



## **BAR COUNCIL MALAYSIA**

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**REPORT OF OBSERVATIONS ON THE PUBLIC INQUIRY  
INTO THE BANDAR MAHKOTA CHERAS INCIDENT ON  
27 MAY 2008**

**SUBMITTED TO THE HUMAN RIGHTS COMMISSION OF  
MALAYSIA (SUHAKAM)**

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## **I. INTRODUCTION**

The Bar Council welcomes the initiative taken by SUHAKAM in conducting the Public Inquiry into the Bandar Mahkota Cheras Incident on 27 May 2008 ('Inquiry').

We appreciate the invitation extended to the Bar and the opportunity to actively participate in the Inquiry.

The Malaysian Bar has been statutorily enjoined under the Legal Profession Act 1976 to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour. The Bar's purpose is also to express views on matters affecting legislation and the administration of law in Malaysia, and to protect and assist the public in all matters touching on, or ancillary or incidental to the law.

This report is the culmination of our role in the Inquiry and is made pursuant to the Bar's purposes set out above.

We submit this report to SUHAKAM for its consideration. We trust that it will be of assistance to SUHAKAM in making its recommendations in relation to the Inquiry.

## II. SCOPE OF THE REPORT

The Inquiry's terms of reference are as follows:<sup>1</sup>

1. To inquire whether or not there was any law enforcement personnel in performance of their duty to maintain law and order has used excessive force during the incident at Persiaran Bandar Mahkota Cheras in Bandar Mahkota Cheras on May 27, 2008;
2. If there was excessive use of force,
  - i. whether there was any violation of human rights of any person or persons; and,
  - ii. who were responsible for such violation;
3. To recommend that action to be taken against those responsible for the violation of human rights of such person or persons.

Given the terms of reference, this report will:

- analyse the evidence of the complainants, authorities and independent witnesses;
- provide an overview of the incident;
- state our conclusion regarding the incident; and,
- make recommendations for adoption and further action.

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<sup>1</sup> See [http://www.suhakam.org.my/docs/press\\_room/PI\\_BMC\\_Eng\\_Mel.pdf](http://www.suhakam.org.my/docs/press_room/PI_BMC_Eng_Mel.pdf) (accessed 11 November 2008)

### III. ANALYSIS OF THE EVIDENCE

#### A. Evidence of the Complainants

1. There were 4 persons (3 men and 1 woman) who were travelling in a car when the incident in question took place. They were:

- Chang Jiun Haur
- Chang Jiun Mein
- Chan Siew Meng
- Cheok Kem Hoo

#### 2. *Chang Jiun Haur (W1)*

- 2.1 W1 was the driver of a Proton Wira bearing registration number WDP 1594 ('Car'). His younger sister (Chang Jiun Mein), and 2 of his friends, namely Chan Siew Meng and Cheok Kem Hoo, were passengers in the Car.
- 2.2 W1 was driving at around 20-30 km/hour and stopped his car of his own volition as traffic was heavy along the stretch of the U-turn. There were vehicles in front of the Car.
- 2.3 When W1 stopped the Car, more than 10 FRU officers armed with batons and shields rushed towards the Car and surrounded it.
- 2.4 The officers started kicking the car and broke the window on the driver's side. W1 could not get out of the Car because it was surrounded by the officers.

- 2.5 W1 did not know how the window was broken as everything happened so quickly and he had to protect his sister who was seated in the front passenger seat at that point.
- 2.6 After breaking the window, the FRU officers unlocked the Car by pulling up the door latch and about 5 officers dragged W1 out of the car while hitting him, causing W1 to bleed profusely.
- 2.7 The officers continued to hit W1's head with something hard and solid while he was lying on the road.
- 2.8 W1 did not know why he was being hit and he did not provoke nor resist the officers. He also confirmed that the Car did not hit anything.
- 2.9 W1 was handcuffed and brought to the police station.
- 2.10 W1 made a police report at the Seremban police station at 4.42 pm on 29 May 2008.

3. *Chang Jiun Mein (W2)*

- 3.1 W2 is the sister of W1, the driver, and was seated in the front passenger seat next to W1.
- 3.2 W2 testified that W1 was not driving aggressively and had to stop the Car as there were vehicles in front of the Car.
- 3.3 As soon as the Car had stopped, FRU officers surrounded the Car and started kicking and hitting the Car with their batons. They broke the window on the driver's side and unlocked the Car from the driver's side.

- 3.4 A male FRU officer opened the car door on W2's side and asked her to get out from the Car. Thereafter, W2 was held by her waist by a female FRU officer and taken to the side of the road.
  - 3.5 In the meantime, the same FRU officer who had opened the car door on W2's side stretched over and hit W1 in full view of W2. W2 also saw W1 being hit with a baton by a FRU officer from the driver's side.
  - 3.6 However, W2 did not witness the number of FRU officers who dragged W1 from the Car as the female FRU officer had brought her to the side of the road.
  - 3.7 W2 saw about 7-10 FRU officers kicking W1 after he had been dragged out of the Car and the kicking continued even after when he was on the ground. W1 was bleeding. W2 said W1's physical condition was weak and he fell when he tried to get up.
  - 3.8 At that point, W2 pleaded with the female FRU officer and plainclothes police personnel not to hit W1.
  - 3.9 W2 was then brought to the police station in a car.
  - 3.10 W2 stated she did not know the reason for the FRU officers to approach the Car. W2 confirmed that the Car did not hit anything and W1 did not put up any resistance when the officers hit him.
4. *Chan Siew Meng (W3)*
- 4.1 W3 was seated directly behind W1, the driver of the Car. According to W3, they were travelling at about 20-30 km/hour and there were vehicles in front of the Car. Hence W1 stopped the Car.

- 4.2 When the Car had stopped, at least 10 FRU officers rushed towards the Car and surrounded it. They kicked and hit the Car with their batons and asked the occupants to get out of the Car.
- 4.3 The officers broke the window on the driver's side of the Car. W3 was scared and unlocked his side of the door to get out of the Car. W3 was the first person to get out from the Car. He was hit by the officers.
- 4.4 W3 was then dragged away and the FRU officers punched his face with their fists and kicked his chest and legs. W3 was beaten until he fell down on the road. W3 could not identify the persons who hit him.
- 4.5 W3 also saw W1 being beaten by the FRU officers and unidentified plainclothes personnel.
- 4.6 W3 also testified that he was beaten by plainclothes personnel in addition to the FRU officers,. W3 was beaten at Point A (X1) and taken to Point B (X2). The FRU officers dragged W1, who was tottering, to X2 and continued to assault both W1 and W3.
- 4.7 W3 saw W1 bleeding from his nose and mouth and using his hands to cover his injured and bleeding face.
- 4.8 W3 saw Cheok Kem Hoo (W7) bleeding from his neck.
- 4.9 W3 suffered bruises and swelling on his head, nose and right eye. He was handcuffed and brought to the police station.
- 4.10 W3 did not know why the FRU officers attacked the Car and confirmed that the Car did not collide with any person or object. He also confirmed that W1 did not put up any resistance when being beaten by the police.



5. *Cheok Kem Woo (W7)*

- 5.1 W7 was seated at the back of the Car behind the front passenger. He testified that the driver was trying to do a U-turn but had to stop because the traffic was heavy and there were vehicles in front of the Car. Movement of the traffic was very slow.
- 5.2 When the Car stopped, FRU officers rushed towards the Car and started hitting and kicking the Car. He saw the window at the driver's side being broken.
- 5.3 W7 could not remember how the Car door on his side was opened but he confirmed that somebody was already hitting him while he was still in the Car. W7 then got out of the Car voluntarily and was dragged to the side of the road and was beaten by plainclothes persons. He did not resist when he was beaten.
- 5.4 W7 was made to squat down and place his hands at his back. He was handcuffed and taken in a Black Maria vehicle to the police station. He could not identify his attackers.
- 5.5 W7 confirmed that the Car did not hit any object and that the driver did not provoke anyone.

B. Evidence of the Authorities

6. *DSP Mohd Razali bin Mohd Idrus (Kajang CID Chief) (W13)*

6.1 W13, the officer in charge of the Criminal Investigation Division at the time of the Inquiry, denied having any material knowledge of the events that transpired on 27 May 2008.

7. *ASP Kamal Ariffin bin Amman Shah (W14)*

7.1 W14 was the commanding officer of the FRU (Unit 4, Cheras) on the day of the incident.

7.2 W14 said that any action taken by his officers must be pursuant to his orders. Yet, he testified that his men took instructions from an Inspector. He admitted that he did not prevent his men from acting on the instructions of an Inspector.

7.3 W14 also stated that it would not have been possible for the Car to have been travelling at more than 20 km/hour while negotiating the U-turn without turning 'turtle'.

8. *L/Kpl Shahrizan bin Rashid (W15)*

8.1 W15 testified that from his group of FRU officers, about 5-6 men moved forward, but he did not see anything when they arrested the driver, because he said that the incident happened very fast.

8.2 W15 also said that he was looking elsewhere although he was 3-4 metres away from the Car.

9. *L/Kpl Fariz bin Abd Samad (W16)*

9.1 W16 testified that about 25 officers were placed under his observation on 27 May 2008.

9.2 W16 said that the driver of the Car had refused to come out of the car and had tried to escape. When questioned by the Inquiry panel on how the driver who had refused to come out of the Car had tried to escape, W16 said that the driver had tried to move the Car forward.

9.3 W16 claimed that he saw the driver's feet on the accelerator pedal when the Car was surrounded by many people.

10. *ACP Shakarrudin bin Che Mood (OCPD Kajang) (W17)*

10.1 W17 said that he did see a Chinese man bleeding from the face. He heard that 2 FRU officers suffered injuries as a result of having been run down.

10.2 W17 did not explain why he thought the residents were behaving 'a bit wild' or why the situation was tense that day so much so that he ordered the FRU to move in and disperse the crowd.

11. *Insp Muhammad Hasmizal bin Hassan (W18)*

11.1 W18 gave evidence that he wanted the Car detained and ordered the FRU to move in. He also said he heard glass shatter.

11.2 W18 said that he pulled W1 out by his shirt, and that W1 tried to kick him and hit his head on the Car door. Later, he arrested the 4 complainants.

12. *Konst Ezez bin Johari (W19)*

12.1 W19 testified that his Inspector used the butt of the tear gas gun to break the Car window, after W19 failed to open the Car door from the inside. When asked if W18 saw the Car window being broken, W19 was not sure.

12.2 W19 also said he saw W1 kick W18 but could not see which part of W18's body was kicked.

13. *Konst Mohd Azniey bin Ahmad Suppian (W20)*

13.1 W20 claimed that he was knocked down by the Car. He testified that traffic was slow at the scene of the incident and the Car was travelling at 20 km/hr. There was a car in front of the Car. He could not gauge the distance between the 2 cars.

14. *Konst Mohd Firdaus (W25)*

14.1 W25 was another FRU officer who claimed to have been hit on the right thigh by the Car.

15. *Our Observations*

15.1 The evidence adduced showed that the authorities perpetrated acts of aggression and violence against ordinary citizens. This was a clear breach of duty by the police. The explanation that W1 drove the Car and hit 2 FRU officers is not supported by corroborative evidence. Particular police witnesses gave testimonies that are unreliable and should not be accepted.

- 15.2 W14 admitted that FRU officers act on his instructions. Therefore, an obvious breach of protocol and procedure occurred when FRU officers acted on instructions given by another officer (W18). W16 was in communication with W14 at all times and was able to take instructions from W14. Yet, W18 gave instructions to the FRU to detain the Car.
- 15.3 W14 failed to conduct a de-briefing session with his officers to determine whether they were involved in causing injury to the complainants. Further, W14 failed to determine if his officers were injured, if at all.
- 15.4 W15 was evasive when he gave evidence at the Inquiry. This is seen from his testimony regarding his position at the scene of the incident and that he did not see what had transpired.
- 15.5 There was also no indication that the Car was being driven in a manner that suggested W1 was attempting to ram the police officers, and W15 merely assumed that W1 was trying to run away.
- 15.6 Despite being an officer in authority, W16 could not give cogent evidence as to his position or the events as they occurred. W16 specifically stated that 2 FRU officers were hit by the Car under the control of W1, yet the injuries sustained by the officers are inconsistent with W16's statement.
- 15.7 Despite being shown the exhibits which illustrate FRU officers and plainclothes police personnel hitting and kicking the Car, W16 denied that there was any violence, and stated that the police personnel's actions were reasonable steps taken towards maintaining law and order.
- 15.8 In his evidence, W17 stated that his instructions to his officers were to take appropriate action and arrest those who committed an offence. He did not give them instructions to use force and this is clearly stated in the Operations Guidelines. The FRU officers had failed to abide by W17's instructions.

15.9 W18 admitted that he pulled W1 by his shirt and out of the Car. It is questionable why such force was required. W18 admitted exerting excessive force on W1, whom he said had not been co-operative. Given the number of FRU officers surrounding the Car, it is unclear how and whether W1 was indeed unco-operative. The fact that W1 had sustained injuries as a result of the use of excessive force is proved.

C. Evidence of the Independent Witnesses

16. *Dr Suthananthini a/p Lankasundram (W4)*

16.1 W4 confirmed the extent of the injuries suffered by W1, which she described as a deep laceration wound of 1.1 cm from the bridge of the nose, a through and through injury over the upper lip (i.e. a cut in the centre of the lip), and the loss of one upper jaw tooth.

16.2 W4 confirmed the presence of bruises on W1's body, sent W1 for an X-ray examination and referred W1 to a dentist.

17. *Dr Kumaresan a/l Supramaniam (W5)*

17.1 W5 testified that W1 sustained a head injury and had swollen eyes when W5 examined him on 29 May 2008, 2 days after W1 had been discharged from the Kajang Hospital.

17.2 W5 sent W1 for a CT scan after W1 complained of persistent headaches and nausea, and W5 attributed the cause of the swollen eyes to an assault.

17.3 W5 also mentioned W1's other injuries, such as swelling in the chest measuring 4 by 5 cm and a posterior injury to the head.

18. *Dr Nazirah Hamzah (W6)*

18.1 W6, a medical officer at the Kajang Hospital, said that W3, whom she examined, had alleged that he was assaulted by the police. W3 suffered superficial injuries on the face and bruises on his right hand and right shoulder.

18.2 W6 did not rule out the possibility that the injuries could have been caused by any kind of blows or being hit by a hard object.

18.3 W6 said that the injuries suffered by W3 could not have been caused by a fall.

19. *Lai Wai Chong (W8)*

19.1 W8 said that he saw 3 or 4 police officers dragging out a person from the Car and then assaulting him. The next day, he saw W1 featured in the newspaper.

19.2 W8 was confident that he could identify the particular FRU officer who had assaulted W1. W8 said he was 80% sure that the officer brought to the Inquiry to be identified was the perpetrator.

20. *Chong Yuan Chun (W9)*

20.1 At the time of the incident, W9 was curious about what was happening at the scene of the incident. He saw an FRU officer and a policeman beating up a person.

20.2 W9 said that from the height and features of the person, the officer brought to the Inquiry to be identified was the one he saw at the incident.

21. *Lee Weng Keat (W10)*

21.1 W10, a sub-editor with Malaysiakini.com, was at the scene to do a news report. He saw about 20 FRU officers surrounding the Car in question. He did not hear any sound of screeching brakes.

21.2 W10 testified that the Car did not hit anything. The Car was chugging along. He saw W1 walking unsteadily and later when he visited W1 at the Kajang Hospital, he was not able to tell if W1 was conscious or otherwise.



22. *Ng Kok Foong (W11)*

22.1 W11, a photographer with Malaysiakini.com, was at the scene of the incident. According to W11, the Car did not hit or touch anything.

22.2 W11 said that the police and FRU officers used batons to beat the Car. They also kicked the Car, dragged W1 out of the Car, and continued to beat W1, W3 and W7.

22.2 W11 testified that none of the complainants put up any resistance at any point of time during the assault. There was also nothing to suggest any provocation by the complainants. In fact, W1 told the police to stop the incessant beating that was being visited upon him.

22.3 W11 further said that he saw W1 bleeding from the face, nose and mouth. W3 and W7 were seen handcuffed.

23. *Syed Jaymal Zahid Syed Kamal (W12)*

23.1 W12, a journalist with Malaysiakini.com, witnessed the beating by FRU and police officers vividly. He was positioned next to the FRU officers who moved towards the Car. From his rather close standpoint, he saw how W1 and W3 were hit, punched and later handcuffed.

23.2 W12 said that the Car was not really speeding. He subsequently visited W1 at the Kajang Hospital. W1 was still bleeding from the nose and mouth.

**IV. OVERVIEW OF THE INCIDENT AND CONCLUSION**

24. On 27 May 2008, a group of residents gathered at an intersection between Bandar Mahkota Cheras ('BMC') and the Grand Saga Highway ('GSH'), specifically referred to as Persiaran Bandar Mahkota Cheras 1, Bandar Mahkota Cheras. It was common knowledge that amongst the issues which culminated in that public gathering was the residents' right of use of a toll-free access road leading to BMC, without using a stretch of the GSH which needed a toll payment.
25. FRU and police officers were deployed to deal with the gathering, and to disperse the same on the basis that it was an 'illegal assembly'.
26. The complainants, W1, W2, W3 and W7, were travelling in a car along the area where the gathering was held. They were stopped and W1, W3 and W7 were physically assaulted by the FRU and police officers.
27. The authorities allege that 2 of their officers were run down by the Car driven by W1.
28. Based on the assessment of the evidence presented, we surmise as follows:
  - 28.1 The Car was travelling at a very slow pace as traffic was heavy, and W1 stopped the Car as the vehicles in front of the Car had also stopped.
  - 28.2 A group of FRU and plainclothes officers rushed towards the Car and started hitting and kicking the Car.
  - 28.3 At all material times, the complainants did not provoke the authorities and they did not know the reason for the attack. They did not put up any resistance when being attacked.

28.4 The key elements of the complainants' testimonies are corroborated. Of importance is W1's narrative and the testimony of independent witnesses concerning the manner in which and the degree to which W1 was attacked. In this regard, it cannot be said that the injuries were self-inflicted.

28.5 Excessive force was used by law enforcement personnel in violation of W1, W2, W3 and W7's rights to life, liberty and security. The said personnel also acted outside the scope of their duties as protectors of the innocent.

## V. RECOMMENDATIONS

29. The Bar Council makes the following recommendations:

29.1 That the perpetrators of the assaults on, and arrests of, W1, W3 and W7 be investigated and prosecuted in a court of law.

29.2 That the Independent Police Complaints and Misconduct Commission, as proposed in the Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, be established immediately.

29.3 That international human rights treaties, in particular the International Covenant on Civil and Political Rights 1966 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, be immediately ratified and implemented domestically.

29.4 That a wide-ranging review of the provisions of the Police Act 1967, Criminal Procedure Code, Inspector-General's Standing Orders and Police Public Order Manual on the Use of Force be conducted to update the same on matters which pertain to the use of force, among others:

- (a) The use of batons, shields, firearms, water cannons and other weapons;
- (b) The deployment of law enforcement officials including the number, circumstances, chain of command and visibility; and
- (c) The clear identification of law enforcement officials through uniforms and name-tags.

29.5 That the United Nations Code of Conduct for Law Enforcement Officials and United Nations Basic Principles on the Use of Force and Firearms by Law Enforcements Officials be legislated in domestic law as a Code of Practice to the Criminal Procedure Code.

29.6 That a Freedom of Assembly Working Group entrusted to deal with issues relating to the right to freedom of assembly be established immediately. The Working Group should comprise stakeholders in the country such as the police, local authorities, legislators, civil society groups, non-governmental organisations, SUHAKAM, Bar Council and human rights bodies. Among others, the Working Group will:

- follow-up with the Government and/or other relevant authorities to implement the recommendations in SUHAKAM's various reports on freedom of assembly; and,
- on behalf of SUHAKAM, act as its monitoring team, functioning to observe any public assembly, gathering or procession and, if the need arises, to intervene or mediate where problems arise between the authorities and participants of the assembly, gathering or procession.

29.7 That more effective and holistic human rights education and practical training of law enforcement officials be conducted with a view towards changing law enforcement attitudes and methods in relation to crowd control and the use of force.

## VI. ACKNOWLEDGEMENTS

This report was written by Chan Weng Keng, Lai Chee Hoe, Amer Hamzah Arshad, Saha Deva A. Arunasalam and Edmund Bon Tai Soon from the Human Rights Committee with the assistance of members who took an active part during the Inquiry.

The Bar Council was represented at the Inquiry by the following members of the Bar:

23 July 2008	Ragunath Kesavan, Andy Yong Kim Seng, Lai Chee Hoe, Siti Zabedah bte Kasim and Saha Deva A. Arunasalam
24 July 2008	Chan Weng Keng, Maria Soosai Raj a/l Joseph Thamby Raj, Noor Arianti bte Osman and Syamsuriatina bte Ishak
25 July 2008	Chan Weng Keng, Syamsuriatina bte Ishak and Usha Kulasegaran
27 Aug 2008	Syamsuriatina bte Ishak and Usha Kulasegaran
28 Aug 2008	Syamsuriatina bte Ishak and Usha Kulasegaran
29 Aug 2008	Chan Weng Keng, Syamsuriatina bte Ishak, Maria Soosai Raj a/l Joseph Thamby Raj

Dated this 13<sup>th</sup> day of November 2008