

**THE WITNESS PROTECTION ACT, 2006**

**No. 16 of 2006**

*Date of Assent: 30th December, 2006*

*Date of Commencement: By Notice*

**ARRANGEMENT OF SECTIONS**

*Clause*

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**AN ACT of Parliament to provide for the**

2. The long title to the Witness Protection Act, 2006, in this Act referred to as "the principal Act", is amended by inserting the following words immediately after the word "proceedings" —

Amendment of  
the long title to  
No. 16 of 2006.

"to establish a Witness Protection Agency and provide for its powers, functions, management and administration, and for connected purposes".

Act, 2006, and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint.

Commencement.

3. Section 2 of the principal Act is amended by inserting the following new definitions in their proper alphabetical sequence-

Amendment of  
section 2 of No.  
16 of 2006.

"Agency" means the Witness Protection Agency established by section 3A;

"Board" means the Witness Protection Advisory Board established by section 3P;

"Committee" means the State Corporations Advisory Committee established under the State Corporations Act;

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"Director" means the Director of the Agency appointed under section 3E;

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

(a) a register maintained under any Act in which marriages are registered or recorded; or

(b) an index, maintained under any Act, of certified copies of any such registers;

"Tribunal" means the Witness Protection Appeals Tribunal established by section 3U;

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

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

Meaning of  
“witness”.

**3** 4. Section 3 of the principal Act is amended —

(a) by deleting subsection (1) and substituting therefor the following new subsection —

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

(a) has given or agreed to give, evidence on behalf of the State in —

(i) proceedings for an offence; or

(ii) hearings or proceedings before an authority which is declared by the Minister by Order published in the Gazette to be an authority to which this paragraph applies;

(b) has given or agreed to give evidence, otherwise than as mentioned in paragraph (a), in

relation to the commission or possible commission of an offence against a law of Kenya;

(c) has made a statement to —

(i) the Commissioner of Police or a member of the Police Force; or

(ii) a law enforcement agency, in relation to an offence against a law of Kenya;

(d) is required to give evidence in a prosecution or inquiry held before a court, commission or tribunal outside Kenya -

(i) for the purposes of any treaty or agreement to which Kenya is a party; or

(ii) in circumstances prescribed by regulations made under this Act.

(b) by deleting subsection (2) and substituting therefor the following new subsection-

(2) A person shall be a protected person for the purpose of this Act if that person qualifies for protection -

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

(a) control and supervise its staff in a manner and for

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

- (a) holding *in camera* or closed sessions;
- (b) the use of pseudonyms;
- (c) the reduction of identifying information;
- (d) the use of video link; or
- (e) employing measures to obscure or distort the identity of the witness.

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

Inclusion in witness protection programme.

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

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

(a) the Attorney-General has decided that the witness be included;

(b) the witness agrees to be included; and

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(c) a memorandum of understanding in accordance with section 7 is signed by the witness or by—

- (i) a parent or guardian of the witness, if the witness is under the age of eighteen years; or
- (ii) a guardian or other person who is usually responsible for the care and control of the witness, if the witness otherwise lacks legal capacity to sign it.

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

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

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

(5) Where—

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

the Attorney-General may require the witness to sign the memorandum.

Assessing witness  
for inclusion in  
the programme.

6. (1) In deciding whether to include a witness in the programme, the ~~Attorney-General~~ <sup>Director</sup> shall have regard to—

- (a) the seriousness of the offence to which any relevant evidence or statement relates;
- (b) the nature and importance of any relevant evidence or statement;
- (c) the nature of the perceived danger to the witness;
- (d) the nature of the witness's relationship to other witnesses being assessed for inclusion in the programme;
- (e) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness's suitability for inclusion in the programme—that examination or evaluation;
- (f) whether there are viable alternative methods of protecting the witness;
- (g) whether the witness has a criminal record, particularly a record of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the programme,

and may have regard to such other matters as the ~~Attorney-General~~ <sup>Director</sup> considers relevant.

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

7. (1) A memorandum of understanding shall—

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

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

- (a) any outstanding legal obligations of the participant and how they are to be dealt with;
- (b) any legal obligations which the participant may or may not enter into;
- (c) the surrender and issue of passports and other identification documents;
- (d) the taking, provision and retention of photographs of the participant;

- (e) the issue of any documents relating to the new identity of the participant;
- (f) the prohibition of the participant from engaging in specified activities;
- (h) marriage, family maintenance, taxation, welfare or other social or domestic obligations or relationships;
- (i) any other obligations of the participant;
- (j) consequences of the participant's failing to comply with the provisions of the memorandum of understanding; and
- (j) any other matter for which it may be necessary or expedient to make provision in the circumstances of the case.

(3) A memorandum of understanding shall contain a statement advising the participant of his right to complain to the ~~Attorney-General~~ about the conduct of any ~~officer~~ in relation to the matters dealt with in the memorandum.

(4) A memorandum of understanding shall be signed by or on behalf of the witness in the presence of the ~~Attorney-General~~ of an officer designated by the ~~Attorney-General~~ for the purposes of this section.

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

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

8. A memorandum of understanding may be varied with the consent of the participant and the ~~Attorney-General~~ <sup>Director</sup>.

Variation of memorandum of understanding.

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

Temporary protection pending full assessment.

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

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

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

Cessation of protection and assistance.

(2) Protection and assistance provided under the programme may be terminated by the ~~Attorney-General~~ <sup>Director</sup> if—

- (a) the participant deliberately breaches a term of the memorandum of understanding or a requirement or undertaking relating to the programme.

(b) anything done or intended to be done by the participant is, in the opinion of the Attorney-General, likely to threaten the security or compromise the integrity of the programme; or

(c) the circumstances which gave rise to the need for protection and assistance for the participant have ceased to exist,

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

Suspension of protection and assistance.

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

Notice of involuntary termination or suspension.

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

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**PART III—PROTECTING WITNESSES FROM  
IDENTIFICATION**

13. Without limiting the powers of the ~~Attorney-General~~ under section 4, he may apply for any documents necessary—

Identifying documents.

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

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

Application for court order.

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

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

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Court proceedings under this Part to be closed to public.

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

Power of High Court to make order.

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

(a) the person named in the application as a witness—

(i) was a witness to or has knowledge of an offence and is or has been a witness in criminal proceedings relating to the offence; or

(ii) is a person who, because of his relationship to or association with a person to whom subparagraph (i) applies, may require protection or other assistance under this Act;

(b) the life or safety of the person may be endangered as a result of his being a witness;

(c) a memorandum of understanding has been entered into by the witness in accordance with section 7; and

(d) the person is likely to comply with the memorandum of understanding.

Effect of witness protection order.

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

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

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

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

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

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

Special provision in case of marriage of participant.

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

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

Restoration of  
former identity.

**20. (1) Where—**

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

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

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

(3) If the ~~Attorney-General~~—

(a) takes action under this section to restore the former identity of a person who was a participant; and

(b) notifies the former participant in writing that he is required to return to the ~~Attorney-General~~ all documents provided to the former participant that relate to the new identity provided under the programme,

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

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

21. While an entry made under this Act in a register of births, deaths or marriages continues in force, a person in respect of whom the entry is made who uses or obtains any document issued by a registrar having charge of a register of births, deaths or marriages which is based on the previous entry is guilty of an offence and is liable on

Offences in relation to documents.

conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or both.

Information not to be disclosed.

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

- (a) for the purposes of this Act;
- (b) for the purposes of an investigation by the Attorney-General, the Police Force or another law enforcement agency; or
- (c) to comply with an order of the High Court.

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

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

Non-disclosure of former identity of participant.

**23.** (1) Where—

- (a) a participant who has been provided with a new identity under the programme would, apart from this section, be required by or under a law of Kenya to disclose his former identity for a particular purpose; and

- (b) the ~~Attorney-General~~ has given the participant permission, in the form prescribed by regulations made under this Act, not to disclose his former identity for that purpose,

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

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

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

(4) In this section, "participant" includes a person who—

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

**24.** (1) If, in any proceedings in a court, tribunal or commission of inquiry, the identity of a participant is in

Identity of  
participant not to

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be disclosed in  
legal proceedings.

issue or may be disclosed, the court, tribunal or commission shall, unless it considers that the interests of justice require otherwise—

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

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

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

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

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participant or former participant or of his place of abode; and

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

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

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

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**25.** The ~~Attorney-General~~ shall not obtain documentation for a participant which represents that the participant—

Documentation restrictions.

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

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

**26.** The ~~Attorney-General~~ may make commercial arrangements with a person under which a participant is able to obtain a benefit under a contract or arrangement without revealing his former identity.

Special commercial arrangements by Attorney-General.

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

Dealing with rights and obligations of

## No. 16

participant.

General shall take such steps as are reasonably practicable to ensure that—

(a) those rights or obligations are dealt with according to law; or

(b) the person complies with those restrictions.

(2) Such action may include—

(a) providing protection for the participant while the participant is attending court; or

(b) notifying a party or possible party to legal proceedings that the ~~Attorney-General~~ will, on behalf of the participant, accept process issued by a court, a tribunal or a commission of inquiry and nominating an office for the purpose.

Avoidance of obligations by participant.

**28.** (1) If the ~~Attorney-General~~ is satisfied that a participant who has been provided with a new identity under the programme is using the new identity—

(a) to avoid obligations which were incurred before the new identity was established; or

(b) to avoid complying with restrictions which were imposed on the person before the new identity was established,

the ~~Attorney-General~~ shall give notice in writing to the participant stating that he is so satisfied.

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(2) The notice shall also state that, unless the participant satisfies the ~~Attorney-General~~ that the obligations will be dealt with according to law or the restrictions will be complied with, the ~~Attorney-General~~ will take such action as he considers reasonably necessary to ensure that they are dealt with according to law or complied with.

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

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

Payments under witness protection programme.

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

#### PART IV—MISCELLANEOUS

30. A person who, without lawful excuse, discloses information—

(a) about the identity or location of a person who is or has been a witness or participant; or—

Disclosures concerning participants.

(b) which compromises the security of such a person, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

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Disclosure by participants and others.

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

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

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding ~~seven~~<sup>ten</sup> years.

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

- (a) has been authorised by the ~~Attorney-General~~;
- (b) is necessary for the purposes of an investigation by the ~~Attorney-General~~, the Police Force or another law enforcement agency; or
- (c) is necessary to comply with an order of the High Court.

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

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

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

- (a) the Attorney-General or ~~an~~ officer under the Attorney-general;
- (b) the Commissioner of ~~Police~~, a member of the Police Force or a ~~person~~ employed in its administration;
- (c) the registrar having ~~charge~~ of a register of births, deaths or marriages;
- (d) a person employed in the administration of the Births and Deaths Registration Act or any law under which ~~marriages~~ are registered or recorded;
- (e) the ~~Attorney-General~~ or any member of his staff;  
or

Certain persons not to be required to disclose information.

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- (f) a person or body (or an employee of a person or body) providing services to or for a participant on request made by or on behalf of the Attorney-General,

shall be compellable in any proceedings in a court, tribunal or commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the exercise of functions under this Act or the protection of witnesses included in the programme.

Protection of witnesses.

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

- (a) any assistance given by the witness to the court or to a law enforcement agency;
- (b) a disclosure of information made by the witness to the court or to a law enforcement agency.

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

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

(4) In any proceedings before a court, the court shall ensure that information that identifies or might lead to the

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identification of a person who assisted or disclosed information to the court or law enforcement agency is removed or concealed from any documents to be produced or inspected in connection with the proceeding.

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

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

Immunity from legal proceedings.

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

Delegation.

**36. (1)** The Minister may make regulations for or with respect to any matter which by this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

Regulations and rules.

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