

BAR COUNCIL LEGAL AID CENTER (KL)

REPORT OF OBSERVATIONS ON THE PUBLIC INQUIRY INTO THE INCIDENT AT KLCC ON 28 MAY 2006 ON BEHALF OF INTERESTED PARTIES

Chua Tian Chang (W1), Badrul Hisham bin Shaharin (W2), Yap Weng Keong (W4), Dr. Hatta Ramli (W5), Lim Sok Swan (W6), Ronnie Liu Tian Khiew (W7), Lee Huat Seng (W8), Lua Khang Wei (W9), Lai Chee Sen (W13), Lee Khai Loon (W14), Lim Hong Siang (W15), Soh Sook Hwa (W16), Zahir bin Hassan (W17), Syed Ibrahim bin Syed Noh (W19), Lim Ban Teng (W20), Nashita binti Md Noor (W22), Ooi Tze Min (W23), Teh Chun Hong (W24), Amran Zulkifli (W25), Wong Keen Yee (W26) and Omar Tan Abdullah @ Tan Soi Kow (W27)

**SUBMITTED TO THE HUMAN RIGHTS
COMMISSION OF MALAYSIA (SUHAKAM) ON
1 DECEMBER 2006**

**BAR COUNCIL LEGAL AID CENTRE (KL)
6TH FLOOR, WISMA KRAFTANGAN
NO. 9, JALAN TUN PERAK
50050 KUALA LUMPUR**

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I. INTRODUCTION

These observations are forwarded on behalf of the following interested parties who also appeared as witnesses in the Inquiry. They are as follows:

- Chua Tian Chang (W1)
- Badrul Hisham bin Shaharin (W2)
- Yap Weng Keong (W4)
- Dr. Hatta Ramli (W5)
- Lim Sok Swan (W6)
- Ronnie Liu Tian Khiew (W7)
- Lee Huat Seng (W8)
- Lua Khang Wei (W9)
- Lai Chee Sen (W13)
- Lee Khai Loon (W14)
- Lim Hong Siang (W15)
- Soh Sook Hwa (W16)
- Zahir bin Hassan (W17)
- Syed Ibrahim bin Syed Noh (W19)
- Lim Ban Teng (W20)
- Nashita binti Md Noor (W22)
- Ooi Tze Min (W23)
- Teh Chun Hong (W24)
- Amran Zulkifli (W25)
- Wong Keen Yee (W26) and
- Omar Tan Abdullah @ Tan Soi Kow (W27)

These observations are also forwarded on behalf of SUARAM, a non-governmental organization working to promote and protect human rights in Malaysia.

The Background

In protest to the sharp fuel price hike announced by the government early this year, three peaceful protests had been organized by a number of NGOs, political parties and the MTUC (Malaysia Trade Union Congress) on 3rd, 10th and 26th of March 2006 in front of KLCC. On the 26th of March, the police dispersed the peaceful crowd violently and arrested 22 protestors. A number of protestors were injured due to police violence. A complaint was submitted to SUHAKAM on 31 March 2006.

On 28 May 2006, the Coalition to Protest Fuel Price Hike (PROTES) once again organized a demonstration in front of KLCC to voice the plight of Malaysians who are

heavily burdened by the fuel price and electricity tariff hike. Unfortunately, this assembly was again dispersed by the police with force. 20 people were arrested, including one minor. Many protestors were beaten and kicked by the Federal Reserve Unit (FRU) personnel. Several protestors suffered injuries of varying severity. The tragic day was dubbed “Bloody Sunday” by observers on account of photographs of blood-stained protestors. A second complaint was lodged with SUHAKAM.

After filing these complaints to SUHAKAM, civil society groups pressed SUHAKAM to hold a public inquiry into police conduct and brutality in breaking up the aforesaid demonstrations. After some months, SUHAKAM finally announced that they would hold a public inquiry into the “Bloody Sunday” incident on 28 May 2006.

The Terms of Reference of the Inquiry

The terms of reference of the Inquiry are as follows:

1. To determine whether there were any violations of human rights of any person or party during the incident.
2. If violations of human rights occurred, to determine:
 - (i) which person or agency is responsible;
 - (ii) how such violations came about;
 - (iii) what administrative directives and procedures, or arrangements contributed to them; and,
 - (iv) what measures should be recommended to be taken to ensure that such violations do not recur.

Counsel for the Bar Council who also appeared at the Inquiry will also be submitted their observations to assist SUHAKAM with their findings. To avoid duplicity, the Bar Council and the Kuala Lumpur Legal Aid Centre shall be submitting two separate reports, and will deal with the terms of reference as follows:

- A. The Kuala Lumpur Legal Aid Centre shall address the evidence presented at the Inquiry and answer terms of reference 2(i) - (iv).
- B. The Bar Council shall address practices and legislation in other jurisdictions and also answer term of reference 2 (iv).

III. IDENTIFICATION OF THE RIGHTS ENGAGED

After having had the opportunity to observe and take an active part in the proceedings, the Bar Council is of the view that based on the evidence presented, the following core rights of the protesters (vis-à-vis the police and FRU) were engaged:

- Right to life, liberty and security
- Right to freedom of opinion and expression
- Right to assemble peacefully without arms

This is to be juxtaposed with the conduct of the police and FRU particularly on the use of force in crowd control situations. We discuss these in turn.

Right to life, liberty and security

A. International human rights law

1. The Universal Declaration of Human Rights, 1948 (UDHR)

1.1 Article 3 provides as follows:

“Everyone has the right to life, liberty and security of person.”

1.2 In connection therewith, Article 5 specifically states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

- 1.3 In the event of violations of fundamental rights, Article 8 provides that everyone has the right to an effective remedy by competent national tribunals for redress of those violations.
2. The International Covenant on Civil and Political Rights, 1976 (ICCPR)
- 2.1 Based on provisions of the UDHR, the ICCPR reaffirmed the rights set out therein.
- 2.2 Article 6(1) provides as follows:
- “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*
- 2.3 In connection therewith, Article 7 specifically states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment¹.
- 2.4 Article 9(1) reinforces the right to liberty and security of the person².
- 2.5 No derogation from Articles 6 and 7 may be made under the ICCPR³. There appears to be no specific prohibition of derogation from Article 9. However, any attempted derogation may only be permitted in a time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed. Measures taken must only be to the

¹ See also United Nations Human Rights Committee, General Comment No. 7 (*“Article 7: The prohibition of torture and cruel, inhuman or degrading treatment or punishment”*), 16th Session (1982) and replaced by United Nations Human Rights Committee, General Comment No. 20 (*“Article 7: The prohibition of torture or cruel, inhuman or degrading treatment or punishment”*), 44th Session (1992).

² See also United Nations Human Rights Committee, General Comment No. 8 (*“Article 9: The right to liberty and security of the person”*), 16th Session (1982).

extent strictly required by the exigencies of the situation⁴. This demonstrates the elevated importance of the right guaranteed under Article 9.

For the purpose of this report, the evidence presented at the Inquiry does not meet the requirements under Article 4(1) allowing any derogation by a State party.

2.6 Article 2(3) outlines remedies which must be provided to any person whose rights have been violated:

“Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
- (c) To ensure that the competent authorities shall enforce such remedies when granted.”*

³ Article 4(2) of the ICCPR. See also United Nations Human Rights Committee, General Comment No. 6 (“Article 6: The right to life”), 16th Session (1982).

⁴ Article 4(1) of the ICCPR. See also United Nations Human Rights Committee, General Comment No. 5 (“Article 4: Derogations during a state of emergency”), 13th Session (1981) and replaced by United

3. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987 (CAT)

3.1 Article 16 provides that each State Party shall undertake to prevent in any territory under its jurisdiction acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture⁵ when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person.

3.2 Article 10⁶ makes it obligatory for each State Party to ensure that law enforcement personnel are trained and educated regarding the prohibition against acts of cruel, inhuman or degrading treatment or punishment, and that rules or instructions issued in regard to the duties and functions of any such person contain the same.

3.3 Article 12⁷ states that each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that acts of cruel, inhuman or degrading treatment or punishment has been committed in any territory under its jurisdiction.

3.4 Article 13⁸ provides that any individual who alleges he has been subjected to acts of cruel, inhuman or degrading treatment or punishment has the

Nations Human Rights Committee, General Comment No. 29 (*“Article 4: Derogations during a state of emergency”*), 72th Session (2001).

⁵ “Torture” as defined in Article 1 of the CAT. It is submitted that the term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against all forms of physical or mental abuse, inflicted for whatever reason, if any. Any other interpretation would render the provision meaningless.

⁶ Read with Article 16 of the CAT.

⁷ Read with Article 16 of the CAT.

⁸ Read with Article 16 of the CAT.

right to complain, and to have his case promptly and impartially examined by competent authorities.

4. Whilst Malaysia has not ratified the ICCPR or the CAT, it is nevertheless submitted that the prohibition of torture or other cruel, inhuman or degrading treatment or punishment has achieved the eminence of customary international law⁹ and is therefore applicable by virtue of this fact; if not, at the very least constituting high persuasive authority for the recognition of these rights in Malaysia¹⁰.

B. National constitutional law

1. The Federal Constitution (FC)

1.1 Article 5(1) provides as follows:

“No person shall be deprived of his life or personal liberty save in accordance with law.”

⁹ See *Filartiga v Peña-Irala* 630 F.2d 876 (2d. Cir. 1980) and Restatement (Third) of the Foreign Relations Law of the United States § 702 (1987).

¹⁰ In the context of native land rights in Australia, Brennan J. in *Mabo & Ors v The State of Queensland (No. 2)* 175 [1992] CLR 1 at page 42 said:

“Whatever the justification advanced in earlier days for refusing to recognize the rights and interests in land of the indigenous inhabitants of settled colonies, an unjust and discriminatory doctrine of that kind can no longer be accepted. The expectations of the international community accord in this respect with the contemporary values of the Australian people. The opening up of international remedies to individuals pursuant to Australia’s accession to the Optional Protocol to the International Covenant on Civil and Political Rights brings to bear on the common law the powerful influence of the of the Covenant and the international standards it imports. The common law does not necessarily conform with international law, but international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights. A common law doctrine founded on unjust discrimination in the enjoyment of civil and political rights demands reconsideration. It is contrary both to international standards and to the fundamental values of our common law to entrench a discriminatory rule which, because of the supposed position on the scale of social organization of the indigenous inhabitants of a settled colony, denies them a right to occupy their traditional lands.”

- 1.2 Article 5(1) of the FC was interpreted in *PP v Tengku Mahmood Iskandar (1973) 1 MLJ 128* at page 128:

“The record, to my mind, reads more like pages torn from some mediaeval times than a record made within the confines of a modern civilization. The keynote of this whole case can be epitomised by two words — sadistic brutality — every corner of the case from beginning to the end, devoid of relief or palliation. I have searched diligently amongst the evidence, in an attempt to discover some mitigating factor in the conduct of the respondent, which would elevate the case from the level of pure horror and bestiality; and ennoble it at least upon the plane of tragedy. I must confess, I have failed. It is said in Criminal Appeal No. 31 of 1972 that the complainants were involved in smuggling goods into this country. Were they 10 times involved, or were they 100 times involved, that did not justify the respondent to inflict brutal third-degree practices on the three of them. The law is sedulous in giving them the right to a fair trial and to be defended by counsel. Those fundamental rights must always be kept inviolate and inviolable, however crushing the pressure of incriminating proof. Cases are never tried in police stations, but in open courts to which the public has access. The rack and torture chamber must not be substituted for the witness stand. That right is enshrined in our Constitution — “No person shall be deprived of his life, or personal liberty save in accordance with law.” That fundamental right implies that no person is punishable or can be lawfully made to suffer in body except for a distinct breach of law proved in a court of law. All this reduces to the minimum the possibility of arbitrariness and oppression.”

This decision was followed by the Malaysian High Court in *Sagong Bin Tasi & Ors v Kerajaan Negeri Selangor & Ors [2002] 2 MLJ 591* and which was subsequently affirmed on appeal in *Kerajaan Negeri Selangor & Ors v Sagong Bin Tasi & Ors [2005] 6 MLJ 289*.

- 1.3 The Court of Appeal in the case of *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261* further held at page 288:

“In my judgment, the courts should keep in tandem with the national ethos when interpreting provisions of a living document like the Federal Constitution, lest they be left behind while the winds of modern and progressive change pass them by. Judges must not be blind to the realities of life. Neither should they wear blinkers when approaching a question of constitutional interpretation. They should, when discharging their duties as interpreters of the supreme law, adopt a liberal approach in order to implement the true intention of the framers of the Federal Constitution. Such an objective may only be achieved if the expression ‘life’ in art 5(1) is given a broad and liberal meaning.

Adopting the approach that commends itself to me, I have reached the conclusion that the expression ‘life’ appearing in art 5(1) does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life. Of these are the right to seek and be engaged in lawful and gainful employment and to receive those benefits that our society has to offer to its members. It includes the right to live in a reasonably healthy and pollution free environment. For the purposes of this case, it encompasses the right to continue in public service subject to removal for good cause by resort to a fair procedure.”

- 1.4 The FC was drafted with the purpose of granting everyone adequate protection against the abuse of State powers, and it is to be interpreted as a “living document”. Article 5(1) must therefore be read broadly¹¹,

¹¹ In *Dato’ Menteri Othman Bin Baginda & Anor v Dato’ Ombi Syed Alwi Bin Syed Idrus [1981] 1 MLJ 29*, Raja Azlan Shah LP said at page 32:

embodying the idea of “law” within it as including rules of natural justice and equity¹² consonant with internationally accepted customs and usages of civilised nations¹³ such as the prohibition against torture or other cruel, inhuman or degrading treatment or punishment.

- 1.5 In essence, everyone in Malaysia should enjoy in their daily lives the right to be free from excessive and/or unlawful physical acts of violence or mental abuse by law enforcement authorities.

“In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way — “with less rigidity and more generosity than other Acts” (see Minister of Home Affairs v Fisher [1979] 3 All ER 21). A constitution is sui generis, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: “A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms.” The principle of interpreting constitutions “with less rigidity and more generosity” was again applied by the Privy Council in Attorney-General of St Christopher, Nevis and Anguilla v Reynolds [1979] 3 All ER 129, 136.

It is in the light of this kind of ambulatory approach that we must construe our Constitution. The Federal Constitution was enacted as a result of negotiations and discussions between the British Government, the Malay Rulers and the Alliance Party relating to the terms on which independence should be granted. One of its main features is the enumeration and entrenchment of certain rights and freedoms. It is in the light of this kind of ambulatory approach that we must construe our Constitution.”

See also **Dewan Undangan Negeri Kelantan & Anor v Nordin Salleh & Anor [1992] 1 MLJ 697**.

¹² See Article 160(2) of the FC. In **Ong Ah Chuan v Public Prosecutor [1981] 1 MLJ 64**, Lord Diplock said at page 71:

“In a constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to “law” in such contexts as “in accordance with law”, “equality before the law”, “protection of the law” and the like, in their Lordships’ view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution. It would have been taken for granted by the makers of the Constitution that the “law” to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules. If it were otherwise it would be misuse of language to speak of law as something which affords “protection” for the individual in the enjoyment of his fundamental liberties, and the purported entrenchment (by Article 5) of Articles 9(1) and 12(1) would be little better than a mockery.”

This statement was applied in the Malaysian context in **S. Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204**. See also **Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261**.

Right to freedom of opinion and expression

A. *International human rights law*

1. UDHR

1.1 Article 19 provides as follows:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

2. ICCPR

2.1 Based on provisions of the UDHR, the ICCPR reaffirmed the right under Article 19.

2.2 Article 19 provides as follows:

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

¹³ See *The Paquete Habana* [1900] 175 U.S. 677 (20 S.Ct. 290).

3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) *For respect of the rights or reputations of others;*

(b) *For the protection of national security or of public order (ordre public), or of public health or morals.”*

2.3 Article 19 has been authoritatively interpreted as follows¹⁴:

“1. *Paragraph 1 requires protection of the “right to hold opinions without interference”. This is a right to which the Covenant permits no exception or restriction. ...*

3. *... It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual’s right.*

4. *Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law”; they may only be imposed for one of the*

purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being “necessary” for that State party for one of those purposes.”

- 2.4 Whilst Malaysia has not ratified the ICCPR, it is nevertheless submitted that the provisions above at the very least constitute high persuasive authority for the recognition of the extent of these rights in Malaysia¹⁵.

B. National constitutional law

1. FC

- 1.1 Article 10 provides as follows:

“(1) Subject to Clauses (2), (3) and (4) -

(a) every citizen has the right to freedom of speech and expression;

...

(2) Parliament may by law impose -

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence; ...”

¹⁴ By the United Nations Human Rights Committee, General Comment No. 10 (“Article 19: The freedom of opinion”), 19th Session (1983).

¹⁵ n. 11 *supra*.

1.2 However, Article 4 prohibits the questioning of any law on the ground that it imposes restrictions on the rights in Article 10(2) which were not deemed necessary or expedient by Parliament for the purposes mentioned in the said Article¹⁶.

1.3 In essence, all citizens have the right to freedom of speech and expression subject to restrictions which may be imposed by Parliament such as through the Sedition Act, 1948 and Printing Presses and Publications Act, 1984.

Right to assemble peacefully and without arms

A. International human rights law

1. UDHR

1.1 Article 20(1) provides that everyone has the right to freedom of peaceful assembly and association.

2. ICCPR

2.1 Based on provisions of the UDHR, the ICCPR reaffirmed the right under Article 20.

2.2 Article 21 provides as follows:

¹⁶ This is in conflict with the international human rights standard which demands that any restrictions to the freedom of opinion and expression be justified as necessary for the purposes set out in Article 19(3) of the ICCPR.

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

2.3 It is to be noted that the right to freedom of speech and expression is inextricably linked to the right of peaceful assembly¹⁷, and States must safeguard the right to peaceful assembly by refraining “from applying unreasonable indirect restrictions upon that right”¹⁸. There are also positive obligations on States to secure the right and the refusal to issue the necessary permits to organise or participate in such assemblies would constitute a violation¹⁹.

2.4 It is submitted that a sharp distinction must be drawn between the power to *restrict (or regulate)* the right of peaceful assembly, and the power to *prohibit (or prevent)* the exercise of the said right. International human rights law only provides States the power to restrict but not prohibit or prevent. Any executive act which is a purported exercise of restriction, but is in pith and substance an act

¹⁷ *“Public assemblies are essential to the proper functioning of democracy, in situations ranging from election and political party meetings to demonstrations organised to protest about government policies or other issues. The right of public assembly is significant not only for political reasons, but also as an important aspect of respect for individual autonomy, because without the right to express views in public and to call public assemblies for this purpose, the right of the individual to self-expression is very limited. The right of public assembly gives the individual access to a public forum for expression of views and provides a mechanism for individuals to take action as a group. The right to assemble is closely based on the rights to freedom of speech and freedom of association.”*: B Gaze and M Jones, “*Law, Liberty & Australian Democracy*”, Law Book Company Ltd, Sydney (1990) [283]. See also *Leung Kwok Hung & Ors v Hong Kong Special Administrative Region FACC Nos. 1 & 2 of 2005* at paragraph 12.

¹⁸ See the European Court of Human Rights decision of 26 April 1991 (on Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which is identical to Article 21 of the ICCPR) in *Ezelin v. France, Application no. 11800/85*.

¹⁹ See the European Court of Human Rights decision of 20 February 2003 (on Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which is identical to Article 21 of the ICCPR) in *Djavit An v Turkey, Application no. 20652/92*.

of prohibition should be struck down. It was said in *Municipal Corporation of the City of Toronto v. Virgo* [1896] HOL 88 at page 93 that²⁰:

“No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order. But their Lordships think there is a marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed.”

- 2.5 Whilst Malaysia has not ratified the ICCPR, it is nevertheless submitted that the provisions and jurisprudence above at the very least constitute high persuasive authority for the recognition of the extent of these rights in Malaysia²¹.

B. National constitutional law

1. FC

- 1.1 Article 10 provides as follows:

²⁰ See also *Public Prosecutor v. Cheah Beng Poh, Louis & 38 Ors* [1984] 1 CLJ 117 at page 118: “The Court as guardian of the rights and liberties enshrined in the constitution is always jealous of any attempt to tamper with rights and liberties. But the right in issue here i.e. the right to assemble peaceably without arms is not absolute for the Constitution allows Parliament to impose by law such restrictions as it deems necessary in the interest of security and public order. In my view, what the Court must ensure is only that any such restrictions may not amount to a total prohibition of the basic right so as to nullify or render meaningless the right guaranteed by the Constitution.”

²¹ n. 11 *supra*.

- “(1) *Subject to Clauses (2), (3) and (4) - ...*
(b) all citizens have the right to assemble peaceably and without arms; ...
- (2) *Parliament may by law impose - ...*
(b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order; ...”

1.2 However, Article 4 prohibits the questioning of any law on the ground that it imposes restrictions on the rights in Article 10(2) which were not deemed necessary or expedient by Parliament for the purposes mentioned in the said Article²².

1.3 In essence, all citizens have the right to assemble peaceably and without arms subject to restrictions which may be imposed by Parliament such as through the Public Order (Preservation) Act, 1958 and Police Act, 1967.

Conduct of the police and FRU

Our observations in discussing the incident at KLCC premised on the rights engaged falls to be evaluated against the conduct of the police and FRU in controlling and dispersing the protesters.

In so doing, the Bar Council notes the United Nations Code of Conduct for Law Enforcement Officials²³. The following provisions are relevant:

²² This is in conflict with the international human rights standard which demands that any restrictions to the right of peaceful assembly be justified as necessary for the purposes set out in Article 21 of the ICCPR.

²³ Adopted by the United Nations General Assembly Resolution 34/169 (1979). See also the United Nations Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials adopted by the United Nations Economic and Social Council Resolution 1989/61. As a member of the

“Article 1

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. ...

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. ...

Article 3

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

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. ...

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. ...

United Nations, Malaysia is obliged to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion (Article 3 United Nations Charter). This duty was reaffirmed by the World Conference on Human Rights, “*Vienna Declaration and Programme of Action*” (1993) adopted by the United Nations General Assembly Resolution 48/121 (1993) and the World Summit Outcome (2005) adopted by the United Nations General Assembly Resolution 60/1 (2005).

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. ...”

The principles which may be culled from the above are as follows:

- “Human rights-based policing” is a core aim of law enforcement officials in carrying out their duties and responsibilities²⁴.
- The rights and dignity of victims and suspects of crimes must be safeguarded without discrimination consistent with international human rights principles such as those enunciated in the UDHR, ICCPR and CAT.
- The use of force including the discharge of weapons or firearms must be the exception rather than the rule. It should be a means of last resort, not a measure of first instance.
- Law enforcement officials are to effectively secure medical attention and services for all those in need of the same.
- Any violations of the Code should be reported for effective remedies to be taken.

The Bar Council further notes the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials²⁵. The following provisions are relevant:

²⁴ See also Amnesty International, “*Malaysia: Towards Human Right-Based Policing*”, AI Index: ASA 28/001/2005 and Amnesty International, “*10 Basic Human Rights Standards for Law Enforcement Officials*”, AI Index POL 30/04/98.

“Principle 2

Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

Principle 3

The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

Principle 4

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

Principle 5

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

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*

²⁵ Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders

- (b) *Minimize damage and injury, and respect and preserve human life;*
- (c) *Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;*
- (d) *Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. ...*

Principle 7

Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

Principle 8

Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Principle 9

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Principle 10

In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

Principle 11

Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;*
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;*
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;*
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;*
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;*

- (f) *Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.*

Principle 12

As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

Principle 13

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

Principle 14

In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9. ...

Principle 26

Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders. ...”

Amnesty International has elaborated on the said Principles, and the key provisions are reproduced herein²⁶:

“Basic Standard 3:

*Do not use force except when strictly necessary and to the minimum extent required
under the circumstances*

The implementation of Basic Standard 3 involves, among other things, that Police officers, in carrying out their duty, should apply non-violent means as far as possible before resorting to the use of force. They may use force only if other means remain ineffective or without any promise of achieving the necessary result. Basic Standard 3 must be implemented in accordance with Basic Standard 4 and 5.

Whenever the lawful use of force is unavoidable, police officers must:

- Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved*
- Minimize damage and injury, and respect and preserve human life*
- Ensure that all possible assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment*
- Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment*
- Where injury or death is caused by the use of force by police officers, they shall report the incident promptly to their superiors, who should ensure that proper investigations of all such incidents are carried out.*

Basic Standard 4:

Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.

Everyone is allowed to participate in peaceful assemblies, whether political or non-political, subject only to very limited restrictions imposed in conformity with the law and which are necessary in a democratic society to protect such interests as public order and public health. The police must not interfere with lawful and peaceful assemblies, otherwise than for the protection of persons participating in such an assembly or others.

The implementation of Basic Standard 4 involves, among other things:

- In the policing of assemblies that are unlawful but non-violent, police officers must avoid the use of force. If force is indispensable, for example to secure the safety of others, they must restrict such force to the minimum extent necessary and in compliance with the other provisions in Basic Standard 3*
- Firearms shall not be used in the policing of non-violent assemblies. The use of firearms is strictly limited to the objectives mentioned in Basic Standard 5*
- In the dispersal of violent assemblies police officers may use force only if other means remain ineffective or without any promise of achieving the intended result. When using force police officers must comply with the provisions in Basic Standard 3*
- In the dispersal of violent assemblies police officers may use firearms only when less dangerous means are not practicable and only to the minimum extent*

²⁶ See Amnesty International, “10 Basic Human Rights Standards for Law Enforcement Officials”, AI Index POL 30/04/98.

necessary to achieve one of the objectives mentioned in Basic Standard 5 and in accordance with the provisions in Basic Standard 3 and Basic Standard 5.

Basic Standard 5:

Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others

The use of firearms is an extreme measure which must be strictly regulated, because of the risk of death or serious injury involved. The implementation of Basic Standard 5 requires, among other things, that police officers must not use firearms except for the following objectives and only when less extreme means are insufficient to achieve these objectives:

- In self-defence or in defence of others against the imminent threat of death or serious injury*
- To prevent the perpetration of a particularly serious crime involving grave threat to life*
- To arrest a person presenting such a danger and resisting the police officer's authority, or to prevent his or her escape*

In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Police officers must identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the officers at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident. Rules and regulations on the use of firearms by police officers must include guidelines that:

- *Specify the circumstances under which police officers are authorized to carry firearms and prescribe the types of firearms and ammunition permitted*
- *Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm*
- *Prohibit the use of any firearms or ammunition that cause unnecessary injury or present an unnecessary risk*
- *Regulate the control, storage and issuing of firearms and ammunition, including procedures for ensuring that police officers are accountable for firearms and ammunition issued to them*
- *Provide for warnings to be given, if appropriate, when firearms are to be discharged*
- *Provide for a system of reporting and investigation whenever police officers use firearms in the performance of their duty. ...”*

Amnesty International notes that in the United States of America, police guidelines on the use of force state that “*officers may use only the minimum amount of force which is necessary to achieve a legitimate purpose (e.g. effect an arrest or prevent the commission of an offence) when other options are not available or have been exhausted. NYPD guidelines set out the following five stages through which force can progress: (1) verbal persuasion; (2) unarmed physical force; (3) force using non-lethal weapons (e.g. pepper spray or mace); (4) force using impact weapons (e.g. police batons); and (5) deadly force, which may be used only when an officer or another persons life is in direct danger. The guidelines also state that flashlights, radios and handguns are not designed as impact weapons and make clear that they should not be used as such in most circumstances. Police regulations also state that any officer at the scene of a police incident has an obligation to ensure that the law and regulations are complied with, and to intervene if*

the use of force against a subject becomes excessive. The guidelines note that failure to do so constitutes an offence under the law as well as departmental policy.”²⁷

The 5 stages expressed above correspond with the degree of force necessary in any given situation faced by the authorities. It would be a welcome addition to our Malaysian law enforcement procedures, and should be inculcated as part of law enforcement officials’ training and education.

²⁷Amnesty International, “*United States of America: Police brutality and excessive force in the New York City Police Department*”, AI Index: AMR 51/036/1996.

III. ANALYSIS OF EVIDENCE OF WITNESSES IN CHRONOLOGICAL ORDER

We present below summaries of the evidence of witnesses in the same order that they gave evidence to the Inquiry. At the end of the summaries, we present an overview of the incident at KLCC based on our appreciation of the evidence.

1st Witness: TIAN CHUA: “I saw a pool of blood on the ground.” Witness told panel that police should have learnt from other ASEAN countries.

Tian Chua was one of the organizers of the gathering and is also the Information Chief of Parti Keadilan Rakyat (Keadilan)

Tian was asked about the overall situation on the day of the demonstration. The inquiry panel inquired in detail on the incident. The inquiry panel also asked some questions about the Anti Fuel Price Hike Coalition – PROTES.

According to Tian, there was a heavy police presence on the day of the protest. The organizer had made it clear that the demonstration on 28 May would be the last of the series of anti fuel price hike protests. Tian also told the inquiry panel that Dr. Hatta, the coordinator of the anti fuel price hike coalition (PROTES) had also reiterated this message in his speech on the day of the assembly.

Besides, Tian told the inquiry panel that he could not hear the OCPD when the officer warned the crowd by using a loud hailer. When the warning was given, Ronnie Liu was addressing the crowd. The warning could not be heard because of the noise caused by the helicopter. Tian told the inquiry panel that he saw a pool of blood on the ground after the police had left the scene. Towards the end of his testimony, Tian criticised the police for being selective in allowing public assemblies. He told the inquiry panel that the Malaysian police should have learnt from other ASEAN countries on how to handle big crowds, especially when the ASEAN Police Conference had concluded just a few days earlier.

2nd witness BADRUL HISHAM SHAHARIN: “Water cannon hit me on my stomach, and I was dragged rudely by the police”

Badrul Hisham Shaharin (hereinafter referred to as Badrul), is the coordinator of an anti-corruption organization, GERAK. Badrul was the emcee of the assembly on 28 May. He was eventually arrested by the police.

Badrul told the inquiry panel that he was the one who started off the assembly. After a short introduction which he delivered standing on a short ladder, he then passed the microphone to the coordinator of PROTES, Dr. Hatta, to deliver his speech. Badrul said that Dr. Hatta only spoke for a few minutes before the next speaker took over. When the third speaker, Ronnie Liu was speaking, Badrul heard some noise from the police but he could not clearly hear what the OCPD was saying. He thought the OCPD might be asking the crowd to disperse, so he tried to communicate with the OCPD through sign language. After some exchange by signs, he was made to understand that the police was giving them another 5 minutes. Unfortunately, the water cannon was unleashed after hardly two minutes.

The water cannon hit Badrul on his stomach and he fell to the ground because of the force. He was immediately surrounded by 5 to 6 police personnel and was dragged with his buttocks on the floor for some 30 yards. According to Badrul, his pants were torn due to the dragging. He was then handcuffed and placed into a police truck used to hold detainees. He saw Zahir Hassan, the deputy secretary general of Parti Keadilan Rakyat also in the truck. Zahir was badly injured and his mouth was bleeding.

Badrul told the inquiry panel that he has not been charged.

3rd witness: CORPORAL MOHD NASARUDDIN HASHIM. Told the panel the video was not doctored

Lance Corporal Mohd Nasarudin Hashim (hereinafter referred to as Nasarudin) is a member of the FRU, who was instructed to video record the gathering on 28 May. Nasarudin told the inquiry panel that the FRU commander who instructed him was Chief Inspector Pusparajen.

Nasarudin told the inquiry that Chief Inspector Pusparajen did not direct him to film any specific scene. He testified that the video was not doctored.

The 17-min video was played at the inquiry. The video clearly showed that the gathering was peaceful and calm until the police acted to disperse it and a commotion ensued.

Nasarudin told the panel that there were around 40 FRU personnel present on 28 May. They were armed with M16 rifles, .38 pistols and riot guns (tear gas launcher). Answering questions from the panel members and lawyers, Nasarudin repeated at least 4 times that the crowd was calm and never turned unruly at any point of time during the video footage.

One of the panel members, Dato' Choo Siew Kioh noticed that there is a 4-minute gap in the video footage. Responding to this, Nasarudin denied that there was a cut or any

editing was done on the video. He told the panel that he merely switched off the camera to save the battery.

Nasarudin also told the inquiry panel that he heard the warning given by the police officer on the command vehicle. The warning sounded like this “*Bersurai serta-merta, atau kami akan gunakan kekerasan*” According to him, the crowd was calm after the warning was given.

Nasarudin also told the panel that he never expected the water cannon to be unleashed so suddenly. From the video footage shown in the inquiry, the police unleashed water cannon in less than 3 minutes after the OCPD was seen giving the signal of another 5 minutes to the crowd.

The following is the chronology of the video footage:

11:01:27 The OCPD was seen giving a signal 5 more minutes to the crowd.

11:03:09 *Amaran terakhir* (last warning) was announced.

11:04:07 Water cannon were unleashed.

4th witness: YAP WENG KEONG “I saw Zahir Hassan being kicked on his waist by the FRU.”

Yap Weng Keong (hereinafter referred to as Yap) is a member of Parti Keadilan Rakyat and works in a legal firm. He was among the 20 protestors who were arrested during the protest held on 28 May.

Yap told the inquiry panel that he could see police making some announcements when Ronnie Liu was addressing the crowd. However, he could not clearly hear what the police were trying to convey because a helicopter was hovering above the crowd.

When the crowd was dispersing, Yap saw Zahir Hassan being hit by the FRU. It happened just beside him. According to Yap, Zahir was surrounded and kicked by FRU personnel, whom he could not recognize. Zahir was kicked on his waist and fell on the ground.

Yap was arrested but has not been charged.

5th witness: DR. HATTA RAMLI. “Police practised double standards”

Dr. Hatta Ramli (hereinafter referred to as Hatta) said that he was the main organizer of the anti fuel price hike gathering on 28 May. Hatta is also the treasurer of PAS (Parti Islam Se-Malaysia). He told the inquiry panel that he did not hear any warning from the police because the helicopter was hovering dangerously low and caused lots of noise. When Dato’ Vohrah asked why he was worried about the helicopter, Hatta replied that he thought that it could crash.

When the water cannon were unleashed, Hatta went down the stairs of the LRT station to seek shelter with his 7-year old son. After a moment he went up again and saw FRU personnel shoving people with their shields.

Hatta told the panel that he saw two melees when the crowd was dispersing. He saw Zahir Hassan on the ground, surrounded by several FRU personnel. He also saw another commotion at a different place but could not see the face of the victim. After crossing the main road (Jalan Ampang), he saw a “bloody” guy, who is known as Amran. He advised Amran to consult a doctor at a nearby clinic.

Hatta condemned the police for practising double standards in permitting demonstrations. He said that he thought the police had an “agenda” on 28 May, because they packed-off immediately after their “attack”, even there were still some people scattered around. It was not a common practice. He termed it as “They come, they hit, and they run!”

6th witness: LIM SOK SWAN “I was pushed from behind. FRU hit my friend’s head”

Lim Sok Swan (hereinafter referred to as Swan) is a student activist who spoke during the May 28 gathering. According to her, she spoke for less than 5 minutes, before handing over the microphone to the next speaker - Ronnie Liu.

When Ronnie Liu was speaking, Swan saw the FRU start to move. She also saw a police officer on the command vehicle announcing something. However Swan could not clearly hear what was said by the police officer. Swan told the inquiry panel that she saw someone from the crowd gesturing with the police on the truck. Hardly 2 minutes after that, the water cannon were unleashed.

In her testimony, Swan told the panel that she was pushed by the FRU from behind. Her friend, Lee Huat Seng, who was telling the FRU that they will disperse, was hit by the FRU on his head. She saw the FRU hit Lee Huat Seng with a baton.

7th witness: RONNIE LIU “The police were hiding their name tags”

Liu Tian Khiew (better known as Ronnie Liu and hereinafter referred to as Ronnie) is the NGO bureau chief of the DAP (Democratic Action Party). He was also the last speaker on 28 May before the police moved in on the crowd.

Ronnie was very concerned about the helicopter that hovered at a dangerous height. Ronnie told the panel that the helicopter was way below the tip of the twin tower. It was, according to Ronnie, only approximately 80 feet above the road. The helicopter was just above the trees and caused the branches to sway.

Ronnie said that he was still standing on the ladder delivering his speech when the water cannon was unleashed. He remembered that he asked the crowd to remain calm. He was drenched. Two policemen came to him and arrested him. He was handcuffed with plastic cuff. He saw Badrul Hisham dragged by the police, and some women being harassed. They were shoved by the FRU personnel’s shields.

Towards the end of his testimony, Ronnie made a few complaints. Among others, he felt that the police should exhibit their name tags whenever they were on duty. He was very unhappy with the police who appeared in the 28 May demonstration because most of them were hiding their name tags.

Ronnie has not been charged.

8th witness: LEE HUAT SENG “I was hit by the police on my forehead. FRU hit me from behind using a baton”

Lee Huat Seng (hereinafter referred to as Huat Seng) is a graduate from Universiti Sains Malaysia. He retreated peacefully from the assembly with his friends after the water cannon was unleashed. While they were walking slowly towards the Public Bank building, several FRU came from behind and pushed them with their shields. Huat Seng said he kept telling the FRU personnel that they would leave, but they did not bother. The FRU personnel hit him several times on his back with a baton because he was standing at the outermost of the group.

Huat Seng denied that he obstructed the police because people had to walk gingerly as the floor was wet and slippery due to the water cannon. According to Huat Seng, after he was hit by FRU personnel from behind, a policeman without uniform came up to him and hit him on his forehead with an open hand. He fell on the ground due to the hit.

Huat Seng later sought medical assistance in Hospital KL. When asked by the panel why he did not lodge a police report after the incident, Huat Seng told them that he no longer had faith in the police.

Earlier Huat Seng told the inquiry panel that he could not hear any warning from the police before the water cannon were unleashed.

9th witness: LUA KHANG WEI “ I tried to help my friend, but I was hit too”

Lua Khang Wei (hereinafter referred to as Lua) is the administrative secretary of the Selangor Hokkien Association. In the pictures shown to the panel members earlier, Lua was seen bleeding profusely on his right cheek.

Lua said he could not hear what the police was trying to say before the water cannon were unleashed. After he was drenched by the water cannon, Lua left the scene and moved towards the bus stop along Jalan Ampang.

However, Lua went back to assist his friends, who were being intimidated and hit by the police while retreating. Lua saw a number of FRU personnel push his friends from behind and Huat Seng (W8) being hit by baton. He also saw Huat Seng being hit on forehead by a non uniformed policeman. While Lua was trying to lift Huat Seng who had fallen to the ground after being hit, Lua was also hit by the FRU. He could not recall how many times he was hit, but he told the inquiry panel that his right arm was extremely painful.

In the melee, Lua’s spectacles fell and cut his right cheek. He bled profusely because of the cut. He was later sent to Hospital KL for medical treatment.

10th witness: DR. DZULHELMIY BIN SULAIMAN “Injury suffered by Lee Huat Seng could be life threatening if greater force were used”

Dr. Dzulhelmy bin Sulaiman (hereinafter referred to as Dr. Dzulhelmy) is the doctor who treated Huat Seng and Lua Khang Wei in Hospital KL on 28 May. Dr. Dzulhelmy bin Sulaiman is currently a doctor attached to the Emergency Unit of the Hospital KL.

Dr. Dzulhelmy admitted that he only examined Huat Seng’s forehead, because Lee only complained about the pain on his forehead. He found a reddish mark on Lee Huat Seng’s forehead and the patient was in pain. The injury was caused by a heavy hit. According to Dr. Dzulhelmy, the injury suffered by Huat Seng was considered light, but it could be life threatening if greater force were used on the same spot.

Dr. Dzulhelmy also examined Lua. He found that Lua had a pain in his right shoulder. Dr. Dzulhelmy also found reddish mark on Lua’s shoulder and a scratch on his right cheek. However, the movement of Lua’s right hand was normal.

Dr. Dzulhelmy testified that the injuries were consistent with those inflicted by baton and a rimless lens.

11th witness: MOHD HAFIZH BIN MOHD MOKHTAR “ An unfortunate man was held and beaten up by a team of FRU personnel”

Mohd Hafizh bin Mohd Mokhtar (hereinafter referred to as Hafizh) is a journalist with Suara Keadilan, the publication of Parti Keadilan Rakyat. Mohd Hafizh had taken some photos, which included those showing Zahir Hassan being kicked by FRU personnel.

Besides, Hafizh’s photos also showed an unknown protestor being surrounded by a number of FRU personnel and being hit brutally by the butt of a tear gas launcher.

12th witness:ANDREW ONG KOK HENG “ I saw Zahir Hassan being kicked by several FRU personnel”

Andrew Ong Kok Heng (hereinafter referred to as Andrew) a journalist works for the online news website, Malaysiakini.

Andrew had taken more than a 100 photographs, but some of these were corrupted. His photographs showed the incident of Zahir Hassan being kicked by FRU personnel.

Andrew told the inquiry panel that he saw Zahir trying to shield his daughters before the FRU personnel hit him. He was kicked by several FRU personnel at least 3 times. One of the pictures clearly showed a FRU personnel’s leg near Zahir’s groin.

13th witness:LAI CHEE SEN “ I was shocked when I saw Amran”

Lai Chee Sen (hereinafter referred to as Lai) is a temporary teacher in a secondary school. Lai Chee Sen had taken some photographs and a few short video clips on the 28 May.

Lai told the panel members that he saw Huat Seng being hit by FRU personnel. He showed a few video clips to the inquiry panel. One of the clips clearly showed a FRU personnel swing his baton and hit Lee Huat Seng’s waist. This was followed by another attack by a different police officer (without uniform) who struck Lee Huat Seng on the left side of his forehead.

Lai also told the inquiry panel that he was shocked when he saw “bloody” Amran after he crossed Jalan Ampang.

14th witness: LEE KHAI LOON “I was hit by police and my glasses was broken”

Lee Khai Loon (hereinafter referred to as Khai Loon) is a full time staff of a youth organization. Khai Loon told the inquiry panel that he did not hear any warning from the police before the water cannon was unleashed. When he was dispersing with his friends, Khai Loon saw Lee Huat Seng being hit by FRU personnel. He was just behind Lee Huat Seng when the incident happened.

Seconds later, Khai Loon was also hit by a hard object. He told the panel that the hitting came from behind when he was moving. His glasses were broken and he could not see things clearly. Khai Loon told the panel that his friends guided him across the main road (Jalan Ampang).

15th witness:LIM HONG SIAN “FRU said - Kalau kamu ambil gambar lagi, saya akan hancur kamera kamu!”

Lim Hong Siang (hereinafter referred to as Lim) is a journalist of an online news website Merdeka Review.

Lim showed some photographs that were taken by him during the peaceful assembly on 28 May. He told the panel that the crowd was dispersing in a very peaceful manner after the water cannon was unleashed. They moved gingerly because the floor was wet and slippery. The entrance of Suria KLCC was blocked by the police, and the only way to disperse seemed to be crossing the main road – Jalan Ampang.

However, the FRU personnel acted rudely towards the crowd. When Lim was trying to take picture of the FRU’s brutality, he saw two FRU personnel came to him in an intimidating manner. He then decided to run away from them. While running, Lim was kicked by the FRU personnel on his buttock. He then shouted to the FRU “*Media pun kamu pukul ke?*” The FRU warned him:“*Kalau kamu ambil gambar lagi, saya akan hancur kamera kamu!*”

16th witness: SOH SOOK HWA “I saw few of my friends being beaten up by the FRU”

Soh Sook Hwa (hereinafter referred to as Soh) is the former secretary of Malaysia Youth and Democratic Movement (DEMA). DEMA is a student and youth organization which is part of the PROTES coalition.

Soh told the inquiry panel that she did not hear any warning from the police throughout the demonstration. After the water cannon were unleashed, Soh and her friends started to disperse, moving towards the direction of the Public Bank building. The FRU shoved

them from behind with shields. She also saw few of her friends being beaten up by the FRU personnel.

Soh told the inquiry panel that she saw Lee Huat Seng being hit on his head and fall to the ground. She also saw Lim Ban Teng being beaten with a FRU baton. Another of her friends, Teh Choon Hong was kicked by the FRU on his back.

After returning home, Soh took the picture of the victims as evidences. Pictures showed the injuries of Lee Huat Seng, Lim Ban Teng, Lua Khang Wei, Teh Choon Hong and Wong Keen Yee.

17th witness: ZAHIR BIN HASSAN “I also want to know why the FRU personnel kick me”

Zahir bin Hassan (hereinafter referred to as Zahir) is the deputy secretary general of Parti Keadilan Rakyat (PKR).

According to Zahir Hassan the police did make an announcement before the water cannon was unleashed. But he could not hear clearly what the announcement was. Zahir told the inquiry panel that the FRU charged into the crowd at a very fast pace when the crowd was slowly dispersing. He said that 4 to 5 FRU personnel beat him up.

Zahir testified: “I was only trying to give some senses to the police that the crowd was moving away and there is no need to push them. They (FRU personnel) pushed me; I lost balance and fell down on the road (Jalan Ampang) I stumbled because of the pushing of the shield. A bus had to stop because I fell in the middle of the road. I felt several kicks. I was only half or quarterly conscious at that moment.”

Answering Dato’ Vohrah’s question on what triggered the FRU personnel to kick him, Zahir said smilingly “I also want to know.”

One of the panel members, Datin Zaitoon asked Zahir a hypothetical question on whether the kicking could have been caused by him preventing the police from doing their job? Zahir answered solemnly: “If that is the reason, there is a serious problem on the training and professionalism of the police.”

18th witness: DR HASNITA BINTI HASSAN “The force used on Zahir Hassan was excessive”

Dr. Hasnita binti Hassan (hereinafter referred to as Dr. Hasnita) is a medical officer attached to the accident and emergency department of Hospital KL.

Dr. Hasnita examined Zahir Hassan on 28 May when he was sent to Hospital KL. Dr. Hasnita said that she observed red marks on Zahir's left forehead, an abrasion wound on his right cheek and his lower incisor and canine were angulated and loose.

Dr. Hasnita told the panel members that a blunt object could have caused the injuries. It could also have been caused by a fall. However, the injuries were consistent with what was told by the patient (Zahir).

Dr. Hasnita also confirmed that the injuries on Zahir must have been caused by trauma. The force used on him was excessive because it had caused him to bleed.

19th witness: SYED IBRAHIM SYED NOH “Zahir did not resist at all”

Syed Ibrahim Syed Noh (hereinafter referred to as Syed) said that he was only about 10 feet away from Zahir when Zahir was kicked by the FRU personnel.

According to Syed, FRU personnel shoved Zahir with shield and he fell on the road. He saw 2 FRU personnel kicked Zahir; one kicked him on the front (face), the other kicked on the back. He noticed that Zahir did not move after being kicked. He moved towards Zahir and tried to protect him. When he checked on Zahir, he saw a blood stain on his left forehead. He also noticed bruises on Zahir's left leg and it was swollen. When he asked Zahir whether he was ok, Zahir did not answer. Only when he was trying to stop the police from carrying Zahir away, he heard Zahir said “*Tak apa, biarkan*” (it's ok, let them)

Answering Dato' Vohrah's question on whether Zahir was talking to the police in a raised voice, Syed replied that Zahir was talking in a gentle manner. Zahir did not resist at all though he was kicked by the FRU personnel.

20th witness: LIM BAN TENG “My finger was fractured!”

Lim Ban Teng (hereinafter referred to as Ban Teng) did not clearly hear the warning to disperse from the police, though he was standing at the outermost of the crowd.

Ban Teng told the inquiry panel that the police used batons on the crowd who were dispersing. He and his friend were dispersing towards the Public Bank building after the water cannon was unleashed. Suddenly, he saw his friend, Lee Huat Seng (W8) being beaten on the back by the FRU personnel. He then moved towards Lee and tried to help. While he was trying to reach Lee Huat Seng and pull him away, he too was hit on his finger.

Ban Teng consulted a doctor in Hospital KL that afternoon. The doctor told him that his finger was fractured. Ban Teng said his finger still hurts.

21st witness: DR NUR ABDUL KARIM “The injury suffered by Lim Ban Teng was serious”

Dr. Nur Abdul Karim (hereinafter referred to as Dr. Nur) is the medical officer who examined Ban Teng (W20) on 28 May. Dr. Nur is attached to the emergency department of Hospital KL.

Dr. Nur told the inquiry panel that Lim Ban Teng’s right thumb was swollen with reduced range of movement. After doing an X-ray, she found that Ban Teng has suffered a fracture on the 1st metacarpal bone of his right hand. It was a closed fracture and it might be caused by blunt object with high velocity.

Dr. Nur classifies the injury suffered by Ban Teng as a serious but non-critical injury. She was of the opinion that the force used on the victim was excessive.

22nd witness: NASHITA MD NOOR I was angry because we were being treated like animals

Nashita Md Noor (hereinafter referred to as Nashita) witnessed the melee where Zahir Hassan was kicked by the FRU personnel.

Nashita said people started running away after the water cannon was unleashed. She saw the police in green vest start to chase, arrest and handcuff protestors. She was with her 12-year-old son and 5-year-old daughter when a group of FRU personnel came and yelled at them. They shouted “*Baliklah!*” (go back) several times and pushed them (the protestors who were dispersing) with their shields. Nashita told the panel members that she was very angry, because as a human being and mother, she felt bad being treated like an animal.

At one point, Nashita saw Zahir (W17, who is also her neighbor) rushing towards his daughters who were being pushed by the FRU. The next second, Zahir was pushed to the ground and the FRU personnel started to kick and hit him. Zahir was seen bleeding. Later on, Zahir was manhandled and brought away by a group of policemen.

Nashita said she was pushed from behind and fell on the flower bed of the pavement.

23rd witness: OOI TZE MIN “I was being kicked on my back while dispersing”

Ooi Tze Min (hereinafter referred to as Tze Min) was kicked and hit by the police while dispersing.

Tze Min did not hear any warning from the police during the assembly. When the water cannon was unleashed, Tze Min was drenched and started to retreat.

While he moved in the direction of Public Bank with his friends, FRU came and pushed them from behind. Tze Min told the inquiry panel that he was kicked on his back. He also saw two of his friends, Lee Huat Seng (W8) and Wong Keen Yee being hit by policemen. According to Tze Min, they told the police several times that they would leave and not to push them. Unfortunately their requests were in vain.

24th witness: TEH CHUN HONG “I was hit once and kicked twice by two FRU Personnel”

Teh Chun Hong (hereinafter referred to as Teh) confirmed that he participated in the PROTES demonstration that was staged in front of KLCC on 28 May 2006.

According to Teh, while he was listening to Ronnie Liew, delivering his speech, water canons were suddenly unleashed on the crowd. Teh told the Panel that he and some others standing in the same vicinity instinctively hovered together in an attempt to shield themselves from the water. The effort proved futile for Teh as he was ultimately drenched.

Teh also mentioned that the loud reverberations of a helicopter flying at an unusually low height appeared intermittently at the premises and drowned out the instructions issued by the authorities.

Soon after the water cannon was unleashed, Teh noticed a group of FRU personnel clad in a navy blue uniform and red helmets approaching the group of demonstrators with whom he was standing. Teh said FRU Personnel had in their hands an instrument described by Teh as a ‘flexible red baton’. On seeing these personnel, Teh and the other demonstrators began efforts to disperse but they were still attacked by the FRU personnel. Teh explained that he was hit once with the baton and kicked twice by 2 personnel. Teh sustained bruises to his shoulders and leg as a result of the said attack. According to Teh, 2 other persons who were with him at this time - Wong Keen Yi and Lee Huat Seng - were similarly attacked and injured by the FRU personnel.

Teh sought traditional treatment for his injuries. He did not lodge a police report on the incident.

25th witness: AMRAN ZULKIFLI ‘FRU Personnel hit me repeatedly on my shoulders and on my head’.

Amran Zulkifli (hereinafter referred to as Amran) aged 38 is an entrepreneur residing in Sungai Petani, Kedah. Amran testified that on the day in question he and his 10 year old child were in the vicinity of the PROTES Demonstration as they had planned to visit Petrosains KLCC.

According to Amran, they arrived at the premises at approximately 9:00 a.m. when he noticed the assembly. Curious about the reason for the assembly, he decided to observe the events that were transpiring. On discovering the purpose Amran decided to suspend his plans and proceeded to join the demonstration with his child whilst holding a placard. According to Amran at this stage a speech was being delivered by a female student however this was not entirely audible due to loud reverberations from a helicopter that appeared intermittently. It was hovering at an alarmingly low height.

Amran also stated that he was aware that the authorities at the premises were issuing instructions to the crowd. However they were inaudible in view of the noise from the crowd and helicopter. Soon after the second set of instruction was given by the authorities, Amran and his child were drenched with water unleashed from a water canon. Amran then noticed the police making random arrests and it was at this stage that he decided to abandon the demonstration.

However, as he and his child proceeded towards the entrance of KLCC with a view to resume plans to visit Petrosains KLCC, Amran was suddenly attacked by FRU Personnel who repeatedly hit him on his shoulders whilst shouting ‘Balik! Balik!’ Fearing for the safety of his child, Amran quickly reached out to take hold of his child only to be struck again by the said personnel. On this occasion Amran was hit on the head causing profused bleeding and he lost his grip and sight of his child. Amran stated that at this point he observed the situation at the KLCC vicinity to being in a state of utter chaos as people were attempting to secure their safety whilst hurriedly rushing in various directions. Consumed with fear Amran proceeded to run from the vicinity of KLCC. Amran told the Panel that he could not identify the officers who hit him as they stood behind him whilst they attacked him. He also stated that he did not retaliate against the FRU aggression, that he was perhaps a target in view of his large build (115 kg) and that he was not aware that he was not allowed to enter the KLCC.

With the assistance of Nasaruddin, Amran sought medical attention at Pusat Rawatan Islam (PUSRAWI), Jalan Tun Razak for the injuries he sustained. He received 5 stitches. Amran was subsequently reunited with his child at the hospital and later lodged a police report on the incident at the Tun Razak Police Station.

26th witness: WONG KEEN YI ‘As I set out to leave the premises, I was unexpectedly attacked by FRU personnel’.

Wong Keen Yi (hereinafter referred to as Wong) aged 23 is a member of Malaysia Youth and Students Democratic Movement (DEMA). Wong confirmed that he participated in the PROTES Demonstration that was staged in front of KLCC on 28 May 2006.

Wong testified that on the day in question, his attention was focused on the speeches that were being delivered by the PROTES Coalition speakers. He told the Panel that he never heard any warnings or instructions from FRU or any other authorities deployed to the premises. He also mentioned that the helicopters deployed to the location were operating ‘just above the trees’.

According to Wong, while listening to Ronnie Liew delivering his speech, he suddenly noticed the water cannon being unleashed. Although the Wong successfully evaded contact with the water, he had resolved to abandon the demonstration at that stage. As he set out to leave the premises, he was unexpectedly attacked by an FRU Personnel with an instrument described as a ‘red baton’. Wong sustained bruises to the right side of his neck as a result of the said attack. According to Wong, at the time in question, he also noticed 2 other demonstrators, Lee Huat Seng and Teh Chun Hong being kicked by FRU Personnel.

Wong sought medical attention at Hospital Kuala Lumpur for the injuries he sustained. He did not lodge a police report on the incident.

27th witness: OMAR TAN ABDULLAH @ TAN SOI KOW ‘After the authorities issued instructions to attack! (Serang!), I saw Zahir Hassan being hit by FRU Personnel’.

Omar Tan Abdullah @ Tan Soi Kow (hereinafter referred to as Omar) aged 52 was a committee member of the PROTES coalition and an employee of Parti Keadilan Rakyat. Omar confirmed that on the day in question, he was at the PROTES demonstration as he was assigned to the task of observing the demonstration, ensuring the welfare of the demonstrators and monitoring any urgent arrests.

Thus upon arriving at the premises, Omar proceeded to inspect the vicinity. Based on Omar’s testimony the 1st instruction issued by the authorities was clear. The crowd was asked to disperse using the precise words, ‘Bersurai! Bersurai!’. The said instruction was issued twice although in the second instance it was not entirely clear. Soon after, the authorities instructed FRU Personnel to attack. The exact words used were ‘Serang!’. Thereafter water cannon were unleashed. During this time and at intermittent stages, a helicopter was seen hovering over the assembly.

Once the attack on the assembly commenced, Omar saw Zahir Hassan (W17) being hit by FRU Personnel. As Zahir's 2 children were with him at the time, Omar immediately took steps to secure them to safety by escorting them across the road in the direction of Duta Vista.

In respect of the attacks on Amran (25th witness), Omar mentioned that he did not see the attack although he heard about it subsequently. He then proceeded to state that Amran has been to demonstrations in the past including those staged in March 2006 on the sharp hikes in fuel prices. He told the panel that Amran is a protest mobilizer for the northern region. He is experienced in demonstrations and that his presence on the day in question was not surprising to him.

Omar, at the conclusion of his testimony stated that based on his experience in monitoring demonstrations, urgent arrests would not have been necessary as the PROTES Demonstration on the day in question was staged in a peaceful manner. This fact notwithstanding several members and supporters of the PROTES Coalition were nonetheless attacked and arrested. Omar was unable to comprehend the basis of the aggression that was asserted by the authorities in this instance.

28th witness: PUSPARAJAN A/L KALIAPAN 'I heard the OCPD instructs Air Unit 1 "Udara 1, turun bawah lagi"'

Pusparajan a/l Kaliapan (hereinafter referred to as Rajan) aged 40 holds the post of Chief Inspector, FRU, Kuala Lumpur. Rajan confirmed he was at the PROTES Demonstration in the official capacity of Commanding Officer for the purpose of dispersing the assembly.

Rajan testified that on 27 May 2006 he received instructions to report to the OCPD of Dang Wangi to stop the PROTES Demonstration that was deemed an illegal assembly. Rajan explained that by virtue of S. 27 of the Police Act 1967 an illegal assembly was defined as an assembly that takes place without a licence being issued for the said purpose.

FRU Troop 4B Unit 4 was assigned to assist Rajan with the task. The Troop consisted of 64 male FRU Personnel including Rajan. They were equipped with a revolver, a gas gun, a rifle, a red baton of rattan make and a plastic shield. The FRU also deployed a fleet of vehicles to the premises and these included a command vehicle, water canons, logistics lorries for equipment and a land rover.

Rajan and his Troop arrived at the premises at approximately 9.55 am. Rajan noted that in addition to the 63 FRU Personnel organised to disperse the assembly, approximately 100 uniformed & civilian clothes police officers were also at the premises. In respect of the assembly approximately 300 – 400 demonstrators were observed at the premises.

Rajan then proceeded to report to the OCPD and IPD Ketua Bahagian Ketenteraman Awam of Dang Wangi to receive further instructions. His instructions were to have his personnel on 'standby' to disperse the assembly. Rajan then briefed his troop informing them that they were to disperse the assembly using minimal force. The troop was then split into 3 sections with each section consisting of 18 men and told to take their positions.

Minimal force would involve instructions to the demonstrators to leave the premises without any body contact. In the event that the instructions were not heeded, unleashing the water canons would be the next step taken under the definition of minimal force.

Conversely, in instances where force was authorised, unleashing water & gas from the canons on the assembly which in effect causes skin irritation would have been sanctioned.

Rajan also explained that the baton and shield were available to FRU personnel for protection against violent crowds. For example in the event demonstrators made threats or threw stones, the FRU personnel were to use the baton and shield to protect themselves.

Rajan confirmed that the crowd on the day in question was not violent and not deemed a threat as such the troop was instructed to only use minimal force.

Rajan proceeded to inform the Panel that the Troop deployed had been adequately trained on using the equipment provided to them and on dispersing assemblies. The training manual in handling such matters did not provide for kicking or dragging people, shoving people using the FRU shield, hitting people on the head with the baton and hitting people with the butt of the gas gun. Rajan confirmed that these measures were not among the FRU procedures in dispersing an assembly and agreed to submit a copy of the FRU Training Manual for the Panel's reference.

Rajan said that during the demonstration he and the OCPD positioned themselves on top of the Command Vehicle so as to have a clear view of the events that were ensuing and to provide instructions to the Troop. Rajan said that his role as Commanding Officer was to all intents and purposes a conduit for taking instructions from the OCPD and communicating these to the FRU Troop. Thus each time a new instruction came forth, Rajan would ring a bell to get the attention of the Troop and instruct them accordingly.

In respect to the instructions that were issued to have the assembly dispersed, Rajan said that instructions to the crowd to disperse were issued on 4 separate occasions and on each occasion the instruction was repeated 3 times. The chronological orders of the said instructions were as follows:-

- 1st instruction: 10:40 a.m. Repeated 3 times
- 2nd instruction: 10:42 a.m. Repeated 3 times
- 3rd instruction: 10:43 a.m. Repeated 3 times
- 4th instruction: 10:45 a.m. Repeated 3 times

Rajan also stated that during the time he was issuing the instructions to the crowd he noticed Tian Chua and another person in the assembly seeking additional time from the OCPD. Although the OCPD appeared to have gestured his consent to the people making the requests, based on the video footage recorded, Rajan was not informed of any additional time that was to be granted. Rajan also acknowledged that during the time he was instructing the crowd the helicopter, which was also under the control of the OCPD was in close range to the assembly and that the reverberations were indeed loud. Rajan also told the Panel that he heard the OCPD say 'Udara 1 turun bawah lagi'.

According to Rajan, as the crowd failed to comply with the instructions to disperse even after the 4th set of instructions were issued, the OCPD instructed him to have the water canon officers commence action. At 10:46 a.m. the water canons were unleashed on the assembly. This was done on 2 separate occasions before the police commenced urgent arrests. Soon after the assembly dispersed.

Rajan stated that the events that transpired on the day in questions were diarised in detail in chronological order and it was agreed that a copy of the same be submitted to the Panel for their reference.

Rajan stated that he never witnessed any abuses of power by FRU Personnel or any other authorities stationed at the premises. However, when the panel asked Rajan to comment on the brute force used by FRU personnel as depicted in the photographs and video footage retained in evidence, Rajan responded as follows:-

1. That he did not recognize most of the FRU personnel depicted as abusing their power;
2. That some force by FRU personnel is justified in certain instances as each situation and type of crowd must be assessed independently;
3. From the time FRU personnel began instructing the crowd until the water canons were unleashed, approximately 40 minutes had elapsed. The crowd clearly disregarded the instructions and as such further action was needed; and
4. Those photographs did not depict with accuracy the actual event that transpired.

In essence, it was observed that after the said photographs and video footage were revealed to Rajan he began contradicting the testimony he provided at the beginning of the session to a significant degree. He was also unable to provide the panel with a comment on the photograph shown to him depicting the head injuries sustained by Amran and could only submit that he only heard about Amran's injuries the next day.

In conclusion, Rajan said that on the day in question the OCPD gave him instructions to have FRU depart from the premises at 11:25 a.m. and this was duly executed at 11:30 a.m.

29th witness: SENIOR ASSISTANT COMMISSIONER OF POLICE, SAC (II) DATO' MOHD NOOR MASDAR "IGSO states that FRU should not be engaged against passive resisters"

Senior Assistant Commissioner of police, SAC (II) Dato' Mohd Noor Masdar (hereinafter referred to as Mohd Noor) is the Commander of the Malaysia Federal Reserve Unit (FRU).

Mohd Noor provided the inquiry panel with the Inspector General Standing Order (IGSO), which was meant to be followed by all police personnel. The 13th paragraph of the IGSO states clearly that the FRU must at all times be guided by the following cardinal principles:

- a. Minimum use of force;
- b. Strict impartiality; and
- c. Adherence to the law.

In accordance to the 14th paragraph of the IGSO, no FRU should be engaged against an illegal assembly unless trouble breaks out or it was quite clear that the use of force will be necessary to disperse such assembly, e.g. it should not ordinarily be engaged, in the first instance, against "passive resisters"

At one point of time, Mohd Noor could not answer questions asked by the panel properly. Below were some of the conversations between Dato' Vohrah and Dato' Mohd Noor:

Vohrah: "The crowd was listening to speeches. Is it threatening?"

Md Noor: "By getting people to listen to speech, there are plans. To me, it's a planned thing. "

Vohrah: "Does that constitute a threat to security?"

Md Noor: "Whatever they are trying to do, it came out in internet and SMS."

Vohrah: "What's wrong?"

Md Noor: "Under the other law, Police Act and CPC, where an assembly of 3 or 5 or more people, you are required to apply permit."

When he was told by the inquiry panel that in some jurisdictions, people only need to inform the police to hold an assembly, Mohd Noor unhesitatingly answered: “If the law has changed, we will follow.”

Mohd Noor told the inquiry panel that there was no criterion to disperse crowd in the IGSO. The decision to disperse is based solely on the OCPD (officer in charge of police district). Answering a question from the inquiry panel, Mohd Noor told the panel that he thought Chief Inspector Pusparajan (W28) could identify his troop members.

30th witness: MOHD NASARUDDIN ABDUL AZIZ: “The situation was under control at all point of time.”

The diary man of the FRU is Mohd Nasaruddin Abdul Aziz (hereinafter referred to as Nasaruddin)

He told the inquiry panel that he was only ordered to jot down all commands given by Chief Inspector Pusparajan (W28). Below are the notes excerpted from the diary:

Time	Events
09:55am	The FRU troop arrived safely at KLCC and standby. Situation is good. (“ <i>Keadaan baik</i> ”)
10:24am	NGO and representatives of political parties started to give speech on the issue of fuel price hike.
10:40am	Acting on the directive of Dang Wangi OCPD, Chief Inspector Pusparajan gave the crowd first warning to disperse (3 times). The situation is good and under control (“ <i>Keadaan baik dan terkawal</i> ”)
10:42am	Acting on the directive of Dang Wangi OCPD, Chief Inspector Pusparajan gave the crowd second warning to disperse. The situation is calm and under control (“ <i>Keadaan tenang terkawal</i> ”)
10:43am	Dang Wangi OCPD directed Chief Inspector Pusparajan to give the crowd third warning to disperse. Chief Inspector Pusparajan announced 3 times. The situation is well under control (“ <i>Keadaan baik terkawal</i> ”)
10:46am	Under the instruction of Dang Wangi OCPD, Chief Inspector Pusparajan directed to unleash water cannon.
10:48am	Chief Inspector Pusparajan instructed the troop to move forward, in order to disperse the crowd. The situation is under control (“ <i>Keadaan terkawal</i> ”)

31st witness: ACP KAMAL PASHA JAMAL “The crowd was unruly because they used unpleasant words”

Assistant Commissioner of Police (ACP) Kamal Pasha Jamal (hereinafter referred to as Kamal) was the ground commander of the police force on 28 May 2006.

Kamal told the inquiry panel that his task on 28 May was to supervise and make sure there was no illegal assembly. It was the objective of the operation named “*Ops Padam*”. He told the panel that he had been monitoring the activity through the internet. Kamal also said that he expected the assembly to be unruly. Below are some interesting conversations between the inquiry panel and Kamal Pasha:

Michael Yeoh: In your experience on the first and second gathering, were those peaceful?

Kamal: No. The crowd used unpleasant words. I believe when such words were uttered against the government, some parties might react.

Vohrah: What sort of reaction?

Kamal: They might fight among themselves.

Zaitoon: Has it happened before?

Kamal: I am just anticipating, because certain groups objected the illegal assembly, the people who are from the government side.

Kamal Pasha told the panel members that about 196 police including 65 FRU personnel were deployed on 28 May. Kamal also told the panel that if there is a change in the law that allows public assembly without a police permit, the police would comply. However, he personally felt that our society is not mature enough to apply those jurisdictions.

In his testimony, Kamal told the panel that the helicopter was meant to disrupt the demonstration and to intimidate the crowd. He also admitted that he was the one who instructed the use of the water cannon, issued an instruction to arrest and instructed the FRU to move forward.

When he was asked about the crowd, Kamal insisted that the crowd was unruly. The conversations went as follows:

Kamal: The crowd was unruly. They ignored my order to disperse.

Vohrah: Are you sure? Unruly means violent behaviour.

Kamal: They were shouting.

Vohrah: But not at you. This is called unruly?

Kamal: Yes. There were slogans about police brutality “Turunkan harga minyak”, “Polis ganas”, “Bebaskan tahanan”. They were yelling. They might lose their temper. Their gestures were too emotional and aggressive.

Zaitoon: Did they attack anybody?

Kamal: No. They did not lose their temper yet, but they might.

When he was asked whether he knows about the 9 people who suffered from injuries, Kamal admitted his knowledge. However, he told the panel that the injuries were not serious and those incidents were triggered by the resistance of the protestors.

Kamal told the panel that 12 police reports about the incident had been made.

32nd witness: CHIEF INSPECTOR SHAFIE BIN MOHD “OCPD told the crowd that he will use force if they do not disperse”

Chief Inspector Shafie bin Mohd (hereinafter referred to as Shafie) is attached to the Dang Wangi police district.

On 28 May, Shafie was tasked to arrange the duty of other police officers. He told the panel that he was in the police bus parked in front of Suria KLCC most of the time during the assembly. His duty in the bus (Temporary Control Centre) was to keep Kuala Lumpur headquarter informed about the situation.

Shafie informed the panel that he was not involved in the arrest. He heard OCPD giving instruction to the crowd, asking them to disperse. The exact instruction is:

“Bersurai serta-merta, ataupun kami akan suraikan dengan kekerasan” (Immediately disperse, or we will disperse by using force)

33rd witness: SERGEANT ZABANI BIN SULAIMAN “Water cannon were used for about a minute”

Sergeant Zabani bin Sulaiman (hereinafter referred to as Zabani) was the water cannon personnel. He told the public inquiry that he was instructed to unleash water cannon from Chief Inspector Pusparajan. He used the water cannon for about a minute.

When asked whether the water could hurt, Zabani told the panel that it could if the distance was too close. The water was not laced with chemical that day.

34th witness: CORPORAL ABU HASSAN BIN RASAD “I could not identify the FRU personnel because of their visors”

Corporal Abu Hassan bin Rasad (hereinafter referred to as Abu Hassan) is Section Commander of Section 1 in the FRU troop. Section 1, 2 and 3 were despatched to control the crowd on 28 May.

As the section commander of Section 1, Abu Hassan told the panel that his duty was to supervise his “boys” (*anak buah*). 14 members in his section were armed with shields, batons and rubber vests.

Initially, Abu Hassan tended to claim the crowd was unruly because they shouted and refused to disperse after warnings were given. However, he later conceded that it was not possible that the action of the crowd would be detrimental, though they were ‘emotional’.

Abu Hassan also told the panel that he was involved in crowd control, but he did not push the crowd. Amazingly, when exhibits were shown to him, Abu Hassan claimed that he could not recognize any of his colleagues because of the visor on their helmets. Dato’ Vohrah warned him that he was on oath.

Eventually, Abu Hassan managed to identify two FRU personnel positively. They were Corporal Jasman and Constable Amri. He also told the panel that it was a peaceful dispersal on 28 May.

Before ending the session, the chief of the inquiry panel, Dato’ K.C. Vohrah told the witness solemnly that he should give believable statement in a public inquiry.

35th witness: SERGEANT MOHD YACOB MOHD SAMAN “He is Lance Corporal Mustika Lamonding”

Sergeant Mohd Yacob Mohd Saman (hereinafter referred to as Yacob) is the commander for Section 2 of the FRU unit which was present in KLCC on the day of the incident.

Yacob told the panel that his troop members were equipped with batons and shields on 28th of May.

When still photos and video clip were shown to him, Yacob positively identified a few FRU personnel who were seen using violence against the protestors. He identified

Mustika Lamonding who was seen hitting Lee Huat Seng (W8) in the video clip. According to Yacob, Mustika Lamonding was from his troop (section 2).

36th witness: DR ABDUL FAHMI BIN ABDUL KARIM “Potentially, it could be a fatal blow!”

Dr. Abdul Fahmi bin Abdul Karim (hereinafter referred to as Dr. Fahmi) is a medical consultant in the private Pusrawi Hospital. He examined Amran Zulkifli (W25) on 29 May, one day after he was admitted to the hospital.

Dr. Fahmi observed some bruises (soft tissue injury) to Amran’s right shoulder and right arm. Amran also suffered from an injury on his right scalp temper parietal area, where a 5cm jagged laceration required wound toilet and suturing.

Dr. Fahmi told the panel that the wound on Amran’s scalp was caused by a blunt object, but it was not consistent with the butt of gas gun. He also testified that the force used on Amran could potentially be a fatal blow. According to Dr. Fahmi, the injury could result in greater harm if similar force were used on a lesser-built person.

37th witness: SERGEANT ABDUL AZIZ BUNIRAN “The gas gun is only meant for shooting tear gas”

Sergeant Abdul Aziz Buniran (hereinafter referred to as Aziz) is the FRU commander of Section 3.

Aziz told the panel that members of his section were armed with rifle M-16 single shot and gas gun. They were also equipped with baton on their waist. Aziz informed the panel that the gas gun was only meant for shooting tear gas. He further emphasized that the instruction was only to shoot (tear gas).

The inquiry panel showed Aziz a still photo (Exhibit 16N), but he could not identify the FRU personnel who was seen holding a gas gun high, as if he was hitting or trying to hit someone on the ground. However, he provided a list of FRU personnel who were holding gas gun on 28 May.

Aziz positively identified Constable Zamri Hussin as one of the FRU personnel who surrounded Zahir Hassan (W17) when he was on the ground.

38th witness: ASP ANUAR BIN JUSOH

ASP Anuar bin Jusoh (hereinafter referred to as Anuar) was the commander of helicopter pilot on 28 May. He has 12 years experience in piloting. The model of helicopter that he piloted on that day is “*Accuireull*” (French).

Anuar said he received instructions from Dang Wangi 1, whom he assumed was the Dang Wangi OCPD. Dang Wangi 1 instructed him to fly the helicopter low, to disrupt the speeches. According to Anuar, the lowest point he flew was lower than 500 metres. When he was asked on whether it was dangerous to fly low, Anuar conceded that it was tactically dangerous. However, he was confident to deal with it.

Commenting on the crowd’s complaints, Anuar opined that the crowd might be fearful because of the swaying trees and they were not used to the helicopter. Anuar told the panel that he had no recommendation on how low the helicopter should fly. Nonetheless, he was of the opinion that flying the helicopter too low above the crowd was not encouraged.

39th witness: CONSTABLE RAJA AHMAD RAJA MANSHOR “Baton can only be used when rioters try to hurt the police”

Constable Raja Ahmad Raja Manshor (hereinafter referred to as Raja Ahmad) had positively identified 2 FRU personnel who pushed Zahir Hassan (W17) and Lee Huat Seng (W8). They were Andyracky (pushed W8) and Zamri (pushed W17). Raja Ahmad has also identified Mustika Lamonding who was seen swinging his baton to hit W8.

Raja Ahmad told the panel that batons could only be used when rioters try to hurt the police. Besides, Raja Ahmad also thought that giving a hefty shove to people who were trying to move away was no good.

40th witness: CONSTABLE SHAHRUL YAAFAR “I did not use my baton and shield at all”

Constable Shahrul Yaafar (hereinafter referred to as Shahrul) told the panel that the FRU personnel in his section (section 2) moved forward to chase the crowd away from the Suria KLCC entrance. He also said that he did not use his shield and baton at all when dealing with crowd control.

Shahrul has positively identified Zamri and Marzuki from the exhibits.

41st witness: CONSTABLE MUHAMAD FIRDAUS ROSLI “Whoever did not run away”-kena”-lah”

Constable Muhamad Firdaus Rosli (hereinafter referred to as Firdaus) could not identify anyone of his colleagues from the exhibits.

Firdaus denied that the FRU were shoving the crowd. According to him, the FRU were merely moving forward with the shields in front of them. Whoever did not run away will “*kena*”-lah.

42nd witness: CONSTABLE WAN MOHD SHUKRI BIN OMAR “I was merely asking them to leave”

Constable Wan Mohd. Shukri bin Omar (hereinafter referred to as Wan) told the panel that he did not use any of his equipment. He was merely asking the crowd to go back. He left those who refused to leave to the arresting squad.

Wan could recognize himself, Kamarul Ismail and Jasman Aris from the exhibits.

43rd witness: CONSTABLE JASMAN ARIS “We only stopped the “rioters” verbally”

Corporal Jasman Aris (hereinafter referred to as Jasman) told the panel that his section (Section 3) did not receive any instructions to move forward. They were only assisting the other sections when the crowd moved towards the entrance of Suria KLCC.

Jasman further testified that they (FRU from Section 3) only stopped the “rioters” verbally. But when some of the crowd tried to move forward, the FRU prevented them by using hands and weapons (rifle and gas gun).

Jasman could identify Zamri, Wan Masrose, Marzuki and himself from the exhibits. He told the panel that he did not see anyone bleeding.

44th witness: CONSTABLE ZAMRI BIN HUSSIN “We could use batons only if the instruction was to attack”

Constable Zamri bin Hussin (hereinafter referred to as Zamri) told the panel that he used shield and asked the crowd to disperse verbally. He did not use baton on that day. Zamri told the panel that they could use batons if the instruction was to attack.

Zamri could only identify himself and Corporal Jasman from the exhibits.

45th witness: CONSTABLE KAMARUL ISMAIL “There is no need to use the butt of gas gun”

Constable Kamarul Ismail (hereinafter referred to as Kamarul) told the panel that he used shield to prevent and push to disperse the crowd. However, he later modified his testimony by saying that his usage of shield was to protect himself because the crowd was pushing.

Kamarul also told the panel that he did not use the baton on that day. Answering a question from the panel members, Kamarul conceded that there was no need to use the butt of gas gun to prevent the crowd from moving towards the entrance of Suria KLCC.

46th witness: CONSTABLE ABDUL NASSER PEPING “There was no physical contact with the crowd”

Constable Abdul Nasser Peping (hereinafter referred to as Nasser) confirmed that Section 3 did not receive any instruction to move forward on 28 May. Despite there was no instruction, Nasser told the panel that he did move back to block the entrance of Suria KLCC. He said there was no physical contact with the crowd when he moved.

47th witness: LANCE CORPORAL MUSTIKA LAMONDING “I used baton to threaten the crowd, but it did not hit anyone”

Lance Corporal Mustika Lamonding (hereinafter referred to as Mustika) told the panel that he did receive instruction to move forward into the crowd. He pushed the people with shield towards Jalan Ampang.

Mustika admitted that he did use baton to threaten the crowd who refused to disperse. However, he said he was merely swinging the baton to intimidate but it did not hit anyone.

48th witness: CONSTABLE MOHD FAIZAL AHMAD “The guy” might be avoiding the weapon from the people”

Constable Mohd. Faizal Ahmad (hereinafter referred to as Faizal) was positively identified by his superior in one of the exhibits. He was seen holding the gas gun as if he was hitting someone on the ground. When the aforesaid photo was shown to him, Faizal could not identify himself. He said he is not sure.

However, he told the panel that “the guy” might be avoiding the weapon from the people.

49th witness: CONSTABLE ANDYRACKY ANAK NYALONG “I could not identify anyone”

Constable Andyracky Anak Nyalong could not identify anyone from all the exhibits.

50th witness: CONSTABLE AWANG AZIZUL AZREEN “I could not identify anyone”

Constable Awang Azizul Azreen told the panel that he did receive instruction to disperse the crowd. He too, could not identify anyone from the exhibits.

51st witness: CONSTABLE MOHD FADLI KASSIM “I am not sure who carried gas gun that day”

Constable Mohd. Fadhli Kassim only said that he carried a gas gun on the 28th May, but he was not sure who else carried a gas gun in his section.

52nd witness: CONSTABLE MARSUKI MAT DIN “I was merely holding it (gas gun)”

Constable Marzuki Mat Din told the panel that he carried a gas gun, but he was merely holding it and trying to push, in order to prevent the people from entering KLCC. He identified himself in exhibit 16N.

53rd witness: CONSTABLE YUSRI YUSUF “I know all the personnel who carried gas gun”

Constable Yusri Yusof carried a gas gun on 28 May. He identified some of his colleagues from the exhibits.

54th witness: CONSTABLE WAN MASROSE WAN SALLEH “I do not know what was happening”

Constable Wan Masrose Wan Salleh identified himself in exhibit 16N. He was standing beside the personnel who look like hitting someone with gas gun butt. However, he told the panel that he does not know what was happening then.

IV OVERVIEW AND NARRATIVE OF THE INCIDENT

It is our assessment based on the above evidence that events at the KLCC on Sunday 28th May 2006 unfolded as follows:

The gathering started when the emcee Badrul Hisham Shaharin (W2) stood on a ladder and addressed the crowd at about 10.24am. By that time, there was a large police presence of approximately 163 personnel comprising FRU, uniformed police and plain clothes police.

The crowd was not unruly at that material time or at any time thereafter. Before the third speaker, Ronnie Liu (W7) could finish his speech the water canon was unleashed. This was done even before the 5 minute time frame signaled by the OCPD himself was up. This was consistent with the fact that the police had decided even before the gathering itself that it was to be dispersed using force (see also evidence of W 26 Chief Inspector FRU).

The subsequent use of excessive force on the participants, is evident from the testimonies of Lee Huat Seng (W8) whom FRU personnel hit on his back with a baton, and who was hit on the forehead by an un-uniformed policeman, Lua Khang Wei (W9) who was beaten up and seen bleeding profusely on the right cheek, Lee Khai Loon (W14) hit and had glasses broken, Lim Hong Siang (W15) kicked by FRU personnel, Lim Ban Teng (W20) who had his finger fractured when batons were used on the crowd and others who were injured. Most of the evidence of these witnesses corroborated, in particular the case of Lee Huat Seng (W8) who had many eye-witnesses as to the manner he was assaulted.

The more serious assaults by the FRU relate to the cases of Amran Zulkifli (W25) who was hit on the head by the FRU and who bled profusely, while attending to the safety of his 10 year old child, and that of Zahir Hassan (W17) who was kicked and manhandled. The medical evidence of Dr Hasnita binti Hassan (W18) established red marks on Zahir's left forehead, abrasion wound on his right cheek, lower incisor and canine angulated and loose.

These accounts were corroborated by many witnesses, photos and video clips. These are cases of unprovoked assault and display a serious violation of human rights. Then you have the evidence of Nashita Md Noor (W22) who came to the assembly with her 12-year old son and 5-year old daughter. She said the crowd was treated like animals by the FRU. She also saw police in green vests chase, arrest and handcuff protestors. In our assessment, these violations of basic right to peaceful assembly were uncalled for.

ACP Kamal Pasha Jamal (W31) said in evidence said that the crowd was shouting. That does not and cannot make an assembly unruly or justify the use of force. In fact W31 said that the crowd did not loose their temper and only speculated that they (the crowd)

might. The OCPD therefore has to assume full responsibility for these blatant violations of human rights. This is founded on his admission that he was the one who instructed the use of the water cannon, issued an instruction to arrest and for the FRU to move forward.

Another area of violation of the right to peaceful assembly lies in the use of the helicopter. ASP Anuar bin Jusoh (W38) testified that he received an instruction from the OCPD to fly the helicopter low to disrupt the speeches. This was confirmed by the OCPD himself who told the panel that the helicopter was meant to disrupt the demonstration and to intimidate the crowd. It is our assessment therefore that the police had already prejudged a situation before really applying their minds as to whether certain measures taken accorded with the circumstances at hand.

These and other violations would not have arisen had the police exercised prudence over the matter, more so in respect of persons who are passive resisters.

V VIOLATIONS OF HUMAN RIGHTS DURING THE INCIDENT.

We are of the view that the following violations of human rights occurred:

- 1 The fundamental right of those who gathered at the KLCC to peacefully assemble in public to protest the fuel hike by the government was violated. It was not just a spontaneous violation that happened at the scene but a preplanned and premeditated violation decided before the event. The police plan to stop and disperse the assembly with force was simply put into effect on that morning.
- 2 Hence the order to disperse was given perfunctorily, speedily merely as a technical formality. No proper time was given to disperse. The use of the helicopter flying at low height to drown the speeches, also made the warnings less audible and was an irresponsible act placing people in potential extreme danger.
- 3 By the forcible dispersal of the assembly, the right of expression of those present to voice their views as provided for under the Federal Constitution and the International Bill of Human Rights was violated.
- 4 By reason of the serious assaults and injuries inflicted by police personnel on passive and peaceful persons in an assembly, their rights to guarantees of personal security and safety were violated. What is most regrettable is that such important rights were violated by state actors.
- 5 Finally, we would observe that the use of any level of violence to disperse an assembly is only permitted if the assembly itself is violent. Shouts, chanting and speeches are NOT violence. It is beyond any dispute on all the evidence presented that the crowd was peaceful at ALL times. The police violence was premeditated, gratuitous and intended to strike fear, to intimidate and to deter persons from attempting to organize or participate in such a gathering again.

Which person or agency is responsible for the above violations?

It is our view that several parties must take responsibility for the above violations:

1. Unidentified (as yet) persons who would include persons in political or executive office as well as police officers senior to the OCPD right up to the level of the IGP who had instructed the OCPD that it was his job to ensure that that gathering did not happen. This is an obvious inference given the police behaviour showing that they had decided to prevent and disperse the assembly from the outset.

2. The OCPD himself for executing those instructions on that morning.
3. The police officers who were responsible for all acts of force on those in the gathering from the use of water cannon to physical violence with the use of truncheons, riot guns, riot shields, fists, legs etc.

What administrative directives and procedures or arrangements contributed to these violations.

1. We are of the view that existing administrative directives and procedures as set out in the IGSO (Exhibit No 36) and the Public Order Manual (Exhibit 50), which were put in as evidence did not contribute to the human rights violations described above. If at all, the events showed that the police willfully breached their own administrative directives and procedures.
2. This phenomenon underscores the fundamental problem in attempting to ensure that the police force do not continue to repeat such human rights violations. It is not the lack of administrative directives and procedures that is the problem. It is firstly, the existence of a legal apparatus to prevent public assemblies that is the problem. And secondly, as was pointed out by Tian Chua (W1) in his testimony to the panel, it is the “political instructions” to officers at OCPD level to selectively allow or stop public assemblies according to the wishes of others in political authority which are also central to the problem.

VI RECOMMENDATIONS

1. We would observe that the recommendations that already have been thoroughly articulated by SUHAKAM in its thematic report on freedom of assembly made in 2001 and its report of its inquiry into the November 5th Incident at the Kesas Highway published on 2 April 2002 are sufficient, if they are implemented both in the short and long-term, to advance protection in Malaysia for the right to peaceful public assembly.
2. The KESAS Highway inquiry made specific findings of human rights violations. Unfortunately no one has been held to account for them. The recommendations also largely remain recommendations that are words on paper. We are of the view that the report of this Inquiry must go further than merely incant again as a formality the same or similar recommendations. This inquiry must become a more meaningful process than be another mere public airing of the human rights violations that occurred at the KLCC on the morning of 28th May 2006 and for that matter also on 26th March 2006 when police behaved in the same manner. These clear violations of human rights were publicly aired and criticized immediately after they occurred. Reconfirming their occurrence in yet another written report without more will only serve to strengthen the cynicism of many observers of this exercise.
3. This is the real challenge and responsibility that faces SUHAKAM and the commissioners that have conducted this inquiry. We must have as an outcome more than just recommendations again. Whilst we recognize that there are limits to SUHAKAM's influence in the current Malaysian environment, SUHAKAM itself has to be much more proactive in terms of concrete action it does after writing its report. It has to be seen to be more positive and proactive in demanding that as the government's statutory adviser on human rights, that the government follow and implement the advice that SUHAKAM has given pursuant to its statutory mandate and duty.
4. SUHAKAM must therefore recommend and implement actions that will require the police and those in political office who are directing the police to respect the right of peaceful public assembly. We would recommend that SUHAKAM implement in a public and visible way its own recommendation in its report on "Freedom of Assembly" published in 2001 that dialogue sessions be held between"
 - SUHAKAM and top level police officers
 - SUHAKAM and policy-makers
 - Police and NGOS
 - Police and political parties

5. If these dialogues are to have any kind of effect, they must take place in a public and visible manner so that the police make public commitments to respect the right to peaceful public assembly and the political authorities similarly commit to refrain from putting the police under pressure to act selectively. SUHAKAM should be able to impress upon the Malaysian police that it is time to learn how to catch up with their counterparts in Indonesia and Thailand as to how huge public assemblies that are critical of those in power are permitted and regulated without destroying the fundamental right of assembly.

VII. ACKNOWLEDGEMENTS

This report was prepared on behalf of the Interested Parties by the following persons:

1. Chan Weng Keng, Sivarasa Rasiah, Amer Hamzah Arshad, M. Moganambal, Latheefa Koya and R. Ragunathanan - Lawyers who were instructed through the Bar Council Legal Aid Centre (Kuala Lumpur);
2. Chang Lih Kang, Gowri Balasubramaniam and Yap Swee Seng from SUARAM.

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