Pre-Trial Disposal: The Effectiveness of the National Legal Aid Foundation in Safeguarding the Rights of Arrested and Detained Persons

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Abstract

It was revealed in Parliament in November 2009 that accused persons were unrepresented in 84,376 out of 108,528 criminal trials that took place in the Magistrate courts in 2008. Then Chairman of the Bar Council stated that there were more than 90% of persons remanded who were without any legal representation. A vast majority of them do not have the financial means to engage a lawyer and those who can afford a lawyer are usually not able to represent them until after they are charged in Court as there is the issue of access to justice at the pre-trial stage. Past literature would show that the rights afforded to an arrested/detained person especially pertaining to the right to counsels are reduced.

The reason many people go unrepresented is because there exists a large number of people who do not receive legal assistance from the two main providers of legal aid in Malaysia i.e. the Government legal aid departments and the Bar Council Legal Aid Centres. In view of the aforesaid, the National Legal Aid Foundation has been set up to plug this gap.

Abstrak

Sekitar bulan November 2009, Parlimen telah mendedahkan statistik yang mengejutkan rakyat Malaysia di mana orang yang dituduh ("OKT") tidak diwakili peguam dalam 84,376 daripada 108,528 bicara jenayah yang dijalankan di Mahkamah Majistret pada tahun 2008. Lebih mengejutkan apabila Pengerusi Majlis Peguam pada ketika itu telah menyatakan bahawa terdapat lebih 90% daripada orang yang disyaki ("OYDS") yang tidak diwakili peguam. Kebanyakan daripada mereka tidak mempunyai kemampuan kewangan untuk melantik peguam manakala mereka yang mampu untuk melantik peguam untuk mewakili mereka pula pada kebiasaannya tidak mendapat khidmat guaman tersebut oleh kerana terdapatnya isu untuk mendapatkan akses kepada anak guam pada tahap pra-bicara. Artikel-artikel sebelum ini menunjukkan bahawa hak-hak orang yang ditangkap/ditahan terutamanya hak untuk diwakili peguam pada tahap pra-bicara adalah pada tahap yang tidak memuaskan.

Faktor yang menyebabkan ramai orang tidak diwakili peguam adalah disebabkan mereka ini tidak mendapat khidmat guaman daripada Pusat Bantuan Guaman Majlis Peguam serta Biro Bantuam Guaman. Untuk menutupi kelompangan di dalam memberikan khidmat guaman, Yayasan Bantuan Guaman Kebangsaan telah ditubuhkan.

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Chapter 1: Introduction

1.1 Statement of the Problem

Past literature and practical experiences show that there are limitations in the safeguards of the rights of the arrested and detained persons[1]. The limitations are mainly due to the fact that a vast majority of them do not have the financial means to engage a lawyer and those who can afford a lawyer are usually not able to represent them until after they are charged in Court.

The operation of the National Legal Aid Foundation (hereafter will be referred to as the 'NLAF'/ 'Scheme') has significantly changed the landscape in the administration of our criminal justice. Following the inception of NLAF, many issues arise since there is no proper legal framework provided to govern NLAF. The possibilities that there may be lack of lawyers participating in NLAF cannot be discounted given the fact that many people are arrested daily. Lack of time and proper facilities at police stations, remand centres and courts for the NLAF lawyers to meet with the arrested and detained persons in private, pose challenges for the NLAF to operate effectively. Further, the cooperation of the relevant stakeholders is needed for NLAF to effectively safeguard the rights of an arrested and detained person. As such, the research problem is whether the existence of NLAF can effectively provide proper safeguards to the rights of an arrested and detained person at the

[1] See Amer Hamzah Arshad (2004), "*Rights of Accused Person: Are Safeguards Being Reduced,* Published in Info line January/February 2004, Retrieved from www.malaysianbar.org.my on 1 March 2013; See Jerald Gomez (2004), *"Rights of Accused Person: Are Safeguards Being Reduced?"*, [2004] 1 MLJ xx, Malayan Law Journal Website, Retrieved from www.lexisnexis.com on 1 March 2013; See Gurdial Singh Nijar (1978), *"The position of the unrepresented accused in the Subordinate Courts in Malaysia"*, Kuala Lumpur, University Malaya Law Faculty

pre-trial stage. The aim of this study (hereafter will be referred to as the 'Study') would be to evaluate how NLAF can be optimised to its fullest capacity to effectively safeguard the rights of the arrested/detained persons.

1.2 Research Objectives

This Study attempts to examine and analyse the operations of the NLAF, while identifying the practical problems faced as well as the legal and policy framework, if any, in carrying out the implementation and enforcement of the Scheme. This Study subsequently attempts to provide recommendations in overcoming issues of access during the stages of arrest and investigation and providing effective representation to ensure the Scheme can be effectively used as a measure to safeguard the rights of the arrested/detained persons. This Study would be based on the operations of the Scheme when it first started operations in April 2012 to date throughout Malaysia but the focus would be emphasised on the operations of NLAF in the Klang Valley.

As this Study focuses on pre-trial stages in the criminal process, the legal framework, procedural and practical aspects governing the area of rights of the arrested and detained person, principles governing remand when dealing with the liberty of the arrested/detained persons and police bail[2] would be examined foremost.

[2] Commonly known as '*jamin mulut*' or '*jamin polis*'

1.3 Research Methods

The research method chosen for this Study is a mixed mode, namely quantitative and qualitative. The qualitative method that will be used for data collection will be by way of interviews with the relevant stakeholders which will be audio taped to maintain accurate accounts of information given. The quantitative method that will be used for data collection will be by way of statistical data obtained from the National Legal Aid Centre (hereafter will be referred to as the 'NLAC'), Kuala Lumpur. This Study will focus on the period from the year of its operations i.e April 2012 to date.

1.4 Sample

Interviews will be conducted with officials who are involved with the administration and decision making related to the NLAF and who are actively practising and enforcing the procedures related to the Scheme, to gain a better insight into some legal issues and problems that have arisen in implementing and enforcing the Scheme. They are, namely officials from the NLAF and members of the Bar Council Legal Aid Centre, Kuala Lumpur. This Study would also be based on the experiences and observations made by the writer having firsthand information[3] on the operations of the NLAF.

[3] The writer is a registered NLAF lawyer who started NLAF works at the pre-trial stage when NLAF first started its operations and has since been a trainer and facilitator to budding lawyers throughout Malaysia who are interested to do NLAF works. The writer is also currently the Assistant Honorary Secretary of the Bar Council Legal Aid Centre (Kuala Lumpur) and is also a Working Committee Member of the Bar Council Legal Aid Centre (Kuala Lumpur)

For the purposes of this Study, the following persons have been interviewed —

(a) Mr. Ravi Nekoo, Co-Chairperson, National Legal Aid Committee, Co-Chairperson, Criminal Law Committee, Bar Council Malaysia;

(b) Mrs. Stephanie Bastian, Executive Director, Bar Council Legal Aid Centre (KL), NLAF Secretariat;

(c) Mr. Shashi Devan, Volunteer Lawyer for NLAF;

(d) Ms. Manimagalai Gowin , Volunteer Lawyer for NLAF; and

(e) Mr. Baskaran Maniam, Legal Aid Duty Solicitor who have been practising for 13 years in the area of criminal law in England until December 2013.

1.5 Research Questions

In carrying out the qualitative Study, the writer has chosen to adopt one set of open ended and semi-structured interviews. The writer chose open-ended interviews as the tool as it allows participants to discuss their opinions, views and experiences fully in detail whereas a set interview with closed ended questions may inhibit them to express their full opinions and experiences. Be that as it may, a set of questions has been prepared[4] as a topic guide and broadly covers the history of NLAF, administrative policies and procedures, practical challenges faced at the arrest and remand stage and the co-operation between the relevant stakeholders.

[4] As may be found at pages 85 and 86 of the Appendices of this Study

1.6 Significance of the Research

The existing literature shows there are reduced safeguards to the rights of arrested/detained persons[5]. The operations of the NLAF provide for an important milestone in changing the landscape in the administration of our criminal justice system. As such, the significance of this research would be to provide an avenue for an effective administration of the criminal justice system in safeguarding the rights of arrested/detained persons. To the arrested/detained persons, his rights can be realized and given full effect. To the lawyers, there is the right to information about their clients, access given to their clients, as of right, and they are able to assist Court better. To the police and enforcement agencies, where the operations of the NLAF is effective, it encourages the police and enforcement agencies to adopt a more transparent and accountable process of crime management, to encourage them to investigate first and arrest later, and most certainly to protect them from allegations of abuse and corruption. To the nation, the effective operations of the NLAF provide safeguard against abuse and custodial deaths, to give life to rights under existing laws and to help build the nation as it develops[6].

1.7 Literature Review

In principle, all persons who are caught within the criminal justice system have an equal chance of proving their innocence, aided or otherwise. The presumption of innocence forms the jurisprudence of our criminal justice system. As the NLAF is relatively new in

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[5] Supra n. 1

[6] Bar Council Steering Committee on NLAF (2014), *"Training Program for Lawyers"*, Training Manual 2014

Malaysia, there are no materials in the textbooks or the Criminal Procedure Code which discusses on the NLAF. Articles that are used in this Study namely Amer Hamzah Arshad, *"Rights of Accused Persons: Are Safeguards Being Reduced?"*[7] and Jerald Gomez, *"Rights of Accused Person: Are Safeguards Being Reduced?"*[8] discuss and elaborate on the rights of the arrested and detained persons and further states how these rights are eventually jeopardised and eroded but provide no solutions. In addition, in the article titled, *"Duty of the state to provide legal aid in criminal trials"*[9] *Srimurugan,* discusses the importance of having legal aid but as the title suggests, the Study is focused on examining the legal framework to show there are insufficient scheme for legal aid to provide legal representation at the trial stage. The article then proposes the Legal Profession Act to be amended to make it compulsory for newly qualified lawyers to serve in a government based legal aid department before they are allowed to join the private sector as has been done in the medical profession. The Study went on to propose that the government enact a comprehensive legal aid scheme but it just stops there. There are no discussions on how a government legal aid scheme can be utilised to effectively safeguard the rights of an arrested and detained persons at the pre-trial stage. Further, in the article by Ravi Nekoo titled, ""*Legal Aid in Malaysia: The Need for Greater Government Commitment*"[10], the author highlights the inadequacies of the legal aid system in Malaysia prior to NLAF and imposes on the government to take proactive steps to reform the structure of legal aid prior NLAF. With the coming of NLAF, it is therefore pertinent to highlight whether the NLAF can effectively safeguard the rights of the arrested and detained persons.

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[7] Supra n. 1
[8] Supra n. 1
[9] See Srimurugan (2006), "*Duty of the state to provide legal aid in criminal trials*", INSAF : The Journal of the Malaysian Bar, (2006) XXXV No.2, pg 1-14
[10] See Ravi Nekoo (2009), "*Legal Aid in Malaysia: The Need for Greater Government Commitment*", Published in the Malaysian Bar Website, Retrieved from www.malaysianbar.org.my on 2 March 2013

1.8 Limitation

As the NLAF is still in its infancy stage in Malaysia, there is hardly any literature, either legal or non-legal on the operations of the NLAF and its effectiveness. There have been only press releases and speeches by the relevant stakeholders with regard to the operations of the Scheme[11]. It may also be difficult in getting accurate statistics from the relevant authorities. Other limitation would be lack of time and as such the writer only managed to interview NLAF lawyers in the Klang Valley and NLAF Steering Committee besides obtaining relevant information from NLAF lawyers and state NLAC throughout Malaysia during trainings for NLAF lawyers.

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[11] Speech by Ybhg Tan Sri Abdul Gani Patail, Attorney General of Malaysia at the Opening of the Legal Year 2013 (12 January 2013) [2013] 1 Mil ccxi; Speech by Lim Chee Wee, President of the Malaysian Bar at the Opening of Legal Year 2013 (12 January 2013) [2013] 1 Mil clxxvii; Speech by Lim Chee Wee, Chairman of Bar Council at the Opening of Legal Year 2012 [2012] 1 MLJ xcvi; Ragunath Kesavan, Chairman of the Bar Council at the Opening of the Legal Year 2011 (15 January 2011) [2011] 4 Mll c; Ragunath Kesavan, Chairman of the Bar Council at the Opening of the Legal Year 2010 (15 January 2011); Ragunath Kesavan, Chairman of the Bar Council at the Opening of the Legal Year 2010 [2010] 3 MLJ ci, Lim Chee Wee, The Rule of Law & Economic Competitiveness [2013] 1 MLJ ccxxxii; many press releases issued by the Malaysian Bar President on YBGK

Chapter 2 : Overview on the Rights of Arrested/Detained Persons at the Pre-trial Stage

In the context of this Study, pre-trial stages cover areas of arrest and remand pending investigations and would include police investigations and police bail.

2.1 Rights of an Arrested Person

The Malaysian law is replete with various provisions protecting the rights of an arrested person. The table below provides an overview of the rights of arrested persons –

Table A : Overview on the rights of arrested persons

Right to –	The Governing Laws
Be Informed Rights to be informed of Grounds of Arrest	• Article 5(3) of the Federal Constitution[12] • Section 28A(1) of the Criminal Procedure Code[13]
Communication An arrested person has the right to communicate with two classes of persons – 1) Relative/Friend; AND 2) Lawyer of his choice or her choice	• Section 28(2)(a) of the Criminal Procedure Code • Section 28(2)(b) of the Criminal Procedure Code
Consultation An arrested person has the right to consult and be defended by a lawyer of his or her choice and the consultation shall take place in the following manner –	• Article 5(3) of the Federal Constitution • Section 28A(4)(a) of the Criminal Procedure Code • Section 28A(5) of the Criminal

[12] Federal Constitution
[13] Criminal Procedure Code (Amendment) Act 2006 Act A1274

1) Shall be conducted at the place where he or she is detained; 2) Shall be within sight of a police officer but private enough so that the conversation will not be overheard by the police; and 3) The police shall provide reasonable facilities for the above communication and it shall be provided free of charge.	Procedure Code • Section 28A(7) of the Criminal Procedure Code
Defer any questioning or recording any statement from the arrested person until the above consultation takes place The police shall defer recording any statement for a reasonable period until the arrested person consults a lawyer	• Section 28A(6) of the Criminal Procedure Code
An arrested person has to be brought before the Magistrate within 24 hours upon arrest.	• Article 5(4) of the Federal Constitution • Section 28(3) of the Criminal Procedure Code

Essentially, the law requires that immediately after arrest, the police must inform the arrested person the grounds of his arrest. [14] The arrested person must also be informed of the right to be represented by a lawyer.

After being informed of the grounds of his arrest and that he has the right to be represented by a lawyer, the law further requires that the arrested person must be allowed to call his relatives and lawyer. Further the lawyer must be allowed access to his client, the arrested person. Article 5(3) of the Federal Constitution and Section 28A(2)(b) and Section 28A(3) of the Criminal Procedure Code is silent as to the time and manner in which the right to counsel is available to the arrested person. Although it is submitted with respect, that the

[14] The usage of the word 'he', 'his' or 'him' throughout this Study connotes gender neutrality

decision of the late Suffian LP in ***Ooi Ah Phua v Officer in Charge of Criminal Investigations Kedah/Perlis***[15] makes nonsensical of the right of an arrested person to counsel guaranteed under Article 5(3) of the Federal Constitution and Section 28A(2)(b) of the Criminal Procedure Code, it is nevertheless submitted that once the arrested person reaches the police station, or soon thereafter, the person arrested must be allowed to call his or her relatives and lawyer. The National Human Rights Commission (hereafter will be referred to as 'SUHAKAM') has also proposed that the right to counsel should be unfettered and exercised immediately upon arrest[16]. There is also no concrete evidence that the presence of lawyers will impede investigations[17]. Even if assuming, which is highly unlikely, that a lawyer will impede investigations, the answer to such objections may be taken in a conference between the police and the Bar to obtain proper assurances to the former from the latter that if lawyers were to impede investigations, then proper actions will be taken on the lawyer's conduct[18]. Any doubt as to the determination of the time period for the exercise of the right to counsel should be presumed in favour of the arrested person, since the grave consequences that may follow is the potential deprivation of life and liberty of the arrested person.[19]

Observations on the use and abuse of section 28A of the Criminal Procedure Code are seen for the first time in a landmark case of ***Fadiah Nadwa binti Fikri & 4 Ors. v. Konstable***

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[15] [1975] 2 MLJ 198, where His Lordship held as follows –
"With respect I agree that the right of an arrested person to consult his lawyer begins from the moment of arrest, but I am of the opinion that that right cannot be exercised immediately after arrest."

[16] See Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) Report (2005), *"Forum on the Right to an Expeditious and Fair Trial"*, Published in the Human Rights Commission of Malaysia Official Portal, Retrieved from http://www.suhakam.org.my on 1 February 2014

[17] Supra n. 1

[18] Supra n. 1

[19] Gary K Y Chan (2007), *"The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia"*, Asian Journal of Comparative Law Vol. 2 (2007) 2 As. J.C.L, pg 24-61

Fauziah bt. Mustafa & 6 Ors.[20]("**Fadiah's case**"). In his 24 page judgment, Dato' John Louis O' Hara J had ruled that the arrests on the 5 plaintiffs who are fully fledged advocates and solicitors were unlawful and therefore amounted to false imprisonment, a denial of their constitutional rights to be told of their grounds of arrest; and unreasonable denial access to legal advice and representation. The Defendants has since appealed the decision of the High Court to the Court of Appeal. The hearing has yet to take place.

In this case, DSP Jude invoked section 28A(8) of the Criminal Procedure Code when the Plaintiffs had wanted to meet their clients but access was refused and later when DSP Jude arrives, he gave no reasons to the Plaintiffs when asked as to why he invoked section 28A(8) of the Criminal Procedure Code. Later upon arrests, the Plaintiffs have communicated their arrest to their lawyers, but their lawyers were denied access to the Plaintiffs. The Plaintiffs were then detained until about 4 a.m. and brought to Travers police station until they were released on bail in the afternoon. They were never charged.

An examination of the grounds of judgment in the above case would show the ruling that the arrests were unlawful was made based on factual findings. The test on section 28A(8) of the Criminal Procedure Code however was on reasonable belief where the factual matrix of this case does not lead one to reasonably believe that section 28A(8) of the Criminal Procedure Code was necessary.

[20] [21NCVC-95-05/2012 & 21NCVC-99-05/2012] The Grounds of Judgment of this case may be found at pages 87 to 110 of the Appendices of this Study

Based on the decision of the High Court in awarding damages to the Plaintiffs for unlawful arrest and false imprisonment, it would appear that the High Court judge had given a liberal interpretation to section 28A of the Criminal Procedure Code, thus protecting the liberty of persons arrested who are really very much innocent until the Court orders otherwise. The judgment essentially sends a message to police who attempts to invoke section 28A(8) to use such provision sparingly and only with strong grounds as since it has the effect of depriving the liberty of an arrested person. In this case, the Court also noted that the police who authorized section 28A(8) of the Criminal Procedure Code keep changing the reasons why he invoked the provision. It is submitted that in such a scenario, it would have been good practice had the police recorded in writing the reasons of invoking section 28A(8) of the Criminal Procedure Code. Perhaps, if this had been done, the issue of credibility would not have arose as the reasons would have been clearly stated in writing and further strengthen the fact that section 28A(8) of the Criminal Procedure Code would only be used sparingly.

Certainly, the right to legal representation would be meaningless if there is no access to justice to cater for all regardless of their social standing.

In ***Hamid bin Saud v Yahya bin Hashim & Anor***[21] at page 118,

"It is at the police station that the real trial begins and a Court which limits the concept of fairness until the police investigations are completed recognizes the form of the criminal process and ignores its substance".

[21] [1977] 2 MLJ 116

Further, the case of ***PP v Choo Chuan Wang***[22] held that the right to a fair hearing within a reasonable time in criminal cases is part of the right to life and liberty in Article 5 of the Federal Constitution.

It is submitted based on the foregoing cases; the concept of fairness would be reduced if the right to counsel is only available to the arrested person after investigations is completed. Where the right of counsel is immediately granted after arrest, the following rights to the arrested persons can be informed to the arrested person which would in turn prevent any prejudice to the arrested person especially after he is charged in Court –

(a) his rights under Section 28A of the Criminal Procedure Code and Article 5 of the Federal Constitution;

(b) his limited right to remain silent under Section 112 of the Criminal Procedure Code i.e. not to answer questions which tends to incriminate him;

(c) that he has no duty to assist the police in their investigations;

(d) in the event that he is detained, his rights under the Lock-up Rules[23]

Arthur J in ***Escobedo v Illinois*** [24] had occasion to deal with an accused person's right to consult counsel and held as follows –

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[22] [1992] 3 CLJ (Rep) 329

[23] The Lock Up Rules 1953 is still valid and applicable although the Prison Ordinance 1952 in which the Rules was made has since been repealed, by virtue of Section 68 of the Prison Act 1995.

[24] (1964) 378 U.S. 478

"No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system".

Having examined the rights of an arrested person, it would be seen that access to justice by legal representation at the pre-trial stage is therefore of paramount importance and any attempts to thwart these rights must be averted.

Perhaps, the amendments to Section 28A(6) of the Criminal Procedure Code which states that the police must defer recording any statement for a reasonable period until the arrested person consults a lawyer further amplifies the fact that in an adversarial criminal justice system, where the State has all the resources at its disposal, the arrested person runs the risk of having his liberty deprived and as such, the State ought to adequately provide all the necessary legal representation, enough to make him achieve a fair hearing. What is a reasonable period has yet to be decided by the Courts but while it is quite impossible to determine how long is a reasonable time, it is submitted that it would make sense if the police wait for a few hours till the solicitors arrives.

Where access to counsel is granted, the law requires that the consultation between the lawyer and arrested person must be within sight of the police, but private enough so that the conversation will not be overheard.

As has been seen, the rights of an arrested person as enshrined in Article 5 of the Federal Constitution and is further codified and elaborated under Section 28A of the Criminal Procedure Code yet although the law prescribed the rights of an arrested person, there are many instances when these rights are denied to them. Existing literature[25] and past experiences would show that these rights are reduced mainly because of lack of legal representation at the arrest and remand stage (due to financial constraints to engage counsel and even if counsel is appointed, there are difficulties in gaining access).

The writer recalls of an incident in the early part of 2012 having represented a client at the Kuala Lumpur Duta Courts for a charge under Section 417 of the Penal Code, posing as a special officer to the Prime Minister, in which, right after court bail was posted by the client's mother and just as the client was about to be released on bail, he was immediately re-arrested. While the grounds of arrest was informed to the client and access to counsel was granted, there were many questions posed to the writer by the Chief Inspector of a police station and his detectives as to the purpose of the right of the arrested person wanting to communicate with the writer. The communication eventually took place in an open area surrounded by several police officers in close range making it practically impossible for any communication to take place. It is submitted that such acts are a serious infringement to the rights of the arrested person and the fundamental liberties of the arrested person. The writer would venture to further state that such acts would tantamount to intimidation to lawyers discharging their duties as an advocate and solicitor.

[25] Supra n. 1

A lawyer attached to the Bar Council Legal Aid Centre once expressed his experience of receiving a call from the family of an arrested person at the last minute informing him of the arrest made and that the arrested person would be brought for remand. A call to the Investigation Officer would then ensue, and if he was lucky, he would be able to get through the Investigation Officer. However, there were many instances where the Investigation Officers would inform the lawyer that remand would take place the next day in Court A but in actual event, the remand was going to take place in Court B. These instances are so common that at one point, even senior lawyers gave up providing representation at the remand stage as it was difficult in gaining access to represent clients at the remand stage and the matter is further exacerbated when the lawyers collect fees from clients and could not provide representations. So it came to a point where many lawyers would just advise the families to let the police do their investigations. It is submitted that such practices run foul of the basic right of an arrested person to be legally represented as enshrined in Article 5 (3) of the Federal Constitution.

2.2 Denial of Rights Accorded under Section 28A(8) of the Criminal Procedure Code

Having examined the rights afforded to the arrested person under Section 28A(2) to (7) of the Criminal Procedure Code, it is pertinent to state that these rights can be denied by the police where the police reasonably believe that compliance with Sections 28A(2) to (7) would result in –

a) the accomplice of the arrested person being informed and taking steps to avoid arrest; or

b) the concealment, fabrication or destruction of evidence or the intimidation of a potential witness.

The police are also authorized to invoke Section 28A(8)(b) of the Criminal Procedure Code if having regard to the safety of others, the questioning or recording of statement is found to be so urgent that it should not be delayed.

The safeguard that Section 28A(8) of the Criminal Procedure Code is not abused lies in Section 28A(9) of the Criminal Procedure Code in which states that the application of sub-section (8) can only be authorized by a police holding the rank of Deputy Superintendent of Police (hereafter will be referred to as the 'DSP') and higher. However, the safeguard to this provision is reduced as has been seen in Fadiah's case, where section 28A(8) of the Criminal Procedure Code was used by DSP Jude without any valid reasons forwarded.

While the reasoning behind the application of Section 28A(8) for the purposes of having regard to the safety of others is acceptable particularly in cases of kidnapping and abduction especially involving children (in such instances, even in the police station there will only be two or three officers who will be aware and will be involved in the investigations), but to deny the right of the arrested person to have access to his lawyer on the grounds that it would result in the accomplice of the arrested person being informed and taking steps to avoid arrest or it will likely result in the concealment, fabrication or destruction of evidence or the intimidation of a potential witness surely would tantamount to the lawyer being a part of his accomplice and is totally unacceptable.

It is also worthy to mention that since Section 28A of the Criminal Procedure Code was inserted, there has been a number issues arisen but have yet to see the light of day through decided cases.

For instance, Sections 28A(9) and 28A(10) of the Criminal Procedure Code states that for the police to invoke Section 28A(8) of the Criminal Procedure Code, it must be upon authorization from a not lower than a Deputy Superintendent of Police rank. However, the issue of whether the authorization together with the reasons stated ought to be in writing or oral has yet to be ventilated in the Courts. Due to this gray area, in practice, there have been police who would make a call to his superior and get the authorization and such authorization will be informed orally to the lawyer. It is submitted that such practice would not be clear as proper reasons could not be ascertained and lawyers would find it difficult to identify if there has been abuse of this provision as well. It would also not help the police to ensure transparency and accountability.

It is humbly submitted that Section 28A(10) of the Criminal Procedure Code ought to be amended to include the following sentence "*in writing*" after the words "*such record shall be made*". This would certainly assist lawyers to identify if there has been an abuse of Section 28A(8) and details of the authorization would also assist for any judicial review application.

2.3 Law and Principles Governing Remand

After a person has been arrested, the police can only detain the person without a remand order for a period of 24 hours[26]. In the event the police deem it necessary to detain a person for more than 24 hours, then pursuant to Section 117(1) of the Criminal Procedure Code, a remand order must be obtained. Section 117(2)(a) of the Criminal Procedure Code provides that the Magistrate may grant a remand order for a maximum of four (4) days in the first application and a maximum of three (3) days in the second application for investigations for an offence which carries the sentence of less than fourteen (14) years imprisonment. Whereas Section 117(2)(b) of the Criminal Procedure Code provides that the Magistrate may grant a remand order for a maximum of seven (7) days in the first application and a maximum of seven (7) days in the second application for investigations for an offence which carries the sentence of more than fourteen (14) years imprisonment.

Section 117(1) of the Criminal Procedure Code clearly lays down the ambits upon which the Magistrate should exercise his powers. This provision, read together with case laws[27] would show that the Magistrate should only grant remand where –

(a) it appears that the investigations cannot be completed within the period of 24 hours;

(b) there are grounds for believing that the accusation or information is well founded;

(c) a copy of the investigation diary is transmitted to the Magistrate; and

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[26] Article 5(4) of the Federal Constitution and Section 28(3) of the Criminal Procedure Code

[27] Re Syed Mohammad Syed Isa [2001] 8 CLJ 247; Dasthigeer Mohd Ismail v Kerajaan Malaysia & Anor[1999] 6 CLJ 317 Re the Detention of R Sivarasa & Ors [1997] 1 CLJ 471; and Re Mohamad Ezam Mohd Nor [2002] 5 CLJ 156

(d) there are reasons to keep the arrested person in the lock-up whilst the police conduct their investigation i.e. grounds to believe that the arrested person if not held in remand would be a flight risk or the arrested person if not held on remand would tamper with evidence or witnesses.

Upon hearing arguments by both parties, the Magistrate may remand the arrested person for a certain number of days or refuse to grant a remand order.

It is submitted that Magistrates should only in exceptional circumstances issue a remand order and in the event, the Magistrate decides to grant remand, reasons must be stated. This is a mandatory obligation and is provided for under Section 117(7) of the Criminal Procedure Code. Although the decision of Elizabeth Chapman JC in the case of ***Lau Kong Peng & Ors v PP***[28] in holding that the failure to record reasons is a mere irregularity, it is respectfully submitted that such failure to record reasons cannot be considered as a mere irregularity particularly in matters concerning the deprivation of a person's liberty. Since the remand application if allowed would infringe on his liberty as provided for under Article 5 of the Federal Constitution, it is respectfully submitted that Section 117(7) of the Criminal Procedure Code must include the following sentences *"...failing which the remand order would be illegal*" after the words "*...shall record his reasons for so doing*".

The decision in ***Re the Detention of S Sivarasa & Ors***[29] and ***Saul Hamid Pakir Mohamed v Public Prosecutor***[30] are admirable and would lend support to the proposed amendment to

[28] [1998] 6 MLJ 501
[29] [2001] 8 CLJ 247

include the consequences of failing to provide reasons for granting a remand application. In both cases, the Courts have held that Magistrates should not simply accept the request of the police to remand a person, and a bare statement accepting the reasons given in a police application would not suffice. Therefore, it is submitted that the Magistrate when granting the remand order, without providing valid reasons for arriving at that decision, as well as recording the decision as provided under Section 117(7) of the Criminal Procedure Code.

More recently, in a claim for unlawful arrest and detention in the case of ***Selvakumar a/l Subramaniam v Penguasa, Pusat Pemulihan Akhlak Simpang Renggam, Johor Darul Takzim & Ors***[31], the plaintiff had been detained for a total period of 44 days. It is submitted that this is a classic case of chain remand. The High Court had allowed the plaintiff's case on the ground that the defendants had not adduced any evidence to show that the plaintiff's arrest and detention at various police stations from 26 July 2004 until 7 September 2004 was legal and for valid reasons. Further, no court documents or remand records were adduced to prove that the plaintiff was detained in accordance with relevant laws. This case reiterates the fact that there are baseless reports against the suspects and yet remand orders are nevertheless granted. This further indicates that Magistrates are not able to appreciate the remand laws pertaining to police investigations.

Further, the wording in Section 117(1) is misleading. The provision refers to the arrested person who is to be brought before a Magistrate for a remand application as an accused

[30] [1987] 2 CLJ 257
[31] [2014] 7 MLJ 244

rather than a suspect. It is common knowledge that a person who is an accused[32] will only be so when a charge is proffered against him. At the pre-trial stage, the arrested person is only a suspect[33]. It is high time that the section be amended to reflect a suspect rather than an accused. This would alleviate any stigma attached to a remand prisoner who may be released without a charge.

It is also worthy to mention that there are issues which have arisen in the course of remand proceedings which have yet to be ventilated in the Courts and is worth a brief discussion as follows.

For instance, when it comes to the granting and dismissal of a remand application, the issue at hand is with regards to the time and date the remand order would expire. In this regard, there are 3 schools of thoughts. A brief scenario would best explain the 3 school of thoughts as follows.

King Kong works as a bouncer in a club in Kuala Lumpur. He usually takes the bus to his workplace at 11.30 p.m. and would reach his workplace at approximately 12.00 a.m. On 15 July 2014, King Kong had overslept and was 15 minutes late than his usual time to catch the usual bus. As he was late, King Kong ran to the bus stop upon which he heard someone from the back shouting *"Tolong! Tolong! Curi!"* Before he could turn, he felt someone jump on him and he fell down. Immediately, thereafter, the police arrested him and brought him to the police station. The next morning, he was brought to the remand centre in Dang

[32] Commonly referred as Orang Kena Tuduh ("OKT")
[33] Commonly referred to as Orang Yang Disyaki ("OYDS")

Wangi in which the Magistrate had on 11 a.m. granted a 1 day remand order pending investigations.

Now, based on the hypothetical facts as stated above, the question that would come to mind would be, when does the 1 day remand order ends? -

(a) The first school of thought states that the 1 day remand would expire at 11 a.m the next day based on the calculation of approximately 24 hours.
(b) The second school of thought states that the remand order would expire on 12.00 a.m. as 12.01 a.m. would already be the second day.
(c) The third school of thought states that the remand order would expire between 5.30 p.m. to 6 p.m. as the Rule 20 of the Lock Up Rules would kick in i.e. 6.30 p.m. and no one could access the OYDS then as Rule 20 was inserted to ensure detainees had 12 hour of rest.

The 3 school of thoughts that had arisen as mentioned above came as a result of practical experiences faced by NLAF lawyers in the remand proceedings. As such, until this issue is ventilated in the Courts, the NLAF lawyers have been trained to ensure the Court states in the remand order the date and time the remand order would expire. This is to ensure there is no confusion as to when the arrested/detained person ought to be released.

Another issue that has yet to be ventilated in the Courts is with regards to the 24 hours police can keep an arrested person in custody as opposed to a dismissal of a remand application. To explain this issue, the scenario of King Kong, where he was arrested at 12

a.m. and brought to the remand centre for the police to obtain a remand order pending investigations would be appropriate. Now, assuming the remand application is dismissed outright, the question that would now come to mind is, whether King Kong can be released immediately after the Court has dismissed the remand application or can he only be released after the police have utilized the 24 hours i.e. 12 a.m?

It is humbly submitted that in a situation where the Magistrate has dismissed the remand application, that ought to translate to an order of the Court in refusing to grant remand and as such, that order must take prevalence and the arrested person be immediately released. It is also submitted that the moment the police makes a remand application, the police there must be taken to have waived their right to detain a person for 24 hours.

Such a view would only be fair, just and in the public interest which not only requires that offenders be apprehended and brought to justice but the equally important public interest that a person is not arbitrarily deprived of his liberty even for the slightest moment. To echo to this principle, such view must necessarily take prevalence as surely, when the Magistrate refuses to grant any remand order even in the first application, the Magistrate must have taken into consideration the following principles –

(a) that there are no grounds for believing that the accusation or information is well founded[34];

(b) there are no reasons to keep the arrested person in the lock up whilst the police conduct their investigation[35];

[34] Dasthigeer Mohd Ismail v Kerajaan Malaysia & Anor [1999] 6 CLJ 317 at page 328E

(c) further, if there are no investigation diary transmitted to the Magistrate, then it is immediately fatal[36]

Where the Courts have already dismissed the remand application based on the fact there are no reasonable grounds, surely that order must be respected and therefore there is no need to utilize the remaining period the police would have had the remand application not made as the police will be on a frolic of their own and citizens and subjects (and foreigners) can be in grave danger of losing their liberty if not their limb[37].

This view would certainly ensure there are safeguards to the liberty of the arrested person and prevent abuse such as chain remand which would be discussed in detail in this Study.

2.4 Police Bail

Where a remand order has expired and investigations are still pending, the suspect may be released on police bail. Again the forms that the suspect needs to sign and the surety needs to sign are also misleading as it refers to an accused person rather than a suspect. Further, it states that the suspect would have to be present in Court at a stipulated date and time when in real effect, the presence is only required at the police station since it is a police bail.

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[35] Re Syed Muhammad Syed Isa [2001] 8 CLJ 247

[36] Polis Diraja Malaysia v Audrey Keong Mei Cheng [1994] 3 CLJ 362 and Re the Detention of Sivarasa & Ors [1997] 1 CLJ 471

[37] Ibid.

A brief excerpt taken from the police bail form is as follows –

Bahawa saya, (nama), yang tinggal di (...), yang ***telah kena tuduh dengan kesalahan*** *(....) adalah dengan ini mengaku akan hadir di hadapan mahkamah Majistret di (...), pada pukul (....) pagi pada haribulan (.....) (atau pun pada masa dan haribulan yang lain diberitahukan oleh Polis Diraja kepada saya) kerana* ***menjawab tuduhan ini****, jika sekiranya tiada saya hadir sebagaimana yang tersebut maka saya mengaku akan membayar kepada Kerajaan Malaysia wang sebanyak (....) ringgit Malaysia.*

Bertarikh pada (...) haribulan (...)

Banyak wang telah disimpankan dengan Polis Diraja RM

(tiada payah diserahkan apa-apa wang kepada Polis Diraja melainkan kalau dikehendaki olehnya)

Nombor Resit

.....

Tandatangan ***yang kena tuduh***

Details in the police bail form as illustrated above particularly requiring the arrested person/suspect to attend court at a stipulated date and time and referring the arrested person as an accused would certainly cause confusion and may result in a warrant of arrest issued against the suspect for failing to turn up at the police station who have taken all measures to appear but nevertheless was misled as a result of the confusion arising out of the forms stated therein.

Chapter 3: A Study on the Effectiveness of the National Legal Aid Foundation

A. Introduction

3.1 Legal Aid in Malaysia (Prior to the existence of the NLAF)

Prior to the coming of the NLAF, both the Government and the Bar Council has been instrumental in providing legal aid in Malaysia. The table below shows the differences between the Bar Council legal aid and the Government's Legal Aid Department[38] -

Table B : Differences between the Bar Council legal aid and the Government's Legal Aid Department

Legal Aid Organisation	Government Legal Aid Department[39]	Bar Council Legal Aid Centre
History	Commenced their services in 1970 (44 years ago)	Started in 1978 in a small shack in Bayan Lepas, Penang (36 years ago)
Nature of Organisation	Administered under the Prime Minister's Department (BHEUU) and governed by the Legal Aid Act 1971[40]	Administered by the Malaysian Bar under the Legal Profession Act 1976[41]
Funding	Funds allocated by the Government	Funds allocated by way of members of the Bar yearly contribution to the Legal Aid fund

[38] Supra n. 6
[39] Commonly known as 'Biro Bantuan Guaman'
[40] Legal Aid Act 1971, Act 26
[41] Legal Profession Act 1976, Act 166

Offices	Has offices in all states including Sabah and Sarawak	Have offices in all states in West Malaysia (as Sabah & Sarawak is governed by their own Bar Association)
Services Rendered	In relation to criminal matters, deals only with mitigation and cases under the Minor Offences Act 1955[42] and Child Act 2001[43]	In relation to criminal matters, deal in all criminal cases at all stages of the criminal process (except for capital punishment cases)
Services Not Rendered	Representing non-citizens i.e. illegal immigrants/migrants/asylum seekers/refugees/stateless persons	Capital Punishment Cases (there is already an assigned counsel scheme provided by Courts for indigent persons accused of capital punishment cases)
Means Test	Applied for legal representation at trial stage	Applied at trial and appeal stage No Means Test at arrest, remand, bail and mitigation stage

A comparison of the Bar Council Legal Aid Centres and the Government Legal Aid Department, the two main providers of legal aid prior to the NLAF, as reflected in Table B above indicate that there are a number of weaknesses which are briefly discussed as follows.

As can be seen from the table above, the Government Legal Aid Department which is governed by the Legal Aid Act 1971 restricts the Department to a narrow range of criminal matters[44] i.e. Minor Offences Act 1955 and Child Act 2001 and mitigation when it comes

[42] Minor Offences Act 1955, Act 336
[43] Child Act 2001, Act 611
[44] Section 10(1) of the Legal Aid Act 1971 provides –

to other criminal offences. In addition, the Government Legal Aid Department does not provide any legal representations to non-citizens. On the other hand, the Bar Council Legal Aid Centres do a wide range of criminal defence work and represents all citizens and non-citizens alike. However, as a result of lack of resources and limited capacity, the Bar Council Legal Aid Centres could only represent a fraction of persons caught within the criminal justice system. Because of this gap, many persons caught within the criminal justice system go unrepresented. For the past 30 years, the Bar Council Legal Aid Centres have singularly shouldered the responsibility of providing legal representation to the impecunious in cases involving criminal defence work. It also came to a stage where the Government Legal Aid Department and Prisons Department were referring cases to the Bar Council Legal Aid Centres[45]. While the Malaysian Bar has always been proud of the fact that the legal aid centres is unique in that the program is solely funded and managed by its own lawyers, but the resources of the Bar are not enough to solve a national problem[46]. The Bar Council Legal Aid Centres are but a mere stop gap solution that has prodded for far too long in trying to manage a Government problem.

"Criminal proceedings in connection with which legal aid may be given are any proceedings of a description specified in the Second Schedule".

The 2nd Schedule to the Legal Aid Act 1971 states –

1. *"All criminal proceedings in which the accused not being represented by counsel pleads guilty to the charge or charges and wishes to make a plea in mitigation in respect thereof.*
2. *Criminal proceedings under the Child Protection Act 1991 (has been repealed by the Child Act 2001(Act 611))*
3. *Criminal Proceedings under the Minor Offences Act 1955"*

[45] Supra n. 10

[46] Ibid.

3.1.1 Legal Framework

Article 5 of the Federal Constitution states that no person shall be deprived of his life or personal liberties save in accordance with law. However, when it comes to providing legal aid to persons caught within the criminal justice system, be it at the arrest stage or at the trial stage, there are no decided cases to extend the right to be legally represented to the indigent persons on the basis of Article 8 (1) of the Federal Constitution that all persons are equal before the law and entitled to equal protection of the law.

While there are provisions in the Court of Appeal Rules 1994[47] and Federal Court Rules 1995[48] for legal aid to be provided in capital punishment appeals and there are also Registrar practice directives[49] in place for legal aid by virtue of assigned counsels in capital punishment trial, which is as far as it could go when it comes to legal aid. This framework does not cover other persons charged for non-capital punishment offences and certainly more importantly, access to justice by legal representation at the pre-trial stage.

In comparison, the Indian Position fares better. In the landmark case of ***Hussainara Khatoon and other v Home Secretary, State of Bihar***[50], the Court ruled that it is a constitutional right of every accused person who is unable to engage a lawyer or secure

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[47] Rule 66 provides as follows –
"In an appeal where a party thereto is not legally represented, the Registrar of the Court shall assign a solicitor to represent him in —
(a) every case where the person has been sentenced to death; and
(b) any other case where the President considers it is in the interest of justice that legal aid should be given".
[48] Similar provision provided under Rule 96 of the Rules of the Federal Court 1995
[49] Arahan Amalan Bil 5 Tahun 2013, Garis Panduan, Tatacara dan Tanggungjawab Peguam Lantikan Mahkamah bagi Kes-kes Kesalahan Hukuman Mati
[50] AIR 1979 SC 1377

legal services on of account of reasons such as poverty, indigence or incommunicado situation to have free legal services provided to him by the State and the State is under a constitutional mandate to provide a lawyer to such an accused person if the needs of justice so requires.

Our criminal justice system is akin to a funnel, wide at the top and tapers down to a narrow range at the bottom[51]. In view of this, one could picture the thousands who would be unrepresented at the pre-trial stage having in mind that there were close to 80% who were unrepresented after they are charged in Court[52].

B. The National Legal Aid Foundation (2012 – present)

3.2 Origins of the NLAF

3.2.1 Brief History

The philosophy governing the creation of the Foundation is that legal aid must be funded by government and it is important to realize that it is the State in pursuance of its duties, which initiates the criminal process against the citizens and that this process may end with the imposition of serious disabilities on the persons proceeded against[53]. It is therefore obligatory on the Government to ensure that all extraneous factors which unduly impede the attainment of a just and proper result are eliminated or their impact minimised[54].

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[51] Dr. Farah Nini Dusuki (2013), Administration of Criminal Justice, (MCJ), University Malaya Law Faculty
[52] Supra n.1
[53] Supra n. 1
[54] Ibid.

The starting point contributing to the existence of the NLAF in Malaysia can be seen at the end of 2006, when Mr. Ravi Nekoo was sent to Taiwan by the Bar Council to attend a legal aid conference. Mr. Ravi Nekoo then wrote a paper premised upon the philosophy and concept of the Taiwan Model ("Proposal to set up the NLAF") and submitted the Proposal to set up the NLAF to the then Bar Council President, Ambiga Sreenevasan. The latter subsequently submitted the Proposal to the then Prime Minister, Tun Abdullah Ahmad Badawi in 2007 during his administration. However, the Proposal remained at the back shelf of the Prime Minister's office. Later, in 2008, under our current Prime Minister's administration, the then Bar President, Ragunath Kesavan re-submitted the Proposal. The Prime Minister took interest, and passed it to the Attorney General. The Attorney General called for a meeting and that is when history began. The NLAF was incorporated on 25 January 2011 as a result of a decision made at a Cabinet meeting on 3 March 2010. The proposal was finalised on 11 Oct 2010 at a meeting chaired by the Attorney General.

The table below shows the functions and operations of the NLAF in brief[55] –

Table C : Brief functions and operations of the NLAF

Nature of Organisation	National Legal Aid Foundation (NLAF)
History	Lobbied by the Bar Council and launched by the Prime Minister on 25 February 2011
Nature of Organisation	Registered as a company limited by guarantee under the Companies Act 1965. Run by a 11 person Board of Directors headed by the Attorney General as Chair and the President of the Bar as Deputy Chair
Funding	Government provided a launching grant of RM5 million to NLAF. Also received

[55] Supra n. 6

	RM200,000 contributions from the Bar Council. For 2012 and 2013, an allocation of RM10 million and RM20 million respectively was provided to NLAF.
Offices	Currently, the Bar Council Legal Aid Centres across West Malaysia serves as NLAF offices. No offices as yet in Sabah and Sarawak.
Services Rendered	Advise and legal representation at all stages of the criminal process
Services Not Rendered	Non-Citizens, Capital Punishment cases, cases under the Kidnapping Act 1961[56] and Preventive Detention cases[57]
Means Test	Means Test applied for Trials and Appeals No Means Test applied at Arrest, Remand, Bail and Mitigation

3.2.2 Implementation and Enforcement

The setting up of and the administrative and structural functions were created by the NLAF Steering Committee in addition to using the existing structural functions of the Bar Council's Legal Aid Centres throughout Peninsular Malaysia.

In ensuring the smooth operations of the NLAF, the relevant stakeholders are instrumental in their respective responsibilities. The Bar Council Legal Aid Centres which operates as the NLAF Secretariat are and has been instrumental in to run the day to day operations of the NLAF.

[56] Kidnapping Act 1961, Act 365

[57] Circular dated 29 March 2012 issued by the Chief Registrar enclosing Guidelines for Magistrates to adhere at Remand that can be found at the Appendices pages 112 to 115 herein.

The Steering Committee on the NLAF is instrumental in formulating policies and setting up administrative structures for operations of the NLAF. Amongst other, the Steering Committee prepares assessment papers, proposals for rate of payments to the NLAF lawyers, drafting relevant details for interview sheets to be used by lawyers when interviewing clients at arrest and remand stage, drafting relevant details in audit forms for purposes of conducting audit on lawyers, preparing relevant forms for lawyers to register as a NLAF lawyer, which includes, letter of undertaking, also sets out requirements of a lawyer who can take up a brief at arrest, remand, bail, mitigation, trial and appeal stage, claim forms, complaint forms for lawyers and clients.

The NLAF also conducts trainings for lawyers throughout Malaysia and refresher courses as well as collection of data, reports and statistics with regards to the operations of the Scheme. All lawyers intending to do NLAF work must attend training, sit for an assessment test and submit their registration form upon completion of the training. The Secretariat, Legal Aid Centres later collates the registration forms and submits to the NLAC for the lawyers to be officially registered. The lawyers can then submit their free dates to the Secretariat, Legal Aid Centres in which a duty roster will then be prepared and sent to the police and the Courts.

More recently, an audit team has been set up to audit lawyers who conduct remand proceedings so as to maintain quality.

The NLAF having its office in Bangi is instrumental in processing payment to the NLAF lawyers and collection of data, reports and statistics. The Attorney General is instrumental

in liaising with all relevant stakeholders such as having a "KUP" (Head Unit Prosecution) meeting once in every 3 months as well as having a DPP monitoring the remand proceedings.

The Judiciary on the other hand have issued a circular[58] and the guidelines to adhere by Magistrates in remand proceedings.

The Police have also been instrumental in the operations of the NLAF and can be seen by an MoU signed[59]. Amongst other duties under the MoU, the police will fax a copy of persons arrested, persons to be brought for bail, persons to be charged and persons released on police bail to the NLAF/Legal Aid Centre. Once the fax are received, the secretariat staff at the National Legal Aid Centres will prepare a summary sheet on the faxes received and will either fax or email or personally hand it over to the lawyers on duty.

As regards the means test, the Scheme provides free legal assistance to all Malaysians, irrespective of their financial means at the arrest stage, remand stage, bail and mitigation stage. However, a means test will be applied at the trial and appeal stage where only those who pass the means test will qualify to receive legal assistance from the Scheme. The means test is set at an income of not exceeding RM36,000 per annum, meaning that a Malaysian who earns RM3000 and below per month will be entitled to receive legal aid at the trial and appeal stage.

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[58] Circular dated 29 March 2012 issued by the Chief Registrar enclosing Guidelines for Magistrates to adhere at Remand that can be found at the Appendices pages 112 to 115 herein

[59] Garis Panduan bagi Pegawai Penguatkuasa Berkaitan Tangkapan dan Reman that can be found at the Appendices pages 116 to 120 herein.

As regards the requirement for panel lawyers intending to conduct briefs at various stages of the criminal process, the requirements are as follows[60] –

(a) *for arrest, remand, bail and mitigation, the NLAF lawyers need only attend Part 1 and Part II of the NLAF training course for lawyers which would cover aspects of the administrative matters of NLAF and the law on arrest, remand, bail, mitigation and revision. Exemptions to Part II of the training course is given to lawyers with more than 10 years of practice but they must still attend Part I on the administrative aspects of NLAF. Once these are complied, the lawyers would then need to sign a general NLAF Lawyer's Letter of Undertaking and provide his free dates in which the NLAF Secretariat will then prepare a duty roster every week based on the lawyer's free dates;*

(b) *for criminal trials at Magistrates and Sessions Courts, the NLAF lawyers need to attend Part 1 and Part II of the NLAF training course for lawyers and additionally, the lawyer would also need to attend Part III of the training course which would cover aspects of criminal trial advocacy. Alternatively, if the lawyer have previously handled three (3) criminal trials, then the lawyer need only sign a letter of undertaking evidencing such and the NLAF is exempted from attending Part III of the training course. If the lawyer is a former prosecutor for two (2) years or a former Magistrate/Sessions Court Judge who has presided over criminal trials for two (2) years, then Part III is also exempted for him. The NLAF Secretariat will circulate a weekly list of unassigned cases for the NLAF lawyers' selection.*

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[60] Supra n. 6

(c) *for criminal appeals at the High Court, the NLAF lawyers need to attend Part 1 , Part II and Part III of the NLAF training course for lawyers, and additionally the lawyer must be in practise for a minimum of three (3) years. However, if the lawyer has already handled 3 criminal trials, then he is exempt from attending Part III of the training course;*

(d) *for criminal appeals at the Court of Appeal, the NLAF lawyers need to attend Part 1, Part II and Part III of the NLAF training course for lawyers, and additionally the lawyer must be in practise for a minimum of five (5) years and the lawyer must also have handled a minimum of five (5) criminal trials and two (2) criminal appeals. If the lawyer is a former prosecutor for two (2) years and has handle three (3) criminal trials or criminal appeals in the High Court, then the lawyer can be assigned to Court of Appeal cases.*

3.3 Contributions and Achievements

The following table provides work done under the Scheme from its commencement in April 2012 to August 2014[61] -

Table D : Statistics for work done under the Scheme

Suspects Interviewed at the Police Stations	Remand Hearings Conducted	Mitigation/Bail	Hearing
5977	110, 590	20,804	3390

[61] NLAC

With the formation of the NLAF, the number of persons unrepresented at the remand stage, has been reduced to 25 %[62], though there may be discrepancy[63] as to the accurate figure. Prior to the NLAF, more than 90% were left unrepresented at the remand stage[64].

Be that as it may, the NLAF has seen a steady increase in the volume of cases undertaken by NLAF at various stages. In 2012, the numbers recorded were 49,270 cases, in 2013, a total of 91,544 cases were recorded and as at August 2014, a total of approximately 131,501 cases were recorded[65].

As at August 2014, the number of panel lawyers registered with the NLAF stands at 1831 throughout Malaysia. Out of this 1831 NLAF lawyers, 1705 lawyers are registered at Peninsular while only 124 lawyers are registered in Sabah & Sarawak who have contributed and cooperated to institutionalise the operations of the Scheme. There is stark increase of lawyers' registered post May 2014 after the rates payment is revised. In Kuala Lumpur, pre-May 2014, the numbers of NLAF lawyers (from January 2014 to May 2014) were 156 lawyers and post-May 2014 (from June 2014 to December 2014), the numbers increased by twofold and is numbered at 348[66].

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[62] Speech by Bar Council President, Christopher Leong, at the Opening of Legal Year in Malaysia 2014 on 11 January 2014 at Perbadanan Putrajaya.

[63] For instance, no fax sheet was forwarded by the police to NLAF/Legal Aid Centres on the arrests of deceased K Nagarajan in December 2012 and N Dharmendran in May 2013 as reported in a press statement issued by the Malaysian Bar President on 29 May 2013.

[64] Speech by then Malaysian Bar President Ragunath Kesavan, at the Opening of Legal Year in Malaysia 2010 on 16 January 2010 at PICC, Putrajaya (201 0] 3 Mil ci at p. civ

[65] Daily Express, *"Legal aid to over 270,000 via YBGK since 2012: A-G"*, Published on 10 December 2014, Retrieved from www.dailyexpress.com.my on 13 December 2014

[66] NLAC

Further from what was understood to mean that the Scheme will only represent citizens in only criminal matters, the recent assistance requested by the government to use the NLAF services to represent the families of MH370 in preliminary legal advice[67] goes to show that there has been an indication that the NLAF has extended its services to representing citizens and non-citizens in a civil matter.

Further, there is also consideration to expand the scope of the NLAF services to cases of domestic violence[68] in panel lawyers facilitating the securing of necessary Interim Protection Orders and Protection Orders under the Domestic Violence Act 1994[69]. In support of the Attorney General's consideration to further extend the scope of services for the Scheme by providing representation to the prisoners on death row by assisting in their applications to the Pardons Board[70], trainings to lawyers on writing petitions on behalf of the prisoners on death row was successfully completed on 6 September 2014 and representations on behalf of death row prisoners are already underway. There is therefore hope that the NLAF may extend to represent non-citizens caught within the criminal justice system at the pre-trial stage.

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[67] The Malaysian Insider, *"Malaysian Bar offers legal aid to families of MH370 passengers, crew members"*, Published on 21 April 2014 by V. Anbalagan, Retrieved from www.themalaysianinsider.com on 1 November 2014.

[68] Speech by Attorney General Tan Sri Abdul Gani Patail, at the Opening of Legal Year in Malaysia 2014 on 11 January 2014 at Perbadanan Putrajaya

[69] Act 521

[70] Ibid.

3.4 Challenges and Shortcomings

3.4.1 Practical Challenges

a) Administrative Issues

Among the practical challenges faced is with regard to the problem of faxes not being sent (This is despite placing a duty on the enforcement officers as per the MoU signed between the police and NLAF ("*Garis Panduan bagi Pegawai Penguatkuasa berkaitan dengan Tangkapan dan Reman*") where the police will inform the NLAC via fax of every arrest made even where Section 28A(8) of the Criminal Procedure Code is applicable. Sample document informing the NLAC of the arrest is found at the Appendices page 115 herein), late faxes, lack of proper facilities at the police station for purposes of taking instructions from clients (this is despite Section 28A(7) of the Criminal Procedure Code which provides the right of an arrested person to reasonable facilities), lack of proper facilities at the remand courts/centres[71] and lack of time to conduct proper interviews before the remand hearing. One of the factor is attributed to the police bringing the detainees late to the remand centres. In such a scenario, the practice has been to request from the Court for the matter to be 'stood down' so as to allow the lawyer to obtain instructions from the client. It cannot be denied that despite NLAF being in operations, there have been instances of death

[71] This was echoed in the President of the Malaysian Bar's Speech at the Opening of the Legal Year 2014 on 11 January 2014 at Perbadanan Putrajaya when he said as follows –
"*We hope to work with the Courts and the Prime Minister's Department to ensure that there are proper facilities in the courts where pre-remand interviews can take place. I do not think that enough thought has been given to providing such facilities when courts were constructed, since no one would have envisaged, even a few years ago, a situation where representation would be provided to so many of those being remanded*"

in police custody[72] whereby NLAF did not receive any faxes pertaining to the deceased arrests.

In addition, due to the fact that the NLAC only operates during office hours that are between 9am to 5pm on weekdays, the arrested persons may not avail themselves to the NLAF's services where the arrest is made after office hours and during weekends. As it stands, the consolation with the coming of this Scheme, is that even though access to arrested person at the arrest stage is not available due to the aforementioned setbacks, nevertheless, the arrested persons are represented at the remand stage as there will be NLAF lawyers on duty every day in the remand centres. It is submitted, regardless of the setbacks, access to arrested person is a fundamental right and must be available the moment a person is arrested subject to Section 28A(8) of the Criminal Procedure Code.

This is also important to prevent a situation where the police may arrest and keep a suspect for 24 hours before re-arresting under another report and repeating for a long period.

However, another obstacle is that the NLAF services could not be extended to remote areas like Besut and Baling due to lack of NLAF lawyers practising there. It is reported that 60% of lawyers in Peninsular Malaysia[73] are concentrated in urban areas namely in Kuala Lumpur and Selangor.

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[72] Press statement issued by the Malaysian Bar President, Christopher Leong (29 May 2013), *"Death in police custody i.e K Nagarajan in December 2012 and N Dharmendran in May 2013"*, Published in the Malaysian Bar Website, Retrieved from www.malaysianbar.org on 2 November 2014

[73] Bar Council, Malaysia

A further setback is the lack of infrastructure in Sabah and Sarawak making NLAF services in East Malaysia limited. Since its inception, it lacks the structural functions to realistically achieve the objectives of the Scheme. As at August 2014, a total of 1831 lawyers are registered with the NLAF and out of that number, only 25 are NLAF lawyers in Sabah in which only a few are actively doing NLAF works.

Another hold-up is due to the fact that NLAC currently operates in all 12 state Legal Aid Centres and accordingly the scheme operates on the commitment and understanding of the state legal aid secretariat. This hinders uniformity in the administration of the scheme though there has been meetings conducted between the state legal aid centres on issues pertaining to the administration of NLAF.

b) Stakeholders

Lawyers

It cannot be denied that the success of the Scheme necessarily depends on the very legal basis for the formation of the NLAF that is to provide legal representation to all regardless of their social standing pursuant to Article 5 (3) and Article 8 (1) of the Federal Constitution and lawyers are inevitably the drivers behind the protection safeguarded by the Federal Constitution. Their inestimable efforts must continue to breathe life into the promise of Article 5 (3) of the Federal Constitution that every person arrested is entitled to legal representation and must be afforded to all regardless of their financial means on the premise of equality pursuant to Article 8 (1) of the Federal Constitution. However, one of the challenges in getting more lawyers to participate is due to the general dissatisfaction

with the current payment rates. The writer observed that concerns on the payment rates were usually raised at the various trainings conducted for lawyers throughout Malaysia.

While there have been NLAF lawyers who have rendered their services voluntarily without filing claims for payments as they regard this as a social responsibility, it is therefore principally not right to make the NLAF scheme compulsory to force lawyers to do NLAF work[74]. Similarly, the Bar Council Legal Aid Centres has been at the forefront for more than thirty (30) years providing volunteer lawyers who would spend their time and efforts in extending their legal services to arrested and detained persons where such services extended is only done pro-bono at no cost and is voluntary. However, the fact remains that access to justice is a fundamental right and any such right cannot be done at a voluntary basis. Therefore, it is submitted that adequate funding is necessary for a comprehensive legal aid in Malaysia.

In order to sustain and provide for a comprehensive legal aid, adequate funding to better coordinate lawyers is inevitable. The National Legal Aid Committee has submitted a proposal to the Foundation to improvise the payment rate with regards to remand proceeding and to include payment rates for pre-trial conference[75] as well as plea bargaining[76] process (since these amendments came after the operations of NLAF) and since 1st May 2014, the rates for payment to lawyers has been revised and increased[77]

[74] Interview conducted with Ravi Nekoo, Co-Chairperson, National Legal Aid Committee
[75] Section 172A Criminal Procedure Code
[76] Section 172C Criminal Procedure Code
[77] A table comparing the rates of payment to lawyers from 1st May 2014 and prior to that can be found at the Appendices pages 121 to 129 herein.

With the increment in the rates of payment, the volume of lawyers doing work for the NLAF has also steadily increased[78]. With the volume of lawyers in place, the challenge faced is now more focused on the quality of representation given to arrested/detained persons[79]. So as to maintain quality in lawyers providing effective and quality representation to arrested/detained persons, assessment test has been inculcated as part of the training program for NLAF lawyers. More interactive videos on arrest, remand and advocacy have been in place to ensure quality representations. In addition, an audit policy is also in place where an audit team have been established to audit lawyers on the field.

Another practical challenge faced is the lack of NLAF lawyers to cover remote areas such as, to name a few, Besut and Baling. The Attorney General have suggested that young lawyers who are interested to practice in the area of criminal law may set up firm in the remote areas to do NLAF work.

Another practical challenge faced is with regards to lawyers fishing for potential clients[80] during their tenure as a NLAF lawyer. The police in such a scenario play an important role in lodging a complaint where there is such misconduct committed by the lawyer. The clients also play a role in informing the NLAC of any such misconduct or any complaints

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[78] NLAC

[79] This was echoed in the President of the Malaysian Bar's Speech at the Opening of the Legal Year 2014 on 11 January 2014 at Perbadanan Putrajaya when he said as follows –
"We need to look seriously at the quality of representation provided by YBGK lawyers. In our mind, greater representation is only one measure of the success of a good legal aid scheme. We also need to be concerned about the quality of representation, and take steps to ensure that those who are in need of legal representation do not receive mere representation, but receive quality representation"

[80] Legal Profession (Practice and Etiquette) Rules 1978 and the Legal Profession Act 1976 - *A lawyer is not allowed to tout and will be properly dealt with the Disciplinary Board if caught.*

as regards the lawyers[81]. As to date, there have been a number of lawyers referred to the Disciplinary Board[82].

The writer has personally observed representations made by lawyers at the remand stage which is incorrigible and devoid of all the trainings that has been taught to NLAF lawyers which arguably is as good as no representation having been made at all. The particular instance the writer observed occurred at the Klang Magistrate Court where the detainee does not know what was going on during the remand proceedings as the submissions by the parties were carried out in a very low tone.

Then, there are also challenges faced when non NLAF lawyers have raised concerns that NLAF is another platform for young lawyers to tout coupled with non-effective representation provided. And that such practice is affecting the rice bowl of the existing criminal lawyers. In the first place, the argument that such practices is affecting the lawyer's rice bowl cannot hold water as the only way in which it will affect the rice bowl of the lawyer is if he himself is in the business of touting which is a clear contravention of the Legal Profession Act where he can be subjected to the Disciplinary Board and risk his career as a lawyer. However, it cannot be denied there are NLAF lawyers who have flouted the rules of conduct since there are a few who have been referred to the Disciplinary Board and there also instances where effective representation is not forthcoming, nevertheless, It is hope that with the establishment of the audit team, it will provide some indicators so as

[81] A client complaint form is available for those who wish to make a complaint against the NLAF lawyer. A sample of the form is found at the Appendices page 130 herein.
[82] Interview conducted with Stephanie Bastian, Executive Director Bar Council Legal Aid Centre (KL)

to identify the outstanding and notorious lawyers which would encourage NLAF lawyers and protect arrested/detained persons as well.

Enforcement Officers

It is trite law[83] that a person can only be detained by an enforcement officer without a court order for a period of twenty-four (24) hours excluding travelling time.

If the enforcement officers deem it necessary to detain a person for more that twenty-four (24) hours, then a remand order must be obtained pursuant to Section 117 of the Criminal Procedure Code. There are also other specific statutes which provide for remand provisions which would take prevalence based on the maxim '*generalia specialibus non derogant*', i.e the Drug Dependants (Treatment and Rehabilitation) Act 1983 which allows for a fourteen (1)4 day remand period. Section 51(5)(b) of the Immigration Act 1959/1963 allows a non-citizen to be detained for 14 days. Section 12 of the Kidnapping Act 1961 allows a fifteen (15) day remand period. The remand provision which would be applicable would therefore depend on the offence that is being investigated

Section 117(2)(a) of the Criminal Procedure Code explicitly provides that for offences where the imprisonment provides for less than 14 years, then there can only be a maximum of 7 days detention, 4 days on the first application and 3 days on the second application. Likewise, Section 117(2)(b) of the Criminal Procedure Code provides that for offences where the imprisonment provides for more than 14 years, then there can only be a maximum of 14 days detention, 7 days on the first application and another 7 days on the

[83] Article 5(4) of the Federal Constitution and Section 28(3) of the Criminal Procedure Code

second application. Therefore, it is submitted that under Section 117 of the Criminal Procedure Code, the maximum detention allowed is only 14 days, nothing more.

However, the writer notes that there are many instances where a person is detained for more than 14 days, some even months. It would add colour to this discussion if the following case conducted by one of the NLAF lawyers is elaborated to explain the chain remand situation.

In the middle of 2012, it came to the attention of the NLAC through the collation of data of clients represented by NLAF lawyers that there was a suspect whose name kept appearing at different remand centres. Through the assistance of NLAC in extracting information of details of the lawyers, magistrate and Investigating Officer in which the remand orders were granted, a chronology of events which transpired in the course of which all the remand orders were granted were prepared and submitted before the Court in which the police were seeking for a new remand order (had the investigation officer could not have denied the document submitted as then, a contempt proceedings would have been initiated against him). As expected, based on the document produced before the Court, the Magistrate had dismissed the remand application and further directed that the suspect be released immediately and handcuffs removed. At this point, the police who had handcuffed and escorted the suspect had mentioned that the keys to the handcuffs were not with him. After much persistence and perseverance by the NLAF lawyer, the keys magically appeared from his pockets! This happened after some conversation over the phone by the police took place. Fearing a situation where the suspect would be re-arrested again, the NLAF lawyer had earlier called up the suspect's family to be on standby outside the

remand centre. The moment he was released, together with the NLAF lawyer, they sprinted towards the exit of the remand centre where the family of the suspect was waiting in the car at which point; the police shouted "*Curi!*" only to find out that the suspect was still in his lock up attire! Upon reaching the nearest petrol station, the suspect had returned the attire to the police through the NLAF lawyer.

As intense and as exhilarating as it may sound, this situation is still happening every day in our Courts even as we speak today.

The situation as illustrated above is called a chain remand[84] and this is one of the main challenges faced by NLAF lawyers in attempting to ensure that a person's liberty is not encroached upon to such an extent that the arrested person is detained according to the whims and fancies of the arresting authority. i.e. chain remand. The writer has had experience similar to other NLAF lawyers experiences where the police would simply state that the lawyer can feel free to oppose the remand even vigorously as they can always re-arrest the suspect. Chain remand is best illustrated with the following example: A is held for five days at Deng Wangi police station. At the end of the five day remand, he is released and immediately re-arrested by police from Jinjang police station. They produce A before a magistrate and obtained a second remand order. At the end of this remand period, A is released and re-arrested in Brickfields police station and is then taken to another Magistrate for a third remand order.

[84] Also known as '*tukar gari*', road show, chain smoking remand

In 2005, S. Hendry was found hanged in his cell at the *Pusat Pemulihan Akhlak Simpang Renggam*, less than 12 hours after he had been transferred to that detention centre. Prior to his arrival at the Simpang Renggam detention centre, S. Hendry had already been detained for a total of four consecutive remand orders under section 117 of the Criminal Procedure Code. In each case, he was not charged due to insufficient evidence. On the last day of the fourth remand, he released unconditionally but immediately re-arrested under section 3(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and detained for a further 60 days at the same lock up. Subsequently, he was transferred to Simpang Renggam detention centre which he was found dead within 12 hours[85].

It is pertinent that arrested persons are treated with dignity and humanity devoid of any acts of oppression. As with the case mentioned above, the writer has also observed and handled various instances where after having successfully mounted an effective challenge to oppose the remand application, the clients are immediately re-arrested, making a mockery of the whole remand process[86]. A change in the hearts and minds of the enforcement officers when dealing with the liberty of an arrested person would certainly go a long way.

Perhaps, Section 117(3) and Section 117(4) of the Criminal Procedure Code is an attempt by the legislators to curtail the chain smoking remand process. Section 117(3) of the Criminal Procedure Code provides that the Investigation Officer must (a mandatory provision) notify the presiding Magistrate of any detention of the arrested person immediately prior to the current application, whether or not such detention is related to the

[85] SUHAKAM report on the *"Public Inquiry into the Death in Custody of S. Hendry"*, Published on 17 & 18 February 2006.
[86] Similar experiences are also shared by all NLAF lawyers interviewed for the purposes of this Study.

current application (Emphasis is mine). Section 117(4) of the Criminal Procedure Code further states that the Magistrate is required to take that into consideration whether or not such detention is related to the current application (Emphasis is mine) before deciding on the number of days to remand the arrested person.

Pursuant to Section 117(3) and Section 117(4), it is submitted that in the event the police do not attach a copy of the Investigation Diary of the previous detention to the presiding Magistrate, then the Magistrate could not possibly come up with a reasoned and informed decision, and as such failure to provide a copy of previous Investigation Diary must of necessity be a ground to dismiss the remand application on the basis that the Magistrate is not informed (if the Investigation Diary is not produced, it is fatal and the remand must be dismissed). More so in a remand application where it deals with depriving the liberty of a person. It is also pertinent that Section 117(7) of the Criminal Procedure Code is mandatory in which the Magistrate in granting a remand must record his reasons for so doing. And so, when recording reasons, the Magistrate could not possibly assume facts from previous detention. Perhaps, a more practical solution is for the Magistrate to stand down the matter to allow the police to bring copies of the previous investigation diary. Magistrates must at the end of the day balance fairly between the demands of public interest that crimes be investigated effectively and that offenders be brought to justice with the rights of the arrested person as held in the case of ***Re Syed Muhammad Syed Isa***[87].

The cause of the abuse of the remand provision is uncertain although there has been indication that the factors is attributed to heavy workload faced by the Investigating

[87] [2001] 8 CLJ 247

Officers and reduced days obtained from the Court. It is submitted regardless, of any factors that may cause the police to abuse the remand provisions, there is certainly no justification whatsoever to deprive a person of his liberty without reasonable grounds.

Currently, NLAC is in the midst of collecting data on instances of abuse of the remand provisions i.e. chain remand. The data collected of such abuses would consequently be put forward at the KUP meeting[88]. Ultimately, the setting up of the Independent Police Complaints and Misconduct Commission (hereafter will be referred to as the 'IPCMC') would be necessary to act as an independent body to police the police.

It is also worthy to mention that there has been instances of abuse of Section 28A(8) of the Criminal Procedure Code when NLAF first began its operations and this is most prevalent in Kuala Terengganu and is used even for the most petty offences. When faced with this challenge at the remand stage, it is submitted that the arguments put forward would be that Section 28A(8) of the Criminal Procedure Code is only applicable at the police station. Remand proceedings are court proceedings and the arrested person has a right to be represented. Any representation would be meaningless if the lawyer is not able to obtain instructions from the arrested person. Therefore, the magistrate is duty bound to ensure that the constitutional right of the arrested person to be legally represented is not infringed. A request for the matter to be "stood down" would be made then in order that the lawyer may obtain the arrested person's instructions before being able to mount an effective representation.

[88] Meeting held once in every 3 months headed by the head of prosecution unit, Attorney General Chambers and involve participation of all relevant stakeholders to iron out issues and problems faced in the implementation and enforcement of NLAF.

Besides the challenges faced when there are situations of abuse of the remand provisions, another practical challenge faced is when the enforcement officers make arrest for non-seizable offence[89] which does not entail any right for arrest as it falls squarely within the ambit of summons and a warrant of arrest must be obtained from the Magistrate first on the grounds, for instance he has failed to turn up in Court to face the charge. However, one will see that even if this issue is pointed out to the Magistrate, in which case some Magistrates will still proceed to grant remand whilst there are those who will immediately dismissed the remand application. Here lies the problem, the police upon realizing this, will in future use an offence slightly higher to bring back within the ambit of arrest and make the remand application. After all, there many cases where a person will be charged on a reduced charge than initially investigated upon. Again, the question of hearts and mind.

Ultimately, the ideal situation in any criminal justice system is for the police to investigate first and arrest later and not otherwise[90]. With a high budget granted to PDRM and with extensive forensic abilities, surely the police can investigate first then arrest only to charge in Court. Allegations of corruption and abuses[91] against the police may also be reduced to a certain extent.

[89] Example of a non-seizable offence is Section 323 of the Penal Code and Section 427 of the Penal Code
[90] Supra n. 86
[91] Senator Valli Muthusamy has once addressed the Parliament describing Section 117 as a 'money making Section for the police' as cited by Jerald Gomez in his article ""Rights of Accused Person: Are Safeguards Being Reduced?" [2004] 1 MLJ xx Supra n. 1

Magistrates

It must be noted that Magistrate play an important role with regards to remand proceedings since they are dealing with the liberty of persons. As has been stated in the case of ***Re Syed Mohammad Syed Isa & Ors***[92], the Magistrate must balance fairly between the right of personal liberty of the individual who has not yet been proven guilty against the equally important public interest that crimes be investigated effectively and that offenders be brought to justice.

However, to begin with, there are Magistrates who lack appreciation of remand provisions. It is trite law[93] that the only acceptable grounds for a remand to be granted is if the suspect is a flight risk and/or if released, the suspect will conceal, tamper with evidence. Yet, the following grounds which are not acceptable and not valid grounds as per case laws[94] have been accepted by Magistrates in granting remand orders —

"Siasatan ke atas saspek tidak dapat di jalankan dalam masa yang pendek; Untuk menjalankan soal *siasat keatas saspek mengenai beberapa saspek yang masih bebas melalui saspek ini; Siasatan awal juga mendapati suspek memang terlibat dalam kejadian kes ini dan juga mengesan pemilik kereta No. XXXX yang juga merupakan seorang saspek yang masih bebas daripada tindakan Polls yang mana suspek tahu tempat kediaman saspek lain; Untuk merakamkan percakapan saspek dibawah Sek 112 KPJ; Untuk memperkemaskinikan kertas siasatan sebelum dituduh; dan untuk semakan mengenai kesahihan kewarganegaraan saspek; Siasatan tidak dapat diselesaikan dalam tempoh*

[92] Supra n. 86
[93] Supra n. 86; Supra n. 29; Polis Diraja Malaysia v Audrey Keong Mei Cheng [1994] 3 CLJ 362; Supra n. 27; Re Mohamad Ezam Mohd Nor [2002] 5 CLJ 156
[94] Ibid.

24 jam; Untuk menkaji later belakang suspek Untuk menyiapkan kertas siasatan; It is a serious case; 10 is too busy; 10 is still awaiting DPPs instructions".

Again when the Magistrate is asked to provide and record valid reasons as stipulated under Section 117(7) of the Criminal Procedure Code, there are many a time where Magistrates will state "*saya terima alasan polis*" without providing any justification.

In ***Re the Detention of Sivarasa & Ors***[95] KC Vohrah J held as follows —

"It has to be stressed that a Magistrate ought not to give a remand order in police custody without him satisfying himself as to its necessity and that the period of remand ought also to be restricted to the necessities of the case. If the necessities of the case for remand or further remand are not shown, no remand order should be made"

The lack of appreciation of remand provisions necessarily emanates from lack of training and because there are Magistrates sitting in a remand court not having any experience at all in the field of criminal law[96]. It is also common for Magistrates to be inundated with loads of remand application in one sitting as occurred in ***Re Syed Mohammad Syed Isa***[97]. Whilst one may sympathise with the plight of the Magistrate, the fact nevertheless remains that the arrested person's constitutional right must be given paramount importance and any attempt to whittle down this right by reason of workload must be averted.

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[95] Supra n. 29

[96] These Magistrates are Senior Assistant Registrar who does banking, civil matters and may not be well versed with the criminal justice system.

[97] Supra n. 86

c) Detention of Children

Another common challenge faced at the pre-trial stage is with regards to the detention of children[98]. Although there are many provisions under the Child Act 2001 covering aspects of pre-trial criminal procedure, however, these provisions lack details.[99] This has led to a dispute as to the period in which a child ought to be remanded and the Court of Appeal in the case of ***Re N (A Child)***[100] held that since the Child Act 2001 does not provide for the detention of a child for the purposes of investigations, the Criminal Procedure Code is therefore applicable. With respect, it is submitted that such decision can only be held as per incuriam as the decision was made in the absence of counsel. The preamble of the Child Act explicitly adopts the spirit of the Convention on the Rights of the Child and in particular the preamble states as follows –

"a child is by reason of their physical, emotional and mental immaturity, is in need of special safeguards, care and assistance..."

The Act clearly was promulgated in the best interest of the child.

The best interest of the child.

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[98] Section 2 of the Child Act 2001 (Act 611) defines a "child" as a person under the age of 18 and in relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed under Section 82 of the Penal Code (Act 574) which is 10 years old. Section 113 Evidence Act 1950 (Act 56) provides for an irrebutable presumption that a boy under 13 years old is incapable of committing rape

[99] Dr. Farah Nini Dusuki (2009), *"The UN Convention on the rights of the child and the administration of juvenile justice : an examination of the legal framework in Malaysia"*, Published in Asia Law Quarterly, pg 141-158

[100] [2004] 2 CLJ 176

Any detention of children is surely not in the best interest of the child. Even if detention is necessary, it must be as a measure of last resort[101]. In this regard and to conform to this principle, one would note that there are a variety of non-custodial provisions provided in Section 91 of the Child Act 2001, what more these provisions of non-custodial orders are made after a finding of guilt is pronounced.

Nevertheless, when it comes to pre-trial arrest, detention and bail concerning children, the Act is vague and does not specify in detail the procedural aspects governing them[102]. Section 87 of the Child Act 2001 and Section 85 of the Child Act 2001 however are worthy of mention.

Section 87 of the Child Act 2001 clearly provides that the enforcement officer must immediately after arrest, inform two classes of persons i.e. the parents/guardian and the probation officer. However, based on observations and practical experiences when providing representation at the remand stage, is the fact that in almost all cases involving children, the probation officer would never be called. Reasons such as the probation officer cannot be located, and the investigating officer will call after the remand application are but some of the common excuses given[103]. However, NLAF lawyers are trained to ensure and vigorously oppose the remand application for non-compliance of the provision in addition

[101] A Juvenile v PP [2003] 1 CLJ 171 ;PP v KM (A Child) [2010] 9 CLJ 605; PP v Bunyau AK Nanum, judgment delivered on 2.9.2008 by Hamid Sultan Abu Backer JC are all cases which states that detention must be as a measure of last resort when involving children. It is pertinent that these are cases where finding of guilt has been made, what more in a situation where a child may not even be charged at all to begin with a happened in the case of Re N (A Child), but the stigmatization that would be befall upon be may leave an imprint throughout the rest of his life.

[102] Supra n. 99

[103] There was however one experience by Ms. Manimegalai, NLAF lawyer where she was able to extract details of the probation officer. But it is submitted that this is the exception as the reason why the probation was able to be located was because of the nature of this particular case where the child ran away from the social welfare department in Rawang, Selangor.

to usual arguments put forward in opposing a remand application. An NLAF lawyer would seek the Court to stand down the matter for the Investigating Officer to contact the probation officer since the wordings in the Section is couched in a manner so as to make it mandatory. This would be argued in addition to the arguments put forward in opposing a remand application.

Section 85 of the Child Act 2001 on the other hand provides that a child must be separated from adults in police stations or Courts. However, compliance of this provision is far from satisfactory. More often than not, a child will be handcuffed together with other adults and brought in the remand centres together. While there is anecdotal evidence by way of an administrative order that a child ought not to be handcuffed, again in the context of the best interest of the child, such practices by the enforcement officers are still in practice today. The High Court in the case of ***PP v Yaakub bin Ahmad***[104], held that when an accused person is brought before the Court, he is in the custody of the Court and therefore, handcuffs must not be used with the exception that he is prone to violence. However, the burden to show to the satisfaction of the Court that the accused person is prone to violence lies on the shoulders of the prosecution. In the Court of Appeal case of ***Ramanathan s/o Chelliah v PP***[105], Shaik Daud JCA held as follows –

"*In the final analysis, it is in the sole discretion of the presiding officer to consider whether it is essential to have an accused person handcuffed be it during the entire trial or at the arraignment, if and when an application is made by the prosecution. Needless to say, such*

[104] [1975] 2 MLJ 223
[105] [1996] 2 MLJ 538 at page 542.

*discretion must be exercised judiciously and not merely because of the prosecution wants it to be. It would seem clear to us....**there must be an application by the prosecution**, and secondly in order for the curt to exercise its discretion judiciously, there must be some credible material before the court in support or otherwise of the application"*

Applying the principles as enunciated in the two cases as mentioned above, it is submitted that there is no reason why the same principle ought not to be used in a remand proceedings since remand proceedings are court proceedings what more involving children and are mere suspects.

NLAF lawyers are also trained to raise these provisions to the Courts to persuade Courts in directing the enforcement officers to comply with the provisions in addition to the usual arguments put forward in opposing a remand application.

Whilst it may be that there is a lack of infrastructure and that the probation officers carry different hats and are overburdened with heavy workload[106], these are again justifications which must be averted as it concerns the liberty of a person, what more a child is affected in this aspect where he may face heavy stigmatization. Essentially, the idea of vigorously requiring compliance of the provisions of the Child Act 2001 is to put pressures on the relevant stakeholders concerned so that the necessary reforms in terms of having proper infrastructure to cater to the law may take place. Ultimately, it is submitted that when concerning juveniles, and in compliance with the Convention on the Rights of the Child

[106] Supra n.99

and the Child Act 2001, alternative forms to deal with children in conflict with the law such as diversion and restorative justice is yet the more viable option.

d) Detention of Foreigners

On 9 October 2014 in New York, United States of America, in a statement by His Excellency Ambassador Hussein Haniff, Permanent Representative of Malaysia to the United Nations[107] stated as follows –

"Malaysia wishes to reaffirm its commitment to the right of equal access to justice for all, including members of vulnerable group in society. We stand by our commitment to provide fair, transparent, effective and accountable services particularly in ensuring access to justice"

The above statement is certainly welcomed and is legally sound finding its protection under Article 5 (3) and Article 8 (1) of the Federal Constitution that access to justice to be legally represented must be given to all citizens and non-citizens alike and such a fundamental right must not be compromised or sidelined to only certain groups of people.

However, this is precisely where the NLAF scheme has failed by denying equal access to justice to all but limiting it only to Malaysians[108]. Therefore, migrant workers, stateless people, asylum seekers, refugees are all not covered under this scheme.

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[107] Statement by H.E. Ambassador Hussein Haniff, Permanent Representative of Malaysia to the United Nations on Agenda Item 82 Entitled *"Rule of Law at the National and International Levels"* At the Sixth Committee of the Sixty-Ninth Session of the United Nations General Assembly

Whilst the Bar has in the past championed rights of LGBTI[109], asylum seekers, refugees, stateless people, again in the context of providing legal representation at the pre-trial stage, no representation can be made if the NLAF is not informed of the arrests of these groups of people. The limited solution in overcoming this issue currently is at the remand stage when the NLAF lawyers are on duty and they will on their own initiatives represent non-citizens on a pro-bono basis in the capacity as volunteer lawyer under the Bar Council Legal Aid Centres. Even then, it really depends on the commitment and dedication of these lawyers to represent them. Passionate and dedicated lawyers who firmly believe in human rights and activism may go the extra mile by representing a non-citizen as well in his capacity as a volunteer lawyer under the Bar Council Legal Aid Centre. But, it is also common knowledge that there are lawyers with solely the business sense or in the dollars and cents mindset as well[110]. These lawyers may not see the importance and necessity of providing legal representation to a non-citizen.

But the more major setback is that at the pre-trial stage where the offences are immigration offences, the NLAF lawyers may not even be available to provide representation on a pro bono basis as these arrested persons will be placed at the immigration detention centres and if they were to be brought for remand, it will be more often than not in PATI[111] Courts. The matter is further exacerbated if these people who are being arrested and detained are children[112] but because they have no documents, and their age may not reflect their facial

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[108] The various guidelines and letters found at the Appendices page would show that the objective of NLAF is to provide legal representation to Malaysians only.
[109] Lesbian, Gay, Bisexual, Transgender/Transexual and Intersexed
[110] The writer has observed in remand centres of the two categories of the lawyers mentioned
[111] 'Pendatang Asing Tanpa Izin'
[112] Article 22 of the Convention on the Rights of Children dealing with the rights of refugee children (note that Malaysia never placed a reservation on this particular Article) couple with the preamble of the Child Act

features as a result of the hardship they go through, in effect they may be later on charged[113] in court for immigration offences[114] which may even result in whipping sentence[115]. Again, these issues may not arise if there are in place proper access to justice in the form of legal representation given to them[116].

In addition, issues of absence of interpreters at every remand hearing are also of concern. This is serious, considering that the foreigners who are arrested and detained are unable to to converse in either Bahasa Malaysia or English.

The importance of an interpreter has been succinctly stated in the case of an accused charged in Court as reflected in the case of ***Ah Poon & Ors v PP***[117] where the Court held as follows –

"*That it is an irregular and improper exercise for the learned Magistrate to have directed a policeman who is not a certified interpreter to interpret the charge to the accused, and such a practice is not only unsatisfactory but most undesirable and cannot be condoned. When*

2001 and Article 5(3) and Article 8(1) of the Federal Constitution clearly access to justice ought to be available to them more so since they are children and must act in the best interest.

[113] Article 145(3) of the Federal Constitution read together with Section 376(1) of the Criminal Procedure Code states that the Public Prosecutor has the discretion to institute, continue or discontinue proceddings.

[114] Malaysia have yet to ratify the 1951 Refugee Convention and its Protocol Relating to the Status of Refugees and as a result Malaysian law does not distinguished between an illegal immigrant and a refugee or an asylum seeker (save for a directive issued by the Attorney General requiring no arrest or prosecution if these individuals are registered with UNHCR, though it is but a mere circular as the writer has been assigned by UNHCR in a couple of cases to intervene in the Courts to secure release of refugees and asylum seekers but in some cases, despite producing the verification letter from UNHCR confirming the accused person's status as a registered person of concern, prosecution nevertheless expressed their intentions to proceed with a s.6(1)(c) of the Immigration Act 1959/63 charge.

[115] S.6(3) of the Immigration Act 1959/63, Act 155

[116] If legal representation is given, the lawyer may raise the issue that the arrested person may be a child and require an order from the Court pursuant to Section 16 of the Child Act for dental evidence to be provided in verifying his age.

[117] [2006] 5 CLJ 521

there is a charge framed in a language not understood by the accused who is present in person, it must be interpreted and explained to him or her in the language which he or she understands; provision for certified interpreter is a right which is given to them under the law and there should be no departure from this settled practice and law, and no one can take that right away. It is a serious matter and not to be taken lightly. It constitutes a breach of a substantive right and forms part and parcel of the doctrine of procedural fairness; administrative inconvenience or difficulties to obtain the aforesaid services should not be grounds to disregard the requirement of justice to provide the accused persons with a qualified and certified interpreter of a dialect which he or she is able to communicate with before recording the plea of the accused; and judicial proceedings should not be hurried in such a fashion or the requirement of essential justice relaxed for the sake of expediency and completing a case and to meet the requirement of statistics or the number of cases isposed of, and disregarding established and statutory procedural requirement in the taking of plea and accepting the plea of guilty can never be a consideration in the discharge of judicial function and in the administration of justice"

Based on the aforesaid case, it is submitted that the there is no reason why the same principle cannot be applied in a remand proceedings as the remand process is an integral part of the administration of criminal justice. The same importance given to an accused person charged in Court ought to be extended to a suspect in a remand proceeding. However, in reality, no interpreter will be available for the remand hearing.

Be that as it may, the current obstacle faced is that the NLAF scheme does not extend to foreigners.

e) Detention of persons with special needs

Another common challenge faced is with regards to drug users who are investigated under the Drug Dependants (Treatment and Rehabilitation) Act 1983[118] which law allows the arrested person to be remanded for a period of 14 days. It is common that Magistrates grant a full 14 day remand period.

Where Magistrates grant such orders, it is necessary that they understand the nature of drug dependants as they may suffer from withdrawal symptoms, who if placed and kept together with other suspects in the lock up, he may not only endanger himself but also others around him. Therefore, Magistrate must ensure necessary orders are made so as to ensure the lives are not jeopardized.

Alternatively, it is necessary that Magistrates grant bail where urine test has been taken and the only thing left is to await for the results from the chemist department. Currently, police orally informs that the chemist would take 12 days to come back with the results. Again, to keep a person in detention for 14 days just to await the results only to find out that he is negative is certainly unacceptable and would deprive his liberty. There are also situations although preliminary tests conducted states that it is positive however, after full analysis it may also turn out to be negative.

[118] Section 3(1) of the Act states that the enforcement officer may take into custody any person whom he reasonably suspects to be a drug dependant. Section 4(1)(b) further states that the Magistrate can grant a remand application for a period up to 14 days.

Therefore, it is humbly submitted that where the circumstances of the person arrested shows that he is gainfully employed, has a permanent address and has family/relatives to bail him out, it would be practical to allow the person to return to work than keeping him in detention just to await for the results which may eventually turn out to be negative and the liberty of the person for 14 days would have not been able to be brought back.

It is pertinent to note that with regards to investigations under this Act, the investigations would be taking samples of the urine and sending the samples to the chemist department for verification as to whether the person is a drug dependent.

The Magistrate should consider the remand application in tandem with the constitutional rights of an arrested person.

f) Lack of Awareness

As it stands today, the initiatives taken to create awareness of NLAF are a number, for instance putting up banners and buntings at relevant places i.e. Courts, police stations. There are Courts who have been proactive for instance in certain Courts in Kuala Lumpur, small pamphlets are placed in Courts to be distributed where a person does not have a lawyer, though is only practiced in few Courts. According to Stephanie Bastion, one of the reasons as to why arrested/detained persons refuse representation is because the arrested/detained persons have no knowledge of the NLAF and so it is difficult for them to comprehend that such service is free.

g) Sustainability

Having examined the workings of NLAF and its origins, one would question whether the NLAF will sustain. The simple answer to this is that there is no guarantee that it will sustain and though it would be ideal to think so, the reality is far from it. Take the ongoing situation of the England's legal aid scheme as an example of its volatility where the issue of its sustainability is already being questioned.

On the other end of the coin, if one were to look at the Taiwan legal aid scheme[119], the Legal Aid Act was promulgated in 2004 and has since flourished to immense heights providing legal aid at different levels of the criminal process and is also actively involved in law reform. All this was possible because it had the Government's support. The Legal Aid Foundation in Taiwan in independent and the Board comprise of people of different institutions, the judiciary, the Ministry of Justice, law professors and leaders of community. There is therefore transparency and accountability[120].

Coming back to our soil, it is also a fact that the NLAF Board comprise of people from different institutions, the Attorney General, the President of the Malaysian Bar, President of the Sabah Law Association, President of the Advocates of Sarawak Association, departments in the Prime Minister's office, Dean of Law Faculty, to name a few. Therefore, there is transparency and accountability.

[119] 2014 International Forum on Legal Aid, Howard Civil Service International House, Taiwan
[120] Ibid.

Furthermore, the writer would venture to state that the Board of NLAF particularly the Attorney General is very much proud of the fact that NLAF is in existence. This is evidenced in 3 consecutive speeches given at the Opening of the Legal Year. Based on the speeches, one could tell how much of confidence the Attorney General has over the NLAF scheme. Even recently, the Attorney General continues to advocate in the promotion of NLAF in its contribution towards achieving access to justice[121]. With the continued support from the Government and the relevant stakeholders, the writer is confident that the NLAF would soar to greater heights in the coming years.

Again, all cannot be made possible with the hard work, dedication and commitment of the secretariat. With the hard work, dedication, solidarity and a great deal of optimism, it is certainly the writer's hope that the NLAF would sustain in the long run.

3.4.2 Statutory Limitation

As it stands today, there are but merely circulars and guidelines issued to ensure the smooth operations of the NLAF. There is no proper legal framework to govern, amongst other, the functions of the Foundation and operations of the Scheme. A proper legal framework would to a certain extent reduce the practical challenges currently faced as mentioned aforesaid.

[121] Supra n. 65

C. Comparative Analysis on Selected Countries

Following is a comparative analysis by the writer on legal aid in selected countries in 2013-2014 in relation to this Study[122] –

Table E : Comparative analysis on size of country

Size of Country (sq. mi)						
Malaysia	Taiwan	UK	Netherlands	Hong Kong	Japan	Philippines
127,724	13,972	93,800	14,422	426	145,920	115,831

Table F : Comparative analysis on population

Population (million)						
Malaysia[123]	Taiwan[124]	UK[125]	Netherlands[126]	Hong Kong[127]	Japan[128]	Philippines[129]
30.4	23.4	64.11	16.88	7.23	127.1	100.7

[122] 2014 International Forum on Legal Aid, Howard Civil Service International House, Taiwan
[123] Statistics as of 15.12.2014, Department of Statistics Malaysia, Retrieved from www.statistics.gov.my/portal/ on 16 December 2014
[124] Statistics as of 30.11.2014,National Statistics, Republic of China, Retrieved from http://eng.stat.gov.tw/point.asp?index=9 on 16 December 2014
[125] Statistics as of 1.7.2013, Office for National statistics, United Kingdom
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[128] Statistics as of 1.11.2014, Statistics Bureau : Ministry of Informal Affairs & Communications, Retrieved from http://www.stat.go.jp/ on 16 December 2014
[129] Statistics as of 16.12.2014

Table G : Comparative analysis on Gross Domestic Product

Gross Domestic Product						
Malaysia[130]	Taiwan[131]	UK[132]	Netherlands	Hong Kong	Japan[133]	Philippines[134]
USD 312.44 billion	USD 21,283 (per person)	USD 2.5 trillion	Not available	Not available	472,596 billion yen	Php 11,548.2 billion

Table H : Comparative analysis on legal aid funded by the government

Government Funding						
Malaysia	Taiwan	UK	Netherlands	Hong Kong[135]	Japan	Philippines
NLAF - 2011 : RM 5 million 2012 : RM 10 million 2013 : RM 15 million	USD 28 million	USD 2.7 billion	Not available	USD 100 million	48 million Yen	Php 1.8 billion

[130] Supra n.122
[131] Supra n.122
[132] Hugh Barett, Director of Legal Aid Commisioning, "*National Report England & Wales*", Legal Aid Agency, Ministry of Justice, accessed at www.laf.org.tw/ifla2014
[133] Keita Abe, "*National report: Japan*", retrieved from 2014 International Forum on Legal Aid, Howard Civil Service International House, Taiwan at www.laf.org.tw/ifla2014
[134] Hon. Persida V. Rueda-Acosta, "*The Public Attorney's Office: Scaling Greater Heights and Embracing a Wider Breadth in the Fulfilment of its Mandate*", National Report (Featuring the Organizational Report of the Public Attorney's Office, the Phillipine Government's Main Provider of Free Legal Aid) retrieved from 2014 International Forum on Legal Aid, Howard Civil Service International House, Taiwan at www.laf.org.tw/ifla2014
[135] Supra n.122

Table I: Comparative analysis on the number of clients served

Number of Clients						
Malaysia	Taiwan	UK	Netherlands	Hong Kong	Japan	Philippines
131,501	136,065	630,000	Not available	3797	70,956	746,161

Table J : Comparative analysis on criteria for granting legal aid

Test						
Malaysia	Taiwan	UK	Netherlands	Hong Kong	Japan	Philippines
Means Test applied for Trials and Appeals No Means Test applied at Arrest, Remand, Bail and Mitigation	Means for citizens & means & merits for foreigners	Means & Merits No Means & Merits Test at police station	Means & Merits	Means & Merits	Means Test	Means & Merits

Table K: Comparative analysis on legal aid for Non-citizens

Non-Citizens						
Malaysia	Taiwan	UK	Netherlands	Hong Kong	Japan	Philippines
No	Yes	Yes	Yes	Not available	Yes	Yes

Table L: Comparative analysis on attendance at Police Stations

Attendance at Police Stations						
Malaysia	Taiwan	UK	Netherlands	Hong Kong	Japan	Philippines
Yes	Yes	Yes	Not available	Not available	Not available	Not available

An analysis of the legal aid schemes funded by the government as indicated above would show that Malaysia has the lowest funding for legal aid allocated by the government. Nevertheless, this could be attributed to the fact that the NLAF is still in its infancy stage having been in operations for only around 2 years. To be fair, for instance, the Taiwan model of legal aid scheme has reached its 10th year anniversary in 2014 while the UK Model of legal aid scheme is a much matured scheme having been in existence for decades. Although the legal aid scheme in UK has been around for many years, it is however currently undergoing major cuts to legal fees as the fees is now set at a fixed rate (though the quantum has yet to be ascertained) as opposed to previously, which is at a rate per hourly[136].

In Malaysia, one would note that for the year 2011 to 2013, the Government funding for Malaysia steadily increased i.e. from RM5 million in 2011 to RM10 million in 2012, followed by RM20 million in 2013. In other words, the government has been steadily increasing the funds for the operations of the Scheme. Further and so as to save cost, the NLAC piggy backs the existing infrastructures of the Bar Council Legal Aid Centres.

[136] Supra n.132

As regards to legal representation at the arrest stage, it is pertinent to note that England and Wales has a 24 hour defence solicitor call centre to cater to persons arrested at any time. In comparison, the NLAF has limited access to justice at the arrest stage due to the fact that the NLAC in each state are only open during office hours on weekdays. Therefore, it is submitted, with proper funding, the NLAC could adopt the model as in England and Wales, to establish a 24 hour call centre to cater to all arrested regardless of when they are arrested.

As regards the legal framework, it is noted that almost all countries have a legal aid act to effectively and efficiently manage the legal aid scheme whereas Malaysia does not have an Act to govern the NLAF. The Legal Aid Foundation in Taiwan is governed under the Legal Aid Act which was promulgated in 2004[137]. In the UK, the Legal Aid Agency was established on 1st April 2013. There are two main legal aid providers in England & Wales i.e. the Legal Aid Agency which engages private firms to provide legal services and the Public Defender Service which is independent from the Legal Aid Agency and the Ministry of Justice[138]. The Legal Aid Agency is an executive body of the Ministry of Justice which was established in April 2013 following the introduction of Legal Aid Sentencing and Punishment of Offenders Act 2012[139]. The Japan Legal Support Centre was established on 10 April 2006 by the Comprehensive Legal Support Act[140]

Therefore, an Act to govern NLAF would allow an effective and efficient mechanism in the implementation and enforcement of the scheme.

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[137] Yu-Shan Chang, "*The Development of Legal Aid Foundation (LAF) and its Social Impacts*", accessed at www.ilagnet.org on 2 December 2013

[138] Hugh Barett, "*National Report England & Wales*", Legal Aid Agency, Ministry of Justice, accessed at www.laf.org.tw/ifla in 2014

[139] Ibid.

[140] Supra n. 133

As regards representation at the pre-trial stage for non-citizens, it can be seen that almost all countries provide representation regardless of their social standing. A Study of the legal aid services funded by the government in countries such as Taiwan, Netherlands, Japan and England and Wales show that the legal aid services are also extended to foreigners. In Malaysia, as it stands, no representation is allowed under NLAF to be given to non-citizens. However, there is anecdotal evidence that representation will be allowed for non-citizens who falls under the category of a child as defined by the Child Act 2001 starting in year 2015.

As regards the means test, In Taiwan those who would be qualified for services under the Foundation are subjected to a means and merits test. The Foundation handles a variety of cases ranging from criminal law, civil law to administrative law. In England and Wales, there is no means test at the pre-charge stage. Similarly, in Malaysia, there are no means tests at the pre-trial stage.

A comparative analysis as above certainly shows that Malaysia is doing well in ensuring that access to justice through legal aid is given to all at the pre-trial stage, though there are much room for improvements. More importantly, a comparative analysis of the various jurisdictions as discussed would show that all countries run on the same common thread and that is the legal aid service provider are as a response to provide access to justice and services rendered are essentially to meet this principle.

In improving and maintaining the quality of NLAF lawyers, it is proposed that the requirements to be a NLAF lawyer ought to be relooked. Perhaps, the experience of the England and Wales as regards the requirements to be a legal aid lawyer in England and Wales may be looked as a starting point to better the quality of NLAF lawyer. A discussion of the requirements to be a legal aid lawyer in England and Wales is as follows.

Mr. Baskaran Maniam[141], a former duty solicitor who practiced for 13 years as a criminal legal aid lawyer in London, England, has stated as follows –

(a) there are two parts for one to qualify as a duty solicitor, firstly one would have to be accredited as a police station representative, only when one has been accredited as a police representative will he be able to go through the second accreditation that is court advocacy to be a duty solicitor;

(b) to be accredited as a police station representative, there are two parts as follows –

(i) Firstly, he will have to find a duty solicitor who is experienced, observe and shadow him for 5 cases on the duty solicitor's representation at the police station ("Master"). Once this has been done, he is then required to do write ups on these 5 cases. Thereafter, he will have to conduct another 5 cases on his own and his Master will then observe and evaluate him. Finally, he is required to conduct another 5 cases on his own; and

[141] Based on the interview conducted by the writer.

(ii) Secondly, once he has completed the above, he will then have to undergo an audio training where the lawyer will have to detect the issues of a real life scenario given through an audio device and record the issues that he has detected through another recording audio device. The process takes about 45 minutes. Apart from the legal issues, ethical considerations are also highlighted. This ensures the trainee lawyer is attentive and sharp in highlighting the issues.

(c) Once the above two parts of the program is successfully completed, then the trainee lawyer will receive a certificate accrediting him as a police station representative.

(d) however, to be on the duty roster at the police station, one will have to qualify as a duty solicitor. There are two parts for one to be qualified as a duty solicitor. The first part is he must have qualified as a police station representative and in addition undergo two parts of stringent court advocacy training.

(e) Only when one has qualified as a duty solicitor will he be put on the duty roster.

D. Recommendations and Possible Improvements

In a nutshell, there are inevitable inadequacies of the current implementation and enforcement of the NLAF, which may be mainly attributed to the fact that the Scheme is still at its infancy stage. Be that as it may, reforms and efforts must be made to respond to these inadequacies effectively.

While access to counsel at the remand proceedings is better managed through the cooperation between the judiciary and the police, and even in where effective representation is given, the safeguards to the rights of an arrested/detained person would be meaningless if there are no changes in hearts and mind to prevent an occurrence of chain remand. In this aspect, it is submitted that while the change in hearts and mind would be a long and daunting task which could see some light in a darkened tunnel after a long time, the more practical approach would be to reform the provisions on remand to provide better safeguards in a situation of chain remand. An outline registry system may be one of the ways to eliminate this undue process. On the brighter side, although so many challenges were raised in this Study on the problems faced when providing representation, these problems would never have been able to be brought out had the right to legal representation is limited as has been evidenced in past literature. The fact remains, these problems are raised precisely because they can be raised as the right to counsel is now given. These issues can be ironed out over time, be it through case laws, through law reform or other methods.

In order to see the sustainability and effectiveness of the Scheme in ensuring the safeguards to the rights of arrested/detained persons in the long run, the following recommendations ought to be noted —

a) Enact a new Legal Aid Act to govern the Foundation, its implementation and enforcement – by converging it to the existing legal aid (Government Legal Aid Department and Bar Council Legal Aid Centres);

b) In overcoming the issues of access to arrested person, the UK Model's "Defence Solicitor Call Centre" that operates 24 hours a day would be a good scheme to follow to overcome the current obstacles faced particularly where arrests are made after office hours. Such a scheme is also fundamental to ensure that the intent of Section 28A of the Criminal Procedure Code is met;

c) Magistrates - proper training ought to be organised by AG, there must also be audit on the Magistrates as well as the police who are making the remand application and more senior Magistrates ought to be placed in remand proceedings dealing since personal liberty of persons are involved.

d) Police - mindset needs to be changed, ideally, to arrest first and investigate later and all the stakeholders need to work as a team, to help rebuild PDRM's reputation and avoid allegations of corruption and abuses.

e) In tackling the issue of chain remand, law reform is necessary. In addition, the setting up of the IPCMC or an independent and credible external mechanism for oversight of the PDRM is urgently needed, putting sanctions on breach of YBGK policies, namely the IPCMC. The Government must recognise, as governments elsewhere have, that whilst the majority of the police force are honest and competent individuals, the police are unable to police themselves.

f) Lawyers - in tackling the problems of lack of lawyers in rural areas, increment of rates of payment to lawyers may encourage more lawyers to set up their firms doing NLAF works. Loans at low interest by the government to assist budding young lawyers to set up their own firms may encourage lawyers to come out to practise in rural areas.[142]. Perhaps, as a start the new rates have also included disbursements that can be claimed, more lawyers from the urban areas could assist in providing representation in more rural areas. For instance, in early 2013, NLAF lawyers from KL have rendered their services in Labuan after being referred by the Government Legal Aid Bureau. More recently, NLAF lawyers from Perak have also rendered their services in Labuan.

g) Interactive trainings for lawyers throughout the nation (role play, round table discussion). To improve the quality of NLAC lawyers, the UK model would be a good scheme to follow i.e

I. To be a NLAF lawyer at the pre-trial stage, the lawyer will have to go through the following – appoint an experience NLAF lawyer (hereafter will be referred as 'Master') and shadow him for a minimum of five (5) cases. The trainee lawyer will then have to handle a minimum of five (5) other cases on his own and this will be observed by the Master. At the final stage, the trainee lawyer is required to handle a minimum of five (5) cases on his own; and

II. Audio training – on real life scenarios where the trainee lawyer will have to engage in raising the necessary issues from a playback.

[142] Supra n. 65

h) To set up a more comprehensive audit department to maintain and improvise the quality of the Scheme;

i) In overcoming the issue of providing representation to non-citizens, perhaps the Government could start with providing representation to children documented and undocumented first, followed by documented migrants and undocumented asylum seekers and refugees. As Martin Luther King, Jr[143] once said, "*Injustice anywhere is a threat to justice everywhere*". Although there might be a hindrance due to budget constraints, the NLAF together with the Bar Council and NLAC should set up a team of lawyers under The Subcommittee on Migrants, Refugees and Immigration Affairs (hereafter will be referred as 'SMRIA'). SMRIA which is set up under the Bar Council is tasked to provide assistance to migrants and refugees, advocating safe migration, integrity and human rights for all.

j) In providing effective representation at arrest and remand stage to children in conflict with the law –

(i) the Child Act 2001 ought to be revamped to include specific procedural aspects governing the arrest and detention of children;

(ii) necessary provisions ought to be inserted in the Child Act 2001 for the non usage of handcuffs on children;

(iii) particularly Section 85 and Section 87 of the Child Act 2001 ought to be amended to include sanctions against enforcement officers who fail to comply with these provisions;

[143] Martin Luther King (1963) "*Why We can't Wait*", Letter from Birmingham Jail

(iv) ultimately, alternative forms to deal with children in conflict with the law such as diversion and restorative justice is yet the more viable option.

k) In tackling the issue of sustainability, whilst admitting that there is no guarantee that the scheme will stay on forever, the first approach would be to push for an enactment of a comprehensive Legal Aid Act. In addition, integrate with the citizens by having more rights awareness campaigns informing citizens of their right and ability to access a lawyer. By engaging citizens in reform efforts, sustainability is fostered by encouraging individuals and communities to become part of the solution;

l) Co-operations with non-governmental organisations and universities would also add value to providing access to justice for all. For instance, the NLAF could work with NGOs and Universities to open to the public the creation of NLAF poster targeting for the illiterate. This would indirectly involve the public and get them to be a part of the solution to the problems of access to justice; and

m) In creating awareness, there has been a positive step in the placement of NLAF commercial advertisement on local television channels. In addition, Courts ought to play a proactive role in creating awareness i.e systematic process of informing the existence of NLAF to be practised in all Courts. Furthermore, universities could organise forums, trainings, seminars and invite speakers to talk about the rights of arrested persons and the various legal aid schemes that are available to them. So when they conduct their own legal aid clinics, they could promote NLAF as well and by word of mouth. As with the success of the widespread Bar Council's MyConstitution

Campaign or the *Kempen Perlembagaanku*, NLAF also could utilise social media like Facebook and Twitter producing a variety of rights awareness activities, public discourse, media events, even fund a free festival similar to the MyConsti *"Rock 4 Rights 2011"*, a 12 hour non-stop concert and carnival, with performance arts events, a film, and a flea market to help Malaysians learn more about their rights and the NLAF.

E. Conclusion

While the NLAF scheme is a positive step towards a better administration of the criminal justice system, inevitably there are shortcomings that need to be addressed and resolved to safeguard the rights of the arrested and detained persons. Among the shortcomings are that the regulatory authorities need to provide more guidelines and proper framework to facilitate compliance with regard to the operations of NLAF. Further, there must be a concerted effort by all stakeholders in the promotion of NLAF to the public, cooperation and trainings to improve the quality of the relevant stakeholders. The relevant stakeholders must also be sensitized of the rights of the arrested/detained persons and appreciate the principles attached to it.

Again, the recommendations to provide for an effective representation would not have been possible if in the first place, there is no access to justice at the remand stage. The fact that so much of reforms and changes can be done is because now we have a situation where from 90% unrepresented to almost 75% having representations at the remand centres. Who would have thought so many representations could be afforded. No one would have envisaged that judging from the lack of facilities to interview suspects etc. As such, now we

can improvise on all this so that more effective representations can be given. Substantial work needs to be done; nonetheless, the writer is certainly proud that much has been accomplished within a short span of time.

2 April 2012 was indeed a historic day because it was on this date that the NLAF began operations. Just over two years on, much progress have taken place in improving the plight of the previously unrepresented arrested and detained persons. By affording representation, NLAF may seek to ensure that most if not all of their rights are enforced and upheld.

It is also the hope of the writer that NLAF will be extended to cover non-Malaysians as everyone who is in Malaysia deserves access to justice and legal representation. We may in fact be witnessing the genesis of a comprehensive government-funded legal aid system in the country. More importantly, the NLAF is able to flourish precisely because it has the Government's support.

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Appendices

Interview Questions

(a) What are the statistics of people arrested in Kuala Lumpur from April 2012 to August 2014?

(b) Out of the overall people who were arrested based on the statistics given, how many of them have been represented by the NLAF, at the arrest stage, and at the remand stage?

(c) For those who were not represented, what were their reasons —

I. was Section 28A(8) of the Criminal Procedure Code (CPC) invoked (if it is in the affirmative, what type of cases is this section being used and did the police inform the NLAF when Section 28A(8) CPC ceases to apply?), or

II. did the arrested persons voluntarily refuse representation because they were threatened by police?; or

III. were there no NLAF lawyers on duty or poor quality of lawyers?; or

IV. did the Magistrate refuse representation to be given to them?; or

V. they have never heard of the NLAF?

(d) What are the joint efforts of the law enforcement agencies, the judiciary and the Bar Council in terms of the implementation and enforcement of the NLAF?

(e) What are the consequences if any party fail to adhere by the guidelines related to the operations of the NLAF?

(f) Are there sufficient trainings given to the relevant stakeholders on the operations of the NLAF?

(g) Are there educational programmes initiated by the relevant stakeholders to promote and educate the public of their rights and duties under the laws of Malaysia and the existence of the NLAF?

(h) What are the conditions of registering as a NLAF lawyer?

(i) How do the salaries and fees paid to the NLAF lawyer as compared to the general market rate?

(j) Are there sufficient lawyers to represent the bulk of people arrested and remanded daily? If in the negative, what are the possible reasons for the lack of lawyers participating in the NLAF?

(k) Are there difficulties in the lawyers gaining access to their clients?

(l) Are there proper facilities at police stations, remand centres and Courts given to the NLAF lawyers to meet with arrested/detained persons?

(m) Are there sufficient cooperation rendered by the police in ensuring the smooth operations of the NLAF?

(n) What is the reason as to why the NLAF do not represent foreigners and cases where suspects are investigated and/or detained under the Kidnapping Act and/or preventive laws?

(o) What are the criterias of granting legal aid at the pre-trial stage?

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN SIVIL)
GUAMAN NO: 21 NCVC – 95 – 05/2012

ANTARA

1. FADIAH NADWA BINTI FIKRI
2. MURNIE HIDAYAH BINTI ANUAR
3. PUSPAWATI BINTI ROSMAN
4. SYUHAINI BINTI FAFWAN

... PLAINTIF-PLAINTIF

DAN

1. KONSTABLE FAUZIAH BT MUSTAFA
2. INSPEKTOR AZLINA BT NORZALI
3. KONSTABLE NOOR BALKHIS BT MAAZIN
4. ACP WAN ABDUL BARI BIN WAN ABDUL KHALID
5. DSP JUDE PEREIRA
6. KETUA POLIS NEGARA
7. KERAJAAN MALAYSIA

... DEFENDAN-DEFENDAN

DIDENGAR BERSAMA

GUAMAN SIVIL NO: 21 NVCV – 99 – 05/2012

ANTARA

RAVINDER SINGH DHALLIWAL
(K/P NO: 800821-14-5385)

... PLAINTIF

DAN

1. TIMBALAN PENGUASA POLIS JUDY BLACIOUS A/P PEREIRA
2. PENOLONG PESURUHJAYA POLIS
   WAN ABDUL BARI BIN WAN ABDUL KHALID
3. LANS KOPERAL SAHA'RI BIN EHWA
4. KETUA POLIS NEGARA MALAYSIA
5. KERAJAAN MALAYSIA

... DEFENDAN-DEFENDAN

GROUNDS OF JUDGMENT

Introduction

1. Civil Suits 21 NCVC – 95 – 05/2012 and 21 NCVC – 99 – 05/2012 were jointly heard before this Court. In 21 NCVC – 95 – 05/2012 (hereafter referred to as Suit 95 the following were the Parties –

Plaintiffs

1. Fadiah Nadwa binti Fikri
2. Murnie Hidayah binti Anuar
3. Puspawati binti Rosman
4. Syuihaini binti Safwan

Defendants

1. Konstable Fauziah bt Mustafa
2. Inspektor Azlina bt Norzali
3. Konstable Noor Balkhis bt Maazin
4. ACP Wan Abdul Bari bin Wan abdul Khalid
5. DSP Jude Pereira
6. Ketua Polis Negara
7. Kerajaan Malaysia

2. In 21 NCVC – 99 – 05/2012 (Suit 99) the parties were as follows –

Plaintiff

Ravinder Singh Dhalliwal

Defendants

1. Timbalan Penguasa Polis Judy Blacious a/l Pereira
2. Penolong Pesuruhjaya Polis
   Wan Abdul Bari bin Wan Abdul Khalid
3. Lans Koperal Saha'ri bin Ehwa
4. Ketua Polis Negara Malaysia
5. Kerajaan Malaysia

3. The Court found in favour of the Plaintiffs in both Suit 95 and Suit 99, and both sets of Defendants have filed appeals against the Court's decisions.

4. In handing down its decision on 23.5.2014 the Court did state that proper grounds would follow if required. These then are the proper grounds.

The Claim in Suit 95

5. In Suit 95, the Plaintiffs seek the following relief –

"a) Gantirugi am; dan

b) Gantirugi teruk ('Aggravated Damages') dan gantirugi teladan ('Exemplary Damages'); dan

c) Gantirugi khas; dan

d) Faedah pada kadar 4% di atas jumlah gantirugi yang dituntut perenggan (a), (b), dan (c) setahun dari tarikh penghakiman sehingga tarikh penghakiman; dan

e) Faedah pada kadar 4% di atas jumlah gantirugi yang dituntut di perenggan (a), (b) dan (c) setahun dari tarikh penghakiman sehingga tarikh penyelesaian penuh; "

The Claim in Suite 99

6. In Suit 99, the Plaintiff seeks the following relief –

"a) General damages in an amount to be decided by this Honourable Court;

b) Exemplary damages in an amount to be decided by thIs Honourable Court;

c) Interest on the total amount of damages in items (1) to (2) above at the rate of 4% er annum from the date of filing of this Writ and Statement of Claim until the date of full payment;

d) costs; and/or

e) such further and/or other relief as may be deemed fit and appropriate by this Honourable Court."

The Witnesses

7. The following gave evidence during the joint trial –

SP1	-	Puspawati bt. Rosman	(P3)	95
SP2	-	Syuhaini bt Safiran	(P4)	
SP3	-	Fadiah Nadwa bt Fikri	(P1)	
SP4	-	Murnie Hidayah bt Anuar	(P2)	
SP5	-	Ravinder Singh	P1	99
SP6	-	Christie Marie A/L Mariesoosai		95 & 99
SP7	-	Chan Chee Kong		
SP8	-	Shufuyan b. Mohd Shukor		
SP9	-	Ginie Lim Siew Lin		
SP10		Ragunath Kesavan		
SD1	-	Shari bin Dewa	D3 in	99
SD2	-	Fauziah bt Che Mustapha	D1	95
SD3	-	Azlina bt Norzali	D2	
SD4	-	Nor Balkhis bt Mat Zin	D3	
SD5	-	ACP Wan Abdul Bari		95 & 99
SD6	-	DSP Judy Blacious Pereira		
SD7	-	ASP Hoo Chang Hock		

Consideration and Evaluation

8. The factual matrix in Suits 95 and 99 are broadly similar and stems from the same continuing transaction. All the

Plaintiffs, i.e. the Plaintiffs collectively in both Suits 95 and 99 are fully fledged advocates and solicitors and also lawyers with the Legal Aid Centre of the Bar Council. The Plaintiff in Suit 99 is the Chairman of the Centre.

9. Fourteen persons had earlier been arrested outside the Brickfields Polis Station (BPS). They were there to show support for a person by the name of Wong Chin Huat by means of a Candlelight Vigil. Wong Chin Huat had been arrested earlier and was being detained at the BPS.

10. Upon being informed of the arrest and detention of these 14 persons the Plaintiffs rushed to the BPS to provide legal assistance and representation to the 14 persons. They congregated at a spot directly outside the Boom Barrier nearest to the Guard House.

11. It is clear to this Court from a viewing of the videos that the Plaintiffs were not part of the Candlelight Vigil. They were there as advocates and solicitors and were in telephonic communication with the 14 persons and did provide legal advice to them. From the video there could also be heard Ginie Lim raised high pitched voice, coming from inside the BPS. Ginie Lim is SP9 and she was one of the 14 persons arrested.

12. To the mind of this Court there was in existence a solicitor and client relationship as a result of the telephonic communication between the 14 persons and the Plaintiffs.

13. The Plaintiffs had requested access to their clients but were told that the officer in charge of the case, DSP Jude (SD6) was in a meeting, and later that he refused to meet them. Plaintiff Fadiah Nadwa then called DSP Jude on his hand phone and was told that that their clients had signed Waiver Certificates.

14. The Plaintiffs then asked DSP Jude to meet them at the Boom Barrier as their instructions were that their clients had refused to sign the Waiver Certificates. They wanted to see the Waiver Certificates.

15. DSP Jude had approached the Plaintiffs, who were all standing outside the Boom Barrier, and informed them that the Waiver Certificates had been signed by their clients as he had invoked Section 28A of the Criminal Procedure Code (hereinafter referred to as "CPC"), which allows the Police to deny an arrested person the right to legal counsel under certain conditions.

16. The Plaintiffs had asked DSP Jude to specify the grounds for invoking Section 28A (8) of the CPC, but no answer was provided. It was according to the evidence of DSP Jude, the first time that he had ever invoked S. 28A. DSP Jude also informed the Court that he had told ACP Wan Abdul Bari (SD5) during a meeting held that night that there were some lawyers waiting outside BPS but that he had denied the 14 persons access their lawyers.

17. Later that night, SD5 approached the Boom Barrier with his officers and issued a warning through a loud hailer that everyone disperse within 3 minutes, declaring that the gathering outside the Boom Barrier was an illegal assembly. SD5 counted to three and the Boom barrier was raised but the Plaintiffs were only ones arrested along with a journalist.

18. The Plaintiffs then communicated their arrest to their lawyers, but their lawyers were denied access to the Plaintiffs. A police report was then lodged by SP6 (Christie Marie a/l Mariasosai Nathan) to this effect.

19. The Plaintiffs were detained in the BPS until about 4 am on Friday 8.5.2009, during which they were ordered to change into "lock-up clothes", and after which they were taken to the Travers Police Station where they spent the rest of the night

and the next morning. The Plaintiffs were taken back to the BPS and released on bail in the afternoon on the 8.5.2009 about 2.30 pm. They were never at all charged in Court with any offence let alone the offence of being in unlawful illegal assembly.

Findings

20. From an evaluation of the evidence including a viewing of the video recordings, these are therefore the Court's findings –

a) the Plaintiffs were never part of the Candlelight Vigil that had gathered outside the BPS;

b) the Plaintiffs were not holding candles;

c) the Plaintiffs were standing away from the main body of persons who made up the Candlelight Vigil;

d) the Plaintiffs were present outside the BPS not for the purpose of participating in the Candlelight Vigil but for the purpose of rendering legal representation and advice to their clients;

e) when the order to disperse was given by SD5, the Plaintiffs who were not part of the Candlelight Vigil did not disperse but were arrested together with a journalist by SD1, 2, 3, 4 by order of SD5;

f) SD5 and SD6 and by imputation the Ketua Polis Negara and the Kerajaan Malaysia had knowledge that the Plaintiffs were outside the BPS in their capacity as advocates and solicitors of the 14 persons detained within the confines of the BPS, and for the purpose of rendering legal assistance to the 14 persons;

g) SD1, SD2, SD3 and SD4 as seen in the video recording P1, effected the arrest of the Plaintiffs SP1 – SP5 without introducing themselves or producing their Kad Kuasa or informing the Plaintiffs of the reasons for their arrest. Yet SD1, SD2, SD3 and SD4 in Court stated that they had done so. As such the Court is compelled to draw an adverse inference as regards the credibility SD1, SD2, SD3 and SD4. In any case it clear that SD1, SD2, SD3 and SD4 had been acting under superior orders in effecting the arrest of the Plaintiffs.

21. Therefore based upon the above the Court rules that –

(i) the arrest of SP5 by SD1;
(ii) the arrest of SP3 and SP4 by SD2;
(iii) the arrest of SP1 by SD3;
(iv) the arrest of SP2 by SD4;

to be wrongful and unlawful arrests.

22. Now coming to Sec. 28A, Sec. 28A provides for the rights of a person arrested as follows –

> **"28A. Rights of person arrested.**
>
> (1) A person arrested without a warrant shall be informed as soon as may be of the grounds of his arrest by the police officer making the arrest.
>
> (2) A police officer shall, before commencing any form of questioning or recording of any statement from the person arrested, inform the person that he may –
>
> (a) communicate or attempt to communicate, with a relative or friend to inform of his whereabouts; and
>
> (b) communicate or attempt to communicate and consult with a legal practitioner of his choice.
>
> (3) Where the person arrested wishes to communicate or attempt to communicate with the persons referred to in paragraphs (2) (a) and (b), the police officer shall, as soon as may be, allow the arrested person to do so.

(4) Where the person arrested has requested for a legal practitioner to be consulted, the police officer shall allow a reasonable time –

(a) for the legal practitioner to be present to meet the person arrested at his place of detention; and

(b) for the consultation to take place.

(5) The consultation under subsection (4) shall be within the sight of a police officer and in circumstances, in so far as practicable, where their communication will not be overheard.

(6) The police officer shall defer any questioning or recording of any statement from the person arrested for a reasonable time until the communication or attempted communication under paragraph 2 (b) or the consultation under subsection (4) has been made.

(7) The police officer shall provide reasonable facilities for the communication and consultation under this section and all such facilities provided shall be free of charge.

(8) The requirements under subsections (2), (3), (4), (5), (6) and (7) shall not apply where the police officer reasonably believe that –

(a) compliance with any of requirements in likely to result in –

(i) an accomplice of the person arrested taking steps to avoid apprehension; or

(ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or

(b) having regard to the safety of other persons the questioning or recording of any statement is so urgent that it should not be delayed.

(9) Subsection (8) shall only apply upon authorization by a police officer not below the rank of Deputy Superintendent of Police.

(10) The police officer giving the authorization under subsection (9) shall regard the grounds of belief of the police officer that the conditions specified under subsection (8) will arise and such record shall be made as soon as practicable.

(11) The investigating officer shall comply with the requirements under subsections (2), (3), (4), (5), (6) and (7) as soon as possible after the conditions specified under subsection (8) have ceased to apply where the

person arrested is still under detention under this section or under section 117."

23. The Court refers to S. 28A (8) which clearly provides that the requirements under S. 28A (2), (3), (4), (5), (6) and (7) may be suspended. But S. 28A (8) is to be read with S. 28A (9), (10) and (11). The key words in S. 28A (8) is "*reasonably believes*". This Court finds that the reasons advanced in his witness statement and during cross-examination by SD6 for invoking Sec. 28A (8) to be unreasonable in the circumstances and factual situation of the Candlelight Vigil outside the BPS. Moreover SD6 kept on changing his testimony in regard to the reasons for invoking S. 28A (8) and this Court therefore has grounds to doubt the authenticity and veracity of the reasons put forward by SD6 for his belief under S. 28A (8), and this Court therefore has serious issues in regard to the credibility of SD6 as a witness.

24. And it therefore follows that all that transpired after the wrongful and unlawful arrest was likewise wrongful and unlawful which therefore amounted to –

(a) false imprisonment and

(b) denial of their constitutional right to be told the grounds for their arrest; and

(c) unreasonable denial access to legal advice and representation.

25. The Court therefore finds in favour of all the Plaintiffs (i.e. in both 95 and 99) as against all the Defendants and orders damages to be paid by all the Defendants (in both 95 and 99) jointly and severally. The Ketua Polis Negara and the Government of Malaysia are found vicariously liable; the Ketua Polis Negara in his capacity as the superior Officer for all the other Defendants, and the Kerajaan Malaysia as the employer of all the other Defendants.

Damages

26. In regard to suit 95 the Senior Federal Counsel submitted as follows –

a) General Damages –

i) Violation of their Constitutional Rights – Nominal damages of RM1;

ii) Unlawful detention – RM2,000 – RM15,000.00 per day;

iii) Nervous Shock – nil;

iv) Pain, suffering, mental anguish etc – nil;

b) Aggravated and Exemplary Damages – nil;

c) Special Damages – nil.

27. All the Plaintiffs prayed for RM30,000.00 general damages each for unlawful arrest and detention, and denial of their constitutional rights.

28. The Plaintiffs in Suit 95 prayed for RM50,000.00 each as Aggravated Damages; RM75,000.00 each as Exemplary Damages.

29. The Plaintiff in Suit 99 prayed for RM50,000.00 in Exemplary Damages.

30. The Court awarded RM15,000.00 per Plaintiff as general damages i.e. breach of constitutional rights, false imprisonment and detention as this amount was in the eyes of the Court fair and based on:

a) the principle of RM25,000.00 – RM30,000.00 per day based upon the decision in *Malek b. Hussin v Borhan b. Hj. Daud & Ors [2008] 1 MLJ 368*;

b) the fact that the Plaintiffs were only detained for about 12 hours.

31. In regard to aggravated and exemplary damages, there is abundant case law in regard to the underlying principles pertaining to aggravated damages and exemplary damages.

32. In *Thompson v. Commissioner of Police of the Metropolis, Hsu v. Commissioner of Police for the Metropolis [1997] 2 All ER 762 @ 774*, Lord Woolf MR stated as follows –

> *"Aggravated damages can only be awarded where they are claimed by the plaintiff and where there are aggravated features about the defendant's conduct which justify the award of aggravated damages."*

33. The Master of the Rolls went on at page 775 to explain as follows –

> *"Aggravated features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they behaved in a high handed, insulting, malicious or oppressive manner either*

in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted."

34. In *Roshairee bin Abdul Wahab v. Mejar Mustafa bin Omar [1996] 3 MLJ 337*, James Foong J (as he then was) followed *Broome v. Cassell & Co. Ltd [1972] AC 1027* and awarded aggravated damages. The head note (9) reads as follows –

"Aggravated damages was to compensate the plaintiff for injuries affecting his feelings arising out of the tortuous acts of the defendants. In assessing this, all circumstances of the case must be taken into account, including the character of the plaintiff. The plaintiff was entitled to self respect and dignity. By the acts of the first and second defendants he has suffered humiliation, loss of pride and self-esteem. ..."

35. The Learned Judge went on at page 348 to state –

"While considering the request for exemplary damages, the Court must bear in mind that the objective for an award under this category is to punish the defendants, and to display the Court's indignant attitude towards the acts committed by the defendants. However through the enlightened judgment of Lord Devlin in Rookes v. Barnard & Ord [1964] AC 1129 (@ page 1226) such damages must be restricted to a situation where there are 'oppressive arbitrary or unconstitutional action by servants of the government' ...".

36. In *Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v Awang Soh Mamat [2009] 5 CLJ 1,* James Foong FCJ (Abdull Hamid Embong concurring) stated that the gravity of the wrong is also another item to be taken into consideration when awarding exemplary damages. This is spelt out in *Cheng Hang Guan & Ors v Perumahan Farlin (Penang) Sdn Bhd [1994] 1 CLJ 19.*

37. In the same case Abdul Malik Ishak JCA (in a dissenting judgment) stated that the primary purpose of awarding damages is to compensate the aggrieved party for the harm done to him.

38. His Lordship Abdul Malik JCA then went on to add that the secondary purpose of awarding damages is to punish the wrongdoer and this is done by imposing what is known as exemplary damages or punitive damages or vindictive damages or retributory damages (*Bell v. Midland Railway Company [1861] English Reports 142, 10 C. B. (N.S) 287 at 308; Cassell & Co. Ltd. V. Broome and Another [1972] A. C. 1027;* and *Rooks v. Barnard and others [1964] A. C. 1129).* Exemplary damages would normally be ordered when the conduct of the wrongdoer has been outrageous as to merit such a punishment. Thus, when the conduct of the

wrongdoer discloses malice, cruelty, fraud, insolence, etc, then exemplary damages would be ordered.

39. *Broome v. Cassel (Supra)* laid down the principle that in a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum that they have in mind to award as compensation (which may, of course, be a sum aggravated by the way in which the Defendant has behaved to the Plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, that it can award some larger sum.

40. In *A v. Bottrill [2003] 1 AC 449,* Lord Nicholls of Burkenhead in delivering the majority judgment of the Privy Council stated at page 456 that cases satisfying the test of outrageousness will usually involve intentional wrongdoing with, additionally, an element of flagrancy or cynicism or oppression or the like: something additional rendering the wrongdoing or the manner or circumstances in which it was committed particularly appalling.

41. In *Thompson v. Commissioner of Police of the Metropolis (Supra)*, Lord Woolf MR stated at page 775 as follows –

> " ... where exemplary damages are claimed and the judge considers that there is evidence to support such a claim, that though it is not normally possible to award damages with the object of punishing the defendant, exceptionally this is possible where there has been conduct, including oppressive or arbitrary behavior by police officers which deserves the exceptional remedy of exemplary damages."

42. SD6 possesses an LL.B Hons and CLP. In his evidence SD6 stated he knew of the existence of the Plaintiffs outside the Boom Barrier and he had communicated this information to SD5, because SD6 had told SD5 of his decision to deny access for the lawyers to see their clients. He also told SD5 that there were lawyers outside and that they wanted to see the 14 arrestees. This was communicated in the meeting room.

43. SD5 admitted during cross-examination that SD6 "*ada beritahu ada lawyer nak jumpa client*" and that this was the first time they had denied access to lawyers. SD5 also stated that he knew that there lawyers outside as SD6 had "*timbulkan*" during the meeting. SD5 had also stated that "*semasa saya keluar Peguam tak pegang lilin*" and that he could see (in frame 717 of the video recording P1) the lawyer who asked about the form. Yet SD5 contradicts himself when he says that when the lawyers were arrested he did not know they were lawyers.

44. This Court considers that aggravated damages are appropriate to compensate the Plaintiffs for the injuries to their feelings and the humiliation arising out of the tortuous acts of the Defendants. SP2 during cross-examination stated "*saya tidak dibenarkan berpakaian lengkap. Disuruh tanggalkan baju dalam*". SP1 – SP4 in their witness statement had stated that they were given lock up uniforms of "*sepasang baju dan seluar berwarna oren terang .... Kami juga tidak dibenarkan memakai bra dan selipar juga kena ditanggalkan*".

45. This Court considers the overall conduct of the Defendants in regard to the Plaintiffs' arrest, detention, denial of their constitutional rights and resulting treatment to be appaling and oppressive, and as such it is necessary and befitting that this Court express its indignation and disapproval by also awarding exemplary damages.

47. As the Defendants acts were part of a continuing transaction which this Court has found to attract the imposition of both aggravated and exemplary damages, it is befitting that the damages to be awarded and in the form of a single combined sum.

48. Having regard to the nature of the Defendants' conduct the Court awards each Plaintiff RM60,000.00 as combined aggravated and exemplary damages.

49. The Court also awards the Plaintiffs costs of RM60,000.00 to the Plaintiffs in Suit 95 and RM40,000.00 to the Plaintiff in Suit 99.

Order

50. So ordered accordingly.

Dated: 29 August, 2014

(Dato' John Louis O'Hara)
Judge
High Court Kuala Lumpur

Salinan Diakui Sah,

2.9.2014

MAIMON BT. MOHD. ZIN
Setiausaha Kepada
Y.A. Dato' John Louis O'Hara
Hakim,
Mahkamah Tinggi Malaya,
KUALA LUMPUR.

COUNSEL

Peguam Kanan Persekutuan,
Jabatan Peguam Negara Malaysia,
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50490 Kuala Lumpur.

JABATAN SIASATAN JENAYAH
IBUPEJABAT POLIS DAERAH SENTUL
No Tel: 03-40414422

SURAT PEMBERITAHUAN YBGK

Bahagian Butir-butir Tangkapan

1.	Nama Orang Kena Tangkapan	:	TAN LEONG HIN
2.	No Kad Pengenalan	:	670903106037
3.	Butir-butir Tangkapan		
	3.1. Tarikh	:	09/10/2012
	3.2. Masa	:	11:11
4.	Nama Ahli Keluarga/Kawan	:	-
5.	No Telefon Ahli Keluarga/Kawan	:	-
6.	Tempat Ditangkap	:	SENTUL

Bahagian Butir-butir Siasatan

Nama Pegawai Penyiasat		:	I17872 / INSP/P / MOHD. HANIS BIN ABDUL WAHAB (IO)
2.	No Telefon Pegawai Penyiasat	:	017-4801897
3.	No Repot Kes	:	JINJANG/021912/12
4.	Disiasat Bawah Seksyen	:	LAIN-LAIN KESALAHAN NON INDEK [294 KK]
5.	Jabatan / Cawangan	:	JABATAN SIASATAN JENAYAH
Alamat IPK / IPD / Balai		:	IBUPEJABAT POLIS DAERAH SENTUL

Bahagian Tindakan

Saya mengesahkan bahawa OKT

1	DIBAWA UNTUK REMAN	Tarikh: 10/10/2012	Masa: 09:30	MAHKAMAH	LOKAP BERPUSAT JINJANG, KUALA LUMPUR

Bahagian Pengecualian

1.	Klausa Penafian dibawah Seksyen 28A(8) Kanun Tatacara Jenayah	:	TIDAK
	1.1 Borang Seksyen 28A(8) Kanun Tatacara Jenayah	:	TIDAK
2.	Tangkapan Memilih Peguam Sendiri	:	TIDAK
	2.1. Nama Peguam	:	-
	2.2. No Telefon Peguam	:	-

Dijana oleh sistem komputer.
Tiada tandatangan

(Tandatangan)
I17872 / INSP/P / MOHD. HANIS BIN ABDUL WAHAB (IO)
Tarikh : 09/10/2012

PEJABAT KETUA PENDAFTAR
Office of the Chief Registrar
MAHKAMAH PERSEKUTUAN MALAYSIA
Federal Court of Malaysia
ISTANA KEHAKIMAN
PRESINT 3
62506 PUTRAJAYA

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Ruj. Tuan :
Ruj. Kami : JK/MP 16/2
Tarikh : 29 Mac 2012

Semua Hakim
Mahkamah Sesyen
SELURUH MALAYSIA

Semua Timbalan Pendaftar / Penolong Kanan Pendaftar
Mahkamah Tinggi
SELURUH MALAYSIA

Semua Majistret
Mahkamah Majistret
SELURUH MALAYSIA

Semua Pendaftar Mahkamah Rendah
Mahkamah Sesyen dan Majistret
SELURUH MALAYSIA

YBhg. Dato' / Datin / Tuan / Puan,

PELAKSANAAN YAYASAN BANTUAN GUAMAN KEBANGSAAN (YBGK)

Dengan segala hormatnya saya merujuk kepada perkara di atas.

2. Adalah dimaklumkan bahawa Yayasan Bantuan Guaman Kebangsaan (YBGK) telah diperbadankan pada 25 Januari 2011 sebagai sebuah syarikat khairat (charitable company) di bawah Akta Syarikat 1965 (Akta 125). Ia merupakan antara usaha pihak Kerajaan untuk mengimarahkan kehidupan rakyat di negara ini. Usaha ini adalah sejajar dengan objektif penubuhan YBGK iaitu untuk menyediakan akses keadilan kepada semua warganegara Malaysia yang dituduh di mahkamah atas kesalahan jenayah.

3. Sehubungan dengan itu, adalah di maklumkan bahawa YBGK akan mula beroperasi pada 2 April 2012 (Isnin). Khidmat YBGK akan diberikan kepada suspek atau orang kena tuduh di mahkamah dari mula suspek ditangkap, reman dan dibicarakan di mahkamah.

...2/-

(Sila nyatakan rujukan kami apabila menjawab surat ini)

4. Oleh yang demikian, YBhg. Dato' / Datin / Tuan / Puan adalah dipohon untuk memastikan garis panduan semasa melakukan proses reman adalah dipatuhi (**Garis panduan reman adalah seperti di Lampiran. Arahan Amalan berkaitan YBGK akan dikeluarkan kemudian**). Khidmat YBGK juga diberikan semasa pertuduhan dibuat di mahkamah. YBhg. Dato' / Datin / Tuan / Puan adalah dipohon untuk memaklumkan kepada orang kena tuduh berkenaan khidmat YBGK ini sekiranya OKT tidak diwakili oleh peguam. Kerjasama YBhg. Dato' / Datin / Tuan / Puan dalam perkara ini amatlah saya hargai dan saya dahului dengan ucapan terima kasih.

Sekian.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

(DATO' HASHIM BIN HAMZAH)
Ketua Pendaftar
Mahkamah Persekutuan Malaysia
Istana Kehakiman
PUTRAJAYA
☎ +603 8880 3782
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s.k
1. YAA Ketua Hakim Negara
2. YAA Presiden Mahkamah Rayuan Malaysia
3. YAA Hakim Besar Malaya
4. YAA Hakim Besar Sabah dan Sarawak
5. Timbalan Ketua Pendaftar
6. Pendaftar Mahkamah Rayuan
7. Pendaftar Mahkamah Tinggi Malaya
8. Pengarah Mahkamah Negeri

YAYASAN BANTUAN GUAMAN KEBANGSAAN

GARIS PANDUAN BAGI MAJISTRET BERKAITAN DENGAN REMAN

A. PENGENALAN

Penubuhan Yayasan Bantuan Guaman Kebangsaan (YBGK) ini adalah antara usaha Kerajaan bagi memastikan golongan yang kurang berkemampuan yang dituduh di mahkamah atas kesalahan jenayah untuk mendapat pembelaan yang sewajarnya apabila mereka diwakili oleh peguam.

B. ASAS UNDANG-UNDANG

Tujuan penubuhan YBGK adalah untuk memberi bantuan dan nasihat guaman dalam kes jenayah kepada golongan yang kurang berkemampuan supaya mendapat akses kepada keadilan dengan sewajarnya sebagaimana yang diperuntukkan di bawah Fasal (3) Perkara 5 Perlembagaan Persekutuan seperti yang berikut:

> *"(3) Jika seseorang ditangkap maka dia hendaklah diberitahu dengan seberapa segera yang boleh alasan-alasan dia ditangkap dan dia hendaklah dibenarkan berunding dengan dan dibela oleh seseorang pengamal undang-undang pilihannya".*

Bantuan guaman dalam kes jenayah juga penting bagi memastikan semua pihak mendapat hak kesamarataan di sisi undang-undang sebagaimana yang termaktub dalam Fasal (1) Perkara 8 Perlembagaan Persekutuan yang berbunyi:

> *"(1) Semua orang adalah sama rata di sisi undang-undang dan berhak untuk mendapat perlindungan yang sama rata di sisi undang-undang".*

Undang-undang berkaitan dengan hak orang yang ditangkap ada diperuntukkan di bawah seksyen 28A Kanun Tatacara Jenayah (KTJ) manakala prosedur berkaitan dengan reman adalah di bawah seksyen 117 KTJ.

C. OBJEKTIF GARIS PANDUAN

Garis panduan ini bertujuan untuk diguna pakai bagi memastikan Majistret memaklumkan kepada suspek haknya untuk mendapatkan khidmat peguam YBGK apabila melakukan reman yang melibatkan suspek warganegara Malaysia.

D. GARIS PANDUAN REMAN

(1) Semasa mengendalikan proses reman, Majistret hendaklah memastikan bahawa seseorang suspek itu diwakili oleh peguam sama ada peguam sendiri atau peguam YBGK. Jika suspek tidak diwakili peguam, Majistret hendaklah mengarahkan Pegawai Penyiasat untuk menghubungi YBGK bagi mendapatkan khidmat peguam YBGK kepada suspek tersebut.

(2) Jika suspek tidak mempunyai peguam sendiri dan enggan menggunakan khidmat peguam YBGK, mahkamah boleh meneruskan prosiding reman tanpa peguam.

E. PEMAKAIAN

(1) Garis panduan reman ini juga terpakai kepada permohonan perlanjutan tempoh masa reman yang dibuat oleh Pegawai Penyiasat.

(2) Garis panduan ini tidak terpakai kepada kes-kes melibatkan undang-undang pencegahan, penculikan dan melarikan orang.

YAYASAN BANTUAN GUAMAN KEBANGSAAN

GARIS PANDUAN BAGI PEGAWAI PENGUAT KUASA BERKAITAN DENGAN TANGKAPAN DAN REMAN

A. PENGENALAN

Penubuhan Yayasan Bantuan Guaman Kebangsaan (YBGK) ini adalah antara usaha Kerajaan bagi memastikan golongan yang kurang berkemampuan yang dipertuduh di mahkamah atas kesalahan jenayah untuk mendapat pembelaan yang sewajarnya apabila mereka diwakili oleh peguam.

B. ASAS UNDANG-UNDANG

Tujuan penubuhan YBGK adalah untuk memberi bantuan dan nasihat guaman dalam kes jenayah kepada golongan yang kurang berkemampuan supaya mendapat akses kepada keadilan dengan sewajarnya sebagaimana yang diperuntukkan di bawah Fasal (3) Perkara 5 Perlembagaan Persekutuan seperti yang berikut:

> *"(3) Jika seseorang ditangkap maka dia hendaklah diberitahu dengan seberapa segera yang boleh alasan-alasan dia ditangkap dan dia hendaklah dibenarkan berunding dengan dan dibela oleh seorang pengamal undang-undang pilihannya."*

Bantuan guaman dalam kes jenayah juga penting bagi memastikan semua pihak mendapat hak kesamarataan di sisi undang-undang sebagaimana yang termaktub dalam Fasal (1) Perkara 8 Perlembagaan Persekutuan yang berbunyi:

> *"(1) Semua orang adalah sama rata di sisi undang-undang dan berhak untuk mendapat perlindungan sama rata di sisi undang-undang."*

Undang-undang berkaitan hak orang yang ditangkap ada diperuntukkan di bawah Seksyen 28A Kanun Prosedur Jenayah (KTJ) manakala prosedur berkaitan dengan reman adalah di bawah Seksyen 117 KTJ.

C. OBJEKTIF GARIS PANDUAN

Garis Panduan ini bertujuan untuk diguna pakai bagi memastikan Pegawai penguat kuasa memaklumkan kepada YBGK berkaitan dengan sebarang tangkapan dan reman bagi kes jenayah yang melibatkan warganegara Malaysia.

D. GARIS PANDUAN TANGKAPAN

(1) Pegawai penangkap hendaklah memaklumkan kepada suspek alasan penangkapan.

(2) Apabila suspek dibawa balik ke pejabat penguatkuasaan, pegawai penguat kuasa hendaklah membuat laporan tangkapan dan sesalinan laporan tersebut perlu dihantar ke pejabat Timbalan Pendakwa Raya (TPR) Negeri melalui faksimile dengan segera.

(3) Sebaik sahaja laporan tangkapan dibuat dan dihantar ke pejabat TPR Negeri, pegawai penguat kuasa hendaklah dengan serta merta, sebelum memulakan sebarang soal siasat atau rakaman pernyataan daripada suspek,-

(a) memaklumkan keluarga atau kawan suspek akan penangkapan tersebut; dan

(b) memaklumkan suspek akan haknya sama ada memerlukan khidmat-

(i) peguam sendiri - suspek hendaklah diberi peluang untuk menghubungi peguam tersebut melalui telefon pejabat penguat kuasa di mana suspek di tahan; atau

(ii) peguam YBGK - pegawai penguat kuasa hendaklah menghubungi YBGK, dan membenarkan suspek memaklumkan YBGK mengenai kehendak suspek menggunakan khidmat YBGK

(4) Pegawai penguat kuasa perlu memberikan maklumat melalui faksimile kepada peguam YBGK atau peguam pilihan seperti berikut:

(a) nama;
(b) nombor kad pengenalan;
(c) tarikh dan masa tangkapan dibuat;
(d) tempat tangkapan dibuat;
(e) nombor laporan tangkapan;
(f) sebab tangkapan; dan
(g) nama pegawai penyiasat dan pejabat agensi penguatkuasaan yang mana orang yang ditangkap sedang ditahan.

(5) Pegawai penguatkuasa hendaklah memaklumkan kepada peguam pilihan/YBGK jika orang yang ditangkap telah dipindahkan dari satu balai/pejabat agensi penguatkuasaan ke balai/pejabat agensi penguatkuasaan yang lain.

(6) Hak suspek di bawah perenggan (3) tidak terpakai. Dalam keadaan di mana subseksyen 28A(8) KTJ diguna pakai.

(7) Pegawai penguat kuasa hendaklah memberikan salinan kebenaran penafian hak tersebut kepada peguam pilihan/peguam YBGK sebaik sahaja peguam tersebut tiba di pejabat di mana suspek ditahan atau melalui faksimile kepada pejabat peguam tersebut jika peguam pilihan/peguam YBGK tidak hadir.

(8) Jika keadaan di bawah perenggan (7) tidak lagi terpakai, pegawai penguat kuasa hendaklah memaklumkan peguam pilihan/peguam YBGK dan perenggan [3] akan terpakai.

(9) Jika peguam pilihan/peguam YBGK dibenarkan berjumpa dengan suspek, pegawai penguat kuasa hendaklah menangguh soal siasat serta rakaman pernyataan suspek untuk suatu tempoh yang munasabah.

(10) Peguam pilihan/peguam YBGK hendaklah menunjukkan kad pengenalan diri sebaik tiba di pejabat agensi penguatkuasaan. Pegawai penguat kuasa atau wakilnya haruslah berada di pejabat agensi penguatkuasaan semasa peguam tiba.

(11) Dalam keadaan di mana perenggan (6) tidak terpakai pegawai penguat kuasa hendaklah membenarkan peguam pilihan/peguam YBGK bertemu dengan

suspek sebelum jam 6.00 petang pada hari bekerja di tempat yang munasabah di mana perbincangan di antara mereka tidak boleh didengar tetapi berada dalam penglihatan pegawai penguat kuasa.

(12) Kesemua perkara yang dinyatakan di atas termasuk perbincangan dengan peguam haruslah mematuhi Peraturan-Peraturan Lokap 1953.

E. GARIS PANDUAN REMAN

(1) Pegawai penguat kuasa hendaklah memaklumkan peguam pilihan/YBGK sekiranya suspek akan direman atau sebaliknya.

(2) Jika reman tidak dipohon, pegawai penguat kuasa hendaklah memaklumkan kepada peguam sama ada suspek dibebaskan, dilepaskan melalui jaminan polis atau dituduh. Jika suspek akan dituduh, pegawai penguat kuasa hendaklah memaklumkan peguam pilihan/YBGK mengenai mahkamah yang mana pertuduhan akan dibuat.

(3) Jika reman dipohon, pegawai penguat kuasa hendaklah memberitahu peguam pilihan/YBGK mengenai mahkamah yang mana suspek akan dibawa, dan masa yang ditetapkan untuk permohonan reman.

(4) Sekiranya suspek belum berjumpa dengan peguam pilihan/peguam YBGK, sebelum permohonan reman dibuat, peguam pilihan/peguam YBGK hendaklah dibenarkan bertemu dengan suspek di mahkamah tersebut, tertakluk kepada subseksyen 28A(8) KTJ.

(5) Jika suspek dilepaskan sebelum tamat tempoh reman atau pegawai penguat kuasa memerlukan masa lanjutan reman, pegawai penguat kuasa haruslah memaklumkan perkara tersebut kepada peguam pilihan/YBGK.

(6) Dalam keadaan di mana subseksyen 28A(8) KTJ tidak terpakai, peguam pilihan/peguam YBGK hendaklah dibenarkan berjumpa dengan suspek pada bila-bila masa dalam tempoh reman. Tertakluk kepada Peraturan-Peraturan Lokap 1953.

F. LAIN-LAIN

(1) Mana-mana agensi penguatkuasaan selain dari polis yang tidak mempunyai lokap dan menggunakan lokap polis, sebarang maklumat yang perlu diberikan kepada YBGK berkaitan orang yang ditangkap hendaklah dilakukan oleh agensi itu sendiri.

(2) Garis Panduan ini tidak terpakai kepada kes-kes melibatkan penahanan dibawah undang-undang pencegahan dan kes-kes culik.

Yayasan Bantuan Guaman Kebangsaan

PAYMENT TO LAWYERS

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
1.	Duty Solicitor	1 client – RM50 2 clients – RM90 3 clients – RM120 4 clients – RM140 5 or more clients – RM150 * Duty solicitor is to receive no payment when on standby * No disbursements	1 client – RM100 2 clients – RM150 3 clients – RM200 4 clients – RM250 5 or more clients – RM300 Maximum claim of RM300 per day
2.	Remand Hearing (To include attending inquiry under section 9 (1) of the Prevention of Crime Act 1959 [*Act 297*])	1 client - RM10 * Maximum claim RM250 per day	1 client - RM30
			Subsequent remands - RM15
		* Subject to a minimum payment of RM50 and a maximum of RM250 per day	Maximum claim of RM300 per day
			(Inclusive of Remand hearings under subsection 3(1) of the Drug Dependants (Treatment and Rehabilitation) Act 1952 [*Act 283*])
3.	Bail Application (Oral)	1 application - RM30	1 application - RM50
		* Subject to a maximum of RM250 per day	Maximum claim of RM300 per day
4.	Bail Application (Formal)	RM100	1 application - RM100
			• If the lawyer takes a Commissioner of Oath to the prison, to affirm an affidavit from the prisoner, the costs charged by the Commissioner of Oaths for being taken to the prison and administration of the Oath, would be borne by YBGK. This would be applicable for this item and any other situation where the prisoner has to affirm an affidavit (proof of costs incurred must be attached.
5.	Court Appearance Solely for Mitigation (No trial)	-	1 client - RM 50 Maximum claim of RM300 per day

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
6.	Hearing in Magistrates Court	Attending Court for mention of case- • RM40 per day	Attending Court for mention/case management- • RM40 per case
		Attending first day of hearing- • RM80 per day or part of a day Attending hearings on subsequent days- • RM60 per day or part of a day	Attending first day and subsequent days of hearing- • RM80 for the first client per day or part thereof • RM40 for each additional client jointly charged per day or part thereof
		*RM50 for disbursements on conclusion of case.	RM50 claim upon closing of the file. (claim to be limited to RM25 if the case does not extend beyond the first day)
			(a) Where there is more than one accused person and 1 charge: • Getting up of RM350 per client • RM175 per every additional client jointly charged (b) Where there is one accused person and more than 1 charge: • Getting up of RM350 per charge • RM100 per every additional charge up to a maximum of 3 charges *Illustration:-* • *Two accused persons and 1 charge* *RM350.00 + RM175.00 = RM525.00* • *One accused person and 2 charges* *RM350.00 + RM100.00 = RM450.00* • *Two accused person and 2 charges* *RM350 + RM175.00 (for additional person) + RM100.00 (for the additional charge) = RM625.00*

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
			(c) All "getting up" is only payable after the first date fixed for trial.
			(d) Pre-trial conference- • RM50 per case (one off payment)
			(e) Successful plea bargaining- • RM200 per client
			(f) In cases involving children, if the lawyer visits the welfare officer for a discussion in relation to the Welfare Report and all matters ancillary and incidental to the case- • RM50 per case (one off payment)
7.	Hearing in Sessions Court	Attending Court for mention of case- • RM40 per day	Attending Court for mention/case management- • RM40 per case
		Attending first day of hearing- • RM90 per day or part of a day Attending hearings on subsequent days- • RM70 per day or part of a day	Attending first day and subsequent days of hearing- • RM80 for the first client per day or part thereof • RM40 for each additional client jointly charged per day or part thereof
		*RM50 for disbursements on conclusion of case.	RM50 claim upon closing of the file. (claim to be limited to RM25 if the case does not extend beyond the first day)

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
			(a) Where there is more than one accused person and 1 charge: • Getting up of RM550 per client • RM275 per every additional client jointly charged (b) Where there is one accused person and more than 1 charge: • Getting up of RM550 per charge • RM200 per every additional charge up to a maximum of 3 charges *Illustration:-* • *Two accused persons and 1 charge* *RM550 + RM275 = RM825* • *One accused person and 2 charges* *RM550 + RM200.00 = RM750* • *Two accused person and 2 charges* *RM550 + RM275 (for additional person) + RM200.00 (for the additional charge) =RM1025*
			(c) All "getting up" is only payable after the first date fixed for trial.
			(d) Pre-trial conference- • RM50 per case (one off payment)
			(e) Successful plea bargaining – • RM200 per client
			(f) In cases involving children. if the lawyer visits the welfare officer for a discussion in relation to the Welfare Report and all matters ancillary and incidental to the case- • RM50 per case (one off payment)

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
8.	Appeal to the High Court against sentence and conviction *	RM1, 200 if the matter originates from the Magistrates Court RM50 for disbursements on conclusion of case.	Appeal from Magistrates Court: (a) Where there is more than one accused person and 1 charge: • RM1,200 per client • RM400 per every additional client jointly charged (b) Where there is one accused person and more than 1 charge: • RM1,200 per charge • RM200 per every additional charge up to a maximum of 3 charges. *Illustration:-* • *Two accused persons and 1 charge* *RM1,200.00 + RM400.00 = RM1,600.00* • *One accused person and 2 charges* *RM1,200.00 + RM200.00 = RM1,400.00* • *Two accused person and 2 charges* *RM1,200.00 + RM400.00 (for additional person) + RM200.00 (for the additional charge) =RM1,600.00*

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
9.	Appeal to the High Court against sentence*		(a) Where there is more than one accused person and 1 charge: • RM1,000 per client if the matter originates from either the Magistrates or Sessions Court • RM300 per every additional client jointly charged (b) Where there is one accused person and more than 1 charge: • RM1,000 per charge if the matter originates from either the Magistrates or Sessions Court • RM200 per every charge up to a maximum of 3 charges. *Illustration:-* • *Two accused persons and 1 charge* *RM1,000.00 + RM300.00 = RM1,300.00* • *One accused person and 2 charges* *RM1,000.00 + RM200.00 = RM1,200.00* • *Two accused persons and 2 charges* *RM1,000.00 + RM300.00 (for additional person) + RM200.00 (for the additional charge) = RM1,500.00*
			• (The amount above is payable upon completion of arguing the appeal. If the appeal is withdrawn by the appellant or defence counsel is discharged or discharges himself the lawyer is entitled to 50% of the aforesaid rate)
		Attending Court for mention of case- • RM40 per day	Attending Court for mention/case management- • RM50 per case
		RM50 for disbursements on conclusion of case.	• RM100 claim upon closing of the file

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
10.	Appeal to the Court of Appeal against conviction and sentence*	RM1, 500 RM50 for disbursements on conclusion of case.	(a) Where there is more than one accused person and 1 charge: • RM1,500 per client if the matter originates from either the Magistrates or Sessions Court • RM500 per every additional client jointly charged (b) Where there is one accused person and more than 1 charge: • RM1.500 per charge if the matter originates from either the Magistrates or Sessions Court • RM200 per every charge up to a maximum of 3 charges. *Illustration:-* • *Two accused persons and 1 charge* *RM1,500.00 + RM500.00= RM2,000.00* • *One accused person and 2 charges* *RM1,500.00 + RM200.00= RM1,700.00* • *Two accused person and 2 charges* *RM1,500.00 + RM500.00 (for additional person) + RM200.00 (for the additional charge)= RM2,200.00*
			• (The amount above is payable upon completion of arguing the appeal. If the appeal is withdrawn by the appellant or defence counsel is discharged or discharges himself the lawyer is entitled to 50% of the aforesaid rate.)
		Attending Court for mention of case- • RM40 per day	Attending Court for mention/case management- • RM50 per case
		RM50 for disbursements on conclusion of case.	• RM100 claim upon closing of the file

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
11.	Appeal to the Court of Appeal against sentence*	-	(a) Where there is more than 1 accused person and 1 charge: • RM1,200.00 per client if the matter originates from either the Magistrates or Sessions Court • RM400 per each additional client jointly charged (b) Where there is one accused person and more than 1 charge: • RM1,200 per charge if the matter originates from either the Magistrates or Sessions Court • RM200 per every charge up to a maximum of 3 charges. *Illustration:-* • *Two accused persons and 1 charge* *RM1,200.00 + RM400.00= RM1,600.00* • *One accused person and 2 charges* *RM1,200.00 + RM200.00= RM1,400.00* • *Two accused person and 2 charges* *RM1,200.00 + RM400.00 (for additional person) + RM200.00 (for the additional charge)= RM1,800.00*
			• (The amount above is payable upon completion of arguing the appeal. If the appeal is withdrawn by the appellant or defence counsel is discharged or discharges himself the lawyer is entitled to 50% of the aforesaid rate)
		Attending Court for mention of case- • RM40 per day	Attending Court for mention/case management- • RM50 per case
		RM50 for disbursements on conclusion of case.	• RM100 claim upon closing of the file

NO.	SERVICE PROVIDED	RATES BEFORE 1 MAY 2014	RATES FROM 1 MAY 2014
12.	Interview of OKT in Prison	RM150 (One interview only)	RM150 per client (One interview only)
13.	Revision	1 application - RM 150	• One application - RM150. • If the lawyer is called to make submission at the revision hearing then RM200 per application is payable.
14.	Interview of Juveniles in juvenile remand centres/ detention centres	-	RM100 (One interview only)
15.	Assisting prisoner on Death Row prepare the Petition for Clemency	-	RM500

Notes

A. Disbursements

Disbursements are claimable upon production of receipts

B. Travel Claims

In addition to disbursements. YBGK lawyers are entitled to make travel claims at the prescribed rate

C. *Handling of High Court Matters - Criteria for YBGK Lawyers:

High Court Matters can only be assigned to a YBGK lawyer who satisfies the following conditions:

(a) Has been in practice for a minimum of 3 years; and
(b) Has on his/her own handled a minimum of 3 criminal trials.

These conditions are waived for the following categories:

(i) A former DPP who has served the AG's chambers as a prosecutor for a period of 2 years:
(ii) A former Magistrate/Sessions Court Judge who had presided over criminal trials for a period 2 years.

D. *Handling of Court of Appeal Matters - Criteria for YBGK Lawyers:

Court of Appeal Matters can only be assigned to a YBGK lawyer who satisfies the following conditions:

(a) Has been in practice for a minimum of 5 years; and
(b) Has on his/her own handled a minimum of 5 criminal trials; and
(c) Has done at least 2 criminal appeals in the High Court

These conditions are waived for the following category:

A former DPP who has served the AG's chambers as a prosecutor for a period of 2 years and has conducted at least 3 criminal trials or criminal appeals in the High Court.

Date of Implementation is 1 May 2014 as decided at the YBGK Executive Committee Meeting on 22 April 2014

YAYASAN BANTUAN GUAMAN KEBANGSAAN

YAYASAN BANTUAN GUAMAN KEBANGSAAN
(INDIVIDUAL STATE LAC ADD)

CLIENT COMPLAINT FORM

PERSONAL PARTICULARS:

1. Name : _____
2. I/C Number : _____
3. Home Address : _____
4. Phone Number (Home): _____ (Handphone): _____

DETAILS OF THE OFFENCE OR CHARGE

5. Date of registration with the Foundation : _____
6. Type of offence : _____
7. Name of Lawyer : _____

THE COMPLAINT

8. Please tell us what your complaint is about (including the time and place of the event):-

9. Date of Complaint made : _____

Customer Signature, Officer in Charge,

_____ _____

YAYASAN BANTUAN GUAMAN KEBANGSAAN

(LEGAL AID CENTRE KUALA LUMPUR)

DANG WANGI SUMMARY SHEET

LIST OF REMAND NAMES (16th NOVEMBER 2012, (FRIDAY)

No	Name of OYDS	IC No.	Date/Time of Arrest	Name of IO	Sec. Under Investigation	S 28A (8) Yes or No	Remarks
1.	MOHD NSARI B MOHD SYUKUR	NOT STATED	16/11/2012 03:20	MAT ADNAN BIN WAHAB	3 (1) APD 1983	NO	
2.	TAY TENG SEANG	640524-07-5181	15/11/2012 14:42	MAT ADNAN BIN WAHAB	3 (1) APD 1983	NO	
3.	NALINI A/P JAGANATHAN	810715-02-5186	16/11/2012 04:56	ROSLI B. SHAARI	3 (1) APD 1983	NO	
4.	CHONG KUI WOONG	600425-05-5015	15/11/2012 19:12	YUSOF B MOHAMAD	372B KK	NO	
5.	MUHAMMAD FAIZAL BIN MOHD HASHIM	890808-14-5075	15/11/2012 16:19	MOHD HASZARUDDIN BIN KAMARUZZAMAN	15 (1)(A) ADB 1952	NO	
6.	CHAN YUEN SOON	660321-05-5285	15/11/2012 19:34	YUSOF B MOHAMAD	372B KK	NO	
7.	TAN POH HOO	590812-10-5311	15/11/2012 19:08	YUSOF B MOHAMAD	372B KK	NO	
8.	CHAN SHE CHONG	550421-01-5881	15/11/2012 19:20	YUSOF B MOHAMAD	372B KK	NO	

FOR ANY INQUIRIES CALL GURPREET/JEEVA AT 03-2693 207

DUTY ROSTER

2ND JUNE 2014 (MONDAY)

CONTACT DETAILS			ARREST					REMAND	
NO	LAWYER'S NAME		BRICKFIELDS	CHERAS	DANG WANGI	SENTUL	PUTRAJAYA	DANG WANGI	JINJANG
1.	Arden Kuan	013-2345678					√		
2.	Kelvinder Singh	014-2345678			√				
3.	Lingeswaran Andiappan	016-2345678						√	
4.	Manimagalai	017-2345698						√	
5.	Martin Tay	018-2345698							√
6.	Miza Haryani	019-1234567						√	
7.	Mohd Ridzuwan	010-2356894				√			√
8.	Wong Woi Kang	011-1245789							√
9.	Zamani Bin Mukhtar	012-2356897							√

3RD JUNE 2014 (TUESDAY)

CONTACT DETAILS			ARREST					REMAND	
NO	LAWYER'S NAME		BRICKFIELDS	CHERAS	DANG WANGI	SENTUL	PUTRAJAYA	DANG WANGI	JINJANG
1.	Arden Kuan	013-2345678					√		
2.	John Das	014-2345678							√
3.	Kelvinder Singh	016-2345678			√				
4.	Lingeswaran Andiappan	017-2345698						√	
5.	Manimagalai	018-2345698						√	
6.	Martin Tay	019-1234567						√	
7.	Miza Haryani	010-2356894						√	
8.	Mohd Ridzuwan	011-1245789				√			√
9.	Wong Woi Kang	012-2356897							√
10	Mageswaran	013-2345678							√

YBGK LAWYER'S LETTER OF UNDERTAKING (1) - GENERAL

I _____, NRIC No: _____, BC No. _____ hereby volunteer my time and professional legal services to the Yayasan Bantuan Guaman Kebangsaan (YBGK), for which I shall receive payments as determined by the YBGK.

In consideration of YBGK accepting me as a YBGK lawyer and providing me the necessary training and manuals, I hereby undertake:

(i) to abide by YBGK's conditions, guidelines and procedures;

(ii) to comply with all the obligations and requirements imposed under the Legal Profession Act 1976 [*Act 166*] and the rules there under;

(iii) not to ask, demand or accept any payment or reimbursement directly or indirectly from the client, family members and/or agent of the client;

(iv) to report to YBGK the development of matters/cases handled by me in the manner and form as prescribed by YBGK;

(v) to declare to YBGK any conflict of interest if any so arises when representing a client assigned to me by YBGK; and

(vi) to declare and inform YBGK should any client previously referred to me by YBGK seeks my professional assistance outside the YBGK scheme; and

I hereby undertake and declare that YBGK shall not be held in any way responsible for any misfortune or personal injury, whether fatal or otherwise, involving me whilst carrying out my duties as a YBGK lawyer.

I hereby confirm that I am a fit and proper person as prescribed by the LPA 1976 to assist the accused or arrested persons.

I hereby further undertake that I shall not exploit or abuse in any way my appointment as a YBGK lawyer. I acknowledge that should I at any time be found to have committed any misconduct as defined by section 94(3) of the LPA, YBGK can suspend or remove me from the YBGK volunteer list.

Finally, I hereby acknowledge that all the files which I am handling belongs to YBGK and YBGK has the right to inspect these files at anytime.

Yours faithfully,

_____

Firm:

Date:

YAYASAN BANTUAN GUAMAN KEBANGSAAN

YAYASAN BANTUAN GUAMAN KEBANGSAAN
(INDIVIDUAL STATE LAC ADD)

INTERVIEW SHEET FOR ARREST

If Remand Granted:
Days: .....
Next date:..../....2013

Date: ..... Ref. No: .....

PART A. Details of Suspect

Name: ..... Male ☐ Female ☐

I.C. No: .....

Address: .....

.....

Age: ..... Held (Police Station):..... Contact No: .....

PART B. Details of Family/Friend (must be above 18 – preferably someone who can be a Bailor)

Name: ..... Relationship: .....

Address: Same as above: ☐ New Address:.....

.....

Contact No:..... Can he/she post bail? Yes ☐ No ☐

PART C: DETAILS OF ARREST:

Place of Arrest

1. Time of Arrest (try to be accurate)?..... 2. Where were you arrested? .....
2. Did you resist arrest? Yes ☐ No: ☐
3. Did the Police Officer inform you why you were being arrested? Yes ☐ No ☐

- If no, do you know why you were arrested? .....

Details of Complainant (only in cases where the complainant is NOT the Police or Enforcement Agency)

Do you know the Complainant? Yes ☐ No: ☐

1. If yes , relationship with the complainant? .....
   a) Is this the first time you have had a problem with the complainant? Yes ☐ No ☐

Questioning by police

1. Have the police taken a statement from you? Yes ☐ No ☐ - If yes, what time?.....
(explain to the client that this would be the 112 statement which he would have had to sign and confirm)

2. Did the police A) inform you have a right to See a Lawyer before the statement was taken? Yes: ☐ No: ☐
B) you need not answer questions that will incriminate you? Yes ☐ No: ☐
C) read back to you the statement before you signed it? Yes ☐ No: ☐
D) Allow you to contact a family member/friend Yes ☐ No: ☐

Investigation done by the police

1. As far as you know, what other investigative steps have the Police taken? (for example)

Kawad cam? ☐ Recovered "Barang Kes" ☐ Interviewed witnesses ☐ Taken bodily fluid specimens ☐

Previous Convictions:

1. Do you have any previous convictions? Yes ☐ No ☐ If yes, how many?.....
2. How many consecutive days have you been in detention (for this offence or any other offence)?.....

Treatment at the police station

1. Have you been assaulted by anyone since your detention? Yes ☐ No ☐
2. If yes, by whom?.....

Special needs

Do you have any special needs/requests? Yes ☐ No ☐ If yes, what? .....

Financial, Social status of the arrested person

1. Where do you work? .....

If Own Business

How long have you run this business? .....
How many employees do you have? .....

If Employed:

How long have you worked there?.....
Family business? Yes ☐ No: ☐
If yes, relationship with your employer?.....

Marital Status

1. Single ☐ Married ☐ Divorced ☐ Do you have children? Yes ☐ No ☐
2. Do you have any dependents? Yes ☐ No: ☐ If yes, who?.....
3. Who do you live with? .....

PART D. DETAILS OF CHARGE

1. Charge Section:.....
2. Who arrested you?: POLICE ☐ RELA ☐ MACC ☐ Others: .....

PART E: FACTS OF CASE & ADVICE GIVEN

1. Facts:

.....

.....

.....

.....

.....

2. Advice Given:

.....

.....

.....

F) Details of Lawyer:

a) Name: ..... b) YBGK Card No: .....

c) Phone No: ..... d) Signature: .....

YAYASAN BANTUAN JAMAN KEBANGSAAN

OYDS Name: .....

I.C. No : .....

Sex: M / F Age: .....

Police Station of Arrest :.....

REMAND INTERVIEW SHEET

Date: .....

Consecutive days in Detention: .....

Special Circumstances (if any):

.....

Court Coram:

Magistrate:

.....

IO:.....

Days Granted:.....

Next date:...../.....2014

Court's

Instructions::.....

Financial, Social status of the arrested person

1. Working? Y / N 2. If Yes, Self Employed / Employed by someone
3. Working at this job for how long ? .....
4. If not working : Why? .....

Special needs

Does OYDS have any special needs/requests? Y / N If yes, pls state: .....

Marital Status

Single ☐ Married ☐ Divorced ☐ Children? Y / N

Who are the OYDS Dependants (If any)?.....

Details of Family/Friend (must be above 18 – preferably someone who can be a Bailor)

Name: ..... Relationship: .....

Contact No:.....

DETAILS OF ARREST & OFFENCE:

OTHER OFFENCE	DRUG ABUSE/CONSUMPTION OFFENCE

Place of Arrest

1. Time of Arrest (try to be accurate)?..... 2. Where were you arrested? .....
3. Does OYDS know why he was arrested? ..... (Section :.....)

Questioning by police

1. Have the police taken a statement from him? Yes ☐ No ☐ - If yes; what time?.....
(explain to the client that this would be the 112 statement which he would have had to sign and confirm)

Investigation done by the police

1. As far as OYDS knows, what other investigative steps have the Police taken? (for example)

Kawad cam? ☐ Recovered "Barang Kes" ☐

Interviewed witnesses ☐ Others: .....

Police taken a sample (urine) from OYDS? Y / N

If yes: When?

If urine test taken, does he know the results?

Positive ☐ Negative ☐

Don't know ☐

Previous Convictions:

1. Does OYDS have any previous convictions? Yes ☐ No ☐

FACTS OF CASE

.....

.....

.....

.....

.....

.....

LAWYERS NAME: