



## **SURUHANJAYA HAK ASASI MANUSIA MALAYSIA**

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**Editor News Desk / Feature**

**For Immediate Release**

### **SUHAKAM'S FINDINGS FROM THE PUBLIC INQUIRY INTO THE INCIDENTS DURING AND AFTER THE PUBLIC ASSEMBLY OF 28 APRIL 2012**

The Human Rights Commission of Malaysia (the Commission) today releases its findings from its Public Inquiry into the Incidents During and After the Public Assembly of 28 April 2012 (BERSIH 3.0), which commenced on 5 July 2012 and concluded on 10 January 2013.

The Inquiry was set up to determine, among others, whether there were any violations of the human rights of any person or party during and after the public assembly of 28 April. In total, 49 witnesses comprising members of the public, media personnel, police personnel and professionals testified before the Panel of Inquiry led by the Commission's Vice Chairman Datuk Dr Khaw Lake Tee and assisted by Commissioners Emeritus Professor Datuk Dr Mahmood Zuhdi and Datuk Detta Samen. A total of 67 exhibits and identified documents were received by the Panel in the course of the proceedings.

The Panel of Inquiry also invited representatives from the Royal Malaysian Police (PDRM), the Bar Council, and BERSIH 2.0 to act as observers and to assist the Panel in various matters including questioning the witnesses and making oral and written submissions to the Panel upon the conclusion of the Inquiry.

In its report, the Panel identifies the following as the key findings from the Inquiry:

- That the assembly of 28 April was the first public assembly to be held after the enforcement of the Peaceful Assembly Act 2012 (PAA 2012). However, as the Act came into effect only 5 days before the assembly, it was too early for the PDRM to fully observe the PAA 2012 in its operations and handling of the assembly participants;
- That the 3R 1C 1E approach (*Restraint, Restraint, Restraint, Caution and Enforce*) adopted by the PDRM in handling the assembly did not reflect the spirit of the PAA 2012, as was intended by the police. The exercise of restraint is not quite the same as facilitation which connotes a more active and participatory role;

- That the police did not assist or facilitate in the dispersal of the participants during the public assembly of 28 April 2012 as envisaged under section 8 of the PAA 2012;
- That the participants of the assembly were not given sufficient and reasonable time to disperse in an orderly and safe manner. Instead, the warning to disperse was made only before the initial firing of the water cannon and tear gas but none thereafter. The continuous firing of water cannon and tear gas had also hampered the efforts of the participants to disperse;
- That there was use of disproportionate force and incidents of misconduct by the police personnel towards those who had been arrested and who were being led to the holding area at Dataran Merdeka; and that most of those arrested were not informed of the ground of their arrest;
- That there were participants who were arrested by the police personnel while they were inside certain premises although they had already left the scene of the assembly;
- That there were attempts by the police in preventing the media from covering the event by confiscating their equipment, deleting the photographs taken as well as arresting or assaulting them;
- That all the arrested participants at the PULAPOL were not informed of the grounds of their arrest and were denied the access to their legal representatives;
- That the persons who staged protests outside the residence of Dato' Ambiga Sreevenasan after 28 April were entitled to exercise their right of expression and freedom to assemble. At the same time, the exercise of these rights must not deny the fundamental rights of Dato' Ambiga Sreevenasan and those residing along the same road and in the same area to privacy, personal liberty and safety. The activities conducted must also be in accordance with laws, regulations or municipal by-laws. The failure of the authorities to act in the face of such violations of their rules and regulations suggest the lack of will to act or even bias or condonation on their part;
- That the Dewan Bandaraya Kuala Lumpur (DBKL) could have played a greater role in facilitating the movement of traffic by opening more roads in and around the city;
- That the closure of several Light Rapid Transit (LRT) stations including Masjid Jamek, Dang Wangi, Pasar Seni (Kelana Jaya Line), Plaza Rakyat, Bandaraya and Sultan Ismail (Ampang Line) from 3.00 p.m. to 5.30 p.m. had created difficulties for the participants to disperse peacefully and orderly; and

- That some of the language used in the guidelines prepared by the organisers of the assembly of 28 April entitled “Garis Panduan Bersih 3.0 – 28 April” could be misinterpreted and could possibly encourage the participants to act in a manner that may be contrary to law or which may result in undesirable actions and consequences.

In response to its findings, the Panel of Inquiry has outlined several key recommendations for the consideration of the relevant authorities and media. They include, among others, the following:

- The need for the PDRM to facilitate peaceful assemblies as envisaged under the PAA 2012 by ensuring crowd and traffic management and control as well as minimising disruptions to the public and activities in the places concerned. These can be realised through meetings with the organisers as well as on-going training and workshops on crowd management and control in line with international standards;
- The need for the police to make distinction between a peaceful assembly and a riot as well as to maintain its neutrality in protecting the safety of participants and members of public in the event of public assemblies involving two or more opposing groups in the same area;
- The need for PDRM to review and amend their Standard Operating Procedure (SOP)/Standing Orders in the dispersal of assemblies in accordance with international human rights standards such as Universal Declaration of Human Rights (UDHR), International Convention on Civil and Political (ICCPR), Convention on the Rights of Children (CRC), European Convention and American Convention on Human Rights and to emulate best practices of other Police Forces in the world;
- The need for the PDRM to ensure that participants are given sufficient and reasonable time to disperse in an orderly and safe manner, and that proper exit routes are available to avoid any untoward incidents. Alternatives means to warn and disperse participants should also be explored;
- The need for the PDRM to avoid any untoward incidents or conflicting instructions by ensuring all orders are issued by the Ground Commander and, should the task be delegated to another officer, the information must be made known to the police personnel on duty during the assembly;
- The need for the PDRM to adopt additional or other means of communication in order to ensure that police officers maintain communications with one another and to avoid any possible confusion with respect to orders or actions taken by any of the troops on the ground;

- The need for the arresting officers to exercise care and avoid using unwarranted or disproportionate force at the time of the arrest as well as to need to inform the arrested persons the ground of their arrest and to ensure their right to obtain access to legal counsel;
- The need for members of public especially participants of public assemblies not to take the law into their own hands and to appreciate and respect at all times the role and responsibilities of the police in maintaining and preserving security, peace and law and order;
- The need for the police to wear their permanent name tags or identification body numbers at all time when exercising their duty while the plain-clothes officers tasked to monitor, observe and document the event should not be involved in the dispersal or arresting process, unless they clearly identify themselves;
- The need for the PDRM to review its SOP and to make compulsory the reporting of its personnel after performing their duty which details all actions taken during the assignment;
- The suggestion for the relevant authorities and media to refer to the OSCE's *Special Report on the Handling of the Media*,<sup>1</sup> which contains guidelines on, amongst other things, how the authorities should treat the media during assemblies, as well as how the media should be prepared in handling the reporting of such events;
- The need for communication or briefing between the police and the media before the assembly to assist both parties in appreciating each other's roles and duties on the day of the assembly, and to anticipate any unforeseen circumstances;
- The need for the journalists to ensure that their attire are not similar to what the participants are wearing and that their media tags are worn and visible at all times. They should also not join the participants in activities such as chanting and singing to avoid being identified as participants;
- The need for PDRM to conduct and complete its investigations on the police reports lodged by the public in relation to acts committed by police personnel to avoid allegations of bias and lack of transparency;
- The need for the authorities to exercise caution when issuing statements that may be interpreted as condoning or advocating any infringement of human rights and which contravenes any law in the country; and

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<sup>1</sup>Organization for Security and Co-operation in Europe (OSCE)'s Special report: Handling of the media during political demonstrations (Observations and Recommendations)

- The need for the authorities to act professionally, impartially and fairly at all times in the discharge of their duties and responsibilities and not to be seen favouring or being partial to any particular party or group.

Based upon its findings, the Panel expresses its hope that the authorities will undertake the necessary steps to implement the recommendations and to demonstrate their professionalism in the conduct of their duties and responsibilities at all the various stages of any public assemblies. In this regard, the Commission once again would like to commend the police for their successful handling and management of the “Himpunan Kebangkitan Rakyat” peaceful rally held at Merdeka Stadium in Kuala Lumpur on 12 January 2013.

While the Panel recognises that all individuals are entitled to their fundamental rights and freedom to assemble including the right to freedom of assembly as enshrined under the Federal Constitution, the PAA 2012 and the Universal Declaration of Human Rights (UDHR), it wishes to flag the need for all parties to play a balanced role in exercising their rights and freedoms so as not to deny the rights and freedoms of others.

The Panel would like to reiterate that the scope of the Inquiry was restricted to issues of violations of human rights during and after the assembly of 28 April. Hence, unless and to the extent they were related to the issues within the terms of reference, the Panel did not inquire into matters such as whether there was any basis for the organisation of the assembly; the composition and objectives of those who organised or participated in the assembly; who or what was responsible for the turn of events at or about 3.00 pm that day or their motives for doing so; or the decisions and actions taken by the authorities and why.

In conclusion, the Panel would like to express its gratitude to all the witnesses, observers, the Office of the Inspector-General of Police (IGP), BERSIH 2.0 Secretariat as well as the media, for their co-operation, support and assistance rendered to the Panel throughout the course of the Inquiry.

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**“Human Rights For All”**

**Datuk Dr Khaw Lake Tee**

Chair of the Panel of the Inquiry / Vice Chairman

Human Rights Commission of Malaysia

17 April 2013