



WITNESS PROTECTION ACT, 2015

(Act 2 of 2015)

I assent.



J.A. Mitchell
President

30th March, 2015

AN ACT to provide for protection of the identity of the witness and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Witness Protection Act, 2015.

Short title

Application

2. This Act applies to any investigation or proceeding, whether it has commenced before or after the commencement of this Act.

Interpretation

3. In this Act, unless the context otherwise requires—

“Minister” means the Minister responsible for Legal Affairs;

“proceeding” means any suit, action, cause or matter, whether civil or criminal, at the trial or hearing of which evidence may be expected to be given;

“witness” means any person called, or proposed to be called, or capable of being called to give evidence, or to produce any document or thing in any proceeding, and includes any person whose identity may be disclosed in evidence.

Witness protection

4.(1) Where in any proceeding before a court or a tribunal in Seychelles, a person is or is likely to be required as a witness, the court or the tribunal, as the case may be, may, on the application of any party to the proceeding or on its own motion, make an order, on such terms as the court or tribunal considers appropriate in the interests of justice—

(a) for the preservation of anonymity of the witness or of any person who might be identified in the evidence given by the witness; and

(b) to ensure that the identity of the witness is not disclosed in or in connection with the proceeding.

(2) An application for an order under subsection (1) shall—

(a) set out the grounds on which the order is sought;

- (b) set out the terms of the order sought;
- (c) be supported by written or oral evidence; and
- (d) not disclose the identity of the witness to any other party or person except the court or the tribunal.

(3) Every application shall be heard in open court, unless the court or the tribunal, in the interest of public order or safety, decency or the welfare or safety of the witness, directs the hearing of the application to be held in chambers.

(4) The court or the tribunal shall not make an order, save in exceptional circumstances for reasons to be recorded in writing, without giving all parties the opportunity to be heard.

(5) Save as otherwise provided, an order made under subsection (1) shall include the following conditions—

- (a) that the name and address of the witness and any details identifying the witness shall be withheld;
- (b) that the witness may use a pseudonym;
- (c) that no question shall be asked at trial that might lead to the identification of the witness or his or her address without the specific consent of the court or the tribunal;
- (d) that the name and address of the witness and any details identifying the witness be deleted from all documents to be disclosed or produced in the proceeding; and
- (e) that no person shall publish or communicate to any other person the name and address of the witness and any details identifying the witness, or any information from which his or her identity or address might reasonably be

identified, where it is known that, or in such a way as it may be concluded that, he or she is or was a witness in the case, except where it is necessary for the lawful conduct of the proceeding.

(6) Without prejudice to subsection (5), the order may include the following additional conditions—

- (a) that the witness be screened while giving evidence from the accused in criminal proceeding, or any other party, or the public, or to any other extent the court sees fit;
- (b) that the voice of the witness be modulated while giving evidence to prevent recognition;
- (c) that the witness give evidence through a live television link from another location outside the courtroom under the provisions of the Evidence Act or any other written law, for the time being in force; and
- (d) which the court or the tribunal considers necessary in the interests of justice to protect the identity of the witness.

(7) Nothing in this section shall permit the witness to be screened from the view of the judge, person in charge of the proceeding, or the jury if the proceeding is triable by jury, or voice of the witness to be modulated to the extent that his or her natural voice cannot be heard by the judge, person in charge of the proceeding, or the jury, as the case may be.

5.(1) The court or the tribunal shall not make an order under section 4, unless it is satisfied—

- (a) that an order is necessary—
 - (i) to protect the safety of the witness or any other person, or to prevent any serious damage to property; or

Court or
tribunal to
satisfy certain
conditions

- (ii) to prevent real and significant harm to the public interest;
- (b) that, in a criminal proceeding, the effect of the order in all the circumstances would not prevent the accused receiving a fair trial;
- (c) that, in civil proceeding, the effect of the order in all the circumstances would not significantly affect the overall fairness of the proceeding;
- (d) that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify, and either —
 - (i) there is a genuine risk that witness would not testify if the order were not made; or
 - (ii) there would be a genuine risk of real and significant harm to the public interest if the witness were to testify without such an order being made.

6. The court or the tribunal shall, while determining whether the conditions provided in section 5 have been met, take into consideration the relevant circumstances, and in particular —

Circumstances which court or tribunal shall take into consideration

- (a) in criminal proceeding, the right of the accused to know the identity of the witness;
- (b) the extent to which the credibility of the witness is likely to be an issue in the proceeding;
- (c) whether the evidence could be properly tested without the identity of the witness being disclosed; and

(d) whether the witness has a tendency or any motive to be dishonest.

Jury not to draw an adverse inference

7. Where an order under section 4 is made in a proceeding triable by jury, the judge shall give such directions to the jury, as the judge deems appropriate, stating that the making of the order should not prejudice them in any way against the accused.

Validity of order

8. An order made under section 4 shall remain in force until the date specified in the order, unless it is revoked earlier or extended for a further period as specified in the order.

Extension, variation or revocation of order

9.(1) Any person may apply to the court or the tribunal for the extension of the period, variation or revocation of the order.

(2) The court or the tribunal shall not extend the period or vary or revoke the order until, so far as is reasonably practicable, all parties and the person in respect of whom the order was made have been given notice and an opportunity to be heard, and the order shall remain in force until the hearing of the application, unless the court or the tribunal, as the case may be, directs otherwise.

Offences and penalties

10.(1) Any person who knowingly—

(a) communicates to any person the identity or the address of a person in respect of whom an order made under section 4 is in force; or

(b) communicates to any person, supplies, or makes known in any form, information from which the identity or the address of the person in respect of whom an order made under section 4 is in force could reasonably be inferred,

with the intention of revealing or communicating the identity or address of such person, commits an offence.

(2) Any person who—

- (a) harms or threatens to harm, or causes fear of harm to, or damages or threatens to damage property of; or
- (b) abates any person to harm, or threaten to harm, or causes fear of harm to, or damages or threatens to damage property of,

the person in respect of whom an order made under section 4 is in force, knowing or believing that such an order is in force, commits an offence.

(3) Any person who—

- (a) harms or threatens to harm, or causes fear of harm to, or damages or threatens to damage property of; or
- (b) abates any person to harm or threaten to harm, or cause fear of harm to, or damages or threatens to damage property of,

any witness, commits an offence.

(4) Any person who commits an offence under this section shall on conviction be liable to imprisonment for a term not exceeding 20 years and to a fine not exceeding SCR 1,000,000.

11.(1) The Minister may make such arrangements as he or she considers appropriate for the purpose of protection of a witness.

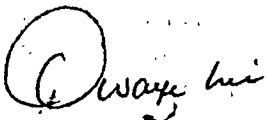
Minister to make arrangements for protection of witness

(2) The Minister shall not make arrangements under this section unless he or she is satisfied that the arrangements are necessary in the interests of justice to protect the safety of the witness.

(3) The arrangements may include—

- (a) providing the witness or any other person with a new identity; or
- (b) relocating the witness or any other person to a place outside Seychelles.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 17th March, 2015.



Ms. Luisa Waye-Hive
Assistant Clerk