HUMAN RIGHTS WATCH

“No Answers, No Apology”

Police Abuses and Accountability in Malaysia

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Glossary

AG	Attorney General
AGC	Attorney General's Chambers
ASP	Assistant Superintendent of Police
CID	Criminal Investigation Division
CPC	Criminal Procedure Code
DAP	Democratic Action Party
DDA	Dangerous Drugs (Special Measures) Act 1985
DBKL	Dewan Bandaraya Kuala Lumpur, Kuala Lumpur City Hall
EAIC	Enforcement Agency Integrity Commission
EO	Emergency (Public Order and Prevention of Crime) Ordinance 1969
FRU	Federal Reserve Unit
IGP	Inspector General of Police
IGSO	Inspector General Standing Order
IPCMC	Independent Police Complaints and Misconduct Commission
ISA	Internal Security Act
LRT	Light Rail Transit
MACC	Malaysian Anti-Corruption Commission
MMC	Malaysian Medical Council
MOU	Memorandum of Understanding
NFA	No Further Action
PCA	Prevention of Crime Act 1959
PAS	*Parti Islam Se-Malaysia,* Pan-Malaysia Islamic Party
PDRM	*Polis Diraja Malaysia*, Royal Malaysia Police
PRS	Police Reporting System
RELA	*Ikatan Relawan Rakyat Malaysia*, Malaysian People's Volunteer Corps
RM	Malaysian Ringgit (RM 1 equals US$0.30)
RMP	Royal Malaysia Police
SDR	Sudden Death Report
SOP	Standard Operating Procedure
SOSMA	Security Offenses (Special Measures) Act
Suhakam	*Suruhanjaya Hak Asasi Malaysia*, Malaysian Human Rights Commission
UMNO	United Malay National Organization

Map of Malaysia

Summary

> I ask Allah how my son felt when he saw a gun at his forehead, knowing he was about to die. Was he crying, screaming, "Don't kill me?"
> —Norhafizah, mother of Mohd Shamil Hafiz Shapiei, 15, killed by police in 2010, Kuala Lumpur, April 2012

> There is stiff resistance from police when anyone questions them. When we inquire about a case, the police tell us that it's under investigation and everything is done according to procedures, but we are not given their SOPs [standard operating procedures] or ever told what their investigation found. "Trust us," they say, "We are taking care of it." But people want tangible proof of what action they take which is nowhere to be seen. There are no checks and balances.
> —Investigator at the Malaysian Human Rights Commission (SUHAKAM), Kuala Lumpur, May 2012

Police abuse remains a serious human rights problem in Malaysia. Unjustified shootings, mistreatment and deaths in custody, and excessive use of force in dispersing public assemblies persist because of an absence of meaningful accountability for Malaysia's police force, the Royal Malaysia Police (RMP). Investigations into police abuse are conducted primarily by the police themselves and lack transparency. Police officers responsible for abuses are almost never prosecuted. And despite recent reforms, there is still no effective independent oversight mechanism to turn to when police investigations falter. The result is heightened public mistrust of a police force that has engaged in numerous abuses and blocked demands for accountability.

This report examines more than 15 cases of alleged police abuse in Malaysia since 2009, drawing on first-hand interviews, complaints by victims or their families, and news reports. In only a handful of cases has the Malaysian government conducted serious investigations and held accountable those responsible. Government statistics provided to Human Rights Watch show that the majority of prosecutions of the police are for corruption and drug-related offenses and not deaths in custody, ill-treatment, or excessive use of force.

The Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (the "Royal Commission"), established in 2004 by the Malaysian king (Yang di-Pertuan Agong), raised serious concerns about police abuses. The Royal Commission received over 900 complaints of abuse including deaths in custody, physical and psychological abuse of detainees, misuse of administrative detention laws, abuse of power, and systematic lack of accountability and transparency. In 2005, the Royal Commission issued its report with 125 recommendations, including that the government amend relevant laws to make them comply with international human rights standards, and take steps to eradicate corruption, enhance investigative policing, and improve police support and maintenance through measures such as better housing and salaries for the police. In order to systematically address the lack of accountability for abuses, the Royal Commission recommended the establishment of an Independent Police Complaints and Misconduct Commission (IPCMC) to investigate police malfeasance and take disciplinary measures.

The government implemented many of the Royal Commission's recommendations. But it rejected the recommendation that it create an external accountability mechanism, partly because the government came under intense police pressure not to create an oversight agency solely focusing on the police. Instead the government established the Enforcement Agency Integrity Commission (EAIC), which oversees 19 government agencies including the police. The EAIC has been operating since April 2011, and received a total of 469 complaints through May 31, 2013, of which 353 were against the police. The commission is thinly staffed—the number of staff investigators dipped to only one in mid-2013—and it has insufficient resources to investigate and respond to complaints. In the words of an EAIC investigator, the commission is "being set up to fail." Speaking to a national conference in May 2013 organized by the EAIC, former Chief Justice Tun Abdul Hamid Mohamad took the EAIC to task, saying, "The bottom line is, since its establishment until the end of 2012, only one disciplinary action and two warnings have been handed down. For a budget of RM14 million [US$4.2 million] for the two years, they were very costly indeed."

The absence of accountability facilitates rights-abusing and at times deadly police practices. The lack of a robust and independent oversight system also harms relations between police and the general public. Effective law enforcement depends on cooperation with and information from the community. Rights abuse diminishes public confidence and trust in the police and leads to less effective law enforcement.

Police officers have the responsibility to take steps to prevent crime and apprehend criminal suspects, and mistakes can happen when they make split-second decisions regarding the use of force. Even the best training, equipment, and leadership will not result in flawless behavior by the police. But Human Rights Watch research found problems much more significant than mistakes or a few ineffectual officers. The serious rights abuses documented in this report point instead to structural problems that need to be addressed. Without rigorous investigation of alleged police abuse cases, those problems cannot be properly identified or tracked. Despite increasing public backlash, neither police leaders nor the civilian authorities who oversee their actions have made a genuine commitment to bringing about needed reform in police policy and practice.

Vague policies, substandard training, lack of transparency, and failure of leadership to investigate and prevent illegal practices all create opportunities for abuse. Unfortunately the Malaysian government and the Inspector General of Police (IGP) have abdicated their responsibility by not making the necessary policy changes to ensure effective oversight and accountability in cases of alleged wrongful deaths, mistreatment in custody and excessive use of force. By failing to ensure that the police cooperate with oversight bodies such as the Malaysian Human Rights Commission (*Suruhanjaya Hak Asasi Malaysia*, SUHAKAM) and the Enforcement Agency Integrity Commission (EAIC), or to establish a specialized independent police investigatory body as recommended by the Royal Commission, the government has allowed the Royal Malaysian Police to remain effectively unaccountable for serious abuses.

* * * *

International legal standards restrict the intentional lethal use of firearms by law enforcement officers to those situations when it is strictly unavoidable to prevent loss of life or serious injury to themselves or others. However, the wide-ranging use of official secrecy laws in Malaysia makes it impossible to determine whether and to what extent the Royal Malaysian Police recognize these parameters on use of force. The IGP standing order on use of force and firearms, for example, is considered a state secret and therefore not publicly available. Human Rights Watch's request to review the order was denied.

Deputy Inspector General of Police Khalid bin Abu Bakar (who became the inspector general on May 17, 2013) told Human Rights Watch in May 2012 that lethal force is used for

"self-protection . . . if police are threatened with death [and] there is no time to use a less lethal weapon." Yet cases examined by Human Rights Watch show that police shot at suspects when police use of force was not warranted and strongly suggest that the police are not adequately trained to use less-than-lethal force when facing threats to themselves or to public safety.

A *parang* (machete). © 2013 Lawyers for Liberty

While police shootings may sometimes be lawful, reported incidents of police shootings show a pattern in which police justify shootings by asserting the suspect had a *parang* (a machete commonly used as an agriculture tool) or failed to stop at a roadblock or after a car chase. In some cases, the police also attempt to justify their use of lethal force by alleging that the suspect was a criminal associated with ongoing police investigations. Wholly absent from police narratives is any attempt to demonstrate that lethal use of force was the only available option to save lives at imminent risk. The apparent quick resort to lethal force raises serious concerns about the police's standard operating procedures and training in the use of lethal force. In many cases investigated by Human Rights Watch, the police version of events was completely at odds with the accounts of witnesses and victims who said the victim was unarmed or did not threaten police.

For example, on August 21, 2012, two people saw plainclothes police shoot an unarmed man, Dinesh Darmasena, 26, at night in a Kuala Lumpur suburb. Darmasena died two days later. The police alleged that Darmasena was a gang member and that he and his friends attacked the police with *parangs*. Yet witnesses filed police complaints, at personal risk to their own safety, saying that Darmasena was unarmed and otherwise contradicting the police version.

In November 2010, police shot and killed Mohd Shamil Hafiz Shapiei, 15, Mohd Hairul Nizam Tuah, 20, and Mohd Hanafi Omar, 22, at approximately 4 a.m. in Selangor. The police alleged that the three were robbing a petrol station and that they then charged at the police with *parangs*, forcing the police to shoot them. All three sustained gunshot wounds to the forehead and chest. The post-mortem report on Shapiei found gunpowder residue on his clothes and concluded that the bullets entered his body at a trajectory angle of 45 degrees, suggesting he had been shot at very close range and not at a distance, as would have been the case had he been charging the police with a *parang.*

Mohd Afham bin Arin, 20, was fatally shot by the police following a motorcycle chase on the night of October 19, 2010, in Johor Baru. The police claimed that Afham waved a *parang* at them and that the passenger, Firdaus, riding behind him also threatened police with a sword. Firdaus filed an official statement with the police rebutting the allegations. The police never charged the Firdaus with any offense related to the incident and conducted no further investigation into the shooting.

The discrepancies between police and witness accounts raise concerns that the police in some instances may be falsely asserting that the victim wielded a *parang* in attempts to justify police use of lethal force. Even dubious police accounts get cemented into the public record, however, because police have greater access to the media and because it is almost always police themselves—often from the same police station as the allegedly abusive officers—who investigate the allegations of abuse. This is all the more reason why an effective independent oversight mechanism is essential.

According to the Ministry of Home Affairs, which oversees the 112,000-member police force, 147 people died in police custody between January 2000 and February 2010. Just three years later, information received in the Parliament on June 26, 2013, from the government in response to MP's questions revealed a total of 231 deaths in custody between the year 2000 and May 2013.

Inquests into wrongful deaths are mandatory under the Malaysian Criminal Procedure Code, but our examination of cases since 2009 shows that a sustained public outcry about a custodial death is often needed before officials will order an inquest. The Royal Commission in 2005 raised similar concerns about police failure to conduct inquests when required by law.

Government officials typically rely on post-mortem examinations by government pathologists that establish the proximate cause of death, but typically do not address serious questions such as whether the death was a result of police mistreatment or could have been prevented with timely medical care.

For example, in January 2010 Mohammad Ramdan bin Yusuf died in police custody of what the post-mortem examiner found to be cardiac arrest, with evidence of "blunt force trauma to the limbs" five days after he was arrested. The police reported that he died of cardiac arrest, but a relative who identified Ramdan's body in the hospital saw bruise marks on his body and indications of bleeding. Despite this claim and family demands for an inquest, no inquest was held to determine the manner of death.

Victims' families have begun questioning the reliability of government pathologists' post-mortems and in recent years have begun requesting a second post-mortem. In the case of 23-year-old Kugan Ananthan— who died shortly after being severely beaten at the Taipan police station, in Subang Jaya, Selangor state, on January 20, 2009—the first autopsy concluded that Kugan had died of "pulmonary edema" (fluid in the lung). This conclusion was disputed by a second post-mortem, which found that Kugan's death was caused by acute renal (kidney) failure due to blunt trauma to skeletal muscles.

The Royal Commission and local human rights organizations have also questioned the independence of police investigations in death-in-custody cases. In July 2012, the High Court of Kuala Lumpur raised serious concerns regarding the impartiality of an investigation conducted by police officers affiliated with the lockup where the death of a detainee occurred. The court recommended such investigations be conducted by police officers from a different station.

However, in the case of truck driver Dhamendran Narayanasamy who died in police custody in May 2013, significant public outcry and a clear post-mortem finding of death caused by "multiple blunt force traumas", led prosecutors to charge four policemen with murder.

The cases we investigated also indicate that ill-treatment of persons in police custody in Malaysia remains a serious concern, and there is little recourse for those who suffer the abuse. For example, Mohammad Rahselan, 18, was forced by the police to squat for an hour, do spot jumping, and "walk like a duck" with arms crossed and hands behind his

ears at a police station in Kelantan. Car mechanic S. Mogan alleged that he was kicked, beaten on his feet with a hosepipe, and threatened with a gun by a police officer at a police station in Selangor who was trying to induce him to confess to theft of a truck. Mogan filed a complaint, which the police disputed. When the wife of truck driver Dhamendran Narayanasamy visited him in police custody on May 19, 2013, he told her that he had been beaten in custody but "not serious" – two days later, he was dead from what the initial post-mortem found were "diffuse soft issue injuries due to multiple blunt force traumas" that occurred while in police custody.

Police handling of public assemblies has also been a problem. Police have frequently employed unnecessary or excessive force. Human Rights Watch observed police using teargas and water cannons against peaceful participants on April 28, 2012, at a mass rally in Kuala Lumpur organized by Bersih, the Coalition for Clean and Fair Elections. While a small group of demonstrators had attempted to breach a police barricade shortly before police moved in, the police also targeted the larger group which did not breach the barricade, severely beating and injuring demonstrators as well as several journalists who were covering the rally while special riot police fired teargas and water cannons at the retreating protesters. One protester suffered significant loss of vision after being struck in the face by a teargas canister. SUHAKAM, Malaysia's national human rights commission, in its 2013 public inquiry concluded that "there was use of disproportionate force and misconduct by the police towards the participants."

Victims of police abuse in Malaysia who do report abusive treatment or question the conduct of the police have little chance of seeing the police investigated, punished, or prosecuted. The police's excessive secrecy usually means that complainants learn nothing about whether their complaint is investigated or whether any disciplinary action has been taken. "I filed a complaint about my son's death, but I don't know what happens next. We never hear what action the police are taking," said Sapiah binti Mohd Ellah, mother of Mohd Afham bin Arin, shot by the police in Johor Baru in 2010. "No answers, no apology."

Police investigative bodies in Malaysia have proven ineffectual. The IGP's Disciplinary Authority investigates police misconduct in the areas of corruption, drugs, violations of Sharia (Islamic law), and truancy. The Criminal Investigation Division (CID) investigates police involvement in crimes as well as civilian complaints of police abuse. But in reality, the investigations are often conducted by officers from the same police station as the

officers implicated in the abuse. The lack of impartiality of police investigators, as well as an institutional culture that does not take abuse complaints seriously, undermines police inquiries in such cases. Yet neither the IGP nor the civilian leadership of the Ministry of Home Affairs has taken steps to remedy this situation.

According to RMP statistics provided to Human Rights Watch, 4,334 police misconduct cases were logged with the CID from January 2005 to May 2012. A total of 32 percent of these cases were referred to the Attorney General's Office for prosecution, and of those referred only one-quarter were actually prosecuted in court. Another 23 percent of the cases referred to the Attorney General's Office were deemed to require "no further action" because of "lack of evidence." The remaining 68 percent of the 4,334 cases were still pending investigation by the police, including some that were opened as far back as 2005.

The types of cases referred by the RMP for prosecution often involve drug-related offenses, corruption, extortion, or robbery. But even these numbers do not provide much clarity, including because they do not distinguish between cases in which civilians complain of police abuse, and cases of police corruption and other crimes.

As with inquests, it appears that significant public attention and outrage are critical in determining whether a case of alleged police abuse will be seriously investigated. Even when they are, prosecutions are the exception and tend to focus on low-level officers. And, as indicated by the two recent cases summarized immediately below, the convicted police officers sometimes effectively avoid punishment for their crimes.

In April 2010, police fatally shot 15-year-old Aminulrasyid bin Amzah while he was driving his car in Shah Alam, Selangor. Public outrage at the death of a student prompted a government inquiry into the IGP standing order on use of force and firearms. The government inquiry resulted in an amendment to the standing order, but the inquiry findings were never made public. Corporal Jenain Subi was charged, convicted, and sentenced in 2010 to five years in prison for culpable homicide. However, the IGP Disciplinary Authority did not investigate him because, according to the authority's head, "[Subi's] actions were not inconsistent with [the standing order]. He was prosecuted because of public sentiment." In December 2012, the court of appeals acquitted Subi and released him.

Similarly, while twelve police officers were suspended for beating to death Kugan Ananthan in police custody in January 2009, only one officer, police constable Navindran Vivekandan, was tried and convicted. He received a three-year-sentence which has been stayed pending an appeal that was still ongoing as this report was published. Kugan's family also filed a civil court case seeking damages, which they won on June 26, 2013, when a judge awarded them damages of RM 851,700 (US$266,156) and cited that actions by senior police officers in the case made them liable to charges of malfeasance. The government immediately appealed the civil court verdict.

Victims of police abuse and their families can also file civil lawsuits. According to the Attorney General's Office, between January 2009 and June 2012, Malaysian courts awarded approximately RM3 million (US$965,000) in damages in 30 cases to victims of negligent shooting, assault and battery, and unlawful arrest and detention. But the ability to seek redress through civil suits has been weakened by a 2009 Federal Court decision in *Kerajaan Malaysia v. Lay Kee Tee*, which has been interpreted to require plaintiffs to name the specific government officials allegedly responsible for the abuse. This is often impossible because, as many victims told Human Rights Watch, police often do not wear identification nametags while on duty. In July 2012, the civil suit of Shahril Azlan, who survived gunshots by plainclothes police at a roadblock in 2009, was dismissed by the Kuala Lumpur High Court because Azlan could not name the individual police officers involved. While the court of appeals reinstated the case on January 15, 2013, at this writing a year later Shahril was still waiting for justice at a new trial at the High Court.

As noted above, a fundamental problem is that Malaysia lacks an independent oversight mechanism focused solely on the police, despite the recommendation of the Royal Commission that such a body be set up. The Enforcement Agency Integrity Commission (EAIC) was established by law to investigate misconduct at 19 government agencies, a nearly impossible task. The EAIC, moreover, is woefully understaffed and police have been reluctant to cooperate with the commission, such as by providing investigators with basic information, including the text of relevant IGP standing orders. In June 2013, the EAIC announced it was forming a task force to investigate the deaths in custody of Dhamendran Narayanasamy and R. Jamesh Ramesh, but at the time of publication of this report, it had not made any findings public.

SUHAKAM has also received complaints of police misconduct such as excessive use of force, abuse of power, and deaths in custody, and it has faced similar obstacles in trying to deal with the police. Police have withheld relevant IGP standing orders and have been unwilling to provide police investigation files on cases that SUHAKAM is investigating. These delay-and-deny tactics by the police in response to document requests hobble the commission's work. The police also continue to dismiss SUHAKAM's findings and recommendations in cases of police abuse that it investigates. By any measure, the current oversight system is failing.

Malaysia is obligated to prevent the commission of human rights violations such as extrajudicial killings and torture by state officials and agents, and to hold those responsible to account. As a member of the United Nations, Malaysia has agreed to uphold the principles of the Universal Declaration of Human Rights (UDHR), which is considered reflective of customary international law. The Universal Declaration protects the right to life and security of the person, including from torture, and cruel, inhuman and degrading treatment or punishment. It provides that everyone has the right to an effective remedy for violations of fundamental rights.

Malaysia also has an obligation under international law to conduct prompt, thorough, and impartial investigations into allegations of serious human rights violations, and to ensure the appropriate prosecution of those responsible. Victims and their families have the right to appropriate redress. When existing law enforcement mechanisms fail to meet these obligations in the face of alleged abuses by the police or other state agencies, it is incumbent upon the government to ensure there are effective and independent oversight mechanisms to address and rectify these problems.

Malaysia has persistently failed to investigate and prosecute alleged police abuse, provide redress for victims, and ensure that existing oversight mechanisms are able to intervene to meet these obligations.

The Royal Malaysia Police should ensure that officers are punished when they violate administrative rules, and the Attorney General's Office should ensure that all serious allegations of police abuse cases are investigated and, as appropriate, prosecuted.

Police should also be accountable to the public and should demonstrate that their policies and practices conform to international human rights standards. External pressure and oversight are important in improving accountability, and police leadership and effective supervision are critical to preventing abuse and misconduct. Police officers take an oath to "obey, uphold and maintain the laws of Malaysia." The motto of the Royal Malaysia Police is "*Tegas, Adil and Berhemah"* (Firm, Just and Well-Mannered). Both the oath and motto should be fully complied with by every police officer in Malaysia—as this report shows that is not the case today. The RMP leadership needs to ensure constant vigilance, clear and consistent enforcement of departmental policies, and a genuine commitment to end police abuse.

Key Recommendations

To the Government of Malaysia

- Create an independent, external commission tasked solely to receive and investigate complaints about RMP misconduct and abuse, and endow the commission with all necessary powers to investigate, compel cooperation from witnesses and government agencies, subpoena documents, and submit cases for prosecution.
- Until an external commission is established with a sole focus on RMP misconduct and abuse, reform the Enforcement Agency Integrity Commission (EAIC) to improve its performance by:
    - Establishing an appointment procedure and process that guarantees the independence and impartiality of the commissioners.
    - Establishing criteria that commissioners and senior staff have relevant experience in monitoring and investigating human rights abuses.
    - Ensuring transparency and timely public disclosure of information about the complaints received and investigations conducted by the EAIC, and
    - Ensuring that the EAIC has adequate investigators, resources and personnel to fulfill its mission.

To the Inspector General of Police

- Create an RMP Ombudsman's office that is empowered to receive and follow up on complaints of police abuse, with authority to take disciplinary action against RMP officers who obstruct or otherwise fail to cooperate with investigations.
- Provide all IGP standing orders on use of force and firearms, procedures for arrest, procedures for investigations, procedures for deaths in lock-ups, to external oversight bodies, including SUHAKAM and the EAIC, and engage with those bodies to bring these standing orders into compliance with international human rights standards.
- Issue an IGP standing order that instructs police stations across Malaysia to fully cooperate with external oversight agencies investigating police conduct by providing access to police files, police witnesses, and other requests for evidence.

The full set of Human Rights Watch's recommendations can be found at the end of the report.

Methodology

Research for this report was conducted in Kuala Lumpur, Selangor, Johor, Kelantan, and Perak in Malaysia in April and May 2012 and May 2013, supplemented by telephone, email, and desk research through January 2014. Human Rights Watch interviewed 75 people for this report including victims of police abuses and their family members, lawyers, police officials, public prosecutors, and staff members of the Enforcement Agency Integrity Commission, SUHAKAM, the Malaysian Bar Council, and other nongovernmental organizations. Human Rights Watch received verbal consent from all interview subjects and participants did not receive any material compensation for their participation.

In cases where the victim had died, we interviewed their relatives, and reviewed available documents such as police reports filed by complainants, death certificates, autopsy reports, and court papers. Most interviewees gave permission to use their names. However, in cases where the interviewee feared reprisal, Human Rights Watch has used pseudonyms and has so indicated in the text and relevant citations.

We obtained data on deaths in police custody, police shootings, and disciplinary actions, criminal prosecutions, and civil suits filed against police from both official sources including the Attorney General's Office and the Inspector General of Police Office, as well as from media reports. Analyzing police data is challenging as the RMP does not maintain detailed statistics on the types of public complaints it receives. As discussed in the report, the RMP apparently does not distinguish investigations of police involvement in crimes from civilian complaints of police abuse or misconduct. Outside entities including SUHAKAM, local human rights organizations, and Human Rights Watch have also been denied copies of relevant standing orders from the Inspector General of Police, impeding external assessment of the policies and procedures of the Royal Malaysia Police.
All documents cited in the report are publicly available or on file with Human Rights Watch.

I. The Royal Malaysia Police

> A key challenge for the Royal Malaysian Police is to regain the good image it enjoyed during the period of the 1960s to 1980s, an image that has been seriously undermined in the last decade due to mounting public perceptions of corruption and abuse of power in PDRM [Polis Diraja Malaysia or Royal Malaysia Police].
> —Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, 2005

The Royal Malaysia Police (RMP) dates back to 1807 when the force was created under British colonial rule. Following Malaysian independence in 1957, the police force expanded. The police played a major role in the counter-insurgency campaign against a communist insurgency during the Malayan Emergency of 1948-1960 and was responsible for internal security and public order.[1]

Under the Police Act of 1967, the functions of the Royal Malaysia Police are the "maintenance of law and order, the preservation of the peace and security of the Federation, the prevention, and detection of crime, the apprehension and prosecution of offenders, and the collection of security intelligence."[2] To carry out its function, the police are empowered to arrest, search, seize, and investigate as set out in the Criminal Procedure Code. The Inspector General of Police (IGP) is empowered to issue standing orders (day-to-day operational procedures) related to specific police functions.

The current RMP is a 112,145-member police force responsible for everything from traffic control to intelligence gathering and is composed of eight specialized law enforcement departments.[3] It is a federal institution and its headquarters in Kuala Lumpur is Bukit Aman from where the IGP directs operations in 14 regions and 148 police districts across the country. The IGP reports to the Minister of Home Affairs.

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[1] For detailed history of the RMP, see Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (2005), chapter 2 ("Royal Commission Report").

[2] Act 344, Police Act 1967, art. 3(3), http://www.agc.gov.my/Akta/Vol.%207/Act%20344.pdf (accessed May 1, 2012)

[3] These departments are the following: Criminal Investigation Department; Narcotics Criminal Investigation Department; Internal Security and Public Order Department; Special Branch; Commercial Crime Investigation Department; Counter-Terrorism Special Operations Task Force; Management Department; and Logistics Department.

The evolution of the RMP has been shaped largely by its role in maintaining Malaysia's national security, in addition to its law enforcement and crime prevention functions. Malaysian police have for years relied on their power to use administrative detention to detain suspects without having to present evidence of wrongdoing before a court.

Until recently, those laws included the Internal Security Act (ISA)[4] and the Emergency (Public Order and Prevention of Crime) Ordinance (EO).[5] These laws allowed the police to hold individuals in detention for 60 days. Upon expiration of the 60-day period, the Minister of Home Affairs could authorize administrative detention, solely based on police recommendations, for two years for persons deemed to be a threat to national security, suspected of crime, or involved in trafficking. The two-year detention periods could be renewed indefinitely and the grounds for detention could not be challenged in court. The Dangerous Drugs (Special Measures) Act (DDA), which authorizes administrative detention, is still in effect.

During the 1960s and 1970s, the Malaysian government used the ISA to suppress political activity, such as the Labor Party of Malaysia and the Party Sosialis Rakyat Malaysia (PSM). Approximately 3,000 persons were administratively detained between passage of the ISA in 1960 and the assumption of power by then Prime Minister Mahathir Mohamed in 1981. Mahathir used the ISA extensively to imprison political opponents and human rights activists, with the most prominent example being Operation Lalang in October and November 1987, through which the government detained 106 human rights advocates and political activists from the major political parties, including the United Malay National Organization (UNMO), the Pan-Malaysia Islamic Party (*Parti Islam Se-Malaysia,* PAS), and the Democratic Action Party (DAP). Mahathir also oversaw at this time the amendment of the ISA to include provision 8(b) that eliminated the possibility of judicial review of ISA decisions. Other high profile political uses of the ISA included Mahathir's 1999 use of the

[4] The ISA was passed in 1960 to deal with the remnants of the communist insurgency in Malaysia, but was frequently used against political critics. It replaced emergency regulations that had been put in place by Malaysia's British colonial rulers. During the 1960s and 1970s, the Malaysian government used the ISA to suppress political activity, such as the Labour Party of Malaysia and the Party Sosialis Rakyat Malaysia (PSM). Close to 3,000 persons were administratively detained between passage of the Act in 1960 and 1981.

[5] The EO was enacted as a temporary measure in May 1969 to control the spread of violence after the May 13, 1969 racial riots. Following the loss of the ruling party United Malay National Organization's (UMNO) parliamentary majority, riots erupted between Chinese and Malay culminating in over 190 deaths. A state of emergency was declared, the parliament and Constitution were suspended, and the Emergency Ordinance was passed on May 16, 1969. The Malaysian government rescinded three emergency proclamations in April 2012 and allowed the emergency powers and regulations provided by those proclamations to lapse in June 2012.

law to detain his former deputy (and now leader of the political opposition) Anwar Ibrahim and the 2001 use of the law against senior political activists in KeADILan who were publicly demanding Anwar's release.[6]

Malaysian and international human rights organizations, SUHAKAM, and the Royal Commission have long documented abuses stemming from administrative detention in Malaysia.[7] The lack of judicial scrutiny of the detentions, complaints of police abuse, and lack of transparency and accountability have engendered greater distrust of the police among civil society groups.

After many years of domestic and international criticism, the ISA and the EO were repealed by the Parliament in April 2012. In their place, parliament passed a new law, the Security Offenses (Special Measures) Act (SOSMA). SOSMA limits police detention to 28 days after which the attorney general must either prosecute or release the defendant. Should the government take a person to trial under SOSMA and the defendant be acquitted, the law empowers the government to continue to detain the defendant during the appeals process.[8]

On October 2, 2013, the government enacted amendments to the Prevention of Crime Act 1959 (PCA) that provide for administrative detention of persons suspected of involvement in "serious crimes." Specifically, the amendments allow for renewable detention for up to two years without trial if the authorities determine that it is in the interests of "public order," "public security," or "prevention of crime"—terms not defined—and a three-person

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[6] See Human Rights Watch, *Convicted Before Trial: Indefinite Detention Under Malaysia's Emergency Ordinance* (September 2006), www.hrw.org/reports/2006/08/23/convicted-trial-0; Human Rights Watch, *Detained Without Trial: Abuse of Internal Security Act Detainees in Malaysia* (September 2005), http://www.hrw.org/reports/2005/09/26/detained-without-trial; Human Rights Watch, *In the Name of Security: Counterterrorism and Human Rights Abuses in Malaysia* (May 2004), http://www.hrw.org/reports/2004/05/24/name-security.

[7] See generally Suaram annual reports, SUHAKAM annual reports, Malaysian Bar Council press statements, and Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (2005), chapter 3 ("Royal Commission Report"). See also, Human Rights Watch, *Convicted Before Trial: Indefinite Detention Under Malaysia's Emergency Ordinance* (September 2006), www.hrw.org/reports/2006/08/23/convicted-trial-0; Human Rights Watch, *Detained Without Trial: Abuse of Internal Security Act Detainees in Malaysia* (September 2005), http://www.hrw.org/reports/2005/09/26/detained-without-trial; Human Rights Watch, *In the Name of Security: Counterterrorism and Human Rights Abuses in Malaysia* (May 2004), http://www.hrw.org/reports/2004/05/24/name-security.

[8] For more information on SOSMA, see Mickey Spiegel, "Smoke and Mirrors: Malaysia's 'New' Internal Security Act, http://www.hrw.org/sites/default/files/related_material/2012_Malaysia_EastWest.pdf.

"Prevention of Crime Board" finds that the person has committed two or more serious offenses "whether or not he is convicted thereof."[9]

Years of being able to detain people without charge or trial under the administrative detention laws appears to have had a devastating impact on the investigative abilities of the police. Not having to present evidence to support an allegation in an independent court where it could be challenged by defendants and their lawyers has inhibited the police from investing in and emphasizing modern investigative policing. Razi M. (pseudonym), a former official of the Criminal Investigation Division, who was based at police headquarters in Bukit Aman, told Human Rights Watch: "The EO and ISA have made the police lazy as they don't have to gather evidence that needs to be submitted in a court."[10] The Royal Commission also noted the need for police to improve intelligence-led and evidence-based systems and not rely on "preventive laws" for detention of suspected criminals.[11]

When asked how the police will handle criminal cases in absence of the EO, then Deputy Inspector General of Police Khalid bin Abu Bakar responded, "Because we no longer have preventive laws, we need to be innovative. We have no choice but to bring suspects to court. We now need to gather evidence. We need new laws to make our job easier to solve crimes."[12] Prime Minister Najib Razak in July 2012 echoed similar concerns and conceded that, "Now police must train themselves to look for evidence."[13] Dennison Jayashooria, a former member of the Royal Commission, told Human Rights Watch, "Good criminal investigation is essential to ensure there is no miscarriage of justice. This should be a top

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9 The bill would allow a detention order to be renewed indefinitely in increments not exceeding two years. No judicial review will be permitted of the board's decisions except on compliance with procedural requirements set out in the PCA. Suspects have no right to representation by legal counsel during any inquiry initiated under the board to determine evidence to be used in the board's decision. Human Rights Watch, "Malaysia: Reject Return to Administrative Detention, October 2, 2013, http://www.hrw.org/news/2013/10/02/malaysia-reject-return-administrative-detention

10 Human Rights Watch interview with former CID official Razi M., Kuala Lumpur, May 26, 2012.

11 Royal Commission Report, pp. 230-31.

12 SOSMA article 6 provides public prosecutors wide-ranging authority to authorize the intercept of "any message transmitted or received by any communication", "intercept or listen to any conversation by any communication," and "intercept, detain and open any postal article in the course of transmission by post" if the prosecutor "considers that it is likely to contain any information relating to the commission of a security offence." In "urgent and sudden cases" police with a rank of superintendent or higher can also exercise this authority to intercept communications without prior authorization from the public prosecutor.

13 Tony Pua, "Learn to Look for Evidence, Don't Rely on EO to Extract Confessions – Whiners, Zahid, IGP Told", *Malaysia Chronicle,* July 8, 2013, www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=125461:learn-to-look-for-evidence-dont-rely-on-eo-to-extract-confessions-whiners-zahid-igp-told&Itemid=2#axzz2wzdsTAD4 (accessed March 23, 2014)

priority in police reform. . . The Royal Commission report sets out details on improving investigation, but the police resist outside critiques."[14]

Royal Commission on Police Reform

In 2004, the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (the "Royal Commission") was established by the Malaysian king in response to "widespread concerns regarding the high incidence of crime, perception of corruption in the Royal Malaysia Police,… general dissatisfaction with the conduct and performance of police personnel, and a desire to see improvements in the service provided by the police."[15] The government also asked the Royal Commission to assess RMP capacities and facilities.[16]

Over a 15-month period, the Royal Commission received 926 complaints from the public, which included deaths in custody; physical, sexual, and psychological abuse of detainees; abuse of power; inefficiency and lack of accountability; failure to follow-up on complaints; abuse of remand provisions under the Criminal Procedure Code; overuse and misuse of administrative detention laws; and police unwillingness to issue public assembly permits.[17]

The Royal Commission's comprehensive report was made public by the government in June 2005. The report contained 125 recommendations and concluded that there are "extensive and consistent abuse of human rights in the implementation of the [Federal Constitution] and [Inspector General] standing orders by PDRM [police] personnel."[18] The Royal Commission recommended that, "upholding human rights needs to become a central pillar of policing . . . that PDRM has to dramatically review compliance with human rights and human rights provisions inherent in the country's law."[19] The report recommended the need

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[14] Human Rights Watch interview with Dennison Jayashooria, former commission member of the Royal Commission, Kuala Lumpur, April 28, 2012.

[15] Royal Commission Report, Executive Summary, p. 1.

[16] Royal Commission Report, Executive Summary, p. 1.

[17] Royal Commission Report, chapter 3. The Royal Commission began working in February 2004 and submitted its final report to the Malaysian king on April 29, 2005. To receive information from the public, the Royal Commission held public inquiries throughout Malaysia, received information from organizations and the public through memoranda, conducted public surveys, visited police stations, met with both government officials, organized several briefings with the Royal Malaysia Police, and visited police organizations overseas to observe best practices. Royal Commission Report, p. 1-2.

[18] Royal Commission Report, Executive Summary, p. 4.

[19] Royal Commission Report, Chapter 4, p. 120.

to "review some of the laws, rules, and regulations affecting policy to strengthen the safeguards prescribed by international human rights instruments and the Federal Constitution."[20] The report unequivocally recommended that "the culture of impunity" needs to be discarded and effective internal and external mechanisms for accountability should be established to provide a check on abuses, and build a culture of accountability.[21]

The Royal Commission's recommendations included improving housing and salaries of the police, technological improvements, eradicating corruption, repealing and amending Malaysian laws to make them consistent with international human rights law, improving facilities for women and children, enhancing investigative policing, and establishing an Independent Police Complaints and Misconduct Commission (IPCMC).[22]

To the credit of the Malaysian government, many of those recommendations have been implemented.[23] For instance, the government allocated funds to the RMP to overhaul its technological equipment, increase community policing, set up new and rehabilitate old police stations, increase salaries, and improve police housing facilities.[24] In 2010, the government announced further increases to police salaries.[25] Improving housing and salaries of the police is a factor in reducing incentives for bribes. But according to former commissioner Dennison Jayashooria, key recommendations have not been implemented,

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[20] Ibid.

[21] Ibid. p. 122-123.

[22] This report does not examine which of the 125 recommendations have been implemented, but focuses on accountability. The Royal Commission Report includes a detailed draft bill to create the IPCMC.

[23] In 2007, Prime Minister Abdullah Badawi in a written reply to parliament wrote that 69 recommendations of the Royal Commission had been implemented, whereas 33 were under consideration. Yoges Palaniappan, "PM: 69 Police Commission Proposals Implemented," *Malaysiakini*, April 12, 2007, http://www.malaysiakini.com/news/65852 (accessed July 16, 2012).

[24] In 2007, the salary of a police constable was RM690 (US $222) while that of an officer with the rank of inspector was RM1,100 (US $353). "IGP Proposes Better Pay Scale," *The Star*, March 25, 2007, http://thestar.com.my/news/story.asp?file=/2007/3/25/nation/17231551&sec=nation (accessed July 16, 2012). The 2008 budget allocated RM 6 billion (over $1.9 billion) to RMP to cover recruitment of 60,000 new personnel over the next five years, overhauling the police computer system, creation of mobile forensic units, and additional patrol cars to increase police presence in the community. "Full Text of PM's 2008 Budget Speech," *The Star*, September 7, 2007, http://thestar.com.my/news/story.asp?file=/2007/9/7/budget2008/20070907174458&sec=budget2008 (accessed July 16, 2012). Subsequent budgets have allocated RM 4.5 billion (over US $1.4 billion) in 2010, RM 5.8 billion (over US $1.8 billion) in 2011, and RM 6.3 billion (over US $2 billion) in 2012. The 2012 budget included RM 442 million (US $1.4 million) for the development of police housing quarters, purchase of communication and technical equipment, upgrading headquarters, stations, and training centers. "Full Text of the Budget 2012 Speech by Prime Minister Datuk Seri Najib Razak," *The Malaysian Insider*, October 7, 2011, http://www.themalaysianinsider.com/litee/sideviews/article/full-text-of-the-budget-2012-speech-by-prime-minister-datuk-seri-najib-razak/ (accessed July 16, 2012).

[25] "New Salary Scheme for 98,747 Police Officers, Personnel," *Borneo Post*, April 2, 2010, http://www.theborneopost.com/2010/02/04/new-salary-scheme-for-98747-police-officers-personnel/ (accessed July 16, 2012).

including improving the investigative capabilities of the police and creating effective external accountability mechanisms.[26]

The Royal Commission's recommendation to create an independent police commission was widely supported by over 300 civil society organizations, including Suaram and the Malaysian Bar Council, and by the national human rights commission, SUHAKAM.[27] Then-Prime Minister Abdullah Badawi also expressed initial support for such a commission, claiming that 25 percent of the recommendations had been implemented and the rest would be implemented in the "short and long term."[28] But the police fiercely opposed the creation of an independent police commission and in an internal bulletin attacked the proposed IPCMC as "unconstitutional, prejudicial to national security and public order, [capable of causing] a state of anarchy and undermin[ing] the ruling coalition's power."[29]

Facing concerted opposition from the police, the government announced that setting up a commission solely to examine police misconduct would unfairly single out one enforcement agency. Instead, in September 2009 the government created the Enforcement Agency Integrity Commission (EAIC) to receive and investigate complaints about 19 enforcement agencies.[30] The EAIC became operational in April 1, 2011. As detailed in chapter III below, the EAIC is seriously understaffed and has inadequate resources to handle its mandate.

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[26] Human Rights Watch interview with Dennison Jayashooria, former commission member of the Royal Commission, Kuala Lumpur, April 28, 2012.

[27] The Malaysian Bar Council recommended amending the IPCMC draft bill, which was prepared by the Royal Commission, to include an appeals process. Wong Yeen Fern, "Bar Council Backs IPCMC Appeal Process," *Malaysiakini*, July 17, 2006, reposted at http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/bar_council_backs_ipcmc_appeals_process.html (accessed July 14, 2012).

[28] "PM: Police Watchdog to be Set Up 'Soon,'" *Malaysiakini*, January 24, 2006, http://www.malaysiakini.com/news/46194 (accessed July 14, 2012).

[29] Kuek Ser Kuang Keng, "Police Attack IPCMC in Internal Bulletin," *Malaysiakini*, May 27, 2006, http://www.malaysiakini.com/news/51654 (accessed July 16, 2012). "Musa: Police Object to the IPCMC," *Malaysiakini*, September 13, 2006, http://www.malaysiakini.com/news/56751 (accessed July 16, 2012) (IGP announced that the police objected to the IPCMC as it did not include an appeals process, but agreed to a counter proposal being prepared by the attorney general's office).

[30] The original 2009 bill gave EAIC jurisdiction over 21 agencies. But in 2011 only 19 agencies are under the purview of the EAIC as two of the agencies have now their own individual agency to review conduct. The 19 agencies covered under the EAIC are: National Anti-Drugs Agency, Malaysian Maritime Enforcement Agency, RELA, Department of Environment, Immigration Department of Malaysia, Royal Customs Department of Malaysia, Department of Occupational Safety and Health, National Registration Department, Civil Aviation Department, Road Transport Department, Industrial Relations Department, Fisheries Department, Department of Wildlife and National Parks, Labor Department, Ministry of Health (Enforcement Division), Ministry of Tourism (Enforcement Unit of Licensing Division), Ministry of Domestic Trade, Ministry of Housing and Local Government (Enforcement Division), and Royal Malaysia Police.

II. Human Rights Violations by Police

Police in Malaysia have committed wrongful killings, torture, and other ill-treatment of persons in custody, and used unnecessary or excessive force during public assemblies causing injuries and deaths. Human Rights Watch investigated cases that raise serious concerns about the still-secret IGP standing order on use of force and firearms, the lack of transparency and impartiality in police investigations, and the continued absence of meaningful accountability for police abuses.

Malaysian and International Legal Standards on Use of Force

The Inspector General of Police standing order on the use of force and firearms is not public. Authorities have repeatedly rejected requests to view the standing order by domestic and international human rights organizations, lawyers, and the Bar Council, and even the government's national human rights commission, SUHAKAM. In October 2013, Minister of Home Affairs Ahmad Zahid Hamidi stated in a written reply to parliament that in general "the standing orders are the procedures and trade-craft of conducting PDRM's duties. It is only for the use of members of PDRM." Zahid added that the "PDRM will only reveal certain standing orders that have a direct relation to the public."[31]

In response to Human Rights Watch's request to review the standing orders on use of firearms, investigations of deaths in custody, and the police Disciplinary Authority, the IGP office stated:

> Your requests have been brought to the attention of the Royal Malaysia Police leadership and it was decided that all request for information by Human Rights Watch should be channel[ed] to the Malaysia Human Rights Commission (SUHAKAM). In so doing, SUHAKAM as the statutory body governing human rights matters for Malaysia would be kept in the know of all matters pertaining to human rights. It is also encourage[d] that you state the reason and purpose of your request for those [sic] info.[32]

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[31] Nigel Aw, "Standing Orders for Cops Only, Won't be Made Public", *Malaysiakini*, October 29, 2013, http://beta.malaysiakini.com/news/245260, (accessed December 5, 2013).

[32] Email from Inspector General of Police's Secretariat to Human Rights Watch, October 3, 2012.

But SUHAKAM itself has not received access to the relevant standing orders. In July 2012, SUHAKAM was provided part of the Federal Reserve Unit guidelines on use of force in relation to a SUHAKAM public inquiry into the crackdown on an electoral reform rally led by Bersih in Kuala Lumpur on April 28, 2012.

Some information on the IGP standing order on use of force and firearms can be gleaned from open sources. In 2010, the *New Straits Times*, citing unnamed police officials, enumerated the following IGP principles governing use of firearms:

- The suspect is believed to have committed an offense that is punishable with life imprisonment or death, e.g. murder, armed robbery, drug trafficking;
- Policemen believe that their lives are in imminent danger of serious injuries or death when apprehending or confronting a suspect; and
- Other people's lives are in imminent danger of serious injuries or death.[33]

According to open sources, in 2010 the IGP standing order was partially amended in response to the killing of 15-year-old student Aminulrasyid Amzah by the police, which drew nationwide attention to RMP use of lethal force. The amended standing order is not public and SUHAKAM told Human Rights Watch that they have not been provided a copy of the order.

Then-Deputy Inspector General of Police Khalid bin Abu Bakar told Human Rights Watch that the standing order on the use of force and firearms is premised on "self-protection . . . if police are threatened with death there is no time to use a less lethal weapon."[34] He further explained that when a police officer shoots and kills or injures someone, the officer must file a report describing the reasons for use of his weapon, and the gun must be sent for ballistic analysis.[35] "The police officer remains on duty and is not temporarily assigned to desk duty pending investigation," said Khalid. When asked what other less-lethal means are used by the police, he responded, "The police use batons and is considering using pepper spray and tasers."[36] SUHAKAM has been urging the Royal Malaysia Police to

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33 Farrah Naz Karim, "License to Shoot: IGP, People Will be More Respectful of Law When They Know the Rules," *New Straits Times*, May 15, 2010.

34 Human Rights Watch interview with Deputy Inspector General of Police Khalid bin Abu Bakar, Kuala Lumpur, May 29, 2012.

35 Ibid.

36 Ibid.

train officers in negotiation tactics, use of less-than-lethal means of force, and methods to incapacitate suspects rather than use deadly force.[37]

Police constables told Human Rights Watch that their use of firearms is in self-defense. "If a suspect has a piece of wood, no we cannot use guns. But if he has a *parang* or any sharp object that can lead to death we are allowed to use a gun," said Ghani M. (pseudonym).[38] When asked which part of the body the police can shoot at to stop a person, constable Ahmed R. (pseudonym) replied without hesitation: "anywhere."[39]

Government security forces are empowered to use force, but only in accordance with basic international standards that govern the use of force. These standards are embodied in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials. Together these documents provide authoritative international standards governing the use of force in law enforcement.[40]

The UN Code of Conduct for Law Enforcement Officials applies international human rights standards to law enforcement. Article 3 provides that "law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The official commentary to article 3 states that national law should recognize proportionality in the use of firearms and sets out that firearms should "not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender."[41]

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that whenever the lawful use of force is unavoidable, then law enforcement officials should "exercise restraint in such use and act in proportion to the seriousness of

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37 See SUHAKAM, 2010 Annual Report and 2009 Annual Report.

38 Human Rights Watch interview with Ghani M. (pseudonym), Kuala Lumpur, May 26, 2012.

39 Human Rights Watch interview with Ahmed R. (pseudonym), Kuala Lumpur, May 26, 2012.

40 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("UN Basic Principles"), Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990); United Nations Code of Conduct for Law Enforcement Officials ("UN Code of Conduct"), adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979)

41 UN Code of Conduct, commentary to art. 3.

the offence and the legitimate objective to be achieved." Officials should also "minimize damage and injury, and respect and preserve human life."[42] Governments should ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offense under national law.[43] The training of law enforcement officials should include "police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation . . . with a view to limiting the use of force and firearms." Law enforcement agencies should "review their training programs and operational procedures in light of particular incidents."[44]

Excessive Use of Force: Shooting of Suspects

> What is the situation of robbery victims, murder victims during shootings? Most of them are our Malays. Most of them are our race. I think that the best way is we no longer compromise with [criminals]. There is no need to give them any warning. If we get the evidence, we shoot first.
> —Minister of Home Affairs Ahmad Zahid Hamidi, "With Criminals, We Shoot First, Admits Home Minister," *Malaysiakini,* October 7, 2013

Malaysia lacks comprehensive and independent nationwide data on fatal and near-fatal police shootings. According to official police statistics, between 2000[45] and August 2012, the Malaysian police shot and killed 394 persons. Of those, 96 were killed between 2000 and 2006. From 2007[46] to August 2012, 298 people were killed. Fifty percent of those killed were of Indonesian origin and 44 percent were Malaysians.[47] SUHAKAM annual reports consistently note that they regularly receive complaints about excessive use of force and

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[42] UN Basic Principles, principle 5.

[43] UN Basic Principles, principle 7.

[44] UB Basic Principles, principle 20.

[45] The document provided by the RMP to Human Rights Watch did not specify a month in the year 2000.

[46] The document provided by the RMP to Human Rights Watch did not specify a month in the year 2007.

[47] Pemberitahuan Pertanyaan Bagi Jawab Lisan Dewan Rekyat to Dr. Michael Jeuajumar Devaraj, October 22, 2012 (on file with Human Rights Watch). According to police data, for the period between 2007 and August 2012, 151 of 298 people killed by Malaysian police were of Indonesian nationality; 141 were Malaysian, 5 Vietnamese, 3 Burmese, 2 Thai, 1 Nigerian, 1 Liberian, and 1 whose nationality is unknown. See also *Penjenayah Ditembak Mati Bagi Tahun 2000 Hinga 2009* "Criminals Shot Dead from 2000-2009" (on file with Human Rights Watch). Forty percent of those killed between 2000 and 2009 were of Indonesian origin, while 54 percent were Malaysians**,** broken down as 21 percent Indian, 18 percent Chinese, and 15 percent Malay.

shootings. Malaysian human rights groups and media reports also regularly publicize police shootings.

Police shootings may sometimes be lawful. However, reported incidents of police shootings show a pattern in which police justify shootings by asserting the suspect had a *parang* or failed to stop at a roadblock or after a car chase. In some cases, the police also attempt to justify their use of lethal force by alleging that the suspect was a criminal associated with ongoing police investigations. Wholly absent from police narratives is any attempt to demonstrate that lethal use of force was the only available option to save lives at imminent risk. The apparent quick resort to lethal force raises serious concerns about the police's standard operating procedures and training in the use of lethal force.

The cases investigated by Human Rights Watch also demonstrate lack of transparency and impartiality in police investigations into the shootings. Frequently, there are conflicting versions of the events among victims, witnesses, and the police and no mechanism to independently determine what occurred.

SUHAKAM does receive complaints of police shootings, but this can be weeks or months after the incident. Moreover, the Malaysian police do not provide SUHAKAM with copies of police investigation files. SUHAKAM is thus hampered in its ability to comprehensively assess specific incidents in which rights abuses are alleged. The absence of transparent and impartial investigations into questionable police actions undermines public confidence in the RMP's ability to police itself and fosters public perception that the police are unaccountable.

The cases below illustrate the often vast differences between police and witness accounts. We are not able to fully assess the competing claims and take no position on the merits of any given claim, but present the cases here because they cry out for rigorous, independent investigation.

Killing of Mohd Afham bin Arin in Johor Baru

> The police made me wait for hours [at the station]. I saw his motorcycle outside the station. It was covered with blood. I asked [the police] "Is Afham alive or dead?" They said he was okay. They lied.
> — Saphiah binti Mohd Elah, mother of Mohd Afham bin Afrin, 20, Johor, May 2012

Mohd Afham bin Arin, 20, was shot and killed by the police on the night of October 19, 2009, in Johor Baru. Mohd Firdaus bin Marsani was seated as a passenger behind Afham who was driving his motorcycle. Firdaus told Human Rights Watch that he and Afham had finished dinner together and were heading towards Afham's home to collect some clothes.[48] He said that they saw three men on motorbikes who tried to stop them: "We did not know they were police. They were in plainclothes. You don't stop at night for someone saying they are police. We thought they were going to rob us." Firdaus claimed that the men on motorbikes then chased them, "We managed to escape the three bikes, but then another bike appeared at a junction and chased us. I then heard a shot so I lifted my hands to surrender, and then I heard two consecutive shots and then we fell off the bike."[49]

Firdaus said that he saw Afham "lying over the motorbike handles motionless." He pulled his leg out from underneath the motorcycle and "saw a man two meters away pointing a gun at me. I raised my hands and stepped behind the road divider. A car sped towards me and stopped, and that's when I escaped into the woods." Firdaus said police did not pursue him, and that he was in the woods for three hours before finally managing to find his way home. He learned about Afham's death later that morning.[50]

The police corporal, Mohd Izaddin bin Rahim, who fired the shot killing Afham has a different version of the events. According to his report, Rahim and three other corporals were "on crime prevention duty and observation" following reports of a "snatch theft" when they received a report that a Yamaha motorcycle was moving suspiciously.[51] Rahim

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[48] Human Rights Watch interview with Mohd Firdaus bin Marsani, Johar Baru, May 26, 2012.

[49] Ibid.

[50] Ibid.

[51] Translation from Malay of Police report of Constable Mohd Izuddin Bin Rahim, Report No. Serialam.006414/09, dated October 20, 2009 (on file with Human Rights Watch).

wrote that he and his colleagues approached the motorcycle and identified themselves as policemen, but the "two Malay men sped off." Rahim reported:

> [We] chased the motorcycle that was driving recklessly and dangerously to escape [us]. … A passenger took out a *parang* and waved it towards me. I managed to dodge it and almost fell. Because the passenger waved his *parang*, my life was in danger. I was forced to shoot towards the two men. …I saw the motorcyclist with his right hand still holding onto the handle bar and there was a sword 20 cm long. I approached the motorcyclist and found that he did not move and believed he was dead.[52]

Afham's death certificate, dated October 22, 2009, states the cause of death as "gunshot wound to the aorta."[53]

When Firdaus heard that the police accused him and Afham of the snatch theft and of possessing a *parang* and a sword, he went to the police station and filed a complaint explaining his version of the events.[54] The police have not yet questioned Firdaus for the alleged snatch theft or alleged possession of a *parang* or sword.[55] Firdaus also told Human Rights Watch that neither he nor Afham had been armed.[56]

On October 22, Afham's mother went to the police station and was informed by the officer in charge that her son was a wanted person for snatch theft and robbery. She recalled what the officer said: "'The story is like this Aunty,' he called me in a mocking tone. 'Your son and his friend robbed the Johor Jaya Bank with *parang* and sword.' But the whole time he lied. Where was the proof?"[57]

A few days after Afham's death, in October 2009, his mother filed a complaint at the local police station demanding an investigation into the killing of her son. A month later, a woman police officer visited her home and took her statement. "I never heard from her

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[52] Translation from Malay of Police report of Constable Mohd Izuddin Bin Rahim, Report No. Serialam.006414/09, dated October 20, 2009 (on file with Human Rights Watch).

[53] Death Certificate of Mohd Afham bin Afrin, October 22, 2009 (on file with Human Rights Watch).

[54] Human Rights Watch interview with Firdaus, Johar Baru, May 26, 2012.

[55] Human Rights Watch interview with Firdaus, Johar Baru, May 26, 2012.

[56] Human Rights Watch interview with Firdaus, Johar Baru, May 26, 2012.

[57] Human Rights Watch interview with Saphiah binti Mohd Ellah, Johor Baru, May 27, 2012.

again," Afham's mother said. "She did not explain what she would do with the information. No answers, no apology."[58] In October 2012, Afham's family filed a civil suit in the Johor Baru High Court, seeking damages. Those judicial proceedings were continuing as this report went to press.

Killing of Dinesh Darmasena, in Ampang, Kuala Lumpur

Dinesh Darmasena, a 26-year-old businessman, was shot by a plainclothes policeman on August 21, 2012, in the Kuala Lumpur suburb of Ampang. He died of gunshot wounds in Ampang hospital on August 23. A post-mortem conducted at the Kuala Lumpur General Hospital revealed that Darmasena was shot in his right arm and in the back of his head.[59]

The police alleged that Darmasena's car backed into a patrol car. Then, according to the Ampang Jaya deputy police chief, Mohd Nazri Zawawi, "four men carrying *parangs* got out of the car and smashed the patrol car."[60] Ampang district police chief Amirudin Jamaluddin said that Dinesh and others "came charging towards the policemen and my men were forced to open fire."[61] The police also asserted that Dinesh's car was part of a 14-car convoy on its way to resume a gang fight at the Pandan Perdana flats when police intercepted it. *Harian Metro* quoted Nazri as saying that Dinesh was a member of the Viva Nanda gang suspected to be involved in loan-shark syndicates.[62]

Two witnesses said they saw men in civilian clothes shooting at Dinesh, contrary to police claims that uniformed police fired the shots. Nelawarasan Yoakanatha, a friend of the deceased, reported that he saw Dinesh emerge from his car, which had been blocked by an unmarked car near a traffic light. In the complaint he filed with police on August 27, 2012, Nelawarasan stated:

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58 Human Rights Watch interview with Saphiah binti Mohd Ellah, Johor Baru, May 27, 2012.

59 G. Vinod, "Witnesses Debunk Police's Version of Shooting", *Free Malaysia* Today, August 27, 2012, https://www.freemalaysiatoday.com/category/nation/2012/08/27/witnesses-debunk-polices-version-of-shooting/, (accessed May 19, 2013).

60 Aidila Razak, "Eyewitnesses: Cops shot unarmed man point blan" *Malaysiakini*, August 27, 2012, http://www.malaysiakini.com/news/207192 (accessed July 9, 2013).

61 G. Vinod, "Witnesses Debunk Police's Version of Shooting," *Free Malaysia Today,* August 27, 2012, https://www.freemalaysiatoday.com/category/nation/2012/08/27/witnesses-debunk-polices-version-of-shooting/, (accessed May 19, 2013).

62 Aidala Razak, "Eyewitness: Cops Shot Unarmed Man Point Blank," *Malaysiakini*, August 27, 2012, quoted in the Malay daily *Kosmo!,* http://www.malaysiakini.com/news/207192 (accessed August 28, 2012).

> We didn't know that he was a police officer as the car was not marked "police" and he was not in uniform. Dinesh got out of his car and headed towards the police. When the police started shooting he ran back to his car. He [the man in civilian dress] then started shooting at our car. My friend Moses and I heard about 10 to 15 shots fired during the incident. At all times, Dinesh didn't hold any weapons.[63]

Nelawarasan publicly repeated this account at a press conference convened by Dinesh's family and lawyers, saying that "when Dinesh got out of his car to enquire, the police opened fire indiscriminately, I saw Dinesh trying to run back into his car before he got shot. Everyone panicked and I just sped off from the scene. I can assure you that we were not carrying any weapons."[64]

A second witness, K. Moses, stopped at the traffic light two cars behind Dinesh's car. He said that Dinesh, a friend, was "running" to his car when he was shot. "I saw beside my car that a guy was shooting," Moses said. "I didn't know who he was. He shot everyone. I sped off, but one bullet hit my car."[65] The two witnesses said they were going to meet Dinesh at a restaurant and were separately driving to the destination when they saw Dinesh's car and began following it and saw the shooting.

In September 2012, Dinesh's family filed a complaint with police headquarters in Bukit Aman demanding that the police officer involved in the shooting be suspended and the investigation be classified as murder under the penal code.[66] An inquiry into the incident is ongoing.

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[63] Complaint of Nelawarasan Yoakanathan, No. Ampang/021905/12 filed on August 27, 2012 (on file with Human Rights Watch). During a press conference Nelawarasan said that he was "a few cars ahead of [Dinesh] and could see him from the back. . . .The police were shooting point blank, up and down." "Eyewitness: Cops Shot Unarmed Man Point Blank," Video of Press Conference, *Malaysiakini* TV, August 27, 2012, http://www.malaysiakini.tv/#/video/24336/eyewitness-cops-shot-unarmed-man-point-blank.html (accessed August 28, 2012).

[64] G. Vinod, "Witnesses Debunk Police's Version of Shooting," *Free Malaysia Today,* August 27, 2012, https://www.freemalaysiatoday.com/category/nation/2012/08/27/witnesses-debunk-polices-version-of-shooting/, (accessed May 19, 2013).

[65] "Eyewitness: Cops Shot Unarmed Man Point Blank," Video of Press Conference, *Malaysiakini* TV, August 27, 2012. http://www.malaysiakini.tv/#/video/24336/eyewitness-cops-shot-unarmed-man-point-blank.html (accessed August 28, 2012).

[66] Abdul Rahim Sabri, "Family Wants Ampang Shooting Classified as Murder," *Malaysiakini,* September 7, 2012, http://www.malaysiakini.com/news/208268 (accessed November 19, 2012).

Killing of Mohd Shamil Hafiz Shapiei, Mohd Hairul Nizam Tuah, and Mohd Hanafi Omar in Selangor

Mohd Shamil Hafiz Shapiei, 15, Mohd Hairul Nizam Tuah, 20, and Mohd Hanafi Omar, 22, were shot and killed at approximately 4 a.m. in Glenmarie, Shah Alam, Selangor, on November 13, 2010. The police alleged that the three had robbed a petrol station and were fleeing the station when they encountered the police. The police told the media that a car chased ensued and when the men's car skidded and stalled two kilometers away from petrol station, the three alighted from the car and charged at the police with *parangs,* forcing the police to shoot them.[67] All three sustained gunshot wounds to the forehead and chest. On January 8, 2011, the families of the three, along with their lawyers, gathered in front of the Bukit Aman police headquarters to submit a complaint to the IGP, demanding an investigation into the killings. Bukit Aman public relations department chief inspector Saipul Anuar Razali received their petition and promised answers would be forthcoming.[68]

In August 2011, eight months after the incident, the three men's families received post-mortem reports from the government hospital. The post-mortem report on Hafiz concluded that the bullet entered his head at a 45-degree angle and that gunpowder residue was found on his clothes.[69] The other two had bullet wounds on the side of their heads and in their chests. The report on Nizam concluded that he was shot twice. One bullet entered the left side of the head and exited at the right side of the ear, and the other bullet entered the front part of the left side of chest and exited at the right side of the chest.[70]

The lawyer representing the families, N. Surendran, cited the post-mortem report on Hafiz—the angle of the shot and the gunpowder residue in particular—to challenge the police's version of the incident: "This [report] suggests that the victims were kneeling

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[67] Andrew Sagayam, "Trio Shot Dead By Police Were Seasoned Criminals," *The Star*, November 15, 2010, http://thestar.com.my/news/story.asp?file=/2010/11/15/nation/7430711&sec=nation (accessed June 12, 2012).

[68] Teoh El Sen, "Families Want Answers to Police Killings," *Free Malaysia Today*, January 8, 2011 (https://www.freemalaysiatoday.com/category/nation/2011/01/08/families-want-answers-to-police-killings/), accessed on May 19, 2013.

[69] Hospital Tengku Ambuan Rahimah, Post-Mortem Report of Muhamad Syamil Hafiz bin Shapiei, May 11, 2011, copy on file with Human Rights Watch.

[70] Hospital Tengku Ambuan Rahimah, Post-Mortem Report of Mohd Hairul Nizam Bin Tuah, November 16, 2011, copy on file with Human Rights Watch.

when they were shot. This contradicts the police version that the three attacked the police with a *parang* before they were shot dead."[71]

Omar bin Abu Bakar expressed surprise at the manner in which his son Hanafi was shot. He told Human Rights Watch:

> I am retired from the army. In my experience if the boys were charging with *parangs* towards police then how can the bullet be at a close range angle and not straight if the police shot at them when they [the deceased] were running at them. The police statements about the shooting are highly questionable.[72]

He later told the media that, "I am not satisfied. My son was shot in the right ear and if the police said he was attacking them, why wasn't he shot from the front? I want the police to speed up their investigations and take action against the people who killed my son."[73]

Selangor's acting police chief, A. Thaiveegan, alleged that the three were involved in at least three armed robberies over five days that month in Selangor.[74] But the families questioned the allegations and noted that none of the deceased had a prior criminal record. The families also told Human Rights Watch that they were unaware that their sons were wanted criminals. After the incident, the police did not show the families any evidence to prove their sons were involved in any alleged robberies. The families said that the police did not conduct any follow-up investigation of the alleged robberies, did not visit the families' homes to search for stolen money, and did not question them or their neighbors about their sons' activities. Norhafizah, mother of Hafiz said, "If my son was suspected of a crime why haven't their searched my house or asked questions about him. They justified his killing by called him a criminal after they shot him."[75]

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[71] Tarani Palani, "Glenmarie Killings: Hisham Riles MP with Short Reply," *Free Malaysia Today*, October 20, 2011, http://www.freemalaysiatoday.com/category/nation/2011/10/20/glenmarie-killings-hisham-riles-mps-with-short-reply/ (accessed July 15, 2012).

[72] Human Rights Watch interview with Omar bin Abu Bakar, Kuala Lumpur, April 22, 2012.

[73] Teoh El Sen, "Families Want Answers to Police Killings," *Free Malaysia Today*, January 8, 2011 https://www.freemalaysiatoday.com/category/nation/2011/01/08/families-want-answers-to-police-killings/ (accessed on May 19, 2013).

[74] Andrew Sagayam, "Trio Shot Dead By Police Were Seasoned Criminals," *The Star*, November 15, 2010, http://thestar.com.my/news/story.asp?file=/2010/11/15/nation/7430711&sec=nation (accessed June 12, 2012).

[75] Human Rights Watch interview with Norhafizah, Kuala Lumpur, April 24, 2012.

Hamidah Kadar, Nizam's mother, expressed disbelief at the conduct of the police:

> Police should investigate first, not shoot. If they investigated and found my son guilty then I can accept it but they just shot him. This I cannot accept. My son never had any problem with the police. The doctor who did the autopsy told me that he is clean: there were no drugs in the urine or the blood.[76]

On October 6, 2011, after examining the post-mortem reports, the three families submitted a formal complaint to the Inspector General of Police demanding an investigation into the killings.[77]

On October 20, 2011, in response to a question from a member of parliament, the Minster of Home Affairs, Hishammuddin Hussein, announced that the police "acted according to the law" and "investigated the case as attempted murder under the penal code and referred it to the attorney general's chambers."[78] Norhafizah told Human Rights Watch, "I want this case to go to court. No one has been charged as yet. There is no closure. The public prosecutor has not filed a complaint against the officers yet. I want justice."[79]

Killing of Kathir Oli in Ipoh, Perak

On the night of September 15, 2011, a plainclothes police officer, Cheah Yew Teik, shot Kathir Oli, 31, outside the Angel Fun Pub and Karaoke bar in Ipoh, Perak. According to witness statements, the pub management had barred Oli and his friends, Shashitheran Kandasamy and Sangar Rahman, from entering the pub because they were ethnic Indian. An argument ensued between pub owners and Oli and his friends, who then decided to leave. Oli's friends said that as they were driving away, a "Chinese man" pointed a gun at them and told them to stop.[80] In his police statement, Kandasamy said:

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[76] Human Rights Watch interview with Hamidah Kadar, Kuala Lumpur, April 24, 2012.

[77] The families had filed a complaint with the police in 2010 shortly after the deaths, but the post-mortem reports shed new information, which prompted the families to file with the IGP office in Bukit Aman.

[78] "Police Acted According to Law in Glenmarie Shooting: Hisham," *The Star*, October 20, 2011, http://thestar.com.my/news/story.asp?file=/2011/10/20/nation/20111020145712&sec=nation (accessed June 20, 2012).

[79] Human Rights Watch interview with Norhafizah, Kuala Lumpur, April 22, 2012.

[80] Police complaints of Sangar Rahman and Shashitheren Kandasamy, October 12, 2011. Copies on file with Human Rights Watch.

> The three of us [Sangar Rahman, Kathir Oli, and Kandasamy himself] then got out of the car. I saw him [the Chinese man] holding the gun in his pocket. He pushed Kathir and Kathir responded by pushing him back. Then, he punched Kathir's face and in response Kathir punched his face. I was terrified because I realized that [the man] had a gun, so I tried to separate [them]. I pleaded to both parties to stop fighting. But suddenly I heard a loud gun shot and saw the gun in the hands of [the Chinese man]… Kathir Oli was shot in his chest.[81]

Kandasamy stated in his police complaint that a police patrol car came "suddenly" and he and his friend were arrested and taken to a police station and [that] they did not know that the armed man was a policeman. "I was puzzled because all this while…I thought he was a pub customer, or a bouncer. I only knew he was a police officer when he handcuffed us."[82]

The police have a different account of the events. Perak police chief Mohd Shukri Dahlan told the media that the three men were robbers who tried to rob the pub carrying *parangs* and that a detective who was walking by the pub stopped to help and Oli attacked him with a *parang.* The chief said the detective shot Oli in self-defense.[83]

According to the complaint, police at Pekan Baru police station placed Oli's two friends in custody for 11 days on suspicion of "attempted murder," blindfolded and beat them, and repeatedly asked whether they carried any machetes or guns.[84] The two men refused police pressure that they confess to a crime and ultimately were released without charge. To date, the police have yet to produce the *parangs* that they claimed Oli and his friends used to rob the pub.[85]

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[81] Ibid.

[82] Police complaint of Shashitheren Kandasamy, October 12, 2011. Copy on file with Human Rights Watch.

[83] G. Vinod, "Cop Kills Man Outside 'No Indians Allowed Pub,'" *Free Malaysia Today*, October 17, 2011, http://www.freemalaysiatoday.com/category/nation/2011/10/17/cop-kil (accessed August 21, 2012).

[84] Police complaints of Sangar Rahman and Shashitheren Kandasamy, October 12, 2011. Copies on file with Human Rights Watch.

[85] B. Nantha Kumar, "Slain Businessman's Widow Turns to Suhakam," *Free Malaysia Today,* December 8, 2011 https://www.freemalaysiatoday.com/category/nation/2011/12/08/slain-businessmans-widow-turns-to-suhakam/ (accessed on May 19, 2013).

In September 2012, Deputy Public Prosecutor Masri Mohd Daud informed Kathir Oli's family and the Parti Sosialis Malaysia, which became involved at the behest of the family, that no inquest would be held because prosecutors had determined that the two friends of Kathir Oli would be charged with causing mischief and causing hurt to a public servant to prevent him from conducting his duties.[86] Daud stated that under a provision of the Malaysian Criminal Procedure Code that makes inquiries unnecessary where criminal proceedings have been brought, there was no need for him to call an inquest.[87] However, to date, neither of Oli's friends has been formally charged with either of these two crimes.[88]

Kathri Oli's wife, Janaki Kathir Oli, has sought justice for the killing of her husband. She told Human Rights Watch, "My husband was not a robber. He never carried a knife. Why did the police kill him? We are defenseless against police's injustice and their abuse of power."[89] She filed a petition with SUHAKAM in 2011 demanding investigation into the incident, prompting SUHAKAM in turn to send letters about the case to the Royal Malaysia Police and the Attorney-General's Chambers.

Killing of Aminulrasyid bin Amzah in Selangor

Aminulrasyid bin Amzah, 15, was shot dead in a hail of bullets fired by the police following a car chase after midnight on April 26, 2010, in an affluent neighborhood of Shah Alam, Selangor.[90] According to Mohammad Azzamuddin bin Omar, who was in the car with Aminulrasyid, the two were returning from a restaurant when Aminulrasyid accidentally scraped a motorcycle and then passed a police car, which began chasing them.[91] Azzamuddin stated in his report to the police:

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[86] Rani Rasiah, "DPP decides no inquest for Kathir Oli shooting death," press statement by Partis Sosialis Malaysia (PSM), September 19, 2012, http://partisosialis.org/en/node/2364 (accessed May 19, 2013).

[87] Section 333(3) of the Malaysia Criminal Procedure Code states that "It shall not be necessary for the Magistrate to hold any inquiry under this Chapter or to make any report under subsection (1) if any criminal proceedings have been instituted against any person in respect of any act connected with the death of the deceased or such hurt as caused the death."

[88] Human Rights Watch telephone conversation with Rani Rasiah, PSM, July 9, 2013.

[89] Human Rights Watch interview with Panorama Lapangan Perdana, Ioph, Perak, May 30, 2012.

[90] Hafiz Yatim, "Court to Examine Car Shot 32 Times, *Malaysiakini*, November 9, 2010 (accessed June 11, 2012), http://www.malaysiakini.com/news/147743. During the trial of Cpl. Jenain Subi, the head of police chemistry department Saari Desa testified that 32 bullets were fired from behind the car. One bullet hit Aminulrasyid.

[91] Aminulrasyid's mother told Human Rights Watch that her son had taken her son-in-law's car out that evening without permission and she did not know that he was out that night with this friend.

> Aminulrasyid was scared, he overtook a police vehicle and that caused the police to chase us. …I heard repeated gunshots hitting our car causing the car to swerve but it was still under control. The last shot hit Amin and he fell on my thigh. I saw a hole in his head and blood. The car went off control and crashed into a wall and stopped. I came out of the car and surrendered myself. One police kicked me from the back and others hit and slapped me. I tried to escape and ran towards my house. I was injured on the right hand, leg, and in the head.[92]

This account differs significantly from the police version, which stated police used lethal force because the driver reversed his car into the police vehicles. The day after the incident, then Selangor Police Chief Khalid bin Abu Bakar (now the inspector general of police) was quoted in the media saying that the police chased Aminulrasyid after they came across him "in suspicious circumstances."[93] The police maintained that the police shot at the car to stop it. After the car stopped, one of the suspects escaped on foot and the driver of the vehicle suddenly reversed the car and tried to ram into the police vehicles. Khalid said that, "Surprised by the action of the suspect and trying to defend himself, the police officer shot in the direction of the suspect in the car."[94] The police also claimed that a *parang*, which was allegedly used in robberies, was found in the car.[95]

Eleven police involved in the case were initially suspended but later cleared of any wrongdoing. Only one policeman, Cpl. Jenain Subi, was charged under penal code 304(a) for culpable homicide not amounting to murder.

The original police explanation by Khalid that additional bullets were fired out of self-defense when the driver reversed his car into the police cars was contradicted by forensic witnesses who testified at the trial of Corporal Subi that there was no such evidence of the car reversing itself.[96] Police rebuffed efforts by Aminulrasyid's family, including their filing of

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[92] Complaint of Mohammed Azamuddin Bin Omar, Report No. SEK 11/003241/10, April 26, 2010, on file with Human Rights Watch.

[93] "Teen Shooting Case to be Brought to Cabinet," *Malaysiakini*, April 27, 2010, http://www.malaysiakini.com/news/130332 (accessed June 11, 2012).

[94] Ibid.

[95] Ibid.

[96] Hafiz Yatim, "No Evidence that Aminulrasyid Reversed Car," *Malaysiakini*, November 11, 2010, http://www.malaysiakini.com/news/147985 (accessed June 11, 2012).

a police report, to demand a retraction and an apology from Khalid and other senior police for claims that Aminulrasyid was a criminal and had attempted to harm police officers.[97]

Subi was found to have fired 21 bullets from a submachine gun at the car. He testified in court that the situation was not dangerous when he fired at the car. He also said that the relevant standing order on use of firearms did not permit opening fire on traffic offenders but only during the commission of crimes such as robbery, house break-ins, rape, sodomy, and kidnapping, or in self-defense.[98]

Subi was convicted on September 15, 2011, by the Shah Alam Sessions Court of culpable homicide not amounting to murder, which carries a maximum sentence of 30 years.[99] Subi received five years in prison.[100] The sessions court judge, Latifah Mohd Tahar, found that "The accused agreed that 21 gunshots were fired. This shows that there was indeed intention to cause death." The judge added that Subi "agreed that the car did not pose any danger to the police patrol team or the surroundings of the housing area as there were no passersby or other vehicles."[101]

Subi appealed his conviction to the Shah Alam High Court. On December 5, 2012, Judge Abdul Rahman Sebli acquitted him, ruling that "The totality of evidence does not support any suggestion that the appellant's intention was to kill. …In any case, it is not the number of shots that matters. It is the intention behind the shots that the court should be concerned with."[102] On November 26, 2013, the three-person Court of Appeals in Putrajaya unanimously upheld the acquittal.[103]

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[97] Steven Daniel, "Aminulrasyid's mother files a police report", *The Star*, April 29, 2011, thestar.com.my/news/story.asp?file=/2011/4/29/nation/20110429135607&sec=nation , (accessed on May 19, 2013)

[98] Lisa Goh, "Aminulrasyid Case: Accused cop agrees situation not dangerous when he fired", *The Star*, April 15, 2011, thestar.com.my/news/story.asp?file=/2011/4/15/nation/20110415190534&sec=nation (accessed May 19, 2013);

[99] See Malaysian Penal Code, sec, 304(a).

[100] "Cop Gets Five Years for Killing 15-Year-Old," *Malaysiakini*, September 15, 2011 (accessed June 11, 2012).

[101] Nurbaiti Hamdan, "Aminulrasyid case: Cop guilty of causing death," The Star, September 16, 2011, thestar.com.my/news/story.asp?file=/2011/9/16/courts/9514519&sec=courts (accessed May 20, 2013).

[102] Nurbaiti Hamdan, "Cop in Aminulrasyid case freed", *The Star*, December 6, 2012, thestar.com.my/news/story.asp?file=/2012/12/6/courts/12418640&sec=courts (accessed May 19, 2013)

[103] Bernama, "Appeals court upholds cops acquittal over death of 15-year-old Aminulrasyid", in *The Malaysia Insider*, November 26, 2013, http://www.themalaysianinsider.com/malaysia/article/appeals-court-upholds-cops-acquittal-over-death-of-15-year-old-aminulrasyid (accessed January 12, 2014).

In contrast to other police shooting incidents, this shooting of a 15-year-old student prompted attention from senior government officials. The IGP and the home minister promised an investigation into the case and a review of the IGP standing order on use force and firearms.[104] On April 27, then-Home Minister Hishammuddin Hussein convened a special panel headed by the deputy home minster to assess the incident. The panel recommended improving existing procedures on use of firearms, which the IGP stated would be implemented. Deputy Home Minister Wera Abu Seman Yousof announced, "We have adapted the standards from the three countries [referring to Canada, United States and the United Kingdom] and the United Nations in order for us to come up with orders that are more suited for us."[105] However, the RMP declined to make either the recommendations or the revised procedures public.

SUHAKAM requested information from the panel about their recommendations and findings, but was told by the deputy home minister that the "panel was satisfied with the police investigation which was transparent, expeditious, and covered all aspects" and noted that a "few improvements" to the IGP standing order on use of force were made. However, SUHAKAM was not given a copy of the amended procedures.[106]

A member of the panel that examined the Aminulrasyid killing, who wished to remain anonymous, told Human Rights Watch:

> In the Aminulrasyid [incident] it was a traffic violation. You don't shoot at a car to stop it unless they are shooting at you. . . The SOP was amended to instruct how to stop a car. It's part of the training defect. . . . What do you expect from someone who has 11th grade education. Six months training [to become a policeman] is not enough. That's why leadership and supervision is very important.[107]

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[104] Edward R. Henry, "Papers on Shooting Case of Aminulrashyid Submitted to DPP," *The Star,* April 30, 2011, http://thestar.com.my/news/story.asp?file=/2010/4/30/nation/20100430103424&sec=nation (accessed June 11, 2012). Then Inspector General of Police Musa Hasan explained that the normal operating procedure to stop speeding cars during a car chase was for the police to try and drive up next to the speeding vehicle before blocking its path by halting in front it. "Prosecution Closes Aminulrashyid's Case, *Malaysiakini*, December 29, 2010 (accessed June 11, 2012).

[105] Dharmendar Singh, "Aminulrasyid Shooting: Probe was Transparent and Fair," September 10, 2010, *The Star*, http://thestar.com.my/news/story.asp?file=/2010/9/3/nation/20100903161100&sec=nation (accessed June 11, 2012).

[106] SUHAKAM Annual Report 2010, p. 38.

[107] Human Rights Watch interview with member of panel examining the Aminulrasyid shooting, Kuala Lumpur, April 30, 2012.

Aminulrasyid's mother, Norsiah Mohamad, told Malaysiakini that:

> I want my son's name cleared... If this had happened to them, how would they react? Every time I pass the tree where the car crashed and my son was killed, it is as though my heart is being ripped out off my chest. On that day, before even we claimed my son's body, Khalid released a public statement that my son and his friend, Azamudin Omar, had tried to ram into the police vehicle and that they found a *parang* in our family car. The statement was made with bad intention and falsely portrays Aminulrasyid as a criminal in order to conceal a crime committed by the police.[108]

Following the acquittal of Subi, in April 2013 Aminulrasyid's family filed a civil suit at the Shah Alam High Court against Subi, the Shah Alam district police chief, former Selangor police chief Khalid, and the government, alleging negligence, and assault and battery. The lawsuit seeks damages from Abu Bakar for his statements about Aminulrasyid and a court finding that the defendants violated Aminulrasyid's rights. The case was pending as this report went to press.[109]

Shooting of Shahril Azlan in Selangor

Shahril Azlan, a truck driver, was shot by police at a roadblock in Shah Alam, Selangor, on the night of April 16, 2009. Although Shahril survived, a bullet is permanently lodged in his back. Shahril was driving home with his friend Saiful around 11:30 p.m. when he saw a traffic jam and a roadblock approximately 100 meters away. His vehicle's road tax sticker had expired so he decided to reverse direction in order to avoid the checkpoint. Shahril told Human Rights Watch:

> I was adjusting my seatbelt and looking down when my friend told me that two men were approaching the car and had sticks in their hands. When I saw the men with sticks—they did not have any uniform on—I thought they were robbers so I began reversing. I panicked. Suddenly, there were bullet

[108] S. Pathamwathy, "Aminulrasyid's mum bids to clear his name," *Malaysiakini*, April 29, 2011, www.malaysiakini.com/news/162776, (accessed on May 20, 2013)

[109] M. Mageswari, "Aminulrasyid's family sues police and government over his death", *The Star*, April 18, 2013, http://www.thestar.com.my/News/Nation/2013/04/18/Aminulrasyids-family-sues-police-and-Government-over-his-death.aspx, (accessed on May 20, 2013).

> sounds. We bent down. The car was shot at least two to three times. I felt numb and could not feel anything and my friend told me that I had been shot. When I looked down…I saw blood.[110]

Shahril said that the two men broke the car window with a pistol and "grabbed my friend from the neck and pulled him out through the window and not the door. The other guy came towards me, pointed the pistol, and told me to step outside the truck."[111]

Shahril asked the men who they were. They replied that they were police but did not show him any identification. "The police accused me of having drugs in the car and checked the bonnet and trunk," Shahril said. "I asked police to call ambulance because I felt numb and was finding it difficult to breathe…It took an hour before the ambulance came."[112] No drugs were found in the truck. Shahril's friend was detained at the Shah Alam police station for four days and his urine was tested for drugs, which was negative. No charges were filed against him and Saiful was released.[113]

Shahril was taken to Tengku Ampuan Rahimah hospital in Klang, but they were unable to operate on him. He was then transferred to Kuala Lumpur General Hospital. According to a medical report, the bullet penetrated his arm and went through Shahril's ribcage and is lodged in his spine.[114] The doctor advised Shahril that it cannot be removed as the procedure could paralyze him. An assistant superintendent of police visited Shahril in the hospital and took down his statement and showed him a photocopy of a *parang* and asked if it belonged to him. Shahril told them that it did not.[115]

Shahril said that he has not heard from the police again and does not believe the police seriously investigated the incident. He told Human Rights Watch: "The police told me that they would investigate the matter. My father lodged a complaint asking for an investigation hours after the incident and again in May 2012. But it has been three years now and nothing. I could not bend for eight months and was restricted to only light work for more

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[110] Human Rights Watch interview with Shahril Azlan, Kuala Lumpur, April 22, 2012.

[111] Ibid.

[112] Ibid.

[113] Ibid.

[114] Hospital Kuala Lumpur, "Diagnosis Hemothorax Secondary to Gun Shot, [case of Shahril Azlan bin Ahmad Kamil]," signed by medical officer Sarvana Kumar, undated, copy on file with Human Rights Watch.

[115] Human Rights Watch interview with Shahril Azlan, Kuala Lumpur, April 22, 2012.

than a year. I used to earn RM 2000 (US $625) [per month]. But because I could only do light work, I earned only 500 ringgit (US $156), which is not enough."[116]

Since 2011 Shahril has resumed regular work. In April 2012, he filed a civil suit against the Shah Alam district police, the inspector general of police, and the Malaysian government seeking damages of RM 18,120 (US $5,662) as well as punitive and exemplary damages for misuse of power and defamation.[117] In July 2012, the complaint was dismissed by the Kuala Lumpur High Court for failing to name the individual police officers who shot him. However, he appealed to the Court of Appeal which reinstated the case on January 15, 2013. The case was still waiting to be considered by that court when this report went to press.

Deaths in Custody

> Police lock-ups and police stations must be a safe place for every human being and should not be turned into a crime scene. The police must regain the public's respect and their interrogation approach must change in accordance with the times. They must step out of their brutality. They should investigate criminals and not turn themselves into criminals.
> —Judge V.T. Singham, Kuala Lumpur High Court Judge, ruling in a civil court case filed by the family of A. Kugan who died in police custody, June 2013[118]

The lack of transparency and impartiality in police investigations into deaths in custody, the inconsistent application of Malaysian law that mandates inquests, and questionable practices by government pathologists conducting post-mortems have all created public distrust of the Royal Malaysia Police's handling of such cases.

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[116] Human Rights Watch interview with Shahril Azlan, Kuala Lumpur, April 22, 2012. Police complaints filed by Shahri's family are on file with Human Rights Watch.

[117] Nigel Aw, "Another shooting victim takes police to court", *Malaysiakini*, April 13, 2012, www.malaysiakini.com/news/194918 , (accessed on May 19, 2013).

[118] Rita Wong, "IGP Responsible for Kugan's Death in Custody, Court Rules", *The Malaysian Insider*, June 26, 2013, http://my.news.yahoo.com/igp-responsible-for-kugan-s-death-in-police-045146944.html (accessed July 15, 2013)

International Legal Standards on Investigating Deaths in Custody

States have the responsibility to protect all those in their custody and to respect their fundamental rights. The obligation to ensure and respect the right to life is set forth in treaty law[119] and various UN standards.[120] According to the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, there shall be "thorough, prompt and impartial investigation of all suspected cases" of death in custody, including cases where complaints by relatives or other reliable reports suggest unnatural death.[121]

The UN Special Rapporteur Handbook on Extrajudicial Executions states that, "the controlled character of a custodial environment permits states to exercise unusually comprehensive control over the conduct of government officials—police officers, prison guards…in order to prevent them from committing violations."[122] In death-in-custody cases there is a presumption of state responsibility due to the custodial setting and the government's obligation to ensure and respect the right to life. A government has to affirmatively provide evidence to rebut that presumption and absent proof that it is not responsible, and the government has an obligation to provide reparations to family of the deceased.[123] The authorities are obligated to prosecute those responsible and also to prevent deaths and respond effectively to the causes of death, including ensuring proper oversight and adequate medical care to detainees.[124]

In those cases in which the established investigative procedures "are inadequate because of lack of expertise or impartiality," the authorities "shall pursue investigations through an independent commission of inquiry or similar procedure."[125]

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[119] See e.g., ICCPR, art. 6; Convention on the Rights of the Child, art. 6.

[120] Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988); UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Principles on Extrajudicial Executions"), E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

[121] Principles on Extrajudicial Executions, principle 9.

[122] UN Special Rapporteur on Extrajudicial Executions Handbook, pp. 2-4, http://www.extrajudicialexecutions.org/application/media/Handbook%20Chapter%204%20-%20Deaths%20in%20custody.pdf

[123] Ibid., p. 4.

[124] Ibid., p. 2. See also, Principles on Extrajudicial Executions, principles 9 to 20.

[125] Principles on Extrajudicial Executions, principle 11.

According to police data, a total of 147 persons died in police custody from all causes between January 2000 and February 2010.[126] Then-Home Minister Hishammuddin Hussein, in a written reply to Member of Parliament Chow Kon Yeow, stated that a total of 10 deaths in police custody were recorded in the first half of 2011 but that most were caused by disease.[127] The Ministry of Home Affairs later responded to a parliamentary request from Member of Parliament N. Surendran with information indicating that there were 48 deaths in custody between January 2011 and June 2013 – a total of 17 in 2011, 19 in 2012, and 12 in the first half of 2013.[128] When this information is combined with that received by N. Surendran, the total is 195 deaths.

Table 1: Malaysian Police Data on Deaths in Custody, January 2000-Feburary 2010[129]

Cause of Death	Number
HIV	32
Asthma	4
Heart diseases	7
Other diseases: ulcer, lung, throat	63
Hangs self/Suicide	23
Fights with others	3
Bleeding in brain	12
Slipped on water in lockup	1
Injured by police	0
Total	**147**

[126] PDRM, Tahanan Mati Dalamlokap Dan Jagan Polis Bagi Tahun 2000-2010 (February), on file with Human Rights Watch.

[127] Suaram, Malaysia Civil and Political Rights Report 2011, p. 18, citing Parliamentary written reply to Chow Kon Yeow, October 6, 2011, Reference No. 4060, question 18, http://173.230.136.137/wp-content/uploads/2011/12/SUARAM-Overview-2011-Complete1.pdf (accessed July 15, 2012).

[128] R. Thevarajan, "Official Statistics Show Custodial Death Rate Still High", *Malaysiakini*, September 5, 2013, http://beta.malaysiakini.com/news/240321, (accessed November 11, 2013).

[129] Royal Malaysia Police, *Tahanan Mati Dalamlokap Dan Jagan Polis Bagi Tahun 2000-2010 (February)*, on file with Human Rights Watch.

However, according to information received in the Parliament from the government on June 26, 2013, there were a total of 231 deaths in police custody between the year 2000 and May 2013.

Table 2: Data from Dewan Rakyat, Parliament, June 26, 2013[130]

Cause of Death	Number
Illness (HIV/AIDS, asthma, heart ailment, etc.)	196
Hangs self	29
Fights (among detainees)	2
Slipping in lock-ups	2
Abused by police	2
Total	**231**

According to section 334 of the Malaysian Criminal Procedure Code, magistrate judges are required to conduct inquests into cases of custodial deaths or they can be directed by a public prosecutor to hold an inquest.[131] The police are obliged to investigate any reported death, write a report, and forward it to the magistrate in whose jurisdiction the body is found. Section 330 mandates the police to arrange for post-mortem examinations by a government hospital if there is reason to suspect that the deceased died in a sudden or unnatural manner, or by violence, or by any unlawful act or omission.[132]

Over the years, civil society organizations, the Royal Commission, and, in July 2012, a High Court judge have raised concerns about the impartiality and transparency of

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[130] Statistics on Deaths in Custody, Dewan Rakyat, Parliament, June 26, 2013, provided to Human Rights Watch by Simon Karunagaram, Head, Complaints and Monitoring Division, SUHAKAM, March 20, 2014.

[131] Article 334 states: "When any person dies while in the custody of the police or . . .in prison, the officer who had the custody of that person or was in charge of that psychiatric hospital or prison, . . ., shall immediately give intimation of such death to the nearest Magistrate, and the Magistrate . . . in the case of a death in custody of the police, and in other case may, if he thinks expedient, hold an inquiry into the cause of death." Article 339 provides that "[t]he public prosecutor may any time direct a magistrate to hold an inquiry . . . into the cause of, and the circumstances connected with, any death as referred to in sections 329 and 334." Criminal Procedure Code (Act 593), as of February 2012.Section 329 instructs the police to investigate upon receiving information of a death from suicide, killed by another person, animal, machinery, accident, died under suspicious circumstances, body of dead person found but cause unknown, or if person died of sudden death.

[132] Criminal Procedure Code, arts. 329-330.

investigations into custodial deaths, noting that such investigations are conducted by an officer from the same police station where the death took place.[133] There are also serious concerns of improper recordkeeping by the police upon arrest, and instances of covering up evidence.

The Royal Commission found that police sometimes classify deaths in police custody as "Accidental Death," which is noted in the Sudden Death Report, thereby bypassing postmortems and inquests for those deaths. The Royal Commission also found that:

> The police had in certain cases relied solely on the findings of the pathologist on the cause of death and stopped investigation. The pathologist's duty is merely to establish cause of death, but whether the death is suicidal or homicidal can only be established by the further gathering of evidence and investigation on the part of the police.[134]

The commission concluded that "for any death in police custody, [section] 334 of the CPC [Criminal Procedure Code] makes it mandatory for an inquest to be held."[135] But the Royal Commission found that inquests were held in only 6 out of 80 such deaths from 2000-2004. It also noted that "[i]n 22 other cases either the magistrate or the [deputy public prosecutor] had decided that an inquiry is not necessary which is contrary to [section] 334 of the CPC."[136]

Despite the recommendation of the Royal Commission in 2005, inquests into custodial deaths are still not conducted in many cases. Government post-mortems on the 147 deaths from January 2000 to February 2010 concluded that 65 percent died due to medical reasons (such HIV, ulcers, asthma, lung and throat diseases), 15 percent due to suicide, and 8 percent due to brain hemorrhage.[137] Between January 2000 and February 2010, inquests by magistrates were conducted in less than 1 percent of the cases.

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[133] Royal Commission Report, p. 43.

[134] Royal Commission Report, section 2.3.5 (i), p. 43.

[135] Royal Commission Report, section 2.3.5 (g), p. 43.

[136] Royal Commission Report, section 2.3.9, p. 44.

[137] PDRM, Tahanan Mati Dalamlokap Dan Jagan Polis Bagi Tahun 2000-2010 (February), (on file with Human Rights Watch).

According to lawyer M. Viswanathan, in practice "inquests are not automatic for custodial deaths, but generally are held only when there is public outcry and police actions are suspect."[138]

The failure to conduct inquests into all death–in-custody cases is of grave concern. The police can and do receive a pathologist's post-mortem report, but that report only establishes the medical cause of death while leaving serious questions about the circumstances of death unanswered. Often left unexamined are questions as to whether the police provided timely and adequate medical care to detainees, whether detainees were beaten or otherwise injured by police during the arrest and the period immediately thereafter, and whether any mistreatment or failures to provide medical care were a contributing factor in the death.

Dhamendran Narayanasamy in Pudu

On May 11, 2013, truck driver Dhamendran Narayanasamy told his wife that he was going to the Pudu police station near his home to file a police report because he had been in a fight near his residence. After filing the complaint, he returned home but soon received a phone call from a policeman requesting he return to the police station to give an additional statement.

When he did not return that night, his wife, Marry Mariasusay, called the station and was told to call again the next day. On the third day, she went to the Pudu police station and was told that her husband had been moved to another police station and his case had been transferred to another officer. However, the Pudu police would not tell her Dhamendran's whereabouts or whether he had been charged with any criminal offense and would not give her contact information for the policeman who had taken over the case.

[138] Human Rights Watch interview with M. Visvwanathan, Kuala Lumpur, April 26, 2012.

Marry said she visited the Pudu police station every day to speak to the police about her husband but "they would keep me waiting for three or four hours, acting like they were busy, and then when a policeman finally talked, he said that they had a lot of cases." Finally, on May 17, the Pudu police informed her that they could not give her any information because the case was being investigated by the Kuala Lumpur police headquarters (IPKL). After she pleaded with them, the police relented and agreed to give her a letter of referral to the IPKL so she could try and visit her husband.[139]

Marry Mariasusay, the wife of Dhamendran Narayanasamy, holding a photo from their wedding while waiting at the Kuala Lumpur Hospital morgue on May 22, 2013 to receive his body. © 2013 Human Rights Watch.

When she visited the IPKL, she was directed to the D-9 department on the 7th floor. The investigating officer, who the police on duty referred to as "Tuan Hare" (Hare) was not present but when police called him he spoke to Marry on the phone and refused to allow her to see her husband. Marry says she pleaded with him and finally Hare agreed to send Dhamendran to the Pudu police station the next day so she could see him. However, when police did not send him to Pudu as promised on May 18, the Pudu police escorted her back to IPKL where her return sparked an angry phone call from Hare to Marry. Marry told Human Rights Watch:

> At about 5 p.m. Tuan Hari called me and immediately started scolding me. He demanded to know who asked me to go to the IPKL. He said to me 'Don't

[139] Human Rights Watch interview with Marry Mariasusay, accompanied by her father, Malisuraran Mariasusay, Kuala Lumpur General Hospital, May 22, 2013.

> you know that I am a three star officer? How dare you nag me like this! I think that you do not know how to respect me! The Bukit Aman officers took your husband's statement so don't keep calling me and disturbing me like this! If you want to go and wait, it's your problem! But do you want me to help or not?' And I replied that 'I am not disrespecting you, but I just want to know where my husband is.' And I said that 'I tried to call you but you didn't answer your phone.' He said he was in court. And then Hari said 'But I can help you illegally – do you understand what I mean or not?' To me that meant that he was expecting some money. Finally, he said 'Call me on Sunday at 10 a.m. and I will tell you were to go.'

On the morning of May 19, Marry said she received a phone call from Dhamendran who was using a policeman's phone. He told her to bring five packets of chicken rice, five cans of 100 Plus drink, and three packs of cigarettes for the police, and also his asthma medicine. At the police station, she was able to speak to him for approximately 30 minutes with police present in the room. Marry said he looked "all right, normal but not as talkative as usual." She asked if the police had beaten him and he replied "Yes, but not serious." Police told her they would bring him to court the next day and to prepare 3000 RM [$900] for bail and other costs. But the next day he was not brought to court and after many phone calls, the family finally learned from the investigating officer that Dhamendran was being detained for another two days.

At approximately 8 p.m. on May 21, Marry received a phone call from a land-line telephone, the caller identifying himself as police but refusing to give his name. She said he told her, '"You should go to the KL [Kuala Lumpur] Hospital. Your husband had asthma on the way to the court, he was complaining of asthma, and he was sent to the hospital and he might have died.' So we [Marry and her father] came here [the KL Hospital] but still have not been able to see my husband's body."[140] Kuala Lumpur Criminal Investigation Department head Ku Chin Wah immediately and publicly maintained that Dhamendran died because of respiratory problems, before a post-mortem was even done, raising concerns of a police cover-up.[141]

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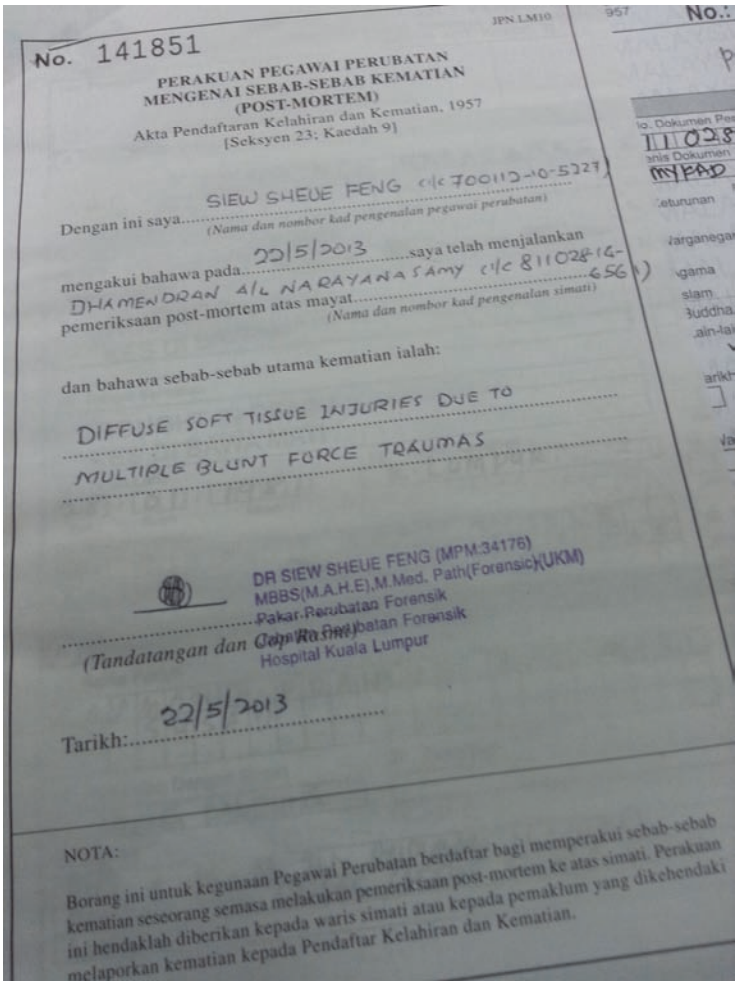
[140] Human Rights Watch interview with Marry Mariasusay, Kuala Lumpur, May 22, 2013.

[141] Malaysiakini, "Cops Being Questioned over Darmendran's Death," May 28, 2013, (http://www.malaysiakini.com/news/231367), accessed June 3, 2013.

An initial post-mortem conducted by Dr. Siew Sheue Feng, a pathologist at the Kuala Lumpur Hospital, determined that Dhamendran did not die from respiratory problems. He concluded that the cause of death was "diffuse soft issue injuries due to multiple blunt force traumas."[142] News coverage from the KL Hospital immediately broadcast the initial post-mortem findings, raising pressure on the police to establish a special committee to investigate.



No. 141851

PERAKUAN PEGAWAI PERUBATAN
MENGENAI SEBAB-SEBAB KEMATIAN
(POST-MORTEM)
Akta Pendaftaran Kelahiran dan Kematian, 1957
[Seksyen 23; Kaedah 9]

Dengan ini saya SIEW SHEUE FENG (Nama dan nombor kad pengenalan pegawai perubatan)

mengakui bahawa pada 22/5/2013 saya telah menjalankan pemeriksaan post-mortem atas mayat DHAMENDRAN A/L NARAYANASAMY (Nama dan nombor kad pengenalan simati)

dan bahawa sebab-sebab utama kematian ialah:

DIFFUSE SOFT TISSUE INJURIES DUE TO
MULTIPLE BLUNT FORCE TRAUMAS

DR SIEW SHEUE FENG (MPM:34176)
MBBS(M.A.H.E),M.Med. Path(Forensic)(UKM)
Pakar Perubatan Forensik
Hospital Kuala Lumpur

(Tandatangan dan Cap Rasmi)

Tarikh: 22/5/2013

NOTA:

Borang ini untuk kegunaan Pegawai Perubatan berdaftar bagi memperakui sebab-sebab kematian seseorang semasa melakukan pemeriksaan post-mortem ke atas simati. Perakuan ini hendaklah diberikan kepada waris simati atau kepada pemaklum yang dikehendaki melaporkan kematian kepada Pendaftar Kelahiran dan Kematian.

Initial post-mortem finding of Dr. Siew Sheue Feng made at Kuala Lumpur Hospital on May 22, 2013, in the death of Dhamendran Narayanasamy: "Diffuse soft tissue injuries due to multiple blunt force traumas." © 2013 Human Rights Watch

Dr. Feng's full post-mortem report documented 52 injuries on Dhamendran's body and stated:

> There was no significant natural disease found in his body that could have caused or contributed to his death at that particular moment in time. Post-mortem examination revealed he sustained multiple blunt force trauma in his body. These injuries were caused by blunt objects and the wounds were relatively fresh. No defensive wound was identified in the body of the

[142] Photograph of initial post-mortem report no. 141851 by Dr. Siew Sheue Feng, dated May 22, 2013. Photograph on file with Human Rights Watch.

> deceased. The overall pattern of these injuries is neither self-inflicted nor accidental in nature.[143]

In June 2013, government prosecutors charged three police officers from the serious crimes unit—Jaffri Jaafar, Mohd Nahar Abdul Rahman, and Mohd Haswadi Zamri Shaari—with murder under the penal code.[144] Their commander, Inspector Hare Krishnan, was apprehended in July and charged shortly thereafter with the same charge of murder. Their case was pending as this report went to press.[145]

The day that she received Dhamendran's body for funeral, Marry said:

> My husband didn't deserve this, and we don't want this to happen to others like it has happened to us…We will fight to the end to make sure that this kind of torture doesn't happen again. My husband didn't do anything wrong, why did they have to torture him? I want to know the reason! We don't have anyone else now, he was the only breadwinner in our family – there is no one to take care of us, what can I do without my husband? I really believed that my husband would come back, because the investigating officer said to me not to worry because my husband didn't do anything wrong and they were just borrowing my husband to make a statement. I am going to fight for him all the way.[146]

Responding to the case, Home Minister Zahid Hamidi told the media, "I assure the public that we will not compromise on the issue of deaths in custody."[147] The filing of murder charges against the police officers in the Dhamendran case counts as a significant exception to the common practice of police delay and cover-up in death-in-custody cases.

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[143] Wong Choon Mei, "3 cops charged for Dharmendran's murder: I remember seeing them in the lockup – widow," *Malaysia Chronicle,* June 5, 2013,www.malaysia-chronicle.com/index.php?option=com_k2&view=item&id=109631:dh#axzz2d45gEqTn, (accessed June 20, 2013).

[144] Malaysian Penal Code, art. 302.

[145] Loshana K. Shagar, "Hare Krishnan Charged with Causing Death of Dharmendran", *The Star Online*, July 30, 2013, www.thestar.com.my/News/Nation/2013/07/30/Courts-Crime-Hare-Krishnan.aspx, (accessed August 2, 2013).

[146] Human Rights Watch interview with Marry Mariasusay, Kuala Lumpur, May 22, 2013.

[147] Azril Annuar, "Zahid: Cops in Dhamendran Case to be Suspended", *The Edge*, June 3, 2013, www.theedgemalaysia.com/political-news/240792-zahid-cops-in-dhamendran-case-to-be-suspended.html, (accessed on July 4, 2013).

Sugumaran Chelladury, in Hulu Langat

A photo of Sugumaran Chelladury. ©2013 Family of Sugumaran Chelladury

At about 6:30 p.m. on January 23, 2013, police chased security guard Sugumaran Chelladury and apprehended him on the side of the road in Taman Sri Nanding, Hulu Langat. Vasandh Ruban, a witness to the events who knew Sugumaran, told the police that he saw a police car and motorcycle chase Sugumaran until he finally stopped, put his hands up, and surrendered. Ruban reported to the police that he witnessed one policeman repeatedly punch Sugumaran in the face and yell "Why were you running?" He said he witnessed the same policeman smear yellow powder in Sugumaran's face. Ruban said he also witnessed a group of men from a nearby shop join the fray at the same time, and kick and punch Sugumaran. Then, he continued, the police car pulled up and two more police came towards Sugumaran, and one of them beat him while the other held him to the ground. He stated that the beating continued for approximately 10 minutes.[148]

Ruban said in his statement to police:

> I saw Abang [Big Brother] Sugu in a position lying on the ground. At that time, one of the uniformed officers was stomping on the back of Abang Sugu's neck. My cousin and I went back home… to call on my other cousins. My cousin and I went back to see Abang Sugu but when we arrived, I heard the police in uniform saying to my uncle that Abang Sugu had died.[149]

[148] Statement by Vasandh Ruban, made to police officers at Petaling Jaya district police headquarters on January 25, 2013. Copy of statement on file with Human Rights Watch.

[149] Ibid.

Ruban reported that when he returned, he saw that Sugumaran was handcuffed and naked, with his torn pants placed on top of his groin and his face covered in turmeric powder.[150] Sugumaran's relatives said the police tried to prevent people from taking photos of the body, but one bystander managed to take a photo using a mobile phone – which shows the body with yellow powder on the face and in state of undress – which was published on the Internet.[151]

Another witness, R. Moohanarajan, told the media "[T]he police stepped on Sugumaran's neck…Twenty to thirty people wearing plain clothes beat him up. He was lying face down with his hands handcuffed behind."[152]

These accounts notwithstanding, Kajang OCPD Assistant Commissioner Abdul Rashid Abdul Wahab told media that police did not beat Sugumaran, and claimed that the three officers from the Batu 14 Hulu Langat police station only handcuffed him with the help of some members of the public because Sugumaran resisted arrest.[153] However, witness Ruban stated he did not see Sugumaran fighting back while being beaten.[154]

An initial post-mortem report conducted by the Serdang Hospital found that Sugumaran died of a heart attack. This finding was strongly disputed by his family, which claimed that he was healthy and had no history of heart-related illness.[155] Sugumaran's uncle told Human Rights Watch that when the family was finally able to view the body at the morgue, they were only allowed to look at it from the waist up, and only for a short time. He said there was dried blood coming from the mouth, turmeric powder on the face, and the body

[150] Turmeric powder is a root native to Tamil Nadu, India, commonly used in Indian food in Malaysia.

[151] "Cops Want Public Inquest on Sugumaran's Death," *Free Malaysia Today*, January 27, 2013, http://www.freemalaysiatoday.com/category/nation/2013/01/27/cops-want-public-inquest-on-sugumaran%E2%80%99s-death/ (accessed May 1, 2013).

[152] Boo Su-Lyn, "Eyewitnesses Say Cops, Mob Beat Handcuffed Man to Death", *The Malaysian Insider*, January 24, 2013, http://www.themalaysianinsider.com/malaysia/article/eyewitnesses-say-cops-mob-beat-handcuffed-man-to-death (accessed March 17, 2013).

[153] Leannza Chia and Nomy Nozwir, "Inquest Ordered into Sugumaran's Death", *The Malaysian Insider,* January 29, 2013, www.themalaysianinsider.com/malaysia/article/inquest-ordered-into-sugumarans-death (accessed March 17, 2013).

[154] Statement by Vasandh Ruban to made to police officers at Petaling Jaya district police headquarters on January 25, 2013. Copy of statement on file with Human Rights Watch.

[155] G. Lavendran, "Classify Sugumaran's Death as a Murder", *Free Malaysia Today*, January 25, 2013, www.freemalaysiatoday.com/category/nation/2013/01/25/classify-sugumars-death-as-murder/ (accessed May 2, 2013).

was still handcuffed. When they asked why Sugumaran was still handcuffed, the government officials present ended the viewing and escorted family out of the room.[156]

The family demanded a second post-mortem and called for a murder investigation to be opened under article 302 of the Penal Code. But the police stated there was not enough evidence for such a charge and ordered an inquest instead.[157] The family refused to participate in the inquest, and stated they would not claim the body until a second post-mortem was performed.

After being petitioned by the family and their lawyers, on February 6 Malaysia's deputy director general of health, Dr. Maimunah Hamid, agreed for a second post-mortem to go forward.[158] However, the family's preferred choice to conduct the second post-mortem – Dr. Pornthip Rojanasunand of Thailand – said she was unable to conduct the procedure. The family's lawyers then consulted with and wrote to two different government hospitals, University Malaya Medical Center and Hospital Kuala Lumpur, but officials at both hospitals stated that they would not carry out the second post mortem without a court order or police authorization. The family and its attorneys were unable to break the deadlock and Sugumaran was buried after 141 days without a second post-mortem ever being conducted.[159] An inquest into his death was ongoing as this report went to press.

Sugumaran's uncle expressed his anger to Human Rights Watch:

> The prime minister guards the police only, not the people… Why don't they give us the permission for the second post-mortem? Why do they block us? We said that we will bear the costs, we are not asking for a single cent from this government. We feel like the police are the licensed murderers of the

[156] Human Rights Watch interview with A. Kuppusamy, maternal uncle of Sugumaran, Kuala Lumpur, May 21, 2013.

[157] Leannza Chia and Nomy Nozwir, "Inquest Ordered into Sugumaran's Death", *The Malaysian Insider,* January 29, 2013, www.themalaysianinsider.com/malaysia/article/inquest-ordered-into-sugumarans-death (accessed March 17, 2013).

[158] Letter to Latheefa Koya, Daim & Gamany, an attorney representing the Sugumar family, from Dato' Dr. Maimunah BT A. Hamid, Deputy Director of General of Health (Research and Technical Support), February 6, 2013. Copy of the letter on file with Human Rights Watch.

[159] G. Lavendran, "Sugumar to be Laid to Rest, Finally", *Free Malaysia Today*, June 7, 2013, www.freemalaysiatoday.com/category/nation/2013/06/07/sugumar-to-be-laid-to-rest-finally/, (accessed on June 8, 2013.)

> Indian community ….and the police are fully controlled by the Home Ministry, they are the puppets of the government."[160]

Mohd Ramadan bin Yusuf, in Kota Bahru, Kelantan

Mohd Ramadan bin Yusuf, 32, died in police custody due to "blunt trauma to the limbs" on January 22, 2010, in Pengkalan Chepa police station, Kota Bahru, Kelantan. A relative of Ramadan, Kamran R. (a pseudonym), told Human Rights Watch that Ramadan was arrested on January 17 in connection with the death of his uncle Idris, who died following a collision between Ramadan's car and Idris' motorcycle on January 15.[161]

Kamran R. told Human Rights Watch that Ramadan—along with Omar B. and Nazri M. (both pseudonyms), who were passengers in Ramadan's car when the accident happened—appeared before a magistrate judge in connection with the accident on January 18.[162] But, on January 22 Ramadan's family learned that Ramadan had died in Pengkalan Chepa police station. Kamran R. told Human Rights Watch:

> When I went to see [Ramadan's] body in the hospital, I saw bruises on his arms and his legs. There were bloodstains on the side of his mouth. There were cuts on his lips. But the Kelantan police chief told local newspapers that [Ramadan] died from a heart attack.[163]

Ramadan's death certificate states that the cause of death was "blunt trauma to the limbs." This, in addition to Kamran R.'s observation of bruises on Ramadan's body at the hospital raises serious concerns that the treatment of Ramadan in police custody resulted in his death.[164]

No inquest has been held into this death and Kamran R. never received a copy of the post-mortem report by the government hospital. Police from the Pengkalan Chepa police station also told Kamran R. not to press charge charges against the police. Kamran R. said:

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[160] Human Rights Watch interview with A. Kuppusamy, Kuala Lumpur, May 21, 2013.

[161] Human Rights Watch interview with Kamran R., Kota Bharu, Kelantan, May 29, 2012.

[162] Ibid.

[163] Ibid.

[164] Death certificate of Mohd Ramadan bin Yusuf, No. D 879766, copy on file with Human Rights Watch.

> I want to know what happened to [Ramadan]. [He] was strong and did not have heart disease. I want to hear explanations from the hospital and the police about those bruises and cuts I saw on [his] body. But police from Pengkalan Chepa police station told me . . . that I should think about the safety of [Omar B.] and [Nazri M.]. If I tried to get the answer about what happened to [Ramadan], then [Omar B.] and [Nazri M.] could be arrested again.[165]

Gunasegaran Rajasundram, in Selangor

The death of Gunasegaran Rajasundram, 31, illustrates serious concerns including treatment of suspects, biased investigations, faulty inquest procedures, and challenges facing families seeking to find out what happened when loved ones die in police detention. Gunasegaran died in police custody in the police lockup in Sentul, Selangor, within two hours of his arrest on July 16, 2009. During the inquest, which began a year later in July 2010, three witnesses submitted statutory declarations attesting that Gunasegaran was beaten by the police.[166] Gunasegaren had failed to urinate for a drug test and witness Selvach Krishnan testified at the inquest that he saw Gunasegaren kicked in the chest by Lance Cpl. Mohammad Faizul.[167] The police denied assaulting Gunasegaren and claimed that he fainted when the police were processing his thumbprints and died on the way to the hospital.[168] The death certificate issued by hospital authorities stated that Gunasegaran died from drug abuse-related causes.

The magistrate judge gave an open verdict in the inquest on October 25, 2010 as she could not specify the cause of death: she concluded that both drug abuse and injuries sustained due to beatings could have caused the death.[169] The family subsequently filed an appeal to the Kuala Lumpur High Court. On July 19, 2012, Judge Y.A. Tuan Hj Kamardin Hashim upheld the magistrate judge's decision to issue an open verdict, while at the same time

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[165] Human Rights Watch interview with Kamran R., Kota Bharu, Kelantan, May 29, 2012. Omar B. and Nazri M., the two passengers in the car with Ramadan at the time of the accident had been released after spending 14 days in remand.

[166] The witnesses were Ravi Subramaniam, Suresh M Subbaiahm and Selvach Santhiran Krishnan.

[167] "Witness: Cop Kicked Detainee in Chest," *Malaysiakini*, July 14, 2010, http://www.malaysiakini.com/news/137332 (accessed July 12, 2012).

[168] The police did not provide any resuscitation efforts but splashed water on Gunasegaren. "Witness: Police Had No Intention of Concealing Detainee's Death," *The Sun*, http://thestar.com.my/news/story.asp?file=/2010/1/19/nation/20100119200322&sec=nation (accessed July 12, 2012).

[169] R. Thevarajan, Right to Justice Coordinator, Suaram, "Press Statement: High Court Judge: All Future Death in Custody Cases Should be Investigated by Other District Police," July 19, 2012, received by Human Rights Watch from Suaram by email, May 22, 2013.

raising concerns that police assigned to investigate misconduct cases are often, as in this case, police from the same district as the officers accused of misconduct.[170]

Police Retaliation Against a Witness

Selvachandran was arrested by five plainclothes police officers under the Drug Detention Act on October 25, 2010, only a few hours after the inquest magistrate judge delivered her open verdict. Selvachandran had testified at the inquest that he saw police kick Gunasegaren. Selvanchandran's wife Saraswathy told Human Rights Watch that her husband was beaten and kicked by the plainclothes policemen during his arrest at their apartment and that the police did not search their home.[171]

Selvachandran's initial detention order was based on a police allegation that he was involved in drug activities in 2007. His lawyer, Fadiah Nawad, filed a habeas corpus petition for him on November 23, 2010 and a hearing was scheduled for December 6, but was adjourned to December 20 at the government's request. Six days prior to that hearing, on December 14, the minister of home affairs ordered Selvachandran to be detained for two years at the Batu Gajah Detention Camp in Perak. "This is an old tactic to render a habeas petition moot by authorizing detention under the preventive detention laws," said Fadiah.[172] Not until December 12, 2012 did the authorities release Selvachandran.

Family members and their legal counsel pointed to indications of a cover-up regarding treatment of Gunasegaran, which they allege are evident in how the police handled his death. "The police took two days to notify the family," said lawyer M. Viswanathan. "Why? What were they hiding? Three police reports were filed on the day Guansegaran died, but none of them mention that Gunasegaran actually died in the Sentul police station."[173] At Gunasegaren's inquest, Sentul district police chief admitted that no police report was filed noting Gunasegaren's death even though it was standard police procedure to do so.[174]

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[170] Ibid.

[171] Human Rights Watch interview with Saraswathy, Kuala Lumpur, May 1, 2012.

[172] Human Rights Watch interview with Fadiah Nawad, Kuala Lumpur, May 29, 2012.

[173] Human Rights Watch interview with M. Viswanathan, Kuala Lumpur, April 27, 2012. Copies of police report on file with Human Rights Watch. Police report No. Sentul/009232/09, July 16, 2009; Police report No: Sentul/009234/09, July 16, 2009; Police report No: Sentul/009237/09, July 16, 2009.

[174] "Witness: Cop Kicked Gunasegaren in the Chest," *Malaysiakini*, July 14, 2010. http://m.malaysiakini.com/news/137332, (accessed, March 18, 2014)

Gunasegaran's family also faced obstacles obtaining a second post-mortem. Hospital officials refused to provide a copy of the first post-mortem report to the family despite numerous requests and they had to get a court order to obtain it.[175] The family then had to petition the court again to have the second post-mortem conducted.[176]

The second autopsy was finally conducted on August 20, more than a month after Gunasegaran's death, and once again found that the death was drug-related. But according to Viswanathan, "The chemist who testified in court did not know what level of drug can contribute to death so how can it be concluded that drug overdose is the cause of death?"[177] The second post-mortem also revealed evidence of an injury, measuring 28cm by 8cm and 5cm deep, on Gunasegaren's chest, which is consistent with testimony by witnesses that Gunasegaren was kicked in the chest.[178] The pathologist who performed the autopsy testified that the injury stemmed from "resuscitation efforts," despite denials by police and hospital emergency personnel they had made such efforts. When confronted with this information the pathologist then conceded that there could be other causes for the chest injury.

The police required the pathologist from the first post-mortem to be present during the second procedure.[179] At the inquest, the pathologist who conducted the second autopsy admitted that the body had decomposed, making it difficult for him to conclude the cause of death. Gunasegaren's lawyer alleged that the hospital failed to properly store the body while waiting for a court order for the second post-mortem. "A month passed and when the body was pulled out of the morgue it was devoid of skin, rotten, intestines had fungus, and the brain matter was like oatmeal," said M. Viswanathan. "Why did this happen? It makes

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[175] Human Rights Watch interview with M. Viswananth, Kuala Lumpur, April 27, 2012.

[176] On July 29 and 30, 2009, lawyers for the family wrote to the Registrar of the Kuala Lumpur Subordinate Courts to notify the court about the death of Gunasegaran and request an inquest, to Hospital Kuala Lumpur (HKL) to request a copy of the first post-mortem, to the Sentul police station to confirm if police had no objection to a second post-mortem, and to Pusal Perubatan Universiti Hospital (PPUH) for a second post-mortem. PPUH replied that a post-mortem could only be undertaken if police authorities confirmed their agreement in writing. The police agreed to a second post-mortem provided a court order is obtained and costs for the second autopsy are borne by the family. On August 18, 2009, the Kuala Lumpur High Court ordered the hospital to give the family copy of the first post-mortem, ordered PPUH to conduct a second post-mortem, and directed an inquest to be held. Nick Choo, "Court Allows Second Post-Mortem on Gunasegaran," *The Nut Graph*, http://www.thenutgraph.com/court-allows-second-post-mortem-on-gunasegaran/ (accessed July 24, 2012).

[177] Human Rights Watch interview with M. Viswananth, Kuala Lumpur, April 27, 2012.

[178] Autopsy Report of Gunasegaran A/L Rajasundram, No. A 301/09 on file with Human Rights Watch.

[179] Human Rights Watch interview with M. Viswananth, Kuala Lumpur, April 27, 2012.

no sense. We pride ourselves in building the tallest building in the world and yet cannot keep bodies intact."[180]

On July 19, 2012, the Kuala Lumpur High Court agreed with the open verdict of the inquest that the cause of death could be either a police beating or a drug overdose, but, as noted above, raised concerns regarding impartiality of the investigation as it was done by investigating officers from the same police station where Gunasegaran was detained.[181]

Gunasegaran's sister, R. Ganga Gouri, filed a civil court case alleging that seven policemen from the Sentul police station failed to comply with their legal duties and regulations and that Sentul police commander Zakaria Pagan failed to ensure they did so. However, the High Court dismissed the case on grounds that she did not have *locus standi* to initiate the case against the government, former Inspector-General of Police Tan Sri Musa Hassan, and 10 others. The reason given was that because she was not the "wife, parent or child of the deceased" she was not allowed to file the case on her own behalf. The court further found at the time she filed the case, Ganga Gouri was not appointed the representative or administrator of the deceased's estate.[182] The family's lawyer has said that they plan to appeal the ruling.[183]

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[180] Human Rights Watch interview with M. Viswananth, Kuala Lumpur, April, 27, 2012.

[181] Bernama, "Court Upholds Coroner's Open Verdict on Gunasegaran Case" *Malaysian Insider*, July 19, 2012, http://www.themalaysianinsider.com/print/malaysia/court-upholds-coroners-open-verdict-on-gunasegaran-case, (accessed July 4, 2013)

[182] "Suit against Ex-IGP, Others over Lock-up Death of Shop Assistant Dismissed", *The Star Online,* December 20, 2013, http://www.malaysianbar.org.my/legal/general_news/suit_against_ex_igp_others_over_lock_up_death_of_shop_assistant_dismissed.html (accessed December 21, 2013).

[183] Hafiz Yatim, "Funds being raised for Gunasegaran death appeal", January 4, 2014, *Malaysiakini*, www.beta.malaysiakini.com/news/250898 (accessed January 5, 2014).

Second Post-Mortems

Since 2008, families who are suspicious about the circumstances of a loved one's death in custody and do not trust the government post-mortem report have begun requesting second post-mortems. To do so, the police require the families to obtain a court order and bear the costs of the second post-mortem.[184]

In the case of 23-year-old Kugan Ananthan who died shortly after being beaten at the Taipan police station, in Subang Jaya, Selangor, on January 20, 2009, government pathologist Abdul Karim conducted the first autopsy. He concluded that Kugan had died of "pulmonary edema." This was later disputed by a second report, which concluded that Kugan's death was caused by acute renal failure due to blunt trauma to skeletal muscles.[185] A complaint was filed against pathologist Karim with the Malaysian Medical Council (MMC). In July 2011, the MMC found Karim in violation of the council's guidelines pertaining to "Ethical Implications of Doctors in Conflict Situations" citing his failure to conduct a proper examination and report in his capacity as a government pathologist entrusted with performing an autopsy on the body of a person who had died in police custody. However, the council chose only to issue Abdul Karim a warning.[186]

In several cases of death in custody we examined, a government hospital failed to adequately preserve the body while awaiting a court order for a second post-mortem or approval from the police to proceed with a second post-mortem. In the case of Mohd Johari, 17, who was shot dead by the police on May 13, 2011, the University Malaya Medical Center in Kuala Lumpur refused to accept the body from the family and lawyers. As a result, the body remained in an unrefrigerated hospital hearse parked for four hours in the hot sun.[187] Although the family had a court order authorizing a second autopsy, the hospital insisted that the pathologist from the first autopsy and police be present during the autopsy.

According to Latheefa Koya, the lawyer in Johari's case, by the time the second post-mortem took place the body had decomposed significantly. She claims the second autopsy report was inconclusive due to the poor condition of the body. "Johari's family was quite shocked when

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184 Human Rights Watch interview with M. Viswanathan, Kuala Lumpur, April 26, 2012.

185 Lawyers for Liberty, "Council Finds Pathologist Guilty of Lying in Kugan Report", July 12, 2011, (http://www.lawyersforliberty.org/2011/07/council-finds-pathologist-guilty-of-lying-in-kugan-report/), accessed July, 5, 2013.

186 Ibid.

187 Human Rights Watch interview with lawyer Latheefa Koya, Lawyers for Liberty, Kuala Lumpur, May 25, 2012. Aidala Razak, "Legal Issues Delayed Second Post Mortem," *Malaysiakini*, http://www.malaysiakini.com/news/165275 (accessed July 15, 2012).

they saw Johari's decomposed body rotting in the sun after it was taken out of the hearse," said Koya. "The stench of the body was unbelievable."[188]

Torture and Other Ill-Treatment by Police

> [A] constable stepped on both legs and [another one] took the hose pipe and beat my leg…and then took a gun and put it to my head and ordered me to confess that I am drug addict and stole a lorry.
> —Mogan Subramanian, Kuala Lumpur, April 26, 2012

Malaysian police have frequently tortured or otherwise ill-treated criminal suspects to obtain confessions or other information. The UN Working Group on Arbitrary Detention found that the mistreatment of persons in police custody in Malaysia to procure confessions is widespread. In their 2011 report on Malaysia, the Working Group concluded that "virtually all detainees interviewed stated that they had been subjected to ill-treatment and even torture in police stations and detention centers in order to obtain confessions or incriminatory evidence."[189] Those mistreated in custody may file official complaints with the police or with SUHAKAM. Complaints about police abuse are invariably disputed by the police but there is no transparency in how the police actually investigate allegations made against their personnel.

Mohammad Rahselan, 18, was forced by the police to squat for an hour, do spot jumping, and "walk like a duck" with arms crossed and hands behind his ears at the Bachok police station, in Pasir Mir, Kelantan on February 24, 2012.[190] Rahselan and his friend were arrested at a police checkpoint and issued three tickets for having no driving license, no car insurance, and no road tax registration. At the checkpoint, Rahselan emptied his pockets for the police and showed them his cigarettes, coins, and a wallet.[191] Rahselan was

[188] Human Rights Watch interview with lawyer Latheefa Koya, Lawyers for Liberty, Kuala Lumpur, May 25, 2012.
[189] UN General Assembly, "Report of the Working Group on Arbitrary Detention, Mission to Malaysia, Addendum," A/HRC/16/47/Add.2, February 8, 2011, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/106/38/PDF/G1110638.pdf?OpenElement (accessed June 12, 2012), para. 50.
[190] Human Rights Watch interview with Mohammad Rahselan, Pasir Mas, Kelantan, May 29, 2012.
[191] Ibid.

driven to the Bachok police station in a car with plainclothes police who ordered him to take a urine test to screen for drugs.[192] Rashselan described what happened at the station:

> Before we got the [drug] test result, the plainclothes police told me to go to the back of his office. There he told me to do spot jumping for 10 minutes. After that, he told me to cross my arms and use my hands to hold my ears. He told me to squat . . . for 30 minutes, duck-walk for 10 minutes, and then squat again for another 30 minutes. Another police in uniform came to join him. Both of them told me they would beat me up with a baton if I did not follow their order. So, I had to do what they said until my legs were very sore.[193]

Rahselan's drug test was negative and he was released. Rahselan had leg pain and was taken to a local clinic on February 26 and then to the hospital on March 8. "I was hospitalized for 19 days, and had to urinate through a tube," said Rahselan.[194] His father filed a police report at the Pasir Mas police station in March 2012,[195] but Rahselan said, "My father told me that it was a long shot to have the police punished for what they did to me."[196]

Mogan Subramanian, 42, a car mechanic, alleges that he was beaten and threatened with a gun by officers of the paramilitary RELA (*Ikatan Relawan Rakyat Malaysia*, or Malaysian People's Volunteer Corps)[197] and police officers on February 16, 2012, in Taman Jaya, Selangor.[198] Mogan was driving out of a petrol station around 5 a.m. when eight men asked to inspect his car. Upon inspection they questioned why he had car tools. "I told them that I am a mechanic and need tools to repair cars…One RELA pulled the radio attached to the car. And when I questioned him, he slapped me…Another RELA man came and beat me with a metal iron on my left leg. They tied my hands behind and they brought me to Taman Jaya police station."[199]

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[192] Human Rights Watch interview with Mohammad Rahselan, Pasir Mas, Kelantan, May 29, 2012.

[193] Ibid.

[194] Ibid.

[195] Police Report of Rahsedi Bin Ab Rashid, No. Bachok 10071/12, March 19, 2012, copy on file with Human Rights Watch.

[196] Human Rights Watch interview with Mohammad Rahselan, Pasir Mas, Kelantan, May 29, 2012.

[197] RELA is a paramilitary, volunteer corps organized by the Malaysian government to "maintain the safety and security of the country" that operates under the auspices of the Ministry of Home Affairs , and authorized by the Malaysia People's Volunteers Corps Law of 2012.

[198] Human Rights Watch interview with Mogan Subramanian, Kuala Lumpur, April 26, 2012.

[199] Human Rights Watch interview with Mogan Subramanian, Kuala Lumpur, April 26, 2012.

At the police station, Mogan was accused of being a drug addict and stealing a truck, and was beaten. He said:

> One policeman took a pipe hose and beat under my feet many times until I could not bear the pain. . . .He said I am drug user and said dirty words to me in Malay. After that they let me be for over an hour. Then an Indian constable Ragu without uniform came, and I asked him "Why am I being beaten? I need to send my kids to school this morning."….He kicked my face. Another constable stepped on both legs and Ragu took the hose pipe and beat my leg…then took a gun and put it to my head and ordered me to confess that I am drug addict and stole a lorry.[200]

Mogan was then taken to Kajang police station and brought before an inspector. Mogan's urine test was negative for drugs and by 2:30 p.m. the inspector recommended releasing Mogan because his arrest was a "mistake."[201] Mogan was taken back to Taman Jaypolice station, where his car was parked. "I saw the Indian constable Ragu again," Mogan told Human Rights Watch. "He warned 'You were lucky, no drug in urine. Next time, I will put you in jail and put new cases of stolen cars on you.'"[202]

After his release, Mogan continued to be in pain. On February 19 he went to Serdang Hospital where an x-ray showed that he had a broken leg. He also had trouble with hearing in his left ear because he was kicked on the left side of his face several times.[203] That same day he filed a complaint at the Kajang police station about the beatings.[204]

On February 23, district police chief Abdul Rashid Abdul Wahab alleged that Mogan had made a false statement and said the persons alleged to have interrogated him were not at the police station at the time.[205] When Human Rights Watch met with Mogan in April 2012, he said he had filed a complaint on February 19, but no police official had contacted him

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[200] Ibid.

[201] Ibid.

[202] Ibid.

[203] Ibid. Medical report of Mogan Subramanian on file with Human Rights Watch.

[204] Police Report by Mogan Subramanian, Report No. 5465/12, February 19, 2012 (on file with Human Rights Watch).

[205] Teoh El Sen, "Mechanic May Have Made False Report," *Free Malaysia Today*, http://www.freemalaysiatoday.com/category/nation/2012/02/23/mechanic-may-have-made-false-report/ (accessed June 14, 2012).

since for follow-up.[206] In response to the police allegations that he fabricated the story, Mogan said, "If I hated the police I would have said that the Kajang police also beat me, but I said only the Taman Jaya [police] and RELA beat me. Not all police are bad. In Kajang they are doing their job properly but not in Taman Jaya."[207]

Ahmed Amin Draman, 47, alleges that he was beaten in the Tenah Merah police station, in Kota Bahru, Kelantan. On March 20, 2012, Draman was summoned to the Tenah Merah police station to give a statement regarding a fight that broke out at a United Malay National Organization (UMNO) party rally on March 10.[208] Draman was arrested after giving his statement and accused of starting the fight. He described what happened to him while in the lock-up:

> Three police took me outside of the cell. Two were in uniform and another in plainclothes. The one in plainclothes punched me in the stomach several times until I collapsed to the floor. Then another police kicked me from behind. He kicked me in the back very hard repeatedly. He kicked me several times. People in the cell saw this and they shouted at those police, telling them to stop. That, perhaps, saved me. The beating stopped and I was put back in the cell. I was in severe pain. I had bruises all over my chest, stomach, and back. [209]

Draman was detained for nine days. On May 22, Draman pleaded guilty to the charges and was fined RM 300 (US $93). He told Human Rights Watch, "I decided to plead guilty because I did not see any hope that I could win even though the charges against me were bogus. . . .I fear that will get in more trouble if I try and take legal action against the police who assaulted me."[210]

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[206] Human Rights Watch interview with Mogan Subramanian, Kuala Lumpur, April 26, 2012.

[207] Human Rights Watch interview with Mogan Subramanian, Kuala Lumpur, April 26, 2012.

[208] Human Rights Watch interview with Ahmad Amin bin Draman, Kota Bahru, Kelantan, May 28, 2012.

[209] Ibid.

[210] Ibid.

Excessive Use of Force during Rallies

The Malaysian police have a long history of using unnecessary or excessive force in handling of public rallies and assemblies.

In July 2003, police violently dispersed a crowd of 300 students who were marching peacefully from the National Mosque to the Kuala Lumpur Magistrates Court in support of seven university students on trial for illegal assembly. In February 2004, around 60 persons, including representatives of nongovernmental organizations (NGOs) and political parties, gathered at the entrance of police headquarters in Bukit Aman to hand over a memorandum noting concern about police powers. Police gave an order to disperse and within three minutes shot a water cannon into the crowd.

In November 2007, police violently dispersed participants at a peaceful rally of the Human Rights Party Malaysia and the Hindu group HINDRAF, beat and arrested participants, and used tear gas and water cannons against protesters.[211]

At rallies for electoral reform organized by the Campaign for Free and Fair Elections (known as Bersih, or "clean" in Malay) in November 2007 and July 2011, police used batons,[212] teargas, and water cannons to disperse large, peaceful crowds. More than 1,600 protesters were arrested at the July 2011 rally.[213]

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[211] On August 30, 2007, HINDRAF filed a class action lawsuit in the UK Royal Courts of Justice, demanding redress and compensation for the displacement and exploitation of Indian laborers in colonial Malaysia. A rally was organized for November 25, 2007 near Batu Caves, several miles outside Kuala Lumpur, to gather 100,000 signatures in support of the class action to present to the British Embassy. The police refused to grant a rally permit. HINDRAF proceeded with the rally, arguing that freedom of assembly is a constitutional right. Jalil Hamid, "Malaysia ethnic Indian in uphill fight on religion," *Reuters*, November 8, 2007, http://in.reuters.com/article/2007/11/08/idINIndia-30397720071108?pageNumber=1 (accessed November 9, 2012); "Batu Caves temple property damaged, 69 protestors held," *The Star*, November 26, 2007 http://www.thestar.com.my/story.aspx/?file=%2f2007%2f11%2f26%2fnation%2f19576008. (accessed November 8, 2012).

[212] Police kicked and beat Aleyasak bin Hamid at the November 2007 Bersih rally in Kuala Lumpur. Aleysak recalled what happened that day: "When I saw the police approaching I walked away. It was raining and I slipped. Five or six policemen surrounded me and stomped on my left knee I could hear and feel it pop. Police asked me to stand up. I told them I can't stand up. I could feel the knee broken. The police did not believe me. One policeman pressed me down with his knees on my neck. The police kicked my rib. They kicked my back. They called me pig, a troublemaker." Human Rights Watch interview with Aleysak bin Hamid, Kuala Lumpur, May 25, 2012. Aleyasak was hospitalized for four days underwent surgery and could not walk without assistance of crutches for six months. Hospital Kuala Lumpur Discharge Sheet for Aleysak bin Hamid, November 14, 2007, copy on file with Human Rights Watch.

[213] Following national and international condemnation of the Bersih 2.0 crackdown in 2011, Prime Minister Najib Razak set up a bipartisan parliamentary panel that suggested several changes to the election system. Bersih leaders criticized those changes as inadequate to ensure that the next national elections are fair. Bersih called for the current membership of the Election Commission to resign, for voting rolls to be purged of fraudulent names, and the election to be monitored by international observers.

A SUHAKAM inquiry into the July 2011 rally (popularly known as Bersih 2.0) concluded that the police had used excessive force in beating and dispersing demonstrators, including shooting teargas near hospitals.[214] Several persons, including political opposition leader Anwar Ibrahim and one of his bodyguards, were injured when they were shot with teargas canisters.

Standards for Use for Force During Public Assemblies

Under Malaysia's Peaceful Assembly Act, enforced since April 2012, police are authorized to "use all reasonable force" to disperse a public assembly when the assembly is being held in an unauthorized place, participants are engaged in or about to engage in unlawful or disorderly conduct, or participants are not complying with restrictions imposed by the police.[215]

The UN Basic Principles of the Use of Force and Firearms by Law Enforcement Officials states: "In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable shall restrict such force to the minimum necessary."[216]

The Bersih 3.0 rally, held on April 28, 2012, in Kuala Lumpur, was also marred by excessive use of force by police.[217] Days before the rally, city officials rejected Bersih's request to use Dataran Merdeka (Independence Square) for their rally, citing safety concerns and stating the square could only be used for what authorities considered "national events." The city suggested alternatives in enclosed venues, but Bersih maintained that Dataran Merdeka is a public square for the use of the people. Bersih also rejected alternatives because they claimed it was too late to change preparations for the large crowd expected and because the Dataran Merdeka site was more accessible. On April 27, the police obtained a magistrate's order barring Bersih from the square and the adjoining streets.[218] The public was warned "not to turn

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[214] Syed Jaymal Zahiid, "Suhakam: Excessive Force Used in Bersih 2.0," *Free Malaysia Today*, ttp://www.freemalaysiatoday.com/category/nation/2012/05/04/suhakam-excessive-force-used-in-bersih-2-0/ (accessed June 10, 2012).

[215] Peaceful Assembly Act, art. 21. Prior to the Peaceful Assembly Act, police were authorized, under article 27B the Police Act of 337, to "use such force as is reasonably necessary for overcoming resistance" if persons are ordered to disperse and are not complying.

[216] UN Basic Principles, principle 13.

[217] On April 23, five days prior to the Bersih rally, the Peaceful Assembly Act of 2012 went into effect, allowing the police wide discretion to set the terms under which groups of people can assemble in public.

[218] SUHAKAM, Report of SUHAKAM Public Inquiry into the Incidents During

up, attend or take part in any gathering from April 28, 2012 to May 1, 2012." Prior to April 28, the police also refused Bersih's request for assistance in crowd management during the rally.

On April 28, according to Bersih's estimate, over 250,000 people gathered in Kuala Lumpur and marched towards Dataran Merdeka.[219] Bersih organizers had told participants to march towards the police barricade, but not to breach the barricade. After a small group breached the barricade, Human Rights Watch observed police using teargas and water cannons against all including peaceful participants who had nothing to do with the breach.[220] In its public inquiry findings, SUHAKAM questioned why police failed to arrest the persons who dismantled the barricades since this action took place right where police were deployed.[221]

Thousands of participants who tried to flee from the teargas were effectively trapped. The trains in the immediate vicinity had been ordered shut down by the authorities and police had cordoned off a number of roads that prevented rally participants from being able to leave.[222] The Federal Reserve Unit (FRU), the riot control unit of the police, and regular police began spreading out through the various streets around Dataran Merdeka, and used teargas and water cannons against the retreating rally participants.

According to witnesses, police beat many rally participants. SUHAKAM's public inquiry found that "there was use of disproportionate force and misconduct by the police towards the participants."[223]

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and After the Public Assembly of 28 APRIL 2012, available at: www.suhakam.org.my/public_inquiry, paragraphs 4-5.

[219] Ibid. paragraph 42. Police contested this figure and said it was much lower.

[220] According to news media and the SUHAKAM inquiry, the breach of the barricades took place at approximately 3 p.m. SUHAKAM stated that its inquiry received reports of agents provocateurs in removing the section of the barricades but was "unable to verify this fact or determine who those persons were." SUHAKAM, "Report of SUHAKAM Public Inquiry into the Incidents During and After the Public Assembly of 28 April 2012," available at: www.suhakam.org.my/public_inquiry, paragraph 94.

[221] SUHAKAM found that "the police could and should have immediately arrested the individuals who dismantled the barricades, more so when it happened right in front of the police or within sight of the police. Instead…the police took the decision to disperse the participants [of the rally] by using water cannon and tear gas without arresting the individuals who dismantled the barricades." SUHAKAM, Report of SUHAKAM Public Inquiry into the Incidents During and After the Public Assembly of 28 April 2012, available at: www.suhakam.org.my/public_inquiry, 2013, para. 131.

[222] The SUHAKAM public inquiry reported that witnesses said "that when the water cannon and tear gas were fired, they were not able to disperse because there were no exit routes or access available to them." The report also noted that Light Rail Transit stations were closed in the area. Preliminary findings of SUHAKAM public inquiry, Report of SUHAKAM Public Inquiry into the Incidents During and After the Public Assembly of 28 April 2012, received from SUHAKAM on May 16, 2013, paragraphs 51-53.

[223] SUHAKAM, *Report of SUHAKAM Public Inquiry into the Incidents During and After the Public Assembly of 28 APRIL 2012*, available at: www.suhakam.org.my/public_inquiry, 2013,pparagraph s 57-69.

Radzi Razak, a journalist for *The Sun*, said that police at the Bersih rally beat him, and noted that he was wearing his media identification tag. Radzi had been observing the events and interviewing people. He told Human Rights Watch that around 6:30 p.m. he was sitting on the sidewalk near Dataran Merdeka:

> I saw ASP [Assistant Superintendent of Police] Kartik arrive, I know him from before. He started to speak in a microphone telling cops to assemble. We could not hear what he said. I thought it was ending soon. . . . Suddenly around 7 p.m. the cops just clapped their hands, shouted, and started to sweep the street and beat people. They walked and started to bash people. I saw one police with a rubber pipe was wearing a handkerchief on his face and beating people. I was sitting cross-legged. I had my phone in my right hand and notepad in my left hand. Seven to eight police surrounded me. They kicked me repeatedly, and I fell. I yelled that I am media. Others shouted "Press! Press!" Suddenly they stopped and left. I was kicked and stomped on my body. I managed to cover my face. I was lying on the floor and paramedics came to me.[224]

Razak had a fractured rib and cheekbone and bruises all over his body. He told Human Rights Watch: "I am angry. This was not in the SOP [standard operating procedures]. The police did not want to apprehend the people but just to beat them. . . . I have lodged a police complaint but I don't have faith in the police to investigate and hold anyone accountable."[225]

A witness from the Malaysian Bar Council told Human Rights Watch:

> I was behind the police controlled area. . . . And that's when I saw the protesters beaten. I saw protesters brought back one-by-one in headlocks. No protester was struggling with the police. There were two rows of police officers and enforcement officers from DPKL [Dewan Bandaraya Kuala Lumpur, Kuala Lumpur City Hall] on either side. . . . One policeman would bring a

[224] Human Rights Watch interview with Radzi Razak, Kuala Lumpur, May 2, 2012.

[225] Human Rights Watch interview with Radzi Razak, Kuala Lumpur, May 2, 2012.

> protester in between rows of DPKL and police officers and each [protester] was punched, slapped, kicked by several police. It was a free for all.[226]

The Bar Council observer saw a senior DPKL officer appear and stop the junior officers, "He did not reprimand them but stopped them."[227]

Lawyer Haijan Omar, an observer at the Bersih rally, described how he was beaten:

> It was 7 p.m. …I was near Masjid Jamek LRT [Light Rail Transit] on Jalan Tun Perak. I saw the police running after protesters. Their eyes were red. I was standing with a friend when two policemen in blue uniform shouted at me. I said, "*Apa*" (what?). They charged at me and looked like they were going to attack me. They punched me with their bare fist on my face near my eye. I said, "You can't do this to me. I am a lawyer!" One of them said, 'I don't care if you are lawyer.'"[228]

Omar described how additional policemen came and kicked and punched him. They took Omar and other arrested rally participants to the Pulapol Police Training center (*Pusat Lathan Polis* commonly known as Pulapol) in Kuala Lumpur for processing. He said:

> I was badly injured, blood on my face. . . . As I passed by a group of police officers they took turns to beat me. One FRU beat me with a baton on back. Even in presence of high-ranking officers I was beaten. They have been given license to beat us. A policeman yelled at me, "You ungrateful bastard, your parents sent you to university and this is what you do to the country!"[229]

Omar also told Human Rights Watch about the other detainees in the bus who were taken with him to Pulapol: "Some of them were badly hurt, even worse than me. One was badly injured in the head. One detainee was a paramedic so treated some of us on the bus. He tried to stop my bleeding."[230]

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[226] Human Rights Watch interview with Malaysian Bar Council witness, Kuala Lumpur, May 2, 2012

[227] Ibid.

[228] Human Rights Watch interview with Hanjin Omar, Kuala Lumpur, May 1, 2012.

[229] Human Rights Watch interview with Hanjin Omar, Kuala Lumpur, May 1, 2012.

[230] Ibid.

A week after the rally, a plainclothes policeman from the Batu Pahat Police Station in Johor visited Omar's mother at home and wanted to interview Omar, who was not there. Omar recounted:

> My mother told the policeman, "If you have questions you have to call him [Omar] directly, he is a lawyer." She gave the policeman my number. The policeman warned, "Tell your son not to participate in any rally or demonstration. It's a crime to be part of an assembly in Malaysia."[231]

In total, the police arrested over 512 persons on April 28. The detainees were denied access to lawyers who waited outside the Pulapol police station all night. Police only charged one person but warned others that they might be charged in the future, and the next morning released all those detained.[232]

Bersih and a network of lawyers submitted more than 90 complaints of police abuse to SUHAKAM. SUHAKAM stated that "In most cases, the witnesses who alleged that they were assaulted or injured by police personnel during the assembly of 28 April informed the Panel that they lodged police reports. However, only a few testified that there had been any follow up by the police."[233]

SUHAKAM also faced difficulties with the Royal Malaysia Police, stating that:

> The Panel also notes that there was a lack of co-operation from the PDRM [police] especially in identifying their personnel who were involved in the assault. The Panel also finds it unacceptable that PDRM could not identify their own personnel merely because they were from different contingents and different states.[234]

In its public inquiry into the events of April 28, 2012, SUHAKAM heard testimony from 49 witnesses over 29 days of public hearings that concluded on January 10, 2013. SUHAKAM

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[231] Ibid.

[232] SUHAKAM, *Report of SUHAKAM Public Inquiry into the Incidents During and After the Public Assembly of 28 APRIL 2012*, available at: www.suhakam.org.my/public_inquiry, paragraph 163, 2013.

[233] Ibid. paragraph 125.

[234] Ibid. paragraph 134.

found multiple cases of police abuses against those already detained by the authorities and concluded:

> [M]ost participants were assaulted along the way to the holding area at Dataran Merdeka … even though there was no evidence that they were resisting arrest or behaving aggressively. The Panel finds it particularly disturbing that some of them were assaulted not by police personnel effecting the arrest but by other police personnel who happened to be stationed along the way to the holding area. The police personnel also appeared to be acting in groups… [T]he panel finds that… disproportionate force was used to effect the arrest of [some protesters], resulting in injuries to them.[235]

Human Rights Watch reviewed a number of complaints of abuse that were filed with the police, including the following, and found them credible and in line with Human Rights Watch's own observations on April 28:

Mohammed Fazwaz bin Yousuf described being kicked and beaten. On April 28, around 7 p.m., he said he was near the Masjid Jamek train station. He said that, "Bersih protesters were instructed by the police to disperse. At the same time the instructions were given, the police were also arresting a few Bersih protesters. I was chased by a number of police officers in uniform. I was arrested, handcuffed, punched, and kicked by the police until I fell to the ground. The police kept beating me in the police truck while I was being brought to Pulapol. I suffered injuries on my face, right arm, neck and left leg and I had some bruises. I was detained at Pulapol. I then went to the hospital to get medical treatment."[236]

Lau Chee Sun was injured when a teargas canister hit his left shoulder: "The FRU started firing a lot of teargas canisters, they fell like raindrops on the crowds before the barricades on Jalan Tun Perak…I decided to leave for a safe place but I could hardly turn my body around due to overcrowding. Suddenly I saw teargas [canisters] from the LRT tracks being shot towards us …one landed before me…another one unfortunately hit me on my left shoulder. I was breathless, felt burning and…nearly fainted…I saw the FRU come and they were continuously shooting [tear gas] towards the crowd…I ran and the FRU were chasing

[235] Ibid. paragraph 63.

[236] Police Complaint of Mohammed Fawaz bin Yousuf, No. May 4, 2012, on file with Human Rights Watch.

after us and we hid ourselves in a restaurant. I consulted a doctor due to the pain and burning. There are a lot of blisters on my left shoulder.[237]

A teargas canister hit Asrul Wadi Ahmad in his face. According to media accounts, a medical doctor who examined Asrul testified to SUHAKAM that Asrul Wadi's injuries were the "result of a huge impact with a blunt and speeding object" that had caused "permanent damage to his right eye," which "now has only 15-20% of normal vision."[238] Asrul received nine stitches below his eye.[239]

Malaysian Prime Minister Najib Razak decried the April 28 rally as an attempt to topple the government. He asserted that "They had the intention to take over Dataran Merdeka, not to gather for two or three hours, but for two or three days or even longer, to show that the government cannot control the situation. They wanted to make Dataran Merdeka like the Tahrir Square in Egypt."[240]

On May 9, then Minister of Home Affairs Hishammuddin Hussein announced a government-led panel to investigate the events of April 28 and appointed Hanif Omar, former inspector general of police, to head the panel.[241] However, Omar's impartiality was immediately called into question because he had previously made statements alleging that "communist sympathizers" were involved in the rally.[242] Following Prime Minister Najib's statement that the Bersih rally was an attempt to topple the government, Omar, along with two other former inspector generals, urged the police to investigate the alleged coup attempt during the Bersih rally.[243] The panel interviewed 46 witnesses, but many

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[237] Police Complaint of Lau Chee Sun, No. THS/015818/12, May 4, 2012, on file with Human Rights Watch.

[238] Susan Loone, "Bersih Supporter Hit By Tear Gas May Lose One Eye," *Malaysiakini*, May 24, 2012, http://www.malaysiakini.com/news/198885 (accessed July 16, 2012). Also, Report of SUHAKAM Public Inquiry into the Incidents During and After the Public Assembly of 28 April 2012 received from SUHAKAM on May 16, 2013, paragraph 69.

[239] Ibid.

[240] "Najib: Rally An Attempt to Topple the Government," *The Malay Mail*, May 4, 2012, http://www.mmail.com.my/story/najib-rally-attempt-topple-govt (accessed May 10, 2012).

[241] "Ex-IGP Hanif Omar Leads Bersih 3.0 Probe Panel," *Malayasiakini,* May 9, 2012, http://malaysiakini.com/news/197438 (accessed May 10, 2012).

[242] "Ex-IGP: Pro-Communists Individuals Seen in Saturday's Rally," *New Straits Times*, May 1, 2012, http://www.nst.com.my/latest/ex-igp-pro-communist-individuals-seen-in-saturday-s-rally-1.79559 9 (accessed May 10, 2012) ("I recognize from the photos and broadcast images [taken from the rally], the pro-communist people who were involved in the 1970s demonstrations. . . .The tactics of using provocateurs to cause the demonstrators to clash with police and to bring children along in the hope they would get injured were tactics learnt from past pro-communist demonstrations.")

[243] "Former Top Cops Want Action Against 'Coup Attempts," *Malaysiakini*, May 6, 2012, http://malaysiakini.com/news/197094 (accessed May 10, 2012).

persons refused to cooperate with the panel because of allegations of bias, leading Hanif Omar to lament that "I was disappointed because we are seeking the truth, but the main actors here refused to cooperate on the basis that the panel cannot be credible. We openly called everyone to come. There were those who we invited to come but were persuaded (by certain quarters) not to come."[244] The panel presented its findings to the home minister on June 10, 2013, but to date that report has not been made public.

In May 2012, the government filed criminal charges against opposition leader Anwar Ibrahim and two of his party members for participating in the April 28 rally and disobeying a court order. In July, an additional charge under the penal code of "abetting" the breaking of the barricade at Dataran Merdeka was made.[245] However, on January 6, 2014, the Court of Appeal ruled unanimously to set aside the April 26, 2012 court order by Kuala Lumpur Magistrate Zaki Asyraf to ban the Bersih 3.0 rally under Section 98 of the criminal code.[246] Several days later, on January 10, Kuala Lumpur Sessions Court ordered a discharge of the charges not amounting to an acquittal against Anwar and his co-defendants.[247]

The government also filed a civil damages suit against Bersih co-chairperson Ambiga Sreenavesan and nine other steering committee members for bringing too many protesters to the rally and failing to appoint sufficient personnel to ensure the protest was peaceful. The civil suit seeks restitution for alleged damage to 15 police vehicles, water cannon trucks, and trees, and for the costs of food and drink for security staff.[248] Judicial proceedings in civil suit were ongoing as this report went to press.

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[244] The Malaysian Reserve, "Hanif: Public Apathy on Bersih 3.0 Inquiry," July 11, 2013, www.freemalaysiatoday.com/category/nation/2013/07/11/hanif-public-apathy-on-bersih-3-0-inquiry/, (accessed July 20, 2013); Also, "Panel's Report on Bersih 3 in Minister's Hands for Further Action, or Not," *Malaysian Insider,* July 10, 2013 www.themalaysianinsider.com/malaysia/article/panels-report-on-bersih-3-in-ministers-hands-for-further-action-or-not/, (accessed July 20, 2013).

[245] Kow Gah Chie, "Bersih 3.0: Anwar and Azmin Slapped with Additional Charge," *Malaysiakini*, July 2, 2012, http://www.malaysiakini.com/news/202450 (accessed July 16, 2012).

[246] "Appellate Court Rules Bersih 3.0 Ban Defective", *Malaysiakini,* January 6, 2014, http://www.malaysiakini.com/news/251028, (accessed January 10, 2014).

[247] Hafiz Yatim, "Anwar, Azmin Discharged in Bersih 3.0 Case", *Malaysiakini*, January 10, 2014, http://www.malaysiakini.com/news/251480, (accessed January 10, 2014.)

[248] Nigel Aw, "Government Sues Ambiga, 9 Other for Bersih 3.0 Damage," *Malaysiakini*, May 23, 2012, http://www.malaysiakini.com/news/198817 (accessed July 2, 2012).

Prosecutors charged two police constables for assaulting *Guang Ming Daily* photographer Wong Onn Kin during the April 28 rally,[249] but the charges were ultimately dismissed because the judge ruled the complainant and prosecutors' witnesses were unable to unambiguously identify the policemen involved.[250]

[249] Koh Jun Lin, "Trial of Cops for Assault Bersih 3.0 Postponed," *Malaysiakini*, June 18, 2012, http://www.malaysiakini.com/news/201167 (accessed July 17, 2012).

[250] S. Rutra, "Bersih 3.0: Cops Acquitted of Assault Charges", *Free Malaysia Today*, November 30, 2012, www.freemalaysiatoday.com/category/nation/2012/11/30/bersih-3-0-cops-acquitted-of-assault-charges, (accessed January 29, 2013).

III. Lack of Transparency and Meaningful Accountability

> The Royal Malaysia Police as a team that engages with the public has to be knowledgeable about human rights in the discharge of duties and in dealing with the public. Issues such as police violence, unsatisfactory service, corruption and other negative issues must be eradicated. All police personnel have to remember that they are acting as protectors of the public.
>
> —Then-Prime Minister Abdullah Badawi, Conference of Police Commissioners, Putrajaya, December 29, 2003

Competent and impartial investigations are critical to reduce impunity for police human rights violations and restore public confidence in the police. Yet investigations into police abuse in Malaysia are often conducted by police from the same police station as the accused personnel, raising serious concerns regarding their impartiality. External oversight of policing has continually faced stiff resistance from law enforcement officials. In 2005, the Royal Commission recommended creating an independent police commission but this was defeated by concerted police opposition. The government's failure to hold police officers accountable for acts of misconduct directed at civilians gives a green light for some police to continue to violate rights, undermines public confidence in law enforcement, and discourages victims and their families from cooperating with criminal investigations.

International human rights law places an obligation on governments to investigate alleged killings by law enforcement officials, including cases in which individuals have died in custody due to mistreatment or lack of timely medical care, and to appropriately prosecute those responsible. Investigations are to be prompt, thorough, and impartial. When law enforcement agencies are unable or unwilling to conduct such an investigation, an independent commission of inquiry should do so. Those individuals found responsible for unlawful killings are to be appropriately prosecuted. [251]

[251] See generally, UN Principles on Extrajudicial Executions, principles 9-20.

International law also provides that victims of human rights violations have a right to remedy. Remedies for serious violations include: equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. Victims or their families should receive fair and adequate compensation within a reasonable amount of time.[252]

Police Internal Review Mechanisms

The Royal Malaysia Police is primarily responsible for investigating police misconduct and has two different internal review mechanisms. The so-called Disciplinary Authority office under the Office of the Inspector General of Police investigates police misconduct pursuant to the Public Officers (Conduct and Discipline) Regulations 1993.[253] Types of misconduct investigated through this process include: corruption, truancy, Sharia (Islamic law) violations, drugs, and involvement in crimes. The Criminal Investigation Division (CID) at Bukit Aman investigates complaints of police misconduct referred by the Disciplinary Authority that include allegations of crime.[254]

Investigations by the Disciplinary Authority are carried out by a team of officers headed by a senior officer (if the officer being investigated is a senior police officer) or a senior or junior officer in the case of a junior police officer. The ranking officer prepares a file on the case. A police officer can only be removed from duty if the inspector general of police determines that doing so is in the "public interest."[255]

Civilian complaints about the police throughout Malaysia are filed with a local police station and if they have an element of crime are investigated by CID. Assistant Superintendent Mohd Fahmi Abdullah told Human Rights Watch that "complaints received in all police stations are [recorded] through a computerized system called the Police Reporting System (PRS). This system is connected throughout the country and Bukit Aman. Therefore all cases reported all over the country regardless of the location can be accessed

[252] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), principle 11.

[253] The RMP Disciplinary Authority derives its authority from IGP Standing Order A110.

[254] Email from Assistant Superintendent Mohd Fahmi Abdullah, CID, Royal Malaysia Police, June 20, 2012.

[255] Ibid.

in CID Bukit Aman."[256] According to then-Deputy IGP Khalid, "The CID conducts an investigation and if, for example, the use of weapon is not according to the IGP standing orders then case is referred to Disciplinary Authority or the AG's Office."[257] The police have primary responsibility for investigating complaints of improper police shootings, excessive use of force, or ill-treatment filed at local police stations. Inquiries by SUHAKAM and EAIC involving police abuse are neither automatic nor frequent.

There are few details publicly available regarding how CID investigates civilian complaints about the police, who is assigned to investigate the allegation, to what extent non-police witnesses are interviewed, how promptly investigations are carried out, and when complainants are notified about the status of the investigation.[258]

Malaysians who had filed complaints told Human Rights Watch about the lack of response from the police. "I filed a complaint about my son's [case], but I don't know what happens next. We never hear what action the police is taking," said Sapiah binti Mohd Ellah, mother of Mohd Afham bin Arin, who was shot by the police in Johor Baru in 2010 (a case detailed in chapter II above).

Human Rights Watch requested data from the CID in Bukit Aman on the number of cases received by police from civilians alleging police misconduct, the number of cases investigated by the police, and number of cases referred for prosecution for the years 2001-2012. (See Appendix A). In response, CID provided Human Rights Watch with data from 2005 to May 2012, but explained that the data included both cases of police involvement in crimes referred to them by the IGP's Disciplinary Authority and civilian complaints of misconduct and abuse.

According to that data, between January 2005 and May 2012, the CID opened 4,334 investigation files. Of these cases, 32 percent (1361) were referred to the Attorney General's Office for prosecution, of which 24 percent (325 of 1361) were being prosecuted in court. The Attorney General's Office classified 23 percent of the 1361 cases as requiring

[256] Ibid.

[257] Human Rights Watch interview with Deputy Inspector General of Police Khalid bin Abu Bakar, Kuala Lumpur, May 29, 2012.

[258] According to the Criminal Procedure Code, article 107(A), complainants have the right to request a status update of their complaint and the police have to respond within two weeks of receiving such a request. Human Rights Watch found no evidence that this mechanism was put into practice.

"no further action" due to "lack of evidence." As of May 2012, 68 percent of the 4,334 cases were still pending investigation, including some that were opened in 2005, by the police.[259] (See Appendix B.) The data also includes 733 cases of "other allegations against police personnel" and 1,342 cases listed as simply "others." The police provided no explanation about what these "other" complaints are.

Table 3: Royal Malaysia Police Data on Complaints Received, Investigated, and Referred for Prosecution By the Police 2005-May 2012

Year	Number of Cases Opened	Number of Cases Still Pending Investigation	Number of Cases Referred to Prosecutors	Number of Referred Case Classified NFA (no further action) by Deputy Public Prosecutor	Number of Referred Cases Prosecuted in Court
2005	340	177	163	128	35
2006	394	193	201	162	39
2007	609	380	229	161	68
2008	705	475	230	193	37
2009	723	542	181	133	48
2010	759	502	257	204	53
2011	642	551	91	51	40
2012	162	153	9	4	5
Total	**4334**	**2973**	**1361**	**1036**	**325**

The lack of more specific information on the complaints received and the absence of statistics distinguishing civilian complaints of police abuse from complaints of alleged police involvement in criminal offenses makes it difficult to assess the data. The public is being denied adequate information on whether the police are being held accountable in any meaningful way.

The government's failure to maintain properly defined statistics on civilian complaints of abuse also inhibits its ability to identify underlying causes of police misconduct. The

[259] Letter from Attorney General's Office to Human Rights Watch, September 4, 2012.

causes could be inadequate supervision, training and equipment, as well as vague or unsuitable laws and standard operating procedures. According to the *UN Handbook on Police Accountability, Oversight and Integrity,* complaints data can also be used to identify the operational areas in which abuse of police powers is likely to occur because it can identify which police officers are subject to a high number of complaints.[260] Moreover, since complaints are an important indication of overall police-community relations, the failure of the Royal Malaysia Police to handle and resolve complaints in a transparent manner creates mistrust between the public and the police.[261]

Prosecutions

According to the attorney general's office, the types of cases involving the police referred by the Royal Malaysia Police to both Disciplinary Authority offices and the CID involve "drug related offenses (possession or trafficking in dangerous drugs), causing hurt or grievous hurt, corruption, extortion, and robbery/theft." The number of other offenses referred "are rather small, for example rape, cheating, forgery, committing affray, mischief."[262]

In some cases, widespread publicity of the wrongdoing and broad condemnation by the public has spurred some prosecutions. However, in some cases, even prosecutions do not necessarily result in meaningful punishment of those found responsible. For instance, in neither of the two high-profile cases discussed in this report did all or any of the culpable police officers receive a suitable punishment.

In September 2011, the Shah Alam Sessions Court found police Cpl. Jenain Subi guilty of "culpable homicide not amounting to murder" for the death of 15-year-old Aminulrasyid Amzah. Subi was sentenced to 5 years in prison, although he faced up to 30 years—the

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[260] UN Office of Drugs and Crime, *Handbook on Police Accountability, Oversight and Integrity* (Vienna 2011), p. 50.

[261] UN Handbook on Police Accountability, p. 50. The Council of Europe's Commission for Human Rights has also stated that, "Statistical and empirical research and analysis of complaints is of fundamental importance to democratic and accountable policing. An [independent police complaints body] will be ideally placed at points where police operations and community experiences intersect and, therefore, able to provide the police and public with informed advice on how to improve the effectiveness of policing services and police/community relations." Council of Europe, Commissioner for Human Rights, "Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police," document CommDH(2009) (Strasbourg, March 12, 2009), para. 87.

[262] Data provided by the Criminal Investigation Division, Royal Malaysia Police to Human Rights Watch, June 28, 2012 and Letter from Attorney General's Office to Human Rights Watch, September 4, 2012.

maximum sentence for culpable homicide under the penal code.[263] Subi's sentence was stayed pending appeal of the case and he was released on bail. Aminulrasyid's mother, Norsiah binti Mohammed, told Human Rights Watch:

> I cannot accept this verdict, since a person who rapes gets 8 years and whipping, and this man who killed my son got only 5 years and he is appealing the case. This is not justice. The police have not apologized to me or my family. They called Aminulrasyid a criminal, but they should clear his name.[264]

The senior assistant commissioner of police, Disciplinary Authority, Hashim Abd Jalil, told Human Rights Watch that Jenain Subi had not been investigated by the Disciplinary Authority because "his actions were not inconsistent with the IGP standing order on the use of force and firearms. He was prosecuted because of public sentiment."[265]

On December 5, 2012, the Shah Alam High Court acquitted Subi and released him. Aminulrasyid's mother reacted by saying that:

> I am shocked and aggrieved by the decision. I am very sad as the death of my son did not receive the appropriate defense…I want a commensurate punishment meted out to the accused because my son was not a criminal, he only did not have a driving license in the incident.[266]

Case of Kugan Ananthan

Kugan Ananthan, 23, died shortly after being beaten at the Taipan police station in Subang Jaya, Selangor, on January 20, 2009. Police constable Navindran Vivekandan received a

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[263] "Cop Gets Five Years for Killing 15-Year-Old," *Malaysiakini*, September 15, 2011, http://www.malaysiakini.com/news/175866 (accessed June 11, 2012).

[264] Human Rights Watch interview with Norsiah binti Mohammed, Kuala Lumpur, April 24, 2012.

[265] Human Rights Watch interview with Senior Assistant Commissioner of Police Hashim Abd Jalil, Deputy Chief Secretariat to Inspector General of Police (Discipline), Kuala Lumpur, May 29, 2012.

[266] Bernama, "Acquitted Jenain Apologises to Aminulrasyid's family", re-printed in *The Star*, December 5, 2012, www.thestar.com.my/news/story.asp?file=/2012/12/5/nation/20121205200546&sec=nation, (accessed on July 8, 2013).

three-year sentence on two counts of "causing hurt"—the maximum possible sentence was seven years and a fine.[267]

The police arrested Kugan on January 14, 2009, in connection with a car theft. After his death, his family went to see his body in the hospital. They saw marks and bruises on his body prior to the autopsy. The initial post-mortem report concluded that Kugan died due to "pulmonary edema"—water in his lungs. On January 24, 2009, the family sent the body for a private second post-mortem at the University Malaya Medical Center, which concluded that Kugan's death was caused by "acute renal failure" due to "rhabdomyolysis" due to "blunt trauma" to skeletal muscles.[268] The second post-mortem established the cause of death as injuries due to beatings, identifying 45 categories of external injuries on the body. In April 2009, the police raided the office of the pathologist who had performed the second post-mortem and seized specimens, photographs, and documents relating to the post-mortem without providing any explanation for the raid.[269]

Kugan's death resulted in public outcry against police brutality. Demands for justice were further spurred when it became clear the first post-mortem was fundamentally flawed. In September 2009, Attorney General Abdul Ghani Petal announced that charges for "voluntarily causing hurt" and "grievous hurt" to extort a confession[270] would be filed against police constable Navindran.[271] Eleven officers were also suspended but not charged by the prosecution and returned to duty.[272] In January 2011, the Petaling Jaya Sessions Court acquitted Navindran because the prosecution had failed to prove a prima facie case on the charges.[273] The case was appealed and was transferred to the Shah Alam Sessions Court.

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[267] "Cop Found Guilty of Causing Hurt to Kugan, Gets Six-year Jail Sentence," *The Star Online*, June 11, 2012, http://thestar.com.my/news/story.asp?file=/2012/6/11/nation/20120611114150&sec=nation, (accessed December 6, 2012).

[268] "Deciphering Kugan's Post-Mortem," *Malaysiakini*, May 3, 2009, http://www.malaysiakini.com/news/103504, (accessed November 25, 2012).

[269] "Deciphering Kugan's Post-Mortem," *Malaysiakini*, May 3, 2009, http://www.malaysiakini.com/news/103504 (accessed March 18, 2014)

[270] Penal Code, sections 330 and 331.

[271] "Kugan's Death: One Cop to be Charged Tomorrow," *Malaysiakini*, September 30, 2009, https://www.malaysiakini.com/news/113948 (accessed March 18, 2014)

[272] Nicholas Wang, "Kugan Death: Family Alleges More Guilty," *Malaysiakini*, http://www.malaysiakini.com/news/200618 (accessed November 25, 2012).

[273] "Malaysian Court Acquits Policeman Accused in High Profile Detainee Death Case," *Associated Press*, January 28, 2012, http://www.570news.com/news/world/article/175736--malaysian-court-acquits-policeman-accused-in-high-profile-detainee-death-case (accessed July 18, 2012).

In June 2012, the court found Navindran guilty on two counts of "voluntarily causing hurt to extort confession." The court sentenced him to three years in prison on each count, to be served concurrently.[274] His sentence was stayed pending appeal.

On January 13, 2012, Kugan's mother filed a RM 100 million civil damages suit in the Kuala Lumpur High Court against then Selangor Police Chief (and now IGP) Khalid Abu Bakar, as well as Subang Jaya District Police Chief ACP Zainal Rashid Abu Bakar, Constable Navindran, the inspector general of police, and the Malaysian government.

In November 2012, Navindran testified in the civil court case that he was made a "scapegoat" for Kugan's death by the late Assistant Commissioner of Police Zainal Rashid from the Subang Jaya police station. Zainal Rashid allegedly convened a meeting of all the serious crime officers stationed at the Taipan station. Navindran testified that Zainal Rashid said that "if there were any volunteers who were willing to take the blame, the police would handle their welfare," and that "ACP Zainal Rashid said he was willing to pay the lawyers' expenses."[275] Rodney Pasla Harris, a police officer from the Taipan police station who attended the meeting, also confirmed that Zainal Rashid called for one of the attendees to take the blame for beating Kugan.[276]

On June 26, 2013, High Court Justice V.T. Singham decided for the plaintiff, ordering the defendants to pay RM 851,700 ($266,156) to Kugan's family. Judge Singham stated that he believed that there were others responsible for the beatings inflicted on Kugan, concluding that "This court is unable to accept that the injuries found on the deceased body were caused only by the second defendant [Navindran]."[277]

The judge also ruled that the entry in the station log that Kugan was in "good condition" could have only been made with the knowledge of officers in charge of the station, and found that the entry "flies in the face of the injuries found on the postmortem reports."

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[274] "Kugan Case: Constable Gets 3 Years for 'Causing Hurt'," *Malaysiakini*, June 11, 2012, http://www.malaysiakini.com/news/200513 (accessed July 18, 2012).

[275] Hafiz Yatim, "I was made Scapegoat for Kugan's Death," *Malaysiakini*, http://www.malaysiakini.com/news/213567 (accessed November 25, 2012).

[276] Hafiz Yatim, "Cop in Kugan case tells of meeting to identify scapegoat", *Malaysiakini*, December 17, 2012, http://www.malaysiakini.com/news/216835 (accessed June 2, 2013).

[277] Alyaa Azhar, "Kugan's family wins suit, awarded RM 851,700", *Free Malaysia Today*, June 26, 2013, www.freemalaysiatoday.com/category/nation/2013/06/26/kugans-family-wins-suit/ (accessed July 26, 2013).

Judge Singham concluded "the torturous act by Navindran was condoned by the officers in charge. These injuries could not have been inflicted by Navindran alone. They were over a period of time, over a series of assault and battery by officers who had access to Kugan."[278]

Judge Singham also found that senior police officers Khalid Abu Bakar and Zainal Rashid Abu Bakar were liable to malfeasance of public office. He stated:

> [T]his court also finds several glaring material contradictions between Khalid and other witnesses in respect to the investigation into the death of the deceased…No person in any position or rank, when testifying in court, should take this court for granted and attempt to suppress the truth to escape liability. [279]

In particular, Judge Singham stated that the circumstances should have merited a murder investigation. He noted that Khalid Abu Bakar testified that he negotiated with the Attorney General's Chambers to prosecute Navindran for "causing grievous injuries" rather than murder.[280] The judge asked, "why didn't he [Khalid] comply with the Attorney-General to open up investigation papers for murder and why did he not direct formal departmental inquiry bearing in mind the nature of the injuries and the cause of death?"[281]

On July 12, the government appealed Judge Singham's verdict.[282] The outcome of the appeal is scheduled to be heard in court on April 25, 2014.[283]

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[278] Rita Jong, "IGP responsible for Kugan's death in police custody, court rules", *The Malaysian Insider*, June 26, 2013, http://my.news.yahoo.com/igp-responsible-for-kugan-s-death-in-police-045146944.html (accessed July 15, 2013)
[279] M. Mageswari, "Khalid Response for Kugan's Death", *The Star*, June 27, 2013, www.thestar.com.my/story.aspx?file=%2f2013%2f6%2f27%2fcourts%2f13292893&sec=courts, (accessed July 18, 2013)
[280] Tan Yi Liang, "Kugan's family wins lawsuit against police, govt", *The Sun Daily*, June 26, 2013 http://www.thesundaily.my/news/753193, (accessed July 17, 2013).
[281] Rita Jong, "IGP responsible for Kugan's death in police custody, court rules", *The Malaysian Insider*, June 26, 2013, http://my.news.yahoo.com/igp-responsible-for-kugan-s-death-in-police-045146944.html (accessed July 15, 2013)
[282] Rita Wong, "No closure for Kugan's family as Putrajaya files appeal," *The Malaysian Insider*, July 12, 2013; http://my.news.yahoo.com/no-closure-for-kugan-s-family-as-putrajaya-081313033.html (accessed July 20, 2013)
[283] Haftiz Yatim, "Police, govt appeal 'wrongful award' in Kugan's case", *Malaysiakini*, December 9, 2013, http://www.malaysiakini.com/news/248878 (accessed December 10, 2013); and Bernama, "Kugan Case: Court of Appeal Sets April 25 for Decision"; *The Sun Daily*, March 11, 2014, www.thesundaily.my/news/983000 (accessed on March 11, 2014).

Civil Damages

According to Royal Malaysia Police data provided to Human Rights Watch, 228 civil suits were filed against police officers between January 2002 and March 2012. These cases include: wrongful arrest, unjustified discharge of firearms, causing injury or death to detainees, negligence in handling exhibits, wrongful seizure of goods, unlawful detention, violation of detainees' rights, and trespassing and wrongful search. But the RMP does not maintain data specifying the outcome of the cases or provide the numerical breakdown of the types of cases among the 228 civil suits. This makes it very difficult to determine which types of abuses are common, how cases have progressed through the system, and how courts have handled these cases.

The attorney general's office provided Human Rights Watch with data on successful civil suits against the police from January 2009 through June 2012.[284] Malaysian courts awarded over RM 3 million (US $965,000) in damages in 30 civil suits, paid by the Malaysian government, for negligent shooting, assault and battery, and unlawful arrest and detention.[285] (See Appendix C.)

It is unclear whether any of the police officers named in civil cases have also been criminally charged. Nor is it clear whether the IGP office uses data from civil suits to recommend disciplinary proceedings against implicated police officers or whether it affects their personnel evaluation. Human Rights Watch's queries to both the attorney general's office and the IGP secretariat on this issue had received no response by the time the report was published.

The Federal Constitution permits the government and government officials to be sued.[286] However, since 2009 the ability to seek redress through civil suits in Malaysian courts has been severely hindered by a requirement that the plaintiffs name the specific government official believed responsible for the wrongdoing for the court case to proceed. In *Kerajaan Malaysia v. Lay Kee Tee,* the Federal Court in 2009 held:

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[284] According to the attorney general's office, data for earlier years is unavailable as six years had passed since the files had closed.

[285] According to the attorney general's office, damages for one case had not been assessed at the time data was provided to Human Rights Watch on September 4, 2012.

[286] Federal Constitution, art. 69(2). Sections 5 and 6 of the Government Proceedings of 1956 (Act 359) creates rights to directly sue the government and in case of tort to sue the government vicariously.

> [I]n any claim in tort against the Government, the officer of the Government who was responsible for the alleged tortious act must be made a party and his liability be established before the Government can be made liable vicariously as principal. It would be insufficient to merely identify the officer without joining the officer as a party because liability by evidence needs to be established. It is only upon a successful claim against the officer personally can a claim be laid against the Government.[287]

The government has invoked this ruling and courts have dismissed numerous cases at the pleadings stage when individual identification of the alleged official responsible is unknown. Victims of police abuse such as indiscriminate shooting or excessive use of force during demonstrations told Human Rights Watch about the difficulties they face in identifying members of the riot police who have attacked or shot at them. For instance, during the two Bersih rallies in 2011 and 2012, riot police were not wearing nametags or identification numbers on their uniforms. In July 2012, the High Court of Kuala Lumpur dismissed Shahril Azlan's civil suit (discussed in chapter II, above) against the police seeking damages for being shot at a roadblock in 2009 because he could not identify the individual plainclothes police officers who fired the shots.

External Review Mechanisms

Existing external review mechanisms have so far proven unable to provide a serious check on police abuse. Since the government decided not to implement the Royal Commission's recommendation to set up an Independent Police Complaints and Misconduct Commission (IPCMC), there is currently no external body wholly dedicated to receiving and investigating complaints about police abuse. Police cooperation with existing external review mechanisms, moreover, has generally been poor, and this lack of effective cooperation has helped render the current mechanisms ineffective in addressing the problems of police abuse.

[287] *Kerajaan Malaysia v Lay Kee Tee*, 1 CLJ 663 2009, available at: http://www.cljlaw.com/public/cotw-090130.htm (accessed July 14, 2012).

Human Rights Commission of Malaysia (SUHAKAM)

The Malaysian Human Rights Commission (*Suruhanjaya Hak Asasi Malaysia*), or SUHAKAM, was established in 2001 and is mandated to promote human rights education, advise the government on human rights legislation and policy, receive complaints about human rights violations, conduct investigations, and recommend appropriate measures to relevant government agencies.[288]

Annual reports of SUHAKAM consistently highlight police abuse. In 2011, SUHAKAM received 113 reports of police abuse which included complaints of police inaction, excessive use of force, and abuse of power. The 2010 report noted that the commission received 125 allegations involving the police ranging from "inaction on investigating reports to brutality during investigations, abuse of remand procedures, and indiscriminate discharge of firearms."[289] In the latest SUHAKAM report, covering 2012, police were the subject of 126 complaints, of which 39 involved alleged excessive use of force, 43 concerned abuse of power, and the remainder were prompted by police inaction on complaints.[290]

The police usually do not respond to SUHAKAM's recommendations or requests for information. According to former commissioner Mohammed Sha'ani Abdullah, "The police have an unwritten policy of non-cooperation with any oversight body including SUHAKAM."[291] During the course of its investigations into civilian complaints of police abuse, SUHAKAM has requested information from the police, but has not been provided with any IGP standing orders or seen a police investigation officer's file on a case that SUHAKAM is investigating.[292] Ameer Izyanif, who has worked with SUHAKAM as an investigator for seven years, explained that when they request information from the police they receive "a standard answer that 'police acted based on procedures.' We write again and ask them to explain the procedures but are told that they are confidential. This makes our work difficult."[293]

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[288] Human Rights Commission of Malaysia Act 1999, Act 597, sections 4 and 12, available at http://www.suhakam.org.my/act597 (accessed July 12, 2012).

[289] SUHAKAM, Annual Report 2010, p. 7 (2010).

[290] SUHAKAM, Annual Report 2012, p. 54 (2013)

[291] Human Rights Watch interview with Commissioner Mohammed Sha'ani Abdullah, SUHAKAM, Kuala Lumpur, May 25, 2012.

[292] Human Rights Watch interviews with SUHAKAM commissioners and investigators, Kuala Lumpur, April and May, 2012.

[293] Human Rights Watch interview with Ameer Izyanif, SUHAKAM, Kuala Lumpur, May 25, 2012.

The SUHAKAM annual report covering 2009 cites a case in which SUHAKAM was investigating a fatal shooting allegedly by the police on November 14, 2009. The report states, "SUHAKAM recorded statements from public witnesses, but was denied access to the police personnel involved and was referred to the AG's Chambers instead." SUHAKAM concluded, "Such decisions prevent SUHAKAM from inquiring into complaints regarding allegations of infringement of human rights. SUHAKAM would like to highlight the importance of cooperation and alliance among all stakeholders to deliver the human rights of citizens."[294]

In 2009, SUHAKAM had several meetings with the Royal Malaysia Police to "expedite the resolution of complaints against the police" and proposed a memorandum of understanding (MOU) between SUHAKAM and the RMP "to advance cooperation." According to SUHAKAM, the RMP responded, "as a Government agency under the Home Ministry, they [RMP] do not have the mandate to enter into a MOU with SUHAKAM."[295]

Notably, in July 2012, in the context of the public inquiry into Bersih 3.0, SUHAKAM was provided a copy of the FRU riot police procedures for use of force to disperse public assemblies. SUHAKAM, however, still has not been provided with the complete IGP standing order on use of force and firearms.

SUHAKAM raised serious concerns about the RMP's lack of cooperation with its Bersih 3.0 inquiry. Specifically, SUHAKAM said:

> [T]he Panel also notes that there was a lack of co-operation from the PDRM [police] especially in identifying their personnel who were involved in the assault. The Panel also finds it unacceptable that PDRM could not identify their own personnel merely because they were from different contingents and different states.[296]

The RMP has cooperated with SUHAKAM on human rights education and SUHAKAM has led educational workshops on human rights for the police. The RMP told Human Rights Watch that in 2012, in cooperation with SUHAKAM, topics in the police curriculum included the

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[294] SUHAKAM Annual Report 2009, p. 30.

[295] Ibid.

[296] SUHAKAM, *Report of SUHAKAM Public Inquiry into the Incidents During and After the Public Assembly of 28 APRIL 2012*, www.suhakam.org.my/public_inquiry, 2013, para, 134.

Universal Declaration of Human Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, the UN Basic Principles on Use of Force and Firearms, and the UN Code of Conduct for Law Enforcement Officials.[297]

Enforcement Agency Integrity Commission (EAIC)

Instead of creating an independent mechanism focused on police conduct, the government created the Enforcement Agency Integrity Commission, which oversees the conduct of 19 government agencies.[298] The bill establishing the EAIC was passed in August 2009 and became operational in April 1, 2011.[299] As of May 31, 2013, the EAIC had received 469 complaints, of which 353 involved the police, and the EAIC had formally opened investigations into 124 of the 469 complaints.[300] Most complaints about the police were about failure to take action following a complaint, delays in investigating complaints, and failure to follow procedures during arrest. According to information available to Human Rights Watch, no cases have been referred to the attorney general's office for prosecution.[301]

The EAIC's broad mandate and limited resources severely constrain its effectiveness. For purposes of an investigation, the EAIC has power to conduct a hearing, receive evidence, powers to search, summon any person, and issue a warrant of arrest to compel attendance of a person.[302] However, the EAIC's powers to subpoena are limited to seeking information related to the proceedings of a public inquiry or activities of a special task force.

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[297] Letter from District Commissioner of Police Abdul Rahim bin Hanafi, Deputy Director of Training Royal Malaysia Police, to Human Rights Watch, July 5, 2012.

[298] EAIC powers are similar to the IPCMC draft bill proposed by the Royal Commission. Some key differences between the two entities are that the IPCMC focused solely on the police and would investigate corruption complaints as well, whereas the EAIC has jurisdiction over 19 agencies and does not examine corruption complaints. Corruption complaints involving government employees are handled exclusively by the Malaysian Anti-Corruption Commission (MACC).

[299] The original 2009 bill gave EAIC jurisdiction over 21 agencies. But in 2011 only 19 agencies are under the purview of the EAIC as two of the agencies—Commercial Vehicles Licensing Board and Registrar of Business— now have their own individual agency to review conduct. EAIC can examine conduct by: National Anti-Drugs Agency, Malaysian Maritime Enforcement Agency, RELA, Department of Environment, Immigration Department of Malaysia, Royal Customs Department of Malaysia, Department of Occupational Safety and Health, National Registration Department, Civil Aviation Department, Road Transport Department, Industrial Relations Department, Fisheries Department, Department of Wildlife and National Parks, Labor Department, Ministry of Health (Enforcement Division), Ministry of Tourism (Enforcement Unit of Licensing Division), Ministry of Domestic Trade, Ministry of Housing and Local Government (Enforcement Division), and Royal Malaysia Police.

[300] Boo Su-Lyn, "EAIC Mulls Probes on Deaths in Custody, Police Shootings," *The Malaysia Insider, June 5, 2013,* news.malaysia.msn.com/regional/eaic-mulls-probes-on-deaths-in-custody-police-shootings, (accessed June 15, 2013).

[301] Human Rights Watch interview Complaints Committee of the EAIC, Kuala Lumpur, May 28, 2012.

[302] EAIC, sections 40-41. Persons are legally obligated to provide information on any information that the Commission has a duty to investigate or face a fine not exceeding RM 10,000 or imprisonment for a term not exceeding two years or both. EAIC, section 33.

Based on conversations with EAIC staff, an urgent problem facing the EAIC is the lack of adequate staff and resources to carry out its mandate to assess and investigate complaints filed by the public and refer cases to disciplinary bodies or prosecutorial authorities for action. When Human Rights Watch visited the EAIC in May 2012, the commission was staffed with only 29 people, including administrative staff. A year later, the situation had gotten worse, with only 23 persons working for the EAIC and a total budget of RM 7 million ($2.1 million).[303] Particularly damaging was the fact that at the end of June 2013, the EAIC only had one investigator on staff because its other five investigators had been recalled to their posts at the Malaysian Anti-Corruption Commission (MACC) in mid-May.[304] According to former EAIC chief executive Nor Afizah Hanum Mokhtar, who was abruptly transferred to the Attorney-General's Chambers in late June 2013 after making critical remarks to the media about the EAIC's difficulties,[305] the EAIC needs at least 10 investigating officers and 10 research officers, and budget of RM 25 million, to do its job adequately.[306] In the government's federal expenditure estimate for 2014, the EAIC is slated to see only a slight increase in its budget, up to RM 7.724 million ($US 2.32 million).[307]

A member of the EAIC complaints committee also expressed concern: "We are being set up to fail if we don't get the resources to do our job properly."[308] Former member of the Royal Commission Dennsison Jayashooria raised similar concerns in April 2012, cautioning that the EAIC's "scope" appeared to be "too wide" and that its effectiveness would depend in

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[303] Boo Su-Lyn, "Enforcement Oversight Body Has Just One Officer to Investigate 19 Agencies, Says CEO", *The Malaysian Insider*, June 4, 2013, http://www.malaysianbar.org.my/legal/general_news/enforcement_oversight_body_has_just_one_officer_to_investigate_19_agencies_says_ceo.html, (accessed July 12, 2013).

[304] Ibid.

[305] Mohd Farhan Darwis, "EAIC Chief Transferred to AG Chambers, No Successor Named", *The Malaysian Insider, June 27, 2013,* http://www.themalaysianinsider.com/malaysia/article/eaic-chief-transferred-to-ag-chambers-no-successor-named/, (accessed July 5, 2013).

[306] Boo Su-Lyn, "Enforcement Oversight Body Has Just One Officer to Investigate 19 Agencies, Says CEO", *The Malaysian Insider*, June 4, 2013, http://www.malaysianbar.org.my/legal/general_news/enforcement_oversight_body_has_just_one_officer_to_investigate_19_agencies_says_ceo.html. Mokhtar was replaced by Idham Abdul Ghani, who was seconded from the Attorney-General's Chambers to take over leadership of the EAIC.

[307] Nigel Aw, "No IPCMC, But EAIC Still Cash-Strapped in 2014", *Malaysiakini*, October 26, 2013, http://beta.malaysiakini.com/news/245013, (accessed November 15, 2013).

[308] Human Rights Watch interview with EAIC Deputy Director, Investigation Division, Zulkefle bin Abd. Hamid, Kuala Lumpur, May 28, 2012.

part on whether the government would adequately fund the EAIC to carry out its mission, and in part on the degree of police cooperation with the EAIC.[309]

The EAIC is able to receive complaints of misconduct from the public against any enforcement officer from 19 government enforcement agencies and to investigate and conduct hearings on such complaints.[310] The scope of misconduct includes acts or omission by enforcement officers which are "contrary to any written law" or "a criminal offense."[311]

However, Nor Afizah Hanum Mokhtar, the former chief executive, said in June 2013 that the EAIC had not received any complaints about police shootings, deaths, or injuries in police custody under her watch. However, this changed when the EAIC agreed to investigate the the death-in-custody cases of Dhamendran Narayanasamy and R. James Ramesh.[312] According to an advisor to the investigation, the investigation of the Ramesh case was still proceeding in March 2014, but the EAIC had deferred its inquiry into the Dhamendran case because that case was the subject of ongoing criminal proceedings against four policemen.[313]

A central question is whether the task force set up by the EAIC will be provided with access to any of the IGP's standing orders. EAIC officers told Human Rights Watch that, to date, they have not been able to obtain IGP standing orders, such as the standing order that sets forth police procedures for use of force and firearms. The EAIC has made repeated requests to the IGP office for these orders. As one EAIC officer said, "The police are secretive about

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[309] Human Rights Watch interview with Dennison Jayashooria, former commission member of the Royal Commission, Kuala Lumpur, April 28, 2012.

[310] Enforcement Agency Integrity Commission Act 2009, Act 700, section 4(1)(a). Other functions are to: (b) put in place mechanisms for the detection, investigation, and prevention of misconduct by an enforcement officer; (c) to protect the interest of the public by preventing and dealing with misconduct of an enforcement officer; (d) to provide for the auditing and monitoring of particular aspects of the operations and procedures of an enforcement agency; (e) to promote awareness of, enhancement of, and education in relation to, integrity within an enforcement agency and to reduce misconduct amongst enforcement officers; (f) to assist the Government in formulating legislation, or to recommend administrative measures to the Government or an enforcement agency, in the promotion of integrity and the abolishment of misconduct amongst enforcement officers; (g) to study and verify any infringement procedures and to make any necessary recommendations relating thereto; and (h) to make site visits to the premises of an enforcement agency, including visiting police stations and lockups in accordance with the procedures under any written law, and make any necessary recommendations relating thereto.

[311] The scope of misconduct also includes: any act or inaction which is: in "opinion of Commission unreasonable, unjust, oppressive or improperly discriminatory," "based on a mistake of law of fact," "grounds should have been given but were not," "the failure of an enforcement officer to follow rules and procedures laid down by law." EAIC, section 24(1).

[312] Joyce Babu, "Malaysia Panel to Probe 2 Ethnic Indians' Custodial Deaths", *Indo Asian News Service,* June 12, 2013, http://in.news.yahoo.com/malaysia-panel-probe-2-ethnic-indians-custodial-deaths-115026773.html, (accessed June 25, 2013).

[313] Human Rights Watch phone conversation with advisor to the EAIC task force, March 13, 2014.

their procedures."[314] An EAIC investigation committee member told Human Rights Watch, "The police have not resisted in meeting with us when we need to take their statement about a case, but when requesting SOPs [standard operating procedures] we encounter problems."[315] An EAIC complaints investigator told Human Rights Watch that "in some of the cases the EAIC has referred to the police for further investigation, the police determined that 'no further action' is needed, but then provided no explanation for the NFA."[316] The obstacles the EAIC is facing are similar to those SUHAKAM has faced when investigating alleged police misconduct.

In terms of structure, seven EAIC commissioners are appointed for a renewable three-year term by the Malaysian king on the advice of the prime minister.[317] A quorum of four commissioners is needed to approve the initiation of an investigation by the EAIC.[318]

However, investigations are significantly delayed. Former Chief Justice Tun Abdul Hamid Mohamad reported at an EAIC-organized conference in Putrajaya in May 2013 that he found that only 60 of the 347 cases the EAIC had received at that time had been referred for full investigation, and, of those 60 cases, only 3 had been fully investigated. He said that "under the Act, the full investigation should be done by a task force. But unfortunately, the commission has not established any task force yet, and full investigations were done by the investigators."[319]

The EAIC's complaints committee is tasked to receive and assess complaints, determine the nature of the alleged official misconduct, conduct a preliminary investigation into the complaint, identify which complaints to investigate and submit to commissioners, and inform complainants of the status of their complaint and actions taken by the EAIC.[320] The complaints committee has wide discretion to decide whether the alleged misconduct fits within the EAIC mandate or to dismiss the allegation as "frivolous, vexatious or not in

[314] Human Rights Watch interview with Riaz M. (pseudonym), EAIC Complaints Committee, Kuala Lumpur, May 28, 2012.

[315] Human Rights Watch interview with Faizal M. (pseudonym), EAIC Investigations Committee member, Kuala Lumpur, May 28, 2012.

[316] Ibid.

[317] EAIC, sections 5 and 7.

[318] EAIC section 9(3).

[319] Hafiz Yatim, "Former CJ Laments Ineffectiveness of EAIC," *Malaysiakini,* May, 20, 2013, www.malaysiakini.com/news/230643, (accessed May 28, 2013).

[320] EAIC, sections 16, 23, and 25. The complaints committee comprises full-time EAIC staff, the CEO of EAIC, the EAIC legal advisor. No commissioners are part of the complaints committee.

good faith."[321] According to EAIC staff, the complaints committee meets at least once a week or sometimes more depending upon the volume of complaints received.[322] The complaints committee can assess whether a complaint is better dealt with by the disciplinary authority of an enforcement agency or whether the offense involves corruption and should be referred to the Malaysian Anti-Corruption Commission (MACC).[323]

A complaints committee member explained that getting a formal investigation underway "can take up to two months" after a complaint is received. Procedures dictate that a complaint be first assessed by the complaints committee, then be referred to commissioners for an initial decision on whether to proceed, and finally be referred to the investigations committee for action.[324] A complaints committee member expressed concern that because the commissioners have other full-time jobs it can be difficult to arrange a commissioners' meeting, contributing to delays in making decisions about whether to proceed with an investigation.

When asked what criteria the EAIC uses to defer to a line agency's disciplinary authority or conduct its own investigation, a complaints committee member responded, "It depends if there are specific names of accused, position of the organization, place of misconduct, if we get full details of complaints then we investigate ourselves."[325]

Prior to starting an investigation, the EAIC will inform either the appropriate disciplinary authority of the agency concerned (if the misconduct is of a disciplinary nature) or the relevant enforcement agency and the public prosecutor (if the complaint involves potentially criminal matters).[326]

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[321] The complaints committee assesses whether the complaint is within the scope of misconduct specified under the EAIC bill; the complaint is "frivolous, vexatious or not in good faith"; the subject matter is trivial; the misconduct complained of occurred at too remote a time to justify an investigation; there is or was available to the complainant an alternative and satisfactory means of redress; and the subject matter of complaint has been finally determined by any court or is the subject matter of any proceedings pending in any court, including appeal proceedings. EAIC, section 23(4).

[322] Human Rights Watch interview with Riaz M. (pseudonym), EAIC Complaints Committee, Kuala Lumpur, May 28, 2012.

[323] EAIC, section 23(4).

[324] Human Rights Watch interview with members of the Investigation and Complaints Committee, Kuala Lumpur, May 28, 2012.

[325] Human Rights Watch interview with Deputy Director, Investigation Division, Zulkefle bin Abd. Hamid, Kuala Lumpur, May 28, 2012.

[326] EAIC, section 27. If the commission is not satisfied with the recommendation of the complaints committee the commission may set up a task force to make further investigations into the complaint within 14 days.

EAIC staff told Human Rights Watch that an investigation can take two to three months and depends on cooperation of the enforcement agency, though the aforementioned report on investigation outcomes by Chief Justice Tun Abdul Hamid Mohamad raises concerns that this may be optimistic.[327] When it completes its investigation, the EAIC makes a recommendation and a referral to the appropriate disciplinary or prosecutorial authority.[328] The authorities receiving the EAIC referral have 14 days from the day they receive the EAIC report to communicate their decision to the EAIC on next steps to be taken. [329]

The EAIC law does not specify what happens if any of the 19 enforcement agencies ignore the recommendations of the EAIC nor does it include any provisions compelling an agency to take the action recommended by the EAIC. For this reason, senior leaders of the Malaysian Bar Council told Human Rights Watch that the EAIC process can result in a dead end: while the EAIC can investigate and document a complaint, it cannot compel the RMP or other law enforcement agencies under its purview to accept or implement its recommendations.[330]

[327] Human Rights Watch interview with EAIC Complaints Committee, Kuala Lumpur, May 28, 2012.

[328] EAIC, section 30(1).

[329] EAIC, section 30 (2)(3).

[330] Human Rights Watch discussion with leaders of the Malaysian Bar Council, Kuala Lumpur, May 2013.

Recommendations

The Royal Malaysia Police have been implicated in numerous instances of killings, mistreatment in custody, and excessive use of force for which no one has been held to account. To bring Malaysian government practice into compliance with international legal standards, as well as improve the standing of the police among the Malaysian population, the following steps should be undertaken.

To the Government of Malaysia

- Create an independent, external commission tasked solely to receive and investigate complaints about RMP misconduct and abuse, and endow the commission with all necessary powers to investigate, compel cooperation from witnesses and government agencies, subpoena documents, and submit cases for prosecution.
- Ensure that this commission is an effective police oversight body, requiring at minimum that it:
    - Be provided with all relevant Inspector General standing orders, police training manuals, and relevant police internal policy memoranda that apply to police conduct.
    - Have the authority to inspect police investigation files, interview police officials, subpoena documents and witnesses to appear before it, if necessary, and to refer complaints to the attorney general's office for prosecution.
    - Have sufficient human and financial resources to be productive and effective, including:
        - A sufficient number of full-time, trained investigators to conduct rigorous and thorough investigations, including field investigations.
        - Full-time trained staff to process complaints and follow-up with complainants to notify them in a timely manner of the status of their complaints.

- Keep meticulous records of the numbers and types of complaints received, how they were investigated, and the status of the complaints and their resolution, whether dismissal, referral to the police Disciplinary Authority, or referral for prosecution.
- Have a public education and outreach program and be accessible to the public with community offices across peninsular Malaysia, Sabah, and Sarawak.
- Have the full cooperation of the police who should respond to commission requests and provide relevant documents, records, and police witnesses in a timely manner.
- Be given status updates by the police and the attorney general's office on disciplinary proceedings or prosecutions involving cases referred by the commission.

- Until an external commission is established with a sole focus on RMP misconduct and abuse, reform the Enforcement Agency Integrity Commission (EAIC) to improve its performance by:
  - establishing an appointment procedure and process that guarantees the independence and impartiality of the commissioners
  - establishing criteria that commissioners and senior staff have relevant experience in monitoring and investigating human rights abuses
  - ensuring transparency and timely public disclosure of information about the complaints received and investigations conducted by the EAIC, and
  - ensuring that the EAIC has adequate investigators, resources and personnel to fulfill its mission.
- Amend the EAIC Act to mandate that EAIC commissioners be made full-time, as are members of the Election Commission and the Public Service Commission, so that they can efficiently make decisions on complaints.
- Establish a Parliamentary Select Committee with an equal number of government and opposition members to review the findings and recommendations of oversight agencies, including the EAIC and SUHAKAM, and actions taken by various government agencies in response to those findings, and make recommendations to strengthen public accountability measures. Such a committee would help ensure

that law enforcement agencies are sufficiently responsive to the recommendations of oversight bodies.

- Ensure that Parliament sets aside adequate public debate time each year to review the annual report submitted to Parliament by SUHAKAM.
- Amend the SUHAKAM Act to ensure that the RMP and other government agencies are required by law to respond to the findings and recommendations of SUHAKAM in a timely manner, such as 14 working days.
- Sign and ratify the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

To the Inspector General of Police

Transparency

- Issue a standing order that instructs police stations across Malaysia to fully cooperate with external oversight agencies investigating police conduct by providing access to police files, police witnesses, and other requests for evidence.
- Provide all Inspector General standing orders on use of firearms, procedures for arrest, procedures for investigations, and procedures for deaths in lock-ups to external oversight bodies, including SUHAKAM and the EAIC, and engage with those bodies to bring these standing orders into compliance with international human rights standards.
- Provide annual public reports to Parliament, oversight bodies such as EAIC, and SUHAKAM that should contain: numbers and types of police abuse/misconduct complaints received from the public; status of the complaints investigated; numbers of officers disciplined and for what offenses; and the number of cases referred for prosecution and their status.

Investigation of Civilian Complaints

- Create an RMP Ombudsman's office that is empowered to receive and follow-up on complaints of police abuse with authority to take disciplinary action against RMP officers who obstruct or otherwise fail to cooperate with investigations. Ensure that

the office reports directly to the IGP, has the power to intervene in all police investigations of abuse, and provides a public annual report of its activities.

- To prevent cover-ups of police misconduct, the RMP should revamp its rules for preliminary investigations of deaths in custody, excessive use of force, discharges of firearms resulting in fatal or near-fatal shootings, and complaints of abuse in police custody. Specifically, such assignments should be assigned to officers, including a ranking officer from a different police station than the police station affiliated with the event and with oversight provided by the RMP Ombudsman's office proposed above.
- To better assess police conduct, the IGP should instruct the Criminal Investigation Division to separate civilian abuse complaints concerning the police from cases of alleged police involvement in criminal activities, to catalogue complaints by subject matter, and to conduct and make public an analysis of the complaints, including identifying the individual police officers who are the subject of the complaints and the police stations to which they are assigned.
- Issue a standing order that police shall authorize the conduct of a second, independent post-mortem when requested by family members of a person who has died in police custody or during police attempts to apprehend him or her.

Track Police Officer Records to Identify Problematic Officers

- Establish a tracking system for police officers facing civilian complaints of abuse or misconduct, including those that have been sued for civil damages, in order to identify officers who misuse their power. Such a tracking system should be used to ensure that problem officers are properly investigated and disciplined, provided necessary training, and, when convicted of crimes, dismissed from the police force.
- Police officers who are being investigated for shooting incidents, deaths in custody, or serious physical abuse should be assigned to desk duty pending the outcome of the investigation.

Use of Firearms

- Provide the IGP standing order on use of force and firearms to external oversight bodies such as SUHAKAM and the EAIC.

- Amend the IGP standing order on use of force and firearms to include an escalating scale-of-force guideline, which specifies the appropriate response to a threat or potential lethal assault, and ensure the amended standing order is in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Make available non-lethal equipment to the police and prioritize training to employ less-than-lethal force as an alternative to drawing a firearm where there is no imminent threat to human life.
- Amend the IGP standing order to ensure that in cases involving the fatal shooting or bodily injury of a person by the police, the officer or officers who discharge the firearm must be put on desk duty for the duration of the investigation into the incident.
- In each police region, establish a Firearm-Discharge Investigation unit comprised of a ranking investigating officer, a crime scene investigator, emergency medical personnel, an officer in charge, and a ballistics investigator, which should be dispatched to the scene where firearms were used.
    - A ranking investigating officer from a regional police office should write up and promptly submit to the IGP office a report that includes analysis on how the incident unfolded, witnesses interviewed, forensic results, whether less-than-lethal equipment was available, and why such equipment was not used. Such a report should be used not only for possible disciplinary investigation and or referral for prosecution, but also to provide lessons learned for clarification, amendment of police standing orders, and training.

Training

- All police officers of any rank should receive training on legal, safe, and proportionate use of non-lethal force and firearms. Emphasize that police officers shall as far as possible apply non-violent means before resorting to the use of force and firearms.
- During firearms training, emphasize that lethal force should only be used when strictly necessary to protect human life.

- Firearms training should include escalating steps in the use of force such as challenge, verbal command, restraint techniques, and other less-than-lethal means prior to use of lethal force.
- In cooperation with SUHAKAM, provide appropriate human rights training to police across peninsular Malaysia and in Sabah and Sarawak at point of recruitment and annually.

Police Conduct during Public Assemblies

- Implement training programs for police on crowd control techniques that minimize the need for use of force, in line with the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials.
- Consistent with the UN Basic Principles, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offense and the legitimate objective to be achieved.

Identification of Police Officers

- Ensure that police officers of all ranks are individually identifiable at all times when they are carrying out law enforcement functions, such as by wearing individual badges worn visibly on their uniforms, including when they wear special gear such as helmets or other protective gear. Riot police officers such as the Federal Reserve Unit should wear badges with a distinct personal identification number clearly visible on their uniform.
- Require plainclothes police officers to provide identification with their full name and rank to individuals when they are detaining them for questioning or formally arresting them.

Lock-Up Facilities

- Amend the IGP standing order on lock-ups to require appointment of a custodial officer in each lock-up responsible for conducting risk assessments of detainees when they arrive in the lock-up. Such assessments should be completed within 24 hours of detention and should include the circumstances of arrest, whether any

force or restraints were used, detailed physical description of the detainee, suicide potential, and any critical medical history of the detainee.

- Provide first-aid training to police in charge of lock-up facilities, including so that they have the ability to identify cases that require immediate medical referral.
- Ensure that procedures are in place and are effectively implemented to respond immediately to medical complaints by detainees, including for making referrals and transferring sick or injured prisoners to outside medical facilities for medical examination and treatment.

To the Attorney General

Deaths in Custody

- Issue a directive instructing magistrate judges that they must conduct inquests into custodial deaths as required by section 334 of the Criminal Procedure Code.

Investigations of Police Misconduct

- Provide a public annual report to Parliament with statistics on investigations of police officers, charges filed, status of those cases, as well statistics on civil suits against the government and the police that allege police abuse.
- Maintain proper statistics separating resolution of civilian complaints of police misconduct or abuse from resolution of other types of police involvement in crime such as corruption and drugs.
- Provide information to the IGP office regarding the status of both criminal and civil cases against police officers.

To the Office of High Commissioner on Human Rights

- Provide technical assistance to external oversight bodies such as SUHAKAM and the EAIC on how to conduct competent monitoring and investigation of police misconduct.
- Provide technical assistance to the Royal Malaysia Police to properly categorize, maintain, and evaluate public complaints of police abuse.

Acknowledgments

This report was written and researched by Sahr Muhammedally, consultant to the Asia division at Human Rights Watch. Additional research in Perak and Kelantan was conducted by Sunai Phasuk, senior Asia researcher, and in Kuala Lumpur by Phil Robertson, deputy Asia director. Mickey Spiegel, senior Asia advisor, provided comments on the report. It was edited by Phil Robertson; James Ross, legal and policy director; and Joseph Saunders, deputy program director. Research assistance was provided by Julia Bleckner, Asia associate. Production assistance was provided by Grace Choi, publications director, Kathy Mills, publications specialist, and Ivy Shen, multimedia production assistant.

Human Rights Watch gratefully acknowledges the assistance of Suaram, Lawyers for Liberty, Hindu Rights Party Malaysia, former commissioners Dennison Jayashooria and Ivy Josiah of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, the Malaysian National Human Rights Commission (SUHAKAM), the Enforcement Agency Integrity Commission (EAIC), Andrew Khoo of the Malaysian Bar Council, the Attorney General's office, and the Royal Malaysia Police office of the Inspector General of Police. We would also like to thank the UK Independent Police Complaints Commission and the Officer Safety Division of the UK Metropolitan Police for insights on police use-of-force training and independent police oversight.

Human Rights Watch extends a profound thanks to the men and women who shared the stories that form the basis of this report.

HUMAN RIGHTS WATCH

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Appendix A:
Letters to Agencies of the Government of Malaysia Requesting Data

HUMAN RIGHTS WATCH

www.hrw.org

May 31, 2012

Mr. Lim Leong Hock
Office of the Inspector General Police
Ketua Polis Negara
Ibu Pejabat Polis Bukit Aman
50560 Kuala Lumpur, Malaysia
Via email

Dear Mr. Lim:

Thank you for arranging the meeting with the Deputy IGP Tan Sri Khalid Abu Bakar, Datuk Sri Mohd Bakri Zinin, Dato Hashim, and with ACP Anil Shah on May 29, 2012. I appreciate the time that officials spent with Human Rights Watch. Dato Hashim provided with me disciplinary statistics, which were very useful.

Human Rights Watch would like the following additional information to complete our research:

Training

1. Training topics for rank and file and length of time spent on each topic.
2. Training topics for officers and length of time spent on each topic.
3. Has the new Criminal Investigation Department (CID) Training Center been created yet? If so, on what date? If not, what is the expected date that it will be in operation?
4. Topics covered in the new CID training center.

Statistics from CID

1. Yearly statistics (2002-2012) on the number and types of complaints by the public about police misconduct or abuse received and processed by CID.
2. Conclusion or results of the investigations done by CID on public complaints of police misconduct (2002-2012).
3. Since 2002-2012, how many cases and types of cases that have been referred to the Attorney General's office? (The Deputy IGP mentioned the Aminulrashyid case and noted that other cases that have been referred).

a. What is the outcome of cases referred to the Attorney General's office (2002-2012)?

4. Since 2002, has any police officer or rank and file police been successfully sued in a civil suit by a member of the public?
   a. If yes, the date of judgment, case name, type of case, and damages awarded to complainant against the police?
   b. In the event of damages, has the IGP's office paid for damages or does the individual police have to pay out of pocket?
5. What is the CID process for investigating and responding to a complaint by the public of police misconduct or abuse?
   a. If a complainant files a complaint with the local police station in a village or a major city is it automatically transmitted to CID in Bukit Aman from all over the country?

Thank you for your cooperation. I look forward to receiving the requested information.

Sincerely yours,

Sahr Muhammedally
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muhamms@hrw.org

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June 27, 2012

Datuk Idrus Harun
Solicitor General
Attorney General's Chambers
No. 45, Persiaran Perdana,
Precint 4, 62100, Putrajaya, Malaysia
Via email sg@agc.gov.my

Dear Datuk Idrus Harun:

Human Rights Watch is researching police reform issues in Malaysia. I met with the Deputy IGP Tan Sri Khalid Abu Bakar and Datuk Sri Mohd Bakri Zinin on May 29, 2012 in Kuala Lumpur.

Human Rights Watch requested and has been provided data from Bukit Aman on police disciplinary actions as well as complaints by the public investigated and referred for prosecution by the RMP.

Human Rights Watch would like some additional information from the Attorney General's office to complete the research.

1. Yearly statistics (2002-2012) on the number and types of cases referred by the Royal Malaysia Police (RMP) to the Attorney General's office.
2. Since 2002-2012, how many cases, including types of cases, were prosecuted by the AG's office? What was the outcome of those cases?
3. Since 2002-2012, after investigation by the deputy public prosecutor, how many cases were classified as NFA (no further action) and reasons for NFA?
4. Since 2002, has any police officer or rank and file police been successfully sued in a civil suit by a member of the public?
   a. If yes, the date of judgment, case name, type of case, and damages awarded to complainant against the police?

Thank you for your cooperation. I look forward to receiving the requested information.

Sincerely yours,

Sahr Muhammedally
Human Rights Watch

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September 27, 2012

Tan Sri Khalid Abu Bakar
Deputy Inspector General Police
Ketua Polis Negara
Ibu Pejabat Polis Bukit Aman
50560 Kuala Lumpur, Malaysia
Fax: 0320707500

Dear Tan Sri Abu Bakar:

Thank you for meeting with Human Rights Watch in May 2012. We are finalizing our research on police reform and would appreciate more information from your office. We would like the following information:

1. Copy of the Inspector General Standing Order on Use of Force.
2. Copy of relevant procedures to investigate shooting incidents.
3. Copy of the Inspector General Standing Order or relevant policy memoranda on procedures to investigate deaths in police custody.
4. Copy of the Inspector General Standing Order on Disciplinary Proceedings number A110.
5. Copy of CID guidelines/procedures for investigating a public complaint against the police.
6. Human Rights Watch was provided data by CID and the Attorney General's office on civil suits filed against the police. When a civil suit is filed what steps does CID or the Disciplinary Authority take to investigate the allegations from a disciplinary perspective?

Thank you for your cooperation. I look forward to receiving the requested information.

Sincerely yours,

Sahr Muhammedally
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September 27, 2012

Ms. Evawani Farisyta binti Mohammad
Deputy Public Prosecutor
Attorney General's Chambers
No. 45, Persiaran Perdana,
Precint 4, 62100, Putrajaya, Malaysia

Via email evawani@agc.gov.my

Dear Ms. Mohammad:

Thank you for providing Human Rights Watch data on prosecutions of the police and civil suits filed against the police. We have some additional questions, which will be useful in analyzing the data.

1. Does the filing of a civil suit by the public against the police also trigger criminal investigation and possible charges against the alleged police officer by the Attorney General's office?
    a. If yes, how many criminal charges were filed out of the 32 civil cases noted in Annex C and what is the status on those cases.

2. Annex A notes that cases were labeled No Further Action (NFA) due to lack of evidence. Can you give an example of what constitutes as lack of evidence if these cases have first been investigated by the police and referred for prosecution.

3. In Annex B, does the number of cases brought forward from previous years refer to cases not resolved in the year a particular case went to trial?

4. In Annex B, what are the reasons that 148 cases were rendered Discharged Not Amounting to Acquittal?

Thank you for your cooperation. I look forward to hearing from you.

Sincerely yours,

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muhamms@hrw.org

Appendix B:
Information Received from the Royal Malaysian Police Criminal Investigation Department

Table 1: Types of Cases Involving Police Officers Received, Investigated by Royal Malaysia Police and Referred to Attorney General Chambers from 2005 to 2012 (May)

Sections and Laws	Year							
	2005	2006	2007	2008	2009	2010	2011	2012 (May)
Sec. 14 - Insulting Behavior - Minor Offences Act 1955	1	1	1	0	2	1	0	1
Sec. 147 - Punishment for Rioting - Penal Code (Act 574) Sec. 148 - Punishment for Rioting with Weapons- Penal Code (Act 574)	0	0	2	4	6	5	3	2
Sec. 170 - Personating a Public Servant - Penal Code (Act 574)	2	3	4	0	2	2	2	0
Sec. 223 - Escape from Confinement Negligently Suffered by a Public Servant - Penal Code (Act 574)	6	12	18	22	18	25	10	7
Sec. 302 - Punishment for Murder - Penal Code (Act 574)	2	4	3	0	2	1	1	0
Sec. 307 - Attempt to Murder - Penal Code(Act 574)	2	1	1	0	5	10	1	1
Sec. 323 - Punishment for Voluntarily Causing Hurt - Penal Code (Act 574)	98	94	157	144	166	161	114	37
Sec. 354 - Assault or Use of Criminal Force to a Person with Intent to Outrage Modesty - Penal Code (Act 574)	9	6	16	8	12	2	10	6
Sec. 376 - Punishment for Rape - Penal Code (Act 574)	11	8	25	12	24	11	11	2
Sec. 379 - Punishment for Theft - Penal Code (Act 574)	10	10	8	24	19	14	16	6
Sec. 384 - Punishment for Extortion - Penal Code (Act 574) Sec. 385 - Putting a Person in Fear of Injury in Order to Commit Extortion- Penal Code (Act 574)	13	20	20	21	19	35	24	10
Sec. 392 - Punishment for Robbery - Penal Code (Act 574) Sec. 395 - Punishment for Gang - Robbery Penal Code (Act 574) Sec. 397 - Robbery when Armed or with Attempt to Cause Death or Grievous Hurt - Penal Code (Act 574)	14	21	23	29	32	31	29	3

Sections and Laws	Year							
	2005	2006	2007	2008	2009	2010	2011	2012 (May)
Sec. 457 - Lurking House-Trespass or House-Breaking in Order to Commit an Offence Punishable with Imprisonment - Penal Code (Act 574)	4	3	1	2	2	2	2	1
Sec. 500 - Punishment for Defamation - Penal Code (Act 574)	0	2	2	2	1	2	3	1
Sec. 506 - Punishment for Criminal Intimidation - Penal Code (Act 574) Sec. 507 - Criminal Intimidation by an Anonymous Communication - Penal Code (Act 574)	16	4	35	10	32	58	20	13
Sec. 11 Anti-Corruption Act 1997	1	1	3	4	2	0	0	0
Other Allegations against Police Personnel	70	74	108	130	156	142	90	33
Gaming / Gambling Offences 1953	3	5	8	4	6	5	9	2
Arms Act 1960	2	9	28	26	23	20	14	5
Others	76	116	146	263	194	232	283	32
Total Numbers of Investigation Papers Opened and Referred to Attorney General Chambers	**340**	**394**	**609**	**705**	**723**	**759**	**642**	**162**

Table 2: Yearly Statistics on the Number of Report Made against Police Officers, Results / Status of Investigations and Number of Cases Referred to Attorney General Chambers from 2005 to 2012 (May)

Year	Numbers of IP's* Opened Based on Reports Received	Number of Cases Pending Investigation	Number of Cases Referred to DPP**	Decision of DPP	
				Classified NFA*** by DPP	Prosecuted in Court
2005	340	177	163	128	35
2006	394	193	201	162	39
2007	609	380	229	161	68
2008	705	475	230	193	37
2009	723	542	181	133	48
2010	759	502	257	204	53

2011	642	551	91	51	40
2012 (May)	162	153	9	4	5

Notes:

* Investigation Papers

** DPP - Deputy Public Prosecutor from the Attorney General's Chambers

*** NFA - No Further Action

Table 3: Cases Involving Civil Suits against Police Officers from the Year 2002 to 2012 (March)

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
27	44	34	35	18	28	42	73	46	42	3

Types of Cases Involved in Civil Suit:

- Wrongful Arrest
- Unjustified discharge of firearms
- Negligently causing death of detainees while in custody
- Negligent in handling exhibits
- Wrongful seizure of goods
- Unlawful detention
- Ignoring rights of detainees to counsel and family visits
- Trespassing and wrongful search
- Causing injury to detainees while in custody

Notes:

Detailed statistics are unable to be provided as data is unavailable

Appendix C:
Information Received from the Attorney General's Office on Cases Involving Police Suspects

REQUEST FROM HUMAN RIGHTS WATCH

1. The Attorney General's Chambers received a letter dated 27 June 2012 from the Human Rights Watch requesting information as follows:

   "*Human Rights Watch would like some additional information from the Attorney General's office to complete the research.*

   1. *Yearly statistics (2002-2012) on the number and types of cases referred by the Royal Malaysia Police (RMP) to the Attorney General's office.*
   2. *Since 2002-2012, how many cases, including types of cases, were prosecuted by the AG's office. What was the outcome of those cases?*
   3. *Since 2002-2012, after investigation by the deputy public prosecutor, how many cases were classified as NFA (no further action) and reasons for NFA?*
   4. *Since 2002, has any police officer or rank and file police been successfully sued in a civil suit by a member of the public?*
      a. *If yes, the date of judgment, case name, type of case, and damages awarded to complainant against the police*?"

2. Questions 1 – 3 of the request relates to inputs from the Prosecution Division whereas question 4 relates to inputs from the Civil Division.

<u>Prosecution Division Inputs:</u>

3. Yearly statistics (2002 – 2012) on the number of cases referred by the Royal Malaysian Police (RMP) to the Attorney General's Chambers (AGC) are attached as **Annexure A**.

4. Yearly statistics (2002 – 2012) on the number of prosecutions and the disposal of those cases are attached as **Annexure B.**

5. The types of cases referred to by the RMP and prosecuted by the AGC mainly involved drug related offences (possession or trafficking in dangerous drugs), causing hurt or grievous hurt, corruption, extortion and robbery/theft. There are also other offences which were referred to by the RMP and prosecuted by the AGC but the number of such cases are rather small, for example rape, cheating, forgery, committing affray, mischief etc.

6. The statistics for the number of cases classified NFA after being referred to the AGC are stipulated in **Annexure A**. Reason for NFA is due to lack of evidence.

7. The statistics as in **Annexure A** involved offences investigated by the RMP which covers CID, commercial crimes and narcotics. The statistics also include cases

investigated by the Malaysian Anti-Corruption Commission (MACC) involving police suspects. Discrepancies between the statistics provided by the RMP and the AGC are mainly because RMP statistics only refers to CID cases, excluding commercial crimes and narcotics. RMP statistics also did not include cases investigated by the MACC.

Civil Division Inputs:

8. The statistics on civil suit as per requested under question 4 is attach as **Annexure C**.

Attorney General's Chambers
Malaysia
4 September 2012

ANNEXURE A

Table 4: Statistics of Cases Involving Police Suspects

YEAR	NO. OF IPs REFERRED TO DPP	NO. OF IPs CHARGED	NO. OF IPs NFA
2002	105	36	69
2003	137	33	104
2004	144	45	99
2005	240	85	155
2006	246	77	169
2007	299	99	200
2008	387	116	271
2009	336	111	225
2010	303	118	185
2011	250	121	129
2012 (as of May 2012)	91	52	39
TOTAL	**2538**	**893**	**1645**

Note:

1. Reasons for NFA for each case are not available as no data is kept. However, generally a case is NFA due to lack of evidence.

Reference:

IPs – Investigation Papers

DPP – Deputy Public Prosecutor

NFA – No further action

ANNEXURE B

Table 5: Statistics of Prosecution Involving Police Accused

Year	No. of Cases Prosecuted	Brought Forward from Previous Year	Cases Disposed				Total No. of Cases Disposed	Balance
			Conviction/ Plead Guilty	Acquitted & Discharged	DNAA	Withdraw		
2002	36	0	12	6	9	5	32	4
2003	33	4	9	11	4	2	26	11
2004	45	11	18	13	9	2	42	14
2005	85	14	22	22	13	11	68	31
2006	77	31	26	14	12	11	63	45
2007	99	45	34	24	17	6	81	63
2008	116	63	33	30	27	17	107	72
2009	111	72	61	25	15	8	109	74
2010	118	74	74	26	24	31	155	37
2011	121	37	40	19	13	12	84	74
2012 (as of May 2012)	52	74	20	3	5	4	32	94
TOTAL	**893**		**349**	**193**	**148**	**109**	**799**	

Note:

DNAA – Discharge not amounting to an acquittal

ANNEXURE C

Table 6: Statistics of Civil Suit against the Police by a Member of Public from Year 2002-2012

NO	CASE NUMBER	PARTIES	CAUSE OF ACTION	DATE OF JUDGMENT	AMOUNT TO BE PAID BY THE GOVERNMENT
1.	COURT OF APPEAL, CIVIL APPEAL NO: 01-08-563-09	1. NGAN CHONG MENG 2. NGUI PAU KEONG 3. LIM CHAI TIAM 4. CHAI CHIT MOEY -VS- ASP RAMLY YUSOF AND GOVERNMENT OF MALAYSIA	NEGLIGENT SHOOTING	4TH JANUARY 2012	1ST PLAINTIFF: GENERAL DAMAGES: RM50,000.00 SPECIAL DAMAGES: RM10,525.71 2ND PLAINTIFF: GENERAL DAMAGES: RM75,000.00 SPECIAL DAMAGES: RM5,530.00 3RD PLAINTIFF: RM5,000.00 4TH PLAINTIFF: RM5,000.00 INTEREST 8% FOR ALL
2.	COURT OF APPEAL, CIVIL APPEAL NO: 12-256-2010	PATRICK BAYING ANAK LANGKU -VS- IGP & GOVERNMENT OF MALAYSIA	ASSAULT IN POLICE LOCK-UP	14TH JUN 2010	DAMAGES RM100,00.00 AND INTEREST OF 8% PER ANNUM FROM 9.02.2007 UNTIL REALIZATION
3.	SESSIONS COURT OF KUALA LUMPUR, SUMMONS NO:53-1562-11/11	YEOW LEONG KANG -VS- 1. NORHESHAM B. MOHD NOR 2. GOVERNMENT OF MALAYSIA	NEGLIGENT SHOOTING	7TH APRIL 2012	DAMAGES RM33, 000. 00
4.	HIGH COURT OF PENANG, CIVIL SUIT NO: 22-34-2005 & 22-99-2005	MOHD ZABIDI BIN HASSAN AND LAGI -VS- YEOH YEW JIN (CONSOLIDATE WITH MOHD ZABIDI BIN HASSAN AND 1 OTHER -VS- ANG CHANG LI MEI)	NEGLIGENT SHOOTING	29TH APRIL 2011	DAMAGES RM59, 036.81
5.	SESSIONS COURT OF	GOOI CHAI HUAT	NEGLIGENT	12TH	DAMAGES RM17,600.00

NO	CASE NUMBER	PARTIES	CAUSE OF ACTION	DATE OF JUDGMENT	AMOUNT TO BE PAID BY THE GOVERNMENT
	ALOR SETAR, SUMMON NO.: 51-13-01	-VS- 1. OCPD OF ALOR SETAR 2. GOVERNMENT OF MALAYSIA	SHOOTING	SEPTEMBER 2005	
6.	SESSIONS COURT OF ALOR SETAR, SUMMONS NO: 51-40-09	AZHAM BIN FADZIL -VS- 1. MOHAMAD JIMMY BIN ABDULLAH 2. POLICE IN CHARGE OF KUAH POLICE STATION, LANGKAWI, 3. KEDAH 4. GOVERNMENT OF MALAYSIA	ASSAULT AND BATTERY	25TH JULY 2010	DAMAGES RM 9,317.00
7.	SESSIONS COURT OF SUNGAI PETANI,KEDAH SUMMONS NO: 51-1-06	MOHD FITRI ASLAM BIN ISMAIL (NEXT OF KINS, ISMAIL BIN GHAZANFAR) -VS- 1. KAMALAKARAN A/L APPARO 2. ARUJUNAN A/L MUNIANDY 3. GOVERNMENT OF MALAYSIA	ASSAULT AND BATTERY	21TH SEPTEMBER 2010	DAMAGES RM9,948.42
8.	SESSIONS COURT OF IPOH, SUMMONS NO: 51-41-2004	CHE AZZMI BIN CHE DIN -VS- 1. GOVERNMENT OF MALAYSIA 2. IGP 3. CPO OF PERAK 4. OCPD OF KINTA 5. CORPORAL 88708 MOHD SHUKRI BIN ISMAIL 6. CONSTABLE 11122 MOHD DESA BIN HARUN 7. CONSTABLE 143376 RAFIAN BIN KARIM	ASSAULT AND BATTERY	15TH APRIL 2009	DAMAGES RM 36,058
9.	SESSIONS COURT OF TELUK INTAN SUMMONS NO: 52-19-	ROSLEE BIN AHMAD SAHUDIN -VS- 1. LANCE CORPORAL ROSTAR NOM	NEGLIGENT SHOOTING	14TH MAY 2009	DAMAGES RM 5,000.00

NO	CASE NUMBER	PARTIES	CAUSE OF ACTION	DATE OF JUDGMENT	AMOUNT TO BE PAID BY THE GOVERNMENT
	2005	CHE COB 2. GOVERNMENT OF MALAYSIA			
10.	SESSIONS COURT OF SEREMBAN CIVIL SUIT NO: 53-168-2008	GOOI KIM POH -VS- 1. SARGEANT 65522, NURSHAR BIN SARBAINI 2. SUPERINTENDANT G12694, HAJI MAZLAN BIN OTHMAN 3. OCPD PORT DICKSON 4. GOVERNMENT OF MALAYSIA	UNLAWFUL SEIZURE	24TH JANUARY 2011	RM 35,000.00
11.	HIGH COURT OF PENANG CIVIL APPEAL NO: 12B-249-2011	YANAMUTHU A/L RAMAN -VS- 1. CONSTABLE YUHIZWAN YUSOF 2. HEAD OF CRIME INVESTIGATION DIVISION,SOUTH EAST DISTRICT, PENANG 3. OCPD OF SOUTH EAST DISTRICT, PENANG 4. CPO OF PENANG 5. GOVERNMENT OF MALAYSIA	NEGLIGENT SHOOTING	15 JUN 2012	RM130,000.00 WITH COST RM20,000.00
12.	KLANG SESSIONS COURT SUMMONS NO: 52-1536-2009	YEU CHIAU LING -VS- 1. SARGEANT UMAR BIN ABD SAMAD (S 96744) 2. OCPD KLANG 3. GOVERNMENT OF MALAYSIA	NEGLIGENCE	5TH MAY 2011	RM 27,000.00
13.	HIGH COURT OF SHAH ALAM WRIT OF SUMMONS NO: 21-125-2006	1. SINGARI A/P MAHALINGAM 2. MADARI A/P PELAYUTHAN -VS- 1. OCPD, KAJANG 2. INSPECTOR GENERAL OF POLICE 3. ATTORNEY GENERAL	NEGLIGENCE DEATH IN CUSTODY	15TH MARCH 2011	RM 15,000.00

NO	CASE NUMBER	PARTIES	CAUSE OF ACTION	DATE OF JUDGMENT	AMOUNT TO BE PAID BY THE GOVERNMENT
14.	SELAYANG SESSIONS COURT SUMMONS NO: 53-315-2008	ABDUL RAHMAN BIN HASHIM -VS- 1. HARDIP SINGH 2. SUBRAMANIAM A/L VEERIAH 3. MOHD FAZLEY B ABDUL RAHMAN 4. JALIL BIN TALIB 5. YAHAYA UDIN 6. MUSA BIN DATO HAJI HASSAN 7. GOVERNMENT OF MALAYSIA	NEGLIGENCE	22ND MARCH 2011	RM 76,995.25
15.	SESSIONS COURT OF JOHOR BAHRU SUMMONS NO: 51-46-2007(2)	ISHAK BIN MOHD ELAH -VS- 1. ASP SURESH A/L SUBRAMANIAM 2. INSPECTOR GENERAL OF POLICE 3. GOVERNMENT OF MALAYSIA	UNLAWFUL ARREST AND DETENTION	17TH MARCH 2011	RM25,000.00
16.	HIGH COURT OF JOHOR BAHRU WRIT OF SUMMONS NO: 22-480-2008	TEH ENG LOO -VS- 1. ROSLAN BIN KAMARUDDIN(LANCE CORPORAL 90791) 2. INSPECTOR GENERAL OF POLICE 3. GOVERNMENT OF MALAYSIA	NEGLIGENT SHOOTING	23RD DECEMBER 2011	GENERAL DAMAGES: RM25,000.00 SPECIAL DAMAGES: RM60.00
17.	HIGH COURT OF KUANTAN WRIT OF SUMMONS NO: 22-115-2004	1. DR. HATTA B. RAMLI 2. NAZRI B. HJ AHMAD 3. MAZLAN B. YASSIN -VS- HANAPI B. HJ DAUD	UNLAWFUL ARREST AND DETENTION	12TH OCTOBER 2011	DAMAGES RM200,000.00
18.	HIGH COURT OF TEMERLOH WRIT OF SUMMONS NO: 22-61-2009	1. M.RAMIS A/L MAILVAGAM 2. (NO.K/P:660114-06-5421) -VS- 1. TAN SRI MUSA BIN HAJI HASSAN 2. ROYAL MALAYSIA POLICE 3. GOVERNMENT OF MALAYSIA	DEFAMATION	14TH JUNE 2010	DAMAGES RM100,000.00

NO	CASE NUMBER	PARTIES	CAUSE OF ACTION	DATE OF JUDGMENT	AMOUNT TO BE PAID BY THE GOVERNMENT
19.	HIGH COURT OF KUALA LUMPUR WRIT OF SUMMONS NO: S4-21-269-2007	JOHARI BIN KASMAN -VS- 1. NADZRI AHMAD 2. INSPECTOR GENERAL OF POLICE	NEGLIGENT SHOOTING	21ST SEPTEMBER 2011	GENERAL DAMAGES: RM 150,000.00 SPECIAL DAMAGES: RM 900,000.00
20.	HIGH COURT OF IPOH WRIT OF SUMMONS NO: 22-223-2006	NORSIAH BINTI AHMAD -VS- CONSTABLE HASANUDDIN AND 2 OTHERS	NEGLIGENCE	11TH SEPTEMBER 2008	RM63,360.00
21.	HIGH COURT OF SEREMBAN CIVIL SUIT NO: 23-1-2003	ANTHONY FERNANDEZ -VS- 1. ACP ABDUL KHALID BIN HASSAN (FORMER) 2. ABDUL RAZAK BIN ABDUL GHANI 3. CPO NEGERI SEMBILAN 4. IGP 5. GOVERNMENT OF MALAYSIA 6. THE NEWS STRAITS TIMES PRESS (M) BERHAD 7. R. SITTAMPARAM 8. DATUK AHMAD ABDUL TALIB 9. ASP MAZUPI BIN ABDUL RAHMAN	UNLAWFUL ARREST AND DETENTION AND DEFAMATION	2ND APRIL 2009	COURT OF APPEAL AFFIRMED THE DECISION OF HIGH COURT. CASE FIXED FOR ASSESSMENT OF DAMAGES.
22.	COURT OF APPEAL CIVIL APPEAL NO: J-01-222-2009	YONG MOI SIN -VS- 1. GOVERNMENT OF MALAYSIA 2. INSPECTOR RAMLI MOKHTAR	UNLAWFUL ARREST AND DETENTION	15TH NOVEMBER 2010	DAMAGES RM50,000.00
23.	FEDERAL COURT CIVIL APPEAL NO: 01(F)-7-2011(S)	1. INSPECTOR YUSOF HAJI OTHMAN 2. OCPD, SANDAKAN 3. CP, SABAH 4. IGP, MALAYSIA 5. GOVERNMENT OF MALAYSIA -VS-	UNLAWFUL ARREST AND DETENTION	25TH JULY 2011	FEDERAL COURT DISMISSED THE APPELLANTS' APPEAL. DAMAGES TO BE ASSESSED.

NO	CASE NUMBER	PARTIES	CAUSE OF ACTION	DATE OF JUDGMENT	AMOUNT TO BE PAID BY THE GOVERNMENT
		KWAN HUNG CHEONG			
24.	COURT OF APPEAL CIVIL APPEAL NO: W-01-74-2010	DR. SANUSI BIN OTHMAN AND 28 OTHERS -VS- DATUK ISMAIL BIN CHE ROS & 4 OTHERS	UNLAWFUL ARREST AND DETENTION	26TH APRIL 2012	DAMAGES RM30,000.00 TO EACH PLAINTIFF.
25.	COURT OF APPEAL: CIVIL APPEAL NO: W-01-(IM)(NCVC)-509-11	PREMJEET KAUR A/P NIKA SINGH -VS- 1. CHIEF INSPEKTOR WONG PENG TECK 2. IGP 3. GOVERNMENT OF MALAYSIA	UNLAWFUL ARREST AND DETENTION	9TH FEBRUARY 2012	CASE REVERTED TO HIGH COURT FOR TRIAL.
26.	HIGH COURT OF KUCHING CIVIL APPEAL NO: 12-34-2006-I	MS KUCHING (S) NO. 53-13-2002-I, 53-14-2002-II, 53-15-2002-III (CONSOLIDATION CASE) ELLIS AK JANTOM -VS- C/INSP 11694 HASSAN B HJ MORSHIDI & 11 ORS	UNLAWFUL ARREST	14TH AUGUST 2007	DAMAGES RM 57,104.55
		HAYATI BT SA-PIEE -VS- C/INSP 11694 HASSAN B HJ MORSHIDI & 11 ORS			
		CHUNG KUI NYAN -VS- C/INSP 11694 HASSAN B HJ MORSHIDI & 11 ORS			
27.	HIGH COURT OF KUCHING CIVIL APPEAL NO: MR-12B-2-2011	JICKSONESS AK EDIN AND ANOR -VS- GOVERNMENT OF MALAYSIA AND 2 OTHERS	ASSAULT AND BATTERY	29TH JUNE 2011	DAMAGES RM 15,000.00

NO	CASE NUMBER	PARTIES	CAUSE OF ACTION	DATE OF JUDGMENT	AMOUNT TO BE PAID BY THE GOVERNMENT
28.	HIGH COURT OF SIBU WRIT SUMMONS NO: 22-12-2007	THOMAS LEBAK AND ANOR -VS- RIMBUNAN HIJAU SDN BHD AND 7 OTHERS	UNLAWFUL ARREST AND DETENTION	5TH NOVEMBER 2010	DAMAGES RM 10,000.00
29.	SESSIONS COURT OF KUCHING SUMMONS NO: 53-143-09-III	LIEW YIAN HOCK -VS- OCPD AND 4 OTHERS	UNLAWFUL ARREST AND DETENTION	30TH NOVEMBER 2010	DAMAGES RM 8,800.00
30.	COURT OF APPEAL CIVIL APPEAL NO: Q-08-71-2010	C/INSP NORAZAM AND 2 OTHERS -VS- DEBO AK SAONG AND 2 OTHERS	UNLAWFUL ARREST AND DETENTION	30TH JUNE 2010	DAMAGES RM340,872.87
31.	HIGH COURT OF KUCHING CIVIL APPEAL NO: 12B-10-2010	CORPORAL HUSSAINI B SULONG AND 3 OTHERS -VS- NDUKMIT AK EGOT	NEGLIGENT SHOOTING	12TH AUGUST 2011	RM260,763.18
32.	HIGH COURT OF LIMBANG NO: 22-07-2010 (LG)	UMAR SELUTAN AND 2 ORS -VS- INSP KHAIRUL ANUAR B OMAR AND 2 ORS	ASSAULT, AND UNLAWFUL ARREST AND DETENTION	22ND JUNE 2012	RM 35,000.00

Note:

*Statistics from 2002 to 2006 are unavailable because the files have been destroyed according to Service Regulations because 6 years have lapsed from the date the file was closed.

ROYAL MALAYSIA POLICE
POLICE HEADQUATERS
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KUALA LUMPUR
MALAYSIA

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Ref : KPN (PR) 135/1/7

Date : July 2012

Human Rights Watch,
First Floor Audrey House,
16-20 Place,
London, England EC1N 6SN.
(Via email)

Dear Mr. Sahr Muhammedally,

ADDITIONAL INFORMATION TO COMPLETE HUMAN RIGHTS WATCH RESEARCH

With regards to the above matter, we are pleased to attach our information and answers to your queries following the visit to our Deputy Inspector General Police office, by your Human Rights Watch's team on May 29, 2012.

2. This information is provided in addition to complete your research:

2.1. Training topics that relevant with human rights for rank and file.

SUBJECT	METHODOLOGY	DURATION
1. Concept and principals of human rights	• Lecture • Group Discussion • Case study • Role Play • Demonstration	(To Be Determined)
2. Concept and Basic Principals of International Human Law		
3. Malaysia's View on Human Rights		
4. UDHR,CRC, CEDAW		
5. Basic principal to use force and firearms		
6. Law Enforcement & Code of Etiquette		

2.2. Training topics for officers that relevant with human rights.

SUBJECT	METHODOLOGY	DURATION
1. Concept and principals of human rights	• Lecture • Group Discussion • Case study • Role Play • Demonstration	(To Be Determined)
2. Concept and Basic Principals of International Human Law		
3. Malaysia's View on Human Rights		
4. UDHR,CRC, CEDAW		
5. Basic principal to use force and firearms		
6. Law Enforcement & Code of Etiquette		

2.3. Furthermore, the Royal Malaysia Police (RMP) has established our Crime Investigation Department (CID) College. The college was integrated with other three Royal Malaysia Police training institution, namely the Kuala Kubu Bharu Police College, Special Branch Training School (SBTS) and Traffic Training School, which known as Kuala Lumpur Royal Malaysia Police College and was officially launched on July 10th, 2004. Among courses offered by Crime Investigation Department (CID) College are as follows:-

2.3.1. Diploma In Investigation Sciences (12 months)
2.3.2. Prosecution Course (4 weeks)
2.3.3. Advance Prosecution Course (1 week)
2.3.4. Domestic Violence Handling Course (2 weeks)
2.3.5. Gambling Expert Course (3 weeks)

2.4 For further detail and information pertaining to the training and topic covered, we are very much appreciated if you could manage to surf our Royal Malaysia Police College website at http://rmpckl.rmp.gov.my.

3. We thank you on your concern and wish that this briefly information will assist you to complete your research.

Thank You.

(DATO' ABD RAHIM BIN HANAFI) DCP
Deputy Director of Management (Training)
Royal Malaysia Police
Bukit Aman, Malaysia

"No answers, no apology" was how a mother described the response of the police in Malaysia to her inquiries about her son who was shot to death by police officers. Her experience is echoed by many other families whose relatives have been killed or injured by the Malaysian police.

Based on in-depth interviews in the capital, Kuala Lumpur, and in Selangor, Johor, Kelantan, and Perak, this report documents failures by Malaysian authorities to adequately investigate allegations of deaths and mistreatment of persons in police custody, unjustified shootings, and excessive use of force in dispersing peaceful public demonstrations.

There is typically no meaningful accountability for the police officers and officials implicated in such abuses. The police do not effectively investigate allegations of misconduct and the government has shown no inclination to ensure they do so. This impunity is facilitated by the lack of a robust, independent oversight body focused specifically on police accountability, and the police force's poor record of cooperation with existing oversight bodies, including the national human rights commission, SUHAKAM. Police secrecy about internal policies, such as standing orders on the use of force and firearms, further frustrates external investigations.

Police need to be accountable to the public and should demonstrate that their policies and practices conform to international human rights standards. External pressure and oversight are important in improving accountability, and police leadership and effective supervision are critical to preventing abuse and misconduct.

Human Rights Watch recommends that the Malaysian government create an independent, external commission tasked solely to receive and investigate complaints about police misconduct and abuse. Police authorities should establish an ombudsman's office empowered to receive and follow up on complaints of police abuse and take disciplinary action against officers. Those authorities should also share internal police standing orders with external oversight bodies and reform those orders to bring them into compliance with international human rights standards.

(above) Police attempt to arrest a protester at the start of the Bersih 3.0 rally in Kuala Lumpur on April 28, 2012.

(front cover) Marry Mariasusay holds a photo of her late husband, Dhamendran Narayanasamy, at the Kuala Lumpur Hospital morgue on May 22, 2013.

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