

PARTICIPATION OF THE PUBLIC AND VICTIMS FOR MORE FAIR AND EFFECTIVE CRIMINAL JUSTICE ADMINISTRATION

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I. INTRODUCTION

In any civilized society of today, the word justice (or injustice) refers to the rules and procedures that characterize social practices which are applied to the actions of individuals who participate in these practices. When we speak of a breach of the rules of 'natural justice', we are referring to arbitrariness suffered by an individual in a ruled-governed process (Barry P. Norman, 1955; *An Introduction to Modern Political Theory*; p.149). Thus, when we talk about justice, it implies equality before the law, otherwise certain forms of inequality are arbitrary and unjust.

As Rawls himself says, "*Justice is the first virtue of society*" (Rawls, J.; 1972, *The Theory of Justice* p.3) and most people would agree that, although a society may exhibit other moral values than justice, a society characterized by injustice would be especially blameworthy. Not only is it right to act justly, it is also specifically wrong to act unjustly.

II. DEFINITIONS OF JUSTICE

The Webster dictionary defines justice as the administration of law, authority or jurisdiction in conformity with moral principles or law. According to Barry, the conventional accounts of justice normally begin by stating a fundamental rule that derives from Aristotle. The theory is that justice means treating equals equally and

unequals unequally, and that unequal treatment should be in proportion to the inequality (Barry P. Norman; *Modern Political Theory*; 1995; p.153).

III. DEFINITIONS OF THE CRIMINAL JUSTICE SYSTEM

Newman D.J defines the criminal justice system as, "*a system that enforces traditional systems, analysis of which includes describing the structural inter-relationship of legislative, appellate court, enforcement and administrative agencies, as well as their corresponding process of decision making from the arrest of suspects through charging, adjudication, sentencing, imprisonment and release on parole*". Reid (1982) defines the criminal justice system as, "*the agencies responsible for the enforcement of criminal law including legislation, police, courts and corrections. Their processes of decision making consists of the prevention, detection and investigation of crime; the apprehension, accusation, and detention and trial of suspects; the conviction, sentencing, incarceration or official supervision of adjudicated defendants*".

IV. EQUALITY IN THE MALAYSIAN CONTEXT

In Malaysia, a similar expression is found in Article 8(i) of the Federal Constitution, which guarantees that: "*All persons are equal before the law and entitled to the equal protection of the law*." This expression of "equal protection of the law", was implanted in *tote* (derived form) from Art.14 and Art.4 of the Indian and

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Pakistani Constitution, respectively. It must also be mentioned here that although the Reid Commission in 1957 felt that fundamental individual rights were already established throughout Malaysia, nevertheless they felt that there should be a constitutional safeguard because of apprehensions about the future [Federation of Malaya (Constitutional Commission, 1956-1957 Report, Paragraph 161)].

**V. POLICE ROLE IN THE
CRIMINAL JUSTICE SYSTEM**

Police are one of the integral components of a criminal justice system. The police are always referred to the “long arm of the law”, “law enforcers”, as well as “peace mediators”. In the course of the execution of their official duties, there may be some shortfalls or flaws in police actions. Such police actions are pertaining to sections 3(3) of the Police Act, 1967; sections, 15, 28 and 117 of Criminal Procedure Code (Arrest); sections 54 and 62 CPC (Search); and sections 387 and 388 CPC (Bail). If police personnel, are ‘*ultra vires*’ of their official jurisdiction in the course of performing their duties, or contravene any of the above mentioned sections of law, their actions, if done without due care and proper accountability, may result in a miscarriage of justice on the part of the persons concerned.

As Alan E. Ellis said about law and justice, “*The concept of law, using law and law enforcement, is only part of the large idea of justice.....Justice includes the use of law and it can't really exist in society without order. But the idea goes beyond both law and order. It is close to what might be called fundamental fairness, liberty or almost moral decency.....*”.

As law enforcement is the most critical and visible component of the criminal

justice system, the police, in executing their official duties, must ensure that any shortfall in police action does not result in “justice denied” to the person concerned. In order to ensure and guarantee that justice is neither delayed nor denied, Vincent Ng Kim Khoay, J.C. in *PP v Lee Eng Kooi* (1993) 2 AMR (Supp. Rep) 480 rightly said, “*Public interest consideration demands that criminals are apprehended, rightly charged, fairly tried, justly convicted and appropriately sentenced. It is only through an interplay of good law officers (police), honest and able DPPs, ethical lawyers and competent magistrates and judges that these essential links in the administration of justice and maintenance of law and order are ensured for society. A shortfall in any these links hardly serves the public interest*”.

**VI. PUBLIC ALSO HAS A ROLE TO
PLAY IN CRIME PREVENTION**

The surge in the crime rate last year, as revealed by the police, is a reminder that the people must never take safety and security for granted. According to statistics, the crime index rose from 87,902 cases in 1996 to 121,176 in 1997 (index crime is made up of violent and property crimes). Policing say the increase was significant, compared with the rise of 6,681 cases or 8.23% in 1996 from 81,221 cases in 1995. In 1997 property crime topped the list with 104,257 cases, an increase of 28,695 or 37.98%. The police had solved 17,824 property crimes and 7,916 violent crimes. In the wake of these statistics, questions have been asked as to whether we have done enough to prevent crime. While we recognise that the police have a major role to play, the responsibility is not ours alone. One leading newspaper recently pointed out that while Malaysia is a comparatively safe country to live in, its citizens and residents should remember that these are extraordinary times.

VII. COMMUNITY CRIME PREVENTION : WHY IS IT IMPORTANT ?

Community crime prevention means people sharing the responsibility for making the place where they live more secure. It doesn't mean taking on the role of the police, but using valuable police resource more effectively.

The premise for community crime prevention is the same as for any community endeavour - when people pull together to solve common problems, much is possible. Since residents know their own communities better than anyone, they can often find solutions ideally suited to the social and cultural identity of their community.

Obviously, for a community to undertake a successful crime prevention program, an organized approach and a strong sense of commitment are needed. In most communities, there are individuals and groups with a proven track record of organizing any number of local projects. Frequently these people are leaders and volunteers alike and will have a long-standing commitment to improving the quality of community life.

A growing number of community-based organisations are now taking action or looking for ways they can be involved in crime prevention programs. Some take part in programs such as Neighbourhood Watch. Others are creating new programs designed to meet the specific situation in their community.

VIII. COMMUNITY POLICING/ ACTIVITIES FOR ENHANCING PUBLIC AWARENESS

A. Malaysia Crime Prevention Foundation (MCPF)

The Malaysia Crime Prevention

Foundation (MCPF) was established on 12 January 1993. The launching of the Foundation was officiated by the Honourable Prime Minister of Malaysia, Dato' Seri Dr. Mahathir Mohamed, who is also the patron of the Foundation.

1. Objectives

- (i) The Foundation aims to contribute to the enhancement of effective measures for crime prevention and the treatment of offenders by way of survey, research and other programmes. This is the basis of solidarity and mutual co-operation among persons involved with criminal justice system in countries of the Asian region; pursuing the ultimate goal of peace and stability in the region.
- (ii) The Foundation shall also promote public awareness of, and participation in, crime prevention efforts in tandem with the co-ordinated efforts of government and private organisations interested or involved in crime prevention and the criminal justice system.
- (iii) The Foundation shall receive and administer all funds for the fulfilment of the above objectives for the benefit of all Malaysians, irrespective of race, creed or religion.

2. Activities

In furtherance of its declared objectives, the Foundation shall undertake the following activities:

- (i) Organise, co-ordinate, promote activities and assist other organisations, institutions, bodies and persons for the purpose of crime prevention.

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- (ii) Organise or assist in organising public lectures, training sessions, symposia, seminars, exhibitions and other meetings concerning research, training and public enlightenment and awareness in connection with crime prevention and the treatment of offenders.
 - (iii) Conduct, assist or encourage such activities as surveys, research and related activities in the field of crime prevention and the treatment of offenders.
 - (iv) Publish and distribute pamphlets, periodicals and other relevant literature to expound the aims and objectives of the Foundation, subject to the prior approval of the relevant authority.
 - (v) Publish, exchange and distribute documents and source materials concerning crime and criminal justice, mainly in Asia.
 - (vi) Send, invite, assist in sending or inviting researchers and experts in the field of crime prevention and the treatment of offenders, regardless of their place of residence.
 - (vii) Assist the activities of those who work for the rehabilitation of victims, offenders and former offenders in Malaysia.
 - (viii) Collaborate and co-operate with other related organisations inside and outside Malaysia, particularly the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI) and other similar regional organisations.
 - (ix) At least 70% of all income of the donations to the Foundation shall be utilised for the fulfilment of the declared objectives of the Foundation.
 - (x) Collect and receive grants, endowments, donations and legacies from individuals or organisations or from any other source for the promotion of the objectives of the Foundation.
 - (xi) Solicit funds to support and sustain non-commercial activities organised in fulfilment of its declared objectives.
 - (xii) Generate income by utilising not more than 30% of all income and donations to the Foundation in short-term investments, the profits of which shall be used solely to fulfil the objectives of the Foundation.
 - (xiii) Contribute towards the rehabilitation of and assistance to the victims of crime, where such assistance is considered by the Foundation to be appropriate according to the merits of each case.
3. Membership
- (i) *Ordinary Members:* All individuals whose applications for membership have been approved by the Executive Council. A university or university college student may become a member with the prior approval of the vice-chancellor of the university concerned.
 - (ii) *Honorary Members:* Individuals who have been considered by the Executive Council to be appropriate because of their outstanding contributions to the activities of the Foundation.

(iii) *Corporate Members:* Duly constituted associations, clubs or other similar bodies interested in or contributing to the activities of the Foundation and considered by the Executive Council to be appropriate for the honour.

(iv) *Life Members:* The Executive Council may, in its absolute discretion, grant life membership to members who have made outstanding contributions to promote the activities of the Foundation.

The Executive Council may fix an entrance and subscription fee for members and may, from time to time, vary the same, subject to the approval of the Registrar of Societies. The entrance fee shall be RM20.00 and the annual subscription fee shall be RM30.00. Corporate members shall pay an entrance fee of RM2000.00 and annual subscription fee of RM2000.00.

The Executive Council shall have full power and discretion to approve or refuse applications for membership to the Foundation. Only ordinary members, life members and representatives of corporate and associate members are eligible to vote and be elected or appointed to the Executive Council. Each corporate and associate member may nominate a number or representatives, as determined by the Executive Council, to participate in the activities of the Foundation. Corporate and associate members are each eligible to a single vote.

Membership shall be terminated on the following grounds:

- (i) When the member resigns their membership from the Foundation;
- (ii) On their demise;
- (iii) When the member has been

dismissed from being a member.

A member intending to terminate their membership shall submit a written notice of intention to the Chairmam of the Executive Council. The Executive Council may dismiss a member from membership in any one of the following circumstances:

- (i) When a member has damaged the reputation of the Foundation or acted in a manner prejudicial to the objectives of the foundation;
- (ii) When a member has acted against their membership obligations;
- (iii) When a member is conspicuously in default of membership dues and continues to neglect the reminders for payment.

No subscription or part thereof, nor entrance fee, if any, shall be returned to a member upon ceasing to be a member by resignation, expulsion or termination of his membership. The Foundation is not under the purview of the police, even though it has police officers within it. It is an NGO.

B. Central Monitoring System (CMS)

The Malaysia Crime Prevention Foundation (MCPF) is going all out to reduce crime in the country. Two of its current projects are the Central Monitoring System (CMS) and Safe City Concept, which are aimed at making it more difficult for people hoping to embark on a life of crime.

One of the main projects of the foundation is the implementation of a crime-fighting tactic known as the Central Monitoring System (CMS) which will allow the public to actively in combating house break-ins. With the CMS, the government won't have to recruit more police personnel and incur extra cost, especially at a time when austerity drives are being adopted nation-wide. Even if the economy was still

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bullish, the public must play its part in order for the police to effectively combat crime.

The public expects the police to be responsible for ensuring everybody's safety; it is impossible. With our nation's current population of 21 million, the ratio of police personnel to civilians is 1:273. The logistics of this ratio are indeed a handicap. There is no way everybody can be protected all the time. Based on limited human resources, the best that the police can do is introduce efficient crime-busting systems, step up patrols and quickly respond to distress calls.

At one time, we had neighbourhood watch groups such as *Rukun Tetangga*, but they fizzled out. People are either too busy with their daily affairs or do not want to spend time on such activities. The CMS will be implemented at the planning stage of a housing scheme or township and will represent a partnership between the developer, police and residents. The first scheme to go online with the system will be *Bandar Utama Damansara* in Petaling Jaya. When operational sometime this year, this upper-middle class residential estate will be the test-bed for an array of hi-tech equipment and newly devised laws. The CMS uses a sophisticated computer system with a control or operations room which is connected to the houses of subscribers. In the event of a break-in, sensors or cameras trigger off a signal in the control room. The control room will be monitored by watch-constables who are trained to respond immediately to any intrusion.

The watch-constable won't be run-of-the-mill security guards. Under Section 9 of the Police Act, they will be empowered to arrest suspects. This will make it easier for them to carry out their duties. The police force will give support to the watch-

constables. For example, if an alarm goes off in a house, a watch-constable will notify the police before rushing to the scene. But if he arrives first, he can apprehend the unauthorized intruder. The watch-constables will be under the direct employ of the security company operating the CMS on behalf of the housing developer. However, the police will monitor their selection. They will have to undergo training at the Police Training Centre (Pulapol) and come under the command and control of an area's OCPD.

As for the cost of the CMS, any service rendered will have to be paid for. The cost will be a nominal monthly fee, which will vary depending on the type of system installed. With wide usage, we believe the cost of installing a CMS will be reduced, as was the case with hand-held phones, which are much cheaper now than when they were first introduced. In time, it may become a necessity rather than a luxury. The CMS will give house owners total peace of mind. It is actually a system which provides on-line communication, protecting homes against intrusion by unauthorised persons.

State-of-the-art onsite sending devices will alert trained personnel who will monitor a control room 24 hours a day. They can then take immediate action should the need arise. Most CMS stations are also equipped with monitors to enable the controllers to view clients' premises, thereby helping to minimise the time taken to check the status of an alarm. Such monitoring can be done by installing special cameras with infrared sensors in strategic locations such as the living room, kitchen, staircase and study.

Every case will be investigated immediately, but only in genuine situations will clients be alerted and call the police for back-up. If the police come, watch-

constables will assist in giving them an account of the burglary progress and location in the house. This will help the police to act fast and accurately.

The government will be careful in the selection of firms participating in the CMS programme. Any security firms intending to appoint watch-constables will have to apply to the Home Ministry for a licence. Only when the Ministry is satisfied that the applicant fulfils all its requirements will it grant approval.

C. Safe City Initiatives

The MCPF, spearheading the move to ensure safety in the cities, was formed in 1993 to promote greater social and public involvement in crime prevention. Its current chairman is Education Minister, Dato' Sri Mohd. Najib Tun Abdul Razak.

1. Background

The Safe City Initiative is based on the principle "prevention is better than cure". This crime prevention approach is through environmental design. It is based on the principle that crime prevention is achieved by reducing the opportunity to commit crime. In the United States, crime prevention is by reducing the opportunity to commit crime. In the United States, criminal psychologists have proved that 75% of crime is from victims behaviour which encourages criminals to commit crimes against them. For instance, most of the robberies and highway crime happen because of opportunity, not because it was professionally planned.

Based on the above, it was decided that prevention requires a physical environmental design which can generate social behaviour that can deter criminals from committing crime. This physical environmental design is consistent with the predictable relationship between human behaviour and the environment in

which that behaviour takes place. The Safe City Initiative is an approach that can be used to create a physical environment that can help in crime prevention in developing areas. It is a programme with integrated activities towards creating, or at least reducing the fear of, a city that is free from crime.

The Safe City Concept, involves the envelopment of a certain area. It involves how buildings and structures are to be built to prevent crime. Example: how advertising boards are put up on pedestrian crossings. If it is all blocked when you use the crossing, nobody can see you when you are robbed. Transparent advertisement boards should be used instead. This in just one small part of the Safe City Concept. Where trees are planted is also important- overgrown bushes should also be avoided because these can act as an ideal place for criminals to hide. Studies from some European countries and North America have shown that the way towns and estates are designed is seen to have an affect on the crime rate.

Besides that, it has been shown that the way a town is designed also results in families being more friendly with each other, reducing the rate of crime because they will watch out for each other. Under the Safe City Concept, safety lanes for bicycles and motorbikes, and safer roads will be built. It is holistic concept to make living in the city safer.

Experts within the MCPF, like the director of the Town and Country Planning Department of Selangor, who is an exco member, is working on the Safe City concept. Developers are also updated on the State City Concept.

The MCPF is also involved in researching the field of crime prevention, and sometimes invites experts from

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different parts of the world to give talks on new insights on fighting crime. The foundation is not under the purview of the police, even though it has police officers within it. It is an NGO.

We hope that in the future the MCPF will almost be exclusively made up of non-police personnel, except for the post of duty chairman who must be the IGP. The latter's presence will ensure police support and supervision of its crime prevention project.

2. Characteristics

- Partnership between government and citizens, especially marginalized groups;
- Prevention of criminal behaviour through environmental design, community development and education;
- Combine citizens in crime prevention and instil neighbourhood spirit; and
- Urban safety as a catalyst for change.

3. Schedule of Activities

- (i) Selection of project area, introduction to project area and target group;
- (ii) Explanation of concept to target group;
- (iii) Formation of the Safe City Committee for project area;
- (iv) Identification of issues/problems/ crimes by target group and Committee;
- (v) Solution to issues/problems by target group and Committee;
- (vi) Engagement of consultant if necessary;
- (vii) Implementation of solutions;
- (viii) Monitoring effectiveness of solutions;
- (ix) Modifications of solutions if necessary;
- (x) Documentation of project activities; and

- (xi) Continuous monitoring and feedback.

4. Safe City Initiatives of Bangsar Zone

The Malaysia Crime Prevention Foundation (MCPF), chaired by the Honourable Dato' Sri Mohd. Najid Tun Abdul Razak, has decided to implement the Safe City Initiative to combat crime in Malaysia. A special committee was formed to study in detail its implementation. On June 2nd 1998, the MCPF Exco meeting decided the two pilot projects, i.e in Bangsar and Cheras Flats in Kuala Lumpur, be implemented. Both projects will be made models for future implementation in all states.

Safe City Initiative' Bangsar Zone comprises of the following areas:

- Sri Hartamas Residence Area
- Bukit Bandaraya Residence Area
- Bangsar Baru Residence Area
- Lucky Garden Residence Area
- Bangsar Park Residence Area
- Bangsar Baru Town Area

IX. PUBLIC PARTICIPATION & CO-OPERATION IN CRIMINAL JUSTICE PROCESSES

A. Investigation

1. Arrest by Private Persons (SEC. 27 CPC)

Any private person may arrest any person who, in their view, commits a non-bailable and seizable offence, or who has been proclaimed under section 44, and shall without unnecessary delay take the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station.

2. Information (SEC. 107 CPC)

- (1) All information relating to the commission of an offence, if given

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orally to an officer in charge of a police station, shall be reduced to writing, or under direction, and be read to the informant.

- (2) All such information shall be entered in a book to be kept by such officer, who shall append to such entry the date and hour on which such information was given, and whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it.

3. Police Power to Require Attendance of Witnesses (SEC. 111 CPC)

- (1) A police officer making an investigation under this chapter may, by order in writing, require attendance before himself of any person being within the limits of the police district in which s/he is making an investigation who, from the information given or otherwise appears to be, acquainted with the circumstances of the case. Such persons shall be, required under this section to perform a journey of more than seven miles from their usual place of abode, exclusive of such portion of the journey as may be performed by train or motor car or other vehicle.
- (2) If any such person refuses to attend as so required, such a police officer may report the refusal to a Magistrate who may thereupon in their discretion issue a warrant to secure the attendance of such a person as required by the aforesaid order.
- (3) Any police officer requiring the attendance of any person employed on a railway shall send immediate information thereof to the person in charge of the nearest railway station.

No person employed on a railway shall be required to leave their employment under such circumstances as to endanger the lives of persons traveling on the railway.

4. Examination of Witnesses by Police (SEC. 112 CPC)

- (1) A police officer making a police investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and shall reduce into writing any statement made by the person so examined.
- (2) Such a person shall be bound to answer all questions relating to such a case as put to them by an officer. Provided that such a person may refuse to answer any question, the answer to which would have a tendency to expose them to a criminal charge or penalty or forfeiture.
- (3) A person making a statement under this section shall be legally bound to state the truth, whether or not such a statement is made wholly or in answer to questions.
- (4) A police officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).
- (5) A statement made by any person under this section, whether or not a caution has been administered to them under section 113 (1), shall, whenever possible, be taken down in writing and signed by the person making it or affixed with their thumb print as the case may be, after it has been read to them in the language in which s/he made it and after s/he has been given an opportunity to make

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the corrections s/he may wish to make.

5. Omission to Assist Public Servant When Bound by Law to Give Assistance (SEC. 187 PC)

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of their public duty, intentionally omits to give such assistance, shall be punished with imprisonment for a term which may extend to one month, or with a fine which may extend to four hundred ringgit, or both. If such assistance is demanded by a public servant legally competent to make such a demand (for the purpose of executing any process lawfully issued by a court, or for preventing the commission of an offence, or for suppressing a riot or affray, or for apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody), they shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand ringgit, or both.

B. Prosecution

1. Form of Summons and Service (SEC. 34 CPC)

(1) Every summons to appear, issued by a court under this Code, shall be in writing and signed as provided by the Courts of Judicature Act 1964, or the Courts Ordinance 1948, and shall bear the seal of the Court.

(2) Such summons shall ordinarily be served by a police officer but the Court issuing the summons may, if it sees fit, direct it to be served by any other person.

2. Service Procedure (SEC. 35)

(1) The summons shall, if practicable, be served personally on the person summoned by showing them the

original summons and by tendering or delivering to them a copy thereof under the seal of the court.

(2) Every person on whom a summons is served shall, if so required by the serving officer, sign a receipt for the copy thereof on the back of the original summons.

(3) In the case of a corporation, the summons may be served on the secretary or other like officer of the same.

(4) Where the person to be summoned cannot, in the exercise of due diligence, be found, the summons may be served by leaving a copy thereof for them with some adult member of their family or with a servant residing with them.

3. Procedure When Personal Service Cannot be Effected (SEC. 36 CPC)

When the person to be summoned cannot, by the exercise of due diligence, be found, and service cannot be effected as directed by sec.35 (4), the serving officer shall affix a copy of the summons to some conspicuous part of the house or other place in which the person summoned ordinarily resides. In such cases the summons, if the court so directs, either before or after such affixing, shall be deemed to have been duly served.

4. Allowances / Protection

All allowances are paid to witnesses attending court cases and protection is given on a selective basis, based on the seriousness of the case.

1. Payment of the Expenses of Prosecutors and Witnesses (Sec 427 CPC)

In every criminal case tried before the High Court, and in every criminal case tried before a Sessions Court or a

Magistrate's Court, such a court may, in its discretion, order payment out of the Consolidated Fund to the prosecutor and to the witnesses, both for the prosecution and for the defence, or to such of them as it thinks fit, of the expenses incurred by them severally in and about attending the High Court, or the Sessions Court or Magistrate's Court, and also as compensation for their trouble and loss of time, subject to such rules as are prescribed.

2. *Reward for Unusual Exertion (Sec 430CPC)*

Whenever it appears to any court that a private person has shown unusual courage, diligence or exertion in the apprehension of a person accused of having committed, attempted to commit or abetted an offence punishable with death or imprisonment, such a court may order payment to them, out of the Consolidated Fund, of any sum not exceeding one hundred ringgit.

3. *Compensation for Family of a Person Killed during Arrest (Sec. 431 CPC)*

If any person is killed in endeavouring to arrest or to keep in lawful custody a person accused as aforesaid, the Minister of Finance may order payment out of the Consolidated Fund to the wife, husband, parent or child of the deceased of such a sum or sums as appear reasonable in compensation for the loss sustained.

C. THE ATTORNEY-GENERAL

The *Yang di-Pertuan Agong* shall, on the advice of the Prime Minister, appoint a person (who is qualified to be a judge of the Federal Court) to be the Attorney-General for the Federation.

It shall be the duty of the Attorney

General to advise the *Yang di-Partuan Agong* or the Cabinet or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to by the *Yang di-Partuan Agong* or the Cabinet, and to discharge the functions conferred on them by or under this Constitution or any other written law.

The Attorney-General shall have power, exercisable on discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a *Syariah* Court, a native court or a court-martial.

The Federal Government may confer on the Attorney-General the power to determine the courts in which, or the venue at which, any proceedings which s/he has power under clause (3) to institute, shall be instituted, or to which such proceedings shall be transferred.

In the performance of duties, the Attorney-General shall have the right of audience with, and shall take precedence over, any other person appearing before any court or tribunal in the Federation.

Subject to clause (6), the Attorney-General shall hold office during the pleasure of the *Yang di-Pertuan Agong* and may at any time resign and, unless s/he is a member of the Cabinet, shall receive such remuneration as the *Yang di-Pertuan Agong* may determine.

The person holding the office of Attorney-General immediately prior to the coming into operation of this Article shall continue to hold the office on terms and conditions not less favourable than those applicable to him/her immediately before coming into operation and shall not be removed from office except on like grounds and in a like manner as a judge of the court.

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D. Judiciary

1. Justice of Peace

1. *Appointment of Justices of the Peace, Subordinate Courts Act 1948 (Sec. 98)*

The *Yang di-Pertuan Agong* may, by warrant under hand, appoint such persons as deemed fit to be Justices of the Peace within and for the Federal Territory, and may, in like manner, revoke any such appointment.

The State Authority may, by warrant under hand, appoint such persons as deemed fit to be Justices of the Peace within and for the State, and may, in like manner, revoke any such appointment.

All appointments and revocations of appointments made under this section shall be notified in the Gazette.

2. *Power of Justices of the Peace, Subordinate Courts Act 1948 (Sec. 99)*

Justices of the Peace in West Malaysia shall have, and may exercise within the State for which they are appointed, such powers not exceeding the powers of a Second Class Magistrate as may be conferred upon them by any written law.

Justices of the Peace in Sabah shall have, and shall exercise and perform, such powers and duties as may be conferred or imposed upon them by any written law. They shall also have such other powers and duties as the Minister may, by regulations, confer or impose upon them, and the Minister may confer or impose the said powers and duties upon all or any of the Justices of the Peace.

Before exercising or performing any of the powers or duties conferred, a

Justice of the Peace shall take and subscribe an oath in the presence of a judge in chambers.

Nothing in this section shall be deemed to require a Justice of the Peace to be satisfied as to the contents of any document, or that the proper stamp duty prescribed under any written law has been paid thereon, except to ensure that one or more stamps have been affixed to the document and that they have been cancelled in the manner prescribed by law prior to signature and attestation.

A Justice of the Peace, whilst exercising powers or performing duties as such, shall be deemed to be a public servant within the meaning of the Penal Code, and the Public Authorities Protection Act 1948; this shall apply to any suit, action, prosecution or proceeding arising therefrom.

E. Juvenile Court

A juvenile can only be tried in a juvenile court, which is very different in composition and procedure from other by courts. The juvenile court is presided over by a magistrate who is assisted by two advisors, one of the whom is usually a woman. It is not an open court, and only the court, court officials, parties to the case, parents or guardians, lawyers, witnesses and newspaper reporters are allowed to be present. The media cannot reveal the name, address or school or any other particulars which may lead to the identification of the juvenile.

F. The Legal Aid Scheme in Malaysia

1. Mission

Towards becoming an excellent agency, by providing caring and professional legal aid and advice services to persons

who qualify under the Legal Aid Act 1971.

2. Objective

The objective of the Bureau is to provide legal assistance to those who cannot afford legal fees and to uphold the principle of equality before the law.

3. Function

- To provide legal advice in all legal matters;
- To represent or provide legal assistance in proceedings in all courts in Malaysia in matters within the jurisdiction, as provided by law; and
- To educate members of the public on their rights under the law.

**G. Conflict Resolution System
Outside Trial: Plea Bargains**

There is no governing law here, but it is not illegal and it is not unusual to have plea bargaining take place between the prosecution and the defence counsel only. The court does not take part in the bilateral agreement. The matter of sentencing is still up to the discretion of the courts.

Previously in a murder case, the defence and prosecution could have quick discussions at the bar table in court and come to an agreement that the charge under Section 302 of the Penal Code be reduced to Section 304. Not being able to do that could cause delays and backlog.

Public prosecutors have to put 'on record' all requests and discussions with lawyers who 'plea bargain' for a reduction of charges or for a review of a case. Any such application must be done in writing by the defence counsel (on record) to the Attorney General or the head of the Prosecution Division or State Legal Advisor.

X. PUBLIC PARTICIPATION & CO-OPERATION IN THE TREATMENT OF OFFENDERS

To date, 24,500 offenders are still under detention in 36 various prisons and rehabilitation centres all over Malaysia. The administration is run by the Prison Department, which is directly under the Ministry of Home Affairs. They were sentenced to prison by the courts for offences committed under the Penal Code, Dangerous Drugs Act, Firearms Act or other laws. Records show that public participation and co-operation in the treatment of offenders was overwhelming. There were so many programmes and projects being held. Two good example are as follows:

A. Religious Activities

There were more than 20 religious organizations conducting various religious activities and programmes in all 36 prison/rehabilitation centres. The religious organizations represented not only Muslim organizations but also Christian, Buddhist and Hindu organizations.

B. Therapeutic Community (TC) - Role Model

1. Objectives

- (a) To remind school children not to get involved in and to avoid committing crime.
- (b) To remind parents of the importance of care and concern towards the social activities of their children in avoiding crime.

2. Activities

- (a) Talks/lectures were conducted by offenders who were still serving their sentence, with the guidance of counsellors from the prison department to selected schools.

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- (b) Slides/video/film shows.
3. Target
- (a) All secondary schools in Malaysia.
- (b) Teachers and Parent Associations through out the country.

In 1998, the programme was conducted in 19 schools in the state of Selangor, while 34 secondary schools in the Federal Territory of Kuala Lumpur. About 11,000 students and 3,000 parents participated in this programme. So far 16 institutions (prisons) were actively involved in this TC programme.

XI. ASSISTANCE TO VICTIMS & VICTIM PARTICIPATION IN THE CRIMINAL JUSTICE PROCESS

A. Order for Payment of Costs of Prosecution and Compensation (SEC. 426 CPC)

The court before which a person is convicted of any crime or offence may, in its discretion, make either or both of the following orders against them, namely:

- (a) an order for payment of the cost of prosecution or such part thereof as the court directs;
- (b) an order for the payment of a sum to be fixed by the court by way of compensation to any person, or to the representatives of any person, injured in respect of their person, character or property by the crime or offence for which the sentence is passed.

The court shall specify the person to whom any sum in respect of costs or compensation, as aforesaid, is to be paid; and the provisions of section 432 [except paragraph (d) of subsection (1) thereof]

shall be applicable to any order made under this section. The court may direct that an order for payment of costs, or an order for payment of compensation, shall have priority, and, if no direction be given, an order for payment of costs shall have priority over an order for payment of compensation.

To the extent of the amount which has been paid to a person or to the representatives of a person under an order for compensation, any claim of such person or representatives for damages sustained by reason of the crime or offence, shall be deemed to have been satisfied. The order for payment shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order. Every order made under this section by a magistrate shall be appealable to the High Court.

B. Victim in the Criminal Justice Process

Until very recently, there was a striking lack of information about victims, and even now, knowledge is still fairly sketchy, limited to certain crimes and often, to certain types of victims. This ignorance is astonishing when one considers that the criminal justice system would collapse if victims were to refuse to co-operate. Some victims have found that their treatment by officials in the justice system - the police, lawyers, court officials, judges and compensation boards - is too stressful, demeaning, unfair, disregarding of their feelings, rights, needs and interests. Sometimes, they see the system as a second victimisation which can be more unpleasant than the original crime. In such cases, they may become disenchanted with the system and choose not to report or to co-operate in the future; their experiences may also affect friends and family, and even the general public,

spreading a general reluctance to co-operate. This syndrome is best known in rape cases where few women are willing to co-operate, but also exists in other areas.

Victims often feel they are being used by the courts. They are expected to report to the police but are not always made feel comfortable in doing this. For most victims the police station remains a fairly uninviting environment. This reduces the effectiveness of crime control, as it increases the offender's chance of getting away undetected. If victims are asked to identify offenders, they are rarely screened and may, through fear of facing the offender, fail to identify him or her. When called to give evidence, they are rarely permitted to relate their experiences in their own words but are forced to answer questions which may actually misrepresent their account of what occurred. Furthermore, if they refuse to co-operate, they may be prosecuted because they would be obstructing the course of justice. The proceedings are indeed mostly adapted to the needs of the State, which has also been victimised in that its peace and its rules have been broken. The State has an interest in the social control of offenders and therefore has a right to require anyone to give evidence, but not at the expense of victims' rights and interest.

C. Remedies

In recent years, more attention has been paid to victims. Systems of compensation and restitution have developed to repay victims for their losses.

1. Compensation

Compensation is a system in which the State repays victims for their financial losses or physical injuries. Under this system, it is not necessary to arrest and convict an offender for a victim to be compensated, nor does a convicted offender have to be financially solvent for the victim

to be repaid for his or her losses.

Compensation has been justified in several ways. Some say that the State has an obligation to protect the welfare and safety of its citizen, and that when it fails to prevent crime, it should pay victims for their losses. Another rationale for compensation is that it may prevent victims from becoming angry at the criminal justice system and alienated from the political system (Schafer, 1968; Stookey, 1981). Even though compensation programs are sometimes aimed at public attitudes toward the criminal justice system and the government, research indicates that many victims who have sought compensation are disenchanted with the criminal justice system. Indeed, administrative obstacles to securing compensation, and the inadequate rewards provided to victims, seem to engender more discontent towards the legal system among applicants for compensation, than exists among people who do not apply for compensation (Elias, 1983, 1984).

Compensation programs must deal with the problem of the victim's contribution to the crime. Victims sometimes precipitate a crime or contribute to their own victimization, and in such cases, the State might choose not to compensate the victim. For instance, someone who first uses force against another person and then ends up badly injured in a fight might not be compensated if the State Compensation Board found that the crime would not have occurred without the victim's initiating actions. In Great Britain, compensation is limited to 'deserving cases', and this is determined in part by the degree to which the victim is to blame for his or her own victimization (Schafer, 1968).

2. Restitution

A system of restitution requires offenders to make monetary payment or

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provide services, either to the victim or the community at large. Relatively, few criminal courts have used restitution extensively, but growing concern for victims' rights has led some judges to require offenders to repay victims for their losses.

Some claim that restitution makes offenders take responsibility for their behaviour and thus helps rehabilitate them (Denning, 1976). Others claim that offenders who repay their victims may not feel guilty for their crimes if they believe they have corrected their wrongs, and that this may make it more likely that they will continue to commit crime. Restitution might improve crime reporting if victims thought they would be repaid for their losses. Moreover, by easing public hostility toward offenders, restitution might reduce the isolation of offenders from conventional society and make it easier to reintegrate them into society after they are released from prison. Restitution would also lighten the burden on taxpayers if it replaced a system of state compensation (Barnett, 1977; Bridges, Grandy and Jorgendon, 1979).

3. Others

Victims have also been given a greater voice in the sentencing of offenders, though defendants are usually allowed to respond to victims statements. In some jurisdictions, victims must be notified of hearings and trials and be informed when an inmate is being considered for parole or escapes from prison.

In America, district attorneys have started to pay more attention to the role of the victim in the criminal justice system. They can help to deal with a victim's fear of retaliation by the offender, frustration with delays in the court, and intimidation by a defence attorney's cross-examination. District attorneys can also impress on

victims and witnesses the importance of testifying in court. In some jurisdictions, victims have even been included in plea bargaining conferences with the district attorney, the defence attorney and the defendant (Heinz and Kerstetler, 1981). One study found that victim-witness programs in prosecutors' offices contributed in an important way to keeping victims informed about the progress and outcome of cases, and that crime victims expressed more satisfaction with the criminal justice system when they knew the outcome of the case and thought they had influenced that outcome (Forst and Herson, 1985).

Few judges learn directly from victims about the impact crime has on their psychological well-being, physical condition and financial situation. Usually, judges learn about this only from pre-sentence reports prepared by probation officers, who draw on secondhand information from police reports, medical records, or victim discussions with prosecutors. As a result, some courts have introduced victim impact statements, detailed written reports based on interviews with victims about the effects of crime on them (Forst and Herson, 1985). In 1987, the US Supreme Court ruled that such victim impact statements could not be used in hearings on the imposition of the death penalty, arguing that those hearings should focus on the defendant's 'moral blameworthiness' rather than on the impact of the crime on the family of the victim.

Today, nearly all states (in the USA) permit victims to appear at parole board hearings or to file written statements with parole boards, in order to make their wishes known whether a prisoner should be released. This reform was introduced to the Federal Prison System in 1984. Many victims do not take this opportunity to make their wishes known, either fearing retaliation or not wanting to dredge up

unpleasant memories of past crimes.

However, those who oppose the use of victim's testimony to parole boards and victim impact statements in court fear that those reforms might introduce public pressure or vengeance into proceedings that should be more dispassionate. They claim that poor and uneducated offenders might be punished more severely if they are confronted with articulate victims who demand long sentences. These critics assert that sentencing and parole should be based on an offender's threat to society and behaviour while in prison, not on a victim's wishes.

Supporters of these reforms argue that they draw the victim into the criminal justice system in a direct way, thereby providing a new perspective to criminal justice administrators. They also point to the greater degree of satisfaction with the criminal justice system among victims who believe their wishes have been taken into consideration in meting out punishment, arguing that a satisfied victim is more likely to report crime in the prosecution of defendants in the future, and this may help deter crime.

XII. CONCLUSION

The criminal justice system would probably function more efficiently if it counseled victims and witnesses and tried to incorporate them more into the processing of defendants. Ultimately, the criminal justice system should achieve an equilibrium of justice for the victims, public and the State, as for well as for the defenders.