



PUBLIC INQUIRY INTO THE DISAPPEARANCE OF PASTOR RAYMOND KOH AND AMRI CHE MAT

FINAL DECISION

THE PANEL:

DATO' MAH WENG KWAI (CHAIRMAN)

PROF. DATO' DR. AISHAH BIDIN

PROF. MADYA. DR. NIK SALIDA SUHAILA BINTI NIK SALEH

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HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

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PASTOR RAYMOND KOH

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A. Introduction

1. This is the Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia) ("**SUHAKAM**") Panel's final decision in the Public Inquiry into the disappearance of Pastor Raymond Koh Keng Joo ("**Pastor Raymond Koh**").

Disappearances of Joshua Hilmi, Ruth Hilmi, Amri Che Mat and Pastor Raymond Koh

2. Since November 2016, Peter Pormannan A/L Annamalai ("**Peter**") had made various attempts to contact his friends Joshua Hilmi (who was also known as Hilmi Bin Hanim) and his wife, Ruth Hilmi. Their last known address was at Kampung Tunku, Petaling Jaya. On 6 March 2017, Peter lodged a police report at the Klang District Police Headquarters stating that despite various attempts to locate Joshua Hilmi and Ruth Hilmi, the couple was uncontactable. Both Joshua Hilmi and Ruth Hilmi have not been seen, heard of or heard from, since November 2016 until now, and are believed to have "disappeared".
3. On 24 November 2016, Amri Che Mat was last seen by his wife, Norhayati Mohd Ariffin ("**Norhayati**") at about 10:30 p.m. Their daughter, Nur Masarrah saw him leaving their house in his car at about 11:30 p.m. Following that, his car was found abandoned with the windows smashed at a disused construction site at Bukit Chabang, Kangar, Perlis. Amri Che Mat has not been seen, heard of, or heard from, since then until now, and is believed to have "disappeared."
4. Less than 3 months later, on 13 February 2017, Pastor Raymond Koh was last seen by his wife Susanna Liew Sow Yoke (IW2) ("**Susanna**") at about 10:15 a.m. Subsequently, one Roeshan Celestine Gomez (IW1) ("**Roeshan**") lodged a police report stating that at about 10:45 a.m., he saw a car being "boxed in" by three (3) black four-wheel drive vehicles ("**4WDs**") while he was driving along Jalan SS4B/10, Kelana Jaya, Selangor. The driver was seen being dragged out of his car and put into one of the three 4WDs. This incident was captured on closed-circuit television ("**CCTV**") of two (2) nearby houses. Pastor Raymond Koh has not been seen, heard of or heard from, since then and is believed to have "disappeared".
5. These three (3) cases of disappearance of persons attracted a significant amount of public attention and concern. It has also led the public to perceive that these disappearances of persons may have been the acts of the State and/or that the State may either have been complicit, involved, supportive of or concealing these unprecedented disappearances.

B. Memorandum Submitted to SUHAKAM

6. In furtherance of the protection and promotion of human rights in Malaysia, SUHAKAM was established under the Human Rights Commission of Malaysia Act 1999 (“**the Act**”).
7. SUHAKAM’s functions are set out in Section 4 of the Act, in particular, Section 4(1)(d) which provides that one of the functions of SUHAKAM “shall be to inquire into complaints regarding infringements of human rights.”
8. Further, Section 12 of the Act empowers SUHAKAM to act on its own motion to inquire into allegations of infringement of human rights or to act on complaints submitted to SUHAKAM.
9. Due to the serious concerns surrounding the three (3) cases of disappearances, on 20 April 2017, a coalition of civil society groups led by Suara Rakyat Malaysia (SUARAM) submitted a Memorandum to SUHAKAM on behalf of the families of the several persons that were reportedly missing: Joshua Hilmi and his wife, Ruth Hilmi, social activist Amri Che Mat and Pastor Raymond Koh (“**Missing Persons**”). SUHAKAM was called on to assist the families concerned, to investigate and determine the whereabouts of these Missing Persons and to serve as a channel of communication between the families, the Police and the Government of Malaysia.
10. On 21 April 2017, the Chairman of SUHAKAM, Tan Sri Razali Ismail (“**SUHAKAM Chairman**”) issued a press statement¹ calling on the authorities to use all means at their disposal to discover the fate of these Missing Persons, to take all necessary steps to alleviate the concerns and unease among the public in this regard and to bring to justice those responsible for the disappearances.
11. Up to June 2017, the disappearances of Joshua Hilmi, Ruth Hilmi, Amri Che Mat and Pastor Raymond Koh remained unresolved. It must be highlighted that to date the families of the Missing Persons have not received any demand for ransom for their release nor has anyone or party claimed responsibility for the disappearance of the Missing Persons.

¹ Press Statement No.14 Of 2017 (Memorandum from SUARA RAKYAT MALAYSIA (SUARAM)
<https://www.suhakam.org.my/press-statement-no-14-of-2017-memorandum-from-suara-rakyat-malaysia-suaram/>

12. On 16 June 2017, SUHAKAM released a press statement² stating that SUHAKAM will investigate the disappearances of the Missing Persons in accordance with its statutory mandate and powers. SUHAKAM further stated that it would assist the authorities with their ongoing investigations and called on individuals who may have relevant and important information to come forward in order to have their statements recorded by SUHAKAM.
13. Notwithstanding the above, SUHAKAM reiterated its calls on all the relevant authorities to fully and expeditiously investigate the disappearances, especially when there are suspicions in the minds of the public that the disappearances may be *enforced* disappearances.

Panel for the Public Inquiry and Terms of Reference

14. On 9 August 2017, the Chairman of SUHAKAM released a press statement to announce that SUHAKAM will be conducting a Public Inquiry into the disappearances of Joshua Hilmi and Ruth Hilmi, social activist Amri Che Mat and Pastor Raymond Koh.³ In its statement, SUHAKAM announced that the Public Inquiry, scheduled to commence in October 2017, would consider, among others:
 - 14.1. Whether these disappearances are cases of enforced or involuntary disappearances, as defined under the International Convention for the Protection of All Persons from Enforced Disappearance (“**ICPPED**”) which explains an enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State; and
 - 14.2. Whether the authorities, specifically the Police have taken adequate steps to investigate these cases.

² Press Statement No.20 of 2017 ((SUHAKAM Will Investigate the Cases Of Missing Persons/Disappearance Of Pastor Raymond Koh, Amri Che Mat, Pastor Joshua Hilmi and Ruth Hilmi, To Assist the Authorities with Their Ongoing Investigation) <https://www.suhakam.org.my/press-statement-no-20-of-2017-suhakam-will-investigate-the-cases-of-missing-persons-disappearance-of-pastor-raymond-koh-amri-che-mat-pastor-joshua-hilmi-and-ruth-hilmi-to-assist-the-authoritie/>

³ Press Statement No. 29 Of 2017 (SUHAKAM's Public Inquiry on Disappearance Cases) <https://www.suhakam.org.my/press-statement-no-29-of-2017-suhakams-public-inquiry-on-disappearance-cases/>

15. On 5 October 2017, pursuant to SUHAKAM’s press statement on 9 August 2017, a panel for the Public Inquiry was formed to investigate the disappearances. The panel comprised three SUHAKAM Commissioners namely, Dato’ Mah Weng Kwai (Chairman), Prof. Dato’ Dr. Aishah Bidin and Dr. Nik Salida Suhaila binti Nik Saleh (“**Panel**”).

16. The Terms of Reference⁴ of the Public Inquiry (“**Terms of Reference**”) are as follows:
 - (a) To determine whether these are cases of enforced disappearances as defined under the International Convention for Protection of All Persons from Enforced Disappearances or are cases of involuntary disappearances in breach or breaches of the criminal and/or civil law and/or applicable human rights laws (hereinafter referred to as such alleged breach or breaches);

 - (b) If (a) has been established at the inquiry:
 - (i) How such alleged breach or breaches came about;

 - (ii) To identify person(s) or agency(ies) responsible for such alleged breach or breaches;

 - (iii) What administrative directives or procedures, or arrangements contributed to such alleged breach or breaches.

 - (c) To consider whether the authorities, specifically the Royal Malaysian Police have taken adequate steps to investigate such alleged breach or breaches.

 - (d) To recommend measures or guidelines to be taken to ensure that such alleged breach or breaches do not recur.

⁴ Press Statements No.41 Of 2017 ("SUHAKAM's Public Inquiry Into the Incidents Of Disappearances Of Individuals")
<https://www.suhakam.org.my/press-statements-no-41-of-2017-suhakams-public-inquiry-into-the-incidents-of-disappearances-of-individuals/>

Public Inquiry into Pastor Raymond Koh's Disappearance

17. On 19 October 2017, the Panel commenced the hearing of the Public Inquiry into the disappearance of Pastor Raymond Koh. The hearings were scheduled on the following dates:
 - 17.1. 19th and 20th of October 2017;
 - 17.2. 2nd, 3rd, 13th to 16th and 21st to 23rd of November 2017.
18. To assist its investigation, the Panel called eleven (11) witnesses to testify in the course of the hearing.

Letter from the Royal Malaysian Police Dated 15 January 2018

19. In the evening of 15 January 2018, a day before the next hearing date, the Panel received a letter from the Royal Malaysian Police ("**the Police**") which amongst others stated that one Lam Chang Nam was arrested on 12 January 2018 and that he was charged in court for an offence under section 365 of the Penal Code in relation to the disappearance of Pastor Raymond Koh. As such, the Public Inquiry should cease immediately pursuant to Section 12(3) of the Act as the disappearance of Pastor Raymond Koh became the subject matter of criminal proceedings pending in court.
20. Section 12 of the Act reads as follows:

"Commission may inquire on own motion or on complaint

12 (1) The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into an allegation of the infringement of human rights of such person or group of persons.

(2) **The Commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which—**
(a) is the subject matter of any proceedings pending in any court, including any appeals; or (b) has been finally determined by any court.

(3) If the Commission inquires into an allegation under subsection 12(1) and during the pendency of such inquiry **the allegation becomes the subject matter of any proceedings in any court, the Commission shall immediately cease to do the inquiry.**”

21. In light of Section 12(3) of the Act and in deference to the action taken by the Police, the Panel decided to temporarily cease the Public Inquiry pending the hearing of submissions by Counsel acting on behalf of all parties and the Officers Appearing for the Police on the law and facts pertaining to the disappearance of Pastor Raymond Koh.
22. On 16 May 2018, the Panel held that it will proceed with the hearing of the Public Inquiry into the disappearance of Pastor Raymond Koh and came to the following conclusion namely:

(G) Conclusion

In the written and oral submissions of Counsel for the Family and Counsel for the Bar Council, Counsel had clearly taken the position that the subject matter before the Court is not the same subject matter as in the PI. The SUHAKAM Assisting Officers initially took the position that the subject matter is the same, but later changed their view in their second submission, by stating that the subject matter was not the same and that the Panel should continue with the PI albeit within certain areas of questioning. After giving much consideration to the written and oral submissions of Counsel and SUHAKAM Assisting Officers and for all the reasons stated above, the Panel concludes that the subject matter before the Court is not the same subject matter that is before the PI.

The Panel has to deal with the subject matter of “enforced disappearance’ to ensure that not only Pastor Raymond Koh has access to justice and truth but his Family members as well. The Family has been continuously disappointed by the police authorities in the investigation of the alleged disappearance of Pastor Raymond Koh. Where else or how else would Pastor Raymond Koh and his Family gain their right to a remedy for a grievance allegedly caused by the State? When the Act was established, it was Parliament’s intention to protect and promote human rights in Malaysia. The Act gives SUHAKAM the power and functions to investigate into infringements of human rights. Hence, the

PI cannot cease to be a platform for Pastor Raymond Koh and his Family to seek their remedy.

In the result, the Panel hereby decides that it will proceed and continue with the hearing in the PI into the alleged disappearance of Pastor Raymond Koh, notwithstanding the letter received from PDRM involving the provision of section 12(3) to cease the PI as the subject matter the Panel will have to deal with in accordance to the Terms of Reference, is not the same subject matter as in the court proceedings. The Panel will continue to deal with the subject matter stated in the first limb of paragraph (a), paragraphs (b) and (c) of the Terms of Reference.”⁵

23. On 7 December 2018, the Panel completed the Public Inquiry into the disappearance of Pastor Raymond Koh. The Public Inquiry took approximately nine (9) months from the beginning of October 2017 to the start of December 2018. In total, there were twenty (20) days of hearing and the Panel heard the testimony of sixteen (16) witnesses.⁶
24. The Public Inquiry into the Disappearance of Joshua Hilmi and his wife Ruth Hilmi have not commenced, to date.
25. Separate decisions of the Public Inquiry into the disappearances of Pastor Raymond Koh and Amri Che Mat will be delivered accordingly.

C. Issues To Be Determined by the Panel

26. The issues that the Panel was required to determine are summarised as follows:
 - 26.1. Whether the disappearance of Pastor Raymond Koh is a case of voluntary disappearance;
 - 26.2. Whether the disappearance of Pastor Raymond Koh is a case of enforced disappearance as defined under ICPED that is, by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State; and

⁵ Refer to Panel’s Interim Decision dated 16.5.2018

⁶ Refer to Schedule 1.

- 26.3. Whether there was a refusal to acknowledge the disappearance of or concealment of Pastor Raymond Koh's fate or whereabouts by the State.

D. Position of the Parties

Position of Counsel on Behalf of Pastor Raymond Koh's Family

27. It is the position of Counsel on behalf of the family of Pastor Raymond Koh that the disappearance of Pastor Raymond Koh is a case of enforced disappearance as defined under the first limb of Article 2 of ICPPED and that the enforced disappearance was carried out by agents of the State.
28. Counsel on behalf of the family also submitted in the alternative that the disappearance of Pastor Raymond Koh is a case of enforced disappearance as defined under the second limb of Article 2 of ICPPED and that the enforced disappearance was carried out by persons acting with the authorisation, support and/or acquiescence of the State.⁷

Position of Assisting Officers of SUHAKAM

29. It is the position of the Assisting Officers of SUHAKAM that on a balance of probabilities, Pastor Raymond Koh is a victim of enforced disappearance and that he was abducted by a group of highly trained personnel.⁸

Position of the Malaysian Bar Council

30. The Counsel of the Bar Council have concurred with the submissions made by Counsel on behalf of the family. However, Counsel of the Bar Council further submitted that the disappearance of Pastor Raymond Koh is a case of involuntary disappearance in breach or breaches of the criminal law, civil law and human rights.⁹

⁷ Refer to page 77 of the Written Submission of Counsel on behalf of the Family of Pastor Raymond Koh dated 15 January 2019.

⁸ Refer to page 27 of the Written Submission of the Assisting Officers of SUHAKAM dated 15 January 2019.

⁹ Refer to page 18 of the Written Submission of Counsel of the Bar Council dated 4 February 2019.

Position of the Officers Appearing for the Police

31. Although the Officers Appearing for the Police agreed with Counsel on behalf of the family, Assisting Officers of SUHAKAM and Counsel of the Bar Council that Pastor Raymond Koh is missing and that his whereabouts are to date unknown, it is their position that:
 - 31.1. There is no evidence to show that the Police, as agents of the State, were involved in the disappearance of Pastor Raymond Koh or that his disappearance was carried out by non-state persons acting with the authorisation, support and/or acquiescence of the State.
 - 31.2. The disappearance of Pastor Raymond Koh is connected with the case of Lam Chang Nam who has been charged in Court on 15 January 2018 under Section 365 of the Penal Code.
 - 31.3. The disappearance of Pastor Raymond Koh is somehow connected with the search and seizure of the exhibits found in the house of Mohd Fauzi bin Tajuddin (“**Fauzi**”) in Pengkalan Hulu, Perak, who was shot dead by the Police in a shootout in Baling, Kedah on 17 June 2017. Fauzi was suspected to be a drug and firearms trafficker. The Police contended that the exhibits seized from the house included pictures of Pastor Raymond Koh, his car and his house at Prima Sixteen, Petaling Jaya. The Police believed that Fauzi and his drug trafficking group was the same group involved in the abduction of Pastor Raymond Koh.
32. The Police have assured the Panel and Counsel on behalf of the family, Assisting Officers of SUHAKAM and Counsel of the Bar Council that Police investigations into the disappearance of Pastor Raymond Koh are still ongoing and that immediate action will be taken if there are any new developments arising.¹⁰

E. Decision of the Panel

33. Upon a detailed evaluation of the evidence adduced, having read and considered the written submissions of Counsel on behalf of the family, Assisting Officers of SUHAKAM, Counsel of the Bar Council and Officers Appearing for the Police (“**the Parties**”) and upon hearing the oral submissions of the Parties on 6 March 2019, the Panel has arrived at a final decision.

¹⁰ Refer to page 17 of the Written Submission of the Police.

34. After having held lengthy discussions and deliberations in this case, the Panel is of the unanimous view that Pastor Raymond Koh is a victim of an enforced disappearance as defined in Article 2 of ICPPED that took place on 13 February 2017 at about 10:45 a.m.
35. The disappearance of Pastor Raymond Koh was neither a case of voluntary disappearance nor a case of involuntary disappearance in breach of the ordinary criminal law.
36. The direct and circumstantial evidence in Pastor Raymond Koh's case proves, on a balance of probabilities, that he was abducted by State agents namely, the Special Branch, Bukit Aman, Kuala Lumpur.
37. The Panel further finds that there is no evidence to support the contention, as suggested by Counsel on behalf of Pastor Raymond Koh's family and Counsel for the Bar Council, Pastor Raymond Koh was abducted by persons or groups of persons acting with the authorisation, support or acquiescence of the State.

F. Grounds of Decision

The Law

Applicable Human Rights Principles

38. Human rights are protected under various instruments, both domestically and internationally. International human rights treaties and the Declarations of the General Assembly of the United Nations categorise enforced disappearance as an infringement of human rights.

Right Against Enforced Disappearance Under International Law

39. "Enforced disappearance" is defined in Article 2 ICPPED as follows:

"For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

- 40. Although Malaysia is not a signatory to ICPPED, the Panel referred to and considered the definition of ‘enforced disappearance’ in ICPPED as a guide when addressing the issue of whether Pastor Raymond Koh’s disappearance fell within the definition of enforced disappearance in breach or breaches of human rights.
- 41. The definition of “enforced disappearance” in ICPPED can be separated into two limbs. The first limb involves the direct participation of the State in the disappearance by forcefully taking the victim away. The second limb speaks of the indirect participation of the State by giving its authorisation, support or acquiescence to the persons or groups of persons who have forcefully taken the victim away. Both limbs of the definition emphasise the involvement and participation of the State in the disappearance.
- 42. Article 2 of ICPPED also provides that when the State is involved in the deprivation of liberty, it must be followed by a refusal of the State to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.
- 43. The right against enforced disappearance is also protected in the Universal Declaration of Human Rights 1948 (“UDHR”) as follows:

"Article 3 Everyone has the right to life, liberty and security of the person...

Article 6 Everyone has the right to recognition everywhere as a person before the law...

Article 9 No one shall be subjected to arbitrary arrest, detention or exile."

- 44. By virtue of Section 4(4) of the Act, the Panel shall give regard to the UDHR to the extent that it is not inconsistent with the Federal Constitution.

Right Against Enforced Disappearance Under Malaysian Law

- 45. In Malaysia, the right to liberty is enshrined in Article 5 of the Federal Constitution of Malaysia (“FC”) which states:

“Liberty of the person

5(1) No person shall be deprived of his life or personal liberty save in accordance with law.”

46. On the issue of the right against enforced disappearance, a distinction must be made between ‘enforced disappearance’, ‘missing person’, ‘kidnapping’ and ‘abduction’ by referring to Section 3 of the Kidnapping Act 1961 and Section 362 of the Penal Code of Malaysia.¹¹

46.1. **Section 3 of the Kidnapping Act 1961** provides a case will be one of kidnapping where a ransom is demanded:

“Abduction, wrongful restraint or wrongful confinement for ransom

3(1) Whoever, with intent to hold any person **for ransom**, abducts or wrongfully confines or wrongfully restrains such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to whipping.”

46.2. Whereas, **Section 362 of the Penal Code of Malaysia** provides that:

“Abduction

362. Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person.”

46.3. There is no express definition of a ‘missing person’ but generally speaking when someone has not been seen or heard from for a period of time without any news of his/her whereabouts or whether he/she is still alive, he/she is said to be a missing person. Cases where there appears to be no criminal elements, are usually categorised as missing persons.

47. It is essential that the State conduct investigations and provide evidence and explanations to the family of the disappeared person. This duty is embedded in the right of the family to know the truth regarding what happened to their loved one. The right extends to the members of the family insofar as it is a violation of mental and moral integrity of the next of kin which is a direct consequence of the enforced disappearance. This was highlighted in the case of *Bamaca-Velazquez v*

¹¹ There are other various offences relevant to the discussion on enforced disappearance, among others: Sections 359 to 369 of the Penal Code.

*Guatemala*¹² where the Inter-American Court of Human Rights held:

"197. In this respect, the Commission declared that the right to the truth has a collective nature, which includes the right of society to "have access to essential information for the development of democratic systems", and a particular nature, as the right of the victims' next of kin to know what happened to their loved ones, which permits a form of reparation. The Inter- American Court has established the obligation of the State to investigate the facts while there is uncertainty about the fate of the person who has disappeared, and the need to provide a simple and prompt recourse in the case, with due guarantees."

What is a Public Inquiry?

48. Generally, a public inquiry is an official review of events or actions ordered by a government body. A public inquiry accepts evidence and conducts its hearings in a more public forum and focuses on a more specific occurrence.
49. Interested members of the public and organisations may make written evidential submissions as is the case with most inquiries and listen to oral evidence given by other parties.¹³
50. A public inquiry is a mechanism that can be used to achieve SUHAKAM's mandate to look into systemic human rights issues with a view to solving them through systematic means. By adopting a broad-based human rights approach, it can examine a large number of situations as opposed to an individual complaint. A public inquiry has a dual focus, fulfilling both fact-finding and educational roles. An effective public inquiry is one that is supported by the exercise of powers to subpoena witnesses, to order the production of documents at its hearings, and to produce a report that will be made public containing recommendations to all relevant parties.¹⁴

¹² IACHR Series C No 70 (Official Citation) [2000] IACHR 7 (Other Reference) IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation) [2002] IACHR 1 (Other Reference) IHRL 1474 (IACHR 2002) (OUP reference)

¹³ Public Inquiry https://en.wikipedia.org/wiki/Public_inquiry

¹⁴ (2013, May 7). Report of the National Inquiry into the Land Rights of Indigenous Peoples (Rep.). Retrieved from <https://drive.google.com/file/d/0B6FQ7SONa3PRbUlnUGcxzdEWU0/preview>

Powers of Inquiry of SUHAKAM

51. As mentioned above, SUHAKAM’s authority to conduct an inquiry is stipulated in Section 12 of the Act which reads:

“Commission may inquire on its own motion or on complaint

12(1) The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into an allegation of the infringement of the human rights of such person or group of persons.

52. The powers relating to the conduct of public inquiries are found in Section 14 of the Act:

“Powers relating to inquiries

14(1) The Commission shall, for the purposes of an inquiry under this Act, have the power—

(a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;

(b) to require that the evidence, whether written or oral, of any witness be given on oath or affirmation, such oath or affirmation being that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorised in that behalf by the Commission an oath or affirmation to every such witness;

(c) to summon any person residing in Malaysia to attend any meeting of the Commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;

(d) to admit notwithstanding any of the provisions of the Evidence Act 1950 [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings; and

(e) to admit or exclude the public from such inquiry or any part thereof.”

Conduct of the Inquiry.¹⁵

53. Prior to the hearings at the Public Inquiry, officers of SUHAKAM recorded statements of individuals who came forward to assist SUHAKAM with information relating to the disappearance of Pastor Raymond Koh. The officers also carried out investigations seeking to interview possible witnesses.
54. At the hearings of the Public Inquiry, witnesses who had their statements recorded by the officers of SUHAKAM prior to the Public Inquiry, were shown their statements. The witnesses were requested to read the statements and to confirm the contents stated therein. The statements were then marked as exhibits. Each witness was then examined by Counsel representing the parties, including Officers Appearing for the Police. Witnesses who did not give their statements prior to the Public Inquiry were similarly examined by Counsel representing the parties, including Officers Appearing for the Police. In the course of the hearings, various video recordings, photographs and documents were tendered as evidence and marked as exhibits. All witnesses gave their evidence on affirmation.
55. At the conclusion of the Public Inquiry, the Panel directed Counsel representing the family, Assisting Officers of SUHAKAM, Counsel of the Bar Council and Officers appearing for the Police to submit their written submissions pertaining to all issues arising from the Panel’s Terms of Reference for the consideration of the Panel.

Elements to be Proven at a Public Inquiry

56. The definition of enforced disappearances in the ICPPED contains various degrees of the State’s culpability regarding the initial disappearance. The degrees of State’s culpability are listed below in descending order:
 - 56.1. that the victim was arrested or detained by agents of the State;
 - 56.2. that the victim was abducted by agents of the State;
 - 56.3. that the victim was abducted by persons or groups of persons acting with the authorisation of the State;

¹⁵ See Sections 8(a), 8(b) and 8(c) of the Commissions of Enquiry Act 1950.

- 56.4. that the victim was abducted by persons or groups of persons acting with the support of the State; or
- 56.5. that the victim was abducted by persons or groups of persons acting with the acquiescence of the State.
57. In Pastor Raymond Koh's case, the first degree of culpability is not relevant. There is no evidence to indicate that Pastor Raymond Koh was arrested or detained by State agents in the exercise of their lawful powers. As such, the degrees of the State's culpability that are relevant in Pastor Raymond Koh's case are the second to fifth degrees.
58. Therefore, the Panel is required to determine whether the circumstantial evidence in Pastor Raymond Koh's case, proves on a balance of probabilities that he was either abducted by State agents or abducted by non-State agents with the authorisation, support and/or acquiescence of the State.
59. Further, the Panel is required to determine whether the evidence, direct and/or circumstantial, can prove on a balance of probabilities, that after the disappearance of Pastor Raymond Koh had occurred, the State has refused to acknowledge the deprivation of liberty of the person or has concealed the fate or whereabouts of the disappeared person as provided under Article 2 of ICPPED mentioned above.
60. In a case of an enforced disappearance, there is an indivisible connection between the initial disappearance and the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person. This is stated by the European Court of Human Rights in the case of *Varnava & Ors v Turkey*¹⁶ :

"148. A disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred. This situation is very often drawn out over time, prolonging the torment of the victim's relatives. It cannot therefore be said that a disappearance is, simply, an "instantaneous" act or event; the additional distinctive element of subsequent failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation."

¹⁶ Appl. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009.

61. In the case of *Ng Yee Fong & Anor v EW Talalla* [1986] 1 MLJ 25, Mohamad Azmi SCJ defined the word “acquiescence” as follows:

“... properly used where a person having a right, and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to it being committed; a person so standing by cannot afterwards be heard to complain of the act (see *De Bussche v Alt* (1878) 8 Ch D 286 314). In that sense the doctrine of acquiescence may be defined as acquiescence under such circumstances that assent may be reasonably inferred from it.”

62. The family and other persons acting on behalf of Pastor Raymond Koh do not have the investigative powers of the State to secure evidence on the identity of the person or persons who caused the disappearance in order to prove with precision the culpability of the State.
63. At the conclusion of the Inquiry, if the Panel’s finding is that this case is one of an enforced disappearance, the Panel is empowered under Section 13(2) of the Act to refer it to the relevant authorities or persons with the necessary recommendations.
64. On the other hand, in the event that the Panel’s finding is that the disappearance is an involuntary disappearance in which the State is not concerned, the Panel similarly has powers under Section 13(2) of the Act to refer the case to relevant authorities or persons with the necessary recommendations.

Standard of Proof in a Public Inquiry

65. There is no provision in the Act which sets out the standard of proof that is to be applied in a public inquiry. However, this does not mean that there is no standard of proof that the Public Inquiry is required to meet.
66. A public inquiry is an investigative inquiry similar to an inquest (an inquiry into a death by a coroner). Although a public inquiry is not an inquest or a civil or criminal trial, the Panel is of the view that the standard of proof to be applied in a public inquiry is of the same standard of proof applicable to an inquest, that is, on a balance of probabilities and not beyond reasonable doubt.

67. While an inquest is for the purposes of determining whether any person may be criminally concerned in the cause of death and to arrive at a verdict, a public inquiry into the enforced disappearance of a person is for the purpose of determining whether the State is in any way concerned in the involuntary disappearance of that person.
68. The relevant principles on the standard of proof in an inquest were discussed in detail by the Court of Appeal in the case of ***Teoh Meng Kee v Public Prosecutor*** [2014] 5 MLJ 741 where Mohammad Ariff JCA held as follows:

“[48] The learned magistrate, and to a lesser extent, the High Court judge, cited and repeated the **basic principles and rules on coronial jurisdiction**.... The **commonly accepted principles are as follows:**

(a) an inquest is a fact-finding exercise and not a method of apportioning guilt;

(b) in an inquest, there is no indictment, no prosecution, no defence and no trial. It is simply an attempt to establish facts;

(c) it is an inquisitorial and an investigation process, unlike a trial;

(d) a coroners verdict is not determined by probabilities but by established facts. A coroner is bound by evidence and can only find facts proved by evidence, not guesswork;

(e) if the evidence is insufficient to come to a definite finding, the coroner should record an open verdict;

(f) the function of a magistrate holding an inquiry under Chapter XXXII of the CPC is to inquire, when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of death (s 337). The cause of death is defined under s 328 to include not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by any unlawful act or omission on the part of any person. Hence, **the**

magistrate holds an inquiry by examining witnesses on oath and while usually following the ordinary rules of evidence, he may admit any evidence which he thinks fit, especially hearsay evidence;

(g) the verdict of the magistrate is only an expression of a non-binding opinion of a proceeding where there is no accusation against any party;

(h) it follows that a coroners inquest is merely a court of law, not a court of justice. Its verdict does not amount to any conviction.

(i) many of these principles are outlined in our Practice Directions No 1 of 2007: Guidelines on Inquest (as restated in Practice Direction No 2 of 2014 *Arahan Amalan Bil 2 Tahun 2014: Pengendalian Siasatan Kematian (Death Inquiry) Selaras Dengan Penubuhan Mahkamah Khas Koroner*) To quote some of the parts immediately relevant to this appeal:

1. What is an Inquest?

(a) It is not a trial.

(b) There are no parties to prosecute and to defend.

(c) It is only an inquiry by a magistrate as to the cause of death and the Prosecuting Officer is there not to prosecute anyone but only to assist the court with the examination of witnesses for the purpose of giving evidence. ...

(f) A magistrate Coroner shall not express any opinion on any matter until the conclusion of the inquest.

(g) There is no conviction or punishment at the end of it.

...

[70] ...the scheme and structure of the interlocking provisions under Chapter XXXII of the CPC mandate a lower standard. **I am therefore of the view that the applicable standard should be the civil standard of proof on a balance of probabilities."**

69. In the case of **Teoh Meng Kee** above, Mah Weng Kwai JCA further held as follows:

"[108] It will be noted that s 328 of the CPC speaks of opinion. The section does not stipulate what the standard of proof is that has to be applied in an inquiry of death. Although s 328 of the CPC is silent on the standard

of proof, of course, it cannot be said that there is no standard to be applied. That would be an unacceptable position in law. **I am of the view that all that is required of the magistrate is to arrive at an opinion applying the balance of probabilities (civil) standard test on an objective basis.** There must be sufficient evidence to arrive at an opinion, in particular whether the death resulted in any way from or was accelerated by any unlawful act or omission on the part of any other person.

STANDARD OF PROOF IN AN INQUIRY OF DEATH

[118] The next question of law of utmost importance to be determined in this case is the **standard of proof to be applied in an inquiry of death.** Both the learned magistrate and the learned High Court judge adopted the beyond reasonable doubt test. With respect, I am of the view that this is an error of law as **the correct test to be applied is the civil standard of balance of probabilities.** I say this for the following reasons:

- (a) as stated earlier, **an inquiry of death is not a criminal trial or proceeding. There is no accused person on trial and there is no one to be convicted and sentenced by the court** upon a finding that the prosecution has proved its case beyond reasonable doubt;
- (b) **the rules on admissibility of evidence and procedure in an inquiry of death are not as strict as in a criminal trial. The magistrate is on a mere fact-finding mission and is allowed to consider even hearsay evidence.** In the case of *Re Loh Kah Kheng* (deceased) [1990] 2 MLJ 126 it was held that a **coroner is not bound by the normal procedure of courts and rules of evidence;**
- (c) where the **rules relating to evidence and procedure are lax, it will be inconsistent to require** a magistrate to return a **verdict at the close of an inquiry on a beyond reasonable doubt standard;**
- (d) it will be incorrect to require the family of Teoh Beng Hock to have to prove a case beyond reasonable doubt before the learned magistrate can return a verdict of homicide as the means to do so are severely limited. The family of Teoh Beng Hock, being **members of the public, simply do not have the powers of investigation as possessed by the police. And where the threshold for proof in an inquiry of death is lower, it will not be correct nor necessary to**

expect members of the public to produce evidence on a beyond reasonable doubt standard and yet expect a verdict to be proved beyond reasonable doubt;

(e) a magistrate conducting an inquiry of death is merely to ascertain whether anyone is criminally concerned in the cause of death. He has no power to hold or find anyone criminally liable in the cause of death on a beyond reasonable doubt standard;

(f) in the event a person or persons is/are arrested for being criminally liable in the cause of death it is then for the prosecution to charge the person/s for an offence of homicide and where it will be incumbent upon the prosecution to prove a case beyond reasonable doubt before a conviction can be secured;

(g) for the police to effect an arrest of a suspect, all that the police have to show at that stage of investigation is that there is reasonable ground of suspicion to support the arrest. The police most certainly do not have to have reasonable grounds on a beyond reasonable doubt standard, before effecting the arrest. Now, if the police can effect an arrest based on reasonable suspicion (see *Shaaban & Ors v Chong Fook Kam & Anor* [1969] 2 MLJ 219) why then should the bar or threshold be raised in an inquiry of death to a standard beyond reasonable doubt before the learned magistrate can return a verdict of homicide? I see no basis for this approach as after all, in fact and in reality, the recording of evidence in an inquiry by the learned magistrate can be likened to an extension of investigations by the police. In *Shaaban's* case it was held that the police are entitled to make an arrest if a reasonable suspicion existed that the suspect was concerned with the offence. It is unnecessary for the police to show that there was prima facie proof of such offence before an arrest.

[119] It is not in dispute that in an inquest the evidence adduced must be credible so as to become the basis for the coroners finding (see *Inquest into the death of Sujatha Krishnan, deceased* [2009] 5 CLJ 783); that the verdict must not be based on guess work but on particulars which have been proved in evidence (see *R v Huntback; ex parte Lockley* [1944] KB 606, *Re Derek Selby, deceased* [1971] 2 MLJ 277); a magistrate who conducts an inquiry must confine

himself to the evidence made available to him and at the end of the day must decide on that evidence alone (see *Public Prosecutor v Shanmugam & Ors* [2002] 6 MLJ 562); that a magistrate can only make a definite finding based on proved facts produced and not on mere conjectures (see *Re Rumie Mahlie, deceased* [2007] MLJU 280; [2007] 10 CLJ 69).

[120] In Victoria, Australia in the case of *Anderson v Blashki* [1993] VR 89 it was held that the standard of proof to be applied by the coroner in investigating a death is the civil standard of the balance of probabilities (see also *Briginshaw v Briginshaw* (1938) 60 CLR 336). In the infamous case of *Inquest into the death of Azaria Chantel Loren Chamberlain* [2012] NTMC 020, it was held by the High Court of Australia that in the coronial jurisdiction, the test applied is a balance of probabilities test.

[122] Returning to the issue of the standard of proof applicable in an inquiry of death, a useful comparison may be made with the standard applied in preliminary inquiries into cases (namely, capital offences) triable by the High Court before Chapter XVII, ss 138–151 of the CPC were deleted by Act A908. For purposes of committal of a case for trial in the High Court, reliance used to be placed by the prosecution on the phrase sufficient grounds for committing as provided for by the former s 140(i) of the CPC. What this meant was that there must be credible evidence shown by the prosecution for a case to be committed for trial. The standard of proof in a preliminary inquiry had always been on a standard lower than that of beyond reasonable doubt. In *Public Prosecutor v Puspanathan a/l Sinnasamy & Ors* [1996] 4 MLJ 165, Mohd Hishamudin J (now JCA) had occasion to say that for the purposes of the preliminary inquiry, the prosecution was only required to adduce sufficient evidence identifying the body of the deceased and was not required to prove this beyond reasonable doubt. In a criminal trial, as opposed to a mere preliminary inquiry, the standard of proof is higher (see p 169 E F,H I; *Teay Wah Cheong v Public Prosecutor* [1964] 1 MLJ 21 and *Fazal Din v Public Prosecutor* [1949] MLJ 123 distinguished).”

70. Thus, the standard of proof applicable in a Public Inquiry under Section 12 of the Act is on a balance of probabilities (that is, the standard or quantum of proof in a civil case). In essence, this means that the Panel is entitled to accept and rely

on evidence which is probably true and which does not need to be proved to be beyond reasonable doubt.

Burden of Proof in Cases of Enforced Disappearance

71. On the burden of proof, that is, on whose shoulders lie the burden of proving the case, the approach taken in international human rights cases on enforced disappearances, is illustrative to show that the burden of proof lies on the State itself. This was held by various courts as follows:

- 71.1. ***Bamaca-Velasquez v Guatemala***¹⁷, the Inter-American Court of Human Rights held as follows:

"As this Court has often repeated, in cases of forced disappearance, the State's defense cannot rely on the impossibility of the plaintiff to present evidence in the proceedings since, in such cases, it is the State that controls the means to clarify the facts that have occurred in its jurisdiction and, therefore, in practice, it is necessary to rely on the cooperation of the State itself in order to obtain the required evidence.

...In cases such as forced disappearance - and others... - the State has better possibilities of assuming the function of proving what it denies, than the individual to prove what he affirms"

- 71.2. ***Godínez Cruz v Honduras***¹⁸, the Inter-American Court of Human Rights held:

"141. In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

142. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State."¹⁹

¹⁷ IACHR Series C No 70 (Official Citation); [2000] IACHR 7 (Other Reference); IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation); [2002] IACHR 1 (Other Reference); IHRL 1474 (IACHR 2002) (OUP reference)

¹⁸ IACHR Series C no 10 (Official Citation); IHRL 1391 (IACHR 1990) (OUP reference)

¹⁹ See also *Velasquez-Rodriguez v Honduras* (IACtHR, 1988).

71.3. ***Varanava & Ors v Turkey***²⁰, the European Court of Human Rights held:

"184. As a logical development of this approach, in the situation where persons are found injured or dead, or who have disappeared, in an area within the exclusive control of the authorities of the State and there is prima facie evidence that the State may be involved, the burden of proof may also shift to the Government since the events in issue may lie wholly, or in large part, within the exclusive knowledge of the authorities. If they then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn."

71.4. ***Bleier v Uruguay***²¹, the Human Rights Committee of the United Nations held:

"13.3 With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information ... In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party."

72. Thus, the burden of proof in cases of enforced disappearances rests with the State. This means that the Panel is entitled to accept inferences submitted by Counsel on behalf of the family, Assisting Officers of SUHAKAM and Counsel of the Bar Council against the State. It is for the State to adduce satisfactory evidence and give explanations on a balance of probabilities to show that the State was not in any way involved in the disappearance of the person within the definition of enforced disappearance under Article 2 of ICPPED.

²⁰ Appl. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009

²¹ Communication No. R.7/30, 29 March 1982.

Admissibility of Evidence

73. The Panel is not constrained or limited by the Evidence Act 1950 in the reception of evidence during the Public Inquiry. A flexible approach is taken whereby evidence which is not usually admitted in criminal and civil proceedings may be received by the Public Inquiry. This is recognised by Section 14(1)(a) and (d) of the Act where it states the “The Commission shall, for the purposes of an inquiry under this Act, have the power - (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;” and “(d) to admit **notwithstanding any of the provisions of the Evidence Act 1950** [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings.
74. This flexibility is in line with international standards regarding human rights inquiries in the following cases:
- 74.1. In *Bamaca-Velasquez v Guatemala*²², the Inter-American Court of Human Rights held:
- “97. In an international tribunal such as the Court, whose aim is the protection of human rights, the proceeding has its own characteristics that differentiate it from the domestic process. The former is less formal and more flexible than the latter, which does not imply that it fails to ensure legal certainty and procedural balance to the parties. This grants the Court a greater latitude to use logic and experience in evaluating the evidence rendered to it on the pertinent facts.
131. Taking this into account, the Court attributes a high probative value to testimonial evidence in proceedings of this type, that is, in the context and circumstances of cases of forced disappearance, with all the attendant difficulties, when, owing to the very nature of the crime, proof essentially takes the form of indirect and circumstantial evidence.”
- 74.2. In *Velasquez-Rodriguez v Honduras*²³, the Inter-American Court of Human Rights held that direct evidence is not the only type of evidence

²² IACHR Series C No 70 (Official Citation) [2000] IACHR 7 (Other Reference) IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation) [2002] IACHR 1 (Other Reference) IHRL 1474 (IACHR 2002) (OUP reference).

²³ Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrHR), 29 July 1988.

that may be legitimately considered. Circumstantial evidence, indicia and presumptions, may also be considered so long as they lead to conclusions consistent with the facts. Further, the court held:

“131. Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterised by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.”

75. Cases of enforced disappearances are usually characterised by attempts to suppress all information by the State. Typically, complainants in such cases do not have direct evidence to show that State agents are concerned in the disappearances and must rely on circumstantial evidence. Complainants also typically do not have the means to identify with precision the State agents concerned in the disappearances.
76. The evidence adduced before the Panel to show that the State was concerned in the disappearance is usually circumstantial evidence which gives rise to the inference that State agents are involved in the disappearance. It is only through the exercise of the State's investigative power, would the perpetrators, and their roles, be identified with precision.
77. The consideration in cases where evidence was entirely circumstantial was explained by the Court of Appeal in *Chan Chwen Kong v Public Prosecutor* [1962] 1 MLJ 307 at paragraphs E and F, page 307:

“It must, however, be borne in mind that in cases like this where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?²⁴

78. In the course of the Public Inquiry, the Panel was entitled as a matter of law to adopt a less constrained and flexible approach in the reception and admission of the evidence both oral and documentary, than would otherwise have been proper to admit in a civil and criminal trial.

²⁴ See also *Sunny Ang v Public Prosecutor* [1963] 2 MLJ 195, where the appellant was convicted of murder even though the body of the deceased was not found and the prosecution relied on circumstantial evidence.

79. In analysing the evidence available in Pastor Raymond Koh's case, the Panel has adopted a more inclusive rather than exclusive approach. Hence, the Panel has inter alia, taken into consideration hearsay, circumstantial or presumptive evidence when determining the cumulative effect of the evidence adduced in the Public Inquiry.

Detailed Facts of the Disappearance of Pastor Raymond Koh

Direct Evidence

80. Based on the direct evidence available, the Panel has noted the following:
- 80.1. Susanna had testified that on 13 February 2017 at about 8.45 a.m., Pastor Raymond Koh was with her and their son, Jonathan Koh Szu Hao ("**Jonathan**") at their home in Prima Sixteen, 12-4 Chapter Two, Jalan 16/18, Section 16, Petaling Jaya, Selangor.
 - 80.2. Susanna further testified that at about 10:15 a.m., Pastor Raymond Koh collected a jar of *belacan* from her at Puncak Damansara Condominium which he intended to give to his friend at the Harapan Komuniti Office at Jalan SS4C/1, Kelana Jaya, Selangor.
 - 80.3. Roeshan, the eye witness of the incident testified that at about 10:45 a.m. on the same morning, he witnessed three (3) black 4WD vehicles and two (2) cars, one of which was a gold Toyota Vios and two (2) motorcycles surrounding a car while he was driving along Jalan SS4B/10, Kelana Jaya in a residential neighbourhood. Subsequently, he saw a struggle between the driver of the car and a few other men who were dressed in black and wore black balaclavas. When Roeshan drove his car closer, an Indian man came up to Roeshan and directed him to "back off" from the scene. Following that, while Roeshan was reversing his car, he saw a Malay-looking man taking a video of the incident before all the men and the vehicles including the victim's car were driven off.
 - 80.4. Roeshan also testified that as he was driving off from the scene, he noticed there were shattered pieces of glass on the road as the driver's window of the victim's car was smashed.
 - 80.5. Roeshan testified that the entire incident occurred in less than a minute.

- 80.6. Roeshan later lodged a police report²⁴ about the incident at the Kelana Jaya Police Station at 11:54 a.m. After approximately two (2) hours, Roeshan met with one Inspector Ali Asra Bin Abu Bakar (IW6) ("**Inspector Ali**") when he was requested to narrate the incident that he witnessed earlier. Inspector Ali informed Roeshan that based on his description, the incident "*was probably a police operation because it fitted the modus operandi of police operations*".
- 80.7. Susanna later testified that on the same day at about 3:30 p.m., she tried to contact Pastor Raymond Koh via his mobile phone but her calls went to his voicemail. Susanna was waiting for Pastor Raymond Koh at their home in Prima Sixteen, Petaling Jaya to pick her up and to meet a friend, Kevin Jesudason in Klang at about 4:00 p.m. However, Pastor Raymond Koh did not show up.
- 80.8. Susanna also testified that she received a call from Jonathan at about 4:45 p.m. informing her that one Albert Teh Chuan Seng (IW8) ("**Albert**"), the owner of the silver Honda Accord bearing registration number ST5515D driven by Pastor Raymond Koh when he left the house in the morning, had informed him that he received a telephone call from the Police. The Police informed Albert that his car was involved in the "kidnapping of kids".
- 80.9. Jonathan subsequently lodged two (2) police reports on 14 February 2017 at 12:22 a.m. and on 27 February 2017 at 5:25 p.m. at the Kelana Jaya Police Station regarding the disappearance of Pastor Raymond Koh.

Circumstantial Evidence

81. On 15 February 2017, two (2) days after the disappearance of Pastor Raymond Koh, Jonathan and his sister, Esther Koh Sze Ern ("**Esther**") went to Jalan SS4B/10, Kelana Jaya and approached the residents of the houses near the scene, in the hope of obtaining CCTV footage of the incident as witnessed by Roeshan.
82. On the same day, they managed to obtain a CCTV footage of the incident from a house at No. 72, Jalan SS4B/12, Kelana Jaya and on the 16 February 2017, Esther managed to obtain another CCTV footage of the incident from a house at No. 19, Jalan SS4C/12, Kelana Jaya.

²⁴ Refer to Exhibit 5 produced in the Public Inquiry.

83. On 22 February 2017, Jonathan shared the CCTV footage with ASP Supari Bin Muhammad (IW7) ("**ASP Supari**"), the Investigating Officer of the case in the disappearance of Pastor Raymond Koh. The CCTV footage eventually went viral when it was uploaded by *The Star Online*.

Summary Of Events *Before* The Disappearance Of Pastor Raymond Koh

Religious Concerns - Issue Of Alleged Proselytization

84. Pastor Raymond Koh was a pastor at the Evangelical Free Church in Petaling Jaya from 1994 to 2004. Prior to that, he was a "Director of Operation Mobilisation, in an international mission agency".
85. In 2004, Pastor Raymond Koh formed Harapan Komuniti together with two other board members, Mohd Rahim bin Ithnen and Sri Ram s/o KJ Gopala Iyer (IW3) ("**Sri Ram**") at 3-1, Jalan PJS 3/48 Taman Sri Manja, 48000 Petaling Jaya.
86. Harapan Komuniti is a non-profit organisation that undertakes social and charity work among marginalised and underprivileged communities. The programmes organised by Harapan Komuniti included amongst others a project named *Inspirasi* in Taman Sri Manja, Petaling Jaya, prison programmes with the Johor Prisons Department, disaster relief works when needed and supporting single mothers and their children.

Thanksgiving Fundraising Dinner

87. Harapan Komuniti's funds came from private donors and fundraising activities. Its accounts are primarily handled by Sri Ram and audited by Soon Yoke Lee & Co.
88. On 3 August 2011, Harapan Komuniti organised a Thanksgiving Fundraising Dinner at the Dream Centre Hall in Damansara Utama Methodist Church (DUMC) Petaling Jaya. This Thanksgiving Fundraising Dinner attracted the attention of Jabatan Agama Islam Selangor (JAIS). On the night of the Thanksgiving Fundraising Dinner, JAIS' officers together with a team of policemen went to DUMC and questioned several Muslim individuals who were present there. Following that, JAIS questioned these Muslim individuals on their involvement with Harapan Komuniti and their purpose of attending the Thanksgiving Fundraising Dinner at DUMC.
89. JAIS' raid at the Thanksgiving Fundraising Dinner attracted a significant amount of public attention. Subsequently, the then Federal Minister of Islamic Affairs,

Jamal Khir Baharom confirmed that Jabatan Kemajuan Islam (JAKIM) was investigating Harapan Komuniti for alleged proselytisation of Muslims.²⁶

90. Pastor Raymond Koh, at the material time was perceived to have carried out work in the proselytisation and conversion Muslims into the Christian faith.
91. On 12 August 2011, about one (1) week after the incident at DUMC, the then UMNO Youth Exco Member, Lokman Noor Adam, the then Senator, Ezam Mohd Nor, and the then Member of Parliament for Kulim Bandar Baharu, Zulkifli Nordin gave religious speeches at Masjid Negeri Shah Alam and stated that there was a need to raise the awareness and danger of proselytisation by DUMC.²⁷
92. On 26 August 2011, about two (2) weeks after the incident at DUMC, Pastor Raymond Koh received an envelope containing two (2) bullets with a note written in red ink at his home in Prima Sixteen, Petaling Jaya. Following that, Pastor Raymond Koh lodged a police report on this. However, the Police did not pursue and/or investigate the matter further.²⁸
93. On 22 October 2011, a protest rally named *Perhimpunan Sejuta Umat, Sejuta Perangai Murtad* organised by Himpunan Pertubuhan-Pertubuhan Islam (HIMPUN) was held at the Shah Alam Stadium soon after the Sultan of Selangor ordered that no one was to be prosecuted in relation to the DUMC incident.²⁹
94. On 10 November 2015, Pertubuhan Muafakat Sejahtera Masyarakat Malaysia (MUAFAKAT) organised a seminar named *Seminar Pendedahan Ancaman Rencana Kristianisasi (SPARK)* at the Auditorium at Kulliyah of Architecture and Environmental Design in International Islamic University, Gombak. According to the flyers that were distributed by MUAFAKAT, Dato' DCP Awaludin Jadid, the *Ketua Penolong Pengarah, Bahagian Ancaman Extremis Sosial, Cawangan Khas Bukit Aman* was invited as a guest speaker. Dato' DCP Awaludin Jadid was called as a witness (IW19) ("**Dato' Awaludin Jadid**") in the Public Inquiry into the disappearance of Amri Che Mat. At the seminar, Dato' DCP Awaludin Jadid spoke adversely against the Christian faith. He urged the audience and Non-Governmental Organisations (NGOs) to take action against any Christianisation

²⁶ Refer to page 7 of Exhibit 10 produced in the Public Inquiry.

²⁷ Refer to Exhibit 21 produced in Public Inquiry.

²⁸ Refer to Exhibit 11 produced in the Public Inquiry.

²⁹ Refer to Exhibit 20 produced in the Public Inquiry.

movement in the country. He further added that the demonstrations and protests by NGOs will not resolve the issue on Christiansation.³⁰

Immigration Checkpoints Incidents

95. According to Susanna, after the DUMC incident, Pastor Raymond Koh and his family were often stopped and questioned by Special Branch officers at immigration checkpoints in Johor Bahru and KLIA Airport whenever they returned from Singapore and overseas.

Summary of Events *After* the Disappearance of Pastor Raymond Koh

The Shooting in Baling, Kedah

96. On 17 June 2017 at 4:25 a.m., there was a shootout between Fauzi and the Special Task Force on Organised Crime (STAFOC) team in Baling, Kedah led by Supt Hazril Bin Kamis (IW15) (“Supt Hazril”). As a result of the shootout, Fauzi was killed.
97. Following that, a forensic team from Alor Setar arrived at the crime scene and found a piece of paper in Fauzi’s car with the address of No. 76, Kampung Selarong, Pengkalan Hulu, Perak written on it.

Recovery of Items Allegedly Relating to Pastor Raymond Koh

98. Supt Hazril and his team of officers later went to the address to further their investigations (“**First Team**”). Supt Hazril conducted a search and seized several items at the said address. A search list purportedly prepared by Supt Hazril was tendered as Exhibit 107A, B & C. The Search List was signed by Supt Hazril.
99. On 18 June 2017, the Chief Police Officer of Kedah, Dato’ Asri Bin Yusoff (IW16) (“**Dato’ Asri**”) issued a Police Press Statement³¹ on the shootout in Baling, Kedah. He listed out the items seized from Fauzi’s house at No. 71, Kampung Selarong, Pengkalan Hulu, Perak which included drugs and firearms. Fauzi was suspected to be a drug and firearms trafficker.

³⁰ Refer to Exhibit 22 produced in the Public Inquiry.

³¹ Refer to Exhibit 40 produced in the Public Inquiry.

100. It is important to note that in Dato' Asri's Police Press Statement, he did not mention any photographs or car number plates allegedly relating to Pastor Raymond Koh being seized by Supt. Hazril during the search of the house.
101. On 25 June 2017, the then Inspector General Police Tan Sri Khalid Bin Abu Bakar (IW5) ("**IGP Khalid**") held a press conference³² stating that the Police had been investigating a group suspected to be involved in drug and firearms trafficking since late 2016. Apart from describing how the shootout in Baling, Kedah took place, IGP Khalid stated that the Police recovered several items allegedly relating to Pastor Raymond Koh from Fauzi's house. These items included photographs of Pastor Raymond Koh, his house and his car. He further stated that the police believed that the drug trafficking group was the same group involved in the abduction of Pastor Raymond Koh.
102. On 30 October 2017, IGP Khalid testified in the Public Inquiry that the items allegedly relating to Pastor Raymond Koh seized at Fauzi's house namely either on the 18th or 19th June 2017 were discovered by a second team of police officers from the Serious Crimes Division of Bukit Aman, Kuala Lumpur ("**Second Team**"). According to IGP Khalid's evidence, the second team travelled from Kuala Lumpur to Fauzi's house one or two days after the shootout in Baling, Kedah had taken place.³³
103. IGP Khalid further testified that the First Team led by Supt. Hazril failed to seize any items allegedly relating to Pastor Raymond Koh in Fauzi's house because the said items "did not arouse any suspicion to the first team since the first team is not handling/investigating on Pastor Raymond Koh's case".³⁴
104. On 2 November 2017, ASP Supari, the Investigation Officer in the disappearance of Pastor Raymond Koh, testified in the Public Inquiry that he did not personally search Fauzi's house or seized the items allegedly relating to Pastor Raymond Koh. He further added that he was only informed by SAC Fadzil Bin Ahmat (IW11) ("**SAC Fadzil**") about the recovery of items allegedly relating to Pastor Raymond Koh.³⁵

³² Refer to Exhibit 42 produced in the Public Inquiry.

³³ Refer to page 179-181 Notes of Proceeding dated 30 October 2017.

³⁴ Refer to page 179-181 Notes of Proceeding dated 30 October 2017.

³⁵ Refer to page 176 Notes of Proceeding dated on 2 November 2017.

105. On 23 November 2017, SAC Fadzil testified in the Public Inquiry that he and his team did not search Fauzi’s house or seize the items allegedly relating to Pastor Raymond Koh. However, he added that ASP Supari received the items allegedly relating to Pastor Raymond Koh from the Seizing Officer, ASP Toh in Pengkalan Hulu.³⁶
106. On 15 October 2018, the *Timbalan Pengarah Jabatan Siasatan Jenayah Riskan dan Operasi*, CP Dato Huzir Bin Mohammad (IW14) (“**CP Huzir**”) testified that only one STAFOC team led by Supt Hazril Bin Kamis (IW15) (“**Supt Hazril**”) had travelled from Kuala Lumpur to the crime scene in Baling, Kedah. He also clarified that Supt Hazril was not from Bukit Aman but from the Police Contingent of Perak and Kedah.³⁷ The same STAFOC team led by Supt Hazril had searched Fauzi’s house in Pengkalan Hulu, Perak and found the items allegedly relating to Pastor Raymond Koh.³⁸
107. During further examination by Counsel on behalf of Pastor Raymond Koh’s family on IGP Khalid’s evidence, CP Huzir further testified that he assumed that the Second Team referred to by IGP Khalid was the Selangor team that arrived later and received the items allegedly relating to Pastor Raymond Koh from the STAFOC team. He added that the Second Team did not discover the items allegedly relating to Pastor Raymond Koh but merely received them. CP Huzir continued to testify that he disagreed with IGP Khalid’s evidence “that the Second Team only went to Fauzi’s house one or two days after 17 June 2017”. CP Huzir contended at the Public Inquiry that the Second Team searched Fauzi’s house on the same day on 17 June 2017.³⁹
108. On 7 December 2018, Supt Hazril testified in the Public Inquiry that CP Huzir was the Commander of STAFOC. Supt Hazril also testified that two (2) weeks prior to the shooting incident on 17 June 2017, he received an order from CP Huzir to arrest a group of arm smugglers that operated at the border of Malaysia-Thailand. Supt Hazril added that he led a STAFOC team from Bukit Aman, Kuala Lumpur to the shootout in Baling, Kedah. As a result, Fauzi was killed in the shootout.

³⁶ Refer to page 106-107 Notes of Proceeding dated on 23 November 2017.

³⁷ Refer to page 39-42 Notes of Proceeding dated on 15 October 2018.

³⁸ Refer to page 49 Notes of Proceeding dated on 15 October 2018.

³⁹ Refer to page 51-53 Notes of Proceeding dated 15 October 2018.

109. After the shootout in Baling, Kedah, a forensic team from IPK Kedah arrived at the crime scene⁴⁰ and found a piece of paper with an address in Fauzi's car. The address was No.76, Kampung Selarong, Pengkalan Hulu. Supt Hazril and his STAFOC team searched the premises which was a *rumah kampung papan* on wooden stilts.⁴¹
110. Following that, Supt Hazril and his STAFOC team discovered and seized a list of items including firearms and items allegedly relating to Pastor Raymond Koh in Fauzi's house.⁴² Supt Hazril further testified that there was no Second Team from Selangor which searched Fauzi's house in Pengkalan Hulu, Perak and that his team was the only team that seized the items allegedly relating to Pastor Raymond Koh.⁴³
111. Following the shootout in Baling, Kedah and the search at Fauzi's house in Pengkalan Hulu, Perak, Supt Hazril testified that on 17 June 2017, he lodged two (2) police reports at 9:04 a.m. at Tanjung Parit, Baling, Kedah and at 4:10 p.m. at Pengkalan Hulu, Perak which were produced as Exhibits in the Public Inquiry.⁴⁴
112. The Search List consisting of three (3) pages of the items seized by Supt Hazril from Fauzi's house on 17 June 2017 at 2.30pm was also produced as Exhibits in the Public Inquiry. The address listed on the Search List was No.76, Kampung Selarong, Pengkalan Hulu.⁴⁵ Supt Hazril also confirmed at the Public Inquiry that the Search List was prepared by him.⁴⁶
113. On 7 December 2018, Dato' Asri testified in the Public Inquiry that the contents of the Police Press Statement he released on 18 June 2017 in relation to the shootout in Baling, Kedah were true and accurate. He further maintained that he did not see any items allegedly relating to Pastor Raymond Koh in Fauzi's house,⁴⁷ hence he did not make mention of the said items in his Police Press Statement.
114. Furthermore, the items allegedly relating to Pastor Raymond Koh were never produced by the Police in the Public Inquiry in its original form even though the

⁴⁰ Refer to page 11-13 Notes of Proceeding dated on 7 December 2018.

⁴¹ Refer to page 36-40 Notes of Proceeding dated 7 December 2018.

⁴² Refer to page 43-53 Notes of Proceeding dated 7 December 2018.

⁴³ Refer to page 68-69 Notes of Proceeding dated 7 December 2018.

⁴⁴ Refer to Exhibit 108 and 111 produced in the Public Inquiry.

⁴⁵ Refer to Exhibit 107 A, B & C produced in the Public Inquiry.

⁴⁶ Refer to page 96-101 Notes of Proceeding dated 7 December 2018.

⁴⁷ Refer to page 135 Notes of Proceeding dated on 7 December 2018.

items had been requested by the Panel repeatedly to be produced before it. Instead, on 13 December 2018, a coloured picture showing the items allegedly relating to Pastor Raymond Koh⁴⁸ was later forwarded by the Officers Appearing for the Police to the Assisting Officers of SUHAKAM, after hearing of the Public Inquiry had been closed. Accordingly, that coloured picture was not tendered through a witness in the Public Inquiry and was not marked as an exhibit.

Evidence of Sergeant Shamzaini Mohd Daud

Introduction

115. At the hearing of the Public Inquiry into the disappearance of Amri Che Mat, Norhayati testified that one Mohd Shamzaini Mohd Daud, a Sergeant with E5 Division (Economic Intelligence) of the Special Branch in Kangar, Perlis (“**Sgt Shamzaini**”) came to her house at about 10:30 p.m. on 12 May 2018 and informed her that the Special Branch, Bukit Aman, Kuala Lumpur had abducted Amri Che Mat under the command of Dato’ Awaludin Jadid. Norhayati also stated that Sgt Shamzaini told her that it was the same team from Special Branch, Bukit Aman, Kuala Lumpur that had caused the disappearance of Pastor Raymond Koh. They spoke for two (2) hours while seated on the verandah of the first floor of Norhayati’s home. Norhayati’s daughter Nur Amirah, was present during the meeting.
116. Both Norhayati and Sgt Shamzaini were called as witnesses in the Public Inquiry into the disappearance of Amri Che Mat and gave evidence of the meeting held between them on 12 May 2018 at about 10:30 p.m.

Details of Sgt Shamzaini’s Evidence Provided by Norhayati

117. The fact of his visit to Norhayati’s house on the night of 12 May 2018 was not denied by Sgt Shamzaini. However, Sgt Shamzaini has denied the contents of the information said to have been given to Norhayati.
118. Norhayati’s version of events of the night of 12 May 2018 is as follows:

118.1. Sgt Shamzaini’s visit was unannounced. Norhayati answered a knock on

⁴⁸ Refer to the Letter from the Police to SUHAKAM dated 13 December 2018, Re: Permohonan Bukti Fizikal/Gambar Barang Rampasan Berhubung Kes Kehilangan Pastor Raymond Koh.

her door, and she asked who it was. Sgt Shamzaini did not answer immediately but asked her if she was Norhayati. When she confirmed that she was Norhayati, Sgt Shamzaini told her that he wanted to speak to her about her husband and that he could not speak to her outside the house.

- 118.2. Norhayati then asked him to move his motorcycle out of sight and to follow her up the external staircase to the verandah on the first floor. Her daughter, Nur Amirah joined them at the verandah. Sgt Shamzaini initially sat on the top of the stairs. However, when he saw the lights of a police car on patrol along the road, he moved further down the staircase so that he could not be seen from the road. Norhayati and Nur Amirah sat on the floor of the verandah .
- 118.3. While at the verandah, Sgt Shamzaini introduced himself as "Sham" and showed Norhayati and Nur Amirah his identity card and the Police identification card. He told them that he was a Sergeant with the Special Branch, Kangar, Perlis under the command of ASP Razman.
- 118.4. According to Norhayati, Sgt Shamzaini came to see her to give her information on Amri Che Mat's disappearance. He told her that the Perlis Police and ASP Razman had intended to arrest Amri Che Mat for his Shia activities and illegal Forex trading. However, without ASP Razman's knowledge, Amri Che Mat was taken away by a team from the Special Branch in Bukit Aman, Kuala Lumpur under the command of Dato' Awaludin Jadid.
- 118.5. When Sgt Shamzaini told her about the abduction by the Special Branch team, Norhayati asked him about Raymond. Sgt Shamzaini told her that Raymond was abducted by the same team for proselytising Christianity amongst the Muslims. He told her that that team was also under the command of Dato' Awaludin Jadid.
- 118.6. Norhayati testified that Sgt Shamzaini informed her that the then IGP, Tan Sri Khalid bin Abu Bakar was aware of the operation. He also told her that the then Perlis Chief Police Officer, Dato' Ab Rashid and the former Head of Special Branch in Perlis, one "Mat Ali" were also aware of the operation. The operation was crude and the dumping of Amri Che Mat's car was unplanned.

- 118.7. He gave her further details that one Inspector Khor was instructed to give false evidence about the gold coloured Toyota Vios and that Inspector Khor's evidence was discussed and planned in advance by the Police. He also informed her that the Toyota Vios was in fact present during the abduction and that one Azam Azahari was in the vehicle together with its owner.
- 118.8. Sgt Shamzaini claimed that he was volunteering this information because what was done is not right and that he did not wish to be complicit. He said that with the change in government, he hoped the truth may be exposed.
- 118.9. The meeting ended with Norhayati giving RM100.00 for Sgt Shamzaini to buy a mobile phone and a SIM card so that they could remain in contact privately. He did not leave any contact details but the understanding was that he would contact her and forward her information.
- 118.10. Immediately after Sgt Shamzaini left, Norhayati exchanged a number of WhatsApp chat messages with one Aizat before speaking to him on the phone. The WhatsApp chat messages while in shorthand, contained a summary of the meeting. Aizat asked her to make a note of the meeting lest she would forget the details. She then wrote down some notes about the meeting in a Note Book, which was tendered in evidence as Exhibit 60(a-c) in the Public Inquiry into the disappearance of Amri Che Mat.
- 118.11. By the time she had finished writing her notes, Aizat and one Anuar came over to her house and she recounted to them what Sgt Shamzaini had told her. After meeting Aizat and Anuar, Norhayati contacted Mohd Faisal Abd Rahman (IW2 in the Public Inquiry into the disappearance of Amri Che Mat) ("**Mohd Faisal**") of Perlis Hope by WhatsApp chat messages and later spoke to him.
- 118.12. She recounted the visit and the information Sgt Shamzaini gave her to Mohd Faisal.
- 118.13. Mohd Faisal contacted Sheryll Stothard (IW15 in the Public Inquiry into the disappearance of Amri Che Mat) ("**Sheryll Stothard**"), a social activist, and an adviser to Norhayati. Sheryll Stothard then contacted

Norhayati around 7:00 a.m. on the morning of 13 May 2018 by WhatsApp chat messages and arranged to speak to her at around 11 :00 a.m., after consulting the lawyers.

- 118.14. Following discussions with Sheryll Stothard and when Norhayati did not hear from Sgt Shamzaini, Norhayati decided to lodge a police report so as to create an official record of the meeting with him. She was afraid to lodge the report in Kangar given its “proximity” to her home and had intended to lodge the report in Kedah. However, as she was to meet her lawyers in Selangor, she decided to lodge a report there. She met with her solicitors in their office in Petaling Jaya, and lodged her report on 15 May 2018 at the Selangor Police headquarters in Section 9, Shah Alam.
- 118.15. Norhayati denied meeting Sgt Shamzaini on the morning of 12 May 2018 outside her home as claimed by Sgt Shamzaini.
- 118.16. Norhayati also denied that the conversation she had with Sgt Shamzaini on the night of 12 May 2018 at her home was about Sgt Shamzaini’s intention to rent the business premises occupied by Ris a/l Chooi (Pharid) (IW16 in the Public Inquiry into the disappearance of Amri Che Mat) (“**Pharid**”), which is adjacent to Norhayati’s house.

119. Sgt Shamzaini’s version of the events is as follows:

- 119.1. Sgt Shamzaini denied that he gave any information about Amri Che Mat to Norhayati. He said that he visited the house not knowing that it was Norhayati’s home and that he was directed to the house by one Pharid who was running Pharid Audio, a car accessory workshop adjacent to Norhayati’s house.
- 119.2. He initially said that he went to Pharid Audio on the morning of 12.5.2018 to have his car tinted. The shop was closed so he tried to contact Pharid by calling Pharid’s number which was displayed on a banner hung outside the premises. This was at 8:56 a.m. As he could not get through Pharid’s line, he made two (2) further attempts. Following that, he went to a nearby paddy field and waited there until he was able to speak to Pharid at 9:18 a.m.
- 119.3. While discussing with Pharid about getting his car tinted, Sgt Shamzaini said he also inquired about renting the premises occupied by Pharid, as

he wanted to operate a car repair workshop business there. He said that Pharid then told him that he should speak to the owner who occupied the adjacent house as he did not have the owner's telephone number.

Presence of the Gold Toyota Vios

120. On 19 October 2017, Roeshan testified in the Public Inquiry into the disappearance of Pastor Raymond Koh that he saw a gold Toyota Vios at the scene of the incident on 13 February 2017. He further testified that the gold Toyota Vios was driven by a male Malay.
121. It is important to note that on 21 March 2018, one Vee Yak a/l Ban Jong (IW2 in the Public Inquiry into the disappearance of Amri Che Mat) ("**Vee Yak**"), the owner of Bengkel JST Auto Mechanics similarly testified that there were three (3) cars parked across the road from his workshop for three (3) consecutive days before Amri Che Mat's disappearance. He further testified that one of the said cars was a gold Toyota Vios. He had taken down the car registration number of the gold Toyota Vios (PFC 1623) as he was afraid that his workshop was being observed or watched by either car repossessioners or people who were up to no good against him. Vee Yak's workshop was located 150 metres from and on the same side of the road as Amri Che Mat's house along Jalan Padang Behor, Kangar, Perlis. Hence, Vee Yak was able to see the gold Toyota Vios from his workshop clearly.
122. Following that, Vee Yak testified that he passed the information about the three (3) cars including the registration number of the Toyota Vios to one Norhafizal bin Mohd Ariffin ("**Norhafizal**") and one Mohd Aizat bin Zahid ("**Aizat**") (IW16 and IW14 in the Public Inquiry into the disappearance of Amri Che Mat respectively). Subsequent to receiving this information from Vee Yak, Aizat immediately contacted one Inspector Khor Yi Shuen, the Investigating Officer into the disappearance of Amri Che Mat (IW9 in the Public Inquiry into the disappearance of Amri Che Mat) ("**Inspector Khor**") on 26 November 2016.
123. On 3 April 2018, Inspector Khor testified in the Public Inquiry into the disappearance of Amri Che Mat that he had conducted a Jabatan Pengangkutan Jalan ("**JPJ**") search on the car registration number of the gold Toyota Vios and sent his officers to interview and record a statement from the owner of the vehicle. He initially stated that he could not recall the name of the owner and that he had ruled out that this was the gold Toyota Vios was the one Vee Yak saw on the basis that the vehicle was in Kuala Lumpur at the material time and the vehicle had never been to Perlis.

124. During further examination in the Public Inquiry into the disappearance of Amri Che Mat, Inspector Khor was shown the JPJ particulars of the vehicle bearing registration number PFC 1623. He was asked whether the owner of the vehicle was one Saiful Bahari bin Abdul Aziz ("**Saiful Bahari**") as stated in the JPJ records. He confirmed that Saiful Bahari was indeed the owner and the person whose statement his officer had recorded. However, he stated that he could not remember Saiful Bahari's occupation.
125. Following that, Inspector Khor was given a list of written questions, including questions about the gold Toyota Vios for him to ascertain evidence about the owner during a break in the hearing of the Public Inquiry. The list of questions was submitted by Counsel for the family of Amri Che Mat to Inspector Khor with the consent of the Panel. In his written answers, Inspector Khor identified Saiful Bahari as an administrative assistant working at the Police Training Center (PULAPOL) at Jalan Semarak in Kuala Lumpur. In evidence, Inspector Khor said that Saiful Bahari had stopped work at PULAPOL in November 2017. He said he tried to locate Saiful Bahari at his home address but Saiful Bahari could not be found there. Inspector Khor informed that Saiful Bahari's supervisor at PULAPOL was one Inspector Mohd Azizie Abd Hamid (IW21) ("**Mohd Azizie**"). It was later learnt that Mohd Azizie was in fact holding the rank of an ASP and not an Inspector, attached to the Special Branch, Kuala Lumpur.
126. On 6 August 2018 and 27 August 2018, ASP Mohd Azizie testified in the Public Inquiry into the disappearance of Amri Che Mat. He identified himself as an Assistant Superintendent of Police with the Logistics Management and Housing Department of the Special Branch in Bukit Aman. He said that Saiful Bahari was the only staff attached to him at the material time in PULAPOL and gave the impression that Saiful Bahari's job was as a low-level general handyman, said to be in charge of cleaning and maintenance of the Police accommodation in PULAPOL. ASP Mohd Azizie claimed that Saiful Bahari stopped coming to work in early November 2017, while his contract expired in March 2018. A week after Saiful Bahari stopped coming to work, ASP Mohd Azizie said that he tried to contact him and even visited his home but Saiful Bahari could not be located. He also claimed that Saiful Bahari could not have been in the Toyota Vios sighted by Vee Yak in late November 2016 because according to a Schedule of leave which he prepared, Saiful Bahari was working in Kuala Lumpur for the 10 days before Amri Che Mat's disappearance. He later confirmed that the Schedule of Leave which he prepared based on Saiful Bahari's leave applications, was for the purposes of giving his evidence at the Public Inquiry.

127. ASP Mohd Azizie also tried to explain the extraordinary 54 days of leave taken by Saiful Bahari, that this included weekends and that he gave him leave beyond his entitlement because Saiful Bahari had requested for it! However, no other explanation or records apart from the loose leave applications by Saiful Bahari and ASP Mohd Azizie's Schedule of Leave were produced during the Public Inquiry. The purported explanation by ASP Mohd Azizie was not a satisfactory explanation.

G. Findings of the Panel

(i) The *Modus Operandi*

128. On a consideration of the evidence, the Panel finds that it was Pastor Raymond Koh who was driving the Honda Accord bearing the registration number ST5515D along Jalan SS4B/10, Kelana Jaya, Petaling Jaya on 13 February 2017 at about 10:50 a.m. when his car was "boxed-in" by three (3) black 4WDs and was forcibly removed from his car. After which all the three (3) black 4WDs and Pastor Raymond Koh's car were driven off, leaving no one behind.
129. The Panel relies on the evidence of Roeshan who witnessed the incident and had testified that he saw about five (5) to six (6) persons being involved in the incident. These persons were fully dressed in black clothes and they were masked.
130. It was contended by Counsel on behalf of the family in their written submissions when describing the operation as "meticulously and professionally executed with military-like precision".⁴⁹
131. However, this contention was disputed by the Officers Appearing for the Police who contended that the abduction of Pastor Raymond Koh was not professionally done "*tidak ada bukti-bukti nyata ianya dilakukan oleh kumpulan terlatih yang mana boleh dikaitkan dengan PDRM khususnya Cawangan Khas. Faktor-Faktor aktiviti Pastor Raymond Koh Keng Joo sendiri yang memungkinkan kehilangannya seperti penglibatan dalam aktiviti keagamaan*".⁵⁰ Further, IGP Khalid had testified in the Public Inquiry that he disagreed with the suggestion

⁴⁹ Refer to page 2 of the Written Submissions by Counsel on behalf of the Family of Pastor Raymond Koh dated 15 January 2019.

⁵⁰ Refer to page 32 of the Written Submissions by the Officers Appearing for the Police.

that the modus of the operation in the disappearance of Pastor Raymond Koh was a special operation carried out by the Police.⁵¹

132. The Panel is of the view that while there is no definition of what amounts to “meticulously and professionally executed with military-like precision”, or “professionally carried out”, the Panel is of the view that regardless of the words used to describe the operation that took place on 13 February 2017 at Jalan SS4B/10, Kelana Jaya, the fact remains that the operation was carried out efficiently and effectively within a span of less than one minute. The Panel further finds that the operation was well organised and well planned as there were even motorcyclists present to direct traffic and a videographer to record the events that took place.
133. Counsel on behalf of the family in their written submissions also contended that as the five (5) or six (6) persons involved in the operation were fully clothed in black with balaclavas that they must have been members of the police force.⁵²
134. This contention was strongly disputed by IGP Khalid. While agreeing the Police have special units where the officers would be fully clothed in black with balaclavas during an operation, the IGP was of the view that the persons involved in the abduction of Pastor Raymond Koh were not police officers as there was no evidence to suggest that there was a police logo/emblem on the front or back of the black clothes worn by the persons to indicate that they were police officers.
135. The Panel is of the view that it is not always the case that police officers who participated in special operations and who wore or were fully dressed in black clothes with balaclavas had the police logo/emblem on either the front or the back of their black clothes.
136. This can be clearly seen in the video marked as Exhibit 82 of the then Sultan of Kelantan, Tuanku Ismail Petra Sultan Yahya Petra, whose convoy was stopped by another police convoy on 4 May 2010. Some of the officers of the latter convoy can be seen in the video to be fully dressed in black clothes with balaclavas without any police logo/emblem seen on either the front or the back of the black clothes worn. There can be no dispute that the men in black were police officers taking part in a special operation.

⁵¹ Refer to page 79-81 Notes of Proceeding dated on 30 October 2017.

⁵² Refer to page 20 of the Written Submissions by Counsel on behalf of the Family of Pastor Raymond Koh dated 15 January 2019.

137. From this circumstantial evidence and from the information given by Sgt Shamzaini to Norhayati that it was a team of police officers from Special Branch, Bukit Aman, Kuala Lumpur that had carried out the “abduction” of the Pastor Raymond Koh. It is the findings of the Panel that the disappearance of Pastor Raymond Koh was in fact carried out by the Special Branch, Bukit Aman, Kuala Lumpur.

(ii)The Search and Seizure of Items at No. 76, Kampung Selarong, Pengkalan Hulu, Perak

138. The Panel finds that the evidence given by the several police officers on the seizure of the items allegedly relating to Pastor Raymond Koh to be full of inconsistencies and material contradictions. The convoluted accounts of how the items allegedly relating to Pastor Raymond Koh were seized seemed incredulous and an affront to common sense and logic. What should have been a straightforward account of who did what and when leading up to the seizure of the items has been so distorted that the evidence simply cannot be accepted as being credible. So much time and effort has been wasted just trying to make sense of the evidence adduced.
139. We say this for the following reasons:
- 139.1. The address written on a piece of paper found in Fauzi’s car was No. 76, Kampung Selarong, Pengkalan Hulu, Perak whereas Dato’ Asri in his Police Press Statement referred to the house as No. 71, Kampung Selarong, Pengkalan Hulu, Perak.
- 139.2. The shootout in Baling, Kedah occurred on 17 June 2017 at about 4:25 a.m. whereas the search conducted by Supt Hazril was at 2.30 p.m. on the said date. Supt Hazril in his evidence stated that he had prepared the Search List himself on all the three (3) pages in Exhibit 107A, B and C. However, a quick glance of the Search List clearly shows that the items listed in the Search List were NOT written by Supt Hazril himself as the writing below his signature in Exhibit 107A, B and C differ substantially from the handwriting listing out the items seized.
- 139.3. In Supt Hazril’s evidence, he pointed out that the house at No. 76, Kampung Selarong, Pengkalan Hulu, Perak was “a *rumah kampung papan* on wooden stilts” whereas the house at No. 71, Kampung Selarong, Pengkalan Hulu, Perak mentioned by Dato’ Asri in his Police

Press Statement was a single storey concrete house as shown in the photograph marked as Exhibit 117A.

- 139.4. Items six (6) to nine (9) in Exhibit 107B and item one (1) in Exhibit 107C in the Search List were stated under "*Tempat/Lokasi Barang-Barang yang dijumpai*" to be "*di bawah rumah*". If the house was on wooden stilts, seizure of the items "*di bawah rumah*" may be self-explanatory but not if the house is a single storey concrete building.
140. Supt Hazril testified that he found and seized the items listed as number five (5) in his Search List, marked as Exhibit 107A on 17 June 2017, whereas Dato' Asri in his Police Press Statement on 18 June 2017 made no mention of the items allegedly relating to Pastor Raymond Koh. If indeed and in fact there was a connection between the seizure of the items allegedly relating to Pastor Raymond Koh recovered on the day of the shootout in Baling, Kedah on 17 June 2017, it would have been reasonably expected that Supt Hazril or some other officer would have informed Dato' Asri of this seizure. As Dato' Asri did not mention the items allegedly relating to Pastor Raymond Koh in his Police Press Statement, it would mean that either he was not so informed or the items allegedly relating to Pastor Raymond Koh were NOT seized at the material time.
141. It must be remembered that IGP Khalid had testified that it was the Second Team that had seized the items from Fauzi's house. This evidence is riddled with potholes because:
 - 141.1. It was Supt Hazril who claimed that his team, the First Team that had seized the items allegedly relating to Pastor Raymond Koh;
 - 141.2. It is illogical for the Second Team to go to Fauzi's house one or two days after the shootout in Baling, Kedah after the items allegedly relating to Pastor Raymond Koh were said to have been already seized by Supt Hazril on 17 June 2017;
 - 141.3. If in fact the items allegedly relating to Pastor Raymond Koh were seized by Supt Hazril and removed from Fauzi's house, then there would have been no items left to be seized by the Second Team;
 - 141.4. On 15 October 2018, CP Huzir testified that the Second Team referred to by IGP Khalid actually went to Fauzi's house on 17 June 2017 itself and not one or two days later, thereby contradicting the evidence of IGP Khalid;

- 141.5. On 2 November 2017, ASP Suppari testified that he did not go to Fauzi's house and searched and seized the items allegedly relating to Pastor Raymond Koh. ASP Supari also testified that he did not receive the alleged items.
- 141.6. On 23 November 2017, SAC Fadzil testified that the items allegedly relating to Pastor Raymond Koh which were seized from Fauzi's house were handed to ASP Suppari (by Seizing Officer, ASP Toh from Pengkalan Hulu).
- 141.7. On 7 December 2018, Dato' Asri maintained in his evidence that the contents of his Police Press Statement were accurate and true, thereby contradicting the evidence of IGP Khalid.
142. In view of the material contradictions mentioned above, the Panel concludes that the items allegedly relating to Pastor Raymond Koh were never seized from Fauzi's house on 17 June 2017 and if such items were indeed "seized" then they must have been placed there or "planted" by the officers concerned. Alternatively, if the items allegedly relating to Pastor Raymond Koh were not placed or "planted", the Panel concludes on a balance of probabilities that all the said officers who had testified about the items having been seized from Fauzi's house had said so without any factual basis whatsoever and had concocted the evidence.
143. The Panel therefore rejects the evidence of the several police officers on the purported seizure of the items allegedly relating to Pastor Raymond Koh as being not credible. This would mean that without any credible evidence that the items relating to Pastor Raymond Koh were in fact seized from Fauzi's house, this debunks the contention made by IGP Khalid that the disappearance of Pastor Raymond Koh was somehow related to Fauzi and/or the group of persons alleged to be drug and arms traffickers up North.

(iii) Information Provided by Sgt Shamzaini to Norhayati

144. The Panel is empowered under Section 14(1)(a) of the Act (i) to procure and examine all such evidence whether written or oral and (ii) to examine all such persons as witnesses, if it is necessary and desirable.
145. Pursuant to Section 14(1)(d) of the Act, the Panel is further not constrained by provisions in the Evidence Act 1950 in admitting *any* evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings. As such, the

Panel is of the view that the evidence provided by Norhayati in the Public Inquiry into the disappearance of Amri Che Mat can be considered in this Public Inquiry.

146. In the Public Inquiry into the disappearance of Amri Che Mat, Norhayati testified that Sgt Shamzaini on 12 May 2018 had informed her that the Special Branch, Bukit Aman, Kuala Lumpur under the command of Dato' Awaludin Jadid had abducted Amri Che Mat. She further testified that Sgt Shamzaini told her that it was the same team that had caused the disappearance of Pastor Raymond Koh.
147. Notwithstanding the fact that Sgt Shamzaini later lodged a police report denying that he told Norhayati about the abduction of Amri Che Mat and Pastor Raymond Koh, the Panel is of the considered view that the evidence provided by Norhayati is more credible compared to that of Sgt Shamzaini.
148. The Panel is of the view that Sgt Shamzaini's evidence contradicted the testimony of several witnesses:
 - 148.1. Sgt Shamzaini's statement that he inquired into renting the premises contradicted Pharid's evidence. Pharid had a long lease on the premises where he was running his business, and the lease was only due to expire in 2025. Pharid's evidence was that Sgt Shamzaini inquired generally on whether he knew of any premises for rent. Pharid did not evince any intention nor indicate to Sgt Shamzaini that he was going to close down his business! Pharid himself said that there was no discussion with Sgt Shamzaini on the taking over of the lease of his premises.
 - 148.2. Sgt Shamzaini also contended that he met Norhayati twice on 12 May 2018 that is, once in the morning and once in the evening. He said that after he spoke to Pharid, he noticed a woman coming out of the house adjacent to Pharid's shop. He went up to her and asked whether the shop was open and when she told him it was closed, he asked her if it was for rent. He claimed that the woman then asked him a series of questions about himself. He told her that his name was Sham, and that he had been living in Perlis for the last 5 to 6 years. He told her that he was attached to the Special Branch Division at the Police Headquarters in Kangar. He then claimed that she told him that she was busy and that he should come over at night to talk to her. This version of events contradicts Sgt Shamzaini's own police report where he had stated that he had only met her once in the evening. According to the evidence of Norhayati, Sgt Shamzaini only met her once on 12.5.2018 and that was in the evening only.

- 148.3. The telephone call logs on the morning of 12.5.2018 of Sgt Shamzaini, before he met Norhayati, showed that he had contacted Aizat, a member of Perlis Hope before he had even spoken to Pharid. This shows that even before he met Norhayati, Sgt Shamzaini knew that she was somehow connected with Perlis Hope and that was the reason he had contacted Aizat before speaking to Pharid. Sgt Shamzaini wanted Aizat to pass him Norhayati's number.
- 148.4. When he could not get Norhayati's number from Pharid, he tried calling both Pharid and Aizat again that night. It was only after he had failed to get Norhayati's telephone number, that he knocked on the door of her house after 10:00 p.m. that evening.
- 148.5. This also contradicts Sgt Shamzaini's evidence that he went to Pharid Auto to have his car tinted. This was clearly an excuse to speak to Pharid and to get Norhayati's telephone number. If he had genuinely wanted to get his car tinted he would not have called Aizat before he called Pharid, and he would not have asked Pharid for Norhayati's number.
- 148.6. Firstly, it is incongruous that a policeman from the Special Branch in Kangar, Perlis would want to meet with the wife of a man whose disappearance was the subject of an ongoing police investigation and a Public Inquiry, in which the actions of the Special Branch officers, both in Kangar, Perlis and in Bukit Aman, Kuala Lumpur were under scrutiny. Sgt Shamzaini surely cannot seriously contend that he did not know of Norhayati's identity because from the contradictions outlined above the Panel can safely infer that he *knew* whom he was talking to before he met Norhayati.
- 148.7. Secondly, and flowing from the first incongruence, it is the admitted evidence of Sgt Shamzaini that the meeting on the night of 12 May 2018 lasted for two (2) hours, during which time Norhayati confronted him with a series of accusations on the conduct of the police in the disappearance of her husband. The tenancy of the premises occupied by Pharid was not discussed at all except in a very peripheral way. If Sgt Shamzaini is to be believed, it means that he spent two (2) hours listening to Norhayati's accusations and laments about the role of the police in the abduction of her husband and that he finally left after she threatened to lodge a police report against him accusing him of being part of her husband's disappearance!

- 148.8. It is absurd to suggest that a police officer would have sat on the verandah of Amri Che Mat's house for two (2) hours listening to Amri Che Mat's wife lament on an ongoing investigation when all that he went there for was to ask whether the premises occupied by Pharid was for rental. One would have expected that the minute the conversation turned to the police investigation and the ongoing Public Inquiry, Sgt Shamzaini would have left, if indeed his only purpose was to discuss about the tenancy.
- 148.9. The only logical explanation for his telephone call to Pharid was that he wanted to get Norhayati's number from him. The talk of a tenancy is illogical and can only be explained as a ruse or cover up for his real intention which was to speak to Norhayati about the disappearance of Amri Che Mat. In all probability he was only trying to speak to Norhayati to arrange to meet her and to pass her the information which she testified that he did.
- 148.10. No justification was given nor could it be understood why a policeman would go to a lady's home at night knowing that her husband was missing, unless he had some important information he needed to pass to her.
- 148.11. Sgt Shamzaini's move to sit a little lower on the staircase of Norhayati's verandah when he saw the lights of the Police patrol car was consistent with someone who did not wish to be seen.
- 148.12. There is considerable confusion in Sgt Shamzaini's evidence in the police report he lodged on 18 May 2018. It is clear that he was spoken to by the Head and Deputy Head of the Special Branch in Kangar, Perlis and had his statement recorded on 17 May 2018 by a senior police officer from Bukit Aman, Kuala Lumpur. Sgt Shamzaini only lodged his report on 18 May 2018 and the police have not produced his witness statement at the Public Inquiry. He was clearly under considerable pressure following Norhayati's report. If he was indeed and in fact threatened by Norhayati as alleged, he would have lodged a police report against her at the earliest opportunity and not 3 days after the meeting.
149. In short, Sgt Shamzaini's evidence is filled with inconsistencies and it raises serious doubts on his credibility. Sgt Shamzaini displayed inconsistent and odd behaviour in explaining how he came about Pharid's and Aizat's telephone numbers. The Panel is of the considered view that on a balance of probabilities,

Norhayati's version of events in the Public Inquiry into the disappearance of Amri Che Mat is more credible and should be accepted on the following grounds:

- 149.1. Norhayati's actions post Sgt Shamzaini's visit are consistent with the actions of someone who is telling the truth. At the very least her actions show her to be a person of credibility and her evidence of Sgt Shamzaini's visit and the information he gave her cannot be dismissed as fabricated or incredulous.
- 149.2. Norhayati has no reason to lodge a police report against Sgt Shamzaini who was at all times a total stranger to her. She did not even know of his existence had he not met her that night. In any event, the police report lodged by Norhayati did not make any accusations against Sgt Shamzaini as he had contended, but was merely to record that such an event occurred.
- 149.3. Her evidence is corroborated by the evidence of Nur Amirah, her daughter, who was present during the meeting. Nur Amirah is not a minor and attends university. She had testified that she went into the house to get RM100.00 to hand to Sgt Shamzaini to enable him to purchase a phone so that he could keep in contact with her mother.
- 149.4. Norhayati's evidence is also corroborated by the evidence of her friends and advisors and Aizat and Faisal, with whom she was in immediate contact following Sgt Shamzaini's visit. There are no material inconsistencies in their evidence.
- 149.5. The notes on the meeting written by Norhayati immediately after Sgt Shamzaini left is contemporaneous and are strong corroborative evidence.
- 149.6. Norhayati's notes contained facts which could not have come from any other source but from Sgt Shamzaini himself:
 - (a) There is a reference to the Toyota Vios being located in Jalan Semarak as recorded in her notes after the visit. Jalan Semarak is where Police Training Centre (PULAPOL) is located in Kuala Lumpur and where one Saiful Bahari was working in November 2016. There is no indication of Jalan Semarak being disclosed in any of the evidence adduced in the Public Inquiry and her notes referring to Jalan Semarak could have only come from Sgt Shamzaini; and

- (b) The name Azam Azahari that was recorded in Norhayati's note turned out to be a Special Branch officer who had served in Bukit Aman, Kuala Lumpur and later in Perlis and who is now on transfer to Terengganu. Notwithstanding Sgt Shamzaini's denial of all knowledge or involvement in Amri Che Mat's disappearance, Norhayati would have had no means of knowing that such a person even existed unless Azam Azahari's name was given to her by Sgt Shamzaini.

- 149.7. The making of the police report by Norhayati adds to the credibility of her evidence. The information that she reported to the police consisted of very serious allegations of an enforced disappearance carried out by the Police in particular the Special Branch, Bukit Aman. It was not made lightly and as a teacher and educated person, she would be fully aware of the consequences of making a false report.
- 150. The Panel is of the view that based on Norhayati's evidence, the disappearance of Pastor Raymond Koh was carried out by the Special Branch in Bukit Aman, Kuala Lumpur.

(iv) The Gold Toyota Vios

- 151. Based on the evidence adduced in the Public Inquiries into the disappearances of Pastor Raymond Koh and Amri Che Mat, the Panel makes the following findings:
 - 151.1. The JPJ Registration particulars of the Toyota Vios bearing registration number PFC 1623 was current as at 10 April 2018. According to the particulars, the registration was active and the car was insured until 19 February 2019. This means that from the JPJ records, Saiful Bahari was and is the owner of the Toyota Vios at all material times and that he has kept his ownership status including road tax and insurance current.
 - 151.2. In spite of this, Inspector Khor claimed that the Police have not been able to locate Saiful Bahari to testify at the Public Inquiry.
 - 151.3. During the hearing at the Public Inquiry into disappearance of Amri Che Mat, evidence of Inspector Khor relating to the owner of the gold Toyota Vios was not free-flowing. The lack of clarity in the evidence concerning Saiful Bahari is troubling and there appears to be a concerted effort to obscure or suppress all reference to him and his suspected involvement in this case.

151.4. Although a Special Task Force had been formed in Bukit Aman to coordinate the investigations into the Missing Persons and the information on the presence of the gold Toyota Vios in the days before the disappearance of Amri Che Mat, it is unfortunate that the Investigating Officer, ASP Supari did not take any action to investigate and locate the gold Toyota Vios bearing PFC 1623 and its registered owner. If the owner of the gold Toyota Vios could have been identified earlier, the owner of the car could have been called to participate in an Identification Parade for Roeshan to identify whether that person was at all present at the scene of the crime at the material time.

(v) Shortcomings of the Police Investigations and Conduct Unbecoming of the Police

152. Upon analysing the evidence of the witnesses and the submissions of Counsel on behalf of the family of Pastor Raymond Koh, Assisting Officers of SUHAKAM, Counsel of the Bar Council and the Officers Appearing for the Police, the Panel is of the view that there are indeed several shortcomings in the police investigations into the disappearance of Pastor Raymond Koh as summarised below:

Delay

- 152.1. In particular, the Panel noted that there was a significant delay in the manner the investigations into the disappearance of Pastor Raymond Koh were carried out by the Police.
- 152.2. On 13 February 2017 at about 11:54 a.m., Roeshan had lodged a police report at the Kelana Jaya Police Station about the incident he witnessed at Jalan SS4B/10, Kelana Jaya, Petaling Jaya. However, Roeshan only managed to meet Inspector Ali after waiting for approximately two (2) hours.⁵³
- 152.3. It was only on 16 February 2017, three (3) days after the disappearance of Pastor Raymond Koh, that the Police had arranged for Roeshan to do a photofit to identify the Indian man whom he saw at the scene of the

⁵³ Refer to page 35 Notes of Proceeding dated on 19 October 2017

incident on 13 February 2017. At the police station, Roeshan again waited for another two (2) hours before he could do the photofit.⁵⁴

- 152.4. In cases such as suspected abduction or even missing persons, early commencement of investigations is of the essence. Therefore, the Panel is of the view that the manner in which the Police had commenced their investigations into the disappearance of Pastor Raymond Koh left much to be desired.

The Police's Failure to Obtain CCTV Footage

- 152.5. Following the disappearance of Pastor Raymond Koh, his family had been actively looking for information and assistance from the residents along Jalan SS4B/10, Kelana Jaya, Petaling Jaya to try to determine what actually happened to Pastor Raymond Koh on the day of the incident. On 15 February 2017, they managed to obtain CCTV footage from two (2) nearby houses along Jalan SS4B/10, Kelana Jaya, Petaling Jaya which partially showed the manner in which Pastor Raymond Koh was abducted.
- 152.6. The Police, on the other hand, failed to obtain any CCTV footage from the nearby houses along Jalan SS4B/10, Kelana Jaya. They merely claimed that *"Ada CCTV di rumah yang berhampiran, tapi rumah tertutup, tak ada orang dan berulang kita pergi pun tak ada orang. Bila ada orang pula cakap itu dummy sahaja, bermacam-macam alasan."*⁵⁵
- 152.7. In the Public Inquiry, ASP Supari further testified that although there were CCTVs installed along the route/highways that may have captured the movement of the vehicles along Jalan SS4B/10, Kelana Jaya, Petaling Jaya,⁵⁶ most of the said CCTVs were not functioning. ASP Supari further testified that he was unable to confirm the reason for the malfunctioning of the CCTVs or as to how long the CCTVs had been out of order.⁵⁷

⁵⁴ Refer to page 37, 38 Notes of Proceeding dated on 19 October 2017.

⁵⁵ Refer to page 151 Notes of Proceeding dated on 2 November 2017.

⁵⁶ Refer to Exhibit 19 produced in the Public Inquiry.

⁵⁷ Refer to page 14-16 Notes of Proceeding dated on 13 November 2017.

- 152.8. The Panel is of the view that CCTV footage have been regularly relied on by the police to solve crimes. The Police's failure to obtain *any* CCTV footage in relation to the incident along Jalan SS4B/10, Kelana Jaya, Petaling Jaya shows that they lacked seriousness in the manner they conducted their investigations into the disappearance of Pastor Raymond Koh. Their explanation for this failure also fell short of the standard that is reasonably expected of them. Further, the Police also refused to reveal initially that they have a control room at the Petaling Jaya Police Station and that Majlis Bandaraya Petaling Jaya and Malaysia Highway Authority had CCTVs under their control as well. This can be seen as an attempt to suppress information by the Police on the disappearance of Pastor Raymond Koh.

Last Ping from Pastor Raymond Koh's Mobile Phone

- 152.9. In the Public Inquiry, Nazeri bin Mohamad (IW13) ("**ASP Nazeri**") testified that ASP Supari had only requested him to locate the last location of Pastor Raymond Koh's phone at about 12:00 a.m. on 14 February 2017, that is after almost twelve (12) hours after Roeshan had lodged his police report on 13 February 2017 at 11:54 a.m.
- 152.10. Following that, ASP Nazeri further testified that he informed ASP Supari at about 12:45 a.m. on 14 February 2017 that the general final location of Pastor Raymond Koh's phone was in the vicinity of Jalan SS25/25, Taman Mayang, Petaling Jaya.⁵⁸
- 152.11. The Panel is of the view that upon confirming the final location of Pastor Raymond Koh's phone, the Police had failed to go to that area to make a thorough search for Pastor Raymond Koh.

Peter Chong

- 152.12. The Panel is of the view that the Police were slow in carrying out investigations into leads that could have provided useful information in relation to the disappearance of Pastor Raymond Koh. This is clear when the Police had failed to thoroughly investigate the information provided by social activist Peter Chong Fook Meng (IW9) ("**Peter Chong**") who had reported that he had received a Whatsapp message from an anonymous

⁵⁸ Refer to page 10 Notes of Proceeding dated on 7 September 2018.

number on 6 April 2017 claiming that he or she could provide Peter Chong with information on the disappearance of Pastor Raymond Koh.⁵⁹

152.13. The Panel further notes that although Peter Chong later lodged a police report with ASP Chua from Dang Wangi Police Station, Kuala Lumpur and had his statement recorded by ASP Supari, the Police failed to investigate thoroughly with the help of the Thai police authorities to determine fully the events narrated or complained of by Peter Chong that took place in Hat Yai and Pattaya, Thailand.⁶⁰

Conduct Unbecoming

152.14. In addition, the Panel is of the view that the conduct of the Police in the investigations into the disappearance of Pastor Raymond Koh was found lacking in propriety and good conduct.

152.15. This can be seen in IGP Khalid's response to reporters in an interview on 20 March 2017 where he stated: "*To the media, individuals and NGOs who want to get involved in kidnap cases, **shut your bloody mouth**; you are putting the victim in a high degree of danger.*"⁶¹ The Panel finds the use of such strong and uncouth language to be improper given that the media and other parties, especially the family of Pastor Raymond Koh were anxiously awaiting updated information from the Police.

H. Conclusion

Enforced Disappearance by Agents of the State

153. The Panel is of the considered view that the enforced disappearance of Pastor Raymond Koh was carried out by agents of the State namely, the Special Branch, Bukit Aman, Kuala Lumpur, within the definition of the first limb under Article 2 of ICPPED.

154. The basis for this conclusion can be found in the evidence of Norhayati who testified that Sgt Shamzaini had told her on 12 May 2018 at about 10:30 p.m. that

⁵⁹ Refer to page 7 Notes of Proceeding dated on 14 November 2017.

⁶⁰ Refer to page 53 Notes of Proceeding dated on 14 November 2017.

⁶¹ Refer to Exhibit 35 produced at the Public Inquiry

it was the Special Branch, Bukit Aman, Kuala Lumpur which had carried out the enforced disappearance of both Pastor Raymond Koh and Amri Che Mat.

Enforced Disappearance by Non-State Agents

155. The Panel further finds that there is no evidence to support the contention, as suggested by Counsel on behalf of Pastor Raymond Koh, that Pastor Raymond Koh was abducted by persons or groups of persons acting with the authorisation, support or acquiescence of the State.

Refusal to Acknowledge the Deprivation of Liberty

156. It will be noted that the enforced disappearance of Pastor Raymond Koh was “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”
157. This conclusion on the refusal by the State, namely the Police, to acknowledge the enforced disappearance is supported by the fact that to date, the Police have refused to reclassify the disappearance of Pastor Raymond Koh as the case of enforced disappearance from the case of abduction.

Common Features Between the Two Disappearances

158. The Panel is further of the view that there are common features between the disappearance of Pastor Raymond Koh and Amri Che Mat. The common features that the Panel has taken note of are the following:

(i) Religious Issues

159. Pastor Raymond Koh was a pastor at the Evangelical Free Church in Petaling Jaya from 1994 to 2004. Following that, he formed Harapan Komuniti together with two others to carry out social and charity work among marginalised and underprivileged communities. At the Thanksgiving Fundraising Event organised by Harapan Komuniti in DUMC on 3 August 2011, the Selangor State Islamic Affairs Department’s (“JAIS”) officers and a team of policemen raided the premises as there were several Muslim individuals who were found to be present at the event.

160. Amri Che Mat was born and brought up as a Sunni Muslim. However, he later took interest in Shiaism where the followers hold very contrasting beliefs from those of the adherents of Sunni Islamic. Amri Che Mat was one of the founders of Perlis Hope, an organisation that undertakes to assist the poor and needy in the community regardless of race or religion. However, Perlis Hope was suspected by the then Chief Minister of Perlis, Dato Seri Shahidan Kassim and the Director of Perlis State Islamic Affairs Department (“JAIP”), Dr. Hazman Hassan (IW11 in the Public Inquiry into the disappearance of Amri Che Mat) to be a Shia organisation. Further, Amri Che Mat’s home, which is adjacent to the office of Perlis Hope, was inspected by the Mufti of Perlis, his officers, together with police officers from the Special Branch, Kangar, Perlis.
161. The Panel finds that Pastor Raymond Koh and Amri Che Mat were both individuals targeted by religious authorities and the Police on allegations that they were involved in matters against Islam in Malaysia.

(ii) Direct Surveillance

162. The Panel also found that there was direct surveillance on the activities carried out by both Pastor Raymond Koh and Amri Che Mat in their respective organisations before their disappearances.
163. Following JAIS’ raid at the Thanksgiving Fundraising Dinner organised by Harapan Komuniti, Susanna testified that Pastor Raymond Koh and his family were often stopped and questioned by Special Branch officers at immigration checkpoints in Johor Bahru and KLIA Airport whenever they returned from Singapore and overseas. Further, the Federal Minister of Islamic Affairs, Jamal Khir Baharom also confirmed that Harapan Komuniti was investigated for the alleged proselytisation of Muslims.
164. On the other hand, it is also undisputed that Amri Che Mat was under the close surveillance of the religious authorities, Special Branch in Kangar, Perlis and the Special Branch in Kuala Lumpur. In or around October 2015, the Mufti of Perlis, Dato’ Dr. Mohd Asri Zainal (IW10 in the Public Inquiry into the disappearance of Amri Che Mat) (“**the Mufti**”) and the officers from the Mufti’s department inspected Amri Che Mat’s house after receiving a number of complaints about his activities in relation to Shiaism. Following that, the religious authorities and the police officers from the Special Branch spoke to Amri Che Mat directly and warned him against the propagation of his Shia beliefs during the meeting on 22 October 2015.

(iii) Similar Modus Operandi

165. The Panel is of the view that the *modus operandi* of the disappearances of Pastor Raymond Koh and Amri Che Mat bore uncanny similarities.
166. In the Public Inquiry into the disappearance of Pastor Raymond Koh, Roeshan testified that he saw a car being “boxed-in” by three (3) 4WD vehicles while he was driving along Jalan SS4B/10, Kelana Jaya, Selangor. The driver was seen being dragged out of his car and put into one of the 4WD vehicles. The description of the *modus operandi* was later seen in the CCTV footage obtained by Pastor Raymond Koh’s family.
167. In the Public Inquiry into the disappearance of Amri Che Mat, there was also direct evidence by Saiful Afdzan that he saw a vehicle which matched the description of Amri Che Mat’s Toyota Fortuner being “boxed-in” by three (3) 4WD vehicles. The driver attempted to run away from the three (3) 4WD vehicles, but he was caught and dragged back into one of the said vehicles.
168. Further, in both cases, the persons dragging Amri Che Mat and Pastor Raymond Koh into one of the vehicles, were described to be wearing black clothing.

(iv) Presence of Gold Toyota Vios

169. The Panel is of the further view that a gold Toyota Vios was parked near Amri Che Mat’s house before his disappearance and that a gold Toyota Vios was at the scene of the abduction of Pastor Raymond Koh was no mere coincidence.
170. In the Public Inquiry into the disappearance of Pastor Raymond Koh, Roeshan testified that besides the three (3) black 4WD vehicles, there was a gold Toyota Vios at the scene of the incident at Jalan SS4B/10, Kelana Jaya. Following that, he further testified that there was an Indian man who told him to “back off” when he got closer to the scene of the incident. Based on the CCTV footage obtained, it is clear that the Indian man described by Roeshan, was a passenger in the gold Toyota Vios. He had approached Roeshan’s car when he saw Roeshan drawing near.
171. On the other hand, in the Public Inquiry into the disappearance of Amri Che Mat, Vee Yak also testified that he noticed a gold Toyota Vios was parked across the road from his workshop for three (3) consecutive days before Amri Che Mat’s disappearance. He took down the car registration number of the gold Toyota Vios

(PFC 1623) and this information was later given to Inspector Khor by Aizat. Norhayati also testified that Sgt Shamzaini had informed her that the gold Toyota Vios was in fact present during Amri Che Mat's abduction and that she should advise her solicitors to harp on the fact in the next hearing before the Panel.

I. Recommendations of the Panel

172. Pursuant to the Panel's last Term of Reference "To recommend measures or guidelines to be taken to ensure that such alleged breach or breaches do not recur," the Panel makes the following recommendations:

Authorities to Respect Freedom of Religion as a Fundamental Human Right

173. The fundamental human right to freedom of religion is explicitly set out in the Universal Declaration of Human Rights as well as in Article 11(1) of the Federal Constitution of Malaysia read with Article 11(4) which states that "State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam." Freedom of religion is also recognised in several other instruments such as the International Covenant on Civil and Political Rights ("ICCPR"), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and resolutions of the Human Rights Council and the General Assembly, to name a few.
174. It is therefore vital that the State and its agents, including the Police and equally the State Religious Authorities, recognise and respect this right. The authorities should be reminded of Article 3 of the Federal Constitution of Malaysia to wit:

"Religion of the Federation

3(1) Islam is the religion of the Federation; but **other religions may be practiced in peace and harmony** in any part of the Federation."

Demarcation Between the Police and the Religious Authorities

175. From the evidence adduced during the Public Inquiry, it is clear that both the Police and the religious authorities are uncertain of the extent of their powers

and jurisdiction in respect of the enforcement against the propagation of Christianisation.

176. During the Public Inquiry, several concerns regarding the interaction between the Police and the State religious authorities were raised, inter alia:
- 176.1. Seminars and religious meetings were held and extended to the public particularly to Muslims, the intentions and message behind these activities were mainly on religious issues and protecting the Islamic faith against Christianity; and
- 176.2. No formal complaints were lodged to the religious authorities or to the Police that could justify why the religious authorities, or the Police needed to look into the activities of Pastor Raymond Koh or Harapan Komuniti. Even if the religious authorities had reason to look into the activities of Pastor Raymond Koh or Harapan Komuniti, why was Police presence required;
177. The Panel is of the view that the Police should not be involved in religious matters unless the situation warrants such intervention as explained in paragraph 178 below. Therefore, a clear demarcation of police interaction with other departments such as the religious authorities in this case and agencies of the government must be drawn up, shared with the public and enforced accordingly.
178. The Panel recognises that there may be situations where religious authorities may need the assistance of the Police so as to ensure that law and order is maintained in the country, where the religious authorities may not have the adequate support and infrastructure to deal with such situations. As such, there must be clear Standard Operating Procedures (SOPs) to govern the intervention of the Police. Importantly it must be emphasised that Police intervention to maintain law and order should only be exercised in situations of real, grave and imminent threats to national security of the country.

Reforms to Standard Operating Procedures of the Police

179. Throughout the Public Inquiry, several complaints were made against the Police. The apparent lack of cooperation, suppression and concealment of evidence by the Police was evident during the course of the hearing of the Public Inquiry. The Panel has highlighted some shortcomings in the Police Investigations in paragraphs 152 to 152.15 above. The Panel therefore, makes the following recommendations:

Investigation Papers

180. The Panel is of the view that, provided the disclosure of the documents contend the Investigation Paper requested do not prejudice ongoing investigations, such documents such as the sketch plan of the scene should be declassified, produced and be admitted in the Public Inquiry as evidence to facilitate the Panel's investigations in the interest of justice and public interest.

Cases of Missing Persons, Abductions and Disappearances

181. In cases of suspected missing persons, according to the Police protocol, 24 hours must have lapsed before a case can be classified as a missing person case. The Panel calls on the Police to review this protocol in cases where there are overwhelming circumstances that point to an abduction or involuntary disappearance of a person.
182. A distinction between this class of cases is necessary so that each case is dealt with appropriately and that no time is wasted. The investigations have to be conducted urgently to increase the chances of finding the missing persons safely.
183. Reforms on the standard operating procedures should implement stringent training on communications protocol to address missing person cases and include procedures such as informing the progress of the case to the family members and members of the public timeously.
184. In view of the Panel's finding that Pastor Raymond Koh is the victim of a case of enforced disappearance, the Panel urges the Police to reclassify Pastor Raymond Koh's case as an enforced disappearance case from that of a missing person case and to recommend investigating accordingly.

Role of the Special Branch

185. Throughout the Public Inquiry, many raised their concerns on the role and functions performed by the Special Branch in public order policing. It is recognised that there appear to be no legal provisions dealing with the functions, powers and duties of the Special Branch.⁶² The Panel recommends that the

⁶² Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police 2005.

Special Branch be made accountable and its powers and responsibilities are spelt out in law so that it can function impartially and independently and to clearly define the term 'security' to avoid the abuse of power, to further scrutinise the agency and to increase their accountability.

Independent Police Complaints and Misconduct Commission (“IPCMC”)

186. Counsel and observers for the family of Pastor Raymond Koh have submitted that it will be an integral part of the primary investigation into the disappearance of Pastor Raymond Koh to investigate the conduct of the Police's investigation to date. This is based on their belief that the ongoing investigation is a sham intended to cover the identities of the abductors and those behind them and that if the investigation itself is investigated those controlling the investigation will be exposed and through them, the identities of the abductors will be revealed.
187. This supports the call by the Bar Council to establish the IPCMC⁶³ so that allegations against the Police such as the above case are addressed adequately.
188. Many have called for the setting up the IPCMC as an independent oversight mechanism for the Police since the public has very little confidence in the Police to abide by the rules and regulations in safeguarding the interests of the public.

Set Up of Special Task Force to Investigate the Disappearance of Pastor Raymond Koh

189. Following the Panel's findings, it is up to the police to properly investigate and bring to book the culprit or culprits responsible. Every effort must be made to track down the abductors of Pastor Raymond Koh in a thorough police investigation. For starters, an experienced Investigating Officer should be appointed to reinvestigate the case.
190. The family needs some closure and answers can only be provided by the State. It is believed that those who have been put in charge so far are withholding the answers to these questions, or are refusing to undertake a diligent exercise to discover them, hence a new and separate task force needs to be set up to re-investigate the disappearance of Pastor Raymond Koh.

⁶³ Recommendation in Report of the Royal Commission to Enhance the Management and Operation of the Royal Malaysian Police (2005)

191. Therefore, the Panel recommends that a special task force be set up to reopen and reinvestigate the case of Pastor Raymond Koh as an enforced disappearance case, instead of a missing person case.
192. To ensure a just disposal of the case and the carrying out of proper investigations, the Panel proposes the following guidelines for the operation of the Special Task Force:
 - 192.1. The Special Task Force should comprise of independent investigators to be appointed by the Attorney General. In the event there is any conflict of interest, they ought not to be appointed. In selecting members of the Special Task Force, the appointing parties shall have regard to, inter alia, the following:
 - (c) Persons who have no current or past connections with the criminal investigations conducted into the disappearance of Pastor Raymond Koh;
 - (d) Persons who have no current or past connections with any current or past member of the STAFOC team and Special Branch, Bukit Aman, Kuala Lumpur.
 - (e) Persons who have no current or past connections with current or past members of the religious authorities such as JAKIM & JAIS.
 - 192.2. The Police shall forward all investigation papers and/or intelligence gathered so far in connection with the disappearance of Pastor Raymond Koh to the Special Task Force for its further action;
 - 192.3. The Special Task Force shall report to the family and SUHAKAM at regular intervals on the progress of its investigations;
 - 192.4. The Special Task Force shall produce a report on the findings of the Special Task Force's investigations which will be made available to the public as soon as possible.

Legal Reforms

Amendments to the Law in Malaysia

193. The Panel recommends that the Government of Malaysia should review the Penal Code and the Criminal Procedure Code to incorporate enforced or involuntary disappearances under a category specific to cases involving missing persons. In other words, amendments shall effectively make it an offence under the Penal Code, in addition and separate from the offence of abduction and kidnapping.

Ratifying International Instruments

194. Malaysia has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance 2006.

194.1. By ratifying the Convention, Malaysia will assume an international obligation to eradicate enforced disappearance. The measures set out in the Convention include provisions on, among others

- (f) the effectiveness of investigations into enforced disappearances and involuntary disappearances⁶⁴;
- (g) bringing those directly and indirectly involved to account for their actions⁶⁵;
- (h) the creation of an additional offence in the penal law with enhanced sentencing for enforced disappearances⁶⁶;
- (i) the provision of information to the families of victims⁶⁷; and
- (j) the training of law enforcement officers⁶⁸.

⁶⁴ Articles 3, 12, 19 and 22 of the ICPPED.

⁶⁵ Articles 6 and 10 of the ICPPED.

⁶⁶ Article 7 of the ICPPED.

⁶⁷ Articles 18 and 24 of the ICPPED.

⁶⁸ Article 23 of the ICPPED.

- 194.2. In short, the ICPPED provides guidelines on identifying elements of an enforced disappearance and clearly outlines the role of the Government in investigating the offence and other related offences.
- 194.3. The Government should utilise ICPPED to produce a framework for the introduction of legislation to criminalise enforced disappearance as well as to fill up the missing components in Malaysia's legislation.
195. Further, Malaysia has also not ratified the International Covenant on Civil and Political Rights 1966. This treaty obligates its members to protect and preserve basic human rights, such as: the right to life and human dignity; equality before the law; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; right to family life and family unity; and minority rights.
196. Following the ratification of the international treaties above, the Government should take further steps to give legal validity to ICPPED and ICCPR in Malaysia to better enable agencies to resolve the issue of 'enforced disappearance'.
197. In conclusion, the Panel reiterates that in carrying out the Public Inquiry, SUHAKAM was discharging its duty to inquire into infringements of human rights under section 4(1)(d) of the Human Rights Commission of Malaysia Act 1999, and that the recommendations in this report are made in exercise of SUHAKAM's powers under section 4(2)(b) of the Act which provides that SUHAKAM may "advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken."
198. The findings and recommendations herein are the unanimous findings and recommendations of the Panel of Inquiry.

J. Addressing the Terms of Reference

199. The Panel has reached the following conclusions in relation to its Terms of Reference:
- 199.1. In response to paragraph (a):
- The disappearance of Pastor Raymond Koh was a case of enforced disappearance as defined under the International Convention for the Protection of All Persons from Enforced Disappearance; and

- The case of the disappearance of Pastor Raymond Koh was neither a case of voluntary disappearance nor a case of involuntary disappearance in breach of the ordinary criminal law;

199.2. In response to paragraphs (b)(i), (ii) and (iii):

- The enforced disappearance was carried out by the Special Branch, Bukit Aman, Kuala Lumpur;

199.3. In response to paragraph (c):

- The Panel finds that the Royal Malaysian Police have not taken adequate steps to investigate the enforced disappearance of Pastor Raymond Koh;

199.4. In response to paragraph (d):

- The recommended measures or guidelines to be taken to ensure that such enforced disappearances do not recur are as set out above in part I. **Recommendations of the Panel** above.

K. Acknowledgment

200. The Panel takes this opportunity to commend and thank Roeshan for having gone to the Police Station promptly to lodge a police report after witnessing the incident along Jalan SS4B/10, Kelana Jaya. By doing so, Roeshan had performed his civic duties admirably and responsibly notwithstanding that he had to spend at least two (2) hours waiting to give his statement to Inspector Ali. The conduct of Roeshan augurs well for his legal career in the future.

201. The Panel wishes to thank all the parties for their attendance, research and submissions, in the conduct of this Public Inquiry. The Panel further thanks learned Counsel on behalf of the family and of the Bar Council for having volunteered their services *pro bono* to the family of Pastor Raymond Koh and to the Bar Council respectively and to the Assisting Officers of SUHAKAM and to the Officers Appearing for the Police for their contributions in the conduct of this Public Inquiry.

202. The Panel wishes to express its deepest concern and sympathies to the family of Pastor Raymond Koh and his loved ones for the grief, anxiety and sadness arising from the enforced disappearance of Pastor Raymond Koh since 13 February 2017.

3rd April 2019

.....
DATO' MAH WENG KWAI

.....
PROF. DATO' DR. AISHAH BIDIN

.....
DR. NIK SALIDA SUHAILA BINTI NIK SALEH

Counsel/Officer appearing before the Panel:

For the Family of Pastor
Raymond Koh:

- Dato' Gurdial Singh Nijar
- Dato' Jerald Gomez
- Phillip Koh
- Steven Thiru
- Larissa Ann Louise
- Michelle Wong

For SUHAKAM:

- Simon Karunagaram
- Joshua Ericsson
- Yustina Ishak

For the Bar Council:

- Roger Chan Weng Keng
- Mansoor Saat
- Cyrus Tiu Foo Woei

Schedule 1: List of Inquiry Witnesses

Inquiry Witness Number	Name
IW1	Roeshan Celestine Gomez
IW2	Susanna Liew Sow Yoke
IW3	Sri Ram s/o KS Gopala Iyer
IW4	Jonathan Koh Szu Hao
IW5	YB Tan Sri Dato’ Sri Khalid Abu Bakar
IW6	Inspector Ali Asra Bin Abu Bakar
IW7	ASP Supari Bin Muhammad
IW8	Albert Teh Chuan Seng
IW9	Peter Choong Fook Meng
IW10	Zaaba Bin Zakaria
IW11	SAC Fadzil Bin Ahmat
IW12	TPPI Hamid Bin Momong
IW13	ASP Nazeri Mohamed
IW14	CP Dato’ Huzir Bin Mohammad
IW15	Supt Hazril Bin Kamis
IW16	Datuk Asri Bin Yusoff

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ID 3	Video CCTV Rumah No.19 Jalan SS4 - Sudut 1	19.10.2017
ID 4	Video CCTV Rumah No.19 Jalan SS4 - Sudut 2 (1)	19.10.2017
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HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

PUBLIC INQUIRY INTO THE DISAPPEARANCE OF

AMRI CHE MAT

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A. Introduction

1. This is the Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia) (“**SUHAKAM**”) Panel’s final decision in the Public Inquiry into the disappearance of Amri Che Mat.

Disappearances of Joshua Hilmi, Ruth Hilmi, Amri Che Mat and Pastor Raymond Koh

2. Since November 2016, Peter Pormannan A/L Annamalai (“**Peter**”) had made various attempts to contact his friends Joshua Hilmi (who was also known as Hilmi bin Hanim) and his wife, Ruth Hilmi. Their last known address was at Kampung Tunku, Petaling Jaya. On 6 March 2017, Peter lodged a police report at the Klang District Police Headquarters stating that despite various attempts to locate Joshua Hilmi and Ruth Hilmi, the couple was uncontactable. Both Joshua Hilmi and Ruth Hilmi have not been seen, heard of, or heard from, since November 2016 until now, and are believed to have “disappeared”.
3. On 24 November 2016 at about 10:30 p.m. Amri Che Mat was last seen by his wife Norhayati Mohd Ariffin (IW1) (“**Norhayati**”). Their daughter Nur Masarrah saw him leaving their house in his car at about 11:30 p.m. Later that night, his car was found abandoned with the windows smashed at a disused construction site at Bukit Chabang, Kangar, Perlis. Amri Che Mat has not been seen, heard of, or heard from, since then until now, and is believed to have “disappeared”.
4. Less than 3 months later, on 13 February 2017, Pastor Raymond Koh was last seen by his wife Susanna Liew Sow Yoke (“**Susanna**”) at about 10:15 a.m. Subsequently, one Roeshan Celestine Gomez (“**Roeshan**”) lodged a police report stating that at about 10:45 a.m., he saw a car being “boxed in” by three (3) black four-wheel drive vehicles (“**4WDs**”) while he was driving along Jalan SS4B/10, Kelana Jaya, Selangor. The driver was seen being dragged out of his car and put into one of the three 4WDs. This incident was captured on closed-circuit television (“**CCTV**”) of two (2) nearby houses. Pastor Raymond Koh has not been seen, heard of, or heard from, since then and is believed to have “disappeared”.
5. These three (3) cases of disappearance of persons attracted a significant amount of public attention and concern. It has also led the public to perceive that these disappearances of persons may have been the acts of the State and/or that the State may either have been complicit, involved, supportive of or concealing these unprecedented disappearances.

B. Memorandum Submitted to SUHAKAM

6. In furtherance of the protection and promotion of human rights in Malaysia, SUHAKAM was established under the Human Rights Commission of Malaysia Act 1999 (“**the Act**”).
7. SUHAKAM’s functions are set out in Section 4 of the Act, in particular, Section 4(1)(d) which provides that one of the functions of SUHAKAM “shall be to inquire into complaints regarding infringements of human rights.”
8. Further, Section 12 of the Act empowers SUHAKAM to act on its own motion to inquire into allegations of infringement of human rights or to act on complaints submitted to SUHAKAM.
9. Due to the serious concerns surrounding the three (3) cases of disappearances, on 20 April 2017, a coalition of civil society groups led by Suara Rakyat Malaysia (SUARAM) submitted a Memorandum to SUHAKAM on behalf of the families of the several persons that were reportedly missing: Joshua Hilmi and his wife, Ruth Hilmi, social activist Amri Che Mat and Pastor Raymond Koh (“**Missing Persons**”). SUHAKAM was called on to assist the families concerned, to investigate and determine the whereabouts of these Missing Persons and to serve as a channel of communication between the families, the Police and the Government of Malaysia.
10. On 21 April 2017, the Chairman of SUHAKAM, Tan Sri Razali Ismail (“**SUHAKAM Chairman**”) issued a press statement¹ calling on the authorities to use all means at their disposal to discover the fate of these Missing Persons, to take all necessary steps to alleviate the concerns and unease among the public in this regard and to bring to justice those responsible for the disappearances.
11. Up to June 2017, the disappearances of Joshua Hilmi, Ruth Hilmi, Amri Che Mat and Pastor Raymond Koh remained unresolved. It must be highlighted that to date the families of the Missing Persons have not received any demand for ransom for their release nor has anyone or party claimed responsibility for the disappearance of the Missing Persons.

¹ Press Statement No.14 Of 2017 (Memorandum from SUARA RAKYAT MALAYSIA (SUARAM))
<https://www.suhakam.org.my/press-statement-no-14-of-2017-memorandum-from-suara-rakyat-malaysia-suaram/>

12. On 16 June 2017, SUHAKAM released a press statement² stating that SUHAKAM will investigate the disappearances of the Missing Persons in accordance with its statutory mandate and powers. SUHAKAM further stated that it would assist the authorities with their ongoing investigations and called on individuals who may have relevant and important information to come forward in order to have their statements recorded by SUHAKAM.
13. Notwithstanding the above, SUHAKAM reiterated its calls on the authorities to fully and expeditiously investigate all the disappearances, especially where there are suspicions in the minds of the public that the disappearances may be *enforced* disappearances.

Panel for the Public Inquiry and Terms of Reference

14. On 9 August 2017, Chairman of SUHAKAM released a press statement to announce that SUHAKAM will be conducting a Public Inquiry into the disappearances of Joshua Hilmi and Ruth Hilmi, social activist Amri Che Mat and Pastor Raymond Koh.³ In its statement, SUHAKAM announced that the Public Inquiry, scheduled to commence in October 2017, would consider, among others:
 - 14.1. Whether these cases are cases of enforced or involuntary disappearances, as defined under the International Convention for the Protection of All Persons from Enforced Disappearance (“**ICPPED**”) that defines an enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State; and
 - 14.2. Whether the authorities, specifically the Police have taken adequate steps to investigate these cases.
15. On 5 October 2017, pursuant to SUHAKAM’s press statement on 9 August 2017, a panel for the Public Inquiry was formed to investigate the disappearances. The panel comprised three SUHAKAM Commissioners namely, Dato’ Mah Weng Kwai

² Press Statement No.20 of 2017 ((SUHAKAM Will Investigate the Cases Of Missing Persons / Disappearance Of Pastor Raymond Koh, Amri Che Mat, Pastor Joshua Hilmi and Ruth Hilmi, To Assist the Authorities with Their Ongoing Investigation) <https://www.suhakam.org.my/press-statement-no-20-of-2017-suhakam-will-investigate-the-cases-of-missing-persons-disappearance-of-pastor-raymond-koh-amri-che-mat-pastor-joshua-hilmi-and-ruth-hilmi-to-assist-the-authoritie/>

³ Press Statement No. 29 Of 2017 (SUHAKAM’s Public Inquiry on Disappearance Cases) <https://www.suhakam.org.my/press-statement-no-29-of-2017-suhakams-public-inquiry-on-disappearance-cases/>

(Chairman), Prof. Dato' Dr. Aishah Bidin and Dr Nik Salida Suhaila binti Nik Saleh (**"Panel"**).

16. The Terms of Reference⁴ of the Public Inquiry (**"Terms of Reference"**) are as follows:

- (a) To determine whether these are cases of enforced disappearances as defined under the International Convention for the Protection of All Persons from Enforced Disappearances or are cases of involuntary disappearances in breach or breaches of the criminal and/or civil law and/or applicable human rights laws (hereinafter referred to as such alleged breach or breaches);
- (b) If (a) has been established at the inquiry:
 - (i) How such alleged breach or breaches came about;
 - (ii) To identify person(s) or agency(ies) responsible for such alleged breach or breaches;
 - (iii) What administrative directives or procedures, or arrangements contributed to such alleged breach or breaches.
- (c) To consider whether the authorities, specifically the Royal Malaysian Police have taken adequate steps to investigate such alleged breach or breaches.
- (d) To recommend measures or guidelines to be taken to ensure that such alleged breach or breaches do not recur.

Public Inquiry into the Disappearance of Amri Che Mat

17. The Panel began with the hearing of the Public Inquiry into the Disappearance of Pastor Raymond Koh on 19 October 2017. However, on 16 January 2018, the Panel decided to temporarily cease the Public Inquiry into the disappearance of

⁴ Press Statements No.41 Of 2017 ("SUHAKAM's Public Inquiry Into the Incidents Of Disappearances Of Individuals") <https://www.suhakam.org.my/press-statements-no-41-of-2017-suhakams-public-inquiry-into-the-incidents-of-disappearances-of-individuals/>

Pastor Raymond Koh in deference to a letter dated 15 January 2018 received from the Police informing the Panel that a suspect has been charged in court.⁵

18. Since the Public Inquiry into the disappearance of Pastor Raymond ceased temporarily, the Panel decided to commence with the hearing of the Public Inquiry into the disappearance of Amri Che Mat on 22 January 2018.
19. On 15 November 2018, the Panel completed the Public Inquiry into the disappearance of Amri Che Mat. The hearings of the Public Inquiry took approximately ten (10) months from the end of January 2018 to the beginning of November 2018 after a total of twenty-seven (27) days and hearing a total of twenty-four (24) witnesses.⁶
20. The Public Inquiry into the Disappearance of Joshua Hilmi and his wife Ruth Hilmi have not commenced, to date.
21. Separate decisions of the Public Inquiry into the disappearances of Amri Che Mat and Pastor Raymond Koh will be delivered accordingly.

C. Issues to be Determined by the Panel

22. The main issues that have to be determined by the Panel can be summarised as follows:
 - 22.1. Whether the disappearance of Amri Che Mat is a case of voluntary disappearance;
 - 22.2. Whether the case of Amri Che Mat is a case of enforced disappearance as defined under ICPPED that is, by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State; and
 - 22.3. Whether there was a refusal to acknowledge the disappearance of or concealment of the fate or whereabouts of Amri Che Mat by the State.

⁵ Although SUHAKAM is empowered to inquire into complaints on human rights infringements, it is subject to the provisions imposed by Section 12 of the Act which provides that SUHAKAM may not investigate complaints which are the subject matter of proceedings pending in a court of law or which have been finally decided by any court.

⁶ Refer to Schedule 1 and Schedule 2

D. Position of the Parties

Position of Counsel on Behalf of the Family

23. It is the position of Counsel on behalf of the family of Amri Che Mat that Amri Che Mat was abducted and that there is reasonable suspicion that Amri Che Mat's "abduction" was carried out by State Agents.⁷
24. Counsel on behalf of the family of Amri Che Mat further submitted that if the evidence is insufficient to hold that the State Agents themselves carried out the "abduction" of Amri Che Mat, alternatively, there is reasonable suspicion that Amri Che Mat's "abduction" was carried out by persons or groups of persons with the authorisation, support or acquiescence of the State.⁸

Position of Assisting Officers of SUHAKAM

25. It is the position of the Assisting Officers of SUHAKAM that on a balance of probabilities, it can be concluded that Amri Che Mat was a victim of enforced disappearance that occurred on 24 November 2016, conducted by a group of highly trained personnel and that governmental agencies such as the Royal Malaysian Police ("**the Police**"), especially individuals within the Special Branch, had directly or indirectly been involved in the enforced disappearance of Amri Che Mat.⁹

Position of the Malaysian Bar Council

26. Counsel of the Malaysian Bar Council ("**Bar Council**") have submitted that based on their analysis of the evidence by the witnesses, there was an enforced disappearance of Amri Che Mat.¹⁰

Position of the Officers Appearing for the Police

27. The Officers Appearing for the Police agree with Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and Counsel of the Bar Council that Amri Che Mat is missing and that Amri Che Mat's whereabouts is unknown

⁷ Page 3, Written Submissions in Reply dated 31 January 2019, Counsel on Behalf of the Family of Amri Che Mat

⁸ Page 5, Written Submissions in Reply dated 31 January 2019, Counsel on Behalf of the Family of Amri Che Mat

⁹ Page 25, Written Submissions dated 15 January 2019, Assisting Officers of SUHAKAM

¹⁰ Page 20, Written Submissions dated 4 February 2019, Counsel of the Bar Council

till now, however, it is their position that there is no evidence to show that the Police were involved in the disappearance of Amri Che Mat.¹¹

28. It is the position of the Officers Appearing for the Police that they have acted in accordance within their functions provided under Section 3(3) of the Police Act and that all accusations against the Police relating to the conduct of the investigations, non-compliance with standard operating procedures and the involvement of any individuals related to the Police in the disappearance of Amri Che Mat are unjustified and *mala fide*.¹²
29. The Police have assured the Panel and Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and Counsel of the Bar Council that Police investigations into the disappearance of Amri Che Mat are still ongoing and that immediate action will be taken if there are new developments arising.¹³

E. Decision of the Panel

30. Upon a detailed evaluation of the evidence adduced, having read and considered the written submissions of Counsel on behalf of the family, Assisting Officers of SUHAKAM, Counsel of the Bar Council and Officers Appearing for the Police (“**the Parties**”) and upon hearing the oral submissions of the Parties on 6 March 2019, the Panel has arrived at a final decision.
31. After having held lengthy discussions and deliberations in this case, the Panel is of the unanimous view that Amri Che Mat is a victim of an enforced disappearance as defined in Article 2 of ICPPED that took place on 24 November 2016 at about 11:30 p.m.
32. The direct and circumstantial evidence in Amri Che Mat’s case proves, on a balance of probabilities, that he was abducted by State agents namely, the Special Branch, Bukit Aman, Kuala Lumpur.¹⁴
33. The Panel further finds that there is no evidence to support the contention, as suggested by Counsel on behalf of the family of Amri Che Mat, that Amri Che Mat was abducted by persons or groups of persons acting with the authorization, support or acquiescence of the State.

¹¹ Page 20, Written Submissions, Officers Appearing for the Police

¹² Page 47, Written Submissions in Reply, Officers Appearing for the Police

¹³ Page 20, Written Submissions, Officers Appearing for the Police

¹⁴ Refer to paragraphs 161 to 167 below.

F. Grounds of Decision

The Law

Applicable Human Rights Principles

34. Human rights are protected under various instruments, both domestically and internationally. International human rights treaties and the Declarations of the General Assembly of the United Nations categorise enforced disappearance as an infringement of human rights.

Right Against Enforced Disappearance Under International Law

35. “Enforced disappearance” is defined in Article 2 of ICPPED as follows:

“For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

36. Although Malaysia is not a signatory to ICPPED, the Panel referred to and considered the definition of ‘enforced disappearance’ as set out in ICPPED as a guide when addressing the issue of whether the disappearance of Amri Che Mat fell within the definition of enforced disappearance in breach or breaches of human rights.
37. The definition of “enforced disappearance” can be separated into two limbs. The first limb involves the direct participation of the State in the disappearance by forcefully taking the victim away. The second limb speaks of the indirect participation of the State by giving its authorisation, support or acquiescence to the persons or groups of persons who have forcefully taken the victim away. Both limbs of the definition emphasise the involvement and participation of the State in the disappearance.
38. Article 2 of ICPPED also states that when a State is involved in the deprivation of liberty, it must be followed by a refusal of the State to acknowledge such

deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.

39. The right against enforced disappearance is also protected in the Universal Declaration of Human Rights 1948 (“**UDHR**”) as follows:

"Article 3 Everyone has the right to life, liberty and security of the person...

Article 6 Everyone has the right to recognition everywhere as a person before the law...

Article 9 No one shall be subjected to arbitrary arrest, detention or exile."

40. By virtue of Section 4(4) of the Act, the Panel shall give regard to the UDHR to the extent that it is not inconsistent with the Federal Constitution.

Right Against Enforced Disappearance Under Malaysian Law

41. In Malaysia, the right to liberty is enshrined in Article 5 of the Federal Constitution of Malaysia (“**FC**”) which states :-

“Liberty of the person

5(1) No person shall be deprived of his life or personal liberty save in accordance with law.”

42. On the issue of the right against enforced disappearance, a distinction must be drawn between ‘enforced disappearance’, ‘kidnapping’, ‘abduction’ and ‘missing person’ by referring to, among others, Section 3 of the Kidnapping Act 1961 and Section 362 of the Penal Code of Malaysia.¹⁵

- 42.1. Section 3 of the Kidnapping Act 1961 provides that a case will be one of kidnapping where a ransom is demanded:

“Abduction, wrongful restraint or wrongful confinement for ransom

¹⁵ There are other various offences relevant to the discussion on enforced disappearance, among others, Sections 359 to 369 of the Penal Code

3.(1) Whoever, with intent to hold any person **for ransom**, abducts or wrongfully confines or wrongfully restrains such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to whipping.”

42.2. Whereas, Section 362 of the Penal Code of Malaysia provides that:

“Abduction

362. Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person.”

42.3. There is no express definition of a ‘missing person’ but generally speaking, when someone has not been seen, heard of, or heard from for a period of time without any news of his/her whereabouts or whether he/she is still alive, he/she is said to be a missing person. Cases where there appears to be no criminal elements involved are usually categorised as missing persons.

43. It is essential that the State conduct investigations promptly and provide evidence and explanations to the family of the disappeared person. This duty is embedded in the right of the family to know the truth regarding what has happened to their loved one. The right extends to the members of the family insofar as it is a violation of mental and moral integrity of the next of kin which is a direct consequence of the enforced disappearance. This was highlighted in the case of *Bamaca-Velazquez v Guatemala*¹⁶ where the Inter-American Court of Human Rights held:

"197. In this respect, the Commission declared that the right to the truth has a collective nature, which includes the right of society to "have access to essential information for the development of democratic systems", and a particular nature, as the right of the victims' next of kin to know what happened to their loved ones, which permits a form of reparation. The Inter-American Court has established the obligation of the State to investigate the facts while there is uncertainty about the fate of

¹⁶ IACHR Series C No 70 (Official Citation) [2000] IACHR7 (Other Reference) IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation) [2002] IACHR 1 (Other Reference) IHRL 1474 (IACHR 2002) (OUP reference)

the person who has disappeared, and the need to provide a simple and prompt recourse in the case, with due guarantees."

Public Inquiry

What is a Public Inquiry?

44. Generally, a public inquiry is an official review of events or actions ordered by a government body. A public inquiry accepts evidence and conducts its open hearings in a more public forum and focuses on a more specific occurrence.
45. Interested members of the public and organisations may not only submit written submissions as is the case with most inquiries, but may also be present to listen to the oral evidence given by the witnesses during the hearing.¹⁷
46. A public inquiry is a mechanism that can be used to achieve SUHAKAM's mandate to look into systemic human rights issues with a view to solving them through systematic means. By adopting a broad-based human rights approach, it can examine a large number of situations as opposed to an individual complaint. A public inquiry has a dual focus, fulfilling both fact-finding and educational roles. An effective public inquiry is one that is supported by the exercise of powers to subpoena witnesses, to order the production of documents at its hearings, and to produce a report that will be made public containing recommendations to all relevant parties.¹⁸

Powers of Inquiry of SUHAKAM

47. As mentioned above, SUHAKAM's authority to conduct an inquiry is stipulated in Section 12 of the SUHAKAM Act which reads:

"Commission may inquire on its own motion or on complaint
12(1) The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into an allegation of the infringement of the human rights of such person or group of persons.

¹⁷ Public Inquiry https://en.wikipedia.org/wiki/Public_inquiry

¹⁸ (2013, May 7). Report of the National Inquiry into the Land Rights of Indigenous Peoples (Rep.). Retrieved from <https://drive.google.com/file/d/0B6FQ7SONa3PRbUlnUGcxzdEWU0/preview>

(2) The Commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which -

- (a) is the subject matter of any proceedings pending in any court, including any appeals; or
- (b) has been finally determined by any court.

(3) If the Commission inquires into an allegation under subsection 12(1) and during the pendency of such inquiry the allegation becomes the subject matter of any proceedings in any court, the Commission shall immediately cease to do the inquiry.”

48. The powers relating to the conduct of public inquiries are found in Section 14 of the Act:

“Powers relating to inquiries

14(1) The Commission shall, for the purposes of an inquiry under this Act, have the power—

(a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;

(b) to require that the evidence, whether written or oral, of any witness be given on oath or affirmation, such oath or affirmation being that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorised in that behalf by the Commission an oath or affirmation to every such witness;

(c) to summon any person residing in Malaysia to attend any meeting of the Commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;

(d) to admit notwithstanding any of the provisions of the Evidence Act 1950 [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings; and

(e) to admit or exclude the public from such inquiry or any part thereof.”

Conduct of the Inquiry.¹⁹

49. Prior to the hearings at the Public Inquiry, officers of SUHAKAM recorded statements of individuals who came forward to assist SUHAKAM with information relating to the disappearance of Amri Che Mat. The officers also carried out investigations seeking to interview possible witnesses.
50. At the hearings of the Public Inquiry, witnesses who had their statements recorded by the officers of SUHAKAM prior to the Public Inquiry, were shown their statements. The witnesses were requested to read the statements and to confirm the contents contained therein. The statements were then marked as exhibits. Each witness was then examined by Counsel representing the parties, including Officers Appearing for the Police. Witnesses who did not give their statements prior to the Public Inquiry were similarly examined by Counsel representing the parties, including the Officers Appearing for the Police. In the course of the hearings, various video recordings, photographs and documents were tendered as evidence and marked as exhibits. All witnesses gave their evidence on affirmation.
51. At the conclusion of the Public Inquiry, the Panel directed Counsel representing the family, Assisting Officers of SUHAKAM, Counsel of the Bar Council and Officers Appearing for the Police to submit their written submissions pertaining to all issues arising from the Panel’s Terms of Reference for the consideration of the Panel.

Elements to be Proven at the Public Inquiry

52. The definition of enforced disappearance in ICPPED contains various degrees of culpability on the part of the State regarding the initial disappearance. The degrees of culpability of the State are listed below in descending order:
 - 52.1. That the victim was arrested or detained by agents of the State;
 - 52.2. That the victim was abducted by agents of the State;

¹⁹ See Sections 8(a), 8(b) and 8(c) of the Commissions of Enquiry Act 1950.

- 52.3. That the victim was abducted by persons or groups of persons acting with the authorisation of the State;
- 52.4. That the victim was abducted by persons or groups of persons acting with the support of the State; or
- 52.5. That the victim was abducted by persons or groups of persons acting with the acquiescence of the State.
53. In the case of Amri Che Mat, the first degree of culpability is not relevant. There is no evidence to indicate that Amri Che Mat was arrested or detained by State agents in the exercise of their lawful powers. The evidence is that he was taken away or “disappeared”. As such, the degrees of the State’s culpability that are relevant in the case of Amri Che Mat, are the second to fifth degrees of culpability.
54. Therefore, the Panel is required to determine whether the evidence, direct and/or circumstantial, proves on a balance of probabilities that he was either abducted by State agents or abducted by non-State agents with the authorisation, support or acquiescence of the State.
55. Further, the Panel is required to determine whether the evidence, direct and/or circumstantial, proves on a balance of probabilities, that after the disappearance of Amri Che Mat had occurred, the State has refused to acknowledge the deprivation of liberty of the person or has concealed the fate or whereabouts of the disappeared person as provided under Article 2 of ICPPED mentioned above.²⁰
56. In a case of an enforced disappearance, there is an indivisible connection between the initial disappearance and the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person. This is stated by the European Court of Human Rights in the case of **Varnava & Ors v Turkey**²¹ :

"148. A disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment

²⁰ Refer to paragraph 35 above.

²¹ Appl. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009

and obfuscation of what has occurred. This situation is very often drawn out over time, prolonging the torment of the victim's relatives. It cannot therefore be said that a disappearance is, simply, an "instantaneous" act or event; the additional distinctive element of subsequent failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation."

57. In the case of ***Ng Yee Fong & Anor v EW Talalla*** [1986] 1 MLJ 25, Mohamad Azmi SCJ defined the word "acquiescence" as follows:

"... properly used where a person having a right, and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed; a person so standing by cannot afterwards be heard to complain of the act (see *De Bussche v Alt* (1878) 8 Ch D 286 314). In that sense the doctrine of acquiescence may be defined as acquiescence under such circumstances that assent may be reasonably inferred from it."

58. The family and other persons acting on behalf of the family of Amri Che Mat do not have the investigative powers of the State to secure evidence on the identity of the person or persons who caused the disappearance in order to prove with precision the culpability of the State.
59. At the conclusion of the Inquiry, if the Panel's finding is that this case is one of an enforced disappearance, the Panel is empowered under Section 13(2) of the Act to refer it to the relevant authorities or persons with the necessary recommendations.
60. On the other hand, in the event that the Panel's finding is that the disappearance is an involuntary disappearance in which the State is not concerned, the Panel similarly has powers under Section 13(2) of the Act to refer the case to relevant authorities or persons with the necessary recommendations.

Standard of Proof in a Public Inquiry

61. There is no provision in the Act which sets out the standard of proof that is to be applied in a public inquiry. Nevertheless, this does not mean that there is no standard of proof that the Public Inquiry is required to meet.
62. A public inquiry is an investigative inquiry similar to an inquest (that is an inquiry into a death by a coroner). Although a public inquiry is not an inquest or a civil or criminal trial, the Panel is of the view that the standard of proof to be applied in a public inquiry is of the same standard of proof applicable to an inquest, that is, on a balance of probabilities and not beyond reasonable doubt.
63. While an inquest is for the purposes of determining whether any person may be criminally concerned in the cause of death and to arrive at a verdict, a public inquiry into the enforced disappearance of a person is for the purpose of determining whether the State is in any way concerned in the involuntary disappearance of that person.
64. The relevant principles on the standard of proof in an inquest were discussed in detail by the Court of Appeal in the case of ***Teoh Meng Kee v Public Prosecutor*** [2014] 5 MLJ 741, where at page 759, it was held by Mohammad Ariff JCA as follows:

“[48] The learned magistrate, and to a lesser extent, the High Court judge, cited and repeated the **basic principles and rules on coronial jurisdiction....** The **commonly accepted principles are as follows:**

(a) an inquest is a fact finding exercise and not a method of apportioning guilt;

(b) in an inquest, there is no indictment, no prosecution, no defence and no trial. It is simply an attempt to establish facts;

(c) it is an inquisitorial and an investigation process, unlike a trial;

(d) a coroners verdict is not determined by probabilities but by established facts. A coroner is bound by evidence and can only find facts proved by evidence, not guesswork;

(e) if the evidence is insufficient to come to a definite finding, the coroner should record an open verdict;

(f) the function of a magistrate holding an inquiry under Chapter XXXII of the CPC is to inquire, when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of death (s 337). The cause of death is defined under s 328 to include not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by any unlawful act or omission on the part of any person. Hence, **the magistrate holds an inquiry by examining witnesses on oath and while usually following the ordinary rules of evidence, he may admit any evidence which he thinks fit, especially hearsay evidence;**

(g) the verdict of the magistrate is only an expression of a non-binding opinion of a proceeding where there is no accusation against any party;

(h) it follows that a coroners inquest is merely a court of law, not a court of justice. Its verdict does not amount to any conviction.

(i) many of these principles are outlined in our Practice Directions No 1 of 2007: Guidelines on Inquest (as restated in Practice Direction No 2 of 2014 *Arahan Amalan Bil 2 Tahun 2014: Pengendalian Siasatan Kematian (Death Inquiry) Selaras Dengan Penubuhan Mahkamah Khas Koroner*) To quote some of the parts immediately relevant to this appeal:

1. What is an Inquest?

(a) It is not a trial.

(b) There are no parties to prosecute and to defend.

(c) It is only an inquiry by a magistrate as to the cause of death and the Prosecuting Officer is there not to prosecute anyone but only to assist the court with the examination of witnesses for the purpose of giving evidence...

(f) A magistrate Coroner shall not express any opinion on any matter until the conclusion of the inquest.

(g) There is no conviction or punishment at the end of it.

...

[70] ...the scheme and structure of the interlocking provisions under Chapter XXXII of the CPC mandate a lower standard. I am therefore of the view that **the applicable standard should be the civil standard of proof on a balance of probabilities.**

65. In the case of *Teoh Meng Kee* above, at page 774, it was held by Mah Weng Kwai JCA as follows:

“[108] It will be noted that s.328 of the CPC speaks of opinion. The **section does not stipulate what the standard of proof is that has to be applied in an inquiry of death. Although s.328 of the CPC is silent on the standard of proof, of course, it cannot be said that there is no standard to be applied.** That would be an unacceptable position in law. **I am of the view that all that is required of the magistrate is to arrive at an opinion applying the balance of probabilities (civil) standard test on an objective basis.** There must be sufficient evidence to arrive at an opinion, in particular whether the death resulted in any way from or was accelerated by any unlawful act or omission on the part of any other person.

STANDARD OF PROOF IN AN INQUIRY OF DEATH

[118] The next question of law of utmost importance to be determined in this case is the **standard of proof to be applied in an inquiry of death.** Both the learned magistrate and the learned High Court judge adopted the beyond reasonable doubt test. With respect, I am of the view that this is an error of law as **the correct test to be applied is the civil standard of balance of probabilities.** I say this for the following reasons:

(a) as stated earlier, **an inquiry of death is not a criminal trial or proceeding. There is no accused person on trial and there is no one to be convicted and sentenced by the court** upon a finding that the prosecution has proved its case beyond reasonable doubt;

(b) **the rules on admissibility of evidence and procedure in an inquiry of death are not as strict as in a criminal trial. The magistrate is on a mere fact finding mission and is allowed to consider even hearsay evidence.** In the case of *Re Loh Kah Kheng (deceased)* [1990] 2 MLJ 126 it was held that a **coroner is not bound by the normal procedure of courts and rules of evidence;**

(c) where the **rules relating to evidence and procedure are lax, it will be inconsistent to require** a magistrate to return a **verdict at the close of an inquiry on a beyond reasonable doubt standard;**

(d) it will be incorrect to require the family of Teoh Beng Hock to have to prove a case beyond reasonable doubt before the learned magistrate can return a verdict of homicide as the means to do so are severely limited. The family of Teoh Beng Hock, being **members of the public, simply do not have the powers of investigation as possessed by the police. And where the threshold for proof in an inquiry of death is lower, it will not be correct nor necessary to expect members of the public to produce evidence on a beyond reasonable doubt standard** and yet expect a verdict to be proved beyond reasonable doubt;

(e) a magistrate conducting an inquiry of death is merely to ascertain whether anyone is criminally concerned in the cause of death. He has no power to hold or find anyone criminally liable in the cause of death on a beyond reasonable doubt standard;

(f) in the event a person or persons is/are arrested for being criminally liable in the cause of death it is then for the prosecution to charge the person/s for an offence of homicide and where it will be incumbent upon the prosecution to prove a case beyond reasonable doubt before a conviction can be secured;

(g) for the police to effect an arrest of a suspect, all that the police have to show at that stage of investigations is that there is reasonable ground of suspicion to support the arrest. The police most certainly do not have to have reasonable grounds on

a beyond reasonable doubt standard, before effecting the arrest. Now, **if the police can effect an arrest based on reasonable suspicion (see *Shaaban & Ors v Chong Fook Kam & Anor* [1969] 2 MLJ 219) why then should the bar or threshold be raised in an inquiry of death to a standard beyond reasonable doubt before the learned magistrate can return a verdict of homicide? I see no basis for this approach** as after all, in fact and in reality, **the recording of evidence in an inquiry by the learned magistrate can be likened to an extension of investigations by the police.** In Shaaban's case it was held that the police are entitled to make an arrest if a reasonable suspicion existed that the suspect was concerned with the offence. It is unnecessary for the police to show that there was prima facie proof of such offence before an arrest.

[119] **It is not in dispute that in an inquest the evidence adduced must be credible** so as to become the basis for the coroners finding (see *Inquest into the death of Sujatha Krishnan, deceased* [2009] 5 CLJ 783); that the verdict must not be based on guesswork but on particulars which have been proved in evidence (see *R v Huntback; ex parte Lockley* [1944] KB 606, *Re Derek Selby, deceased* [1971] 2 MLJ 277); a magistrate who conducts an inquiry must confine himself to the evidence made available to him and at the end of the day must decide on that evidence alone (see *Public Prosecutor v Shanmugam & Ors* [2002] 6 MLJ 562); that a magistrate can only make a definite finding based on proved facts produced and not on mere conjectures (see *Re Rumie Mahlie, deceased* [2007] MLJU 280; [2007] 10 CLJ 69).

[120] In Victoria, Australia in the case of *Anderson v Blashki* [1993] VR 89 it was held that the standard of proof to be applied by the coroner in investigating a death is the civil standard of the balance of probabilities (see also *Briginshaw v Briginshaw* (1938) 60 CLR 336). In the infamous case of *Inquest into the death of Azaria Chantel Loren Chamberlain* [2012] NTMC 020, it was held by the High Court of Australia that in the coronial jurisdiction, the test applied is a balance of probabilities test.

[122] Returning to the issue of the standard of proof applicable in an inquiry of death, a useful comparison may be made with the standard applied in preliminary inquiries into cases (namely, capital offences) triable by the High Court before Chapter XVII, ss 138–151 of the CPC were deleted by Act A908. For purposes of committal of a case for trial in the High Court, reliance used to be placed by the prosecution on the phrase sufficient grounds for committing as provided for by the former s 140(i) of the CPC. What this meant was that there must be credible evidence shown by the prosecution for a case to be committed for trial. **The standard of proof in a preliminary inquiry had always been on a standard lower than that of beyond reasonable doubt.** In *Public Prosecutor v Puspanathan a/l Sinnasamy & Ors* [1996] 4 MLJ 165, Mohd Hishamudin J (now JCA) had occasion to say that for the purposes of the preliminary inquiry, the prosecution was only required to adduce sufficient evidence identifying the body of the deceased, and was not required to prove this beyond reasonable doubt. In a criminal trial, as opposed to a mere preliminary inquiry, the standard of proof is higher (see p 169 E F,H I; *Teay Wah Cheong v Public Prosecutor* [1964] 1 MLJ 21 and *Fazal Din v Public Prosecutor* [1949] MLJ 123 distinguished).”

66. Thus, the standard of proof applicable in a Public Inquiry under Section 12 of the Act is on a balance of probabilities (that is the standard or quantum of proof in a civil case). In essence, this means that the Panel is entitled to accept and rely on evidence which is probably true and which does not need to be proved to be beyond reasonable doubt.

Burden of Proof in Cases of Enforced Disappearance

67. On the burden of proof, that is, on whose shoulders lie the burden of proving the case, the approach taken in international human rights cases on enforced disappearances, is illustrative to show that the burden of proof lies on the State itself. In the following cases, it was held by the various courts accordingly:

- 67.1. ***Bamaca-Velasquez v Guatemala***²², the Inter-American Court of Human Rights held:

²² IACHR Series C No 70 (Official Citation); [2000] IACHR 7 (Other Reference); IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation); [2002] IACHR 1 (Other Reference); IHRL 1474 (IACHR 2002) (OUP reference)

"As this Court has often repeated, in cases of forced disappearance, the State's defense cannot rely on the impossibility of the plaintiff to present evidence in the proceedings since, in such cases, it is the State that controls the means to clarify the facts that have occurred in its jurisdiction and, therefore, in practice, it is necessary to rely on the cooperation of the State itself in order to obtain the required evidence.

...In cases such as forced disappearance - and others... - the State has better possibilities of assuming the function of proving what it denies, than the individual to prove what he affirms"

67.2. **Godinez Cruz v Honduras**²³, the Inter-American Court of Human Rights held:

"141. In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

142. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State."²⁴

67.3. **Varnava & Ors v Turkey**²⁵, the European Court of Human Rights held:

"184. As a logical development of this approach, in the situation where persons are found injured or dead, or who have disappeared, in an area within the exclusive control of the authorities of the State and there is prima facie evidence that the State may be involved, the

²³ IACHR Series C no 10 (Official Citation); IHR 1391 (IACHR 1990) (OUP reference)

²⁴ See also *Velasquez-Rodriguez v Honduras* Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrHR), 29 July 1988

²⁵ Appl. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Council of Europe: European Court of Human Rights, 18 September 2009

burden of proof may also shift to the Government since the events in issue may lie wholly, or in large part, within the exclusive knowledge of the authorities. If they then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn.”

67.4. ***Bleier v Uruguay***²⁶, the Human Rights Committee of the United Nations held:

“13.3 With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information ... In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.”²⁷

68. Thus, the burden of proof in cases of enforced disappearances rests with the State. What this means is that, the Panel is entitled to accept inferences submitted by Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and Counsel of the Bar Council against the State. It is for the State to adduce satisfactory evidence and give explanations on a balance of probabilities to show that the State was not in any way involved in the disappearance of the person within the definition of enforced disappearance under Article 2 of ICPPED.

²⁶ Communication No. R.7/30, 29 March 1982

²⁷ See also *Salah Saker v Algeria* (HRC, March 2006)

Admissibility of Evidence

69. The Panel is not constrained or limited by the Evidence Act 1950 in the reception of evidence during the Public Inquiry. A flexible approach is taken whereby evidence which is not usually admitted in criminal and civil proceedings may be received by the Public Inquiry. This is recognised by Section 14(1)(a) and (d) of the Act where it states “The Commission shall, for the purposes of an inquiry under this Act, have the power - (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine;” and “(d) to admit **notwithstanding any of the provisions of the Evidence Act 1950** [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings.”
70. This flexibility is in line with international standards regarding human rights inquiries in the following cases:
- 70.1. In the case of *Bamaca-Velasquez v Guatemala*²⁸, the Inter-American Court of Human Rights held:

“97. In an international tribunal such as the Court, whose aim is the protection of human rights, the proceeding has its own characteristics that differentiate it from the domestic process. The former is less formal and more flexible than the latter, which does not imply that it fails to ensure legal certainty and procedural balance to the parties. This grants the Court a greater latitude to use logic and experience in evaluating the evidence rendered to it on the pertinent facts...

"131. Taking this into account, the Court attributes a high probative value to testimonial evidence in proceedings of this type, that is, in the context and circumstances of cases of forced disappearance, with all the attendant difficulties, when, owing to the very nature of the crime, proof essentially takes the form of indirect and circumstantial evidence."

²⁸ IACHR Series C No 70 (Official Citation) [2000] IACHR 7 (Other Reference) IHRL 1453 (IACHR 2000) (OUP reference); IACHR Series C No 91 (Official Citation) [2002] IACHR 1 (Other Reference) IHRL 1474 (IACHR 2002) (OUP reference)

- 70.2. In the case of *Velasquez-Rodriguez v Honduras*²⁹, the Inter-American Court of Human Rights held that direct evidence is not the only type of evidence that may be legitimately considered. Circumstantial evidence, indicia and presumptions, may also be considered and be admitted so long as they lead to conclusions consistent with the facts. Further, the Court held:

“131. Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.”

71. Cases of enforced disappearances are usually characterised by attempts to suppress all information by the State. Typically, complainants in such cases do not have direct evidence to show that State agents are concerned in the disappearances and must rely on circumstantial evidence. Complainants also typically do not have the means to identify with precision the State agents concerned in the disappearances.
72. Evidence adduced before the Panel to show that the State was concerned in the disappearance is usually circumstantial evidence which gives rise to the inference that State agents are involved in the disappearance. It is only through the exercise of the State's investigative power, would the perpetrators, and their roles, be identified with precision.
73. The consideration in cases where evidence was entirely circumstantial was explained by the Court of Appeal in *Chan Chwen Kong v Public Prosecutor* [1962] 1 MLJ 307 at paragraphs E and F, page 307:

“It must, however, be borne in mind that in cases like this where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?”³⁰

²⁹ Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrHR), 29 July 1988

³⁰ See also *Sunny Ang v Public Prosecutor* [1963] 2 MLJ 195, where the appellant was convicted of murder even though the body of the deceased was not found and the prosecution relied on circumstantial evidence.

74. In the course of the Public Inquiry, the Panel was entitled as a matter of law to adopt a less constrained and flexible approach in the reception and admission of the evidence, both oral and documentary, than would otherwise have been proper to admit in a civil and criminal trial.
75. In analysing the evidence available in the case of Amri Che Mat, the Panel has adopted a more inclusive rather than exclusive approach. Hence, the Panel has inter alia, taken into consideration hearsay, circumstantial or presumptive evidence when determining the cumulative effect of the evidence adduced in the Public Inquiry.

The Facts

Summary of Events Before the Disappearance of Amri Che Mat

Amri Che Mat Practicing Shiaism

76. Amri Che Mat was born and brought up as a Sunni Muslim. Counsel on behalf of the family of Amri Che Mat informed the Panel that in 2004 he was introduced to Shia teachings and took an interest in Shiaism. Counsel further informed the Panel that Amri Che Mat had visited Shia centers in Iran and Southern Thailand to explore Shiaism and that Amri Che Mat spoke freely amongst his friends on matters surrounding his beliefs.³¹
77. On 8 March 2014, there was a Shia gathering in Ijok, Perak. Amri Che Mat was arrested together with one hundred and thirteen (113) others at the gathering.³² This was the first time Amri Che Mat was faced with the religious authorities and the Police involving his Shia activities.

Inspection at Amri Che Mat's Home

78. In the afternoon of 21 October 2015, the Mufti of Perlis, Dato' Dr. Mohd Asri Zainal Abidin (IW10) ("**the Mufti**"), and officers from the Mufti's department, accompanied by about twenty (20) police officers, headed by the Perlis Deputy Chief Police Officer, went to Amri Che Mat's house.

³¹ Page 8, Written Submissions dated 18 January 2019, Counsel on Behalf of the Family of Amri Che Mat

³² Please refer to paragraphs 99 to 102 on Shia gathering in Perak on 8 March 2014.

79. The Mufti had requested to see Amri Che Mat. Norhayati, who was at home at the time, informed the Mufti that Amri Che Mat was not in and refused the Mufti's request to enter their home. Nevertheless, Norhafizal bin Mohd Ariffin (IW6) ("**Norhafizal**"), Amri Che Mat's brother-in-law, who was present agreed to let the Mufti and the group into Amri Che Mat's house. Officers from both the Mufti's office and the Police followed the Mufti inside.
80. After being allowed entry into Amri Che Mat's home by Norhafizal, the Mufti then inspected the living room. Photographs were taken during the inspection, and before leaving, the Mufti asked Norhayati to inform Amri Che Mat to meet him at the Office of the Mufti of Perlis the next morning.
81. As requested, Amri Che Mat went to the Mufti's office together with Norhafizal the following day, on 22 October 2015. The meeting was attended by one Sergeant Wan Nasirudin Pawan from E2 Division of the Special Branch based in Kangar, Perlis; Dato' Mat, a Member of the Fatwa Council of Perlis; and other officers from the Mufti's office and the Fatwa Council of Perlis.
82. The meeting took place in a meeting room at the Mufti's office and lasted for about an hour. During the meeting, Amri Che Mat was asked by the Mufti of Perlis whether he was a Shia, to which Amri Che Mat replied that he was.
83. Also during the meeting, the Mufti informed Amri Che Mat that he had received a number of complaints about his activities. Amri Che Mat was then instructed by the Mufti that if he wanted to carry on as a Shia, he and his wife should do so behind closed doors.

Separate Investigations on Amri Che Mat by the Special Branch

84. Following the meeting at the Mufti's office, ASP Razman Ramli (IW17) ("**ASP Razman**"), head of the Special Branch, E2 Division in Kangar, Perlis, testified that his unit had started investigating Amri Che Mat to ascertain if he was propagating Shiaism through the non-governmental organisation (NGO) known as Perlis Hope.³³ In his testimony, ASP Razman concluded that he did not find Amri Che Mat or Perlis Hope to be propagating Shiaism.³⁴

³³ Refer to paragraphs 87 to 90 on Perlis Hope.

³⁴ Page 119, Notes of Proceedings dated 26.6.2018 (NP15)

85. However, Dato' Awaludin Jadid (IW19) ("**Dato' Awaluddin**") head of the Special Branch, Bukit Aman, Kuala Lumpur and other officers of E2 Division, Special Branch, Bukit Aman, Kuala Lumpur testified that they did not agree with ASP Razman's conclusion based on their own separate intelligence.³⁵
86. Dato' Awaludin testified that Bukit Aman's investigations into Amri Che Mat had begun even earlier than ASP Razman's investigations and that he, Dato' Awaludin, had access to wider intelligence which concluded that Amri Che Mat and Perlis Hope were in fact propagating Shiaism. Dato' Awaludin further testified that the intelligence that his Division had gathered was passed on to the Mufti during a meeting on 7 October 2016,³⁶ that is about twelve (12) months after the Mufti, the Mufti's officers and the police officers had visited Amri Che Mat's house on 21 October 2015.

Perlis Hope

87. On 17 October 2015 Perlis Hope was registered with the Registrar of Societies, just days before the Mufti, the Mufti's officers and the Police Officers visited Amri Che Mat's home on 21 October 2015. Amri Che Mat was one of its founders and its office was within the same premises as his home at C33 Kampung Padang Behor, Kangar.
88. Mohd Faisal Abd Rahman (IW3) ("**Faisal**") an activist in and spokesperson for Perlis Hope, and Annuar bin Ismail (IW5) ("**Annuar**"), a member and the Secretary of Perlis Hope, in their evidence, described Perlis Hope as a non-governmental organisation deriving its support and funding from volunteers and public donations. Faisal and Annuar informed the Panel that Perlis Hope's work was charitable and aimed at assisting the poor and needy in the community regardless of race or religion. Perlis Hope's activities included distributing rice to needy families every month, rebuilding and repairing homes, distributing school uniforms, assisting patients suffering from chronic ailments, and distributing food during Ramadan.
89. On 20 September 2016, Dato' Seri Shahidan Kassim, the former Chief Minister of Perlis ("**Dato' Seri Shahidan Kassim**"), labelled Perlis Hope as "Perli No Hope" in a public post on Facebook, undermining the charitable work carried out by Perlis

³⁵ Page 28, Notes of Proceedings dated 23.7.2018 (NP20)

³⁶ Refer to paragraphs 109 to 115 on the meeting between the Police and the religious authorities on 7 October 2016.

Hope and made accusations against Perlis Hope suggesting Perlis Hope was a Shia organisation.³⁷

90. Further, on 21 September 2016, the Director of the Perlis State Islamic Affairs Department (“**JAIP**”), Dr. Hazman Hassan (IW11) (“**Dr Hazman**”), issued a letter to the Perlis State Education Department accusing Perlis Hope of being a Shia organisation disguised as a charity and requested the Department to prohibit Perlis Hope from conducting its charitable work with schools in Perlis.³⁸

Shiaism in Malaysia

Status of Shiaism

91. Shia is a sect of Islam where followers hold very contrasting beliefs from those of the adherents of the Sunni Islamic, which make up the majority of Muslims around the world and is the only denomination whose religious practices, concepts and rituals are recognised in Malaysia.
92. In 1996, the Special Conference of the Fatwa Committee of the National Council of Islamic Affairs, Malaysia, convened on 5 May 1996 decided that Muslims in Malaysia should only practice the teachings of Islam based on the followers of *Ahli Sunnah Wal-Jamaah* (“**1996 Decision of the Fatwa Committee**”).
93. The 1996 Decision of the Fatwa Committee decided that Islamic teachings other than those based on the followers of *Ahli Sunnah Wal-Jamaah* were contrary to Islam and thus the propagation of any other doctrine from *Ahli Sunnah Wal-Jamaah*, that is Shia, was prohibited.
94. Between 1998 and 2013, eleven (11) States in Malaysia issued *fatwas* to enforce the 1996 Decision of the Fatwa Committee. Therefore, Shiaism, deemed to be contrary to Islam, was dealt with by the Federal authorities under the Internal Security Act 1960 (“**ISA**”) and by the State religious authorities under State Islamic laws. A fatwa against the teachings of Shiah was gazetted in the Government of the State of Perlis Gazette on 7 August 2012.

³⁷ Exhibit 11(a) to (d)

³⁸ Exhibit 10

95. Pursuant to the position taken by the religious authorities, organisations, including NGOs, organised seminars and talks against the propagation of Shiaism. Hence, Shia followers were treated as a problem in relation to Islamic belief in Malaysia and the Police acted upon powers that they purportedly had under the ISA to deal with the perceived threat.
96. In 2012 the ISA was repealed and replaced by the Security Offences (Special Measures) Act 2012 (SOSMA) effective 31 July 2012. SOSMA restricted the power of detention, increased the rights of detainees and their families and made detentions subject to judicial oversight in public hearings. Since its enactment, according to the evidence adduced, there have not been any reports of actions being taken against Shi'ie under SOSMA. No convictions relating to the propagation of Shiaism under State Islamic laws have been reported by the State religious authorities.
97. In 2013, public statements were issued identifying Shiaism as not merely an issue of religious deviance, but as a dangerous threat to national security. The then Deputy Prime Minister, Dato' Seri Ahmad Zahid Hamidi announced at a press conference on 30 July 2013, that the Ministry of Home Affairs had made a presentation to the National Security Council on the danger posed by Shiaism and that the report would be presented to the Council of Rulers.
98. Later the same year, there was debate on amending the Federal Constitution to identify Islam more specifically as being limited to *Sunnah wal-Jamaah* to prevent the spreading of Shiaism. This can be seen in public statements made by the then Deputy Prime Minister and also by the former Inspector-General of Police (IGP), Tan Sri Khalid Abu Bakar.³⁹

Shia Gathering in Ijok, Perak on 8 March 2014

99. On 8 March 2014, a Shia gathering was held in Ijok, Perak. The Police were made aware of the Shia gathering by a letter dated 3 March 2014 sent by Abdul Manap bin Abdul Hamid, Secretary of *Masyarakat Awam Syiah Imamiyyah (Ja'fari) Malaysia*, to the Prime Minister's Office, giving notice that they would be holding a Shia celebration in Kampung Haji Ismail, Kelian Gunung, Ijok, Perak on 8 March 2014.

³⁹ Zahid Hamidi: Home Ministry To Propose Islam Is Defined in Constitution | Malay Mail
<https://www.malaymail.com/news/malaysia/2013/12/06/zahid-hamidi-home-ministry-to-propose-islam-is-defined-in-constitution/576747>

100. The letter dated 3 March 2014 was referred from the Prime Minister's Office to the former IGP. The IGP minuted on the letter, that according to a "*fatwa kebangsaan*" Shia was unlawful, thus, any gathering by them would also be unlawful. The IGP also instructed the Perak Chief of Police to prevent any Shia group from gathering.
101. After having received the instructions from the IGP, the Perak Chief of Police noted on the letter instructions to the District Police Chief of Selama to take action together with the Special Branch and the State religious department, and to report to the IGP.
102. On 8 March 2014 at about 10:00 p.m., a large contingent of police officers and officers from the religious department raided the Shia gathering in Ijok, Perak. Reports of the number of personnel involved ranged from sixty (60) to one hundred and fifty (150). Everyone present, including women and children were gathered and taken to the police station lock-up in Selama. Amri Che Mat was amongst them. All were released the next day and there were no charges brought against any of them.

Statements of Perception Towards Shiaism

103. On 13 December 2015, Dato' Ayob Khan Mydin Pitchay, Deputy Director of the Counter Terrorism Division of the Special Branch, Kuala Lumpur ("**Dato' Ayob**") gave a speech at an event called "*Seminar Negara Islam, Jihad vs Militan*". Dato' Ayob in his address, spoke of the threat to national security posed by the Islamic State ("**IS**") who he said based their ideology on the teachings of the 14th century Muslim scholar Ibn Taimiyyah. Dato' Ayob did not make any reference to Shia in his address. Instead, Dato' Ayob claimed that the majority of those who joined the Islamic State claimed to be *salafi*⁴⁰ without a strong religious foundation.
104. A day later, on 14 December 2015, Dato' Seri Shahidan Kassim queried Dato' Ayob's understanding and questioned Dato' Ayob's statement allegedly made against *salafis* and the teachings of Ibn Taimiyyah, a respected Sunni scholar.
105. Several days later, on 18 December 2015, the Mufti of Perlis issued a public post on Facebook in defence of Ibn Taimiyyah's works. In his post, the Mufti stated that Shia followers have deceived the public in many ways. Following which, the

⁴⁰ A group of Muslims under the the *Sunni* faith

Mufti gave the work of Zamihan Mat Zin (“**Zamihan**”) criticising Ibn Taimiyyah as an example of one of the ways Shia deceived the public.

106. Over a month later, on 20 January 2016, the Mufti of Perlis, mentioned that Zamihan was a student of a Shia scholar from Jordan named Hasan Saqqaf. In the post, the Mufti of Perlis also mentioned that Dato’ Ayob was a student of Zamihan. This would suggest that Dato’ Ayob Khan was Shia, himself.
107. On 13 August 2016, Dato’ Ayob Khan gave a speech at an event called “*Seminar Ancaman Daesh dan Kafir Harbi.*” In his address, Dato’ Ayob stated that he was not a Shia and that in fact, he had been a part of several operations relating to Shiaism, namely the arrest of twelve (12) Shia leaders in Kemunting, Perak in 1997 and the arrest of five (5) followers of Shiaism in an operation in 2000. Dato’ Ayob Khan further explained that those arrested were sent to rehabilitation and released upon their recovery because although Shiaism was declared contrary to Islam by the National Fatwa Council, this did not give the authorities the right to take their lives. Dato’ Ayob Khan went on to state the dangers of him being labelled as a Shia as such a label may trigger members of the extremist group, IS, to want to murder him.
108. On 21 August 2016, the Deputy Minister in the Prime Minister's Department, Dato’ Asyraf Wajdi Dusuki, was reported in the news as urging the State religious authorities to strengthen enforcement against Shia activities.

Meeting Between Mufti of Perlis and the Special Branch

109. On 7 October 2016, a meeting was convened at the Perlis Mufti's office at the request of Dato’ Awaludin. Several officers from E2 Division, Special Branch, Bukit Aman and Perlis were present along with several officers from the religious authorities of Perlis.⁴¹
110. Dato’ Awaludin testified that he had called for the meeting to discuss his intelligence on religious extremism in Perlis, Kedah and South Thailand. He said that the discussion on Shia as religious extremists moved to Perlis Hope and Amri

⁴¹ From photographs adduced, 10 people were present: Dato’ Awaludin and ACP Hanafi Mohd Sani from E2 in Bukit Aman; 3 officers from E2 in Perlis: ASP Razman Ramli, Inspector Fadli, and Sergeant Wan Nasirudin; Officers from the Perlis religious authorities: Mufti of Perlis and the JAIP Director Dr Hazman.

Che Mat. He claimed that Perlis Hope was a front for Shia activity and that Amri Che Mat's home was in fact a Shia centre.⁴²

111. In his evidence, Dato' Awaludin explained that in the past, when the ISA was an available tool to combat social extremism, he would have been able to deal with the propagation of Shiaism. However, he said nowadays he had no jurisdiction to act on this kind of extremism and was obliged to pass his intelligence onto the State religious authorities for them to act on.
112. Both the Mufti of Perlis and Dato' Awaludin testified that after the detailed presentation at the meeting, each concluded that the matter was very serious but that the other party had the responsibility to deal with it. Dato' Awaludin was of the view that as this involved breaches of State religious laws, it was up to the Perlis religious authorities to take action against Amri Che Mat and Perlis Hope.⁴³
113. On the other hand, the Mufti of Perlis was of the view that these activities were in the realm of national security and it was for the police to act upon. The Mufti also informed Dato' Awaludin that he had no jurisdiction over Perlis Hope which was an approved registered society.⁴⁴
114. After the meeting, the Mufti of Perlis posted on Facebook and held a press interview on the meeting to address the threat of Shiaism to national security and stability of the country.
115. On 6 November 2016, Dato' Awaludin was a speaker at a seminar entitled '*Seminar Belia Menentang Keganasan*' organised by an Islamic Non-Governmental Organisation *Ahli Sunnah Wal Jamaah*. This seminar was attended by around sixty (60) to one hundred (100) people, consisting of students from the Malaysian National Defence University and members of Muslim NGOs, and it was held at the Ministry of Home Affairs Complex in Kuala Lumpur.
 - 115.1. The main focus of Dato' Awaludin's speech was to warn against Shia activity in the country. He said that there was an urgent need to address the rise of Shiaism and that Shia had infiltrated all levels of society including the Police, Judiciary, religious authorities, and the

⁴² Page 59, Notes of Proceedings dated 3.7.2018 (NP17)

⁴³ Page 77, Notes of Proceedings dated 3.7.2018 (NP17)

⁴⁴ Page 32, Notes of Proceedings dated 12.4.2018 (NP9)

administration. According to him, this problem was not sufficiently recognised.

- 115.2. He gave an example of three (3) Shia mosques in Satun and a Shia centre in Tangalam, in Southern Thailand and claimed that these have been turned into training centres for two hundred (200) to three hundred (300) Malay Shia preachers and that they in turn, would be deployed to Malaysia to infiltrate society and to spread Shiaism.
- 115.3. He also stated that individuals who supported Shiaism must be identified and that his intelligence shows that Shia activity starting in Perlis had spread to Kedah, Penang, Perak, Selangor, Wilayah Persekutuan, Melaka, Johor, Terengganu, Pahang and Kelantan.
- 115.4. Dato' Awaludin complained of the stripping of police powers and the confusion within the administration on the supervision of religious organisations. In the face of this overwhelming threat and the lack of cohesive action to deal with it, he called on the participants and the larger Muslim community to unite and to eradicate the problem posed by Shias.

Surveillance of Amri Che Mat's House

116. For 3 consecutive days before Amri Che Mat's disappearance, the owner of Bengkel JST Auto Mechanics, Vee Yak a/l Ban Jong (IW8) ("**Vee Yak**") noticed an unusual occurrence. His motor repair shop is located about one hundred and fifty (150) meters from Amri Che Mat's house along Jalan Padang Behor towards the direction of Kangar. His shop is on the same side of the road as Amri Che Mat's house.
117. Vee Yak had observed the presence of three (3) cars, two (2) of which were parked across the road from his workshop, in front of a restaurant, known as *Kuali Hangat*. The cars were parked facing Amri Che Mat's house. He noticed a gold Toyota Vios parked in front of the restaurant from about 9:30 a.m. till about 12:00 p.m, after which the Toyota Vios left. The Toyota Vios was replaced by a white Honda Civic which was parked at the same location from about 12:00 p.m. to about 7:00 p.m. When the Honda Civic left, it was replaced by a third car, a black Toyota Hilux from about 7:00 p.m. to about 12:00 midnight. The Toyota Hilux was parked on Vee Yak's side of the road facing Amri Che Mat's house.

118. Vee Yak was only able to make these observations until the closing of his motor workshop. He usually closed shop at 9:00 p.m. but occasionally he worked until later to finish his work. On the three (3) days that he noticed and observed the presence of the cars, he was working until around midnight. On all three (3) days when he left work, the Toyota Hilux was still parked outside his shop. He could not say when the Toyota Hilux left or whether it was replaced by another vehicle after midnight. All that he could inform the Panel was that the Toyota Vios was there when he arrived for work in the morning and that the Toyota Hilux was there when he left his shop at around midnight over the three (3) days in question.
119. Vee Yak felt this was odd particularly as the cars had tinted windows and the occupants had remained inside the respective vehicles with their engines running throughout. He was afraid that his workshop was being observed/watched by either car repossessors or people who were up to no good against him. He took down the registration number of one of the vehicles, the Toyota Vios and recorded it on a board in his shop. The number of the vehicle he recorded was PFC1623. Vee Yak kept this information to himself until two (2) days after Amri Che Mat's disappearance.

Summary of Events After the Disappearance of Amri Che Mat

Facts of the Disappearance of Amri Che Mat

120. On 24th November 2016 at about 7:30 p.m., Amri Che Mat, while at home, felt tired and decided to take a nap and had requested his wife, Norhayati, to wake him up at 10:30 p.m. As requested, Norhayati woke him at 10:30 p.m. before she herself went to bed. This was the last time Norhayati spoke to her husband. At around 11:30 p.m. their eldest daughter, Nur Masarrah, saw her father leave their home in his black Toyota Fortuner.
121. Amri Che Mat left his house to meet his friend Abdul Jamil bin Ahmad Jawi (IW2) ("**Jamil**"), in Jitra, Kedah, which is approximately a forty five minute drive from his home in Kangar. He went to meet Jamil for coffee and for a chit chat, something he used to do. Amri Che Mat had a little earlier texted Jamil at 11:11 p.m. to invite him for coffee but Jamil only managed to reply at 11:34 p.m. Around the same time, shortly after replying Amri Che Mat's text, Jamil spoke to Amri Che Mat on the phone. Amri Che Mat sounded like he was in a hurry and only managed to answer 'ok, ok, ok' and ended the call abruptly.

122. When Amri Che Mat was driving along Jalan Padang Behor, about five hundred (500) meters away from his house and when he had neared *Restoran MakLang*, a witness Saiful Afdzan bin Seinei ("**Saiful Afdzan**"), heard the screeching of tyres and the breaking of glass. When Saiful Afdzan looked out from his restaurant (*Restoran MakLang*), he saw three (3) vehicles "boxing" in Amri Che Mat's car at about the same time.
123. Another witness, Syed Amri bin Abd Jalil (IW7) ("**Syed Amri**") who was riding a motorcycle from the opposite direction, saw the four (4) vehicles and thought it was an accident.
124. At about 12:30 a.m. the next day, Amri Che Mat's car was found abandoned by Yousri bin Khalid ("**IW4**") at a disused construction site at Bukit Chabang, Kangar, Perlis with three (3) of its windows smashed. Following a police report lodged by Yousri bin Khalid at around 2:20 a.m., the Police managed to trace Norhafizal, the registered owner of the vehicle. Norhafizal is Amri Che Mat's brother-in-law.
125. Amri Che Mat has not been seen, heard of, or heard from, since 24 November 2016 till now and is believed to have "disappeared".

Events After the Disappearance of Amri Che Mat

126. Two (2) days after, around 9:00 a.m. on Saturday, 26 November 2016, Norhafizal and Mohd Aizat bin Zahid (IW14) ("**Aizat**") a close friend from Perlis Hope, went to check the area along Jalan Behor, attempting to gather information about the disappearance of Amri Che Mat when they met Vee Yak.
127. Vee Yak testified that he passed the information about the three (3) cars including the registration number of the Toyota Vios to Norhafizal and Aizat. Aizat in his evidence stated that immediately upon receiving the information from Vee Yak, he contacted the Investigating Officer, Inspector Khor Yi Shuen (IW9) ("**Inspector Khor**") and passed this information on to him on 26 November 2016.
128. On 8 December 2016 Norhayati lodged a second police report outlining the evidence of Amri Che Mat's nephew, Sharizal Abd Manan, on the suspected surveillance by a Toyota Hilux and a motorcyclist on Amri Che Mat's house. Sharizal Abd Manan was never interviewed by the Police and no statement was recorded from him.

Meeting Between Sergeant Shamzaini and Norhayati

129. Months later, on the night of 12 May 2018 at about 10.30 p.m., Sergeant Mohd Shamzaini Mohd Daud (IW20) (“**Sgt Shamzaini**”), a Sergeant with E5 Division (Economic Intelligence) of the Special Branch in Kangar, Perlis paid a visit to Norhayati at her home. According to Norhayati, Sgt. Shamzaini spoke to her about the disappearance of her husband. They spoke while sitting on the verandah of the first floor of her home. Norhayati’s daughter Nur Amirah binti Amri Che Mat (IW13) was present during the meeting.
130. The visit by Sgt. Shamzaini lasted for two (2) hours and was during a break in the Public Inquiry. Evidence had been recorded for nine (9) days starting from 22 January 2018 to 12 April 2018 and it was scheduled to resume on 16 May 2018. ASP Razman Ramli, the head of E2 Division of the Special Branch in Kangar, Perlis was scheduled to testify on the next hearing date.

G. Findings of the Panel

Explanations Given by the Police

131. The Police and/or the religious authorities have suggested several possible reasons for Amri Che Mat’s disappearance, namely:
- 131.1. That he was facing financial problems either at the instance of his investors in his unlicensed Forex trading or from creditors and therefore voluntarily went missing to avoid them;
 - 131.2. That a disgruntled investor in his Forex business or a creditor had caused his disappearance;
 - 131.3. That the biological uncle of the four (4) children Amri Che Mat and Norhayati were fostering, was angry with him because he was exposing the children to Shia teachings and had caused Amri Che Mat's disappearance;
 - 131.4. That members of the public were angry with Amri Che Mat over his Shia activities and had caused his disappearance;
 - 131.5. That he had entered into a contract marriage with another woman and had run away with her; and

- 131.6. That he had run away to the Shia centre in Satun, Southern Thailand.
132. The Panel will deal with the possible scenarios in turn:
- 132.1. Financial problems:
- (a) Although Amri Che Mat was declared a bankrupt twice, no evidence was adduced to suggest he was a target of any of his customers or creditors. No reports were made against Amri Che Mat in connection with his Forex business nor demands made for the return of any money.
 - (b) ASP Roslan Remeli (IW12), testified that after interviewing Amri Che Mat's investors about his Forex business, he found that none had shown any animosity towards him. The Police themselves had ruled out any connection between Amri Che Mat's Forex business and his disappearance.
 - (c) Although Amri Che Mat was an undischarged bankrupt, evidence was adduced to show that he had settled all amounts due and owing and was in the process of arranging for his discharge as a bankrupt. No connection can be found between his creditors and his disappearance.
- 132.2. Foster children:
- (a) Norhayati explained that she and Amri Che Mat had been fostering four (4) children for a few years because their father was facing financial hardship. They were taking care of their well-being and education. At the time of Amri Che Mat's disappearance, they were being educated in Thailand.
 - (b) There were no issues at all with the biological family and in fact, the fostering arrangement was a welcome relief to the family's hardship. Inspector Khor in his evidence said that he had interviewed the children's biological uncle and nothing untoward was found during that interview. It was stated by ASP Roslan that this issue was no longer a part of the investigations.

132.3. Shia activities:

- (a) On Amri Che Mat's Shia activities, as mentioned above, neither the police nor the religious authorities were able to produce any complaints or names of complainants from amongst the public. The best that they could do was to refer to rumours that the Mufti of Perlis had heard about some general unhappiness in the neighbourhood but none of the purported neighbours seemed to have raised any complaints and from the list of persons that Inspector Khor interviewed in the course of his investigations, none appeared to be Amri Che Mat's neighbours!

132.4. Contract marriage:

- (a) The suggestions by the Mufti of Perlis that Amri Che Mat may have absconded to Southern Thailand or had run away with another woman was unsupported by any evidence. There was no immigration record of Amri Che Mat leaving the country and his passport was left at home. The arrangements he made that evening to meet his friend Jamil, and the general continuity of his life and activities at the time of his disappearance, speak against such speculation. Norhafizal and Norhayati have also testified against this speculation.

133. As can be seen, none of the possible explanations offered by the Police and religious authorities rise above speculation and maybe quite easily debunked. In fact, except for Amri Che Mat's disappearance being connected to his Shia activities, all explanations have been ruled out by the authorities themselves.

Special Branch Watch on Shiaism and the Surveillance of Amri Che Mat

134. From the various documents exhibited, it is undisputed that the issue of Shiaism was given a lot of attention by the Mufti of Perlis and the Special Branch, Bukit Aman, Kuala Lumpur and was discussed in the public space. It is also undisputed that Amri Che Mat received close attention and was under surveillance by both the religious authorities and the Special Branch as they had spoken directly to him and had warned him against the propagation of his Shia beliefs during the meeting on 22 October 2015. It is also undisputed that at the meeting on 7 October 2016 it was concluded that Shiaism was perceived as a threat and that action needed to be taken.

135. On the issue of Shiaism and the surveillance of Amri Che Mat, the Panel makes the following observations:
- 135.1. The meeting between the State religious authorities and the Police on 7 October 2016 was a meeting led by the Mufti of Perlis and Dato' Awaludin, both of whom held positions of authority and both of whom had expressed very strong views about the threat to national security posed by Shias in Perlis;
 - 135.2. Both the religious authorities and the Police agreed and concluded during the meeting on 7 October 2016, that Shiaism was a serious threat. Nonetheless, both maintain that the meeting was merely for the sharing of intelligence;
 - 135.3. No records as to what was discussed at the meeting and the decisions arrived at were made; and
 - 135.4. Both claimed that the other had jurisdiction over the matter.
136. The Panel is of the view that the meeting was held to decide on how to deal with the perceived threat of Shiaism in a coordinated way. This raises many concerns as no acceptable justifications have been provided as to why the Police were involved in religious matters. Dato' Awaluddin did not clearly explain what the threats, whether real or perceived, to national security were. The problems were generally described as threats to national security.
137. The authorities alleged that they acted to confront a threat to national security. However, it must be noted that the exact kind of threat, whether it was the propagation of Shiaism, violence, security or religious threat, was never properly defined nor explained in evidence.
138. Furthermore, the Police contended that they no longer had the power to deal with the threat following the repeal of the ISA and that the matter should be left with the religious authorities. Yet it can be discerned from the evidence that despite losing their 'power' the Police continued to survey members of the public on issues that they claim should be left with the religious authorities!
139. Importantly, neither the State religious authorities nor the Police were able to show any proof of how or why Amri Che Mat and/or Perlis Hope's social work could be seen as a threat to anyone, let alone a threat to national security.

Enforced Disappearance of Amri Che Mat

Issue of Identity

140. The Panel has no hesitation in concluding that it was Amri Che Mat who was taken away on the night of 24 November 2016 at around 11:30 p.m. due to the following direct evidence of:
- 140.1. Norhayati who woke Amri Che Mat up on 24 November 2016 at 10:30pm;
 - 140.2. Abdul Jamil who was to meet Amri Che Mat that night in Jitra, Kedah for *teh tarik* and a chit chat and that Amri Che Mat did not turn up even after he spoke on the phone while on his way to meet Jamil;
 - 140.3. Saiful Afdzan and Syed Amri who witnessed an incident along Jalan Padang Behor, between the traffic lights and Saiful Afdzan's restaurant known as *Restoran MakLang*;
 - 140.4. Yousri who found a Toyota Fortuner abandoned with its windows smashed at a disused construction site in Bukit Chabang, Kedah; and
 - 140.5. The Police confirming that a Toyota Fortuner registered in the name of Norhafizal had been found abandoned in Bukit Chabang, Kedah.
141. From the above evidence, the Panel has no difficulty in concluding that it was Amri Che Mat's Toyota Fortuner that was "boxed" in and that it was Amri Che Mat who was taken away by the occupants of the three (3) 4WD vehicles along Jalan Padang Behor at the material time.

Issue of the Disappearance

142. The Panel is of the view that the evidence strongly points to a forcible abduction of Amri Che Mat based on inter alia, the direct evidence of Saiful Afdzan and Syed Amri and the circumstantial evidence of Vee Yak.

Direct Evidence of Saiful Afdzan and Syed Amri

143. Although Saiful Afdzan did not appear before the Public Inquiry as a witness, his statement which was recorded by officers of SUHAKAM on 17 May 2017 was produced and marked as an exhibit. The statement was admitted as evidence.
144. From the evidence of Saiful Afdzan and Syed Amri, there is direct evidence to prove that on 24 November 2016 at about 11:30 p.m., three (3) 4WD vehicles were seen “boxing” in a vehicle along Jalan Padang Behor.
145. From the evidence adduced, the attention of Saiful Afdzan and his cousin, Mohd Afiq Adli was drawn to the incident that happened in front of their restaurant by the screeching of the tyres and the sound of breaking glass.⁴⁵
146. Saiful Afdzan testified that he saw the driver of the “boxed” in vehicle coming out of the vehicle in an attempt to run away from the three (3) 4WD vehicles, but the driver was caught and dragged back into one of the vehicles.
147. At about the same time, Syed Amri who was riding his motorcycle, approaching from the opposite direction, testified that he saw the vehicles stopped on the road. Thinking it was an accident, Syed Amri rode past and left the scene.
148. Evidence of the guard Yousri, who found Amri Che Mat’s car abandoned at a disused construction site in the early morning of 25 November 2016 at about 12:30 a.m., about an hour after Amri Che Mat had driven off from his home in his black Toyota Fortuner.

Circumstantial Evidence of Vee Yak a/I Ban Jong

a) Surveillance of Amri Che Mat’s House

149. While Vee Yak’s evidence on his observations of the three (3) vehicles over the three (3) consecutive days they were parked near his workshop and the fact that Vee Yak had recorded the vehicle number of the gold Toyota Vios (PFC1623) amount to direct evidence, what appears to be the purported surveillance of Amri Che Mat’s house by the occupants of the three (3) vehicles at the material time amounts to a strand of the circumstantial evidence.⁴⁶

⁴⁵ As stated by Saiful Afdzan in the video recorded by an officer from SUHAKAM, marked as Exhibit 96.

⁴⁶ See the case of *Chan Chwen Kong and Sunny Ang*, paragraph 73 above.

150. The Panel accepts the evidence of Vee Yak to be credible. His evidence clearly shows that Amri Che Mat's house was under surveillance by the occupants of these three (3) vehicles over the three (3) consecutive days they were parked near his workshop. Another strand of circumstantial evidence in support of the alleged surveillance over Amri Che Mat's house was the evidence of Amri Che Mat's nephew who had also noticed the unusual presence of cars and motorcycles near Amri Che Mat's house a few days before Amri Che Mat disappeared.

b) Presence of the Gold Toyota Vios

151. Vee Yak testified that he passed the information about the three (3) cars including the registration number of the Toyota Vios to Norhafizal. Subsequent to receiving this information from Vee Yak, Aizat immediately contacted and informed Inspector Khor of this information on 26 November 2016.
152. Besides informing Inspector Khor of the presence of the gold Toyota Vios and its registration number, Aizat also passed the registration number to Annuar bin Ismail (IW5) ("**Annuar**"), one of his friends and fellow member of Perlis Hope. Annuar in turn passed this information on to one Police Sergeant Asri, his neighbour, and asked him for his assistance to check on the Toyota Vios.
153. Around 6:00 p.m. the same day, 26 November 2016, Sergeant Asri, and two (2) other police officers, ASP Fauzi and Inspector Wan Shakirin met with Aizat and Annuar at *Restoran D'Orange* in Kangar. The police officers told Aizat and Annuar that they had checked on the registration number of the Toyota Vios and concluded that as the car was in Kuala Lumpur it could not have been in Kangar, Perlis at the material time. They told Aizat and Annuar that in all likelihood, the number plate that Vee Yak saw on the Toyota Vios was a false number plate.
154. Matters rested at that until Inspector Khor testified at the Public Inquiry on 3 April 2018 when he said that after he had received the car registration number from Aizat he conducted a *Jabatan Pengangkutan Jalan* (JPJ) search on the number and requested his officers to interview and record a statement from the owner of the vehicle. He initially said that he could not recall the name of the owner and that he had ruled out that this was the Toyota Vios that Vee Yak had seen. He said this was because the vehicle was not heavily tinted as stated by Vee Yak and based on his intelligence, the vehicle was in Kuala Lumpur at the material time, and had never been to Perlis.

155. On further examination, Inspector Khor was shown the JPJ particulars of the vehicle bearing registration number PFC1623. He was asked whether the owner of the vehicle was one Saiful Bahari bin Abdul Aziz (“**Saiful Bahari**”) as stated in the JPJ record. He confirmed that Saiful Bahari was indeed the owner and the person from whom his officer had recorded a police statement. When asked, he said that he could not remember Saiful Bahari’s occupation.
156. Inspector Khor was given a list of written questions, including questions about the Toyota Vios for him to gather evidence about the owner, during a break in the hearing of the Public Inquiry. The list of questions was submitted by Counsel for the family of Amri Che Mat to Inspector Khor with the consent of the Panel. In his written answers, Inspector Khor identified Saiful Bahari as an administrative assistant working at the Police Training Center (PULAPOL) at Jalan Semarak in Kuala Lumpur. In evidence, Inspector Khor said that Saiful Bahari had stopped work at PULAPOL in November 2017. He said he tried to locate Saiful Bahari at his home address but Saiful Bahari could not be found there. Inspector Khor informed that Saiful Bahari's supervisor at PULAPOL was one Inspector Mohd Azizie Abd Hamid (IW21) (“**Mohd Azizie**”). It was later learnt that Mohd Azizie was in fact holding the rank of an ASP and not an Inspector, attached to the Special Branch, Kuala Lumpur.
157. ASP Mohd Azizie gave evidence at the Public Inquiry on 6 August 2018 and 27 August 2018. He identified himself as an Assistant Superintendent of Police with the Logistics Management and Housing Department of the Special Branch in Bukit Aman. He said that Saiful Bahari was the only staff attached to him at the material time in PULAPOL and gave the impression that Saiful Bahari’s job was as a low-level general handyman, said to be in charge of cleaning and maintenance of the Police accommodation in PULAPOL. ASP Mohd Azizie claimed that Saiful Bahari stopped coming to work in early November 2017, while his contract only expired in March 2018. A week after Saiful Bahari stopped coming to work, ASP Mohd Azizie said that he tried to contact him and even visited his home but Saiful Bahari could not be located. He also claimed that Saiful Bahari could not have been in the Toyota Vios sighted by Vee Yak in November 2016 because according to a Schedule of leave which he prepared, Saiful Bahari was working in Kuala Lumpur for the 10 days before Amri Che Mat's disappearance. He later confirmed that the Schedule of Leave which he prepared based on Saiful Bahari's leave applications, was for the purpose of giving his evidence at the Public Inquiry.

158. ASP Mohd Azizie tried to explain the extraordinary fifty-four (54) days of leave taken by Saiful Bahari, that this included weekends and that he gave him leave beyond his entitlement because Saiful Bahari had requested for it! However, no other explanation or records apart from the loose leave applications by Saiful Bahari and ASP Mohd Azizie's Schedule of Leave were produced during the Public Inquiry. The purported explanation by ASP Mohd Azizie was not a satisfactory explanation.
159. Based on the evidence adduced, the Panel makes the following findings:
- 159.1. The JPJ Registration particulars of the Toyota Vios bearing registration number PFC 1623 was current as at 10 April 2018. According to the particulars, the registration was active and the car was insured until 19 February 2019. This means that from the JPJ records, Saiful Bahari was and is the owner of the Toyota Vios at all material times and that he has kept his ownership status including road tax and insurance current.
- 159.2. In spite of this, Inspector Khor claimed that the Police have not been able to locate Saiful Bahari to testify at the Public Inquiry.
- 159.3. During the hearing at the Public Inquiry, evidence by Inspector Khor relating to the owner of the gold Toyota Vios was not free-flowing. The lack of clarity in the evidence concerning Saiful Bahari is troubling and there appears to be a concerted effort to obscure or suppress all reference to him and his suspected involvement in this case.
160. Significantly, it will be noted that the officers of SUHAKAM were unable to serve the subpoena on Saiful Bahari to secure his attendance at the Public Inquiry as a witness. Importantly also, it is to be noted that no attempt was made by the officers appearing for the Police to produce the police statement recorded from Saiful Bahari as an exhibit and to be used as evidence.

Evidence of Sergeant Shamzaini Mohd Daud

161. On the night of 12 May 2018 at about 10:30 p.m., Sgt Shamzaini, a Sergeant with E5 Division (Economic Intelligence) of the Special Branch in Kangar, Perlis paid a visit to Norhayati at her home. According to Norhayati, Sgt. Shamzaini spoke to her about the disappearance of Amri Che Mat. He had informed Norhayati that

Amri Che Mat was abducted by a team of officers from E5 Unit of the Special Branch, Bukit Aman, Kuala Lumpur under the command of Dato' Awaludin. They spoke for 2 hours while seated on the verandah of the first floor of Norhayati's home. Norhayati's daughter Nur Amirah, was present during the meeting.

162. The fact of his visit to Norhayati's house on the night of 12 May 2018 is not denied by Sgt Shamzaini. However, Sgt Shamzaini has denied the contents of the information said to have been given to Norhayati.
163. Norhayati's version of events on the night of 12 May 2018 is as follows:
 - 163.1. Sgt Shamzaini's visit was unannounced. Norhayati answered a knock on her door, and she asked who it was. Sgt Shamzaini did not answer immediately but asked her if she was Norhayati. When she confirmed this Sgt Shamzaini told her that he wanted to speak to her about her husband and that he could not speak to her outside the house.
 - 163.2. Norhayati then asked him to move his motorcycle out of sight and to follow her up the external staircase to the verandah on the first floor. Her daughter, Nur Amirah joined them at the verandah. Sgt Shamzaini initially sat on the top of the stairs. However when he saw the lights of a police car on patrol along the road, he moved further down the staircase so that he could not be seen from the road. Norhayati and Nur Amirah sat on the floor of the verandah.
 - 163.3. While at the verandah, Sgt Shamzaini introduced himself as "Sham" and showed Norhayati and Nur Amirah his identity card and the Police identification card. He told them that he was a Sergeant with the Special Branch, Kangar, Perlis under the command of ASP Razman.
 - 163.4. According to Norhayati, Sgt Shamzaini came to see her to give her information on Amri Che Mat's disappearance. He told her that the Perlis Police and ASP Razman had intended to arrest Amri Che Mat for his Shia activities and illegal Forex trading. However, without ASP Razman's knowledge, Amri Che Mat was taken away by a team from the Special Branch in Bukit Aman, Kuala Lumpur under the command of Dato' Awaludin.
 - 163.5. When Sgt Shamzaini told her about the abduction by the Special Branch team, Norhayati asked him about Pastor Raymond Koh. Sgt Shamzaini

told her that Raymond was abducted by the same team for “*memurtadkan orang*”⁴⁷ that is for proselytising Christianity among the Muslims. He told her that that team was also under the command of Dato’ Awaludin.

- 163.6. Norhayati testified that Sgt Shamzaini informed her that the then IGP, Tan Sri Khalid bin Abu Bakar was aware of the operation. He also told her that the then Perlis Chief Police Officer, Dato’ Ab Rashid and the former Head of Special Branch in Perlis, one "Mat Ali" were also aware of the operation. The operation was crude and the dumping of Amri Che Mat’s car was unplanned.
- 163.7. He gave her further details that Inspector Khor was instructed to give false evidence about the gold Toyota Vios and that Inspector Khor’s evidence was discussed and planned in advance by the Police. He also informed her that the Toyota Vios was in fact present during the abduction and that one Azam Azahari was in the vehicle together with its owner.
- 163.8. Sgt Shamzaini claimed that he was volunteering this information because what was done was not right and that he did not wish to be complicit. He said that with the change in government, he hoped the truth may be exposed.
- 163.9. The meeting ended with Norhayati giving Sgt Shamzaini RM100.00 for him to buy a mobile phone and a SIM card so that they could remain in contact privately. He did not leave any contact details but the understanding was that he would contact her and forward her information.
- 163.10. Immediately after Sgt Shamzaini left, Norhayati exchanged a number of WhatsApp chat messages with Aizat before speaking to him on the phone. The WhatsApp chat message while in shorthand, contained a summary of the meeting. Aizat asked her to make a note of the meeting lest she would forget the details. She then wrote down some notes about the meeting in a notebook, which was tendered in evidence as Exhibit 60(a) to (c).

⁴⁷ Exhibit 54 and 53

- 163.11. By the time she had finished writing her notes, Aizat and Annuar came over to her house and she recounted to them what Sgt Shamzaini had told her. After meeting Aizat and Anuar, Norhayati contacted Mohd Faisal Abd Rahman (IW3) ("**Mohd Faisal**") of Perlis Hope by WhatsApp chat messages and later spoke to him.
- 163.12. She recounted the visit and the information Sgt Shamzaini gave her to Mohd Faisal.
- 163.13. Mohd Faisal contacted Sheryll Stothard (IW15) ("**Sheryll Stothard**"), a social activist and adviser to Norhayati. Sheryll Stothard then contacted Norhayati around 7:00 a.m. on the morning of 13 May 2018 by WhatsApp chat messages and arranged to speak to her at around 11:00 a.m., after consulting the lawyers.
- 163.14. Following discussions with Sheryll Stothard and when Norhayati did not hear from Sgt Shamzaini, Norhayati decided to lodge a police report so as to create an official record of the meeting with him. She was afraid to lodge the report in Kangar given its "proximity" to her home and had intended to lodge the report in Kedah. However, as she was to meet her lawyers in Selangor, she decided to lodge a report there instead. She met with her solicitors in their office in Petaling Jaya, and lodged her report on 15 May 2018 at the Selangor Police headquarters in Section 9, Shah Alam.
- 163.15. Norhayati denied meeting Sgt Shamzaini on the morning of 12 May 2018 outside her home as claimed by Sgt Shamzaini.
- 163.16. Norhayati also denied that the conversation she had with Sgt Shamzaini on the night of 12 May 2018 at her home was about Sgt Shamzaini's intention to rent the business premises occupied by Ris a/l Chooi (Pharid) (IW16) ("**Pharid**"), which is adjacent to Norhayati's house.
164. Sgt Shamzaini's version of the events is as follows:
- 164.1. Sgt Shamzaini denied that he gave any information about Amri Che Mat to Norhayati. He said that he visited the house not knowing that it was Norhayati's home and that he was directed to the house by one Pharid who was running Pharid Audio, a car accessory workshop adjacent to Norhayati's house.

- 164.2. He initially said that he went to Pharid Audio on the morning of 12.5.2018 to have his car tinted. The shop was closed so he tried to contact Pharid by calling Pharid's number which was displayed on a banner hung outside the premises. This was at 8:56 a.m. As he could not get through to Pharid's line, he made two (2) further attempts. Following which, when he still could not get through he went to a nearby paddy field and waited there until he was able to speak to Pharid at 9:18 a.m.
- 164.3. While discussing with Pharid about getting his car tinted, Sgt Shamzaini said he also inquired about renting the premises occupied by Pharid, as he wanted to operate a car repair workshop business there. He said that Pharid then told him that he should speak to the owner who occupied the adjacent house as he did not have the owner's telephone number.
165. Upon assessing Sgt Shamzaini's evidence, the Panel makes the following findings:
- 165.1. Sgt Shamzaini's evidence contradicted the testimony of several witnesses:
- (a) Sgt Shamzaini's statement that he inquired into renting the premises contradicted Pharid's evidence. Pharid had a long lease on the premises where he was running his business, and the lease was only due to expire in 2025. Pharid's evidence was that Sgt Shamzaini inquired generally on whether he knew of any premises for rent. Sgt Shamzaini could not have been referring to Pharid's premises because Pharid was running his business there and has a long lease. Pharid did not evince any intention nor indicate to Sgt Shamzaini that he was going to close down his business! Pharid himself said that there was no discussion with Sgt Shamzaini on the taking over of the lease of his premises.
 - (b) Further, the contention made by Sgt Shamzaini that he inquired into leasing Pharid's premises to conduct his business is unsubstantiated. Regulation 5(1) of the Public Officers (Conduct and Discipline) Regulations 1993 states that a public servant shall not operate a business except with the express authorisation of his or her Head of Department. No such written authorisation nor any proof of what Sgt Shamzaini had intended to run was ever tendered during the Public Inquiry.

- (c) Contradiction with Sgt Shamzaini's sister's, Norhashimah binti Mohd Daud (IW22) ("**Norhashimah**") testimony. Sgt Shamzaini contended that he called his sister on 12 May 2018 to tell her that he intended to open a workshop in Perlis. However, Norhashimah's evidence was that she could not recall what she had discussed with Shamzaini and that it was Shamzaini who told her prior to her attendance as a witness at the Public Inquiry, that they had discussed about Sgt Shamzaini's intention to open a workshop.⁴⁸ There were also instances where she stated that they had not talked about opening a workshop in Perlis.⁴⁹
- (d) Sgt Shamzaini also contended that he met Norhayati twice on 12 May 2018 that is, once in the morning and once in the evening. He said that after he spoke to Pharid he noticed a woman coming out of the house adjacent to Pharid's shop. He went up to her and asked whether the shop was open and when she told him it was closed, he asked her if it was for rent. He claimed that she then asked him a series of questions about himself. He told her that his name was Sham, and that he had been living in Perlis for the last five (5) to six (6) years. He told her that he was attached to the Special Branch Division at the Police Headquarters in Kangar. He then claimed that she told him that she was busy and that he should come over at night to talk to her. This version of events contradicts Sgt Shamzaini's own police report where he had stated that he had only met her once in the evening. According to the evidence of Norhayati, Sgt Shamzaini only met her once on 12 May 2018 and that was in the evening only.
- (e) The telephone call logs on the morning of 12 May 2018 of Sgt Shamzaini, before he met Norhayati, showed that he had contacted Aizat, a member of Perlis Hope before he had even spoken to Pharid. This shows that even before he met Norhayati, Sgt Shamzaini knew that she was somehow connected with Perlis Hope and that was the reason why he had contacted Aizat before speaking to Pharid. Sgt Shamzaini wanted Aizat to pass him Norhayati's number.

⁴⁸ Refer to page 45 of Notes of Proceedings dated 27 August 2018.

⁴⁹ Refer to page 36 of Notes of Proceedings dated 27 August 2018.

- (f) When he could not get Norhayati's number from Pharid, he tried calling both Pharid and Aizat again that night. It was only after he had failed to get Norhayati's telephone number, that he knocked on the door of her house after 10:00 p.m. that evening.
- (g) This also contradicts Sgt Shamzaini's evidence that he went to Pharid Auto to have his car tinted. This was clearly an excuse to speak to Pharid and to get Norhayati's telephone number. If he had genuinely wanted to get his car tinted he would not have called Aizat before he called Pharid, and he would not have asked Pharid for Norhayati's number.

- 165.2. Firstly, it is incongruous that a policeman from the Special Branch in Kangar, Perlis would want to meet with the wife of a man whose disappearance was the subject of an ongoing police investigation and a Public Inquiry, in which the actions of the Special Branch officers, both in Kangar, Perlis and in Bukit Aman, Kuala Lumpur were under scrutiny. Sgt Shamzaini surely cannot seriously contend that he did not know of Norhayati's identity because from the contradictions outlined above the Panel can safely infer that he clearly knew whom he was going to talk to before he met Norhayati.
- 165.3. Secondly, and flowing from the first incongruence, it is the admitted evidence of Sgt Shamzaini that the meeting on the night of 12 May 2018 lasted for two (2) hours, during which time Norhayati confronted him with a series of accusations on the conduct of the police in the disappearance of her husband. The tenancy of the premises occupied by Pharid was not discussed at all except in a very peripheral way. If Sgt Shamzaini is to be believed, it means that he spent two (2) hours listening to Norhayati's accusations and laments about the role of the police in the abduction of her husband and that he finally left after she threatened to lodge a police report against him accusing him of being part of her husband's disappearance!
- 165.4. It is absurd to suggest that a police officer would have sat on the verandah of Amri Che Mat's house for two (2) hours listening to Amri Che Mat's wife lament on an ongoing investigation when all that he had gone there for was to ask whether the premises occupied by Pharid was for rental. One would have expected that the minute the conversation turned to the police investigation and the ongoing Public Inquiry, Sgt

Shamzaini would have left, if indeed his only purpose was to discuss the tenancy.

- 165.5. The only logical explanation for his telephone call to Pharid was that he wanted to get Norhayati's number from him. The talk of a tenancy is illogical and can only be explained as a ruse or cover up for his real intention which was to speak to Norhayati about the disappearance of Amri Che Mat. In all probability he was only trying to speak to Norhayati to arrange to meet her and to pass her the information which she testified that he did.
 - 165.6. No justification was given nor could it be understood why a policeman would go to a lady's home at night knowing that her husband was missing, unless he had some important information he needed to pass to her.
 - 165.7. Sgt Shamzaini's move to sit a little lower on the staircase of Norhayati's verandah when he saw the lights of the Police patrol car was consistent with someone who did not wish to be seen.
 - 165.8. There is considerable confusion in Sgt Shamzaini's evidence on the lodging of his police report on 18 May 2018. What is clear is that he was spoken to by the Head and Deputy Head of the Special Branch in Kangar, Perlis and had his statement recorded on 17 May 2018 by a senior police officer from Bukit Aman, Kuala Lumpur. Sgt Shamzaini only lodged his report on 18 May 2018 and the police have not produced his witness statement at the Public Inquiry. He was clearly under considerable pressure following Norhayati's report. If he was indeed and in fact threatened by Norhayati as alleged, he would have lodged a police report against her at the earliest opportunity and not three (3) days after the meeting.
166. In short, Sgt Shamzaini's evidence is filled with inconsistencies which raises serious doubts on his credibility. Sgt Shamzaini displayed inconsistent and odd behaviour in explaining how he came about Pharid's and Aizat's telephone numbers. The Panel is of the considered view that on a balance of probabilities, Norhayati's version of events is more credible and should be accepted on the following grounds:

- 166.1. Norhayati's actions post Sgt Shamzaini's visit are consistent with the actions of someone who is telling the truth. At the very least her actions show her to be a person of credibility and her evidence of Sgt Shamzaini's visit and the information he gave her cannot be dismissed as fabricated or incredulous.
- 166.2. Norhayati has no reason to lodge a police report against Sgt Shamzaini who was at all times a total stranger to her. She did not even know of his existence had he not met her that night. In any event, the police report lodged by Norhayati did not make any accusations against Sgt Shamzaini as he had contended, but was merely to record that such an event occurred.
- 166.3. Her evidence is corroborated by the evidence of Nur Amirah, her daughter, who was present during the meeting. Nur Amirah is not a minor and attends university. She had testified that she went into the house to get RM100.00 to hand to Sgt Shamzaini to enable him to purchase a phone so that he could keep in contact with her mother.
- 166.4. Norhayati's evidence is also corroborated by the evidence of her friends and advisers and Aizat and Faisal, with whom she was in immediate contact following Sgt Shamzaini's visit. There are no material inconsistencies in their evidence.
- 166.5. The notes on the meeting written by Norhayati immediately after Sgt Shamzaini left are contemporaneous and are strong corroborative evidence.
- 166.6. Norhayati's notes contain facts which could not have come from any other source but from Sgt Shamzaini himself:
 - (a) There is a reference to the Toyota Vios being located in Jalan Semarak as recorded in her notes after the visit. Jalan Semarak is where PULAPOL is located in Kuala Lumpur and where Saiful Bahari was working in November 2016. There is no indication of Jalan Semarak being disclosed in any of the evidence adduced in the Public Inquiry and her notes referring to Jalan Semarak could have only come from Sgt Shamzaini; and

- (b) The name Azam Azahari that was recorded in Norhayati's note. As it turned out, he was a Special Branch officer who had served in Bukit Aman, Kuala Lumpur and later in Perlis and who is now on transfer to Terengganu. Notwithstanding Sgt Shamzaini's denial of all knowledge or involvement in Amri Che Mat's disappearance, Norhayati would have had no means of knowing that such a person even existed unless Azam Azahari's name was given to her by Sgt Shamzaini.

- 166.7. The making of the police report by Norhayati adds to the credibility of her evidence. The information that she reported to the police consisted of very serious allegations of an enforced disappearance carried out by the Police in particular the Special Branch, Bukit Aman. It was not made lightly and as a teacher and educated person, she would be fully aware of the consequences of making a false report.
167. Although the information given by Sgt Shamzaini to Norhayati during their meeting on the night of 12 May 2018 is hearsay evidence, the Panel holds the view that such evidence is nonetheless admissible pursuant to the provisions of section 14 of the Act.⁵⁰

Shortcomings in the Police Investigations

168. Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and the Bar Council have submitted that the police investigations into the disappearance of Amri Che Mat are "sham" investigations and that the disappearance has not been treated with serious effort or endeavour by the Police to uncover the truth.
169. Upon analysing the evidence of the witnesses and the submissions of Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM, Counsel of the Bar Council and Officers Appearing for the Police, the Panel is of the view that there are indeed several shortcomings in the police investigations into the disappearance of Amri Che Mat as summarised below:

- 169.1. Delay in appointing the investigating officer

⁵⁰ Refer to paragraph 48 above.

- (a) On 25 November 2016 at around 2:22 a.m., Yousri lodged a police report that he had found a vehicle with three (3) of its windows smashed in Bukit Chabang, Kangar, Perlis.
- (b) Around 6:00 a.m. Norhafizal received a call from the Police informing him that a vehicle was found at Bukit Chabang, Kangar, Perlis and requested for him to go to the Kangar Police Station to identify the said vehicle.
- (c) Around 7:00 a.m Norhayati and Norhafizal arrived at the disused construction site at Bukit Chabang, Kangar, Perlis and identified the Toyota Fortuner.
- (d) Around 12:20 p.m. Norhayati lodged a police report indicating her concern for the safety of her husband. She reported that she had not been able to contact him and that his car was found with the windows smashed and that important documents were missing.
- (e) The Panel notes that while the Police were quick to act upon the police report lodged by Yousri and had managed to trace the owner of the Toyota Fortuner within four (4) hours. Regrettably, the Investigating Officer, Inspector Khor was only appointed at 4:00 p.m. on 25 November some fourteen (14) hours after the discovery of the Toyota Fortuner was reported by Yousri.
- (f) The Panel is of the view that in light of the very suspicious circumstances in which the Toyota Fortuner was found, with the windows smashed, road tax and license plates missing, the Police should have appointed an investigating officer immediately, upon Norhayati informing the Police at about 7:00a.m. that Amri Che Mat was missing. In cases such as suspected abduction or even missing persons, early commencement of investigations is of the essence.

169.2. Classification of case as missing person case

- (a) Throughout the Inquiry, witnesses from the Police maintained that the classification of Amri's disappearance was correctly classified as that of a missing person case. They claim that they

had insufficient evidence, to raise the classification to one of abduction.

- (b) It is inexplicable that Amri Che Mat who was under surveillance by the Special Branch both in Kangar and in Bukit Aman and whose disappearance had been reported with his car found with its windows smashed at a disused construction site, should be treated as a simple case of a missing person and a junior officer in the Criminal Investigation Department (“CID”) would be appointed to investigate his disappearance.
- (c) The Police have not provided any acceptable justifications for their refusal to reclassify the case of Amri Che Mat.

169.3. Appointing a junior officer

- (a) Inspector Khor was assigned as the Investigating Officer by ASP Roslan Remeli during an internal CID meeting.
- (b) Inspector Khor was a fresh university graduate and had only been a part of the police force around six (6) months earlier. In other words, Inspector Khor was a very junior probationary officer. Inspector Khor admitted that he was inexperienced as he had handled only two (2) or three (3) missing persons cases before and only seventy (70) other general cases. Inspector Khor also had no specialised CID training and the specialist training that he had received was in handling domestic violence.

169.4. Shortcomings of Inspector Khor’s investigations:

- (a) Inspector Khor claimed that he had canvassed the scene along Jalan Padang Behor shortly after he was assigned the case however he did not manage to gather any information.
- (b) Nonetheless, friends of Amri Che Mat actively sought for answers into the disappearance of their friend Amri Che Mat. Any relevant information they obtained through their own efforts were immediately forwarded to Inspector Khor as the Investigating Officer. Despite being given information of possible

witnesses, there was a delay by the Police in interviewing these witnesses and recording their statements.

- (c) There were three (3) witnesses to the abduction of Amri Che Mat: Saiful Afdzan, his cousin Mohamad Afiq Adli (“**Afiq**”) and Syed Amri.
- (d) Saiful Afdzan and Afiq witnessed the abduction from *Restoran MakLang*. Both Saiful Afdzan and Afiq were never interviewed by the Police. In fact, the Statement from Saiful Afdzan was recorded by the officers of SUHAKAM. The Police also failed to secure the attendance of Saiful Afdzan.
- (e) The third witness, Syed Amri, testified that he was interviewed twice by the Police, once shortly after 25 November 2016 and another time a week later. It should be noted that Syed Amri testified that during these two interviews by the Police, no statement was recorded and that his statement was only recorded in January 2018, around fourteen (14) months after Amri Che Mat’s disappearance.
- (f) There was also a delay in interviewing Vee Yak who testified that he was only interviewed by the Police a month later at his workshop. Further, Vee Yak testified that his statement was only recorded in October 2017, around eleven (11) months after the disappearance of Amri Che Mat.
- (g) Furthermore, Inspector Khor had initially quickly ruled out the information given by Vee Yak regarding the gold Toyota Vios. Inspector Khor claimed that the car was in Kuala Lumpur at the material time and that it could not have been the car that Vee Yak saw. It should be noted that Inspector Khor came to this conclusion without even speaking to Vee Yak. Moreover, having been made aware that the owner of the gold Toyota Vios was in Kuala Lumpur, Inspector Khor did not interview the owner himself but had asked another officer to do so. Thus, Inspector Khor ruled out the gold Toyota Vios without even speaking to Vee Yak or the owner of the vehicle.

- 169.5. Reluctance to disclose information about Saiful Bahari
- (a) The lack of clarity on the evidence concerning Saiful Bahari is troubling and there appears to be a concerted effort to obscure all reference to him and his involvement. This is supported by the information disclosed by Sgt Shamzaini that Inspector Khor was instructed to lie about the Toyota Vios.
 - (b) The owner of the gold Toyota Vios was Saiful Bahari. The reluctance with which his identity and designation as a contract worker with Special Branch, Bukit Aman, Kuala Lumpur has been highlighted above.
 - (c) Officers who were asked to provide information relating to the Toyota Vios quickly dismissed it as being irrelevant and insignificant in the police investigations as the car was in Kuala Lumpur at the material time.
 - (d) Information relating to Saiful Bahari was only disclosed in August 2018 during the Public Inquiry.
- 169.6. Failure to locate Saiful Bahari and secure his attendance at the Public Inquiry
- (a) It is difficult to accept that the Police were unable to trace and locate one of their own officers who had worked there for 18 years, even if he is no longer part of the police force.
 - (b) Roeshan, a witness in the Public Inquiry into the disappearance of Pastor Raymond Koh testified that he had seen several men come out of the vehicles that “boxed” in Pastor Raymond Koh’s vehicle. If the Police had located Saiful Bahari, he could have been called to participate in an Identification Parade for Roeshan to identify whether that person was at all present at the scene of the crime at the material time.
170. The above illustrates that in general, there was no sense of urgency in the police investigations. In fact, a lackadaisical attitude was adopted by the police officers in the investigations into the disappearance of Amri Che Mat.

H. Conclusion

Enforced Disappearance by Agents of the State

171. The Panel is of the considered view that the enforced disappearance of Amri Che Mat was carried out by agents of the State namely, the Special Branch, Bukit Aman, Kuala Lumpur, within the definition of the first limb of Article 2 of ICPPED.
172. The basis for this conclusion can be found in the evidence of Norhayati who testified that Sgt Shamzaini had told her on 12 May 2018 at about 10:30 p.m. that it was the Special Branch, Bukit Aman, Kuala Lumpur which had carried out the enforced disappearance of Amri Che Mat.
173. The basis for this conclusion, also arises from the direct evidence of Syed Amri and Saiful Afdzan. Syed Amri testified that he saw the “boxing” in of a Toyota Fortuner along Jalan Padang Behor while Saiful Afdzan testified that he saw the driver of the Toyota Fortuner being chased by several men in front of his restaurant, known as *Restoran MakLang* on 24 November 2016 at about 11:30p.m.
174. The circumstantial evidence adduced in the hearing proves on a balance of probabilities that it was Amri Che Mat, who was driving the Toyota Fortuner when it was “boxed” in at the material time and about an hour later, Amri Che Mat’s Toyota Fortuner was found abandoned at the disused construction site at Bukit Chabang, Kangar.
175. The conclusion of the Panel is also supported by the direct evidence of Vee Yak who had testified that he had noticed three (3) vehicles taking turns to keep surveillance on Amri Che Mat’s house three (3) days before his disappearance and that he had in fact taken down the number of the gold Toyota Vios (PFC1623). Vee Yak informed Faisol and Annuar of the number, who in turn informed Inspector Khor of the same. It will be noted that Sgt Shamzaini had also informed Norhayati that a gold Toyota Vios was present at the scene when Amri Che Mat was “taken” at the material time. The presence of a gold Toyota Vios was mentioned by Norhayati in her police report following the meeting with Sgt Shamzaini.

Enforced Disappearance by Non-State Agents

176. The Panel further finds that there is no evidence to support the contention, as suggested by Counsel on behalf of the family of Amri Che Mat, that Amri Che Mat

was abducted by persons or groups of persons acting with the authorisation, support or acquiescence of the State.

Refusal to Acknowledge the Deprivation of Liberty

177. The enforced disappearance of Amri Che Mat was “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” as set out in Article 2 of ICPPED.
178. This conclusion on the refusal by the State, namely the Police, to acknowledge the enforced disappearance is supported by the fact that to date, the Police have refused to reclassify the disappearance of Amri Che Mat as a case of enforced disappearance from the case of a missing person.

Common Features Between the Two Disappearances

179. The Panel’s conclusions are further supported by the common features between the disappearance of Pastor Raymond Koh and Amri Che Mat which are strands of circumstantial evidence when considering the enforced disappearances of Amri Che Mat and Pastor Raymond Koh together, namely:
 - 179.1. The cars in which Amri Che Mat and Pastor Raymond Koh were travelling in at the material time, were “boxed” in by three (3) black 4WD vehicles;
 - 179.2. Three (3) windows of Amri Che Mat’s vehicle and a window of Pastor Raymond Koh’s vehicle were smashed; and
 - 179.3. The *modus operandi* of the enforced disappearance of both cases bore uncanny similarities.
180. The common features that the Panel has taken note of are explained further in the following:

Religious Issues

181. Amri Che Mat was born and brought up as a Sunni Muslim. However, he later took an interest in Shiaism where the followers hold very contrasting beliefs from those of the adherents of Sunni Islamic. Amri Che Mat was one of the founders of Perlis Hope, an organisation that undertakes to assist the poor and needy in

the community regardless of race or religion. However, Perlis Hope was suspected by the then Chief Minister of Perlis, Dato Seri Shahidan Kassim and the Director of Perlis State Islamic Affairs Department (“JAIP”), Dr. Hazman Hassan to be a Shia organisation. Further, Amri Che Mat’s home, which is adjacent to the office of Perlis Hope, was inspected by the Mufti of Perlis, his officers, together with police officers from the Special Branch, Kangar, Perlis.

182. Pastor Raymond Koh was a pastor at the Evangelical Free Church in Petaling Jaya from 1994 to 2004. Following that, he formed Harapan Komuniti together with two others to carry out social and charity work among marginalised and underprivileged communities. DUMC was later raided by Selangor State Islamic Affairs Department’s (“JAIS”) officers, together with a team of policemen, as there were several Muslim individuals who were found to be present at a Thanksgiving Fundraising event.
183. The Panel finds that Amri Che Mat and Pastor Raymond Koh were both individuals targeted by religious authorities on allegations that they were involved in matters against Islam in Malaysia.

Direct Surveillance

184. The Panel also found that there was direct surveillance on the activities carried out by both Amri Che Mat and Pastor Raymond Koh in their respective organisations before their disappearances.
185. It is undisputed that Amri Che Mat was under the close surveillance of the religious authorities, Special Branch in Kangar, Perlis and the Special Branch in Kuala Lumpur. In or around October 2015, the Mufti of Perlis, and the officers from the Mufti’s department inspected Amri Che Mat’s house after receiving a number of complaints about his activities in relation to Shiaism. Following that, the religious authorities and the police officers from the Special Branch spoke to Amri Che Mat directly and warned him against the propagation of his Shia beliefs during the meeting on 22 October 2015.
186. On the other hand, in the case of Pastor Raymond Koh, following the JAIS raid at the Thanksgiving Fundraising Dinner organised by Harapan Komuniti, Susanna testified that Pastor Raymond Koh and his family were often stopped and questioned by Special Branch officers at immigration checkpoints in Johor Bahru and KLIA Airport whenever they returned from Singapore and overseas. Further,

the Federal Minister of Islamic Affairs, Jamal Khir Baharom also confirmed that Harapan Komuniti was investigated for the alleged proselytisation of Muslims.

Similar Modus Operandi

187. The Panel is of the view that the *modus operandi* of the disappearances of Pastor Raymond Koh and Amri Che Mat bore uncanny similarities.
188. In the disappearance of Amri Che Mat, there was direct evidence by Saiful Afdzan and Syed Amri that they saw a vehicle which matched the description of Amri Che Mat's Toyota Fortuner being "boxed-in" by three (3) 4WD vehicles. The driver later attempted to run away from the three (3) 4WD vehicles, but he was caught and dragged back into one of the said vehicles.
189. In the Public Inquiry into the disappearance of Pastor Raymond Koh, Roeshan testified that he saw a car being "boxed-in" by three (3) black 4WD vehicles while he was driving along Jalan SS4B/10, Kelana Jaya, Selangor. The driver was seen being dragged out of his car and put into one of the 4WDs. This description of the *modus operandi* was later supported by the CCTV footage obtained by Pastor Raymond Koh's family.
190. Further, in both cases, the persons dragging Amri Che Mat and Pastor Raymond Koh into one of the vehicles, were described to be wearing black clothing.

Presence of Gold Toyota Vios

191. The Panel is of the further view that a gold Toyota Vios seen parked near Amri Che Mat's house before his disappearance and that a gold Toyota Vios seen at the scene of the abduction of Pastor Raymond Koh was no mere coincidence.
192. In the Public Inquiry into the disappearance of Amri Che Mat, Vee Yak testified that he noticed a gold Toyota Vios parked across the road from his workshop for three (3) consecutive days before Amri Che Mat's disappearance. He took down the car registration number of the gold Toyota Vios (PFC1623) and this information was later given to Inspector Khor by Aizat. Norhayati also testified that Sgt Shamzaini had informed her that the gold Toyota Vios was in fact present during Amri Che Mat's abduction and that she should advise her solicitors to harp on the fact in the next hearing before the Panel.

193. In the Public Inquiry into the disappearance of Pastor Raymond Koh, Roeshan testified that besides the three (3) black 4WD vehicles, there was a gold Toyota Vios at the scene of the incident at Jalan SS4B/10, Kelana Jaya. Following that, he further testified that there was an Indian man who told him to “back off” when he got closer to the scene of the incident. Based on the CCTV footage obtained in the Public Inquiry of Pastor Raymond Koh, it is clear that the Indian man described by Roeshan, was a passenger in the gold Toyota Vios. He had approached Roeshan’s car when he saw Roeshan drawing near.

I. Recommendations of the Panel

194. Pursuant to the Panel’s last Term of Reference “To recommend measures or guidelines to be taken to ensure that such alleged breach or breaches do not recur,” the Panel makes the following recommendations:

Authorities to Respect Freedom of Religion as a Fundamental Human Right

195. The fundamental human right to freedom of religion is explicitly set out in the Universal Declaration of Human Rights as well as in Article 11(1) of the Federal Constitution of Malaysia read with Article 11(4) which states that “State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.” Freedom of religion is also recognised in several other instruments such as the International Covenant on Civil and Political Rights (“ICCPR”), the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and resolutions of the Human Rights Council and the General Assembly, to name a few.
196. It is therefore vital that the State and its agents, including the Police and equally the State religious authorities, recognise and respect this right.

Demarcation Between the Police and the Religious Authorities

197. From the evidence adduced during the Public Inquiry, it is clear that both the Police and the religious authorities are uncertain of the extent of their powers and jurisdiction in respect of the enforcement against the propagation of Shiaism.

198. During the Public Inquiry, several concerns regarding the interaction between the Police and the State religious authorities were raised, inter alia:
- 198.1. Meetings and discussions were held where the subject matter of the meetings were deliberately restricted to the public, how these meetings came about, their content, and the decisions made have not been disclosed. No clear explanation as to what information was shared, why it was shared, or even on what authority such information can be disseminated, was given by the religious authorities or the Police; and
 - 198.2. No formal complaints were lodged to the religious authorities or to the Police that could justify why the religious authorities or the Police needed to look into the activities of Amri Che Mat or Perlis Hope. Even if the religious authorities had good grounds to look into the activities of Amri Che Mat or Perlis Hope, no justifiable or acceptable reason was given as to why Police presence was required at the material time. There was no evidence whatsoever to suggest that the security of the religious authorities or any other party was at risk at any time.;
199. The Panel is of the view that the Police should not be involved in religious matters unless the situation warrants such intervention as explained in paragraph 200 below. Therefore, a clear demarcation of police interaction with other departments such as the religious authorities in this case and agencies of the government must be drawn up, shared with the public and enforced accordingly.
200. The Panel recognises that there may be situations where religious authorities may need the assistance of the Police so as to ensure that law and order is maintained in the country, where the religious authorities may not have the adequate support and infrastructure to deal with such situations. As such, there must be clear Standard Operating Procedures (SOPs) to govern the intervention of the Police. Importantly it must be emphasised that Police intervention to maintain law and order should only be exercised in situations of real, grave and imminent threats to the national security of the country.

Reforms to Standard Operating Procedures of the Police

201. Throughout the Public Inquiry, several complaints were made against the Police. The apparent lack of cooperation, suppression and concealment of evidence by the Police was evident during the course of the hearing of the Public Inquiry. The Panel has highlighted some shortcomings in the Police Investigations in

paragraphs 168 to 170 above. The Panel therefore, makes the following recommendations:

Investigation Papers

202. The Panel is of the view that, provided the disclosure of the documents contained in the Investigation Paper requested, do not prejudice ongoing investigations, such documents such as the sketch plan of the scene should be declassified, produced and be admitted in the Public Inquiry as evidence to facilitate the Panel's investigations in the interests of justice and public interest.

Cases of Missing Persons, Abductions and Disappearances

203. In cases of suspected missing persons, according to the Police protocol, 24 hours must have lapsed before a case can be classified as a "missing persons" case. The Panel calls on the Police to review this protocol in cases where there are overwhelming circumstances that point to an abduction or involuntary disappearance of a person.
204. A distinction between this class of cases is necessary so that each case is dealt with appropriately and that no time is wasted. The investigations have to be conducted urgently to increase the chances of finding the missing persons safely.
205. Reforms on the standard operating procedures should implement stringent training on communications protocol to address missing persons cases and include procedures such as informing the progress of the case to the family members and members of the public timeously.
206. In view of the Panel's finding that Amri Che Mat is a victim of an enforced disappearance, the Panel urges the Police to reclassify Amri Che Mat's case as an enforced disappearance case, from that of a missing persons case, and to recommence investigations accordingly.

Role of the Special Branch

207. Throughout the Public Inquiry, many raised their concerns on the role and functions performed by the Special Branch in public order policing. The Royal Police Commission recognised that there appears to be no legal provisions

dealing with the functions, powers and duties of the Special Branch.⁵¹ The Panel recommends that the Special Branch be made accountable and its powers and responsibilities be spelt out in law so that it can function impartially and independently and to clearly define the term 'security' to avoid the abuse of power, to further scrutinise the agency and to increase their accountability.

Independent Police Complaints and Misconduct Commission (“IPCMC”)

208. Counsel on behalf of the family of Amri Che Mat, Assisting Officers of SUHAKAM and Counsel of the Bar Council have submitted that it will be an integral part of the primary investigations into the disappearance of Amri Che Mat to investigate the conduct of the Police's investigation to date. This is based on their belief that the investigations are a sham intended to cover the identities of the abductors and those behind them and that if the investigation itself is investigated those controlling the investigation will be exposed and through them, the identities of the abductors may be revealed.
209. This supports the call by the Bar Council to establish the IPCMC⁵² so that allegations against the Police such as in this case be addressed adequately.
210. Many have called for the setting up the IPCMC as an independent oversight mechanism for the Police since the public has very little confidence in the Police to abide by the rules and regulations in safeguarding the interests of the public.

Set Up of Special Task Force to Reinvestigate the Disappearance of Amri Che Mat

211. Following the Panel’s findings, it is up to the police authorities to properly investigate and bring to book the culprit or culprits responsible. Every effort must be made to track down the abductors of Amri Che Mat in a thorough police investigation. For starters an experienced Investigating Officer should be appointed to reinvestigate the case.
212. The family needs some closure and answers can only be provided by the State. It is believed that those who have been put in charge so far are withholding the answers to these questions, or are refusing to undertake a diligent exercise to

⁵¹ Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police 2005

⁵² Recommendation in Report of the Royal Commission to Enhance the Management and Operation of the Royal Malaysian Police (2005)

discover them, hence a new and separate task force needs to be set up to re-investigate the disappearance of Amri Che Mat.

213. Therefore, the Panel recommends that a special task force be set up to reopen and re-investigate the case of Amri Che Mat as an enforced disappearance case, instead of a missing persons case.
214. To ensure a just disposal of the case and the carrying out of proper investigations, the Panel proposes the following guidelines for the operation of the Special Task Force:
 - 214.1. The Special Task Force should comprise of independent investigators to be appointed by the Attorney General. In the event there is any conflict of interest, they ought not to be appointed. In selecting members of the Special Task Force, the appointing parties shall have regard to, inter alia, the following:
 - (a) Persons who have no current or past connections with the criminal investigations conducted into the disappearance of Amri Che Mat;
 - (b) Persons who have no current or past connections with any current or past member of the E2 Division of the Special Branch Kangar, Perlis and Special Branch, Bukit Aman, Kuala Lumpur.
 - (c) Persons who have no current or past connections with current or past members of the Perlis religious authorities.
 - 214.2. The Police shall forward all investigation papers and/or intelligence gathered so far in connection with the disappearance of Amri Che Mat to the Special Task Force for its further action;
 - 214.3. The Special Task Force shall report to the family and SUHAKAM at regular intervals on the progress of its investigations;
 - 214.4. The Special Task Force shall produce a report on the findings of the Special Task Force's investigations which will be made available to the public as soon as possible.

Legal Reforms

Amendments to the Law in Malaysia

215. The Panel recommends that the Government of Malaysia should review the Penal Code and the Criminal Procedure Code to incorporate enforced or involuntary disappearances under a category specific to cases involving missing persons. In other words, there should be amendments to effectively make enforced disappearance an offence under the Penal Code, in addition and separate from the offence of abduction and kidnapping.

Ratifying International Instruments

216. Malaysia has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance 2006.

216.1. By ratifying the Convention, Malaysia will assume an international obligation to eradicate enforced disappearance. The measures set out in the Convention include provisions on, among others

- (a) the effectiveness of investigations into enforced disappearances and involuntary disappearances⁵³;
- (b) bringing those directly and indirectly involved to account for their actions⁵⁴;
- (c) the creation of an additional offence in the penal law with enhanced sentencing for enforced disappearances⁵⁵;
- (d) the provision of information to the families of victims⁵⁶; and
- (e) the training of law enforcement officers⁵⁷.

⁵³ Articles 3, 12, 19 and 22 of the ICPPED.

⁵⁴ Articles 6 and 10 of the ICPPED.

⁵⁵ Article 7 of the ICPPED.

⁵⁶ Articles 18 and 24 of the ICPPED.

⁵⁷ Article 23 of the ICPPED.

- 216.2. In short, the ICPPED provides guidelines on identifying elements of an enforced disappearance and clearly outlines the role of the Government in investigating the offence and other related offences.
- 216.3. The Government should utilise ICPPED to produce a framework for the introduction of legislation to criminalise enforced disappearance as well as to fill up the missing provisions in Malaysia's legislation.
217. Further, Malaysia has also not ratified the International Covenant on Civil and Political Rights 1966. This treaty obligates its members to protect and preserve basic human rights, such as: the right to life and human dignity; equality before the law; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; right to family life and family unity; and minority rights.
218. Following the ratification of the international treaties above, the Government should take further steps to give legal validity to ICPPED and ICCPR in Malaysia to better enable agencies to resolve the issue of 'enforced disappearance'.
219. In conclusion, the Panel reiterates that in carrying out the Public Inquiry, SUHAKAM was discharging its duty to inquire into infringements of human rights under section 4(1)(d) of the Human Rights Commission of Malaysia Act 1999, and that the recommendations in this report are made in exercise of SUHAKAM's powers under section 4(2)(b) of the Act which provides that SUHAKAM may "advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken."
220. The findings and recommendations herein are the unanimous findings and recommendations of the Panel of Inquiry.

J. Addressing the Terms of Reference

221. The Panel has reached the following conclusions in relation to its Terms of Reference:
- 221.1. In response to paragraph (a):

- The disappearance of Amri Che Mat was a case of enforced disappearance as defined under the International Convention for the Protection of All Persons from Enforced Disappearance; and
- The case of the disappearance of Amri Che Mat was neither a case of voluntary disappearance nor a case of involuntary disappearance in breach of the ordinary criminal law;

221.2. In response to paragraphs (b)(i), (ii) and (iii):

- The enforced disappearance was carried out by the Special Branch, Bukit Aman, Kuala Lumpur;

221.3. In response to paragraph (c):

- The Panel finds that the Royal Malaysian Police have not taken adequate steps to investigate the enforced disappearance of Amri Che Mat;

221.4. In response to paragraph (d):

- The recommended measures or guidelines to be taken to ensure that such enforced disappearances do not recur are as set out above in part **I. Recommendations of the Panel** above.

K. Acknowledgment

222. The Panel wishes to thank all the parties for their attendance, research and submissions, in the conduct of this Public Inquiry. The Panel further thanks learned Counsel on behalf of the family and of the Bar Council for having volunteered their services pro bono to the family of Amri Che Mat and to the Bar Council respectively and to the Assisting Officers of SUHAKAM and to the Officers Appearing for the Police for their contributions in the conduct of this Public Inquiry.

223. The Panel wishes to express its deepest concern and sympathies to the family of Amri Che Mat and his loved ones for the grief, anxiety and sadness arising from the enforced disappearance of Amri Che Mat since 24 November 2016.

3rd April 2019

.....
DATO' MAH WENG KWAI

.....
PROF. DATO' DR. AISHAH BIDIN

.....
DR. NIK SALIDA SUHAILA BINTI NIK SALEH

Counsel/Officer appearing before the Panel:

For the Family of Amri Che Mat:	M. David Morais Khabir Dillon Raul Lee Bhaskaran Larissa Ann Louis
For SUHAKAM:	Simon Karunagaram Joshua Ericsson Nur Adlin Abd Ghaffar Yustina Ishak
For the Bar Council:	Roger Chan Weng Keng Mansoor Saat Cyrus Tiu Foo Woei
For the Police:	SAC Dato' Moktar SAC Dato' Azman DSP Nuzulan ASP Irwan ASP Ismail

Schedule 1: List of Inquiry Witnesses

Inquiry Witness (“IW”) Number	Name
IW1	Norhayati binti Mohd Ariffin
IW2	Abdul Jamil bin Ahmad
IW3	Mohammad Faisol bin Abd Rahman
IW4	Yousri bin Khalid
IW5	Annuar bin Ismail
IW6	Norhafizal bin Mohd Ariffin
IW7	Syed Amri bin Syed Abdul Jalil
IW8	Vee Yak a/l Ban Jong
IW9	Inspektor Khor Yi Shuen
IW10	Dato' Dr. Mohd Asri bin Zainul Abidin
IW11	Dr. Hazman bin Hassan
IW12	ASP Roslan bin Remeli
IW13	Nur Amirah binti Amri
IW14	Mohd Aizat bin Zahid
IW15	Sheryll Christine Stothard
IW16	Ris a/l Chooi (Pharid)
IW17	ASP Razman bin Ramli
IW18	DSP Azam Azahari bin Othman
IW19	YDH CP Dato' Awaludin bin Jadid

IW20	Sarjan Mohammad Shamzaini bin Mohd Daud
IW21	ASP Mohd Azizie bin Abd Hamid
IW22	Norhashimah binti Mohd Daud
IW23	Tan Sri Dato' Khalid bin Abu Bakar
IW24	Muhammad Faiz bin Abdul Rahman

Schedule 2: List of Exhibits

Exhibit No.	Description of Exhibit	Date marked
Exhibit 1	Police Report No. BESERI/001673/16 lodged by Norhayati binti Mohd Ariffin dated 25.11.2016	22.1.2018
Exhibit 2	Police Report No. KANGAR/008875/16 lodged by Norhayati binti Mohd Ariffin dated 8.12.2016	22.1.2018
Exhibit 3(a) to (d)	Photograph of Toyota Fortuner taken on 25.11.2016	22.1.2018
Exhibit 3(e) to (f)	Photograph of Toyota Fortuner taken on 19.1.2018	22.1.2018
Exhibit 4(a)	Perlis Hope volunteers donating rice	22.1.2018
Exhibit 4(b)	Perlis Hope volunteers building Pak Dani's house	22.1.2018
Exhibit 4(c)	Perlis Hope volunteers donating porridge	22.1.2018
Exhibit 4(d)	Perlis Hope volunteers fixing a house	22.1.2018
Exhibit 5(a) to (c)	Photograph of MAIP inspection taken on 21.10.15	22.1.2018
Exhibit 6	Photograph of meeting with Dr Mohd Asri Zainul Abidin at the Mufti of Perlis' Office taken on 22.10.2015	22.1.2018
Exhibit 7	Screenshot of Facebook post by DrMaza.com dated 7.10.2016	22.1.2018
Exhibit 8(a) to (m)	Screenshot of Facebook post and photographs posted by Jabatan Mufti Negeri Perlis dated 7.10.2016	22.1.2018
Exhibit 9	Sinar Harian Online Article "Mufti bimbang penularan Syiah di Perlis" dated 13.10.2016	22.1.2018

Exhibit 10	Letter from JAIP to Jabatan Pendidikan Negeri Perlis dated 21.9.2016	22.1.2018
Exhibit 11(a) to (d)	Facebook post by YB Ds Shahidan Kassim dated 20.9.2016	22.1.2018
Exhibit 12(a) to (d)	Photograph of Amri Che Mat's Car	22.1.2018
Exhibit 13	Berita Harian Online Article "Kehilangan aktivis kebajikan di Perlis tiada kaitan culik" dated 27.11.2016	22.1.2018
Exhibit 14	Screenshot of WhatsApp conversation between Annuar and Inspector Khor	24.1.2018
Exhibit 15, 15(1) to (12)	Facebook post by DrMaza.com and photographs posted dated 23.1.2018	24.1.2018
Exhibit 16	Free Malaysia Today (FMT) Online Article "Asri serang Amri, kata Syiah ancam 'keselamatan negara'" dated 23.1.2018	24.1.2018
Exhibit 17	FMT Video "Asri serang Amri, kata Syiah ancam 'keselamatan negara'"	24.1.2018
Exhibit 18	<i>Permohonan Semakan Rekod Keluar Masuk Warga Malaysia (Amri Che Mat) dated 30.11.2016</i>	24.1.2018
Exhibit 19	Pengesahan Rekod Pergerakan Keluar Masuk (Amri Che Mat) dated 14.7.2017	24.1.2018
Exhibit 20	Short Message Service (SMS) between Abdul Jamil and Amri Che Mat received at 11:11 p.m. dated 24.11.2016	24.1.2018
Exhibit 21	SMS between Abdul Jamil dan Amri Che Mat sent at 11:34 p.m. dated 24.11.2016	24.1.2018
Exhibit 22	Letter "Pemakluman Bagi Mengadakan Majlis Kesyukuran, Perkemahan Dan Sukan Sempena Wiladah Zainab Al-kubra 2014 (Hijrah 1435)" dated 3.3.2014	24.1.2018

Exhibit 22(T)	Transcription of handwritten notation of letter dated 3.3.2014	25.1.2018
Exhibit 23(a) to (j)	Photographs of Selama Police Station Lock-Up	24.1.2018
Exhibit 24(a) to (c)	Google Map image of location where Amri Che Mat was abducted allegedly	24.1.2018
Exhibit 25(a) to (d)	Perlis Hope's Organisation Profile	25.1.2018
Exhibit 25(e)	Notice of cancellation of Perlis Hope "Bantuan Baju Sekolah Rendah" Project	25.1.2018
Exhibit 26	Bankruptcy Search on Amri Che Mat dated 23.1.2018	25.1.2018
Exhibit 27(a) to (c)	Video at the location Amri Che Mat's car was found, taken on 4.11.17	25.1.2018
Exhibit 28	Polis Report No. PDG BESAR/003254/16 lodged dated 25.11.2016	25.1.2018
Exhibit 29	<i>Percakapan Dalam Pemeriksaan</i> Yousri bin Khalid dated 25.11.2016	25.1.2018
Exhibit 30(a) to (d)	Photocopy of Amri Che Mat's Passport	19.3.2018
Exhibit 31(a)	Letter from Azri, Lee Swee Seng & Co to Tetuan Tawfeek Badjenid & Partners dated 14.3.2018	19.3.2018
Exhibit 31(b)	Letter from Azri, Lee Swee Seng & Co to Jabatan Insolvensi Malaysia dated 14.3.2018	19.3.2018
Exhibit 32(a)&(b)	Letter from Tawfeek Badjenid & Partners to Tetuan Azri, Lee Swee Seng & Co dated 15.3.2018	19.3.2018
Exhibit 33	Letter from Jabatan Insolvensi Malaysia to Tetuan Azri, Lee Swee Seng & Co	19.3.2018
Exhibit 34	Photo of Amri Che Mat's adopted child (Hashimah)	19.3.2018
Exhibit 35	Photo of Amri Che Mat's adopted child (Hashimi)	19.3.2018

Exhibit 36	Photo of Amri Che Mat's adopted child (Nur Masarah)	19.3.2018
Exhibit 37	Photo of Amri Che Mat's adopted child (Hashimi)	19.3.2018
Exhibit 38	Floor plan of Amri Che Mat's house	19.3.2018
Exhibit 39	A copy of <i>Bil Cukai Tanah</i> Amri Che Mat	19.3.2018
Exhibit 40	WhatsApp dated 26.11.2016 between Sarjan Asri and Annuar	19.3.2018
Exhibit 41	WhatsApp dated 28.11.2016 between Sarjan Asri and Annuar	19.3.2018
Exhibit 42	Document "Payment pada 11.8.2016"	19.3.2018
Exhibit 43	Sketch of the scene Amri Che Mat was abducted	20.3.2018
Exhibit 44	Photograph of Tyre Shop	20.3.2018
Exhibit 45	Rough sketch of the scene Amri Che Mat was abducted	20.3.2018
Exhibit 46	Video of the scene Amri Che Mat was abducted in front of Restoran MakLang recorded on 20.3.2018	20.3.2018
Exhibit 47	Video of the scene Amri Che Mat was abducted in front of Restoran MakLang recorded on 20.3.2018	21.3.2018
Exhibit 48	<i>Percakapan Dalam Pemeriksaan</i> of Vee Yak a/l Ban Jong dated 16.10.2017	21.3.2018
Exhibit 49(a) to (c)	Photograph of Toyota Vios with registration number PFC1623	21.3.2018
Exhibit 50	Photograph of a Toyota Vios	21.3.2018
Exhibit 51	<i>Carian Rasmi Pemilik Kenderaan</i> PFC1623 issued by Jabatan Pengangkutan Jalan (JPJ)	3.4.2018

Exhibit 52	Sinar Online Article “Wahabi tidak sesuai diamal di Malaysia” dated 1.3.2015	12.4.2018
Exhibit 53(a) to (c)	<i>Keputusan Carian Fatwa</i>	12.4.2018
Exhibit 54	Police Report No. KANGAR/003635/18 lodged by Norhayati binti Mohd Ariffin dated 15.5.2018	16.5.2018
Exhibit 55	<i>Percakapan Saksi 112</i> (Norhayati binti Mohd Ariffin) dated 15.5.2018	30.5.2018
Exhibit 56	WhatsApp Call Log call of Norhayati binti Mohd Ariffin	30.5.2018
Exhibit 57(a) to (c)	WhatsApp between Norhayati and Aizat	30.5.2018
Exhibit 58	WhatsApp conversation between Norhayati and Chon	30.5.2018
Exhibit 59	Call Log of Faizol calling Norhayati	30.5.2018
Exhibit 60(a) to (c)	Norhayati’s Notebook	30.5.2018
Exhibit 61	Police Report No. KANGAR/003707/18 lodged by Mohamad Shamzaini bin Mohd Daud dated 18.5.2018	31.5.2018
Exhibit 62	<i>Surat Perjanjian (Pajakan Kedai C32/1 Kampung Padang Behor)</i>	31.5.2018
Exhibit 63(a) & (b)	WhatsApp Messages from Aizat’s phone dated 13.5.2018	31.5.2018
Exhibit 63(c)	Call Log of Aizat	31.5.2018
Exhibit 64(a) to (c)	Call Log of Aizat	31.5.2018
Exhibit 65	Screenshot of Perlis Hope’s Facebook page	7.6.2018
Exhibit 66	Screenshot of WhatsApp messages from Norhayati dated 13.5.2018	7.6.2018

Exhibit 67(a)	Call Log of Sheryll Stothard	7.6.2018
Exhibit 67(b)	WhatsApp Messages between Sheryll and Faisal dated 13.5.2018	7.6.2018
Exhibit 67(c)	Call Log of Sheryll Stothard	7.6.2018
Exhibit 67(d)	WhatsApp Messages between Sheryll and Norhayati dated 13.5.2018	7.6.2018
Exhibit 68(a) to (e)	Documents passed to Insp Hazwani on 15.5.2018, JSJ IPD Shah Alam	7.6.2018
Exhibit 69(a) & (b)	Call Log of Ris a/l Chooi (Pharid)	26.6.2018
Exhibit 70	Extract from Notes of Proceedings (NP9) from Pastor Raymond Koh's Case	3.7.2018
Exhibit 71(a) to (d)	Photographs of Toyota Vios Registration No. PFC1623	3.7.2018
Exhibit 72	List of written questions submitted to Insp. Khor Yi Shuen dated 2.4.2018	3.7.2018
Exhibit 73	The Rakyat Post Online Article "Bukit Aman dedah penyebaran Kristian menyamar Islam-Awaluddin Jadid" dated 11.11.2015	5.7.2018
Exhibit 74	Berita Harian Online Article "Militan terpesong diresapi ideologi salah" dated 5.1.2016	5.7.2018
Exhibit 75	Transcript of Youtube Video "Peringatan dan Amaran dari Dato' Ayob Khan Pichay" published on 19.8.2016	5.7.2018
Exhibit 76	The Star Online "Cops : Stamp Out radicalism" dated 21.8.2016	5.7.2018
Exhibit 77	Berita Malaysiakini "Syiah, mazhab, Jakim timbul pada pertemuan CEP – Mufti" dated 27.6.2018	5.7.2018
Exhibit 78	"Warta Kerajaan Negeri Perlis" dated 27.9.2012	5.7.2018

Exhibit 79	<i>Gambar Hadapan Rumah Puan Norhayati Di Kampung Padang Behor (1)</i>	6.7.2018
Exhibit 80(a) to (c)	<i>Gambar Rumah Puan Norhayati Di Kampung Padang Behor (2)</i>	6.7.2018
Exhibit 81	Malay Mail Online Article "Deputy Minister: 'National Fatwa Council' Incorrect Term" dated 31.3.2016	23.7.2018
Exhibit 82(a) to (c)	Facebook post by Facebook Rasmi Polis Diraja Malaysia	23.7.2018
Exhibit 83	Minister for Home Affairs, Malaysia & Anor v Jamaluddin bin Othman [1989] 1 MLJ 418	23.7.2018
Exhibit 84	Police Report No. REDANG PANJANG/000164/14 dated 9.3.2014	23.7.2018
Exhibit 85	Sinar Online "Panggilan bongkar aktiviti Syiah" dated 10.3.2014	23.7.2018
Exhibit 86	Photograph of Pharid Audio	24.7.2018
Exhibit 87	Public Officers (Conduct And Discipline) Regulations 1993 PU(A) 395/1993	24.7.2018
Exhibit 88	Photograph of Banner With Pharif Auto's Telephone Number.	24.7.2018
Exhibit 89	Call Log of Sarjan Mohamad Shamzaini Mohd Daud	24.7.2018
Exhibit 90	Location Ping for Sarjan Mohamad Shamzaini Mohd Daud's phone	24.7.2018
Exhibit 91	Location Ping for Norhayati binti Mohd Ariffin's Phone	24.7.2018
Exhibit 92	<i>Rekod Pergerakan Cuti Saiful Bahari bin Abd Aziz Tahun 2016</i>	27.8.2018
Exhibit 93	WhatsApp message sent to Sarjan Mohamad Shamzaini Mohd Daud from Mohammad Faisol bin Abd Rahman	27.8.2018
Exhibit 94	Screenshot of PDRM Website Post "114 pengikut Syiah Ditahan"	28.8.2018

Exhibit 95	<i>Kertas Butir-butir Penyiasatan, Dalam Aduan No: KANGAR RPT 8554/2016</i>	31.10.2018
Exhibit 96	Video of Saiful Afdzan	31.10.2018
Exhibit 96(T)	Transcript of Video of Saiful Afdzan	31.10.2018
Exhibit 97	Statement of Saiful Afdzan bin Seinei recorded by SUHAKAM dated 17.5.2017	31.10.2018

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