

THAILAND'S WITNESS PROTECTION PROGRAMME

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I. INTRODUCTION

Nowadays, we cannot deny that there are a large number of crimes. Undoubtedly, crimes are increasing in number. This is caused by many factors as the world has been developing dramatically. Technology and state-of-the-art invention play an important role in current crimes. Crimes have changed as the world has developed. The more development in technology, the more sophisticated crimes. This surely adds more difficulty for authorities to enforce the law. States cannot overlook this movement and in fact they have to develop the law to protect our societies from those sophisticated crimes. Today, we have criminal law as our weapon. To prove that a person has committed crimes, evidence must be clearly shown. Evidence can be witnesses, documents and hard evidence. There is a serious problem when a witness does not want to testify against a criminal due to fear for his own safety or even his or her family's safety.

The doctrine of "Witness Protection" comes from an idea to support criminal case proceedings. In the judicial system, no matter what proceeding system a state uses, a judge is always the one who is capable of ruling a judgment. Evidence is the most important source for a judge to rule a case lawfully. A state has the duty to ensure that criminals must be sentenced according to the state's law. To do so the state needs witnesses to testify in a criminal proceeding; however, the state also has a duty to ensure and provide protection to the witness. It is easy to understand that no one would want to do a thing for the state if, by doing so, it would cause harm to himself or his family. If a state cannot enforce the law by bringing criminals to justice, its citizens will not believe and trust in the state's governing power, resulting in a failure socially or even nationally.

II. WITNESS PROTECTION

A. Meaning of "Witness Protection"

"Witness" means a person who commits himself/herself to be present at, or give evidence to a competent official for investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert but not a defendant who himself/herself is a witness.

"Security" means security in life, body, health, liberty, honor, property or any lawful rights of the witness before or at the time of or upon becoming a witness.

"Witness Protection" therefore means the method providing to a witness ensuring his or her safety and his or her family, including everything that he or she is entitled to have by law, in exchange for a witness's testimony.

B. Objective of Witness Protection

- For a competent officer to understand the law and perform his or her duty efficiently.
- For a competent officer to realize his or her authority and power imposed by law, in order for the officer to perform the highest level of protection in each case.
- To predict the number of witnesses in criminal cases in the future by planning and finding solutions against any potential obstacles beforehand.

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C. Method, Authority Power and Duty

The Law “the Witness Protection Act BE 2546” (2003) provides for two strategies.

1. General Provision Strategy

This is the more common strategy. According to the Section 6 of the Act, in a case where a witness loses his or her security, a competent official from criminal investigation, interrogation, prosecution or the Witness Protection Bureau, as the case may be, shall desire for the witness protection measures as deemed appropriate or as requested by the witness or other concerned party. Where necessary, the said person may request a police officer or other official for protection and this must be subject to the witness’s consent.

Protection measures may include arrangements for a safe place for the witness; or change of name/ family name, domicile, identification, and information that would reveal the identity of the witness as appropriate, and the personal status of the witness and the nature of the Criminal case.

The protection of witnesses in general doesn’t apply to the witness only but can also be used for those related to the witness. In a case where a witness’s husband, wife, progenitor, descendant, or person with a close relationship to the witness is affected by the person becoming a witness and would lose security, he/she may request the competent official to design or arrange for measures as deemed appropriate, taking into account the consent of that person.

Protection measures may include arrangements for a safe place for the witness; or change of name/ family name, domicile, identification, and information that would reveal the identity of the witness as deemed appropriate, and the personal status of the witness and also the nature of the criminal case.

2. Special Protection Measures

A witness in the following [types of] cases may be eligible for the privilege of special protection measures:

- A case under the law on narcotic drugs, money laundering law, anti-corruption law, or customs law.
- A case related to national security under the Penal Code.
- A sexual offence under the Penal Code relating to the luring of a person for the sexual gratification of another.
- A criminal offence in the nature of organized crime under the Penal Code, including any crime committed by a criminal group with a well-established and complicated network.
- A case punishable with at least ten years of imprisonment.
- A case that the Witness Protection Bureau deems appropriate to arrange for protection.

Whenever there are explicit circumstances or suspicion that a witness has lost his/her security, the witness or other concerned party, a competent investigation official, competent interrogation official or competent criminal case prosecution official shall apply to the Minister of Justice or his appointed official to arrange for special protection measures, subject to the witness’s consent.

D. Special Witness Protection Detail

The Witness Protection Bureau shall arrange for one or more of the following special protection measures:

- A new place of accommodation.
- Daily living expenses for the witness or his/her dependents not exceeding one year, with extensions as necessary for three months each time, not exceeding two years.
- Coordination with the relevant agencies in order to change the first name, family name and information that may contribute to knowledge of the personal identity of the witness, including arrangements for a return to original status.
- Action to help the witness have his/her own career, and training, education and other means of proper living for his/her life.
- Assistance or action on behalf of a witness for his/her lawful rights.
- Arrangements for a bodyguard service for a necessary period of time.

- Other actions to assist and support a witness with his/her security as appropriate.

E. Possible Benefits

The Witness Protection official can utilize the information and knowledge acquired from protecting the witness to further the case.

This would aid in the planning and determining the protection of the witness, making witness protection more efficient.

F. Principles for Witness Protection

The Witness Protection Bureau has rights and authority as follows:

- Determine the necessity to authorize the use of Witness Protection for the witness.
- Specify or comment regarding the protection measures to be used.
- Set rules and regulations for the witness to follow while under protection and if witness violates any rules that would result in the termination of the witness protection.
- Determine which department or official would be in charge of providing protection to the witness and also the location in which the witness would be protected.
- Determine the necessary weaponry, transportation, equipment and other utilities.
- Set a budget, and total funds to be used in providing protection to the witness.
- Set regulations and guidelines in requesting funds used in protection of the witness.
- Investigate and follow up on the witness protection and also on the expenses requested for the protection.
- Request the witness or any others related to give a statement or request further documentation/evidence to aid in the authorization of the protection of the witness.
- Delegate a sub-committee to pass judgment or carry out tasks set by the board.
- Assess and order the termination of a certain witness protection programme.
- Assess and order the modification of the protection methods or of the regulations set.
- Assess and order the authorization of continued witness protection or terminate the witness protection.
- Assess and order the authorization or termination of witness protection authorized prior to new regulations regarding witness protection in criminal cases.

G. Witness Protection Center

The Department of Special Investigations (DSI, a division of the Ministry of Justice) Regulations regarding the Witness Protection in Criminal Cases gives authority to the Office of Special Operations to be the Witness Protection Center and has rights and authority as follows:

- Administration and management of the Board of Witness Protection.
- Inspect the petition for witness protection filed.
- Assess and offer comments to the Board of Witness Protection.
- Input and file data of witness protection.
- Coordinate and follow up on the witness protection.
- Collect and follow up on data received to be presented to the Board of Witness Protection for further assessment.
- Inspect and give opinion regarding the expenses of a witness protection such that it is appropriate and most efficient.

The Witness Protection Center is also responsible for filing a petition regarding the reward budget and expenses. It is also responsible for acquiring the necessary equipment, transportation, tools and other up-to-date technology to be used in the witness protection and the training, development and improving of the strategy utilized in witness protection.

Data of Witness Protection

Year	Number of Witnesses Under Protection	Completed	Remaining
2004	1	1	0
2005	15	4	11
2006	4	0	4
2007	2	1	1
2008	11	4	7
2009	11	4	7
2010	25	0	25
Total	69	14	55

Diagram showing procedures in obtaining protection

III. PROBLEMS, OBSTACLES AND POSSIBLE SOLUTIONS IN WITNESS PROTECTION

A. Problems and Obstacles in performing Witness Protection

Laws regarding witness protection in criminal cases were only recently established. This is because witnesses in criminal justice cases usually have a problem of coming to court to testify or give false testimony altering the truth due to the fear of their lives, possessions and that of close relations, by means of threats, abuse from those who have direct impact from the case such as powerful figures, or relatives of the defendant all of which effects the criminal justice process as justice is lost by not being able to bring the criminal to be punished by law. Furthermore people who are to become witnesses and also the officials responsible for providing protection of the witnesses' do not fully understand the boundaries, the rights, authority and means of witness protection as there is no clear procedures to follow. It requires officials with experiences in witness protection giving priority to the safety of the witness. The problem in offering witness protection can be further categorized in two sections as follows:

1. Problems and Obstacles received from the Witness under Protection

In order to receive protection the witness must perform and live within certain sets of rules and regulations set prior to the protection being given, resulting in a change and discomfort to their normal life causing witnesses to reach boredom if the court proceedings consumes large periods of time.

Witnesses under protection are given a sum of money as a reward and an allowance is given to those closely related to the witness, the witness is also given an allowance used in purchasing food, paying for the location of stay, and other vital expenses in their daily lives. This can sometimes cause some witnesses to take advantage of requesting funds that are used in an inappropriate manner.

2. Problems and Obstacles faced by Witness Protection Officials

There is lack of the man power to perform the protection voluntarily. This is because it is seen as something that doesn't require any skill, knowledge to perform, the commanding officials also do not show a lot of importance and care towards it. This job doesn't provide progress in a government official's career. Also the lack of female officials to perform the witness protection is a problem as DSI is currently faced with large numbers of female witnesses which is only proper if the protection was given by a female official.

There is also lack of the coordination between the investigating officials and the witness protection

officials, resulting in an inability for the protection officials to predict the dangers that the witness could face and the means to counter it. This also includes problems that could occur to the witness such as illness, family related problems, financial problems, mental health etc. as the protection official has to try to correct alone.¹

No established training course or programmes are available to give knowledge to the witness protection officials. Currently officials rely on their own experiences in operating the protection causing a lack of standardized means of providing protection to witnesses.

Some operations require protection of the witness for a year, or many years before the witness is able to testify in court, leading to the officials becoming bored and unable to perform other tasks.

B. Possible Solutions

- Define clear set of protocols regarding the payment for the expenses required in the operation, to the officials and the witness according to the rights by law. This is to ensure that the official is able to perform their duties fully and able to control the budget for expenses for the witness with great efficiency.
- Provide support for the officials in witness protection that shows great potential and knowledge in this field as it is a job that requires a lot of patience, good wit/senses, skilled in the art of conversation to talk to the witness, and must be able to solve problems that had just occurred straight away. Provide a possible progression in career as an incentive for the officials to continue performing their job.
- Give the power for DSI officials to have a part in deciding and correcting problems of the witness in conjunction with the protection officials. This is so that the problems that occur can be dealt with correctly, not time consuming and suitable.
- Should provide a shift rotation of protection officials so that officials can also go on other operations and perform other duties as assigned by their commanding officers and wouldn't cause the officials to become bored in protecting the witness.
- Organize training for DSI officials regarding the rules and regulations in Witness Protection and also field training in the methods and possible ways to protect witness, skills in proper handling of firearms to ensure a single standard in giving protection to witnesses.

C. Protection of Persons who provide Useful Information relating to Government Officers' Corruption in Thailand

Corruption of officials in government agencies has long been a serious problem for Thailand; hence it is essential to find the appropriate mechanisms and measures to solve this problem. Monitoring is one of the important rights of people in order to participate in this matter by reporting activities which involve corruption. However, it relies on a person acknowledging and highlighting activities that are likely to be in conflict with the public interest or of persons at a higher level within an organization which can be detrimental to that person's career.

Whistleblowing is not only an act of revealing a serious problem in the internal administration of an organization, but also a tool that will bring evidence to legal proceedings of an accused. Nevertheless, whistleblowing comes with a high risk of retaliation for the whistleblower.

A significant factor encouraging whistleblowing is the measure protecting those disclosing information from any activities that may harm their lives, bodies and freedom and it will, definitely, help ensure people enthusiastically reveal information. Moreover, the offering of benefits in addition to protection will be an additional tool to persuade people to reveal information. Government must legislate and implement whistle

¹ All Departments involved with witness protection, fall directly under the control of the Ministry of Justice. As witness protection policies are relatively new to Thailand, the levels and channels of cooperation between the various departments involved, with the aspects discussed in this paper are still to a degree being developed. Many of the relationships between different Bureaus and Departments are currently a little complicated and may go through more than one department, based upon personal contacts to achieve the desired result. More formal channels for inter department cooperation are currently being developed, which should enhance the effectiveness of these programs in due course.

blower protection law into practice which will, in time, create the environment to support whistleblowing. People expect a well-organized system and procedure for whistleblower protection law, and if such exists, people in possession of wrongdoing will feel safe to disclose information.

Unfortunately, currently the protection law is not adequate because a non-government agency must be founded to create principles and policies for the process of protection and to play an additional role as an authority to protect the whistleblower. It apparently seems that the prevention of corruption within an organization requires the establishment of legislation for whistleblower protection, which will not only benefit the country in the development of proficient skilled officers to solve problems related to corruption and unity, but also save the country's resources (funds and human resources) by founding of a new non-government agency to oversee whistleblower protection. Finally, it will be good for the country by helping to encourage confidence through the general populace in Government authority.

Thailand introduced legislation in 2008 to cover many aspects of corruption in Government agencies with sections 53-57 focusing on protection of the Whistleblower. These sections allow the Office of the National Anti-Corruption Commission to provide initial protection to a witness and grants authority for allocation of protection to an accused person, a witness or another involved party, as well as family members or others closely known to the whistleblower who may be at risk. Allocation of funding to a protected party is decided and allocated by a committee. In cases where the information is especially important or sensitive, the committee is empowered to take additional measures to ensure the reputation and credibility of the witness is also assured, in addition to physical safety. In the case of Government employees where the nature of the information disclosed may prejudice their continued employment in the same role or office, special measures are available to ensure their career will not be adversely affected by their revelations. The act also allows for the committee to allow a person who reveals information to be granted immunity from prosecution and to be entered into the witness protection programme. Penalties both financial and custodial exist for any person who reveals or discloses information about the identity or whereabouts of any protected person.