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No. 48 of 2005

I assent,

(SIR COLVILLE N. YOUNG)
Governor-General

10th January, 2006.

*AN ACT to provide for the establishment of a programme
for the protection of certain witnesses and other
persons; and to provide for matters incidental thereto.*

(Gazetted 14th January, 2006).

BE IT ENACTED, by and with the advice and consent
of the House of Representatives and the Senate of
Belize, and by the authority of the same, as follows:

PART I
PRELIMINARY

1. This Act may be cited as the

Short title.

JUSTICE PROTECTION ACT, 2005

Commencement.

2. This Act shall come into operation on a day to be appointed by the Attorney General by Order published in the *Gazette*.

Interpretation.

3. In this Act, unless the context otherwise requires:-

“Administrative Centre” or “Centre” means the department or Ministry charged with responsibility for the development, management and maintenance of the Justice Protection Programme;

Third
Schedule.

“Agreement” means the Agreement Establishing the Regional Justice Protection Programme, signed at Port-of-Spain on July 7, 1999; the text of which is set out in the Third Schedule to this Act;

“approved authority” or “authority” means –

- (a) the Attorney General;
- (b) the Solicitor General;
- (c) the Director of Public Prosecutions;
- (d) the Commissioner of Police;
- (e) any other person or body that the Minister may, from time to time, designate as an approved authority;

“associate” means a person, including a family member of that person who, by virtue of his relationship or association with a participant or prospective participant, may be considered for protection or assistance or both, under the Justice Protection Programme;

“Contracting Party” means a Party to the Agreement;

“Investigative Agency” means the Agency charged with the functions set out in section 9;

“Justice Protection Programme” or “Programme” means the Justice Protection Programme established under section 4;

“Minister” means the Attorney General;

“participants” means witnesses, jurors, judicial officers, legal officers, law enforcement personnel, associates of such persons and any other persons to whom protection or assistance or both is given under the Justice Protection Programme;

“Protective Agency” means the Agency charged with the functions set out in section 11;

“risk assessment” means an evaluation of the risk or danger which a participant is likely to pose for the receiving community, having regard to the matters specified in paragraphs (a), (d) and (e) of the definition of “threat assessment” and any other factors considered relevant in a particular case;

“threat assessment” means an evaluation of the danger to a prospective participant based on, but not limited to information on –

- (a) persons who are the subject of judicial or administrative proceedings concerning the case, in relation to which the prospective participant has given evidence or is required to give evidence;
- (b) any criminal organization interested in the relevant proceedings;
- (c) the nature of the threat to the prospective participant;

- (d) the names and other identifying data of all persons who are likely to pose a danger to the prospective participant;
- (e) where appropriate, the prospective participant's association with persons referred to in paragraph (a) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph;
- (f) the immediacy of the threat;

“witness” means a person who has given, is obliged to give or has agreed to give, a statement or evidence or both –

- (a) in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (b) to an approved authority in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (c) in a criminal trial;
- (d) in any civil proceedings.

PART II

THE JUSTICE PROTECTION PROGRAMME

Establishment
of the Justice
Protection
Programme
and Agencies.

4. (1) The Minister shall establish a programme to be known as the Justice Protection Programme, for the purpose of providing to participants, subject to this Act, protection or assistance or both.

(2) For the purposes of administering the Programme, the Minister shall, by Regulations made under section 26, provide for the establishment of the following Agencies:

- (a) an Administrative Centre;
- (b) an Investigative Agency; and
- (c) a Protective Agency.

Administrative Centre

5. (1) Subject to this Act, the Administrative Centre shall develop, manage and maintain the Justice Protection Programme and shall be responsible for deciding whether a prospective participant is to be afforded protection or assistance or both, under the Programme

Functions of
the
Administrative
Centre.

(2) In performing its functions under this Act, the Centre shall -

- (a) liaise with other approved authorities and with Administrative Centres of other Contracting Parties;
- (b) liaise where necessary, with appropriate authorities in the territories of non-Contracting Parties;
- (c) determine the participants in the Justice Protection Programme;
- (d) determine, after consultation with the Investigative Agency and the Director of Public Prosecutions, the level and duration of protection or assistance for a prospective participant, based on the assessments referred to in subsection (3) (a);

- (e) obtain such information as may be required to determine –
 - (i) the financial implications of admitting the prospective participants to the programme; and
 - (ii) the actual or potential civil and criminal liability of the prospective participant;
- (f) require the prospective participant to conclude a Memorandum of Understanding with the Centre, detailing the terms and conditions of his participation in the Programme;
- (g) arrange for the provision of safe-houses on the written recommendations of the Investigative Agency or the Protective Agency on the basis of threat and risk assessments;
- (h) develop guidelines for the effective operation of the Programme;
- (i) establish budgetary requirements of the Programme;
- (j) make payments in connection with the protection and assistance provided under this Act;
- (k) take cognizance of the high cost and complexity of providing adequate protection for participants;
- (l) co-ordinate and relay to approved authorities of Contracting Parties, relevant information on threat and risk assessments and other related matters.

(3) In the performance of its functions in accordance with subsection 2 (c), the Administrative Centre shall -

- (a) in relation to criminal matters, make a determination on the basis of written assessments received from –
 - (i) the Investigative Agency;
 - (ii) the Director of Public Prosecutions; and
 - (iii) the Protective Agency;
- (b) in relation to civil matters and enquiries under the Commissions of Enquiry Act, make a determination on the basis of written assessments received from –
 - (i) the Investigative Agency;
 - (ii) the Solicitor General; and
 - (iii) the Protective Agency.

CAP. 127.

(4) The Administrative Centre shall, in deciding whether to include a prospective participant in the Programme, have regard to-

- (a) any criminal record of the prospective participant, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if he is included in the Programme;
- (b) the results of any medical, psychological or psychiatric examination or evaluation of the prospective participant, conducted to determine his suitability for inclusion in the Programme;
- (c) the seriousness of the offence to which any relevant evidence or statement relates;

- (d) the nature and importance of any relevant evidence or statement;
- (e) whether there are viable alternative methods of protecting or assisting the prospective participant;
- (f) the nature of the perceived danger to the prospective participant;
- (g) the nature of the prospective participant's relationship with other prospective participants being assessed for inclusion in the Programme;
- (h) the expected duration of the protection or assistance to be provided; and
- (i) any other matters that the Centre considers relevant.

(5) Action which may be taken by the Administrative Centre to facilitate the safety and security of participants may include the following:

- (a) providing any documents necessary –
 - (i) to establish a new identity for the participant; and
 - (ii) to protect the participant;
- (b) permitting a participant to use an assumed name in carrying out his duties in relation to the Programme and to carry documentation supporting the assumed name;
- (c) providing payments to or for the participant for the purpose of –

- (i) meeting his reasonable living expenses including, where appropriate, living expenses of his family; and
- (ii) providing, whether directly or indirectly, other reasonable financial assistance;
- (d) providing payments to the participant for the purpose of meeting costs associated with relocation;
- (e) providing assistance to the participant in obtaining employment, access to education and health care;
- (f) providing other assistance to the participant with a view to ensuring that the participant becomes self-sustaining.

6. (1) The Administrative Centre may offer protection or assistance or both under the Justice Protection Programme in respect of the offences set out in the First Schedule.

Cases to be considered for protection.
First Schedule.

(2) The Minister may, by Order published in the *Gazette*, after consultation with the Director of Public Prosecutions and the Commissioner of Police, amend the First Schedule.

First Schedule.

7. (1) Notwithstanding section 5 (3), the Administrative Centre shall not include a prospective participant in the Programme unless -

Disclosure of certain information to the Administrative Centre.

- (a) it is satisfied that the person has provided the Centre with the information required of him under subsection (2); and
- (b) it receives such other information as may be required in the case or under this Act.

(2) A prospective participant shall disclose to the Centre -

- (a) details of all his outstanding legal obligations;
- (b) details of all his outstanding debts including amounts outstanding in respect of any tax;
- (c) details of his criminal history;
- (d) details of any civil proceedings that have been instituted by or against him;
- (e) details of
 - (i) any cash balances in bank accounts; and
 - (ii) property, real or personal, held anywhere by him in his own name or jointly or severally with any other person or persons as the case may be;
- (f) whether any of his property, real or personal, is liable to forfeiture or confiscation under any other law;
- (g) details of any enterprise whatsoever, in which he is involved, that may yield him a monetary return;
- (h) details of receivables and all sources of income;
- (i) details of his general medical condition;
- (j) details of any dependents and related obligations;
- (k) details of any court order relating to sentences imposed on him or to which he is subject in relation to criminal prosecutions;

- (l) details of any relevant court orders or arrangements relating to his custody of or access to children; and
- (m) details of any arrangements that he has made for –
 - (i) the service of documents on him;
 - (ii) representation in proceedings in any court;
 - (iii) enforcement of judgments in his favour; or
 - (iv) compliance with the enforcement of judgments against him.

(3) The Centre shall make such other inquiries and investigations as it considers necessary for the purpose of assessing whether the prospective participant should be included in the Programme.

**Inclusion of
prospective
participants in
Programme.**

8. The Administrative Centre shall not include a prospective participant in the Programme unless –

- (a) subject to section 10, he applies in the prescribed form to be included;
- (b) the Centre is satisfied that he understands the implications of being included in the Programme;
- (c) he understands and signs a Memorandum of Understanding in accordance with the provisions of this Act or if he is under eighteen years of age or otherwise lacks legal capacity to sign the Memorandum –

- (i) it is signed by a parent or guardian; or
- (ii) if there is no such parent or guardian, it is signed by a person appointed by the Supreme Court to be his guardian.

The Investigative Agency

**Functions of the
Investigative
Agency.**

9. In relation to the possible inclusion of a prospective participant in the Justice Protection Programme, the Investigative Agency -

- (a) shall make investigations and submit to the Administrative Centre, the application referred to in section 8 (a) which shall be accompanied by the following documents prepared by the Investigative Agency:
 - (i) an assessment of that application;
 - (ii) a threat assessment including a prison report where the prospective participant is in prison; and
 - (iii) a risk assessment;
- (b) shall provide protection for the prospective participant in the period prior to the determination referred to in section 5 (3) (a); and
- (c) may, in a case of emergency, apply to the Administrative Centre for provisional entry into the Programme by the prospective participant, prior to the determination referred to in paragraph (b).

The Director of Public Prosecutions

10. (1) In relation to criminal matters, the Director of Public Prosecutions shall, where he is satisfied that the circumstances so warrant, prepare and submit an application in the prescribed form, to the Administrative Centre for a prospective applicant's entry into the Justice Protection Programme.

**Director of
Public
Prosecutions
to submit
application.**

(2) An application referred to in subsection (1) shall be made after the Director of Public Prosecutions has –

- (a) in the case of a prospective participant who is likely to be a witness –
 - (i) determined that the testimony of the prospective participant is credible and essential; and
 - (ii) formed the opinion that the prospective participant can be relied upon to give the testimony;
- (b) determined that a juror, judicial officer, legal officer, law enforcement officer or any of their associates, is in need of protection or assistance or both.

(3) An application under this section shall be accompanied by detailed information on –

- (a) the significance of the case;
- (b) the prospective defendant;
- (c) the testimony of the prospective participant; and
- (d) the anticipated benefits of a successful prosecution.

(4) For the purposes of subsection 2 (b), "legal officer" includes an attorney-at-law in private practice, and a Crown Counsel.

The Protective Agency

**Functions of
the Protective
Agency.**

11.(1) For the purposes of this Act, the Protective Agency shall -

- (a) submit a report to the Centre on the suitability of a prospective participant for entry into the Justice Protection Programme and for that purpose shall
 - (i) interview the prospective participant with a view to establishing his suitability for entry into the Programme;
 - (ii) examine the threat and risk assessments submitted to the Administrative Centre pursuant to section 9(a); and
 - (iii) require a prospective participant or a participant, as the case may be, to undergo, for the purpose of determining his physical and mental health, medical tests or examinations and psychological or psychiatric evaluations and to authorize the results to be made available to the Protective Agency;
- (b) protect participants and persons accorded provisional entry pursuant to section 9 (c);
- (c) relocate participants where necessary; and
- (d) carry out periodic reviews of threat and risk assessments.

PART III
MEMORANDUM OF UNDERSTANDING

12. (1) The Administrative Centre shall, subject to the approval of the Minister, prepare a Memorandum of Understanding which shall, subject to subsection (2), contain the matters set out in the Second Schedule.

Memorandum of
Understanding.
Second Schedule

(2) The Administrative Centre, may, where it considers necessary in a particular case, include any other matter in a Memorandum of Understanding.

(3) The Memorandum of Understanding shall be signed

(a) by the prospective participant; or

(b) where the circumstances so require, by the person referred to in section 8 (c), in the presence of two witnesses, one of whom may be the participant's attorney-at-law.

(4) A prospective participant is included in the Justice Protection Programme when the Memorandum of Understanding is countersigned by the person authorized by the Minister for the purpose.

(5) The Memorandum of Understanding may be varied by the Minister -

(a) after consultation with the Administrative Centre and with the participant's consent; or

(b) upon application by the participant for a variation.

(6) The variation referred to in subsection (5) shall take effect on the day on which the participant receives written notice thereof.

(7) Where a participant remains in the Programme upon attaining the age of eighteen years, the Administrative Centre shall require him to sign a Memorandum of Understanding on his own behalf upon his attaining that age.

PART IV **REGISTER OF PARTICIPANTS**

Register of
participants.

13.(1) The Administrative Centre shall maintain a register of participants which shall be accorded a security classification not below "Top Secret".

(2) The register may be maintained by electronic means.

(3) The Centre shall include in the register, the following details in respect of each participant:

- (a) the participant's name and assumed names, if any;
- (b) the participant's new name where he has been provided with a new identity under the Justice Protection Programme;
- (c) the participant's address;
- (d) details of any offences for which the participant has been convicted;
- (e) the dates on which the participant entered and left the Programme;
- (f) the matter giving rise to his entry into the Programme; and
- (g) details of any approval or refusal pursuant to section 16 (1).

(4) The Centre shall keep the following documents (hereinafter referred to as "ancillary documents") along with the register:

- (a) the original of each Memorandum of Understanding;
- (b) in respect of new identities, copies of each new document issued under the Programme;
- (c) the original of each approval granted by the Centre pursuant to section 16 (1); and
- (d) any documents returned to the Centre pursuant to section 18 (5).

14. (1) Subject to this section, the Administrative Centre shall be the only approved authority that shall have access to the register and to the ancillary documents referred to in section 13.

Access to
register.

(2) The Centre may, if it is of the opinion that it is in the interest of the due administration of justice to do so, allow another approved authority to have access to the register and the ancillary documents.

(3) Where the Centre allows an approved authority access to the register and the ancillary documents, the Centre shall notify the other approved authorities of -

- (a) the identity of the authority to whom the access was allowed;
- (b) the information to which the authority was allowed access;
- (c) the reasons for allowing access; and
- (d) the date and time of such access.

PART V
PROTECTION UNDER THE JUSTICE
PROTECTION PROGRAMME

**Rights and
Obligations.**

15. (1) Where a participant is entitled to exercise a right, is under an obligation or is subject to any restriction, the appropriate approved authority shall take such steps as are reasonably practicable to ensure that -

- (a) the right or obligation is dealt with according to law; and
- (b) the participant complies with the restriction.

(2) The steps referred to in subsection (1) may include

- (a) providing protection for the participant while the participant is attending court; and
- (b) notifying a party or possible party to legal proceedings, that the authority shall accept process issued by a court or tribunal on behalf of the participant, and nominating one of its officers for the purpose.

(3) Where the authority is satisfied that a participant who has been provided with a new identity under the Justice Protection Programme is using the new identity to -

- (a) avoid obligations that were incurred before the new identity was established; and
- (b) avoid complying with restrictions that were imposed on the participant before the new identity was established,

the authority shall give notice in writing to the participant stating that unless he satisfies the authority that the obligations

are dealt with according to law or the restriction be complied with, the Authority shall take such action as it considers necessary to ensure performance of the obligations or compliance with the restrictions.

(4) The action referred to in subsection (3) may include informing a person who is seeking to enforce rights against the participant, of the details of any property, real or personal, owned by the participant under his former identity.

16. (1) A participant who has been provided with a new identity under the Justice Protection Programme shall not disclose his former identity unless he has obtained the prior written approval of the Administrative Centre.

Non-disclosure
of former
identity.

(2) Notwithstanding subsection (1) and any other written law, the participant shall in any proceedings, be entitled to claim that his new identity is his only identity.

(3) In this section "participant" includes a person who is no longer participating in the programme but retains this new identity.

17. (1) Protection or assistance provided under the Justice Protection Programme to a participant -

Cessation of
protection and
assistance.

- (a) shall be terminated by the Centre if the participant requests in writing that it be terminated; or
- (b) may be terminated by the Centre if -
 - (i) the participant deliberately breaches a term of the Memorandum of Understanding;
 - (ii) the Centre discovers that the participant had knowingly given information to the

Centre that was false or misleading in a material particular;

- (iii) the participant's conduct is, in the opinion of the Centre, likely to compromise the integrity of the Programme;
- (iv) the circumstances that gave rise to the need for protection or assistance for the participant, cease to exist;
- (v) the participant deliberately breaches an undertaking, including an undertaking to give evidence, in relation to a matter, or material relevant to the Programme;
- (vi) the participant refuses or fails to sign a new Memorandum of Understanding when required to do so under section 12 (7); or
- (vii) there is, in the opinion of the Centre, no reasonable justification for the participant to remain in the Programme.

(2) Where the Centre decides under subsection (1) (b) to terminate protection or assistance or both under the Programme, the Centre shall -

- (a) take reasonable steps to notify the participant of the decision; and
- (b) notify the other approved authorities of the decision.

(3) A participant who receives such a notification may, within twenty-eight days after receiving the notice, apply in writing to the Minister for a review of the decision of the Centre.

(4) Where a participant applies for a review of the decision of the Centre, the Minister shall -

- (a) allow the participant a reasonable opportunity to state his case;
- (b) review the decision of the Centre and -
 - (i) confirm or reverse it; or
 - (ii) vary it with the consent of the participant,

and inform the participant, in writing, of the decision.

(5) A decision of the Centre pursuant to subsection (1) (b) to terminate protection or assistance or both, shall be effected as follows:

- (a) where the participant's whereabouts are unknown and the Centre has taken reasonable steps to notify the participant of the decision but has been unable to do so or where, in the opinion of the Minister, the participant is avoiding notification, the protection shall be terminated at the end of the period of twenty-eight days after those steps were commenced;
- (b) where the participant does not apply for a review of the decision in accordance with subsection (3), termination shall take effect at the end of the period of twenty-eight days after the participant receives the notification; or
- (c) if the participant applies for a review of the decision in accordance with subsection (3) and the Minister notifies the participant that the decision of the Centre is confirmed, termination shall take effect from the date of receipt of the notification.

Restoration of
former
identity.

18. (1) Where a participant has been provided with a new identity under the Justice Protection Programme and protection or assistance to the participant is terminated, the Administrative Centre may, if it considers it appropriate to do so, take such action as is necessary to restore the former participant's former identity.

(2) The Centre shall take reasonable steps to notify the former participant of its decision under subsection (1).

(3) Where the Centre proposes to take action to restore the identity of the former participant, he may, within twenty-eight days after receiving the notification, apply in writing to the Minister for a review of the decision of the Centre.

(4) Where an application is made, the Minister shall -

(a) before making a decision, give the former participant a reasonable opportunity to state his case; and

(b) review the decision of the Centre and confirm or reverse it, and inform the former participant, in writing, of the decision.

(5) Where the Centre takes action under this section to restore the identity of the former participant and the Centre requests the return of all documents that were provided in relation to the new identity, he shall return those documents to the Centre within seven days of his receipt of the request.

Provision of
information to
an approved
authority.

19. Where another approved authority notifies the Administrative Centre that a participant who has been provided with a new identity or has been relocated, is under investigation for, or has been arrested or charged with,

an offence, the maximum penalty for which is or includes imprisonment for a period of more than one year, the Centre may-

- (a) provide the appropriate approved authority with
 - (i) the participant's new identity;
 - (ii) the participant's criminal record and fingerprints; and
 - (iii) such other information relating to the Justice Protection Programme as the Centre considers appropriate in the circumstances; and
- (b) cause the participant to appear before the appropriate authority.

PART VI

MISCELLANEOUS

20. Officers of the Administrative Centre performing functions in relation to the Programme, shall not be liable to any action, suit or other proceedings in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Act.

Officers
protected from
suit in respect
of decisions
made under
this Act.

21. (1) A person who, without lawful authority, discloses information-

Offences.

- (a) about the identity or location of a person who is or has been a participant;
- (b) that compromises the safety or security of a participant or the integrity of the Programme,

commits an offence.

(2) A person who is or has been a participant or a person who has undergone assessment for inclusion in the Justice Protection Programme and discloses -

- (a) the fact of such participation or assessment;
- (b) information as to the way in which the Programme operates;
- (c) information about any officer of the Administrative Centre who is or has been involved in the Programme;
- (d) the fact that he has signed a Memorandum of Understanding; or
- (e) any details of a Memorandum of Understanding that he has signed,

commits an offence unless he has been authorized by the Centre to make the disclosure.

(3) A person who

- (a) offers a bribe or other inducement to any person employed in the administration of this Act, for the purpose of obtaining information which could prejudice the safety or security of a participant or the integrity of the Programme; or
- (b) being a person employed in the administration of this Act, accepts any bribe or other inducement in exchange for the information referred to in paragraph (a),

commits an offence.

(4) A person who commits an offence under sub-section (1), (2) or (3) is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for ten years.

(5) A person who, without reasonable excuse, fails to return the documents referred to in section 18(5) in accordance with that section, commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years.

22.(1) Subject to subsection (2), an officer of the Administrative Centre shall not be required to -

Officers not
required to
disclose
information.

- (a) produce in any court or to another approved authority, any document that has come into the custody or control of the Centre in the course of or because of the performance of functions or duties under this Act; or
- (b) divulge, communicate or produce to or before such a body, any matter or thing that has come to the notice of the officer in the performance of functions or duties under this Act,

except where it is necessary to do so for the purpose of carrying the provisions of this Act into effect.

(2) Where, in the determination of legal proceedings, it becomes necessary for the Judge or Magistrate presiding, to be advised of a participant's location and circumstances, an officer referred to in subsection (1) shall disclose the relevant information to the Judge or Magistrate in chambers but the officer shall not disclose the information if any person other than the Judge or Magistrate is present.

(3) The Judge or Magistrate shall not disclose any information received under subsection (2) otherwise than in accordance with this Act.

Requirement
where
participant
becomes a
witness in
criminal
proceedings.

23. (1) Where -

- (a) a person is provided with a new identity under the Justice Protection Programme;
- (b) the person retains that identity, whether or not he remains a participant; and
- (c) the person is to appear as a witness in criminal proceedings under that identity,

the person shall notify the Administrative Centre that he is to appear as a witness in such proceedings.

(2) After being notified under subsection (1), the Centre may take any action it considers appropriate in the circumstances, except that where the person has a criminal record, the Centre shall disclose that criminal record to the court, the prosecutor and the accused person or the accused person's legal representative.

Identity of
participant not
to be
disclosed.

24. If in any proceedings in any court, the new identity of a person who is a participant is in issue or may be disclosed, the court shall, unless it considers that the interests of justice require otherwise -

- (a) hold that part of the proceedings that relate to the identity of the participant *in camera*; and
- (b) make such orders restricting the publication of evidence given before the court as in its opinion will ensure that the identity of the participant is not disclosed.

Annual reports
to the Board.

25. (1) Subject to subsection (2), the Administrative Centre shall submit to the Board, annual reports on the general operation, performance and effectiveness of the Justice Protection Programme.

(2) A report under subsection (1) shall not contain any matter which in the opinion of the Centre, is likely to prejudice the effectiveness or security of the Programme.

(3) In subsection (1), "Board" means the Board of Governors referred to in Article 5 of the Agreement.

26. (1) The Minister may make Regulations prescribing all matters which are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations respecting the establishment of new identities for participants.

(3) Regulations made under subsection (2) are subject to affirmative resolution by the National Assembly.

27.(1) Any Memoranda of Understanding or any arrangements with any person in relation to protection or assistance that existed at the commencement of this Act, shall continue in force on the same terms and conditions until they are replaced by Memoranda of Understanding under this Act.

Transitional.

FIRST SCHEDULE
(Section 6)

OFFENCES WHICH MAY GIVE RISE TO PROTECTION
UNDER THE JUSTICE PROTECTION PROGRAMME

Murder

Manslaughter

Treason

Sedition

Piracy or hijacking

Possession or use of firearms and ammunition with intent to injure

Possession or use of firearms in furtherance of any criminal offence

Aggravated assault

Shooting or wounding with intent to do grievous bodily harm

Robbery

Robbery with aggravation

Armed robbery

Arson

Any sexual offence

Any drug trafficking offence

Kidnapping

Any money laundering offence

Any domestic violence offence

SECOND SCHEDULE
(Section 12)

CONTENTS OF MEMORANDUM OF UNDERSTANDING

The basis on which a prospective participant is to be included in the Justice Protection Programme

The details of the protection or assistance that is to be provided

The terms and conditions upon which protection or assistance shall be provided to the prospective participant

An undertaking that the participant will not compromise, directly or indirectly, the security of, or any other aspect of the protection or assistance, or both, being provided

An undertaking that the participant will comply with all reasonable directions of the Centre in relation to the protection or assistance, or both, provided to him

An undertaking that the prospective participant or participants, as the case may be, shall, if required to do so by the Administrative Centre -

(a) undergo medical tests or examinations and psychological or psychiatric evaluations by medical officers approved by the Centre for those purposes;

(b) undergo drug or alcohol counselling or treatment,

and authorize that the results be made available to the Centre

A list of all outstanding legal obligations and a statement by the prospective participant, of the arrangements which have been made to meet those obligations

A financial support arrangement

An undertaking by the prospective participant to disclose to the Centre, details of any criminal charges that are made against him, and any civil or bankruptcy proceedings that are instituted against him after his inclusion in the Programme

A provision to the effect that protection or assistance under the Programme may be terminated if the prospective participant breaches a term of the Memorandum of Understanding.

THIRD SCHEDULE

**AGREEMENT ESTABLISHING
THE REGIONAL JUSTICE PROTECTION
PROGRAMME**

AGREEMENT ESTABLISHING THE REGIONAL JUSTICE PROTECTION PROGRAMME

The States Parties,

Recognising the need to uphold the integrity of the justice system of Member States of the Caribbean Community (hereinafter referred to as "the Community") and the need to prevent any interference in the administration of justice by the intimidation or elimination of witnesses, jurors, judicial and legal officers, and law enforcement personnel and their associates;

Convinced that a co-operative approach by the Community is the most effective way to confront and overcome the threat;

Conscious of the need to establish, develop and maintain an appropriate and effective infrastructure at the national and regional levels in order to safeguard and enhance the credibility and integrity of the justice system in the Community;

Affirming the importance of the principles of sovereign equality, mutual respect, and friendly relations;

Have agreed as follows:

Article 1 Use of Terms

In this Agreement, unless the context otherwise requires:

"Administrative Centre" means the Department or Ministry charged with responsibility for developing, managing and maintaining the national programme in a State Party;

"approved authority" means the Attorney-General, the Director of Public Prosecutions or the Office with responsibility for criminal prosecutions, the Ministry responsible for national security or competent Department thereof, or such other person or body as the Minister responsible for national security may from time to time designate as an approved authority;

"associate" means a person who, by virtue of his relationship or association with a participant may be considered for protection or assistance under this Agreement;

"Conference" means the Conference of Heads of Government of the Community;

"national programme" means the Justice Protection Programme established in a State Party pursuant to Article 7 of this Agreement;

"participants" means witnesses, jurors, judicial and legal officers, law enforcement personnel, their associates and any other persons to whom assistance or protection is given in accordance with this Agreement and 'participant' shall have a corresponding meaning;

"risk assessment" means an evaluation of the risk or danger which a participant is likely to pose for the receiving community, having regard to the matters specified in paragraphs (ii), (iv) and (v) of the definition of "threat assessment" and such other factors as are considered relevant in any particular case;

"Secretary-General" means the Secretary-General of the Community;

"State Party" means a State Party to this Agreement;

"threat assessment" means an evaluation of the danger to a prospective participant, and includes information on -

- (a) persons who are the subject of judicial or administrative proceedings concerning the case in relation to which the prospective participant has given evidence or is required to give evidence;*
- (b) any criminal organisation interested in the relevant proceedings;*
- (c) the nature of the threat to the prospective participant;*
- (d) the names and other identifying data of all individuals who are likely to pose a danger to the prospective participants;*
- (e) where appropriate, the prospective participant's association with the persons referred to in paragraph (i) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph;*
- (f) the immediacy of the threat;*

"witness" means a person who has given, is obliged to give or has agreed to give a statement or evidence or both -

- (i) in relation to a crime which has been committed against the laws of a State Party or which there are reasonable grounds to believe will be committed;*
- (ii) in a criminal trial in a State Party;*
- (iii) in any civil proceedings in a State Party;*
- (iv) to an approved authority in relation to a crime that has been committed or which there are reasonable grounds to believe will be committed.*

Article 2

Establishment of the Regional Justice Protection Programme

There is hereby established the Regional Justice Protection Programme (hereinafter referred to as "the Regional Programme") having the structure, composition, powers and functions set out in this Agreement.

Article 3**Participation in the Regional Programme**

1. *Participation in the Regional Programme shall be open to Member States of the Community.*
2. *Any other territory which, in the opinion of the Conference, is willing and able to enjoy the rights and assume the obligations established by this Agreement may accede thereto.*

Article 4**Objectives of the Regional Programme**

The objectives of the Regional Programme shall be to promote and ensure the proper administration of justice by providing participants with such protection, assistance and security as would enable them to perform their functions with efficiency and confidence when there is a threat to their lives, safety, or property arising from, or directly or indirectly related to the performance of their duties or obligations in the administration of justice.

Article 5**Establishment of the Board of Governors**

1. *Subject to the direction of the Conference, the Regional Programme shall be administered by a Board of Governors (hereinafter referred to as "the Board").*
2. *The Board shall comprise Ministers responsible for national security of States Parties or their duly designated representatives.*
3. *Each member of the Board shall have one vote.*
4. *The Board shall be convened in an ordinary meeting once in every year and in extraordinary meetings as often as the Board determines.*
5. *Ordinary meetings of the Board shall be convened at the Headquarters of the Community unless the Board, by a simple majority of the members, determines otherwise.*
6. *Subject to the provisions of this Article, the Board shall regulate its procedure.*
7. *The Community Secretariat shall be designated the Secretariat of the Regional Programme and shall provide the support services for the Board.*

Article 6**Functions of the Board**

In order to achieve the objectives set out in Article 4, the Board may carry out the following functions:

- (a) *upon request, advise States Parties on the establishment of national programmes;*
- (b) *identify and mobilise required resources from intra-regional and extra-regional sources for the establishment, development and operation of national programmes and the Regional Programme;*

- (c) approve agreements and working arrangements for the provision of resources for the efficient operation of programmes;
- (d) such other functions as the Conference may determine from time to time.

Article 7
Establishment of National Programmes

1. Each State Party shall establish, develop, manage and maintain a national programme designed to facilitate the achievement of the objectives set out in Article 4.
2. Each State Party shall ensure that its national programme includes the following components:
 - (a) an Investigative Agency;
 - (b) the Office of the Director of Public Prosecutions or the Office with responsibility for criminal prosecutions;
 - (c) an Agency providing protection or assistance or both;
 - (d) an Administrative Centre.
3. Each State Party shall ensure that, having regard to its laws, each component is so structured and composed as to be able to discharge its functions under this Agreement.
4. Without prejudice to the generality of paragraph 1, national programmes shall provide for the training of personnel in the following areas:
 - (a) safe-house establishment and operational procedures;
 - (b) advanced investigative methods and techniques;
 - (c) the preparation of threat and risk assessments;
 - (d) evaluation, including psychological and psychiatric evaluations, of the suitability of participants for entry into long-term protection programmes;
 - (e) management of participants in protective custody;
 - (f) personal security of participants.
5. Each State Party shall establish a mechanism for the review and monitoring of its national programme.

Article 8
Functions of the Investigative Agency

The Investigative Agency shall -

- (a) carry out investigations in relation to an application by a prospective participant for protection or assistance or both;
- (b) prepare and submit to the Administrative Centre, the application which shall be accompanied by -
 - (i) an assessment of the application;

- (ii) a threat assessment including a prison report where the prospective participant is in prison;
- (iii) a risk assessment;
- (c) provide protection for prospective participants in the period prior to the approval for entry into the national programme by the Administrative Centre;
- (d) request emergency protection under the national programme prior to approval of the application by the Administrative Centre.

Article 9
Functions of the Director of Public
Prosecutions or Office Responsible
for Criminal Prosecutions

The Director of Public Prosecutions or the Office responsible for criminal prosecutions shall, where appropriate, prepare and submit applications for protection or assistance to the Administrative Centre, and with respect to witnesses shall -

- (a) satisfy himself as to the credibility of the prospective participant;
- (b) evaluate the nature of the evidence given or to be given;
- (c) certify that the related testimony is essential;
- (d) determine when a participant in the national programme is no longer necessary for the prosecution of the case.

Article 10
Functions of the Agency Providing Protection

The Agency providing protection and assistance shall -

- (a) conduct interviews with prospective participants to establish suitability for entry into the national programme;
- (b) examine the threat and risk assessments submitted by the Investigative Agency;
- (c) require a prospective participant or a participant, as the case may be, to undergo such medical tests and examinations and psychological and psychiatric evaluations as would determine his physical and mental health;
- (d) submit a report to the Administrative Centre on the matters mentioned in paragraphs (a), (b) and (c);
- (e) protect participants approved by the Administrative Centre and those accorded provisional entry into the programme on an emergency basis;
- (f) organise relocation, if necessary, of participants approved pursuant to paragraph (e);

- (g) review threat and risk assessments throughout the relevant proceedings, including any appeal process and, where appropriate, after such proceedings.

Article 11

Functions of the Administrative Centre

1. The Administrative Centre shall be responsible for developing, maintaining and managing the national programme.

2. In general, protection shall be on a short-term basis, that is, until the relevant proceedings are concluded. Long-term or post-trial protection or assistance shall be dealt with on a case by case basis.

3. In discharging its responsibility, the Centre shall -

- (a) make a determination as to the persons who will participate in the national programme on the basis of the submissions from -
- (i) the Investigative Agency;
 - (ii) the Director of Public Prosecutions or the Office responsible for criminal prosecutions, and
 - (iii) the Agency providing protection;
- (b) on the basis of the threat and risk assessments, determine the level and duration of protection or assistance for the prospective participant, taking into account the need to protect associates;
- (c) require the prospective participant to furnish such information as may indicate:
- (i) the financial implications of admitting the prospective participant to the national programme; and
 - (ii) the actual or potential civil and criminal liability of the prospective participant;
- (d) require the prospective participant to conclude an agreement with the Administrative Centre detailing the terms and conditions for participation in the national programme and for terminating that agreement;
- (e) where necessary, facilitate the relocation of participants and the establishment of safe houses;
- (f) liaise with Administrative Centres of other States Parties;
- (g) co-ordinate and relay to approved authorities in States Parties relevant information on threat and risk assessments and other related matters;
- (h) develop guidelines for the effective operation of the national programme;
- (i) establish budgetary requirements and approve and make payments for the subsistence and other allowances of participants;

- (j) take cognisance of the high cost and complexity of providing adequate security for participants and ensure strict compliance with the requirements of Articles 8, 9 and 10;
- (k) undertake such other responsibilities as may facilitate the functioning of the Centre.

4. The Administrative Centre shall prepare and submit annual reports to the Board and make recommendations on policy for its consideration.

Article 12

Scope of Protection under National Programmes

1. States Parties shall take such measures as are necessary and reasonable to protect the safety, health and welfare of participants in national programmes.

2. Such measures may include where necessary -

- (a) providing accommodation;
- (b) defraying relocation expenses;
- (c) providing for living expenses;
- (d) establishing new identities;
- (e) providing assistance in rehabilitation.

Article 13

Register of Participants

1. States Parties shall establish and maintain a register of participants in national programmes. The register may be in electronic form and shall include the following information which shall be accorded a security classification not below "TOP SECRET" -

- (a) the names and addresses of participants;
- (b) assumed names, if any;
- (c) new identities, where appropriate;
- (d) details of convictions, if any;
- (e) case reference;
- (f) date of commencement of participation in the programme and date of termination.

2. States Parties shall determine the conditions under which access to the register may be accorded to an approved authority.

3. The register shall be kept at the Administrative Centre, which shall be responsible for its safe custody.

Article 14

Relocation of Participants

1. States Parties shall co-operate with the Board and each other in the relocation of participants under national programmes.

2. A determination to relocate a participant in a jurisdiction other than the jurisdiction in which the participant ordinarily resides shall be made by the Administrative Centres of the sending State Party and the receiving State Party.

3. Prior to the relocation of a participant in a different jurisdiction, the sending State Party and the receiving State Party shall establish an arrangement determining the rights and obligations of the respective States Parties and the participants being relocated.

Article 15
Legislative and Other Measures

States Parties undertake to adopt such legislative and other measures as are necessary to discharge their obligations under this Agreement to, *inter alia* -

- (a) facilitate in their jurisdictions, the incarceration of persons convicted of offences against the laws of the sending State Party;
- (b) provide protective custody for participants in national programmes;
- (c) protect identities;
- (d) establish offences and sanctions for:
 - (i) unauthorised disclosure of information, corruption and unethical practices;
 - (ii) unlawfully interfering with a participant;
- (e) provide for the liability of a State Party and its representatives resulting from acts or omissions causing injury to participants.

Article 16
Signature

This Agreement shall be open for signature by the Member States referred to in Article 3.

Article 17
Ratification

This Agreement shall be subject to ratification by the Member States referred to in Article 3. Instruments of Ratification shall be deposited with the Secretary-General, and take effect one month thereafter.

Article 18
Accession

Subject to paragraph 2 of Article 3, territories may accede to this Agreement. Instruments of accession shall be deposited with the Secretary-General and take effect one month thereafter.

Article 19
Entry Into Force

This Agreement shall enter into force upon the deposit of three Instruments of Ratification with the Secretary-General, who shall transmit certified copies thereof to the States Parties.

Article 20
Depositary

The Secretary-General of the Community shall be the Depositary of this Agreement.

Article 21
Amendments

This Agreement may be amended by the States Parties. Such amendments shall be ratified by the States Parties and shall enter into force one month after their deposit with the Secretary-General.

Article 22
Notification

States Parties shall notify the Secretary-General of the addresses of their Administrative Centres, and their approved authorities.


Article 23
Withdrawal

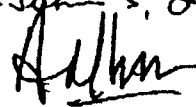
1. A State Party shall not withdraw from this Agreement until three years after its entry into force.

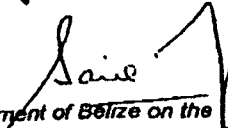
2. A State Party wishing to withdraw from this Agreement shall give twelve months' notice to the Secretary-General. A notice of withdrawal shall not affect the State Party's obligations assumed under this Agreement prior to the effective date of its withdrawal.

IN WITNESS WHEREOF the undersigned duly authorised in that behalf by their respective Governments have executed this Protocol.

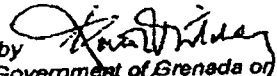
DONE at Trinidad + Tobago on the 6th day of JULY 1999.

Signed by 
for the Government of Antigua and Barbuda on the 13th day of July 1999
at St. John's, Antigua and Barbuda.

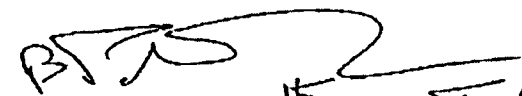
Signed by 
for the Government of Barbados on the 7th day of July 1999
at Port-of-Span, Trinidad and Tobago.

Signed by 
for the Government of Belize on the 6th day of July 1999
at Port-of-Span, Trinidad and Tobago.


Signed by
for the Government of the Commonwealth of Dominica on the
day of 1999 at

Signed by 
for the Government of Grenada on the 5th day of July 1999
at Georgetown, Guyana.

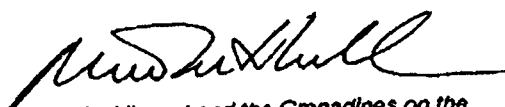
Signed by
for the Government of the Co-operative Republic of Guyana on the
day of 1999 at

Signed by 
for the Government of Jamaica on the 7th day of July 1999
at Port-of-Spain, Trinidad and Tobago


Signed by
for the Government of Montserrat on the day of 1999
at

Signed by 
for the Government of St. Kitts and Nevis on the 7th day of July 1999
at Port-of-Spain, Trinidad and Tobago

Signed by
for the Government of Saint Lucia on the day of 1999
at

Signed by 
for the Government of St. Vincent and the Grenadines on the 7th day of July
1999 at Port-of-Spain, Trinidad and Tobago


Signed by
for the Government of The Republic of Suriname on the day of
1999 at

Signed by 
for the Government of The Republic of Trinidad and Tobago on the 7th
day of July 1999 at Port-of-Span, Trinidad and Tobago

DECLARATION


The representatives of the under-mentioned Governments hereby
declare their intention to apply provisionally the provisions of Protocol VII:

Signed by
for the Government of Antigua and Barbuda on the day of 1999
at


Signed by 
for the Government of Barbados on the 7th day of July 1999
at Port-of-Span, Trinidad and Tobago.

Signed by
for the Government of Belize on the day of 1999
at


Signed by
for the Government of The Commonwealth of Dominica on the day of
1999 at

Signed by 
for the Government of Grenada on the 7th day of July 1999
at Georgetown, Guyana


Signed by
for the Government of the Co-operative Republic of Guyana on the
day of 1999 at

Signed by 
for the Government of Jamaica on the 7th day of July 1999
at Port-of-Span, Trinidad and Tobago

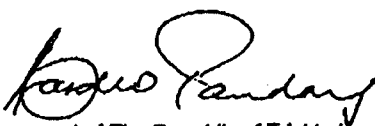
Signed by
for the Government of Montserrat on the day of 1999
at

Signed by 
for the Government of St. Kitts and Nevis on the 7th day of July 1999
at Port-of-Span, Trinidad and Tobago

Signed by
for the Government of Saint Lucia on the day of
1999 at

Signed by 
for the Government of St. Vincent and the Grenadines on the 7th day of July 1999
at Port-of-Span, Trinidad and Tobago

Signed by
for the Government of The Republic of Suriname on the day of
1999 at

Signed by 
for the Government of The Republic of Trinidad and Tobago on the 7th
day of July 1999 at Port-of-Span, Trinidad and Tobago