

**Police Response Disproportionate And Excessive**  
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**By Christopher Leong**

The Malaysian Bar is appalled at the abuse of the legal process and grotesque use of force by the police in connection with the BERSIH 3.0 rally in Kuala Lumpur yesterday, 28 April 2012.

The crowds that had gathered for the BERSIH 3.0 rally reflected a broad cross-section of Malaysian society, and were peaceful. The police were initially restrained, although they did try to stop people from reaching various pre-announced meeting points. However, the attitude of the police underwent a sea-change at 3:00 pm that day. The reported breach of police barricades in some areas does not justify the police unleashing the full force of their arsenal upon crowds that were peaceful. The police have shown in this incident that they do not have the maturity, discipline and restraint required of a professional force.

In this regard the Malaysian Bar strongly disagrees with the Minister of Home Affairs' assertion that the police acted professionally.

The court order excluding members of the public from Dataran Merdeka is arguably defective in law due to a lack of specificity. Given that the BERSIH 3.0 rally had been announced on 4 April 2012, there was no need to have obtained the order ex parte. There had been ample opportunity for the relevant parties to be heard before deciding if such an order deserved to be issued. In addition, the order was obtained with respect to a situation of the authorities' own making, by their unjustifiable denial of access to Dataran Merdeka. It is important to bear in mind that the Minister of Home Affairs had previously announced that the BERSIH 3.0 rally was not a security threat.

Nonetheless, having obtained the exclusion order, the police proceeded to disrespect the order by unilaterally closing additional roads and restricting access to other areas not covered by its terms. The terms of the order itself, the closing of the roads and the restriction in access gave rise to a tense situation that contributed to the unnecessary violence that occurred.

As has been done with some other public assemblies in the past, the Malaysian Bar deployed lawyers and pupils-in-chambers to act as monitors during the rally, numbering approximately 80. Our monitoring teams reported witnessing the use of an array of heavy-handed tactics by the police, including the indiscriminate discharging of multiple rounds of tear gas without any obvious provocation, and arbitrary use of water cannons. Police fired tear gas directly at the crowd. They also manoeuvred their firing pattern to box in the participants rather than allowing them to disperse quickly. This is not action to disperse, but is instead designed to attack, a crowd. When items were thrown at the police, the police stooped to return like for like.

The Malaysian Bar does not countenance the belligerent conduct shown by a number of the participants. However, we express deep and serious concern as to how the police responded. The police displayed a lack of restraint and proportionality, reminiscent of their actions at the BERSIH 2.0 rally on 9 July 2011. Instead of displaying action to calm the situation, they instead aggravated it and contributed to the escalation of the conflict.

Although organisers of public gatherings must bear some responsibility when things get out of hand due to their action or inaction, this does not and cannot excuse the response of the police.

The monitoring teams also witnessed numerous acts of police brutality, such as assault of arrested persons. Instead of merely apprehending suspects, the attitude of the police was punitive in nature. The reported attacks by the police on members of the media, both local and international, and the confiscation and/or destruction of their photographs and video recordings, speaks to police action in covering up or

preventing a full and accurate record of the BERSIH 3.0 rally and the responses of the police.

Regrettably, the police also showed a general lack of cooperation towards the Malaysian Bar's monitoring teams, and were hostile in their attitude and approach at times. This is most unprofessional and unbecoming, and serves as an unhealthy development with negative connotations for the future.

The Malaysian Bar notes that yesterday's events have not occurred in isolation, but stem from the fundamental problems that gave rise to the BERSIH 3.0 rally in the first place, namely the ongoing and outstanding issues relating to the electoral roll, and the lack of confidence in its integrity and that of the electoral process in Malaysia.

Those who look upon Dataran Merdeka as a symbol of freedom will view the exclusion from Dataran Merdeka as freedom denied. The promise by the Government to respect democracy and human rights, and implement reforms, was tested yesterday.

The Government's response and actions during the BERSIH 3.0 rally provided an indication of whether the new reform legislation will be perverted and abused in its use and implementation, where the wide powers vested in the authorities call for measured, proportionate and mature exercise. The events of 28 April 2012 do not bode well in this regard.

Transformation and real recognition of democratic rights come at a price, namely constant vigilance. The cost of not transforming and not allowing Malaysians the proper exercise of our democratic rights is too high. In Malaysia's march towards developed nation status by 2020, which is only eight years away, the constitutional right to clean, free and fair elections cannot and should not be sacrificed.

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