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MALAYSIA

Towards Human Rights-Based Policing

1. Introduction

In December 2003, two months following his appointment as Prime Minister of Malaysia, Abdullah Ahmad Badawi announced the formation of a Royal Commission of Inquiry to examine the conduct and management of the Royal Malaysia Police (RMP). The Commission was asked to submit its findings and recommendations for reform after one year.

The move was seen as a response to reports of patterns of violations by police officers, including fatal shootings, excessive use of force, and ill-treatment, torture and deaths in custody, presented over many years by Malaysian civil society organizations and the Human Rights Commission of Malaysia (*Suhakam*). There were also persistent complaints of inefficiency and corruption within the police force.

Amnesty International welcomed the establishment of an independent Royal Commission as an important step towards the development of a broadly based process of police reform. The organization regarded the Prime Minister's initiative as a significant indication of political will, essential if a police reform process is to succeed in the long term.

During 2004, the Royal Commission received a broad array of submissions, complaints and feedback from non-governmental organizations (NGOs), law associations and members of the public. The Commission also consulted with police officers and other key actors within the criminal justice system. Topics under consideration were diverse, ranging from human rights violations and accountability to issues of structural organization, procedures, recruitment, salaries, training and the conditions within which officers are required to perform their duties.

Initial responses of the senior leadership of the RMP, upon whom any lasting changes in the internal culture of the force will depend, were seen as positive. Taking up some preliminary findings and recommendations of the Royal Commission, the RMP's leadership issued a series of internal directives to improve, among other things, the implementation of procedures safeguarding the rights of detainees, including the treatment of suspected juvenile offenders.

In this report, Amnesty International seeks to contribute to continuing deliberations in Malaysia on the substance and scope of the police reform process by drawing on and illustrating key principles related to policing enshrined and elaborated within international human rights standards.

Underpinning the report is Amnesty International's conviction that human rights should be at the core of police philosophy and practice. In essence there is no conflict between human rights and policing - rather policing means protecting human rights. Indeed *effective* policing in a democracy depends on respect for human rights and the rule of law.

Amnesty International considers that a human rights approach to policing should be a primary goal of the reform process under consideration in Malaysia. The organization believes that this approach presents the best means of ensuring that police practices recognize the human dignity and the rights of every person in Malaysia, while providing them with effective protection from crime.

2. What is human rights-based policing?

2.1 International standards

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

The 1948 Universal Declaration of Human Rights (UDHR) representing “a common standard of achievement for all peoples and all nations” for which “every individual and every organ of society” is required to strive sets out and enshrines these rights and freedoms.¹ In the 1993 Vienna Declaration, Malaysia alongside the international community, affirmed that these rights and freedoms are the inalienable birthright of all human beings, that their protection and promotion is the first responsibility of governments, and that all human rights are “universal, indivisible, interdependent and interrelated.”

While everyone shares a responsibility to uphold the UDHR in its entirety, a number of its provisions have a particular relevance to policing. These include:

- Everyone has the right to life, liberty and security of the person (Article 3);
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5);
- All are equal before the law and entitled without any discrimination to equal protection of the law (Article 7);
- No one shall be subjected to arbitrary arrest and detention (Article 9);
- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to a law in a public trial at which they have had all the guarantees necessary for their defence (Article 11(1));
- No one shall be subjected to arbitrary interference with their privacy (Article 12);
- Everyone has the rights to freedom of opinion and expression (Article 19);

¹ The UDHR enshrines internationally recognized human rights, and a number of its provisions are considered to have achieved the status of customary international law, binding on all states. The prohibition against torture, for example, through international consensus reflected in doctrine and practice is recognized as *jus cogens*, a peremptory, non-derogable norm of general international law.

- Everyone has the right to freedom of peaceful assembly and association (Article 20).

Police personnel, as officers of the state (where primary responsibility for the protection and promotion of human rights resides) are, with all other individuals and organs in society, obliged to know and to apply international standards for human rights. Moreover, Article 28² of the UDHR recognizes that a “social order” is a necessary condition for the realization of the above and all other rights. Within the context of ensuring “social order”, the effective deployment of a policing service in a manner that respects human rights is one of the key means which a sovereign state can fulfil both its international obligations and its obligations to its own citizens.³

This overarching purpose is reflected in core police functions recognized and carried out by police services around the world, notably:

- The prevention and detection of crime;
- The maintenance and, where necessary, the restoration of public order;
- The protection of individuals, including provision of aid and assistance in emergencies of all kinds affecting the individual or the wider community.

It is clear that police officers can and should be regarded as protectors of human rights. Not only are they instrumental in the maintenance of “social order” generally, but they are also directly involved in ensuring a range of specific rights set out within the UDHR. Protection of the right to life, for example, requires enforcement of laws which create offences of murder and other forms of unlawful killing, and entails a continuous police process of crime prevention and detection.

In addition, police in many jurisdictions are playing a greater role in, for example, the protection of women from violence in the home, as governments increasingly implement their obligation not only to respect rights by refraining from violating human rights themselves through their state agents and apparatus, but also to protect individuals from abuse by others (i.e., non-state actors) and to promote enjoyment of human rights in a wider sense.

However, it is also true that police are often the perpetrators of violations of human rights, and in certain circumstances serve to maintain repressive social orders that undermine or deny a broad array of fundamental rights. In such cases legitimate limitations on the enjoyment of rights, which are recognized in Article 29 of the UDHR,⁴ are exceeded. This Article, by stipulating the only purposes for which rights and freedoms may be restricted, sets

² UDHR Article 28: “Everyone is entitled to a social and an international order in which the rights and freedoms set forth in Declaration can be fully realized.”

³ R. Crawshaw, B. Devlin, and T. Williamson, *Human Rights and Policing: Standards for Good Behaviour and a Strategy for Change* (Kluwer, 1998).

⁴ UDHR Article 29(2): “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

limits on police powers. In short, police may legitimately be given powers that restrict human rights *only* for the purposes of securing the human rights of others and of meeting the requirements of morality, public order and the general welfare in a democratic society. In addition, police must not *exceed* the powers given by law to them.

While the above human rights principles underpinning both the purpose and the implementation of policing may appear clear, their breach within day to day police practice around the world points to persistent obstacles to the achievement of genuine human rights-based policing.

Among such obstacles is a belief held by many police officers, and often shared by ordinary members of the public, that human rights can be an impediment to “effective” policing. According to this perspective, a human rights approach to policing tends to be overly concerned with the rights of criminals rather than the victims of crime, who also have a right to protection. Such attitudes are likely to become increasingly entrenched among police officers if the community which they serve perceives that the threat from crime, especially violent crime, is real and rising.

In the course of their everyday work in their communities, individual police officers often act with a degree of autonomy and independent judgement, exercising discretion in the discharge of their duties and the enforcement of particular laws. If the prevailing police culture is one within which officers view their anti-crime “law enforcement” function as trumping human rights principles there is a risk that, over time, police practice will become seriously tainted by unethical or unlawful conduct.

Unless checked by well-conceived procedural codes of conduct, effective supervisory mechanisms and, if necessary, criminal prosecutions, police misconduct including unlawful behaviour and patterns of corruption, risk resulting in a serious deterioration in relations with local neighbourhoods. This risks depriving the police of the community support and assistance which are an essential context for preventing and combating crime. In addition, if human rights abuses by police result in miscarriages of justice leading to the punishment of the innocent, there is a danger of a collapse of public trust and confidence in the police.

Such policing cannot be described as either professional or effective. It is widely acknowledged in studies of police that they cannot be effective unless they have the consent of the people being policed.⁵ This is achieved when society believes that policing is impartial and carried out on behalf of all the community, rather than favouring certain groups within it. Further, a police service will be most effective, and will maintain the confidence, trust and respect of the public, when it is representative of the community.

A central challenge confronting policing reform processes around the world is how best to guarantee that police agencies are representative of the communities they serve and ensure their practices recognize the human dignity and the rights of all individuals, while providing them with effective protection from wrongdoing. The United Nations (UN), in a

⁵ Committee for the Administration of Justice, *Human Rights on Duty: Principles for better policing – international lessons for Northern Ireland*, 1997.

continuing effort to assist member states in the development of national police practice consistent with the human rights framework, has developed a series of Principles, Codes and Guidelines related to policing.

2.2 UN codes, guidelines and principles for policing

In the context of Malaysia's continuing development of a police reform process, Amnesty International believes that UN General Assembly resolution 34/169, by which the UN Code of Conduct for Law Enforcement Officials (hereafter referred to as UN Code of Conduct) was adopted in 1979, is of particular significance.

The Resolution and Code of Conduct, by setting out that "*every law enforcement agency should be representative of and responsive and accountable to the community as a whole,*" establishes a fundamental standard on the nature of human rights-based policing, and the relationship police should have with the communities they serve and political system within which they function.

The Commentaries accompanying the eight Articles of the Code, and other international standards, help interpret these core principles and should inform national processes of reform towards police agencies that are representative, responsive and accountable.

a) Representative

For a police agency to be representative of a community as a whole, its membership should be representative of the community according to key criteria, including race or ethnic group, women and men, language and religion. Minority communities must be adequately represented, and individuals from these groups must be able to pursue their careers fairly and without discrimination. At a minimum, an internal police culture should be established that is sensitive to the needs and concerns of minority communities.

b) Responsive

While democratic systems allow for public concerns to be reflected through an elected legislature and other political institutions that direct and guide the police, a police service striving to be genuinely responsive to the community as a whole requires a leadership and internal culture that is committed to strengthening the consent and cooperation of the community they seek to serve effectively. There must be an awareness of and a willingness to respond to community concerns and expectations of police methods and performance, especially in relation to new dimensions of crime and criminality.⁶

c) Accountable

The principle of accountability to the community as a whole encompasses both legal accountability and concepts of "democratic accountability."

⁶ Caracas Declaration and Milan Plan of Action, Article 5(h), of the 6th UN Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 1980.

Legal accountability requires a transparent legal framework for policing, consistent with international human rights standards, which makes clear what actions (or omissions) of police are considered abuses, and which holds individual officers accountable for those actions or omissions.

Ensuring effective legal accountability requires a framework of independent yet interlocking oversight mechanisms. They include:

- An independent prosecution service (Attorney General’s Chambers) which actively pursues cases involving police;
- An independent and proactive judiciary, which takes action against police abuses that come to light in the course of criminal proceedings or other legal processes, including judicial inquiries (coroner’s inquests) into deaths;
- An internal police accountability mechanism that fairly and impartially addresses breaches of police procedures, imposes disciplinary measures or initiates criminal proceedings and thereby inculcates a culture of professionalism, ethical conduct and respect for human rights throughout the police service;
- An external police oversight mechanism (ombudsman or complaints investigation body) empowered to effectively and independently investigate complaints of abuses lodged against police officers and, if necessary, recommend prosecution and remedial action.

“Democratic accountability” requires that the police must, like any public service, be accountable to a democratic authority. However, a broad understanding of the concept of “democratic accountability” extends beyond traditional notions of police accountability to civil society through elected representatives in the legislature, to aspects of “responsiveness” intrinsic to community policing, and to the need, in some cases, for direct civil society participation on Police Commissions (a Police Board or Police Authority). Police Commissions oversee, for example, the setting of key strategic objectives for the service, the appointment of police senior leadership and the monitoring of overall police performance and of public responses to it.

UN Code of Conduct for Law Enforcement Officials:

“Law enforcement officials shall at all times fulfil the duties imposed on them by law, by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession”- Article 1

“In the performance of their duty all law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons” - Article 2

Based on the core principles of representation, responsiveness and accountability, the UN Code of Conduct comprises eight articles safeguarding the rights of all persons and stipulating that these should be incorporated into national law and police practice.

These principles are reflected and reinforced in international human rights treaties (Conventions or Covenants),⁷ and a body of Guidelines, Principles and Rules elaborated by the UN that are related to policing.⁸ While international human rights treaties impose binding obligations on States' Parties to prevent and investigate human rights violations, the non-treaty standards represent the consensus of the international community about the manner in which states should carry out their policing functions. These standards have the persuasive force of having been negotiated by governments over many years, and of having been adopted by political bodies such as the UN General Assembly. They include the:

- UN Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials;
- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- UN Standard Minimum Rules for the Treatment of Prisoners (hereafter referred to as Standard Minimum Rules);
- UN Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment (hereafter referred to as Body of Principles);
- UN Rules for the Protection of Juveniles Deprived of their Liberty;
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

This report will seek to examine whether the principles and provisions of the UN Code of Conduct and other international standards listed above are reflected in the content and current application of Malaysian laws related to policing. It will illuminate reports of human rights violations by police and the institutional context within which they occur, and seek to use the UN standards as a framework for the development of recommendations for reform. The report will look firstly at the significant opportunity provided by the establishment and progress of the Royal Commission of Inquiry, before briefly describing the evolution of the RMP as a major institutional actor in Malaysia's political and social

⁷ Of the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic and Social Rights (ICESCR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Malaysia has ratified only the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

⁸ For a digest of international standards relevant to the police, see Amnesty International "10 Basic Human Rights Standards for Law Enforcement Officials", December 1998, (AI Index: 30/04/98).

development since before independence in 1957. It will examine some of the particular consequences of extraordinary powers extended to the RMP under emergency laws, before looking at the reports of human rights violations in the context of the fight against crime, including fatal shootings and custodial violence. Providing some illustrative cases, it will seek to illuminate how critical safeguards within Malaysia's laws and institutions have proved ineffective and to provide a number of recommendations for reform.

3. The Royal Commission of Inquiry

The independent "Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police" was charged with presenting, after one year, recommendations to the King and government for the improvement and modernization of the police force.

The establishment of the Commission was seen as Prime Minister Badawi's response to public concern at reports that some RMP officers had been responsible for persistent patterns of human rights violations, including unlawful killings and torture or ill-treatment of criminal suspects. Public complaints of inefficient, unresponsive working practices and of patterns of corruption had also been made against the RMP. In announcing the Royal Commission, the Prime Minister made clear that:

"The police must be well-versed in human rights when discharging their duties and dealing with the public. Police brutality, poor service, corruption and other negative traits must be eradicated".

He also stated that the police faced an "image crisis" and needed to change perceptions and regain public trust.

The Commission's Terms of Reference were broadly worded. It was empowered to enquire into, among other things, the role and responsibilities of the RMP in enforcing Malaysia's laws; the force's work ethics and operating procedures; human rights issues, including concerns involving women; and questions of structural organization, personnel development and training. Sixteen Commissioners were appointed, chaired by a former Chief Justice of Malaysia and including a former Inspector General of Police (IGP), the President of the Bar Council, the heads of NGOs working on women's rights and anti-corruption issues, and senior figures from the civil service, the media and the business community.

The Commission began its work in February 2004 and, seeking to allay concerns expressed by some Malaysian observers that the composition of the commission was not fully representative, or that the public may be intimidated by the presence of former senior police and government officials into not presenting complaints against the police, initiated a series of open public hearings across the country. The Commission also invited the submission of memoranda from NGOs and any other interested groups or individuals. Emphasizing a commitment to impartial and fair hearings for all interested parties, the Commission held a series of dialogues with the RMP and other related government agencies, including the Anti-Corruption Agency and Public Complaints Bureau. The Commission also visited police stations.

In April 2004 commenting publicly on the complaints and submissions it had received, the Commission disclosed that public dissatisfaction with the RMP was at a high level, particularly in relation to the receipt and response to police reports (crime reports and other complaints) lodged at police stations by members of the public, and as regards overcrowding and ill-treatment in 'lockups' (communal holding cells in police stations).

In order to promote reform in advance of its eventual recommendations, the Commission announced that, while reserving the right to conduct its own investigations into complaints that were substantial or of particular public interest, it would relay the bulk of the specific complaints it received to the police for immediate investigation and, if necessary, remedial action. Though no specific timeframe was placed on these police investigations, the Commission pledged to review and, if necessary, publicly report on the progress of police investigations.

In May, the Commission relayed to the RMP the complaints and feedback submitted, including complaints relating to poor conditions and ill-treatment in police lockups; the denial of access to legal counsel for prisoners held in remand custody;⁹ and incidents of corruption (including, for example, officers acting as 'agents' for insurance, legal and other business interests after traffic accidents).

In June, the senior leadership of the RMP responded by issuing a series of internal directives. These instructed police personnel to ensure that Police Reports lodged by the public were properly received, classified and acted upon, and that complainants were kept informed about the status of investigations; that arrest and detention procedures be fully respected; that families of detained suspects be informed and allowed visitation rights, and that lockup detainees not be ill-treated; that juvenile suspects not be detained with adult offenders; and that evidence and exhibits related to an investigation be properly safeguarded. The Royal Commission called for public feedback on the implementation of these directives. It also announced that it would conduct its own investigations into reports of 17 deaths in police custody in 2003, with a view to recommending further police investigations or court inquests.

In August, following 26 nationwide public inquiries and the receipt of scores of submissions from civil society groups and political parties and hundreds of complaints from individuals, the Commission submitted a six-month Interim Report to the government. Concerns were expressed by NGOs about a lack of transparency and the need for public discussion of interim findings when the Report, described as a work in progress and classified officially as 'secret', was not released. However, the Chairman of the Commission publicly confirmed that the Interim Report reflected findings that "*corrupt practices involve officers and personnel at all levels*"; excessive force had been used against detained suspects; review or repeal of laws relating to remand detention was necessary; clear weaknesses in internal police disciplinary procedures exist; and a lack of understanding among many police officers resulted in a failure to respect the RMP's own rules and procedural duties. The Commission also drew attention to delays in the implementation of directives from senior officers by lower

⁹ Remand: detention of persons arrested but not yet charged with an offence.

ranking police personnel, while acknowledging the negative impact of insufficient police numbers, resources, equipment and training, and expressing concern at inadequate salaries for many police.

During the remainder of 2004 the Commission continued to receive submissions while formulating recommendations for its Final Report expected to be publicly released in May 2005.

4. The Royal Malaysia Police

4.1 Legal basis, role, structure, command and ethics

As stipulated in the Police Act of 1967, the functions of the RMP are the “maintenance of law and order, the preservation of the peace and security of the Federation, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence”.

Police powers of, among other things, arrest, search and seizure, investigation, and prosecution in the subordinate courts are set out in the Criminal Procedure Code (CPC). Based on such primary legislation, the Inspector General of Police (IGP) is empowered to issue a series of Standing Orders (day to day operational procedures) related to each specific policing function.

Made up of more than 87,000 personnel, the RMP forms the country’s single policing institution organized on a nationwide basis with a centralized command. With a hierarchy of central, state, district and local structures, the force is under the overall command of the IGP, who is responsible for its organization and administration and reports to the designated Minister.¹⁰ Under the IGP, the main departmental divisions comprise Criminal Investigation; Narcotics; Internal Security & Public Order; Special Branch (security intelligence); Management, and Logistics.

The RMP’s Code of Ethics provides that “for the sovereignty of the nation, tranquillity in society and professionalism in the force” its personnel undertake to fulfil the primary responsibility for the discharge of functions listed in the Police Act (*see above*). The Code defines the force’s ethical values as:

- Loyalty - to nation, government and police leadership;
- Discipline - personal and professional dedication and trustworthiness;
- Authority - discharging duties and powers with firmness, fairness and justice;

¹⁰ Until 1999 former Prime Minister Mahathir concurrently held the post of Home Minister (designated responsible for the police). After 1999 his then deputy, Abdullah Badawi, held the Home Ministry portfolio. In March 2004, Prime Minister Badawi divided the Ministry of Home Affairs into the Internal Security Ministry (responsible for the police, prisons and drugs offences) and the Home Ministry (responsible for immigration and migrant workers). Prime Minister Badawi concurrently serves as Internal Security Minister.

- Sensitivity and Friendliness – “courteous, quick and correct” service with a priority placed on the rights and interests of the wider community;
- Excellence - proactive commitment to personal and institutional improvement sensitive to contemporary changes.

4.2 Historical background: a police force not a police service?

Current debate in Malaysia over the need for, and direction of, police reform are set within the context of the country’s political, social and economic development. At independence in 1957, Malaysia’s *Merdeka* (freedom) Constitution established a parliamentary democracy based on respect for the rule of law and protection of fundamental liberties and rights. However subsequent political pressures and developments, including successive states of emergency, led to the imposition of incrementally tighter restrictions on fundamental rights and liberties and, in a realignment of constitutional checks and balances, an expansion of executive power in relation to that held by the judiciary and legislature.

The parallel evolution of the RMP has been shaped in particular by the central role the force has played in maintaining the security of the Malaysian state, in addition to its exercise of traditional law enforcement and crime prevention functions. In the years after World War II, the Communist Party of Malaya (CPM) and its armed insurgency posed a serious challenge to the British colonial authorities and to the newly independent nation. The declaration of a State of Emergency, in force from 1948 to 1960, led to the granting of sweeping powers to the RMP as existing civil and political rights, including those safeguarding against arbitrary arrest and detention without trial, were suspended. Subsequently, the RMP was instrumental in defeating the insurgency and countering subversive activity.¹¹

In 1960, these extraordinary temporary police powers were entrenched through the enactment of the Internal Security Act (ISA) (*see below*), and by the permanent status afforded to regulations issued under subsequent emergencies,¹² including the 1969 Emergency (Public Order and Prevention of Crime) Ordinance (EO).

Under these ‘preventive’ laws, police are empowered to arrest without a warrant any person they suspected of being an actual or potential threat to national security or public order and to detain them incommunicado for up to 60 days for ‘investigation’. Based on police

¹¹ During the 1948-60 Emergency, police casualties numbered 2947 (1346 killed and 1601 wounded), double the number of all other Security Forces’ casualties. The shape and character of the RMP was heavily influenced by the critical role played by its Special Branch, responsible for intelligence and anti-subversion activities, and by the maintenance of a large paramilitary division, the Police Field Force. Much of the methodology of the Special Branch, including the “turning over” of communist insurgents through the use of intensive, disorientating interrogation during prolonged incommunicado detention, was developed during this period and continues to be reflected in current practice.

¹² States of Emergency were also proclaimed in 1964, during a period of diplomatic and military tensions with Indonesia, and after racial riots in 1969. These proclamations have not been annulled by parliament and many of the laws issued under them remain in force.

investigation reports, the Minister is empowered to issue two-year detention orders, renewable indefinitely, without judicial review.

While the threat of communist subversion, the original justification for the enactment of the ISA, gradually declined, underlying fears over the potential fragility of Malaysia as a multi-ethnic, multi-religious, economically developing nation persisted. In 1969 these fears were crystallised by outbreaks of serious rioting involving elements of the Malay majority and Chinese minority ethnic communities in the capital Kuala Lumpur. A state of emergency was declared, governmental functions taken over by a National Operations Council and the Constitution and Parliament suspended until 1971.

Subsequently the United Malay National Organization (UMNO), the main political party representing the country's Malay majority, which had headed the government since independence, consolidated an overwhelming political dominance within the framework of the multi-ethnic *Barisan Nasional* (BN – National Front) ruling coalition. Citing the grave threat that renewed communal violence would pose to national stability and economic progress, and deploying a two-thirds parliamentary majority (affirmed through regular national elections), UMNO moved to further enhance the authority of the executive¹³ and to tighten legislative restrictions¹⁴ on rights to freedom of expression, association and assembly.¹⁵

Government leaders also defended the use of the ISA and other emergency legislation as a continuing necessity – including against those seeking to peacefully express their political and religious beliefs. The background of people detained under the ISA changed over time. While those originally detained under the ISA were suspected members of the Communist Party of Malaysia accused of armed insurgency or subversive activity, detainees subsequently included parliamentary opposition party members, civil society activists, 'deviationist' Muslim groups and Shi'ias, journalists, trade unionists and, since 11 September 2001, alleged Islamist "extremists" or "terrorists".

The government's authoritarian stance necessarily influenced public perceptions of the RMP. While Special Branch officers were primarily responsible for application of the ISA, large numbers of other police officers were required to enforce the array of laws restricting civil and political rights while also fulfilling their ordinary crime prevention and detection duties. The lack of effective scrutiny of the reasons behind ISA arrests, combined with apparently selective application, or filing of prosecutions, under restrictive laws contributed to a belief that the RMP as an institution was not politically impartial. This was felt particularly

¹³ As head of the executive, the Prime Minister decides the appointment of judges, the public prosecutor (Attorney General) and senior police and Special Branch officers. A two-thirds parliamentary majority and strict party discipline combines with a fusing of executive, judicial appointments, legislative and internal security authority under his office.

¹⁴ See Amnesty International Report: *Malaysia – Human Rights Undermined: Restrictive Laws in a Parliamentary Democracy*, September 1999, (AI Index: ASA 28/06/99).

¹⁵ Restrictive laws (many first imposed by the British colonial authorities), enacted or incrementally tightened through amendments included the Printing Presses and Publications Act, the Sedition Act, the Official Secrets Act, the Societies Act, the University and University Colleges Act and the Police Act.

in relation to the policing of public assemblies, with opposition parties and NGOs complaining repeatedly that denials of police permits were politically motivated, and that peaceful demonstrations were broken up with excessive, punitive use of force (*see page 32*).

Over time a perception of the RMP as primarily the “enforcers” of a powerful executive, dominated without interruption by a single political party, took root. Complaints of police abuses, particularly in relation to the ISA but including broader anti-crime and public order policing issues, were viewed with suspicion by the government and some RMP leaders, as potentially threatening to national security.

For example, to mark Human Rights Day in 1996, the human rights group *Suaram* and eight other NGOs planned to organize an indoor forum, titled a ‘People’s Tribunal,’ to discuss reports of abuses of police powers. Police were invited to participate in the discussions and to hear testimonies from human rights activists and representatives of urban poor, indigenous and other communities. However the forum was suspended after senior officials, including former Prime Minister Mahathir Mohamad and the then IGP, accused the organizers of seeking to tarnish the reputation of the police and of posing a threat to national security. The organizers were threatened with detention without trial under the ISA, with the Prime Minister labelling them “leftists” and “traitors”.¹⁶

Within such a climate, and with a lack of effective judicial scrutiny, an erosion of police accountability and transparency took hold. Today, it may still be accurate to describe the RMP as a police “force” closely aligned to the political executive, rather than an impartial police “service” representative of and responsive and accountable to the community as a whole.

5. “Emergency” laws and policing

The existence of a body of “emergency” laws in Malaysia continues to have a marked impact on the conduct and internal culture of the RMP. It also affects public perceptions of the force’s authoritarian “national security” function and lack, in practice, of operational independence from the ruling political party. These “emergency” laws circumvent critical human rights safeguards enshrined in the Malaysian Constitution and international human rights law. They have facilitated patterns of human rights violations, including torture and ill-treatment, and promoted a climate of police impunity.

The following section will examine the extent of powers granted to the police by some of these laws and how they have engendered patterns of police misconduct. The Human Rights Commission of Malaysia (*Suhakam*)¹⁷ and a broad range of domestic NGOs have repeatedly called for repeal or reform of such laws to ensure respect for fundamental human rights, including the presumption of innocence and freedom from arbitrary arrest and torture or ill-treatment. Such bodies have also called for the incorporation effective safeguards of the rights of detainees, including judicial review at any stage of detention and access to legal

¹⁶ *Agence France Presse (AFP)*, 18 December 1996.

¹⁷ See *Suhakam Report (2003): Review of the Internal Security Act 1960*.

representation. Amnesty International believes that moves towards human rights-based policing in Malaysia must include such reforms.

5.1 The Internal Security Act (ISA)

Enacted pursuant to Article 149 of the Constitution,¹⁸ the ISA empowers the police to arrest, without evidence or a warrant, individuals that they believe have acted, or are “about to” or “likely to” act in any manner that would threaten Malaysia’s security, “essential services” or “economic life.”¹⁹

Detainees can be held for up to 60 days for investigation. They are denied access to lawyers, independent doctors and family members. After 60 days, the Internal Security Minister (formerly the Home Minister) can issue a two-year detention order under Article 8 of the ISA. This two-year detention can be renewed indefinitely without the detainee ever being charged with a crime or tried in a court of law.

The ISA has, through a series of amendments, incrementally extended executive powers, while stripping away the judicial safeguards designed to protect against their abuses. Once a person is detained under the ISA, he or she has no effective recourse to legal protection, nor any opportunity to establish their innocence. The ISA is contrary to fundamental principles of international law, including the right to liberty of the person, to freedom from arbitrary arrest, to be informed of the reasons for arrest, to the presumption of innocence, and to fair and open trial in a court of law. It has facilitated the practice of torture and ill-treatment.

Although some of those detained under the ISA have made successful *habeas corpus* applications before a court, most are rejected.²⁰ One detainee whose detention under both Article 73 and Article 8 was ruled as unlawful by a court in 2002 was immediately re-arrested by the police on his release and given another two-year detention order by the then Home Minister.²¹

5.1.2 ISA detainees: the risk of torture and ill-treatment

¹⁸ The 1957 Constitution, in light of the communist threat, included a provision (Article 149) allowing for parliament, in the event of serious subversion or organised violence, to pass legislation that was repugnant to fundamental rights safeguarded elsewhere in the constitution. Amendments added threats or actions “prejudicial to public order” to the provision..

¹⁹ ISA s.73 (1)

²⁰ The few successful *habeas corpus* applications have been made challenging the legality of the first 60 days of detention (under s.73 of the ISA). Amendments made to the ISA in 1989 prevent acts of the Home Minister being brought into question by the courts. This has rendered ineffective *habeas corpus* applications in relation to two-year detention orders issued under Section 8, unless on a matter of procedure.

²¹ Nasharuddin Nadir was arrested in April 2002 on suspicion of alleged links to Islamist “extremist” groups. In November 2002 the High Court heard his *habeas corpus* petition and ordered his release. He was rearrested the next day and remains held under ISA detention orders.

UN Code of Conduct for Law Enforcement Officials:

“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 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 5

For over four decades the torture and ill-treatment of ISA detainees has remained among Amnesty International’s gravest concerns in relation to the application of the ISA. While Malaysia has not ratified the UN Convention against Torture (CAT), other international human rights standards strictly prohibit torture and ill-treatment. Furthermore absolute prohibition of torture is regarded as part of customary law, binding on all States, and as a norm of *jus cogens* (a peremptory norm of general international law from which no derogation is allowed at anytime).

Article 5 of the UDHR provides that “No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.” A definition of torture was elaborated in the Torture Declaration,²² adopted by the UN General Assembly in 1975, and enshrined in the Convention Against Torture (CAT). The right to protection against torture and ill-treatment is regarded under international law as one of the fundamental rights from which no derogation is permitted, even in times of emergency or war. The Geneva Conventions,²³ the CAT and other international treaties prohibit torture within the context of an emergency. Other international human rights standards, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 6),²⁴ and the UN Standard

²² Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Declaration), adopted by UN General Assembly Resolution 3452 of 9 December 1975.

Article 1: “... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons...”

Article 2: “Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.”

²³ Under common Article 3 (which extends to armed conflicts not of an international character) of the four Geneva Conventions of 1949, “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” “are and shall remain prohibited at any time and in any place whatsoever”.

²⁴ Body of Principles, Principle 6: “No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*... No circumstances whatever may be invoked as a justification for torture or to cruel, inhuman or degrading treatment or punishment”. *The Body of Principles elaborates that “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions

Minimum Rules for the Treatment of Prisoners (Rule 31),²⁵ also prohibit torture and ill-treatment.

Articles 6, 8 and 9 of the Torture Declaration also provide that interrogation methods and practices shall be kept under systematic review with a view to preventing any case of torture; that a prompt and impartial investigation shall be ensured whenever there are reasonable grounds to believe that an act of torture has been committed, and that any individual subjected to torture has the right to complain and have his case promptly and impartially examined.

Recognizing that the risk of torture and ill-treatment increases when detainees are held incommunicado, international standards require prompt and regular access to detainees by legal counsel, medical practitioners and family members.

Under the ISA, techniques of interrogation by Special Branch police, which combined physical assault with persuasion, deception, and coercion involving intense mental and physical pressure at times amounting to torture, became entrenched. An almost uniform pattern in the ill-treatment of ISA detainees was recorded by Amnesty International during missions to Malaysia in 1978 and again 10 years later following Operation Lallang in 1988.²⁶

Primarily during the initial 60-day investigation period, ISA detainees were assaulted, forced to strip, deprived of sleep, food and water, told that their families would be harmed, and subjected to prolonged aggressive interrogation to break them down (referred to as “turning over”, “neutralisation” or “brain-washing”) to coerce confessions or elicit information. During this period, ISA detainees continue usually to be held in solitary confinement, often in a windowless cell where they lose all sense of time. Within a context of actual or threatened physical assault, the interrogation procedure is designed to induce a feeling of complete disorientation and dependence on the interrogators as the only point of human contact. The sense of helplessness is exacerbated by their knowledge that no judicial or legal intervention is permitted and that family visits are entirely at the discretion of their Special Branch interrogators.

Amnesty International remains gravely concerned that the Malaysian authorities have repeatedly failed to effectively investigate reports of the torture or ill-treatment by police of ISA detainees. In addition, while there has been greater scrutiny of the treatment and

which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

²⁵ Standard Minimum Rules, Rule 31: ‘Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely prohibited as punishments for disciplinary offences.’

²⁶ *Report of an Amnesty International Mission to the Federation of Malaysia, 18 November - 30 November 1978*, (AI Index: ASA 28/04/79) and; ‘*Malaysia ‘Operation Lallang’: Detention without Trial under the Internal Security Act*’, December 1988, (AI Index: ASA 28/18/88). During Operation Lallang, 106 people across a wide political and social spectrum were arrested accused of provoking racial and religious tensions. Those detained included opposition parliamentarians, trade unionists, Chinese educationalists, Islamic teachers, Christian church and community workers, and other activists.

detention conditions of ISA detainees in recent years due to the efforts of *Suhakam* and local NGOs,²⁷ there are continued fears that the safeguards protecting against future patterns of torture or ill-treatment remain weak.

Suhakam's Reports,²⁸ and its visits to special Police Remand Centres (PRCs) in undisclosed locations (where ISA detainees are at times held during the 60 day "investigation" period) and to the Kamunting Detention Centre (where ISA detainees are transferred following the issue of detention orders) led to a series of recommendations for reform. These included repeal of the ISA and its replacement with a comprehensive law which balanced national security interests with respect for fundamental human rights principles, including the right to a trial. Pending enactment of such a law, and as an immediate interim measure, *Suhakam* recommended revision of the Lockup Rules.²⁹ While calling for the Rules to be amended generally to comply with human rights standards, *Suhakam* focused attention on the need to reform or replace particular provisions related, among other things, to:

- The right of detainees to be informed about the grounds for their arrest and detention and the factual allegations laid against them (new provision);
- The provision of information about the detainee's rights in detention and procedures he or she will be subjected to (amend Rule 14);
- The right of all detainees to be brought before a magistrate within 24 hours of arrest (new provision);
- The right of all detainees to have access to lawyers and family members as soon as possible, and in any event within seven days of their arrest³⁰ (amend Rule 22);
- The police to inform family members of detainees of their arrest within 24 hours (new provision).

In relation to allegations of torture and ill-treatment of detainees, *Suhakam* also recommended that all allegations of cruel, inhuman or degrading treatment or punishment should be investigated and disciplinary action taken against officers involved. In relation to detainees receiving treatment in hospital, the Commission recommended that relatives be informed immediately to assist in the provision of information on the patient's medical history, and that, in any event, relatives should be informed of an admittance of a detainee to hospital within 24 hours.³¹

²⁷ Notably a coalition of NGOs, *Gerakan Mansuhkan ISA* (Abolish the ISA Movement).

²⁸ *Suhakam Reports: Review of the Internal Security Act 1960*, (2003); *Report of the Public Inquiry into Conditions of Detention under the ISA*, (2003).

²⁹ The Lockup Rules, 1953, lay down detention procedures, and some safeguards, applicable for ISA and Emergency Ordinance detainees and for all other ordinary criminal suspects held in police custody.

³⁰ *Suhakam* recommended that all ISA detainees be brought before a magistrate within 24 hours of arrest, and be allowed access to a lawyer during their appearance before the magistrate.

³¹ *Suhakam* Annual Report 2002 (Visitations to police lockups).

However most of these recommendations have yet to be implemented by the government and the following case studies illustrate the kinds of human rights violations that Amnesty International believes continue to face ISA detainees today.

a) Abdul Malek Hussein

In September 1998, Abdul Malek Hussein, an opposition activist linked to former Deputy Prime Minister Anwar Ibrahim and the “*reformasi*” (reform) movement was among 16 persons arrested under the ISA. After his release he filed a police report in March 1999 complaining of abuse by Special Branch officers during the 60-day “investigation” period. In an affidavit he described being stripped naked, handcuffed from the back, blindfolded and repeatedly hit during interrogation until he lost consciousness. He claimed his mouth was forced open and he was forced to drink urine. He described how his genitals were hit with a hard object, and how cold water was poured over him while naked in an air conditioned room.

b) Dr. Munawar Anees

On 14 September 1998, Dr. Munawar Anees, a Muslim scholar and former speech writer for Anwar Ibrahim, was arrested under the ISA. Held incommunicado and subjected to physical and severe psychological pressure, he confessed to sexual acts with Anwar Ibrahim, pleading guilty on 19 September to charges laid against him. He later lodged an appeal and described his interrogation in an affidavit:

“By the end of the second day the long hours of interrogation, the lack of sleep, and the lack of decent food had left me completely disoriented and exhausted. My health was deteriorating and I was extremely worried about my family... I had no idea of time... My cell had no pillow or anything that even remotely resembled comfort...The only way I could lay on the platform was in the foetal position. The light and the sound from the vent made sleep impossible....I had done nothing wrong but I was deeply frightened. I felt hopelessly outnumbered and very vulnerable... Suddenly one of the four screamed at me to stand up. I did so. All four came from behind the table and surrounded me in a very aggressive manner as if they were about to assault me. One of them literally had his face in mine. They all screamed at me, in my ears, loudly, again and again and again, that I had [had sex] with Anwar...They screamed and screamed and screamed, in my ears, at my face, at me, again and again, over and over asking me to say yes until I gave in and broke down saying yes, yes. They stopped screaming. That was what they wanted to hear. They were not interested that it was untrue.”

c) *Keadilan* opposition party and other activists

In April 2001, ten activists, many leading members of the opposition *Keadilan* party (led by Dr. Wan Azizah, wife of Anwar Ibrahim), were detained under the ISA and accused of planning to overthrow the government by “militant” means. No evidence to support the allegations was made public. At the first period of detention all the detainees were kept

incommunicado, some for up to four weeks. All were eventually allowed family visits, but were denied access to lawyers and independent medical attention. While some reported being roughly man-handled and slapped, many of the detainees described being subjected to threats and intense disorientating psychological pressure during interrogation, at times amounting to cruel, inhuman or degrading treatment. Two year detention orders were imposed subsequently on six of the detainees.³²

In 2002 the Federal Court ruled on a *habeas corpus* petition lodged by Mohamad Ezam Mohd Noor and others of the detainees.³³ The Court found that the detainees had been arrested and detained for the collateral or ulterior motive of intelligence gathering, wholly unconnected with national security. They were not interrogated on their alleged militant activity, but rather on their political activities and beliefs. The Court found that the exercise of the powers of detention by police under section 73 of the ISA had been *male fide* (in bad faith) and improper. However, as the men were by that stage held under ministerial detention orders (under section 8 of the ISA), the Court did not order their release.³⁴

d) Alleged Islamist “extremists”

Since 2001 hundreds of alleged Islamist “extremists” have been arrested, accused of links to domestic or regional “terrorist” networks. Over 80 of those arrested have been issued two year detention orders and these orders are routinely extended without explanation. Within the context of the “War against Terror”, fears that such detainees may be particularly vulnerable to torture or ill-treatment during incommunicado detention were acute. In 2004, 31 ISA detainees lodged complaints with *Suhakam* of ill-treatment during their initial 60-day ISA detention period.³⁵

Abdul Razak bin Abdul Hamid (arrested in December 2002) reported that he had been stripped completely naked, beaten by his interrogators and forced to drink water poured onto the floor. Mohidin Shaari (arrested in December 2002) and Azman Hashim (arrested in February 2003) also described how they were stripped naked, kicked and verbally abused. Sulaiman Suramin (arrested in June 2003) claimed he was stripped, sexually humiliated and forced to kiss rubbish and cigarette ashes. Four of the above complainants also reported they were forced to describe how they made love to their wives. Other allegations made by the 31 detainees included being hit in the face with newspapers, spat at and forced to drink the spittle, and being forced to sit in the cold blast of air-conditioners during interrogation.

³² Tian Chua (Vice-President, Keadilan), Mohamad Ezam Mohd Noor (Youth wing Chief, Keadilan), Lokman Noor Adam (Youth wing Secretary, Keadilan), Dr Badrul Amin Baharon (division chief, Keadilan), Saari Sungib (political activist), Hishamuddin Rais (political activist, journalist). Arrested in April 2001, the six detainees were released in June 2003.

³³ *Mohamad Ezam Mohd, Noor v Ketua Polis Negara & other Appeals* [2002] 4 CLJ 309, p. 331.

³⁴ See n.16.

³⁵ The NGO coalition *Gerakan Mansuhkan ISA* (Abolish the ISA Movement) lodged a police report with the copy of the complaints attached, in February 2004. Amnesty International remains unaware of any information regarding the progress or results of police investigations into the complaints.

5.2 The Emergency (Public Order and Prevention of Crime) Ordinance

While the original, declared objective of preventive detention under the ISA was to counter the remnants of communist insurrection, preventive detention under the Emergency (Public Order and Prevention of Crime) Ordinance (EO) issued under the State of Emergency proclaimed after the 1969 racial riots, was intended, originally, to restore the peace and order which had been seriously disturbed.

The Ordinance empowers the police to detain suspects for up to 60 days with a view to “preventing any person from acting in a manner prejudicial to public order” or for the “suppression of violence or the prevention of crimes involving violence.” Under the EO, police are not required to obtain a remand detention order from a magistrate, thus depriving detainees of the opportunity to exercise their right, under the Malaysian constitution and international human rights law, to have the appropriateness of their detention reviewed by a judge or other judicial authority. Such judicial review would allow the magistrate to assess whether sufficient legal reason exists for the arrest, to safeguard the well-being of the detainee and to prevent violations of the detainee’s fundamental rights. Under the EO, a police officer of or above the rank of Deputy Superintendent has only to report the circumstances of the arrest to the IGP or his designate.

Based on police reports compiled during the initial 60-day police “investigation” period, the Home Minister can then issue a two-year detention order, renewable indefinitely.³⁶ The detainees are transferred from police custody to a detention camp for the duration of the order. Alternatively, the Minister can choose to issue a restriction order controlling the suspect’s freedom of movement and place of residence. Implementation of the order is supervised by the police.

The EO has not been restricted to action necessary to restore public order, or for suppressing violence or crimes involving violence committed during or immediately after a disturbance or incident. Rather it has become an extraordinary law to deal with categories of suspected criminals who are regarded as difficult to bring to justice by the ordinary process of law, either due to lack of evidence or the inability of the prosecution to find witnesses who are willing to give testimony.

The EO continues to be mostly used to arbitrarily detain or restrict the movement of suspected gang members and violent criminals. The Ordinance is mostly applied in the context of police special “operations” or “sweeps” against suspected gang activities in particular districts. NGOs have raised concerns that members of poorer ethnic-Indian communities, who are perceived to be more likely to be linked to gangster activity, are a particular target for such mass-arrest operations. However in July 2004, Prime Minister

³⁶ Under a 1989 amendment, all forms of judicial review of the discretionary powers of the Minister were denied, except those related to the EO’s procedural requirements.

Badawi also threatened the use of the EO to counter an upsurge of “snatch thefts” and street muggings.

The denial of judicial oversight and a lack of police accountability regarding the grounds for arrest, steps taken to investigate and methods of interrogation sharply increase the risk of serious human rights violations. EO cases tend to be surrounded by secrecy, with lawyers and family members reporting particular difficulties in accessing information from the police about the whereabouts of detainees and the reasons for their arrest.

EO detainees held incommunicado in police custody for up to 60 days, denied access to legal counsel, family members or doctors of their choice, are at heightened risk of being subjected to torture or ill-treatment. Unprotected by a presumption of innocence and denied access to counsel and a fair trial, those subsequently subjected to renewable two year detention orders continue to be denied the opportunity to argue their innocence.

In addition, there are reports of the EO being invoked to justify the continued detention of suspects who were originally arrested under the Criminal Procedure Code (CPC). Critical safeguards limiting periods of custodial detention, and ensuring access to counsel, are bypassed as detainees are subjected in the first instance to a series of remand orders (*see page 36*), which are then extended still further by a 60 day police “investigation” under the EO. In the case of Tharma Rajen (*see page 42*), the suspect was arrested in April 2002 under the CPC, accused of involvement in gang fights. He was given successive remand orders, totalling 30 days in police custody, before being detained for “further investigation” under the EO. Amid allegations of ill-treatment, Tharma Rajen’s health deteriorated sharply and, after transfer to hospital, he died in June 2002.

At least 450 persons were reported to be detained under the EO at the Simpang Renggam detention camp, Perak state, in 2002. On 11 November 2004, a reported 435 EO detainees³⁷ at the camp went on hunger strike protesting conditions and complaining about the manner in which they had been arrested and detention orders imposed. Among the complaints were that detainees had not been called to participate in a police investigation or allowed to defend themselves nor challenge the police reports drawn up to justify their detention. Detainees also complained that, denied the opportunity to report irregularities (including corrupt practices) in the investigation process or incidents of physical or mental abuse by police, they had been released after 60 days detention only to be immediately re-arrested on the same purported grounds and transferred to successive police stations as officers sought to build up a report to submit to the Minister for the issue of a detention order. Others protested that they had been arrested under the EO after being acquitted by a court on an ordinary criminal charge, and are now incarcerated without knowing when or if their detention orders will be lifted or indefinitely renewed.

³⁷ *Suaram* reported that around 435 detainees joined the hunger strike on its first day, and prison officials reported that 235 detainees remained on hunger strike by 13 November, with the numbers diminishing until the strike ended on 26 November 2004.

5.3 The Dangerous Drugs (Special Preventive Measures) Act

Under the Dangerous Drugs (Special Preventive Measures) Act of 1985 (DDA-SPM), enacted pursuant to Article 149 of the Constitution, any police officer is given power to arrest without a warrant any person suspected of any form of involvement in drugs trafficking

As with the ISA and EO, there are serious concerns relating to the purported grounds behind many DDA-SPM arrests and the conduct of the investigation, including the risk of torture or ill-treatment during incommunicado detention.

According to studies,³⁸ following a period of intelligence gathering, police prepare a pre-arrest report supported by the statements (recorded by different police officers) of at least three people directly linking the suspect to drugs trafficking. The IGP's Standing Orders reportedly require the RMP's Narcotics Department Director (or Deputy Director) to give prior approval for the arrest on the basis of the pre-arrest report. Then, after arrest, the police are empowered to hold the suspect in the police lockup, without access to lawyers or relatives, for up to 60 days for the purposes of further investigation.

Police are required to submit their investigation findings to an Inquiry Officer³⁹ who, alongside the police report submits his own report to the Minister for Internal Security on the reasonableness of a proposed detention order. However, the effectiveness of the Inquiry Officer's role as a potential safeguard against police abuses is open to serious doubt, not least because his review of the case is not seen as sufficiently independent of the police investigation or thorough.

The Minister may then "in the interest of public order" issue a detention order of up to two years, renewable indefinitely, on any person he or she is satisfied "has been or is associated with any activity related to or involving trafficking in dangerous drugs..." Once the Minister has issued an order, the detainee is entitled to a *habeas corpus* hearing before a court. In some instances, mainly related to procedural irregularities, the judge may order the detainee's release. Detainees may be held without charge for renewable two-year periods, with periodic review by an Advisory Board, whose opinion is binding on the Minister, but is not open to judicial intervention except on procedural grounds. Alternatively, the Minister can choose to impose a restriction order, of up to two years renewable indefinitely, related to the suspect's place of residence and freedom of movement. Implementation of the order is supervised by the police.

Concerns about police application of the DDA-SPM, as with the ISA and EO, stem from the denial of the right to liberty of the person, to freedom from arbitrary arrest, to the presumption of innocence and to fair and open trial in a court of law. Fears that the police apply the DDA-SPM to avoid the need for effective investigations and evidence-gathering that would stand up to scrutiny in a court of law are reinforced by the arrest of suspects under

³⁸ Abdul Rani bin Kamarudin, *Preventive Detention under the Dangerous Drugs (Special Preventive Measures) Act 1985: Are the Safeguards Real Or Only a Smokescreen*, Malayan Law Journal Articles Vol. 1, 2003.

³⁹ The Inquiry Officer must be a legally qualified person but not a police officer.

the DDA-SPM as they leave court having been acquitted on drug-related charges filed under other drug-related laws.

According to official statistics, there were 2,057 persons arrested under the DDA-SPM in 2002, of which 900 were given detention orders and 866 restriction orders.⁴⁰ In 2002, there were an estimated total of 1,000 persons detained under the DDA-SPM at the Simpang Renggam detention camp.

6. Police abuses and ordinary criminal suspects

Parallel to the “emergency” laws described above, legislation regulating the ordinary duties⁴¹ and everyday conduct of the police includes the Police Act, the Criminal Procedure Code (CPC) and the Lockup Rules. Under these laws police are empowered, among other things, to use “reasonable force” in self-defence or against suspects resisting arrest or attempting to escape.

However persistent reports, examined below, of excessive use of force including fatal shootings and physical abuse of detainees, point to widespread misuse of police powers and a failure to respect the safeguards these laws provide. Amnesty International believes there is a need for review and reform of the current provisions and implementation of such laws; for effective training for police; and for the creation of complementary internal and external police accountability mechanisms.

6.1 Fatal shootings by police

<p>UN Code of Conduct for Law Enforcement Officials:</p> <p><i>“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”</i>⁴² – Article 3</p> <p>Constitution of Malaysia</p> <p><i>“No person shall be deprived of his life or personal liberty save in accordance with the law”</i> – Article 5.1</p>

International standards uphold the principle that the use of force is an exception, and to be used only when strictly necessary and to the extent required for the performance of duty. These standards are based on the balance between the right to life and security of the person

⁴⁰ Some discrepancies were evident in police statistics issued in April 2003, which stated that between 1998 and 2002 a total of 8,633 persons had been arrested under the DDP-SPM, with 4,902 detention orders and 2,868 restriction orders imposed.

⁴¹ Such ordinary duties include arrests, searches, seizures, investigations and traffic control.

⁴² The Commentary accompanying Article 3 includes a requirement that firearms should not be used “except where a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the alleged offender.”

and the need to prevent crime and bring criminals to justice. All rights emanate from the supreme right to life, and no state may derogate from the right to life, even at a time of public emergency. If a police officer kills a fleeing suspect who should be presumed innocent until proven guilty beyond reasonable doubt in a court of law, the determination of guilt or innocence of the suspect is circumvented. In addition, if there is no proper system of accountability, the guilt or innocence of the police officer responsible for the shooting will also never be established.

In Malaysia, concern over apparently unlawful police shootings have persisted over many years. In 1998 Raja Aziz Addruse, one of most senior members of the Malaysian Bar association and President of the human rights NGO, *Hakam*, issued a statement⁴³ expressing concern that over 50 persons, suspected to have been armed robbers, had been shot dead by police since 1996. Noting that a police officer defending himself in a civil action in 1997 had stated that a police unit had orders to shoot dead suspected criminals if they are “armed and dangerous”, Raja Aziz Addruse expressed alarm at an apparent lack of proportionality and discrimination in police use of firearms, and at the possible existence of an unofficial police “shoot to kill” policy. He called for the creation of an independent investigation mechanism. Then Prime Minister Mahathir responded publicly by calling the statement “grossly unfair” and asserted that the police had no choice but to use firearms when faced with armed criminals.

In 1999 the Bar Council called for police to institute a standard procedure to investigate every fatal shooting by police, and *Suaram* and a group of 61 domestic NGOs lobbied for the creation of an independent investigation commission. The government did not take up these recommendations and, over subsequent years, the Police Watch and Human Rights Committee (Police Watch) of *Parti Insan Malaysia* (PRIM) played a leading role in documenting and publicly campaigning against continuing reports of unlawful police shootings, and of torture and ill-treatment and deaths in custody.⁴⁴

Based primarily on surveys of media reports, Police Watch and other human rights lawyers⁴⁵ have expressed grave unease at similarities in police descriptions of the circumstances that led to the fatal shooting of suspected criminals. In numerous cases, reports described police as having seen persons acting suspiciously, the suspects then typically resist arrest or attempt to flee and open fire on the police. Police respond by firing back, in many cases killing all of the suspects. Occasionally, some of the suspects not killed were reported to have escaped, though such media reports rarely stated that such persons were later captured or had corroborated the police version of events. Despite descriptions of heavy gunfire, reports of police casualties or injuries remained unusual. Subsequent media coverage of such

⁴³ An edited version was published in the *New Straits Times*, 11 April 1998, “Police cannot assume the roles of judge, jury and executioner.”

⁴⁴ Police Watch and Human Rights Committee of *Parti Insan Malaysia*, Memorandum “A Trigger Happy Royal Malaysian Police Force” (31 Oct 2002); Memorandum “Assault and Death of Tharma Rajen a/l Subramaniam and hundreds of others in police custody. Are We Heading for a Police State?” (1 July 2002); Protest Note “Police Lords in Malaysia” (28 Jan 2004). www.policewatchmalaysia.com.

⁴⁵ Edmund Bon, Advocate & Solicitor, High Court of Malaysia, “Cop-Land” (26 Apr 2003).

incidents would often repeat police descriptions of those killed as well-known criminals or gangsters linked to a series of alleged offences, despite the categorical denials of the victim's relatives. Police claims that the suspects killed had been armed and that weapons were found at the scene have also been disputed by relatives. Especially in the context of high profile police "special operation" anti-crime drives involving large numbers of police and with public access prohibited, relatives have accused the police of planting weapons.

In October 2003 the Deputy Home Minister told parliament that 33 alleged criminals had been shot dead by police in 2000, 14 in 2001, 54 in 2002 and at least 27 in 2003.⁴⁶ Previously, in April 2002, the minister had announced that 579 suspected criminals, including 82 non-nationals, had been shot dead by police between 1981 and 2002, and that 19 police officers had been killed in the line of duty. Opposition Democratic Action Party (DAP) leader Lim Kit Siang questioned these figures in light of an official announcement in 1999 that 635 persons had been shot dead by police in the previous ten years.

Despite the Deputy Home Minister's denial, public perceptions that police units may exist which are unofficially charged with carrying a "shoot to kill" policy against "hardened" criminals persisted. This perception was strengthened by frequent media reports that, although ordinary police officers had encountered or surprised the suspects, the actual shootings were carried out by a Special Weapons Action Team (SWAT), or a *Unit Tindakan Khas* (UTK).⁴⁷ In some instances, observers have questioned how such units came to be present at what were described as surprise encounters or "hot pursuits" of suspected criminals.

In 1999, a Bar Council Memorandum⁴⁸ urged the Attorney General (AG) to use his powers under the Criminal Procedure Code⁴⁹ (CPC) to direct Magistrates to hold judicial inquiries (coroner's inquests) into the cause and circumstances of any death occurring in the course of police operations or any report of death in custody or ill-treatment. In 2004, a resolution of the Annual General Meeting of the Bar again called for the AG and IGP to initiate an inquiry into "each and every" case of fatal shooting or death in custody, and where appropriate, to institute criminal proceedings against those responsible. The Bar Council has also urged the Chief Justice to exercise his discretionary powers⁵⁰ to order magistrates to conduct coroner's inquests. However, until recently, such inquests have remained exceptions rather than the norm.⁵¹

⁴⁶ Police Watch recorded 30 deaths by police shooting for the whole of 2003, of which an estimated 60% were ethnic-Indian Malaysians (who make up around nine per cent of the population).

⁴⁷ 'Special Action Unit' under the Internal Security & Public Order division of the RMP.

⁴⁸ Bar Council of Malaysia: "*Memorandum on cases of death by shooting in the course of police operations*" (10 Mar 1999).

⁴⁹ CPC s.339.

⁵⁰ CPC s.337.

⁵¹ CPC s.334 provides that a Magistrate shall hold an inquiry into the cause of death only "if he thinks it expedient." In September 2004, amid increased hopes that the holding of inquests into police fatal shooting or deaths in custody cases may become automatic, the Attorney General ordered inquests into at least 5 prominent cases.

Case Study: The Tumpat shootings

Partly in response to concerns expressed by the Bar Council, NGOs and widespread media coverage, the Attorney General ordered an inquest into the fatal shooting of six “suspected criminals” by police in Tumpat, Kelantan state in October 1998. The inquest (eventually held in 2001) and subsequent judicial proceedings illuminated serious concerns about both police practice and the potential weakness of inquest procedures.

The shootings occurred close to midnight on 3 October 1998 when, having received information that drugs and guns were to be smuggled over the Thai border (no details of the identity, race or gender of the suspects being provided), two unmarked police vehicles ambushed a van carrying six persons. The leader of one of the police teams claimed that, just after police cars blocked the van at the front and right side, he heard shots and ordered his men to open fire. Within twenty seconds, 47 rounds had been fired killing all the passengers. The victims, all ethnic-Indian Malaysians, included government civil servants, a politician and members of the Citizens Volunteer Force.⁵² None had criminal records.

The pathologist carrying out an autopsy noted that all the shots had been directed at the victim’s heads. No police officers were killed in the incident. Police reported they recovered firearms and bullets from the glove compartment of the van. No spent cartridges were found and no tests were conducted to ascertain if the firearms had been fired that evening.

In May 2001 the inquest conducted by the Tumpat magistrate found that the police had fired back in self defence and “were reasonable” and that no criminal act had been committed. At the request of the Bar Council, the case was submitted to the High Court for revision. Subsequently the High Court Judge found serious fault with the inquest findings,⁵³ drawing attention to a series of questions related to evidence adduced during the inquest that had not been addressed by the inquest Magistrate. Questions included why no bullet holes were found on police vehicles and why police officers sustained no injuries despite the alleged fire fight; the apparent precision of the victims’ head injuries; and why no weapons had been found held by or near the victims. On the immediate presence of a police photographer at the scene, the Judge commented “*Why he, in the middle of the night, had tagged along during that incident as if in anticipation of a shoot out, remained a mystery to me. I am sure the police standing instructions require that an arrest be attempted first in a normal situation, and not shoot first and question later.*”

⁵² A national volunteer organization assisting the security forces. Under the Home Ministry, the group comprises uniformed part-time members with some policing powers.

⁵³ *Public Prosecutor v Shanmugam & Ors* [2002] 6 MLJ 562 at 577. “I was quite stunned by the format of the magistrate’s decision as it bordered on the defence of the police over zealotry....At worst he could have merely recorded that the deaths were caused by misadventure, as a result of multiple shot wounds to the heads and bodies, but unfortunately had failed to do so.”

While the High Court quashed the inquest finding replacing it with a verdict of misadventure (the victims shot by persons unknown), due to insufficiency of evidence provided related to which police officer fired the fatal shots, the Court felt unable to rule on whether a criminal act had been committed by the police. In 2004, a civil suit for negligence and wrongful shooting filed in 1999 by the relatives of the victims was settled out of court. The police agreed to pay compensation, without admission of liability.

However in October 2002, in what may be reflective of the predominant judicial view as regards the balance between the rights of detainees and duty of the state to maintain law and order, the High Court overturned the conviction for manslaughter of a policeman who had shot dead an ethnic Chinese male doctor in a train station car park in 1999. The doctor had attempted to drive away after he and an ethnic Malay female nurse were surprised by the policeman knocking loudly on the car window.

The High Court judge was reported as saying that convicting the policeman “*was to destroy the integrity of the police force, as they should be given every encouragement to book criminal offenders and, if necessary, have the right to use their weapons*” and that if police were brought to court for the use of force the criminal justice system would be adversely affected with police hesitating in carrying out their law enforcement duties.⁵⁴ The Bar Council responded with grave concern, stating that the judgement validated the use of firearms by police in questionable circumstances, and failed to take into account that police should be trained in the effective use of firearms. The Council called for transparent and effective measures to account for every discharge of firearms by police officers.⁵⁵

Case Study: Lee Quat Leong

The body of Lee Quat Leong, a 42 year-old mechanic arrested on suspicion of involvement in a bank robbery but detained under the EO, was found naked in a Kuala Lumpur Police Remand Centre in May 1995. Amid allegations that he had been beaten, including with a rubber hose, an autopsy found at least 45 external injuries over his body and seven fractured ribs. Records revealed he had been taken out of the lockup and held in an interrogation room for a period of four days. After an internal police investigation failed to establish who was responsible for his injury and death, the AG ordered a coroner’s inquest, which found 11 policemen, including four senior officers, criminally responsible for the death. The AG, citing lack of evidence, chose to prosecute only two of the most junior policemen for “causing hurt to extort confession”.⁵⁶ The two pleaded guilty and were sentenced to 18 months imprisonment each. Lee Quat Leong’s family appealed the sentence and the High Court increased the term of imprisonment to 36 months each. In 1996 opposition member Karpal Singh on receiving a response to his parliamentary question, expressed shock that internal police disciplinary procedures had only been instituted against the four senior officers, who received “admonishments”, while no action was taken against the other policemen involved.

⁵⁴ Malaysiakini, 5 October 2002; *Suaram* Annual Report 2003, p. 81.

⁵⁵ Bar Council press statement, 12 Dec 2002, “*Discharging Firearms; more exacting standards required of police*”.

⁵⁶ Penal Code s330.

Case Study: Vikenes Vesvanathan

Vikenes Vesvanathan, a 19 year-old sixth-form student, and two of his friends, Katiravan Tamilchelvam (25) and Puvaneswaran Subramaniam (24), were shot dead by police in Nilai, Negri Sembilan on 10 October 2003. Police claimed that the men had been staking out a bank in preparation for a robbery, and that when their car was followed by police they sped away, crashed, and on alighting refused to surrender and opened fire on the police. The police stated they returned fire killing all three men, whom they claimed were linked to at least 20 cases of armed robbery. Police reportedly cordoned off the area where they were shot before the shooting, and reported that guns and bullets were found in the car.

Vikenes' family disputed the police version of events insisting that their son, a high school student, had no criminal record and was not, as alleged, a "marksman and a weapons expert". According to a police report lodged by a friend of Vikenes who saw his body in the mortuary, there were two gunshot wounds to Vikenes' chest, but his shirt (which the police refused to release) had no bullet holes in it. He also claimed that there were bruise marks on his face, legs and back. In addition, the brother of Puvaneswaran stated "there were about four or five red bruises on the back of his [brother's] body which looked like cane marks. His lips were also swollen and his nose bleeding."

A post-mortem report found that there were two gunshot wounds to Vikenes' upper chest. In findings that increased his relatives' mistrust of the police version of events, the report stated that the wounds showed bullets had exited the body, suggesting that the firing may have taken place at close range.

As in similar cases, the families of the victims reported apparent obstruction from police and medical officials as they sought to gain copies of the official post mortem report, to arrange a second private post mortem and to receive information about the progress of police investigations into their complaints. Vikenes' relatives, reporting that staff told them that police had instructed the hospital not to take the body for a second post-mortem, filed a report complaining that the police were attempting to suppress evidence.

Initial attempts to secure a coroner's inquest were also unsuccessful. On 28 October 2003, a magistrate ruled that a formal application, accompanied by appropriate affidavits, was required, and that time should be given for the police to complete their investigations in order for the magistrate to be in a position to decide whether or not an inquest should be held. No significant progress was made until October 2004, when in response to continued appeals from NGOs and others, the AG announced that inquests would be held in relation to Vikenes and four other controversial cases of deaths in custody and police shootings. After initial proceedings on the Vikenes case in December, formal hearings are set to begin in March 2005. His family and their lawyers continued to complain about a lack of police cooperation, including repeated refusals to release information about the case.

6.2 Freedom of assembly: police bias and excessive use of force

The right to freedom of assembly and peaceful protest is an intrinsic part of the right to freedom of expression. This fundamental connection is reflected in international human rights

treaties, Articles 19 and 20 of the UDHR and other instruments including the 1998 UN Declaration on the Rights of Human Rights Defenders.⁵⁷

Article 10 of the Malaysian Constitution guarantees that “all citizens have the right to assemble peacefully and without arms”, but the right has in practice been restricted by subsequent legislation, including the Police Act and the Penal Code. Under the Police Act⁵⁸ an “unlawful assembly” occurs when any assembly, meeting or procession takes place in a public place without a police permit, or when three or more persons taking part in the assembly neglect or ignore police orders. Under the Act, police may refuse a permit if they believe it to be prejudicial to national security or to threaten a disturbance of public peace.⁵⁹ Police are empowered to stop any unlicensed meeting as an “unlawful assembly”, to arrest participants without a warrant, and to use force “as is reasonably necessary for overcoming resistance” if participants ignore orders to disperse.

The discretionary powers given to police officers in issuing and cancelling permits have led to repeated allegations of selective application of the law, political bias and an absence of justifiable grounds for refusing permits for both indoor and outdoor meetings. Instances of long unexplained delays in issuing permits, and sudden cancellations at the last moment, have prompted continuing complaints by opposition parties and NGOs at police arbitrariness and lack of transparency.

Such complaints became commonplace as political tensions increased following the dismissal and arrest of former Deputy Prime Minister Anwar Ibrahim in 1998 and numerous indoor meetings and forums were refused police permits, declared illegal, or participants were ordered to disperse.⁶⁰ Selective refusals of indoor meetings have continued. In January 2002 police blocked people seeking to enter the Chinese Assembly Hall in Kuala Lumpur to attend a coordination meeting for a campaign to build a Chinese school, on the grounds that the organizers had not received a permit. The Kuala Lumpur police chief was reported as saying the police will not allow anyone to exploit allegedly sensitive issues “to sow the seeds of hatred against the government.”

⁵⁷ Article 5, UN Declaration on the Rights of Human Rights Defenders: ‘For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at national and international levels: a) to meet and assemble peacefully; b) to form, join and participate in non-governmental organizations, associations, or groups; c) to communicate with non-governmental or intergovernmental organizations.’

⁵⁸ Police Act, s27.

⁵⁹ See *Suhakam Report, Freedom of Assembly*, (2001) Criteria for issuing police permits, as set out in the IGPs Standing Orders derived from s27 of the Police Act, include: a) prevailing circumstances b) racial composition c) conditions in the location of the proposed assembly d) possible threat to national security or public order (as may be identified though facts coming within criteria a – c).

⁶⁰ In October 1998 police came on to the platform at an indoor forum held to discuss the repeal of the ISA in the Malaysian Trades Union Congress headquarters in Kuala Lumpur, and declared the meeting illegal. Police ordered the 200 participants to disperse within 10 minutes or else face arrest. In April 1999 an indoor forum entitled *What is this thing called reformasi?* organized by the Malaysian Social Science Association (PSSM) to be addressed by academics from Malaysian and Australian universities was cancelled after police refused to issue a permit.

The granting of permits for, and the policing of, outdoor assemblies also continues to generate criticism of the police. In 1998, as a broad based opposition “*reformasi*” (reform) movement gathered momentum after Anwar Ibrahim’s dismissal, street demonstrations of an unprecedented frequency and scale took place in Kuala Lumpur. While the protests, with some exceptions,⁶¹ remained peaceful, excessive use of force by police, particularly members of the Federal Reserve Unit (FRU - riot police), was evident on numerous occasions during dispersal and mass arrests of demonstrators. The actions of the FRU often amounted to a contravention of Article 5 of the UDHR and of Principle 13 of the UN Basic Principles of the Use of Force and Firearms by Law Enforcement Officials, which states:

“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 necessary”.

Beginning in 1998, demonstrations in support of Anwar Ibrahim and “*reformasi*” continued periodically over subsequent years. In response FRU personnel in armoured buses and accompanied by water cannon trucks (containing water laced with a chemical irritant and/or yellow dye) would typically assemble near the peaceful demonstrators. A police officer would then declare the assembly illegal, and order protestors to disperse. At times accompanied by bursts of water and tear-gas, FRU personnel, wearing crash-helmets and carrying rubber truncheons and cane sticks (*rotan*), would advance in formation beating on their riot shields, and then charge at the crowds - who were frequently peacefully gathered in busy shopping areas. At other times police charges were sudden and unexpected and without audible orders to disperse. The FRU would charge into crowds and chase and arrest demonstrators or bystanders. Many were subjected to unprovoked, and apparently deliberately punitive, violent assaults.

In many cases, as plain-clothes (mostly Special Branch) police officers mingling with the crowd seized ‘targeted’ suspects, FRU personnel would chase fleeing protestors, at times into a nearby buildings and shopping centres, while conducting mass arrests. Witnesses reported that demonstrators and bystanders attempting to flee police charges were frequently subjected to unprovoked kicking and beatings on their heads and backs by FRU personnel using batons.⁶² Injuries sustained by alleged demonstrators during the dispersals or in police trucks or police lockups after arrest, typically included broken noses, and hands, fingers and

⁶¹ At least 16 “illegal” peaceful demonstrations took place between September and October 1998 in Kuala Lumpur. Many were large-scale and were dispersed by police using excessive force. On 24 October 1998 after a demonstration was violently dispersed, protestors threw rocks and iron bars at police in the Kampung Baru district of Kuala Lumpur. In subsequent protests police periodically arrested protestors and claimed they were carrying stones or sling-shots. Participants in peaceful demonstrations claimed that plain-clothes Special Branch officers mingling with the crowd were responsible at times for violent incidents in order to justify police dispersals.

⁶² In one illustrative incident, a Malay youth was reportedly assaulted by 10 baton-wielding police who kicked him repeatedly and beat him around the legs as he lay on the ground. *Agence France Presse*, 28 September 1998.

head wounds requiring stitches. Lawyers also reported seeing detainees with criss-cross scars on their bodies allegedly caused by ‘whipping’ with *rotan* canes.

Case Study: The Kesas Highway Rally

In response to numerous complaints *Suhakam*, in its first public inquiry since its establishment in 1999, examined the policing of a large scale assembly that took place without a police permit on the Kesas Highway in Klang district in November 2000.

On the question of police permits, *Suhakam* found that the opposition party coalition organizers had planned the rally (during which up to 100,000 people were expected) on private rather than public land, and were not therefore required to apply for a permit. However the police declared in advance that, without a permit, the rally was illegal, although a demonstration by some local residents against the planned rally was allowed to go ahead by police without request for, or issue, of a permit.

On the policing of the assembly and allegations of excessive use of force, *Suhakam* found that in the days before the rally the police decided their approach should be one of “total denial and domination” including preventing the public getting to the venue through the use of road blocks. On the day of the rally, hundreds of cars attempting to reach the venue were halted in traffic jams on the Kesas Highway or forced to park on the roadside. At various times during the day, as people tried to walk, the police used water cannon and tear gas to disperse the crowds. At one point with around 7,000 to 10,000 persons present, the rally organizers, who were unable to reach the site itself, gave short speeches on the Highway and announced that they would inform the police that the gathering would disperse and request roads be opened for this purpose. However before they could do so, without clear audible orders to disperse, police moved in firing water cannon and tear gas, beating participants with batons and punching and kicking many attempting to run away. Police also beat people in their cars trapped in the traffic jams, or when they were ordered out of their vehicles. Among 122 demonstrators reported arrested, some were held for several hours in police trucks and there were incidents of tear gas being deliberately sprayed into the trucks. In police lockups, some of those who had been injured requested medical attention but were refused until the following morning or until a magistrate inquired about their condition at remand hearings 24 hours after arrest. In relation to the grant of five-day remand orders by the magistrate, *Suhakam* argued that this was unnecessary and a violation of the right to liberty, as there was no need for continued investigation as it was clear that the offence would have been in relation to being present at the scene of an unlawful assembly.

In its 2001 Kesas inquiry report *Suhakam* made a series of recommendations, which included:

- The law related to assemblies should be applied equally and without discrimination;
- RMP methods of crowd dispersal should be reviewed, and police ordered to act with restraint;
- Police warnings to disperse should be given loudly and clearly, three times at 10 minute intervals;

- That crowds be given sufficient time to disperse, and not be chased and/or assaulted as they tried to get away;
- That persons arrested should not be assaulted or subject to other cruel and inhuman treatment; and that medical treatment be provided without delay.

In an initial response government officials called the report “biased and idealistic” and influenced by “western liberal thinking”. However, *Suhakam* reiterated its recommendations in a subsequent report issued in 2001.⁶³ Drawing attention to examples of restrained, effective policing of a number of demonstrations that had taken place without incident during the year, the Commission stated that as a general rule permit applications for static assemblies in premises such as stadiums, halls and private premises should be granted; that police and organizers should cooperate in the preparation and management of assemblies and processions, and that police use of force should be characterized by restraint, and only used in cases of resistance to an order to disperse.

While some observers have noted improvements in the RMP’s respect for freedom of assembly over recent years, continued periodic incidents point to the fact that changes in police attitudes, and the operationalization of reform recommendations for public order policing, have as yet not been consolidated. In July 2003, for example, police violently dispersed a crowd of about 300 students who were marching from the National Mosque to Kuala Lumpur Magistrates Court in support of seven university undergraduates on trial for illegal assembly. Police also arrested the spokesperson of a student group opposed to the ISA who had attempted to negotiate with the police to allow their group to join the peaceful march. In another incident in February 2004, around 60 persons including representatives of 46 NGOs and political parties, gathered peacefully at an entrance of the national police headquarters at Bukit Aman to hand over a memorandum concerning abuses of police powers. With police insisting that only three representatives would be allowed into the headquarters to hand over the memorandum, organizers negotiated to allow a group of at least 10 to enter and discuss the issues of concern. Refusing this request, a police officer gave an order to disperse (not heard by many in the crowd) and, within three minutes, a water cannon truck sprayed water laced with chemical irritant at the crowd. As participants fell over and struggled to get away, plainclothes and other police officers immediately seized apparently targeted people in the crowd, and pursued others attempting to disperse. Amid reports of rough treatment, 17 people were arrested and taken to the Jalan Hang Tuah police station. They were released on police bail later in the day.

6.3 Police powers of arrest and detention: misuse of remand procedures

Universal Declaration of Human Rights:

<i>“No one shall be subjected to arbitrary arrest, detention or exile” – Article 9</i>

⁶³ *Suhakam Report, Freedom of Assembly*, October 2001.

Constitution of Malaysia

***“No person shall be deprived of his life or personal liberty save in accordance with the law”
– Article 5.1***

Unlawful deprivation of liberty is a matter of concern not only because it is a serious human rights violation in itself, but because it can be the first of a series of human rights violations to which detainees are vulnerable, including denial of access to legal counsel, torture or ill-treatment, and unlawful deaths in custody.

Malaysia’s Criminal Procedure Code (CPC) empowers a police officer to arrest without a warrant when a person is suspected of committing a “seizable” offence;⁶⁴ when a reasonable complaint has been made or credible information has been received, or when a reasonable suspicion exists.⁶⁵ Police officers can arrest a person who in his presence commits or is accused of committing a non-seizable offence and refuses on demand to give his name and residence.⁶⁶

Concerns have been expressed at apparent abuses of police powers of arrest. Despite domestic jurisprudence⁶⁷ stressing that investigations should be carried out *before* an arrest and that there should be well founded grounds, observers, including the human rights NGO *Suaram*,⁶⁸ have described a tendency of police to “arrest first, investigate later” based on highly questionable “reasonable suspicion.” *Suaram* noted that distributing leaflets or demonstrating is viewed by many police officers as inherently suspicious or likely to constitute criminal behaviour. In addition, arrests of ordinary criminal suspects at times appear indiscriminate, especially during police operations against illegal drugs activities, or in the context of mass arrests of persons allegedly loosely linked to a particular high profile crime.

Yet the principle source of concern, raised repeatedly by lawyers’ groups,⁶⁹ NGOs and the *Suhakam*,⁷⁰ has remained the abuse of laws, procedures and safeguards related to suspects held on remand in police custody.

In conformity with Article 5 of the Constitution,⁷¹ the CPC⁷² requires the police to bring a suspect arrested without a warrant before a magistrate within 24 hours, and, if it has

⁶⁴ Unless specified otherwise, the CPC provides that “seizable” offences are those punishable with death or with three years imprisonment or more, for which a police office may ordinarily arrest without a warrant.

⁶⁵ CPC s23(1).

⁶⁶ CPC s24(1).

⁶⁷ *Syed Mohamad b Syed Isa & Ors [2001] 8 CLJ 247; Dasthigeer Mohamad Ismail v Kerajaan Malaysia & Anor [1999] 6 CLJ 317.*

⁶⁸ *Suaram: Human Rights Report, 2003.*

⁶⁹ Jerald Gomez, Advocate & Solicitor, “Police Powers and Remand Proceedings” 2002.

⁷⁰ *Suhakam Report Rights of Remand Prisoners (April 2002).*

not been possible to complete investigations, to apply for a remand detention order (renewable up to a maximum of 15 days from arrest) for the purpose of completing investigations.

However, patterns of police abuse of remand procedures have remained widespread. Despite constitutional provisions,⁷³ suspects have routinely not been informed of the grounds for their arrest, have been prevented from contacting lawyers or family members. Remand hearings, held after 24 hours custody, have been described as “rubber stamp” exercises with the magistrates often viewing them as an administrative formality to assist the police, rather than a critical opportunity to extend judicial scrutiny over the actions of the police; to ascertain whether the rights of the detainee - especially freedom from ill-treatment or torture - have been respected; and to ensure that the *sole* purpose of the police application for extended custody is for officers to be able to complete investigations.⁷⁴

Lawyers and relatives have repeatedly described being not informed, or misdirected, by police as to where detainees are being held, and the time and location of remand hearings. Particularly in cases of suspected petty crimes, or when peaceful demonstrators have been arrested for illegal assembly, scores of detainees can be presented in batches before the magistrate, who then questions individuals cursorily, if at all, before granting remand orders. In addition, police often apply to magistrates in their chambers rather than in court, without the presence of the detainee, let alone their lawyers. The Investigation Diary - a critical record of the reasons and time of arrest, the identity of arresting and investigating officers, the place of detention and steps taken in the course of the investigation - is often not shown to the magistrate or is presented as a sheaf of incomplete, unorganized pages of notes thereby obscuring the facts and the chronology of the arrest and investigation.

In addition, the lack of duty magistrates at the weekend or public holidays meant that many suspects detained, for example on a Friday evening, were necessarily detained for longer than the prescribed 24 hours without the opportunity of access to judicial scrutiny and protection.

⁷¹ Federal Constitution, Article 5(4), ‘When a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours...be produced before a magistrate and shall not be further detained in custody without the magistrate’s authority.’

⁷² CPC s28 and s117.

⁷³ Federal Constitution, Article 5(3), ‘When a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.’

⁷⁴ These principles were asserted by High Court Justice Vohrah in the case *Detention of R Sivarasa & Ors* [1996] 3 MJL 611 at 619. Sivarasa and others had been detained in relation to an alleged illegal assembly and a magistrate issued successive remand orders of 4 and 10 days. On revision, the High Court found that magistrate had failed to satisfy himself, at a minimum by examining the police investigation diary, if there was a “reasonable suspicion” that justified the arrest. The remand orders were seen as *punitive*, rather than for the purpose of completing investigation, and were found unlawful.

In 2002, *Suhakam* released a report detailing these concerns.⁷⁵ The Commission drew attention to the police practice of denying access to lawyers on the grounds that it would “interfere” with investigations, and also to issue of “chain smoking or road-show” repeat remand orders by which suspects would be transferred from one police station to another, with fresh remand applications made each time in relation to different offences, resulting in months of remand detention.

In 2003, in an effort to clarify and emphasise the duties of magistrates to protect the rights of detainees at remand hearings, the Chief Justice issued updated procedural guidelines.⁷⁶ These emphasized, among other things, that the suspect must be brought, in person, before the magistrate within 24 hours of arrest; that a formal application for remand must be filed; that a police officer, preferably the Investigating Officer (IO), must appear before the magistrate to make the application; that two copies of the Investigation Diary must be produced to allow the magistrates to ascertain the reasonableness of the grounds for the arrest and what steps have already been taken by police to investigate, and that the magistrate give reasons why remand detention should be granted or denied.

Though the Constitution guarantees detainees the right to legal counsel of their choice,⁷⁷ subsequent judicial interpretations have diluted this right by finding that the right cannot be exercised immediately after arrest if it impedes police investigation or the administration of justice.⁷⁸ In addition applicable regulations for detention, particularly the Lockup Rules of 1953, are unclear as to the exact time in which detainees are allowed access to counsel.⁷⁹ Police therefore habitually refuse access to lawyers during remand detention in lockups, and often fail to inform either lawyers or relatives when and where the remand hearings before a magistrate will take place. Rather than disturbing this interpretation or reaffirming the constitutional right of any detainee to see a lawyer at any time, the 2003 guidelines instructed magistrates, having asked suspects if they have had the opportunity or wish to consult a lawyer, to issue a short remand order for this purpose. Lawyers have expressed serious concern at this instruction, arguing many detainees would be deterred from seeking to consult a lawyer if they thought this would necessarily mean a greater length of time in police custody; that the constitutional right to counsel should be respected at all times and that detainees should rather be released on police bail to consult counsel.

Amnesty International is concerned that such a procedure is contrary to international standards relating to the right of access to legal counsel. Principle 7 of the Basic Principles on

⁷⁵ n. 70: *Rights of Remand Prisoners*.

⁷⁶ Chief Justice Practice Circular No 3/2003.

⁷⁷ See n.71.

⁷⁸ *Ooi Ah Phua v Officer-in-charge of Criminal Investigations Kedah/Perlis* [1975] 2 MLJ. “The right of an arrested person to consult his lawyer begins from the moment of arrest but the right cannot be exercised immediately after arrest...The right should not be exercised to the detriment of any investigations by the police.”

⁷⁹ LockUp Rules (1953), Rule 22(1), ‘A prisoner shall be entitled, subject as hereinafter provided, to such visits from his relatives, friends and advocates as are consistent with the proper discipline of the lockup.’

the Role of Lawyers⁸⁰ states that access to a lawyer must be granted “promptly” and in any case “not later than forty-eight hours from the time of arrest or detention”. A detainee’s access to a lawyer may be restricted or suspended “in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order”.⁸¹ However, even in these exceptional circumstances, access may not be denied for long. The UN Special Rapporteur on torture has recommended that anyone who has been arrested “should be given access to legal counsel no later than 24 hours after the arrest”.⁸²

Amnesty International is also of the opinion that detainees may be reluctant to exercise their right to legal counsel if this is conditional on being placed on remand. As a general rule, in accordance with Principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, anyone detained on a criminal charge shall be “entitled to release pending trial subject to conditions that may be imposed in accordance with the law”. Placing persons on remand simply in order to meet their fundamental right to access to legal counsel is contrary to international standards.

Cases of extended remands and of denial or restriction of access to lawyers by remand prisoners continue to be reported and, in this context, Amnesty International urges the Royal Commission to take into consideration the recommendations of *Suhakam*.

6.4 Torture, ill-treatment and deaths in custody

6.4.1 Safeguarding against torture: the role of the courts

As described above in relation to ISA detainees, torture and ill-treatment is strictly prohibited under international law and standards. With the denial, in law and practice, of speedy and effective judicial scrutiny of ISA and other “emergency” detentions, a critical safeguard protecting against torture and ill-treatment of detainees is removed.

In the case of ordinary remand prisoners, magistrates have an opportunity to inquire into the health and well-being of detainees, and if necessary order medical examinations, when detainees are brought before the court after 24 hours, and during subsequent remand extension proceedings. However, local lawyers have expressed grave concern at a failure on the part of many magistrates to take a proactive stance in questioning suspects as to their treatment during detention and the nature of any injuries sustained during arrest or while in police custody.

When a person is brought before a judicial or other authority, he or she, in accordance with Principle 37 of the Body of Principles on Detention shall “have the right to make a statement on the treatment received by him while in custody.” If there is any sign of torture or

⁸⁰ UN Basic Principles on the Role of Lawyers (1990).

⁸¹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment on Detention - Principle 18(3).

⁸² Report of the UN Special Rapporteur on torture, UN Doc. E/CN.4/1990/17, 18 December 1989, para.272; see also UN Doc. E/CN.4/1995/34, 12 January 1995, para. 926.

ill-treatment, the judge should inquire into it without delay, even if the prisoner has not volunteered any statement. If the inquiry, or the prisoner's own statement, gives reason to believe that torture or ill-treatment was committed, the judge should initiate an investigation and take effective steps to protect the prisoner against any further ill-treatment, and, if the detention is unlawful or unnecessary, order the prisoner's immediate release under safe conditions.

When at any time in the course of a judicial proceeding it is alleged that a statement was made under torture or ill-treatment, or when a judge otherwise has reason to suspect that evidence was obtained through torture or ill-treatment, a separate hearing should be held before such evidence is admitted. Amnesty International believes that it is a principle of customary international law that if the hearing determines that a statement was not made voluntarily, it should be excluded as evidence, except as evidence against those accused of using coercion to obtain the statement. As recommended by the Special Rapporteur on torture, "Prosecutors and judges should not require conclusive proof of physical torture or ill-treatment (much less final conviction of an accused perpetrator) before deciding not to rely as against the detainee on confessions or information alleged to have been obtained by such treatment; indeed, the burden of proof should be on the State to demonstrate the absence of coercion."

6.4.2 Remand detention: custodial violence & inhumane conditions

Police abuse of remand procedures, in conjunction with a reported tendency to physically assert authority and to use aggressive interrogation techniques - aimed at coercing information or a confession - rather than investigative interviewing, has provided the framework within which patterns of ill-treatment and torture of criminal suspects have persisted in Malaysia.

While periodic allegations of physical abuse at the time of arrest have been reported,⁸³ more commonly reports of ill-treatment relate to suspects held in lockups and

⁸³ *Suaram* "Malaysia: Human Rights Report 2003": **Lee Kam Choon**, 17 years old, reported he was assaulted by a number of police in Penang in May 2003. He had been riding his motorcycle when he was chased by plainclothes officers whom he feared may be robbers. They caught him and reportedly beat him up before taking him to the lockup at Butterworth police headquarters. A medical report found that Lee sustained "multiple bodily injuries affecting the back, right and left upper limbs, face and both ankles." A relative later claimed that police threatened to bring serious charges against Lee, including carrying firearms, if the family pursued the case in court.

L. Yoges Rao, 22 years old, died in December 2003 in Sitawan police station, Perak. Following arrest on drug-related charges he was brought to his home where, according to his sister, she saw him being punched in his stomach by police. He was then taken into a locked room from where his sister said she heard sounds of assaults and cries of pain. About half an hour later he was brought out, vomiting blood. He died the next day. Despite evidence of abuse on Yoges' body, the burial permit said he had died of a stomach ulcer. On receipt of complaints, *Suhakam* initiated an investigation. Responses from the Perak deputy head of police included that the deceased vomited in the police station (narcotics office) and was sent to Seri Manjung hospital for treatment. The doctor who treated him was subsequently in charge of the post mortem and certified cause of death as "peritonitis with duodenal ulcer." Police

describe police officers slapping, beating and kicking detainees in what appears often to be an assertion of authority and to punish any perceived “disrespect” or infraction of detention rules. Detainees ill-treated in this manner are reported to be predominately from disadvantaged socio-economic or educational backgrounds, often accused of petty crimes or rounded up in drugs or other anti-crime sweeps, who may be regarded as not having high status, influence or the means to access legal protection.⁸⁴

However, the risk of such patterns of ill-treatment escalating to very serious physical assaults, other forms of torture and deaths in custody occurs primarily when detainees are transferred from the communal lockups to separate areas or rooms in the police station for interrogation. A range of abuses by police, at times inflicted with detainees blindfolded, include assaults with punches or by kicking (“roughing up”); beatings with various implements including wooden batons, canes, hockey sticks, belts and books; and whipping with rubber hoses - often on the soles of the feet. Reported forms of humiliating, often sexual, ill-treatment or torture include forcing detainees to strip naked and to perform sexual acts; placing chilli sauce or hot candle wax on the penis, and forcing detainees to drink urine. Such abuses are referred to in complaints lodged with *Suhakam*, surveys of newspaper reports, and a series of advocacy campaigns launched by Police Watch, *Suaram* and other legal or human rights groups in response to deaths in custody cases.⁸⁵

Patterns of overcrowding and inhumane conditions in police lockups have also remained a persistent concern. In 2004, *Suhakam* held a public inquiry into complaints of police abuses in Kundasang, Sabah⁸⁶ and again found severe overcrowding in the lockup, unsanitary conditions, requests for medical attention rejected and sanitary pads denied, detainees being forced to sleep on bare concrete floors without blankets, and inadequate provision of food and water. The Commission once more drew attention to misuse of remand provisions, stating that there had been no need to hold the Kundasang suspects for the maximum permitted 14 days remand without granting police bail, and reemphasizing that remand orders under the CPC should only be sought for the purpose of enabling the police to complete investigations and provided that investigations are conducted diligently.⁸⁷ In May

investigations into the complaints of assault (“causing hurt”) lodged by the deceased sister are reported to be continuing.

⁸⁴ Human rights and opposition political activists arrested for alleged illegal assembly during the 1998-1999 ‘*reformasi*’ demonstrations reported that while they were occasionally ill-treated in or around lockups, ordinary criminal suspects held with them were frequently beaten, kicked or otherwise abused.

⁸⁵ See Police Watch Reports on Asian Human Rights Commission website:

<http://malaysia.ahrchk.net/mainfile.php/torture/8/>.

⁸⁶ *Suhakam*, Kundasang Public Inquiry Report, April 2004.

⁸⁷ The Kundasang Report cited judicial opinion in *Re Mohamad Syed Isa (2001) 8 CLJ 247*.

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

2004, Suhakam welcomed the setting up a special police task force to improve conditions in lockups, and handling of reports and complaints lodged at police stations.

6.5 Denial of adequate medical care and deaths in custody

UN Code of Conduct for Law Enforcement Officials:

“Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, take immediate action to secure medical attention whenever required” – Article 6

According to government statistics 425 prisoners (including both prison inmates and detainees in police custody) died during their incarceration between January 2002 and July 2003.⁸⁸ As regards those in police custody, six died in 2000, ten in 2001, 16-19 in 2002 and seven by September 2003.⁸⁹ Officials claimed that the majority of deaths occurred when detainees attempted to escape.

The following cases are believed to be illustrative of wider patterns of breakdowns of procedural and supervisory safeguards ensuring adequate health care and the prevention of ill-treatment or torture leading to deaths in custody. They are also feared to reflect a broader weakness in police attitudes towards the provision of care for the health and well-being of detainees under their charge.

Case Study: Tharma Rajen

Tharma Rajen, a 19 year-old ethnic-Indian Malaysian, a waiter with no criminal record reportedly on his way to shop, was arrested in a poorer “working class” area of Kuala Lumpur on 3 April 2002 on suspicion of involvement in “gang fights” near his home.⁹⁰ He was subjected to “serial” remand detention orders and held successively in lockups in four different police stations (IPK, Cheras, Brickfields and Putrajaya) for a period of 66 days. His brother, who spoke to him one week after his arrest at his first remand hearing, said Tharma Rajen recounted how he had been hit and slapped by police until he had a toothache, and was beaten with a rubber hose on the soles of his feet. Granted police bail on 3 May, Tharma Rajen remained in detention as the police invoked the Emergency Ordinance (EO), allowing for a 60-day detention period for police ‘investigation.’

Tharma Rajen was taken to a hospital emergency ward on 9 June. Despite repeated appeals, his mother and other relatives were only belatedly informed of his whereabouts

⁸⁸ Home Ministry parliamentary announcements in September 2002 and October 2003. Some discrepancies were apparent in relation to those who died in police custody in 2002.

⁸⁹ Police Watch recorded ten deaths in police custody in the whole of 2003.

⁹⁰ According to the Malay Mail (June 2002) the arrest was linked to ‘Operation Copperhead’ a nationwide police crackdown on ethnic Indian gang members.

during remand detention, his subsequent detention under the EO, and his eventual hospitalization. On eventually receiving permission to visit him in Putrajaya police station, his mother reported that his health had declined sharply and that he had complained of being cold, in pain and constantly vomiting. Her initial requests for him to be transferred to hospital were ignored. When he was transferred in critical condition, his mother was allowed only weekly hospital visits and was prevented from approaching him shortly before he died on 21 June – hand cuffed to his bed. According to the official post mortem, Tharma Rajen a previously healthy young man, died of pneumonia, though a second, private post mortem found he died of tuberculosis and that his body was “malnourished and emaciated.”

In September 2002 the Deputy Home Minister informed parliament that police investigations revealed that there was no criminality in police conduct in Tharma Rajen’s death. In response to urgent requests from Police Watch and other human rights groups to ascertain whether Tharma Rajen died from the effects of physical abuse or lack of care and negligence, the office of the Chief Justice ordered an inquest that began in September 2002. Hearings proceeded intermittently and had not been concluded by January 2005.

Case Study: Ho Kwai See

Ho Kwai See, a 28 year-old coconut trader, was arrested on 28 July 2003 on a drug-related charge. After being detained for at least 4 days at Kota Damansara police station (Selangor), he was transferred to the Sungai Buloh prison. His brother said that the family had been unaware of Ho Kwai See’s arrest until 5 August, when he received an anonymous phone call informing him that Ho Kwai See had died on 4 August and asking him come to the hospital to identify the body.

According to a first post-mortem carried out in a government hospital (as required under the CPC for all deaths in custody) Ho Kwai See apparently died of a perforated ulcer. However, when mortuary staff uncovered the upper section of his body for identification purposes, his brother noticed several large bruises across his chest and suspected that he had been assaulted. The bruises, along with the fact that he was apparently in good health prior to his arrest, led the family to lodge a police report and to call for an investigation.

The family also sought to arrange for a second, independent, post-mortem. The University Malaya Medical Centre which initially agreed to conduct the second examination subsequently refused, citing a requirement for a court order or a police permit. The family’s application to the High Court for such an order was turned down,⁹¹ increasing the likelihood that, in future, requests for second post-mortems will be acted upon only if specifically authorized by a magistrate or the police.

Because the family could not afford a burial plot, Ho Kwai See’s body was cremated eliminating the possibility of a further post-mortem and reducing the probability that an inquest would be in a position to determine whether his death in custody was unlawful or

⁹¹ On the grounds that the plaintiffs had failed to satisfy requirements under the Special Relief Act 1950, which gives powers to the court to order officials to carry out certain acts.

whether any police officer was criminally responsible for any assaults or negligent in the provision of medical care.

7. Accessing remedies

7.1 Medical examinations and post-mortems

While the CPC requires police, in cases of a suspicious death including deaths in custody, to transfer the body to a government hospital for a post-mortem examination by a Government Medical Officer (whose report is to sent to the police for forwarding to the magistrate), relatives of victims have frequently complained of refusals and delays in the release of post-mortem reports, and a grave lack of confidence in initial medical findings. Attempts to arrange second, independent post-mortem examinations have often been problematic, with arrangements apparently delayed or obstructed by police and/or hospital or other medical officials.

In other alleged cases of police improperly influencing or colluding with medical officers, relatives and lawyers have described the treatment of criminal suspects being brought to district clinics or hospitals for medical examinations after complaints of ill-treatment or torture. In such cases, once the police accompanying the suspects describe them to medical staff as “bad people” and “hardened, violent criminals” they are at risk of receiving reportedly cursory examinations and inconclusive medical reports.

Amnesty International urges that procedures relating to the conduct of medical examinations and autopsies be reviewed to ensure consistency with medical ethics and international standards.⁹² Such standards provide that investigations must include an adequate medical examination, as well as collection and analysis of all physical and documentary evidence and statements from witnesses. They stress that the autopsy report is as important as the autopsy itself, and must be full, detailed, clear, comprehensible and objective.

7.2 Legal remedies

7.2.1 Inquests

As illustrated by the case studies described above, relatives of those who died in police custody or after alleged shoot-outs have complained that the police at times appeared to obstruct the complaints process by withholding or suppressing evidence, or by apparently colluding with hospital officials or medical officers to delay and impede cooperation with family members or lawyers seeking medical evidence of physical abuse or failure in the duty of care.

⁹² UN Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions: Principles 12, 13, 14 and 16.

See also the UN manual “Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (2001).

In particular, relatives have complained of difficulties and unexplained delays in securing an order from a magistrate or the Attorney General for a judicial inquiry (inquest) into the death of their relative. In addition, concerns have been expressed, that when inquests are initiated, they are often subject to frequent adjournments and delays, aggravating the uncertainty and suffering of the victim's family.

While welcoming the Attorney General's decision in September 2004 to order inquests into at least five cases of custodial deaths, Amnesty International urges that the Criminal Procedure Code, which currently gives magistrates discretion in deciding whether to hold an inquest, be amended to ensure that in future inquests are held automatically for all death in custody and death by police shooting cases.

In practice the relatives of the deceased have not been able to enjoy legal representation at inquests, although the magistrate has the discretion to permit a family to be legally represented. Amnesty International welcomes recent judicial rulings affirming the right of lawyers to represent the interests of the families of victims at inquests, including through the examination of witnesses and access to all relevant documentation. The organization considers legal expertise is often necessary for calling and effectively cross-examining witnesses and for the proper examination of medical and other evidence. It remains concerned that many families are unaware of this need, or are unable to access legal aid needed to ensure representation.

7.2.2 Civil litigation: compensation

In the absence of effective complaints procedures and a lack of confidence in inquests leading to criminal prosecutions, the families of some victims have resorted, at times successfully, to civil litigation to seek compensation from the police. However, in general such civil law remedies have not resulted in more than financial compensation, particularly when the matter has been settled out of court. In rare cases where civil cases have proceeded to a hearing on the merits, important public disclosure of alleged human rights violations have occurred.

Amnesty International is concerned that given the infrequency of prosecutions against police officers alleged to have committed violations, civil law remedies have become the main recourse for victims of police abuses. Yet for many the cost and extended duration of such proceedings are a major deterrent. In addition, important aspects of reparations are frequently outside the bounds of civil remedies.⁹³

⁹³ Full reparation encompasses the principles of rehabilitation, including medical and psychological care, cessation of the violations and guarantees of non-repetition, verification of the facts and full and public disclosure; and acceptance of responsibility and apology by the perpetrators.

8. Policing vulnerable groups

8.1 Women

Violence against women in the community: For over two decades, women's groups in Malaysia have actively engaged in dialogue with the authorities about gender issues, including issues of rape and domestic violence, and police responses to such cases.

Women's groups were concerned that, while criminal proceedings and protection injunctions were available under the Penal Code and other legislation, domestic violence tended to be regarded as a private matter, with the police and courts appearing unwilling to take action against those who may have assaulted their spouses or other relatives within the home. For example, there were reports of police officers advising women seeking to lodge a report about being battered by their husbands, to return home and resolve the problem within the family.

In this context, women's groups lobbied for a Domestic Violence Act (DVA), passed in 1994 and implemented in 1996, which defined offences, protection measures and the duties of police officers in relation to domestic violence.⁹⁴ Women's groups are also engaged in continuing debate over proposed amendments to the Penal Code and Criminal Procedure Code, in relation, among other things, to the criminalization of marital rape and more severe penalties for rape offences.

Efforts by women's groups, in collaboration with the Ministry of Women's Affairs and Family Development, to reinforce the content and implementation of the DVA and other laws and procedures continue, due in part to periodic reports that women, particularly women migrant workers, who seek to lodge complaints of domestic violence or other forms of sexual assault are at times discouraged or treated unsympathetically by police. There are also concerns about a general under-reporting of rape, with an estimated nine out of ten rapes not being reported.⁹⁵ Studies have also shown that, even when alleged rapes are reported, only low percentages are heard in court, with few resulting in convictions.⁹⁶

Women's groups have conducted a series of dialogues with police and have welcomed RMP initiatives to strengthen procedures and gender-sensitive training of police officers regarding the receipt and investigation of reports of rape and other forms of violence against women, and the interviewing of women victims. Women police officers are assigned to receive reports of sexual assaults and accompany the victims to hospital for treatment, and

⁹⁴ Duties of police officers provided in the DVA include explaining the victim's right to protection against domestic violence; assisting her filing a complaint; and arranging transportation to the nearest hospital for treatment or to a safe shelter.

⁹⁵ RMP and Women's Action Organization (WAO) statistics show the number of reported rape cases increased from 1,217 in 2000, to 1,431 in 2002 and 1,462 in the first 10 months of 2004. Statistics for 2002 revealed that about 20 per cent of rape incidents occurred in public places, while nearly 70 per cent took place within the home.

⁹⁶ A study conducted in 2000 involving 417 court files from 7 state capitals and Kuala Lumpur found that 20 per cent of cases were heard in court, and only a small fraction of these resulted in convictions.

in 2002 the RMP announced plans to set up “one stop” centres for rape victims whereby police reports could be lodged and medical treatment provided in single locations.

Custodial rape and sexual abuse: periodic reports of rape or sexual abuse of women in police custody emphasise the need, in light of the particular vulnerability of women in detention, for continued oversight and review of laws, rules and procedures safeguarding women’s custodial rights.

In a case that highlighted the added vulnerability of women from marginalised groups such as migrant workers,⁹⁷ a police constable was charged in 2002 with raping two undocumented migrant women (from Indonesia and the Philippines) detained in a police lockup in Ampang. The constable was initially acquitted, with the Sessions Court ruling that the sexual acts had been consensual, and undermining the women’s credibility of the grounds that they were undocumented migrants and married with children. The verdict drew widespread public criticism and the Attorney General’s office filed an appeal. In 2003, the High Court overturned the verdict and sentenced the police constable to 15 years in prison.

In May 2003 a 42-year old woman detainee alleged that, during interrogation at a police station in Gombak (Selangor) about an alleged criminal offence, a police officer forced her to perform oral sex on a male detainee who had been brought into a room wearing only underpants. According to the woman, she was forced to admit to a crime after the policeman told her that he could sleep with her daughter who was also being held for questioning in the station. Although the woman filed a police report about her treatment, the police did not take a statement from her. The woman’s husband also lodged a police report complaining that he was assaulted by police, stripped naked, photographed and asked to appear nude in front of his daughter. Amnesty International remains unaware of the progress of police investigations into the reports.

8.2 Juveniles

Malaysia ratified the UN Convention on the Rights of the Child⁹⁸ (CRC) in 1995 and incorporated many of its principles in the Child Act of 2001, which consolidated existing laws relating to the care, protection and rehabilitation of juveniles.

Under the Act any child (defined as a person under the age of 18) who is arrested on suspicion of a crime must be brought before a Court for Children within 24 hours. The Act also provides basic safeguards reflecting the special needs of children in detention, including separation from adult detainees, and the speedy notification of parents, guardians and probation officers of their arrest. However, there are continuing concerns that such safeguards

⁹⁷ For further information on threats faced by migrant workers, see Amnesty International “*Malaysia: Human rights at risk in mass deportation of undocumented migrants*”, December 2004 (AI Index: ASA 28/008/2004), and “*Malaysia: Irene Fernandez defends the rights of migrant workers despite conviction*”, December 2004 (AI Index: ASA 28/015/2004).

⁹⁸ Malaysia made reservations in relation to Articles 1,2,7,13,14,15,28(1a) and 37 of the CRC.

have yet to be fully and consistently implemented and that long standing patterns of ill-treatment and procedural failings in relation to the treatment of juvenile offenders persist.

In 2000 the Bar Council Legal Aid Centre (Kuala Lumpur) raised a number of such concerns, including the detention of juveniles on remand in police lockups for extended periods for investigation, and the holding for lengthy periods of remanded juveniles in ordinary prisons awaiting trial or judgement, often in relation to petty crimes. The Centre also recorded incidents of ill-treatment of juveniles in police lockups during 2001, documenting 31 cases of alleged abuse. These cases included Mohamad Syril, aged 15 and under investigation for theft, who reported being beaten with a rubber hose; Oon Joo Siong, aged 17 and arrested on suspicion of theft and handling stolen property, who was reportedly kicked, punched and beaten with a cable; and Raju Ramaya, aged 15 and arrested on suspicion of vandalism (causing damage), who reported being beaten with a rubber hose and a belt, slapped and having his ears twisted.

Suhakam moved to address these issues during a 2001 workshop and made a series of recommendations for reform.⁹⁹ These included that all police officers be reminded of their duty to inform parents or guardians and probation officers immediately after arrest of a juvenile, and that procedural guidelines be issued to clarify the exact steps to be taken ensure such notifications. *Suhakam* also recommended that police directives be issued reinforcing the prohibition on beating or other ill-treatment of juveniles in lockups, and reiterating the principle that if the investigation of a juvenile detainee could not be resolved quickly, the suspect should be released on bail.

In 2002, *Suhakam* welcomed a series of remedial steps undertaken by the police, including the issue of orders requiring that relatives of young prisoners are informed of their arrest, the establishment of specific lockups for the sole purpose of detaining juveniles, and increased oversight and expenditure for the management of lockups nationwide. The Commission also welcomed judicial initiatives including the expediting cases of juveniles held on remand.

However, reports of juvenile suspects being ill-treated by police; of relatives not being informed of their arrest or court hearings; and of juveniles being detained with adults and subjected to extended periods of remand detention in police lockups suggests that the implementation of the Child Act and of related police directives and procedural guidelines remains incomplete.

In line with *Suhakam's* recommendations, Amnesty urges that continued efforts be made to ensure that Malaysia's obligations under the CRC are upheld, and that principles for the treatment of juvenile suspects elaborated in the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) are respected in practice. In particular, the Lockup Rules should be

⁹⁹ *Suhakam, Report of the Workshop on the Rights of Young Prisoners*, issued in 2002.

reviewed and amended to bring them into conformity with these UN instruments, and the effective implementation of police procedural guidelines related to the treatment of juvenile suspects should be ensured through adequate training, effective oversight and, if necessary, disciplinary or criminal action against police officers who fail in their duties or engage in misconduct.

9. Enhancing representative policing

Amnesty International believes that a key step towards building a police service that enjoys the support and cooperation of the wider community is to ensure that the composition of the police, as far as possible, reflects all sectors of the community. At a minimum, an internal police culture should be established that is sensitive to the needs and concerns of minority communities.

Minority communities should be adequately represented, and individuals from these groups must be able to pursue their careers fairly and without discrimination. At present, ethnic Chinese Malaysians, who make up 24 per cent of the population, are reported to comprise around 2.5 per cent of police force personnel,¹⁰⁰ while ethnic Indian Malaysians, who make up eight per cent of population, are reported to comprise around 1.25 per cent of the force.¹⁰¹

Amnesty International urges that continued efforts are made by the RMP to strengthen recruitment and career development policies to attract and retain greater numbers of ethnic minority officers in the service. All police officers should be able to perform their duties in a non-discriminatory working environment.

10. Enhancing responsive policing

Failures to ensure the protection of vulnerable groups, including women and children, risks undermining public respect for the police. More generally, the extent of public trust in, and cooperation with, any police service is linked to how responsive police officers are to public concerns, particular in relation to the impartial, timely and effective receipt and investigation of complaints of crimes.

In Malaysia, as discussed above, the intimidating effects of “emergency” and other laws, weak accountability mechanisms, and a perception that complaints against the police may be regarded as a potential threat to national security, have eroded public confidence in the responsiveness of the RMP.

In 1996, following the suspension of the proposed forum (People’s Tribunal – *see page 13*) on reports of police abuses amid threats of arrest under the ISA, the NGO coalition involved continued to call for dialogue with the police. In 1997 senior officers agreed to participate in a meeting during which a memorandum of concerns and recommendations was

¹⁰⁰ MCA Online, 20 August 2004, “*Police Recruitment: Working on an Uphill Task*”.

¹⁰¹ MIC website, “*MIC wants independent inquiry for ‘detention without trial’ cases*”.

submitted.¹⁰² Though the police responded to some of the issues discussed, NGOs continued to complain of an entrenched police culture that leads to a lack of responsiveness to public concerns and complaints.¹⁰³

Concerns raised in the 1997 memorandum, many of which persist today, included police inaction, or failures to give information about the progress of investigations of police reports (crime reports/complaints) lodged by members of the public. As complainants sought to lodge reports, ordinarily at police station front counters, officers reportedly would at times make their own personal assessments as to whether the report should be recorded, or give discouraging or aggressive responses, including verbal abuse, particularly if the complainants were from poorer, marginalised communities.¹⁰⁴ Complainants would at times be directed to other police stations to lodge a report, or refused information about the identity of the Investigating Officer assigned to the case.

In relation to the conduct of police investigations, concerns over impartiality and transparency continue to be expressed. The 1997 memorandum drew attention to cases of the police appearing to investigate the complainant rather than the complaint itself, of the lack of updates or status reports regarding the investigation of complaints, and of complaints of senior officers being investigated by their direct subordinates.

The memorandum also drew attention to abuses of remand detention procedures; poor conditions and ill-treatment in lockups, and the misuse of police bail when those arrested on suspicion of committing relatively minor offences (such as being present at an “illegal assembly”) were subsequently released on police bail and required to report back to the police at intervals over apparently arbitrarily extended periods. Such practices often appeared as a form of selective police harassment, as there was no apparent need to carry out further investigations with a view to filing charges. The memorandum’s proposals for reforms included:

- Improved police training and the provision of clear, transparent procedures for the professional and polite receipt of reports lodged at police stations, and to ensure officers receiving reports did not improperly advise or interfere in the content or processing of reports;

¹⁰² NGO Memorandum: “*Police and the Public: Problems and Proposals*”, 2 October 1997.

¹⁰³ Police Watch expressed particular concern at police responses to a series of apparently racially motivated attacks on ethnic-Indians by unidentified ethnic Malays in the economically deprived neighbourhood of Kampung Medan near Kuala Lumpur in March 2001. Six men were killed and scores injured by machetes and other weapons in apparently random gang attacks over four days. Observers expressed grave concern that some attacks had occurred after the police had sealed off the affected locality, and that police had failed to adequately protect the local ethnic Indian community from violence or conduct effective investigations leading to the prosecution on those believed responsible.

¹⁰⁴ In relation to the policing of marginalised communities, including indigenous and urban poor groups, the memorandum raised concern at cases where the police appeared to lack impartiality, particularly in disputes involving developers or logging companies.

- Provision of regular, timely status reports on the progress of investigation of complaints;
- Provision of clear guidelines safeguarding against arbitrary use of police bail;
- Measures to ensure that any complaint against a police officer be investigated impartially by a more senior officer with no relationship with the accused;
- Improvement of lockup conditions and dissemination of the Lockup Rules to all detainees to help ensure protection of custodial rights, including immediate access to lawyers and relatives;
- The establishing of an independent investigation mechanism for complaints against the police.

The RMP gave a partial response by letter in 1998,¹⁰⁵ but subsequent reports issued by NGOs, and complaints referred to by the Royal Commission of Inquiry during 2004, suggest that significant improvements in police transparency and responsiveness to public complaints and concerns have yet to take root.

11. Enhancing accountable policing

11.1 Investigations and the right to a remedy

Human rights violations by police represent a breach of trust with the community and victims which the state must address. Torture, the use of unlawful lethal force and other serious violations gravely undermine the professionalism of, and trust in, the police. In addition to ensuring the prevention of human rights violations, the government and the police are obliged to ensure the instances that do occur are investigated thoroughly, independently and impartially, the victims offered redress and the perpetrators brought to justice.

International human rights law makes clear that states must investigate such human rights violations including torture and the deprivation of life by unlawful lethal force.¹⁰⁶ Where serious human rights violations are disclosed the investigations should lead to disciplinary and criminal proceedings that ensure effective accountability of both perpetrators themselves and other officials implicated in carrying out or covering-up violations. States

¹⁰⁵ Police responses included: on investigation updates - there is no legal requirement for police to give feedback to the public, but the public can request information; on remand - magistrates (not the police) grant remand extensions if investigations are not completed, but detainees can submit habeas corpus petitions; on complaints against police officers – even though a complaint involves a policeman, the police still have to investigate the complaint, non-police do not have the power to investigate and the RMP has its own check and balance system; on independent complaints mechanism - no response.

¹⁰⁶ For example, the UN Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions requires that killings resulting from excessive or illegal use of force by public officials should be made punishable as a criminal offence and, when they occur, governments are required to institute thorough, prompt and impartial investigations.

must establish an “effective remedy” and entrench in domestic law the rights of victims to lodge complaints.

Under Malaysia’s constitution fundamental rights including the right to life, the right to personal freedom, security and integrity and the right to be free from torture and other cruel, inhuman or degrading treatment are recognized, thereby formalizing in domestic law the responsibility of the state to protect these rights and guarantee the rule of law. The state is responsible for investigating violations of such rights should they occur.

Essential components of an effective remedy include:

- *Promptness*, in examining allegations initially and the pace of the full investigation, to protect the victim and to minimize loss of evidence;
- *Impartiality*, to ensure due weight is given to all evidence, from complainant, accused and witnesses;
- *Independence*, to ensure no conflict of interest, concealment of evidence or unfair procedure;
- *Protection of complainants and witnesses*, to ensure no reprisals against complainants, witnesses and others involved in the investigation;
- *Thoroughness*, to ensure consideration of all relevant information for proving or disproving a complaint.

11.2 Oversight mechanisms

Effective accountability structures are essential to any police service. They provide oversight mechanisms to ensure that police powers are not abused; they enable society to influence and monitor police policy and practice; they create the environment and capacity within a police service to recognize problems and to self-correct and change; and they enhance public confidence in the police. There is no single model for systems of accountability, but to be effective there must be structures which ensure that the police generally, as well as individual police officers, are both legally accountable and accountable to society as a whole.

The legal framework governing policing should be clearly defined by domestic law, regulations and codes of procedure, and be informed by principles contained in international standards which define good practice. Accountability to society can take many forms, but should provide the public with a role in choosing the type of police service it wants, ensure that the police provide the agreed type and quality of service, and ensure redress when it does not.

Without effective accountability systems, a climate of impunity is likely to emerge. Impunity leads to the normalisation of abuses of police powers and the erosion of efforts towards developing a community based policing model – a model that delivers effective policing through the consent and cooperation of the public at large.

Different types of oversight and investigation by public bodies and officials can help the police to fulfil their obligations and ensure an accountable and professional police service. They include:

- Internal investigations by the police with a view to possible disciplinary sanctions and/or referral to the prosecuting authorities;
- Investigation by the prosecuting authorities (Attorney General's Chambers);
- Judicial inquiries into deaths (coroner's inquests), which make findings on culpability and referrals to the prosecuting authorities;
- A specialized independent complaints investigation mechanism responsible for directly investigating police abuses or supervising internal police investigations and capable of recommending systemic change;
- Investigations by the Human Rights Commission (*Suhakam*) aimed at obtaining redress for victims or formulating recommendations for legal or institutional reform.

Each investigating body serves a separate and important function. Working together these bodies are able to illuminate the facts, assist victims to obtain redress and protect potential victims. Each needs necessary powers, resources and qualifications to be effective. These bodies should report publicly on their activities. Any recommendations made by the latter three of these bodies should be swiftly implemented by the government. Failure by the authorities to respond to findings and implement valid recommendations will discredit the investigation body and send a signal that the state condones human rights violations. Where findings reveal *prima facie* evidence of a crime, then a timely criminal investigation must follow.

Amnesty International is concerned that at present in Malaysia there is no independent institutional mechanism effectively performing an oversight function specific to the police. Though the Constitution provides for a Police Force Commission (PFC - *see below*) responsible to Parliament for disciplinary control of the RMP, the organization believes that this body does not at present ensure adequate accountability, effective investigation or the provision of redress.

Amnesty International calls for a review of the composition and functions of the PFC to ensure the provision of effective disciplinary control over the RMP, and responsiveness to society's evolving expectations of a human rights-based police service. While exercising overall responsibility for disciplinary control of the RMP, the PFC should also play a more active role in promoting accountability to the community as a whole through, among other things, the inclusion of civil society representatives with appropriate experience, the agreement and public dissemination of human-rights based codes of conduct, and the monitoring of overall police performance and of public responses to it.

In addition, Amnesty International believes that an external complaints investigation mechanism for the police should be established with a mandate that ensures its independence and impartiality, and enables it to be sensitive to the particular needs of vulnerable groups

such as women, children and members of minority ethnic communities. This body should also monitor patterns of complaints and of police performance, with a view to making public recommendations to the PFC to assist the formulation of national level policing strategies and policies for presentation to Parliament and the wider public.

11.3 Internal disciplinary mechanisms

11.3.1 The Police Force Commission

As with other branches of the Public Service (Civil Service), the Constitution¹⁰⁷ provides for establishment of a permanent body responsible for the exercise of disciplinary control over each designated service, and for other matters including appointments, promotions and transfer of personnel. In the case of the RMP, this body is the Police Force Commission.

The PFC is reported to currently comprise seven to 10 members, chaired by the Prime Minister (as Minister of Internal Security with responsibilities for the police) and including the IGP and senior members of the civil service. While the PFC itself deals with disciplinary matters involving senior officers, it has delegated to the IGP authority to initiate and conduct disciplinary proceedings for middle or lower ranks. In turn the IGP delegates authority to Disciplinary Units (chaired by a Senior Assistant Commissioner - SAC) established in the Bukit Aman national police headquarters and in major contingent police headquarters. Amnesty International understands that complaints possibly amounting to dismissal are addressed by panels headed by a SAC, while lesser disciplinary offences, not amounting to dismissal, are considered by panels comprising three officers (of a rank senior to the officer being investigated).

The PFC lodges an annual report before Parliament providing information about the activities of the RMP and includes statistical data on disciplinary actions undertaken.¹⁰⁸ Nevertheless there are continuing concerns about the effectiveness, transparency and impartiality of the RMP's existing internal disciplinary system. As discussed above (*see page 50*), these include the manner in which the RMP firstly, receives, responds to and investigates police reports/complaints lodged by members of the public, and secondly conducts, adjudicates, imposes sanctions and reports back publicly on its disciplinary methodology and actions.

¹⁰⁷ Article 140.

¹⁰⁸ The 2003 Annual Report of the PFC stated that disciplinary actions were initiated against 754 police personnel, and 98 officers had been relieved of their duties. While the Report recorded that 145 police personnel had been punished for "erring in their duties" and 45 for corruption, it did not provide further clarification. Other disciplinary offences listed in the Report included "inefficiency", "irresponsibility" and "tarnishing the police force's image".

11.3.2 Disciplinary regulations and the “code of conduct”

Internal police disciplinary investigations are usually prompted by police reports, or by complaints (at times anonymous) lodged directly with the Disciplinary Units by members of the public.

However, under the applicable Public Officers Regulations,¹⁰⁹ it is the duty of every officer (police and all other public officers) to exercise disciplinary control and supervision over subordinates and to take appropriate action as soon as possible for any breach of the regulations. An officer who fails in this duty is deemed “negligent and irresponsible” and is liable to disciplinary action.¹¹⁰

A Code of Conduct, forming Part II of the Regulations, requires every public officer not to, among other things, use his public position for his personal advantage; conduct himself in a manner that brings the service into disrepute or discredit; lack efficiency; be dishonest or untrustworthy; be irresponsible; or be negligent in performing his or her duties. The Code also contains provisions prohibiting sexual harassment of any person.

According to procedures set out in the Regulations, a police officer is required to respond in writing to the initial findings of the Disciplinary Unit within 21 days, which, if necessary, can set up an Investigation Committee to conduct further investigations and to call or examine witnesses. Disciplinary punishments include warnings, fines, reduction of salary or rank, and dismissal. If an officer is alleged to have committed, or is reasonably suspected of having committed, a criminal offence or serious disciplinary offence, the Disciplinary Unit may suspend the officer from the exercise of his duties. If criminal proceedings are initiated against an officer, no disciplinary action based on the same criminal charges can be taken until the criminal proceedings are completed.

11.3.3 Responding to complaints against the police

Although a Human Rights Desk was set up in the Criminal Investigation Department at Bukit Aman in 2002,¹¹¹ NGOs report little knowledge of or interaction with it and describe how ordinary complainants often feel intimidated and deterred from approaching Disciplinary Units in police headquarters to lodge or follow up on complaints against police officers. Police Watch, other civil society groups and relatives of alleged victims of police abuse also describe how they have rarely received formal responses to numerous complaints about police behaviour sent to the police. More generally, as recognized by the Royal Commission of Inquiry, there is widespread public dissatisfaction with perceived police “inaction”- often relating to police failures to properly receive, record and act on reports lodged, followed by a lack of feedback and transparency concerning the progress of any investigation.

In this context Amnesty International welcomed the establishment of a Parliamentary Select Committee in 2004 to examine proposed amendments to the Criminal Procedure Code

¹⁰⁹ Public Officers (Conduct and Discipline) (Amendment) Regulations 2002.

¹¹⁰ *ibid.* s.3.

¹¹¹ *Suhakam* Annual Report 2002.

(CPC). The Committee continues to consider possible solutions to police inaction and is due expected to report in mid-2005.¹¹²

11.3.4 Disciplinary procedures & chain of command responsibility

A frequent police response to inquiries about the investigation of a complaint of police abuse, particularly when there is little media coverage or overt public interest in the case in question, is that police investigators were satisfied that “procedures were followed correctly.” Information about the course of internal investigations, or their findings in relation to particular breaches of specific codes of procedure (such as the Standing Orders related to arrest, detention, investigations/interrogations or the use of firearms) are rarely made public.¹¹³

NGOs and lawyers observe that disciplinary proceedings are often slow and protracted and, in practice, shrouded in secrecy, and that the eventual findings often appear incommensurate with the gravity of the original complaint. As recorded in the PFC annual report, the majority of disciplinary findings relate only to the broadly-defined offences listed in the Public Officers Regulations, such as “bringing the service into disrepute”, being “irresponsible” or being “negligent in the performance of duties”.

Amnesty International believes that the absence of a code of conduct specific to the police and reflecting key principles in the UN Code of Conduct for Law Enforcement Officials is a critical weakness in existing internal disciplinary procedures and is conducive to an internal police culture within which human rights violations are tolerated and perpetrators not held to account.

There are also concerns that internal investigations and disciplinary proceedings may be open to influence if the respondents are senior officers. More generally, there are fears that the requirement on those officers with chain of command control to ensure that abuses by fellow officers are reported, investigated and, if found necessary, subjected to sanctions, is insufficiently robust.

A transparent and effective system of chain of command control is essential for operational accountability. All officers with managerial and supervisory responsibilities must ensure that their subordinate officers understand their duty as members of the RMP to respect and protect human rights, and know that there will be criminal and/or disciplinary

¹¹² This Parliamentary Select Committee, the first to be established in Malaysia for nearly twenty years, canvassed public opinion during 2004 about proposed amendments to the CPC. In response to concerns about police inaction, the Committee continues to consider an amendment requiring police to provide to any complainant, within two weeks upon request, a status report on the progress of the investigation. Failure to do so would result in the intervention of the AG or the imposition of criminal penalties (a fine and/or a month in prison). Other issues being considered by the Committee police powers in relation to the arrest of “terrorist” suspects and the intercept of “terrorist” communications.

¹¹³ Police Standing Orders are reported to be “secret”, classified under the Official Secrets Act, thereby hampering public scrutiny and discussion of police investigation and other procedures.

consequences for misconduct. In addition, the obligation on all officers to report wrongdoing within their chain of command must be emphasised.

This need was highlighted during internal police investigations into the assault on former Deputy Prime Minister Anwar Ibrahim while he was held blindfolded in a police cell in Bukit Aman in September 1998. A RMP Special Investigation Team found that police officers were responsible for the assault, but failed to identify the perpetrators. Amid intense public concern, an independent Royal Commission of Inquiry was established, which proceeded to find that the then IGP had been solely responsible for the assault. The IGP was subsequently charged with causing “grievous hurt”,¹¹⁴ found guilty and sentenced to two months imprisonment.

The Bar Council expressed grave concern that, although there was evidence that Anwar Ibrahim was blindfolded and handcuffed¹¹⁵ by other officers in the cell when he was criminally assaulted by the IGP, no criminal action, and reportedly no disciplinary action, was taken against these officers for failing to arrest the perpetrator,¹¹⁶ failing to notify or inform a senior authority or lodge a police report, or failing to ensure the detainee received immediate medical attention.¹¹⁷

The requirement on police officers to report violations committed by their colleagues is reflected in Article 8 of the UN Code of Conduct for Law Enforcement Officials, which states that officers “*shall...to the best of their capability, prevent and rigorously oppose*” any violation of the law and the Code, and that those officers who believe a violation of the Code has or is about to occur “*shall report the matter to their superior authorities and where necessary, to other appropriate authorities or organs vested with reviewing or remedial power*”.

Amnesty International believes that a human rights-based police Code of Conduct, a clearly defined duty to report abuses; and a transparent and effective chain of command, responsive to and supportive of human rights, are essential to ensure operational accountability.

11.4 External complaints investigation mechanism

While effective and impartial internal disciplinary mechanisms are essential for the creation and maintenance of a culture within the police service which is respectful of human rights,

¹¹⁴ Penal Code s325.

¹¹⁵ The Lockup Rules provide that “prisoners should not be placed in a mechanical restraint as punishment” (which encompasses handcuffs and blindfolds) and that “no police officer shall strike or apply physical force to a prisoner unless compelled to so in self defence...”

¹¹⁶ CPC s23 (1): powers of arrest without a warrant. Penal Code s202: “whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence that he is legally bound to give, shall be punished....”

¹¹⁷ The Lockup Rules provide that medical officers must be informed without delay of any injury or illness of any prisoner.

Amnesty International considers such internal systems need to be complemented and reinforced by an independent external investigation mechanism.

Suhakam, a statutory body with investigative powers and the right to examine witnesses and procure evidence, already serves such a function. However, given the number and scope of complaints and other human rights issues already addressed by *Suhakam*, Amnesty International calls for the establishment of a statutory independent external complaints mechanism specific to the police.

RECOMMENDATIONS:

12. Reform of the law

The context and character of policing is framed by the laws defining and regulating police powers. Amnesty International is concerned that unjustified application of “emergency” and other restrictive laws in Malaysia have facilitated the emergence of abusive police practices. In particular, “emergency” legislation, by denying effective judicial scrutiny of police actions while permitting incommunicado detention, has had a negative impact on police culture and the treatment of detainees.

Laws related to or stemming from States of Emergency should only limit derogable rights, including freedom of expression, association and assembly, in a manner that is necessary, proportionate and strictly required by the exigencies of the situation. In line with recommendations made by *Suhakam*, Amnesty International recommends:

- The Internal Security Act (ISA) is either repealed or amended so that it no longer allows for the arrest and detention of those who peacefully express religious or political beliefs;
- That those arrested under the ISA or other “emergency” laws are not be held in incommunicado detentions and be give prompt and regular access to legal representation, relatives and independent doctors.
- The ISA and other “emergency” laws, including the Emergency (Public Order and Prevention of Crime) Ordinance and the Dangerous Drugs (Special Preventive Measures) Act, be repealed or amended so that those suspected of threatening national security or public order have an opportunity to defend themselves before a court of law in proceedings that meet international standards of fairness;

Amnesty International is also concerned that clauses of other, non emergency-related, legislation relevant to policing, including the Police Act, the Lockup Rules and the Criminal Procedure Code facilitate, or provide insufficient safeguards against, police abuse of detainees and other suspects. The organization recommends that:

- Provisions of such laws be removed or amended to ensure that vague or ambiguous language does not lead to human rights violations;

- The provisions and application of such laws be made consistent with the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for Protection of Persons under Any Form of Detention or Imprisonment and other relevant international standards.

Additionally, Amnesty International urges the government and the police to respect the right of all persons in Malaysia to engage in peaceful assemblies and demonstrations, and to implement recommendations made by *Suhakam* regarding the use of adequate warnings and restraint and prohibitions on excessive use of force, when dispersing peaceful assemblies. Amnesty International also recommends that:

- Provisions of the Police Act and Penal Code are reviewed and amended to ensure that they may not be used to arrest and imprison individuals for the peaceful exercise of their right to freedom of assembly.

13. Combating abuses: integrating human rights into police operations

13.1 Use of force and firearms

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials cover a range of issues, including the exercise of restraint and proportionality; the issuing and storage of firearms; policing of unlawful the assemblies; policing persons in custody or detention; recruitment and training and reporting and review procedures.

Under the Basic Principles the intentional use of firearms is prohibited except when strictly unavoidable to protect life – that is, in self-defence or the defence of others against whom there is an imminent threat of death or serious injury (Principle 9). The use of restraint and proportionality is emphasized (Principles 4, 5(a) and 5(b)). It is also explicitly stated that if firearms are to be used a clear warning must be given (Principle 10).

Amnesty International is concerned that these principles and procedures appear not to have been adequately embedded within the RMP's training and practice. In particular, the concepts of ***legality, proportionality and necessity***, even in cases where suspects open fire on police, need to be emphasised and given operational effect through effective training. Standing Orders and training programs related to the use of force and firearms in public order policing and arrests more generally should be reviewed to ensure that they incorporate, in a practical way, the concepts of proportionality, legality and necessity. Standing Orders, consistent with human rights standards, must be available to, and understood by, all police officers.

Restraint and threat assessment: the exercise of restraint in the use of force and firearms and the requirement to act in proportion to the seriousness of the offence and the legitimate objective to be achieved is contained in the Basic Principles (Principle 5(a)). Non-violent means should be applied and force or firearms only resorted to if non-violent means prove ineffective (Principle 4). Firearms should only be used when there is a direct threat to

life (Principle 9). Although existing training programmes may enable RMP officers to reach an appropriate level of technical competency in the use of force and firearms, Amnesty International urges that equal weight be given in training to tactical skills that would ensure that officers are able to assess threats, in particular a threat to life; exercise restraint; and, where force is necessary, apply the appropriate level.

Reporting and investigation: in cases where force or firearms are used the Basic Principles lay out clear guidelines on the steps that should be taken to report and review such an incident (Principles 22 to 26) There is a need for effective reporting and review procedures; access to an independent process, including a judicial process, for persons affected; and disciplinary and/or criminal procedures taken against superior officers in cases where they know or should have known the officers under their command were resorting to unlawful use of force and firearms and did not take all measures to prevent or report such use (Principle 24).

Amnesty International is concerned that at present the RMP does not have adequately impartial internal mechanisms for the investigation of allegations of unlawful use of force and firearms by the police. The organization calls for internal investigations to be conducted by officers with sufficient impartiality and independence from the unit responsible for the use of force or firearms under scrutiny. The organization urges that:

- All incidence of use of weapons or firearms, whether intentional or not and whether or not they result in injury, should be recorded by the RMP and should subject to scrutiny by an internal and/or an external oversight body;
- All allegations of misuse of force or firearms should be investigated promptly, thoroughly, impartially and independently, in accordance with the Basic Principles and other international standards for such investigations.¹¹⁸ Such investigations should be conducted by an impartial internal investigation unit and/or an external investigation unit, according to the seriousness of the incident;
- Where the alleged offence amounts to a criminal act, individual officers should be brought to justice in processes which meet with international standards for fair trial;
- Ongoing analysis of incidents of use of force and firearms should be conducted by internal and external police oversight bodies to ensure that international human rights standards are being adhered to and, if they are not, to identify why and on the basis of the findings to implement any necessary reform.

13.2 Preventing torture and ill-treatment

Continued reports of torture or ill-treatment of detainees held incommunicado under the ISA and other “emergency” laws, or of ordinary criminal suspects detained in police lockups and interrogation rooms reemphasise the urgent need for a review of rules applicable to the arrest, interrogation and treatment of suspects in police custody. All such rules, administrative codes

¹¹⁸ UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

(Standing Orders), instructions, methods and practices should be brought into conformity with international standards. Amnesty International recommends that:

- The authorities publicly reiterate their absolute opposition to all forms of torture and ill-treatment wherever it occurs. Government officials and the RMP leadership should make clear to all police personnel and to civil society that torture and ill-treatment will never be tolerated.
- All complaints and reports of torture or ill-treatment should be promptly, impartially and effectively investigated by an internal body independent of the alleged perpetrators, and/or an independent external body, depending on the seriousness of the case.
- Those responsible for torture or ill-treatment should be brought to justice. This principle should apply wherever the crime was committed and no matter how much time has elapsed since the commission of the crime.

13.3 Arrest and detention

Procedures, training and oversight: In light of reports of torture, ill-treatment and unlawful use of force or firearms, Amnesty International remains concerned that deficiencies or ambiguity in applicable laws; an ineffective regulatory framework governing arrest and detention procedures; and inadequate training and a lack of effective oversight have facilitated abusive or inappropriate practices among police. The organization recommends that a process of review and reform, backed up by adequate training and resources, should include the following custodial safeguards:

Informing suspects of their rights: Consistent with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹¹⁹ Amnesty International urges that the Criminal Procedure Code, Lockup Rules and relevant Standing Orders be amended to ensure that detainees in police custody are informed of and can exercise their rights.

In particular, consistent with Principle 17 of the Body of Principles,¹²⁰ and reflecting recommendations made by *Suhakam*,¹²¹ Amnesty International urges that amendments ensure the right of detainees:

- To contact a relative or close friend and be visited by such person;

¹¹⁹ Principle 13; "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights."

¹²⁰ Body of Principles, Principle 17: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it".

¹²¹ *Suhakam Report: Rights of Remand Prisoners*, 2002.

- To contact a legal representative promptly after arrest and communicate with him or her confidentially;¹²²
- To access free legal advice if necessary;
- To be examined by a doctor as promptly as possible and to receive medical treatment;
- To be brought promptly (within 24 hours) before a magistrate; to be fully informed about the nature of the remand proceedings; to have access to a lawyer throughout the proceedings; and to inform the magistrate of any complaints about their treatment whilst in police custody.

Amnesty International is concerned that there is a relatively low level of awareness, or understanding, of rights among many detainees and among the general population. In such a situation, particular care must be given to explaining the reason for these rights and how they can be exercised. Custody officers should reconfirm the reason for arrest when a suspect is brought into police custody and should check that they have understood their rights. Written records should reflect the process of suspects being informed of their rights and their responses.

- All police officers should be fully trained in a standard set of words to ensure that the rights of a suspect or detainee are explained in a manner which is understood;
- All officers should be issued with card which lists arrest and custody rights of which they must inform suspects and detainees;
- Effective procedures should be introduced and the capacity of magistrates and other relevant judicial officials enhanced to ensure that suspects or detainees can avail themselves of their rights;
- Particular attention should be given to training police officers in the rights of juveniles and their responsibility as officers to uphold these rights.

Records: While the Lockup Rules require the keeping of a custodial journal, recording such details as numbers of prisoners and medical inspections, Amnesty International urges that the Rules and any supporting Standing Orders be reviewed and amended to ensure consistency with the Body of Principles. Principle 12 requires that, on the detention of an individual, the following data should be recorded:

- The reasons for the arrest;
- The time of the arrest and the taking of the arrested person to a place of custody as well as that of their first appearance before a judicial or other authority;

¹²² UN Special Rapporteur on torture (UN doc: A/56/156, para. 39(f)) “Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention...In exceptional circumstances, under which it is contended that prompt contact with a detainee’s lawyer might raise genuine security concerns and where such restriction of such contact is judicially approved, it should be at least possible to allow a meeting with an independent lawyer, such as one recommended by a bar association”.

- The identity of the law enforcement officials concerned;
- Precise information concerning the place of custody.

To this should be added:

- The date and time that the individual was brought into custody;
- Their medical condition;
- Each visit by detention officers, lawyers, doctors and family or friends;
- Exercise periods;
- Time and date of transfer to detention facility or release.

Records containing all of this data should be maintained at each location where there are custody facilities.

The purpose of arrest and custody records is to contribute to the protection of detainees against human rights violations, including arbitrary detention and torture or ill-treatment, through ensuring transparency and accountability. It also is available to police to use in their defence in the case of a false allegations of arbitrary detention or other violations of rights, and is vital for investigations in the event of a death in custody. The ability to draw analysis from such data, for example on average custody times, or frequency of visits by lawyers to suspects in police custody, could also be of benefit to the authorities in their efforts to improve and strengthen the administration of justice. Without the scrupulous recording of data none of the above is possible. All officers should be trained to record data in the standardized custody records the effective implementation of which should be kept under continual review.

Custody facilities: continued efforts should be made and regular inspections conducted to ensure that police lockups and other detention facilities are of a standard required in the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules). When police custody facilities fall short of these standards, necessary steps should immediately be taken to improve them.

Unhindered access to facilities by *Suhakam* and other independent human rights and legal organizations can significantly contribute to the prevention of human rights violations such as torture and ill-treatment, and can also help safeguard the police against false allegations of human rights violations. It also provides a framework for cooperation between the authorities, independent experts, civil society groups and others to work together towards ensuring that international standards are met. To this end:

- Representatives from *Suhakam* or other independent inspection panels should have regular access to all places of detention and premises where detainees may be held, and be able to select the places they wish to visit. The duration of visits should not be restricted and the visiting mechanism should be able to interview detainees in confidence, without witnesses.
- Inspection visits should include members of the judiciary, law enforcement officials, defence lawyers, physicians, independent experts and representatives of civil society.

14. Protection of vulnerable groups

14.1 Women

In light of the continued risk of violence against women both in custody and in the community, Amnesty International calls on the RMP leadership to reiterate to all officers that deterring women from reporting sexual violence, inaccurately recording their complaints, or failing to investigate will not be tolerated. The organization urges that review and amendment of existing laws, rules and procedures reflects the following recommendations:

- Women detainees should be held separately from male detainees; they should be interrogated only in the presence of female staff, who alone should be entrusted with body searches. There should be no contact between male guards and female detainees without the presence of a female guard;
- All reports of violence against women, whether perpetrated by police and other officials or private individuals should be promptly, impartially and thoroughly investigated with a view to holding the perpetrators to account. For this purpose, clear guidelines must be issued to law enforcement personnel stating that deterring women from reporting acts of violence will not be tolerated and that it is the duty of all police officers to register promptly and without bias all complaints of women victims of violence, investigate all allegations of acts of violence against women, whether perpetrated in custody or within their families;
- Contravention of the duty of police to register and investigate should result in criminal and/or disciplinary sanctions;
- To curb and ultimately end gender bias in the police force, adequate gender sensitive training should be provided to both senior staff and new recruits to enable them to deal with sensitivity with complaints of violence against women;
- An adequate number of women police officers should be recruited and trained. The investigative techniques of all police personnel should be improved to ensure that women victims of violence are not subjected to further humiliation; particularly when sexual abuse is alleged, and competent, and if possible, female medico-legal practitioner should be promptly involved in the examination of the victim;
- Information should be made available to women victims on rights and remedies available to them and on how to obtain them, in addition to the usually provided information on their anticipated role in criminal proceedings.

14.2 Children

- Enforce the safeguards that exist under the Child Act of 2001 and international law and hold those who fail to uphold such standards accountable;
- Ensure that police officers inquire immediately into, and document on arrest or first contact, the age of any suspect who appears to be younger than eighteen;

- Ensure that the documented age of a minor is brought to the attention of all judicial and custodial officials coming into contact with the child;
- Ensure that provisions requiring medical examinations on arrest are followed. The results of such examinations must form a part of the child's record; any injuries noted must be explained;
- Immediately and impartially investigate any allegations of torture or ill-treatment of children on arrest or in detention;
- Ensure that child detainees are, in accordance with international standards, at all times detained separately from adult detainees and preferably in separate facilities;
- Ensure that conditions of detention, including bedding and food, conform with the UN Standard Minimum Rules for the Treatment of Prisoners;
- Deliver all child detainees promptly (within 24 hours) before a Court for Children or other judicial authority following arrest;
- Ensure that parents, guardians and/or social workers are immediately informed of the arrest and that notification attempts are recorded and open to independent scrutiny;
- Ensure timely access to legal counsel following arrest. Such access must be available for all child suspects prior to interrogation and charging;
- Limit the use of pre-trial detention for children to exceptional circumstances: all forms of detention should be consistent with the international standard that children should only be detained as a last resort and for the shortest possible period of time.

15. Accountability and oversight

15.1 Responding to complaints against the police

In order to enhance the responsiveness of the police, Amnesty International urges that:

- All allegations of human rights violations or misconduct by police officers must be received without impediment and immediately investigated through the formal channels of internal police mechanisms or an independent oversight mechanism, depending on the nature and seriousness of the alleged violations contained in the complaint;
- The Criminal Procedure Code and Police Act should be reviewed and amended to ensure an obligation on police to receive and investigate complaints of human rights violations, and to provide prompt status reports on the progress of investigations of complaints;
- Internal investigations into complaints against the police should be conducted in such a manner as to ensure that investigating officers are impartial and sufficiently independent of the unit or section within which the accused officers are based;

- Information about the forms of redress available and about the outcomes of investigations into police behaviour should be publicly disseminated nationwide;
- Disciplinary and/or criminal proceedings must be undertaken where allegations of human rights abuses prove to be well-founded.

15.2 Internal disciplinary mechanisms

Amnesty International recommends:

- A review of the composition and functions of the Police Force Commission (PFC) to ensure effective disciplinary control over the RMP;
- The PFC should enhance the RMP's responsiveness and accountability to the community as a whole through the inclusion among its members of civil society representatives with appropriate experience, the agreement and public dissemination of human-rights based codes of conduct, and the monitoring of overall police performance and of public responses to it;
- The Public Officers (Conduct and Discipline) Regulations should be reviewed with the view to the establishment of disciplinary regulations and procedures specific to the requirements of a human rights-based police service;
- A Code of Conduct specific to the police and reflecting human rights principles contained in the UN Code of Conduct for Law Enforcement Officials should be drawn up and publicly disseminated;
- All police internal disciplinary procedures and mechanisms should be clearly set out in publicly available documents to ensure transparency and improve accessibility;
- All police officers should be made aware through the chain of command that failures to protect human rights, or the violation of human rights, will result in investigation and corresponding sanctions;
- Clear guidelines requiring officers to report abuses should be issued, and that officers with chain of command control are held responsible for enforcing such guidelines, with penalties imposed for failing to report, or covering up, police misconduct.
- Internal disciplinary procedures should be thorough, prompt and ensure fairness and due process both to complainant and to police personnel.

15.3 External complaints investigation mechanisms

Amnesty International calls for the creation of an external investigation mechanism dealing specifically with complaints involving the police. Although the form of such a mechanism may differ, Amnesty International believes such a body must at a minimum:

- Be operationally independent of the government, political influence and the police;
- Be accessible to members of the public;

- Be empowered to receive complaints and other reports and to investigate incidents on its own volition;
- Be empowered to procure and receive any evidence and to examine any witnesses as may be necessary to conduct an effective investigation;
- Be empowered, depending on the nature and seriousness of the complaint, to choose whether to supervise or to manage investigations conducted by police investigation officers, or to carry out investigations using its own independent investigators;
- Be empowered to refer matters to the criminal prosecutor and to the police internal disciplinary body;
- Have the capacity to carry out research with a view to being proactive and tracking trends beyond individual incidents;
- Have sufficient budget to underpin the principle of independence and in order to be effective in terms of promptness, thoroughness and the protection of complainants and witnesses;
- Be accountable to parliament or other designated oversight body, and be required to report publicly on its activities.

16. Judicial oversight

16.1 Judicial scrutiny of detentions (reform of remand procedures)

The requirement to bring a detainee promptly before a judicial authority, as provided by the Malaysian Constitution and the UN Body of Principles,¹²³ forms a critical safeguard against arbitrary detention and against torture or ill-treatment.

Suhakam, the Malaysian Bar Council and a range of NGO's have drawn attention to abuse of remand procedures by police, and the failure on the part of some magistrates to exercise effective scrutiny of police requests for remand orders. A number of these concerns have been addressed in the 2002 Chief Justice's Practice Circular to magistrates (*see page 37*). Amnesty International believes safeguards provided in the Circular should be entrenched in practice and urges that:

¹²³ "Body of Principles, Principle 4: "Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority."

Principle 37: "A person detained on a criminal charge shall be brought promptly before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody."

- Detainees be allowed to contact their families immediately on arrest and while in custody, and that families and legal counsel be informed of the time and location of remand hearings;
- Detainees be given full access to legal representation for remand hearings;
- The Criminal Procedure Code be amended to require magistrates, after examining the Investigation Diary, to be satisfied that there are sufficient grounds linking the detainee to the offence being investigated before issuing a remand order;
- Effective judicial scrutiny and oversight should lead to disciplinary actions and/or criminal proceedings against police officers found attempting to abuse remand procedures, particularly through the use of serial (“road-show”) remand applications;
- Legal requirements and procedural guidelines related to remand procedure should be effectively disseminated and implemented, including through training and the provision of adequate resources.

Amnesty International believes that during remand hearings magistrates should play an active role in protecting against the incidence of torture and ill-treatment. If there are reasonable grounds to believe that torture or ill-treatment was inflicted during arrest, detention and interrogation, the magistrate should ensure that a prompt and impartial investigation is initiated, in accordance with Articles 8 and 9 of the Declaration against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Amnesty International recommends:

- That prisoners should be able to address magistrates in an atmosphere free from intimidation;
- If there is any sign of torture or ill-treatment, the magistrate should inquire into it without delay, even if the prisoner has not volunteered any statement;
- If the inquiry, or the prisoner’s own statement, gives reason to believe that torture or ill-treatment was committed, the judge should initiate an effective investigation and take effective steps to protect the prisoner against any further ill-treatment, and, if the detention is unlawful or unnecessary, order the prisoner's immediate release under safe conditions;
- The supposed victim should have access to independent doctors and lawyers for assistance in securing the evidence needed to back up the claim.

16.2 Inquests

Amnesty International considers that the role played by coroner’s inquests in establishing the facts behind cases of deaths in custody or fatal shootings and combating any perception of police impunity should be strengthened. The organization remains concerned that families of victims are at times unaware of the need, or are prevented from retaining lawyers to represent their interest during inquests. The organization considers that legal expertise is often necessary for calling and effectively cross-examining witnesses and for the proper examination of medical and other evidence and recommends that:

- The Criminal Procedure Code is amended to ensure that coroner's inquests are mandatory for all deaths in custody and deaths by police shooting;
- Magistrates exercise their discretion and allow lawyers to represent the interests of the families of victims at inquests, including through the examination of witnesses and access to all relevant documentation.

17. Medical examinations and post-mortems

Amnesty International urges that rules and procedures governing the conduct and reporting of medical examinations and post-mortems should be amended to be consistent with UN principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the UN Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international standards. In line with these standards Amnesty International recommends:

- All investigations of deaths in custody and complaints of torture or ill-treatment must include an adequate medical examination, as well as collection and analysis of all physical and documentary evidence and statements from witnesses;
- Those conducting autopsies, or medical examinations of detainees, must be able to function impartially and independently of any potentially implicated persons or organizations. Those conducting autopsies should have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred;
- The body of a deceased person must not be disposed of until an adequate autopsy is conducted by a physician, who should if possible be an expert in forensic pathology;
- The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible;
- The autopsy report, of equal importance as the autopsy itself, must be full, detailed, clear, comprehensible and objective. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased, including any evidence of torture.

The UN Standard Minimum Rules (Rule 24) and the Body of Principles on Detention (Principle 24) call for prisoners to be given or offered a medical examination as promptly as possible after admission to a place of detention. The Special Rapporteur on torture has further recommended that such medical examinations be “repeated regularly and should be compulsory upon transfer to another place of detention.”¹²⁴ Furthermore, prisoners should

¹²⁴ UN Doc. A 56/156, 2001, paragraph 39 (f).

have a right to be examined by a doctor of their own choice. Amnesty International therefore recommends that:

- A person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities;
- All medical examinations of persons in custody are to be conducted out of the hearing and -- unless the doctor concerned expressly requests otherwise in a given case -- out of the sight of police officers;
- The results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the person in custody and his or her lawyer;
- The confidentiality of medical data is to be strictly observed.

For the effective investigation of torture, Amnesty International believes that Medical Officers and doctors working with the police, government hospitals and other medical institutions should be given adequate resources and training to enable detailed examinations to be carried to establish whether marks, or observable physical and psychological effects, are consistent with the torture that has been alleged.

Amnesty International recommends that these examinations reflect the principles and required methodologies set out in international standards on the medical investigation of torture allegations, particularly the Istanbul Protocol. These Principles make clear that a doctor's examination of a person alleging torture should include:

- A history, including "alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms";
- A physical and psychological examination;
- An opinion or "an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment".

18. Training

- All training and reform initiatives should be linked to the creation of effective accountability mechanisms.
- A comprehensive review of all existing curriculum materials should be undertaken to ensure that human rights are integrated across the curriculum and are reflected in the programs of the Police Training Centre and similar institutes;
- Training in human rights should be practical and reflect the reality of policing in the field. To this end scenario based training should be developed, including in procedures for arrest techniques, detention procedures and the use of force and

firearms to develop skills in assessing proportionality and necessity. Such training should be compulsory for both new recruits and existing officers;

- Training on the rights of women and children in the criminal justice system should be fully integrated into the formal police training;
- The delivery of training by *Suhakam* and other organizations outside of the police should be continued and built upon to ensure that training is delivered by a variety of people so that the diversity of the community to be served is modelled in the training process. For example, there should be both male and female trainers and representatives from minority communities;
- Training must not be restricted to new recruits, but must continue throughout the careers of police officers and training programs should be developed for this purpose;
- Resources should be provided for a research and development unit within the RMP to facilitate the speedy implementation of new legislation and procedures within the training curriculum;
- Monitoring and evaluation of training programs should be strengthened. The criteria for evaluating the success of training programs, including the evaluation of trainees' understanding of and commitment to human rights standards, should be established at the start of the training to ensure that lessons are learnt and are incorporated into future training initiatives.

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