

WITNESS PROTECTION BILL, 2015

ARRANGEMENT OF SECTIONS

Witness Protection Agency

1. Establishment of Witness Protection Agency
2. Object of the Agency
3. Functions of the Agency
4. Powers of the Agency
5. Independence of the Agency
6. Governing body of the Agency
7. Functions of the Board
8. Tenure of office of members of the Board
9. Meetings of the Board
10. Disclosure of interest
11. Establishment of committees
12. Allowances

Administrative and Financial Matters

13. Appointment of Executive Director
14. Functions of Executive Director
15. Appointment of Deputy Executive Director
16. Appointment of other staff
17. Funds of the Agency
18. Accounts and audit
19. Annual report and other reports

The Victims Compensation Fund

20. Establishment of Victims Compensation Fund
21. Object of the Fund
22. Sources of money for the Fund
23. Bank account of the Fund
24. Management of the Fund
25. Disbursement of the Fund

Powers of Officers of the Agency

26. Authorised Officers to exercise powers of the Police
27. Obstruction of an Officer of the Agency

WITNESS PROTECTION BILL, 2015

Witness Protection Programme

28. Protective action
29. Inclusion in Witness Protection Programme
30. Assessing witness for inclusion in the Programme
31. Memorandum of Understanding
32. Variation of the Memorandum of Understanding
33. Temporary protection pending full assessment
34. Cessation of protection and assistance
35. Suspension of protection and assistance
36. Notice of involuntary termination or suspension

Protecting Witness from Identification

37. Identifying documents
38. Application for court order
39. Court proceedings under this Act to be closed to public
40. Power of High Court to make order
41. Effect of witness protection order
42. Effect of entries made under this Act
43. Offences in relation to documents
44. Information not to be disclosed
45. Non-disclosure of the former identity of a participant
46. Identity of participant not to be disclosed in legal proceedings
47. Documentation restrictions
48. Special commercial arrangements by the Attorney-General
49. Dealing with the rights and obligations of a participant
50. Avoidance of obligations by a participant
51. Payments under Witness Protection Programme

Miscellaneous

52. Disclosures concerning participants
53. Disclosure by participants and others
54. Certain persons not to be required to disclose information
55. Protection of witnesses
56. Immunity from legal proceedings
57. Regulations
58. Interpretation

WITNESS PROTECTION BILL, 2015

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ENTITLED

WITNESS PROTECTION BILL, 2015

AN ACT to establish a Witness Protection Agency, to provide for a Witness Protection Programme and for related matters.

PASSED by Parliament and assented to by the President:

Witness Protection Agency

Establishment of Witness Protection Agency

1. (1) There is established by this Act a body corporate to be known as the Witness Protection Agency.

(2) For the performance of its functions, the Agency may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(3) Where there is a hindrance to the acquisition of property, the property may be acquired for the Authority under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Agency.

WITNESS PROTECTION BILL, 2015

Object of the Agency

2. (1) The object of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons who possess important information and face potential risk or intimidation due to their cooperation with the prosecution and other law enforcement agencies.

(2) The special protection referred to in subsection (1) entails the power of the Agency to acquire, store, maintain and control firearms and ammunition and electronic or other relevant necessary equipment, despite the provisions of any other enactment.

Functions of the Agency

3. To achieve its object, the Agency shall

- (a) establish and maintain a Witness Protection Programme;
- (b) in consultation with the Attorney-General determine the criteria for admission to and removal from the Witness Protection Programme;
- (c) determine the type of protection measures to be applied;
- (d) advise any Government Ministry, department, agency or other person on the adoption of strategies and measures on witness protection; and
- (e) perform any other function conferred on it by this Act or that is ancillary to the object of the Agency.

Powers of the Agency

4. The Agency shall exercise powers that are necessary to enable it to effectively perform its functions and may, in particular

- (a) control and supervise its staff in a manner and for purposes that are necessary for the promotion of the object for which the Agency is established;
- (b) administer the funds and assets of the Agency;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursement;
- (d) enter into association with other persons, bodies, or organisations within or outside the country that it may consider desirable or appropriate in furtherance of its object;

WITNESS PROTECTION BILL, 2015

- (e) enter into confidentiality agreements with relevant foreign authorities, international criminal courts or tribunals and other regional or international entities relating to the relocation of protected persons and other witness protection measures;
- (f) open bank accounts for the funds of the Agency;
- (g) collate, analyse, store and disseminate information related to witness protection;
- (h) give instructions to a protected person that the Agency may consider necessary;
- (i) search the protected person and their property and seize items regarded by the Agency to be a threat to the protected person or another person or the integrity of the programme;
- (j) summon a public officer or other person to appear before it or to produce a document thing or information which may be considered relevant to the functions of the Agency within a specified period of time and in a manner that it may specify; and
- (k) invest the funds of the Agency not currently required for its purposes.

Independence of the Agency

5. (1) The Agency has the powers necessary for the performance of its functions under this Act without interference from any authority.

(2) The Agency shall, for purposes of accountability, report to the Minister on the overall fulfillment of its object and purpose and the performance of its functions under this Act.

Governing body of the Agency

6. (1) The governing body of the Agency is a Board consisting of
- (a) a chairperson who has previously held the post of a Justice of the Superior Court of Judicature or has held a post analogous to that of a Justice of the Superior Court of Judicature; and
 - (b) one representative each of
 - (i) the Attorney-General and Minister for Justice, not below the rank of a Principal State Attorney;
 - (ii) the Inspector-General of Police, not below the rank of an Assistant Commissioner of Police;

WITNESS PROTECTION BILL, 2015

- (iii) the Economic and Organised Crime Office, not below the rank of a Chief Staff Officer;
- (iv) the Commission for Human Rights and Administrative Justice, not below the rank of a Deputy Commissioner;
- (v) the Ministry responsible for the Interior, not below the rank of a Director;
- (vi) the Director-General of Prisons, not below the rank of a Director of Prisons;
- (vii) the Director-General of Immigration, not below the rank of a Director of Immigration; and
- (viii) the National Security Council, not below the rank of a Chief Analyst.

(2) The members of the Board shall be appointed by the President in accordance with Article 70 of the Constitution.

(3) The President shall in appointing a member of the Board have regard to the integrity, knowledge, expertise and experience of that member in matters relevant to the objects and functions of the Agency.

Functions of the Board

7. The Board shall

- (a) oversee the sound and proper management of the resources of the Agency, and
- (b) ensure the proper and effective performance of the functions of the Agency.

Tenure of office of members of the Board

8. (1) A member of the Board, shall hold office for a period not exceeding four years and is eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Executive Director.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, other than the Executive Director, who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

WITNESS PROTECTION BILL, 2015

(5) The President may by letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or section 10;

(b) as a result of a declaration under subsection (6); or

(c) by reason of the death of a member

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

Meetings of the Board

9. (1) The Board shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extraordinary meeting of the Board within seven days of the request.

(3) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(4) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(5) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision by the Board.

Disclosure of interest

10. (1) A member of the Board who has an interest in a matter for consideration

(a) shall disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) shall not be present or participate in the deliberations of the Board in respect of that matter.

WITNESS PROTECTION BILL, 2015

(2) A member ceases to be a member of the Board, if that member has an interest in a matter before the Board and

- (a) fails to disclose that interest; or
- (b) is present or participates in the deliberations of the Board in respect of that matter.

Establishment of committees

11. (1) The Board may establish committees consisting of members of the Board or non-members or both to perform stated functions.

(2) A committee composed entirely of non-members may only advise the Board.

(3) Section 10 applies to members of a committee of the Board.

(4) A committee of the Board may be chaired by a member of the Board.

Allowances

12. Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Administrative and Financial Matters

Appointment of Executive Director

13. (1) The President shall, in accordance with article 195 of the Constitution, appoint an Executive Director for the Agency.

(2) The Executive Director shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Executive Director

14. (1) The Executive Director is responsible for the day to day administration of the Agency and is answerable to the Board in the performance of the functions under this Act.

(2) The Executive Director may delegate a function to an officer of the Agency but the Executive Director shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Appointment of Deputy Executive Director

15. (1) The President shall, in accordance with article 195 of the Constitution, appoint a Deputy Executive Director for the Agency.

WITNESS PROTECTION BILL, 2015

(2) The Deputy Executive Director shall perform functions assigned by the Executive Director and in the absence of the Executive Director, perform the functions of the Executive Director.

Appointment of other staff

16. (1) The President shall in accordance with article 195 of the Constitution, appoint other staff of the Agency that are necessary for the proper and effective performance of the functions of the Agency.

(2) Other public officers may be transferred or seconded to the Agency or may otherwise give assistance to the Agency.

(3) The Agency may engage the services of consultants on the recommendation of the Board.

Funds of the Agency

17. The funds of the Agency include

- (a) moneys approved by Parliament;
- (b) donations and grants; and
- (c) any other moneys that are approved by the Minister responsible for Finance.

Accounts and audit

18. (1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall, within three months after the end of the financial year, submit the accounts of the Agency to the Auditor-General for audit.

(3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Board.

(4) The Internal Audit Agency Act, 2003 (Act 658) applies to this Act.

(5) The financial year of the Agency is the same as the financial year of the Government.

Annual report and other reports

19. (1) The Board shall, within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Agency for the year to which the report relates.

WITNESS PROTECTION BILL, 2015

(2) The annual report shall include the Auditor-General's report.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other report which the Minister may require in writing.

The Victims Compensation Fund

Establishment of Victims Compensation Fund

20. There is established by this Act a fund to be known as the Victims Compensation Fund which shall vest in the Agency.

Object of the Fund

21. The object of the Fund is to provide financial resources to the Agency for the purpose of providing protection to victims, witnesses and related persons who are at risk of harm or retaliation as a result of their co-operation with a law enforcement agency in the course of a criminal investigation or prosecution.

Sources of money for the Fund

22. The sources of money for the Fund are

- (a) moneys approved by Parliament;
- (b) subject to any other enactment, proceeds from the sale of property forfeited to the Republic in connection with a crime, which otherwise would have been paid into the Consolidated Fund;
- (c) grants, gifts, donations or bequests made to the Fund and received by the Agency with the approval of the Minister, where the receipt does not occasion a conflict of interest in the performance of the functions of the Agency under this Act;
- (d) moneys earned or arising from any investment of the funds of the Agency; and
- (e) other additional moneys which may become lawfully payable to, or vested in the Fund of the Agency.

Bank account of the Fund

23. Moneys for the Fund shall, on the directions of the Board, be paid into a bank account opened for that purpose with the approval of the Minister for Finance.

Management of the Fund

24. (1) The Fund shall be managed and administered by the Board.
- (2) For the purpose of subsection (1), the Board shall
- (a) pursue and achieve the object of the Fund;
 - (b) ensure that the disbursements from the Fund are accounted for by establishing guidelines and procedures for their management and disbursement;
 - (c) initiate activities to generate money for the Fund; and
 - (d) perform other functions incidental to the achievement of the object of the Fund.
- (3) Subject to the Ministries, Departments and Agencies (Retention of Funds) Act, 2007 (Act 735), the Agency is authorised to retain all moneys realised in the performance of its functions.
- (4) The Board shall keep books of account and proper records in relation to them in a form approved by the Auditor-General.
- (5) The books of account for the Fund and records in relation to them shall form part of the accounts of the Agency submitted under section 18(2).

Disbursement of the Fund

25. (1) The disbursement of moneys from the Fund shall be determined by the Board.
- (2) The Board may approve
- (a) a payment of compensation from the Fund;
 - (b) a reimbursement of the expenses incurred by a victim in connection with assistance provided by the victim in the course of investigations carried out by a law enforcement agency on behalf of the State; or
 - (c) a payment of other relevant expenses that the Board may determine as necessary in accordance with this Act within twenty working days if the Board receives an application for a payment out of the Fund in respect of any of the matters specified in paragraph (a) to (c).
- (3) The Agency shall, during the period when a person is provided protection under this Act, pay
- (a) compensation to a victim of the crime in respect of which protection is provided or to the family of a victim of that crime, for the restitution of the victim;

WITNESS PROTECTION BILL, 2015

- (b) compensation for the death of a victim of a crime in respect of which protection is provided, to the family of that victim; and
- (c) any moneys required to meet expenses relating to any other matter incidental to or connected with the matters stated in paragraphs (a) and (b).

Powers of Officers of the Agency

Authorised officers to exercise powers of the police

26. The Executive Director, Deputy Executive Director and officers authorised by the Executive Director shall exercise the powers and have the immunities conferred on a police officer in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the Police Service Act, 1970 (Act 350) and any other law related to a police officer.

Obstruction of an officer of the Agency

27. A person who willfully obstructs an authorised officer from performing a function under this Act commits an offence and is liable on summary conviction,

- (a) in the case of an individual, to a fine of not less than one hundred penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than six months and not more than four years; or
- (b) in the case of an entity, to a fine of not less than five hundred penalty units and not more than one thousand penalty units.

Witness Protection Programme

Protective action

28. (1) The Attorney-General, through the Witness Protection Programme established by the Agency, shall take necessary and reasonable steps to protect the safety and welfare of a witness.

- (2) The action may include
 - (a) making arrangements necessary
 - (i) to allow the witness to establish a new identity; or
 - (ii) otherwise to protect the witness;
 - (b) relocating the witness;

WITNESS PROTECTION BILL, 2015

- (c) providing accommodation for the witness;
- (d) providing transport for the property of the witness;
- (e) providing reasonable financial assistance to the witness;
- (f) providing to the witness services in the nature of counselling and vocational training services; and
- (g) doing any other thing which the Attorney-General considers necessary to ensure the safety and welfare of the witness.

(3) The Attorney-General shall, by notice published in the *Gazette*, issue the necessary directives that accord with the United Nations Guidelines in matters involving child victims and child witnesses of crime to ensure the comprehensive protection of the child.

- (4) A person satisfies the criteria for admission to or removal from the Programme if that person requires 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 Executive Director in consultation with the Attorney-General considers sufficient.

Inclusion in Witness Protection Programme

29. (1) The Attorney-General is responsible for deciding whether to admit a witness onto the Programme, even in cases where a legal representative of the witness, a member of the Police Service or another law enforcement agency has requested that a witness be admitted onto the Programme.

- (2) A witness may be admitted onto the Programme only if
- (a) the Attorney-General has decided that the witness satisfies the matters specified under section 30(1) and the criteria to be determined in accordance with section 3(b);
 - (b) the witness agrees to be admitted; and
 - (c) a Memorandum of Understanding in accordance with section 31 is signed by
 - (i) the witness;
 - (ii) a parent or guardian of the witness, if the witness is under the age of eighteen years; or
 - (iii) a guardian or other person who is usually responsible for the care and control of the witness, if the witness otherwise lacks legal capacity to sign it.

WITNESS PROTECTION BILL, 2015

(3) Where a witness has not been offered protection under the Programme, a written request for the inclusion of the witness in the Programme may be made to the Attorney-General by

- (a) the witness; or
- (b) any law enforcement agency.

(4) The Attorney-General shall respond to a request under subsection (3) within seven days of receiving it.

(5) Where

- (a) a parent or guardian of a witness signs a Memorandum of Understanding because the witness was under the age of eighteen; and
- (b) the Memorandum of Understanding is still operating after the witness turns eighteen, the Attorney-General may require the witness to sign another Memorandum of Understanding.

Assessing witness for inclusion in the Programme

30. (1) In deciding whether to include a witness in the Programme, the Attorney-General shall have regard to

- (a) the seriousness of the offence to which any relevant evidence or statement relates;
- (b) the nature and importance of any relevant evidence or statement;
- (c) the nature of the perceived danger to the witness;
- (d) the nature of the relationship of the witness with respect to other witnesses being assessed for inclusion in the Programme;
- (e) any psychological or psychiatric examination or evaluation of the witness that has been conducted, to determine the suitability of the witness for inclusion in the Programme;
- (f) whether there are viable alternative methods of protecting the witness;
- (g) whether the witness has a criminal record, particularly a record of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the Programme; and
- (h) other matters that the Attorney-General considers relevant.

WITNESS PROTECTION BILL, 2015

(2) The Attorney-General shall not include a witness in the Programme if the Attorney-General does not have enough information to assess the matters referred to in this section in relation to the witness.

Memorandum of Understanding

31. (1) A Memorandum of Understanding shall

- (a) set out the basis on which a participant is included in the Programme and details of the protection and assistance which are to be provided; and
- (b) ensure that the details contain a provision to the effect that protection and assistance under the Programme may be terminated if the participant deliberately breaches a term of the Memorandum of Understanding or a requirement or an undertaking relating to the Programme.

(2) A Memorandum of Understanding in relation to a participant may also contain provisions relating to

- (a) outstanding legal obligations of the participant and how they are to be dealt with;
- (b) legal obligations which the participant may or may not enter into;
- (c) the surrender and issue of passports and other identification documents;
- (d) the taking, provision and retention of photographs of the participant;
- (e) the issue of any documents relating to the new identity of the participant;
- (f) the prohibition of the participant from engaging in specified activities;
- (g) any other obligations of the participant;
- (h) consequences of the failure of a participant to comply with the provisions of the Memorandum of Understanding; or
- (i) any other matter for which it may be necessary to provide for in the circumstances of the case.

(3) A Memorandum of Understanding shall contain a statement advising the participant of the right of that participant to complain to the Attorney-General about the conduct of any officer in relation to the matters dealt with in the Memorandum.

WITNESS PROTECTION BILL, 2015

(4) For purposes of this section, a Memorandum of Understanding shall be signed by or on behalf of the witness in the presence of the Attorney-General or an officer designated by the Attorney-General.

(5) A witness is admitted to the Programme when the Attorney-General or an officer designated by the Attorney-General signs the Memorandum of Understanding.

(6) The Attorney-General shall, as soon as practicable after a Memorandum of Understanding is duly signed, notify the relevant participant that it has been signed.

Variation of the Memorandum of Understanding

32. A Memorandum of Understanding may be varied with the consent of the participant and the Attorney-General.

Temporary protection pending full assessment

33. (1) The Attorney-General may include in the Programme on a temporary basis a witness who, in the opinion of the Attorney-General, is in urgent need of protection.

(2) The Attorney-General may require an interim Memorandum of Understanding to be signed by or on behalf of that witness.

(3) Sections 29 and 30 shall not be construed as preventing the exercise of any power or performance of any function under this section but, in so far as the requirements of those sections have not been complied with before the witness is included in the Programme, they shall be complied with as soon as practicable after the inclusion of the witness.

Cessation of protection and assistance

34. (1) Protection and assistance provided under the Programme to a participant shall be terminated by the Attorney-General if the participant requests in writing that it be terminated.

(2) Protection and assistance provided under the Programme may be terminated by the Attorney-General if

(a) the participant deliberately breaches a term of the Memorandum of Understanding or a requirement or undertaking relating to the Programme;

(b) anything done or intended to be done by the participant is, in the opinion of the Attorney-General, likely to threaten the security or compromise the integrity of the Programme; or

WITNESS PROTECTION BILL, 2015

- (c) the circumstances which gave rise to the need for protection and assistance for the participant have ceased to exist, and the Attorney-General is of the opinion that, in the circumstances of the case, the protection and assistance should be terminated.

Suspension of protection and assistance

35. Protection and assistance provided under the Programme to a participant may be suspended by the Attorney-General for a reasonable period determined by the Attorney-General if the Attorney-General is satisfied that the participant has done something or intends to do something which limits the ability of the Attorney-General to provide adequate protection to the participant.

Notice of involuntary termination or suspension

36. Where protection and assistance provided under the Programme to a participant are terminated or suspended under section 34 or 35, the Attorney-General shall notify the law enforcement agency concerned of the decision.

Protecting Witnesses from Identification

Identifying documents

37. Without limiting the powers of the Attorney-General under section 28, the Attorney-General may apply for a document necessary

- (a) to allow a witness to establish a new identity;
- (b) to protect the witness; or
- (c) to restore the original identity of a former participant.

Application for court order

38. The Attorney-General may, in a manner to be prescribed by the Rules of Court, apply to the High Court for an order authorising a specified person, or a person of a specified class or description to

- (a) make a new entry in a register of births or a register of marriages in respect of a witness;
- (b) make a new entry in a register of deaths in respect of a witness or a relative of a witness; or
- (c) issue a document of a kind previously issued to the witness in the new identity of the witness.

WITNESS PROTECTION BILL, 2015

(2) The Attorney-General shall provide the evidence that the High Court may require to satisfy itself as to the matters specified in section 40.

Court proceedings under this Act to be closed to public

39. Business of the High Court under this Act shall be conducted in camera.

Power of High Court to make order

40. The High Court may make a witness protection order if it is satisfied that

- (a) the person named in the application as a witness
 - (i) was a witness to or has knowledge of an offence and is or has been a witness in criminal proceedings relating to that offence; or
 - (ii) is a person who, because of a relationship to or association with a person to whom subparagraph (i) applies, may require protection or other assistance under this Act;
- (b) the life or safety of the person may be endangered as a result of being a witness;
- (c) a Memorandum of Understanding has been entered into by the witness in accordance with section 31; and
- (d) the person is likely to comply with the Memorandum of Understanding.

Effect of witness protection order

41. On the making of an order of the kind referred to in section 40 (a) or (b)

- (a) a person authorised to do so by the order may make the entries in a register of births, deaths or marriages that are necessary to give effect to the order;
- (b) the appropriate registrar having charge of the register of births, deaths or marriages shall afford the person so authorised full access to the relevant register and give the person the required assistance; and
- (c) the Attorney-General shall maintain details of actual records of the birth, death or marriage of each person in respect of whom an entry is made under paragraph (a).

Effect of entries made under this Act

42. (1) An entry made under this Act in a register of births, deaths or marriages has effect as if it were a valid entry made in accordance with the law governing the register.

(2) An entry made under this Act in a register of births, deaths or marriages can only be cancelled by the Registrar-General or an appropriate registrar, if the High Court, after being satisfied that the witness is no longer included in the relevant Programme, has made an order on the application of the Attorney-General directing that the entry be cancelled.

Offences in relation to documents

43. While an entry made under this Act in a register of births, deaths or marriages continues in force, a person in respect of whom the entry is made who uses or obtains a document issued by a registrar of births, deaths or marriages for a fraudulent or dishonest purpose commits an offence and is liable on summary conviction to a fine of not less than two hundred penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than fifteen months and not more than four years or to both the fine and the term of imprisonment.

Information not to be disclosed

44. (1) Except where it is necessary

- (a) for the purposes of an investigation by the Attorney-General, the Police Service or another law enforcement agency; or
- (b) to comply with an order of the High Court,

a person who, either directly or indirectly, makes a record of, discloses or communicates to another person, any information relating to an entry made in a register of births, deaths or marriages for the purposes of this Act commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than six months and not more than four years or to both the fine and the term of imprisonment.

(3) Despite subsection (1), the Attorney-General may disclose the former identity of a participant for the purpose of obtaining documents relating to the new identity of the participant.

Non-disclosure of the former identity of a participant

45. (1) Where

- (a) a participant who has been provided with a new identity under the programme would, apart from this section, be required by or under a law of this country to disclose the former identity of the participant for a particular purpose; and
- (b) the Attorney-General has given the participant permission, in the form prescribed by the Regulations not to disclose the former identity of the participant for that purpose,

the participant is not required to disclose the former identity to any person for that purpose.

(2) Where a participant has been given permission under subsection (1) not to disclose the former identity of the participant for a particular purpose, that participant may, in any proceedings or for any purpose, under or in relation to the relevant law of this country, claim that the new identity is the only identity of that participant.

(3) A person who

- (a) is associated with the Programme; or
- (b) has been associated with the administration of the Programme, and who has obtained access to information or a document relevant to the Programme, shall not disclose that information or publish that document except as authorised by the Attorney-General.

(4) In this section, “participant” includes a person who

- (a) was provided with a new identity under the Programme; and
- (b) is no longer a participant but retains that identity.

Identity of participant not to be disclosed in legal proceedings

46. (1) Where, in any proceedings in a court, or commission of inquiry, the identity of a participant is in issue or may be disclosed, the court, or commission of inquiry shall, unless it considers that the interests of justice require otherwise,

- (a) hold that, that part of the proceedings which relates to the identity of the participant be conducted in camera; and

WITNESS PROTECTION BILL, 2015

- (b) make an order relating to the suppression of publication of evidence given before the court, tribunal or commission of inquiry as, in its opinion, will ensure that the identity of the participant is not disclosed.

(2) Where in any proceedings in a court, or commission of inquiry, a participant or former participant who has been provided with a new identity under the Programme is giving evidence, the court, or commission of inquiry may hold that part of the proceedings *in camera*.

(3) The court, or commission before which any proceedings referred to in subsection (1) or (2) are conducted may by order direct

- (a) that a question shall not be asked in the proceedings which might lead to the disclosure of a protected identity of a participant or of the place of abode of the participant;
- (b) that a witness in the proceedings, including a participant, cannot be required to answer a question, give evidence, or provide any information, which may lead to the disclosure of a protected identity of the participant or former participant or of the place of abode of that participant; and
- (c) that a person involved in the proceedings shall not, in the proceedings, make a statement which discloses or could disclose a protected identity of a participant or the place of abode of that participant.

(4) In subsection (3), “protected identity” means an identity of a participant that is different from the identity under which the participant is known or in connection with the proceedings concerned.

Documentation restrictions

47. The Attorney-General shall not obtain documentation for a participant which represents that the participant

- (a) has a qualification which the participant does not have; or
- (b) is entitled to a benefit to which the participant is not entitled.

Special commercial arrangements by the Attorney-General

48. The Attorney-General may make commercial arrangements with a person under which a participant is able to obtain a benefit under a contract or arrangement without revealing the former identity of the participant.

Dealing with the rights and obligations of a participant

49. (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Attorney-General shall take steps that are reasonably practicable to ensure that

- (a) those rights or obligations are dealt with according to law; or
- (b) the person complies with those restrictions.

(2) The action may include

- (a) providing protection for the participant while the participant is attending court; or
- (b) notifying a party or possible party to legal proceedings that the Attorney-General will, on behalf of the participant, accept process issued by a court, a tribunal or a commission of inquiry and nominating an office for the purpose.

Avoidance of obligations by a participant

50. (1) Where the Attorney-General is satisfied that a participant who has been provided with a new identity under the Programme is using the new identity

- (a) to avoid obligations which were incurred before the new identity was established, or
- (b) to avoid complying with restrictions which were imposed on the person before the new identity was established, the Attorney-General shall give a notice of caution in writing to the participant.

(2) The notice shall also state that, unless the participant satisfies the Attorney-General that the obligations will be dealt with according to law or the restrictions will be complied with, the Attorney-General will take the necessary action to ensure that they are dealt with according to law or complied with.

(3) The action may include providing to a person who is seeking to enforce rights against the participant, information on the details of any property, whether real or personal, owned by the participant under the former identity of that participant.

WITNESS PROTECTION BILL, 2015

Payments under Witness Protection Programme

51. (1) The Attorney-General may certify in writing that the whole or part of an amount held by a participant represents payments made to that participant under the Programme.

- (2) An amount certified under subsection (1) shall not
- (a) be confiscated or restrained; and
 - (b) be applied in payment of pecuniary penalties.

Miscellaneous

Disclosures concerning participants

52. A person who, without lawful excuse, discloses information

- (a) about the identity or location of a person who is or has been a protected witness or participant, or
- (b) which compromises the security of the person,

commits an offence and is liable on summary conviction to a term of imprisonment of not less than two years and not more than ten years.

Disclosure by participants and others

53. (1) A person who is or was a participant or a witness considered for inclusion in the Programme and who directly or indirectly discloses or communicates to another person

- (a) the fact that the person or a member of the family of that person has entered a Memorandum of Understanding under section 31,
- (b) details of the Memorandum of Understanding,
- (c) information relating to anything done by the Attorney-General or an officer under this Act, or
- (d) information about an officer obtained by the person as a result of anything done under this Act,

commits an offence and is liable on summary conviction to a term of imprisonment of not less than two years and not more than ten years.

(2) This section does not apply to a disclosure or communication which

- (a) has been authorised by the Attorney-General;

WITNESS PROTECTION BILL, 2015

(b) is necessary for the purposes of an investigation by the Attorney-General, the Police Service or another law enforcement agency; or

(c) is necessary to comply with an order of the High Court.

(3) For the purposes of subsection (1), a person is a witness considered for inclusion in the Programme if

(a) the person is a witness who is the subject of consideration under section 29 for inclusion in the Programme; or

(b) the person is a witness included in the Programme temporarily under section 33.

Certain persons not to be required to disclose information

54. Except as otherwise provided by order of the High Court, a person who is or has been

(a) the Attorney-General or an officer under the Attorney-General;

(b) the Inspector-General of Police, a member of the Police Service or a person employed in its administration;

(c) the registrar having charge of a register of births, deaths or marriages;

(d) a person employed in the administration of the Births and Deaths Registration Act or any law under which marriages are registered or recorded; or

(e) a person or body or an employee of a person or body providing services to or for a participant on request made by or on behalf of the Attorney-General, is not compellable in any proceedings in a court, tribunal or commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the exercise of functions under this Act or the protection of witnesses included in the Programme.

Protection of witnesses

55. (1) An action or proceeding, including a disciplinary action, shall not be instituted or maintained against a witness in respect of

(a) any assistance given by that witness to the court or to a law enforcement agency;

(b) a disclosure of information made by that witness to the court or to a law enforcement agency.

WITNESS PROTECTION BILL, 2015

(2) Subsection (1) does not apply with respect to a statement made by a witness who did not believe it to be true.

(3) A person shall not be required to identify, or provide information that might lead to the identification of a witness who assisted or disclosed information to the court or law enforcement agency.

(4) In any proceedings before a court, the court shall ensure that information that identifies or might lead to the identification of a person who assisted or disclosed information to the court or law enforcement agency is removed or concealed from any documents to be produced or inspected in connection with the proceeding.

(5) Subsections (3) and (4) do not apply to the extent determined by the court to be necessary to ensure that justice is fully done.

Immunity from legal proceedings

56. A person is not liable to any action, claim, suit or demand whether criminal or civil in respect of any thing done or omitted to be done by that person in good faith in the exercise or purported exercise of a function conferred by or under this Act.

Regulations

57. The Minister may, by legislative instrument, make Regulations generally for the efficient and effective implementation of this Act, and in particular, for

- (a) prescribing the rights and obligations of persons who are granted protection under the Witness Protection Programme;
- (b) prescribing the procedure for applying for the payment of compensation from the Fund;
- (c) the protection of children;
- (d) the regulation of access to places where persons are kept;
- (e) terms and conditions of agreements and arrangements entered into for the purposes of this Act;
- (f) relocation agreements; and
- (g) the procedure for the relocation or change of identity of a witness.

WITNESS PROTECTION BILL, 2015

Interpretation

58. In this Act, unless the context otherwise requires,

“Agency” means the Witness Protection Agency established by section 1;

“Board” means the governing body of the Agency established under section 6;

“Executive Director” means the Executive Director of the Agency appointed under section 13;

“Fund” means the Victims Compensation Fund established under section 20;

“law enforcement agency” includes a government department or agency with legal authority and responsibility to enforce laws;

“Minister” means the Attorney-General and Minister for Justice;

“participant” means a witness who is included in the Programme;

“Programme” means the Witness Protection Programme to be established and maintained as a function of the Agency under section 3;

“protected person” means a person who has been placed under protection in accordance with this Act;

“register of births” means a register of births maintained under the Births and Deaths Registration Act 1965, (Act 301);

“register of deaths” means a register of deaths maintained under the Births and Deaths Registration Act 1965, (Act 301);

“register of marriages” means

(a) a register maintained under any Act in which marriages are registered or recorded; or

(b) an index, maintained under any Act, of certified copies of the registers;

“victim” means a person who has suffered a loss, damage or injury as a consequence of the commission of a crime; and

“witness” means a person who needs protection from a threat or risk which exists on account of being a crucial witness who

(a) has given or agreed to give, evidence on behalf of the State in

WITNESS PROTECTION BILL, 2015

- (i) proceedings for an offence; or
- (ii) hearings or proceedings before an authority which is declared by the Minister by Order published in the *Gazette* to be an authority to which this paragraph applies;
- (b) has given or agreed to give evidence, otherwise than as mentioned in paragraph (a), in relation to the commission or possible commission of an offence against a law of this country;
- (c) has made a statement to
 - (i) the Inspector-General of Police or a member of the Police Service; or
 - (ii) a law enforcement agency, in relation to an offence against a law of this country; or
- (d) is required to give evidence in a prosecution or inquiry held before a court, commission or tribunal outside this country;
 - (i) for the purposes of any treaty or agreement to which this country is a party; or
 - (ii) in circumstances prescribed by Regulations made under this Act.

Date of *Gazette* notification: 18th December, 2015.

WITNESS PROTECTION BILL, 2015

MEMORANDUM

On 27th June, 2007 Ghana ratified the United Nations Convention against Corruption (UNCAC) . The Secretary-General of the United Nations, at the time, Kofi A. Annan, in his endorsement of the Convention stated that corruption undermines democracy and the rule of law, allows organised crime, terrorism and other threats to human security to flourish.

The Convention prescribes a comprehensive set of rules and standards that Member States must apply to strengthen their legal and regulatory framework to eradicate and prevent corruption.

Article 32 of UNCAC requires a Member State to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation, for witnesses and experts who give testimonies concerning offences, and persons who assist directly or indirectly in criminal investigations. The Convention requires protection to be afforded to the relatives of witnesses and other persons who are close to the witnesses or their relatives.

The testimony of a witness in a criminal investigation or proceeding is often useful to the work of intelligence agencies, the Police and other agencies tasked with maintaining law and order and safeguarding the security and safety of the citizens and the nation. In many cases the evidence of a witness can be the pivotal piece of information that concludes an investigation or that leads to the successful outcome of the investigation or criminal proceedings. In other cases, it may be used to prevent the occurrence of a crime particularly where information is provided by a member of a criminal group. The evidence of a witness is commonly required to prevent gun crime, organised crime and war crime trials. However, it can be required to secure the arrest and conviction of other persons involved in armed robbery, fraudulent and corrupt business activities and seemingly simple but complex fraud.

It is without doubt therefore that witnesses must have confidence and trust in the criminal justice system to provide evidence and co-operate fully with the Police or intelligence agencies. Unless the full level of

WITNESS PROTECTION BILL, 2015

support and protection is afforded to witnesses fearful of retaliation, death or harm to themselves and their relations, many forms of criminal offences such as human trafficking, illicit arms dealing, money-laundering and racketeering, will be more easily committed and become rife in the country.

The measures available to Member States include providing protection to witnesses, the relocation of a witness and the family of a witness, providing police escort to hearings, testifying *in camera*, support for the adoption of a new identity under government protection, temporary residence or anonymity of the witness. Article 65 of UNCAC requires a State Party to take measures to ensure the implementation of its obligations under the Convention, such measures include the establishment of a Witness Protection Programme administered by the Attorney-General. Presently Ghana has not enacted legislation in this respect.

Accordingly this Bill provides the measures under which witness protection may be offered to persons who require that protection.

Clauses 1 to 12 deal with matters relating to the establishment of a witness protection agency. *Clause 1* establishes the Witness Protection Agency as a body corporate. The object of the Agency as specified in *clause 2* is to provide the framework and procedures for giving protection to persons who face risk of harm while co-operating with the prosecution or other law enforcement agencies. The Agency is empowered to store, maintain and control fire arms and ammunition and other devices in line with the nature of its objectives.

Clause 3 sets out the functions of the Agency. The Agency is to establish and maintain a Witness Protection Programme. It is also, in consultation with the Attorney-General, to determine the criteria for admission to and removal from the Witness Protection Programme. Furthermore the Agency is to determine the type of protection to offer a witness as well as advise on the adoption of strategies and measures on witness protection.

The powers of the Agency are enumerated in *clause 4* and include among other things, the power to enter into a confidentiality agreement

WITNESS PROTECTION BILL, 2015

with a foreign authority or international criminal court or tribunal with respect to the relocation of a protected person and other witness protection measures. It also has power to collate, analyse, store and disseminate information related to witness protection, summon a public officer to produce a document or thing, invest funds and receive gifts, donations or endowments as well as administer its own funds and assets.

Clause 5 confirms the independence of the Agency which enables it to perform its functions without interference from any Authority. The Agency is, however, for purposes of accountability required to report to the Minister. The Agency is governed by a Board, the members of which are appointed by the President.

Clause 6 provides for the governing body of the Agency which consists of a representative each from public institutions, that is, the Police Service, the Attorney-General's Office, Economic and Organised Crime Office, Commission for Human Rights and Administrative Justice, Ministry of the Interior, the Prisons Service, the Immigration Service and the National Security Council. Members of the governing body are to be appointed by the President. The Board is to be chaired by a person who has previously held the post of a Justice of the Superior Court of Judicature or a post analogous to that of a Justice of the Superior Court of Judicature.

The functions of the Board are stated in *clause 7* and include overseeing the sound and proper management of the resources of the Agency and its proper and effective performance.

Clauses 8, 9, 10, 11 and 12 deal with the tenure of office of members of the Board, meetings of the Board, disclosure of interest, establishment of committees of the Board and allowances for members of the Board and members of committees, respectively.

Clauses 13 to 19 deal with administrative and financial measures. *Clause 13* makes provision for the appointment of an Executive Director who is to be appointed by the President in accordance with article 195 of the Constitution. The functions of the Executive Director are provided for, in *clause 14*. *Clause 15* makes provision for the appointment and functions of the Deputy Executive Director.

WITNESS PROTECTION BILL, 2015

Clause 16 provides for the appointment of other staff that are necessary for the effective performance of the functions of the Agency. The Agency may also engage the services of a consultant.

Provision is made for the funds of the Agency under *clause 17*.

The standard provisions on accounts and audit and annual report and more specifically a report covering the activities and operations of the Agency for the year are provided for under *clauses 18 and 19*.

Clause 20 establishes the Victims Compensation Fund. The Fund is established to cater for the payment of compensation, restitution and any monetary expenses connected to the payment of compensation to a victim or family of a victim of crime.

Clause 21 specifies the object of the Fund which is to provide financial resources to the Agency for the purpose of providing protection to victims, witnesses and related persons who are at risk of harm or retaliation as a result of their co-operation with a law enforcement agency in the course of a criminal investigation.

The sources of money for the Fund are enumerated in *clause 22*. These include moneys approved by Parliament, subject to any other enactment, proceeds from the sale of property forfeited to the Republic in connection with a crime, grants, gifts donations or bequests made to the Fund, moneys earned from investments and moneys lawfully payable to, or vested in the Fund.

Clause 23 deals with the bank account of the Fund. Moneys for the Victims Compensation Fund are, on the directions of the Board, to be paid into a bank account opened for that purpose with the approval of the Minister for Finance.

Clause 24 deals with management of the Fund. Disbursements from the Fund are covered under *clause 25*. The disbursement of moneys from the Fund is to be determined by the Board. On application for a payment out of the Fund, pursuant to *clause 21*, the Board may within twenty working days, approve a payment of compensation from the Fund, or

WITNESS PROTECTION BILL, 2015

approve a reimbursement of the expenses incurred by a victim in connection with assistance provided by the victim in the course of investigations carried out by a law enforcement agency on behalf of the State, or approve a payment of other relevant expenses that the Board may determine as necessary in accordance with provisions of the Bill.

During the period when a person is provided protection under the provisions of the Bill, the Agency is to pay compensation to a victim of the crime in respect of which the protection is provided or to the family of a victim of that crime, for the restitution of the victim. Under the same circumstance, the Agency would have to pay compensation to the family of a victim, for the death of that victim of a crime in respect of which protection is provided. Finally, during the period a person is provided with protection, the Agency is to pay any moneys required to meet expenses relating to any other matter incidental to or connected with the protection of the witness to the crime or the family of the witness of the crime.

Clauses 26 and 27 make provision for the powers of officers of the Agency. In particular *clause 26* provides that the Executive Director, the Deputy Executive Director and other officers authorised by the Executive Director have powers and immunities akin to those of the Police in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) and the Police Service Act, 1970 (Act 350). These powers are not to be willfully obstructed when exercised in the performance of a function. A person who obstructs an authorised officer from performing a function commits an offence.

In line with Article 32 of UNCAC, *clauses 28 to 36* set out the measures to be taken under the Witness Protection Programme. The Attorney-General is, under *clause 28*, responsible for taking necessary and reasonable steps to protect the safety and welfare of a witness. In carrying out this responsibility, the action taken includes relocating the witness, providing transport for the property of a witness and offering counselling and vocational training services for the witness amongst others. In the case of children and victims who may be especially vulnerable and may

WITNESS PROTECTION BILL, 2015

require special protection appropriate to their age, level of maturity and special needs, the Attorney-General is required to issue specific directives in the *Gazette* that are commensurate and accord with the United Nations Guidelines in matters involving child victims and witnesses. *Subclause (4)* indicates the criteria by which a person qualifies for protection under the Act. This is by virtue of being related to a witness, because of the testimony given by a witness or for any other reason the Executive Director in consultation with the Attorney-General considers sufficient.

Clause 29 makes the Attorney-General solely responsible for deciding whether to include a witness in the Witness Protection Programme. The witness must however agree to be included in the Programme and must sign a Memorandum of Understanding. In cases where a witness is not offered protection under the Programme, a written request for inclusion in the Programme may be made to the Attorney-General.

Clause 30 sets out the criteria to be applied by the Attorney-General in deciding whether or not to include a witness in the Programme.

Clause 31 makes detailed provision for the contents of the Memorandum of Understanding which under *clause 32* can only be varied with the consent of the participant and the Attorney-General.

Clause 33 makes provision for a temporary protection pending a full assessment. Temporary protection is to be offered to a witness who in the opinion of the Attorney-General is in urgent need of protection.

Clause 34 empowers the Attorney-General to terminate the protection and assistance provided under the Programme if for instance the participant deliberately breaches a term of the Memorandum of Understanding. The Programme may also be terminated on the request of the participant.

Clause 35 further empowers the Attorney-General to suspend a participant from the Programme if the participant does something that the Attorney-General considers will restrict the provision of adequate protection to the participant.

WITNESS PROTECTION BILL, 2015

Where a decision is made under clause 34 or 35, the Attorney-General is, under *clause 36*, required to notify the law enforcement agency which has an interest in the decision.

Clauses 37 to 51 deals with the overall scheme for protecting witnesses from identification. Firstly, the Attorney-General is authorised under *clause 37* to apply for any documents necessary to facilitate the establishment of a new identity for a witness or to restore the original identity of a former participant on the Programme.

Under *clause 38*, a court order may be applied for to authorise and compel a specified person to make a new entry in a register of births or deaths and issue a new identity document to the witness.

Clause 39 empowers the Court to conduct proceedings under the Bill in private. This is in the light of the fact that a public hearing is likely to prejudice a trial. In addition it is considered that the defence of the country, public safety, public order and public morality in the country and welfare of a witness under the age of eighteen or the protection of the private life of a person concerned in proceedings may be compromised and will be at stake if proceedings are conducted in public. This provision is therefore made as an exception, under article 19(15) and article 126(3) of the 1992 Constitution.

Clause 40 empowers the High Court to make a witness protection order if satisfied on an application to the court that the person named in the application is a witness to an offence or has knowledge of an offence or has been a witness in criminal proceedings or is a person who may require protection or assistance as a result of an association with a witness. The High Court must also be satisfied that the life and safety of the person is in danger, that a Memorandum of Understanding has been entered into by the witness and that the witness is likely to comply with it.

The effect of the making of a witness protection order is highlighted in *clause 41* in that the relevant persons are compelled among other things, to make the appropriate entries in the relevant registers and the Attorney-General is required to maintain details of the actual records of the birth, death or marriage of each person in respect of whom an entry is made.

WITNESS PROTECTION BILL, 2015

Clause 42 states that entries made in the register of births, deaths or marriages with respect to a participant will have the same effect as if it were made in accordance with the law governing the register.

Clause 43 deals with offences in relation to the fraudulent or dishonest use of documents issued by a registrar of births, deaths or marriages.

Clause 44 requires that information relating to the making of an entry under the Bill in a register of births, death or marriage shall only be disclosed if it is necessary to do so in the circumstances enumerated in *subclause (1)(a)* and *(b)*. A person who breaches the provision commits an offence and is liable on summary conviction to a fine or a term of imprisonment or to both. However, the Attorney-General may disclose the former identity of a participant if it is necessary to obtain documents relating to the new identity of the participant.

Under *clause 45*, a participant who is described as a person who is provided with a new identity under the Programme or who retains the new identity but is no longer a participant, may not be required to disclose his or her former identity. Similarly, by *clause 46* a court, tribunal or commission of inquiry may make various directions so as not to disclose the identity of the witness in legal proceedings and so as not to place the witness in a position that may result in the witness being exposed to risk of retaliation or harm.

Despite the provision to fully protect and assist a participant, *clause 47* prohibits the Attorney-General from obtaining for a participant, documentation that indicates that the participant has a qualification which the participant in fact does not or that entitles the participant to a benefit to which the participant is not entitled.

Special commercial arrangements may be made by the Attorney-General to enable a participant obtain a benefit from a contract or arrangement without revealing the former identity of the participant, *clause 48*.

Clause 49 requires the Attorney-General to take steps to ensure that any outstanding rights or obligations of a participant are complied with.

WITNESS PROTECTION BILL, 2015

Clause 50 seeks to prevent a participant from abusing the new identity provided; for example, prohibiting the participant from avoiding obligations which were incurred before the new identity was established. In such cases the Attorney-General may, amongst other powers, issue a caution to the participant.

Clause 51 deals with the payments made to a participant.

The miscellaneous matters are covered in *clauses 52* to *58*. Under *clause 52*, it is an offence for a person to disclose information about the identity or location of a witness or a participant. A participant or witness who discloses or communicates to another person, information on the details of the Memorandum of Understanding or any information that reveals the confidential nature of the Programme also commits an offence unless the disclosure has been authorised by the Attorney-General.

Likewise, under *clause 53* a person who is a participant in a Programme and who discloses or communicates to another person, details of the Memorandum of Understanding or information relating to anything done by the Attorney-General commits an offence. However, the *clause* does not apply to a disclosure or communication in certain circumstances. These circumstances relate to disclosures or communications authorised by the Attorney-General, disclosures necessary for the purposes of an investigation by the Attorney-General, the Police Service or another law enforcement agency or disclosures necessary for compliance with an order of the High Court.

Clause 54 stipulates the persons who are not compelled to disclose information in court.

Clause 55 provides protection for a witness by prohibiting legal action being taken against a witness including disciplinary action in respect of the assistance provided to that witness except of course, if the witness provided evidence believing it to be untrue.

Clause 56 protects a person against legal action instituted in relation to an action carried out by that person in good faith and in exercise of the functions imposed by provisions of this Bill.

WITNESS PROTECTION BILL, 2015

Clause 56 protects a person against legal action instituted in relation to an action carried out by that person in good faith and in exercise of the functions imposed by provisions of this Bill.

Clause 57 provides the Minister with the power to make Regulations for the effective implementation of the provisions of the Bill and *clause 58* provides the interpretation for some of the words and expressions used in the Bill.

MARIETTA BREW APPIAH-OPONG (MRS.)
Attorney-General and Minister for Justice

Date: 19th November, 2015.