



Witness Protection Act 11 of 2017

What does the law do?

This law sets up a Witness Protection Programme to protect the safety and wellbeing of witnesses and persons related to or associated with them.

What is the purpose of the law?

Persons who have knowledge of wrongdoing and can give information to government authorities are often put under pressure not to say what they know. Witnesses who fear for the safety of themselves or their families are unlikely to want to cooperate with authorities or testify in court. This law aims to protect and support witnesses and persons connected to them, so that no one will be afraid to speak out against wrongdoing. It also helps Namibia fulfil its duties under the United Nations Convention against Transnational Organized Crime.



When did the law come into force?

The law is not yet in force. The Minister of Justice will announce the date that it will come into force.

Who is a “witness” for the purposes of the law?

People usually think of a witness as a person who gives evidence in a court case. But there is a specific definition of witness for the purposes of this law. A “*witness*” in this law is **someone who has given or is going to give evidence** in a “*proceeding*”, or **someone who has made a statement** in connection with a “*proceeding*”. “*Proceedings*” include –

- criminal trials for any crimes covered by the law (listed on the next page)
- appearances before a commission of inquiry
- inquests (court enquiries into the cause of a person’s death)
- proceedings under the *Prevention of Organised Crime Act 29 of 2004* relating to the property of someone who has benefited from a crime
- proceedings before other tribunals or bodies identified by the Minister of Justice as being covered by this law.

The term “*witness*” also includes **victims** of crimes covered by the law – whether or not they testify or make a statement. It also includes **whistleblowers** who disclose improper conduct in terms of the *Whistleblowers Protection Act 10 of 2017*. It can also cover **any other person identified by the Director of Witness Protection in the Ministry of Justice as needing witness protection**.

Who runs the Witness Protection Programme?

The Witness Protection Programme is run by the **Witness Protection Unit** that is part of the Ministry of Justice. This Unit is headed by a **Director** and **Deputy Director**, who are staff members of the Ministry of Justice appointed by the Minister for 10-year terms. The Director makes decisions on whether or not a person may be admitted to the Witness Protection Programme and the types of protection that will be provided. The Witness Protection Unit can set up branch offices in any part of Namibia as needed, with each branch being headed by a **witness protection officer**.

Even though the Unit is made up of Ministry staff, it is supposed to carry out its functions impartially and without interference from any person or authority. It is a crime for any person to interfere with a staff member of the Unit.

Members of the Namibian Defence Force, the Namibian Police, the Correctional Service or the Intelligence Service can be seconded to serve as **security officers** for the Unit.



What criminal proceedings are covered by the witness protection programme?

The protections for witnesses are available only in relation to certain serious crimes, and particularly in cases where the crimes involve criminal gangs or crime syndicates. The crimes covered are –

- treason (attacking a government that you owe allegiance to)
- sedition (trying to get people to rebel against a government or a government authority)
- murder
- culpable homicide (causing someone's death through negligence)
- rape
- public violence
- robbery
- kidnapping
- defeating the ends of justice
- perjury (making a false statement under oath in a judicial proceeding)
- any crimes under the *Anti-Corruption Act 8 of 2003*
- any crimes under the *Prevention of Organised Crime Act 29 of 2004*
- any crimes under the *Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014*
- certain crimes related to drugs under the *Abuse of Dependence-Producing Substances Act 41 of 1971*

The law establishes a **Witness Protection Advisory Committee** to advise the Minister on high-level policy matters relating to witness protection, and to advise the Witness Protection Unit on how to carry out its functions. The members of this Committee are –

- the Executive Director of the Ministry of Justice
- one high-level staff member from each of the ministries responsible for –
 - finance
 - international relations
 - home affairs
 - safety and security
- one high-level staff member nominated by the Head of the Intelligence Service
- one high-level staff member nominated by the Prosecutor-General
- one member of the Namibian Police ranked Commissioner or higher.

- domestic violence crimes
- crimes relating to possession or dealing in firearms and explosives
- any crimes involving criminal gangs, crime syndicates or law enforcement officers where the Director believes that the witness's safety is at risk
- crimes relating to exchange control, extortion, fraud, forgery, uttering (putting counterfeit money into circulation) or theft where substantial amounts of money are involved, and especially in cases involving criminal gangs or crime syndicates
- crimes under the *Geneva Conventions Act 15 of 2003*, which relates to the humane treatment of persons during war
- any other crime identified by the Minister for the purposes of the law
- any other crime where the Director believes that the witness's safety is at risk and that the witness should be protected.

What kinds of protection does the Witness Protection Programme provide for witnesses?

The law sets up a general framework for witness protection, but the details will be different in each case.

Witnesses may be housed in "places of safety" for temporary protection while other arrangements are being made.¹

¹ This is covered in part by section 185 of the *Criminal Procedure Act*.

Witnesses may be allowed to give evidence in a closed session. It is also possible to restrict the publication of information about the proceedings involving the witness, so that the identity of the witness is not revealed.

Witnesses may be assisted to change their identity, and provided with new identification documents so that anyone who wants to harm them will not be able to find them. In this case, the Witness Protection Unit will arrange to keep the witness's previous identity secret. But there are also rules to make sure that a person who is given a new identity cannot use the new identity to avoid legal obligations or restrictions that already applied to them.



Witnesses may be assisted to relocate with their families inside or outside Namibia. They may also be given financial assistance to cover reasonable living expenses, as well as help with finding work or accessing education until they can become self-supporting.

The law also allows the Director to take other steps to ensure the safety and wellbeing of the witness.

What is the procedure for requesting witness protection?

The Director has the sole responsibility for deciding whether to admit a witness or a related person to the Witness Protection Programme. Admission to the Programme is not intended to be a reward for giving evidence, or a way to persuade people to give evidence – it is just a way to protect the safety and well-being of witnesses who are at risk.

Witnesses (or persons connected to them) who believe that they are at risk must apply for protection to one of the officials listed in the law:

- the investigating officer
- any person in charge of a police station
- if the person at risk is in prison, the person in charge of that prison or a State social worker
- a prosecutor
- a staff member of the Witness Protection Unit
- a person authorised to receive information from whistleblowers under the *Whistleblower Protection Act 10 of 2017*
- the Prosecutor-General, or in the case of proceedings other than criminal cases, someone designated by the presiding officer
- any other person identified by the Minister of Justice for this purpose.

If the person at risk is not able to make the application personally, the investigating officer or any other interested person can help them. The person receiving the application has a duty to assist the applicant with the paperwork. The application must be forwarded right away to the Director or to a witness protection officer. In either case, a witness protection officer will evaluate the application and make a recommendation to the Director.

The witness may be placed under temporary protection while the application is being considered. The Director may collect additional information about the situation, and may even request the applicant to undergo a medical examination or a mental evaluation before making a decision.

The law sets out the factors that the Director should consider in making a decision on the application. Here are some of the key factors:

- the nature and extent of the danger to the applicant's safety
- the interests of the community
- the applicant's relationship with any other persons already admitted to the Programme
- if the witness has a criminal record, the potential risk to the public if they are accepted into the Programme
- the importance of the information that the witness can provide
- the cost of providing the protection
- whether there are other ways to protect the witness.

The applicant must be notified of the Director's decision and the reasons for it. If the application is refused the applicant can appeal to the Witness Protection Review Tribunal.



The **Witness Protection Review Tribunal** consists of a magistrate or a judge assisted by two other persons with appropriate expertise, appointed by the Minister of Justice after discussion with the Chief Justice for five-year terms. The Tribunal convenes only when it is needed.



Anyone who is admitted to the Witness Protection Programme must enter into a protection agreement with the Director. This agreement will explain why the applicant was admitted to the Programme and give details of the protection to be provided. This agreement will set out the duties of the person who is being protected, which include –

- a duty to give evidence in the proceedings that gave rise to the protection (if this applies)
- a duty to continue to meet other legal obligations, including things such as providing maintenance for children and paying taxes
- a duty not to commit crimes while under protection
- a duty not to do anything that might endanger his or her own safety, the safety of staff members of the Unit or any other person who is being given witness protection.

Suspending or ending witness protection

Witness protection can be suspended if the person being protected acts in a way that limits the Director's ability to protect them. It can be ended at the protected person's request, or if the protection is no longer needed. It can also be withdrawn if it comes to light that the witness gave false or misleading information, violated a term of the protection agreement or did something that may threaten the security of the entire Programme.

Protection from threats and victimisation

It is a serious crime to threaten anyone for applying for witness protection, or for cooperating with a court or a law enforcement agency. It is also a serious crime to take legal action or disciplinary action against someone in retaliation for cooperation with the authorities. The penalty for these crimes is a fine of up to N\$100 000 or prison for up to 10 years, or both.

Confidentiality

There are detailed rules to prevent unauthorised disclosure of information about the Witness Protection Programme or the identity of people who are being protected. There are also rules to make sure that authorised disclosures are made with careful regard for the safety of all persons who may be affected. Unauthorised disclosure is a crime that is punishable by a fine of up to N\$100 000 or prison for up to 10 years, or both.

The Minister of Justice may cooperate on witness protection with authorities in other countries or with international courts or tribunals.

How does this law fit together with the *Whistleblower Protection Act 10 of 2017*?

The two laws offer different kinds of protection for people who provide information to combat wrongdoing. Whistleblowers fall under the definition of "witness" in the *Witness Protection Act*, whether or not the whistleblower gives information in court. This means that a whistleblower may be entitled to the protections provided by the *Whistleblower Protection Act* (explained in a separate summary), and to the protections in the *Witness Protection Act*. But not every witness is also a whistleblower, since the definitions of "witness" and "whistleblower" do not overlap entirely. Whistleblower protection is about preventing retaliation, especially detrimental action in the workplace. Witness protection involves broader protective measures such as relocation or identity change. The two laws complement each other.

Criticism

It has been suggested that the appointment of persons to the Witness Protection Review Tribunal should not be made by a political appointee, even though the decisions on appointments involve consultation with the Chief Justice. Security of tenure for the Tribunal members is also not guaranteed, since the Minister can end the term of office for a Tribunal member for any reason that the Minister "considers good and sufficient". The concern is that this approach is not sufficient to protect the independence of the Tribunal from possible political interference.²

² Iheb Chalouat, Carlos Carrión-Crespo and Margherita Licata, "[Law and practice on protecting whistle-blowers in the public and financial services sectors](#)", International Labour Office (ILO), 2019, page 43