection will be immediately withdrawn and the related person will be required to leave the programme in the event of the prosecutor informing the Director: Witness Protection (hereinafter referred to as the Director) that the witness's evidence was untruthful or unreliable or by the court trying the case making such a finding. If the witness was obliged in terms of to incriminate himself / herself the protection will also be cancelled in the event of the court refusing to grant the witness indemnity from prosecution.

4. Notwithstanding the undertaking in paragraph 2 above the protection will be withdrawn and the related person will be obliged to leave the programme if anyone of the following circumstances occurs.

- (1) The Prosecuting Authority decides not to institute or discontinues the criminal proceedings in respect of which the witness was admitted to the programme or;
- (2) The witness is not required to give evidence or;
- (3) In the opinion of the Investigating or Prosecuting Authority the witness is no longer at risk, or
- (4) In the opinion of the Director the witness is able to make alternative arrangements for his / her safety without remaining on the programme or
- (5) The related person when applying for protection willfully furnished false or misleading information, particulars or makes a statement which is false or misleading in any material respect or willfully failed to disclose any material relevant to his / her application or
- (6) The related person and / or witness is arrested for any criminal offence or
- (7) The related person and / or witness abscond from the programme.

5. The protection is subject to the related person complying with the following conditions and the related person's protection will be immediately cancelled and the related person removed from the programme in the event of any one of the following conditions being breached:

- (1) The related person failed to make a full disclosure of his / her knowledge of the facts surrounding the case in which he / she has been placed as a witness to both the members of the unit is investigating the case as well as members of the Office for Witness Protection as may be required.
- (2) The related person failed to co-operate with the investigation unit in the investigation of the case in which he / she has been placed as a witness.
- (3) The related person is obliged to subject himself / herself to a security check which may include:
 - (i) having his / her fingerprints/photograph taken,
 - (ii) subjecting himself / herself to a polygraph test and / or other psychological or medical examination, and
 - (iii) making a full disclosure of any previous investigations and / or litigation which is relevant to his / her protection in this case including whether he / she has ever previously been placed on the Witness Protection Programme.
- (4) The related person is obliged to make a full disclosure of his / her financial circumstances including all sources of income, liabilities, and assets as well as those of the witness where their particulars are within his / her knowledge. The related person confirms that he / she has been informed that such information will be relied upon to determine whether he / she qualifies for an allowance. The willful disclosure of any false or misleading information will render him / her guilty of a criminal offence. Any allowance fraudulently acquired will be recovered from him / her. He / She is furthermore required to waive his / her right to confidentially retrted to in section of the Income Tax Act and to authorize the Director slid / or his Delegate to obtain information held by the Kenya Revenue Services in order to verify the stated income. The related person is obliged to immediately disclose any changed circumstances.

Witness Protection

[Subsidiary]

- (5) The related person is obliged to surrender any objects, which in the opinion of the security officers are not necessary to be in his / her possession while he / she is under protection. Should he / she fail to surrender the items and they are either stolen, damaged or destroyed The State will not be responsible for any such loss or damage.
 - (6) The related person is not permitted to be in possession of any dangerous weapons, illegal substances and any items, which have been unlawfully obtained.
 - (7) The related person is obliged to submit himself / herself and his / her property to a search if requested by a security officer and any member who is responsible for his / her safety.
 - (8) The related person may not abuse alcohol or narcotic substances or indulge in violent or disorderly or other anti social behavior while under protection or harass any other person who may also be at the place of safety.
 - (9) The related person may not commit any offences while under protection.
 - (10) The related person may not at any stage reveal to any other person the location of the safe house where he / she may be lodged, the identities or other particulars of any other protected person or his her handlers or their vehicles or any other information which could endanger the security of the Witness Protection Programme. He / She confirms that it has been explained to him / her that he / she renders himself / herself guilty of a criminal offence should he / she make such a disclosure and he / she will be liable for the costs incurred should it be necessary to close down the place of safety.
 - (11) The related person may not bring any persons to the place of safety or let the place of safety out to other persons.
 - (12) The related person may not communicate with personi specified by either the investigating officer of his / her case or the members of the Witness Protection Agency. The related person may not communicate with the accused and / or their supporters nor may / he she return to the area where the offences were committed without authority. The related person specially may not communicate with the following persons. (See attached annexure).
 - (13) The related person may not damage the place of safety or any property in or at such place of safety. He / She confirms that it has been explained to him / her that he / she will be liable for any such damage, which he / she has willfully or negligently caused. The related person must keep the place of safety in a clean and tidy condition.
 - (14) The related person may not indulge in any conduct, which may endanger the security or other aspects of the operation of the Witness Protection Programme or which may endanger his / her life, or that of any other person.
 - (15) The related person is obliged to comply with any orders given to him / her by anyone responsible for his / her safety, which orders are necessary for efficient security or which may contribute to the safety of the members of the Witness Protection Agency, the protected person or any other person in the place of safety concerned. He / She confirms that it has been explained to him / her that he / she may renders himself / herself guilty of a criminal offence should he / she disobey any such orders.
 - (16) The related person is obliged to disclose full particulars concerning any civil proceedings, which are or may be instituted by or against him / her or in which he / she may otherwise be involved.
 - (17) The related person is obliged to ensure that his / her child dependants who have been admitted to the programme will comply with conditions (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) above.
 - (18) The related person is obliged to resume a normal life, without any assistance from the programme at the earliest possible moment.
 - (19) The rely ted person is obliged to enter into a protection agreement with the Director or his delegate.
6. The following facts have been brought to the attention of the related person.

Witness Protection

[Subsidiary]

- (1) The related person's admission to the programme does not absolve him /her from his / her existing debts and any further debts, which he / she may incur.
- (2) The related person's admission to the programme does not absolve him / her from any legal obligations incurred by him / her including any obligations regarding the custody and maintenance of children and taxation obligations.
- (3) Any allowance due to the related person will be in accordance with the amounts prescribed in the regulations promulgated in terms of the Witness Protection Act and that the following will be taken into account:
 - a. The amount of income earned at the time of the admission to the programme.
 - b. No income acquired from unlawful means will be considered.
 - c. No income not declared for tax purposes will be taken into account.
 - d. Living expenses that the witness or the related persons had prior to being admitted to the programme which will no longer be incurred will be deducted from the determination of the related person's income.
 - e. Benefits provided by the Witness Protection Programme, including payments made to other related persons will be deducted from the determination of the related person's income.
- (4) Any allowance will be terminated in the event of the related person's absconding from the programme.
- (5) The Witness Protection Programme may not place the related person in a better financial position than prior to his her admission to the programme, nor is the programme obliged to provide the related person with employment or housing upon his / her discharge from the programme.
- (6) No promises made to the related person, by any member of the investigation unit are binding on the Director.
- (7) The related person may in writing and to the person responsible for his safety make representations to The Director concerning the amendment of any of the conditions of the protection agreement.
- (8) The Director or his delegate shall for the duration of protection
 - (1) Provide the related person with such protection, which is necessary according to the risk assessment supplied by the investigating authority and is within the resources of the State.
 - (2) Provide the related person with necessary medical treatment or counseling at an institution or by medical practitioners approved of by The Director or his delegate. The witness may receive treatment from a doctor of his / her choice if he / she (the witness) accepts full responsibility for the account.

(7) In accordance with the prescribed regulations and the information supplied by the related person the Director of Public Prosecution's office through the Witness Protection Agency, will pay per month to the related person while in catered accommodation or per month to the witness while in self catering accommodation. The amount may be reviewed in terms of the regulations and should the related person's financial position have altered after admission to the programme

.....
 (for related person's who earns a salary).

(8) The Witness Protection Agency will pay any expense for which provision is made in terms of the Regulations and in respect of which the related person makes a specific application.

(9) Receive on behalf of the related person any court process for any litigation in which the witness may be involved.

The Rights of the Participant:

Witness Protection

[Subsidiary]

1. The Participant's involvement in the Programme shall be voluntary, and he/she may withdraw at any time provided that he/she makes such a request in writing to the Director: Witness Protection.

2. In addition, the Participant shall have the following rights in respect of the Programme:

a. to bring to the attention of the Director: Witness Protection perceived inappropriate conduct by Witness Protection Agency representatives in relation to the matters covered within the present Agreement;

b. to be notified of any change in the threat assessment or the decision to terminate his/her participation in the Programme; and

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

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

Dated this day of 20

.....

RELATED PERSON

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

Dated this day of 20

.....

WITNESS PROTECTION AGENCY

FOURTH SCHEDULE

[r. 10(2)(f)]

OATH/AFFIRMATION OF OFFICE

KENYA WITNESS PROTECTION AGENCY

OATH/AFFIRMATION OF OFFICE

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

So help me God.

.....

Signature:

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

On this day,

.....

Witness Protection

[Subsidiary]

Signature

(Full names)

Designation:.....

Witness 1:

Witness 2:

Name:

.....

Date:

.....

FIFTH SCHEDULE

[r. 7]

RELOCATION AGREEMENT

KENYA WITNESS PROTECTION AGENCY

RELOCATION AGREEMENT

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

Excellency,

I have the honour to refer to the discussions held between the Republic of Kenya represented by and the Government of (hereinafter:

"....."), concerning arrangements between the Agency and for the relocation to the territory of of Witnesses of the Agency, and, where necessary, their Close relations.

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

I. As for purpose of this Exchange of Letters:

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

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

- (6) Where the Director considers that a Witness requires Relocation, he/she shall make such request, in writing, to which relocation request shall hereinafter be referred to as "Request" that accept such Witness and his/her Close relations which witnesses and their close relations shall hereinafter be referred to as "Subjects"
- (7) Requests shall be accompanied by the Agency's psycho-social and threat assessment and the Subject(s) full details as set out in Annex I of this Exchange

Witness Protection

[Subsidiary]

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 Agency, take whatever measures deemed necessary to protect the Subject(s). If appropriate, shall enter the Subject(s) into the witness protection program.

IV. As to the status of Relocated Person(s)

- (14) shall grant Relocated Person(s) with legal status, in accordance with its national law.
- (15) will immediately notify the Director if it is informed that a Relocated Person has died or if his/her whereabouts are unknown.

V. As to the termination of Relocation Services:

- (16) (a) The Director shall make assessments hereinafter referred to as "Assessment") on a regular basis to determine whether the risk and /or threat to life of the Relocated Person(s) under this Exchange of Letters still continue.
 - (b) If the Director concludes from such Assessment that Relocation Services are no longer required, the Director shall inform

Witness Protection

[Subsidiary]

accordingly may then either terminate or continue with the Relocation Services herein.

- (17) Notwithstanding any provision of this Exchange of Letters, unless the Agency and the Relocated Person express their consent in writing, shall not return any Relocated Person to the territory of a State identified as one in whose territory the Relocated Person's life or well-being would be at risk, on the basis of his/her nationality, religion, race or political conviction or in whose territory he/she would risk measures causing insupportable mental pressure.
- (18) If; at any time after the entry into force of this Exchange of Letters and the transfer of the Relocated Person to....., for any legal or practical reasons, further provision of services and security has become impossible, the-Agency and shall promptly consult to resolve the matter. shall continue to provide the Relocation Services until such time when the matter is resolved.

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

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

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

- (20) (a) The provisions of this Exchange of Letters shall enter into force on the day the Director of Public Prosecution of the Republic of Kenya receives confirmation of this Exchange of Letters.
- (b) The provisions of this Exchange of Letters shall remain in force until terminated by either Party providing the, other Party with six months written notice of termination. Such termination shall be carried out without prejudice to the status of any Relocated Person(s) and Close relations relocated in at the time of termination.

VIII. As to the resolution of disputes

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

IX. Representatives of the Parties

- (22) The 'Director, or his/her authorised designate, shall represent the Agency in all matters relating to this Exchange of Letters.
- (23) A representative to be chosen by and communicated to the Agency shall present in all matters relating to this Exchange of Letters.

X. Operational Points of Contact

- (24) The Parties agree that each shall designate an official to be the point of contact for all operational matters relating to implementation of this Agreement.
 - (a) The operational point of contact on behalf of the Agency will be the Director of the Witness Protection Agency, or any authorised designate; and
 - (b) The operational point of contact on behalf of will be

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

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

DIRECTOR, WITNESS PROTECTION AGENCY

THE WITNESS PROTECTION RULES

ARRANGEMENT OF RULES

Rule

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

THE WITNESS PROTECTION RULES

[Legal Notice 225 of 2015]

1. Short title and commencement

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

2. Interpretation

In these rules, unless otherwise the context requires—

"Act" means the Witness Protection Act;

"Agency" means the Witness Protection Agency established by Section 3A of the Witness Protection Act (Cap. 79);

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

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

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

"child" means a person who has not attained the age of eighteen years;

"Court" means a court of competent jurisdiction;

"court point" means the court room, or other place where the court having jurisdiction is sitting;

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

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

"police officer" has the same meaning assigned to it under the National Police Service Act (Cap. 84);

"protection officer" means a person appointed as such under section 3N (1) of the Witness Protection Act (Cap. 79);

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

"redaction" means the removal of any identifying information from a document;

"Registrar" means a registrar of the relevant court;

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

"Rules" means the Witness Protection Rules;

[Subsidiary]

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

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

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

"protection order" means an order of the Court directing protection of a witness.

3. Application of Rules

These Rules shall apply to the proceedings with respect to a protected witness in accordance with section 36(2) of the Witness Protection Act (Cap. 79).

4. Protection of witnesses

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

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

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

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

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

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

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

5. Protection measures

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

- (a) measures to prevent disclosure to the public or media of the identity or whereabouts of a witness, or of persons related to or associated with a witness by such means, including—
 - (i) expunging identifying information from the Court's public records;

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

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

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

6. Duration of protective measure

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

7. Variation of a protective order

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

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

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

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

8. Public hearing

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

9. Closed or *in-camera* hearing

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

- (a) protecting the rights of the accused or a witness;
- (b) public order or morality;

Witness Protection

[Subsidiary]

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

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

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

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

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

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

10. Testimony by means of audio or video link technology

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

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

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

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

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

(5) Despite subrule (3), the technology shall permit the witness to be examined by the prosecutor, the defence, or by the Court, at the time that witness testifies.

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

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

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

11. Qualifications for evidence of audio and video recorded interview

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

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

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

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

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

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

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

12. Video recorded evidence-in-chief

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

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

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

13. Evidence through an intermediary

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

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

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

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

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

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

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

(7) In performing the functions of an intermediary, an intermediary may—

- (a) accompany, stand or sit near the witness;
- (b) give the witness the physical or psychological support that the witness may require;

Witness Protection

[Subsidiary]

- (c) stand, or sit in the full view of the witness; or
- (d) draw the attention of the Court if the witness is in distress.

(8) An intermediary shall not instruct a witness regarding the giving of evidence.

(9) In the interest of justice and for the protection of a witness, the Court may direct that an intermediary—

- (a) shall not do any act in relation to a witness; or
- (b) shall take such action in relation to a witness as the Court may require.

(10) Where the Court appoints an intermediary for a witness, it shall inform an accused person, in writing, and shall give the accused person an opportunity to be heard regarding the appointment of the intermediary.

(11) If a Court appoints an intermediary under subrule (1), the Court may direct that the relevant witness shall give evidence at any place—

- (a) that is informally arranged to set the witness at ease;
- (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
- (c) which enables the Court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through electronic or other media, that intermediary as well as that witness during their testimony.

(12) The Court shall provide reasons for refusing any application, or request by the prosecution for the appointment of an intermediary.

(13) An intermediary appointed by the Court in terms of subrule (1) shall be summoned to appear in Court on a specified date and at a specified place and time to act as an intermediary.

(14) If, at the commencement of, or at any stage before the completion of the proceedings concerned, an intermediary appointed by the Court—

- (a) is for any reason absent;
- (b) becomes unable to act as an intermediary in the opinion of the Court; or
- (c) dies,

the Court may, in the interest of justice and after due consideration of the arguments put forward by the accused or the accused's advocate and the prosecution—

- (a) postpone the proceedings in order to obtain intermediary's presence;
- (b) summon the intermediary to appear before the Court to provide a reason for being absent;
- (c) revoke the appointment of the intermediary and appoint another intermediary; or
- (d) revoke the appointment of the intermediary and order that the proceedings continue in the absence of an intermediary.

(15) The Court shall immediately give reasons for any direction, or order referred to in subrule 14 (d) which reasons shall be entered into the record of the proceedings.

14. Protecting the identity of a witness

(1) The Agency may apply to the High Court *ex parte* for an order for any document necessary—

- (a) to allow a witness to establish a new identity; or
- (b) to restore a protected person's former identity.

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

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

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

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

15. Record of proceedings and record of evidence

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

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

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

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

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

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

(2) A direction by the Court under subrule (1) shall not prevent—

- (a) the publication of information of the name and personal particulars of the accused;
- (b) the charge preferred;
- (c) the plea;
- (d) the verdict; and
- (e) the sentence, unless the Court is of the opinion that the publication of any part of such information might defeat the object of its direction under rule 4 in which event the Court may direct that such information shall not be published.

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

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

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

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

[Subsidiary]

- (iv) the place where the offence in question was alleged to have been committed.

17. Application to Court

(1) An application to Court under these Rules shall be made by the Agency, the prosecution, the investigating officer or any other investigative agency in the proceedings.

(2) An application to Court may be made orally or in writing at the discretion of the Court.

(3) An application may be made to the Court at any time during the trial.

(4) A written application under these Rules shall be made by notice of motion.

(5) An application under these Rules shall specify the special measure sought and the reasons for the application.
