

LEAD ARTICLE

## “QUIS CUSTODIET IPSOS CUSTODES?” (“Who Watches The Watchmen?”)

JUVENAL was a Roman poet who lived in the 1<sup>st</sup> and 2<sup>nd</sup> century. He wrote the ‘SATIRES’ which is a vital source for the study of ancient Rome. He is also the compiler of several well known maxims and quotes one of which is the ever troubling poser as to who can be trusted with power – “who will watch the watchers?” or “who will guard the guardians themselves?” (“Quis Custodiet Ipsos Custodes” Satires VI-347-48).

John Gray in the Foreword to his exquisite book “Lawyers’ Latin” says he began writing life with ‘The Morning Post’ and later ‘The Daily Telegraph’. For a leading article on police misconduct he could not find an expression in the English language to better the heading “Quis Custodiet Ipsos Custodes”. He said that the English version would be a dull: “who guards the guards?”. It would have been too dull and unattractive, he wrote.

Now in the SATIRES it was suggested that Roman male guards cannot be trusted and so they should not be allowed to guard women. This was said to be premised on the possibility that the male guards themselves will attack the women for sexual satisfaction. An abuse of power. The powerful over the powerless. Be that as it may, it is to be noted that in ancient China the Emperor’s concubines were watched over by eunuchs so no harm will befall on the harem and the multiple concubines of the Emperors. Men have always been possessive and jealous when it comes to their women! In his Nobel Prize Lecture (8-12-2007) Leonid Hurwicz a Russian born Polish American economist (Nobel Memorial Prize 2007) said Juvenal suggested that wives cannot be trusted and keeping them under male guards was not a solution because the guards themselves cannot be trusted either. He suggested that the “need for enforcement implies the possibility of behavior that violates the rules.” In the Malay language the relevant peribahasa or proverb is “Harapkan pagar, pagar makan padi”.

The Malaysia Police Force has interesting antecedents. According to Wikipedia the first Police force was in Malacca under the Sultanate. The Portuguese ruled Malacca by using “Capitan” system. (The British to supervise Indian workers had the “Kankani” system. In Tamil “Kan” means “eyes” and “kani” means “roving”). On January 14, 1641 the Portuguese Empire in Malacca ended. The Dutch fleets successfully conquered Malacca with the help from Johore State military forces. The Portuguese battled in Aceh. A Dutch police force in Malacca was known as “Burgher Guard” was formed when the European population was increased and it was found necessary to set up a constabulary.

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According to Wikipedia, on August 11, 1786 Francis Light came to Penang and named the island as Prince of Wales Island. The population in Penang at that time was small and Malay fishermen made up most of the population. Three years later, the population increased to 10,000 peoples as more immigrants went to Penang. Francis Light found the need to set up a police force to safeguard the security in Penang. Which was controlled by India. He pleaded his case to his superiors in India but it was not well received.

Later on the British East India Company took control of Singapore in 1819. This then changed the history of Malaya. With effect, all police forces in the Straits settlements were under the control of a chief police headquartered in Singapore. Penang and Malacca were led by a Superintendent who acted as the Chief Police officer. The first Police Chief of the Straits settlement was Colonel Samuel Dunlop. Up to the Independence in 1957 the Police Chiefs were Englishmen.

On July 24, 1958 DYMM Seri Paduka Baginda Yang diPertuan Agong, Almarhum Tuanku Abdul Rahman Ibni Almarhum Tuanku Muhammad conferred the title "Royal" or the Federation of Malaya Police Force. It then became known as "Royal Federation Of Malayan Police".

The concept of "Bersedia Berkhidmat" (English: "Ready To Serve") was introduced by Federations of Malaya State Police Commissioner, Sir Arthur Young on December 15, 1952. The current motto of the Polis DiRaja Malaysia (PDRM) is "Tegas Adil dan Berhemah" – "Firm Fair and Prudent".

But who will protect us from the protectors? The Greek Philosopher Plato said advocated that the protectors must police themselves. But in legal parlance this will be said to be a case of conflict of interest and a case of (to use Latin once again) "nemo iudex in causa sua" – "nobody should be judge in his own case". John Gray notes that in the extradition proceedings related to political atrocities alleged of General Pinochet of Chile a Judge Lord Hoffman failed to declare his connection with Amnesty International and so it was ordered that the case be re-tried by another panel of Law Lords.

In the recent past these have been an array of allegations and accusations against the Malaysian Police Force. Now, the Complainants have to lodge a report with the Police for the Police themselves to investigate their own conduct or then conduct of one of their own kind. This may be wholly unacceptable and the perception is that no justice may be meted out equitably and fairly. The calls for the constitution of an Independent Police Complaints and Misconduct Commission ("IPCMC") seem to have gone unheeded and it is suspected that the Police themselves were objecting to this Commission. In England a retired Judge of the High Court Sir William Macpherson was tasked to look into complaints against Police and later the Home Office set up a study by KPMG the professional consultants for a body to independently investigate the complaints against the Police Force.

It is suspected by all and sundry that State based Police when dealing with the complaints against their own members will not treat them as suspects as they will when dealing with the common-man. There may be preferential treatment. It may breach the cardinal rule that the Police should not investigate themselves. The Public will suspect collusion and cover-up.

In England and Wales the role, the power, structure and investigations of the IPCC are all well documented. The Commissioners themselves cannot have worked for the Police by law. And they are all full time officers appointed for a term of 5 years through open competition and are public officers. They are not hand picked by powers that be for some post-retirement remuneration and perks.

Some years ago the BBC televised a film by Mark Daly an undercover journalist who infiltrated the British Police Force and discovered so much prejudices and foul-play that later on led to the suspension of several of officers of the British Police Force.

It is plain that any body of men will have a multiplicity of problems and unacceptable behavior so we need to be judicious and transparent in investigating and probing complaints against the Police. As R. Nadeswaran wrote and observe in The Sun (28.5.2012) "The police can have a hundred one reasons to detain anyone, but surely it is not their God-given right to harm anyone in the process. Why did they have to do that?". We ought not to allow the Police Force to descend to become a public scandal. Tun Mohamed Dzaiddin bin Haji Abdullah who chaired the Royal Commission on the Police recommended a permanent. Commission to monitor and probe complaints lodge against the Police. The then Prime Minister Datuk Seri Abdullah Ahmad Badawi (as he then was) is reported to have said that "the Government is setting up a permanent commission" and when told of Tun Dzaiddin's comment that the Police did not practice human rights when conducting the nude squat search Abdullah said: "It was not the police (force) but the individual police officer's concern." It may be well argued that this statement smacks of infirmity and will not hold water because the Police officer represents the Police Force.

The Indonesian National Police is the official name for the Police Force in Indonesia. It was formerly known as Tentara Nasional Indonesia. In 1994 the Police were separated from the military. It was reported that the "Police in Indonesia shoot, beat and even kill people without fear of prosecution leaving their victims with little hope for justice." (Josef Benedict quoted by Reuters 25.4.2012). The Indonesian Police Commission ("Kopolnas") is empowered receive complaints against Police Misconduct but it has to refer same to the DPP for prosecution. The primary purpose of

Kompolnas is to improve and monitor the performance of the Police Force and investigate complaints from citizens of the alleged corruption wrongdoings and attitude of the Force. It has been reported that Kompolnas has been criticized for lack of independence and power to prosecute.

In India the largest democracy the sheer volume of complaints is said to breed delays response and action. It is said that creation of an IPCMC might not change attitudes as only changes in attitudes in the minds of senior officers will bring about a transformation. Senior officers are said to have taken a popular attitude so that they are amiable with their subordinates. Many are said to lack the moral stature to deal with delinquents and deviants. And some more so out of fear because their own subordinates are well aware of their own sins delinquency and deficiencies. It may be that if a Subordinate is unhappy or disgruntled many skeletons of the superior will be dragged out of the cupboards for all to see. The Latin phrase “Nemo iudex in causa sua” (nobody (should be) judge in his own case). It is said no judge should preside over a matter in which he has a personal interest or involvement. It is a canon of natural justice. If this is not followed there might arise a presumption of bias and if this arises any decision made may be challenged in a proper forum. R.K Ravhavan (Frontline Feb 2004) wrote :

**“There can be no two opinions at all on the question whether we need a transparent process to look into complaints against the police. It is well known that the majority of complaints against the police are swept under the carpet for a variety of reasons. It is not just lack of civility of the police that agitates the common man who approaches them. In fact, this is taken for granted and is easily forgiven for reasons of expediency. It is only outrageous acts such as extortion of a bribe or the use of illegal physical force that incense most complainants. The sheer magnitude of such complaints compels many senior police officers to soft-pedal them. Until an instance of police misconduct becomes a public scandal, not many supervisors are inclined to pay attention to it. This is an unfortunate situation that does not offer much hope of a reversal.”**

In Malaysia despite the passage of much time since the recommendation by the Commission of Tun Mohamed Dzaiddin no developments leading to the setting up of IPCMC have been made despite many calls by NGOs the Bar and other public spirited bodies. It is imperative that the decline in the confidence of the Police Force and the vitriolic criticisms against the Force must be arrested. And what better way to arrest the decline and set up standards for members of the Force to follow then to constitute the IPCMC so that everybody will act and keep within the given perimeters set by the Commission.

It was reported lately that The Enforcement Agency Integrity Commission (EAIC) what came into operation in April 2011 received the most number of complaints against the Police Force but not on abuse by its members. The Chief Executive of the EAIC a former DPP and Sessions Judge of EAIC was quoted as saying that people don't trust EAIC enough to lodge complains. It seems that after the stringent opposition to the Independent Police Complaints and Misconduct commission (IPCMC) from the police force, the government abandoned its original proposal and instead mooted the EAIC in 2009 – a body to investigate misconduct of all government enforcement agencies, not just the police. The Director of EAIC is reported to have said that **“the Enforcement Agency Integrity Commission Act 2009 had granted the commission vast powers in carrying out investigations, including conducting hearings and summoning any witnesses it considers necessary to testify under oath”**. She reportedly said **“our investigation shows that we act on a complaint of a particular officer living the lifestyle of a millionaire if he's not, or that he had three wives (which requires department clearance) are disciplinary in nature. So we will revert the matter – as provided in the Act – back to the police and say ‘look, there's a complaint against so-and-so, this is for your action”** she explained. But to all and sundry this Commission seems to be channel or a conduct because it processes complaints and refers same to the controlling bodies to investigate and prosecute. It is said that, the commission is bogged down by a variety of grouses that are mostly of a bureaucratic nature or those out of jurisdiction. The Director reported that 24 cases that were beyond the commission's scope of work were rejected, nine were referred to the Malaysian Anti-Corruption Commission (MACC) and 13 to the police disciplinary body. It is suggested that an Independent Police Complaint and Misconduct Commission will increase public confidence in the police. It will set standards and patterns of behavior for the Police force to follow and it will deal with complaints against the police in a judicious manner. It will give credence to the time worn maxim that ‘justice is not only done but seen to be done’ and that we must always try and keep the streams of justice pure and unpolluted by injustice and prejudice of any color kind or manner.

The Malaysian Bar Council at an EGM holden on 11.5.2012 moved the following resolutions:

3. “the Malaysia Bar renews our call on the Government to give effect to the recommendation of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police to set up the Independent Police Complaints and Misconduct Commission recommended therein, without further delay.”
6. “The Malaysian Bar calls for the setting up of an independent commission to recommend and formulate proper guidelines or operating procedures governing conduct of police in the control and management of public assemblies, and the use of non-lethal and lethal weapons, which would be in accordance with internationally-accepted standards, in particular the Code of Conduct for Law Enforcement Officials (adopted by United Nations General

Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990.”

The motion, as amended, was put to a vote and carried by a majority (939 votes in favour, 16 against, with no abstentions).

It may be germane to note that Parliament has empowered the Malaysian Bar per Legal Profession Act :

- S.42(1)(a) - “to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour”
- S.42(1)(g) - “to protect and assist the public in all matters touching ancillary or incidental to the law”
- S.42(2)(e) - “do all such other things as are incidental or conducive to the achievement or betterment of the purposes of the Malaysian Bar”

It is therefore entirely legal and proper for the Malaysian Bar to have convened the EGM and for the body of members to pass the various resolutions passed as it is not ultra vires the LPA and was done uberrime fidei. There is as the scriptures say a time to keep silent and a time to speak and the Bar spoke.

The bona fides of the Bar ought not to be looked upon with any degree of suspicion as it acted ex abundanti cautela (“from an abundance of care”) and within the powers bestowed upon it by the LPA, the Bar’s Magna Carta.

But The Star (12.6.2012) reported that Minister in the Prime Minister’s Department Datuk Seri Nazri Abdul Aziz said the Government had no intention of setting up a Police Complaints and Misconduct Commission as complaints could be submitted to the Enforcement Agency Integrity Commission.

He told Opposition Leader Datuk Seri Anwar Ibrahim (PKR-Permatang Pauh) that there was no plan for a review as the public could forward any form of complaint against any enforcement agency and the police to the commission.

The IPCMC might increase public confidence in the police complaints system as it will set standards for the members of the Force to adhere to. The IPCMC must be completely independent of the Government, the Police and the complainants themselves. After the latest Bersih (28.4.2012) brouhaha the creation of IPCMC should not be left to linger any longer. It is our fervent hope and prayer that an IPCMC will be constituted and be entirely free of any restrictions and Governmental Control. There will be a semblance of Independence. It might invoke confidence in the people. It might be “Tegas, Adil and Berhemah” (“Firm, Fair and Prudent”).

**S. Balarajah**  
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**16.6.2012**



### Complaints panel to be formed soon

by R. Manirajan  
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**KUALA LUMPUR:** The government is setting up a permanent commission to monitor and probe complaints lodged against the police force.

Prime Minister Datuk Seri Abdullah Ahmad Badawi, who is also internal security minister, said the Attorney-General (AG) was currently studying laws and bills that need to be reviewed and amended to enable the commission.

“The commission will be effective as soon as possible,” said Abdullah in a media briefing after a four-hour Umno Supreme Council meeting yesterday.



Abdullah ... AG studying laws and bills to be reviewed

Dzaiddin ... nude ear-squat against human rights

(The Sun. 25-1-2006)

### Trust needed: EAIC

> Complainants and whistleblowers will be protected under the law, commission chairman gives assurance

BY KAREN ARUKESAMY  
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**P**ETALING JAYA: The Enforcement Agency Integrity Commission (EAIC) has received 167 complaints from the public against law enforcement personnel since it began operations earlier this year.

However, a large percentage of the complaints received were via anonymous letters, which makes it difficult for the commission to verify the complaint and carry out investigations.

“When we receive anonymous letters, it is hard to determine the complaints are genuine and we have to register every complaint that we receive,” EAIC deputy chairman and commissioner Datuk Paul Low told the Sun yesterday.

“People have to trust us and provide us their particulars so that we can contact them for details,” said Low, who emphasised that complainants and whistleblowers will be protected under the law.

“We also have legal provisions to act against those who threaten, injure or blacklist complainants who give evidence to the EAIC,” he said.

Section 44 of the EAIC Act 2009 provides for imprisonment of up to two years and a fine of up to RM100,000 for anyone who threatens, insults or injures a person for giving evidence to the commission.

Low said the commission also received complaints that are too old or happened long before the EAIC was set up, as well as domestic quarrels and grievances against employers which do not fall within the ambit of the EAIC.

“We are bound by the Act and it is difficult to proceed if the misconduct complained of occurred at too remote a time to justify an investigation as stated in (Section 23 of) the Act.

“Currently, most of the investigations are pending responses from the respective agencies and because the commission is still new, we are giving the agencies some time to respond to our queries,” he said.

“We cannot simply close the cases without appropriate reasons. Nevertheless if the complaints involve misconduct, violation of procedure or abuse of power, we will investigate,” he added.

Low said although the commission was set up in April last year, it didn’t start till after a year

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### Panel has power to start full probe

▶ FROM FRONT PAGE

because it had to start from scratch, and was able to take in complaints after its structure and procedures had been properly established.

“And in order to safeguard the commission’s independence and professionalism, we had to hire, vet and train the officers well before we could take complaints,” said Low, who heads Transparency International Malaysia and was appointed as one of the EAIC’s seven commissioners.

Meanwhile, EAIC CEO Nor Afizah Hanum Mokhtar in an email interview said after preliminary investigations are made, the complaint will be sent to the complaints committee which will make a report on its findings and recommendation for deliberation and final decision by the commission.

“The commission has the power to commence a full investigation into a complaint. It can also refer the complaint to the appropriate disciplinary authority for action,” she said.

Nor Afizah said if the alleged misconduct involves corruption, the EAIC will refer the matter to the Malaysian Anti-Corruption Commission (MACC) for further action.

“If the misconduct is of a criminal nature then it will be referred to the public prosecutor,” she said.

The EAIC was set up by the government to cover law enforcement agencies instead of an Independent Police Complaints and Misconduct Commission (IPCMC) for only the police.

It is headed by retired federal court judge Datuk Helilah Mohd Yusof and currently has a team of 26 officers to investigate complaints against 19 enforcement agencies, including the police, immigration, customs, Road Transport Department, Domestic Trade enforcement division and Rela.

Anyone wishing to file complaints against law enforcement officers can contact the EAIC hotline at 03-8888 6618, e-mail aduan@eaic.gov.my, or obtain more details from www.eaic.gov.my.

(The Sun, 14-6-2012)