

**SESI PENDENGARAN AWAM JAWATANKUASA PILIHAN KHAS  
MENIMBANG RANG UNDANG-UNDANG MENGENAI  
RANG UNDANG-UNDANG  
SURUHANJAYA BEBAS ADUAN SALAH LAKU POLIS 2019  
BIL.2 TAHUN 2019**

**2 NOVEMBER 2019 (SABTU)**

**BILIK GERAKAN, ARAS 4  
BANGUNAN PERSEKUTUAN PULAU PINANG  
JALAN ANSON, PULAU PINANG**

NO : 7

**NAMA PEMBENTANG**

RAVINDER SINGH

**PERSATUAN / PERTUBUHAN / INDIVIDU**

PERSATUAN PENGGUNA PULAU PINANG



The Chairman,  
Special Select Committee of Parliament on  
Independent Police Complaints and Misconduct Commission (IPCMC)

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The Consumers Association of Penang makes representation as follows:

1. The current Police Act does much to contribute to the lack of accountability in the Force.
2. The Absence of a legal mechanism for dealing with public complaints against the police quickly and effectively encourages unlawful police behaviour. Therefore the IPCMC is very necessary.
3. No members of the police force, of whatever rank, whether still in service or retired, should have any say as to whether such a Commission is necessary, what it should be called, what its duties should be, how it should function or who its members should be.
4. Members of the IPCMC should not be in the Force or have had any professional connection with it in the past.
5. Appointment to the IPCMC should not be for political services rendered.
6. It is absolutely important that members of the IPCMC should be people of high calibre and integrity.
7. The IPCMC must command respect and credibility and must have real power and responsibility.
8. The IPCMC must hold the IGP and the Force publicly to account. There should be no exceptions.
9. The IPCMC must be answerable to Parliament and not to the Executive.
10. The name of the Commission as proposed by the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, i.e.

#### **INDEPENDENT POLICE COMPLAINTS AND MISCONDUCT COMMISSION**

is most appropriate as it reflects the full extent of the Commission's duties and functions and should be retained. The word "misconduct" must not be removed as suggested by certain parties.

11. The Consumers Association of Penang had sent a memorandum titled **A Call for Fundamental Reform in the Policing of Malaysia** to the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police. It explains in more detail the need for the IPCMC. We now give a copy of it to your Committee.

Ravinder Singh  
Consumers Association of Penang  
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# A Call for FUNDAMENTAL REFORM in the POLICING OF MALAYSIA

Continuing participation by civil society in public policies, projects and plans is the essence of democracy. As such, the focus of the reform of the policing of Malaysia should be the creation of democratic police governance with legal mechanisms for efficient and effective policing, accountability, protection of human rights, prevention of corruption and abuse of power, and public participation.

The Police Force has come under public criticism for violation of human rights, and ineffective and inefficient policing. Public confidence in the Force to maintain the rule of law and protect integrity has been seriously eroded.

The Consumers Association of Penang submits that the most important role of the Force is to protect the human rights of the people. Police policy, law and practice must be formulated and implemented with a constant focus on the interests of the community.

Major changes need to be made to the organisation, recruitment and appointment modes of the Force as well as the rank, grading, legal framework, funding, this information effective and planning. There have to be mechanisms built into the system to guarantee transparency and accountability. Public participation and feedback on the delivery of policing service must also be part of the reform of police setup. It is earnestly recommended that we make our recommendations.

Consumers Association of Penang

A Memorandum by  
The Consumers Association of Penang  
to The Royal Commission to Enhance  
the Operation and Management  
of the Royal Malaysia Police





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**A Call for  
Fundamental Reform  
in the  
Policing of Malaysia**

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The Consumers Association of Penang  
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the Operation and Management  
of the Royal Malaysia Police

Consumers Association of Penang



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Published by  
Consumers Association of Penang  
10 Jalan Masjid Negeri  
11600 Pulau Pinang  
Malaysia

Tel: 04-8299511 Fax: 04-8298109

Printed by Jutaprint  
2 Solok Sungai Pinang 3  
Sungai Pinang  
11600 Pulau Pinang  
Malaysia

ISBN 983-3083-13-7

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## 1 Introduction

The Consumers Association of Penang (CAP) would like to congratulate our Government for setting up the Royal Commission to inquire into the state of the Royal Malaysia Police (hereinafter referred to as "the Force") and to make recommendations for its reform and modernisation. Such an initiative is unprecedented in the short history of independent Malaysia and we hope that it is only the beginning of a process of greater democratisation. We also wish to thank you for giving us the opportunity to submit our views on transforming the Force to make it democratic in its culture and ethos and more efficient and effective in its service delivery.

Continuing participation by civil society in the planning, formulation, implementation, monitoring and evaluation of public policies, projects and plans is the essence of democracy, which has been misunderstood as being limited to only periodic participation in elections to choose our legislators. Consistent community involvement will contribute to more efficient allocation and utilisation of resources; the elimination of corruption, abuse of power and waste; and increased productivity in service delivery.

The Royal Commission's terms of reference are:

- To inquire into the role and responsibilities of the police force in enforcing national laws.
- To inquire into the organisational structure and deployment of hu-



man resources in the police force.

- To inquire into human resources development, including training and facilities, in the police force.
- To inquire into police work ethics and procedures.
- To inquire into police duties in relation to human rights and women's issues.
- To make recommendations for the enhancement and modernisation of the police force.

These terms are wide enough to enable the Royal Commission to make recommendations for the restructuring of the Force into a modern one rooted in democratic ideals, which can be a model for other developing nations. We urge the Royal Commission to seize this historic opportunity and make a lasting contribution to improving our criminal justice system of which the Force is an important component. We submit that the focus of the inquiry and recommendations should be on the creation of democratic police governance with legal mechanisms for efficient and effective policing, accountability, protection of human rights, prevention of corruption and abuse of power, and public participation.

In this context the editorial comments of the *New Straits Times*, 11 August 2004, seem apposite:

"The next six months will ... provide the commission with the opportunity to address the defects in police structures, practices and procedures and to initiate a comprehensive set of reforms rather than limit itself to issues raised in its preliminary report. It should aim to set the highest standards possible for the Malaysian Police... While the commission needs to suggest ways to provide the police force with the skills and resources they need to prevent and solve crime effectively, it should also address the need to inculcate a strong sense of accountability to ethical standards... The police have to reaffirm their role as the protectors of the public and the defenders of their rights."

## 2 The Royal Malaysia Police: Origins, History and Culture

The Force, like many other national institutions, is essentially the creation of the former colonial government, a legacy handed down to us by the British at independence. Its primary role was to protect and entrench British colonial rule. After the introduction of the First Charter of Justice in 1807 by the British, the first police contingent was formed in Penang. In 1872, with the coming into effect of the Police Force Ordinance, a police force for the Straits Settlements — Penang, Malacca, and Singapore — was created.

In 1896, with the formation of the Federated Malay States, another police force was created which was "subject to the orders and control of the Chief Secretary". In 1952, the Federation of Malaya Police Force was established which was "subject to the orders and directions of the High Commissioner". In 1963, the Royal Malaysia Police was established. It is under the command of the Inspector-General of Police (IGP) who is "responsible to the Minister of Home Affairs for the control and direction of the Force". Thus the colonial tradition continues in independent and democratic Malaysia, with the Force not enjoying any autonomy but being directly controlled by the Executive.

In the years preceding the Second World War, the Special Branch was created to gather intelligence on those involved in the anti-colonial struggle, including nationalists, communists, socialists and Islamic

politicians. Its agents penetrated trade unions, schools, and religious institutions, and spied on those who opposed colonial rule and wanted independence. On the declaration of emergency by the British in 1948, the British colonial government, relying on the reports of Special Branch officers, detained thousands of freedom fighters. Great nationalists like Dr. Burhanuddin and Datuk Boestaman who made immense contributions to our independence struggle were victims of the colonial Special Branch.

The defining culture of the colonial police force was its loyalty to the British colonial government. It was subordinate to the colonial Executive and was used as an instrument to defend an anti-democratic political order based on "the rule by law" rather than "the rule of law". By subordinating its role to serving the interests of the colonial government, the police force did not develop a culture of democracy, respect for human rights and good governance. There were also no legally sanctioned mechanisms for public participation and for making the force accountable for its performance and abuses.

Sadly, Merdeka did not usher in major efforts to change the culture of the police force to imbibe the values of our newfound democracy. Whatever changes were made appeared to be cosmetic. The colonial tradition of being subject to the direction of the Executive remained deeply entrenched in the post-Merdeka police force, facilitated in no small measure by laws which permitted the infringement of human rights, e.g., certain provisions of the Internal Security Act 1960 (ISA), the Police Act 1967 and the Publications and Printing Presses Act.

Laws introduced to deal with the communist threat during the turbulent period of the Emergency — ostensibly as an extraordinary measure — persist long after the demise of that threat. Forty-seven years after Merdeka, they have now become "normal" laws during peacetime in our democratic country. The wide powers given to the police under

laws such as these and the absence of accountability mechanisms are the major factors for the serious erosion of professionalism in the Force. It is much easier to detain a person without trial or torture him to make a confession than to undertake a painstaking and rigorous investigation and have the offender successfully prosecuted in a court of law.

### PUBLIC PERCEPTION

Crime rates have skyrocketed over the years. Malaysia has grown from being a society which was considered relatively safe to one in which crime is an ever-present threat. To illustrate:

- In 1997, there were 16,919 cases of violent crimes recorded by the Malaysian police. By 2002, this had increased to 20,843 — an increase of 23% in just 5 years.
- Commercial crime had shot up by 52% during the same period<sup>1</sup>. In fact, commercial crime has tripled over the last decade, according to Bukit Aman Commercial Crime Director, Datuk Hairuddin Mohamed<sup>2</sup>.
- Every hour, 7 motor vehicles are stolen.
- Every 6 hours, a rape is committed on a woman, a young girl or even a toddler.

Illegal gambling, prostitution, loan-sharking and the activities of secret society gangsters are also a plague upon modern-day Malaysian society. The reform of the Force is critical if these and similar social ills are to be curbed.

In recent years the Force has come under severe public criticism for violation of human rights, and ineffective and inefficient policing. Pub-

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<sup>1</sup> Statistics taken from the Royal Malaysia Police website. Percentage calculations by CAP.  
<sup>2</sup> *The Star*, 5 July 2004



lic confidence in the Force to maintain the rule of law and to act impartially has been seriously eroded. It has been accused of:

- Lacking in professionalism.
- Being corrupt.
- Being inefficient.
- Lacking in courtesy when dealing with the public.
- Lacking in communication and language skills.
- Intimidation when dealing with the public.
- Being ignorant and/or dismissive of human rights.
- Being prejudiced — discrimination in treatment of the public depending on the person's socio-economic status.
- Being subservient to powerful political and business interests.

A proper survey is required to assess accurately public perception of the Force. Monitoring public perception should be an ongoing process to evaluate the level of public satisfaction with the services rendered by the Force.

Before we proceed further, however, we must put on record our appreciation of the critical role that the members of the Force have fulfilled in the progress of our nation. Any criticism of the Force contained in this memorandum is made with a view to setting in place an institutional framework that would contribute to the emergence of an effective and clean police force held in high esteem by the public. We greatly value and appreciate the enormous service rendered by thousands of police personnel, especially the lowly paid policemen serving in the field, protecting our security and maintaining order, often under very difficult conditions. They have been subjected to harsh conditions, faced great dangers and borne the risk of exposure to many hazards. Many have been killed, maimed and wounded while on duty. This memorandum, while making proposals for a more efficient and effective police force for the benefit of Malaysian society at large, also pursues a better deal for the unheralded and lowly paid police personnel of the rank and file.

### 3 The Modern Role of the Police

The most important role for the Force is to protect the human rights of the people against infringement by others, and, when discharging its duties, to respect their human rights. The Force must uphold the law in a manner that has regard for the public good and rights of the individual. It must help to achieve a social order in which people are able to enjoy basic rights and freedoms.

It must be recognised that, ultimately, it is the community that confers authority on the Force, that its paymasters are the community and that, in consequence, there must be accountability to that very same community. The people must know that they are getting their money's worth of policing and for that to happen they must feel welcome to scrutinise and evaluate the conduct of the police.

Policing is one of those few services, like teaching and healthcare, which have close links with the community and its social life. As such, police policy, law and practice must be formulated and implemented with a constant focus on the interests of the community. The police force is being reformed and restructured worldwide, including in developing countries and the former communist states. The reform and restructuring is based on (a) the separation of those who authorise policing from those who do it, and (b) the transference of both functions away from government. In essence, the role of the modern police force is seen as that of a service provider, responding to the needs of the public in consultation with it.

The Force needs to evolve. Major changes need to be made to the organisation, management and operation modes of the Force as well as the underpinning legal framework. To render this transformation effective and ongoing, there have to be mechanisms built into the system to guarantee transparency and accountability. Public participation and feedback on the delivery of the policing service must also be part of the reformed police set-up. It is against this backdrop that we make the recommendations contained in this memorandum.

## 4 Accountability

The key issue to be addressed in the reform of the Force is that of accountability. The Force's accountability must first be manifest in its absolute submission to the law. Just as the police enforce the law, they must similarly be subject to it but rather be above corruption of the law. They should adhere, and *be seen to adhere*, strictly to the law they espouse. The key aspects of accountability, with regard to the police, are:

- **Democratic accountability** — Where elected representatives negotiate with the police on the sort of policing the community wishes for, and hold the police responsible for delivering this.
- **Transparency** — The existence of a system where the community can enquire and be kept informed about police activities as well as the reasons behind any activity.
- **Legal accountability** — In addition to enforcing the law, the police, themselves, must be subject to the law and held accountable for misuse of their powers and position.
- **Oversight of covert policing** — Because of its clandestine nature, covert policing is particularly susceptible to abuse and misuse, and is therefore most in need of built-in accountability and oversight structures.
- **Financial accountability** — To ensure that value-for-money police services are delivered.



## DEMOCRATIC ACCOUNTABILITY

The Force today is organised in a hierarchical system linked directly to the Executive. There is a Police Force Commission, pursuant to Article 140 of the Federal Constitution, which is responsible for the appointment, promotion, transfer etc. of members of the Force. Under our original Constitution, the Police Force Commission was relatively independent and autonomous. Its chairman was the chairman or deputy chairman of the Public Services Commission. It had one legally qualified member appointed by the Yang di Pertuan Agong after consulting the Chief Justice, and two to four other members appointed by him at his discretion but after considering the advice of the Minister responsible for the police.

In 1960 the Constitution was amended to bring the Police Force Commission explicitly under the direct control of the Executive. It now provides for the Minister responsible for the Force, i.e. the Minister of Home Affairs, to be the chairman. The Secretary General of his Ministry and the IGP are members of the Police Force Commission. Under the Police Act, 1967, the IGP is responsible to the Minister "for the control and direction of the Force". The IGP and his deputy are appointed by the Yang di Pertuan Agong on the recommendation of the Police Force Commission but before doing so he "shall consider the advice of the Prime Minister". This constitutional amendment opened the door wider for undue Executive influence in the policing functions and operations of the Force.

The public have not been able to hold the police accountable through their democratically elected representatives, as should happen in a democratic society. There are no legal requirements for the Force to submit to Parliament reports on its strategic policing policies, priorities, plans, performance indicators and evaluation of performance. Thus, there is no parliamentary oversight of the Force's activities, performance and financial expenditure.

There is also no channel for public participation. By and large, the Force operates without reference to the very people it serves. Inclusion of public input is probably the most crucial change that needs to be brought about in policing. This would require a legal framework that mandates the Force to seek public input and feedback on policing. A hassle-free mechanism for dealing quickly and effectively with public complaints against members of the Force is badly needed.

The current Police Act does much to contribute to the lack of accountability in the Force. It is, in essence, a continuation of the legislation governing policing during the colonial period. Thus, it does not reflect the spirit of the times and is inadequate to deal with today's policing challenges. Even the subsequent amendments made to the Act serve to frustrate rather than promote the democratic aspirations of our society. Therefore, it must be replaced with one based on democratic values to promote good governance, public accountability and transparency.

## DEMOCRATIC ACCOUNTABILITY Our Recommendations

### Tripartite arrangement for policing

- We believe that police autonomy can be achieved through a tripartite system whereby the Minister of Home Affairs, a Policing Board and the IGP share responsibilities. Such an arrangement would allay the concerns of many that the police are subject to political dictates. The police should be, and should be seen to be, impartial servants of the community rather than of the political executive of the day.
- The Minister should set principles and broad overall objectives for policing, the Board should set mid-term objectives and priorities, and the police should develop the short-term tactical plans for delivery.



ering the objectives. The Board will be an institution of central importance, setting the objectives for policing, monitoring police performance, initiating inquiries as necessary and exercising real authority over the police. We, therefore, recommend that a Policing Board be established.

#### **Functions of the Policing Board**

- The function of the Board is to secure the maintenance of an efficient and effective police force. It must hold the IGP and the Force publicly to account. It should be empowered and equipped to scrutinise the performance of the Force effectively.
- The Board should set objectives, priorities and performance indicators for policing over a 3- to 5-year period, taking into account any long-term objectives and principles set by the Minister. It should then adopt a 3-5 year strategy, prepared by the IGP through a process of consultation with the Board and civil society.
- The Board should be responsible for adopting an annual National Policing Plan, developed by the IGP through a process of consultation with the Board, which should reflect the objectives and priorities set by the Board as well as the 3-5-year strategy adopted by it. The annual National Policing Plan must be published and a copy sent to the Minister.

◦ The Board should monitor police performance against the National Policing Plan and the 3-5-year strategy. It should watch crime trends and patterns as well as police performance in public order situations. It should assess public satisfaction with the police service and the patterns and trends in public complaints against the police

◦ After the end of each financial year, the Board must issue an annual Policing Report which must include an assessment of the

extent to which the annual National Policing Plan has been achieved. This Policing Report shall rely on information obtained from the annual report on policing activities submitted to the Board by the IGP (see below). The Board shall cause the annual Policing Report to be published and a copy sent to the Minister.

◦ The Board shall be responsible for the appointment of the IGP and all senior police officers, subject to the approval of the Minister. The Board, subject to the approval of the Minister, should have the power to call upon the IGP and senior police officers to retire in the interest of efficiency and effectiveness. Before exercising such power, the Board must give the officer concerned the opportunity to make representations, and take into account any representation so made.

◦ The Board should coordinate its work closely with other agencies whose work touches on public safety, including education, environment, economic development, housing and health authorities, as well as social services, youth services and the probation service, and with appropriate non-governmental organisations.

◦ The Board should be responsible for negotiating the annual policing budget with the Minister. It should then allocate the police service budget to the IGP and monitor police performance against the budget.

#### **Membership of the Policing Board**

◦ It is absolutely important to appoint people of high calibre and integrity to be members of the Board. To be effective, it must command respect and credibility and must have real power and responsibility. Appointment to the Board should not be for political services rendered. The majority of the Board members should be appointed by the Dewan Rakyat from its members, reflecting the strength of the parties in the Dewan. None of them should hold any ministerial



#### office in the Executive.

◦ The remaining members should be selected from a range of different fields — including business, trade unions, voluntary organisations, community groups and the legal profession — with the aim of finding a group of individual representatives of the community as a whole. They must have expertise to set policing priorities and to probe and scrutinise different areas of police performance, from management of resources to the safeguarding of human rights. They should be appointed by the Minister.

#### Functions of the Minister

◦ The Minister should by order set the principles and the long-term objectives for policing. Before making the order he should consult the Board and the IGP.

◦ The Minister must lay before Parliament the annual National Policing Plan adopted by the Board and its annual Policing Report, and cause them to be published in an appropriate manner.

◦ The Minister may issue a code of practice relating to the discharge of its functions by the Board. He should lay before Parliament a copy of the code of practice and cause it to be published.

◦ The Minister may require the Board to call upon the IGP to retire in the interests of efficiency and effectiveness. The IGP must be given an opportunity to make representation to the Minister who shall consider any representation so made.

◦ The Minister may require the Board to report on matters connected with the discharge of its functions and such report should be published.

◦ The Minister shall cause a consolidated and classified abstract of the information received by him from the IGP with respect to offences, offenders, criminal proceedings and the state of crime in each of the police districts to be prepared and laid before Parliament and to be published.

◦ The Minister shall for each financial year, with the approval of the Treasury, make grants for police purposes, capital expenditure and expenditure on safeguarding national security.

◦ The Minister may make regulations as to the government, administration and conditions of service of the Force.

#### Functions and powers of the IGP

◦ The Force shall be under the direction and control of the IGP. He has operational responsibility, which means it is his right and duty to take operational decisions. Neither the Minister nor the Board should have the right to direct him as to how to conduct an operation. However, he should be accountable for his actions under the law. Also the Board should have the power to require him to report on any issue pertaining to the performance of his functions or those of the Force.

◦ The IGP shall prepare the 3-5-year strategy and the annual National Policing Plan and submit them to the Board for adoption. In preparing the strategy and the Plan he must take into consideration the principles and long-term objectives set by the Minister, the objectives, priorities and performance indicators set by the Board, and the views of the public.

◦ The IGP shall submit to the Board an annual report on the policing for the year and any other report required by the Board. He must also submit to the Minister periodically criminal statistics in respect of



offences, offenders, criminal proceedings and the state of crime in each police district for that year.

- o The IGP must make arrangements in every police district for obtaining the views of people in that area about the matters concerning policing of the district, and their cooperation with the police in preventing crime in that area.

- o The IGP must cause an annual Local Policing Plan to be prepared for each police district based on the annual National Policing Plan and the views of the community in that district. Its implementation must be monitored and its performance evaluated to ascertain if the objectives and targets have been met.

- o Appointments and promotions to any rank below that of the senior officers shall be made by the IGP in accordance with the regulations made by the Minister.

#### **District Policing Partnership Councils**

- o The Board will be the central institution for democratic accountability. However, policing should be decentralised and there should be constant dialogue at local levels between the police and the community.

- o There should be a District Policing Partnership Council in every police district. The majority of the members of the Council will come from the members of the State Assembly based on the party strength in the Assembly. The independent members will be appointed by the Board and should be broadly representative of the district in terms of race, religion, gender, age and cultural background.

- o The function of the Councils should be advisory, explanatory and consultative. They represent the consumers, voice the concerns of

the citizens and monitor the performance of the police in their districts. There should be monthly meetings between the officers in charge of the police districts and the Councils. During the meetings the police should present reports on the policing in the districts, and the Councils should convey to the police the community concerns and priorities. The Councils can become forums for promoting a partnership of community and police in the delivery of community safety.

- o The Councils should be the focus of public consultation at district level for the annual National Policing Plan as well as the annual Local Policing Plan and, therefore, the police should consult them. The views expressed by the Councils should be taken fully into account by the IGP and the Board in the formulation of policing plans and strategies at the central level.

- o The Federal Government should provide the Councils with adequate secretarial and support services.

- o The Board should maintain regular contact with the Councils through periodic meetings of chairpersons, annual conferences, seminars, training courses and by including them in the circulation of information.

#### **TRANSPARENCY**

The public need to know what the police are doing and why. This is important if the police are to command public confidence and active cooperation. Policing here is shrouded in secrecy. Secretive policing arrangements run counter not only to the principles of a democratic society but also to the achievement of effective policing. There needs to be a culture of openness and transparency in the police service as a whole, in which police officers as a matter of instinct disseminate information about their work.



This process of transparency and openness must start with the system. The police should regularly volunteer information to the public. There must be a routine by which the police publish reports and statistics. The police must welcome each and every enquiry into their goals, operations and results. Complaints against the police must also be received openly.

### TRANSPARENCY Our Recommendations

#### Public meetings

Our earlier recommendations to publish annual policing plans and reports and to promote a partnership of police and community in the delivery of community safety will go a long way in achieving transparency in policing. In addition to these measures we also recommend that the Board should meet in public once a month, to receive a report from the IGP. The meetings should be held in different parts of the country so as to give the Board a visible profile.

#### District Police Meetings

The District Policing Partnership Council should also meet in public once a month and members of the public should be given the opportunity to address questions to the Council and to the police.

#### Upgrade Website

The website of the Force should be upgraded to carry more policing information, e.g.:

- National policing strategy for the relevant year, including law enforcement priority areas, training strategy, key policies and changes in police procedure.
- Specify performance indicators for purposes of monitoring.
- The issue, update and/or revision of Police Codes of Conduct.
- Information/statistics to support its policing strategy for the rel-

evant period.

- The annual Policing Report reviewing performance against set objectives, priorities, and targets; containing policing statistics and an analysis of public complaints and the action taken.

### LEGAL ACCOUNTABILITY

The police are tasked to uphold and enforce the law, but, like ordinary citizens, they must at all times act within it. Police officers should have sound knowledge of the law and of their powers under it. They need sufficient discretion to do their jobs well but they need at the same time to be monitored in their adherence to the law, and to have any errors rectified and abuses punished. It is important for the credibility of the police in the communities they serve that all this should not only be the case but that it should also be seen to be the case.

There should, in every instance, be systems in place to monitor and, where justified, act upon complaints against police personnel. Most modern service industries pride themselves on dealing quickly and effectively with complaints about customer service. Likewise, service complaints about policing should be dealt with speedily and effectively at a local level as expeditiously as possible. The incidence of complaints should be used by management at all levels as an indicator of public satisfaction or otherwise with the policing service being provided, of the need to make changes and of training requirements.



## LEGAL ACCOUNTABILITY Our Recommendations

### Training

Police personnel should have sufficient and regular training on law and human rights.

### Legislation

The powers and limits of police use of force must be spelt out clearly in the legislation governing the Force.

### Complaints Commission

We recommend that a body corporate be set up to be known as the Independent Police Complaints Commission (hereafter referred to as "the Commission"). The role, powers and functions of the Commission should be governed by an Act of Parliament. It should be headed by an independent chairman appointed by the Yang di Pertuan Agong – preferably a retired judge of good standing. The Minister, with the approval of Parliament, should select the remaining members of the Commission. These members should not be in the Force or have had any professional connection with it in the past.

### Functions of Complaints Commission

The functions of the Commission should be:

- (1) To secure the maintenance by the Commission itself, the Board and the IGP of suitable arrangements with respect to:
  - The handling of complaints made about the conduct of persons serving with the Force.
  - The recording of matters from which it appears that there may have been conduct by persons serving with the Force which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings.
  - The manner in which such complaints or matters are investigated or otherwise handled and dealt with, including the need to keep the

complainant informed of the progress of the investigation and the decision.

- (2) To keep under review all arrangements maintained with respect to those matters.
- (3) To secure public confidence in the arrangements.
- (4) To monitor and coordinate the operations of the internal accountability mechanisms of the Force.
- (5) To conduct major investigations, whether in response to public complaints or as a result of its own monitoring activities.
- (6) To engage in joint operations with other law enforcement agencies, particularly in operations directed against organised crime and corruption.
- (7) To make recommendations and give advice for the modification of the arrangements and also of police practice.
- (8) To submit to the Minister an annual report of its activities, and, from time to time, other reports on matters it deems important. The Minister must lay before Parliament the annual report and, if and to the extent that he considers appropriate to do so, any other report. Copies of the reports must be supplied to the Board and the IGP.

## COVERT POLICING

The Special Branch Department (SB) is the intelligence wing of the Force. Its function, as stated in the website of the Force, is to gather security intelligence in connection with local and external threats, subversive activities, extremist groups and individuals, as well as sabotage and spying activities. The SB, after analysing the intelligence, distributes it, and gives advice, to departments within and outside the Force as well as to certain organisations.

The SB controls and decides on the scope and limits of our basic human rights. If you want to organise a public talk or a peaceful demonstration, or to publish a newspaper, or to set up an organisation, you



must get approval from the SB. Appointments to all important public posts must get clearance from it. It is an enormously powerful institution and yet there are no laws defining the parameters of its powers, and providing independent mechanisms for overseeing its activities and making it accountable. Many perceive the SB to be above the law.

The SB also operates in a secret and clandestine manner. Many of its activities infringe on the freedoms of our people. It intercepts communications, conducts surveillance of individuals and infiltrates political parties, trade unions, educational institutions and other legal organisations. Even in mosques, it plants agents to report on what the *khatib* says in his *khutbah*. There are no legal mechanisms to ensure that, in carrying out these activities in violation of our human rights, it does not exceed the bounds of the law. In a democracy, such transgressions to our human rights may be permitted, subject to stringent conditions, only under exceptional circumstances, e.g., during wars and emergencies, to suppress militant activities that threaten the life of the nation and to combat organised crime.

The SB has come under strong criticism from some quarters for abusing its powers, showing partiality and acting under dictation from the Executive. A number of highly distinguished ex-ISA detainees have published books exposing the SB's machinations and the hollowness of its claim that they posed a threat to national security. They also reveal the illegal methods, including torture, used by its officers to extract information and confessions from the detainees.

Some of the highly controversial arrests and detentions that raise serious questions on the bona fides of the SB are:

- The detention of A. Samad Ismail, a patriot and Malaysia's most famous journalist, and two Federal Government Ministers, Datuk Abdullah Majid and Datuk Abdullah Ahmad, in 1974, as a result of the power struggle in UMNO then. They were coaxed by the SB to make

confessions on TV with the promise of an early release from detention. Two of them retracted their confessions when the SB did not keep to its promise.

Some well-informed political analysts believe that Singapore engineered the detention of Samad, who was then very close to our Government. It feared that left-wing nationalists would take over the leadership of UMNO. Samad was detained based on confessions by Singapore journalists detained under their ISA who falsely implicated him in pro-communist activities.

- The detention of Dr. Syed Husin Ali and Dr. Kassim Ahmad, leaders of a legal political party, on the totally baseless ground that they were pro-communists.

- In the case of Mohamad Ezam Mohamad Noor and five others, the Federal Court held that the exercise of powers of detention by the police was mala fide and improper.

- The detention of Abdul Ghani Harom and Gobalakrishnan a/l Nagappan which the High Court at Shah Alam held "was mala fide by reason of the fact that the Inspector General and the Director of the Special Branch had prematurely made up their minds to detain the two applicants for a period in excess of the permissible 30 days".

- The arrest and detention of Nasharuddin Nasir whom the SB alleged was an Islamic militant. He was released by the High Court at Shah Alam because there were no material particulars to indicate that the arresting officer had sufficient reasons to believe that the applicant had acted, or was likely to act, in a manner prejudicial to the security of Malaysia. SB officers, immediately upon his release, rearrested him.

There are hundreds, maybe thousands, of such cases of abuse of power by the SB. Only an enquiry by an independent commission, with powers like the Truth Commission in South Africa, can unearth the extent of the abuses.

The Human Rights Commission of Malaysia (SUHAKAM), in its "Re-



view of the Internal Security Act 1960", found that there is merit in the concerns expressed by human rights groups that "citizens and non-citizens have been subjected to arbitrary detention and inhuman or degrading treatment whilst in detention". It identified three root causes, namely:

- There is no accountability for the exercise of the power by the relevant detaining authority to an independent and impartial body.
- There are inadequate safeguards in the law to check possible abuse of the power to detain without trial.
- Detainees have not been conferred the basic fundamental rights that are contained within the framework of the Constitution, which include the fundamental right to be informed of grounds of arrest and the right to be produced promptly before a magistrate.

#### COVERT POLICING

##### Our Recommendations

- The government should table a white paper on the National Security Policy in Parliament for debate. Civil society groups and individuals must be given an opportunity to give their inputs to the policy. There has been no meaningful discussion in Parliament, the media or by civil society organisations on the threats to our national security and the means to deal with them.

The maintenance and promotion of national security must not be left to the Executive alone but must be the concern of all. National security must be pursued in compliance with the law, including international law.

- Create two intelligence agencies, one focusing on domestic intelligence and the other on foreign intelligence. Federal legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service. There must be parliamentary and judicial oversight of

the security services in a manner determined by law.

With the creation of these agencies the intelligence work of the Force would be limited to mainly collecting criminal intelligence. Three pieces of British legislation — the Security Service Act 1989, the Intelligence Service Act 1994, and the Regulation of Investigatory Powers Act 2000 — are useful models.

- The Federal Constitution should be amended to provide that the security services remain politically neutral. The South African Constitution provides a useful model. It reads:

"Neither the security services, nor any of their members, may in the performance of their functions

— prejudice a political party interest that is legitimate in terms of the Constitution.

— further, in a partisan manner, any interest of a political party."

- The Royal Commission should invite ISA detainees who claim that they have been victimised and unjustly treated to make representations to the Commission. The Commission should review their claims and, if such claims are found to be justified, the Commission:

(i) should make recommendations for the reform of the SB to prevent future abuses, and

(ii) should recommend that the Government set up a mechanism to award appropriate compensation to the victims.

#### FINANCIAL ACCOUNTABILITY

The Federal Government allocation for internal security, which presumably consists mainly of policing activities, is RM5.130 billion<sup>2</sup> for the year 2005. This represents a 45% increase over the internal security spending for the year 2001, just four years ago.

<sup>2</sup> *Economic Report 2004/2005*, published by the Malaysian Treasury



The size of this budget and the importance of getting good value for public money call for good management within the police service and close scrutiny by those responsible for holding the police accountable.

There needs to be an accounting made to the Malaysian public of how the billions paid each year for policing are expended, what areas are prioritised for this spending and how commensurate the results are with the monetary input.

### **FINANCIAL ACCOUNTABILITY** **Our Recommendations**

#### **Budgeting**

Include the national financial budget for policing in the proposed National Policing Plan. The budget should be arrived at hierarchically, with all levels of police throughout the nation submitting their budgetary requirements for approval and inclusion in the budget.

#### **Budgetary control**

The budget, once approved by Parliament, will be controlled exclusively by the Policing Board. This measure is crucial, as it will enhance the independence of the Board.

#### **Review and monitoring**

The annual Policing Report should include an annual financial report — including sectoral analyses. This report should mirror, as far as relevant and practicable, the requirements of private sector accounting with regard to disclosures. Consequently, disclosures should include the remuneration bands of all senior police officers and extraordinary and significant expenditures. Significant departures from budgetary projections should also be explained. Naturally, the report must be made public.

#### **Audit**

Both the budget and the annual financial report must be audited. An internal audit team can audit the budget — provided the team is given the autonomy and authority necessary for the job. The auditing process must necessarily include a value-for-money analysis in enhancing the "service provider" approach of the Force. The internal audit team should also monitor the expenditure — in essence, conduct an ongoing audit — of the Police Force during the course of the relevant financial year. We recommend that the external audit function remain the purview of the Auditor-General's office.

#### **Personnel**

The financial workforce of the Force must be strengthened to accommodate the above changes. Personnel competent in budgeting, financial management and auditing must staff the accounting department. Reasonably competent financial staff should also be deployed at state and district level, to ensure correct and accurate collection of source data.



## 5 Community Policing

Community policing means the police participating in the community and responding to the community's needs, and the community participating in its own policing and supporting the police. It is a police-community partnership. It is working together and mobilising all resources to promote long-term public safety rather than reacting short-term to incidents as they occur. Partnership is not only a matter of policing style but also an attitude of mind both for police officers and for the public. There needs to be a profound shift in police and community thinking on meeting personal security needs.

Community policing is not a novel idea but an accepted practice that is being successfully implemented in many countries. Even in Malaysia, there have been several attempts at police-community cooperation but without much success, e.g. the "Operasi Bersedia Berkhidmat" in 1952, "Sistem Salleh" in 1968, and "Khidmat Mesra" in 1999. These attempts failed because there was poor planning without any community input. There was also no community monitoring and evaluation of the effectiveness of local policing based on published targets and performance indicators.

### COMMUNITY POLICING Our Recommendations

#### Force's core function

Community policing should be the core function of the Force. Every neighbourhood or rural area should have a dedicated policing team with lead responsibility for policing its area. The team members should serve a minimum period of three years in the same neighbourhood or rural area. They should clearly display their names on their uniforms and, where practicable, patrol on foot.

#### Local planning of policing

Neighbourhood or rural policing teams should be empowered to determine their own local priorities and set their own objectives, within the overall annual National Policing Plan and the annual Local Policing Plan and in consultation with community representatives.

#### Crime-solving approach

The Force should, both at a service-wide level and at patrol team level, conduct crime pattern and complaint pattern analysis to provide an information-led, problem-solving approach to policing. All police officers must be instructed in problem-solving techniques and encouraged to address the causes of problems as well as the consequences. They should be regularly appraised as to their performance.

#### Rukun Tetangga

The Rukun Tetangga programme should be reintroduced nationwide. However, the programme should first be modified to eliminate weaknesses identified from past experiences.



## 6 Public Order Policing

Public order policing by the Force has come in for bitter criticism from civil society organisations. Arbitrary refusal or cancellation by the police of permits for holding public meetings and peaceful demonstrations has been widely condemned. No sound reasons are given for the refusal or cancellation. It appears that the police officer empowered to issue permits does not exercise his own discretion but acts on dictation from the Minister.

The source of the problem is the wide powers given to the Police under Sections 27 and 27A of the Police Act to regulate assemblies, meetings and processions. The Act does not specify clear and unambiguous guidelines on how the power is to be exercised although abuse of such power would lead to serious infringements of our fundamental human rights and constitutionally guaranteed freedoms.

The abuse of powers by the approving authority forced the people to hold meetings and peaceful demonstrations without obtaining police permits. In response, the government of the day amended the Act in 1988 to make it more repressive. After the amendment, even an innocent bystander found at a public meeting without a police permit could be found guilty of an offence.

Anyone committing an offence is liable to a mandatory fine of between RM2000 and RM10000, and a mandatory jail term not exceeding one year. Under the previous law there was no mandatory minimum fine

or mandatory jail term. The magistrate then had the discretion to impose a fine not exceeding RM500 or a jail term not exceeding 6 months or both. He could even caution and discharge, or bind over, the offender without imposing the prescribed punishment. Now, a person found guilty under this section would automatically be disqualified from contesting the elections to, and being a member of, Parliament or any State Assembly.

Public order policing here is too heavy-handed, over-reactive, intimidating and threatening. It is a sure way to antagonise and alienate the public. At every public meeting, big or small, the Federal Reserve Unit (FRU), armed police and Special Branch agents are present even if there is no threat to national security or public order. The spectacle of FRU or Public Order Reserve Unit (PORU) personnel in riot gear and armoured vehicles is highly intimidating. The use of violent methods — using toxic tear gas, water cannons, and baton charging — to disperse peaceful assemblies would only breed public hatred for the police. The SUHAKAM report on “Freedom of Assembly” states that “the omnipresence of the Police, FRU trucks, water cannons, and the use of dogs at assemblies tend to create a hostile environment.”<sup>4</sup>

In exercising his discretion under Sections 27 and 27A of the Police Act, the police officer must understand that the paramount consideration in deciding on an application for a public meeting is upholding the human rights of the people. Public order policing, like other police services, should be done in partnership with the community. Police officers who are working closely with communities will be in a better position to ensure that public meetings, parades, demonstrations or other public events proceed smoothly, without any incidents that can threaten public order and security.

<sup>4</sup> Para 2.3 of the “Freedom of Assembly” report, SUHAKAM, 24 July 2001

## **PUBLIC ORDER POLICING Our Recommendations**

### **Implement SUHAKAM's recommendations**

The recommendations of SUHAKAM in its report on "Freedom of Assembly" dated 24 July 2001 should be implemented.

### **Public order events**

The organisers and the police should work together to plan the policing of public order events. In the case of a parade, this should involve the representatives of the neighbourhoods involved in the parade route. The same general principles could apply to static public order events, such as rallies, concerts and sporting occasions.

### **Event marshals**

It should be a condition for the approval of a parade or demonstrations that the organisers should provide their own event marshals. We also recommend that the police introduce short courses on marshalling public order events.

### **Minimise confrontation**

The main aim of the joint planning of parades should be to minimise the opportunities for confrontation to occur. It should include mediation as necessary before the event, and mechanisms for de-escalating and containing problems if they occur during the event. Ideally the organisers and their marshals should carry out the policing of a parade with the police providing assistance such as physical barriers and traffic control.

### **Police intervention**

The police should, however, take control of matters if the marshals are unable to maintain the peace, or if the parade participants fail to abide by the terms of the parade licence. If police intervention is required, there should be a graduated response to developing diffi-

culties, in which the police should have a range of options at their disposal — from verbal persuasion to various forms of coercive force. They should avoid deploying equipment or tactics that are disproportionate to the threat they face.

### **Monitoring by Board**

The Board should actively monitor police performance in public order situations. They should, if necessary, seek reports from the IGP and follow up on them.



## 7 Human Rights

The fundamental purpose of policing should be the protection and vindication of the human rights of all. The police must uphold the laws that safeguard the lives of citizens. There should be no conflict between human rights and policing.

Police powers to limit rights and freedom, e.g. by arresting people, must be exercised with great care and strictly within the law. How such powers are exercised determines the difference not only between good and bad policing but also between effective and ineffective policing. Police abuse of powers, e.g. by assaulting a suspect in a lock-up, unjustified stop and search, disrupting peaceful meetings using excessive force, will alienate the people whose support is needed for effective policing.

The Royal Commission has already received reports of police abuse of power and violation of human rights from several groups. Some of the more serious abuses and violations are:

- The use of the Internal Security Act to arrest and detain people who pose no threat to national security.
- The re-arrest of defendants immediately after their acquittal by the courts.
- Physical abuse of detainees in police lock-ups, in some cases resulting in death.

- The restrictions imposed on public assemblies and peaceful demonstrations.
- Physical abuse of participants in peaceful demonstrations.

Police abuses of power are due to a lack of appreciation by the police that upholding human rights will promote effective policing. The absence of a legal mechanism for dealing with public complaints against the police quickly and effectively encourages unlawful police behaviour. Laws such as the Internal Security Act, which gives wide powers of arrest and detention to the police without making them accountable, are also responsible for police abuses.

### HUMAN RIGHTS Our Recommendations

#### Repeal ISA

We recommend that the Internal Security Act be repealed. This recommendation coincides with the recommendation made by SUHAKAM in its "Review of the Internal Security Act 1960". The review states that (underline emphasis inserted by CAP):

"At the heart of the recommendation is the repeal of the ISA. In place of the ISA, this report recommends that a new comprehensive legislation that takes a tough stand on threats to national security (including terrorism) but which at the same time is in line with human rights principles be enacted. This new legislation would have the following characteristics:

- a. The legislation contains a schedule which prescribes a list of specific offences which relate to threats to national security (including terrorist offences);
- b. Since the legislation relates to issues of national security, the criminal procedure, inquiry and facts relating to the cases arising under the legislation should be dealt with by learned and experienced Judges and therefore the designated offences contained in



the Schedule should be wholly dealt with and triable in the High Court's

#### **Human rights culture**

Serious efforts must be taken to create a policing culture in the Force rooted in upholding human rights and serving the community. All new and existing police officers must make a declaration expressing an explicit commitment to upholding human rights.

#### **Code of ethics**

The existing code of ethics should be replaced by a new one on all aspects of policing, including covert law enforcement techniques, based on human rights principles.

#### **Training**

All police officers should be trained in the fundamental principles and standards of human rights and the practical implications for policing. Human rights dimension should be integrated into every module of police training.

#### **Appraisal**

Awareness of human rights issues and respect for human rights in the performance of duty should be an important element in the appraisal of individuals in the Force.

#### **Legal expertise**

A lawyer with specific expertise in the field of human rights should be appointed to the staff of the Force's legal services and he/she should be consulted about proposed police operations that raise human rights considerations.

#### **Monitoring**

The Board should monitor the performance of the Force as a whole in

respect of human rights, as in other respects.

#### **Identification of police personnel**

Police officers must always identify themselves when dealing with a member of the public and must give him/her the opportunity to record their names and serial numbers if necessary.

#### **Public awareness of rules**

Rules with regard to arrest, detention and interrogation must be made available to the public and strictly complied with by the police. Needless to say, torture should be strictly and expressly forbidden.

#### **Communication of rights**

A person arrested must be informed of his rights immediately. Rules with regard to access of family and lawyers must be made clear to all detainees upon arrest. Under no circumstance should information with regard to the location of a detainee be withheld from his family or lawyer. Family and lawyers should be informed whenever a detainee is relocated.

#### **Extension of remand period**

There must be a proper enquiry by a magistrate before extension of a remand period is granted.

#### **Separation of investigation and detention**

The authority conducting investigation should be separate and independent from the detention authority. All interrogations should be carried out in the presence of a lawyer.

#### **Confessions**

Confessions should be made only to a magistrate. Confessions made to a police officer should not be admitted as evidence.

<sup>5</sup> Para 5.1, Executive Summary, "Review of the Internal Security Act 1960", SUHAKAM, 2003.



## 8 Corruption

It is indisputable that corruption is a serious problem in the Force. The Royal Commission's deputy chairman, a former IGP, recently admitted that most of the 400 public complaints received "are on corruption ... and the lack of urgency in investigating police reports"<sup>6</sup>. The Royal Commission's interim report has highlighted that corruption exists at every level of the Force.

Some of the sources of police corruption are:

- Traffic offenders.
- Operators of prostitution centres.
- Operators of discotheques, karaoke lounges and nightspots where use of drugs is prevalent.
- Lawyers and their touts.
- Motor vehicle workshop owners and their touts.
- Illegal bookies.
- The drug mafia.
- Smugglers.
- Operators of illegal betting.
- Undocumented workers.
- Human traffickers.

The interim report identifying corruption at every level of the Force has come in for unsubstantiated criticism from some quarters. These crit-

<sup>6</sup> *New Straits Times*, 11 May 2004

ics, a small minority, are either ignorant or have their own private agenda. They would prefer a corrupt police force with opaque systems, procedures and processes to one that is clean, open and transparent.

It is probably true that there are only a few "rotten apples" that bring a bad name to the Force. These "rotten apples" must be removed, especially if they occupy positions of power and influence. Otherwise the rot will spread to the entire Force. As the Malay proverb says: "A fish begins to rot from its head".

A criticism of the Force is a criticism of the institution and not its members. We greatly value and appreciate the enormous service rendered by thousands of ordinary lowly paid police personnel in protecting our security and maintaining order, sometimes under very difficult conditions. Their plight should be addressed urgently and their terms of employment improved substantially.

Corruption thrives in the Force because of the secrecy surrounding policing, the lack of accountability mechanisms, and an ineffective anti-corruption agency. The recommendations we have made in this memorandum, if accepted and implemented, will go a long way towards checking corrupt practices in the Force. But that is not enough. Corruption is not limited to the Force but is pervasive in the public service, including the political elite, as well as in large companies. Therefore, a well-planned and determined national effort, involving both the private and public sectors, is needed to wipe out corruption.

Organised crime retains a significant presence in the Malaysian crime scenario. Prostitution, drug smuggling and peddling and protection rackets are just some examples where organised crime is involved. Loan shark syndicates also bear the hallmarks of organised crime. In short, organised crime has pervaded the very fabric of our society. Malaysian society is aware of its presence and yet exhibits apathy and resignation

in its face. Apart from the fabled strength and ruthlessness of organised crime syndicates, one of the reasons for the apathy is that there is a perception that organised crime has close links with the Force, thus accounting for its relatively unhindered operations.

## **CORRUPTION**

### **Our Recommendations**

#### **Anti-Corruption Agency (ACA)**

Reform the ACA and its legal framework so that it is free of Executive influence and under Parliamentary oversight. The law must provide for adequate and effective accountability mechanisms and an independent tribunal for dealing with public complaints.

#### **Pro-active investigation by the Royal Commission**

We recommend that the Royal Commission follow the lead of the Royal Commission into the New South Wales Police Service in itself carrying out pro-active investigations into corruption in the Force. The New South Wales Commission is reported to have even made use of extensive physical and electronic surveillance, and public hearings at which suspect officers were examined under oath in relation to both their policing activities as well as their financial means.

We anticipate that the Royal Commission may have to apply for an extension of their tenure in order to implement this recommendation.

#### **Increase intelligence capability**

The Force should devote more resources towards increasing its intelligence capacity, especially in the area of organised criminal activities. The procurement and analysis of such intelligence must be an ongoing and coordinated activity which must be accorded top

priority. Liaison activities with the international police community must also be emphasised.

#### **Investigate causes of proliferation of organised crime**

The Force should carry out an exhaustive study of the reasons why organised crime has persisted so long in our society. Should the study uncover elements of corruption, these should be weeded out immediately from the Force.

#### **Reasonable pay**

Members of the Force, particularly from the lower ranks, should be paid salaries sufficient to meet their current needs and those of their dependents.

#### **Assets**

Require mandatory periodic declaration of assets by all police personnel to the Board and the Anti-Corruption Agency. The declarations must be scrutinised to see whether a police salary would be sufficient to support their lifestyles.



## 9 Road Safety

drivers and vehicles. Today, one accident occurs every two minutes. And these are only those that are reported.

We understand that the majority of these road accidents involves motorcyclists. The Malaysian Helmet Initiatives Program estimates that 58% of some 6,000 deaths that occurred on Malaysian roads in 2000 were a result of motorcycle-related accidents.<sup>8</sup>

We understand and appreciate the critical role that the Force plays in ensuring safety on our roads. However, the statistics available to us on road safety suggest that there is still a lot that needs to be done to reduce casualties on our roads.

In the five years from 1998 to 2002, Malaysian roads claimed an average of 16 lives a day. The government must rate road safety to be in a state of crisis when 16 people leave their homes each day not knowing that it will be the last time they will see their families.

Below are the statistics on road usage and accidents over a 16-year period from 1987 to 2002<sup>7</sup>.

Year	Vehicles	Drivers/ Riders	Accidents
1987	3,674,484	3,280,824	76,882
2002	12,021,939	9,377,870	279,641
% increase	227%	186%	264%

The first thing of note is that the number of vehicles on the road as well as the number of drivers have increased astronomically. The number of vehicles and drivers increased from over 3 million to 12 million and 9.4 million respectively. This obviously affected road safety as evidenced by the increase in road accidents. More pertinent though is that the increase in the number of accidents is far more than the increase in

<sup>7</sup> Extracted from IPJ website on 11 October 2004. Percentage calculations done by CAP.

One of the major problems in tackling the road safety problem is that land transport in Malaysia is regulated by different departments and ministries. The Economic Planning Unit, the Transport Ministry, the Housing and Local Government Ministry, the Entrepreneur Development Ministry, Puspakom as well as the Force are among some of the parties that are involved in land transport. Apart from the obvious problems like excessive bureaucracy and overlap of jurisdiction, road safety also suffers as a result of the multiplicity of agencies. There are many factors that contribute to road accidents, including faulty road structures and car design faults. Licensing and commercial transport issues also have a bearing on road safety. Such matters are dealt with by different authorities, rendering effective coordination very difficult.

Authorities have often identified "human error" as the main cause of accidents. However, there could be factors other than the human element that contribute significantly to accidents but which do not come to light due to insufficient research and investigation. We are not implying that the Force has been lax in this area, rather that not enough effort and funds have been invested in research and crash investigative procedures.

We understand that drivers with multiple offences are still allowed to drive, despite being guilty of previous offences. This is unacceptable as the persistent offender is bound to end up injuring or killing somebody

<sup>8</sup> Background to Malaysian Helmet Initiatives, website: <http://www.geocities.com/my/helmets/background.html>



on the roads unless his licence is suspended or revoked.

Other probable causes of road accidents have also to be addressed more comprehensively, including the issues of vehicle roadworthiness (both design and maintenance of vehicles) and licensing of drivers.

The critical need in dealing with our road safety crisis is planning. There must be a structure — both organisational and systemic — to facilitate long-term, strategic and coordinated planning to improve our road safety record.

### **ROAD SAFETY Our Recommendations**

#### **Land Transport Authority**

The Government should set up a Land Transport Authority (LTA) to deal with all matters related to land transport. This would facilitate easier and more expedient planning, implementation, coordination, monitoring and review of road safety matters. The Force should work closely with this department to improve road safety in the country<sup>9</sup>.

#### **Integrated Transport Policy**

The Force should support the introduction of an Integrated Transport Policy. This would give the Force a plan towards improving our road safety record.

#### **Improve efficiency of Kejora system**

The enforcement of the Kejora system of demerit points must be improved to ensure that multiple road safety offenders are kept off the road.

#### **Extend crash investigative procedures**

We understand and appreciate that some initiative has been taken

<sup>9</sup> A number of the recommendations on road safety included here have already been proposed to the Transport Ministry.

in the area of crash investigations. However, these efforts need to be increased drastically to make a difference. Laying the blame for most accidents on "human error" is too convenient. More investigation has to be done on just how much other elements factor into road accidents, such as vehicle and road designs.

#### **Recall code**

A Vehicle Recall Code should be put in place and enforced. A database containing information about recalls should also be made available to consumers. The government should also make it compulsory for car manufacturers to report all consumer complaints regarding their vehicles to the LTA (recommended above) and to the traffic division of the Force.

#### **Road Safety Institute**

A department such as a Road Safety Institute should be set up to deal with issues of road safety, including developing the Vehicle Recall Code proposed above — i.e. a system of detecting necessary vehicle recall situations and implementing such a recall.

#### **Increase enforcement operations**

Enforcement of traffic rules needs to be more frequent and regular. Some of the areas in which enforcement can be improved are:

- Drunk driving.
- Illegal racing.
- Carrying more than one pillion rider, especially where children are involved.
- Riding motorcycles without wearing crash helmets, especially in rural areas.
- Underaged riding of motorcycles, also prevalent in rural areas.
- Using a mobile phone without a hands-free kit while driving.

#### **Increase visibility of traffic police**

Traffic police need to increase their visibility to serve as a passive deterrent to reckless drivers.



## 10 Training, Education and Research

We believe that training of all police officers based on the recommended reforms is the key to the transformation of the Force into a modern, democratic, efficient and effective police force. Reform of policies and laws will count for very little if the content and spirit of such reform are not transmitted throughout the ranks of the Force. This can be most effectively achieved through a well-structured and comprehensive training programme.

Commercial fraud is a growing global menace. Not only is Malaysia facing the challenge of local commercial crooks, there is also transborder crime to contend with. Fraud associated with electronic transactions, e.g. in the area of Internet commerce and automated teller machines, is also a fast-growing crime phenomenon. The statistics tell the bleak story:

Commercial Crime	No. of cases reported	Amount involved (RM)
- 1994 v. 2003 <sup>10</sup>		
1994	4,229	154 mil
2003	11,714	570 mil
Percentage increase	177%	270%

There is also an urgent need for more research to be done by, or on behalf of, the Force. This research will aid the Force in developing more

<sup>10</sup> Statistics taken from the Royal Malaysia Police website. Percentage calculations done by CAP.

organised and focused intelligence and in developing vital databanks on criminal activities.

One area which the Force should research is the impact of cultural and environmental factors on the incidence of crime in Malaysia. Examples are the impact of violent or horror movies or the influence certain living conditions have on the likelihood of a person to commit crime. These areas are ostensibly not within the jurisdiction of the police, but the Force should forward the results of its study to the relevant authority. This is because environment and culture are proven to be among the factors that affect the predilection of one towards or against crime. The Force's input would be invaluable.

### TRAINING, EDUCATION AND RESEARCH Our Recommendations

#### Enhance reform through training

A training, education and development strategy should be put in place, both for recruit training and for in-house training, which is linked to the proposed reforms and to the objectives and priorities set out in the policing plans. These plans should incorporate training and development requirements.

#### Training budget

A total training and development budget should be established, covering all aspects of training, and this should be safeguarded against transfers to other sub-heads.

#### Recruit more professionals

More professionals specialising in areas like banking and electronic commerce systems should be recruited to meet the challenge of commercial and cyber crime. The benefits that will be accrued from



the reduction in such crime will more than outweigh the additional wage bill.

#### **Enhance research capability**

Research activities by the Force into criminal activities should be upgraded. This research, distinct from intelligence activities, would focus on the causes and sources of crime. Possible remedies should also be examined. Again, sufficient resources need to be allocated to this area to ensure its effectiveness.

#### **Civilian input**

There should be a high degree of civilian input into the recruit-training programme. Some modules of recruit training should be contracted out to universities and delivered on university premises, ideally together with non-police students.

#### **Recruit-training programme**

The recruit-training programme should include modules on the history of the anti-colonial struggle, ethics, human rights, human relations, ethnic and gender relations, management and language skills. Recruits should be encouraged to master, in addition to Bahasa Malaysia, one other language, e.g. Mandarin, Tamil, English etc.

#### **Problem-solving approach**

Problem-solving and community partnership approaches should be central to the recruit-training course, and scenario exercises should be developed as training tools.

#### **Community awareness**

Community awareness training for police recruits should be developed to include representatives of all the main political and religious traditions in Malaysia.

#### **Neighbourhood officers**

Standard training for neighbourhood officers should include modules on such community problems as domestic violence, child abuse, rape, and drugs and youth issues.

#### **Religion**

Religious talks (from all the major religions in Malaysia) on community service and corruption should be introduced.



## 11 Terms and Conditions of Service

The lower-rank members of the Force are paid a salary that is insufficient to meet the cost of their basic needs, particularly in the major urban centres. Many of them have to take on two jobs and work more than 12 hours. Their wives/husbands also have to work outside their homes. As a result, their children become "latch-key children" and do not receive sufficient parental care. This is one of the major causes of our growing social problems.

Many of these lowly paid police officers are housed in cramped, soulless flats where their often-large families are forced to fight for space. In fact, the Royal Commission members were quoted as being "appalled at the ... cramped quarters of the rank-and-file. The police cannot possibly provide first-class service with third-class facilities."<sup>11</sup>

We are encouraged by the Royal Commission's concern over the welfare of the rank-and-file police personnel. We believe that urgent action is needed to remedy the situation and we trust that your recommendations will provide that remedy.

<sup>11</sup> *New Straits Times*, 17 May 2004

### TERMS AND CONDITIONS OF SERVICE Our Recommendations

- The salary and benefits of the rank-and-file members of the Force must be reviewed and improved.
- There should be a reasonable COLA ("cost of living" allowance) built into the remuneration scheme, taking into account the varying costs of living in different localities in Malaysia.
- The housing facilities of the rank-and-file group should be upgraded to provide them a dignified standard of housing.
- The criteria and procedures for promotions should be clear, objective and transparent.



## 12 Law Reform

Our recommendations would require a major reform of the laws governing the Force to give legal effect to them. Therefore, we make the following additional recommendations.

### LAW REFORM

#### Our Recommendations

- A new Police Act be enacted to replace the current one so as to give effect to our recommendations on:
  - The tripartite policing system incorporating the sharing of responsibilities between the relevant Minister, the Policing Board and the Inspector-General of Police.
  - Accountability mechanisms.
  - An Independent Police Complaints Commission for dealing with complaints from the public with regard to the Force.
  - Public participation in the planning, implementation, monitoring and evaluation of policing in the country.
  - Public order policing as well as community policing.
- Introduce legislation creating two new intelligence agencies to deal separately with domestic and foreign intelligence. With regard to these two agencies, there should also be set up accountability mechanisms to deal with public complaints as well as internal, parliamentary and judicial oversight.

- Introduce legislation for public order policing as well as community policing.

- Amend the Anti-Corruption Act to:
  - Bring the ACA under parliamentary control.
  - Provide for accountability mechanisms.
  - Set up a Complaints Tribunal.

- Repeal Article 140, which provides for the appointment, promotion, transfer, etc. of the members of the Force, and other related parts of the Federal Constitution.

- Repeal the Internal Security Act and introduce a new legislation dealing with internal security which incorporates democratic principles as recommended by SUHAKAM.



## 13 Conclusion

We believe that our Prime Minister is seriously committed to a major reform of the criminal justice system, including the Force, which has come in for extensive criticism from foreign and local human rights groups, lawyers and jurists. He has repeatedly called for a public service that is clean, efficient and accountable to the people.

In his speech at the 5th National Civil Service Conference on 22 June 2000, he reminded the civil servants that:

“...the civil service *vis-à-vis* good governance will have to ensure that it upholds its integrity, and remains transparent and accountable. The government will not tolerate graft and corruption among public servants and views this, not only in terms of violating public trust, but as a misallocation of resources in terms of funds and manpower. Reinventing government does not end with creating a paperless administration. Reinventing government must be a holistic effort that strengthens civic values that are necessary for good governance. Corruption, bribe taking, and reciprocating solicited favours have no place in an upright and professional civil service force, and corrupt civil servants have no place in a system of good governance.”

We believe that the Prime Minister has high expectations that the Royal Commission would come out with recommendations for reinventing our police force. The reformed Force must cast off its colonial baggage and become modern, efficient, effective, community-centred, and com-

mitted to upholding human rights. These goals can only be achieved if legally mandated institutions, mechanisms and procedures are put in place to promote efficient and effective policing, and accountability. Our recommendations are a small contribution towards realising these aims and we hope the Royal Commission would adopt them in its final report.

## REFERENCES

In preparing this memorandum, the CAP research team surveyed a wide range of literature on the modern role of the police force and the restructuring taking place in several countries worldwide. Listed in the references below are some of our significant resources. The research team found reports from the Independent Commission on Policing for Northern Ireland and the Royal Commission into the New South Wales Police Service to be of particular usefulness and relevance to our situation here in Malaysia. We hope that the Royal Commission will study these reports and even make an attempt to meet their authors, the Commissions' members themselves, to share experiences.

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9. Intelligence Services Act 1994, United Kingdom
10. Security Service Act 1989, United Kingdom
11. "A New Beginning: Policing in Ireland", The Report of the Independent Commission on Policing for Northern Ireland.



12. Reports from the Royal Commission into the New South Wales Police Service
13. Constitution of the Republic of South Africa
14. White Paper on Intelligence, 1995, South Africa
15. "Freedom of Assembly", Human Rights Commission, Malaysia
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