

SECURING PROTECTION AND COOPERATION OF WITNESSES AND WHISTLE-BLOWERS

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I. SECURING PROTECTION AND COOPERATION OF WITNESSES AND WHISTLE-BLOWERS

A witness is a crucial support in the dispensation of justice in any civilized society. Nowadays we hear a lot of squabbles about unceremonious dismissals or acquittals in sensational criminal cases. One of the reasons for this acquittal is the lack of or recantation/desistance of witnesses.

A witness happens to be the eyes and ears of the Court. The information provided by victims and witnesses aids in the identification and arrest of the suspect. The role of witnesses and the evidence they provide in criminal proceedings is crucial in prosecuting and securing the conviction of offenders.

Conversely, a person witnessing a crime usually experienced trauma. During the course of investigation the witness may suffer harassment and threats from the accused. He or his relatives and loved ones are open to the risk of being threatened, abducted, maimed or even bribed. For all these reasons, a person is reluctant in becoming a witness.

The Philippines has taken appropriate measures to provide effective protection from potential retaliation or intimidation of witnesses in criminal proceedings. Republic Act No. 6981 or “The Witness Protection Security and Benefit Act” was enacted on 24 April 1991, to encourage a person who has witnessed or has knowledge of the commission of a crime to testify before a court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals and from economic dislocation.

II. RATIONALE FOR THE ENACTMENT OF THE LAW

Witnesses for fear of reprisal and economic dislocation usually refuse to appear and testify in the investigation/prosecution of criminal complaints/cases. Because of such refusal, criminal complaints/cases have been dismissed for insufficiency and/or lack of evidence. For a more effective administration of criminal justice, there was a necessity to pass a law protecting witnesses and granting them certain rights and benefits to ensure their appearance in investigative bodies/courts.

III. SALIENT FEATURES OF R.A. 6981 THE WITNESS PROTECTION SECURITY AND BENEFIT ACT

A. Section 2. Implementation of Program

The Department of Justice (DOJ), through the Secretary, formulates and implements the Witness Protection, Security and Benefit Program. The Department may call upon any department, bureau, office or any other executive agency to assist in the implementation of the Program and the latter offices shall be under legal duty and obligation to render such assistance.

B. Section 3. Admission into the Program

Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the Program:

Provided, That:

- a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws;
- b) his testimony can be substantially corroborated in its material points;
- c) he or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony; and
- d) he is not a law enforcement officer, even if he would be testifying against the other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act.

If the Department, after examination of said applicant and other relevant facts, is convinced that the requirements of this Act and its implementing rules and regulations have been complied with, it shall admit said applicant to the Program, require said witness to execute a sworn statement detailing his knowledge or information on the commission of the crime, and thereafter issue the proper certification. For purposes of this Act, any such person admitted to the Program shall be known as the Witness.

C. Section 4. Witness in Legislative Investigations

In case of legislative investigations in aid of legislation, a witness, with his express consent, may be admitted into the Program upon the recommendation of the legislative committee where his testimony is needed when in its judgment there is pressing necessity therefor: Provided, That such recommendation is approved by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

D. Section 5. Memorandum of Agreement with the Person to be Protected

Before a person is provided protection under this Act, he shall first execute a memorandum of agreement which shall set forth his responsibilities including:

- a) to testify before and provide information to all appropriate law enforcement officials concerning all appropriate proceedings in connection with or arising from the activities involved in the offense charged;
- b) to avoid the commission of the crime;
- c) to take all necessary precautions to avoid detection by others of the facts concerning the protection provided him under this Act;
- d) to comply with legal obligations and civil judgments against him;
- e) to cooperate with respect to all reasonable requests of officers and employees of the Government who are providing protection under this Act; and

- f) to regularly inform the appropriate program official of his current activities and address.

E. Section 6. Breach of the Memorandum of Agreement

Substantial breach of the memorandum of agreement shall be a ground for the termination of the protection provided under this Act: Provided, however, That before terminating such protection, the Secretary of Justice shall send notice to the person involved of the termination of the protection provided under this Act, stating therein the reason for such termination.

F. Section 7. Confidentiality of Proceedings

All proceedings involving application for admission into the Program and the action taken thereon shall be confidential in nature. No information or documents given or submitted in support thereof shall be released except upon written order of the Department or the proper court.

Any person who violates the confidentiality of said proceedings shall upon conviction be punished with imprisonment of not less than one (1) year but not more than six (6) years and deprivation of the right to hold a public office or employment for a period of five (5) years.

G. Section 8. Rights and Benefits

The witness shall have the following rights and benefits:

- (a) To have a secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level. When the circumstances warrant, the Witness shall be entitled to relocation and/or change of personal identity at the expense of the Program. This right may be extended to any member of the family of the Witness within the second civil degree of consanguinity or affinity.
- (b) The Department shall, whenever practicable, assist the Witness in obtaining a means of livelihood. The Witness relocated pursuant to this Act shall be entitled to a financial assistance from the Program for his support and that of his family in such amount and for such duration as the Department shall determine.
- (c) In no case shall the Witness be removed from or demoted in work because or on account of his absences due to his attendance before any judicial or quasi-judicial body or investigating authority, including legislative investigations in aid of legislation, in going thereto and in coming therefrom: Provided, That his employer is notified through a certification issued by the Department, within a period of thirty (30) days from the date when the Witness last reported for work: Provided, further, That in the case of prolonged transfer or permanent relocation, the employer shall have the option to remove the Witness from employment after securing clearance from the Department upon the recommendation of the Department of Labor and Employment.

Any Witness who failed to report for work because of witness duty shall be paid his equivalent salaries or wages corresponding to the number of days of absence occasioned by the Program. For purposes of this Act, any fraction of a day shall constitute a full day salary or wage. This provision shall be applicable to both government and private employees.

- (d) To be provided with reasonable travelling expenses and subsistence allowance by the Program in such amount as the Department may determine for his attendance in the court, body or authority where his testimony is required, as well as conferences and interviews with prosecutors or investigating officers.
- (e) To be provided with free medical treatment, hospitalization and medicines for any injury or illness incurred or suffered by him because of witness duty in any private or public hospital,

clinic, or at any such institution at the expense of the Program.

- (f) If a Witness is killed, because of his participation in the Program, his heirs shall be entitled to a burial benefit of not less than Ten thousand pesos (P10,000.00) from the Program exclusive of any other similar benefits he may be entitled to under other existing laws.
- (g) In case of death or permanent incapacity, his minor or dependent children shall be entitled to free education, from primary to college level in any state, or private school, college or university as may be determined by the Department, as long as they shall have qualified thereto.

H. Section 9. Speedy Hearing or Trial

In any case where a Witness admitted into the Program shall testify, the judicial or quasi-judicial body, or investigating authority shall assure a speedy hearing or trial and shall endeavor to finish said proceeding within three (3) months from the filing of the case.

I. Section 10. State Witness

Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:

- (a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;
- (b) there is absolute necessity for his testimony;
- (c) there is no other direct evidence available for the proper prosecution of the offense committed;
- (d) his testimony can be substantially corroborated on its material points;
- (e) he does not appear to be most guilty; and
- (f) he has not at any time been convicted of any crime involving moral turpitude.

An accused discharged from an information or criminal complaint by the court in order that he may be a State Witness pursuant to Section 9 and 10 of Rule 119 of the Revised Rules of Court may upon his petition be admitted to the Program if he complies with the other requirements of this Act. Nothing in this Act shall prevent the discharge of an accused, so that he can be used as a State Witness under Rule 119 of the Revised Rules of Court.

J. Section 11. Sworn Statement

Before any person is admitted into the Program he shall execute a sworn statement describing in detail the manner in which the offense was committed and his participation therein. If after said examination of said person, his sworn statement and other relevant facts, the Department is satisfied that the requirements, it may admit such person into the Program and issue the corresponding certification.

If his application for admission is denied, said sworn statement and any other testimony given in support of said application shall not be admissible in evidence, except for impeachment purposes.

K. Section 12. Effect of Admission of a State Witness into the Program

The certification of admission into the Program by the Department shall be given full faith and credit by the provincial or city prosecutor who is required not to include the Witness in the criminal complaint or information and if included therein, to petition the court for his discharge in order that he can be utilized as a

State Witness. The Court shall order the discharge and exclusion of the said accused from the information.

Admission into the Program shall entitle such State Witness to immunity from criminal prosecution for the offense or offenses in which his testimony will be given or used and all the rights and benefits provided under Section 8 hereof.

L. Section 13. Failure or Refusal of the Witness to Testify

Any Witness registered in the Program who fails or refuses to testify or to continue to testify without just cause when lawfully obliged to do so, shall be prosecuted for contempt. If he testifies falsely or evasively, he shall be liable to prosecution for perjury. If a State Witness fails or refuses to testify, or testifies falsely or evasively, or violates any condition accompanying such immunity without just cause, as determined in a hearing by the proper court, his immunity shall be removed and he shall be subject to contempt or criminal prosecution. Moreover, the enjoyment of all rights and benefits under this Act shall be deemed terminated.

The Witness may, however, purge himself of the contumacious acts by testifying at any appropriate stage of the proceedings.

M. Section 14. Compelled Testimony

Any Witness admitted into the Program cannot refuse to testify or give evidence or produce books, documents, records or writings necessary for the prosecution of the offense or offenses for which he has been admitted into the Program on the ground of the constitutional right against self-incrimination but he shall enjoy immunity from criminal prosecution and cannot be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents, records and writings produced.

In case of refusal of said Witness to testify or give evidence or produce books, documents, records, or writings, on the ground of the right against self-incrimination, and the state prosecutor or investigator believes that such evidence is absolutely necessary for a successful prosecution of the offense or offenses charged or under investigation, he, with the prior approval of the department, shall file a petition with the appropriate court for the issuance of an order requiring said Witness to testify, give evidence or produce the books, documents, records, and writings described, and the court shall issue the proper order.

The court, upon motion of the state prosecutor or investigator, shall order the arrest and detention of the Witness in any jail contiguous to the place of trial or investigation until such time that the Witness is willing to give such testimony or produce such documentary evidence.

N. Section 15. Perjury or Contempt

No Witness shall be exempt from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion pursuant to this Act. The penalty next higher in degree shall be imposed in case of conviction for perjury. The procedure prescribed under Rule 71 of the Rules of Court shall be followed in contempt proceedings but the penalty to be imposed shall not be less than one (1) month but not more than one (1) year imprisonment.

O. Section 16. Credibility of Witness

In all criminal cases, the fact of the entitlement of the Witness to the protection and benefits provided for in this Act shall not be admissible in evidence to diminish or affect his credibility.

P. Section 17. Penalty for Harassment of Witness

Any person who harasses a Witness and thereby hinders, delays, prevents or dissuades a Witness from:

- (a) attending or testifying before any judicial or quasi-judicial body or investigating authority;

- (b) reporting to a law enforcement officer or judge the commission or possible commission of an offense, or a violation of conditions or probation, parole, or release pending judicial proceedings;
- (c) seeking the arrest of another person in connection with the offense;
- (d) causing a criminal prosecution, or a proceeding for the revocation of a parole or probation; or
- (e) performing and enjoying the rights and benefits under this Act or attempts to do so, shall be fined not more than Three thousand pesos (P 3,000.00) or suffer imprisonment of not less than six (6) months but not more than one (1) year, or both, and he shall also suffer the penalty of perpetual disqualification from holding public office in case of a public officer.

IV. ISSUES AND CHALLENGES

A. Admission to Witness Protection Program

Under the law a person who is “testifying or about to testify before any judicial or quasi-judicial body” can be admitted in the program. Provisional coverage for a period of ninety (90) days, subject to re-evaluation, is allowed for witnesses under serious threats so that they can be given certain benefits even if all the required documents for application have not yet been completed. Although application for admission requires strict compliance with statutory requirements, stringent vetting procedures and threat evaluation, the program has liberalized admission requirements especially when threat level on bona fide witnesses in media and political killings is high.

B. Lack of Intelligence and Security Force

Presently, the Program has no existing intelligence and security force. It has to rely to other law enforcement agencies to augment the temporary services of the Intelligence Security and Operations Group (ISOG). Under the set-up, Mission Order of ISOG personnel are issued either by the National Bureau of Investigation (NBI) or the Philippine National Police (PNP).

In the past there were plans for the establishment of an organic security force to strengthen the Program’s organizational structure. From the inception of the Program the protection and security of its witnesses have mainly been provided by its Intelligence Security and Operations Group (ISOG) composed of contractual employees most of whom came from the police and military service. Augmentation, as may be necessary, is provided by the National Bureau of Investigation (NBI) and Philippine National Police (PNP) with whom the Program has an existing Memorandum of Agreement.

The plan however has been shelved mainly because due to the prevailing economic crisis, drastic change (formation of new bureaucracy, creation of plantilla positions) will weigh heavily on its weak logistical support which may be better prioritized for the witnesses’s basic needs.

Moreover, creation of plantilla positions may seem counter to the Program’s highly confidential nature which requires utmost trust and confidence in its employees.

C. Weak Support System

Witnesses often decline to testify for the prosecution not only because of fear of physical harm but more often because of economic dislocation. Through the years the inventory of witnesses and their dependents have dramatically risen together with the high number of cases of national interest, political and Extra-Judicial Killing cases. However, the program has to work on a shoe string budget to fund judiciously and effectively allocate its meager resources to witnesses-clients and to support its administrative and operational requirements.

Although the program provides psycho-social counseling to witnesses as maybe necessary, there is no support system for recreation and self development for witnesses for them to become productive, alongside the protecting and security aspect of the program.

Much as the Program hopes to enhance witness benefits this cannot be done unless the budgetary requirements be made available to them.

D. Uneven Application of the Law

Under RA 6981 any person who has witnessed or has knowledge or information on the commission of the crime and has testified, is testifying or about to testify may be admitted provided that he is not a law enforcement officer even if he would be testifying against other law enforcement officers.

Under the law, policemen and military are not qualified to be admitted under the program; however, in cases in which these law enforcers are testifying against their superiors, who have power and authority over their promotions, assignments and other aspects, it is simply impossible for them to come forward and testify without protection.

In such a case, only the immediate members of his family may avail themselves of the protection provided under the WPP law. However, the WPP has issued Certificates of Admission to police officers with a proviso that only immediate members of his family may avail of the protection provided under the RA 6981.

E. Role of Other Law Enforcers

The law enforcer's role in protecting witnesses: In practice, while the law enforcers encourage witnesses to come forward, they do not take prompt or effective actions to protect them. Under the police force's rules, it is the responsibility of the police to give protection to any person that is being threatened, even if the person is not a witness. If protection is necessary, the police may request/recommend that the DOJ admits the person to the program once a case has been filed. Because of the lack of protection for witnesses at the early stage of the process, such as during police investigations, most cases do not progress beyond the initial stages of investigation.

V. CONCLUSION

Crimes have evolved with the progression of technology. Criminals have become more sophisticated and intelligent. If they cannot find ways to go around the laws and legal procedures, they threatened, harassed or even bribed the witnesses of justice. This extensively challenges the government in terms of law enforcement and crime prevention.

I believe that no amount of law enforcement could prevent or thwart criminal activities. We need vigilance, cooperation and support of the people in the dispensation of criminal justice system. As we impose laws and moral obligations, let us equally provide our citizens with security and protection to counteract the peril of being hunted or harassed by anti social elements. We are obliged to act on account of numerous experiences faced by the courts of witnesses turning hostile due to threats, coercion and monetary considerations at the instance of those in power, their henchmen and hirelings and other innumerable corrupt practices ingeniously adopted to smother and stifle truth. As a result truth and justice become ultimate casualties.¹ Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and

¹ WITNESS PROTECTION-Bird's Eye View, A. Hariprasad.

injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution.