



**MOTIVATION STATEMENT BY DR.  
ALBERT KAWANA, MP ON THE  
OCCASION OF THE TABLING OF  
THE WITNESS PROTECTION BILL**

**NATIONAL ASSEMBLY**

**16 FEBRUARY 2017 WINDHOEK**

**Honourable Speaker,** I once again have the honour and privilege to rise and motivate the Witness Protection Bill.

I should point out upfront that this Bill and the Whistleblower protection Bill which I motivated before this august House a while ago has many areas of similarities. Indeed, initially the two Bills were drafted as one but after learning from other experiences, it was decided to split them into two Bills.

**Honourable Speaker,** just like the Whistleblower Bill that I just motivated, allow me to discuss general principles and background to the Bill before I discuss specific provisions. In any functioning criminal justice system, witnesses play an important role during the trial. A case can be lost or won depending on the quality of evidence presented before court.

For too long, our citizens have been complaining about lack of legal measures aimed at adequately protecting witnesses in Namibia.

It is painful to experience the fact that a solid case during the criminal trial can be lost due to the reluctance of a witness to cooperate with the prosecution authority. I will revert to this point later on during my motivation.

**Honourable Speaker**, the Bill before Honourable Members of this august House is a subject of extensive consultation. The Ministry established a technical committee to undertake a study tour to a number of countries which run successful witness protection programmes. The team visited Canada, Ghana, Kenya and South Africa to learn best practices or benchmarking. Against this background, Namibia drafted legislation borrowing good practices from a number of systems.

In addition, the Bill before you, Honourable Members is also a product of experiences borrowed from a number of countries such as Malaysia. We also used guidelines of the United Nations Office on Drugs and Crime Guidelines on Reporting Persons as reference material.

**Honourable Speaker**, an Inter-Ministerial Committee was also established to coordinate with stakeholders. This led to a National Stakeholders Consultative Workshop that was held in Swakopmund in June last year. The Workshop was officially opened by His Excellency Dr. NickeyIyambo, Vice-President of the Republic of Namibia. Apart from stakeholders, the Workshop was also attended by experts from Kenya and South Africa. I would, therefore, once again like to take this opportunity to express my appreciation and gratitude to His Excellency Dr. NickeyIyambo, the Vice-President of our Republic, His Honour the Chief Justice, my colleagues Ministers and Deputy Ministers, the experts from Kenya and South Africa, and other senior Government officials for not only attending the Workshop but also for making very useful contribution.

Just like the Whistleblower Bill, I also had an opportunity to extend an invitation to the leaders of Political opposition Parties represented in Parliament and took them through the provisions of the Bill.

Allow me, therefore, **Honourable Speaker** to use this opportunity to extend my appreciation and gratitude to the opposition political leaders for the spirit in which they accepted my invitation. Those who could not attend send their representatives. I am most grateful to them.

**Honourable Speaker**, with the advent of terrorism at an unprecedented scale. It is the duty of every State to protect its citizens. We have witnessed innocent citizens being slaughtered at shopping malls, soccer fields, concert halls and popular streets. Women and children are being slaughtered at open markets, innocent souls who have nothing to do with whatever is the justification of the discontent. We have also witnessed a situation where organized crime, especially drug trafficking, is increasingly becoming more violent. This state of affairs is making it very difficult for witnesses during the criminal trial to come forward without assurance of adequate protection measures. In most cases, this leads to criminals being acquitted for lack of evidence. As a result, victims of such serious crimes remain without redress. Against this background, I can say the world has changed. Governments all over the world are being forced to adopt measures,

including legislative measures, aimed at protecting their citizens.

**Honourable Speaker,** Honourable Members, Namibia must take adequate legislative measure so that in the event of such unfortunate terrorist action being experienced, we should not be found with our pants down so to speak. Witnesses must feel protected, and if need be together with their families so that they can come forward to give evidence in order to put perpetrators of such serious crimes behind bars. We in Namibia pride ourselves in saying that the security of our citizens is not negotiable, today we are putting legislative measures in place in order to buttress this point.

**Honourable Speaker,** it has been realized that currently, we have inadequate legislative measures aimed at witness protection. Witnesses in criminal proceedings are protected under the provisions of the Criminal Procedure Act of 1977. Unfortunately, the process is not voluntary. It is initiated where the Prosecutor-General feels that a particular person needs protection by reason of his or her being a witness in a criminal trial. The Prosecutor-General is required to apply for a court order to place the witness under protection. The

witness has no say in the matter and he or she can even be placed under protection without his or her consent.

One of the disadvantages of the current system is that in some cases, such witnesses tend to become hostile during the criminal trial which jeopardises the success of the prosecution. We had an experience where a female witness of more than thirty years of marriage could not identify her husband during the identification parade. Obviously, the case was lost because the perpetrator could not be positively identified.

**Honourable Speaker,** international law requires States to protect the safety of witnesses in general, but more specifically, victims of crime and other vulnerable persons. Namibia is a State Party to the United Nations Convention on the Combating of Transnational Organized Crime. Articles 24 and 25 of the Convention require States to render assistance and protection to witnesses. As already pointed out, witnesses are one of the major role-players in the criminal justice system who render cooperation to law enforcement agencies and the prosecution authority. This enables the State in the end to successfully prosecute offenders.

**Honourable Speaker,** I now turn to discuss the specific provisions of the Bill. The Bill before you, Honourable Members, consists of 8 parts and 85 clauses plus a schedule. Part 1 of the Bill consists of the standard definitions. Part 2 of the Bill establishes a Directorate for Witness Protection. I must point out that staff members of the Directorate will consist of staff members who will be vetted by the Namibia Central Intelligence Service. This is important because such staff members will be dealing with most sensitive information.

**Honourable Speaker,** experience in other countries has shown that if staff members do not keep the information which comes their way during the course of their functions, this is likely to expose protected witnesses to extreme danger. Indeed, there has been instances where some witnesses have been killed or injured, especially in cases involving terrorism, drug trafficking and high treason. This is very common in countries where conviction of those offences carry a mandatory death penalty. In such a situation, accused persons will do everything possible to eliminate witnesses in order to serve their necks.

Issues covered in this Part include the establishment of the Directorate; object of the Directorate; composition of the Directorate; appointment of the Director; functions and powers of the Director; the Permanent Secretary and the Minister; witness protection officers; and security officers.

I must also point out that a number of staff members will be seconded from other Offices, Ministries and Agencies. All these issues are covered under Clauses 2 through to 12.

Part 3 of the Bill contains the Witness Protection Advisory Committee. The main functions of the Committee are: to make recommendations to the Minister regarding policy matters, including amendments to the Act and the making of regulations and issuing of directives; to advise the Minister on the formulation of witness protection policies in accordance with the current and international best practices; to give advice to the Directorate generally on the performance of its functions and exercise of its powers; and to make recommendations to the Minister on the budgetary estimates of the Directorate. Part 3 consists of Clauses 13 through to 18.

Part 4 of the Bill covers the Witness Protection Fund. In terms of clause 19, the Fund consists of: money appropriated by Parliament and made available to the Fund for the purposes of attaining the objects of the Directorate and the Programme; money allocated to the Fund pursuant to section 76 (1) (b) of the Prevention of Organized Crime Act of 2004;

Donations made to the Fund; interest derived from an investment; and money lawfully vesting in or accruing to the Fund from any other source. Part 4 contains Clauses 19 through to 29.

It is absolutely important, if we are to learn from the experience of other countries, that a fund is created. According to the experience of other countries, payments have to be made even at night to enable witnesses to be moved from one place to another for their own safety. For security reasons, they have to be moved by other means other than by transport which is used by the members of the public.

In addition, food has to be bought for them as they cannot eat in public places. Although separate, the fund will be under the control and supervision of the Ministry of Justice. The

accounting officer will be the Permanent Secretary of the Ministry. I must also point out, Honourable Members, that the Fund will be audited by the staff of the Auditor-General. The only difference is that all the auditors will be vetted.

Part 5 of the Bill covers Witness Protection Programme. It contains Clauses 30 through to 45. The part regulates issues such as the procedure before admission to the Programme; the duty of the witness to disclose certain information before admission; interim protection measures; report by witness protection officers; consideration of applications and the decision of the Director whether or not to admit a witness to the programme; protection agreements; admission of witnesses from other countries; admission of witnesses at the request of an international court, tribunal, institution, or organisation; register of protected person; access to the register of protected persons; suspension from the programme; and termination from the programme.

**Honourable Speaker**, allow me to explain further why it will be necessary to admit witnesses from other countries to the programme. This will be done on reciprocal basis. It will happen that due to the seriousness of the case under

consideration such as terrorism, it will be necessary to relocate key witnesses to other countries. Although Namibia as a country is big, the population is so small to the extent that we virtually know each other.

Against this background, it will not help to relocate a witness from one part of the country to the other because such a witness will easily be identified, especially if he or she is a well-known personality. The only solution will be to relocate such a witness outside Namibia. It will, therefore, be necessary to cooperate with other countries as experience elsewhere has shown.

In some cases, witnesses will be required to voluntarily change their identity and even to undergo plastic surgery with a view to concealing their identity as provided for under Part 6 of the Bill.

**Honourable Speaker,** Part 6 of the Bill covers Witness Protection Measures. These are measures which are required to be taken as well as procedures to be followed for the effective protection of witnesses. Part 6 contains Clauses 46 through to 60. Issues which are covered under this Part include witness protection measures; change of identity which

I have already explained; commercial arrangements by the Director in cases of witnesses who are involved in business; protection of third party rights; non disclosure of identity in legal proceedings; and restoration of original identity when it is established that the threat to the witness is no longer there.

Part 7 covers Witness Protection Review Tribunal. It contains Clauses 61 through to 70. **Honourable Speaker**, just like the Whistleblower Protection Bill, members of the Witness Protection Review Tribunal will bead hock. This is intended to cut down on the cost. The main objective of establishing a Tribunal is to ensure a speedy disposal of cases. Most of the issues covered under Part 7 are standard. The main function of the Tribunal is to review the decisions of those who are entrusted with the administration of the Act, once it becomes operational.

Part 8 covers Miscellaneous Provisions. It contains Clauses 71 through to 85. **Honourable Speaker**, most of the provisions under this Part are standard. It covers issues such as international agreements by the Minister responsible for Justice. As already explained, this will be necessary for purposes of exchange of witnesses. Agreements will also have to be entered into with international organisations in relation

to witnesses who will be required to give evidence before such international institutions.

There will be a need to issue security clearance certificates to staff members and other persons who will be involved in the programme. The Part will also regulate restrictions on access to premises of the Directorate for security reasons. It also covers a procedure of making regulations, directives and staff rules, as well as delegation of powers and assignment of functions.

**Honourable Speaker,** just like with the Whistleblower Protection Bill, this Bill is aimed at further improving the administration of justice in our country. I hope that witnesses will come forward to give evidence so that we can address the scourge of corruption, drug trafficking, poaching, money laundering, human trafficking, terrorism, environmental degradation, domestic violence, and fighting crime generally.

It is, therefore, my honour and privilege to kindly request you, Honourable Members, to speedily pass the Witness Protection Bill.

**I thank you.**