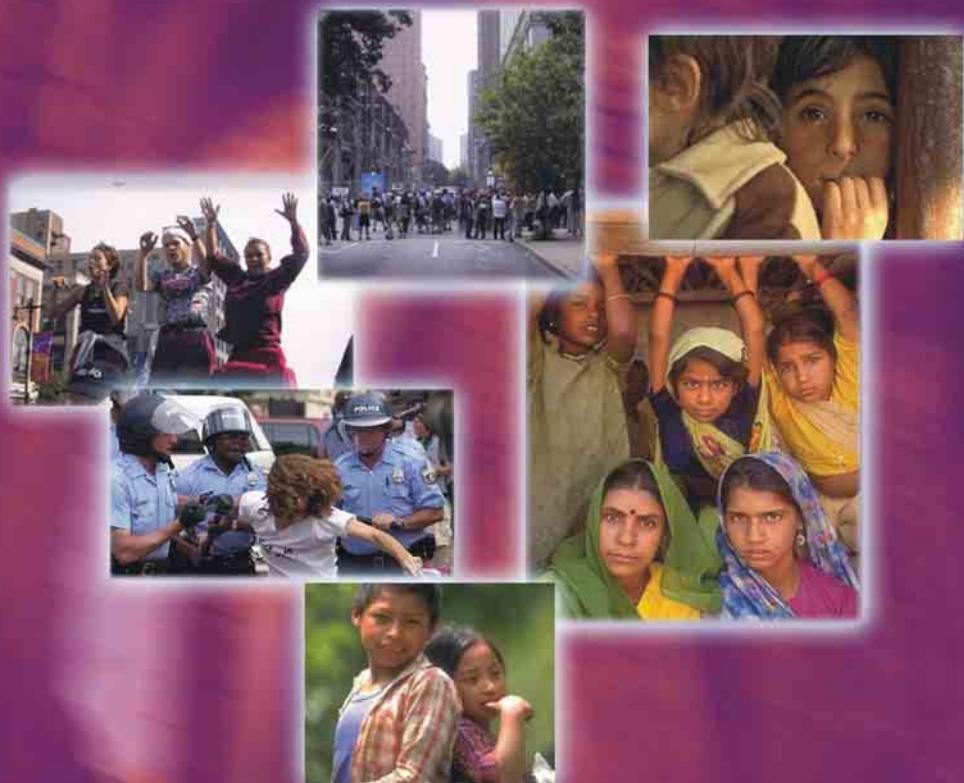


proceedings of the
national consultation on

SUHAKAM: *After 3 Years*

*Recommendations for Promotion and Protection
of Human Rights and the Government's Response*



Organised by



ERA CONSUMER, Malaysia
*Education And Research Association
For Consumers, Malaysia*



Consumer Protection
Association
of Penang (PCPA)
*Persatuan Pelindung
Pengguna Pulau Pinang*

Edited by S. Nagarajan

*Proceedings of
The Forum was supported by
Friedrich Naumann
Stiftung*

**Proceedings of the National Consultation on
SUHAKAM : After 3 Years
Recommendations for Promotion and Protection of Human
Rights and the Government's Response
5th July 2003 • Shangri-La, Magazine Road, Penang**

Contents

Welcome Address	1
<i>By Marimuthu Nadason, President, ERA Consumer, Malaysia</i>	
Realisation of Freedom and Human Dignity	5
<i>By Rainer Heufers, Project Director, Friedrich Naumann Foundation, Bangkok</i>	
SUHAKAM's Achievements in Monitoring Democracy and the Rule of Law	8
<i>By Tan Sri Harun Hashim, Vice-Chairman, SUHAKAM</i>	
Question and Answer Session	15
Evaluation of SUHAKAM's Reports and the Government's Response	22
<i>By Ramdas Tikamdas, President, HAKAM</i>	
SUHAKAM's Recommendations and Government's Response	28
<i>By Prof Chiam Heng Keng, Commissioner, SUHAKAM</i>	
SUHAKAM: What Assessment, Whose Future?	32
<i>By P. Ramakrishnan, President, Aliran Kesedaran Negara</i>	
Economic, Social and Cultural Rights	38
<i>By Charles Santiago</i>	
Gender Equality	44
<i>By Honey Tan Lay Ean, Women's Centre For Change, Penang</i>	
SUHAKAM Fails in Fine Print	48
<i>By Steven Gan, Editor-in-Chief, Malaysiakini.com</i>	
Question and Answer Session after Panel Discussion	52
Obituary & Acknowledgement	57

National Consultation on SUHAKAM After 3 Years: Recommendations for Promotion and Protection of Human Rights and the Government's Response

Programme

8.30 – 9.00 a.m.	Registration
9.00 – 9.10 a.m.	Welcoming address by <i>Mr. Marimuthu Nadason</i> <i>President, ERA Consumer Malaysia</i>
9.10 – 9.20 a.m.	Speech by Mr. Rainer Heufers <i>Project Director, Friedrich Naumann Foundation, Bangkok</i>
9.00 – 10.00 a.m.	Keynote SUHAKAM's Achievements in Monitoring Democracy and the Rule of Law <i>Tan Sri Harun Hashim, Vice-Chairman of SUHAKAM</i>
10.00 – 10.30 a.m.	Question and Answer
10.30 – 10.45 a.m.	Tea/coffee Break
10.45 – 11.15 a.m.	Evaluation of SUHAKAM's Reports <i>Mr. Ramdas Tikamdas, President of HAKAM</i>
11.15 – 12.15 p.m.	Panel Discussion
	i. Role of SUHAKAM in Promoting Freedom of Speech and Expression <i>Mr. Steven Gan, Editor-in-Chief, Malaysiakini</i>
	ii. Civil and Political Rights <i>Mr. P. Ramakrishnan, President of ALIRAN</i>
	iii. Economic, Social and Cultural Rights <i>Mr. Charles Santiago, Director of MSN</i>
	iv. Gender Equality <i>Ms. Honey Tan Lay Ean, Women's Centre for Change</i>
	v. SUHAKAM's Recommendations and the Government's Response <i>Prof. Chiam Heng Keng, Commissioner SUHAKAM</i>
	Session will be chaired by <i>Dato' Param Kumaraswamy,</i> <i>UN Special Rapporteur on the Independence and Impartiality of the Judiciary</i>

Welcome Address

*By Marimuthu Nadason
President, ERA Consumer, Malaysia*

A very good morning to all of you and welcome to this third National Consultation on SUHAKAM organised by ERA Consumer Malaysia, in collaboration with Aliran and the Consumer Protection Association of Penang.

The word ‘human rights’ is an international term, although its meaning is often overlooked. According to UN Secretary-General Kofi Annan, “human rights are foreign to no culture and native to all nations, they are universal, whether civil, political, cultural, economic or social, human rights are indivisible and interdependent. Thus the absence of human rights is more than a denial of human dignity; it is also at the root of poverty and political violence that plague our world”.



Reflecting on this quote, I would like to stress on the objective of today’s consultation. ERA Consumer’s objective is mainly to promote SUHAKAM to the masses because we see it as a valuable body for human rights protection. The National Human Rights Commission serves as a focal point for complaints by individuals, where SUHAKAM is able to monitor the work of government from within and assist it in carrying out its treaty obligations under the human rights conventions.

At the previous consultation in September 2002, one of the pledges of civil society was to declare the year 2003 as the ‘Year For Ratification’ and for SUHAKAM to work hard at convincing the Government to ratify the international instruments.

Malaysia has yet to ratify, arguably, the most significant human rights instruments pertaining to civil and political rights (ICCPR), economic, social and cultural rights (ICESCR), racial discrimination (CERD) and torture, cruel and inhuman treatment (CAT). The Government has instead lamely advanced the so-called “Asian values” position on human rights by arguing that many of the current declarations, covenants and convention on human rights are of Western origin. Early this year, SUHAKAM informed ERA Consumer that it had recommended to the Government to ratify the ICESCR, ICCPR and CAT. However, the Government replied that it is not certain whether it will proceed to ratify the three instruments.

This clearly shows the Government’s attitude towards SUHAKAM. Therefore, we the concerned citizens of this country would like to cooperate with SUHAKAM the National Human Rights Commission to improve this situation. The Working Group of the ASEAN

Human Rights Mechanism has also placed great emphasis on the sharing of responsibility between government and civil society in the promotion and protection of human rights.

Ladies and gentlemen, for those of you who are still not aware, ERA Consumer initiated this annual series of consultations with NGOs even before SUHAKAM was born. That was in 1999, soon after our Government initiated the much belated formation of the Human Rights Commission of Malaysia. At that time, we held a conference on *Human Rights and the National Commission*.

Today's national consultation in Penang is our fourth. We hold these consultations in different parts of the country annually – last year's was in Ipoh. This conference is to bring together NGOs, government officials, professionals and the general public to reflect on, discuss and evaluate SUHAKAM's performance every year.

These national consultations take place after SUHAKAM presents its *Annual Report* to Parliament. Just to remind the honoured National Human Rights Commissioners present here today, I must quickly add that the NGOs are aware that our evaluation cannot be based solely on SUHAKAM's *Annual Reports*.

Through these national consultations, we wish to broaden our perception and understanding so that the civil society and SUHAKAM will be able to work closely to tackle issues of human rights that concerns all of us.

As in the past, we hope that this consultation will enable the wide range of NGOs gathered here to voice directly to SUHAKAM on what more we expect and to highlight issues that need immediate attention and action.

We take pride that we have done a lot more in publicising SUHAKAM among the masses over these years than the publicity generated by the Commission itself through the mass media – discounting, of course, the KESAS Highway Inquiry.

Our work is largely to empower the grassroots. From 1999, we took on human rights issues training as one of our key areas of work. Since then we have conducted many seminars and workshops, besides organising the annual national consultations.

We are proud to say that most of these seminars and workshops were conducted in the rural areas and small towns where people have less access to information about their basic rights. There is also little or no awareness among these people of SUHAKAM and its work.

As part of our human rights education, we have also translated important treaties – such as ICCPR, UDHR, ICESCR, CRC, CEDAW, Human Rights Defenders Convention, the Racial Discrimination and Torture Convention and even the Malaysian Charter on Human Rights –

into the Malay language so that more people will understand better these important issues. ERA Consumer has on several occasions expressed the need for SUHAKAM to translate its *Annual Report* to the Malay language so that more members of the public will be able to understand the Commission's work. However, this is yet to materialise.

These translated versions have been distributed to all libraries in the country as a source of reference. Some of these documents have also been translated into Tamil and Chinese.

Our focus on the rural folk does not mean that we are ignoring people in the urban areas. This consultation in Penang is one of the many examples of our work. Even the SUHAKAM representatives are here to gather feedback as well. I believe SUHAKAM looks forward to ERA Consumer's national consultations as they give the Commission the rare – and I dare say accurate – assessment of public opinion about its work.

ERA Consumer sees human rights education as the best means of enabling members of the public to be more aware of human rights issues. Our training sessions over the last four years have focused on the youth. In the early days when we conducted human rights education training, we found that most people, the young and the old, had very little understanding of human rights. We have seen a lot of difference in the last few years, coinciding perhaps with the establishment of SUHAKAM and the publicity, even if not much, given to it.

I will not dwell on the Commission's *Annual Report 2002*, because that is the subject matter of discussion by our distinguished speakers today.

I also note with interest that SUHAKAM, in its report, agrees with ERA Consumer that it should focus on economic, social and cultural rights through the setting up of the Economic, Social and Cultural Rights Working Group and further to convince the Government to ratify the International Covenant on Economic, Social and Cultural Rights. It is clearly stated in Article 9 of the Malaysian Charter on Human Rights that everyone irrespective of race, religion, ethnic origin or gender has equal access to all basic needs.

SUHAKAM was established by an Act of Parliament. However, it does not have the "bite". Its reports are largely ignored by our MPs who don't even bother to debate them. Generally, there are nine rights regarded as fundamental in the Malaysian Constitution. For example, Article 5 concerning the liberty of a person and Article 11 on the freedom of speech, assembly and association. This is also clearly stated in various other International Conventions and the Universal Declaration of Human Rights (UDHR). However, currently most of them are denied, including the two mentioned above. Again we see the attitude of the Government towards SUHAKAM.

Perhaps, other than getting the Government to ratify – and honour – the various conventions

by amending the relevant local laws or enacting new ones, SUHAKAM should also work on getting itself fully accepted and respected by the Government this year.

I am not suggesting that SUHAKAM should become a pressure group like the NGOs. It should work with the advantages it has as part of the Establishment and prove its critics wrong that the Commission was set up by the Government as a public relations exercise to deflect international pressure.

Therefore, I would like to invite you, ladies and gentlemen, to voice out your recommendations, views and criticisms towards SUHAKAM, as this is an excellent opportunity to address all the issues pertaining to human rights violations in our country and to find a solution towards protecting human rights through the Commission.

Realisation of Freedom and Human Dignity

By Rainer Heufers

Project Director, Friedrich Naumann Foundation, Bangkok

The Friedrich Naumann Foundation is a German foundation for the promotion of political liberties. Our aim is the realisation of freedom and human dignity in all areas of life. We try to achieve this in the reunited Germany as well as in cooperation with our partners abroad through civic education, political consultation programmes, training and dialogue. In Asia we are operating from our regional office (East and Southeast Asia) based in Bangkok in Thailand.

With ERA Consumer Malaysia, the Friedrich Naumann Foundation has conducted a series of human rights training programmes. The focus is on improving knowledge and providing information on fundamental rights such as the civil and political as well as the social, economic and cultural rights. The target groups include mainly members of political parties but also community leaders and consumer associations.



The foundation believes that enhancing awareness of fundamental rights will empower people's participation in the political, social and economical sphere and this will ultimately lead to growth and equality. For the liberal Friedrich Naumann Foundation, the central value is freedom of the individual, which explains why choice, tolerance, rule of law, civil and political rights, property and entrepreneurship are so important for us. Without them freedom of the individual would be meaningless. Moreover, we struggle for the notion that freedom is not to be taken as an opinion but rather as an absolute paradigm or truth. In fact, it would create some kind of a paradoxical situation if the belief in freedom and human rights is regarded as just one opinion among others. It would then have to compete with other leading paradigms such as social order, equality or social justice.

However, all these paradigms don't need to be mutually exclusive. Liberals would argue that in order to enjoy freedom, there has to be some order. It is difficult to imagine, for example, the freedom to elect and be elected if there is no legally defined and sanctioned electoral procedure. It is also difficult to invest in an economy if there are no transparent rules and effective enforcement mechanism.

Finally, individual rights find their limits in the rights of others and in the collective established order of an open and democratic society. Likewise any notion of freedom contains some element of equality or equal treatment. Yet, instead of compromising individual rights for a presumably superior goal of equality and social justice, we insist that the equal treatment must lie in the rules that govern the competition among and interplay of conflicting interests. If the rules are just, that means a level playing field as far as starting conditions are concern. If these rules are just and if they are abided by, the outcome will be just because the differences in outcome will reflect differences in preference and performance and, thus, do justice to those involved.

The Malaysian Government has in the past compromised freedom of speech and assembly for reasons of peace and stability. It has sacrificed economic and social rights for the sake of economic growth and development. Likewise, cultural rights were reduced in the name of national identity and other reasons. Naturally, this has caused many concerns and has eventually led to a discourse that is marked by repressive laws and practices on the side of the Government and the desperate search for popular support of the political opposition.

How can a human rights institution perform in this tense situation? The creation of any human rights institution, be it just a convention, a commission or even a court, will be marked by the prevalent political discourse in the respective country or region. Take for example the African, the inter-American and European court of human rights, what have they achieved? Have they stopped any violation of human rights? Have they prevented any such violation? Are they merely waste of money? This is certainly a legitimate question but I personally believe that these institutions and SUHAKAM all along had played an important role. They act on the one hand as watchdogs but they also set the standard of human rights in the local political discourse. While everybody usually agrees on universal human rights as laid down in the Declaration of Human Rights, there are now institutions that undertake policy analysis with the sole standard of human rights. They try to ensure that these rights become the benchmark of national policies, they have to be the yardstick of internal, and increasingly also external, assessment of government polices. It is, after all, the setting of an agenda in the political mainstream.

Of course, human rights institutions themselves need to be controlled just like any other regulator or watchdog. No institution will work to its optimum if there is no external controlling. The Government cannot fulfil this function because it is assumed that it belongs to the list of violators of human rights. Hence, this responsibility lies with society or its institutionalised expression, the civil society. NGOs however don't have the mandate of the people. They might represent certain interest in society but they lack the authorisation and legitimacy of an elected legislative and executive like the one here in Malaysia. Furthermore, SUHAKAM has to take into consideration the task and responsibility of the Malaysian judiciary. SUHAKAM is therefore caught between the NGOs that are pushing for reform and the Government that puts its emphasis on stability or security. It is probably the fate of

SUHAKAM to be bashed by both sides. Actually, the media, another important watchdog that is bound by the limits of this society, shares this fate. I would encourage both to continue their important work even under the current difficult circumstances. The same is true for NGOs, which find it even harder to express their views given the existence of so many oppressive laws in Malaysia. However, they need to put aside their sense of frustration stemming from the harshness of political discourse. They need to engage with SUHAKAM beyond the polarised sphere of politics. This is the reason why we are here today in this national consultation.

The Friedrich Naumann Foundation has supported a whole range of human rights organisations and institutions worldwide including the regional working group for an Asean human rights mechanism represented here by Dato' Param Cumarasamy. We are also happy to work with ERA Consumer in the efforts to provide an annual platform for human rights NGOs to express their views about the performance of the National Human Rights Commission. The Friedrich Naumann Foundation is indeed glad to be associated with these successful programmes right from the start three years ago. I am looking forward to your fruitful debate and wish you success in your endeavour.

Keynote Address

SUHAKAM's Achievements in Monitoring Democracy and the Rule of Law

By Tan Sri Harun Hashim
Vice-Chairman, SUHAKAM

When I was called upon to deliver this keynote address, I must admit that I was rather intimidated as the topic chosen requires me to spell out SUHAKAM's accomplishments in carrying out its role as the nation's watchdog of democracy and the rule of law. At this juncture, I must humbly state that what SUHAKAM has done so far can hardly be said to be achievements. At best it can be called initiatives. In delineating what SUHAKAM has done so far, I shall place emphasis on our activities in the past year as part of, if I may call it, progressive accomplishments, lest I may be repetitive of what I have said when I addressed this forum two years ago and also what Prof Chiam outlined in her speech last year.



Democracy and the Rule of Law

Before I delve into SUHAKAM's initiatives in monitoring democracy and the rule of law, as a starting point, allow me indulgence to speak briefly on the concepts of democracy, rule of law and human rights. Both standards in their own right, democracy and the rule of law are the very foundation of any progressive society.

Democracy is indeed not a novel trend. In fact, the idea of democracy originated in ancient Greece where theorists such as Plato and Aristotle had attempted to define democracy. Over two millenniums, we have struggled to untangle the definition of democracy but I think Mahatma Gandhi had put it very aptly and simply that "in true democracy every man and woman is taught to think for himself or herself". Although democracy has its beginnings in the West, it is unfair to allege that it is solely a Western concept and therefore inapplicable here. Rather, the postulation that democracy as a universal value is based on its "plurality of virtues"¹ germane to all cultures and race, of political participation, accountability, responsibility and respect for fundamental liberties².

¹ Amartya Sen (1999), *Democracy as a Universal Value*, *Journal of Democracy* 10(3): 3-17.

² *Ibid*

I shall not attempt to deal with the debate of an Asian versus a Western concept of democracy, as it is deserving of a paper of its own, but suffice to say that principles of democracy remain valid today and in our society. When we talk of democracy, it is inevitable that we allude to the concept of the rule of law. The rule of law is a principle of “institutional morality”³. At its very essence, the rule of law entails the freedom of an individual from arbitrariness and a guarantee of individual autonomy⁴. How then does these two standards fit into the larger picture of human rights? The rule of law and human rights are the two pillars of democracy. The three concepts share a synergistic affiliation that as much as democracy acts as a check on the rule of law and human rights, human rights are as necessary to democracy and the rule of law “as the second blade is to a pair of sheers”⁵.

Effective Human Rights Protection

Bearing these standards in mind, SUHAKAM as the national human rights institution lies at the very centre of effective human rights protection. As a national human rights institution established under the aegis of the Paris Principles, SUHAKAM is charged, among others, with the on-going duty of monitoring that legislation, policy and practices abide by the principles of democracy and rule of law. In the past three years, we have attempted to do exactly this.

ISA

SUHAKAM has always regarded arbitrary detention under the Internal Security Act 1960, or more commonly referred to as the ISA, as a threat to democracy. Therefore, in the first half of this year, SUHAKAM published two major reports, first being the Public Inquiry in the Conditions of Detention under the ISA, and the second, a Review of the ISA itself. The fact that a number of people detained under the ISA had risen to 112 by the end of last year, was and is a cause of concern for SUHAKAM and we have and will persistently call for the repeal of the ISA. SUHAKAM is of the view that the authorities should resort to the courts rather than the ISA.

In our report on the Review of the ISA, we unequivocally recommended the repeal of the ISA. However, while acknowledging that the ISA is an infringement on human rights, in light of threats of global terrorism and the importance of preserving national security, SUHAKAM

³ *Mason Hills (1994), The Rule of Law and Democracy in Hong Kong – Comparative Analysis of British Liberalism and Chinese Socialism, Vol 1, No 2, <http://www.murdoch.edu.au/elaw/issues/v1n2/hills12.html>*

⁴ *ibid*

⁵ *D. Marsden, Liberty, Law and Democracy, <http://www.nonserviam.com>*

recommended that a new law be passed to replace the repealed ISA. We recommended that the new law be written in conformity with international human rights principles. Among our suggestion is that this new law contain a list of specific offences, which are genuinely a threat to national security. Further this new law spells out that the maximum number of days of remand that a High Court judge may order is 29 days in totality, thereafter the accused person must either be charged or released. Other safeguards include that the accused be brought before a High Court judge after the expiration of 24 hours, the right to counsel and other similar rights afforded to accused persons detained under ordinary laws of the Penal Code and the Criminal Procedure Code. SUHAKAM also recommends that the new law contain a sunset clause whereby the said legislation will only be in effect for one year. This is to avoid the situation of complacency and as a means to compel Parliament to examine on a yearly basis, the necessity of the said law taking into consideration the circumstances of the country. We have also come up with interim recommendations and also for amendments to the Lockup Rules 1953 and the Internal Security (Detained Persons) Rules 1960 and the relevant administrative processes.

SUHAKAM also carried the Public Inquiry into the Conditions of Detention under the ISA. This report was perhaps very much misconstrued because it was released prior to the report on the Review on the ISA. It was thought that this report signified SUHAKAM's stand of endorsing ISA. Let me clarify, this inquiry was prompted by numerous complaints that detainees were ill treated and conditions were substandard at detention camps. Thus, our mission was to ascertain the conditions of detainees, a wholly separate issue to our stand on the ISA. Much as we would like to see the immediate repeal of the ISA, we must adopt a realistic approach on the matter. As long as the ISA is still in force and while SUHAKAM continues to lobby for its repeal, at the very least, the commission has a duty to ensure that the detainees are not ill treated and that access to family, counsel, medical treatment and improvement to their living conditions are guaranteed.

At this juncture, we note the plight of seven students who were arrested and charged with illegal assembly while participating in a peaceful anti-ISA demonstration. We have asked the authorities to free the students and will intensify our efforts to free them. We are also in the midst of reviewing the Emergency Proclamations, the Prevention of Crime Act 1959 and other similar preventive detention laws.

Police Custody

Democracy and the rule of law necessarily entail values of accountability and responsibility. The Government through the Ministry of Home Affairs, the police and the prison authorities must be accountable for their actions. In this instance, SUHAKAM is aware of the numerous complaints of deaths in police custody, police brutality and negligence. We view these

issues gravely. Prompted by the complaints lodged and also on SUHAKAM's own initiative, we have visited police lockups, temporary immigrations detention and rehabilitation centres to examine the conditions at these places. We have interviewed policemen, visited the hospitals where the victims of police brutality were admitted and were briefed by the doctors who had examined them. One main problem that we noticed was the problem of overcrowding and the conditions of detention did not comply with international standards and the United Nations Standard Minimum Rules. Another rather worrying observation is that the welfare and safety of infants of illegal immigrants were compromised as these children were detained along with their mothers.

I will not reiterate our recommendations but it must be said that there were positive outcomes as a result of these visits. The Attorney General ordered two inquests, an 87-year-old prisoner who was suffering from an eye problem had received the proper medical treatment and we are monitoring his condition and the status of his appeal to the Court of Appeal. The police on their part have agreed to set up a human rights desk in the Criminal Investigation Department and a joint committee has been set up between SUHAKAM and the police to address issues of human rights. Further, as part of our endeavour in sensitising enforcement officers, SUHAKAM has also held a number of dialogue sessions with senior police officers and we are working closely with enforcement officers to raise their awareness on issues pertaining to human rights. A workshop for the Prisons Department, Immigration Department, the Customs and Excise Department and the local councils is being organised by SUHAKAM. Two workshops have been held this year, the first in Malacca on March 14, 2003 and the second in Terengganu on May 24, 2003. Another two similar workshops are scheduled at the end of this year.

Remand Prisoners

On the same note, in terms of detention and remand, SUHAKAM has singled out a particular disadvantaged group of juveniles. As follow-up to previous visits on juvenile prisoners, we found that the conditions have improved but the problem of lack of access to counsel still persists. In SUHAKAM's report on the right of remand prisoners, it recommended that magistrates when making remand order, inquire when the accused person was first arrested and whether he has been moved from one district to another and how long has the accused person been in custody. At this juncture, I must commend the police and Prisons Department for a positive response. We note that co-operation between the authorities concerned have been enhanced. The police have issued a departmental order to the effect that family members or guardians must be informed of the arrest of the juvenile and the Prisons Department has provided each prisoner with writing materials to contact their family members through a letter should other means of communication prove futile. Further, the police have assured SUHAKAM that they will inform probation officers of the arrest of juveniles and that young

prisoners are not detained together with adult prisoners. In fact, specific places in prisons have been gazetted for the sole purpose of detaining young prisoners. The police are also taking heed of the conditions in police lockups. A committee on the management of police lockups has been set up to address such problems and RM20 million has been allocated to improve the conditions of the lockups.

Responses from the judiciary have been equally encouraging. The Chief Justice issued a circular ordering that cases involving children in remand be disposed expeditiously and a requirement on magistrates to submit a monthly report on the number of children in remand, the period of remand, the age of the child, the place of detention and most importantly, reasons why the case was not disposed off within the stipulated time. As a result, the number of children in remand has decreased. Further, we welcome the Chief Justice's decision to have a magistrate on call for 24 hours during weekends and public holidays so as to lend accuracy to the constitutional right of being produced before a magistrate within 24 hours of arrest⁶.

Freedom of Speech and Expression

The exercise of civil and political rights is an intrinsic value of democracy, translated to mean the liberty to have open discussions, debate, criticisms, and the freedom for individuals to voice their opinion⁷. Freedom of speech and expression is enshrined in Article 10(1)(a) of the Federal Constitution and Article 19 of the Universal Declaration of Human Rights. In this regard, we have received a number of complaints and memorandum alleging that the right to freedom of expression has been violated where publishing permits were unjustly denied. There were also allegations of infringement of freedom of media by the use of the Sedition Act 1948 and we also note Malaysiakini.com editor-in-chief Stevan Gan's recommendations when he addressed this forum last year. Therefore, in *Annual Report 2002*, SUHAKAM recommended that several provisions of the Printing Presses and Publications Act 1984, Official Secrets Act 1972 and the Defamation Act 1957 be amended. This was to ensure that licences and publishing permits are not revoked arbitrarily and that there is a right to be heard upon revocation of the licence. We have also called for an independent and impartial body or media council to be set up. We have also urged the courts to be more dynamic and to have an overarching consideration to the principles of press freedom and expression when dealing with such cases. We have also called on the Government to consider the enactment of a Freedom of Information Act as a guarantee to press freedom and access to information.

⁶ Article 5(4) Federal Constitution.

⁷ Amartya Sen, *loc. cit.*, *supra*, see n. 1.

CEDAW and CRC

Apart from civil and political rights, SUHAKAM has also placed importance on economic, social and cultural rights. Only about four months ago, SUHAKAM organised a Round Table Discussion as part of our efforts to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Malaysia. The aim of the Round Table Discussion was to focus on the rights and obligations of Malaysia under CEDAW and to assess the extent to which progress has been made in implementing CEDAW provisions. The Round Table Discussion saw the participation of both the government agencies and non-governmental organisations. We also included representatives from women NGOs as members of the organising committee of the Round Table Discussion. This is to ensure the participation of a cross-section of interests. From the Round Table Discussion, SUHAKAM noted that although Malaysian laws do, to certain extent, guarantee equality, existing practices reflect the contrary. This is compounded by the cultural and social practices which impede equality and the fact that we do not have an Act of Parliament which translates CEDAW into domestic law. Since the Round Table Discussion, we have met with the Ministry of Women and Family Development in an attempt to foster relations with it. Rest assured, SUHAKAM will continue to monitor the implementation of CEDAW and the review of the reservations entered by Malaysia. We are also working towards monitoring the submission of reports to the UN treaty monitoring body, in particular, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child. In addition, we are considering the possibility of submitting shadow reports to the respective treaty bodies should the need arise.

From our three *Annual Reports*, SUHAKAM has recommended a host of international instruments that the Government should be a party to and the withdrawal of reservations. The commission has also recommended to the Government to adopt a national action plan on human rights. Though our recommendations are still being considered by the Government, let me assure you that we are not folding our arms. We will continue to lobby the Government for change. We have an on-going consultation with the various ministries and government agencies to urge them to ratify or accede to the recommended international human rights instruments. The Ministry of Foreign Affairs has assured us that it is in the final stages of preparing a paper for consideration of the Cabinet on Malaysia's accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. We are looking forward to the response with regards to the rest of our recommendations.

Further, we are also engaging in dialogues with the relevant ministries and agencies on ascertaining the rationale behind the reservations entered by Malaysia, with the main aim of urging the Government to withdraw these reservations. We are also conducting research on the implementation of the Convention on the Rights of the Child (CRC) through the Child

Act 2001, the reservations to CEDAW and its rationalisation under Syariah law. SUHAKAM is also researching on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Conclusion

I have touched on the major initiatives of SUHAKAM in the past year and much has been said on its overt initiatives and activities, published reports, dialogues and visits. However, let us not forget the more covert accomplishments of the commission, particularly, that its establishment has created a platform for the people to voice their concerns and to lodge complaints. Albeit SUHAKAM may be seen as the public's last resort, after exhausting all other remedies, it remains an available option. In addition to that, slowly but surely, SUHAKAM has increased the level of human rights awareness among the public.

At this juncture, let me note that SUHAKAM is not perfect. I appreciate that there is room for improvement. At SUHAKAM, we would like to see that we are given the opportunity to comment on draft legislation and policy proposals before they are translated into Acts of Parliament, with the objective of ensuring that these laws and policies are in conformity with international human rights principles. We would like to see that SUHAKAM's advice and recommendations are taken into account when the Government enacts new laws. From my observations, it cannot be denied that a close working relationship between the Commission, government agencies and civil society at large is vital. To conclude, I leave you with a quote from a learned author, that "to create an enabling environment for democracy we must focus on the magical triangle of coalition building between nation-states, the private sector and civil society"⁸.

⁸ *Peter Eigen.*

Question and Answer Session

with SUHAKAM Vice-Chairman Tan Sri Harun Hashim

The question and answer session after the keynote address was chaired by Dato' Param Cumaraswamy, the UN Special Rapporteur on the Independence and Impartiality of the Judiciary.

Ong Boon Keong (Malaysian Local Democracy Initiatives): The right to vote in local governments had been taken away in the 1960s in Malaysia. This has given rise to local councils that are not accountable, notoriously inefficient, corrupt and lack transparency. So, what role can SUHAKAM play to help restore people's voting rights in local governments? What do you think of the notion of "no votes, no taxation" in relation to local governments?



Tan Sri Harun Hashim: Your question is ironic because it was Penang that killed or nullified the right to vote in the local council elections. It was a long time ago and many of you were still young and probably don't know about this. There was a time when we had local council elections, and, if I'm not mistaken, from 1952. I had organised some of them, so I can still remember there were local council elections. Penang had an elected city council. In 1958 I was the magistrate here. It was then a British tradition that after the elections the new mayor would sit with the magistrate on the first day of taking office. The elected mayor Ramanathan sat next to me. As usual the first group of people brought before the Penang magistrate's court were the hawkers who were doing business without licences along Penang Road. They were hauled up every day. The police and the hawkers had an arrangement whereby the entire length of Penang Road was divided into seven sections (Monday, Tuesday etc) so they were brought to court once a week and not every day. On Ramanathan's first day of office, the hawkers were pleading guilty and paying the fines. After having heard 50 of them and about 15 minutes later, the mayor was rather fidgety in his chair and he said "adjourn, adjourn". I thought he wanted to go to the toilet. I told him to hold on for a little longer. After about 20 minutes, he said he could not stand this any more and asked me to adjourn. So I thought the call of nature was very urgent and promptly adjourned the proceedings. The mayor then asked me: "What are you doing? I can't sit there, these people were my voters. On the first day after being elected I'm sitting there and participating in punishing all these people for illegal hawking." Then there came a time when the council elections were abolished. For some unknown reasons, the City Council decided to boycott the National Day celebrations one year. The Federal Government said this was going too far

and abolished local government elections. It started to appoint councillors to run the local councils. The trigger point was actually Penang when the City Council defied the Federal Government by not celebrating the National Day. Coming to my views on local government, I have been personally advocating, mainly through my column in the *New Straits Times*, that the people should directly elect local councils. I think, as time goes on, this will be justified. The Royal Commission on Local Government, which was chaired by the then deputy minister Athi Nagappan, had recommended local council elections. When the chairman consulted me, I fully supported his recommendation. But since then the Government has yet to bring back local council elections. In fact, municipal council elections were held long before the national elections. I still think it is basics that if councillors were elected, they would be very active because they would be preparing for the next election. So they would be looking after the welfare of the people. I don't think any national government should worry too much when the local councils are mainly concerned about basic services such as clearing of rubbish and cleaning the drains. I think one of your PAS Member of Parliament in Penang, who is a lawyer, decided not to stand for re-election. When I asked him to explain his decision, he said: "I thought as an MP I will be sitting in Parliament making laws but the party asked me go back to the constituency in Penang and see whether the drains are clean and the rubbish is collected."

Ong Boon Keong (Save Our Selves): A housing rights advocate had submitted, probably, the first complaint to SUHAKAM and we have yet to receive any reply. The complaint was over oppressive conditions in a police lockup in Penang. Three years later, we had also made an enquiry about it through email. What happened? Is there a policy not to reply to each and every complaint like any other government department? Subsequently, we had submitted another memo on the denial



of housing rights to the visiting SUHAKAM chairman (it was then Datuk Musa Hitam). Also no response, like a stone thrown into the sea. Again, why?

Tan Sri Harun: Well, I'm sorry that your complaint did not get a reply because there is a standard procedure. The first thing we do once we receive a complaint is to classify as to whether there is violation of human rights before we take further action. For example, as I mentioned earlier, someone might complain about not getting his permit, some teachers complained that they did not get increment and some government servants said they did not get promotion. Well, it is a very wide interpretation of human rights but we are talking about basic human rights. Once we have identified them, of course we will investigate and may follow up with inquires. But there is a standard procedure to reply to all the complaints. So can you please give me the details of your complaint? This must have been overlooked or whatever. Probably you sent to the wrong address, we don't know. (Ong: I went to the

office). You went to the office? So you cannot be wrong. Any way I apologise if you have not received any reply.

Abdul Rahman Abdul Kadir (Penang State Assemblyman, Parti Keadilan Nasional): The power given to the Minister and police under Section 8(73) to detain a person without trial goes against human rights principles. Definitely ISA is a threat to democracy. About 100 or more ISA detainees have yet to be released. It is said that SUHAKAM can only comment, recommend and give views and there can be no response and action from the Government. SUHAKAM has no power to act against any wrongdoing. Please comment?

Tan Sri Harun: I would like to make two points. SUHAKAM is not an enforcement agency like the police, immigration or customs department but it is very much like a Royal Commission. In the past, whenever the Government had a problem it appointed a Royal Commission to hold a public inquiry and make recommendations. In fact I was chairman of a Royal Commission in 1971. In the past, the Government had always accepted and implemented the suggestions in the reports of Royal Commissions. In fact, my commission report was implemented 100 per cent and even extended to other government services. So, SUHAKAM is more or less like a permanent Royal Commission. When there is a problem, there will be an inquiry and we will give our recommendations after investigating. It is up to the Government to implement the recommendations. So, you may say, in that case SUHAKAM is a toothless tiger but our strength lies in public opinion. Under the law, we are required to report directly to Parliament every year. Our reports are not doctored or edited by any government agencies or ministry. In the reports, SUHAKAM is required to specify the complaints received, what it had done about them, its recommendations and what action the Government had taken on the recommendations. If there was no action, SUHAKAM just says “NO”. If yes, it will explain what was done. So after every inquiry, we keep sending our recommendations to the Government. Every Member of Parliament receives a copy of the report. It is up to the MPs, whether on the government bench or in the opposition, to take up the matter and query the Government about the implementation of SUHAKAM’s recommendations. Of course, as the MP knows, the resolutions have to be moved by a minister. If one is not a minister, then an MP will face some problems in moving any resolution in the legislature. But the opportunity is always there during the budget session of Parliament when MPs can ask any question and raise any matter. We have sent three reports to Parliament. Why are the MPs who were elected by the people not doing anything about our reports? SUHAKAM does not have enforcement powers and this is the best we can do. I think the MPs have to change some of the MPs or all of them. Our reports not only go to Parliament but also to the UN Commission for Human Rights in Geneva and other international agencies. Of course, Malaysiakini will also play up the reports straight away. In addition, Amnesty International, Human Rights Watchdog and all sorts of organisations have access to our reports. Our reports are also available on SUHAKAM’s website. So, it is up to the people to react and do something about the reports. We can only do our job as set out in the Act of Parliament. I hope it answers the question.

Dato' Param Cumaraswamy: Can I just add very quickly to this point. In many countries, national institutions do not have powers to enforce their recommendations. This is the frustration many national institutions have expressed to me whenever I go on missions to these countries. For example, Mexico has a very effective national commission, which was infringing the constitution. At that time the constitution was being reviewed. In my main report, I recommended that the law be amended to require the Government to respond to the recommendations from the national institution within a reasonable period of time. The suggestion was the Government should publicly declare whether it is accepting the recommendations and implementing them. If the Government has difficulties in accepting the recommendations, then it must publicly give reasons as to why it is unable to implement them. Let me say this, not all recommendations can sometimes be implemented, particularly those coming under the covenant on economic, social and cultural rights. They are quite difficult to implement sometimes because of budgetary and other reasons. But the important thing is governments must be very transparent and inform the people as to why they are unable to accept and implement the recommendations of an institution set up by Parliament.

Wilson: The Government has allocated RM6 million to SUHAKAM. Does it have any plan for more road shows in all the other states? So far, SUHAKAM has only conducted road shows in Sabah and Sarawak? Can we have more road shows, may be in all the major cities? Is there any plan to open branches in all the states? Since the Government has allocated the funds, what is SUHAKAM's transparency level? If I'm not mistaken, four or five people were shot dead by the police in Kelantan and a complaint has been lodged to SUHAKAM. Until now I have not seen any detailed report on this matter. Another issue is that of detainees who died in the cell, a few Indian youths have died in police lockups. Reports have also been lodged to SUHAKAM on this but there is no outcome? Please explain.

Tan Sri Harun: Yes, SUHAKAM is given RM6 million a year and our account is in the report itself. We have explained what happened to the money. We have been conducting road shows not only in Sabah and Sarawak but in other states as well. Actually, we have been going around, to Kedah, Johor and so on. Certainly, we will conduct more road shows. We have branches in Sabah and Sarawak because of problems of accessibility. People from Sabah and Sarawak will have to come a long way to Kuala Lumpur just to file complaints and it would incur them more expenses. So, that is why we have established branches in the two states. Here, nobody has complained that they could not reach SUHAKAM because of transport problems. We have a very efficient communications network in the Peninsula. Well, we don't actually have that many complaints from Penang. I don't know which comes first, the chicken or the egg. If we have more branches, does it mean we will have more complaints? Or does it work the other way? I'm not suggesting that you all must complain as much as possible so that we can have a branch in Penang. We have to take public convenience into consideration. So far we cannot justify the need to open branches in every state in the Peninsular. Yes, we have received reports about people who died in police custody and we have made immediate enquires. But once the matter is taken up by the police and the post

mortem is being held, we cannot interfere. Our law says SUHAKAM should not interfere if the matter is already in court. Even if SUHAKAM has started an investigation, our work must stop once a case is filed in the court. We have to let the court decide. Otherwise there will be too many people involved in the same matter. In any case, it is the requirement of the law. But if somebody has died and nothing has been done, we will act the moment we get the complaint. We don't just sit on the complaint. But once we find that the matter is on the way to court, SUHAKAM will not interfere further.

Param Cumaraswamy: Maybe in those circumstances where SUHAKAM investigations have to be suspended because of an imminent court proceeding, it would be worthwhile to hold a watch in brief in court. This would make it clear to the court and the police that SUHAKAM is monitoring this particular incident. It would also bring to the attention of the authorities that SUHAKAM is very interested in the matter and the outcome. Thereafter when the court proceedings are over, SUHAKAM can have a look into the matter. So I think a watch in brief in court by SUHAKAM would carry a lot of weight in the interest of human rights.

Tan Sri Harun: Thank you for this suggestion. I will certainly make this a part of the standard operation procedure.

Wilson: One question was not answered, the one about four family members who were killed in Kelantan. The incident happened about four or five years ago and a complaint had been sent to SUHAKAM. I would like to know the outcome?

Tan Sri Harun: I need to find out more details. I cannot say more. But you said this incident happened before SUHAKAM was established.

Param Cumaraswamy: To whom did you send the complaint if SUHAKAM was not established then? In fairness to SUHAKAM, when you raise individual matters, I don't think the commissioners have a registry of all the complaints here for them to answer. Maybe they could note them down and you can get a reply subsequently.

Prof Chiam Heng Keng: I just want to add to what Tan Sri Harun has said on road shows. Actually, there was a road show in Penang. It was organised by Dato Ranita last year. Sometimes we have road shows not in general but on specific issues like the one on disability. We have been making arrangements to come here. In fact, we were supposed to be in Penang next week but the local NGO representatives told us it was not possible because of the Yang Di-Pertua's birthday celebrations. Then we wanted to come the following week but they said something else. It is not that SUHAKAM does not want to have road shows but when we plan to have one, people here tend to have other things to do. So it's not that we are not conducting road shows in Penang. We try to but the local organisations have to play their part too.

Lim Kah Cheng (Coalition of Societies For the Disabled): Can I answer that please. This is inaccurate. Actually, we wrote a letter to Prof Chiam and Dato Borat complaining about the violation of the human rights of disabled persons. It was in February or March when we heard that there was a dialogue in Kuala Lumpur. I was so happy that after several months, SUHAKAM did call us in response to our letter. We are at the moment negotiating on a date to have a dialogue with SUHAKAM. We did give several dates for SUHAKAM to consider. I'm not sure whether Prof Chiam has checked with her officer Ms Lee Pei Si on the dates we had suggested. They were all in July and we also proposed August. She got back to us and asked for a postponement. I pleaded with her not to postpone it because we are hoping that a bill on disability discrimination will be tabled in Parliament this September. We want a hearing on 4th September 2003. Why is the disability issue not even one of the issues in focus in your report? I also noticed that in your previous proceedings, you have actually received complaints from Anthony and others on issues pertaining to the disabled people's right to education. Somehow it is still not in focus. From my experience working with the disability groups, we are always not in the focus of anybody. It is like an invisible issue and the violations of the rights of disabled people are numerous. There is a local government by-law (34a), which says that buildings must be accessible to disabled persons but just look around you. How accessible are they to the disabled? On rights to education, the Government has made education compulsory from this year and yet there are lots of children who are not sent to school. It is not that they don't want to go to school. It is because the schools and the transport system are not disabled-friendly. It is a major problem just to get out of the house and go to school. So, my first question is why is the disability issue not in focus? Secondly, will it be an issue in focus? Before I end, I would like to beg to differ with Tan Sri Harun's comment on local government elections. I don't think a single issue triggered the ban on local government elections. I don't think one boycott could lead to such a major change in the lives of the electorate. I think it was because we have always voted the opposition in local government elections. I think that was why the law was amended to end local council elections.

Tan Sri Harun: There is a Malay saying *kerana satu nyamuk bakar kelambu* (because of a mosquito, one burns the entire mosquito net). Yes, that is politics. Of course in many countries, the national capital is always in opposition hands and they don't want it to be so in this country. It is one of the reasons but what I said was that the ban was triggered by the Penang City Council's action. The issue of disabled person is always in focus for SUHAKAM.

Lim Kah Cheng: Mr Chairman, with due respect, the matter I raised was not a women's issue but a disability issue and it was addressed to SUHAKAM as a whole. Why is the disability group not included? That's all and it's very simple.

Tan Sri Harun: I presume that you are Penang resident. We have had disability sessions in Kuala Lumpur and had invited the various organisations representing the disabled. People with all kinds of disability attended the sessions. In the particular session even the association

of short people, *orang kerdil*, took part. They also had complaints. According to them, when they enter government buildings, they queue up to get the numbers just like anybody else. Once their number was called out, they go to the counter but the person behind the counter keeps on repeating the numbers. The reason being these people were so short that the person manning the counter could not see them. So, their organisation suggested having raised platform so that these people can be seen. What I mean is that SUHAKAM has gone to that extent and has written to the Ministry of Local Government and Housing to make specific provisions for the disabled in government buildings. We recommended that all public buildings must be accessible to the disabled. Certainly, they have not been ignored.

Evaluation of SUHAKAM's Reports for Three Years and the Government's Response

*By Ramdas Tikamdas
President, HAKAM*

This is the third occasion in three years that civil society groups are meeting to evaluate SUHAKAM's Annual Reports which the Malaysian Human Rights Commission is bound by statute, the Human Rights Commission of Malaysia Act 1999, to submit to Parliament. Although we have been discussing and debating on the Commission's Annual Reports, unfortunately the Parliament that established the Commission has yet to do so. The Government's response to the two earlier reports, *Annual Report 2000 and Annual Report 2001*, has been one of measured silence. The fate of the third *Annual Report 2002* is yet to be seen when Parliament sits again in September 2003.



SUHAKAM itself has expressed its regret on the matter in its *Annual Report 2002*. The report states that the “acid test of SUHAKAM's effectiveness is the response that will be forthcoming from the Government and whether its recommendations made in its report will be debated and acted upon Advocacy on human rights for Parliamentarians and policy makers is an area which requires attention by the Commission as it is only when the government authorities and parliamentarians have a better realisation of human rights can they be more willing to accept and implement the Commission's recommendations and can we expect the commission's reports to be debated in Parliament”.

The submission of SUHAKAM's Annual Reports to Parliament plays a crucial part in the scheme of the Act whose expressed object is “the protection and promotion of human rights in Malaysia”. The Act provides that every year SUHAKAM shall submit an annual report to Parliament and Section 21(2) states:

“The report shall contain a list of all matters referred to it, and the action taken in respect of them together with the recommendations of the commission in respect of each matter”.

The fact that by statute, the Commission “shall” submit recommendations to Parliament must necessarily envisage and mean that Parliament must receive and consider and debate on the recommendations submitted. But for the two earlier *Reports 2000 and 2001*, attempts by some parliamentarians to have the Reports tabled and debated in the Dewan Rakyat have been rejected by the House. In fact, even the “special reports” which SUHAKAM has prepared from time to time and submitted pursuant to S.21(3) of the Act, have not received any response from the Government. These include the Kesas Highway Inquiry Report submitted on April 2, 2001, the Freedom of Assembly Report submitted on July 24, 2002 and the National Human Rights Plan of Action submitted on February 25, 2002. SUHAKAM states in its *Annual Report 2002* that as it “continues into its third year, a major challenge that remains unresolved is the slow Government response to SUHAKAM reports on major issues that touch on fundamental liberties”. This “slow Government response” can be seen from the various human rights violations and abuses that have continued unabated even after the enactment of the Act and establishment of the Human Rights Commission.

Black 14

Barely a week after the appointment of the Commissioners on April 3, 2000, the authorities unleashed “*Black 14*”, a date which is now etched in the human rights calendar as a stark reminder of abuse of police powers with the all too familiar images of water canons, batons, tear gas, police boots and beatings. Since then the Executive and various government and law enforcement agencies have gone about *their business as usual* as if SUHAKAM is just another human rights voice, nothing more.

Detention Without Trial

More and more people have been detained under the ISA and the other emergency enactment and regulations relating to detention without trial. The first Annual Report records 40 people detained under the ISA, the second records 78 and the third records 112. *Suaram’s Human Rights Report 2002* states that about 400 people are being detained under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 while approximately 1,000 people are detained under the Dangerous Drugs (Special Preventive Measures) Act, 1985.

In the *Ezam Case*, the Federal Court had declared the detention of four people unlawful. Even though SUHAKAM recommended in a press release on Sept 17, 2002 that the Home Minister should review the detention orders, there was no response from the Government and the *Reformasi* detainees continued to be detained until the last hour of the full two-year term.

Freedom of Assembly

So far as the right of *freedom of assembly* is concerned, the Government's response to the Kesas Highway Inquiry Report and the Freedom of Assembly Report is the aggressive dispersal of the May Day march in 2002 and the blanket ban imposed by the police on political ceramahs. This is despite SUHAKAM's press release on Feb 18, 2002 that there is no legal provision for the ban. The May Day gathering for 2003 was however permitted to proceed without resulting in any breach of the peace or public order.

Freedom of Speech and Expression

Further, since the establishment of SUHAKAM there has been unabated and continuing abuse of repressive laws such as the Sedition Act 1948, Official Secrets Acts 1972, the Universities and University Colleges Act 1971 and the Printing Presses and Publication Act 1984, the combination of which has further stifled and repressed the right of free speech and expression and undermined press freedom. The Human Rights Commission could only stand by helplessly as democracy continued to recede and as Malaysia was ranked 110 out of 139 countries in a press freedom index. The survey was carried out by *Reporters Sans Frontiers* (RSF), an international organisation dedicated to the worldwide protection and promotion of press freedom. Malaysia's ranking was below that of other Asean countries such as Indonesia (57), Thailand (65), Cambodia (71) and the Philippines (89).

Deaths in Custody and Police Shooting

Further, during this period there was increasing concern over the excessive use of police powers and interrogation methods as more detained persons died in police custody. Six deaths were reported in 2000, 10 deaths in 2001 and 18 deaths as of September 2002. SUHAKAM in its *Report 2002*, beyond stating that it "*views with concern the allegation of police brutality and negligence in the complaints received*", offers no in depth review or recommendation.

There is also no reference to the growing concern of civil society in respect of deaths in police shootings. According to the Police Watch and Human Rights Committee, set up by concerned citizens, 35 people were reportedly killed by the police in shoot-outs from January to October 2002. Invariably, the mainstream newspapers reported the police version of the incidents with the deceased persons normally painted as highly dangerous criminals, and accompanying statements attributed to senior police officers that many old files were being closed.

SUHAKAM in its *Report 2002* however reported some progress and expressed its appreciation to the judiciary, the police and the Prisons Department for steps taken to

improve the welfare and rights of young prisoners. The Human Rights Commission also reported that RM20 million had been allotted to the police to improve the condition of several lockups. It also stated that a nationwide study would be conducted to evaluate the condition of police lockups in the country.

What About Kampung Medan?

There is one continuing omission by SUHAKAM that civil society will not and cannot forget. That is the failure to consider, inquire into and make recommendations in respect of the six deaths and serious bodily injuries sustained by about a hundred people in Kampung Medan. To date, despite repeated requests from various groups, the authorities do not seem to have the political will to commence a public inquiry into the tragic incident to find out what happened, how it happened, who are responsible for the travesty and what steps need to be taken to ensure that it does not happen again. Any attempt to cheat history will inevitably fail and worse, social ills and injustices that are left untreated will invariably manifest themselves in unpredictable ways in time. We urge SUHAKAM to do its duty without fear or favour and to immediately commence an inquiry into the Kampung Medan incident pursuant to S.12(1) of the Act.

Recommendations for Systemic Advancement of Human Rights

SUHAKAM has made four significant recommendations for the systemic advancement of human rights in its reports. These are pertaining to preventive detention, the emergency proclamations, the legislative process and the ratification of international human rights covenants. These recommendations if adopted, would undoubtedly lead to the protection and promotion of human rights in Malaysia.

Preventive Detention Without Trial

The *first* is its recommendation that preventive detention without trial is an infringement of universal human rights principles. SUHAKAM has prepared two reports, firstly in respect of the conditions of detention under the ISA and secondly the review of the Act. It recommended that the Act should be repealed and replaced with a new comprehensive legislation which deals with national security (including terrorism). These special offences will be listed as scheduled offences. Under this proposed enactment, the police can detain a person for a maximum period of 24 hours after which the person must be produced before the High Court. Pursuant to an order of the High Court, a person may be further detained for maximum periods of seven days each time for a maximum of 29 days. Upon the expiry of the 29 days, the person must either be released or charged in court for the scheduled offence. The legislation shall only be in force for a period of one year renewable for one-year periods by authority of Parliament.

SUHAKAM also proposes to review the other preventive detention laws such as the Prevention of Crime Act, 1959, the Emergency (Public Order and Prevention of Crime) Ordinance 1969, the Essential (Security Cases) Regulations 1975 and Dangerous Drugs (Special Preventive Measures) Act 1985.

Emergency Proclamations

The *second* recommendation is its proposal to review the necessity of the emergency proclamations that are still in force in Malaysia. The *Annual Report 2000* states that none of the four proclamations of emergency in 1964, 1966, 1969 and 1977 have been revoked and that this “perpetual state of emergency” continues although the events that occasioned them had come to pass. Civil society’s position is that this perpetual dark cloud of emergency hanging over our body politic is a blot on our system of parliamentary democracy.

Legislative Process

The *third* recommendation is that Bills of Parliament be debated by public interest groups and be drafted in consultation with them. Unfortunately this positive recommendation has also not been adopted by the Government, so much so that even SUHAKAM gets to know about Bills only when they are presented in Parliament. SUHAKAM therefore is unable to give its consideration and input as to whether laws passed by Parliament have human rights implications and consequences.

Ratification of International Covenants

The *fourth* recommendation is that Malaysia should ratify the international human rights covenants as soon as possible. They are:

- International Covenant on Civil And Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The ratification of these international human rights instruments will demonstrate the Government’s respect for and commitment to protect and promote human rights as envisaged in the Act. Further, HAKAM repeats its proposal made during the National Consultation in Ipoh on Sept 7, 2002 that the time has also come for the Government to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). In SUHAKAM’s *Annual Report 2001*, this international convention has been identified as “crucial to the

protection of human rights". The Commission should therefore also recommend this international convention for ratification by the Government.

Motion for SUHAKAM to Present Recommendations in Parliament

Recommendations by SUHAKAM without the political will to consider and implement them will be a mere public relations exercise and will not realise the object of the Act and the aspirations of the people. Civil society and public interest groups have a legitimate expectation that SUHAKAM's reports and recommendations will receive the due respect and consideration they deserve.

HAKAM therefore proposes that a motion be put before Parliament at the next sitting in September 2003 to invite SUHAKAM Chairman Tan Sri Abu Talib Othman to present the three Annual Reports, the special reports and its recommendations to Parliament to be debated and considered for implementation.

This would be a positive step in heralding a new era in government based on civil liberties, human rights and the rule of law. It would also mark our progress in both development and democracy as we move forward towards Vision 2020.

SUHAKAM's Recommendations and the Government's Response

By Prof Chiam Heng Keng, Commissioner, SUHAKAM

Let us look at the recommendations made by SUHAKAM in the *Annual Report 2002* very briefly. In the first recommendation, SUHAKAM suggested a review of the Internal Security Act 1960; conditions of detention under ISA; detention centres, welfare homes and hospitals. It also sought a review of the Human Rights Commission of Malaysia Act 1999.

The second recommendation touched on the rights of indigenous people; Rohingya community in Malaysia; rights of young prisoners; and the Malaysian Human Rights Days that include human rights education and the right to information.



Government's Response

Now, let us look at the response from the Government. On March 17, 2003, the Ministry of Foreign Affairs sent the Government's response to SUHAKAM's observations and recommendations made in its *Annual Report 2001* and *2002* and also in other SUHAKAM reports published in the two years. The Government's response came in 93 pages. Top in the list was the response to the issues of freedom of assembly, rights of detention under ISA, rights of remand prisoners, other types of detention and rights of indigenous people in Sarawak.

The Government had also held a forum on vulnerable groups in 2001. It has responded to rights of the disabled, women, children, workers and special groups like those who are living with the AIDS. The Government has also responded to SUHAKAM Commissioners' visits to the Sungai Buloh prison, women's prison in Kajang and other detention centres such as the Kapar police lockup. It also responded to the report on the reform of the Exile Act 1959 and the remand detention law and gave its comments on the ratification of human rights instruments.

Further, the Government also responded to the recommendations on (introducing) international provision into the Federal Constitution; aligning domestic laws with international conventions; the judiciary to be more open; and the review of all reservations on conventions.

It also responded to the Kesas Highway Report. In total, the Government has responded to 25 topics or issues.

ISA issues

The Government did not respond to all the recommendations made in SUHAKAM's *Annual Report 2002*. It has not responded to the recommendation for the repeal and replacement of the ISA. However, the Government has responded to several observations and recommendations made by SUHAKAM. I would like to give an example of the Government's response to the ISA issue. The Human Rights Commission's recommendation was that the family members of detainees should be allowed to interact freely and the screen that separates them be removed. The Government's response was that all visitors of ISA detainees are subjected to the same requirements as visitors to other detention centres. It also said the screen is to prevent objects from being handed over to the detainees and that there is no change in visiting hours.

Basically, there seem to be some improvements in the basic amenities in the detention centres, for example the provision of flush toilets instead of pots.

Rights of Remand Prisoners

The Government has also responded to the issue of rights of remand prisoners. Its response included (that they) have to be produced within 24 hours but (their remand) can be extended if the following day is a holiday. It also noted that family members were informed but some remand prisoners refused to give information about their families or employers.

SUHAKAM had observed that the lock-ups were overcrowded and lacked basic amenities, including clean water. The Government responded that efforts will be made to improve the basic amenities. It said RM20 million has been allocated to improve conditions in the lock-ups. The actual response to the report was much better than the official response. The judiciary had requested SUHAKAM's help in drawing the courts' attention to instances of consecutive remand orders that are issued to enable further investigation. The Chief Justice's decision to have magistrates on call on weekends and public holidays to enable the police to produce suspects before them within 24 hours of their arrest as required by law is another positive outcome of the report.

Young Offenders

The Government has also responded to our report on young offenders. In fact, SUHAKAM

has actually included in its *Annual Report 2002* what it had done. The Government said parents or the welfare officers of young offenders were informed, except for vagabond, because the Child Act 2001 requires parents to be present at all proceedings. The police also denied the use of force or violence. The Government provided 15-page feedback on this issue and one of the outcomes is the separation of young prisoners from adults. Another is the assurance of appointing counselors and officers whose expertise is in child psychology for rehabilitation of young offenders. The Government also noted that these offenders could apply for studies in higher institution if they qualify. As I mentioned just now, SUHAKAM commended the judiciary, the police and the Prisons Department for their forthright response and assurance of change to the various problems identified in the *Annual Report 2002* (page 54-57).

Indigenous People in Sarawak

The Government also responded to matters raised with regard to the indigenous people in Sarawak. Basically, the Government maintained that to advance, the indigenous people must be willing to change their idea of basic economy and get rid of the “*cukup makan sendiri*” attitude. It also refuted some of the allegations by the indigenous people, which it said were incorrect. The Government said the compensations paid to them were fair as they were based on the formula agreed by all parties including representatives of the indigenous people. It also claimed that the Bakun Hydro Dam project provided about 6,000 jobs but the residents of Sungai Asap were not taking up the opportunities.

No Response

The Government has not responded to five of SUHAKAM’s recommendations. They are on the freedom of the media, review of the Human Rights Commission of Malaysia Act 1999, rights of indigenous people, Rohingya community in Malaysia and human rights education and information.

Conclusion

So, to conclude I would say that the Government has not responded to five more issues in SUHAKAM’s *Annual Report 2002*. Probably the Government gave priority to recommendations in the *Annual Report 2000* and *Annual Report 2001* and viewed these five areas as less important than the others. The 93 pages of feedback suggest that the Government is not ignoring the Commission’s recommendations and reports. Admittedly, many of the responses are not what SUHAKAM expects or hopes for. Many probably

disagree and dismiss the Government's responses to be of little consequence. It is much easier to be a critic, sit in judgment of others and make impossible demand of them. A good benchmark to evaluate the performance of others is to assess one's performance and what one has achieved.

SUHAKAM: What Assessment, Whose Future?

By P. Ramakrishnan

President, Aliran Kesedaran Negara

I am very happy to be here, on behalf of Aliran, to speak as a member of the panel at this important public forum.

The gathering of many activists and concerned individuals here is a reliable indication of a growing public awareness that the protection of human rights and the preservation of civil liberties in this country will always require the active participation of conscious citizens.

At the same time, it is no small reminder, which needs to be made over and over again, that there is much work to be done before we can be satisfied with the state of human rights and civil liberties, and with the progress, if we can call it that, in these critical areas of public and political life.

We are all aware that the broad movement dedicated to protecting human rights and preserving civil liberties in this country long preceded the founding of SUHAKAM.

Nonetheless it is significant that, three years after it was established, the Human Rights Commission is today the subject of a public evaluation in order to ascertain its effectiveness as a human rights commission, and assess its impact as an institution set up to defend human rights and civil liberties.

Indeed, if I may boldly offer my humble opinion, I would say we are here not least to ponder aloud the very future of SUHAKAM itself.

Those of us who have been involved in the struggle for human rights and civil liberties will remember with what uncertainty and expectations SUHAKAM's establishment was greeted in 2000.

Among social activists, politicians and concerned citizens, as I recall, there were some who were dismayed at the ways in which the Human Rights Commission of Malaysia Act was rushed through Parliament in September 1999 with scant consultation with civil society organisations. Their well considered comments and critiques are recorded in an invaluable



resource document, *Human Rights and the National Commission* edited by S. Sothi Rachagan and Ramdas Tikamdas and published by HAKAM.

Other people cynically dismissed Parliament's intention in establishing SUHAKAM at that time. Who could blame them, for why should the Barisan Nasional-dominated Parliament, habitually sluggish in protecting civil liberties, be rushing to establish a National Commission of Human Rights?

Yet others who knew too well the BN government's *modus operandi* could barely believe that it was offering to empower an independent commission to investigate and check the BN's own record of abuse of human rights and violation of civil liberties.

The scepticism and the suspicion of the national movement for human rights and civil liberties were not groundless. The National Human Rights Commission was set up in April 2000 – a critical moment when the BN government was responding to popular, legitimate and lawful expressions of dissent with fiercer repression against the leaders of legal opposition parties, social activists, and the promoters of alternative media.

Therefore, many of us asked: could it be that in the name of creating a national human rights commission, the BN government was equipping itself with an institutional tool that would set back the cause of human rights protection?

In short, and heeding Prime Minister Datuk Seri Dr Mahathir Mohamad's advice always to call a spade a spade, let me put it bluntly that many of us who were involved in the struggle for justice and freedom openly wondered if SUHAKAM would turn out to be a creature of the BN government.

(With due respect to everyone here, and to the SUHAKAM Commissioners, let me say that it is not just now that we begin to evaluate SUHAKAM!)

As always, there were BN apologists who tried very hard to convince the nation, if not the world, that SUHAKAM's founding had little to do with public anger over (former Deputy Prime Minister) Anwar Ibrahim's maltreatment and nothing to do with *Reformasi's* pressure.

Well, any fool could have told those apologists, simply, that Parliament created the Human Rights Commission of Malaysia Act with indecent haste and the BN government set up SUHAKAM with public relations fanfare precisely because UMNO's relevance was under considerable threat.

I am happy to note that none of us involved in developing a civil society stance vis-à-vis SUHAKAM in 2000 was a fool.

Tan Sri Harun Hashim once observed, concerning SUHAKAM, that, “The moment a new body is established there is this great expectation that miracles will happen overnight”.

I do not speak for the BN government. But it is possible that the BN government placed fond hopes in its half-hearted but carefully scripted establishment of SUHAKAM. Perhaps the BN government had hoped that setting up the Commission would miraculously make public disgust over Anwar Ibrahim’s humiliation, *Reformasi*’s courageous response to lies and repression, and the electoral support for the Barisan Alternatif vanish overnight.

But I doubt very much that the activists, politicians and concerned individuals who had long and sincerely struggled for human rights and civil liberties ever entertained great expectations that miracles would happen the moment SUHAKAM was established.

Had there been a miracle, they and we would probably have welcomed it given the BN government’s dismal abuses of human rights and violations of civil liberties.

But, no, those who genuinely worked to advance the cause of human rights protection were realistic. They expected to find SUHAKAM placed *between* the BN government and the national human rights movement.

I say “between” for two reasons:

On the one hand, the BN government – which, as the late Azmi Khalid astutely commented, constantly took away by draconian legislation what the Constitution guaranteed – hoped that SUHAKAM would be its institutional buffer to deflect and minimise the anger and dissent in the post-Anwar era; and,

On the other hand, the national human rights movement had every reason to claim that the Human Rights Commission, however limited or manipulated, was a direct outcome of a long struggle to establish an independent mechanism for extending the scope of human rights and civil liberties.

Accordingly, a fundamental assessment of SUHAKAM’s role and work must determine whether it is a *creature of the BN government*, or an *ally of the national movement for justice*. In other words, whether SUHAKAM sides with those who abuse human rights and violate civil liberties or gives true assistance and solidarity to the victims of the same abuses and violations.

Today, three years after its founding, perhaps we are not yet ready to deliver a conclusive verdict on SUHAKAM’s true colours.

We know that SUHAKAM has carried out certain duties and tasks, which no other

government-established and government-funded institution has conducted to date. As a result of some of SUHAKAM's studies, reports, workshops and seminars, the public may have learned new things about the deficiencies in the legal system. The public may have become more aware of the injustices and repression committed in the name of "national security" or "law and order", and so on.

On record, some social and political groups have availed themselves of the avenues opened by SUHAKAM to report abuses and violations to an institution charged with investigating and responding to such reports.

Specifically, we have seen SUHAKAM defend the constitutional right of the peaceful protesters to assemble during the Kesas Highway march in 2000, or more recently highlight the injustices perpetrated under the Internal Security Act.

However, much of SUHAKAM's work along those lines may be credited to its Commissioners whose terms have not been extended, presumably because their efforts and their commitment to human rights and civil liberties exceeded the low standards of the BN government.

Worse than that, we know the BN government and the institutions under its control – the police, the ministries, and the media – displayed scant respect for SUHAKAM's Commissioners whenever they disagreed with official versions of what was happening to human rights and civil liberties. In fact, these institutions went out of their way to belittle the meaning of having a National Commission of Human Rights.

Since SUHAKAM was established, the BN government has detained scores of citizens under the ISA, charged others with all kinds of offences, cancelled or disrupted ceramahs and withdrawn the publishing permits of independent periodicals.

Unfortunately, SUHAKAM was not able to prevent or redress those violations of human rights and civil liberties.

In addition, the Commission has not been able to plan a meaningful role in formulating legislation and policies to safeguard human rights and civil liberties. Indeed we would not be wrong in thinking that the BN government will never permit SUHAKAM to play such a role.

We would not be exaggerating if we warn its Commissioners that SUHAKAM is in danger of being a warehouse for storing reports and memorandums that the BN government will consistently ignore.

We would not be exaggerating if we warn its Commissioners that SUHAKAM equally faces the danger of remaining a complaints' bureau, which helps the perpetrator rather than the

victims of human rights abuses.

SUHAKAM could well play the part of deflecting criticisms, dissipating anger and re-channeling outrage so that its Commissioners, rather than Parliament and the Executive, end up facing public wrath and dissatisfaction.

It was in anticipation of SUHAKAM's becoming such a creature of the BN government that 32 non-governmental organisations "disengaged" with SUHAKAM for 100 days shortly after Tan Sri Abu Talib Othman succeeded Tan Sri Musa Hitam as its Chairman.

The disengagement definitely expressed disillusionment with SUHAKAM's seeming helplessness. But the disengagement was also a protest against the BN government. In particular the 32 NGOs had noted that the BN government had showed neither respect for nor intention to comply with SUHAKAM's recommendations.

Moreover, the NGOs had criticised the appointment of Abu Talib as SUHAKAM Chairman. No one had forgotten that Abu Talib had sided with the BN government when it abused human rights and violated civil liberties, especially during *Operasi Lalang* in 1987 and the judicial crisis in 1988.

SUHAKAM was founded at a crucial political juncture. In evaluating its performance, we must remember that we have arrived at another critical juncture.

We stand on the eve of a transition of power from Dr Mahathir to the remaining UMNO and BN leaders. We recall that past transitions often involved fierce factional fights within UMNO that led to serious violations of human rights and civil liberties, not least for innocent groups of citizens not involved in any ruthless competition for power.

We stand within months of another general election. And past elections have shown just with what impunity the BN government can undermine the rights of citizens and legal parties to participate in the electoral and broader democratic processes.

A few weeks ago we saw the release of Parti Keadilan Nasional leaders and social activists unjustly detained under the ISA for two years. Yet we know that scores of other citizens remain imprisoned under the ISA, in equally unjust ways.

Year by year our democratic space has been curtailed. Daily our freedom of expression is severely restricted. Our basic right to the freedom of assembly is apparently no longer recognised by the BN.

Citizens who are detained fear for their safety in police custody. Ironically, we might even say, some of the most blatant abuses of human rights and cynical violations of civil liberties

have taken place *after* SUHAKAM's establishment.

Being mindful of the times in which we live, we must realise that any evaluation of SUHAKAM's ability to protect human rights and preserve civil liberties, cannot simply be an exercise in pointing how much it has done, its limitations and how much more it must achieve.

All those are important questions, which I hope we can all help to answer fairly.

Yet, I humbly suggest, if we want to assess SUHAKAM's effectiveness accurately, we must be able to answer a fundamental question – is SUHAKAM turning into the creature of the BN government? Will its Commissioners allow themselves, individually and collectively, to be mere tools of social and political control?

No doubt the SUHAKAM Commissioners, present and future ones, will want to answer those questions themselves. But those of us who have been part of the human rights movement, we must always be clear that when we assess its performance as a national commission of human rights, we assess no less than SUHAKAM's future.

Economic, Social and Cultural Rights

By Charles Santiago

National consultations such as this helps SUHAKAM to be responsive to the demands of civil society and forces it to be accountable for its actions and policies.

This morning I would like to focus on three issues pertaining to the economic, social and cultural rights. First, I want to outline the status of these rights in the country as indicated in SUHAKAM's *Annual Report 2002*. Second, I want to put forward the notion of the right to development as the basis in which to evaluate economic, social and cultural rights issues. Third, I want to raise the issue of the right to water. This right will be violated if the water resources of the country are privatised. There is an urgent need to have a national debate and SUHAKAM should recommend to the Government not to privatise water resources since access to water is a fundamental human right.



Status of ECOSOC Rights

SUHAKAM's *Annual Report 2002* discussed two ECOSOC rights issue. They pertain to the violation of the rights of indigenous people and the access to education in the context of the Convention on the Rights of Children (CRC). It must be pointed out that SUHAKAM allocated only six pages to discuss ECOSOC rights. This constitutes about 4.6 per cent of the 132-page report. Five of the six pages discussed the violation of the rights of indigenous people.

Annual Report 2002 focused on its investigation of government failure to resolve problems of native and customary land rights of the Orang Asal (indigenous people) since this was affecting their livelihood. Furthermore, the Orang Asal were not consulted on the development projects carried out in their land. Outsiders, including companies and government agencies often exploited their land, and their subsequent relocation destroyed their family structure.

The OrangAsal are the poorest community in the country, with the lowest income. About 80 per cent of the OrangAsal live below poverty line. SUHAKAM has organised three seminars – in Sarawak, Sabah and Kuala Lumpur – to address these concerns and to identify “Friends of SUHAKAM” from the representatives of the Orang Asal.

According to the *Annual Report 2002*, the seminars were organised to inculcate awareness of human rights among the Orang Asal. It also noted that the Friends of SUHAKAM group was established to communicate with SUHAKAM on the planning and implementation of issues that have been identified in the various seminars.

Annual Report 2002 also indicated that children in Malaysia are being denied access to education. These children come from vulnerable groups such as the indigenous community, people with disabilities and children living with HIV/AIDS. SUHAKAM has organised a one-day seminar for agencies working with children.

Unfortunately, nothing more on ECOSOC rights was discussed in the *Annual Report 2002*. I think SUHAKAM has an extremely important role in the area of economic, social and cultural rights. SUHAKAM should take this responsibility seriously because the economic, social and cultural rights in the country have eroded. Moreover, these rights are fundamental to human development and raising the quality of life. If we look around, poverty and poverty-linked violence is increasing. There is a fear that access to water will be denied as a result of privatisation. Indigenous people face the danger of losing native and customary land. The cost of healthcare is rising and the Malaysian workers have become substitutable, replaceable, flexible and disposable as the result of economic globalisation. Mother tongue education is under attack. In some areas in Kuala Lumpur, poor people have been staying in temporary houses for 15 years before being relocated to another temporary place.

Right to Development

We need to put forward the notion of the right to development in articulating economic, social and cultural rights. The right to development analysis indicates that poverty, denying people access to water and racial discrimination suffered by the poor, including the Orang Asal, are serious violation of human rights and they contribute to unsustainable development of the community.

Poverty denies people the right to basic needs to sustain a decent standard of living and quality of life. Furthermore, poverty and violence in the Indian Malaysian community (as in other poor communities) are linked to a general lack of control over resources, land, skills, competencies, credit and capital, knowledge and social networks.

It also indicates the lack of influence of the Malaysian poor over government decision making. Without these resources, the poor are neglected by policy makers and they have limited access to enabling institutions, markets, employment and public services. Clearly then, achieving equitable progress requires acknowledging the interdependence between respect for human rights, sustainable development and democracy.

The right to development analysis indicates that poverty and decreasing real wages – or

inability to organise unions or state victimisation of workers – are a violation of their human rights. Poverty and laws that deny workers the right to unionise deny people the right to sustain a decent standard of living and quality of life.

The right to development strategy provides the basis for moral legitimacy and social justice to the objectives of human development. It allows us to evaluate a government on the basis of its contribution to the right to development.

It allows us to determine the legitimacy of a government based on its ability to realise the right to development of all citizens, particularly the poor and vulnerable communities.

What is the right to development? The right to development brings together notions of human rights and human development in order to realise an enabling and sustainable environment. Put differently, human development can only be achieved through the realisation of all human rights.

Here, both human rights and human development mutually and collectively *expand people's capabilities and choices and at the same time protect peoples' rights and fundamental freedoms*¹. Without the recognition of these rights and without provision for enabling their exercise, sustainable development cannot be achieved.

The strategies for creating an enabling environment for sustainable development:

- The notions of right to development as a human right should lie at the heart of any national development or poverty elimination strategy. When a government fails to protect its citizens from poverty, the need to protect and enhance economic, social and cultural rights becomes an imperative. The present development strategy is seriously unsustainable as it discriminates and promotes further marginalisation of politically weak minorities such as the Indian Malaysian and Orang Asal communities. Thus, for the vulnerable communities, the rights approach becomes central to its development process.
- The rights approach transcends race-based development and poverty eradication strategies. This is because it is an inclusive approach. It responds to and encompasses all communities and people who are classified as poor and vulnerable and thus does not segregate or discriminate based on race. A rights approach is colour blind and is built on the principle that all human rights are for all people.
- A rights approach will make government accountable in distributing the national

¹ *The United Nations General Assembly adopted the "Agenda for Development" in June 1997 affirmed that development cannot be attained in the absence of respect for all human rights.*

wealth equitably. The poor and vulnerable communities should be perceived as legitimate citizens of the country, and be accorded their rightful share of national wealth. The government should not consider vulnerable communities as children of lesser god and it should not take advantage of its political vulnerability.

- Denying people the right to development contributes to marginalisation of poor communities from the political processes and as a result the country inherits a weak citizenry. Society in turn is deprived of these people's contribution. In short, to continue denying people the right to development by creating and sustaining a disabling environment for their development will not only be a violation of their human rights but also a lost of human resources.
- The notion of right to development puts the state on notice of its role in creating an enabling environment for the development of its citizens especially vulnerable groups as a matter of human right. In fact, the right to development notion should demand a legal and institutional commitment on the part of the Government for a better quality of life and standard of living for all people.
- The right to development approach would suggest that the provisioning of essential services such as water, electricity, healthcare and education should be considered a fundamental human rights and as a constitutional responsibility of the state to its citizens. There should be an effort to reverse the privatisation of essential services since these services constitute necessary social safety protection of vulnerable communities, especially in periods of crisis.

National Bill of Rights

I would like to suggest that SUHAKAM should consider proposing a *National Bill of Rights* consistent to poverty eradication and right to development. The bill of rights should entail economic, social and cultural rights relating to income distribution, access to land, housing, healthcare, adequate safe and nutritious food, water, social security and education.

The bill of rights should ensure that poverty eradication becomes a legally binding responsibility for which the state is responsible. Moreover, the Government must be legally mandated to report to Parliament on the measures it has taken to realise the bill of rights.

SUHAKAM and the Right to Development

The National Human Rights Commission should play an important role in the protection and promotion of the right to development. SUHAKAM should assist and encourage the embracing of the right to development through:

- The scrutiny of existing laws, administrative decisions and state policies as well as draft bills in order to ensure that they are consistent with the demands of the International Covenant on Economic, Social and Cultural Rights 1966 (but came into force in 1976);
- The promotion of education and awareness on the right to development among the public, government services, the private sector, the judiciary and labour movement;
- The identification of national level benchmarks against which the realisation of Covenant obligations can be measured; and
- The conducting of research/ inquiries, and monitoring compliance in order to ascertain the extent to which particular economic, social, and cultural rights are being violated in relation to communities of particular vulnerabilities.

Right to Water

Access to water is a fundamental human right. There is an on-going effort to privatise the water resources in the country. There is no denying that there is a need for efficient water resource management. But water resources should not be subject to private ownership and full cost of recovery. Now what is full cost of recovery? The concept was recently introduced in Malaysia. It means if you cannot pay your water bill, your supply will be disconnected. Let's say that in a couple of years, you have to use prepaid card to access water. If you cannot afford to buy the prepaid card, you will get no water. This is a very serious matter. So please say "NO" to water privatisation. The poor would not be able to buy the prepaid card and would then have to depend on the other water resources which is contaminated most of the time. Almost all the rivers in Malaysia are contaminated, so those people who would have to depend on the rivers and streams in Malaysia will face health risks.

By transforming water, a common and social good into an economic good would mean that access to water would depend on affordability and not based on need. This would favour the rich and victimise the poor. Access to water should not be left to the market. Water is a critical resource for the reproduction of the individual and sustainable livelihood and thus is a human right and should not be privatised. The state has an important role in ensuring that the country's water resources remain in the hands of the public sector.

In November 2002, the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 15 indicated that the right to water was a human right. International human rights laws require that governments take immediate steps, such as the formulation and implementation of domestic and international policies and resource allocations, to realise the right to water. Governments have a responsibility to respect, fulfill and protect this right.

Moreover, international human rights also require that governments are held accountable for their conduct in relation to their human right obligations. Water as an essential public good takes priority over water as an economic commodity.

SUHAKAM has to exercise its political will and act according to internationally accepted standards of human rights. It must recommend to the Government that privatisation of water resources would constitute a violation of human rights and create a disabling environment for poor families in the country.

Gender Equality

By Honey Tan Lay Ean

Women's Centre For Change, Penang



Women and men are members of the human family. We are born free and equal in dignity and rights.¹ Women and men are entitled to all rights and freedom without distinction of any kind such as race, religion or sex.² Wonderful ideals, but we live in an imperfect world.

That “distinction” or discrimination exists in many spheres of our lives. I will be addressing discrimination between the genders and sexes.

Is there a difference between “sex” and “gender”? Actually, there is. Sex refers to the biological aspect of a person. As a general rule, you are either a male or a female. Gender refers to characteristics that society associates with your sex – it’s about being masculine or feminine. Just look at the colours used. Blue tends to be associated with men and boys. Pink and red tend to be associated with women and girls. Other characteristics that are deemed masculine are to be aggressive and ambitious. If you are a female, you are expected to be feminine by being loving and obedient.

Equality

In Malaysia, we have formal equality. The Federal Constitution was amended in 2001, and now under Article 8(2) it is stated that:

Except as expressly authorised by the Constitution, there shall be no discrimination against citizens on the grounds only of religion, race, descent, place of birth or gender..

So what does that mean, this non-discrimination on the ground of gender?

Women form half of the human family. All rights that we have as humans are human rights. Women have rights. Women’s rights are human rights. Women’s rights have to be highlighted because of discrimination, both past and present. It needs special attention and redress.

So how do we approach this idea of equality? There are basically three approaches.

1 Article 1, Universal Declaration Of Human Rights (UDHR)

2 Article 2, UDHR

The 'Sameness' Approach

Let's treat men and women the same. Let's make the laws and policies gender neutral. Will this work?

Let's look at an example: S76(3) and (4) of the Law Reform (Marriage and Divorce) Act 1976. These sections deal with the distribution of matrimonial assets during divorce. It provides that where assets are acquired solely by the effort of one party, *that* party shall receive a greater portion.

On the face of it, there's nothing wrong. But if you analyse the realities in Malaysia, we have to acknowledge that generally, men earn more than women. Men stay in employment longer whilst some women stay at home once they have children. So who earns the money? The men. Who buys the assets? The men. Therefore when divorce happens, the men end up with the lion's share of the matrimonial assets.

This is unacceptable if we truly subscribe to the view that marriage is a partnership. This is unacceptable if we view the wife's roles as caregiver and homemaker as equal with the husband's ability to earn money.

So we have a gender-neutral provision that *in effect* discriminates against women.

The 'Difference' Approach

Let's look at another common approach. Let's be gender specific. Here, we can take the example of S34 of the Employment Act 1955. It prohibits night work for women between 10pm and 5am unless approval is obtained from the relevant authority.

The idea behind this is to "protect" women because they are different. But this attitude discriminates against women. It violates our human right³ to work, to free choice of employment, and to just and favourable conditions of work.

We have to aim for the following approach:

The 'Substantive Equality' Approach

Substantive equality requires there to be equality of opportunity, access and most importantly, *results*. We have to acknowledge and deal with the inter-related factors of social, cultural and institutional barriers that deny women substantive equality with men. We have to

3 Article 23, UDHR

ensure that policy and law makers always bear in mind that certain laws and policies impact women differently from men.

One international convention that embodies women's rights is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Malaysia ratified CEDAW in 1995 with several reservations. To date there are still several reservations which Malaysia has not removed.⁴ Reservations are statements made by member states that exclude or modify the legal effect of the provisions of that convention.

As a measure of how contentious women's human rights are *worldwide*, CEDAW bears the distinction of being the convention with the most number of reservations made against it.

CEDAW provides for this substantive equality approach by providing in its Article 1 that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the *effect* or *purpose* of impairing or nullifying the recognition, enjoyment or exercise by women of their human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field.

However, despite the ratification of the treaty in 1995, it has not been transformed into domestic law.⁵ In Malaysia, even though the Government has ratified an international convention, unless the Parliament passes⁶ an Act to make it law, some will argue that the international convention is inapplicable.

However, in Malaysia, judges also make laws.⁷ Their decisions have to be followed by the litigants, and the decision of a higher court binds the lower courts. When there is an area of law that is unclear, or for which there are no specific provisions, judges may and should look to international standards and conventions⁸ to guide them, especially at conventions which have been ratified by the Government.

4 Articles 5(a), 7(b), 9(2), 16(1) (a), (c), (f), (g) and 16(2). A declaration was made on Article 11

5 The doctrine of transformation provides that international law only forms part of domestic law if enacted by subsequent domestic legislation or incorporated by judicial decisions : *A Dictionary of Law, 3rd Edition, Oxford University Press.*

6 "Treaties to which Malaysia is a party may either require subsequent legislation, in which case they become the law of the land as soon as the necessary laws are enacted or, they may not, in which case they remain within a category of Malaysia's international law, binding only herself vis-à-vis the other parties to the treaties, but having no effect as such on Malaysian subjects." *Tunku Sofian Jewa, Public International Law – A Malaysian Perspective, Pacifica Publications 1996, p.35*

7 *Stare decisis : the doctrine of precedent under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation : A Dictionary of Law, 3rd Edition, Oxford University Press.*

8 See the *Bangalore Principles, especially paragraph 4. For the full text : www.unodc.org/pdf/crime/corruption/judicial-group/Bangalore_principles.pdf and the speech by Kirby J : *The Road From Bangalore : The First Ten Years Of The Bangalore Principles On Domestic Application Of International Human Rights Norms : www.hcourt.gov.au/speeches/kirbyj/kirbyj_bang11.htm**

The Role of SUHAKAM

So what is the role of SUHAKAM in eliminating discrimination between the genders? What can SUHAKAM do to promote gender equality and protect women's rights from being violated?

We suggest the following:

- Set up an Equal Opportunities Working Group to add to the existing four groups. This will enable the Commissioners to concentrate on issues of discrimination, be they on race, religion, descent, place of birth, gender or any other forms which impedes equal opportunity to enjoy our human rights and fundamental freedoms in political, economic, social, cultural, civil or any other fields;
- Put gender equality as one of the “issues in focus”. This presumably will receive the immediate attention and action from the SUHAKAM Commissioners;
- Carry out research on the level of gender sensitivity and awareness among the judiciary, the police force, welfare officers and the hospital personnel. Let's have some empirical data on how their levels of gender awareness and sensitivity have affected their decisions and determined their actions;
- Go on road shows to promote the idea of gender equality; and
- When human rights education is being introduced in schools and for the police, emphasise and elaborate on the issues of gender equality. Why stop at the schools and the Police Academy? SUHAKAM should advocate that gender sensitising be included during the training of members of the judiciary, and may I be so bold as to suggest – a similar training for the SUHAKAM Commissioners as well? Gender sensitising helps judges make informed decisions with respect to issues pertaining to women, especially in cases of sexual assault like rape, and during hearings for divorces.

This year, to celebrate International Women's Day, SUHAKAM organised a round table discussion on the rights and obligations under CEDAW. This is the first step. We look forward to more such discussions. We hope that SUHAKAM will not lose focus on gender equality issues which are in effect issues of discrimination and must be viewed as a violation of human rights.

SUHAKAM Fails in Fine Print

By Steven Gan,
Editor-in-Chief, *Malaysiakini.com*

“What SUHAKAM has done so far can hardly be said to be achievements. At best, it can be called initiatives.” No, these are not the words of a SUHAKAM critic – and there are many. These words are from none other than SUHAKAM Vice-Chairman Tan Sri Harun Hashim.

And indeed, he is right. However, to evaluate SUHAKAM’s performance in protecting human rights and press freedom, in particular, the question we should ask is not so much what it has done, but what impact it has made.

The answer is, sadly, very little. SUHAKAM’s three-year track record speaks for itself. Let’s begin with 2000, the year the Human Rights Commission was formed.



- Jan 13: *Harakah* editor Zulkifli Sulong and printer Chia Lim Thye charged with sedition.
- Feb 28: The frequency of *Harakah*’s publication was slashed from eight issues a month to two.
- March 27: Bimonthly current affairs magazine *Detik*, published by independent editor Ahmad Lutfi Othman, banned.
- April 15: Weekly tabloid *Ekshusif*, published by Karang kraf, banned.
- Aug 31: Monthly youth magazine *al-Wasilah*, also published by Ahmad Lutfi, banned.

The situation in 2001 was no better.

- February: The Government blocked the distribution of international weeklies *Asiaweek* and *Far Eastern Economic Review*. In particular, *Asiaweek* was accused of publishing a photo of Prime Minister Datuk Seri Dr Mahathir Mohamad which made him look “tired and stupid”.
- Feb 5: Malaysiakini journalists barred from Government functions. The police, too, have slapped a ban on Malaysiakini reporters.
- March 5: Dr Mahathir accused Malaysiakini of being unpatriotic. “These people act

like traitors ... and people who love Malaysia cannot count on them,” he was quoted as saying.

- March 14: The Selangor police chief filed a police report against Malaysiakini over a “seditious” story on the Kampung Medan racially-motivated killings.
- May 28: MCA took over Chinese-language dailies *Nanyang Siang Pau* and *China Press*.
- December: The Government ticked off *The Sun* for its news report about an assassination plot against the country’s top two leaders.

Last year, the attack on the press continued.

- January: The Government again blocked distribution of *Newsweek*, *Time*, *Economist* and the *Far Eastern Economic Review*.
- March 12: Ahmad Lutfi threw in the towel and stopped all his unlicensed publications after a long battle with the Home Ministry.
- April 3: Malaysiakini reporters barred from covering proceedings in the Parliament.
- June 1: TV2 cancelled the screening of a Chinese-language documentary on the takeover of *Nanyang Siang Pau* and *China Press*.
- Sept 29: New Chinese-language daily *Oriental Daily* appeared for only one day after it was told that it did not have a printing permit. It eventually obtained the green light from the Government in December.

The first half of this year saw more erosion of press freedom.

- Jan 20: Police raided Malaysiakini’s office, seizing 19 computers.
- April: Government leaders called for the banning of the *Economist*.
- May 2: *Harakah* editor Zulkifli Sulong fined RM5,000 for sedition on the eve of the World Press Freedom Day.

So, what has SUHAKAM done in response to such attacks? Not much. Clearly, the human rights watchdog has been more of a detached bystander than a human rights protector. But to give credit where it is due, SUHAKAM did make a number of suggestions this year on press freedom. Among them were for the automatic approval and renewal of publication licences, amendments to Printing Presses and Publications Act and Official Secrets Act, and the enactment of a Freedom of Information Act to guarantee press freedom and access to information.

But as with other proposals, the Government has ignored these recommendations.

Who controls what?

The struggle for press freedom – with or without SUHAKAM’s support – must continue. The battle is tough for it involves two fronts: repressive laws and the Government’s direct, and indirect, ownership of the Malaysian media.

Much has been said about how restrictive laws have kept journalists on a short leash – PPPA, OSA, the Sedition Act, Internal Security Act and contempt, libel and defamation laws, to name a few. Suffice to say there are 35 laws that directly or indirectly impinge on press freedom.

What about media ownership in Malaysia? This is the picture:

- The English-language press: the *New Straits Times* and *Malay Mail* are controlled by Realmild, whose owners are believed to be UMNO proxies. *The Star* is owned by MCA’s investment arm, Huaren Holdings. *The Sun* and business weekly *The Edge* are under Nexnews – a company jointly owned by Vincent Tan and Tong Kooi Ong. Tan is a business tycoon with close links to Dr Mahathir and Tong is a former supporter of ex-Deputy Prime Minister Anwar Ibrahim who is now seeking to reinvent himself.
- The Malay-language press: *Utusan Malaysia* is directly owned by UMNO since its controversial takeover in 1961, while *Berita Harian* is part of the New Straits Times Press group under Realmild.
- The Chinese-language press: *Nanyang Siang Pau* and *China Press* are owned by MCA, while *Sin Chew Daily* and *Guangming Daily* are owned by Sarawak timber tycoon-turned-media magnate Tiong Hiew King, who has close links with MCA. The newly launched *Oriental Daily* is owned by another Sarawak timber tycoon, Lau Hui Kang.
- The Tamil-language press: Both *Tamil Nesan* and *Malaysia Nanban* are owned by MIC leaders.
- Broadcast media: TV1 and TV2 are state-owned while TV3 is controlled by Realmild. NTV7 is owned by Agriculture Minister Effendi Norwawi, a politician from Sarawak, and satellite TV Astro is owned by Ananda Krishnan, another tycoon with close links to Dr Mahathir. The radio stations are controlled by three main players: State-owned RTM operates four radio channels, Ananda Krishnan’s Astro five stations and MCA controls Rediffusion which owns two stations.

More recently, another Mahathir-linked tycoon, Syed Mokhtar Al-Bukhary, has attempted to buy a stake in Utusan and the NSTP group which will give him control over two key Malay-language dailies as well as *NST*, *Malay Mail*, and TV3. It is not clear whether Syed Mokhtar would be allowed to do so for even the Government is troubled by such blatant monopoly of the media.

Be that as it may, these are the men and women who control what we see, hear and read.

But when all is said and done, Malaysians get the media they deserve. It is only when there is media diversity – especially in media ownership – can there be genuine press freedom. We are evidently very far from reaching that goal.

SUHAKAM is not helping either. After three years and millions of ringgit channeled into the human rights watchdog, it can hardly claim to have made any achievements.

Question and Answer Session after Panel Discussion

Chow Kon Yeow (Member of Parliament for Tanjong, DAP): Throughout today's session many references were made to the failure of Parliament to address the human rights issues that were raised in SUHAKAM's reports. I would have to share the frustration faced by Tan Sri Harun Hashim who lamented a few months ago that Parliament and the MPs are not taking the SUHAKAM's reports seriously. However, he is not very accurate in his lamentation. It would be true if it is addressed to Barisan Nasional MPs who think that the ISA should be extended forever and the detainees' terms should not be renewed every two years and that they should be locked up forever. But on behalf of MPs who are in the opposition bench, I wish to thank Mr Ramdas for his observation that certain parliamentarians view SUHAKAM's reports very seriously. As spokesman for human rights representing my party in Parliament, I have been taking constant action to get this *Annual Report* debated through normal and emergency motions, as suggested by Tan Sri Harun. But sad to say, I am representing the opposition and all these efforts came to nothing. We would like all civil and human rights organisations to lobby on this aspect. In fact, there was also a resolution in last year's national consultation calling for SUHAKAM's report to be debated in Parliament. If my little effort as an opposition MP is not sufficient, I want to lobby here this afternoon that all those who are gathered here make a resolution that the Executive must address this issue and Parliament must set aside at least a day or two every year to debate SUHAKAM's report. In fact this is also a proposal by Ramdas. The Government must not treat SUHAKAM as a decorative showpiece of human rights for the world to see. Finally, I want to comment on the point raised by the chairman just now on whether the important responses by the Government had been made public. I think the Government has not done so. As recently as the June sitting of Parliament, I asked the Government to list its responses to SUHAKAM's annual reports. Until today I did not get a reply. But if its responses were sent to SUHAKAM as early as March, why couldn't the Government be bothered to give a reply in Parliament when the specific matter was raised? Therefore, I hope that with the efforts of civil society, NGOs and today's forum, the Government will one day bend and listen to the voices of the people and not treat SUHAKAM like a decorative showpiece anymore.

Param Kumaraswamy: I think it is a good idea if the annual reports can be presented in the Dewan Rakyat by the SUHAKAM chairman every year and thereafter debated. This is something we need and it depends on the political will of the competent authorities.

K.P. Thum (Coalition of Societies for the Disabled, Penang): The disabled people are not here to speak for themselves. That's why a few members of the coalition are here to speak on behalf of the disabled. I am a father of a 15-year-old autistic child with learning disabilities. After seeing the presentation by Prof Chiam, I'm a little envious of the people in prison who

have been given so much attention with regards to human rights. They are given better toilets and education in prison. Sometimes, I wish that my child would be in there too as he will be well treated. As a disabled child he is denied education, employment and all these very basic human needs. So I would prefer that he is in prison where the Government would provide him with better education and a counsellor or speech therapist. I hope SUHAKAM would not ignore this group of people. I believe about 10 per cent of the population are disabled and they represent a major group of the society. I hope SUHAKAM with its resources and its team of learned people would do something for the disabled. We have come together as a coalition in Penang because this is a very critical year for us. We are trying to lobby the Government to pass the Disability Act, which we believe is long overdue for this group of people.



Param Kumaraswamy: Thank you for the comments. If I recall from the three annual reports of SUHAKAM, last year we saw reference to the disabled. The theme of the first Malaysian human rights conference was on the disabled people. Somehow or rather, the present report does not say anything about the follow up. A group representing the disabled raised the follow up matter at last year's consultation. The representatives were very vocal and articulate. I was impressed and met some of them. They had complained that there was no follow up from what happened at the conference. May be Tan Sri Harun would like to elaborate on what has been done.

Dato' Ranita Hussein (SUHAKAM Commissioner): I am not in a position to say what kind of follow up was done to the earlier conference. But SUHAKAM is very much interested in the new law on disabled people that is being mooted. We are trying to keep abreast and perhaps also participate in the UN initiative for a convention of disabled people. It is a very recent move where the local law is concerned. What SUHAKAM is doing right now is researching on the local situation. Perhaps, we would engage with the associations that are dealing with the disabled to get feedback. We will then be in a better position to make a proposal for legislation.

Anil Netto: This question is addressed to SUHAKAM Commissioners. I don't think this was touched on this morning. It is the complaint of assault against Tien Chua and Hishamuddin Rais in Kamunting. SUHAKAM has said that it will probe the complaint. I think it is a very serious complaint and it deserves a public inquiry. If there is one performance

indicator for SUHAKAM, it is the repeal of ISA. Until the ISA is repealed, we cannot say that SUHAKAM is a success or has achieved anything. Some of the commissioners say this would take time. I don't understand why it should take time, why can't it be abolished tomorrow and all the UN convention ratified? Why should it take years and years to ratify this thing? So, I call for a public inquiry on the complaint of assault against Tien Chua and Hishamuddin Rais.

Param Cumaraswamy: I recently met all the five detainees who were released at a gathering. Tien Chua did give me an account of what happened at the particular incident. It is a very worrying account. I really hope SUHAKAM will give this matter serious consideration and call for a public inquiry as this is the only way we can keep the authorities in check, particularly when dealing with people who are in custody. Maybe Tan Sri Harun will comment on that.

Tan Sri Harun Hashim: SUHAKAM will do that, of course. We are very much aware of the complaint. It was suggested that SUHAKAM would only be worth its salt if the ISA is abolished. Just as a matter of clarification, the ISA is the only law that can be abolished by a simple resolution in Parliament. As for the other laws, each requires a new legislation to repeal an earlier law. ISA can be abolished just like that. So ask your MPs to do that.

Cheah Kah Peng (Lawyer of ISA Reformasi Six): A word of caution to the parent of the autistic child. Don't let your child go into the prison because not all they say in the report from the police is true. I have been there myself. Working as a lawyer, I was arrested in Petaling Jaya two years ago and nothing has been done so far. Few months ago at the ISA detention centre in Kamunting, someone who did not want to identify himself assaulted me in front of all the officers. We don't know who is he but nothing has been done. I know it is a short time. Probably we have to wait for a long time for things to be settled. For your indulgence, I have a short story to tell. Thousands of years ago in China, the emperor had set up a commission to try to pacify the people on the issue of human rights. Subsequently, hundreds of thousands of people were killed. After the overthrow of the emperor, he was sent into exile. It was not a severe punishment for the emperor. But the punishment was harsh on the commission. The people extracted the teeth of all the commissioners but left their lips intact so that they can perform their usual thing: the lip service. But the people down there are toothless. I want to conclude by saying that with all the help we can be proactive and really build a nation with healthy human rights rather than submitting reports upon reports, and thousands of pages of reports on the previous thousands of pages of reports.

Param Cumaraswamy: Thank you very much for the comment. May I take this opportunity to commend the courage and determination of the lawyers who continued to represent the six and finally managed to get them out. Many were surprised as to how they were released because one even said it was never the administration's or Dr Mahathir's style that anyone was released immediately after the two-year detention period. But it was because of the

determination of the lawyers who pursued the matter right up to the Federal Court and other avenues and also the NGO community and the international NGO community. Here let me say this, many of you do not know and it was never made public. Just about three or four weeks before they were released the High Commission for Human Rights in Geneva sent a letter to the Malaysian Government calling on it to release the six without any condition in the light of the circumstance of their detention. We are glad that they were released and it was due to effective work of many involved. I really praise the lawyers who did all the work *pro bono*, as I understand, for their courage and determination.

Ahmad Farook Shaharuddin: I would like to make two observations. Firstly, students in institutions of higher learning are not permitted to participate actively in politics but are advised to study diligently. Ironically, some members of the ruling party go to these institutions to give talks, recruit members and even establish UMNO clubs. The opposition is denied such facilities. The second observation is many key members of a political party were found guilty of money politics sometime back. But neither the ACA nor SUHAKAM ever steps in to curb such gross injustice.

Abdul Rahman Said Alli (Perak Consumers Association): I was very much disappointed when Prof Chiam gave a sort of a rundown of the responses from the Government. She only said the Government responded or no response. She did not say what kind of response. It is very hurting for a professor to come and say this. It is very incumbent for SUHAKAM to be on the side of the rakyat (the people) and not for the Government. She is so apologetic towards the Government. I hope the other commissioners who are here are not like that professor whose term, I know, would be renewed. The important point is they are supposed to be on the side of the rakyat. We have come here to discuss the report, you have to be transparent and accountable. I did hear, fortunately or unfortunately, a comment from Tan Sri Harun who said that it is inside. This means they don't want to disclose what is the response. This is very sad. I hope the commissioners would take note and would not do this again to insult us.

Tan Sri Harun: Thank you for the observations. We only received the responses from the Government in March and we are going through them. That is why we were only able to highlight some aspects. I think Prof Chiam did give some concrete examples of the responses. We are preparing a full report on the Government's responses. May I also make a comment out of respect for Mr Stevan Gan. It is a little story to conclude. I was the international parliamentary observer for the Sri Lankan elections and Dato Param was also there. Every morning a newspaper was pushed under the door of the hotel room. The newspaper was 100 per cent pro-government, so I had to go out to buy another daily which was 100 per cent anti-government or pro-opposition. When the elections were over I can say that they were free and fair because the opposition won. After the results were announced the same newspaper came under the door but it is now pro the new government. The pro opposition paper is now pro the old government. So, Mr Steven Gan, the morale of the story is who

owns the newspaper.

Abdul Rahman SaidAlli: Mr Chairman, I suggest that SUHAKAM put up the government responses on its website so that we all can read.

Param Cumaraswamy: We will include this suggestion in the memorandum.

Mohd Razip Samian (Jemaah Islamiah Malaysia): I think our society is beginning to accept discrimination, in particular political discrimination. It seems that if you have a particular political orientation, your career path will have serious obstacles. Recently, a Cabinet Minister threatened to withdraw scholarships of students displaying alternative political orientations. Although it is an anecdotal comment by a minister, I think it needs to be taken into account. I think this has something to do with human rights

Param Cumaraswamy: Before I conclude, I would like to make one reference, which was not raised here. There is a chapter in the *Annual Report* recommending a review of the Human Rights Commission of Malaysia Act. I am glad that SUHAKAM has submitted some views to review the legislation to try to bring it in line with the Paris Principles. But I am concerned about one particular recommendation with regard to the terms of appointment of commissioners. It was suggested that the term of office of commissioners should be for five years or in the alternative, for a minimum period of three years. I think it should also add another clause 'without any renewals' because it is useful to appoint commissioners for a period of time if they want to secure their independence. I feel a five- or even seven-year term is useful but without any renewal. Renewals are quite worrying. It can be like how judges are appointed for a fixed term or for life but there should not be any renewal of their terms. That is the only way to secure their independence. Otherwise, towards the end of their term you will find some people toeing the line of the Government to get their renewals confirmed. In order to avoid that it would be important to have a fixed term. I feel the ideal period would be five years without any renewal. With that note, I conclude by thanking the four SUHAKAM Commissioners who are here and all of you who made this a successful consultation.

Obituary & Acknowledgement

Tan Sri Harun Hashim was the embodiment of human rights and all that it stands for. He believed in its existence and through him we knew human rights existed. His last article in the *New Straits Times* on Oct 2, 2003 in his column ‘Bench Mark’, entitled ‘Human Rights Not Really a Western Invention’ seems so poignant. It reflects his thoughts on human rights even as he has left us.

Simple and always approachable, he treated us all equally. He was never judgemental nor did he censure anyone. Tan Sri Harun was not merely good, he was the best. To most of us, he was a father-figure, to some others — a second grandfather.

Tan Sri Harun was mighty in the practise of human rights — on that score no eulogy is needed nor expected. On the whole, his character was, in its mass, perfect, in nothing bad, in few points indifferent, and it can be truly said that never has nature and fortune combined more perfectly to make a man as great as Tan Sri Harun.

He had a steadfast and abiding faith in justice, righteousness and liberty as the prevailing and abiding forces in the conduct of states, and that justice and righteousness are sure to prevail where any people bear rule in perfect liberty. We take great solace in Tan Sri Harun’s constant and loyal participation in many of ERA’s programmes especially his commitment with us during the National Consultations on SUHAKAM since its inception.

It is for us, the living, to be dedicated to the unfinished work that Tan Sri Harun has thus far so nobly advanced. We take increased devotion to that cause for which Tan Sri Harun gave the last full measure of devotion, that his cause was not in vain, that human rights in Malaysia shall not perish.

Tan Sri Harun’s immortality does not lie in any of his achievements, but in his attitude towards mankind. He was indeed a noble work of God. He touched us all in some way or other. We hope we shall always possess fairness and virtue enough to maintain what we consider the most enviable of all titles that Tan Sri Harun possessed — the character of an Honest and Just Man!



About ERA Consumer

The Education and Research Association for Consumers, Malaysia (ERA Consumer, Malaysia) is a voluntary, non-profit and non-political organisation that was founded in Ipoh, Perak in 1985. ERA Consumer is a registered membership organisation under the Malaysian Societies Act of 1966. It was set-up to undertake and promote the task of developing critical consciousness on public-related issues out of the larger socio-economic issues.

ERA Consumer is a dynamic institution that is constantly responding to and developing its services according to the needs and demands of the people. It aims to create awareness among the public on issues that are effecting their lives, through research and educational programmes by undertaking independent, authoritative, balanced research on public issues; carrying out public education projects; making policy recommendations to the government & international institutions; building solidarity and understanding among NGOs in Malaysia and society at large, and to increase South-South relations and North-South understanding. ERA Consumer's components and main programmes are consumer issues; human rights education; food, trade and economics.

Published by:

**EDUCATION AND RESEARCH
ASSOCIATION FOR
CONSUMERS MALAYSIA
(ERA CONSUMER MALAYSIA)**

No 24, Jalan SS1/22A

47300 Petaling Jaya

Selangor Darul Ehsan

Tel (603) 7877 4741, 7876 4648

Fax (603) 7873 0636

Email eracons@po.jaring.my

Website www.eraconsumer.org

ISBN : 983-2518-27-X

Edition : June 2004

Printed by : Syarikat Asas Jaya

ISBN 983-2518-27-X



9 789832 518273