

SPECIAL ISSUE

Kenya Gazette Supplement No. 195 (Acts No. 45)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2016

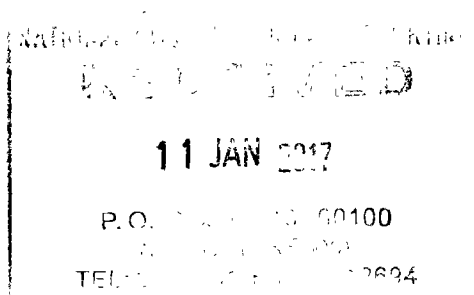
NAIROBI, 30th December, 2016

CONTENT

Act—

PAGE

The Witness Protection (Amendment) Act, 2016.....1135



**THE WITNESS PROTECTION (AMENDMENT)
ACT, 2016**

No. 45 of 2016

Date of Assent: 23rd December, 2016

Date of Commencement: 13th January, 2017

AN ACT of Parliament to amend the Witness Protection Act to align the Act with the Constitution and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Witness Protection (Amendment) Act, 2016.

Short title.

2. Section 2 of the Witness Protection Act, 2006, in this Act referred to as “the principal Act” is amended—

Amendment of section 2 of No. 16 of 2006.

(a) by deleting the definition of the term “committee” and substituting therefor the following new definition—

“Committee” means the Witness Protection Complaints Committee established under section 3U of this Act;

(b) by deleting the definition of the word “Minister” and substituting therefor the following new definition—

“Minister” means the Attorney-General;

(c) by deleting the definition of the word “Tribunal”;

(d) by deleting the definition of the word “witness” and substituting therefor the following new definition—

“witness” means a person who has made a statement or has given or agreed to give evidence in relation to an offence or criminal proceedings in Kenya or outside Kenya, and requires protection on the basis of an existing threat or risk”.

(e) by inserting the following definitions in proper alphabetical order—

“Commission” means the Salaries and Remuneration Commission established under Article 230 of the Constitution;

“law enforcement agency” means a government agency responsible for the enforcement of the law;

“public interest” means matter affecting the welfare of the state or the rights, health, or finances of the general public;

“protection officer” includes an officer of the agency charged with the responsibility of protecting a witness;

“threat” means the possibility of adverse consequences for a witness as a result of giving evidence in the proceedings and includes any danger, physical or psychological, that may result from the involvement of the person in the proceedings;

“risk” means the likelihood or possibility that a threat may occur;

“security officer” means a person who has been trained on security matters charged with the responsibility of ensuring physical safety.

3. The principal Act is amended by repealing section 3 and replacing it with the following new section—

Repeal and replacement of section 3 of No. 16 of 2006.

Application.

3. (1) This Act shall apply to—

- (a) a witness in criminal proceedings; and
- (b) a witness who is required to give evidence in a prosecution or inquiry held before a court, commission, or tribunal outside Kenya—

- (i) for the purposes of any treaty or agreement to which Kenya is a party; or
- (ii) in circumstances prescribed by Regulations made under this Act.

(2) A person is a protected person for purposes of this Act if that person qualifies for protection—

- (a) by virtue of being related to a witness;
- (b) on account of a testimony given by a witness; or
- (c) for any other reason which the Director may consider sufficient.

4. Section 3D of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 3D of No. 16 of 2006.

(3) A person who disobeys a summons issued by the Agency commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

5. Section 3E of the principal Act is amended—

Amendment of section 3E of No. 16 of 2006.

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

(1) There shall be a Director of the Agency who shall be appointed by the Advisory Board on such terms and conditions as the Board may, in consultation with the Commission, approve.

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (c)—

(d) meets the requirements of Chapter Six of the Constitution.

(c) by inserting the following new subsections immediately after subsection (4)—

No. 45

(4A) The Director may, in writing, delegate any power or function conferred to the office under this Act to a senior officer of the Agency.

(4B) An officer of the Agency to whom a power or function has been delegated under subsection (4A) shall exercise that power or perform that function subject to the general directions of the Director.

(4C) The Director may at any time in writing withdraw a delegation under subsection (4A).

(4D) The delegation of any power or function does not prevent the Director from exercising or performing that power or function in person.

(d) by deleting subsection (7) and substituting therefor the following new subsection—

(7) A person desiring the removal of the Director shall present a petition to the Board which shall be in writing, setting out the alleged facts constituting the grounds for removal of the Director.

(e) by inserting the following new subsection immediately after subsection (7)—

(7A) The Board shall consider the petition and, if it is satisfied that it discloses the existence of a ground under subsection (6), the Board shall dismiss the Director.

(f) by deleting subsection (8);

(g) by deleting subsection (9);

(h) by deleting subsection (10); and

(i) by deleting subsection (11).

6. Section 3F of the principal Act is amended—

(a) in subsection (1), by deleting the word “Committee” and substituting therefor the word “Commission”;

Amendment of
section 3F of No.
16 of 2006.

- (b) in subsection (2) by inserting the words “security officers” immediately after the words “protection officers”;
- (c) in subsection (5)—
 - (i) by deleting the word “Committee” appearing in the opening sentence and substituting therefor the word “Commission”; and
 - (ii) by inserting the following new paragraph immediately after paragraph (b)—
 - (c) that the remuneration and conditions of service may differ from those applicable in the public service.

7. The principal Act is amended by repealing section 3H and replacing it with the following new section—

Repeal and replacement of section 3H of No. 16 of 2006.

Funds of the Agency.

3H. (1) Except as otherwise provided in section 3I, the expenses incurred by the Agency in accordance with this Act shall be charged and issued out of the Consolidated Fund and the appropriation for the expenses shall be included in the Appropriation Bill introduced in the National Assembly to authorize the withdrawal from the Consolidated Fund.

(2) Without prejudice to subsection (1), there may be made to the Agency grants, gifts, donations or bequests towards the achievement of the objects of the Agency.

(3) The Agency shall not accept any grant, gift, donation or bequest made on any condition that the Agency performs any function or discharges any duty or obligation other than duties under this Act.

8. Section 3J of the principal Act is amended—

Amendment of section 3J of No. of 2006.

- (a) in subsection (2), by deleting the words “within three months before the commencement of the financial year” and substituting therefor the words “in accordance with the law relating to the public finance management”; and
- (b) in subsection (4), by deleting the words “Minister and the Treasury” and substituting therefor the words “National Treasury”.

9. Section 3P of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 3P of No. 16 of 2006.

(2) The Board shall be an unincorporated body consisting of—

- (a) the Solicitor General as chairperson;
- (b) the Principal Secretary responsible for matters relating to foreign affairs;
- (c) the Principal Secretary responsible for matters relating to finance;
- (d) the Chief Registrar of the Judiciary;
- (e) the Director-General of the National Intelligence Service;
- (f) the Inspector-General of the National Police Service;
- (g) the Commissioner-General of Prisons;
- (h) the Director of Public Prosecutions; and
- (i) the Chairperson of the Kenya National Commission on Human Rights.

10. The principal Act is amended by repealing section 3R and replacing it with the following new section—

Repeal and replacement of section 3R of No. 16 of 2006.

Allowances.

3R. Members of the Board shall be paid such allowances as may be determined from time to time by the Cabinet Secretary responsible for finance in consultation with the Commission.

2016

Witness Protection (Amendment)

No. 45

11. The principal Act is amended in Part 1A by deleting sub-title C and substituting therefor the following new sub-title—

Amendment of Part 1A of No. 16 of 2006.

C. The Witness Protection Complaints Committee.

12. The principal Act is amended by repealing section 3U and replacing it with the following new section—

Repeal and replacement of section 3U of No. 16 of 2006.

Establishment of the Witness protection Complaints Committee.

3U. (1) There is established a committee to be known as the Witness Protection Complaints Committee.

(2) The Committee shall consist of—

- (a) a chairperson who shall be a person qualified to be appointed a judge of the High Court; and
- (b) four other members—
 - (i) one of whom shall be an advocate of the High Court of five years standing;
 - (ii) two members with relevant experience in handling complaints relating to human rights and intelligence respectively; and
 - (iii) one member who shall either be a retired senior witness protection officer or a person with experience in witness protection.

(3) The chairperson and members of the Committee shall be appointed by the Attorney-General and shall serve on part-time basis.

(4) A person shall not be qualified to be appointed as a chairperson or a member of the Committee if that person—

- (a) is a member of the public service or is a member of a governing body of a political party; or
 - (b) has not met the requirements of Chapter Six of the Constitution.
- (5) The chairperson and members shall hold office for a non-renewable term of six years.
- (6) The Attorney-General may—
- (a) by regulations provide guidelines for the operation of the committee; and
 - (b) designate staff to facilitate the operations of the Committee.

13. The principal Act is amended by inserting the following new section immediately after section 3U—

Insertion of a new section 3V in No. 16 of 2006.

Functions of Committee.

3V. (1) The Committee shall receive, consider and determine—

- (a) appeals from decisions of the Director under this Act; and
 - (b) complaints against staff of the Agency.
- (2) A person aggrieved by the decision of the Committee may, within thirty days of that decision, appeal to the High Court.

14. Section 4 of the principal Act is amended by adding the words “within or outside Kenya” at the end of word “relocation” appearing in subsection (2)(b).

Amendment of section 4 of No. 16 of 2006.

15. Section 5 of the principal Act is amended by inserting the following new subsection immediately after subsection (7)—

Amendment of section 5 of No. 16 of 2006.

(8) A person admitted into the programme shall be protected for as long as the danger or risk to their safety persists.

2016

Witness Protection (Amendment)

No. 45

16. Section 6 (1) of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (g)—

Amendment of section 6 of No. 16 of 2006.

- (h) the public interest in the prosecution of the case;
- (i) ability of the person to adapt to the programme and its measures.

17. Section 22(1) of the principal Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 22 of No. 16 of 2006.

- (b) for the purposes of investigation by the Director of Public Prosecutions, the National Police Services or other law enforcement agencies; or.

18. The principal Act is amended by inserting the following new Part immediately after Part III.

Insertion of Part IIIA of No. 16 of 2006.

**PART IIIA — RECIPROCAL PROTECTION
ARRANGEMENTS WITH FOREIGN
COUNTRIES**

Admission of witnesses from foreign countries on reciprocal basis.

29A. (1) The Director, in consultation with the Attorney-General, may on the basis of any treaty or convention ratified by Kenya enter into a written agreement with a competent authority from a foreign country—

- (a) to admit, on reciprocal basis, qualifying witnesses from that country into the witness protection programme under this Act; or
- (b) to have Kenyan witnesses protected under the witness protection regime of that foreign country.

(2) The particulars for the agreement referred to under subsection (1) shall include—

- (a) personal particulars and relevant documentation with respect to the witnesses sought to be protected;
- (b) the reasons for their protection, and the nature of the risk or threat they are facing;
- (c) the period of protection;
- (d) the source of funding to meet their protection costs; and
- (e) any other relevant particulars.

Application for admission of a foreign witness.

29B. (1) An application for protection under this Part shall be in the prescribed form.

(2) Upon receipt of an application under subsection (1), the Director shall assess and, after consultation with the Attorney-General, determine whether or not to admit the witness into the programme.

(3) Before a foreign witness is admitted into the programme under this section, the Director shall—

- (a) request to be furnished with such further information as may be necessary; and
- (b) confirm that the foreign authority requesting for such protection shall provide all the resources and other material necessary for the protection.

(4) Where it is decided to admit a foreign witness in the programme, the Director shall liaise with the Cabinet Secretary responsible for immigration for the necessary permits.

(5) The Agency may make Regulations to give full effect of this Part.

2016

Witness Protection (Amendment)

No. 45

Admission of witnesses at request of international court, or tribunal, to which Kenya is a party.

29C. (1) Subject to the provisions of any other law, the Director may upon request from an international court, tribunal, commission, institution or organisation to which Kenya is a party, and after consultations with the Attorney-General, admit any witness to the programme.

(2) The provisions of this Part relating to the protection of foreign witnesses shall, with necessary modifications, apply to a request made pursuant to this section.

19. The principal Act is amended by inserting a new section immediately after section 30E—

Insertion of a new section 30F in No. 16 of 2006.

Prohibition against intimidation, harassment etc.

30F. (1) A person shall not intimidate, harass, obstruct, threaten, hinder or prevent a witness with intention to subvert the course of justice.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a term of imprisonment not exceeding five years.

20. The principal Act is amended by repealing section 35.

Repeal of section 35 of No. 16 of 2006.

21. The principal Act is amended by repealing section 36 and replacing it with the following section—

Repeal and replacement of section 36 of No. 16 of 2006.

Regulations and rules.

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

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

(3) Without prejudice to subsections (1) and (2) the nature and scope of the Regulations and rules shall—

- (a) be in line with the general purpose and objectives of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under this Act.