

SECURING PROTECTION AND COOPERATION OF WITNESSES AND WHISTLE BLOWERS

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I. BACKGROUND

Witnesses are crucial factors in the dispensation of justice in any civilized society. In the criminal justice system, prosecution of cases fails or succeeds, depending on the willingness of witnesses to testify.

A witness is the “eyes and ears” of the Court. The information provided by a witness aids in the identification and arrest of the suspect. A witness is often times indispensable in the conviction of the accused.

Witnesses to crime usually experience trauma. Worse, he and/or his family and loved ones are at risk of being harassed, threatened, influenced, bribed, hurt, harmed or even killed by influential and powerful individuals or groups, especially in organized crimes. A witness is forced to change residence and leave his work. He will endure tremendous personal, family and financial inconvenience. For these reasons, a person is usually reluctant, or even refuses to be a witness.

The Philippine government has taken appropriate measures to provide effective protection against potential retaliation to witnesses in criminal proceedings and grants them rights and benefits as well. Republic Act No. 6981 or “The Witness Protection, Security and Benefit Act” was enacted on 24 April 1991 by President Corazon Aquino, 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.

Under the law, the Department of Justice (DOJ), through the Secretary as Chief Implementor, 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 are legally obliged to render such assistance (Section 2, RA 6981).

II. SALIENT FEATURES OF THE LAW

A. Admission into the Program (Section 3, RA 6981)

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:

- 1) 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;
- 2) his testimony can be substantially corroborated in its material points;
- 3) 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
- 4) 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

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provided for under this Act.

B. Witness in Legislative Investigations (Section 4, RA 6981)

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.

C. Duties and Responsibilities of a Witness (Section 5, RA 6981)

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

- 1) 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;
- 2) to avoid the commission of a crime;
- 3) to take all necessary precautions to avoid detection by others of the facts concerning the protection provided him under this Act;
- 4) to comply with legal obligations and civil judgments against him;
- 5) to cooperate with respect to all reasonable requests of officers and employees of the Government who are providing protection under this Act; and
- 6) to regularly inform the appropriate program official of his current activities and address.

C. Breach of the Memorandum of Agreement (Section 6, RA 6981)

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.

D. Confidentiality of Proceedings (Section 7, RA 6981)

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 year but not more than six years and deprivation of the right to hold a public office or employment for a period of five years.

E. Rights and Benefits of a Witness Admitted to the Program (Section 8, RA 6981)

The witness shall have the following rights and benefits:

- (1) 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.
- (2) 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.
- (3) 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 there from: Provided,

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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.

- (4) 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.
- (5) 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.
- (6) 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 (P 10,000.00) from the Program exclusive of any other similar benefits he may be entitled to under other existing laws.
- (7) 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.

F. Speedy Hearing or Trial (Section 9, RA 6981)

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.

G. State Witness (Section 10, RA 6981)

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:

- (1) 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;
- (2) there is absolute necessity for his testimony;
- (3) there is no other direct evidence available for the proper prosecution of the offense committed;
- (4) his testimony can be substantially corroborated on its material points;
- (5) he does not appear to be most guilty; and
- (6) he has not at any time been convicted of any crime involving moral turpitude.

H. Sworn Statement (Section 11, RA 6981)

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 of this Act and its implementing rules are complied with, 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.

I. Effect of Admission of a State Witness into the Program (Section 12, RA 6981)

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.

J. Failure or Refusal of the Witness to Testify (Section 13, RA 6981)

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.

K. Compelled Testimony (Section 14, RA 6981)

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.

L. Perjury or Contempt (Section 15, RA 6981)

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.

M. Credibility of Witness (Section 16, RA 6981)

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.

N. Penalty for Harassment of Witness (Section 17, RA 6981)

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

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- (1) attending or testifying before any judicial or quasi-judicial body or investigating authority;
- (2) reporting to a law enforcement officer or a judge the commission or possible commission of an offense, or a violation of conditions or probation, parole, or release pending judicial proceedings;
- (3) seeking the arrest of another person in connection with the offense;
- (4) causing a criminal prosecution, or a proceeding for the revocation of a parole or probation; or
- (5) 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.

Pursuant to the directive of DOJ Secretary De Lima to strengthen the Witness Protection Program, the following measures have been recommended for implementation:

1. Proactive Implementation

Program's implementors in the regions have been directed to adopt a proactive stance in seeking out witnesses in cases involving political killings, media murders and human rights violations. Although application for admission for witness protection coverage necessarily requires strict compliance with statutory requirements, stringent vetting procedures and the identification and evaluation of threats, program personnel have been directed to liberalize admission requirements particularly when threat level on bona fide witnesses in media and political killings is high.

2. Enhancement of Witness Benefits

Witnesses often decline proposal to testify for the prosecution not only because of fear of physical harm but more often because of economic dislocation. To allay witnesses' uncertainty because of a drastic change in their way of life upon admission into the Program, economic benefits and social services should be enhanced.

Psychological counseling which are presently undertaken in coordination with the Department of Health and Department of Social Welfare and Development shall be extended ample logistical support.

Direct financial assistance shall likewise be increased to ameliorate witness's economic condition.

Increase in employees' benefits.

3. Skills Training for Witnesses

To prepare witnesses in re-joining mainstream society after their discharge from the Program as protected witnesses and to lessen their dependence on the Program consistent with security requirements, a wide-ranging vocational orientation-training program is being undertaken in cooperation with Technical Education and Skills Development Authority (TESDA) and/or Technology and Livelihood Resource Center (TLRC) to prepare them for suitable employment here and abroad.

4. Institutionalization of Coordination with Judiciary and other Pillars of Criminal Justice System

Speedy disposition of cases is a key feature in the maintenance of a reliable and credible witness protection program. Prolonged pendency of cases particularly before the high courts results to apathy and indifference of witnesses on the success of the case. Loss of opportunity, isolation and boredom associated with extended confinement in relocation sites and safe houses away from native community and relatives dampen witnesses' resolve to testify.

5. Upgrade in Training and Equipment of Protective and Administrative Personnel

Acquisition of firearms suitable for encounters, body armor and communication equipment for use of protective personnel are essential requirements for enhancement of the Program's protective capability.

Upgraded training of administrative personnel should likewise be undertaken to keep them posted on trends in record keeping and confidentiality.

Purchase of utility vehicles to augment the Program's aging fleet to transport witnesses from regional relocation sites to trial venues across the country is an operational necessity for the security and well being of witnesses.

III. IMPLEMENTATION OF THE WITNESS PROTECTION PROGRAM

Although there has been a marked increase in the number of applications for coverage under the WPSB Program due mainly to the increasing awareness of the importance of protecting witnesses in the prosecution of heinous crimes, the Program has remained under resourced. From the stand point of the prosecutors and law enforcers, witness protection and care has become a vital tool in the effective prosecution of criminal cases.

From only six admissions in its inception in 1991, the Program has expanded its operations through the years. For the period covering 1 January 2011 to 30 June 2011, a record of 74 applications were filed with the Program. Out of this number, 70 applicant witnesses were admitted and added to the witnesses already being maintained by the Program. As of 30 June 2011, the Program had under its coverage a total of 471 witnesses nationwide.

The increase in the number of witnesses in 2010 is partly due to the infamous Maguindanao Massacre with which claimed 57 innocent lives. Suspects, including members of the powerful Ampatuan political clan, have been charged with 57 counts of murder. These cases are pending trial before the Quezon City Regional Trial Court. Hundreds of persons have been indicted in these cases. Because of the huge number of witnesses and the gravity of the offences, and the notoriety of the accused, these cases gained national interest. Hence, the Program poured tremendous resources to secure the witnesses in these cases.

From the assumption to the Presidency of His Excellency, President Benigno C. Aquino, III, 1 July 2010, up to 30 June 2011, 193 applications for coverage under the Program have been filed with 155 having been approved.

On the other hand, form the period 1 January 2011 – 30 June 2011 out the 34 cases decided with witnesses covered under the Program testifying, 32 cases have been won, thereby posting a conviction rate of 94%.

IV. PROGRAM SPECIAL CONCERNS: MEDIA MURDERS, EXTRA JUDICIAL KILLINGS, AMPATUAN MAGUINDANAO MASSACRE & REBELLION CASES

Because of the rise in media murder cases and extrajudicial killings, the Philippines was labelled by the international media organizations as the most murderous country for journalists.

To dispel the impression that in our country many killers and masterminds of journalists who expose corruption in government get off the hook owing to the weakness of our criminal justice system, DOJ Secretary Leila De Lima directed the Program implementors to be involved in case buildup, identification of potential witnesses under threat, filing of charges, securing of warrants and relocation of witnesses in a number of cases.

V. SOME CASES WITH WITNESSES COVERED BY THE PROGRAM

A. People of the Philippines versus Joseph Ejercito Estrada, et.al. for Plunder

This case sets a historical precedent as the accused was a president of the country. Plunder is the act of public officers of amassing immense wealth through a series or combination of overt or criminal acts, in violation of the public trust. Estrada was convicted for the systematic collection of 545 Million Pesos in illegal gambling pay-offs and the receipt of 189 Million Pesos commission from stock market purchases using state pension funds. The Program covered 12 witnesses over a period of ten years and spent a total of 11.6 Million Pesos for their protection and well-being.

B. People of the Philippines versus Amin Iman Boratong et.al. for Drug Trafficking

Operatives of the Anti-Illegal Drugs Special Operations Task Force in a City in Metro Manila raided an area notorious for sale and distribution of illegal drugs leading to the eventual arrest of the operator Boratong, his wife and their cohorts who were convicted and sentenced to life imprisonment. Because Boratong earned at least 900 Million Pesos in this shabu business, he is also charged of money laundering. The Program covered two vital witnesses including Boratong's right hand man whom he threatened and attempted to bribe.

C. People of the Philippines versus Congressman Romeo Jalosjos for Statutory Rape

The Program covered the victim/complaining witness who was sexually abused on several occasions by then incumbent congressman of Zamboanga del Norte, a province in southern Philippines. The victim and three (3) other witnesses were granted financial assistance and protection for six years until Jalosjos was sentenced to two life terms. Jalosjos was so influential that while in jail but pending appeal of the conviction, he managed to be re-elected. However, he was dropped from the rolls of the House of Representatives when the Supreme Court later affirmed his guilt.

D. People of the Philippines versus Estanislao Bismaros, et.al. for Murder

Journalist Marlene Esperat was a crusader against corruption and for good governance. She was killed in her residence in front of her husband and children because of her exposé of the 432 Million Pesos fertilizer fund scam in the Department of Agriculture involving high ranking officials. Three of the accused were convicted and sentenced to life imprisonment but the suspected masterminds remain at-large. Six witnesses were covered by the Program, three of whom are the victim's children.

E. People of the Philippines versus Mayor Antonio Sanchez, et.al for Rape with Homicide

Antonio Sanchez, then the mayor of Calauan, Laguna and his men, including the Chief of Police of said town, were convicted of the crime of rape with homicide and murder on seven counts and all of them sentenced to seven terms of life imprisonment, for each raping Aileen Sarmienta and killing her and her boyfriend Allan Gomez. The Program covered two witnesses who were both members of the security team Sanchez. In another unrelated case, Sanchez was also given a double life term by the Supreme Court.

F. People versus Claudio Teehankee, Jr. for Murder and Homicide

These cases gained wide publicity because the perpetrator of the crime was the son of a former Chief Justice of the Supreme Court and brother of a former Undersecretary of the Department of Justice. Many people expected acquittal of Teehankee but he was found guilty of murder and homicide. The Program secured and protected the mother of victim Maureen Hultman.

G. People of the Philippines versus Senior Police Inspector Jose Flores, et. al. for Murder with Unintentional Abortion, Murder (2 Counts) and Frustrated Murder

Six police officers framed four women for shoplifting, detained them for two days then assaulted and stabbed them. As a result, three women were killed and one of them was pregnant. The Program covered the lone survivor and only eyewitness, Myrna Diones. Five of the accused were convicted and sentenced to life imprisonment while one of them was acquitted.

H. People of the Philippines versus Fransisco Juan Larranaga, et.al. for Kidnapping and Rape with Homicide

The program covered seven witnesses against seven accused who included scions of rich, prominent, influential families in Cebu who raped and killed sisters Jacqueline and Marijoy Chiong. Foreign groups from Europe especially from Spain lobbied for the accused because the one of them is a Spanish citizen but they were all convicted.

VI. ISSUES AND CHALLENGES

A. Intelligence and Security Force

The Program has no organic intelligence and security force. The Intelligence Security and Operations Group (ISOG) is composed of contractual personnel and sometimes augmented by the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) as may be necessary. In the past, there were plans for the establishment of an organic security force to strengthen the Program's organizational structure. The plans were shelved mainly because of financial constraints. Salaries for new positions would weigh

heavily on the budget of the Program and would affect the financial and other needs of witnesses.

B. Support System for Witnesses

Witnesses often decline to testify for the prosecution not only because of fear of harassment or physical harm but more often because of economic dislocation. Relocation and confinement to a safehouse result in loss of opportunities, isolation and boredom. The program strongly pursues speedy trial as a vital measure to avoid witnesses becoming disinterested and also recognizes that witnesses need a strong support system to sustain their resolve. For example, professionals are needed to address the needs of witnesses for psychosocial counseling. Job skills and livelihood training to prepare them to rejoin mainstream society and the competitive work force are also required. To address this concern, the Program has engaged the services of trained counselors from the Department of Health and trainers from the Technical Education and Skills Development Authority and the Technology and Livelihood Resource Center which are also government agencies. They are enjoined to keep confidential all matters pertaining to the witnesses.

C. Disqualification of Law Enforcement Officers

Under the law, law enforcement officer is not qualified to be admitted to the Program. This poses a problem in a case where he will testify against his superior who has power and authority over him. In such a case, only the immediate members of his family are covered by the Program and may avail of witness protection and benefits.

D. No Special Protection to Witnesses in the Early Part of the Investigation

Some cases do not progress beyond the initial stage of police investigation because of the lack of special protection to witnesses at this point. If protection for a witness is necessary, the police or thereafter the prosecutor during preliminary investigation may recommend that a witness be admitted to the Program. Admission to the program requires strict compliance with statutory requirements and careful evaluation, hence, it takes time. As a stop-gap measure, the Program has liberalized admission requirements and processes if the level of threat is high and especially in cases of killing by organized groups or when it politically motivated or when the victim is a member of a media. Provisional coverage for a period of 90 days, subject to re-evaluation, is allowed for witnesses so that they can be afforded protection and other benefits, pending completion of the requirements and final evaluation of their application.

VII. PROPOSED AMENDMENTS TO RA 6981

A. Proposed Amendments to the Witness Protection Security and Benefit Act (Republic Act No. 6981)

A bill was introduced in Congress proposing several amendments to RA 6981. The Department of Justice was invited to submit its recommendations to the Committee on Justice. The proposed amendments to RA No. 6981 seek to:

1. Create a separate Witness Protection Program that will cover witnesses in legislative investigations;
2. Increase the penalty for violation of the confidentiality rule;
3. Prohibit the courts from issuing injunctions or restraining orders against the admission of witness;
4. Empower the Secretary of Justice to order the concerned agencies to effect a change in the name, middle name, or surname of a witness;
5. Clarify that the admission of an offender under the Program is distinct and independent from a discharge of an accused from an information or criminal complaint by the court in order that he may be a state witness pursuant the Rules of Court;
6. Increase the penalty for a witness who, after having been admitted the Program, refuses to testify.