

KUNDASANG PUBLIC INQUIRY REPORT

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Introduction

The Memorandum of Complaint

On 17.06.03, the Sabah Office of the Human Rights Commission of Malaysia (“Suhakam”) received a memorandum (“the Memorandum”) from 18 persons in Kundasang, Sabah, alleging human rights violations by Desa Highlands Sendirian Berhad and by the police.

In the Memorandum was a claim that the 18 persons were villagers who had been occupying a piece of land in Desa Monteki in Kundasang since 1985. It consisted of an area of 74 acres of agricultural land and the occupation had been with the approval of the village chief. It was alleged that these persons (the villagers) had cultivated and worked on the land without objection from any party for five years.

It was also stated that in 1989, the villagers had made an application to the Land and Survey Departments in Kota Kinabalu and Kundasang for the alienation of the said land. It was contended that their application complied with State Land requirements. There was a claim that “State Customary Practices (Amalan Adat Negeri)” entitled these villagers to the land after three years of occupation and cultivation if no one raises any objection. The villagers assumed that the land belonged to them and were only awaiting government approval.

It was claimed that in 1992, one Desa Highlands Sendirian Berhad (“the Company”) made an application to the Land Office for alienation of the said land to the Company. The villagers had objected to that application through a letter to the Land Office.

On 22.05.03, representatives from the Company accompanied by about 10 police officers and three bailiffs came “to chase the villagers away from the land”. Then on 27.05.03 the same workers from the Company came into the land with chainsaws and heavy machinery to destroy the properties of the

villagers. The villagers claimed that they reacted by objecting to the demolition. That night, 18 villagers were arrested at about 11.30pm. On 28.05.03, a remand order was granted by a District Officer (acting as Second Class Magistrate) for the villagers to be remanded for 14 days.

Allegations of violations of human rights in the Memorandum -

The Memorandum (see Appendix 1) contained the following allegations of human rights violations by the police -

1. That there was improper use of force by the Ranau Police during the eviction process on 22.05.03 causing one Milah Bte Bangaloi to be warded at the government hospital in Ranau.
2. That a police officer pointed his pistol at a villager.
3. That the villagers were prevented from making a police report by Assistant Superintendent of Police (“ASP”) Mohd Izaan who called them into his room and frightened them from making the report.
4. That on 28.05.2003 when the Police took 18 villagers for remand in the Ranau lockup and during the rest of the remand period, there were numerous human rights violations (similar to those highlighted by Suhakam in their “Report on the Rights of Remand Prisoners”) when they were placed in the lockup -
 - a) Family members were not allowed to visit the detainees.
 - b) The maximum period of remand (14 days) had been given for this case even though the alleged offences in which they were arrested were comparatively less serious than many other offences, such as murder, where sometimes the maximum period of remand is not extended to the fullest.

In this case the District Officer (Second Class Magistrate) was the one who gave the remand order.

- c) There was a 70 year old detainee and he could not converse in Malay.
- d) Detainees were placed in an over-crowded cell.
- e) Detainees were made to sleep on the cement floor and not given sleeping mats.
- f) Detainees were prevented from praying (“*menunaikan sembahyang*”) as prayer attire (“*telekung sembahyang*”) was not allowed in the lockup.
- g) The toilets in the cells were extremely dirty and smelly causing some of the villagers to be ill.
- h) Detainees were questioned or interrogated at night and were not allowed to rest.
- i) Detainees were questioned or interrogated on issues that were not relevant to the case at hand and the police tried to force or intimidate the detainees to withdraw the police report that had been made on the alleged improper use of force by the Ranau police.
- j) Spectacles and clothes had to be taken off.
- k) The Police purposely delayed the interrogation or investigation process to torture the villagers.
- l) There was hostile treatment from the Ranau police until a point where the police verbally abused and intimidated the detainees.

Preliminary Action by SUHAKAM

On the same day the Memorandum was received (i.e. 17.06.03), the Sabah office of Suhakam wrote to the Police Commissioner of Sabah concerning the allegations (see Appendix 2). There was no reply to the letter. A letter addressed to the Inspector General of Police was then sent on 14.07.03 relating to the allegations (see Appendix 3). On 30.09.03 the Sabah office of Suhakam received a letter from one ASP Goh from the Police Headquarters in Sabah on the matter. Suhakam does not consider the contents of the letter (see Appendix 4) that it received to be an adequate response to the various allegations.

Acting under section 4(2)(b) of the Human Rights Commission Act of Malaysia Act 1999 (Act 597) ("the Act"), Suhakam may exercise its powers -

To 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;

In this regard, Suhakam proceeded to carry out preliminary investigations on the allegations of human rights violations contained in the Memorandum.

The preliminary investigations touched on the events of 22.05.03 and also those on 27.05.03. In regard to the events on 22.05.03, it was shown that a building belonging to a villager had been demolished on 27.05.03 and that later an excavator was set on fire and a Land Cruiser turned on its side on the said land. Following from that, the police stationed at Ranau went to a village, Kampung Kauluan, in Kundasang, and arrested 18 villagers who were then brought to the Ranau police station. They were arrested for the purpose of investigations into the offences of rioting and mischief by fire under sections 147 and 435 respectively of the Penal Code ("PC").

On 10.06.03, 15 villagers were charged in the Magistrates' Court, Ranau, for rioting and three for causing mischief by fire.

On 08.12.03, the Commissioners of Suhakam at a meeting decided that a Panel of Commissioners would hold a Public Inquiry on the allegations of human rights violation contained in the Memorandum submitted which is to be conducted pursuant to the powers given to the Commission under section 12(1) of the Act which reads –

The Commission may, on its own motion or on a complaint made to it 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 allegation of the infringement of the human rights of such person or group of persons.

Following from that, officials of Suhakam proceeded to Sabah to make all necessary preparations to facilitate the Public Inquiry to be held in Kundasang.

Panel of Commissioners for the Public Inquiry

A Panel of three Commissioners was constituted by the Commission for the Public Inquiry comprising the following –

Dato' K. C. Vohrah (Chairman)

Tan Sri Dato' (Dr.) Ramon Navaratnam

Datuk Dr. Abdul Monir Yaacob

A statement to that effect was issued by Suhakam (see Appendix 5)

The Public Inquiry was held in Kundasang, Ranau, Sabah from 11.02.04 to 14.02.04 and continued from 4.03.04 to 6.03.04. Thirty-seven witnesses gave evidence (see Appendix 6).

Applicable Human Rights Principles

The Panel looked at the following sources to ascertain whether there were violations of their human rights. Both domestic law and international law, and international standards comprising instruments and cases were referred to. They are as follows -

(a) DOMESTIC

i. Federal Constitution

The Federal Constitution of Malaysia forms the fundamental law of the country. It is divided into 15 parts but from a human rights perspective, Part II of the Constitution defining civil liberties is of foremost concern.

Although protection of Fundamental Liberties under Part II of the Federal Constitution is narrower in scope as compared to the Universal Declaration Human Rights (UDHR), yet the latter instrument can be used as a guideline on human rights standards that are not covered by the Constitution. In fact, as a country that is constantly vying for higher standards, the UDHR and other international instruments can be seen to complement the Constitution in upholding and further promoting human rights in Malaysia. Indeed, under section 4(4) of the Human Rights Commission of Malaysia Act 1999, it is stated that “regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution” for the purposes of the Act.

ii. Legislation

In preparing this report, certain legislations bearing relevance to the allegations and issues raised were considered. These laws are binding on both public bodies and citizens and some of them create offences, the breaches and violations of which may lead towards the institution of legal proceedings in a court of law against the wrongful party. However, this

Public Inquiry does not have the powers accorded to a court of law and hence, it proceeds only on specific allegations raised in the Memorandum and revealed in evidence and examines them from a human rights perspective in order to ascertain if any violations (including from a domestic law perspective) had in fact occurred. In preparing the report, the following Acts were looked into -

1. Police Act 1967 [Act 344]
2. Criminal Procedure Code [Act 593]
3. Subordinate Courts Act 1948 [Act 92]
4. Penal Code [Act 574]
5. Evidence Act 1950 [Act 56]
6. Lockup Rules 1953
7. Ranau Lockup Rules

iii. Case Law

Case law constitutes a source of law and can be cited as supporting authority. The cases cited in this report include local cases, Commonwealth authorities as well as the decisions of the European Court of Human Rights. Although some are not binding on Malaysia, yet due to the evolving nature of human rights jurisprudence in other jurisdictions, it is prudent to refer to a wide range of case law for purposes of clarification or to aid in the process of interpretation.

(b) INTERNATIONAL

In preparing this report, references had been made to International Instruments which touch on the issue of the use of force by the police as well as the issue of conditions of detention for prisoners. They range from the UDHR and legally binding treaties upon ratification or accession by a nation to minimum guidelines which are not legally binding.

On the issue of use of force by the Police, these Instruments serve to clarify and identify general principles as to the situations where properly, reasonable force may be used.

Pertaining to conditions of detention for prisoners, International Instruments which have laid down minimum standards to be observed in relation to detention conditions taking into account humanitarian concerns have also been referred to.

i. International and Regional Treaties

International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was adopted and opened for signature, ratification and accession by the United Nations General Assembly Resolution 2200A (XXI) of 16.12.1966 and entered into force on 23.03.1976 in accordance with Article 49 of the Covenant.

The UDHR, the ICCPR and three other international instruments form the United Nations International Bill of Human Rights.

Covenant against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The CAT was adopted and opened for signature, ratification and accession by the United Nations General Assembly Resolution 39/46 of 10.12.1984 and entered into force on 26.06.1987 in accordance with Article 27(1) of the Convention.

As the title of the Convention suggests, its provisions relate to the struggle against torture and other cruel, inhuman or degrading treatment or punishment. The provisions of the CAT are of particular importance in this area because prisoners / detainees are generally recognized as one of

the groups which are vulnerable to torture and other cruel, inhuman or degrading treatment or punishment.

Although the ICCPR and the CAT are open for signature, ratification and accession by nations that are members of the UN, Malaysia has yet to sign or ratify or accede (as the case may be) to either of these treaties. Therefore, their provisions are not legally binding on Malaysia until the Government signs or ratifies or accedes (as the case may be) to these instruments. Nevertheless, in the meantime, they may be persuasive in the legislative drafting and policy making of the Government given that they are generally recognised as instruments that form part of the minimum international standard relating to human rights.

European Convention on Human Rights 1950 (ECHR)

The Convention for the Protection of Human Rights and Fundamental Freedoms is more popularly known as the ECHR. It was opened for signature in Rome on 4.11.1950 and came into force on 3.09.1953. The object of its authors was to take the first steps for the collective enforcement of certain rights stated in the UDHR.

In addition to laying down a catalogue of civil and political rights and freedoms, the ECHR sets up an enforcement machinery of the obligations of nations that are parties to the ECHR. Initially, three institutions were entrusted with this responsibility – the European Commission of Human Rights (set up in 1954), the European Court of Human Rights (set up in 1959) and the Committee of Ministers of the Council of Europe.

The increasing caseload, however, prompted the creation of a single full-time court. This single full-time court was created to simplify the enforcement machinery of the ECHR, shorten the length of proceedings relating to the resolution of allegations of violations of the provisions of the ECHR by nations that are parties to the ECHR and to strengthen the judicial character of the system.

The new European Court of Human Rights came into operation on 1.11.1998 and on 31.10.1998, the old Court ceased to function.

Being a regional based treaty, it is only open for signature and ratification by nations that are members of the Council of Europe. Nevertheless, the provisions of the Convention are referred to in this report mainly because the human rights jurisprudence developed by the European Court of Human Rights in relation to the interpretation and implementation of the ECHR is arguably the most established jurisprudence in the field of human rights. As such, because the provisions of the ECHR are based on many provisions of the UDHR, the case law developed by the European Court of Human Rights is an internationally respected source of guidance for the interpretation and implementation of the UDHR.

ii. **Non-Treaty Instruments**

Standard Minimum Rules for the Treatment of Prisoners (SMR) (see Appendix 7)

The SMR was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955, and approved by the Economic and Social Council by its Resolution 663 C (XXIV) of 31.07.1957 and 2076 (LXII) of 13.05.1977. The provisions of Part I of the SMR are generally applicable to all prisoners. The provisions of the SMR are in fact not new to the prison system of Malaysia. In fact, it is stated that *Jabatan Penjara Malaysia* (Prisons Department of Malaysia) claims to be guided by the provisions of the SMR when carrying out its responsibilities (www.prison.gov.my/bm/akta.html).

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BOP)

The BOP was adopted by the United Nations General Assembly Resolution 43/173 of 9.12.1988. It is indeed a far-reaching addition to the

International Instruments pertaining to the standards governing the practice of detention for a number of reasons, first, it introduces some important additional safeguards and in certain other respects clarifies and develops existing protective measures to guard against abuse of those in custody. Secondly, the BOP contains no provision permitting the derogation from any of its principles during times of emergency.

Code of Conduct for Law Enforcement Officials (see Appendix 8)

The Code of Conduct was adopted by the United Nations General Assembly resolution 34/169 on 17.12.1979. Its purpose was to ensure that law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, from 27.08.1990 to 7.09.1990. It starts off from the premise that the work of law enforcement officials is a social service of great importance as they have a vital role to play in the protection of the right to life, liberty and security of the person, as guaranteed in the UDHR. Hence, the Seventh Congress, in Resolution 14, inter alia, emphasises that the use of force and firearms by law enforcement officials should commensurate with due respect for human rights. These basic principles were also brought about by the support of the Economic and Social Council, in its resolution 1986/10, section IX, of 21.05.1986, which invited Member States to pay particular attention in the implementation of the code on the use of force and firearms by law enforcement officials.

Areas of Competence

For the purposes of the Public Inquiry, Suhakam can only be concerned with human rights violations within the ambit of the provisions of the Act particularly bearing in mind the definition of “human rights” in section 2 read with section 4(4) of the Act. Consequently the Panel has no remit to deal with some matters raised in the Memorandum.

One of the main grievances in the Memorandum of the villagers is directed at the Company for the alienation of the disputed land. This, the villagers claimed, was unjust and this message was made clear by the heart rending anguish and despair of these simple villagers right through the course of the Inquiry, that it was to the Company and not to them that the land was vested in. This was so although they were in occupation of the land for a long period of time and had been cultivating it for five years (ie: 1985 to 1989) before they applied for the alienation of the land.

The issue of whether the said land was properly alienated to the Company, however, is not something within the purview of the Panel to decide. The State of Sabah had alienated the land under powers vested in the State under the relevant land law and Suhakam is not the proper forum nor has it the competence to go behind the exercise of such power.

There was also a High Court order dated 6.02.03 allowing the Company to recover possession of the said land from Malandi Tanor, James Ting Ching Ong and 42 others (see Appendix 9).

In relation to this order, while acknowledging that the villagers dispute the validity of the order of possession, the Panel will have to accept that the said order made by the High Court is valid, until it is set aside by the Court of Appeal.

It also has to be noted that so far as the arrest of the villagers (one was released later) was concerned, the arrest was in connection with several incidents which

included the burning of the cabin of an excavator on the said land on 27.05.03. As pointed out, several villagers have been charged for rioting under section 147 the Penal Code and some have also been charged for causing mischief by fire under section 435 of the same Code. The Panel is not concerned with the merits of the two cases arising from the charges which are the subject matters of trials in the Magistrates' Court in Ranau.

Finally, there was implied in the Memorandum that the District Officer (acting as Second Class Magistrate) in making a remand order for 14 days in respect of the 17 villagers, had acted outside the powers conferred under section 117 of the Criminal Procedure Code ("CPC"). It has to be noted that the order made by the District Officer was made in his ex-officio capacity as a Second Class Magistrate under section 77(1) read with the Fourth Schedule of the Subordinate Courts Act 1948 and that is a judicial order. The Panel cannot go behind the order to question its validity. The validity can only be challenged in the High Court.

Established facts relating to the entry on land on 22.05.03 by the Bailiff and the Police.

Matters before the entry on land

In respect of the events on 22.05.03, it is not disputed that on 06.02.03, an order for summary possession under Order 89 of the Rules of the High Court 1980 to recover possession of the land [Lot G 06124956] was issued by the High Court in Kota Kinabalu.

An appeal was filed against the order on 6.03.03 but it was not pursued. There was no application for a stay of execution of the order of possession.

On 15.04.03, a Writ of Possession in respect of the said land was issued (see Appendix 10).

It has to be observed that the firm of solicitors for the Company arranged for the Police to be present on 22.05.03. It is in evidence that the solicitors received a letter from the High Court, Kota Kinabalu dated 6.05.03 (see Appendix 11) informing them that the Writ of Possession would be executed on 22.05.03 and requested for a representative of the firm to assist the court bailiff on the matter. The firm then sought police assistance. According to a lawyer from the firm, Peggy Liow (Witness 7), surveyors employed by the Company had gone to the disputed land to survey the land in March. They had been chased away and could not proceed with their work. She said, "*we felt that with 76 acres to repossess, we could not do it with just the bailiffs and the surveyors had refused to go onto the land again without some sort of protection for themselves and particularly, their workers...In my experience, the practice here (in Sabah) is for us to assist the bailiffs - the lawyers arrange for the police.*" She said that on 19.05.03 they went to Kepyayan, the Police Headquarters in Sabah, and met one Deputy Superintendent of Police (DSP) Fadzil and sought police assistance from him. On 22.05.03 a police team met up with the bailiffs and others including the lawyer, in Kundasang and proceeded to the land.

It has to be pointed out that the Deputy Registrar of the High Court, Kota Kinabalu (Witness 18), did not write to the police for assistance as there was no request directed at her to apply for police assistance. She agreed that the procedure in the High Court and in the Subordinate Courts for the repossession of land is the same and concurred with the evidence of the Senior Registrar of the Subordinate Courts (Witness 12) in Kota Kinabalu on the procedure -

For land, the bailiff will give seven days notice for the defendant or occupier to vacate. Usually there will be negotiations between the plaintiff and defendant for extra time and if none, it will be seven days.

...

After seven days or extended time, the bailiff will return to the site to make sure whether the place (has been) vacated or not by the defendant.

If the place is vacated, the bailiff will hand over the property to the owner / plaintiff there and then, but if the defendant refuses to vacate, then the bailiff will return to the Registrar and make his report to the Registrar.

After that, any further action will be on the plaintiff's side to make an application to the Court to use force or to take committal proceedings. When the bailiff receives this order, the order to either use force or for committal by the Court, the bailiff will return to the site and enforce the order.

In this area two things may happen. The defendant(s) may vacate the place peacefully or (he) may refuse to vacate. In this situation the bailiff will report to the Registrar and the Registrar will write to the police for assistance. (Emphasis added)

The Panel has dwelt at some length on the evidence relating to police assistance during eviction. When the police went to the site, they were there to assist the bailiff in carrying out his duties and not for the protection of the plaintiff's (i.e. the Company's) workers to carry out survey work on the land. More importantly, it was for the Deputy Registrar of the High Court acting on the report of the bailiff and not for the plaintiff or his representative to apply for police assistance. Thus, the Deputy Registrar through no fault of hers was not aware of police assistance being requested for by the plaintiff.

It has to be pointed out that during the course of the Inquiry, it was revealed and it was clear that the villagers resented the large presence of the police and felt that it was the police, rather than the bailiff, who were effecting the eviction proceedings. Evidence from witnesses including ASP Mohd Izaan (Witness 13) himself indicated that ASP Mohd Izaan was accused by the villagers of working for the Company and of being corrupt.

The Panel has made a recommendation on the matter of police assistance and that appears later in this report.

Matters relating to the scene on 22.05.03

The evidence showed that in Desa Monteki there were several men and women who worked on a co-operative (*gotong-royong*) basis to cultivate vegetables on the land. Some of the villagers lived on the disputed land and others lived outside the land in a village in Kundasang called Kampung Kauluan.

Encik Lam, the manager of the Company, lived in a house on a neighbouring land, on higher ground.

The exact time of entry onto the land is unclear but it appears closer to noon on 22.05.03. The villagers working on the land saw a group of people (which included several policemen, Lam and others) walking down from Lam's house. The villagers were then signaled to approach the group.

The villagers walked outside the boundary of the disputed land that they were cultivating before they reached the group. Some of them went up to stand on a large rock outcrop which narrowed and sloped downwards at one end. That end had a drop of two to three feet to the ground.

The bailiff, Encik Kindongan (Witness 8), met with the villagers and explained to them the nature and effect of the Writ of Possession. He told them that the land belonged to Desa Highlands Sendirian Berhad and that they had to leave the land. There were vehement protests by the villagers on the eviction process. Some claimed that the land belonged to them (the villagers) and that although there was a High Court decision giving possession to the Company, there had been an appeal filed against the decision. ASP Mohd Izaan (Witness 13) intervened and explained to them that there had been no order from any Court to stop the repossession, thus they had to abide by it.

It was also in evidence that ASP Mohd Izaan was in the thick of things during the noisy protests, trying to explain that the eviction process was as a result of a valid court order. He had to explain to the villagers one by one, repeatedly, on

the same theme. Slowly, the villagers managed to calm down. It was also the ASP's evidence that this was his first experience in an eviction process.

Disputed Facts

Allegation 1 - that there was improper force used on Milah Bte Bangaloi by ASP Mohd Izaan.

Allegation 2 - that ASP Mohd Izaan had pointed a pistol at Milah Bte Bangaloi.

Milah's evidence

There was evidence that one of the villagers who protested loudly and vehemently against the eviction process was Puan Milah bte Bangaloi (Witness 4). She alleged, on the first day of hearing, that firstly, ASP Mohd Izaan had manhandled her roughly and, secondly, that he had pulled out his pistol and threatened to shoot her. There was a variation of this version when she gave evidence at the site when the Panel subsequently visited the place together with her, ASP Mohd Izaan and others. It has to be noted that she also stated that ASP Mohd Izaan did not point his pistol at her.

There were also several versions of the two incidents by other witnesses which varied with her two versions. To have a sufficient and relevant backdrop, all versions; some set out verbatim and in extenso, will be examined.

In the first version of Milah's evidence, she said ASP Mohd Izaan had told the villagers that they could no longer work on the land as it belonged to Desa Highlands Company. Her evidence was that he pulled her to a rock and when she asked him for the letter showing the eviction, the ASP pulled her by her left arm and told her, "*Don't talk too much. It is better for you to get down (from the*

rock) and be put in a lockup". She said she was quite persistent in wanting to see the letter but that she was not angry. She admitted she spoke a lot, and to this, the ASP said "Jangan banyak cakap, cukup tiga kali cakap, lebih tiga kali terus masuk lokap". She stated that initially the ASP pulled her up and later he pulled her down.

She also stated that after being pulled down, she tried to go up the rock up as she was afraid the Police would take her to the lockup. Instead, she said she was on the ground and she was dragged along and then surrendered to another policeman, Lance Corporal Ravi (Witness 26).

On the matter of the pistol she said that ASP Izaan had told her that if she did not listen to him, he would shoot her. This incident purportedly occurred while he was dragging her. She said he drew his pistol but he did not point it at her.

She also that said she was pulled by her left arm.

The Panel visited the scene on 13.05.04 and inspected the site of the incident. At the site, there is a rock embedded in the earth and it has a large surface. It slopes downwards at the narrow end where it has a drop of two to three feet to the ground.

While on the surface of the rock, Milah showed where she had stood. This was near the narrow sloping end of the rock. She stated in evidence, giving a second version of what had taken place,

I wanted to see the letter of eviction from the court because I did not agree to moving out. The bailiff was to my left with a file. While the bailiff was trying to pull out the file, ASP Mohd Izaan, who was standing to my right, said, "Your lawyer is biased." So I said to Izaan, "Why are you making so much noise?" I can't hear what this person (the Bailiff) is trying to say to me.

Then he pulled me (to the lowest level of the rock). I fell down to

the ground – on my behind. I wanted to move to the right (as one faces the rock). My back was towards the rock. Izaan pulled me by my left arm, like this (witness demonstrates). And I was pulled (while I was) on my haunches and my right arm was grabbing my sarong (witness demonstrates) – I had a bag with me. He pulled me down the slope - until the log there...

He pulled out his pistol just near the log, because I could not cross over, so he was saying that if I was stubborn, he would shoot me.

When she was further questioned by the Panel, she stated -

I was at the edge of the rock. ASP Izaan was also on the rock. After the first pulling we were both at the edge of the rock. He purposely let me fall. He released my wrist. I was about to fall when he released my wrist...

The Panel posed this question -

He did not pull you down?

Her answer was -

Maybe Izaan was afraid of stepping on me, that is why he released my wrist.

The Panel posed another question -

The last time when you gave evidence, you said you were dragged on your body over the ground.

Her answer was -

I was on my side – my left side (on my behind and my thigh). I was trying to lift myself because it was painful to be

touching the ground. He dragged me by my left arm. I was trying to stand up because it was painful. I was not resisting...

There is a slope from the rock and I slipped down on my haunches and he was still pulling me...

Anibah's evidence

Another version of what took place there was that of Trainee Nurse Puan Anibah @ Sitidah Bte Duani (Witness 3), the niece of Milah, who witnessed Milah falling down. She stated,

Later my auntie Milah got angry, she spoke loudly, she said, "This land is ours, not yours!"

She was standing on a rock. ASP Izaan pulled her left hand in a rough way. He pulled her by her left arm - I think it was left side - I am not sure which. He pulled hard and I could see that the lady was in pain. She fell on the branches which were on the ground yet she was still being pulled.

After that, she was taken to somebody (another policeman) by ASP Izaan and ASP Izaan came back to us (at the rock).

The witness added that after Milah had fallen, ASP Mohd Izaan pulled her for about eight meters (about 30 feet). She did not see the incident relating to the pistol.

Kimuah's evidence

Puan Kimuah bte Bangaloi (Witness 19), the younger sister of Milah, gave her version on the events which led to Milah being brought away from the scene,

Milah asked, "Why are we were being evacuated? Why we can't see the evidence?" She then asked ASP Izaan, "Why are you the one who is talking and not the court official?" Izaan replied to Milah "You are arrogant and you should move away". My sister is very outspoken in that way. Milah said she would like to see the evidence first, whether it is true that we are being asked to leave our land and the police reacted by pulling her away...Izaan, he was just trying to pull her away from the rest of the people.

The first part was Izaan trying to move her away from the rest by holding on to her wrist. But what happened after that, she landed on (the ground) after he pulled her down. I was standing on the rock beside her (shows that she was on Milah's left) before she fell. The court official was also on the rock.

Izaan pulled Milah and Milah dropped on her haunches below the rock. Then Izaan went back up to the rock and Milah tried to stand up but she did not manage to go up. Izaan went off the rock and pulled her by one hand and she was being dragged along. Before she could go up the rock, Izaan went down and grabbed her by her arm, pulling her. She said "No! No! No!" She was pulled from there to there (about 10 to 12 feet).

They had to stop after 20 feet because there was a fallen tree on the path. Milah was resisting being pulled. So, there was a fallen tree there and they stopped there and Milah managed to stand up and along the way, there were branches of trees and she was in pain because the branches were hitting her body.

Because she was wearing a sarong, she tried to step over the branches but she couldn't because of her sarong and at the same time because Izaan was pulling her. Izaan said "I'm pulling you away because I want to bring you to jail -

you are too outspoken.”

Curiously she did not mention a pistol being pulled out although that would have been noticed and would have been brought out early in evidence. The Panel had to ask her if she saw anything unusual and she replied *“I only saw Izaan dragging. I saw the tree and the branches that were poking Milah all over her body. At that point where he stopped in front of the tree which had fallen, Izaan said to Milah, ‘If you are stubborn, I am going to shoot you and he pulled out his pistol’”*. When she was told by the Panel that other witnesses had said that ASP Mohd Izaan had pulled out the pistol after he came down from the rock, her answer was *“Maybe they could not recall the whole incident – I recall it happened at the fallen tree”*.

Malandi’s evidence

The husband of Milah, Encik Malandi Bin Tanor (Witness 5), gave his version. He said that his wife was talking a lot. Izaan went near her. He said she was on top of the rock and Izaan was standing near the rock. According to him, Izaan accused Milah of being stubborn. He then pulled Milah down from the rock and she fell down. In addition, Izaan said, *“You are stubborn, and you speak a lot and it is better for you to go to the lockup.”* Apparently, Izaan then gripped her upper arm very tightly, and dragged her. She was lying on the ground and she was dragged. She was dragged for 30 feet and over dead branches. And then she was surrendered to another policeman. On the matter of the pistol, he said ASP Izaan surrendered Milah to another policeman near a log and told her *“If you don’t follow, I will shoot you”*. He said this and drew his pistol.

Other evidence

As against all these versions, evidence also came from an advocate and solicitor Puan Peggy Liow Vui Kun (Witness 7), Encik Lo Fung Ming (Witness 6), a legal clerk attached to the Company’s solicitors and Puan Betty Pang Kon Khyun

(Witness 11), the owner of the firm of surveyors appointed by the Company to survey the disputed land.

Kindongan's evidence

Strangely, Encik Kindongan (Witness 8), the bailiff, who was in the midst of the incident, said he did not see anything although he was identified by virtually all the relevant witnesses to have been there.

Lo's evidence

According to Lo Fung Ming, Milah was sitting down on the rock while Kindongan was explaining the order. As she tried to get up, ASP Izaan signaled for her to sit down and somehow Milah fell down - she slipped down. There were 15 or 20 villagers on the rock. She slipped and ASP Izaan tried to help (pull) her up. Milah was sitting at the side of the rock. ASP Izaan tried to help her up and she pulled at his shirt and two buttons came undone. ASP Izaan took out his gun, adjusted it and then buttoned his shirt and quickly put his gun back to his waistband.

Peggy Liow's evidence on the pistol incident

Peggy (Witness 7), the lawyer, saw a tussle between Milah and ASP Mohd Izaan but did not see how she got to the ground. She also saw the pistol incident. Her evidence is as follows -

We went on to a ridge which was on higher ground from where the kampung folks were originally. My impression was they spotted us right away because they were shouting and a group of them, as I said, climbed up the hill and got onto this rock outcrop.

At times I was near the villagers (about six feet away from the rock outcrop). At times I would move further away. 15 to 20 of them faced ASP Izaan and they were shouting. Basically they were protesting. At times their voices were raised.

There was a woman who is the wife of Malandi (ie: Milah). She was more vocal than the rest of them. I was moving around a bit - I did not want to get too close. I did not see any weapons. I don't remember who told me that the villagers might have "parangs".

I was maybe some six to eight feet away. Milah was at one time shouting at him (ASP Izaan). She pushed him. The villagers got excited, like they wanted to help her. I was at the side in between Izaan and villagers, six to eight feet away. I saw a tussle between the two of them. Now, I got to be careful here because I remember specifically it was not Izaan pushing her. She sort of made some protests, so she pushed him and then he sort of maybe fell off balance, and then in that he grabbed her, and then the two of them were grabbing each other. (Upon seeing this) people behind her were getting agitated, so I moved away, about 20 feet away. I wanted to be near to Rama (another lawyer from the firm) who kept a very safe distance away.

At about 20 feet away, I was looking at the villagers. I had a frontal approach. Izaan had his back to me. I saw he had his pistol out in his right hand. He was not pointing it at anybody, I remember very clearly. He was standing...he held it with his arm bent and stretched to the side. He was standing then. It was a matter of seconds and he put his gun back. Milah was in front of him, but I can't remember whether she was on the ground or not. I saw that his jacket was in disarray, not neat. Before he took out his gun, there was a tussle, that's why I moved away from the group.

This woman in the blue head scarf (ie: Milah), she was objecting very vocally. Izaan was standing on the ground facing the rock outcrop and the lady in the blue scarf was on the rock which was about two feet above the ground.

There was pushing to and fro between Izaan and Milah. She was loud and she said she would not allow the bailiffs to do their work or words to that effect.

He (ASP Mohd Izaan) was quite alone. His men were outnumbered by the villagers. After I saw him with his pistol, and within seconds, he put it back. Subsequently the kampung folks became quieter, as compared to before the gun was taken out. Before it was taken out, they were very noisy.

He also arranged for Milah to be escorted down the hill. I did not see Milah being dragged. She had resisted, I can't remember, but maybe one or two police officers had to escort her down. I did not see her being dragged.

Earlier on, I did not see her fall. To be fair, I don't know how she got down (from the rock). I might not have seen certain things within the seconds it took me to walk down. (But) I remember she was escorted down (the hill) held by her arm or shoulder. She still resisted.

Betty Pang's evidence

At that time I was standing about 10 feet away from where the villagers, Izaan and the bailiffs were standing. Izaan, the bailiffs and the villagers were on the rock and Milah was right in front of Izaan. It was around 12 to 12.30 noon.

Suddenly I heard Milah screaming, she said, "Kalau kamu paksa mau ukur tanah ini, biarlah kamu langkah mayat kami", and she started pushing Izaan.

This was not caught on my camera. Izaan was standing by the side of and on top of the rock with Milah in front. As Milah pushed him, he dropped from the rock. He lost his balance. I saw Milah pushing Izaan and Izaan stepping down. Milah pushed Izaan on the chest and Izaan caught her on both shoulders. Milah started struggling. She caught hold of Izaan's shirt (demonstrates by holding the front of the shirt of a person standing in front of the witness). Because of the struggle, both of them came down but they did not fall flat on the ground. They were standing.

I saw Izaan's buttons fall off. Izaan was holding on to her shoulders and both came down on their feet. The rock at the place was about two to two and a half feet from the ground. The area where they landed on their feet was about two to three feet wide and there was another drop, a depth of four to five feet. I saw Izaan - his hands were free and he used them to adjust his shirt. He took out his pistol and looked at it and then, he put it back. He took it out and checked it. I can see clearly, very clearly that the pistol was pointing to the ground and not to Milah.

Betty Pang also said she did not see Milah being dragged.

ASP Mohd Izaan's evidence

Finally, there is the evidence of ASP Mohd Izaan (Witness 13), the person alleged to have used improper force and to have allegedly pointed a pistol at Milah. First, he sketched the scene before the incident,

So the villagers went to the bailiff and I saw some of them talking to him. At the same time I saw some kampung folks going to the surveyors who were working and shouted at them to stop. It was at around this time that

the bailiff climbed on to the rock together with some of the villagers. I could hear the bailiff explaining the court order to them in Dusun.

We entered the land together with the lawyers, bailiffs and surveyors at about 11.00 am maybe. I could see that the people were talking to the bailiff. They were arguing with him. I could see he was losing control of the situation. The people were talking and shouting at him and he appeared to be at a loss for words.

Then he explained his role in the incident -

I had to step in and I spoke and I said that this is a court order and they have to follow the court order. So they were saying that they are appealing the case, the company has no right to take the land and they have no right to survey the land at that time. I explained to them that even though they are appealing, but if there is no order from any court to stop the repossession, then they have to abide by it.

I also told them that if they were not happy with it, they have to refer it to their own lawyer. But the people still did not want to listen. They were still insisting that the land is theirs and nobody can take the land away. The atmosphere on that rock was a bit chaotic where everybody was trying to talk at the same time.

There were people around the rock and they were voicing out their views. Eight to 10 people were on the rock. I was trying to calm everybody down. I told them whatever their feelings are, they still have to respect the court order. How I went about this was to talk to one person at a time. Slowly I managed to calm down a few of them.

ASP Mohd Izaan then explained his encounter with Milah and what he decided to do with her -

Then I come to a lady whom later I found out was called Milah. When I tried to explain to her, she did not want to listen. In fact she got angrier and she even accused me of working for the Company. She accused me of being corrupt and even stated that she would rather die before the land is taken away from her. At that time I made the decision that if I were to allow her to still be there, her actions might instigate or encourage the others to start getting violent. So I told her "You please calm down, please don't shout. Can you please follow me?" Everybody was still talking. I spoke loudly but not in anger. When I told her I wanted her to follow me, she became even angrier and started saying "Kalau mahu tangkap saya ka, tangkaplah, bawa pergi balai".

I said, no, I wanted her to follow me. At that time she started moving towards me while saying those words. I had to step backwards so much so that I stepped off the rock I was standing on.

I carry my firearm tucked into my waistband on the left side, the same way I am carrying it now (stands and demonstrates). I was wearing a bush jacket uniform like today. The reason I carry it tucked at my waistband is because if I were to use a holster, it would be very conspicuous...

By placing my gun tucked into my waistband, any movement would cause the gun to move up and down.

ASP Mohd Izaan explained that at the time he was stepping off the rock, his gun came loose. He said that he could feel it was going to drop and he put his hand onto his gun. He *"took it out and re-inserted it"*. On further questioning by the Panel, ASP Mohd Izaan stated that Milah had grabbed the front of his

uniform and this was before he stepped down from the rock. He stated that when he was moving backwards and there being no space left (behind him), he put his palms out on to her shoulders to stop her from moving towards him and stepped off the rock. His intention was to stop her from advancing. A series of questions were put to the ASP by the Panel and the questions and his answers to them are set out below-

Q: When you stepped down you did not hold onto Milah?

A: No. More or less the thing happened at the same time. I stopped her and stepped off. I didn't want her to advance any further from that point.

Q: Did you stop her?

A: The actions were continuous. I stopped her from advancing further and at the same time I stepped off the rock.

Q: Did you use force on her when you stopped her?

A: No, it's not that I pushed her back or was pushing her away or anything like that. I just didn't want her to advance any further. I just put up my hands, touched her so that she will stop there.

Q: How did she fall?

A: Fall from where?

Q: Fall from the rock.

A: She did not fall from the rock.

Q: [Reading Milah's testimony - "...You pulled her down from the rock..."] Is it possible that in the process of trying to save yourself, you fumbled when stepping back, you sort of held on to her and brought her down, is that possible?...to prevent her from advancing, you said you held on to her, could that action have pulled her down too?

A: I didn't pull her down. I only held her to stop her, with my palms. I did touch her on the shoulders, just to stop her from advancing.

Q: ...in that process inadvertently could you have

caused her to fall? Because you had contact with her.

A: It is possible.

Q: Betty Pang (the surveyor) said you caught her on both shoulders? What do you have to say to that?

A: ...

Q: ...

A: It was possible. As far as I can recollect, I just held her on the shoulders.

Q: ...

A: ...

Q: You held her shoulders, why?

A: Yes, I held her shoulders, one, to stop her from advancing and maybe for me not to lose my balance as well.

Q: You said in the process she could have fallen?...

A: ...yes. What could have happened at the beginning was, as she was coming nearer and nearer to me, I put my hands/palms to stop her from advancing. But later when she kept on coming and when I was going to step off the rock, I could have held on to her shoulders to hold on to my balance. And she could have come down at the same time.

Q: ...

Q: Did you actually hold her shoulders? Because this will be shown in the medical report. You did it, maybe?

A: I can recollect I did put up my hands to stop her from advancing towards me but at the moment when I was stepping off the rock, at the same time, I was thinking of my balance.

Q: What 'thinking'? Are you quite sure?

A: I believe I could have grabbed her just to get my balance.

Q: ...

A: ...

Q: *Where was she? Where was Milah?*

A: *She was at that time on the ground in front of me.*

Q: *Because she had already fallen?*

A: *Yes*

Q: *Because she had fallen?*

A: *...I believe she just landed on her feet, she didn't fall down.*

Q: *...*

A: *...*

Q: *When she grabbed you, you said she grabbed your shirt. It was on the rock right?*

A: *Yes*

Q: *When she grabbed you by your upper jacket, what happened then? You pushed her away?*

A: *I just put up my hands.*

Q: *Was there any damage done to your bush jacket?*

A: *My bush jacket? The buttons became undone. This thing can be easily undone... But the buttons were secure (intact). ...The buttons did not fly off. I can remember two buttons (came undone).*

Q: *Then what happened?*

A: *As I was mentioning, after I stepped off the rock, I put back my pistol and Milah was standing in front of me. I took hold of her hand.*

Q: *Which hand?*

A: *I can't recall. I told her to follow me. I walked about 10 to 15 feet to hand her over to Lance Corporal Ravi...*

Q: *...when you asked her to go with you, was she agitated?... She had grabbed you...Now, did she gently come along with you or did she resist?*

A: *She did resist.*

Q: *How? To what extent? Demonstrate please.*

A: *I can't remember which hand. Some force, slight force, not going along easily.*

Q: *So you used force to pull her?*

A: *Some force... Ravi was there, she was walking all*

the way... She did not fall.

Q: Milah said she was dragged.

A: No, she was walking.

Q: The evidence given is very clear from some that she was dragged. Can you explain?

A: They are lying. I never did drag her. She walked.

When the Panel visited the site together with Milah and ASP Mohd Izaan, evidence was taken from both of them. The Panel has already mentioned the relevant aspects of Milah's evidence earlier. The evidence of the ASP taken at the site was this -

And she started to advance towards me. Then I moved backwards. She still advanced. I tried to stop her. We moved all the way to the edge of rock (as pointed out earlier by her). She stood in front of me. I was trying to hold her back. I put my hands on her shoulder. She had already grabbed my uniform. Since she was advancing, I had no choice and I stepped backwards. I was trying to stop her and maybe because I was losing my balance, I could have grabbed her.

At this stage my pistol came loose and I put it back in my waistband. I held her wrist and brought her to the beginning of the slope. I am not clear, from rock to this place, whether she was on the ground but at the edge of the slope, she was standing (about 10 feet from rock). This is where Ravi was standing and Ravi took over and brought her (down the hill). There was no other occasion when I pulled out my revolver..

Assessment of evidence

Looking at the evidence, it was revealed that the villagers were extremely unhappy that the Writ of Possession was to be executed that morning. They had claimed that the land was theirs and that it had been unfairly given to the

Company. They had thought that the appeal against the decision of the High Court giving possession to the Company was being pursued.

It has to be pointed out that the lawyer (Witness 2), then acting for the villagers in the Company's claim for summary possession against them, told the Inquiry that although a Notice of Appeal against the decision of appeal had been filed, there was no Memorandum of Appeal filed to pursue the appeal and there had been no application filed to stay the execution of the Writ of Possession. It was quite obvious that the villagers were in the dark about this development.

Although the bailiff had explained to them that he had to execute the Writ of Possession and that they had to move out, it did appear that the bailiff had not effectively explained the situation to them.

The bailiff was not making any headway with the hostile villagers while executing his duty and it is quite clear that as a result, ASP Mohd Izaan took over the role of the bailiff in explaining the Writ of Possession. This was mistaken as he was acting over and above his actual role. He was thus perceived as being associated with the Company. As was pointed out earlier, the police were seen coming to the site together with the manager of the Company as were the bailiffs. In fact, ASP Mohd Izaan said that the villagers accused him of being corrupt and being in the pay of the Company. ASP Mohd Izaan should not have acted beyond the scope of his duties, bearing in mind the words of his superior officer which he said had been imparted to him to *"strictly only to give security coverage to the court staff and any other person enforcing the order...The Police is not be to be involved in any demolition of structure or eviction of people"*.

In the context of the foregoing, it can be seen that the villagers were restive over having to vacate the land. There were vehement protests over the eviction and they were unhappy with the police's active role there and with ASP Mohd Izaan's intervention. An unhealthy situation was building up. The group of unhappy villagers protested loudly and there was no headway being made to calm them down. Milah was the most voluble and the loudest protestor. From the evidence as it appears, and it is reasonable to believe and infer, that ASP

Mohd Izaan tried to defuse a bad situation. He tried to isolate Milah from the rest of the villagers to restore calm. It will be remembered that the nervous lawyer, Peggy Liow, did not want to get too close to the crowd. The ASP himself was afraid that Milah's action might instigate or encourage the others to get violent. Under section 103 of the CPC, it is said that "*every police officer may interpose for the purpose of preventing and shall to the best of his ability using all means to prevent the commission of any seizable offence*". There was also evidence that the villagers had chased some of the surveyors away before this. In the heat of the moment, with the grist of anger arising from the belief of being unfairly and unjustly deprived of their property coupled with the strong words of an agitated person, all these factors could have inflamed the restive crowd and cause a breach of the peace in the context of the confused situation at the site.

Applicable Human Rights Principles

For the above allegations (Allegation 1 and 2), Article 8(1) of the Federal Constitution serves as a suitable starting point whereby it is stated that-

All persons are equal before the law and entitled to the equal protection of the law.

This cardinal principle is also enshrined in Article 7 of the Universal Declaration of Human Rights which states that-

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Thus, from the human rights perspective, on the basis that everyone is entitled to equal protection of the law and as the Royal Malaysian Police exists as an organ of the State, inter alia, to maintain law and order and to preserve peace and security as provided by section 3(3) of the Police Act 1967, the Police has a positive obligation to help secure a safe society where the rights of individuals

and communities are properly and equally safeguarded and balanced. Indeed, it is heartening to note that the Royal Malaysian Police (currently under the Internal Security Ministry) in their website (www.rmp.gov.my) has stated that one of the aims of the concept of “Friendly Policing (*Khidmat Mesra*)” introduced by the Ministry of Home Affairs is to ensure that the police is seen by the people as an enforcement agency that is “fair, trustworthy and sympathetic and that every police officer is a protector of their life and property.”

Having acknowledged that the Police has a positive obligation to protect the rights of individuals and communities, for the purposes of this Inquiry, it is necessary to consider two main issues from the human rights perspective:

- (i) Can the Police use force when carrying out this duty, and
- (ii) If so, to what extent may force be used?

With regard to the first issue relating to the use of force by the Police, the Panel refers to Article 3 of the Code of Conduct for Law Enforcement Officials (“Code of Conduct”) which states 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 Article 3 of the Code of Conduct elaborates the provision further for it states that-

This provision emphasises that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorised to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

Thus, it is clear from Article 3 of the Code of Conduct and its Commentary that the Police may use force in the course of discharging its obligations to protect

the rights of the people provided that it is necessary to do so. This means that the Police-

- (i) Should, as far as possible, use force and firearms only as a last resort as stated under Article 4 of the Basic Principles; and
- (ii) Shall not use firearms against persons except under extreme circumstances as indicated under Article 9 of the Basic Principles.

Further, guided by Article 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“Basic Principles”), the Panel is of the opinion that whenever the lawful use of force and firearms is unavoidable, the Police shall-

- (i) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (ii) minimise damage and injury, and respect and preserve human life;
- (iii) ...
- (iv) ...

The Panel is of the view that the failure to meet the requirements of the principles of necessity and proportionality when using force, which even the court has recognised in *Mahmood v. Government of Malaysia* [1974] 1 MLJ 103, may lead to the violation of Article 5 of the UDHR which states that-

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Based on the principles and cases stated above, the Panel came to the following findings and recommendations on the allegations (Allegation 1 and 2) of excessive use of force by the police-

Findings on Issues Relating to Allegation 1

That at one time Milah and ASP Mohd Izaan were on the rock and that they had an argument, cannot be gainsaid. His intention to isolate her from the crowd was also clear. How she got down to the ground is not clear, but it does appear at one stage that there was a tussle between Milah and the ASP. And from the evidence of Anibah, a straightforward witness, she did see the ASP pulling Milah and Milah falling down although she did not know which hand he pulled her by. This action would have accorded with the ASP's intention to isolate her from the rest – i.e. by leading her away from the crowd. Milah in her evidence at the site did concede that the ASP did not actually pull her down but that at the edge of the rock, the ASP released her wrist as she was about to fall stating, *“Maybe Izaan was afraid of stepping on me, that is why he released my wrist”*. The point is that ASP Mohd Izaan did not pull Milah down to the ground, or if he did, it was accidental and unintended.

In regard to Allegation No 1, there are two aspects. The first aspect is the allegation by Milah that she was pulled down from the rock, the second, the allegation by Milah that she was dragged by ASP Mohd Izaan for some distance.

In regard to the first aspect of the allegation, it is the finding of the Panel that though ASP Mohd Izaan intended to lead Milah away from the other villagers on the rock and that he did pull her by her hand, he did not deliberately pull her down from the rock.

As for the second aspect of the allegation, Milah stated that she was roughly handled by ASP Mohd Izaan (although originally she said she was dragged, subsequently her evidence was that she was pulled by ASP Mohd Izaan away from the rock on her haunches without her resistance until she was handed over to another policeman). The evidence of Kimuah was that Milah was pulled

by ASP Mohd Izaan on her haunches (which she demonstrated by raising her behind and resting it on her feet) and that Milah resisted. ASP Mohd Izaan conceded that he used force to pull her away from the rock and Milah was resisting being pulled away. From the evidence of the doctor, Dr. Helmy Harahap (Witness 10) who examined Milah on 23.05.03, she only complained of tenderness on the posterior part of her left shoulder and also on the left posterior chest wall. The doctor's finding was that there was no bruising. He said she did not complain of pain on other parts of her body.

Dr. Aung Kyaw Khaing (Witness 14) who examined Milah earlier, (i.e. on 22.05.03 in the afternoon), said that Milah complained that she was hit on the nape of her neck. He found tenderness but no visible physical injury on the left side of the back of her chest and her left shoulder. She also complained of headache and shortness of breath. Both doctors could not comment as to how the injuries complained about could have been sustained as they were non-specific injuries.

It stands to reason that if she had been dragged flat on her back or her side, over rough ground, injury would have been shown in those areas of her body. It also has to be noted that at the Inquiry, she did not complain of being hit on the nape of her neck. But the evidence of the doctors does accord with Milah's evidence that she was pulled by her left arm.

It is therefore the finding of the Panel that Milah was not dragged along the ground by ASP Mohd Izaan but that she was pulled away from the rock by him by her left arm and that at some stage or another, she could have been in a squatting position. It is also the finding of the Panel that she resisted being pulled away before being handed over to another policeman some 20 to 30 feet away.

It is also the Panel's conclusion that although ASP Mohd Izaan had to use force to pull Milah away as she was resisting, yet disproportionate force was used.

To this, the Panel would like to refer to and concur with the wordings of *Hanna J* in *Daniel Lynch v. Fitzgerald & others* (The Irish Reports 1938 at page 402) whereby it was said that -

By the law of this country, everyone is bound to aid in the suppression of riotous assemblages. The degree of force, however, which may be used in their suppression depends on the nature of each riot, for the force used must always be moderate and proportioned to the circumstances of the case and to the end to be attained.

Recommendations

It was earlier observed by the Panel that it was the firm of solicitors acting for the Company that unilaterally requested for police assistance for the bailiff in the execution process. The Deputy Registrar of the High Court, Kota Kinabalu, was not aware of the police assistance having been requested directly; she should have been the proper person to request for police assistance for the bailiff. According to lawyer Peggy Liow (Witness 7) whose firm had requested for police assistance, *“We felt that with 76 acres to repossess, we could not do it with just the bailiffs and the surveyors had refused to go onto the land again without some sort of protection for themselves and particularly, their workers.”* As it turned out to be, the police were seen accompanying the manager of the Company, the lawyers, surveyors, workers and bailiffs to the scene. Police assistance is not for the Company’s lawyers, surveyors and workers but for the protection of the bailiff in enforcing the Writ of Possession.

It was ASP Mohd Izaan who took an active role in the eviction proceedings. It is to be noted that ASP Mohd Izaan in fact requested the police at Pondok Polis Kampung in Kundasang on 21.05.03 to tell the villagers to be present at the site on 22.05.03. ASP Mohd Izaan explained this strange request to the villagers to be present; he said- *“They (the villagers) only had a vegetable plot at the disputed land and I was of the opinion that if we do not inform them of our coming, they might not be there to receive the notice.”* He said he was afraid that

the bailiff may not have informed the villagers about the notice. The Panel cannot see any good reason for ASP Mohd Izaan for having taken that action and usurping the role of the bailiff. It was for the land owner to take legal action on issues of trespass in the future, if the matter of trespass did arise. Furthermore, the request for the villagers' presence and consequently the presence of a large number of villagers on 22.05.03 made the bailiff's work of explaining the Writ of Possession more difficult. It was the ASP's first experience as a police officer in an eviction process. It may have been well intentioned, but the villagers misread the role of the police in the eviction proceedings and quite clearly they felt that the police were being partisan.

The Panel would recommend for the police, in future, to take steps not to give the perception through their actions that they are partial, however misconceived the perceptions are. The police, led by ASP Mohd Izaan, walking together in the company of the Company's manager (Encik Lam) and the Company's entourage of lawyers and workers from Encik Lam's house does not give the appearance of impartiality. Again, the police should have stayed aloof when the bailiff explained the effect of the Writ of Possession. A brooding police presence is far better than one that is characterised by zeal of action or conduct to do its duty that is misguided, however well intentioned it is.

On the matter of ASP Mohd Izaan leading Milah away from the crowd in order to isolate her and to prevent a breach of the peace, ASP Mohd Izaan cannot be faulted for having used his judgement in assessing the situation and for using force to pull her away since she was resisting being taken away.

However, the ASP is a very tall man and Milah is a woman of small stature. Thus it does appear that disproportionate force was used by him on Milah. It is recommended that in all cases where police assistance is requested by the court, women police personnel be included in the team who can render assistance where it is anticipated that those who will be evicted will include women.

Finding on Allegation 2

On the allegation that ASP Mohd Izaan had pointed his pistol at the villagers, nobody in evidence alleged that. Quite clearly, the allegation was not made out. However, on the evidence by Milah that he drew his pistol and threatened to shoot her, there was the evidence of a fairly straightforward though nervous lawyer Peggy Liow who saw ASP Mohd Izaan standing on the ground (in front of the rock) with his back towards her. She had, before that, seen a tussle between the ASP and Milah. She had stated, *"I did not see her fall - to be fair I don't know when she got down (from the rock)"*. Coming back to the earlier point, she said she saw ASP Mohd Izaan's back towards her - he had his pistol on his right hand, not pointing it at anybody, holding it with his arm bent and stretched to the (right) side.

The evidence of Betty Pang on the pistol was that after both Milah and the ASP landed on the ground after the 'struggle', the ASP adjusted his shirt (jacket), took out his pistol, looked at it and put it back.

The evidence of Lo Fung Ming, except as to the details of the incident, was almost similar, that ASP Mohd Izaan took out his pistol and adjusted it before quickly putting the pistol back to his waistband.

The Panel finds that the version of ASP Mohd Izaan adjusting the pistol at his waistband under the jacket when it came loose during a tussle, as highly credible and can be accepted as what most probably happened.

Thus, although Principle 4 of the Basic Principles for the Use of Force and Firearms for Law Enforcement Officials allows for the use of firearms in the event that non-violent means employed are ineffective or do not bring about the desired result, the Panel finds that since a firearm was not used on this occasion, this issue does not arise.

Allegation 3 - **Villagers prevented from making a police report by the same officer who called them to his room and frightened them from making the report.**

Malandi's evidence

It is quite clear from the evidence that Malandi (Witness 5) had to go to the Ranau Police Station twice before he could lodge a police report (Exhibit 2, Appendix 12) relating to the Desa Monteki incident that morning.

Malandi said he did not succeed in making the report the first time he went there with some villagers. He was instead shunted to see ASP Mohd Izaan after the policeman at the Inquiry Office at the Police Station telephoned the ASP. The reason given by the policeman was that he had to 'consult' the ASP. ASP Mohd Izaan did not deny the fact that he saw Malandi and some villagers. He said he asked Malandi what his report was about and Malandi replied that his wife had been hurt by the police during the eviction process by the police earlier that morning. ASP Mohd Izaan said he told Malandi that as far as he knew, Milah felt giddy and he had presumed that it was high blood pressure. He said he talked to them for 20 minutes about the land dispute and explained to them the avenues they had if they were not satisfied with the court order. He denied deterring or intimidating the villagers from making a police report and he incredulously suggested that he thought *"they had made a report already and he told the officer he wanted to see them!"*

Siti Rahayu's evidence

Malandi then went to the police station the second time upon being encouraged by his son Walter and Walter's wife, Siti Rahayu Bte Mohd Hashim (Witness 30). Siti Rahayu, a Mathematics Lecturer at University Malaysia Sabah (UMS) gave clear, incisive and formidable evidence as to what transpired the second time when Malandi, herself and Walter went to the Ranau Police Station to

make the police report. She went there after she was informed that the villagers were asked to go to ASP Mohd Izaan's room where he told them there was no use for them to make the report as *"nothing would be done."* So the report was not made. She then went to the counter of the Police Station and spoke loudly, *"Where do I lodge a police report?."* One policeman asked her what report she wanted to make and she told him it was about 'rough handling' by the police.

I told him my mother-in-law has been hospitalised due to harsh treatment by the police. I informed him that the incident happened at Desa Monteki that morning. I think I said something else but I can't remember...

Siti Rahayu then gave evidence of the telephone call the policeman made to somebody -

The policeman picked up the phone and made a phone call and I observed and listened to what he said "Hello Tuan, ada orang datang nak buat laporan". He stopped to listen and he said, "Kes pagi tadi Tuan", Then he stopped to listen and said, "Baik Tuan.

Siti Rahayu then related what took place after the phone call,

Then I was asked to go to the back to see this particular Tuan. At that time I did not know who this Tuan was. I refused to go because I knew that this Tuan would try to intimidate me like before. I was very angry at that time and I asked the policeman, "Di mana buat laporan polis? Di kaunter kah atau di belakang?" He did not answer but he told me to meet "my Tuan" as he wanted to speak to me first - I refused.

I told him I intended to make my report here at the counter no matter what. One of the police officers, Michael, if I am not mistaken, said "Bertolak ansur-lah sikit (Please be tolerant)". Then I got angrier. I said "Kamu dah buat mak mertua saya macam itu pun, masih nak suruh saya bertolak ansur?" (You have made my mother-in-law like that, and you still want me

to be tolerant?). I said a lot of things. I was so angry. I said the Police are there to serve the public. I gave them some lecture. I told him if the Tuan wishes to see me, ask him to come here and not me going over there.

I told the policeman "I know what your Tuan will try to do". I know he wants to make me afraid just like what he did to my father-in-law or uncle. The policeman then said, "It is not like that. He wants to have a discussion". Then I asked him, "To make a police report, do you have to discuss first? For everyone who wants to make a report does he have to go behind first?" Azamuddin sat down. Michael was the one who interacted with me more...and Michael made a gesture with his head swinging to one side to Azamuddin.

I forgot to add, when Azamuddin was making the phone call earlier, I noticed that his hands were shaking...he took out a book; slowly he opened it with his hands shaking. In front of the police officer were my father-in-law and husband. I was in front of Michael and I was holding my daughter. My father-in-law's Malay is not good so my husband translated from Dusun to Malay and my husband wrote the report for my father-in-law. My father-in-law was talking and my husband did the writing. It took quite some time.

She then related the appearance of ASP Mohd Izaan at the counter -

During the process there came a tall and lanky man, actually Izaan, in plain clothes. He stood behind Azamuddin. He held his left arm akimbo and with the other, he pointed at the paper which was being written by my husband "Laporan ini untuk laporan sahaja ke atau untuk tindakan?". That time I did not know it was the ASP who treated my mother-in-law harshly and I answered him nicely "Mana yang lebih baik, tuan?" because I don't know the procedure, so I asked him nicely, "which is better?"

More or less, his reply was like this “Kalau laporan, kita buat laporan sahaja dan kita akan simpan untuk rujukan (for record purposes)”. I don’t remember what he said about “tindakan”. I am not sure whether it was me or my husband who said it was for rujukan (record purpose) and the officer looked satisfied and he left.

Applicable Human Rights Principles

In this regard, the Panel is of the view that, the ability of a person’s right to lodge a police report forms an important right and in many instances forms the first step towards the fulfillment of the right to equal protection of the law.

It is imperative to appreciate the clear wording of section 107(1) of the Criminal Procedure Code which requires that all oral information relating to the commission of an offence given at a police station **must** be reduced in writing by the police officer for it states that -

Every information relating to the commission of an offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant. (Emphasis added)

Using the pertinent example of *M.K Velayudhan v. Sub-Inspector of Police, Irinjalakkuda and Ors* (1998) CRI. L.J 1187, the Panel wishes to concur with the findings of the Kerala High Court in India which said that -

...the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information (Emphasis added)

The importance of a police report cannot be overstressed.

In the High Court case of *PP v Mohamad Musa Amarullah* [2002] 1 CLJ 366 at page 372, it was held that -

In any case the first information report is the first recorded information to the police with regard to a particular offence and this report forms the basis, to

commence a full-throttled investigation which includes interviewing witnesses, recording statements, visiting the scene of the offence, taking cautioned statements, producing the accused before a magistrate to seek his remand and so on. (Emphasis added)

Thus, based on the important role that a police report plays towards the fulfillment of the right to equal protection under the law, the Panel is of the view that a police officer should not prevent a member of the public from lodging a report. Such an act amounts to a serious violation of a complainant's right to such protection.

Findings

The clear finding of the Panel is that the first time Malandi went to the Ranau Police Station the evening of 22.05.03, the officer in charge of the Inquiry Office refused to take the police report relating to an allegation of an offence of hurt being caused.

This is in contravention with the aforementioned section 107(1) of the Criminal Procedure Code which reads -

Every information relating to the commission of an offence, if given orally to an officer of a police station, shall be reduced to writing by him or under his direction and be read over to the informant

It is the finding of the Panel that ASP Mohd Izaan in using himself as a filter before the report could be lodged by Malandi, and on persuading or preventing Malandi from making the said report, was interfering with the right of Malandi to make the police report.

It is also the finding of the Panel that ASP Mohd Izaan had also tried to interpose himself as a filter on the second attempt by Malandi to make a report and that he failed to get Malandi to see him again because of the refusal of Malandi's son and the son's wife to accede to that request.

Recommendation

The right to make a report on the commission of an offence is given by law and it cannot be refused by any police officer in any police station nor can the right be whittled down by the informant being persuaded or otherwise not make the report. Any police officer who refuses to allow an informant to make a report should be disciplined.

Matters relating to the Arrest on 27.05.03 and the Remand thereafter

On the night of 27.05.03, 18 persons were arrested at Kampung Kauluan in respect of police investigations into an excavator having been set on fire and of another vehicle having been turned on its side. These persons were detained at the Ranau Police Station. 14 men were kept in one cell (one was released on the second day) and four women were kept in another cell. The villagers remained in their respective cells after the remand order for the entire period of remand.

The remand order was for 14 days. It was made by the District Officer of Ranau in his capacity as a Second Class Magistrate under section 82 of the Subordinate Courts Act 1982.

As has been pointed earlier, Suhakam (and therefore the Panel) cannot go behind the said order.

However, having said that, the Panel can inquire into why the villagers, although remanded, were not released earlier having regard to all the circumstances of the case.

Allegations of Breach of Human Rights Principles

The allegations of breach of human rights principles relate to the indignities and inhumane treatment the villagers claim they suffered in the lockups or cells that they were kept in and during the period of remand.

Each of the cells that the two groups were detained in was about 11 feet by 12 feet. There was a low wall, waist high, near one corner of the cell. It delineated the rest of the cell for the space for the open squatting toilet and a tap near and above the toilet.

This space is opposite a blank part of the wall which separates the cell from the corridor outside. This wall had a grille barrier near the other end.

Each cell had a wooden platform for prisoners to sleep on.

It has to be pointed out that Ranau has a new police station and that new cells on a new site have replaced the old cells since September 2003.

The villagers have listed 12 allegations of human rights violations (listed as (a) to (l)) under paragraph 4 of their Memorandum which are repeated below.

Allegations not dealt with

The Panel did not deal with those listed under subparagraph (b) (the order of 14 days remand but the Panel examined why the villagers were not released earlier) and subparagraph (i) (being interrogated on irrelevant issues) in the Memorandum.

In regard to subparagraph (b), it has to be pointed out again that the Panel is not competent to question the validity of the Order of Remand. As far as subparagraph (i) is concerned, since the villagers have been charged in court, the matter of what they stated to the police during police investigations or what was asked of them is part and parcel of the investigation process or what was asked of them would be delving into the merits of the two cases pending in Court. The voluntariness of their cautioned statements can be challenged in court and it would not be proper for this Panel to delve into what they stated to the Police in their statements.

Allegations raised in the Memorandum and other Allegations raised in Evidence

For the purposes of this report, the allegations listed in the Memorandum have been taken together with other allegations which arose during the course of evidence being advanced. They are as follows -

- 1) On the denial of access to family members (subparagraph (a)),
- 2) On the denial of access to medication / medical officer (allegation raised in evidence),
- 3) On the detention of a 70 year old detainee who could not speak Malay (subparagraph (c)),
- 4) Detention in an over-crowded cell (subparagraph (d)),
- 5) On allegations that the villagers were made to sleep on the bare cement floor and were not given any blankets while being remanded in the police lockup (subparagraph (e)),
- 6) On the alleged denial of the right to pray (subparagraph (f)),
- 7) On allegations that the toilets in the lockup were extremely dirty and malodorous (subparagraph (g)),
- 8) On improper interrogations while under remand (subparagraph (h), (k) and (l)),
- 9) On the fact that their clothes and spectacles had to be taken off (subparagraph (j)),
- 10) On the allegation that there was insufficient food and drinking water supplied (allegation raised in evidence),
- 11) On the allegation of lack of exercise (allegation raised in evidence).

In addition, the Panel also considered other issues which were not raised in the Memorandum but which were highlighted by the villagers in the course of giving their evidence. These include:

- i. Not providing a woman with sanitary towels although she was having her menstruation,
- ii. Toilets which were clogged up and where human excrement from the toilets had to be manually cleared in the women's cell,
- iii. Not provided with soap or other toiletries,
- iv. Muslim women were denied prayer attire.

Anibah's evidence

In respect of the cell where four women were detained, the evidence of Trainee Nurse Anibah (Witness 3) is instructive on the harrowing days spent in the lockup, of the delays in her statement being taken, and the illnesses of herself and her relatives which went untreated although medical treatment was requested for. She struck the Panel as being a straightforward, truthful and sincere witness. She said -

In the lockup I thought my statement would be taken that day but for several days nobody called me to make a statement. But we were told that if we cooperate, we would be released in two or three days. During my stay there I was very sad. My two aunties Domo, and Milah, and my mother Kimuah had colds and they asked for medicine but nobody gave them medicine. I don't remember who I asked (the sentries). We asked the pengawal lockup (they were on rotation) for the other three to be brought to a hospital but it was not allowed.

With regard as to why they were sick, she offered these reasons, pointing also to the state of the toilet, having to sleep on the bare cement floor without blankets and the old age of some of the detainees,

Maybe the colds were as a result of the toilet being blocked, we slept on bare cement and there was no blanket, no pillows except our own clothes. The smell was from the clogged toilet. There was no flush there, only a water pipe. They had colds and coughs. My mother is over 50 years old. Domo is over 70 years old.

She also talked about the refusal of the guard to provide her with sanitary pads,

My other request - as I was having my period... and I asked for Modest (sanitary pads) - nobody gave me any. I said that I had RM60 with the police and that they could use the money. They were not willing to help me. I let my period go just like that. There were no policewomen in the lockup except when we were brought to the District Office. They said the money cannot be taken out and that I have to be patient.

She also stated that they were not allowed any visitors. She had asked for her elder sister Pilisah Binti Duani (Witness 17) to visit her. Pilisah in fact went to the police station and her requests to visit Anibah and Kimuah were rebuffed with a sarcastic comment that if she wanted, she could join “*join them in the lockup*”.

Anibah also said she wanted to give her statement quickly so that she could be released earlier as they did not have enough food to eat. She continued about the poor quality of the food and the insufficient drinking water -

In the morning we had a hot drink and a pack of three pieces of biscuits, - it costs about 10 cents. Lunch - a plastic packet of rice costing about 50 cents - one piece of

chicken and two to three pieces of vegetables. The water was not enough as the cell was warm. We did ask to buy water. They did not let us do so. Liquid was given three times a day.

There were mosquitoes at night and their cell was not provided with mosquito destroyer.

The women suffered further indignities when performing their daily needs and even had to clean their cell. She said -

We felt that our dignity was adversely affected when we had to perform our daily needs. We bathed naked. They gave a change of clothes two or three times for the whole remand period of 14 days. We were not allowed to go out. Had to clean our lockup. We asked for a broom to clean the lockup.

At night, there were guards outside the cell. The door was a grille and the cell was not in full view of the Inquiry Office. But if one comes to the grille, they will be able to see us bathing. So, when we bathed or performed our daily needs, the others would shield us from view by standing at the grille.

On the performance of prayers she mentioned the requests of others for the prayer attire -

I did not pray as I was having my period. My aunties and mother did ask for telekung and prayer mats and they were not allowed. My mother prayed using whatever she had. We used our tudung in the cell (to pray). We are not satisfied with the way they treated us. We should be treated nicely but we were treated worse than illegal immigrants.

Evidence of Leef @ Anwar and Malandi Tanor

In respect of the male villagers, 14 were crammed into one cell. Leef @ Anwar (Witness 1), the son of Malandi and Milah, a university graduate from University Putra, and Malandi (Witness 5) gave cogent evidence relating to the cell where the male villagers were locked up. Their evidence was substantially similar to that of Anibah in regard to the conditions the villagers faced in their cell, such as coughs and colds because of the stench from the toilet, sleeping on the bare cement, the mosquitoes, inadequate food and drink, and the slow investigation process. Leef also complained of being supplied with *sotong* and prawn to which some villagers were allergic to, as well as not being supplied with soap or towel nor with toothpaste and toothbrush.

More importantly, Leef complained of the cramped conditions of the lockup where 13 villagers (on the first day of detention, there were 14 but one male villager was released on the second day) were placed in one lockup, *"The lockup was too small for the 13 of us. Maybe it was 10 by 12 feet."* (The Panel caused a measurement to be made of the dimension he pointed out and it was 11 x 12 feet). He also said in regard to sleeping conditions in his cell (for 14 days) -

We had to take turns to sleep. Too small. Those who felt sleepy went to sleep - some slept lying (down) and others sat on the floor. About eight people could sleep at one time - we slept on the cement without any mat.

None of us had a blanket. It was cold, there were mosquitoes and it was smelly. No pillows were provided..... Ranau is cold and windy.

He said he could not pray as the place was not conducive for prayer and it was dirty. Nor could they go for exercise. He did, however, receive just one visit from his wife.

Milah's evidence

As for the women, Milah corroborated substantially what Anibah had stated in her evidence with regard to the conditions of their cell and the period of detention. Milah also gave evidence that she took out human waste from the clogged toilet and put the waste into a plastic bag with her bare hands. There was no reason for the Panel to disbelieve her. She did state that they did tell the police when the toilet was clogged and that *"after that it was alright but it still clogged up periodically"*.

Kimuah's evidence

Kimuah (Witness 19, Anibah's mother) spoke of being asked to take out any outer layer of clothes that she may have on and she said that a male officer tried to look underneath her clothes to see if she had another layer of clothing. This was before they were placed in the lockup. There was no female police personnel there to attend to her.

General assessment of Allegations

Except for having to take off their outer layer of clothing, the taking off of the spectacles (Leef was told to do so), and not being supplied with toothbrush, all of which, the police explained, are prohibited in the cell for security reasons, the complaints of deplorable overcrowding (in respect of 14 male villagers in one cell), of dirty and smelly toilets which clogged up fairly often, of sickness and of requests for medical attention being rejected, of a request for sanitary pads being denied, of sleeping without proper bedding in cold Ranau, of insufficient food and drinking water, of women villagers being denied prayer attire though requested for, of lack of exercise, of investigations being slow, all these complaints have been made out.

The use of two cells for the villagers and overcrowding in one of them has been blamed on the lack of cells in the old police station. They were built in the

1970s and were only demolished in August 2003 for the rebuilding of the Police District Headquarters (according to the OCPD, ASP Teh (Witness 20)). There had been four cells but one cell was used for transient detainees, and another had a detainee who was probably mentally ill. Evidence was shown that the police did call the Public Works Department (PWD) to come and repair the clogged toilets. The Panel acknowledges that the physical condition of the cells may have been beyond the control of the Ranau OCPD. However, the point of the detainees not being released earlier and the reason they were denied basic amenities by the police were well within the purview of the relevant police personnel.

There was a general denial of the complaints by the police. The OCPD, ASP Teh (Witness 20) said that there would be a guard at the cell day and night and there were four shifts of guards on duty. He said that it was not possible for them to receive complaints and not report it, but it does seem strange these 17 villagers, 13 crowded in one cell and the outspoken Anibah and the voluble Milah and Kimuah in the other cell did not complain at all! The OCPD did, however, concede that if no complaints came to him, he would not have known about them.

The OCPD said that the food was supplied by a contractor (awarded the contract before he came to Ranau as OCPD) and he thought that the food was enough. One of the policeman also said that it was enough. Admittedly this might be a matter of opinion, but Milah, who did not appear to the Panel to have exaggerated about it, brought in a sample of food which did not appear to the Panel to be adequate. The evidence of other witnesses relating to the food was that they consistently complained of the inadequacy of the amount and the quality of the food. One policeman (Lance Corporal Polinuh (Witness 28)) brought a sample of what he said was supplied by the contractor but when Milah saw it, she scoffed that that was the amount given - she said that each detainee was supplied with only 1/3 of the amount given in the Police's sample of the food. The Panel believed what Anibah and the rest said, that the food supplied was inadequate in amount and not nutritionally balanced. As far as drinking water was concerned, the OCPD conceded that in between meals, the prisoners would not be given any water.

As for the regime of exercise for the detainees, OCPD Teh offered the reason that they could abscond if they were allowed to exercise outside the cells.

In regard to the lack of blankets, the OCPD said that there were a few (four blankets) and if they were requested for, it would be supplied to them. He also said that no blankets had been provided for in the newly built cells. The Panel found this strange. He also said there were no mats (to sleep on), but for health reasons the villagers could ask for them. He agreed that if there had been requests made but which were not communicated to him, he would not know about it.

The policeman who was on duty at the Inquiry Office (Witness 23, Corporal Rahisin), denied that the detainees made any complaints. Corporal Jumil (Witness 27) said someone complained of having menstruation and *“coincidentally a relative was visiting her and I informed her that sanitary towels were needed”*. However, it must be remembered, that Pilisah (Witness 17) was refused a visit to Anibah and she did not mention anything about a request for sanitary pads. Anibah was adamant she requested for sanitary pads and was not given the same. Why should she have lied on an embarrassing incident? Another guard Lance Corporal Polinuh (Witness 28) said that throughout his sentry shift duties there, no one requested for anything. There was persistent denial from the police officers about any requests from the detainees for blankets, food, water, *“telekung”*, *“sejadah”* and medication.

The Panel also had the distinct impression that there was a culture of ignoring legitimate complaints. It is fair to infer that such complaints fell on deaf ears and were not communicated to superior officers except in obvious matters that could be found out such as the clogging of toilets.

One policeman said that prayer attire was available and was kept in the cupboard but no one asked for them. Surely he and the others could have explained to the Muslim women there that they were available. In any event, there was cogent evidence was that there were requests for the *‘telekung’* and

they were denied. Evidence proffered also showed that there were a few blankets but one was 'spoilt' and too smelly to be used! There appeared to have been a mechanical and lackadaisical attitude relating to the performance of their duties. Furthermore, there was definitely little concern or knowledge of the human rights of the detainees and indifferent attitudes shown for their welfare.

Applicable human rights principles on specific allegations

Taking into account the testimonies given above, the Panel is of the opinion that many of the indignities suffered by the villagers infringe human rights principles providing for humane treatment for detained persons. These will be set out as per the allegations above and where appropriate, case law will be inserted as supporting authority.

1) On denial of access to family members (subparagraph (a))

Access to family members by detainees held in the police lockup is governed by Rule 22 of the Lockup Rules 1953 which states that -

- (1) *A prisoner shall be entitled, subject as hereinafter provided, to such visits from his relatives, friends and advocates as are consistent with the proper discipline of the lockup.*
- (2) *No prisoner shall receive more than one visit in each week from relatives or friends.*
- (3) ...
- ...
- (8) ...

Although the Lockup Rules 1953 is not entirely clear as to the exact time in which detainees may be allowed access to their family members, yet it clearly confer upon persons detained in the Police Lockup the right of access to family members.

International Instruments also provide that prisoners under remand have the right of access to their family members. For example, Rules 37 and 92 of the Standard Minimum Rules for the Treatment of Prisoners (SMR) states that -

Rule 37

Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

Rule 92

An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

Thus, since the detainees were totally denied any visits from family members for the whole duration of their remand period, the Police would have been in violation of a detainee's right of access to family members.

In addition, the Panel takes cognizant of the High Court case of *Abdul Ghani Haroon v Ketua Polis Negara and another application* [2001] 2 MLJ 689 which at page 704 held that to deny detainees and their family members access to one another for an unnecessarily long period is in itself cruel, inhuman and oppressive not only to the detainees but to their families as well.

Findings

Based on the principles above, the Panel finds that the denial of access to their family members constitutes a breach of their human rights.

2) On the denial of access to medication / medical officer (matters raised in evidence)

There are numerous provisions in the Lockup Rules 1953 that provide detainees access to a medical officer. The most notable of these are Rules 10, 36 and 38 which states the following-

Rule 10

The Medical Officer shall so far as possible examine every prisoner as soon as possible after admission to a lockup and shall certify whether the prisoner is fit for imprisonment and, if convicted, the class of labour.

Rule 36

The Officer-in-Charge or the Deputy Officer-in-Charge shall without delay report to the Medical Officer any case of apparent mental disorder or of injury to or illness of any prisoner.

Rule 38

The Medical Officer shall visit each lockup whenever requested to do so by the Officer-in-Charge, and he shall enter in the Journal his comments on the state of the lockup and the prisoners confined therein.

International Instruments also provide that prisoners under remand have the right of access to medical treatment. For example, Rules 22 and 91 of the SMR states that -

Rule 22

- (1) *At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organised in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.*
- (2) *Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.*

(3) *The services of a qualified dental officer shall be available to every prisoner.*

Rule 91

An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

In addition, Article 6 of the Code of Conduct provides that:

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.

A detainee's right of access to a medical officer or treatment whenever required is crucial as the act of denying a detainee such access could worsen his or her medical condition thereby amounting to a possible act of an inhumane, cruel and degrading treatment.

Indeed, the clear words of Principle 24 of the BOP also set out what should be done in the event that a detainee complains of possible health problems-

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Findings

Based on the principles above, the Panel finds that by ignoring the detainees' requests for medication and requisite medical attention, the police had infringed the detainees' right to have access to medication / medical officer.

This would have included the request for sanitary pads which was denied.

3) On the detention of a 70 year old detainee who could not speak Malay (subparagraph (c))

If an arrest has been made, the Police have to inform the person concerned on the reasons for his arrest as Article 5(3) of the Federal Constitution says that:

Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

The Courts too have taken a stand on the issue. For instance, the case of *Polis Diraja Malaysia v. Audrey Keong Mei Cheng* [1994] 3 CLJ 362 at page 366 held that-

By Christie & Anor v. Leachinsky [1947] 1 All ER 567, any arrest without warrant requires the policeman (or policewoman) to "inform the person arrested of the true ground of arrest". I need add here that by article 5(3) of our Federal Constitution any person who is arrested must ("shall") be informed as soon as may be of the grounds of his arrest.

The Police should furthermore inform an arrestee of the reasons for his or her arrest and questioning or interrogation of the suspect should be done in a language he / she understands. In this regard, the Panel notes that Principle 14 of the BOP provides that-

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest. (Emphasis added)

Findings

The Panel finds that this 70 year old detainee was eventually provided with an interpreter and it was a logistical problem for the Police to find an interpreter at the early stages of arrest.

4) On alleged over-crowding in the police lockup (subparagraph (d))

Principle 1 of the BOP states-

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Thus, it is pertinent that the conditions of detention at places of detention including the Police Lockups meet the minimum standards of the treatment and protection of detainees as enunciated in the relevant international instruments, including the SMR and the BOP. The meeting of such minimum standards would go a long way in avoiding the conditions of detention or imprisonment of a detainee amounting to torture or other cruel, inhuman, degrading treatment contrary to Article 5 of the UDHR.

In this regard, the Panel notes that Rule 10 of the SMR states that:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. (Emphasis added)

Findings

Based on the principles above, the Panel finds that the over-crowding of Police Lockups does not meet the requirements of Article 10 of the SMR and takes cognizance that the over-crowding in the Police Lockups constituted a health hazard and was repressive to the utmost. The Panel notes that particularly for the men's cell, there was intolerable overcrowding and this was exacerbated by prolonged remand in the cell for 14 days. The Panel cannot understand why the villagers in both cells could not have been released earlier having regard to the

deplorable conditions in the cells.

5) On allegations that the villagers were made to sleep on the bare cement floor and were not given any blankets while being remanded in the police lockup (subparagraph (e))

In relation to these allegations, the Panel notes that Rule 13 of the Lockup Rules 1953 states that-

Every prisoner shall be supplied with bedding which shall be changed and washed as often as may be necessary but never less than once a month.

The Panel also notes that Article 19 of the SMR provides that:

Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

According to the New Shorter Oxford English Dictionary, “bedding” means “the articles which compose a bed, as mattress, bedclothes, or materials provided for sleeping on.” It is therefore the opinion of the Panel that blankets falls under the definition of bedclothes which encompasses the “sheets, blankets, covers and materials which are put on a bed.” Pursuant to these rules, the Panel notes that detainees in lockups ought to be provided with beds and should not have had to sleep on the cold cement floor.

Findings

Based on the principles above, the Panel finds that by denying the detainees blankets and sleeping mats, the Police have breached the human rights principles as set out above and steps should be taken to remedy this situation.

6) On the alleged denial of the right to pray (subparagraph (f))

Article 11(1) of the Federal Constitution provides-

Every person has the right to profess and practise his religion and subject to Clause (4), to propagate it.

Pursuant to Rule 42 of the SMR, this right to practise one's religion ought to be extended to detainees as well for it states-

So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Findings

Based on the principles above, the Panel is of the opinion that detainees should be allowed to perform their religious requirements such as praying, even though they are under remand. The Police contended that if prisoners are placed in the lockup with minimum attire, they would not pose a threat to themselves or other prisoners in the cell. Although the balancing process may, at times, prove to be a difficult one, however, the Panel is of the view that since the cell floors were dirty, the detainees should have been allowed to have prayer mats and also prayer attire for the women ("*telekung sembahyang*") to perform their religious requirements. It was in evidence that prayer attire for the women (ie: "*telekung*") were available.

7) On allegations that the toilets in the lockup were extremely dirty and malodorous (subparagraph (g))

In relation to the allegation in subparagraph (g), the Panel notes that Rules 12 and 13 of the SMR states -

Rule 12

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Rule 13

Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

Findings

The toilets in the Police lockup were in fact extremely dirty and malodorous. Further, the evidence showed that, more often than not, the toilets were clogged and in one instance, human excrement in the toilet bowl had to be physically scooped out by detainees Milah and Domoï. It was also in evidence that although the PWD did help to clear the clogging, the problem of the clogging was a persistent one.

Based on the principles above, the Panel finds that the toilet facilities provided in the cells were grossly unsatisfactory as they fell short of the international standards provided for in Rules 12 and 13 the SMR.

8) On interrogations at the police lockup (subparagraph (h), (k) and (l))

The duty of the Police to protect human rights in general and to ensure equal protection of the law as guaranteed by Article 8 of the Federal Constitution and Article 7 of the UDHR clearly entails some form of obligation on the part of the Police to conduct an “effective investigation capable of leading to the identification and punishment of those responsible” (*Aksoy v. Turkey*, HUDOC, Application No. 100/1995/606/694, paragraph 98) for a violation of human rights.

Also, based on the persuasive authorities of *Aksoy v. Turkey* (<http://www.echr.coe.int>, HUDOC, Application No. 100/1995/606/694) and *Ayudin v. Turkey* (<http://www.echr.coe.int>, HUDOC, Application No.

57/1996/676/866), the Panel is of the view that the failure of the Police to conduct an effective investigation in itself may lead to the infringement of the right to equal protection of the law. However, the investigation of a crime must also respect the rights of suspects or potential suspects.

This means that amongst others, firstly, investigating techniques must not amount to infringement of human rights including the right to freedom from torture or other cruel, inhuman or degrading treatment as guaranteed by Article 5 of the UDHR. The Panel would also rely on a provision of the BOP to illustrate this point, whereby it is stated under Principle 21 that -

(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.

(2) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

The Panel observes that its view is in line the opinion of the Malaysian Judiciary. In the Federal Court case of *Lai Kim Hon v Public Prosecutor* [1981] 1 MLJ 84 at page 91, it was held that-

The Police Force exists to protect the public from criminal elements, and are given wide powers of arrest, search, investigation and so on - to detect offenders, to collect evidence against them and to bring them to book. These powers are to be found in the Criminal Procedure Code and other laws enacted by Parliament, and welcomed by the people. The Police are expected to do their duty energetically and efficiently, and on the whole they do that - as witness the comparative peace and tranquility that exist in the country. But one power the Police do not have, and it is most unlikely that Parliament and the people will give it to them, and that is power to assault and torture suspects in their custody, least of all power to kill. Parliament and the public expect the police to exercise their power in a civilised and humane way. Those who exceed their powers should not expect to be protected by the law.(Emphasis added)

With regard to questioning detainees during the night, the Panel also notes that by implication, the Lockup Rules 1953 would appear to prohibit night questioning as Rule 20 expressly provides that-

Prisoners shall be locked up for the night by 6.30 p.m. and shall rise and be dressed by 6.30 a.m.;

Furthermore, the power to deprive a person who has not been convicted of any offence, of his or her liberty, should be used only where it is strictly necessary. As such, police investigations and questioning must be conducted expediently and diligently. Such expedience and diligence extends to the questioning of a person who has not been convicted of any offence but is being detained under section 117 of the Criminal Procedure Code (CPC) for further investigations. In this regard, the Panel observes that the High Court in the case *Re Mohamed Syed Isa* [2001] 8 CLJ 247 at pages 248 and 257, which held that -

Detention under Sec 117 CPC is for the purpose of enabling the police to complete investigations. It is warranted if investigation is conducted diligently. Sec 117 does not authorize detention of a person at leisure to conduct further investigations. If detention is warranted, the diligence with which the police pursued their investigations is an appropriate consideration as to the length of detention to be ordered at a time or at all. (Emphasis added)

The Panel is of the opinion that the failure to exercise the power to deprive a person who has not been convicted of any offence, of his or her liberty only when it is strictly necessary could amount to the infringement of a person's freedom from arbitrary arrest or detention as guaranteed under Article 9 of the UDHR which in turn will inevitably lead to violation of a person's right to personal liberty as enshrined in Article 5(1) of the Federal Constitution and Article 3 of the UDHR.

Findings

There was no evidence adduced to show that there was hostile treatment from

the Ranau Police until a point where the Police verbally abused and intimidated the detainees or that the Police delayed the interrogation or investigation process to torture the villagers.

On the allegation that the detainees were questioned or interrogated at night and were not allowed to rest, there was only the evidence of one detainee who stated that he was questioned at night with four others. If this were true, then Rule 20 of the Lockup Rules 1953 was breached.

9) On the fact that their clothes and spectacles had to be taken off (subparagraph (j))

In relation to subparagraph (j), the Panel notes that Rule 7 and Rule 8 of the Lockup Rules 1953 states-

Rule 7

Every prisoner shall be searched on admission and all clothing and property, other than one set of clothing, shall be removed, entered in the Prisoner's Property Receipt Book, and placed in safe custody. Any monies or valuable sent for delivery to a prisoner shall be entered in the Prisoner's Property Receipt Book and placed in safe custody. The Receipt Book shall be signed both by the prisoner and the officer who makes the entries.

Rule 8

A woman prisoner shall be searched only by a woman.

In addition, the Panel notes Rules 17 and 88 of the SMR-

Rule 17

Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

Rule 88

- (1) *An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.*
- (2) *If he wears prison dress, it shall be different from that supplied to convicted prisoners.*

Findings

In relation to the spectacles worn by Leef Anwar, he was not allowed to bring the spectacles into the cell for security reasons. The Panel accepts that the Police has a discretion in the matter. However, as far as the clothes that the detainees had, the evidence was that extra layers of clothes were not allowed and this accords with the Lockup Rules and other rules. It is however, to be noted that, since there were no blankets provided, the extra layer of clothing should have been allowed because Ranau, being in the highlands, is cold at night.

The Panel also found that the complaint which arose during the evidence that male officers inspected to see whether the women wore extra layers of clothing was made out. This contravenes Rule 8 of the Lockup Rules 1953.

10) On the allegation that there was insufficient food and drinking water supplied (allegation raised in evidence)

In relation to this, the Panel would like to refer to Rules 15 and 16 of the Lockup Rules 1953-

Rule 15

The food supplied to a prisoner shall be in accordance with the diet scales set out in the First Schedule to the Prison Rules, 1953

Rule 16

The Officer-in-Charge or the Deputy Officer-in-Charge shall ensure that every article of food supplied to a prisoner is sound and of good quality.

Findings

The Panel finds that the food supplied was inadequate in amount of quality and as far as drinking water is concerned, insufficient amounts were provided.

11) On the allegation of lack of exercise (allegation raised in evidence)

For this allegation, the Panel would like to refer to Rule 18 of the Lockup Rules 1953-

Rule 18

Every prisoner shall as far as practicable take exercise daily.

Finding

The Panel finds that indeed the detainees did not have a chance to exercise during the whole period of their detention and the reason offered by the OCPD that they could abscond if they are allowed to exercise outside the cells is rejected as the detainees could have taken their exercise under supervision and in small batches.

Recommendations

Police personnel should be made aware of the Lockup Rules 1953, the Ranau Lockup Rules and the various International Instruments providing for humane treatment of detained persons as mentioned above. Preferably there should be a course of instruction for all personnel involved in the Inquiry Office and in security duty at lockups.

No doubt a "*Buku Melawat Lockup*" is kept but it is only a useful record if entries are not made mechanically as a matter of chore and routine. The same goes for other forms of documents that are kept by the sentries and the other duties they perform. Again, mechanical and perfunctory performance of duties without proper regard for the minimum standards to be accorded to the prisoners brings a calloused culture of apathy and brings discredit to the police as these matters do get publicised through word of mouth and even through the

Press. There has to be a re-look at procedures at the highest level to correct management defects. Adequate training should also be given to prevent personnel from becoming indifferent and uncaring for the general welfare of the detainees.

Policewomen should also be available to attend to women detainees and their needs.

Abuse of Remand Procedure by the Police

The allegation by the villagers in (subparagraph (b) of the Memorandum was that *“the maximum period of remand (14 days) had been given in this case even though it is comparatively less serious than many others, such as murder, whereby sometimes the maximum period is not extended to the latter.”*

Here, the 17 villagers were investigated for the offence of causing mischief by fire under section 435 of the PC, a bailable offence under the CPC and of the offence of rioting under section 147 of the PC, which under the CPC is non bailable offence.

Under section 387(1) of the CPC, either a police officer or court is competent to grant bail and a person who is accused of or charged with a bailable offence “shall be released on bail”.

Wahab Patail J in *Wong Kim Woon v PP [1999] 5 MLJ 114* at page 118 stated in respect of the words “Shall be released on bail” thus -

The words “shall be released on bail”, given their literal and natural meaning, mean that bail must be offered. This has been so held in R v Lim Kwang Seng & Ors [1956] MLJ 178. In Mohd Jalil bin Abdullah & Anor v PP [1996] 5 MLJ 564, Nik Hashim JC (as he then was) held that bail is mandatory under section 387. I respectfully agree with these views.

Under section 388(1) of the CPC, where any person accused of non-bailable offence is arrested or detained without warrant by a police or appears or is brought before a Court, he may be released on bail by the officer in charge of the police district or by that Court, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

Thus, in regard to a “non-bailable” offence, a person - unless the offence is punishable with death or life imprisonment - may be released on bail by a police officer in charge of a police district or a Court. There is clearly discretion given to the police officer in charge of a police district or the Court to release a person accused of a non-bailable offence where, as in the case of rioting, the sentence may be imprisonment up to two years, or with fine or with both. It is to be noted that in the case of the police, it is the officer in charge of the police district, like the Court, who has the discretion to grant bail.

There is case law to guide courts in the exercise of such discretion but clearly the factors are the same factors that should guide a police officer in exercise of his discretion when investigating any person accused of a non-bailable offence.

Callow J in the case of *PP v Wee Swee Siang [1948] MLJ 114* has referred to various factors set out in *Mallal's Criminal Procedure Code* with approval, namely -

There are set out in the second edition of Mallal's Criminal Procedure Code at page 377, nine points which the court may take into consideration when granting or refusing bail. They are:

- 1) *Whether there was or was not reasonable ground for believing the accused guilty of the offence (...)*
- 2) *The nature and gravity of the offence charged (...)*
- 3) *The severity and degree of punishment that might follow.*

- 4) *The danger of the accused absconding if released on bail.*
- 5) *His character, means and standing.*
- 6) *The danger of the offence being continued or repeated.*
- 7) *The danger of the witness being tampered with.*
- 8) *Opportunity to the accused to prepare the defence.*
- 9) *The long period of detention of the accused and probability of further period of delay...*

In *Mallal's Criminal Procedure Code*, three other factors are set out -

- 1) the nature of the evidence in support of the charge;
- 2) whether there is any guarantee that the accused will not abscond or obstruct the course of justice;
- 3) the likelihood of the accused setting up false evidence if released on bail.

Gunn Chit Tuan J (before he become CJ (M)) took cognizance of the factors set out in the case of *Wee Swee Siang* but noted that the list is not exhaustive. See also the case of *PP v Dato' Balwant Singh* (No 1) [2002] 4 MLJ 427.

ASP Mohd Izaan advanced some reasons why he applied for remand in respect of the villagers and why they were not allowed police bail. Below are set out his reasons and also the questions by the Panel and his answers to them,

Q: What were the reasons for your application for remand?

A: We could not complete investigations within 24 hours. We needed time to record statements, we needed their fingerprints and their photographs, we had to check if they had previous convictions and we needed time to

question them.

The other reasons -

We had to get officers from other districts to come and assist us in recording section 113 statements (of the CPC). Some of the villagers could not converse in Malay and we needed interpreters. There were also a large number of them, 18 of them, there was a report by Lam that he and his family were threatened and finally, we needed time to complete investigation, to get instruction from the Public Prosecutor.

The villagers were staying in Kauluan. They stayed in Kampung Kauluan but at the same time they cultivated vegetables at Desa Monteki (the disputed land).

Q: Why didn't you release them on police bail?

A: There was no guarantee that they could heed police bail to come back to police station. I mean, they had shown that they were capable of disregarding a High Court order. We were also worried about the threat to Lam and his family. We were afraid that if they were released on police bail before the charge, they might get the impression that nothing can be done to them, that they might not be charged in court.

Q: All assumptions?

A: Yes, but we were worried about that

Q: If you had evidence of threats of violence, isn't there a provision in the CPC - s 67 - to bind them over, if a person poses a threat?

Q: Could you have applied for binding over?

A: We don't have a resident First Class Magistrate here. The Magistrate here comes from Keningau. Keningau is about 2 ½ hours' drive away.

Q: Why not travel 2 ½ hours - as you say, to Keningau for the order?

A: At that time I made the decision under the prevailing circumstances. It would be better to get the order from

the DPP to charge them in Court.

Q: Are you aware of CJ's circular (on the matter of remand)?

A: No. I haven't read it.

Q: Are you aware of case law which states remand is only for investigations and not for collateral purposes?

A: I'm not aware.

Q: Threat to 3rd party is a collateral reason? That is not your concern for a remand. Then you should have asked for security, security to bind over.

A: Yes, Dato'

Q: In the meantime, you had to get instructions from the DPP. That is not a reason, because the investigations would have been completed by that time. You had sent the file to the DPP didn't you? So you still detained them after the file had been sent?

A: I took the file to see the DPP myself. He gave instructions there and then on 9/6. They were detained up till then.

His reasons for not releasing them on bail have to be viewed in the context of the factors set out earlier in the authorities cited.

It is clear in the case that the offence of rioting, although non-bailable, does not attract mandatory imprisonment. There also could not have been danger of the villagers absconding if released. The villagers are simple villagers and not well-to-do people – they had been making a living out of cultivating vegetables on the disputed land and they lived nearby in one Kampung Kauluan. They should have been released on bail as they could be contacted easily. As one of them indignantly said, they were the “pre-bumi”, the original natives of the state; they were citizens, where could they run to?

If they appeared likely to commit a breach of the peace or were likely to commit a wrongful act that could probably occasion a breach of the peace, they could have been produced before a Magistrate under section 67 of the CPC for them to execute a bond for keeping the peace. In any event, in the Inquiry, there was

no evidence to show they would breach the peace if released on police bail. Also, it would be wrong to take advantage of the remand order and to not release them on police bail after 04.06.03, when the last cautioned statement was made.

According to ASP Mohd Izaan, the villagers had their statements taken against the dates shown –

1.	Malandi Tanor	31/5
2.	Leef@Anwar Malandi	3/6
3.	Jarid Hadirin	3/6
4.	Yahya Maji	4/6
5.	Daimin Langgoi	29/5
6.	Lait @ Pairin bin Basinda	31/5
7.	Lanam Ramlan	31/5
8.	Adam@Jasibin Gomoral	4/6
9.	Kimuah Bangaloi	29/5
10.	Domoi Hudina	4/6
11.	Milah Bangaloi	29/5
12.	Anibah Duani	29/5
13.	Solungin Sangai	28/5
14.	Gabbas Bangaloi	29/5
15.	Jamirin Dius	29/5
16.	Naim bin Jasibin@Adam	28/5
17.	Masinin Gabbas	2/6
18.	Jeus Linkin	2/6

Thus, altogether 18 villagers were arrested on 27.05.03 but one was released on 28.05.03 (Solungin Sangin). The remaining villagers who had been detained were on 04.06.04, already detained for eight nights, an inordinately long period under deplorable, unhygienic and depressing conditions in their cells. All the more they should have been released on bail pending charges being brought against them in court.

It was contended that the papers had to go to the Deputy Public Prosecutor for his instructions as to whether charges should be proffered against the villagers. Obviously, since the villagers were charged for offences under the Penal Code subsequently, ASP Mohd Izaan must have found that the investigations had revealed, at least on a *prima facie* basis, that the offences have been made out and certainly the offences did not attract mandatory terms of imprisonment. He could have released them on bail pending the decision of the Deputy Public Prosecutor.

Findings

There was no need to hold the villagers under remand for the full period assuming that they should have been remanded in the first place, having regard to all the circumstances of the case. Bail should have been allowed at the early stages of the investigations bearing in mind that the villagers lived in a village where they could easily have been contacted to come to the police station for their statements to be recorded. Not having sufficient police officers to record their statements is understandable but all the more, it calls for the villagers to be have been released on bail so that when officers became available, the villagers could have been summoned to appear for their statements to be recorded. Bearing in mind that the villagers were kept under very cramped and deplorable conditions in the cells, all the more they should have been released earlier. Assuming that further investigation was really needed, the admission of ASP Mohd Izaan that the investigations were completed, with the last three cautioned statements having been recorded on 04.06.03, the police should have released the villagers on bail right after that. To hold them under remand beyond that date, only to get the DPP's instructions, cannot be an acceptable reason.

It has to be stressed again, that Wahab Patail J in *Re Mohamed Syed Isa* (2001) 8 CLJ 247 stated that-

Detention under Sec 117 CPC is for the purpose of enabling the police to complete investigations. It is warranted if investigation is conducted

diligently. Sec 117 does not authorize detention of a person at leisure to conduct further investigations. If detention is warranted, the diligence with which the police pursued their investigations is an appropriate consideration as to the length of detention to be ordered at a time or at all. (Emphasis added)

Recommendations

The police have wide powers over persons detained under a remand order. Recognising that the wide power can be abused, Tun Mohamed Dzaiddin bin Haji Abdullah CJ issued a circular in 2003 with guidelines to Magistrates pertaining to section 117 of the CPC (see Appendix 13). It is obvious that short remand periods are to be given at any one time and it would be for the police to satisfy the Magistrate that the police needs more time to complete their investigations. Section 119 requires a police officer to keep a diary of proceedings in investigation. To apply for a remand order before a Magistrate, the police officer making the application under section 117 of the CPC has to transmit a copy of the entries in the diary recorded under section 119 to the Magistrate to satisfy him that there are good grounds to order remand and the Magistrate has to record his reasons for so doing.

It is recommended that police officers be supplied with the Chief Justice's Circular and that they should undergo courses which highlight the awesome powers of the police in regard to detained persons (mostly held incommunicado) and the obvious checks and balance that should be employed to control these powers. This is to ensure that the basic rights of detainees having regard to the Federal Constitution, domestic law and human rights jurisprudence are protected and upheld. The Police must also be informed that their powers should not be abused or used for collateral purposes (*see Mohd Ezam bin Mohd Noor v Ketua Polis Negara and others appeal* [2002] 4 MLJ 449).

It is recommended that the following cases on remand be supplied to all police investigations and officers in charge of police district -

1. *Polis Diraja Malaysia V Audrey Keong Mei Cheng* [1994] 3 CLJ 362
2. *In Re the Detention of Sivarasa* [1997] 1 CLJ 471, pg 478
3. *Re Syed Mohd Isa & Ors* [2001] 8 CLJ 247
4. *Re Mohamad Ezam Mohd Noor* [2002] 5 CLJ 156
5. *Dasthingeer Mohamed Ismail V Kerajaan Malaysia and anor.* [1999] 6 CLJ 317

The Panel would like to end with the poignant words of Anibah-

The incident has affected me adversely and I really have no respect for the police. I was really frustrated by the actions of the police. Since they are the ones that look after the harmony in this country, they should have treated us fairly. The way they treated us is if we are not humans. What we want to do is to stand up for our human rights. A few (policemen) were nice but the respect for them is gone.

These words of one ordinary citizen should be hearkened to with deep soul-searching before it becomes the refrain of the general public. The police of this country who serve the nation well do deserve more.

APPENDICES

Appendix 1

**AHLI JAWATAN KUASA
DESA MONTEKI MESILAU
KAULUAN KUNDASANG
RANAU**

TAJUK:

***LAPURAN MENGENAI PENCABULAN HAK-HAK ASASI MANUSIA OLEH
SYARIKAT DESA HIGHLANDS KUNDASANG DAN POLIS DAERAH RANAU
KEATAS PENDUDUK KAMPUNG DESA MONTEKI KAULUAN***

LAPURAN KEPADA:

***SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
KOTA KINABALU***

DI TULIS OLEH

AZWAL AZIZ @ WILTER MALANDI

FOTOGRAF OLEH

WAKIMIN BIN SERIDAN

PENGENALAN

Perkara pencabulan ini terjadi berikutan pertikaian tanah seluas lebih kurang 74 ekar di Desa Monteki (**LOT. G 06124956**) diantara penduduk kampung dengan syarikat Desa Highlands. Tanah tersebut diatas adalah kawasan yang telah dan sedang diusahakan oleh penduduk kampung semenjak tahun 1985 lagi atas persetujuan ketua kampung. Setelah mengusahakan tanah tersebut selama 5 (lima) tahun iaitu sejak 1985 sehingga 1989 tanpa bantahan daripada mana-mana pihak maka kami telah memanjangkan permohonan tanah kepada Jabatan Tanah dan Ukur atas persetujuan semua penduduk kampung dan ketua kampung bagi mengikuti prosedur kerajaan untuk pemilikan tanah (Sila Lihat Lampiran Resit Permohonan Tanah)

Bagaimanapun pada tahun 1992, kawasan tersebut yang sedang diusahakan dan dijadikan penempatan perkampungan penduduk kampung telah dipohon oleh Syarikat Desa Highland Sdn Bhd (No. 066053-W). Sehubungan dengan itu dengan serta merta kami telah membuat bantahan kepada permohonan Pihak Syarikat tersebut melalui Pejabat Tanah dan Ukur Daerah Ranau dan Jabatan Tanah dan Ukur Sabah di Kota Kinabalu (Sila Lihat Lampiran Surat Bantahan Penduduk Kampung).

Dengan bantahan kami ini, kami berkeyakinan bahawa tanah yang sedang kami duduki dan usahakan ini adalah hak milik kami sebagai anak tempatan dan hanya menanti kelulusan pihak kerajaan untuk proses penyukatan.

Menurut amalan adat Negeri, sekiranya penduduk kampung meneroka dan mengusahakan satu-satu kawasan tanah selama 3 (tiga) tahun atau lebih tanpa bantahan mana-mana pihak maka kawasan tersebut adalah hak milik peneroka dan pengusaha tersebut. Dalam hal ini, kami telah mengusahakan tanah tersebut lebih daripada tempoh tersebut.

Pencabulan Hak asasi manusia Oleh Syarikat Desa Highland dan Polis Ranau

1. Pada 22 Mei 2003, pihak Desa Highlands dengan di iringi oleh polis lebih kurang 10 anggota yang diketuai oleh Pemangku OCPD Ranau iaitu ASP Mohd Izaan telah datang ke kawasan tapak untuk menghalau penduduk kampung.
 - Bantahan dan Rayuan penduduk kampung tidak diendahkan, malah pihak polis Ranau telah bertindak **mencederakan penduduk kampung** sehingga **Pn. Milah Bt Bangaloi di masukkan ke Wad Hospital Ranau.**
 - Polis juga bertindak melampau dengan **mengacukan pistol (Trigger Happy)** kepada penduduk kampung
 - Penduduk kampung cuba membuat laporan polis bagi kejadian tersebut, tetapi telah **digertak oleh Pemangku OCPD Ranau** ASP Mohd Izaan sewaktu mereka di panggil ke bilik peribadinya menyebabkan penduduk kampung takut untuk membuat laporan polis.
 2. Pada 27 Mei 2003, Pihak syarikat Desa Highlands telah menggunakan pekerjaanya yang terdiri daripada warga asing untuk **memusnahkan harta benda penduduk kampung Desa Monteki** (Lampiran Foto).
 - Mereka menggunakan mesin gergaji berantai dan jentera berat untuk memusnahkan harta benda penduduk kampung
 3. Penduduk kampung bertindak bagi membantah tindakan tersebut menyebabkan polis telah membuat penangkapan beramai-ramai keatas penduduk kampung pada jam lebih kurang 11.30 malam 27 mei 2003.
-

4. Pada 28 Mei 2003, polis telah memilih hanya 18 orang sahaja untuk di tahan Reman di Penjara Ranau. Sehubungan dengan itu berbagai pencabulan hak-hak asasi manusia telah berlaku mengikut peraturan yang digariskan oleh SUHAKAM terutamanya hak-hak tahanan Reman iaitu:
 - a. Keluarga tidak dibenarkan berjumpa dengan tahanan
 - b. Tempoh tahanan telah mencapai maksimum iaitu 14 hari bagi kes ini sedangkan kes bunuhpun boleh di bebaskan sebelum tempoh maksimum
 - Dalam Kes ini Pegawai Daerah Ranau En. Amri Suratman (Second Class Majistret) merupakan pihak yang berkuasa untuk memberikan kebenaran tempoh reman,
 - Bagaimanapun beliau telah bersubahat dengan Polis untuk menganiaya penduduk kampung serta berdolak-dalik kepada penduduk kampung mengenai tempoh reman sebenar
 - c. Terdapat tahanan yang berumur 70 tahun dan keatas dan tidak boleh berbahasa melayu
 - d. Tahanan di tempatkan di lokap yang sempit bagi kesemua 18 orang
 - e. Tidak diberikan alas untuk tidur dan berehat
 - f. Tidak dibenarkan menunaikan sembahyang atau solat kerana telekung sembahyang dilarang
 - g. Tandas yang amat berbau busuk
 - h. Disoal siasat tanpa henti sepanjang malam dan tidak diberikan rehat
 - i. Di soal siasat mengenai perkara yang tidak berkaitan dengan kes termasuk cuba memaksa tahanan untuk menarik balik aduan penduduk kampung keatas salah laku polis Ranau
 - j. Pakaian ditanggalkan termasuk cermin mata
 - k. Segaja melambatkan proses soalsiasat untuk menyeksa orang kampung
 - l. Layanan anggota polis di Balai Polis Ranau amat buruk sehingga sanggup menemnelak dan memalukan tahanan
-


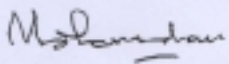
Penutup

Rentetan peristiwa yang di nyatakan diatas adalah kejadian yang amat memeranjatkan, menakutkan dan merupakan penderitaan penduduk kampung akibat kekejaman pihak asing daripada tanah Kundasang iaitu syarikat Desa Highlands yang turut dibantu oleh Pihak Polis Ranau yang mungkin mempunyai kepentingan termasuk Pegawai Daerah Ranau.

Jelas bahawa pencabulan hak-hak asasi manusia dan penganiayaan telah berlaku terhadap penduduk asal kawasan ini. Ini bukan sahaja tindakan tidak berperni kemanusiaan pihak syarikat dan Polis tetapi juga menjatuhkan maruah dan hak-hak bumiputera.

17 Jun 2003

Appendix 2

	SURUHANJAYA HAK ASASI MANUSIA MALAYSIA HUMAN RIGHTS COMMISSION OF MALAYSIA (CAWANGAN SABAH)
	Rujukan Tuan: Rujukan Kami: SHM (SBH) 004/4/4 Jld.2(04) Tarikh: 17 Jun 2003
Pesuruhjaya Polis Sabah Ibu Pejabat Polis DiRaja Malaysia Jalan Kepayan 88560 KOTA KINABALU Tel : 088-212 222 Faks: 088-230 975	No. Fala : 088-230 975 Pegawai : Mohd Hmdan
Ybhg. Dato',	
TUNTUTAN TANAH DESA MONTEKI RANAU	
Perkara di atas adalah dirujuk.	
2. Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) Cawangan Sabah telah menerima aduan daripada AJK Desa Monteki Mesilau Kundasang. (Sila rujuk Lampiran)	
3. Setelah meneliti aduan dari pengadu kami mendapati mungkin terdapat unsur-unsur pelanggaran hak asasi terhadap penahanan ke atas tangkapan dan layanan yang dibuat pada 27 Mei 2003.	
4. Diharapkan pihak tuan dapat memberikan maklumbalas terhadap perkara ini demi menjamin nama baik dan imej polis.	
5. Bantuan dan kerjasama tuan dalam hal ini amatlah dihargai.	
Sekian, terima kasih.	
"HAK ASASI UNTUK SEMUA"	
Yang benar,	
	
PROF. DATUK MOHD HAMDAN ADNAN Pengerusi Kumpulan Kerja Aduan dan Siasatan	

Appendix 3



SURUHANJAYA HAK ASASI MANUSIA MALAYSIA HUMAN RIGHTS COMMISSION OF MALAYSIA

Ruj. Kami : SHM.006/6/2-128/07/03(24)

Tarikh : 14 Julai 2003

Ketua Polis Negara
Ibu Pejabat Polis Di Raja Malaysia
Bukit Aman
50560 Kuala Lumpur.
(u.p: ACP Hj. Ismail bin Hj. Omar
- Ketua Penolong Pengarah Pendakwaan/Undang-Undang)

Tuan,

ADUAN TERHADAP ANGGOTA POLIS DAERAH RANAU, SABAH

Adalah saya dengan segala hormatnya merujuk kepada perkara yang tersebut di atas.

2. Sukacita dimaklumkan bahawa Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) telah menerima aduan berhubung dakwaan pencabulan hak asasi penduduk Kg. Desa Monteki, Ranau, Sabah oleh anggota-anggota dari Ibu Pejabat Polis Daerah Ranau, Sabah. Untuk makluman tuan, penduduk-penduduk berkenaan mempunyai pertikaian dengan syarikat Desa Highland Sdn. Bhd. berhubung masalah tanah di Desa Monteki. Bersama-sama ini disertakan salinan aduan berkenaan untuk makluman dan perhatian lanjut pihak tuan.

3. Sehubungan dengan itu, SUHAKAM memerlukan kerjasama pihak tuan memaklumkan kepada kami kejadian sebenar yang melibatkan pihak polis dan 18 orang penduduk kampung berkenaan yang ditahan reman selama 14 hari bermula pada 28 Mei 2003. Maklum balas pihak tuan amat kami hargai dan diucapkan ribuan terima kasih.

Sekian.

"HAK ASASI UNTUK SEMUA"


Saya yang menurut perintah,

(KAMARUDDIN MOHAMED BARIA)
Setiausaha
Suruhanjaya Hak Asasi Manusia Malaysia

Appendix 4

2003 12:48 FAX 317406
-2003 12:00 TIM/KJSJ(BSJP) SBH. SUHAKAM SABAH SUHAKAM HQ 002
088 225487 P.01

u/p Encik Japiez.

**IBU PEJABAT POLIS
POLIS DIRAJA MALAYSIA
KONTINJEN SABAH
88580 KOTA KINABALU**

TEL: 088 - 450242

Rujukan : (PR) 104/45
Tarikh 30 Sept, 2003

Penolong Pengerah Jabatan Siasatan Jenayah,
Bahagian Pendakwaan / Undang-Undang (D5),
Bukit Aman,
50560 Kuala Lumpur

ADUAN TERHADAP ANGGOTA POLIS DAERAH RANAU

Saya telah diarah merujuk surat tuan atas perkara yang sama bertarikh 29 Ogos, 2003.

Sukacita dimaklumkan bahawa pengaduan yang dirujuk oleh Suruhanjaya Hak Asasi Manusia Malaysia ini adalah berpunca daripada satu laporan polis, Ranau repot 921/03 bertarikh 27 Mei, 2003. Bersangkut repot ini, kas telah diklasifikasi dibawah Sek 435 dan Sek 147 Kanun Kesaksaan.

Rutentan permulaan kas ini adalah berkaitan dengan satu arahan oleh YDH Datuk PJP Sabah kepada pihak polis IPD Ranau yang dikehendaki mengiring (Eskot) Peguam dan Bailif Mahkamah Tinggi, Sabah dalam menyempurnakan Write Of Possession keatas tanah-tanah di Mesilau Kundasang. Tuan tanah yang Bona Fide ialah Syarikat Desa Highlands yang mendakwa tanah-tanah yang dimaksudkan telah dicerobohi oleh setinggan.

Tugas bantuan eskot ini telah diketuai oleh ASP MOHD IZAN BIN ABDULLAH pada ketika itu adalah Pemangku KPD Ranau. Pada 22 Mei, 2003 setelah memberikan taklimat tugas pada pegawai dan anggota yang terlibat, pasukan eskot ini telah berlepas ke kawasan tanggungjawab. Pada 221100 # Mei pasukan eskot telah mengiring juru ukur bagi menentukan sempadan tanah untuk mendirikan pagar. Semasa juru ukur ini sedang dalam tugas, mereka telah didatangi lebih kurang 30 lelaki dan perempuan membantah tugas mereka tersebut.

Walaupun setinggan ini menunjukkan reaksi yang agresif, kehadiran KPD Ranau dan juga Pegawai Bailif Mahkamah Tinggi disitu telah dapat menenangkan mereka. Pegawai Bailif telah menjelaskan tindakan yang diambil oleh Syarikat Desa Highlands ini adalah melalui proses mahkamah. Setelah setinggan tersebut mendapat penjelasan yang jelas atas isu sebenar, ramai daripada mereka terus berundur. Dalam keadaan hampir tenang, KPD Ranau telah melihat seorang perempuan dan suaminya masih menjeri-jeri dan tidak mahu terima perkara sebenar. Pemangku KPD Ranau tiada pilihan lain, selain daripada mengarahkan anggota polis yang bertugas membawa pasangan suami isteri ini ke IPD Ranau. Pasangan ini kemudiannya dikenali sebagai MILAH BANGALOI (isteri) dan MALANDI TANOR (suami) yang menjadi SUBJEK dalam komplot. Bagaimana MILAH BANGALOI tidak dibawa balik ke balai sebaliknya telah dipohon bawa ke Hospital Ranau untuk rawatan.

Pada 27/1300 H Mei Pemangku KPD Ranau semasa dalam perjalanan balik daripada Taman Kinabalu ke IPD Ranau telah dimaklumkan melalui telefon daripada balai Polis Ranau iaitu satu kes khianat dengan menggunakan bahan api hingga mendatangkan kerugian telah berlaku di tapak tanah yang dipertikaikan. Pemangku KPD Ranau terus balik ke IPD Ranau dan selibanya disana telah dapat Pengurus Desa Highlands bersama peguam-peguamnya telah menunggu. Pengurus syarikat ini telah membuat laporan polis dimana selepas itu Penolong Pegawai Penyiasat telah mengarahkan merakam percakapan pengadu (Pengurus Desa Highlands).

Penjelasan oleh Pengurus Desa Highlands, insiden bencana dengan api ini berlaku adalah ketika tindakan pekerja-pekerja syarikat ini cuba merobohkan beberapa buah rumah yang gagal diruntuh oleh tuan punya sendiri. Pada mulanya dipersetujui oleh kedua-dua pihak proses runtuh rumah tersebut akan dilaksanakan oleh tuan punya dalam masa 3 hari tetapi lepas tenik tersebut mereka masih gagal dan tidak tepati janji. Semasa tindakan meruntuhkan rumah tersebut dijalankan, telah kelihatan satu perakan kumpulan orang dalam anggaran 10 ke 20 orang menuju ke arah Excavator yang sedang bekerja. Secara tiba-tiba mereka telah membaling botol-botol berisi minyak petrol yang dipasang sumbu serta dinyalakan api. Tindakan mereka ini tidak dapat dikawal hingga menyebabkan kebakaran pada Excavator.

Berpandukan laporan polis yang dibuat serta maklumat-maklumat yang munasabah. Pemangku Ketua Polis Daerah Ranau telah mengesuai satu pasukan polis ke Kampung Kauluan, Kundasang. KPD Ranau telah pergi ke rumah MALANDI TANOR (suspek pertama) dan menangkapnya serta MILAH BANGALOI (suspek kedua) dan LEEF @ ANWAR B MALANDI (suspek ketiga). Ketiga-tiga suspek ini telah dimaklumkan sebab-sebab mereka ditahan. Dalam masa itu suspek pertama ada maklumkan orang-orang kampung yang terlibat dalam insiden pembakaran Excavator turut mahu senah diri. Seramai 18 orang telah ditangkap pada malam 27 Mei, 2003. Bagaimanapun kesemua mereka telah dimaklumkan kesalahan yang telah dilakukan oleh mereka hingga membolehkan pihak polis membuat tangkapan. Bagi yang tidak berkenaan dibenarkan pulang dan bebas.

Pada 28 Mei, 2003 kesemua suspek telah dibawa kehadapan Pegawai Daerah Ranau bagi mendapatkan kelulusan tahanan reman. Kebenaran reman selama 14 hari telah diberikan oleh Pegawai Daerah bagi tujuan pihak polis menjalankan siasatan. Dalam perkara tangkapan suspek pihak polis Ranau tidak memuat pilihan seperti yang dicadangkan oleh subjek. Sedangkan tangkapan dibuat ke atas mereka yang benar-benar terlibat dengan insiden. Pada hari pemohonan reman masih seorang suspek dibebaskan tanpa dituduh dimana pihak polis telah dimaklumkan beliau tidak terlibat.

Segala tindakan Polis adalah berlandaskan pada undang-undang dan mengikut unsur-unsur kemanusiaan. Pada sebarang masa pihak polis tidak bertindak dengan kekerasan walaupun situasi pada waktu itu membenarkan pasukan eskort menggunakan "Minimum Force". KPD Ranau tidak menafikan iaitu PN. MILLAH BANGALOI dimasukkan ke Hospital Ranau. Kemasukan ke hospital ini adalah disebabkan suspek kedua ini mendapat stress sehingga membawa sakit tekanan darah tinggi yang memerlukan rawatan. Suspek kedua sama sekali tidak dcederakan dalam pertikaian tanah ini.

Appendix 5

MEDIA ADVISORY

SUHAKAM'S PUBLIC INQUIRY IN KUNDASANG, SABAH

The Human Rights Commission of Malaysia (SUHAKAM) received a complaint on 18 June 2003 from some native villagers from Desa Monteki in Kundasang, Sabah alleging human rights violations by the police. In the memorandum submitted to the SUHAKAM office in Sabah, the villagers were detained for 14 days at the Ranau Police Station and allegations include ill-treatment during police detention, including denial of the right to pray.

SUHAKAM will hold a public inquiry in accordance with Section 12 (1) of the Human Rights Commission of Malaysia Act 1999. The public inquiry will be conducted by a panel of three Commissioners comprising:

1. Dato' KC Vohrah (Chairman)
2. Tan Sri Datuk Dr Ramon Navaratnam
3. Datuk Dr Abdul Monir Yaacob,

The Public Inquiry will look into human rights violations resulting principally from the following allegations:

1. Improper use of force by the Police when evicting the villagers from the land.
2. Inhumane treatment while under remand in the Ranau lock-up.
3. Improper use of the remand order under Section 117 of the Criminal Procedure Code.

Details are as follows:

Date:	Time:	Venue:
11 February 2004	9.30 am	Bilik Kundasang, Hotel Perkasa, Mount Kinabalu Sabah.
12 February 2004	9.00 am	
13 February 2004		
14 February 2004		

Background

In their complaint, the villagers stated that they had been occupying the land, consisting of an area of 74 acres of agricultural land, since 1985 with the approval of the village chief. They claim that they had cultivated and worked on the land without objection from any party for five years.

In 1989, the villagers made an application to the Land and Survey Department of Kota Kinabalu and Kundasang for the alienation of the land. They contend that their application complied with State Land requirements. According to the complainants, the State Customary Rights (“Amalan Adat Negeri”) entitles them to the land after three years of occupation and cultivation if no one raises any objections. The villagers assumed that the land belonged to them and was only awaiting government approval.

However, in 1992, Desa Highlands Sdn. Bhd made an application to the Land Office for the land. The complainants objected to the application by the Company through a letter to the Land Office. The land was subsequently granted to Desa Highlands by the authorities. On 22.05.03, the company entered the land to execute the writ of possession granted to it by the High Court.

Chronology of events:

- **22.05.2003** - representatives from the Company accompanied by 10 police officers and three bailiffs came to enforce the Writ of Possession over the land which the Company had obtained from the High Court.
- **23.05.2003** - the eviction was further carried on when the Company’s personnel and foreign workers came with chainsaws and destroyed their homes.
- **27.05.2003** - personnel from the Company arrived with excavators to destroy some of the homes which they had not been able to destroy previously. The villagers tried to stop them from doing so.
- **27.05.2003** – 18 villagers were arrested at about 11.30pm and held at the Ranau police lock-up.
- **28.05.2003** - Remand order granted by a Second Class Magistrate for the 18 villagers to be remanded for 14 days (28.05.2003 – 10.06.2003).
- **18.06.2003** - Memorandum received by SUHAKAM on allegations of violation of human rights on the Ranau villagers

Note: Although a letter was sent to the Sabah police (on 17 .06.2003) followed by another letter to the Police Head-quarters in Kuala Lumpur (on 14.07.2003) concerning the allegations, there was no response until a press report in Sabah (on 11.11.2003) highlighted a comment by SUHAKAM that the police had not responded to the allegations. Shortly after, a copy of a letter from the Sabah police was faxed to SUHAKAM in Sabah. SUHAKAM does not consider the contents of the fax sent to be an adequate response to the various allegations.

Allegations of violations of human rights in the Memorandum include:

- 1 That there was improper use of force by the Ranau policemen during the eviction process on **22.05.2003** causing one Milah Bangaloi to be warded at the Government Hospital in Ranau.
- 2 That the police pointed their pistols at the villagers thus intimidating them.
- 3 That they were prevented from making a police report by a police officer who called them into his room and intimidated them
- 4 Family members were not allowed to see the detainees.
- 5 They were not allowed to pray as the “telekung sembahyang” was not allowed in the lock-up.
- 6 They were questioned without break throughout the night and were not allowed to rest.
- 7 They were questioned and interrogated about things that were not relevant to the case in question.
- 8 The police tried to force the complainants to withdraw their report against the Ranau police which they had made earlier

Appendix 6

	Name	Date(s) testimony given
SIW1	Leef@Anwar Malandi	11.02.2004
SIW2	Seibing Gunting	11.02.2004 14.02.2004
SIW3	Anibah@Sitidah binti Duari	11.02.2004
SIW4	Milah binti Bangaloi	12.02.2004 05.03.2004
SIW5	Malandi Tanor	12.02.2004
SIW6	Lo Fu Ming	12.02.2004
SIW7	Peggy Liow Vui Kun	12.02.2004
SIW8	Kindongan@Kindongai Limpakan	12.02.2004
SIW9	Stephen Lee Chai Ann	12.02.2004
SIW10	Dr Helmy Harahap	13.02.2004
SIW11	Betty Pang Kon Khyun	13.02.2004
SIW12	David Apin	13.02.2004

SIW13	ASP Mohd. Izaan Abdullah	13.02.2004 14.02.2004 05.03.2004 06.03.2004
SIW14	Dr Aung Kyaw Khaing	14.02.2004
SIW15	Emit Mandadi	14.02.2004
SIW16	Dr Wong Yoke Kong	Not questioned
SIW17	Pilisah binti Nurul Ain Duari	14.02.2004
SIW18	Senior Assistant Registrar Puan Ummu Kalthom	04.03.2004
SIW19	Kimuah Bangaloi	04.03.2004
SIW20	ASP Teh Cheng San	04.03.2004
SIW21	Sarjan Tinggie Ungkee	04.03.2004
SIW22	L/Kpl Tawayan bin Gambeabui	04.03.2004
SIW23	Kpl Rahisin bin Duari	04.03.2004
SIW24	Domoi Hudina	04.03.2004
SIW25	Jiorry bin Dasan	05.03.2004

SIW26	Kpl Ravi a/l Balakrishnan	05.03.2004
SIW27	Kpl Jumil bin Garatam	05.03.2004
SIW28	L/Kpl Polinuh Majin	05.03.2004
SIW29	L/Kpl Azamuddin Teh	06.03.2004
SIW30	Siti Rahayu	06.03.2004
SIW31	Adam@Jasibin Gomarol bin Abdullah	06.03.2004
SIW32	Lait@Pairin bin Basinda	06.03.2004
SIW33	Daimin bin Longgoi	06.03.2004
SIW34	Lanam@Ramlan bin Basinda	06.03.2004
SIW35	Nancy Gasial	06.03.2004
SIW36	Naim bin Adam	06.03.2004
SIW37	Yahya Maji	06.03.2004

Appendix 7



Standard Minimum Rules for the Treatment of Prisoners
Adopted by the First United Nations Congress on the Prevention of Crime
and the Treatment of Offenders, held at Geneva in 1955, and approved by
the Economic and Social Council by its resolution 663 C (XXIV) of 31 July
1957 and 2076 (LXII) of 13 May 1977

Preliminary Observations

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.

(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

PART I

RULES OF GENERAL APPLICATION

Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register. Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults. Accommodation

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Exercise and sport

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the

institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (1) The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and service of food;

(b) The hygiene and cleanliness of the institution and the prisoners;

(c) The sanitation, heating, lighting and ventilation of the institution;

(d) The suitability and cleanliness of the prisoners' clothing and bedding;

(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be inflicted;
- (c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from

injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition. (2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

46. (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

PART II

RULES APPLICABLE TO SPECIAL CATEGORIES

A. PRISONERS UNDER SENTENCE

Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation I of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid. 61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

Work

71. (1) Prison labour must not be of an afflictive nature.
- (2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
- (3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
- (4) So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.
- (5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
- (6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.
72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.
- (2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.
73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.
- (2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.
74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.
- (2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.
75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.
- (2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty. 78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

B. INSANE AND MENTALLY ABNORMAL PRISONERS

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

C. PRISONERS UNDER ARREST OR AWAITING TRIAL

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners," hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

D. CIVIL PRISONERS

94. In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. PERSONS ARRESTED OR DETAINED WITHOUT CHARGE

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

Appendix 8



Code of Conduct for Law Enforcement Officials **Adopted by General Assembly resolution 34/169 of 17 December 1979**

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Commentary:

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

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 a 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.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of

the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

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.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

Appendix 9

MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA
KINABALU

4

ORIGINATING SUMMONS NO. K24-181 2001

(IN THE MATTER OF CL
065316074 SITUATED AT
MASILAU, KUNDASANG,
RANAU, SABAH

AND

IN THE MATTER OF ORDER 89,
RULE 2 OF THE RULES OF THE
HIGH COURT 1980)

BETWEEN

DESA HIGHLANDS SDN BHD
(COMPANY NO. 066053-W)

.. PLAINTIFFS

AND

MALANDI TANOR (NRIC NO. H0103973)
JAMES TING CHING ONG
(NRIC NO. K718013)
& 42 ORS

.. 1ST DEFENDANT

.. 2ND DEFENDANT

BEFORE THE HONOURABLE JUDGE
DATUK SULONG MATJERAIE,
JUDGE OF THE HIGH COURT
IN SABAH AND SARAWAK
AT KOTA KINABALU

IN CHAMBERS

THE 6th DAY OF FEBRUARY 2003

ORDER

UPON THE APPLICATION of the abovenamed Plaintiffs: AND UPON
READING the Originating Summons (in the matter of CL 065316074
situated at Masilau , Kundasang, Ranau, Sabah and in the matter of *Order 89*

rule 1 of the Rules of the High Court 1980) dated 19th June 2001 together with Affidavit in support of Fung Yin Leung sworn to on 18th June 2001 and filed herein; the affidavit of Malandi Tanor affirmed on 16th November 2001 and filed herein; the affidavit in reply of Fung Yin Leung sworn to on 3rd January 2002 and filed herein; the supplementary affidavit of Fung Yin Leung sworn to on 14th January 2002 and filed herein; the affidavit to reply of Malandi Tanor affirmed on 19th March 2002 and filed herein AND THIS APPLICATION coming up for hearing on 30th November 2001 AND UPON HEARING RAMANANANTHAN A/L SARAVANAMUTHU Esq. of Counsel for the Plaintiffs and SEIBING GUNTING Esq. of Counsel for the Defendants IT WAS ORDERED that this Originating Summons do stand adjourned.

THIS APPLICATION coming up for hearing on 8th March 2002 IT WAS ORDERED that this Originating Summons do stand adjourned.

THIS APPLICATION coming up for hearing on 6th May 2002 IT WAS ORDERED that this Originating Summons do stand adjourned.

THIS APPLICATION coming up for hearing on 22nd July 2002 IT WAS ORDERED that this Originating Summons do stand adjourned.

THIS APPLICATION coming up for hearing on 2nd December 2002 IT WAS ORDERED this Originating Summons do stand adjourned.

THIS APPLICATION coming up for hearing on 6th February 2003 IT IS ORDERED that the Plaintiffs, Desa Highlands Sdn Bhd, recover possession of the land described in this Originating Summons as CL 065316074 situated

at Masilau Kundasang Ranau Sabah and that the Defendants do pay the cos
of this application to the Plaintiffs to be taxed unless agreed.

Dated the 6th day of February 2003.

L.S.

ORIGINAL SIGNED
BY
ANITA HARUN

Deputy/Senior Assistant Registrar
High Court in Sabah and Sarawak
at Kota Kinabalu

INDORSEMENT PURSUANT TO ORDER 45 RULE 7 AND 9(2) OF
THE RULES OF THE HIGH COURT 1980

If you the within name MALANDI TANOR, the 1st Defendant, JAMES TING CHING ONG, the 2nd Defendant and all other persons not named in this Originating Summons but are in occupation of the said Land without licence or consent of the Registered Owner neglect to obey this Order you will liable to process of execution for the purpose of compelling you to do so.

L.S.

ORIGINAL SIGNED
BY
ANITA HARUN

Deputy/Senior Assistant Registrar
High Court in Sabah and Sarawak
at Kota Kinabalu

This Order is filed by Messrs Jayasuriya Kah & Co., Advocates for the Plaintiffs whose address for service is at Suite 208, 2nd Floor, Wisma Sabah, Kota Kinabalu, Sabah

(T/LIT/3955-RS)

Appendix 10

JAYA HIDYA KAH
KOTA KINABALU

MAHKAMAH TINGGI
= 17

MALAYSIA *Entered by SIW18*

ENCLOSURE

IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA KINABALI

ORIGINATING SUMMONS NO. K24-181 2001
Az: 1038-01-2003

(IN THE MATTER OF CL 065316074
SITUATED AT MASILAU,
KUNDASANG, RANAU, SABAH

AND

IN THE MATTER OF ORDER 89,
RULE 2 OF THE RULES OF THE
HIGH COURT 1980)

BETWEEN

DESA HIGHLANDS SDN BHD
(COMPANY NO. 066053-W) .. PLAINTIFFS

AND

MALANDI TANOR (NRIC NO. H0103973) .. 1ST DEFENDANT
JAMES TING CHING ONG
(NRIC NO. K718013) .. 2ND DEFENDANT
& 42 ORS

YANG AMAT ARIF TAN SRI DATUK AMAR STEVE SHIM LIP KIONG,
P.S.M., P.J.N., CHIEF JUDGE OF THE HIGH COURT IN SABAH AND
SARAWAK IN THE NAME AND ON BEHALF OF SERI PADUKA BAGINDA
YANG DI PERTUAN AGONG

WRIT OF POSSESSION
(Order 89, rule 7 of the Rules of the High Court)

To the Sheriff/Baliff,

Whereas it was on the 6th day of February 2003 ordered that the Plaintiffs,
Desa Highlands Sdn Bhd do recover possession of Country Lease 065316074 situated
at Masilau Kundasang in the District of Ranau and that the Defendants, Malandi

Tanor, James Ting Ching Ong and 42 Ors do pay Desa Highlands Sdn Bhd costs to be taxed unless agreed;

We command you that you enter the said land and cause Desa Highlands Sdn Bhd to have possession of it.

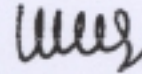
And in what manner you have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have here then this writ.

Dated the 15TH day of April 2003.

BETWEEN


DESA HIGHLANDS SDN BHD
(COMPANY NO. 156033-W)

JAMES TING CHING ONG
(INDIVIDUAL)



UMMU KALTHOM BTE ABDUL SAMAD
PENOLONG KANAN PENDAFTAR
MAHKAMAH TINGGI SABAH DAN SARAWAK
KOTA KINABALU
High Court in Sabah and Sarawak in
Kota Kinabalu

Appendix 11

 MAHKAMAH TINGGI
BANGUNAN BLOK C
PETI SURAT 10837 MALAYSIA
88809 KOTA KINABALU
SABAH MALAYSIA

NO. TELEFON : 088-210068
NO. FAKS : 088-210068
TELEGRAM "Judicial Kota Kinabalu"

351280/211255
351280/211255
D12

Ruj. Tuan : *Lampiran B*
Ruj. Kami : AE.K.38-01-2003
Tarikh : 06 MEI 2003

Tetuan Jayasuriya Kah & Co.
Peguambela dan Peguamcara
Kota Kinabalu.

DOKUMENT DIAMBIL OLEH:
TANDATANGAN:
NAMA :
TARIKH :

Tuan,

Application For Execution No. K38-01 Tahun 2003
[Suit No. K24-181 Tahun 2001]
Desa Highlands Sdn. Bhd.
Dan
Malandi Tanor
James Ting Ching Ong & 42 Yang Lain

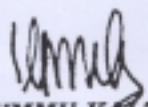
Surat tetuan ruj: TJ/LIT/3955-SR/CG bertarikh 12 April 2003 dirujuk.

2. Sila dimaklumkan bahawa 'Writ of Possession tersebut akan dijalankan pada tarikh **22 Mei 2003** jam 9.00 pagi. Sila hantar wakil tetuan untuk membantu Belip Mahkamah ini.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,


(UMMU KALTHOM ABD. SAMAD)
Penolong Kanan Pendaftar
Mahkamah Tinggi
Kota Kinabalu.

AG/jg[Writ of Possession m. 20]

Sambungan Report

Selain itu lebih kurang 10 anggota dengan 2 kenderaan telah datang ke ~~tempat~~ kawasan kejadian dengan mendatangkan kecurigaan kepada penduduk di samping menimbulkan ketakutan kepada penduduk kampung sebagai satu bentuk ugutan.

Sesapa sahaja penduduk yang cuba meminta penjelasan atau diugut untuk dicerca atau dipenjara, yang kami rasa amat bercanggah dengan perkhidmatan pihak polis.

Pn. Milah telah cedera di bahagian bahu ~~kiri~~ dan kaki sehingga ~~tidak~~ ^{sukar} berjalan akibat kekasaran polis yang bijak memukul tanpa ketara di mata orang ramai.

MPLANO

BALAI POLIS DAERAH RANAU

Siapa yang ambil report SENDIRI

Waktu dan haribulan report 22/5/03 2240

Nama MALANDI BIN TANOK

lelaki atau perempuan LELAKI umur 53

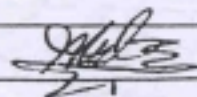
keturunan DUSUN bahasa DUSUN/MELAYU

pekerjaan PETANI tempat tinggal KAULUAN
KUNDASANG
pendakwa itu.


Aduan kata—

Sambungan ~~daripada~~ V 352693.

Individu yang telah mengasari dan
menyebabkan kecederaan kepada
Puan Milah Bangaloi ialah
MOTHD IZAAN (Pemangku CCPD
Daerah Ranau). Beliau juga (Mothd
Izaan) juga berlagak seolah-olah
Penguasa tanah yang boleh
memutuskan hak milik tanah
penduduk kampung.



Appendix 13

 **NOTICES**

ARAHAN AMALAN KETUA HAKIM NEGARA BIL 3 /2003

**Perintah Penahanan di bawah seksyen 117
Kanon Prosedur Jenayah (KPJ)**

Setelah berunding dengan YAA Hakim Besar Malaya dan YAA Hakim Besar Sabah dan Sarawak, saya dengan ini mengeluarkan arahan seperti berikut:

2. Bagi memastikan kesragaman amalan dan untuk mempertingkatkan pematihan kehendak seksyen 117 Kanon Prosedur Jenayah (KPJ) di seluruh Malaysia, prosedur-prosedur berikut hendaklah diikuti:

(i) Seorang pegawai polis yang memohon perintah di bawah seksyen 117 KPJ hendaklah mengemukakan kepada Majistret:

a) orang yang disyaki; dan
b) dua salinan catatan diari siasatan di bawah seksyen 119 KPJ yang berkaitan dengan kes tersebut.

(ii) Sebelum pendengaran sesuatu permohonan, Majistret hendaklah bertanya orang yang disyaki samada beliau :

a) telah diberi peluang untuk mendapatkan atau menghubungi peguam; atau
b) ingin diwakili oleh peguam.

(iii) Sekiranya orang yang disyaki:

a) ingin diwakili oleh peguam, Majistret hendaklah mendengar jika terdapat bantahan terhadap perwakilan tersebut dan mempertimbangkannya. Beban untuk membuktikan samada hak kepada peguam ini akan menghalang siasatan adalah terletak kepada pihak polis. Satu tempoh reman pendek boleh diberikan dengan syarat dia diberi peluang untuk mendapatkan peguam. Peguam yang dijanjikan mestilah dipersetujui oleh orang yang disyaki.
b) tidak ingin diwakili oleh peguam, Majistret hendaklah terus mendengar permohonan tersebut.

(iv) Pada permulaan pendengaran permohonan itu, Majistret hendaklah menentukan samada permohonan ini adalah permohonan baru atau permohonan lanjutan. Sebelum sesuatu permohonan dibenarkan, Majistret mesti mengambil kira alasan-alasan yang diberi termasuk alasan didalam perintah tersebut.

(v) Sekiranya Majistret membenarkan penahanan, beliau hendaklah:

a) mencatatkan didalam diari sebuah-sebuah penahanan dibuat;
b) mengembalikan satu salinan kepada pegawai penyiasat; dan
c) memfailkan satu lagi salinan di dalam fail mahkamah dengan ditandakan 'Perintah penahanan dibawah Seksyen 117 KPJ' dan fail tersebut hendaklah diumumkan mengikut tahun.

(vi) Apabila seseorang di bawah perintah penahanan dilepaskan atau diberi jaminan, pegawai penyiasat hendaklah memaklumkan kepada Majistret dengan mengisi borang seperti Lampiran 1. Borang tersebut mestilah difailkan bersama-sama dengan, perintah tahanan tersebut.

(vii) Setiap perintah tahanan yang telah dikeluarkan hendaklah dibawa kepada perhatian Majistret pada tarikh orang yang disyaki itu dilepaskan. Sekiranya tiada borang perlepasan dikemukakan pada tarikh tersebut, Majistret hendaklah mengarahkan pegawai penyiasat yang berkenaan memfailkan borang seperti Lampiran 1.

(viii) Majistret hendaklah menyediakan dan menghantar penyata bulanan perintah-perintah tahanan dengan mengisi borang di Lampiran 2 kepada Hakim Utama Mahkamah Tinggi dan sesalinan kepada Ketua Pendaftar Mahkamah Persekutuan.

(ix) Sekiranya Majistret tidak dapat mendengar permohonan perintah tahanan, Hakim Mahkamah Sesyen, Pendaftar Mahkamah Rendah atau mana-mana pegawai lain seperti yang disenaraikan di bawah jadual Keempat Akta Mahkamah Rendah 1948 boleh mendengar permohonan tersebut.

(x) Bagi pegawai penjawat awam di negeri-negeri seperti yang disenaraikan di bawah Jadual Keempat Akta Mahkamah Rendah 1948 yang mendengar permohonan perintah tahanan, prosedur yang telah digariskan di atas adalah terpakai. Setelah membuat perintah tersebut, pegawai tersebut adalah dikehendaki mengemukakan dengan segera salinan perintah yang dibuat olehnya kepada Majistret Daerah berkenaan.

(xi) Perintah tahanan yang diberikan oleh pegawai tersebut hendaklah tidak melebihi 3 hari kecuali bagi Mahkamah Jaja di negeri Sabah dan Sarawak. Sekiranya tahanan lanjut difikirkan perlu selepas tamat tempoh 3 hari, pegawai polis yang berkenaan hendaklah mengemukakan orang yang disyaki di hadapan Majistret Daerah itu atau Majistret yang berhampiran.

3. Pekeliling Ketua Pendaftar 1/79, Pekeliling Ketua Pendaftar 5/79 dan Pekeliling Pendaftar 1/95 adalah dibatalkan.

4. Arahan Amalan ini berkuatkuasa mulai 2 Januari 2003.

Tan Mohamed Dzaiddin bin Haji Abdullah
Ketua Hakim Negara
Mahkamah Persekutuan Malaysia
Kuala Lumpur