

Can a witness be resettled or relocated from his/her home?

- The Director of the Agency shall negotiate resettlement and relocation of witnesses on a case-by-case basis. The necessary resettlement forms shall then be completed

How are witnesses to conduct themselves while under protection?

- A witness protection officer may give instructions to the witnesses and to persons related to the witnesses, which the officer may consider necessary in the circumstances
- Witnesses who do not adhere to issued instructions may be removed from the programme, in accordance with the Act

On what basis is financial assistance provided to witnesses?

- A person included to the programme is entitled to financial support necessary to ensure that the dignity and basic human rights of that person are upheld
- The Director of the Agency shall determine the allowances payable to each witness, based on the specific basic needs to the person commensurate to economic conditions prior to admission into the programme considering the legal sources of income
- The Director of the Agency may authorise, where necessary, the payment of allowances to the protected person to cater for basic living expenses, any costs that are related to the specific needs of the protected person, or any costs related to the protected persons
- Assistance provided to the witness or persons related to the witness may not exceed the amount

necessary to cover costs of living and inclusion into an unfamiliar environment

How does the Agency ensure confidentiality of information and documentation?

- All documentation and information provided to the Agency by witnesses or persons related to witnesses are deemed confidential and treated as such
- The Agency shall undertake various measures required to ensure its staff to undergo comprehensive security screening periodically to ensure the maintenance of strict confidentiality at all times
- Should the High Court issue an order of disclosure without any specific authorisation from the Director, the Director of the Agency shall take all necessary measures and specify security measures relating to handling of information after disclosure and inform the protected person of such a disclosure if deemed necessary

Can the identity of a former applicant be disclosed?

- An applicant who has been issued a new identity under the programme may request the Director for permission not to disclose his/her former identity according to the law

What are the consequences of non-Compliance with the Regulations?

- Failure by a member of the staff of the Agency to comply with these Regulations shall be liable to such disciplinary actions as may be determined by the Director.

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WITNESS PROTECTION ACT, CHAPTER 79, LAWS OF KENYA



ABRIDGED VERSION OF THE WITNESS PROTECTION REGULATIONS (2011) KENYA



Prepared by the Witness Protection Agency of Kenya in partnership with the Institute for Security Studies (ISS), South Africa



What are the Witness Protection Regulations?

The Witness Protection Regulations are established under the Witness Protection Act, Chapter 79 to provide:

- Modalities for applying for witness protection
- Documentation to be completed by applicants to the Programme
- Nature of agreements to be signed between the Witness Protection Agency and the protected witness
- Guidelines for witnesses under protection

The regulations also provide a code of conduct for the Witness Protection staff and illustrate the agreements to be signed between the Witness Protection Agency and its staff.

Who may apply for protection?

- A witness or person related to the witness that has reason to believe that his/her safety is or may be under threat by reason of being a witness or being related to a witness
- A parent or legal guardian, legal representative, public prosecutor or law enforcement agency may make the application on his/her behalf if he/she is unable to apply directly

- The investigator or public prosecutor on behalf of a child without his or her parent or legal guardian consent where he/she can prove that exceptional circumstances warrant the application without such consent

Who can apply for inclusion into the witness protection programme?

Application for inclusion into the witness protection programme may be made by the following persons if they have reason to believe that the safety of a witness or related person may be threatened:

- Any witness and or related person
- An intermediary
- Legal representative
- Parent or legal guardian
- Public prosecutor
- Law enforcement agency
- An application for the protection of a minor can be made by a law enforcement agency without the consent of the person's parent or guardian

Any of the persons to whom a report has been made that a witness life is in danger, shall immediately investigate the claims and if found credible:

- Assist such a person with his or her application
- Inform the Director of the witness protection agency of the application and
- Submit the application to the Director or a Witness Protection Officer

When is threat and risk assessment done?

- The Witness Protection Officer shall immediately undertake a threat and risk assessment upon receipt of an application and submit the recommendations to the Director. These relate to:
 - Nature of protection to be provided
 - Duration of protection
 - Any considerations for such placement
- If the application is declined, the Protection Officer provides recommendations on the way forward or alternatives including the period within which the application should be finalised

What documentation may be completed by/for the witnesses and the witness protection officers?

- The following forms have to be completed by either the witness or protection officers:
 - Request for Protection by a witness for himself or related person(s) – **Form A**
 - Request for Protection by a family member, dependant or related persons to a protected witness – **Form B**
 - Request for Protection by a Child witness – **Form C**
 - Declination Form (Adult) – **Form D**
 - Declination Form (Child Consent) – **Form E**
 - Witness Discharge Form – **Form F**
 - Authorisation of Non-disclosure of Former Identity of a Participant – **Form G**
 - Memorandum of Understanding for Temporary Placement of Witness
 - Memorandum of Understanding for Temporary Placement of Related Persons
 - Memorandum of understanding between the Witness or related person and the Witness Protection Agency
 - Oath of Office of Kenyan Witness Protection Agency
 - Relocation Agreement

How does inclusion into the programme occur?

- A witness or a person related to a witness shall participate in the programme voluntarily

- A person may be included to the programme after the necessary Memorandum of Understanding has been completed

Can a person make an application on behalf of minor without consent?

- Application may be made without the consent of his guardian or parent if the applicant and the relevant investigating official and or Public Prosecutor can prove to the Director that exceptional circumstances exist that warrant such an application
- Where an application is made for the inclusion of a child to the programme without the consent of the parents or legal guardian, the Director of the Agency shall decide if it is necessary for the child's safety, that he/she be included on to the programme and after applying to the High Court for a protection order, assume care over the child.

When can a person be discharged from programme?

- Where a witness declines to continue with protection assistance or the Director has lawfully suspended the protection, the witness or person related to the witness shall complete discharge form.

What assistance is available for vulnerable witnesses?

- In performing its functions under the Witness Protection Act, the Agency shall give due regard to the particular needs of vulnerable witness
- The Agency may assign, as appropriate, a support person to assist the vulnerable witness through all stages of the witness protection program
- Vulnerable witnesses include:
 - Children
 - Victims of sexual and gender based violence
 - Elderly
 - Ill person
 - Persons declared so due to personal characteristics
 - Witnesses to certain types of offences
 - Witnesses with close relationship to the perpetrator
 - Witnesses in other circumstances