



# Protection of Witnesses in Kenya



## ABRIDGED VERSION OF THE AMENDED WITNESS PROTECTION ACT OF KENYA, 2010

Prepared by the Witness Protection Agency of Kenya in  
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## Protection of Witnesses in Kenya

### What is the Witness Protection Act, No. 16 of 2006 as amended by Act No. 2 of 2010?

**T**he Witness Protection Act, 2006 (as amended by Act No. 2 of 2010) is an Act of Parliament of Kenya that governs the protection of witnesses who have been intimidated for cooperating with law enforcement officers, and provides clear guidelines about who qualifies for protection. The Act also establishes the Witness Protection Agency of Kenya that will oversee the protection of witnesses, and gives details about what the agency is, what it does, how it is run and the people responsible for carrying out its functions.

#### Who qualifies for protection?

A person qualifies for protection:

- If he/she has given or agreed to give evidence on behalf of the State
- If he/she has reported a crime to the Police or any law enforcement agency
- If he/she is required to give evidence before a court, commission or tribunal outside Kenya
- If he/she is related to a witness who requires protection

- If he/she requires protection for any other reason under the Act

As a witness a person qualifies for protection:

- On account of his/her testimony
- If there is a threat or risk to his/her life because he/she is an important/key witness in a given case

#### Who provides the protection?

Witnesses are protected by the Witness Protection Agency of Kenya.

#### What is the process of admission into the witness protection programme?

The Director of the Agency will determine the admission of an applicant into the programme and the type of protection to be accorded to the admitted witness. The admission will be guided by the set procedure and criteria. The applicant will be required to fill the necessary application forms.

## About the Witness Protection Agency of Kenya

### How does the Agency function?

- The Witness Protection Agency of Kenya is an independent body, which means that no other authority may interfere with its work.
- The Agency is responsible for providing special protection to persons in possession of important information and who are facing potential risk or intimidation due to their cooperation with the prosecution, the police and other law enforcement agencies.
- As part of its functions, the Agency will maintain a witness protection programme and take necessary and reasonable actions to protect the safety and welfare of protected persons.
- The Agency's staff includes professional and technical staff that are responsible for the daily running of the Agency.
- The Director of the Agency ensures that the Agency's staff adequately protects witnesses and that the Agency is run efficiently and effectively.
- The Agency is accountable to and reports to the Minister for the time being responsible for matters relating to witness protection on the overall fulfilment of its object and purpose, and the performance of its functions under the Act.
- The Witness Protection Advisory Board's role is to advise the Agency generally on the exercise of its powers and the performance of its functions under the Act.



### What kind of protection and services does the Agency provide to witnesses?

The Agency does the following:

- Provides physical and armed protection to witnesses;
- Relocates witnesses;
- Assists witnesses to change their identity; or
- Any other measure necessary to ensure the safety of a protected person.

### How are witnesses protected during court proceedings?

The Agency may request courts to:

- hear the testimony of witnesses in camera or in closed sessions;
- allow the witness to use a different name and not his/her real name;
- hide certain information that may make it easy to identify the witness;
- make use of a video link; or
- employ measures to hide or mask the identity of the witness.

### What else does the Witness Protection Agency do?

Advisory role

- The Agency can also advise Government ministries, departments, agencies or any other person – where necessary – on the adoption of witness protection strategies.

Managing a Victims Compensation Fund

- The Agency is also responsible for managing a Victims Compensation Fund. The Fund is used to compensate victims, or the family of a victim of a crime committed against a

person who was under the protection of the Agency at the time. It will also compensate for the death of a victim who was killed while under the protection of the Agency.

### **Where can a witness or other individual go if he/she has a complaint or grievance against the Witness Protection Agency?**

In the event that a witness or any person has a grievance or complaint against the Witness Protection

Agency, he/she may approach the Witness Protection Appeal Tribunal, which was also established in terms of the Act.

The Tribunal's primary function will be to review and determine grievances of persons who are not satisfied with any of the decisions or orders of the Agency with regards to a victim of a crime committed against a person who was under the protection of the Agency at the time. It will also compensate for the death of a victim who was killed while under the protection of the Agency.

## **Witness Protection Regulation Legal Notice No. 99 of 2010**

### **What are the Witness Protection Regulations?**

The regulations are established under the Act to provide for modalities of applying for witness protection, the forms to be filled, the nature of agreements to be signed between the Agency and the protected witness and how to behave while under protection.

#### **Expectations from the staff**

Agency staff is expected to maintain confidentiality and impartiality at all times. They must be trained to ensure the security, integrity, and dignity of witnesses and be gender sensitive throughout all stages of proceedings and after.

#### **Needs of children and elderly persons**

Due regard must be given to the needs of children, elderly persons and people with disabilities.

#### **Request for witness protection**

A request for inclusion on the witness protection programme to the Agency may be made in the specified manner under the Act. Appropriate forms

can be accessed from the Agency. The Director may either approve or reject the application.

#### **Inclusion in the programme and relocation of witnesses**

There shall be a Memorandum of Understanding, between the Director and witnesses. This may include the relocation/transfer agreement if necessary.

#### **Instructions to protected witnesses**

The protected witnesses are given necessary instructions in order to ensure their security, that of officers or any other person.

#### **Duties of the Director of the Agency and financial assistance to witnesses**

The Regulations highlight the duties of the Director of the Agency to provide financial assistance to protected witnesses, including clothing and related provisions.

#### **Terms and conditions**

Terms and conditions for failure to comply with the Regulations call for disciplinary action as may be determined by the Director of the Agency.

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