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**THE PUBLIC INQUIRY INTO THE ALLEGATION OF  
EXCESSIVE FORCE DURING THE INCIDENT AT BANDAR  
MAHKOTA CHERAS ON 27<sup>TH</sup> MAY 2008**

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

**18 NOVEMBER, 2008**

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## 1. INTRODUCTION

Suara Rakyat Malaysia (SUARAM) recognises the effort taken by SUHAKAM in conducting the Public Inquiry into the case of the recent incident at the Bandar Mahkota Cheras herein after to be referred to as BMC on 27 May 2008.

SUARAM appreciates that the Commission has given the opportunity to civil society organisations to actively participate in the inquiry and to perform this submission.

SUARAM notes that the formation of the National Human Rights Commission or SUHAKAM is to monitor and investigate into such incidences and provide justice to the victims of such cases and to further rectify abuses of power and human rights violations such as in the case named above.

SUARAM firmly believes that creating a fair, just and accountable police force is a fundamental protection for human rights within any society. In the case of BMC, we are concerned that:

1. The police force is not representative of the whole community;
2. There has been a failure to train the PDRM in basic international principles which guide the conduct of law enforcement officials;
3. There has been a failure to monitor PDRM's activities to ensure that the police force operates in a manner consistent with international human rights principles;
4. There has been a failure to institute legislations which both protect members of the public against potential abuse at the hands of the police and makes accountable those accused of violations of human and civil rights under the law.

As highlighted by the attached reports, there is credible evidence of patterns of human rights abuses by the PDRM. We are not satisfied that investigations into alleged abuses have been conducted in a thorough and impartial manner. Both the nature and scale of abuses coupled with the lack of accountability lend credibility to charges that the PDRM has been able to operate with virtual impunity.

SUARAM urges that the final recommendations of the Commission should also include measures to ensure that future policing in Malaysia:

1. Is fair, just and accountable;
2. Operates within a "coherent and cooperative justice system" which is in conformity with human rights norms;
3. Has the confidence of all sectors of the community.

As we outline subsequently in this report, we believe, to this end, it is imperative that the Commission's consultation process is inclusive, impartial and receptive to the wider community. SUARAM believes that the process of community consultation will be as important as the eventual outcome in ensuring the success of, and public confidence in police reforms in Malaysia.

## **2. The issues to be determined in the inquiry are:-**

### 2.1 Terms of reference of the public inquiry:

- a) Whether or not there was any law enforcement personnel in performance of their duty to maintain law and order has used excessive force during the incident at Persiaran Bandar Mahkota Cheras 1 in Bandar Mahkota Cheras on 27<sup>th</sup> May 2008; and
- b) If there was excessive use of force:
  - i. whether there was any violation of human rights of any person or persons and;
  - ii. who were responsible for such violation;
- c) To recommend what action to be taken against those responsible for the violation of human rights of such person or persons.

### 2.2 The scope of inquiry may extend to:-

The deployment of non uniformed (plain clothed) special branch agents at the scene and possible act of provocation that was later used to justify use of force.

### **3. Analysis of evidence of witnesses**

In this regard, SUARAM adopts the finding and analysis made by the Bar Council Malaysia. We agree that FRUs and police personnel have used excessive force on the three male complainants W1, W3, and W7. There is no justification whatsoever for the police and FRUs to have committed violation of human rights in the manner they did.

### **4. Recommendations**

SUARAM would like to make recommendations as below:

#### **4.1 Prosecute Human Rights Violators**

In refer to this incident, SUARAM urges the Commission to suggest to Attorney General's Chamber to prosecute those police personnel who were involved in the assault on W1, W3 and W7. The Commission also needs to prevent the perpetrators' impunity from punishment of law.

At the meantime, enhance the engagement between Suhakam and Attorney General's Chamber to prosecute human rights violators in court. This relationship should retain until the Attorney General's Chamber allocate an independent Deputy Public Prosecutor in Suhakam office to further prosecute human rights violators.

#### **4.2 Pro-active of Civil and Political Rights Committee**

SUARAM welcomes the effort of Suhakam in setting up the civil and political rights committee and having a few rounds of dialogue with civil society organizations to discuss the function and role of the committee. SUARAM would like to recommend the committee should be more pro-active to attend to each peaceful assembly to monitor the whole process of assembly and to intervene when the authorities deny the rights to assemble.

The committee should be the body to push forward all the recommendations on rights to assemble made by Suhakam in the report on "Freedom of Assembly" to The House

of Parliament in year 2001 and recommendations in the report of public inquiry into the incident at KLCC on 28 May 2006.

### **4.3 Accountability**

SUARAM has strongly stated that the present mechanisms for police accountability are ineffective and unsatisfactory. In order for any policing service to have public confidence, it must be seen to operate under the rule of law. Thus the actions of state agents must be accountable under law and to the public in a transparent manner. We urge the Commission to strongly call for the immediate implementation all the 125 recommendations as proposed by the Royal Police Commission especially the setting up of the Independent Police Complaints and Misconduct Commission (IPCMC).

SUARAM also views with concern on the role and function played by the Special Branch in public order policing. We fear that the unidentifiable officers in civilian clothing could abuse their powers and act as a provocateur at any tensed situations and moments. The Royal Police Commission recognised that there appears to be no legal provisions dealing with the functions, powers and duties of the Special Branch. The Commission recommended the Special Branch to be made accountable and its powers and responsibilities to be spelt out in law so that it can function impartially and independently and to clearly define the term 'security' to avoid abuse of power. SUARAM urges SUHAKAM to further study the roles played by the Special Branch in situation of public assembly and to adopt the recommendations made by the Royal Police Commission to further scrutinise the agency and to increase their accountability.

### **4.4 Composition**

A vital step towards creating a police force that enjoys the support of the wider community is to ensure that the composition of the police reflects all sectors of the community. The terms of reference for the Commission clearly state the recommendation should include proposals that address the composition of the police force. Creating a police force that is representative of the Malaysian community is, therefore, a vital first step in building a force that will have the confidence of the general public.

To this end, SUARAM recommends:

- To set a recruitment timetable and target for attracting under-represented community sectors including those from the nationalist community as well as those from other minority groups and women;
- The establishment of a vetting system, which will ensure that no police officers involved in past abusive practices could continue to work in the police force.

#### **4.5 General International Policing Standard**

Although the Malaysian government has not ratified key legally-binding international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), Malaysia as with all other UN member states, has a responsibility under the 1945 UN Charter to promote respect for, and observance of, human rights and fundamental freedoms.

Police personnel, as officers of the state (where primary responsibility for the protection and promotion of human rights resides) are, with all other individuals and organs in society, obliged to know and to apply international standards for human rights. Moreover, Article 28(2) of the UDHR recognises that a "social order" is a necessary condition for the realisation of the above and all other rights. Within the context of ensuring "social order", the effective deployment of a policing service in a manner that respects human rights is one of the key means which a sovereign state can fulfil both its international obligations and its obligations to its own citizens.

In addition, Malaysia should be in alliance with the United Nations (UN), who in a continuing effort to assist member states in the development of national police practice consistent with the human rights framework, has developed a series of Principles, Codes and Guidelines related to policing.

#### **4.6 UN codes, guidelines and principles for policing**

SUARAM would like to express our support to SUHAKAM in calling the Government of Malaysia to immediately ratify and implement domestically all the

international human rights measurements. In particular the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, the United Nations Code of Conduct for Law Enforcement Officials, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcements Officials and other relevant human rights standard documents.

This effort is to establish a fundamental standard on the nature of human rights-based policing, and the relationship that police should have with the communities they serve and political system within which they function.

#### **4.7 Training**

Central to the training curriculum of police officers must be principles of international human rights laws and standards. Specifically, we recommend that training received by the police force be in accordance with principles on policing as expressed in the following international documents:

- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- UN Code of Conduct for Law Enforcement Officials; and
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Additionally, police officers should be familiar with provisions contained within international human rights treaties including the International Covenant on Civil and Political Rights. Such training should have relevance to the impact of these instruments on everyday policing.

To this end, Suaram recommends that the police force draw from all available professional resources, including from the academic, legal and human rights communities, to conduct this training in a rigorous and informed manner.