

THE WITNESS PROTECTION ACT
(Cap. 79)

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

THE WITNESS PROTECTION REGULATIONS, 2011

Citation.

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

Interpretation.

2. 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;

Cap. 242.

“medical officer” has the meaning assigned in section 2 of the Public Health Act;

“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;

Application for witness protection.

4. (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;

(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.

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

5. (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.

Needs of vulnerable witnesses.

6. 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.

Resettlement or relocation.

7. 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.

Instructions to protected persons:

8. (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.

Financial assistance to protected persons:

9. (1) A witness or a person related to a witness who has been included in the programme shall, 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—

(a) a subsistence or daily allowance to enable the protected person 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 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.

Confidentiality.

10. (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 effect 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 take 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 a 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.

Non disclosure of former identity of applicant.

11. 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.

Failure to comply with Regulations.

12. 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.

Revocation of LN.10/2009.

13. The Witness Protection Regulations, 2009, are revoked.

FIRST SCHEDULE

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).

(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)

<i>Name</i>	<i>Surname</i>	<i>Age</i>	<i>ID Card Number/DOB</i>	<i>Relationship to applicant</i>

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. 1—

(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:

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.....

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:

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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:
 - 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.
- 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, 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 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).

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)

<i>Name</i>	<i>Surname</i>	<i>Age</i>	<i>ID Card Number/DOB</i>	<i>Relationship to applicant</i>

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 abovementioned 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:

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FORM C

(r.4 (5) (c))

APPLICATION FOR PROTECTION: CHILD 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:

-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

- 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(3)(b)-(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 extend 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)

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:

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.....
.....

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 nr (h):
 Tel nr (w): Cell phone nr:
 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.	

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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:

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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:
 - Section A by the applicant as defined in section 3 of the Witness Protection Act; and
 - 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.

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:

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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:
 - 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
 - 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 nr (h):

..... Tel nr (w): Cell phone nr: E-Mail address:

Hereby declare that I, am the *parent /guardian of the following child witness (d): Identity Card Number: Passport number: or DOB: 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:

.....
.....

(r. 5(11))

FORM F: 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:
 - 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
 - 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):

.....
Identity Card Number: Passport number:
or DOB: Of: (g)Home address:

..... Work address:

..... Tel nr (h): Tel nr (w):

.....
Cell phone nr: 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 respect by the Prosecutor that you interacted with during your time on the program?	Yes	No
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 nr (h): Tel nr (w): Cell
 phone nr: E-Mail address:

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

Place: Date:

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 Protection Act, 2006 (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 Date

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, 2006;
- 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

TEMPORARY PLACEMENT: WITNESS

WITNESS PROTECTION PROGRAMME

PLACING UNDER TEMPORARY PROTECTION IN TERMS OF SECTION 9(2) OF THE WITNESS PROTECTION ACT, 2006

(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 persons qualify for admission to the Witness Protection Programme.

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 facts 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 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. 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. 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.

(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, 2006 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 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 of20....

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, 2006

(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, damages 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 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,

(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 of20.....

.....
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 of20....

THIRD SCHEDULE

(r. 5(4))

Memorandum of Understanding:

WITNESS

Witness Protection Programme

PLACING UNDER 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, 2006

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 ofvs....., 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 any allowance fraudulently acquired will be recovered from him / her.

(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.

(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.

(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.

Ithe 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, 2006, Entered into between of the Witness Protection Agency (duly authorized in terms of section 7(4) of the Witness Protection Act, 2006) 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 ofversus

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 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 related person is obliged to immediately disclose any changed circumstances.

(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 persons 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 related 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.

(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, 2006 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:

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 an 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))

KENYA WITNESS PROTECTION AGENCY

OATH 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, 2006 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, 2006.

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,.....

.....
Signature

(Full names)

Designation:

Witness 1:

Witness 2:

Name:

.....

Date:

.....

FIFTH SCHEDULE

(r.7)

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 1 of this Exchange of Letters. The Director may provide any further information as may be requested by provided such information does not constitute testimony of the Witness or other confidential information that cannot be disclosed.

(8) Where the Director considers that in addition to the Relocation Services provided herein, protective measures are necessary to ensure the protection of the Subject(s) which protective measures shall hereinafter be referred to as "Protective Requirement"), such requirement shall be indicated in the Request.

(9) shall consider the Request without delay, and shall respond within two months from the date when such Request is made. However, where the Director considers that circumstances require the Subject(s) to be relocated immediately, following consultations with the Director, shall consider the Request immediately.

III. As to the nature of the Relocation Services to be provided to Subjects accepted for Relocation by pursuant to this Exchange of Letters

(10) Where agrees to a Request, the Director shall arrange for the transfer of the Subject(s) hereinafter referred to as relocated persons after their relocation to country X to the territory of

(11) shall provide to the Relocated Person(s) the facilities, benefits and entitlements to which persons are entitled under the definition of “refugees” under Article 1 of the 1951 Convention on the Status of Refugees, as amended by the 1967 Protocol thereto.

(12) In addition to the services provided pursuant to Paragraph (11) above, shall provide the Relocated Person(s) with such facilities and services that would allow the Relocated Person(s) to fully integrate into the society of Such facilities and services shall, inter alia, include :

- (a) housing;
- (b) education, including skills and language training, where necessary, for purposes of gaining employment;
- (c) health and social services, including specialist medical care where necessary;
- (d) access to opportunities to obtain employment;
- (e) documents to enable travel to and from.....; and
- (f) any other applicable facilities and benefits.

Such services and facilities provided under this Exchange of Letters shall be without prejudice to any rights which the Relocated Person(s) would be entitled to under the laws of

(13) If, upon receipt of a Request pursuant to Paragraph (8) herein, agrees that a Protection Requirement exists, it shall, in consultation with the 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 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 represent in all matters relating to this Exchange of Letters.

X. *Operational Points of Contact*

(24) The Parties agree that each shall designate an official to be the point of contact for all operational matters relating to implementation of this Agreement.

(a) The operational point of contact on behalf of the 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

Dated the 14th July, 2011.

AMOS WAKO,
Attorney-General.