

**HUMAN RIGHTS COMMISSION OF MALAYSIA
(SUHAKAM)**

**INQUIRY 2/2000 : INQUIRY ON ITS OWN MOTION INTO THE
NOVEMBER 5TH INCIDENT AT THE KESAS HIGHWAY**

PART ONE : THE REPORT

INTRODUCTION

On 5th November 2000, a rally was to be held at 2.30p.m. at Markas Parti Keadilan Nasional in Jalan Kebun, Klang, off the Kesas Highway. The organizers had hoped to attract 100, 000 people. Media reports on the 6th November 2000 showed that the rally was prevented from taking place by police action, that several people had been arrested and that some people had been assaulted and injured, a few somewhat seriously. (see appendix 1)

The reports of the November 5th incident at the Kesas Highway were brought to the attention of SUHAKAM. At its meeting on 8th November 2000, SUHAKAM, in accordance with its powers under section 12(1) of the Human Rights Commission of Malaysia Act 1999, Act 597, (hereinafter referred to as “the Act”) decided to conduct an Inquiry on its own motion into the incident.

Three commissioners, hereinafter referred to as the Panel, were given the task of conducting the Inquiry:

Tan Sri Dato’ Haji Anuar bin Dato’ Haji Zainal Abidin - Chairperson

Tan Sri Datuk Seri Panglima Simon Sipaun

Puan Mehrun Siraj

A statement to that effect was issued by SUHAKAM. (see appendix 2)

Terms of Reference

The terms of reference for the inquiry are :

1. To determine whether there were any violations of human rights arising from the incident.
2. If violations of human rights occurred, to determine :-
 - (i) which person or agency is responsible;
 - (ii) how such violations came about;
 - (iii) what practices, arrangements or policies contributed to them;
 - (iv) what measures should be taken to ensure that the situation improves or the violations do not recur.

SUHAKAM's announcement was viewed with concern by some quarters who were of the view that SUHAKAM had no *locus standi* to conduct the inquiry and, in any case, could not proceed as the matter had become *sub judice* because investigations were being carried out by the Police and one person had already been charged in court. Furthermore, no regulations had been enacted to provide for the procedure for the Inquiry.

The Panel notes that SUHAKAM's authority to conduct the inquiry lies in section 12(1) of the Act. Section 12(1) states:

12. (1) The Commission may, **on its own motion** or on a complaint made by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, **inquire into an allegation of the infringement of the human rights** of such person or group of persons.

It is clear, from section 12(1), that if SUHAKAM has information suggesting that an infringement of human rights has occurred in Malaysia, it may inquire on its own motion into the incident.

The Panel further notes that a matter does not become *sub judice* merely because investigations are being carried out. The *sub judice* principle applies only if the matter is before the courts. In this regard, there are specific provisions of the Act that dictate what SUHAKAM can and cannot do. The relevant provisions are section 12(2)(a) and section 12(3).

Section 12(2) The Commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which –
(a) is the subject matter of any proceedings pending in any court, including any appeals; ...

Section 12(3) If the Commission inquires into an allegation under subsection 12(1) and during the pendency of such inquiry the allegation becomes the subject matter of any proceedings in any court, the Commission shall immediately cease to do the inquiry.

The Panel stresses that the provisions set out above do not preclude SUHAKAM from inquiring into allegations of human rights infringements merely because a matter arising from the same incident is before the courts. SUHAKAM is precluded from beginning or continuing with an inquiry only if the subject matter of the inquiry is the same as that of the court proceedings.

The effect of section 12(2)(a) and 12(3) is best seen in a specific example. If a person is charged in court for taking part in an unlawful assembly or for obstructing the police in the carrying out of their duties, then SUHAKAM cannot inquire into whether the person is guilty of either of the charges but SUHAKAM may inquire into whether any human rights violations occurred during the incident which resulted in the person being arrested and also whether there were any infringements after the arrest.

With this interpretation of sections 12(2)(a) and 12(3), the Panel concludes that it can inquire into whether there were any infringements of human rights during the incident at the Kemas Highway on November 5th 2000.

The Panel is unable to agree with the view that the lack of regulations means that SUHAKAM cannot conduct inquiries until regulations are enacted. The provision relating to regulations is section 22. Section 22 states:

22. The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act, including for prescribing the procedure to be followed in the conduct of inquiries under this Act.

Section 22 empowers the Minister to make regulations where it is felt that there is a need for provisions to clarify matters relating to the implementation of the Act by setting out details of what can or should be done. Section 22 does not have the effect of preventing the implementation of the Act until regulations are enacted. As such, if the Act has sufficient provisions for the conduct of inquiries, SUHAKAM may proceed even though regulations have not been enacted.

It is to be noted that the Act itself prescribes the Powers relating to inquiries. These powers are to be found in section 14.

Section 14 Powers relating to Inquiries

14. (1) The Commission shall, for the purposes of an inquiry under this Act, have the power –
 - (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;
 - (b) to require that the evidence, whether written or oral, of any witness be given on oath or affirmation, such oath or affirmation being that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorized in that behalf by the Commission an oath or affirmation to every such witness;
 - (c) to summon any person residing in Malaysia to attend any meeting of the Commission to give evidence or

- produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;
- (d) to admit notwithstanding any of the provisions of the Evidence Act 1950 [Act56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings; and
 - (e) to admit or exclude the public from such inquiry or any part thereof.

The power to summon a witness under section 14(1)(c) of the Act includes the implied power to enforce the summons and imposes on the individual so summoned a duty to comply with the summons. This is by virtue of section 40 of the Interpretation Acts 1948 and 1967 (Act 388). Section 40 states :

40. Implied Powers

- (1) Where a written law confers a power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.
- (2) Without prejudice to the generality of subsection (1) –
 - (b) where a power is conferred on any person to direct, order or require any act or thing to be done, there shall be deemed to be imposed on any person to whom a direction, order or requisition is given in pursuance of the power a duty to comply therewith.

Section 40 of the Interpretation Acts 1948 and 1967 (Act 388) must be read together with Section 18(4) of the Human Rights Commission of Malaysia Act and sections 172, 174, 175, 178, 179, 181, 182, 186 and 187 of the Penal Code [Act 574].

Section 18(4) of the Act states:

Chapters IX and X of the Penal Code [Act 574] shall apply to members, officers and servants of the Commission as if references to “public servant” had been replaced with “member, officer or servant of the Commission”.

The sections of the Penal Code mentioned above fall within Chapter X. Some examples of the offences are absconding to avoid service of summons or other proceedings from a public servant, non-attendance in disobedience to an order from a public servant, omission to produce a document to a public servant by a person legally bound to produce such document, omission to give notice or information to a public servant, furnishing false information, and refusing to answer a public servant authorized to question.

The effect of all the provisions mentioned above is that persons who refuse to comply with summonses from SUHAKAM or otherwise refuse to cooperate with an inquiry conducted by SUHAKAM, commit offences for which they can be prosecuted and punished.

The Act also prescribes under section 15, the manner in which evidence is given before the Commissioners.

Section 15 Evidence before the Commission

15. (1) A person who gives evidence before the Commission shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court.

(2) No person shall, in respect of any evidence written or oral given by that person to or before the Commission, be liable to any action or proceeding, civil or criminal in any court except when the person is charged with giving or fabricating false evidence.

The Panel feels that sections 14 and 15 are sufficient to enable the Commission to carry out its inquiries.

For the information of members of the public, the Panel drew up guidelines for the procedure to be followed, based on the above mentioned provisions. (see appendix 3)

A statement was issued by SUHAKAM informing the public of the date of commencement of the Inquiry. (see appendix 4)

The Panel invited the Police, the Attorney General's Chambers and the Bar Council to attend the Inquiry. The Attorney General declined to attend. On behalf of the A.G.'s Chambers, a press statement was issued citing as the reason for not sending observers to the inquiry, their concern that the matter was *sub judice* as police were conducting investigations. (see appendix 5). The Police also declined to send observers.

The Bar Council sent two lawyers for every sitting of the Inquiry. The lawyers were from the Kuala Lumpur Legal Aid Centre and had experience in remand proceedings. They were always available to be called upon to provide relevant information in cases where the witnesses were unsure as to the provisions of law or procedure that were applied to them.

CONDUCT OF THE INQUIRY

The Inquiry began on the 29th November 2000. The hearing was spread over twenty days and a total of forty six witnesses gave evidence. (see Appendix 6 for list of witnesses)

Initially, twenty two persons who had been present at the scene of the incident came forward to testify. It was explained to all witnesses that in accordance with section 15(2) of the Human Rights Commission of Malaysia Act 1999, they would not be subject to liability in any action or proceeding, civil or criminal, in respect of any evidence given at the Inquiry except if they are charged with giving false evidence.

The Panel called seven expert witnesses to give evidence – four of the doctors who treated persons who were injured in the incident, the magistrate who remanded the persons arrested, a senior research officer from the *Makmal Senjata, Pusat Sains & Teknologi Pertahanan*, and a forensic chemist from the government chemistry department. The last two witnesses provided information about the tear gas canisters

alleged to have been used at the incident that were produced as exhibits in the Inquiry. The witnesses gave evidence as to normal method for their discharge and their effects.

From the evidence adduced, there were several complaints made against the Police. The witnesses were able to identify the police personnel involved from their name tags. Unfortunately, the names in the name tags were incomplete.

The Panel issued notices to the following witnesses to appear in the Inquiry to give evidence :

1. The Officer in charge of operations on the ground
2. Officer in charge of the CID personnel present
3. Officer in charge of the PGA personnel present
4. Officer in charge of the FRU personnel present
5. SAC2 Mangsor
6. DSP Bahwandi
7. ASP Shamsuddin
8. Arman (FRU)
9. The two (2) women personnel who interviewed Umi Juma ina binti Mohamad Jan (the seventeen year old detained at Kapar)
10. Insp. Stephen (who appeared before the magistrate)
11. Dayang Safinah (woman police officer at Kapar)
12. Officer in charge of training police personnel in crowd control.

The Panel requested a briefing on the various units of the Police Force present on the 5th November, their uniform, weapons and the specific duties entrusted to them.

The Panel also requested a copy of the Standard Operating Procedure (SOP) that was used for the operation. Unfortunately, the SOP could not be supplied as it was claimed that it was a restricted document. However, some of the procedures for that operation was explained by the officer who prepared the SOP, ACP Karn Kam Peng, OCPD Kelang, (W32) when he gave evidence.

A total of fifteen police personnel gave evidence. Of the thirteen called by the Panel, only one witness identified as Arman was not able to be present. The Panel was informed that there was no Arman in the FRU.

One witness, Inspector Azmi bin Yahya (W44), came forward to give evidence that he had been assaulted in the incident. The Police also produced as a witness the Area Commander of the St. Johns Ambulance Brigade (W41) to testify that First Aid was available on the 5th November 2000.

Following media reports of the testimony of some police officers about a particular incident, Encik Zainur Zakaria (W46) came forward to give evidence as to what he saw of the incident.

On the 23rd July 2001, the Panel visited the Kemuning Toll on the Kesas Highway, Lot 7362, Batu 7, Jalan Kebun where the rally was scheduled to be held, and the Kapar Police Station Lockup. The Panel recorded evidence from seven staff members of the Kesas Highway Authority (KHA) and viewed a video that had been recorded by KHA. The Panel also recorded evidence from Encik Sd. Mohamad Johari bin Haji Yasin, the owner of Lot 7362, and Chief Inspector Mohamad bin Kimin, *Ketua Balai Polis Kapar*.

SUMMARY OF EVENTS LEADING TO THE NOVEMBER 5TH INCIDENT

This summary is gleaned from the evidence of police personnel, other witnesses and from media reports and video tapes produced as exhibits.

The rally scheduled for 5th November 2000, received a great deal of publicity in the media – both print and electronic. The Police declared the assembly unlawful as no permit for it had been applied for or issued. The Police warned the public not to attend. (see appendix 7 for Police press statement).

The evidence of several senior police officers disclosed that on the 2nd November, there was a meeting at the Selangor Contingent Headquarters chaired by the Deputy Police Chief of Selangor, and attended by several senior police officers from Selangor, Chief of Special Branch, Officer in charge of Criminal Investigations (OCCI), Chief of Internal Security and Traffic, Officer in charge of Police District (OCPD) Kelang and OCPD from other districts in Selangor, DSP Bahwandi, and representatives of the commanders of Unit Udara (Air Wing of Police), Federal Reserve Unit (FRU) and *Pasukan Gerakan Am* (PGA). Also present were enforcement officers from Majlis Perbandaran Kelang and Dewan Bandar Raya Shah Alam, a representative from the District Officer's Office and from the St. John's Ambulance Brigade.

The purpose of the meeting was to plan integrated action to prevent the gathering from taking place. The decision was to take action for "total denial and domination" which in effect meant "total control". This involved preventing the public from getting to Jalan Kebun, the venue of the gathering. According to the police evidence, the decision was based on several factors – the venue was too small to accommodate 100,000 people, the roads leading to the place were not "big" and there would be traffic congestion, the residents of Jalan Kebun had objected to the gathering and had lodged a police report complaining about their concern that the gathering would cause public disorder and inconvenience to them.

On the 4th November 2000, police personnel led by Deputy Police Chief Selangor, SAC 1, Dato' Johar bin Che Din, together with enforcement officers from Dewan Bandar Raya Shah Alam, went to the venue of the proposed gathering, Lot 7362 Jalan Kebun, where some traders were setting up stalls. The traders were told to dismantle their stalls and leave the place. Some refused to do so and were arrested. Four men and one woman were arrested. The owner of the property, Encik Sd. Mohamad Johari bin Haji Yasin, was also arrested.

Fourteen road-blocks were set up on the 4th November at around 3p.m. and remained in place until about 8p.m. on the 5th November. They were all within the Klang district.

On the 5th November 2000, five groups from five directions converged on Jalan Kebun from about 11a.m. The first group of about 100 people was dispersed by 12 noon. At 2.15p.m. there were about 1000 cars parked for about 3-4 kilometres along the Kesas highway. Several other cars were “trapped” in the area and were not able to leave. From the video viewed by the Panel at the Kemuning Toll on the 23rd July 2001, the traffic jam was caused by the police road-block which left open only one lane on the highway. Many drivers, tired of waiting for the congestion to clear, began parking their cars on the side of the road. Several got out of their cars and walked around.

By about 3p.m. there were about 5,000 people present. Water canons and tear gas were used to disperse the crowd. “Kembali” tow trucks were used to tow away some of the cars and the divider in the middle of the highway was removed with the help of workers from the Kesas Authority to enable people to leave the area.

Leaders of the Barisan Alternative arrived at the scene at about 5.30 p.m. As they could not proceed to the venue where the rally was originally scheduled to take place, they decided to give short speeches on the Kesas Highway itself. The last speaker was the organizing chairman who announced that the group was going to disperse and that four representatives would meet with the Police to inform them that they were dispersing and to request that the road be opened so that the crowd could leave the area. Before they could do so, the police had moved in with water canons and the FRU were firing tear gas at the crowd.

Several people were arrested, some of whom were assaulted and sustained injuries. Others were suffering from the effects of the tear gas and chemically laced water.

From a video of the scene, produced by a witness (W4) who had been arrested, and marked Exb.5, police personnel were seen assaulting the witness for no apparent reason while others were seen kicking motorcycles parked by the roadside.

ISSUES ARISING FROM THE EVIDENCE AT THE HEARINGS, THE LAW, THE FINDINGS AND THE RECOMMENDATIONS OF THE PANEL

From the evidence recorded, the Panel has identified issues that need to be addressed. Where the issues are closely connected, they are dealt with together.

1. NO POLICE PERMIT FOR PROPOSED RALLY / OPPOSITION TO PROPOSED RALLY BY RESIDENTS OF JALAN KEBUN

Police witnesses, SAC 1 Dato' Johar bin Che Din, Timbalan Ketua Polis Selangor (W30) and ACP Karn Kam Peng, OCPD Kelang (W32), stated that the proposed rally was unlawful as no application for a licence to hold it had been made by the organizers. The organizing chairman of the rally, Saari Sungib, confirmed this fact via a telephone conversation with a SUHAKAM officer.

Section 27 of the Police Act 1967 (Act 344) requires an application to be made for a licence to hold any meeting or assembly or procession in a public place. No licence is required for assemblies on private property.

The Police Act 1967, which was revised in 1988, does not define “public place” so the definition of “public place” in the Interpretation Acts 1948 and 1967 (Act 388) will apply. Section 2(1)(b) of Act 388 provides that the Act will apply to “all laws revised under the Revision of Laws Act 1968”. Section 3 defines “public place” as follows :

“public place” includes every public highway, street, road, bridge, square, court, alley, lane, bridle way, footway, parade, wharf, jetty, quay, public garden or open space, and every theatre, place of public entertainment of any kind or other place of general resort to which admission is obtained by payment or to which the public have access.

SAC II Mangsor bin Ismail, Head of Criminal Investigation Department, Selangor, (W45) stated that although the venue of the rally was private property, it was not an enclosed space and the public could get in. He was of the the view that the land could

accommodate about 4,000 or 5,000 people only whereas the plan was to have a gathering of 100,000.

The Panel visited Lot 7362, Jalan Kebun on 23rd July 2001 and recorded the following information from its owner, Encik Sd. Mohamad Johari bin Haji Yasin (W47). The land is 3 acres in size and once before had been estimated by the police as being able to accommodate 30,000 people, when a licence was applied for, for a programme that Parti Keadilan wished to carry out. The property is registered in the name of W47 and his older sister. On it is a row of four terrace houses, one of which is the home of W47. His house has been registered as the headquarters of Parti Keadilan, Shah Alam Branch. The Panel noted that Lot 7362 was not fenced, but noted also that none of the houses in that neighborhood were fenced, as is the usual case with *kampung* houses.

The Panel is of the view that Lot 7362 does not fall within the definition of “public place”. The Panel finds that Lot 7362, Jalan Kebun, was private property and not a public place. The Panel concludes that in this case, the question of applying for a licence for the proposed rally does not arise.

Section 27A(1) empowers the Police to stop activities on private property in three circumstances including the likelihood that the activity will excite a disturbance of the peace [paragraph (c) of section 27A(1)].

27A. Power to stop certain activities which take place other than in a public place.

- (1) Where any activity takes place on or in any land or premises which do not constitute a public place and –
 - (a) the activity is directed to, or is intended to be witnessed or heard or participated in by, persons outside the land or premises, or is capable from all the circumstances of being understood as being directed or intended; or
 - (b) the activity attracts the presence of twenty persons or more outside the land or premises;

(c) the activity is likely to be prejudicial to the interest of the security of Malaysia or any part thereof or to excite a disturbance of the peace,

any police officer may order the persons involved in the activity to stop the activity and may order all persons found on or in or outside the land or premises to disperse.

SAC 11 Md. Lazim bin Hj. Ahmd, Ketua Cawangan Khas Selangor (W31) stated that residents of Jalan Kebun objected to the proposed rally and threatened to take their own action if Police did not stop the rally. On 31st October 2000, the *Jawatankuasa Kemajuaan dan Keselamatan Kampung Jalan Kebun*, lodged a police report (no. 33348/2000 Kelang, later tendered as Exb.16) “*kerana dikhuatiri berlaku pergaduhan di majlis tersebut*”. On 2nd November 2000, about 50 residents staged a demonstration with banners protesting against the proposed rally. A photograph of the demonstration, marked Exhibit 13, was tendered by W31.

It is significant to note that the Police did not prevent this demonstration from taking place although no permit was applied for or given.

W31 also stated that the *Pertubuhan Pergerakan 4B Cawangan Jalan Kebun*, had sent a letter dated 28th October 2000 to the OCPD Klang (W32) stressing that they “*membantah keras dan tidak akan bertanggungjawab sekiranya berlaku sesuatu yang tidak diingini disebabkan sudah timbulnya rasa tidak puas hati yang teramat sangat di kalangan belia dari penduduk Kampung Jalan Kebun.*” (copies of letters and police reports were later tendered by W32 and marked as Exhibit 16.)

It appears to the Panel that the Police were relying on the possible threat of clashes between the residents and those attending the rally to justify stopping the rally.

The Panel is of the view that opposition to a gathering of one group should not be made a ground for preventing the gathering from taking place.

The Panel recommends that opposing groups be allowed to demonstrate within sight and sound of each other. The police should be present to ensure that the demonstration and counter-demonstration are carried out peacefully

In this case, the Police could have taken action against the residents who were threatening to commit an offence. W32 testified that he had made a police report no. 33684 on 3rd November 2000 tendered as Exb. 17. He stated that investigations would be carried out by another section of the Police force which would decide whether or not action should be taken against the residents of Jalan Kebun.

The Panel finds as a fact that there is an application of double standards on the part of the Police in relation to public assemblies. The Panel is of the firm view that no application of authority should be tainted with double standards.

The Panel strongly recommends that the law relating to assemblies be applied equally and without discrimination.

W30 also stated that the venue for the rally was not big enough to take the estimated number of persons expected to attend the rally, hence it had to be stopped. The Panel notes that the organizers had, on two occasions, applied for permission to use the Bukit Jalil Stadium but permission was refused.

The Panel is of the view that if the rally had been allowed to take place at Bukit Jalil Stadium, with Police exercising traffic and crowd control, no untoward incident would have occurred.

The Panel recommends that the authorities, including managers of public places, allow the use of public places, if they are suitable, for gatherings organized by all sectors of society without any discrimination. This would avoid the problem of unsuitable venues.

2. PREVENTING PUBLIC FROM PROCEEDING TO PRIVATE PROPERTY / ROAD-BLOCKS CAUSING TRAFFIC JAMS / INNOCENT PASSERS-BY AT SCENE OF ALLEGED ILLEGAL GATHERING DUE TO ROAD-BLOCKS

All the witnesses who were at the scene of the incident stated that members of the public were prevented from proceeding to Jalan Kebun but were unable to move away from the area because of road-blocks on the Kemas Highway. These road-blocks caused a traffic jam on the highway and prevented persons not intending to go to Jalan Kebun from proceeding to their destinations. As a result there was a large number of vehicles and people present at the scene of the road-block near the Kemuning Toll Booth.

W30 acknowledged that fourteen road-blocks were set up to deter people from “coming in”. W30 produced a plan of the roads and road-blocks and this was marked Exhibit 12. W32 tendered another plan of ten road-blocks and this was marked Exhibit 14. W32 stated that the road-blocks were not normal road-blocks. Police personnel comprising one officer and ten men at each road-block stood by the side of the road to facilitate free flow of traffic. W32 denied that the road-blocks caused the traffic congestion.

W30, W32 and W45 stated that the traffic congestion was caused by cars parked on the highway. They testified that the highway was subsequently cleared by towing away some of the parked cars.

On Monday 23rd July 2001, the Panel visited the Kemuning Toll to view the site. The Panel spoke with three executive officers, one supervisor and three toll collectors. The Panel was informed that control of traffic by the Police had begun three or four days before the event. On the 5th November 2000, by about 3 p.m., the Highway near the Kemuning Toll was blocked. The Toll officials stated that they requested the police to open up the highway to let people go, but they refused to do so, stating that they had orders not to do so. The officials stated that cars were forced to stop because of the police road-blocks. The divider in the middle of the Highway was opened up at about 5 p.m. to allow vehicles to turn back.

The staff stated that the traffic congestion began at about 10.30 a.m. because of the police road-block. The police were stopping people from proceeding to Klang and asked them to turn back to Kuala Lumpur. The staff removed the chain in the middle of the road to enable the people to turn back. By about 3 p.m. the road was blocked. The executive on duty asked all the staff to raise the bars at the toll and to leave the toll booths and go into the main building at about 4 p.m. The toll remained open until 8 p.m. and no money was collected during that period.

The meeting room in the building was used as a *surau* for members of the public to say their *zohor* and *asar* prayers. After *asar* it was closed as the crowd got too large. Some people prayed on the roadside and within the compound of the Toll building.

Under Section 26 of the Police Act the Police are empowered to erect road-blocks for specific purposes.

Section 26. Power to erect road barriers.

(1) Notwithstanding anything contained in any other law, any police officer may, if he considers it necessary so to do for the maintenance and preservation of law and order or for the prevention or detection of crime, erect or place or cause to be erected or placed any barriers on or across any public road or street or in any public place in such manner as he may think fit; and any police officer may take all reasonable steps to prevent any person from passing or any vehicle from being driven past any such barrier.

The Panel is of the view that road-blocks for the purpose of deterring people from coming to private property in Jalan Kebun does not come within “the maintenance and preservation of law and order” in section 26.

The Panel finds that it was the police road-blocks that initially caused the traffic congestion on the Kesas Highway on 5th November 2000. As a result of the road-blocks, several people not involved with the gathering, were held up and arrested.

The Panel accepts the evidence of W30, W32 and W45 that cars parked on the Highway subsequently prevented the movement of vehicles but the Panel stresses that the cars began parking on the road because of the original congestion caused by the road-blocks.

The Panel recommends that road-blocks should not be used to prevent gatherings and assemblies from taking place.

3. INSUFFICIENT WARNING AND TIME TO DISPERSE

In the first incident in which water canons and tear gas were used, witnesses close to the police personnel heard the order to disperse but those further away did not hear any order to disperse. Those who heard the order to disperse stated that after the order was given, police moved in almost immediately without giving the crowd time to disperse.

W30 showed the Panel a video taken by the police. The order to disperse was given three times consecutively at 14.21 hours and the water canons started moving in at 14.22 hours. The time lapse was only one minute. W30 informed the Panel that a copy of the video would be made for the Panel. W32 later tendered the video which was marked Exb. 20.

In the second incident, no warning to disperse was heard by any of the witnesses.

Ms Theresa Susan Loone Sui Yin (W10), a journalist on duty, testified that she was standing near the FRU truck and did not hear any warning to disperse. She stated that she only heard the ringing of a bell which she believed was the signal for the FRU personnel to start moving forwards. She was quite certain that if a warning to disperse had been given, she would have heard it.

Superintendent Haji Ruslan bin Dollah, (W34) the FRU commander, stated that a warning to disperse was given and he waited about ten minutes for the crowd to follow

the order to disperse before ordering the water canons to spray water which had been mixed with chemicals.

The Panel is doubtful that any order to disperse was given. The Panel is of the view that even if an order had been given, it could not have been heard by the crowd over the noise of cheering, chanting and clapping that accompanied the short speeches of the Barisan Alternative leaders.

From the video marked exhibit 5, the Panel noted that independently of any police order to disperse, the organizers told the crowd that they were to disperse and that they would send four representatives to ask the Police to make it possible for people to disperse. However, before this could be done, the Police moved in with water canons and began firing tear gas at the crowd. Although people were trying to run away i.e. disperse as ordered, police personnel continued to chase them, beat them and arrest them.

The Panel finds that insufficient time was given to the crowd to disperse.

The Panel also finds that police personnel continued to chase people even when they were running away from the scene, or in other words, trying to disperse.

The Panel recommends that :

- (1) warnings to disperse should be given loudly and clearly, three times at 10 minute intervals.**
- (2) people should be given sufficient time to disperse. The actual time given should depend on the size of the crowd. The larger the number of people present, the longer the time given to enable them to disperse. The Panel is of the view that one minute is clearly insufficient time for a large crowd to disperse.**
- (3) Police should not chase people who are trying to get away from the scene after a warning to disperse has been given.**

4. USE OF FORCE ON PERSONS NOT REFUSING TO DISPERSE / EXCESSIVE USE OF FORCE ON PERSONS ATTEMPTING TO DISPERSE / CAUSING DAMAGE TO PROPERTY / CONFISCATING PRIVATE PROPERTY

Encik Saedin bin Wateh (W4) testified that after the leaders had spoken, the chairperson announced that they were going to send representatives to ask the Police to “open” the road so that the crowd could disperse. Suddenly the Police began to spray water and shoot tear gas at the people who then started to run away. W4 stated that it was difficult to disperse quickly as there were thousands of people present and cars were blocking the way. W4 saw Datin Seri Dr. Wan Azizah (W22) in a wheelchair being rushed away. W4 stated that teargas cannisters were shot in the direction of W22. W4 says he ran under the overhead pedestrian bridge and sat near the drain, wiping his eyes which were stinging due to the tear gas. W4 stated that he saw Police personnel chasing after people who were running away, kicking motorcycles, hitting cars and people, and jumping on to the bonnet of cars. W4 saw police personnel kicking an old man before catching him. W4 stated that he stood up and asked them not to beat the old man. As W4 tried to jump across the drain in front of him, he was caught by a person in plain clothes who said “*tahan, tahan, tangkap.*” The person boxed W4’s cheek and hit him on his back. Other police personnel joined them and proceeded to kick W4 from the back and from the front, with one person aiming for his private parts. The police personnel were leading him away and beating and kicking him in the process. W4 produced a video that had recorded the entire incident. It was marked Exhibit 5.

Encik Shaari bin Karim (W5) stated that he was on his way to Shah Alam when he found that there was a traffic jam near the toll booth. He got out of his car to see what was happening. He saw the police and started to run. They chased him and hit and kicked him. He had a black eye, and suffered bruises on his right arm and at two or three places on his back. When hit, he fell. The police asked him to get up and then hit him again causing him to fall again. W5 stated that he was then brought to a lorry. By then he was almost unconscious.

Ms Theresa Susan Loone, (W10) a journalist, said she was on duty on the 5th November 2000. She arrived at the Kemuning Toll at about 4p.m. There was a massive jam on both sides of the road. W10 said that she was informed by her colleague at Perhentian Awan Besar that a crowd of people and Barisan Alternative leaders were walking towards the toll. The crowd stopped near the overhead pedestrian bridge which is about 100 to 150 metres from the toll. W10 stated that she was standing near the FRU personnel. She did not hear any warning to disperse. She was quite positive that if any warning to disperse had been given, she would definitely have heard it. All she heard was the ringing of bells which she believed was the signal for FRU personnel to move forward and shoot the tear gas. About 5 or 6 canisters were shot. The water canons began spraying water laced with chemicals. W10 said that she felt the effect of the water. She felt suffocated and had difficulty breathing. Her eyes were tearing and there was a bitter taste on her tongue which lasted for about twenty minutes. Her colleague found two gas canisters at the scene and these were later tendered as exhibits and marked Exhibit 10.

W10 testified that she saw FRU personnel with helmets and canes chasing people, asking them to go back. She saw the police caning people who were already running away from the scene.

Encik Shaiful Khairy bin Kamarul Zaman (W6) testified that he was present at the scene as he was acting as bodyguard to W22. After the leaders had spoken and the crowd was about to disperse, he heard the FRU bell ringing and immediately after, the water canons and tear gas were fired at the crowd. W22 was on a wheelchair. People around her lifted the wheelchair across the divider, stopped a passing car and placed her in it. W6 stated that he then sat on the boot of the car which was moving very slowly.

W6 stated that he saw the FRU approaching, about five or six men with shields and canes. He kept turning round to look at them. The third time he turned his face towards the FRU personnel, he saw one of them aim his gas gun at the car. The police were then about 60 –70 feet away. He bent his head but the gas canister hit his head on the side. He fell off the car. When he stood up, his vision was not clear as his eyes were stinging from the tear gas. He could not hear with his right ear. The tear gas canister had hit his

head directly. He wasly was pria clinic in Shah Alam by a passing car. From the clinic W6 was sent to the Selangor Medical Centre in Shah Alam. (SMC) X-rays revealed a fractured skull. W6 was placed in the ICU for two days and subsequently in the open ward for three days. W6 tendered photographs of himself in ICU and these were marked Exhibit 11. He testified that he was still receiving outpatient treatment at SMC and that his ears still ring off and on.

W6's evidence of his injury and medical treatment was corroborated by the evidence of **Dr. Jayaratnam Kasipillai (W15)** who treated him at the Selangor Medical Centre. (SMC). W15 was shown photographs of W6, Exhibit 11, and W15 identified his patient from the photographs. W15 stated that W6 was hit with some force by a blunt instrument. W15 was shown the gas canisters, Exhibit 10, and agreed that the injury caused to W6 was consistent with being hit by a gas canister at an angle. W15 confirmed that W6's fractured skull had not healed yet and that it would take some time. He also confirmed that W6 still had a haematoma on his face i.e. one side of his face was still swollen.

Encik Kamarul Azman bin Hashim @ Amir Hashim (W11) testified that he was at the Kesas Highway from about 2.30p.m. There was already a congestion as people were prevented from going into Jalan Kebun. The Police began to fire tear gas and the crowd ran. They were forced to leave their cars and run. W11 saw some people being caught by the police and beaten with batons. Some people sat in their cars and their cars were kicked by FRU personnel. About 5.30p.m. the Barisan Alternative leaders arrived at the scene. As soon as they finished their speeches, the water canons moved in and started spraying water. W11 stated that he was standing near W22 at that time. W22 was in a wheelchair so he, together with a few others, lifted the wheelchair and carried W22 across the divider. They stopped a passing car and placed her in it. W11 said that Khairy (W6) sat on the boot of the car which had to move very slowly due to the congestion on the highway. W11 saw FRU personnel approaching. They began firing tear gas in the direction of the car carrying W22. One of the canisters hit W6 on the head. W6 fell.

W11 stated that he ran ahead to direct traffic to make way for the car in which was W22. The FRU were no longer firing tear gas. They were hitting cars that were left on the highway. Some cars had their windows and windscreens broken, some had their tyres punctured. Motorcycles were kicked, their mirrors broken and their petrol tanks dented by batons. A red Proton Iswara was knocked into by a water canon. W11 stated that he saw a number of motorcycles left behind. He asked the police if the owners could take their bikes away. They said yes, so he yelled to the people to remove their bikes. However, as the people tried to take away the bikes, the police personnel kicked the bikes until some fell in the drain. The owners were arrested. W11 says that he asked the police why the people were being arrested when they had been given permission to remove their bikes but he received no answer. W11 saw 60 –70 people being arrested. He estimated that at that time, there were about 10,000 people present. W11 says that he did not hear any warning to disperse before the water canons started moving in.

Puan Norsham bt. Abu Samah (W12) corroborated the evidence of W11.

Encik Johari bin Abdul (W29) gave evidence that corroborated the evidence of W11. W29 stated that he saw police personnel kicking motorbikes, ‘attacking’ the young people who were trying to claim their bikes, arresting people and beating them after arresting them. W29 saw Pospan’s (W19) van being kicked and other cars being hit. W29 stated that he later brought a lorry to take the motorcycles that had been abandoned to a house in Taman Andalas.

Encik Eddie Shukor bin Ramzi (W21) testified that he was at the Kesas Highway at about 5p.m. He was on the way to Kelang but was forced to stop his vehicle due to the congestion on the highway. As it was hot, he got out of his vehicle. He heard the police warning to disperse and began to run away from the scene but he was chased and caught by FRU personnel. W21 stated that he was hit with batons and canes, punched and kicked. He was kicked several times on the stomach and chest. He was then dragged to a police truck.

Dr. Irene Teo Ai Ling (W25), a medical officer at Hospital Kelang, saw W21 on the night of 6th November 2000 between 11.45 p.m. and 2.10a.m. He mentioned that he had been kicked on the left side of his chest and had been hit on the head with wood. On examination, he was found to have a haematoma (swelling) over the back of the scalp measuring about 4X3 centimeters. He had a bruise over the left forearm measuring about 3X2 centimeters. On his back he had two linear bruises each about 4 centimeters long, consistent with being hit by a long blunt object. Three linear abrasions, one measuring 7centimeters by one centimeters and two measuring three centimeters long were found on his back. Bruises were also seen on the left side of his back, abrasions on the right side. A chest X-ray was done. It revealed no fractures.

Several witnesses testified that they were sitting in their vehicles when police surrounded them, asking them to get out. When they did so, they were assaulted by police personnel.

Encik Mohamad Salim bin Lal Din (W1) stated that he and his employee **Encik Rahmat bin Mohamad (W2)** had stopped on the Kesas Highway sometime after the Zohor prayers because a large crowd had gathered there. About fifteen minutes later, he heard the FRU commander, using a loudhailer, asking the crowd to disperse. The order was given three times but with no interval in between. Police began almost immediately to move towards the crowd. W1 and W2 both ran back to the car and locked themselves in. Soon the car was surrounded by police personnel who tried to open the car door but failed as it was locked. The police threatened to break the car windows and windscreen if W1 and W2 did not get out of the car. W1 stated that as he was getting out of his car as ordered by the police, he was hit on the back. He fell on the road and was carried by two FRU personnel to a truck. He was kicked again and fell again. His leg was injured and he suffered swelling on his back and neck. W2 was hit on the face and body. His nose and lips were injured. He had a photograph showing his injuries but was unwilling to part with it. He stated that it was published in a Chinese newspaper and suggested that SUHAKAM try to obtain a copy from the newspapers.

Dr. Siti Aula binti Turmizi (W24), a medical officer at Hospital Kelang, testified that she examined 10 persons who had been arrested in relation to the November 5th incident, on the 6th November between 10p.m. and 2a.m.

W24 saw W1 who complained that he had been hit on the head and left leg. On examination she confirmed that there were lacerations. His leg was dressed and he was given pain killers.

W24 saw W2 who complained that he had been sprayed with tear gas and beaten with a cane. On examination she found his nose swollen and there was an abrasion on the bridge. X-rays of the head and nose showed that there was no fracture.

W24 saw W5 who complained that he had been kicked and beaten on the body and face. On examination, she found bruises (*lebam*) on his face, stomach, hand and back. He was in pain. X-rays of the head, hand and back revealed no fractures.

Encik Monashofian bin Zulkarnain Putra (W7) testified that at about 2.30 p.m., he was sitting in his car with his wife when 8-10 police personnel surrounded his car and asked him to get out. He refused. He saw an officer with the name tag “Bahwandi” hitting the front window of his car and another with the name tag “Shamsuddin” sending a flying kick to the front left door. Bahwandi then hit the bonnet of his car with his leg. The police personnel then asked the tow truck to tow his car to the Port Klang Police Station. At the police station, W7 got out of the car and asked if he was being arrested. The police officer present grabbed his arm and held it tightly. W7 stated that his arm was *lebam* and when he was taken to the hospital at 5a.m. the next morning, the doctor gave him pain killers.

On the 10th November, W7 was charged in the Kelang Magistrates Court for abusing the police (section 14 Minor Offences Act 1955, Act 336) and for obstructing police in the course of their duties (section 186 of the Penal Code).

On the 17th November W7 made two police reports. These were tendered and marked Exhibits 8A & 8B.

Dr. Sharmila Rajaintharan (W23), a medical officer at the Tengku Ampuan Rahimah Hospital, Klang, testified that she saw seven persons on 6th November at 5 a.m. She

examined W7 who complained of pain in the arm. W23 stated that she found a bluish-black bruise on his left arm which looked like a fresh bruise. W23 prescribed painkillers for W7.

Encik Md. Zabri bin Md. Taib (W16) testified that he was at the Kemuning Toll on the Kesas Highway at about 3 p.m. He moved past the toll for about two hundred metres but was unable to proceed due to a traffic congestion. By then it was about 4 p.m. W16 waited in his car, a Volvo 940. About ten minutes later, he saw people running to their cars. He turned and saw RFU personnel chasing the people and firing tear gas at them. He saw Pospan (W19) getting into his vehicle which was about 20 feet from his car. The FRU personnel opened the door and dragged Pospan out. He was taken to the side of the road and assaulted (belasah). The police then looked into W16's car and asked him to get out. He refused and locked the doors so that they could not open them. The police then hit his windscreen and window on the driver's side with batons and canes until they broke. W16 stated that he tried to move his car and he heard the FRU shouting "*Jangan lepaskan dia lari*". The driver of a maroon Rusa van made way for W16 who then managed to get away. W16 stated that he saw the driver of the van being scolded for letting him get away. The driver of the van was assaulted by the FRU personnel.

Encik Fua'at bin Mohd. Ramli (W17) was a passenger in the car of W16 and corroborated the evidence he gave. W17 identified one of the FRU personnel who struck and kicked the car as Arman from the name tag he was wearing.

Encik Zamani bin Abdul Wahid (W3) testified that as a photographer who "follows big events", he was at the Kesas Highway on 5th November from around noon. He had intended to take photographs of the gathering at Jalan Kebun. W3 first stopped at Perhentian Awan Besar and took photographs of the crowd and the surroundings which showed that the situation was calm and under control. People were proceeding in an orderly manner towards the Kemuning Toll. W3 tendered five photographs which were marked Exhibits 2a – 2e. At the Kemuning Toll, he saw a police road-block. Cars were forced to stop as they could not proceed so the people began to walk. Some people

stopped to pray by the side of the road (photographs were tendered and marked as Exhibits 2f – 2g). The crowd was getting larger. W3 saw a Volvo car with its windscreen broken. He tendered two more photographs, one of the road-block, marked Exhibit 2i and one of the Volvo car with the broken windscreen, marked Exhibit 2j.

Encik Pospan Linggan a/l Sinakanu (W19) testified that he was on his way to Port Klang to inform his friends that the gathering at Jalan Kebun had been cancelled. About 2.30 p.m. he was about 200 –300 metres from the Kemuning Toll. He saw that it had been sealed off by the FRU so he stopped his van. He got out and started walking towards the pedestrian bridge. He saw FRU personnel walking towards him, firing tear gas. A young man was overcome by the tear gas so W19 stopped to help him with the mineral water that he was carrying. Two FRU personnel reached W19 and caught him, holding him on each side. Another FRU personnel was affected by the tear gas and took W19's mineral water to drink and wash his face, after which he started beating W19 with his cane. Another FRU officer gave a flying kick to W19's face and hit him on the right cheek. W19 stated that he blacked out for a few seconds and when he recovered he noticed that his lips were torn and bleeding.

Mohamad Hafzal bin Ismail (W20) testifies that he was at the KESAS Highway on the 5th November 2000. At the Jalan Kebun junction there was a road-block and he was told that the road had been closed. He proceeded towards Klang but was unable to move as there was a traffic jam. W20 stated that he stopped his car to say his Zohor prayers and he and his wife waited in the car. FRU personnel approached his car and asked him to get out. He did so and was taken by the officer to the FRU truck where he was assaulted. He was injured in the eye and on his back and his nose was bleeding. His face was punched and his back kicked. W20 stated that all this happened in front of his wife who got a shock. He was taken away in a police van. His car was left by the side of the road as his wife is unable to drive.

Dr. Irene Teo Ai Ling (W25) a medical officer at Hospital Klang testified that she examined 11 patients on the night of 6th November from 11.45 p.m. to 2.10 a.m.

W25 saw Pospan (W19) and found that he had a swelling over the right cheek, an abrasion over the lower lip measuring one centimeter in diameter and mild swelling over the back of his left hand. He was given painkillers and antibiotics.

W25 saw Mohd. Hafzal (W20) who alleged that he had been punched over the right side of his face and hit with a stick over the back of his left elbow. On examination, he was found to have a bruise under the right eye and swelling over the right cheek, consistent with being punched. There was also swelling and tenderness over the right elbow. On the left side of his back there were two bruises, one measuring 10 X 8 cm. and the other, 6 X 4 cm. X-rays of the skull and right elbow revealed no fractures and he was discharged with painkillers.

Medical evidence from three doctors who examined persons who had been arrested by the police on 5th November established that 28 people suffered injuries. W23 stated that another doctor, Dr. Aslam, was also on duty at the same time and had examined eight other arrested persons. W24 also mentioned that another doctor, Dr. Aini was also on duty and had examined persons arrested. The total number of people injured in the incident was therefore much more than the 28 whose injuries were reported to the Panel. There were also others who were not arrested and therefore not included in the group examined by the doctors at the Klang government hospital, for example Khairy (W6) who was warded into a private hospital.

The Panel also received evidence from a member of the public who requested anonymity. The person stated that that she had been at the scene to take photographs and the film from her camera was confiscated by police personnel.

Superintendent Ariff Patail (W33), Pegawai Pemerintah Battalion 4, Pasukan Gerakan Am, was in charge of the Pasukan Gerakan Am (PGA) personnel who had been deployed to the Kesas Highway/ Jalan Kebun area on 5th November 2000.

W33 explained that the PGA which was formerly known as the Police Field Force, has various roles and functions, one of which was the Public Order Riot Unit (PORU). The primary role of PORU is the suppression of riots and the dispersal of unlawful assemblies. The secondary role is to control any area affected by civil disturbances. When the PGA perform the PORU task, they wear combat dress – green uniform.

Each PORU unit has three sections, each section comprising nine men. Sections 1 and 2 are the Baton sections which are normally in front. At the rear is the third section, the gas gun and rifle group. For this particular deployment, all the PORU units had been directed not to use batons. They carried with them canes (*rotan*) that were five feet long and half an inch in diameter. W33 stated that even for the use of the *rotan* the men are trained to hold the cane at an angle such that only the lower part of the body will be hit. W33 however did say that in making arrests, the personnel can use their legs to kick to deflect resistance for the purpose of arrest but should not do so if there is no resistance.

W33 explained that each unit has its own Standard Operational Procedure (SOP) which sets out the permissible force which can be used in any situation. For a particular operation, the contingent can come up with its own SOP. The Commander on the ground will give orders to disperse in accordance with the Operations SOP but the unit will refer to their SOP for the method and procedure when dispersing the crowd. W33 stated that the training of the PORU personnel emphasizes patience and restraint when carrying out their duties.

In relation to crowd dispersal, W33 stated that normally the crowd is asked to disperse and if they do so, there is no further action. Only if there is a resistance to the order to disperse will the following action be taken :

- ? Normal arrest which is the lowest category of force used.
- ? Tear smoke
- ? Baton Charge – to charge at the crowd with baton and shield. The personnel however are to hit on the lower part of the body and never on the face or upper body.

? Rifle fire with live bullets.

W33 testified that he was at the Tactical Headquarters (TEK HQ) from 11.30 a.m. on the 5th November until 2.30 a.m. on the 6th November. His control over the PORU was more of an administrative command. The operational command was under the overall commander of the operation, Dato' Johar bin Che Din (W30).

W33 was at the HQ most of the time and went to the scene only on two occasions with W30. The first occasion was at 2.30 p.m. at the Interchange of Jalan Kesas and Jalan Kebun, near road-block 3, when FRU personnel and one water canon were used to disperse a crowd of about 400 people. The second occasion was at 7p.m. at the Toll Kemuning area. W33 stated that when they got there the situation was almost back to normal so they returned to the HQ.

W33 stated that there was only one occasion when the PORU personnel used tear smoke and fired 9 canisters of tear gas. This was at the height of the incident at about 6p.m. at the Toll Kemuning. W33 stated that the men are trained to shoot the canisters upwards so that the canisters will fall down at an angle. They must also fire from at least one hundred metres from the crowd. If they fire from one hundred metres away, then even if the canister is fired directly at the crowd, it will fall before the crowd at about 70 –75 metres away. W33 stated that he was unaware of anyone being injured by a direct hit from a canister.

W33 was shown the video marked exhibit 5 and identified the police personnel as being PORU and also FRU personnel.

Superintendent Haji Ruslan bin Dolah (W34), Timbalan Komander FRU, was the FRU commander for the operation which, he said, was called “*Ops Padam Kebun*”. On 5th November 2000, four FRU troops and two water canons were to be on duty at Jalan Kebun. The role and function of the FRU was to “*menangani segala bentuk masalah ketenteraman awam bagi mencegah, menumpas, menyurai segala bentuk tunjuk*

perasaan, rusuhan, perhimpunan dan perarakan yang menyalahi undang-undang.” All FRU personnel were equipped with shields, canes, wooden batons and smoke grenades and those in section three of the troop also had gas guns for firing gas canisters.

At about 2.50 p.m., W34 was at the Jalan Kebun-Kesas Highway interchange with W30, who directed him to disperse the crowd of 400 –500 people. W34 stated that he climbed on to the Command vehicle and sounded his bell for 12 seconds. The FRU personnel gathered in front of the vehicle, facing the crowd which was about 150-200 meters away. Using the microphone on the vehicle, W34 ordered the crowd to disperse three times. The warning given was : *“Bersurai serta-merta atau kami akan suraikan dengan kekerasan.”* After 5 or 7 minutes, when the crowd had still not dispersed, W34 ordered sections 1 and 2 to move forward and disperse the crowd with their canes. Behind them was the arresting team which arrested 13 people. W34 stated that in this incident, no tear gas and water canons were used.

W34 stated that some people got into their cars or gathered under the overhead bridge. W34 asked Inspector Manan who was in charge of one water canon to spray water at the cars to disperse them. No warning to disperse was given as these people were from the same group and this was regarded as “continuous action.”

At about 3.45 p.m. at the Kemuning Toll, there were about 7,000 to 10,000 people in front of W34 at a distance of 200 – 250 meters. One unit of PORU was on standby at the Toll Plaza, and W34 stated that he asked them to assist the FRU by acting as the arresting team. W34 stated that he used the loudspeaker and gave the warning to disperse three times. He waited ten minutes before ordering the water canons to start spraying water mixed with chemicals on the crowd.

At about 4 p.m., the gas gun unit moved forward. There were six men and W34 stated that he gave the orders to fire in the direction indicated by him. The direction in which the gas guns are fired depends on the wind direction and the situation. Usually the guns are fired upwards at an angle of 70 degrees so that the canisters will fall in front of the

crowd which was about 200 – 250 meters away. W34 did agree that it was possible that a canister could hit a person – “*Ada kemungkinan satu daripada enam peluru yang ditembak boleh kena pada orang.*” Between 4 p.m. and 6.30 p.m., Troop A fired 84 canisters of tear gas.

W34 stressed that FRU personnel who do not follow orders when firing, commit an offence. W34 stated that he saw FRU personnel accompanying persons who were arrested but did not see them using force on the people nor did he see them kicking vehicles. He agreed that there was a possibility that FRU personnel misbehaved but if they did, disciplinary action would be taken as such behavior would not be condoned.

The video marked Exh.5 was shown to W34. He identified the troops as PORU personnel but there were FRU personnel as well. W34 stressed that the ones that “*melakukan sesuatu*” were not FRU personnel but those wearing green uniforms.

Encik Cheong Meow Kioon (W27) is a forensic chemist attached to the Government Chemistry Department. W27 had been asked to examine Exhibits 10A and 10B and had prepared a report, tendered as Exhibit 10C. 10A was identified as two tear gas canisters labeled 560CS and 10B was a canister labeled S18 Riot CS. W27 explained that “CS” stands for chorostyrine, a chemical normally used in the tear-gas industry and commonly used to control riots all over the world. The S18 Riot CS is like a hand grenade which can be thrown by hand once activated. The 560CS is smaller and must be launched by a launcher. The canister should be launched from a distance of 150 yards although it is alright to launch from a nearer position provided that the launcher is angled upwards. W27 stated that trained personnel will know the angle that is required for a particular distance. W27 stated that firing directly at a person is a misuse of the teargas. If a canister hits an individual it is misuse. When used in the open, accumulation of CS is unlikely to reach a higher concentration. In a confined space however, it is possible to create a lethal concentration. Hand spray types are also available, manufactured by the same company, using the same agents.

Encik Md Zaini bin Zainal (W28) Pegawai Penyelidik Kanan at the Pusat Sains dan Teknologi Pertahanan examined Exhibit 10A and stated that the launcher is a long range projectile and should not be used for short distances. Ideally it should be used at a distance of 150 yards. At a closer distance, even if it is shot upwards at an angle, when it falls, it can cause injury if it falls on someone's head. The instructions on the canister prohibit firing directly at a person. W28 explained that it is dangerous to fire directly at a person as it will have the effect of a bullet and can kill.

SAC 2 Mangsor bin Ismail (W45) testified that at about 1.30 p.m. on the 5th November, on the instruction of W30, he and OCPD Klang (W32) had gone to the KESAS Highway at kilometer 24 to sort out the traffic congestion there due to a gathering of about three hundred people and about 700 cars parked along the highway. W45 stated that one person from the group introduced himself saying "Saya Suffian, bekas tahanan ISA. Saya juga adalah Ketua Reformasi yang berkumpul di sini."

(This Suffian was subsequently identified as Monashofian, W7.)

W45 stated that he advised W7 to use his influence to disperse the crowd but he replied "Kami tak hendak bersurai". W45 stated that W7 then asked the people to move their cars to block the road. In response to a question from the Panel as to why W7 was not arrested at that point, W45 stated that it was not safe to make the arrest then as there were only four officers present and there was a big crowd.

W45 then instructed W32 to take the necessary action to disperse the crowd. W45 stated that W32, using a loud hailer, ordered the crowd to disperse three times but the people refused to move. The water canon started moving and sprayed the crowd with water. They ran away but regrouped and this time FRU men on foot took action to disperse the crowd. W45 stated that several arrests were made. It was nearly 3.30 p.m. before the road was cleared.

W45 stated that he was then instructed by W30 to go to the Kemuning Toll where a large crowd of about 5,000 people had gathered. The crowd was about 200 meters in front of

the FRU troop that was stationed just after the Toll. The road was blocked by stationary cars. W45 stated that he noticed the FRU commander (W34) trying to disperse the crowd by using the water canon as well as tear gas fired by both FRU and PGA personnel. W45 stated that their action was limited due to the blockage on the road.

W45 stated that he and W34 were called back to HQ for a meeting with W30. The meeting decided that, with the help of workers from the Kesas Highway Authority, the road barriers in the center of the road would be opened up to enable the traffic to move. It was also decided that four tow trucks would be brought in to remove the vehicles that were left on the road. W45 stated that the strategy at that time was to use the FRU and PGA personnel to disperse the crowd 100 meters at a time until the traffic congestion could be eased.

ACP Karn Kam Peng (W32) gave evidence that corroborates the evidence of W45. He stated that they decided to arrest W7 after he had asked the people to block the road with their cars. W32 stated that W7 then ran to his car and locked himself in. W7 refused to come out so they towed his car away.

DSP Bahwandi a/l Hiralal (W35) had been identified by W7 as one of the police officers who surrounded his car and kicked it. W35 tendered a written statement which was marked Exb. 21. W35's version of the incident is as follows:

“While I was directing two tow trucks to tow the abandoned cars to the side of the Highway and at the same time the PSP and the arresting team were moving to disperse the crowd, the leader of the group Monashofian suddenly appeared and quickly got into his car together with his wife and another male companion and tried to drive his car away and in the process nearly knocked me down. In order to stop his car from knocking me I put my foot on the bonnet and tried to push the car backwards with my leg. At this juncture I saw ASP Amidon and ASP Shamsuddin coming to help me. They tried to open the door of the car but it was locked from inside. The occupant of the car was shouting towards Amidon and Shamsuddin which I could not hear clearly. We ordered Monashofian and those in the car to come out of the car but they refused

to do so. I then ordered the car to be towed away with the occupants in the car.”

ASP Shamsuddin Mat (W42) had also been identified by W7 as one of the police officers who kicked his car. W42 tendered a written statement marked Exb.26. His version of the incident is as follows :

“Di sini saya nampak Monashofian bersama seorang wanita dan seorang lagi lelaki meluru ke keretanyadan memandu melulu ke arah DSP Bahwandi seperti ingin melanggarnya, perbuatannya yang menggerakkan keretanya dengan melintang jalan menjadikan keadaan menjadi lebih sesak dan bercelaru. Di sini, beliau mengambil tindakan dengan mengunci pintu keretanya namun tingkap sebelah pemandu dibuka sedikit dan sambil mengeluarkan kata-kata kesat ke arah ASP Amidon dan sambil menghulurkan jari telunjuknya ke arah saya sambil berkata ‘I’ll challenge you in the court’. Semasa ini saya sempat ambil gambarnya seperti disertakan. Apabila tindakan beliau yang semakin mendatangkan provokasi kepada Polis di samping kata-kata kesat yang dilemparkan kepada kami, saya cuba membantu DSP Bahwandi untuk menangkapnya dengan cuba membuka pintu keretanya namun tidak berjaya dan apabila diarah keluar dari kereta pula beliau enggan sambil memberi senyuman sinis dipercayai kerana kami gagal membuka pintu keretanya. Seterusnya saya nampak KEMBALIK diarahkan menarik kereta yang dipandu oleh Monashofian dengan cara menarik di bahagian belakang.”

W42 tendered four photographs marked Exhibit 27 (a) – (d).

In response to a question, W42 stated that the car in front of the car of W7 was three feet away and W7 was trying to turn his car to the right to get into the vacant space on the right.

ASP Amidon bin Anan (W43) testified that he had been elected to head the Arresting Party (Unit Tangkapan) for the November 5th operation. There were eight teams, each with an officer in charge and 35 men. W43 stated that on the date in question, two police personnel were to observe “a suspect” i.e. to observe an active so-called demonstrator.

The police personnel would decide on which suspect to watch. W43 stated that the personnel do not know the identity of the “suspect”. They just observe his behaviour. W43 explained that the idea was to have a “good arrest” and not a quantity of arrests, so only the leaders would be arrested. The arresting team is not in uniform so that they can mingle with the crowd and make their observations. In the event of the demonstrators not heeding Police orders, the arresting party was to make the arrests. When making the arrest, they are to inform the persons that they are police personnel.

W43 stated that on the 5th November, at about 1.30 p.m., they were informed of heavy movement along the Kesas Highway so he dispatched the arresting teams to the various areas along the Highway. W43 himself was in a police vehicle, a Pajero, which he was driving. He was wearing a vest with the police crest and his name tag.

W43 stated that when he got to the scene of the congestion, he saw a person who appeared to be a leader, standing on the divider and shouting “Polis Anjing”. W43 stated that he pointed his finger at the person to indicate to him to shut up but he refused to do so. At that point, W43 saw W35 and W42 calling the person to get off the divider. Later the person was missing from the scene.

W43 then saw the person getting into a black Citroen. Beside him was a lady and in the back was another man. W43 saw a few police officers including W35 and W42 surrounding the black Citroen. W43 then got out of his vehicle and moved towards the car. W43 heard the police officers ordering the person to get out of the car. W43 told him he was going to arrest all the persons in the car but the person’s response was to shout “What powers do you have?” and “What can you policeman do?”

W43 stated that the person tried to manoeuvre the car but could not do so because there were a few police officers in front of the car plus a few other vehicles at the front and on the left side of the car. Yet he tried a few times to manoeuvre the car and almost knocked down officers standing in front of him. W43 then heard the order to tow the car away.

W43 stated that he lodged a police report of the incident. The three occupants of the car were W7, his wife Aida binti Idris and a friend Mohd. Tarmizi bin Abdul Rahman.

Encik Zainur Zakaria (W46) had read the media reports of W35's evidence to the inquiry in which he had alleged that W7 had attempted to run him down. W46 stated that he had been a witness to the incident and came forward to testify as to what he saw. W46 stated that he was about 20-25 feet from where the cars were parked on the highway. He said that it was bright day and he could see clearly what was happening. He saw a dark coloured car trying to reverse and to turn back and several police officers shouting to the driver. The car was unable to reverse as there were other cars blocking the way. W46 stated that he saw a police officer who looked Malay, kicking the car door on the driver's side. The driver in the car was not trying to run down the Police. He was trying to reverse. He was trying to move out.

W46 stated that he started to walk to the divider in the middle of the road. He saw police personnel hitting the windscreen of a van. The glass broke and the driver got out of the van. His face was injured and bleeding; he was taken away by the police. W46 was about 7-8 feet from the police at that time. Later, W46 saw two PORU personnel in green uniforms. They approached a Volvo car and broke its windows with their batons. In a separate incident at the Bukit Rimau Toll, police personnel, when dispersing the crowd that had gathered there, hit them with their canes and pulled off the *tudung* of a young lady.

Umi Jumaina binti Mohamad Jan (W14), a seventeen year old school girl, testified that she was at the Kesas Highway with her parents and brothers on 5th November 2000. They were on the way to Klang but due to a traffic congestion, her father, who was driving, stopped the car. After a long wait, her father suggested that they get out to pray at the rest area. W14 and her mother finished praying earlier than her father and brothers who were using a separate prayer room. W14 stated that while her mother was talking to the Toll workers, she went over to where a crowd had gathered.

W14 stated that she saw YB Mohamad Sabu (W8) in the crowd. At that moment, the FRU moved towards the group to disperse them. W14 stated that she tried to run away but was caught and beaten with a baton. Her *tudung* was pulled off, she was kicked and fell down. W14 said that she heard W8 shouting at the police personnel, asking them not to beat her. Her mother, who had seen what happened, ran towards her to take her away but the police personnel said “*Puan ikut sekali*”

While W14 and her mother were being taken to a police vehicle, W14’s father came towards them and her father told the police personnel that W14 was only 17 years old and due to sit for her SPM examinations. The policeman answered “*ini arahan*”. W14 and her mother were taken to a truck in which there were about forty people. As they were the only two women among those arrested, they were allowed to sit in front with the driver.

Hamidah bt. Mat Som (W13), the mother of W14, corroborated the evidence of W14. W13 testified that she saw a group of about 30 people crowding round W8. She heard a warning to disperse followed immediately by the police hitting their shields with their batons, and simultaneously running towards the crowd. She saw her daughter’s *tudung* being pulled off and ran to pick it up and to help her daughter to stand up. She was asked to go along with her daughter to the police vehicle.

YB Mohamad Sabu (W8), also corroborated the evidence of W14. W8 testified that he saw W14’s *tudung* being pulled off and thrown on the ground. She was kicked and beaten with a cane. He stated that he shouted at the police personnel not to beat women and pull off their veils but he was caned on the thighs. W8 stated that the caning was so forceful that a comb in his pocket broke. W8 stated that the cane left marks on him.

INTERNATIONAL INSTRUMENTS have dealt with the question of the use of force by law enforcement officials :

The Code of Conduct for Law Enforcement Officials, adopted by general Assembly resolution 34/169 of 17 December 1979 provides in Article 3 that “law enforcement

officials may use force only when strictly necessary and to the extent required for the performance of their duty.” The commentary to this article states that “this provision emphasizes that the use of force should be exceptional” and only such force as is reasonably necessary to effect a lawful arrest may be used.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990, provides, in principles 5 and 13 :

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall :

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”

SECTION 27B OF THE POLICE ACT 1967 (ACT 344) provides for the use of force in dispersing or arresting persons in relation to unlawful assemblies. Section 27B provides :

“If persons are **ordered to disperse** pursuant to section 27(3) or 27A(1) **and do not disperse**, any police officer or any other person acting in aid of a police officer may do all things necessary for dispersing them and for arresting them or any of them pursuant to section 27(6) or 27A(5), and, if

any person makes resistance, may use such force as is reasonably necessary for overcoming resistance.”

The Panel notes that although section 27B of the Police Act does authorize police personnel to use force in dispersing persons, there are three conditions that have to be satisfied :

- ? There must be an order to disperse
- ? There must be a resistance to the order i.e. a refusal to disperse
- ? The force used is reasonably necessary for overcoming the resistance.

SECTION 84 OF THE CRIMINAL PROCEDURE CODE (ACT 593) deals with the forcible dispersal of unlawful assemblies. Section 84 provides :

If any unlawful assembly is commanded to disperse under section 83 or under section 5 of the Public Order (Preservation) Act 1958, and does not disperse, or if, without having been commanded to disperse, it conducts itself in such a manner as to show a determination not to disperse, any police officer, any member of the armed forces or any other person acting in aid of a police officer or member of the armed forces **may do all things necessary for dispersing the persons so continuing assembled and for apprehending them or any of them, and, if any person makes resistance, may use such force as is reasonably necessary for overcoming resistance** and shall not be liable in any criminal or civil proceedings for having by the use of such force caused harm or death to any person or damage to any property.

Section 84 also allows the use of force for dispersing unlawful assemblies and for arresting persons in the assembly but this power is subject to the conditions that force can only be used if the persons refuse to disperse or resist arrest and, in such a situation, only such force as is reasonably necessary to overcome resistance can be used.

The Panel has weighed the evidence of all witnesses and the evidence of the doctors that corroborates the evidence of the injuries suffered by some witnesses.

The Panel notes that there were several occasions on the 5th November when crowd dispersal action was taken by the Police. The Panel will deal with the two major occasions when arrests were made and injuries were caused and a third incident when there was improper treatment of a woman.

The first major incident occurred between 1.30 p.m. and 3.30 p.m. The Panel accepts the evidence of W45 that W7 was acting as the leader of the crowd and had told him (W45) that he (W7) was not dispersing. The Panel is of the view that at that point W7 should have been arrested. The Panel is unable to accept the explanation that there were only four officers present then and therefore it was unsafe to arrest W7 at that time. The Panel notes that W43 and some of the 35 men in his arresting team were among the crowd so the arrest could have been made before the water canon dispersed the crowd.

The Panel takes the view that when W7 got into his car, he was attempting to leave the scene of the assembly and was not resisting arrest because until that time there was no attempt to arrest him. The Panel finds that the police attempted to arrest him only when he was trying to leave in his car.

The Panel finds it difficult to accept the explanation of W35 with regard to the incident involving W7 and his car. If W35 was in fact trying to stop the car from knocking him down, he would have put his leg against the bumper where there was a greater likelihood of pushing the car away rather than on the bonnet. With his leg raised high on to the bonnet there was every possibility of his falling over if the car was really moving as he claimed. The Panel believes that W35's leg was on the bonnet, as he admits, because he was hitting the car with his leg as alleged by W7.

The Panel also finds it difficult to accept the explanation of W42. On the evidence of W43 and W46, the Panel finds that several officers were in fact crowding round the car as alleged by W7 and that the officer who kicked the car could well have been W42. The Panel notes however that W46 did not make a positive identification of

the officer concerned although his evidence corroborates the evidence of W7 as to what happened.

W43's evidence that W7, in trying to manoeuvre his car, almost knocked down police officers in front of him, conflicts with W46's evidence that the car was trying to reverse. The Panel is inclined to accept the evidence of W46.

The second major incident occurred between 4 p.m. and 6 p.m. at the Kemuning Toll area where the leaders of the Barisan Alternative had stopped to make speeches.

The Panel notes that in its crowd dispersal action, Police chased persons who were trying to run away, caught and assaulted them. This happened at the earlier incident also.

The Panel finds that force was used to stop persons from attempting to get away from the scene rather than for overcoming resistance to the order to disperse as provided by law.

The Panel is of the view that the force used was not reasonably necessary particularly in the case of persons sitting in their cars who were unable to move due to the traffic congestion and who were forced out of their cars and assaulted. The Panel does not believe that the persons concerned were resisting arrest such as to justify the use of force.

The Panel also finds that excessive force was used on people who had already been arrested and were being taken away to police vehicles.

The Panel finds from evidence of the injury to W6 that he had been hit directly by a gas canister. From the evidence of witnesses, the Panel takes the view that tear gas

was being fired directly at the crowd at a distance shorter than the prescribed safe distance, resulting in the serious injury to W6.

The Panel also finds that private property – cars, vans and motorcycles – were damaged by police personnel in action not related to or necessary for crowd dispersal or arrest and therefore section 84 of the Criminal Procedure Code would not apply to absolve the personnel concerned.

The Panel is of the view that the police have no authority to confiscate the film from the camera belonging to a member of the public.

The Panel notes that most of the police officers who testified were at the temporary headquarters of the operation and not at the scene of the assaults and damage to property while those who were at the scene stated that they did not see such action, though they admitted that it may have occurred out of their sight.

In the third incident, the Panel accepts the evidence of W8, W13 and W14 that police personnel did pull off the veil of a young woman and beat and kick her.

THE PANEL MAKES THE FOLLOWING RECOMMENDATIONS :

- (1) The Police should review the methods of crowd dispersal. In particular :**
 - (a) Police personnel on duty should be ordered to exercise restraint when dispersing unlawful assemblies, especially in the use of canes and batons, tear gas and water canons.**
 - (b) If the crowd starts moving away after a warning to disperse has been given, they should not be chased and arrested and/or assaulted.**

- (2) The headgear (*tudung or hijab* or scarf) of women should never be pulled off by police personnel and women should not be manhandled.**

- (3) **Police personnel should not destroy property belonging to members of the public nor should they confiscate property without a justifiable reason.**
- (4) **The Police should conduct their own investigations to determine which of their officers had in fact used force in a manner not permitted by law. The Panel stresses that the purpose of the exercise should be to prevent a recurrence of the incident. If police personnel know that they will be disciplined for misbehaviour, they are more likely to conduct themselves in a restrained manner in future operations.**

5. CAUSING INJURY TO PERSONS IN DETENTION / DELAY IN PROVIDING MEDICAL TREATMENT FOR INJURED DETAINEES AND FAILURE TO PROVIDE MEDICATION PRESCRIBED

Encik Saedin bin Wateh (W4) testified that he and several others who had been arrested were placed in police trucks. There were about 40 persons in the truck which was taken to the Sekolah Jalan Kebun. They were made to wait for almost four hours in the truck. It was excessively hot. Someone began to read a *doa*. The police made fun and the person said “*Siapa kurang ajar?*” The police then brought “*pewangi*” and sprayed it into the truck. W4 stated that he was sitting at the front so the spray hit him on the face and went into his eyes. The Police sprayed several times. By then W4 said that he could not see. (The Panel was subsequently informed that the “*pewangi*” was tear gas in a spray can.)

The detainees were then taken to the Port Klang Police Station. W4 stated that he asked for medical treatment but was refused. W4 stated that even when a lawyer arrived and wanted to take W4 to see a doctor, he was not allowed to do so. It was only about 6 a.m. the next morning, 6th November 2000, that he was taken to the hospital with a few others.

W4 stated that the doctor who examined him asked him to stay back until 9 a.m. when the eye specialist would be in but the Police refused to let him stay and took him back to the police station. It was only at about 1 p.m. that he was taken to the hospital again. He was seen by an eye specialist and warded into Ward 8B where he remained for nine days. For three or four days during that period his eyes were bandaged.

W4 tendered photographs of himself in hospital, marked Exb. 3A-H; his discharge certificate from the hospital, marked Exb. 7; and a police report that he made marked Exb. 6.

The evidence of W4 was corroborated by W1 and W2.

Eddie Shukor bin Ramzi (W21) also testified that though he was injured, no medical attention was provided until the magistrate had seen him and other injured detainees and had questioned them about their injuries. W21 stated that he was taken to the hospital on the night of 6th November.

Mohamad Hafzal bin Ismail (W20) testified that he and some others were taken to hospital on the morning of the 6th November and examined by a doctor who prescribed medication. W20 stated that the medication was not given to him. Later, at the insistence of lawyers, he and other injured detainees were taken to the hospital again at about 10 p.m. On this occasion, W20 received his medication.

Mohamad Iskandar bin Ahmad (W26), was the magistrate who was brought to the Port Klang Police Station on 6th November 2000 to hear the application for remand for 122 persons who had been arrested. W26 testified that those who were injured were brought before him and he recorded their injuries and their complaints. W26 then ordered the Police to take the injured persons to hospital.

The Police response was that first aid was available as they had asked the St. Johns Ambulance Brigade to be on stand-by from the 4th November 2000.

Encik Yeo Kim Thong (W41) the Area Commander for Kawasan Pantai Selangor, St. Johns Ambulance Brigade Malaysia, confirmed that he had been invited to attend two meetings with the police before the 5th November. W41 testified that the St. Johns began their services on the evening of the 4th November. Two ambulances were stationed at the Sekolah Menengah Jalan Kebun with four personnel. Eight other personnel were stationed at the District HQ in Klang. The personnel at the school were there all night.

W41 stated that on the 5th November, the ambulance transferred one case with head injuries to the Klang Hospital. The person had a two-inch cut at the back of his head. W41 was unable to provide the name of the person but produced the ambulance driver's report which was marked Exb. 24.

W41 mentioned one case of Asthma – Azchar bin Che' Din – who was given oxygen. W41 produced a report marked Exb. 25.

W41 mentioned treating several minor cases like cuts, wounds and fainting. W41 stated that some of those treated were police personnel.

W41 stated that the St Johns ended their services past midnight of the 5th November, i.e. in the early hours of the 6th. November.

Pospan Linggan (W19) was the only witness who testified that he was offered the services of the St Johns. W19 testified that the St Johns Ambulance wanted to give treatment. He asked them for medication but would not allow them to stitch his cut. He also stated that he was taken to the hospital after the magistrate had seen the injured detainees.

INTERNATIONAL INSTRUMENTS that deal with the treatment of persons in detention, particularly in relation to the provision of medical attention, are as follows:

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly resolution 43/173 of December 9 1988. Principle 6 provides :

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatsoever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

The commentary to this principle states that “the term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”

Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly resolution of 34/169 of 17 December 1979. Article 5 provides :

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Paragraph (c) of the commentary states that the term “cruel, inhuman or degrading treatment or punishment” has not been interpreted by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6 of the Code provides :

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular,

shall take immediate action to secure medical attention whenever required.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990, provides, in principle 5 :

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall :

- (a) ...
- (b) ...
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

The Panel accepts the evidence of the persons injured that tear gas was sprayed into the truck in which they had been placed. The Panel notes from the evidence of the expert witnesses (W27 & W28) that tear gas should never be released in a confined space as it is possible to create a lethal concentration.

The Panel finds that W4 had tear gas sprayed into his eyes at close quarters causing him to lose his sight temporarily.

The Panel also finds that although several persons detained had suffered injuries, there was a delay in providing medical treatment to them. Some were brought to the hospital in the morning of the next day, i.e. 5a.m. on Monday 6th November. Others were taken to hospital only after the magistrate ordered it and they were seen by the doctors between 10 p.m. (6th November) and 2 a.m. (7th November).

The Panel notes that first aid could have been provided by the St. Johns Ambulance but it appears to the Panel that not all injured persons were taken to the St. Johns.

The Panel finds that some detainees were not given medication although the doctors had prescribed them.

The Panel finds that the treatment of persons detained was cruel and inhuman.

THE PANEL RECOMMENDS :

- 1. The Police should not assault persons who have been arrested or are otherwise in detention. Such persons should not be subjected to cruel or inhuman treatment.**
- 2. Medical treatment should be provided without delay.**

6. CONDITIONS OF DETENTION AND TREATMENT IN DETENTION

W1 testified that he and other detainees were kept in a police truck covered with canvas for about two hours. They were constantly being threatened that tear gas would be sprayed into the truck. Later they were detained under a “car shed” in the compound of the Balai Polis Pelabuhan Kelang. Only on the next day were they sent to the lock-up at IPK Shah Alam

W2 and W4 corroborated the fact that they were detained in the truck although W2 thought that it was for about three hours and W4 thought that it was about four hours. W14 stated that she and the other arrested persons in the truck she was in, were kept there for three hours.

W30 stated that several trucks were used for transporting the arrested persons to the temporary headquarters and police station. He said that one truck could take about 25 people. He denied that the persons were detained in the truck for up to four hours.

Puan Norazimah Mohd. Nor (W18) was arrested on the 4th November at the premises in Jalan Kebun where the proposed gathering was to take place. She had gone there to set up a stall selling t-shirts, caps and VCDs of *ceramah*. W18 testified that she was taken to IPK Shah Alam where a statement was recorded from her. She was then sent to the Lockup for women at Kapar Police Station. W18 stated that in the lockup at Kapar there were about eight women in one cell. On the night she was sent there, she was ordered by a woman police officer named Dayang Safnah to go into the cell, get onto the platform (*pangkin*) in the cell, strip and do 10 knee squats. W18 stated that she objected to taking off her clothes but was told “*Jangan banyak cakap. Ikut sahaja arahan.*” W18 stated that after she had done the knee squats she was told to put on her clothes. W18 stated that the other detainees in the cell heard the order given to her by the police officer and turned.

Konstabel Dayang Sabnam binti Ratman (W40) testified that on the 5th November 2000, she was on duty at the Balai Pertanyaan, Balai Polis Kapar at 12 midnight. At about 1.10 a.m., W18 was brought to the station from IPD Kelang. W40 stated that she asked W18 to remove her valuables and recorded them in the form POL 56. W40 stated that she then brought W18 to the lockup. There is only one lockup and there were nine women there that night.

W40 testified that she took W18 to the room (*bilik khas*) within the cell to carry out a body search. W40 stated that she asked W18 to strip to determine that she had not brought in any prohibited item. W40 stated that in the room there were only W18 and herself. After W18 had removed all her clothes, W40 asked her to squat down to ensure that she had not concealed anything in her private parts, such as drugs, which could be of

danger to herself or the other detainees. W40 stated that when she had determined there was nothing concealed in the body of W18, she told her to get dressed and left the cell.

In response to questions from the Panel, W40 stated :

At the time she carried out the body search on W18, all the detainees in the cell were asleep. W40 drew a plan of the lockup and this was tendered as Exb.23.

The search she carried out was one that was normally done on all persons who are detained. The first time the search is made, it is done “*dengan menyeluruh*”.

W40 stated that she was not aware of what law required her to carry out the search in that manner. She was merely following orders to do so.

W45 was asked about the orders given regarding body searches. W45 stated that the general instruction is to do a body search but sometimes detainees are asked to strip and the private parts examined. He stated that it is left to the discretion of the police personnel in charge to decide whether or not to strip a detainee.

The Panel visited the Kapar Police Station on 23rd July 2001 to view the Lockup. The Panel noted that there was one lockup which was divided into two rooms, one said to be the main room for the detainees to sleep in and the other, which had a raised platform or *pangkin* which was said to be the “examination” room. There was a toilet at the back portion of the room.

Chief Inspector Mohamad bin Kimin (W48), *Ketua Balai Polis Kapar*, informed the panel that the lockup was for women and had been gazetted for one person only in 1975. Nowadays however, as many as 20 women are detained at any one time, the largest number being 26. Female juveniles are also detained at the lockup although it has not been gazetted for juveniles.

On the examination procedure conducted at Kapar, W48 stated that the search is a 100% body search, meaning that the arrested person will be asked to strip and to squat to ensure

that nothing is concealed in her private parts. W48 stated that this applied to every person brought in.

The Panel notes that W13 and W14 were also detained in the Kapar Police Station Lockup but neither complained of being asked to strip and squat. The Panel is doubtful that this procedure is standard at Kapar police Station and administered to all women who are brought in.

The Panel is of the view that since W18 had been arrested at Jalan Kebun when she was setting up a stall and had been in police custody since her arrest, there was no need for the 100% body search which should be reserved only for suspects in drug related offences or violent crimes.

The Panel is of the view that requiring a person to strip and to squat is degrading treatment. The Panel feels that an ordinary body search should be sufficient.

The Panel notes that a juvenile was detained in a lockup that has not been gazetted for juveniles. The Panel further notes that the juvenile was detained with adults, in contravention of section 7 of the Juvenile Courts Act 1947, Act 90. The panel is of the view that ordinarily, juveniles, whether male or female, should not be detained with adults. In this case however, the Panel refrains from making any adverse findings as the juvenile was in fact detained with her mother who would not have been arrested at the scene if she had not gone forward to help her daughter and to stay with her daughter who had been frightened by the police attack and arrest.

THE PANEL RECOMMENDS :

- 1. The Police should ensure that the use of lockups comply with the gazette notification in terms of numbers of detainees and proper place for juveniles.**

2. **The practice of requiring arrested persons to strip and squat should be stopped.**
3. **If there are instructions to carry out such searches, the instructions should be withdrawn.**
4. **An ordinary body search should be carried out.**

7. REMAND PROCEEDINGS / REMAND OF JUVENILE / TAKING OF STATEMENTS FROM DETAINEES

All the witnesses detained were produced before a magistrate to enable a remand order to be made under section 117 of the Criminal Procedure Code so that they could be kept in detention for a further period pending investigation. The period of remand requested by the police was ten days. The maximum period permitted by the law is fifteen days. The magistrate (W26) granted five days remand and his reason for refusing a longer period was *“sepuluh hari tidak perlu memandangkan kesesakan yang akan berlaku jika mereka ditahan dengan lebih lama.”* W26 stated further that though he granted five days, the police could release the detainees earlier on police bail.

The Panel is of the view that the remand period sought was unnecessarily long as the alleged offences were in relation to an unlawful assembly. There was no investigation that had to be carried out as the offence would have been in relation to being present at the scene of an unlawful assembly.

The Panel feels that the arrested persons could have been released on police bail and not remanded at all. Although the magistrate ordered remand for five days, all detainees were questioned only once or twice during that period.

The Panel is of the view that incarceration for five days was unnecessary and a violation of the individual's right to liberty.

Among the arrested persons was a seventeen year old student, Umi Jumaina binti Mohamad Jan (W14) who was due to sit for her SPM Examinations about a week from the day she was detained. W14 was also remanded for five days despite the fact that she was a minor and due to sit for examinations soon.

W26 absolves his responsibility by stating that the Investigating officer, Inspector Stephen who was present at the remand hearing assured him that he would take the matter up with his superior officers and have W14 released on police bail as soon as possible.

The Panel is of the view that the magistrate should have made an order to release W14 on police bail immediately as that was within his control. The magistrate should not have relied on the police assurance as that was beyond his control.

Inspector Stephen a/l Ganesan (W37) confirms that when questioned by the magistrate during the remand proceedings on the 6th November, he stated that he would bring to the attention of his superior officer, the request by the lawyer for W14 that she be released on police bail as she was a student. W37 testifies that he referred the matter to his superior officer, DSP Asnan, on the 8th November but he did not recommend that W14 be released as the investigation had not been completed. His superior asked him to continue with the investigation. W37 himself did not question W14 during the period of her detention.

W37 produced a photograph of W14 wearing a T-shirt with a picture of Dato' Seri Anwar Ibrahim. This was marked Exb. 32. It appears that W37 thought that the T-shirt W14 was wearing was justification for the detention of W14 for five days.

W14 testified that while in detention at the Kapar Police Station Lockup, she was questioned only once on the 8th November by two women police officers for about one

hour. The police officer wrote down what she said but did not read it back to her nor did she ask her to sign her “statement”. Before beginning the questioning, the officer did not inform her of her rights, for example, she did not tell her that she had a right to remain silent. Instead the officer said *‘Awak hendaklah berkerjasama. Kalau tidak, dia akan menjejaskan masa depan awak’*

W14 stated that she did not argue with them. When she answered the questions, the officer said that she did not believe her. The officer said *“Baik cakap benar. Kalau awak berkerjasama, nama awak akan dibersihkan dari rekod. Kalau tidak, nama awak akan ada dalam rekod.”*

On the 10th November, W14 was brought to the Shah Alam High Court where there was a hearing about her remand. The application for revision of the magistrate’s remand order had become academic as the police informed the judge that W14 had already been released.

W13, mother of W14, testified that on the 7th November, she was questioned by W37. Before the questioning began, W37, did not inform her that she need not answer questions that would incriminate her. W37 did not administer any warning. He took down notes but did not read them out to W13. W37 asked her if she had any requests and W13 stated that she requested that her daughter, W14, be released immediately as she was due to sit for her SPM examinations.

W13 corroborated W14’s evidence that they were brought to the Shah Alam High Court on the 10th November for the hearing of an application for revision of the remand order for W14. The judge did not make any order as the police stated that W14 had been released. However, the learned judge expressed the view that the minor should not have been remanded in those circumstances. The learned judge stressed that the magistrate should have exercised his discretion before making the remand order. (see Appendix 8)

Woman Chief Inspector Szabrena Pou Abdullah (W38) testified that she was ordered to carry out a “*temubual*” with four women detained at the lockup at Balai Polis Kapar, one of whom was W14. They had been arrested in connection with the unlawful assembly at Jalan Kebun, Klang. W38 stated that the aim of the interview was to “*memperolehi sebarang maklumat keselamatan bersabit dengan cara-cara perlaksanaan dan cara berkumpul oleh penyokong PKN di Jalan Kebun Kelang sepertimana termaktub dalam tugas Polis di bawah seksyen 3(3) Akta Polis.*”

W38 testified that on the 8th November between 10 a.m. and 1 p.m. she interviewed W14. Throughout the interview, W38 concentrated on security (*keselamatan*). The result of the interview was that W14 admitted to taking part in the unlawful assembly on 5th November at kilometer 21 along the Kesas Highway together with her mother Hamidah binti Mohd. Som (W13).

W38 stated that W14 did not report to her any rough treatment or any other problem relating to her detention. W14 told her she was 17 years old and a student in Form 5 but did not say that she was due to sit for her examination soon.

W38 stated that she made notes of the interview in her Note Book. W38 stated that the interview was not an investigation under the Criminal Procedure Code. She did not caution W14.

W38 stated that she prepared her report and submitted it to her superior. She did not recommend that W14 be released or otherwise because “*ini bukan tugas saya*”.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides in Principle 21 :

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

Section 3 of Police Act deals with the Constitution of the Police Force and subsection 3 provides :

The Force shall subject to this Act be employed in and throughout Malaysia (including the territorial waters thereof) for the maintenance of law and order, the preservation of the peace and security of Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders and **the collection of security intelligence.**

The Panel is extremely disturbed by the fact that the Special Branch is questioning persons in remand about matters not directly related to the alleged offence for which they are being detained. Section 3(3) of the Police Act merely states the general duties of the Police Force. Although the Police may have general powers under the Police Act, these powers are circumscribed by sections 112 and 113 of the Criminal Procedure Code that apply to a person who is arrested and detained in relation to an offence. Any questioning of and recording of statements from the detainee must comply with the two provisions.

The Panel notes that when statements were being taken from detainees, they were not informed before hand that they had a right not to answer questions that might incriminate them. Statements taken were not read back to detainees and consequently they were not advised that corrections or additions could be made to their statements. This, in the opinion of the Panel, is a breach of section 112 of the Criminal Procedure Code.

The Panel is of the view that as it is not an offence to wear a T-shirt with a picture of Dato' Seri Anwar Ibrahim on it, doing so was not a justification for detaining the minor for a period of five days to question her about Parti Keadilan activities.

The Panel takes a serious view of the conduct of W37 who gave his assurance to the magistrate (W26) on 6th November that he would bring to the attention of his

superiors the matter of the immediate release on police bail of the minor (W14) and yet did not do so until 8th November when he in fact opposed the early release on the ground that the investigations were not complete.

THE PANEL RECOMMENDS :

- 1. The Police have a training or retraining programme for all personnel involved in seeking remand orders so that remand is obtained only when there is a real need to investigate a crime and not to be used for the purpose of collecting security intelligence or of “turning over” detainees. Shorter or no remand would reduce the overcrowding in lockups and would ultimately ease the burden on police personnel.**
- 2. Magistrates should exercise their discretion when making remand orders. They should take into consideration the circumstances of each case, the seriousness of the alleged offence and whether or not there is a real need for investigation.**
- 3. The Judicial Training Institute (ILKAP) should conduct training or retraining courses for magistrates in relation to remand proceedings. ILKAP should consider using the Protocol designed by the Bar Council for this purpose. (see Appendix 9)**

8. POLICE BAIL

All persons detained were released on police bail and required to report to the police station about once a month. W18 testified that since her release from detention on the 10th November she had to report to the Police station on 29th November, 12th December and 9th January 2001.

The Panel is concerned over the misuse of police bail for an indefinite period.

The Panel recommends that if persons on police bail are not charged in court within the first month, they should be released unconditionally.

9. PROVOCATION OF POLICE / INJURIES TO POLICE PERSONNEL

All the police officers at the scene of the gathering on 5th November alleged that some members of the crowd were throwing stones and sticks at the police. This was during the last incident at about 4 p.m.

The Panel accepts this evidence but notes that the crowd's behaviour was a reaction to earlier police brutality, excessive use of tear gas and the water canon. The Panel is of the view that if the police had exercised restraint in crowd control, this would not have happened and the persons assembled would have dispersed peacefully.

Inspector Azmi bin Yahya (W44) testified that he was a special branch officer who was on duty on the 5th November to “*menjalankan tugas pemantauan dan risikan keselamatan*” in relation to the gathering at Jalan Kebun. W44 stated that at about 5 p.m. he was at the Kemuning Toll. He was approached by 7 – 8 Malay men who attacked him. He was punched and kicked and hit on the head with a hard object. He was rescued by an unknown person and taken to the FRU truck. He was then taken to the HQ and later the Klang Hospital.

W44 lodged a police report No.33865/2000 which was produced and marked Exb. 28.

W44 also produced a medical report marked Exb. 29

W44 stated that a photograph of him being assaulted was published in the New Straits Times and Nan Yang Siang Pau. The photographs were produced and marked Exb.30 & 31. W44 stated that the photographs had been taken by a Reuters cameraman who was also assaulted and his camera taken from him. A photograph and a police report were produced and marked Exb. 32 & 33.

In response to a question from the Panel, W44 stated that he was not in uniform but thought that the persons who assaulted him knew that he was a police officer because he had been working in that district for 12 years. W44 also stated that he was rescued by a person from that group itself and the reason W44 gave was that perhaps the person was not certain whether he was a police officer or a member of the public.

The Panel takes note of the fact that W44 was assaulted but the persons who assaulted him are unknown. The Panel finds it difficult to believe that the crowd who were not necessarily from the district, would have recognized W44 as a police officer, start assaulting him and then stop and “rescue” him.

The Panel notes that there were several plain clothes police personnel among the crowd, from the Special Branch and from the arresting team. If the group doing the assaulting were in fact members of the public, surely they would or could have been apprehended by the arresting team. In fact none of them were arrested.

The Panel wonders how it is possible that the group took away the camera of the cameraman who took the photograph of the assault and yet the photograph appeared in the newspapers.

SUHAKAM has received complaints that police personnel try to disrupt peaceful gatherings by creating violent scenes so that they have an excuse to arrest members of the gathering. The Panel finds that it is more probable that the assault on W44 was orchestrated to turn an otherwise peaceful gathering into a violent one.

The Panel would like to reiterate that speeches and shouting do not render a gathering “not peaceful”.

10. POLICE PERSONNEL ON DUTY FOR UNDULY LONG PERIOD

The Panel received information from sources that the Panel considers reliable, that police personnel were on duty for long periods without rest and/or proper meals. The senior police officers who gave evidence insisted that police personnel worked on shift and were provided food and drink.

The Panel notes the evidence of W33 who was in charge of the PORU (PGA) units. W33 stated that 2 PORU units which were on duty from 2 p.m. on the 4th November, worked until 11 p.m. and the units that relieved them worked until 7 a.m. on the 5th. Four fresh units started work at 7a.m. on the 5th and returned to Cheras at about 3 a.m. on the 6th. The two units that began work at 3 a.m. were redirected to Port Kelang Police Station.

ASP Mat Fuzi bin Haji Ismail (W36), the Commandant at the Police Training School in Ipoh, testified that he was in charge of training police personnel especially those who were about to enter the FRU. He outlined in detail the course and methodology used.

The Panel notes that the training programme for police personnel is indeed an excellent one and if the principles taught are adhered to by the trainees, there would be no disciplinary problems. However, the Panel feels that if the personnel are required to be on duty for an inordinately long period, they are likely to feel tired and resentful and to take this out on the crowd that they have to disperse.

The Panel recommends that smaller numbers be deployed for crowd control so that each unit can work for a shorter period.

EVIDENCE OF OTHER WITNESSES

The Panel also recorded evidence from two Barisan Alternative leaders, YB Datin Seri Dr. Wan Azizah (W22) and YB Encik Mahfuz Omar (W9). Their evidence corroborates the evidence of other witnesses with regard to several issues, in particular, the fact that the crowd was going to disperse and yet, tear gas and water canons were used on them.

CONCLUSION

The Panel arrived at its findings by weighing the evidence adduced at the Inquiry, the demeanour of the witnesses and the manner in which they answered questions. The Panel notes that many of the Police witnesses gave evidence that had been prepared. When questioned, one became defensive (W30), one contradicted himself (W37), while most stated that the answer would be provided by the next witness. The next witness would come well prepared to answer the questions that had been put earlier but would not answer any new questions. The Panel had to weigh the pat answers given in this manner by the Police against the spontaneous answers provided by other witnesses.

As a Human Rights Commission, the Panel is entitled to consider information from any source apart from the direct evidence presented at the Inquiry. When doing so, the Panel first evaluates the probity of the source of information, weighs the information against the other evidence adduced at the Inquiry and then decides whether to consider it in the Panel's deliberations. Through this process, the Panel has included in its decision some facts that were not presented at the Inquiry.

The Panel has reached the following conclusion in relation to its Terms of Reference:

1. Were there any violations of human rights?

The Panel is clearly of the view that there were several violations of human rights arising from the Kesas Highway incident. These include:

- (a) the use of force on persons present at the scene of the assembly;
- (b) causing damage to private property;
- (c) confiscating private property;
- (d) causing injury to persons in detention;
- (e) delay in providing medical treatment for injured detainees and failure to provide medication prescribed for injured detainees;

- (f) the cruel and inhuman treatment of detainees;
- (g) taking advantage of the situation of a detained person for the purpose of compelling him/her to confess or otherwise incriminate himself / herself.
- (h) Gathering security intelligence from persons detained for a specific offence.

2(i) The person or agency responsible for the human rights violations

The agency responsible for the human rights violations is the Police. No individuals have been identified, apart from two officers who were named for kicking a car. However there was no evidence that their action caused damage to the car or injuries to the occupants of the car.

2(ii) How such violations came about

The violations occurred due to the “total denial and domination” action of the police, during crowd dispersal action, the arrests of persons at the scene and the treatment of the arrested persons while in detention.

2(iii) What practices, arrangements or policies contributed to them?

The Panel is of the view that some existing practices and policies of the Police and other authorities contributed to the human rights violations. These include:

- (a) the selective application of the law relating to assemblies by the police;
- (b) the discrimination by the authorities, in particular the manager of a public place, against a group that requested the use of the place for the assembly;
- (c) the “total denial and domination” action of the police against the organizers of an assembly on private property;
- (d) the crowd control and crowd dispersal methods of the police;
- (e) the practice of gathering security intelligence from detained persons.

2(iv) What measures should be taken to ensure that the situation improves or the violations do not recur.

The Panel has made recommendations that it feels can improve the situation or prevent the violations from recurring. The recommendations have been summarized and placed under separate headings. They are:

(a) The holding of assemblies

1. The law relating to assemblies should be applied equally and without discrimination.
2. Opposing groups should be allowed to demonstrate within sight and sound of each other. The police should be present to ensure that the demonstration and counter-demonstration are carried out peacefully.
3. The authorities, including managers of public places, should allow the use of public places, if they are suitable, for gatherings organized by all sectors of society without any discrimination.
4. Road-blocks should not be used to prevent assemblies from taking place.

(b) Crowd dispersal methods

1. The Police should review the methods of crowd dispersal.
2. Police personnel on duty should be ordered to exercise restraint when dispersing assemblies, especially in the use of canes and batons, tear gas and water canons.
3. Warnings to disperse should be given loudly and clearly, three times at 10 minute intervals.
4. Sufficient time to disperse should be given. The time given should depend on the size of the crowd – the larger the crowd, the longer the time given to enable them to disperse.
5. People who are trying to get away after the warning to disperse has been given, should not be chased and/or assaulted.

(c) Treatment of persons arrested/ in detention

1. When arresting women, their headgear (*tudung, hijab* or scarf) should not be pulled off and women should not be manhandled.
2. Persons who have been arrested should not be assaulted or subjected to other cruel and inhuman treatment.
3. Persons arrested should not be required to strip and squat. An ordinary body search should suffice.
4. If persons who have been arrested are injured, medical treatment should be provided without delay.
5. The police should ensure that the use of lockups comply with the gazette notification in terms of numbers of detainees and proper places for juveniles.
6. Investigation of an arrested person should be in accordance with the provisions of the Criminal Procedure Code. The Police should not gather security intelligence while investigating a specific offence.

(d) Confiscation or destruction of property

1. Property belonging to members of the public should not be destroyed or confiscated without a justifiable reason.

(e) Remand of arrested persons

1. Police should seek remand orders only if there is a real need to investigate a crime. Arrested persons should not be remanded for the purpose of gathering security intelligence or for “turning over”.
2. Magistrates should exercise discretion when making remand orders. They should take into consideration the circumstances of each case, the seriousness of the alleged offence and whether or not there is a real need for investigation.

(f) Training for remand proceedings

1. The Police should have a training or retraining programme for all personnel who are involved in obtaining remand orders
2. The Judicial Training Institute (ILKAP) should conduct training or retraining course for magistrates in relation to remand proceedings, using the Protocol designed by the Bar Council.

(g) Police Bail

- I. If persons on police bail are not charged within one month, they should be released unconditionally.

(h) Police Investigation of Personnel

1. The Police should conduct their own investigations to determine which of their personnel had in fact used force or otherwise behaved in a manner not permitted by law.

In conclusion, the Panel reiterates that in carrying out the Inquiry, SUHAKAM was discharging its duty to inquire into infringements of human rights under section 4(1)(d) of the Human Rights Commission of Malaysia Act 1999, and that the recommendations in this report are made in exercise of SUHAKAM's powers under section 4(2)(b) of the Act which provides that the Commission may "advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken."

August 2001