

18/04/2001

Bar Council: Existing laws adequate

Tony Emmanuel; Hong Sook Yee; Lee Shi-ian

KUALA LUMPUR, Tues. - Existing laws are adequate to protect crime eyewitnesses, the Bar Council said today.

It said this in response to the Government's announcement that a legislation to protect eyewitnesses is being considered.

The proposed legislation is similar to the United States' Department of Justice Witness Protection Programme.

In the US, any potential witness or a member of the family of a potential witness testifying in major crime cases is entitled to come under the WPP should the Attorney-General feel that he/she is in danger because of the fact that the witness will testify.

Minister in the Prime Minister's Department Datuk Dr Rais Yatim said he was awaiting feedback from relevant parties before drafting the legislation. "The feedback will be used as a guide to form proposals to amend the law."

The laws to be amended, he said, would include the Evidence Act and Criminal Procedure Code.

Yesterday, Prime Minister Datuk Seri Dr Mahathir Mohamad said the Government was considering drafting a law to protect eyewitnesses to crimes, as there had been cases where they were threatened with dire consequences should they testify.

"I think (eye)witnesses can be protected, which is something the Government can consider," he had said.

He cited several examples of murder cases going unsolved and this included that of Lunas State Assemblyman Dr Joe Fernandez, who was shot dead in broad daylight on a busy road in Bukit Mertajam last Nov 5.

Malaysians, Dr Mahathir said, were generally reluctant to assist the police in investigations although crimes occurred "right before them".

"This is not because they are not public-spirited, but (for fear) that they may be grilled and heckled by lawyers in courts," he had said.

Some lawyers, the Prime Minister added, with political leanings also appeared for suspected criminals to gain political mileage.

In response, Bar Council president Mah Weng Kwai described legislation spelt out in the Abduction and Criminal Intimidation of Witnesses Act and the Penal Code as statutory protection afforded to witnesses.

"The council is of the view that it may not be necessary to draft new laws," his statement read.

Therefore, he said, the remedy to this problem lies not with further legislation but with police carrying out their investigations properly.

Disagreeing with the Prime Minister's views as to why many Malaysian witnesses preferred not to get involved, Mah said as the court system was adversarial in nature, lawyers acting for accused persons in criminal cases were entitled to cross-examine witnesses.

"The object of cross-examination is to test the accuracy and veracity of witnesses' evidence and to determine their credibility."

Agreeing that lawyers should not heckle witnesses in court, Mah said should they do so, they would run foul of the Legal Profession (Practice and Etiquette) Rules.

"Further, under the Evidence Act, a lawyer may not ask indecent or scandalous questions."

The Bar Council was also of the view that often the public refrained from coming forward to give evidence as they might find it a hassle to

lodge a police report and they might see recording of statements as a long and tedious affair.

"If the police were more 'people-friendly' in this respect and police procedures streamlined, perhaps more members of the public will be ready to come forward as witnesses."

However, lawyer Karpal Singh described the Prime Minister's announcement as a move in the right direction.

"The Act should also encompass protection of all witnesses and not necessarily eyewitnesses alone," he said in a statement.

"Witnesses should be given protection to ensure the evidence they give in court is given without fear or favour from any quarter.

"The reason given by the Government for the perpetuation of laws which provide for detention without trial is the reluctance of witnesses to come forward to testify in an open court of law owing to possible retrials by those against whom the evidence is directed," Karpal, who is DAP deputy chairman, said.

He added under the Essential Security Cases Regulations 1975, it provided for hooded witnesses to give evidence.

"With the coming to force of the proposed Witnesses Protection Act (which should embrace all witnesses), ESCAR should be repealed and also the Internal Security Act, the Emergency (Public Order and Prevention of Crime) Ordinance 1969, the Dangerous Drugs (Special Preventive Measures) Act 1985 and the Restricted Residence Act 1933, all of which provide for detention without trial."

He urged the Government to be pragmatic and not ignore the rejection of detention without trial.