

UNDCP MODEL WITNESS PROTECTION BILL, 2000

Bill No of 2000

To be presented by the Minister of Justice

MEMORANDUM OF OBJECTS AND REASONS

The object of this bill is to ensure that the due administration of justice in criminal and related proceedings is not prejudiced by witnesses not being prepared to give evidence without protection from violent or other criminal recrimination.

ATTORNEY-GENERAL

An Act to provide for the safety and well-being of witnesses in criminal proceedings who, unless protected, may not give evidence for fear of death, violence or serious injury by criminal interests likely to be affected by the proceedings, and for related purposes.

ENACTED by the President and Parliament of [name of State]

PART I PRELIMINARY

1. Short title, Extent and Commencement

- (1) This Act may be called the "Witness Protection Act, 2000."
- (2) It shall extend throughout [name of State].
- (3) It shall come into force at once.

2. Definitions

- (a) "foreign State" means:
 - (i) any country other than [name of State]; and

- (ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;
- (b) "serious offence" means an offence against a provision of:
 - (i) any law in **[name of State]**, for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than **[12 months]**;
 - (ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in **[name of State]**, would have constituted an offence for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than **[12 months]**;
- (c) "witness" means a person who;
 - (i) has made a statement, or who has given or agreed to give evidence in relation to the commission or possible commission of a serious offence;
 - (ii) because of his or her relationship to or association with a person referred to in **subsection (i)**, may require protection or other assistance under this Act; or
 - (iii) for any other reason, may require protection or other assistance under this Act;
- (d) "proceedings" means any procedure conducted by or under the supervision of a judge or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts; and
- (e) "property derived from an offence" means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence.

PART II WITNESS PROTECTION

3. Witness protection programme

- (1) The **[Commissioner of Police]** shall, through the establishment and maintenance of a witness protection programme, take such action as he or she thinks necessary and reasonable to protect the safety and welfare of a witness in any proceedings relating to this Act.
- (2) Subject to **subsection (3)**, that action may include the following;
 - (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;
 - (c) providing accommodation for the witness;

- (d) providing transport for the property of the witness;
 - (e) providing reasonable financial assistance to the witness;
 - (f) permitting any person involved in the administration of the witness protection programme to use an assumed name in carrying out his or her duties and to have documentation supporting those assumed names;
 - (g) doing any other thing that the **[Commissioner of Police]** considers necessary to ensure the safety of the witness;
 - (h) taking any of the steps listed in **subsections (a) to (g)**, in respect of a foreign witness present in **[name of State]** pursuant to an agreement or arrangement between **[name of State]** and a foreign State relating to witness protection.
- (3) The **[Commissioner of Police]** shall not obtain documentation for a witness participating in the witness protection programme that represents that the participant has a qualification that he or she does not have, or is entitled to a benefit that he or she is not entitled to;

4. Inclusion of a witness in the witness protection programme

- (1) Subject to any direction of the Minister pursuant to **subsection 12 (3)**, the **[Commissioner of Police]** shall be responsible for deciding whether to include a witness in a witness protection programme.
- (2) In deciding whether to include a witness in the witness protection programme, the **[Commissioner of Police]** shall have regard to:
- (a) the seriousness of the offence to which the statement or evidence of the witness relates;
 - (b) the nature and importance of that statement or evidence;
 - (c) the nature of the perceived danger to the witness;
 - (d) the nature of the witness's relationship to any other witness being assessed for inclusion in the programme;
 - (e) the results of any psychological or psychiatric examination or evaluation of the witness conducted to determine his or her suitability for inclusion in the programme;
 - (f) whether there are viable alternative methods of protecting the witness; and
 - (g) whether the witness has a criminal record, particularly in respect of violent crime, which indicates a risk to the public if he or she is included in the programme.
- (3) A witness shall not be included in a witness protection programme unless the witness, or a person legally responsible for the person, agrees in writing to be included in the programme.

5. Court orders protecting witnesses from identification

- (1) For the purposes of this Act, the **[Commissioner of Police]** may apply to the **[Court]** for an order authorizing a specified person or a person of a specified class or description of persons:

- (a) to make a new entry in the [**register of births**], [**register of deaths**] or [**register of marriages**] in respect of a witness;
 - (b) to issue in the witness's new identity a document of a kind previously issued to the witness.
- (2) The [**Court**] may make a witness protection order if it is satisfied that the life or safety of that person may be endangered by virtue of the person being a witness.
 - (3) Any proceedings of the [**Court**] under this **section** shall be conducted *in camera*, and all records of the proceedings shall be sealed.
 - (4) On the making of a witness protection order under **subsection (2)**, any person authorized to do so by the order may make such entries in the [**register of births**], [**register of deaths**] or [**register of marriages**] as are necessary to give effect to the order.
 - (5) An entry made in the [**register of births**], [**register of deaths**] or [**register of marriages**] pursuant to a witness protection order under **subsection (2)** has effect as if it were a valid entry made under the [**Births, Deaths and Marriages Act**].

6. Termination of protection and assistance

- (1) Protection and assistance provided under the witness protection programme:
 - (a) shall be terminated by [**Commissioner of Police**] if the participant requests in writing that it be terminated; and
 - (b) may be terminated in writing by [**Commissioner of Police**] if:
 - (i) the witness deliberately breaches a requirement or undertaking relating to the witness protection programme;
 - (ii) the witness's conduct or threatened conduct is, in the opinion of the [**Commissioner of Police**], likely to threaten the security or compromise the integrity of the witness protection programme; or
 - (iii) the circumstances that gave rise to the need for protection and assistance for the witness have ceased to exist,

and the [**Commissioner of Police**] is of the opinion that, in all the circumstances of the case, the protection and assistance should be terminated.
- (2) A decision of the [**Commissioner of Police**] to terminate protection and assistance under the witness protection programme takes effect:
 - (a) when the [**Commissioner of Police**] notifies the witness of the decision;
 - (b) if the witness's location is not known and the [**Commissioner of Police**] has taken reasonable but unsuccessful steps to notify the witness, at the end of a period of [**28**] days after those steps were taken.

7. Non-disclosure of former identity of a witness

A person whose protection has not been terminated under **section 6** shall not disclose his or her former identity for

any purpose, and it shall be lawful for that person, in any proceedings or for any purpose in [name of State], to claim that his or her new identity is his or her only identity.

8. Restoration of former identity

The [Commissioner of Police] may, if he or she considers it appropriate to do so, take such action as is necessary to restore the former identity of a person whose protection and assistance under a witness protection programme has been terminated.

9. Certain persons not required to disclose information

Unless the [name of Court] makes an order in the interests of justice that provides to the contrary, or the proceedings relate to an offence against this Act, a person who acquires information in the ordinary course of official duties relating to the administration of the witness protection programme cannot be required in any proceedings in any [court, tribunal or commission of inquiry however described] to:

- (a) produce any document; or
- (b) divulge or communicate any matter or thing,

relating to the performance of his or her duties in connexion with the programme.

10. Provision of information to competent authorities

If:

- (a) a person has been provided with a new identity or relocated under this Act; and
- (b) the [Commissioner of Police] is notified by a competent authority that the person is under investigation for, or has been arrested for or is charged with a serious offence,

the [Commissioner of Police] may:

- (i) release to that authority the new identity or location of the person;
- (ii) provide that authority with the criminal record and fingerprints of the person;
- (iii) release to that authority such other information as [the Commissioner of Police] considers appropriate in the circumstances; and
- (iv) otherwise cooperate with that authority.

11. Offences relating to witness protection

(1) No person shall, except in accordance with this Act, disclose information:

- (a) about the identity of a person who is or has been a witness included in the witness protection programme; or
- (b) that compromises the security of such a person.

Penalty: [...] penalty units, or imprisonment for a period not exceeding [10] years, or both.

- (2) Subject to **subsection (3)**, no person who has participated in the witness protection programme shall, either directly or indirectly, disclose or communicate to another person:
- (a) information relating to anything done by the [**Commissioner of Police**] or any police officer under this **Act**; or
 - (b) information about any police officer gained by the person as a result of anything done under this **Act**.

Penalty: [...] penalty units, or imprisonment for a period not exceeding [5] years, or both.

- (3) **Subsection (2)** does not apply to any disclosure or communication:
- (a) that has been authorised by the [**Commissioner of Police**]; or
 - (b) that is necessary to comply with an order of the [**name of Court**].
- (4) A person in respect of whom an entry is made under this **Act** in a [**register of births**], [**register of deaths**] or [**register of marriages**] shall not, while the entry remains in force, use or obtain any document that is based on the previous entry.

Penalty: [...] penalty units

- (5) A witness who has been provided with a new identity under a witness protection programme shall not marry using the new identity unless;
- (a) the witness is of marriageable age;
 - (b) if the witness has been married previously to another person, the witness is now divorced from that other person, or that other person has died; and
 - (c) there is no legal impediment to the marriage.

Penalty: [...] penalty units or imprisonment for [...] [**months/years**]

12. Witness protection arrangements

- (1) The [**Minister**] may make arrangements with any foreign State about any matter relating to cooperation between [**name of State**] and that State relating to witness protection.
- (2) The [**Minister**] may make such arrangements as are necessary or convenient for the administration of a witness protection programme with any other Minister or competent authority in [**name of State**].
- (3) The [**Minister**] may issue such directions as are necessary or convenient for the administration of a witness protection programme.



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INDEX

PART I PRELIMINARY

1.	Short title, Extent and Commencement	1
2.	Definitions	1

PART II WITNESS PROTECTION

3.	Witness protection programme	2
4.	Inclusion of a witness in the witness protection programme	3
5.	Court orders protecting witnesses from identification	3
6.	Termination of protection and assistance	4
7.	Non-disclosure of former identity of a witness	4
8.	Restoration of former identity	5
9.	Certain persons not required to disclose information	5
10.	Provision of information to competent authorities	5
11.	Offences relating to witness protection	5
12.	Witness protection arrangements	6