

SPECIAL ISSUE

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



REPUBLIC OF KENYA

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**KENYA GAZETTE  
SUPPLEMENT**

**ACTS, 2016**

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NAIROBI, 30th December, 2016

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THE WITNESS PROTECTION (AMENDMENT)  
ACT, 2016

Amendment  
of section 2 of  
No. 16 of  
2006.

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.

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

(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.

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

pplication.

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—

party; or

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

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 purposes of this Act if that person qualifies for  
 protection —

No. 45  
 Amendment of  
 section 3D of  
 No. 16 of 2006.

- (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.

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

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

(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—

- (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) —

(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).

(41) 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— Amendment section 3F of ofNo.

16 of 2006.

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

(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

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Witness Protection (Amendment)  
ng the following new paragraph immediately  
after paragraph (b) —

No. 45  
Amendment of  
section 3J of No. of  
2006.

(c) that the remuneration and conditions of  
service may differ from those applicable  
in the public service.

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

Funds of the Agency. 3H. (1) Except as otherwise  
provided in section 31, 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—

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

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—

(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—

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.

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

11. The principal Act is amended in Part IA by deleting subtitle C and substituting therefor the following new subtitle—

C. The Witness Protection Commission Complaints Committee.

12. The principal Act is amended by repealing section 3U and replacing it



with the following new section—

Establishment of the 3U. (1) There is established a Witness Complaints protection committee to be known as the Witness Committee. 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 parttime basis.

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

Amendment of Part IA of No. 16 of 2006.

Repeal and replacement of section 31J of No. 16 of 2006.

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(a) is a member of the public service or is a member of a governing body of a political party; or

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

(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.

Amendment of section 4 of No. 16 of 2006.

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

Functions of  
Committee.

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

Amendment of section 5 of No. 16 of 2006.

(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).

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

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

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## Witness Protection (Amendment)

16. Section 6 (1) of the principal Act is 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 Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 22 of No.

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

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

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

Insertion of Part IIIA (No. 16 of

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 protected under the witness protection regime of that foreign country.

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

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- (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  
admission of a  
foreign witness.

for 29B. (1) An application for protection under thiš 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.

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

Witness Protection (Amendmnt)

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.

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

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

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.

Repeal of section 35 of No. 16 of 2006.

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

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

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

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Regulations and 36. (1) The Attorney-General may rules.  
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.





