SUHAKAM PUBLIC INQUIRY INTO THE ARREST AND DETENTION OF THE 5 LAWYERS OF THE KUALA LUMPUR LEGAL AID CENTRE

DECISION

1.0 Introduction

1.1 On 20th May 2009, Suhakam received a memorandum from the Malaysian Bar Council requesting Suhakam to conduct a public inquiry into the arrest of 5 advocates and solicitors (lawyers) of the Kuala Lumpur Legal Aid Centre (KL LAC) on 7th of May 2009 at the precincts of the Brickfield Police Station, Kuala Lumpur. Due to the importance of the human rights and public interest issues raised therein warranting a public inquiry, Suhakam at its monthly meeting of the full Commission on 13th July 2009 decided to establish a panel of inquiry pursuant to section 12(1) of the Human Rights Commission Act, 1999 (hereinafter "**Suhakam Act**") to inquire into the exact circumstances of the said arrests.

1.2 The terms of reference of this public inquiry are:-

(i) To determine whether the arrest and detention of the five KL LAC lawyers by the Police at the Brickfields Police Station on May 7th 2009 constitutes a denial of legal representation and a contravention of Article 5 of the Federal Constitution and Section 28A of the Criminal Procedure Code (CPC) and therefore a violation of human rights;

(ii) To determine whether there was any justification or necessity to arrest and detain the KL LAC lawyers under section 27 of the Police Act, 1967 and therefore a violation of human rights;

(iii) if violation of human rights accrued, to determine:-.

(a) which person or agency was responsible;

(b) how did such violations occur;

(c) what administrative directives and procedures, or arrangements constituted to them; and

(d) what measures should be recommended to be taken to ensure that such violation do not reoccur.

1.3 The public inquiry were conducted by the Panel consisting of the 3 of us from the 7th of May 2009 up to the 23rd of February 2010 when submissions by all parties were concluded. We adjourned the inquiry to a date to be fixed for our decision. We had contemplated making our decision earlier but due to certain technical problems, mostly in the delay of the preparation of the verbatim notes of the proceedings by the Secretariat we were unable to deliver our opinion any earlier. The hearing of the testimonies and submissions took longer than expected. A total of 27 witnesses testified comprising of 15 civilian witnesses (including those from the Bar) and 12 police witnesses.

1.3.0 The proceedings were delayed mostly due to an interlocutory matter that arose in the middle of the proceeding proper and this was in relation to the issue of whether Suhakam was empowered in law to record statements from witnesses or potential witnesses,

including police witnesses. That issue has now been resolved and is now the subject of our separate opinion and treatment dated 11th September 2009. That interlocutory decision has not been subjected to any challenges by any party including the Police or the Honourable Attorney General. Since that decision and in the course of the period of the remainder of this proceeding the Police witnesses had decided to provide the Suhakam investigating officers with written and authenticated statements.

1.3.1 We must place on record our appreciation to all parties representing the Police, the Bar Council Malaysia, the KL LAC and other civilians who had come forward as witnesses for the inquiry. Long before the commencement of the inquiry the Suhakam Secretariat was directed by us to invite the representatives of the Attorney General's Chambers to participate in this very important public inquiry. We were of the opinion that since some of the issues raised in this inquiry would directly affect the police force, Brickfields Police in particular, an impartial participation by the Attorney General's Chambers would be a serious contribution to the determination in this inquiry. The Attorney General Chamber's non-response and non-participation in this inquiry remains a matter of regret.

2.0 At the heart of the inquiry is the question of the justification for the:-

(a) arrest of the 5 KL LAC lawyers;

(b) their detention overnight; and

(c) the denial to them of their constitutional rights to communicate and consult legal practitioners of their choice.

If these 3 questions are answered in a wholesome fashion the other issues raised in the terms of reference would in our opinion fall into place and would by themselves provide adequate answers on the issues of breaches of human rights, responsible party or parties for such transgressions, circumstances under which such transgressions could have taken place, etc.

We have given anxious considerations on the approach we should take. This inquiry presents a unique situation of the interplay of facts and the law. It is a unique situation because the status of the arrestees (ie, the 5 KL LAC lawyers) are highly relevant. This is to be contrasted with the position of the 14 arrestees earlier arrested and detained. In ascertaining this unique position of the 5 KL LAC lawyers we would have to determine whether they were there at the boom gate of the Brickfields Police Station in their professional capacity as defence lawyers or were they participants in some kind of illegal or unlawful assembly, or could they have been reasonably perceived as such by the Brickfields Police. We therefore propose to examine the question of the status of defence counsel in criminal matters and their roles in the criminal justice system as a whole as an important prelude or even as a threshold issue of fact and law that could unlock the various answers we are seeking herein.

3.0 The special position of lawyers in the criminal justice system

3.1 Under the Legal Profession Act, 1976

Individually an advocate and solicitor of Malaya has the exclusive right to appear and plead in all courts of justice in Malaysia and as between themselves shall have the same rights and privileges without differentiation. Due to this status these lawyers are officers of the courts and the criminal lawyers are officers of the criminal justice system as well. Whether the lawyers, individually or as an Association choose to levy fees on particular clients or not, do not remove the quality of solicitor/client relationship in any given situation. Section 42(1)(h) however empowers the Bar as an Association of lawyers to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors. This section merely authorizes the Bar to provide fund for such a scheme. It has no bearing however to the locus standi of each advocate and solicitor acting for any litigant on gratis basis.

In any case the question of whether the provision of the Bar in their legal aid scheme is utilized to the latter of the law or not for impecunious persons has no bearing whatsoever to individual lawyers "client/solicitor relationship".

3.2 Universal Declaration of Human Rights, 1948

Article 8, 9, 10 and 11 read together declare the right of an individual to be treated fairly, possessing right to an effective

remedy against acts violating his fundamental rights, to be tried by our impartial tribunal and the presumption of innocence. Implied necessarily within these rights is the right to counsel for such rights to be fully exploited otherwise the rights will remain illusory.

At the beginning of the preamble to the **UDHR 1948** there is recognition of the "*inherent dignity and of the equal and inalienable rights*" of human rights and stated to be "*the foundation of freedom, justice and peace in the world.*"

Further, having noted human barbarous acts resulting in mayhem and misery over the two world wars and in order to avoid rebellions against tyranny and oppression, the UDHR declared such human rights should be provided and "*protected by the rule of law*."

The dominant purpose of the UDHR was to set a common standard of achievement for human rights in member countries.

In the United Nation's attempt to spell out the various human rights exhaustively, a number of the provisions, (in Articles 1 to 28) often overlap in their ambits. Articles 29 and 30 are provisos in effect.

Although the UDHR, when originally adopted by member countries, was not legally binding, it has now achieved it's dominant purpose of being regarded as a standard upon which human rights practiced in various member countries are judged upon.

3.3 **Section 4 of Suhakam Act, 1999**

In Malaysia however, with the passing of the Human Rights Commission of Malaysia Act 1999, ("Suhakam Act"), the UDHR has been recognized as forming part of domestic laws of Malaysia.

Section 4(4) of the HR 1999 Act declares "*for the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution.*" The Suhakam Act defines human rights as referring to fundamental liberties as enshrined in Part II of the Malaysian Federal Constitution. It is therefore arguable that the provisions of the UDHR are in fact supplemental to Part II of the Federal Constitution. That being the case, the UDHR may be further argued to have constitutional dimension and status as long as the provisions of the UDHR are not inconsistent with the Federal Constitution.

3.4 Other international human rights instruments pertaining to lawyers

Between August and September of 1990 at the eighth United Nations Congress on the Prevention of Crime and the Treatment of offenders held in Havana, Cuba, the Congress passed and adopted a significant document called 'Basic principles on the Role of Lawyers'. We are told that at that Congress, as is usual in these circumstances, the Government of Malaysia was represented by a three man delegation (headed by Tan Sri Hanif Omar, the then Inspector General of Police). It is significant to note that the Government of Malaysia adopted these basic principles on the role of lawyers without any reservations.

The Basic Principles, according to its preamble, have their roots in the Charter of the United Nations and the UDHR 1948 (among others) to which Malaysia is a party.

Principles 1 to 8 spell out basically the right of an arrested person for access to his lawyer. These principles are relevant when we look at our own **Article 5(3) of the Federal Constitution and Section 28A of the Criminal Procedure Code** in the light of Malaysian case laws thus far. We will look back at these principles when we deal specifically with s.28A CPC in the light of article 5(3) of the Federal Constitution.

Principles 12 to 22 are the most relevant for our current discussion on the status and position of defence lawyers in the criminal justice system. In summary these principles declare:-

(a) defence lawyers are agents of the administration of justice. In the Malaysian courts system we have no difficulty in accepting lawyers as officers of the courts, an essential appendage to the administration of justice in court. There has not been enough emphasis in the principle that defence lawyers' role do not begin merely in the courts. They begin from the moment their clients become suspects in police investigations;

(b) defence lawyers owe the obligations and loyalty to protect the rights of their clients and in promoting the cause of justice, to uphold human rights and fundamental freedoms;

(c) Governments have the duty to ensure the functioning and security of lawyers. In its fuller format it declares in **principle 16**:-

"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standard and ethics."

Principle 17

"Where the Security of lawyers is threatened as a result of discharging their functions they shall be adequately safeguarded by the authorities."

Principle 18

"Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

Principle 21

"It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers

to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."

Rule 22

"Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."

Rule 25

"Professional associates of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics."

We have taken the trouble to quote the above in extenso for the sole purpose of impressing upon ourselves of the importance of the role of defence lawyers in the criminal justice system. In this connection we have during the course of submission by various parties, in particular from the Bar, inquired of the status of defence lawyers as individuals and the Bar, as an association of such lawyers in relation to their role in the criminal justice system. Due to the grave importance of the role of the Bar as defenders of human rights some jurisdictions have started a debate as to whether the Bar ought to be regarded as the 5th Estate in the checks and balances of the larger Government or the Administration.

This debate is perhaps connected to the historical development of the role of the Press/Media which has long been accepted as the 4th Estate or arm of the larger Government in a matured democracy in ensuring the much needed checks and balances.

But after much anxious considerations we are however more inclined to place the role of the Bar in the criminal justice system within the scope of the role of the Judiciary itself. As we have stated earlier, lawyers appearing in the Courts are officers of the Courts and they carry the duty and responsibility as such. Correspondingly, the administration of the criminal justice system which includes the courts, the Police and other enforcement agencies and the Attorney General's Chambers must recognize and respect this unique status of lawyers under this system.

3.5 **Article 5(3) of the Federal Constitution, section 28A of the CPC and principles 1 to 8 of the Basic Principles on the Role of Lawyers**.

3.5.1 several Malaysian and Singapore cases have interpreted the right to counsel under Article 5(3) of the Federal Constitution. The locus classicus is the Federal Court decision of **Ooi Ah Phua** v **Officer in Charge Criminal Investigation, Kedah/Perlis** [1975] 2 MLJ 198. That was a decision of the Federal Court 35 years ago and we would have to re-examine whether Ooi Ah Phua is still as relevant today as it was then in the light of the following main reasons:-

(a) **Article 5(3)** of the Federal Constitution being a constitutional provision is dynamic in its effect in relation to changing circumstances and need of society. Should **Article 5(3)** continue to be interpreted restrictively the way Ooi Ah Phua had interpreted?;

(b) The passing of **section 28A** of the CPC, which seems to provide the mechanics to the working and interpretation of **Article 5(3)** of the Federal Constitution. Infact, the passing of this legislation is clear proof that society has changed in its perception of the right granted under Article 5(3);

(c) relevant International and local instruments that bear relevance on the issue.

Suffian LP in **Ooi Ah Phua** in discussing the issue in the appeal with respect to a habeas corpus application seemed to have been inappropriately influenced by two factors:-

(a) that once a detention has been sanctioned by a judicial body such as a magistrate, no transgression of any kind (including a constitutional one) by the Police during the period of custody could alter a lawful detention into an unlawful one. (see pp. 199, para B right column; pp.201, column I left). This view cannot be defended in the light of modern judicial view such as amplified in the cases of **The State (at the Prosecution of Robert Trimbole otherwise known as Michael Hanbury)**

v **The Governor of Mountjoy Prison** [1985] IR 550 (adopted in **Tan Hock Chan** v **Menteri Dalam Negeri Malaysia & Ors** [1994] 1 MLJ 160).

A judicial sanction for a detention is on the presumption that the physical act of the detention itself be carried out by the authorities lawfully. Assuming there is a purposeful deprivation by the police of the detenues' right to consult his counsel throughout his detention, can the court continue to sanction such a detention?

The decision in **Trimbole** has been accepted or argued in our jurisdiction. See the cases of **Tan Hock Chan v Menteri Dalam Negeri, Malaysia & Ors** [1994] 1 MLJ 60 (HC), **Abdul Razak Baharuddin & Ors v Ketua Polis Negara & Ors** [2006] 1 MLJ 320 (FC).

The decision in **Trimbole** lays down certain principles that the Malaysian courts can adopt as techniques for the court to resort to in ensuring that constitutional provisions especially of fundamental liberties are strictly adhered to. The court in applying the **Trimbole**'s principle must vigilantly uphold to the fullest the constitutional rights and protection afforded in criminal justice through the Constitution. The entrenched provisions of Article 5 is solemn in its declaration of rights of individual liberties. Enforcement authorities who choose to consciously and deliberately violate the constitutional safeguards of citizens must therefore expect a corresponding reaction from the courts namely that the court would declare

not only the impugned acts to be unlawful but that any benefits derived from such an illegal act of public officers are to be restored to the victims in the original condition. The sanctions the court exhibited by virtue of the **Trimbole**'s principle will discourage enforcement authorities from committing infringement of constitutional rights of citizens.

(Note: Article 40 of the Irish Constitution is in spirit identical to our Article 5 and 8 combined)

[c/f: **Mohamed Ezam v Ketua Polis Negara** [2002] 4 CLJ 309, **Palautah Sinnapayan v Timbalan Menteri Dalam Negeri** [2010] 2 CLJ 141]

(b) the Federal Court in Ooi Ah Phua surprisingly was also of the view that Article 5(3) (on right to counsel did not confer any new rights as **section 255** of the CPC had already granted such rights. The relevant part of **section 255** says:-

"...*every person accused before any criminal court may of right be defended by an advocate.*"

(see pp.199 B-D right of Ooi Ah Phua and pp.200 A-C right)

That view with due respect, is faulty for two important reasons. Firstly, Article 5(3) is wider as it deals with the situation at point of arrest (as opposed to being accused or charged in court as contemplated in section 255 of the CPC). That is really the reason for Article 5(3) to specify that the arrested person "be allowed to consult and be

defended by a legal practitioner of his choice" whereas section 255 of the CPC declares a limited right of an accused person in court to be "defended by an Advocate."

Secondly, to derogate the importance and primacy of Article 5(3) is to misunderstand the concept of 'sui generis' character of constitutional provisions as "living documents" "capable of being breathed into with new lives" with varying effects consonant with changing circumstances prevalent at any particular time".

Both the Federal Court and the High Court in Ooi Ah Phua relied on the same Indian and local cases to come to a proposition that although the right of an arrested person to consult his lawyer under Article 5(3)" begins from the moment of arrest but that right cannot be exercised immediately after arrest. A balance has to be struck between the right of the arrested person to consult his lawyers on the one hand and on the other the duty of the police to protect the public from wrongdoers by apprehending them and collecting whatever evidence exists against them. The interests of justice is as important as the interest of arrested persons and it is well known that criminal elements are deterred most of all by the certainty of detention, arrest and punishment." The decision did not seem to specify the specific circumstances under which the police could seek the exceptions within the idea that the police can delay an arrestee consulting his lawyer after his arrest. Both the Federal Court and the High Court provided carte blance privileges to the police to create any reasons whatsoever to postpone or deny the arrested person from communication and consultation with his lawyer. Ironically, the cases depended upon by both courts did specify the

limited circumstances upon which the police could seek delay or postponement of the consultation. In **Moti Bai** v **The State** [1954] AIR Raj 241, Modi J ruled that in India the right of an arrested person to consult a legal practitioner of his choice began right from the time of his arrest. Syed Agil Barakhbah J, in **Ramli b Salleh** v **Inspector Yahya Hashim** [1973] 1 MLJ 54 relied on **Moti Bai** and other decisions and held that:-

"*...the right of an accused person remanded in police custody, to consult and be defended by a legal practitioner of his choice ..... begins right from the day of his arrest even though police investigation has not yet been completed. On the other hand, the law also requires that the Police to carry out investigations in order to satisfy the constitutional requirements of clause (1) of Article 5 with a view to bringing the offender to justice. It is in that respect and towards that end that the fundamental right of the accused to consult counsel of his own choice should be subject to certain legitimate restrictions which necessarily arise in the course of police investigations, the main being to ensure a proper and speedy trial in the court of law. Such restrictions may relate to time and convenience of both the Police and the person seeking the interview. They should not therefore be subject to any abuse by either party, for instance, by the Police in unreasonably delaying the interview or by counsel in demanding an interview at any time that suits him or by interference with investigations.*"

In **Ramli**, the learned judge emphasized the immediacy of the right to counsel but laid out certain legitimate restrictions of their right to timing and convenience of both the lawyer and the police

investigating. But 'reasonableness' of conduct of both parties was a prerequisite with a warning that abuse of the right ought not be tolerated.

In **Sunder Singh** v **Emperor** [1930] Lahore 945, Bhinde, J, while recognizing legitimate restrictions held that the restrictions was to curb undue interference of investigations by counsel such as demanding interviews at any time he chooses or the case of an unethical lawyer who abuses the privilege and in such a case the interview can be refused. But the learned judge warned that if the Police invokes those reasons "the police must of course be prepared to support their action on substantial grounds."

LP Suffian quoted all the above cases with approval and adopted them and yet his decision was strikingly different from the cogent reasoning provided in those cases that he relied upon.

Both Suffian and Hashim Yeop Sani were under the mistaken impression that the right to consultation with counsel was for purposes of preparing the arrested persons' defence. While that may be true at a later stage of the drama, the immediate concern of lawyers would be to prevent abuse of powers by the Police during the investigations stage such as in unfairly extracting confessions or in the inaccurate recording of any statements of the arrested persons. This worry of lawyers is well recognized by Raja Azlan Shah, J in **Hashim bin Saud** v **Yahya b Hashim** [1977] 2 MLJ 116 when the learned judge said:-

"...In our view it is at the police station that the real trial begins and a court which limits the concept of fairness to the period of police investigation is completed recognizes only the form of criminal justiciable process and ignores the substance."

All these cases that were cited by the Federal Court and analyzed by us above, attempted to provide the mechanics within which Article 5(3) (or the Indian equivalent of Article 22(1)) was to operate in relation to right to counsel upon arrest. Provisions in any Constitution are mostly declaratory in nature. It is always open to Parliament itself to create further laws to provide the detail mechanics on the workings of these declaratory provisions, such as that we now see in Section 28(A) of the CPC or for the courts themselves to provide an active, living and workable interpretations to these provisions suited for the period in question. The courts in interpreting constitutional provisions, especially one that deals with fundamental liberties, freedom and human rights must take the established canon of constitutional interpretation starting with treating them as "*sui generis*".

In **Minister of Home Affairs** v **Fisher** [1980] AC 319, The Privy Council per Lord Wilberforce dealt squarely with the issue of the need for special interpretation of constitutional provision and in particular constitutional provisions dealing with protection of fundamental rights and freedoms of individuals. He said at p.328:-

"So far the discussion has been related to Acts of Parliament concerned with specific subject. Here, however we are concerned with a Constitution, brought into force certainly by Act of Parliament, the Bermuda Constitution Act 1967 United Kingdom, but established by a self contained document set up in Schedule 2 to the Bermuda Constitution Order 1968....It can be seen that this instrument has certain special characteristics. 1. It is, particularly in Chapter 1, drafted in a broad and ample style which lays down principles of width and generality. 2. Chapter 1 is headed "Protection of Fundamental Rights and Freedoms of Individuals." It is known that this Chapter, has similar portion of other Constitutional instruments drafted in the post colonial period, starting with the Constitution of Nigeria, and including the Constitution of most Caribbean territories, was greatly influenced by the European Convention for the protection of human rights and fundamental freedoms (1953)(Cmd) 8969. That Convention was signed and ratified by the United Kingdom and applied to dependent territories including Bermuda. It was in turn influenced by the United Nations' Universal Declaration of Human Rights of 1948. These antecedents, and the form of Chapter 1 itself, called for a generous interpretation of avoiding what has been called "The austerity of tabulated legalism," suitable to give to individuals the full measure of the fundamental rights and freedoms referred to. 3. Section 11 of the Constitution forms part of Chapter 1. It is thus to "have effect for the purpose of affording protection to the aforesaid rights and freedoms" subject only to such limitation contained in it. "Being limitations designed to ensure that the enjoyment of the said rights

and freedoms by any individual does not prejudice... the public interest."

Later on Lord Wilberforce continued:

"...it would be to treat a Constitutional instrument such as this as sui generis, calling for principles of interpretation of its own, suitable to its character as already described without necessary acceptance of all the presumptions that are relevant to legislation of private law."

"...A Constitution is a legal instrument giving rights, amongst other things, individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. ..."

Fisher's case established several principles:-

a) constitutional provisions such as that in Article 5, in particular Article 5(3) of our Federal Constitution is drafted in a broad and an ample style, some may call it declaratory in nature, which lays down broad principles only.

b) Secondly, Article 5 falls within the important Part 2 headed Fundamental Liberties, Article 5 being the first provision. The Federal Constitution being a 1957 document was clearly influenced by international documents such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmnd) 8969 and the United

> Nations Universal Declaration of Human Rights 1948. Being provisions of that nature, namely Constitutional provisions affecting fundamental liberties and human rights, their interpretation calls for the avoidance of the austerity of tabulated legalism. Such an instrument is *sui generis* in nature calling for principles of interpretation of its own, to be interpreted generously and not pedantically.

The decision in effect means that the courts are to preserve the full impact of the words in the constitution, in the broadest terms of their meanings denoting important rights fundamental in character. They must not be shackled by pre-determined ideas or concepts. A constitutional instrument being a living document lives through time and has to be given its meaning in the context of the era. On these Fazal Ali, J. said at p.774 in **Pathumma** v **State of Kerala** AIR 1978 SC 771:

"Courts interpret constitutional provisions against the social settings of the country so as to show a complete consciousness and deep awareness of the ... requirements of ... society, the ... needs of the nation, the ... problem of the day... It must take into consideration the temper of the times and living aspirations and feelings of the people."

Fisher's decision has been adopted in many leading cases in Malaysia [see: **Dato' Menteri Othman Baginda** v **Dato' Ombi Syed Alwi** [1981] 1 MLJ 29 at 32; **Merdeka University Bhd** v **Government of Malaysia** [1982] 2 MLJ 243 at 251; Lee Kwan Who v PP [2009] 5 CLJ 631 at 639-640]

The cry for the preservation of the sanctity and purity of words in the constitution is not only a cry of lawyers. The inimitable Pablo Neruda in his poem entitled "Word" said the following:- (we quote merely an extract from the full poem):

"...I want that in the word
the roughness is seen
the iron salt
the de-fanged strength

... I want to see the thirst
inside the syllables
I want to touch the fire
In the sound:
I want to feel the darkness
of the cry. I want
Words as rough
as virgin rocks"

The poet was stressing the importance of being loyal to the pure meaning of words and to give them expansive interpretations that words are capable of accommodating.

In **Boyce v The Queen** (2004) UKPC 32, Lord Hoffmann explained the general and abstract terms by which fundamental rights in a Constitution are expressed supporting our earlier view that these are said in declaratory fashion to be further clothed by constructive and harmonising interpretations :

"Parts of the Constitution, and in particular the fundamental rights provisions of Chapter III, are expressed in general and abstract terms which invite the participation of the judiciary in giving them

sufficient flesh to answer concrete questions. The framers of the Constitution would have been aware that they were invoking concepts of liberty such as free speech, fair trials and freedom from cruel punishments which went back to the Enlightenment and beyond. And they would have been aware that sometimes the practical expression of these concepts - what limits on free speech are acceptable, what counts as a fair trial, what is a cruel punishment - had been different in the past and might again be different in the future. But whether they entertained these thoughts or not, the terms in which these provisions of the Constitution are expressed necessarily co-opts future generations of judges to the enterprise of giving life to the abstract statements of fundamental rights."

Clearly therefore declarative promulgation of fundamental laws such as that in Article 5(3) expects the Judiciary to iron out the details of the right granted but in doing so the Judiciary has to harken to the principle that the rights have to be read expansively giving individuals affected its full rigour of protection and if by implication of absolute necessity restrictions or qualifications have to be read into them for purposes of humanising these rights then such qualifications and restrictions must be narrowly construed in favour of rights rather than the restrictions or qualifications. (See **Gurung Kesh Bahadur** v **Director of Immigration** (2002) 5 HKCFAR 4 at 28-29 ; **Prince Pinder** v **The Queen** (2002) UKPC 46).

If we apply the above principles of interpretation, the judicial exceptions provided by Ooi Ah Phua to the right of counsel, in that the right can be postponed to enable the Police to investigate, carte blanche, in our

opinion is too broadly stated and has reduced the right to something ineffectual.

We find it strange that both the High Court and the Federal Court in **Ooi Ah Phua** found it necessary to state the legal positions that way when it was not necessary to do so based on the peculiar facts of that case. We say this because in Ooi Ah Phua it was a finding of fact that the arrestee Ooi Chooi Toh, a week after the robbery, shooting and his arrest, had led the police to certain places in connection with other reports (presumably leading to discovery of some evidence or other arrests).These facts could easily have provided a basis for the invocation of a narrow exception, namely that the right to counsel may lead to interference with the police attempt to trace a dangerous accomplice or facilitated concealment, fabrication or destruction of evidence. If the court had invoked that exception the decision would have been consistent with the earlier Malaysian and Indian cases that we had cited. And it would have been a situation worthy of consideration under our current section 28 A (8)(a)(i) & (ii) Criminal Procedure Code. **Ooi Ah Phua** therefore has to be closely examined, if it was correctly decided on its own facts. We differ in our view of the law expressed therein as the idea therein has been overtaken by the passing of time.

That brings us to the *raison d'etre* of section 28A Criminal Procedure Code itself. Section 28A is a codification of the various principles in the common law cases in the Commonwealth including Malaysia, Ooi Ah Phua, with due respect, being one of the exceptions.

Section 28 A (1) reiterates the first part of Article 5(3) but in relation to seizable offences (arrest without warrant). Presumably section 28A(i) recognises that all arrests by way of a warrant require the offences to be stated in the warrant itself for immediate communication to the arrestee. So it does not mean that those arrested with warrant is without the rights of Article 5(3). Lord Simmonds of the House of Lords in **Christie v Leachinsky...**
(1947) AC 573 at 592 made it clear ;

> "..... *arrested with or without warrant, the subject is entitled to know why he is deprived of his freedom*".

Section 28(2) sets out a mandatory tone for compliance by the Police. It requires the Police, before questioning or recording any statement from an arrestee to bring it to his attention that he has a legal right to communicate with a relative or friend to inform of his whereabouts. This is a necessary right as, inter alia, it allays the fears of the arrestee's friend or relative as to the arrestee's safety and for their communications or visits to the arrestee.

Secondly, such communication could facilitate the right of the arrestee to communicate and consult with a legal practitioner of his choice as the friend or relative could arrange for such a legal practitioner to be available for him (section 28 A (2) (b).

It is our opinion that when the Police Officer carries out his duty pursuant to section 28 A (2) he must use the alerting words to bring to the attention of the arrestee those rights specified therein. The arrestee must know it is

not a mere privilege. This duty to alert the arrestee by analogy is almost as, if not more onerous, than that of section 113 of the Criminal Procedure Code.

Interestingly, section 28 A places a duty on the police officer to allow such communication or consultation as soon as may be. This is an important development in legislation. One need be reminded that earlier cases interpreting Article 5(3) in relation to the right to counsel interpreted that phrase "as soon as may be" was only applicable to the first limb in that article, namely the right to be told of the grounds of his arrest.

Those cases have also interpreted "as soon as may be" to mean " as nearly as is reasonable in the circumstances of the particular case"
See Aminah v Superintendant of Prison, Pengkalan Chepa, Kelantan (1968) 1 MLJ 92.

Interpreting similar phrases in the Indian equivalent of Article 5(3), Desai J in **Vimal Kishore** v **The State of Uttar Pradesh** (1956) AIR All 56 said

> *".....It is that he must be informed of the grounds of arrest 'as soon as may be' and once there has been a failure to do so, his detention becomes illegal once and for all. Informing him of the grounds at a later stage is no satisfaction of his fundamental right and is as good as not informing him at all.....The reason for the arrest was within the knowledge of the person arresting him and there was nothing to prevent its being communicated to him "*

Suriyadi, J, in **Nik Adli Bin Nik Abdul Aziz** (2001) 4 MLJ 598 at 605 warned of the peril of police officers not acting expeditiously in informing the grounds of arrest within the meaning of "a soon as may be".

> " .....*it must mean that the grounds must have already been in existence when he was arrested. What may be delayed, perhaps due to some extreme exigencies of the moment as stated above, is limited only to the informing. But this remark should not be construed as a carte blanche prerogative by the arresting officer to delay in fulfilling his duty, of informing the detainee of the grounds, bearing in mind that an unexplained delay could render the detention order invalid*".

The combined effect of section 28A (2) and (3) demonstrate the requirement that the right to counsel has to be expeditiously granted as the right has to be provided before any questioning or recording of any statement of the arrestee and "as soon as may be". Section 28A (4)-(7) reinforces the right to counsel upon arrest in ensuring that the Police would allow reasonable facilities and reasonable time for the legal practitioner appointed for the arrestee to arrive at the place of detention and to be consulted. Interrogation and recording of any statement for the arrestee can only take place after the right has been exercised or reasonable time has been given for the legal practitioner to arrive even though he finally did not attend.

Section 28A (8)-(10) of the CPC deals with the narrow exception for the postponement of the right to counsel. Several prerequisites are required before the Police can exercise this exception to the rule of right to counsel:-

(i) the police officer in charge of the investigation must have reasonable belief that;

(ii) the compliance of the right to counsel is likely to result in an accomplice of the arrestee remaining at large; or

(iii) the compliance of the right to counsel is likely to result in the concealment, fabrication or destruction of evidence or the intimidation of a witness in the case; or

(iv) having regard to the safety of other persons the questioning or recording of any statement is so urgent that it should not be delayed.

The requirement of reasonable belief imports an objective test that can be independently tested by an impartial tribunal based on the circumstances of the facts. For elements (2) and (3) the concern of the police normally relates to the communication with a relative or friend and that such a character may be used as a conduit to commit crimes ex post facto (accessory after the fact) to frustrate the ongoing investigation. The police must have some credible evidence to invoke this exception although in relation to the friend or relative, due to the ready inference that may be drawn to the possibility due to the relationship, that would justify the Police denying the arrestee communicating with the friend or relative. The Police has to have a distinct consideration for the communication and consultation of the arrestee with his lawyer. It is worth reminding that if the police invokes similar suspicion on the lawyer for any possible ex post facto transgression then the burden on the police is a heavy one i.e they must be prepared to support their decision on

substantial grounds [Sunder Singh vEmperor (ante)]. In the English case of **R** v **Samuel** [1988] 2 WLR 920 some direction can be gleaned from the decision therein. In that case there was a suspicion on the part of the police in denying the Accused to consult his counsel that the counsel's interview of his client may lead to other defendants being warned and therefore the investigation would be compromised. There was therefore a suspicion on the counsel or solicitor, but the Court of Appeal in England held that even in that situation there must be proof with cogent evidence that a particular counsel or solicitor could be prejudicing the investigation. The Court of Appeal warned that the police ought not extend such suspicion to solicitors generally. This case illustrates the requirement of stringent proof if the police were to rely on an exception to the right of counsel upon arrest.

For exception (iv) to apply possible circumstances would include the urgent requirements of the police to interrogate an arrestee in order to save a kidnapped victim whose whereabout is unknown and whose life could be in serious danger, or a situation of the police needing to know from an arrestee where and when the next bomb was to imminently explode.

Section 28A (9)-(11) is a specific protection given to an arrestee to ensure that the police would not abuse the exception in s.28A(8). The section requires the exception be only applied upon the authorization of an officer not less than the rank of a DSP. The officer authorizing such an exception must record the grounds of belief of the reasons for the exception "contemporaneously" to the event. This legal requirement in the code is perhaps to allow the courts to independently evaluate by looking at the reasons provided and applying an objective test to come

to the conclusion whether the invocation was reasonable. This also presupposes that the party challenging the invocation is allowed discovery and inspection of the said document.

Lastly, s.28A(11) requires that the right to counsel must immediately be restored as soon as the reasons for the invocations of the exception are no longer subsisting.

The interpretation to Article 5(3) and section 28A CPC given above is further boosted by the Basic Principles on the Role of lawyers we earlier discussed. Principles 5 and 7 of that document prescribes that arrestees are immediately informed of the right to counsel and he shall have prompt access to a lawyer and in any case not later than 48 hours from arrest.

4.0 FACTUAL MATRIX

Mr Wong Chin Huat an activist had been arrested prior to the 7th May 2009 for an alleged offence of sedition. On the 7th of May 2009 a group of supporters to his cause had gathered at the Brickfields Police Station in solidarity with Mr Wong Chin Huat's cause. Most of these supporters had worn black clothes as a show of support.

The Brickfields Police headed by the OCPD Wan Abdul Bari bin Wan Abdul Khalid (EW21) considered the assembly illegal as it had no police permit pursuant to section 27 of the Police Act 1967. After several warnings were given by the OCPD, 14 of them were arrested for illegal assembly.

As a result of the arrest of the 14, the KL LAC was alerted, in particular "its urgent arrest team". These are teams of lawyers apparently trained in

situations where persons are arrested and legal advice is needed by those affected. The 5 lawyers, the subject of arrest and detention in this inquiry arrived separately upon being communicated by way of sms through their handphones. Puspawati Rosman (EW8), Fadiah Nadwa Fikri (EW9), Ravinder Singh (EW24), Murni Hidayah bte Anwar (EW23) and Syuhainin Safwan (EW27) were the 5 lawyers who answered the call in relation to the arrest of the 14 earlier. The 5 lawyers individually arrived at Brickfields Police Station sometime between 9 to 10 pm. The 5 KL LAC lawyers had gathered in front of the Brickfields Police Station to the right of the boom gate.

It is not disputed that at that time there were other members of public including the members of the press who were also situated somewhere in front of the boom gate and elsewhere. It is also not disputed that the 14 arrested earlier had been allowed by the police whilst in custody to use their individual handphones and apparently the 14 arrestees had been communicating with their colleagues and friends which finally led to their communication with the 5 KL LAC lawyers either directly or indirectly. The 14 were allowed presumably until they were taken to the individual lock-ups to have access to their handphones. From here facts began to be disputed. The 5 KL LAC lawyers apparently had notified the Brickfields Police that they were lawyers for those 14 who had been detained during the candle light vigil. They were initially told to wait as DSP Jude Pereira (EW11) was in a meeting. These 5 lawyers waited while maintaining communication with their clients through mobile phones. Their clients' had informed them through the mobile phones that they had been asked by the police to sign certificates to waive their right of access to their lawyers. They were quite naturally advised not to sign such certificates. Fadiah Nadwa testified that when she saw DSP Jude Pereira in the compound of

the police station she had telephoned him as she was not able to speak to him directly. She was informed by DSP Jude Pereira that her clients had signed the waiver certificates. Evidence was also led by both sides (namely the police and the lawyers) that the 14 who had been earlier arrested had been shouting rather loudly that they wanted lawyers. In the light of that Fadia Nadwa had asked for a copy of the waiver certificates that DSP Jude Pereira claimed their clients' had signed. However DSP Jude Pereira did not comply with the request and did not provide her with satisfactory answers. We have heard testimonies of the police and the testimonies of the lawyers and we have also watched the various video footage of the drama that night (exhibit 18 and 28). For clarity we must correct the use of the term 'waiver certificates'. They were actually certificates of s.28A CPC which the Police had used to deny the 5 lawyers of access to their counsel. The 5 were requested to sign as acknowledgement of receipts of the documents, not as a waiver to the right to counsel.

Without condescending into unnecessary details we make the following observation of facts:-

a) the 5 lawyers remained on the right side of the boom throughout the waiting period for them to meet DSP Jude Pereira. Video footage indicates that they had remained clustered together as a group of 5. There has been no evidence led by the police that the 5 actively participated in an illegal assembly, such as holding candles or making speeches or issuing statements to the press about their cause in the demonstration. The 5 lawyers on the other hand had given evidence specifically maintaining that they were there

as lawyers representing the 14 earlier arrested. They were clear in their testimonies that they had introduced themselves to the Police and in particular to DSP Jude of their status in relation to the 14 arrestees.

b) we also observe that there has been definite communications between the 5 lawyers and the members of the Brickfields Police force. We find it difficult to believe that the 5 lawyers having arrived there to represent the 14 did not make any attempt to make their purpose clear to the police. In one of the video footage Fadiah Nadwa gave an interview contemporaneously to the event unfolding then where she stated in no uncertain terms that her team of lawyers had been attempting to get permission to see the clients and that they have been unsuccessful thus far. There is further support in this from another video footage of a similar claim by EXCO Member and Selangor ADUN, Ms Elizabeth Wong (EW5) where she too was recorded speaking loudly over her phone complaining to the person on the other end that she had not been allowed to see her 2 staff among the 14 who had been arrested and that she said there were LAC lawyers there too, clearly in reference to the 5 lawyers, who were also not allowed to go into the police station to see their 14 clients;

c) as opposed to the above clear testimony, the police witnesses in particular DSP Jude Pereira and OCPD Wan Bari were totally hazy with their testimony pertaining to their interaction with the 5 lawyers or for that matter with other lawyers including the Chairman of the Bar who arrived

subsequent to the arrest of the 5 lawyers. We find the evidence of DSP Jude Pereira totally unsatisfactory. DSP Jude Pereira either consciously were not telling the truth or suffered from a serious bout of loss of memory. DSP Jude Pereira initially denied interacting with any lawyers until he was confronted with direct evidence and documentary evidence in the form of the video footage. We believe OCPD Wan Bari did not have any conversation with the 5 lawyers. Looking at the evidence as a whole he seem to be very dependent on DSP Jude Pereira for purposes of interaction with the 5 lawyers and legal advice on matters of criminal procedure. However, we are baffled with his claim that he has never met the Chairman of the Bar or Mr Puravelan or any other senior lawyers representing the Bar who were allowed into the compound of the police station after the arrest of the 5 lawyers. Mr Ragunath Kesavan in no uncertain terms testified that he pleaded to meet up with the arrestees but he was unceremoniously told off and instructed to get out of the police station by the OCPD. OCPD Wan Bari was only able to say that he cannot remember such incidents happening implying that such incidents never happen. We must however point out there were police reports lodged the very night itself at the Brickfields Police Station by one of the senior lawyers Christie Marie A/L Mariassosai Nathan (exh 12) forming Brickfields Report No: 006679/09 lodged at 1.41am on the 8th of May 2009 hardly two to three hours from the arrest of the 5 lawyers. Exhibit 12 clearly stated that a group of lawyers had sought permission to see the 5 arrested lawyers that night itself but were refused by DSP Jude Pereira and a report was

lodged because of the denial of access of counsel to their client. Further, the report claimed that no reasons were provided why access to their clients were refused.

d) We had also been invited to make observation of certain exhibits. Exhibit 1 of Form 28A relating to Fadiah Nadwa, Exhibit 5 of Form 28A relating to Puspawati Rosman, Exhibit 13 of Form 28A pertaining to the arrest of Syuhaini, exhibit 14 of Form 28A of the arrest of Ravinder Singh, Exhibit 15 Form 28A of Murni Hidayah. In all these exhibits the arrest was purportedly anchored on refusal to disperse in an illegal assembly. DSP Jude Pereira have signed on the form certifying the refusal of access to counsel for Fadiah on the grounds of s.28A (8) (a) (ii) and (b) CPC. Similarly in exhibit 5A and 5B, in relation to the arrest of Puspawati Rosman on the same ground and the same reasons for refusal of access to counsel. In exhibit 13A and 13B in relation to the arrest of Syuhaini for the same ground. DSP Jude Pereira had also refused her for access to counsel on the same reasons as others. Exhibit 14A and 14B and exhibit 15A and 15B are likewise stated ie the same ground for arrest and the same reasons for refusal of access to counsel. We need mention here the 5 lawyers were allowed to keep their handphones until they were brought to their respective lock ups similar to the treatment of the 14 arrestees. The police in their submission has attempted to argue that since all these arrestees (the 14 and 5 lawyers were allowed to keep their handphones to communicate, there was actually no denial of communication and consultation with the counsel of their choice. We find this argument not appealing at all because it

totally demolishes all the reasons provided by DSP Jude in all the five s.28A forms for refusal of access to counsel. It is to be recollected that DSP Jude had invoked s.28A (8) (a) (ii) and (b) in all the 5 cases. DSP Jude was apparently worried of any possible concealment, fabrication or destruction of evidence or the intimidation of the witness if access to counsel was allowed to the 5 lawyers. We find these reasons amusing to say the least. If telephone communication had been allowed throughout their detention in Brickfields, they could have communicated to the world at large about any matters they wish including on matters DSP Jude purportedly was worried about when he refused them access to counsel. What further harm could have been done by allowing them to physically consult their counsel? These observations of ours is also applicable in relation to the 14 arrested persons. This is in fact a powerful piece of evidence to show *mala fide* and improper motives on the part of the police to deny access to counsel. Further, we also take note that the police did nothing throughout the whole night of the 7th and early morning of the 8th until much later in the afternoon of the 8th when statements were recorded from the 5. We find the other reasoning provided in the Form 28A in relation to safety of other persons to be completely without merit whatsoever and totally illogical. DSP Jude did not tell us whose safety he was worried about. As we had earlier pointed out that provision is totally inept to this mundane situation.

e) There was hardly anything complicated for the Police to record any statement from the 5 LAC lawyers. It was a simple case of illegal assembly. Having made those observation of

the role of the 5 LAC lawyers as legal practitioners to the 14 arrestees and that they were in no way part of any illegal or unlawful assembly, their arrests were unlawful. Further, one cannot help wondering, if it was true as DSP Jude and OCPD Wan Bari claimed that they did not realize there were lawyers at the gate for the 14 arrestees surely they would have realized this upon arrest of the 5 LAC lawyers. The logical thing to do then was to immediately release the 5 or at least release them on Police bail without further delay.

f) The Police testified that the 14 arrestees were unruly when they were arrested. We saw some evidence of continued protest by the 14, such as shouts for lawyers and Genie's (EW1) hysterical shouts when she was isolated in a room away from the rest. We are even prepared to accept that the 14 may have been difficult in allowing the processing of their particulars to be undertaken but this is a far cry from claims that they were unruly to the extent that their behaviour brought about a situation of a possible siege of Brickfields Police station. There was even a claim that others from outside could pose danger acting in concert with the 14 to cause a public order problem. Apparently, according to DSP Jude the armory too could have been put in danger. We find no evidence of this magnitude. The Police in Brickfields were well in control of the situation.

g) The Police having exaggerated the situation of the 14 arrestees then made the claim that the drama relating to the 14 is a continuous activity or transaction to the event leading

to the arrest of the 5 LAC lawyers. We find this claim absurd as the 5 LAC lawyers came to the station for the sole purpose of acting as counsel for the 14 arrestees. It is instructive for us to remind ourselves the proclamation in the UN document on "Basic Principles on the Role of Lawyers" re principle no. 18, namely, "*Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions*". We must add that it is the duty of the Police to protect any lawyers, officers of the court no less, when they undertake to carry out their duties in the defence of their clients. It is not out of place for us to correct the misapprehension some minority members of the public and enforcement authorities may entertain, namely, lawyers are just mischief makers, seeking support from a *Shakespeare's play in Henry VI, part 2, Act 4, scene 2*, where an unsavoury character ('Dick the Butcher') uttered. "***The first thing we do, lets kill all the lawyers***", something totally taken out of context. Lawyers have an important and distinct role to play as recognized by the UN document quoted herein.

Cross Examinations and credibility of witnesses

We have decided at the commencement of the Inquiry that we would abandon the traditional procedure in inquiries and allow parties full latitude to cross examine because of the serious nature of the allegations in this matter and the fact that we anticipated major chunks of the evidence would be disputed either way. We also believe in **Wigmore's** statement that cross examination "*is beyond any doubt the greatest legal engine ever invented for discovery of truth.*" But this procedure that we

have undertaken must not be regarded as the standard operating procedure in inquiries. It is in infact an exception.

In the context of cross examination, cases are replete with the proposition that a party must cross examine his opponents' witnesses on matters he disagrees, otherwise the party is taken to have agreed to the proposition made by the witness (see **Wong Swee Chin** v **PP** [1981] 1 MLJ 212). We also take note of cases such as (**Khoon Chye Hin** v **Public Prosecutor** [1961] MLJ 105) in determining the credibility of witnesses in this inquiry. It is said in those cases that we must be careful in our analysis of testimonies of witnesses who have been caught telling some untruths but that we ought not reject their entire evidence. That is the correct statement of the law. A Chinese proverb captures that principle very well when it states: "*the credibility of a clock becomes suspect when it strikes thirteen*."

We have put to scrutiny the testimonies of all witnesses but in particular the testimonies of DSP Jude and OCPD Wan Bari applying all the above principles. We find it difficult to accept their contention on the contentious issues. We reject their evidence in those parts and accept the testimonies of the 5 LAC lawyers whose testimonies bore support of corroborative evidence both from other witnesses and documents. It is significant to note that there has been no challenge by way of cross examination of the testimonies of the Chairman of the Bar, Mr. Ragunath Kesavan (EW10) and the Selangor ADUN member Ms. Elizabeth Wong (EW5). Similarly, we find serious lack of challenges in material evidence given by the 5 LAC lawyers or other witnesses in support of them.

CONCLUSION

With reference to the terms of reference we answer as follows:-

1) The arrest and detention of the 5 KL LAC lawyers did constitute a denial of legal representation and a contravention of **Article 5(3)** of the Federal Constitution and **section 28A** of the Criminal Procedure Code for the reasons we have earlier adumbrated. That being the case it was a clear violation of human rights;

2) There was no justification or necessity to arrest and detain the 5 KL LAC lawyers under **section 27** of the Police Act 1967 as they were there not participating in the cause of their clients but simply performing their duties as legal practitioners in defence of the 14 arrestees who were their clients. This is a clear transgression and a violation of human rights.

3(i)(ii) & (iii) clearly the violation of the human rights herein were mainly committed by DSP Jude and OCPD Wan Bari. We are of the view that these 2 senior most officers in Brickfields Police station at the relevant time were responsible in making all the assessment of the situations and subsequently giving directions that have now become the subject of controversy.

such violations of human rights occurred because the relevant officers did not understand nor appreciate the functions and duties of defence lawyers in the context

of the criminal justice system. We find that this episode need not have happened. All the police need do was to invite the 5 lawyers into the Police station for a discussion with the relevant officers. In this context it would have been the OCPD Wan Bari and DSP Jude Pereira. An exercise in public relations of some sort by giving a chance for the lawyers to express their request would have brought about a better understanding between the Police and the members of the Bar. The directives in relation to the mechanics of **s.28A CPC** ought to be relooked at along the lines of our observations earlier.

It is time that the Police on the ground in charge of crime enforcements be made to be familiar with the constitutional provisions in relation to fundamental liberties and human rights. Section **28A CPC** must be thoroughly explained to the Police on the ground perhaps from the Police Headquarters after consultation with the Attorney General's Chambers. The Police must be made familiar with the basic local and international instruments pertaining to human rights. Instruments that have been cited herein are important documents for starters.

We wish to say that we found as a whole the rest of the testimonies of other police officers in this inquiry to be very credible and forthright.

Our experience in Suhakam in relation to the Police force has mostly been pleasant. We have come across many police officers who are professional in their conduct and in carrying out their duties.

There is bound to be a black sheep or two in any organization but one or two black sheep should not change the landscape of New Zealand.

A Malay proverb expresses this quite well:-
"Dalam setandan pisang, rosak sebiji tidak lah rosak kesemuanya."

Dated this 23rd day of April, 2010

.....
DATO' SRI MUHAMMAD SHAFEE ABDULLAH
CHAIRMAN

.....
DATUK DR MICHAEL YEOH ONN KHENG

.....
DATUK DR DENISON JAYASOORIA