



proceedings of  
the national consultation on

# SUHAKAM: *After One Year*

May 5, 2001

*Proceedings of the Forum supported by:*

Friedrich Naumann



Asean Mechanism



*Organised By:*

Education And Research Association For Consumers,  
Malaysia (ERA CONSUMER, Malaysia)

**SUARAM**

Suara Rakyat Malaysia (SUARAM)



Proceedings of the  
National Consultation  
on

**“SUHAKAM  
After One Year”**



**ERA CONSUMER MALAYSIA**

*(Education and Research Association for Consumers, Malaysia)*

# *contents*

Acknowledgements	p <i>ii</i>
Organising & Supporter Organisations	p <i>iii</i>
Introduction	p <i>v</i>
List of Acronyms	p <i>vi</i>
Opening Address	p 2
Keynote Speech	p 5
Panel Presentations	p 14
<b><i>Criticism and the evaluation of SUHAKAM</i></b> <i>By Irene Fernandez</i>	p 15
<b><i>General overview of SUHAKAM</i></b> <i>By Dr Mohd. Nasir Hashim</i>	p 21
<b><i>SUHAKAM and indigenous people</i></b> <i>By Colin Nicholas</i>	p 28
<b><i>SUHAKAM: Analysis of maiden parliamentary report</i></b> <i>By Ramdas Tikamdas</i>	p 35
<b><i>Significance of SUHAKAM to the people and grassroots-based organisations</i></b> <i>By Irene Xavier</i>	p 40
<b>Question and Answer Session</b>	p 43
<b>Workshop Section</b>	p 56
<input type="checkbox"/> <i>Reviewing the Annual Report of SUHAKAM</i>	
<input type="checkbox"/> <i>Reviewing the Role of SUHAKAM in the Past Year</i>	
<input type="checkbox"/> <i>How to Strengthen Human Rights Advocacy in Malaysia</i>	
<input type="checkbox"/> <i>How to Improve and Enhance SUHAKAM to be More Effective</i>	
<b>APPENDIX</b>	
<b><i>Resolution</i></b>	p 62
Poem by Dr Nasir Hashim	p 63

# *Acknowledgments*

The Education and Research Association for Consumers Malaysia expresses its gratitude to all individuals and organisations that contributed, either directly or indirectly, to make the consultation a success.

We would like to express our gratitude and appreciation particularly to:

- **Suara Rakyat Malaysia (SUARAM)**
- **Friedrich Naumann Foundation (FNF)**
- **Working Group for an ASEAN Human Rights Mechanism**

## **The Resource Persons**

- ❖ **Tan Sri Harun Hashim, SUHAKAM**
- ❖ **Dr Nasir Hashim**
- ❖ **Ramdas Tikamdas, HAKAM**
- ❖ **Irene Fernandez, TENAGANITA**
- ❖ **Irene Xavier, PMI**
- ❖ **Colin Nicholas, COAC**

## **Moderators**

- ❖ **Dato' Param Cumaraswamy, Special Rapporteur, UN**
- ❖ **Bishan Singh, MINSOC**

And all of the participants who ensured the success of the programme.

# *Organising and Supporter Organisations*

- ❖ **Education and Research Association for Consumers Malaysia (ERA Consumer)** is a voluntary, non-political and non-profit organisation. ERA focuses on a wide array of issues, including food security, human rights, the environment, consumers' rights and women's rights for a socially just and equitable society. ERA has been mandated to act as the National Coordinator for the Human Rights Education Programme in Malaysia through a National Civil Society Organisations (CSOs) consultation held in 1999. Thus, the Human Rights (HR) Division in ERA conducts various activities and programmes in order to promote human rights education in Malaysia, including human rights training programmes (HRTP) and educational programmes and consultations on the Malaysian National Human Rights Commission (SUHAKAM). ERA has been working closely together with SUHAKAM on a number of issues, particularly relating to education, as ERA is a member of the Sub-committee on the Working Group for Education in SUHAKAM.
  
- ❖ **The Friedrich Naumann Foundation (FNF)** is a German-based foundation that provides support to developing market economies all over the world in establishing economic structures and helps its partner organisations in their project countries in finding individual solutions to their problems. As a foundation for liberal policy, the Friedrich Naumann Foundation is committed to freedom - freedom of opinion and action - in all walks of life and all over the world. Thus with their partners in more than 80 countries, encompassing the regions of South America; South, Southeast and East Asia; Africa; Central, South and Eastern Europe and the Mediterranean, FNF is working to change people's awareness and their patterns of behaviour. FNF believes that only those who understand political contexts can effectively work to change them. And only they who know what freedom means can take up the cause of liberalism and democracy.

- ❖ **The Working Group for an ASEAN Human Rights Mechanism** is an informal coalition of individuals and groups within the region who are working with government institutions and NGOs in the field of human rights. Its primary objective is the establishment of an inter-governmental human rights mechanism in Southeast Asia. It is organised into national working groups in the ASEAN states which are composed of representatives of government institutions, parliamentary human rights committees, the academe, and NGOs. The Working Group follows a step-by-step, constructive and consultative approach involving governments, parliamentary committees, academe and NGOs. Since 1996, the Working Group has been meeting with ASEAN ministers/senior officials and with civil society groups throughout the region. It has organised conferences on human rights issues of common concern. At the same time, parallel activities are also being undertaken by national working groups at the state level.
  
- ❖ **Suara Rakyat Malaysia (SUARAM or Voice of the Malaysian People)** is a non-profit, non-governmental organisation committed to upholding human rights in Malaysia. SUARAM saw its beginnings as a group of concerned citizens in 1987, shortly after the alarming arrest and detention without trial of 106 citizens under the Internal Security Act in a campaign the Royal Malaysian Police Force dubbed “Operasi Lallang”. The organisation was finally allowed registration as a society in 1989. Since then, SUARAM has evolved into the leading human rights centre in Malaysia, promoting and protecting fundamental liberties.

ERA Consumer Malaysia also wishes to record its appreciation to the following people for helping in preparing this publication, editing and proof-reading the text:

1. **G. Umakanthan**
2. **Simon Karunagaram**
3. **Suresh Perumal**
4. **Miranda Gass-Donnelly**

# *Introduction*

According to the Malaysian Human Rights Commission Act 1999 (Article 21), SUHAKAM should submit an annual report on all of its activities, a list of all matters referred to it and the action taken and its recommendations to the Parliament. The report will be received and debated by the members of Parliament for the betterment of human rights in Malaysia.

The annual report of SUHAKAM is thus an important instrument in the human rights discourse in Malaysia. The report, together with the recommendations to Parliament, will be a catalyst for the better promotion and protection of human rights in Malaysia.

SUHAKAM submitted its maiden report to Parliament on April 19, 2001.

## **Objectives and Goals of the Forum**

Realising the importance of SUHAKAM's maiden annual report, ERA Consumer organised the national consultation with the following objectives:

- i. To evaluate the annual report prepared by SUHAKAM;
- ii. To obtain feedback and comments from people working on various issues pertaining to human rights;
- iii. To evaluate the performance of SUHAKAM over the past year; and
- iv. To draft and submit a memorandum containing concerns and recommendations made by the participants to SUHAKAM.

## **Publication**

This publication is intended to share the results, the concerns and the experiences discussed during the consultation. Most importantly, the publication records all the recommendations made by the participants in respect to SUHAKAM in order for it to continuously work for the betterment of human rights.

# *List of Acronyms*

---

ASEAN	Association of South East Asian Nations
ACA	Anti-Corruption Agency
AG	Attorney-General
BN	Barisan Nasional (National Front)
FRU	Federal Reserve Unit
HRC	Human Rights Commission
ISA	Internal Security Act
KLIA	Kuala Lumpur International Airport
MCA	Malaysian Chinese Association
MIC	Malaysian Indian Congress
MP	Member of Parliament
MTUC	Malaysian Trades Union Congress
NGO	Non-Governmental Organisation
SUHAKAM	Suruhanjaya Hak Asasi Manusia ( <i>Malaysian Commission on Human Rights</i> )
UDHR	Universal Declaration of Human Rights
UMNO	United Malays National Organisation
UN	United Nations

---



Proceedings of the  
National Consultation  
on

***“SUHAKAM  
After One Year”***

# Opening Address

*Marimuthu Nadason  
President  
ERA Consumer Malaysia*

Good morning to Tan Sri Harun Hashim, Deputy Chairman of SUHAKAM, the Human Rights Commission of Malaysia, Dato' Param Cumaraswamy, Co-Chair, ASEAN Human Rights Working Group Mechanism and United Nations Special Rapporteur for the Independence of Judges and Lawyers, Mr Rainer Heufers, Project Director, Friedrich Naumann Foundation (FNF), Ms Cynthia Gabriel, Executive Director, Voice of the People (SUARAM), distinguished panellists, ladies and gentlemen.



On behalf of the organisers ERA Consumer and SUARAM, it is with great honour and privilege that I welcome all of you to this National Consultation on the state of human rights in Malaysia. It is indeed a great pleasure and a privilege to take part in this gathering of distinguished fellow workers and advocates in the arena of human rights in Malaysia.

This gathering today is the third in a series of similar gatherings on the Human Rights Commission of Malaysia. The first meeting was held on July 3, 1999 entitled "The National Human Rights Commission" and the second was on May 27, 2000 entitled "Understanding the Human Rights Commission Act 1999". ERA Consumer spearheaded these initiatives together with other NGOs involved in the area of human rights in Malaysia, namely HAKAM and SUARAM.

SUHAKAM was established in September 1999 and has been operating since April 2000. In the beginning, the establishment of the Commission was viewed as a mere public relations exercise created in the wake of the Anwar Ibrahim crisis. I must say that the Commission has to a certain degree earned some respect by taking a bold and courageous stand in declaring that the recent detentions of several Parti

Keadilan Nasional (Keadilan) leaders under the Internal Security Act (ISA) are human rights abuses.

I think this is a step in the right direction to see the ultimate abolition of the ISA. However this does not mean that the Commission can now sit back and relax. The “bigger picture” of the state of human rights in Malaysia still leaves very much to be desired on the part of the work that SUHAKAM has to do. With the existence of repressive and draconian laws and measures such as the Official Secrets Act (OSA), the Internal Security Act (ISA), the Printing Presses and Publications Act (PPPA), the Sedition Act, and the four Proclamations of Emergency, one wonders how SUHAKAM can effectively promote and protect human rights in Malaysia — unless and until these laws are repealed and amended and the states of emergency annulled.

SUHAKAM has stated in its maiden annual report that its law reform working group will review the legislations and recommend changes or repeal. I hope that the study and review of these oppressive laws will not remain on a study indefinitely, as has often been the case in Malaysia, but that some positive initiatives will be taken by the Commission to review these laws and recommend changes as soon as possible.

There is a pressing need for this. For example, the freedom to assemble peacefully, a basic right guaranteed to the individual under Article 10 (1) of the Federal Constitution, has been continuously infringed upon by the Police Act. Whilst I commend the Commission for the interim recommendations made to the government on the freedom to assemble, I hope that the Commission continues to lobby the government for changes. I note with disappointment that the debate on the annual report in Parliament did not generate much interest among our Parliamentarians. This inevitably reflects the shallow level of understanding of human rights issues among our Parliamentarians! I think it is high time for SUHAKAM to educate our Members of Parliament (MPs) on the importance of human rights.

Another area which requires immediate attention by the Commission is the enactment of a Freedom of Information Act in Malaysia, like that which exists in the United States and Australia. The Official Secrets Act places wide restrictions on the right of citizens to access privileged and classified documents that are in the hands of government agencies. This hinders transparency in government dealings and may at times promote corruption. The citizen’s right to know is the pillar of a

democracy, which in turn promotes transparency and openness in the government. This can only be achieved by enacting a Freedom of Information Act.

Ladies and gentlemen, the purpose of this consultation today is to provide an opportunity for all of you to review the Commission's annual report and to hear your suggestions, criticisms and recommendations to the Commission. I would like to take this opportunity to thank all of the 105 organisations represented here today for your participation and support. I would also like to express my deepest appreciation to FNF and the ASEAN Mechanism for making this event possible.

I wish to conclude by leaving you with the words of the late Senator Jose Diokno, the great Filipino patriot and human rights activist who described human rights in these simple but most moving words: "Human rights are more than legal concepts – they are the essence of man. They are what make man human. That is why they are called human rights; deny them and you deny man's humanity."

On that note, I wish all of you a fruitful and constructive discussion today.

Thank you.

# *Assessment Of Human Rights In Malaysia And The Role Of Suhakam In Promoting And Protecting Human Rights*

*Tan Sri Harun Hashim  
Vice-Chairman  
SUHAKAM*

Good morning Mr Chairman, ladies and gentlemen. On behalf of SUHAKAM, we thank the organisers for giving SUHAKAM the opportunity to account to you what we have been doing, or rather not doing, since we came into being. First of all, I would like to remove some misconceptions on what really happened. The law that came into force, this Human Rights Commission Act, is easy to remember because it is all “9s”, i.e. Sept 9, 1999. But the Commission did not actually come into being until the Commissioners were appointed on April 4, 2000. In accordance with the provisions of the Act, we are required to present an annual report to Parliament for each year. Our first annual report is actually for only eight months. So it is not a review of one year but rather of eight months’ work. That is the first thing to remember.



The second is that the coming into existence of this Commission has got nothing to do with Anwar Ibrahim. That must be underlined. In 1993 Malaysia became a member of the United Nations Commission on Human Rights (UNCHR). Tan Sri Musa Hitam was appointed by the Malaysian government to represent the country on that Commission in 1993. In 1995 he was elected to be the Chairman for the 1995 session. Ever since he began representing Malaysia on the UNCHR, Musa had to go around the world to speak about human rights, to tell countries that their record was not very good and to suggest that they establish a National Commission. He then realised that we do not have such a commission ourselves in Malaysia. It took him six years to convince the government that we should establish a Human Rights Commission, long before Anwar Ibrahim was arrested, but the

gestation period in the Malaysian government is always very long before it gets around to doing anything. Finally it became law in 1999, and even then it took a long time to actually get the Commission appointed and functioning.

When we were finally appointed we had no staff or offices, and out of the generosity or courtesy or obligation of the Minister of Foreign Affairs (because the United Nations falls under this ministry), he allowed us to use the premises of the Ministry of Foreign Affairs. The initial secretariat of SUHAKAM was located in a container on the grounds of Wisma Putra. Then, of course, there was more bureaucracy and that sort of thing.

Prophet Muhammad was right when he said, "If you visit somebody, do not stay beyond three nights. You are very welcome for three nights, but after that please disappear. You are overstaying your welcome." We could see that happening at Wisma Putra. They were very nice at first, but after some time the smiles started to disappear. We thought that we had overstayed our welcome. So we decided to have all our meetings and sessions in hotels. From one hotel to another, meeting the public and that sort of thing, until we rented our present office space. Of course we had to go through the Public Works Department, but then finally we got the premises.

Then there was the question of staffing. The law says we can recruit people, but it takes time to advertise. So we have been borrowing staff from various government departments to get things started. This has taken time, and of course then there is the little matter of finance. Our money is still being controlled by the Ministry of Foreign Affairs. We want to have our own funds. However, we must have a certain number of employees and a qualified accountant before we can operate our own funds. That is taking a little time, in addition to the task of trying to find bodies to fill the jobs. We are still in this transitional stage, but we realised we had to get started as quickly as possible because there is a lot of work that needs to be done.

The moment a new body is established there is this great expectation that miracles will happen overnight. I remember when I was first appointed as the Director-General of the Anti-Corruption Agency (ACA), I received at least 500 to 600 letters a day from all over the country. Everybody wanted me to solve their problems. Quite a lot of it had nothing to do with corruption but only the perception of corruption because government departments were slow or inefficient.

According to the law, one of the jobs we have to do is to educate the public on human rights. Thus, as a first step to achieving this goal, we produced pamphlets. Admittedly the first lot is in English, but we are in the process of printing them in Malay, Chinese and Tamil for distribution.

There are two ways we have adopted in advocating human rights education. The first is by the 'road shows', which we have conducted in Sabah, Sarawak and Kedah. Johor was the last place we did, and Pahang will be the next. What we do in this road show is we go to the particular state and on the first day we invite all of the heads of government departments, statutory bodies and local authorities to meet with us. We explain to them what we are supposed to be doing and together we have a real dialogue session.

Sometimes it is surprising the questions that come to us. For example the Prisons Department asked, "Why are we here at all? We have nothing to do with human rights." We replied, "Of course you do. You have everything to do with human rights. There is such a thing as unusual punishment, cruelty and whatnot in prison. We want to know whether you are cruel or not to these people who are already in prison. They are there legally, but are you treating them illegally or in violation of their human rights? That is why you are here." The Director of Medical Services asked, "Why we are here?" Then he realised, "Ah, right to health." I would have to go through all 30 articles of the UDHR, but these people are not aware that what they are doing has anything to do with human rights. So that is what occurs in the morning of the road show.

Then, in the afternoon, we invite all of the local NGOs to come and talk with us. That is day one. On day two we invite all of the different government parties such as Barisan Nasional (BN), Malaysian Indian Congress (MIC), Malaysian Chinese Association (MCA) and United Malays National Organisation (UMNO). It is quite surprising how much they do not know, even though this law was passed by the MPs themselves and without any objection from any political party in the House. In fact, when the HRC Act was first debated in the Parliament, some of the MPs actually suggested that we should put more meat into the legislation. So we invite all of the political parties to attend – some are part of the opposition, others are part of the government itself, so they call themselves Barisan Alternatif (BA). They come to tell us what their problems are. This is how the road show is conducted.

For the second part of our human rights education campaign, apart from printing leaflets and distributing them, we hold competitions in the schools, like the logo

and the essay competitions. We were surprised by how well these programmes were received. These programmes were created in order to create more awareness on human rights among younger Malaysians. We also have, like today for example, speaking engagements where we get invited by all sorts of organisations to discuss what SUHAKAM is all about and to inform the public about what we are doing. This is almost a non-stop activity all over the country. We have been doing these presentations from place to place ever since we first began operations. At the same time, we have been on the radio, television, talk shows and that sort of thing. This is all to create greater awareness of human rights among Malaysians.

Recently, I went to Geneva for two weeks to represent our National Commission. I sat at the meetings, Dato' Param was also there, and saw that practically every country in the world had sent a delegate. Most of those in attendance were the Prime Minister, the President or the Minister of Justice of their respective country. Each delegate was given the chance to speak. I listened to these countries, especially from Africa and other such places say, "Ah yes, human rights. We are very serious about this issue. We are going to build schools, hospitals, and provide housing. We are going to make sure that our people do not die of starvation. We are going to establish an independent judiciary, etc." One after another of the speakers was like this. I thought that as far as Malaysia is concerned, we already have these things. We talk about progress of human rights, but most of these rights have already been there for a long time. Some of them were there even before we became independent, like the schools and hospitals. Of course, there are more schools now than before, more hospitals, and also better hospitals. Housing is really something. We even have housing for the poor, and we have yet to hear of anybody in Malaysia dying of starvation, like they do in some countries in Africa or even in North Korea.

Here comes the assessment of human rights, in that sense. We would rate our economy as good compared with many other countries. If our economy was not that good we would not have these thousands and thousands of people coming from all over the region trying to find work in Malaysia. There are particularly a lot of workers coming from Indonesia, Myanmar, Thailand, the Philippines and Nepal. What attracts these people to come to this country? So surely our country must be better off than theirs. Otherwise they would not be here. So, we would say our economy is good. Everything in this respect is good in terms of human rights. Socially, we would also say yes, that human rights are fair. We do have little local difficulties and in the past racial differences have caused some problems. But overall, we do not have serious ethnic problems. Socially, I think we also rate as fair, and culturally, yes, *boleh tahan* (can do). You can read, you can discuss and there are

cultural dances and even philharmonic orchestras, so *boleh tahan*. When it comes to political affairs, it is a bit more *susah* (difficult).

So, in Malaysia, when we talk about human rights, we are really talking about freedom of speech. There is freedom of speech mentioned in the Constitution, which is practised by a lot of people. What the Constitution does not guarantee is freedom *after* speech. Then there is also the issue of the right to assembly.

Since our economy is good, and socially and culturally we are okay, Malaysians are at a much higher level in respect of human rights than are many other countries in the world that are still labouring, grasping, fighting and struggling for basic human rights. Right to food, right to shelter, right to education, right to health, these all are parts of the UDHR. So in this process what we have done under the law is that I am adopting a legal tactic. In the courts when you are arguing a case and you find that the judge is not following you, it is quite obvious that the judge does not know this law. So how do you teach the judge what the law is? You cannot because you can even be up for contempt of court, especially with some of the judges these days. So these lawyers like Dato' Param will often say, "As your lordship well knows..."

Under our Act we have the function of educating the public. I think we are becoming quite well known. Internationally, they also will say, "Ah, SUHAKAM ..." So we have gone that far already internationally as well. So many people now know about SUHAKAM. Of course, we get confronted by people at the roadside who say, "hah lu SUHAKAM aah, itu orang minta permit banyak lama tak dapat, lu boleh tolongkah?" (Oh SUHAKAM, that person has been asking for a permit for a long time, can you help him?) So, we now have a public face.

We have gone so far as to do two things. One is we have devised a curriculum for the Police College to make it compulsory that every police officer knows what human rights are. They have so many courses at the Police College in Cheras. We have provided a curriculum for human rights to be included in the normal police courses. We have already developed the curriculum to be taught in the schools. We are doing this with the Ministry of Education to implement in the schools so that from a young age they know what human rights are all about.

The second issue we have focused on are all of the various treaties, protocols and Conventions. What we do is we call the respective ministry or department concerned and ask them why they cannot sign this particular Convention or why

it cannot be ratified. Now they are asking for feedback as far as signing and ratification of treaties are concerned. This is an ongoing exercise.

The third group is the law reform group. So far we have identified which laws contain provisions that are in violation of human rights. Then we call the various ministries and departments and ask them to explain why we still need this law and what is the reason why they are still keeping this law? It is easy to say, "Repeal the Printing Presses and Publications Act. Repeal the Sedition Act. Repeal the Official Secrets Act." There is a lot of feedback coming from the various NGOs, very strongly worded, that some of the laws should be taken off the statute books. What we are doing is we are asking these departments that are administering these laws the reasons why they still want to keep them. Some of the recommendations will be very obvious. For example, the question of why must we have a permit to print a newspaper? If a person is not required to have a permit to print or publish a newspaper, then newspapers would all be on the same level as the *surat layang* (poison pen letters). All sorts of defamatory remarks are made but when we do not know who wrote them, how do we take action?

You know *surat layang*, a favourite of politicians or those who are involved in politics, especially during election time. There is character assassination right, left and centre, but you cannot pinpoint who wrote the remarks. The legal requirement is there to show who printed this or who the publishers are. So, you need some sort of regulations to require that you need a permit in order to publish. But then we ask, is it really necessary to have an annual renewal? Maybe a one-time permit, or maybe a larger down payment. Then a person can publish on and on. You do not have to renew it every year and worry about when the permit will be withdrawn. The permit should bear specific conditions so that you do not get told suddenly that the minister has revoked your permit.

Nowadays, the decision of the minister cannot be challenged in any court on any ground. We have said that this is not good enough, that it should not be there in the first place. If there is a law about which the minister had made a decision, the question is when should his decision be subjected to judiciary review, if it is necessary. You cannot give absolute discretion to any minister to do anything. I mean, he has to run the country, yes, and there are certain situations where the minister needs to have power. However, not in every respect, such as granting or revoking the permit. This should be subjected to judicial review, or at least by some independent body. We are looking at all of these areas. This, of course, takes time, especially since we have a very limited staff. We need to undertake a great deal of

research, and we need people who know what we are looking at.

So, our first group is to come out with a law on the right to peaceful assembly. There are two parts to this. One is the static assembly like we are having today, where somebody rents a hall. We say that they should be allowed to meet in a stadium or hall like this. Within static premises if the participants want to make speeches we say that they should be allowed. The other type is the mobile one, such as street processions. We have no problem with religious processions; however, we might have a problem with political demonstrations. Whatever the reason for it, whether it is because somebody raises the price of sugar or something, if the organisers want to demonstrate, then they need to know how to contain it. The organisers must have monitors to control their own people and the police should protect the demonstrators like they do in many other countries. The function of the police is to protect the procession from external attack. People from outside should not provoke the procession. It is not the other way around. The police should not view the members of the procession as the threat.

We have listed in our annual report a list of laws that need looking into or revision, or maybe even sometimes a total repeal. Or even if the law still remains, the important thing is how that particular law is exercised by the authorities, such as with the permit. The printing press is a very expensive business. It costs millions to set up the machinery. Should the printers be prosecuted at all? The printer is there, open for business and people come in saying, "I want this printed, and I want that printed".

I do not think any printer in this country will actually go through the document word for word to see whether it is defamatory or not. I do not think there is any printer who is going to ask that. At SUHAKAM we are already having problems trying to get proofreaders. So a printer will be the last person to do any proofreading in order to determine whether the publication has any defamatory remarks. We would say that the printers should be left alone because they are doing their business and trying to establish a proper printing press. The real culprit, if any, must be the writer of the article. They are the guilty one, if ever someone needed to be prosecuted. In this day and time you cannot say who the writer is but in the old days, yes. So what is this law about? It is very simple. At that time we had a lot of what we called subversive documents, as well as communist ideology. Of course, no one would say who wrote these types of documents, and certainly not who the publisher was.

So then the law was you grab the printer, because at least you know who printed it. This is the reason for that particular law. The big question mark is, “do you still need this kind of law today?” If it is necessary, then you can go after the writer or publisher of the article or the book, if you want to take any action at all. At SUHAKAM we have constraints of personnel. What we have done is narrow down our focus, especially for the year 2001. We will come out with one or two specific legislations, recommending to the government how and what should be done. We have got a long list, but do not expect us to complete that list. We do not have that kind of staff and we need to be practical. We have reduced our focus to one or two laws which should be out by the end of the year, with the specific recommendations we have made and what we believe should be done with this type of legislation.

We are also very grateful to the NGOs and all the other people who have shown an interest in human rights and have given us a lot of feedback, such as where to look and what they believe we should do. It is now a question of collecting the reactions of the government ministries and departments regarding the question of why they still want to keep this particular law, and then we will try to come out with our own solutions. So, in regard to how good or how successful we are, or how functional we prove to be, I am afraid we will have to wait and see. Our work will take a fair amount of time. How quickly we move will depend on the existing staff.

The last group we have is the complaint inquiries investigation group. They have just completed one particular inquiry that arose at Jalan Klang Lama. We have had many complaints of this nature, but because of time, availability of staff, etc, we cannot conduct investigations into every complaint that comes in. But we now know that many of the complaints are basically the same, they are only made by different people, at different places and at different times.

We can thus zero in on the basic allegations, such as the allegation of police brutality against people whom they have arrested. We are now gathering all this information, and after this inquiry the particular panel will write out the report. I have here an actual inquiry. The points raised are one, two and three. On these points we have received complaints on numbers one, two and three. Similar complaints are made all over the place, so then we determine what should be done. So that will cover a few hundred complaints about police brutality all over the country. We cannot have a separate inquiry for every complaint that comes in because we just cannot afford it. We do not have the manpower or the time, and we certainly do not have the money. It is not like the magistrate’s court where they can have inquiries into every case. We are now still collecting information and then collating it. So based

on one inquiry, we will be able to deal with all the other similar issues raised by other people at different times. Ninety percent of the cases are not even political in nature. So we have to address all these different issues.

Now I have explained as a sort of report to all of you what SUHAKAM has done throughout the period from April to December of last year. That is all.

Thank you.

*Panel Presentations:  
“SUHAKAM  
After One Year:  
Has the State of  
Human Rights  
Improved  
in Malaysia?”*

# *Criticism and Evaluation of SUHAKAM*

Irene Fernandez  
Director  
Tenaganita

Thank you very much Dato' Param, friends. First of all I would like to thank ERA Consumer and SUARAM for the opportunity to speak before you this morning.

They say that to make a good politician you must *turun padang* (go to the ground). So, I have come down. The criticism or the evaluation that I bring forth comes from two bases. One is that there cannot be a compromise on human rights. That is the first point. The second is that it is in light of my own experience and the passion I have for human rights that this critique or evaluation on the report and the performance of SUHAKAM is brought to you, so that together we can move forward.



I heard some people saying that they could read my expression as Tan Sri Harun Hashim was speaking. We should never forget that everything Hitler did in Germany was legal. And as I read the SUHAKAM report and as I heard Tan Sri Harun speak, this very strong legal framework seemed to shroud us. It seemed that we have to have this in order to justify human rights and in order to see recognition of human rights. That is rather a concern for me because human rights and the basis of these rights must come from a perspective where they are viewed as intrinsic rights of every individual which do not need to be justified by the law in order to be legitimate. I just want to go quickly through because there is only 15 minutes allotted for me to speak.

This period for SUHAKAM has been one of searching, of strategising, and of hoping to synergise through dialogue sessions, meetings and the like. That has been their role during this period, but what is it all for? It must be for the development of a human rights perspective which gives recognition to Malaysians who are experiencing human rights violations. Therefore, the purpose of SUHAKAM is to

promote human rights, and if you want to promote human rights, then the next step must be the development of interventions. That is why the Commission has the power of investigation and so forth. It is to protect human rights, but whose rights exactly? It must be the rights of the *rakyat* (people). This is very crucial. It must be. And if it is the rights of the *rakyat*, then we know that all human rights are inherent, they are universal, and they are indivisible. It is not only Malaysian human rights. It is also not just Asian value-based human rights. It is a philosophy which is universal in nature. It is also indivisible and this therefore calls on us to ensure that all human rights are holistic in nature.

Even if one says that the right to assembly is a right that needs to be protected, which is what is needed when the Malaysian Trades Union Congress (MTUC) talks about pickets and a lot of people want to come to protest, whether they are union leaders or not. The right to economic, social, and cultural rights is protected through this freedom of assembly. So, you cannot divide, you cannot isolate, and that is the indivisibility that we are talking about. There has to be a holistic approach and rights cannot be seen in isolation. Therefore the frame of reference has to be under the UDHR. However, if you read through the SUHAKAM report, a lot more references are made to the Constitution than to the UDHR. I think this calls for concern. It is also quite strange that next week we are going to have a conference on economic, social and cultural rights, as well as globalisation, in Malaysia, but so few or hardly any of us know that this conference is going to take place. It is an international conference, sponsored by the government, but we do not know about it. Therefore, there are problems when this kind of a thing happens.

Now, in reading through the report, unfortunately what I noticed was there seemed to be a distance in the way the report has been written. It looks so governmental. There is a lack of feeling, of the passion that is needed. For example, if you read through the report it simply states that visits were made to the detention centres. I was waiting to see, so what? What did they find out? And there was nothing. So how would Parliament debate this issue if there was no more information other than that visits were made? What did SUHAKAM find out? What were the conditions in the detention centres? This is what people want to know and this is what is important in a report. What are the violations taking place in detention centres? And this is not covered at all in the report, similarly for a number of the other complaints.

The public inquiry was a major intervention done by SUHAKAM. That dealt with the issue of freedom of assembly. But the report only says that 300 citizens had

complained and an inquiry was held. Probably the report is not ready yet, but I am sure they have at least already identified what the violations were, what was the police brutality, etc. SUHAKAM already found out these facts and details, but that is not coming through in the report. It creates a major gap and that is why I said that the report seems like it is written from a distance. Eight months is a long time, but the report is not reflective of this.

We have to move forward in order to become more independent. I think we have to recognise this and comment on it. In going through the report, what I also find worrying is that the positions that are taken are unclear. Here I would like to go back to what Tan Sri Harun has said, in terms of freedom of expression. Even in evaluating the Printing Presses and Publications Act, why should it be in the hands of the state to give the permit? It should be merely a registration exercise so that we know who is the publisher and who is the author. It is not a permit or permission that we need to seek from the state. Freedom of expression must be seen in that context. The maturity of the people must be recognised so that they can evaluate for themselves.

Now in reference to when Tan Sri Harun was talking about *surat layang* (poison pen letter). Anwar Ibrahim was sent to prison over a *surat layang*. It started with that, and so what are we really are talking about? So much importance was given to this *surat layang* and then they say that the control measures are in order to avoid the *surat layang*. These are the contradictions and conflicts that surface for me. The freedom of thought must be evolved and developed, not controlled. It is up to us as citizens to evaluate and that is the maturity in which we come forth and if we want to improve, it is there. So it is a registration exercise and that is all. It is not a question of judicial review having to go completely. That is the process in which a lot of acts since 1998 have evolved and today we have the dictator.

So how do we get away from this and how do we create more space? It is not in small steps, but rather by being very clear of our position. Freedom of thought and freedom of expression cannot be compromised. This is the way, I think. We have enough laws in terms of criminal defamation and civil defamation for people to be challenged. There is no need for this kind of Printing Presses and Publications Act. Therefore, since the positions are unclear as to freedom of assembly, why this static assembly in the *kampung mana nak cari* (how to find the village?). One big place, and what is so wrong in coming together under a tree and sharing our thoughts and expressions? What is the problem? Why does it have to be within this enclosed room?

In a recent experience in Malacca, I was supposed to speak at a *ceramah umum* (public lecture), but it was cancelled and moved into a building. Of course, it had to be a small Parti Keadilan Nasional office, and the moment there were people outside because the crowd was coming in, the police threatened us and said that they would bring reinforcements because of all the people outside. This is what is going to happen when we say static assembly. We can only have small groups of people. But why can't I address five or six thousand people? Why can't people come to listen? Why should it be a problem? Why must I pay so much money to have it in a hotel? That is not freedom of expression or freedom of assembly. These are what we call compromises. If we compromise on this then human rights will not improve. I think this is what we need to challenge. We need to declare that we will not compromise. The democratic space has to be opened. It is not bargaining. You do not bargain on human rights.

We also see that the visits by SUHAKAM to the ISA detainees are a setback. The Commissioners are not even moving – they are waiting for the police. Tan Sri Anuar Zainal Abidin made assurances that the Act gives SUHAKAM powers to make such visits and it is only a matter of being nice that they inform the police about an impending visit. But that is not what is happening today. They are waiting for permission from the police. If SUHAKAM has the power under the Act to visit detention centres, as under 4(A), 4(B), 4(C) of the Human Rights Act, then they must just go in. Twenty-four days have gone by and they are still waiting. I have a problem with that.

What also worried me was the third time when I took the family after Pak Din was detained. There were withdrawal symptoms because of what Augustine Paul said in his judgment. I will now read to you what he wrote in his judgment, "First, it is inappropriate for a person or a body of persons to call for the release of persons detained under ISA and to prosecute and try them in an open court, if they have committed any offence, as it amounts to an unlawful interference with the lawful exercise of discretion by the detaining authority. It is not part of my function to delve into matters that have transpired outside the court." Then Paul goes further, "but where a party to litigation relies upon such matters in support of its case, it behoves upon me the relevancy in order to explain to the party the relevance on such matters. While I am convinced that SUHAKAM acts with the best of intentions, it must be realised that is of prime importance that issues of what the law is and what it can do and should or ought to be, are kept separate so as not to risk confusing the public and unwittingly adding the proverbial oil to the fire". That is Augustine Paul. Once this came true, Tan Sri Anuar felt that SUHAKAM may not, or should

not, push further. How does that go with the Hishamuddin Yunus judgment in the High Court at Shah Alam? He took the position saying that any detention is illegal until the detainee has been formally charged. And that is very crucial. Therefore, to defend themselves, they should be in the court when a habeas corpus application is made. He quoted from the Constitution on it. This is what is worrying. Is SUHAKAM going to be very legal-centred? Or is it going to be proactive towards the Constitution and the UDHR? This is the burning question for SUHAKAM.

Finally, I would like to make two more criticisms. One is regarding the human rights education committee where there are no women at all. Why? Where will the gender perspective be strengthened? What has happened to the women? Women play a very active role in the Human Rights Commission. They are there for us whenever we need them. When the ISA detentions took place it was Prof Mehrun Siraj, who in spite of her health, said that she would come. And Zainah was the first to say, "We will be there." And Tan Sri Anuar and Dato' Salleh also came, but what has happened to human rights education? Maybe Muthu can answer for us. He is on the human rights education committee. Anyway, this is a concern.

Another issue is native rights. There is a whole paragraph on this topic, but completely no evaluation or discussion on SUHAKAM's position, in spite of this group having previously met with them. So I do not know whether it is part of their strategy or not, that they will deal with it later. But they should have at least stated their position and then how they will monitor the violations on indigenous communities. But that does not exist at all, so there are still a lot of question marks.

Some of the emerging issues that arise in this context will be:

1. The report does not fully reflect the people's response. There have been a lot of responses from the people in terms of violations, but the report does not reflect this.
2. The report does not reflect the amount of work that has been done. The inquiry has taken a lot of work, and that is important. So it does not give enough credit and these issues are not debatable as such. Consequently, we are not able to evaluate the effectiveness when reading the report.

One does not know whether to believe that SUHAKAM is merely a PR exercise of the government, or whether this new body is really challenging the existing

violations.

I look back at the reports of the Human Rights Commissions in Indonesia and the Philippines, and I notice that it was in the current of political repression that the Human Rights Commissions emerged as strong. They became a source of protective pressure for individuals whose rights had been violated. That is what I expected out of SUHAKAM during the ISA arrests, but that has not come true thus far. That is worrying. SUHAKAM cannot be neutral. It must have a definite position on human rights. If one is neutral, then one is on the side of the oppressor. SUHAKAM should listen to both sides, but its position should come from human rights, and that is important. I think it should increase the participatory process and confidence-building throughout the dialogue. It should not just concentrate on human rights per say. Human rights groups like SUARAM and HAKAM, and also women's rights organisations... all these groups have to be met with constantly and regularly. I think the challenge is really also up to us. How far we challenge human rights will be the basis of how far our rights can be protected.

Thank you.

# *General Overview on SUHAKAM*

*Dr Mohd Nasir Hashim  
Social Activist*

I would like to thank the organising committee for providing me the opportunity to give a brief comment on the performance of SUHAKAM for the past year. I would also like to congratulate the committee for organising such a big and successful forum. I hope that my comments will do justice to SUHAKAM and I truly appreciate your responses.

I had the opportunity to read through the SUHAKAM report and have gained some insights into its internal dynamics and activities within the frame of its terms of reference. I am impressed.



## **1) Initial Reaction to the Formation of SUHAKAM**

I have to admit that my initial reaction to the formation of SUHAKAM by the government, (gazetted on Sept 9, 1999 under the Human Rights Commission Act 1999, Act 597), was one of suspicion and cynicism. There were too many lingering questions and doubts that needed to be answered, such as:

- a) Was there a hidden government agenda to all this? We were told that it took about six years of contemplation before SUHAKAM took off the ground. Why now?
- b) Was it pressured by international opinion on the unprecedented withering away of democracy in Malaysia ?
- c) Was it duly pressured by the national election and/or was it indirectly acknowledging the continued erosion of people's support for its various activities?
- d) Was it trying to hoodwink the people into thinking that we now have a government with a conscience?
- e) What about the members of the Commission? What were their previous track records? Will they be used to legitimise government atrocities?

- f) How would the judiciary react to all this? Could not this be a slap in its face, since it would be challenging and questioning the role of the judiciary as the protector of people's rights?
- g) Will the members of SUHAKAM become beholden or indebted to the ruling government for being appointed into SUHAKAM?

## 2) The Abuses Continue

The point of contention is that if the government is truly sincere in having such a Commission, how come the abuses of human rights continue to grow in leaps and bounds in spite of the formation of SUHAKAM? Issues pertaining to abuses of human rights become too obvious, especially:

- a) The Anwar Ibrahim detention and black eye;
- b) Police brutalities towards unarmed citizens and demonstrators;
- c) Rampant demolition of squatter homes (urban pioneers);
- d) Squandering of the workers' Employment Provident Fund (EPF) money;
- e) The continued non-persecution of a former Attorney-General who is now a judge;
- f) Police and ACA inaction toward reports against ministers and robust actions towards police reports against opposition leaders;
- g) The ever-continuing saga of cronyism, corruption, nepotism and collusion;
- h) Increased government arrogance; and
- i) Blatant use of ISA and so forth.

## 3) SUHAKAM Exerting its Independence

I have to admit that after a year has passed us by, I did see some change and progress on SUHAKAM's performance, especially in the effort to exert its independence. Particularly:

- a) Its high profile as a body that was approved by the Parliament;
- b) The popularity and publicity it garnered from the press and public;
- c) Its high profile inquiry into Anwar's black eye that finally got the former Inspector- General of Police (IGP), Rahim Noor, convicted;

- d) Statements that ISA should not be used and that detainees should be released if there is no evidence against them, or that if there is evidence then the detainees should be charged in a court of law; and
- e) Willingness to receive the Black April 14 Memorandum in spite of the fact that the key leaders had been detained under ISA and in the midst of the threat of mass arrests. Tan Sri Anuar also took the trouble to come down and address the crowd — a symbolic gesture of support and approval.

In short, there was a flicker, a glimmer of hope on SUHAKAM. Maybe the people have a friend after all. A body that is willing to listen and act accordingly. But then how far can it go?

#### **4) The Drawbacks to the Report**

The SUHAKAM report has certain drawbacks and a lot of soul-searching needs to be done before the commission can become a force to be reckoned with.

- a) SUHAKAM was able to speak to almost everybody, including NGOs and government agencies. It was expected that such dialogues should culminate in the drafting of a national report on the position and problems of human rights in Malaysia. These dialogues should be the basis of formulating the guiding philosophy/principles for SUHAKAM to chart its short-term and long-term goals. We are sceptical whether SUHAKAM is willing to take a strong stand in exposing the actual root causes and the symptoms leading to the abuse of human rights in the country. Addressing the causes may lead to critical questioning of the very existence of the capitalist system that is deeply entrenched to violate basic human rights in this country. Thus, the easy way out and the safest bet is to flirt with the symptoms (rather than the cause) by giving clandestine cosmetic recommendations.
- b) SUHAKAM did not discuss the race and religious issues that continue to confront the fundamental rights of the citizens and at the same time continue to dictate the overall development policies. It did not discuss the fact that the capitalists and their political cronies strive on national disunity (not national unity!) as a form of control to subjugate society.
- c) There was also no mention of dialogues with union leaders in MTUC, CUEPACS and other workers' organisations. Thus there was no mention of the exploitation of workers, an important factor that can change the entire

mindset of society. Exploitation and production relations at the workplace have fundamentally dichotomised society into the haves and have-nots with all its ensuing momentum of social, cultural and political contradictions. This dichotomy is perpetuated further by existing systems as a form of control and eventual abuse.

- d) The social, cultural and economic aspects were mentioned but not elaborated. They must be regarded holistically as a package deal, rather than mere appendages of an exploitative economic system.

## 5) **SUHAKAM is Indeed Powerful**

While perusing through the report, we can conclude that under this Act we find that SUHAKAM in reality (and potentially) has been given extensive powers to act, especially when:

- a) It was approved by Parliament and therefore not answerable to the Executive (the Prime Minister) or other politicians. Nobody can dissolve it, except through the Parliament.
- b) It can judiciously interpret and strengthen its powers in conjunction with Article 8 of the Constitution and the UDHR of 1948. Thus, SUHAKAM should be in control of the situation and be able to exert its authority.
- c) The act empowers SUHAKAM to act on its own motion to inquire into allegations of the infringement of human rights (section 12 of the Act) that occur even during and after the arrest.
- d) It can visit places of detention
- e) It can summon any person residing in Malaysia to give evidence, to produce documents, to produce other things in his possession and to examine that person as a witness.
- f) SUHAKAM has immunity (section 18 of the Act) from any action, suit, or prosecution.
- g) The experiences of the highly respected members of the Commission can make the difference in providing dignity and success to SUHAKAM. By virtue of their respected and high profile positions in society, they should be able to interpret the law to ensure that basic human rights will be upheld at all costs. Etc, etc.

## 6) SUHAKAM is Not Assertive

The burdening question remains, that with such obvious powers vested in SUHAKAM, how come it is walking on a limp? We find that:

- a) SUHAKAM is not assertive enough in carrying out its investigations pertaining to inquiries and visiting problematic areas anywhere in the country. There appears no initiative to do this. SUHAKAM is too accommodating and too diplomatic, resulting in it becoming ineffective.
- b) SUHAKAM tends to ignore the fact that when we are dealing with abuses of human rights, we are bound to be at loggerheads or on a head-on confrontation with the various authorities of power and influence. As such, the dialectics of confrontation and negotiation become the order of the day because you are challenging a decaying system that is becoming more redundant and defensive everyday. You will be attacked by all fronts. Thus, with the people's support, you openly confront or expose the culprits with the intention of bringing them back to the negotiating table. Or, you negotiate on the basis of strength. Negotiating without strength and support from the people is downright begging. Trying to be too diplomatic is also tantamount to begging. There is dignity in this struggle. We are demanding our rights, not begging for our rights.
- c) There is a tendency for SUHAKAM to merely receive reports/memoranda and behave rather like full bloom bureaucrats and mere pencil pushers. The urgency is not there at all.
- d) Not innovative enough to dictate terms (using the powers vested by the Parliament and to reinterpret the laws) to immediately demand to see the ISA detainees and allow their families to visit them. SUHAKAM is more content to allow the police to use their discretionary powers and abide by them. The idea for the immediate or early visits is to protect the detainees from physical and mental abuses/tortures. Documentation and affidavits continue to confirm such abuses. If permission is granted a month later, we can safely say that the damage had already been inflicted and indoctrination or the turnover is complete. It is as if for some reason, SUHAKAM is consciously placing its power on hold, at the expense of the rights of the people.

## 7) Reality Check

On the other hand, maybe we should do a reality check here:

- (a) Maybe we are expecting too much from SUHAKAM.
- (b) Maybe it does not have the youthful idealism to be aggressive and pushy.
- (c) Maybe the Commissioners can only do so much without jeopardising whatever they have now. They are also walking on a tight rope to gain small battles before winning the war.
- (d) Maybe we should not put all our eggs into one basket.

## 8) People's Power

For sure, the presence of SUHAKAM continues to be a welcome sight. But we must remind ourselves that SUHAKAM is not, and cannot be, our saviour. However it can effectively act as a support system to check various forms of abuses in society. For our strength is still with the people. We have to go back to them and talk to them, be with them. Organise with them. What we need is people's power to break such abuses.

Unfortunately, we are growing in strength not simply because of our special powers or our own doings, but rather by default/de facto. The powers-that-be are simply losing the people's support because of the grotesque escalation of the abuses of power, arrogance and the continued rape of the nation's wealth. So we must buckle up from this false sense of awakening and complacency that we are actually strong. We can't be waiting to expect the system to crumble by itself, or merely busy ourselves to wait and react to ongoing abuses and nothing else. For this approach is opportunistic, mechanistic and reactionary. Such tendencies will eventually lead to stereotyping, wishful thinking and the weakening of the people's power. Education, consciousness, organisation and actions must be the order of the day.

## 9) The Need for an Alternative System

As such, there must be concerted efforts to create an alternative system of governance, where humanity holds supreme and where there is justice for everyone. In fact, we should be gauging the rate and nature of abuses in society in light of our ongoing short-term (tactical) and long-term (strategy) programmes for a better

society. Such evaluation will ensure the success of our programmes, rather than merely vacillating and reacting blindly to immediate abuses of basic human rights. Thus, there is a need for a thorough, on-going analysis of existing national development programmes and strategies, for it will soon become crystal clear that various abuses that we are now experiencing are in reality the effects of warped development strategies based upon exploitation, with its ensuing tendencies for corruption, nepotism, cronyism and collusion. This analysis will be very useful to us and will provide greater impetus for consciousness-raising and greater reason to participate in the people's struggles.

## **10) Conclusion**

In short we must together develop people's power and give a strong helping hand to further strengthen the role of SUHAKAM and all other people's movements. We must also increasingly continue to network with others to ensure greater success in information gathering and exchanges of progressive ideas. We also believe that SUHAKAM's courage to exert its independence and the recent court decisions on the former IGP and habeas corpus are partly due to its increasing sensitivity towards the ever-growing strength of people's power.

I strongly believe that if we are seeking the truth and are truly fighting for the truth, we will have nothing to fear at all, for the path to success will surely come our way.

Thank you.

# *SUHAKAM and Indigenous People*

*Colin Nicholas*  
*Center for Orang Asli Concerns (COAC)*

I have been asked to evaluate SUHAKAM's performance during its first year, insofar as the rights and aspirations of the indigenous peoples of Malaysia are concerned.

The Commission's activities thus far have been mainly in the area of civil and political rights, and certainly rightly so. However, given that Malaysia is in the forefront of asserting that there is such a thing as an Asian concept of human rights, one that emphasises social, economic and cultural rights, it seems odd to me that these other rights are not given equal emphasis.



The deprivation of a right is always cause for great concern — whether it is the right to free expression, the right to due legal process or any of the many civil and political rights we are all familiar with. When you are suddenly deprived of such an inalienable human right, you immediately feel it. When you are arrested under the ISA, for example, you can immediately appreciate the loss of your right to freedom of movement, in comparison to the liberty you enjoyed before.

But for some communities, the loss of basic human rights is an everyday affair. So commonplace is this loss for indigenous Malaysians that others have come to regard it as being part of 'their way of life' or a case of, "Well, that's the way things have been and always will be".

Well, things have not always been like this for the indigenous peoples. Continuing and increasing gross violations of their social, economic and cultural rights have caused many indigenous communities to experience greater economic hardship, increased challenges to their cultural identity, and the loss of their traditional territories and subsistence bases.

SUHAKAM, in its annual report, stated that, “for increasingly larger segments of Malaysian society, a full stomach is no longer enough”. It added that Malaysian citizens are now craving for their fundamental rights.

But not all Malaysians are so fortunate as to have full stomachs. The third *Outline Perspective Plan* boasts that poverty in Malaysia has been reduced to 7.5%, a truly remarkable feat for any nation. What it fails to mention, however, is that the poverty rate among the Orang Asli (indigenous people) has actually been increasing over the years, to 81.4% at present.

So 81% of the Orang Asli, and equally many native peoples in Sabah and Sarawak, still worry daily about filling their stomachs. In terms of loss of rights, how more basic can you get? Malnutrition is also prevalent among the Orang Asli in supposedly “better deal” resettlement schemes. Such malnutrition leads to disproportionately higher incidents of tuberculosis and other such easily preventable diseases.

The violence of poverty occurs daily and deprives people of a healthy and happy life. It even kills. For instance, in 1997, out of every five women who died in childbirth, three were Orang Asli. And remember that the Orang Asli represent only 0.5% of the national population.

But the fate of indigenous peoples was not always like this. They were once autonomous and led full and varied lives. As one Semai friend told me in 1992:

*“Orang Asli are not concerned about the wider problems. At night when it is time to sleep, they are only concerned about finding where to tie the string for the mosquito net.”*

However, his opinion changed six years later. In 1998, he told me:

*“Dulu gajah menyerang kami. Sekarang pembangunan yang menyerang kami.”*

(In the past, the elephants attacked us; today it is this thing called ‘development’.)

For a long time, however, development — that is, development for others — came in the form of logging activities in their traditional territories. Whether it was in Orang Asli areas in the peninsula, in Dayak and Orang Ulu areas in Sarawak or in

Anak Negeri areas in Sabah, the consequence was the same: the total disregard of native customary rights to their traditional lands, the plunder and destruction of their resource base, and in at least one case, as reported to SUHAKAM, the rape and killing of Penan people in Ulu Baram, Sarawak.

There seems no let up in logging activities. In January this year, Penans in Long Sayan and Long Belok had to set up blockades again to try to stop the loggers. Two years ago, 21 Orang Asli were detained overnight in the police lock-up for trying to stop logging trucks from leaving their traditional lands. Without doubt, logging activities do not benefit the indigenous peoples as a community. No wonder indigenous peoples have a common saying among them about logging, which goes something like this:

*“While the loggers rake in heaps of money with their bulldozers, we get to scrape the dust from our eyes with our fingers.”*

Ironically, logging is no longer the biggest of problems for indigenous peoples today. In the past, after the loggers left, at least the land remained in the hands of the indigenous communities, albeit in a much degraded condition. Lately, because the customary lands of indigenous peoples are no longer frontier areas in the ulu (the backwaters), the trend has been to appropriate indigenous lands for all sorts of development projects. Consequently, the new threat has been to dispossess indigenous peoples completely of their customary lands.

We saw this happen in the case of dam projects like the Batang Ai and Bakun dams in Sarawak, the Temenggor and Sungai Selangor dams in the peninsula, and the Babagon dam in Sabah. We saw it happen in the construction of the KL International Airport and Universiti Kebangsaan Malaysia, in the construction of highways and golf courses and in the establishment of industrial projects and luxury homesteads. Currently, large land development schemes for agriculture and agro-forestry are of particular concern to indigenous peoples, especially in Sabah and Sarawak.

Sometimes, these encroachments lead to fatal consequences for the parties involved, an indication of the seriousness of the problem. Alas, this is not viewed as such by the powers-that-be. One recent case was that of Ulu Niah in Sarawak. Here, Sarawak Oil Palm Bhd wanted to occupy the customary lands of two Iban communities, with the tacit backing of the state authority. The corporation employed armed hooligans to instil fear in the native peoples in the hope that they would vacate their customary lands. These hooligans, seeing that the authorities were not acting

on the many police reports made against them by the communities, became more aggressive until the inevitable clash between them and the villagers resulted in four of them being killed.

Nineteen of the villagers were charged with murder and were detained for 18 months before their case was first heard in November 2000. Eight were eventually discharged in March 2001, but the remaining 11 are still imprisoned, awaiting the conclusion of their court hearing. Representatives of the community reported this case to SUHAKAM last November.

Other development projects may not have such dramatic outcomes, but they do bring misery and a deprivation of basic social and economic rights. The mega Bakun Hydroelectric Dam project, discontinued twice in the past because of the lack of funds and revived again recently, is a case in point.

For the 1,700 indigenous families who were resettled in 1997, the predicted hardship and consequences of resettlement are already being experienced. For example, not only is the soil in the resettlement area not fertile, it is also too sandy for subsistence agriculture. Further, the original resettled population (of about 10,000 people) has now increased by about 40%, thereby requiring additional housing units. The housing units themselves are a subject of complaints. In addition to being poorly built and designed, they also come with an unjustified and exorbitant price tag of RM51,000 a unit. The houses are also located too far from their subsistence fields.

The result of all this is frequent communal conflicts, especially over depleting resources, increased alcoholism, particularly among the men, a high dropout rate among students, women losing their independence as a result of the changing social relations and food shortages. Food shortages in the resettlement area are now a distinct reality. One Penan mother, Terai Longop, revealed to Utusan Konsumer how she longed to go back to the old area. This is because in the resettlement scheme, she and her family have been reduced to eating just one meal a day. Hardly do they get to eat meat these days, to the extent, they say, that it is as if they are becoming Muslims, a veiled reference to the lack of wild boar meat in their diet.

An elder from the Lahanan longhouse aptly captured the situation in the Sungai Asap resettlement area when he said:

*"There is no freedom here. No freedom to wander looking for vegetables, hunting for meat, or fishing. Everyone feels trapped, like in a cage. You can't*

*go searching for food; you can only plant vegetables in your own compound. We dare not move around because some areas are considered as state land. People dare not trespass into other people's compounds, or into the compounds of other longhouses. There is no freedom – back there in the ulu (upriver), you could go anywhere you wanted to. There, you could hunt until nightfall, go fishing alone even. Here there are limits."*

As such, not only are the people's social and economic rights being compromised as a result of the external development projects, their right to freedom of movement has also been somewhat curtailed.

Majid Suhut, the President of the Orang Asli Association of Peninsular Malaysia (POASM), has also alluded to these constraints to his people's freedom. At the recent annual general meeting of his association, he lamented that:

*"People tell us that we are a special people with special rights. I don't see how special we are with the exception that we are the only ethnic group in Malaysia that has a special department to take care of us - the Department of Orang Asli Affairs (JOA). But the Orang Asli and the department can be likened to a bird in a cage. The bird wants to, and can, fly. Just like the other birds. But we are being caged in."*

His lament is not only about freedom of movement. Over the years, the JOA has developed into an institution that the Orang Asli now realise has come to effect control over them and over their traditional territories.

While there is no denying that there has been some good provided through the agency of the Jabatan Hal Ehwal Orang Asli (JHEOA or JOA), one must also weigh this in relative terms. Otherwise, how can one explain the increasing rate of poverty among the Orang Asli, in spite of the increasing allocations for Orang Asli development? How can one explain the policy of integration and assimilation that effectively discriminates against the Orang Asli and in effect ignores their right to cultural and spiritual differences? It is no surprise therefore that at the POASM AGM last Sunday, there was a resolution calling for the dissolution of the JHEOA, or at least to have it run and controlled by the Orang Asli themselves.

This is just a glimpse into the varied problems and issues faced by the indigenous communities in Malaysia. I hope I have not given you the impression that indigenous peoples generally reject development. On the contrary, they have

persistently complained that they have long been deprived of enjoying the benefits of development, although they have not been spared the effects of it.

Those who have been involved with issues of the indigenous people know that their specific historical and cultural circumstances call for their recognition on different terms, terms that are being outlined in the Draft Declaration on the Rights of Indigenous Peoples, currently being debated at the United Nations. Many of these rights are being curtailed in the laws that we have, including the Aboriginal Peoples Act, the Sarawak Native Land Code and the Land Ordinance of Sabah. These laws need to be amended to protect the rights of indigenous peoples, rather than those of the state and the influential.

So, what has SUHAKAM done insofar as indigenous rights are concerned? In its annual report, SUHAKAM has listed 'native customary rights' as one of its areas of focus. It has expanded on the meaning and implications of native customary rights. It has also received complaints and reports from indigenous communities, including the Penans of Ulu Baram, the Ibans of Ulu Niah, and the Semai of Pos Dipang. In April 2000, after the visit by the Penans about their victimisation by loggers in their areas, SUHAKAM said it would meet with the Chief Minister of Sarawak at the end of that month to discuss the matter. SUHAKAM also said that it would inquire into the alleged misuse of the police force by the loggers. There was also mention of some Commissioners going on a fact-finding mission to Penan areas to see the situation for themselves. (*The Star*, April 11, 2000 and July 11, 2000).

It would be good to know whether these actions were taken, and to know their findings. Apart from these statements, I regret to say that the indigenous component of SUHAKAM's first year has been rather wanting. The Commission members are not to be wholly blamed for this. I am aware of the shortage of staff and funds SUHAKAM is faced with.

The lack of a Commission member who is knowledgeable in indigenous issues has no doubt contributed to this state of affairs. On our part, we have not offered our services to SUHAKAM, nor have we aggressively lobbied our cause in the manner the advocates of civil and political rights have done so. However, hopefully things will be different from now on.

It would help also if the Commission members from Sabah and Sarawak establish offices in their respective states so that they will be more accessible to the local indigenous communities. And certainly it will help if SUHAKAM appreciates that

it has a role to play in ensuring that only just laws are enacted and repressive ones repealed. It is of no use telling indigenous peoples (as was done a few days ago by the SUHAKAM chairman) that it has to go about this the legal way, through the MPs and through Parliament. Given the minority status of indigenous peoples in Malaysia, and given that existing laws already make it difficult to have free and informed elections, it is imperative that every avenue, every agency, be used to effect the desired change, with or without our MPs.

For their part, the indigenous communities have taken various forms of action — from dialogues to blockades to court cases — to seek redress of their plight, which I am sad to say has not improved in the past year. What is needed is a more concerted effort from others, including SUHAKAM, in the name of solidarity and holistic human rights.

In conclusion, I wish to say that we recognise that the position of the SUHAKAM Commissioners comes with a very heavy responsibility. But it is a responsibility that I know indigenous peoples are banking on to be faithfully and fearlessly borne. Indigenous peoples certainly could do with another ally in their difficult struggle.

I hope the Commission will go beyond its political mandate and do what is right and necessary and so be a vehicle and motivator for change towards a more humane Malaysia.

Thank you.

# *SUHAKAM: Analysis of Maiden Parliamentary Report*

*Ramdas Tikamdas  
HAKAM*

## 1) The Birth of SUHAKAM

The Human Rights Commission of Malaysia Act 1999, (“the Act”) which gave birth to SUHAKAM was gazetted on Sept 9, 1999. Thereafter on April 3, 2000, the government announced the appointment of the commissioners. The Minister of Foreign Affairs, Dato’ Seri Syed Hamid Albar, had promised when presenting the Bill in Parliament that this “should be regarded as a positive development towards protecting the interests and realising the aspirations of our people”. Based on that promise, the people waited in hopeful anticipation for a human rights gesture from the government. Instead, history will record one of our darkest days, the “Black 14”. Then, about a year later on April 19, 2001 the maiden report of SUHAKAM on the human rights status of the country was submitted to Parliament. This time, the people were greeted with the draconian antithesis of human rights, the ISA.



These two dismal events which commemorated the birth of SUHAKAM and shadowed its inaugural report in Parliament a year later, clearly betray the real human rights challenges that face civil society in Malaysia.

SUHAKAM’s prognosis of the human rights situation in the country is on page 35 of the report:

*“Fundamental liberties such as freedom of assembly, freedom of expression, and freedom of religion need to be upheld. Detention without trial, the continuous state of emergency, discrimination against women, native customary rights and the ratification of various international human rights*

*instruments are all issues that SUHAKAM has identified as deserving its priority attention”.*

This, in a nutshell, correctly identifies the serious concerns of civil society. It is also what the NGOs and the various groups in civil society have been saying for decades.

## **2) SUHAKAM’s Recommendations**

The real question is what are SUHAKAM’s recommendations in “furtherance of the protection and promotion of human rights in Malaysia”, which is its statutory duty pursuant to Section 4 (1) of the Act.

The maiden annual report submitted to Parliament is pursuant to Section 21 of the Act and sub-section (2) states that the report “shall contain a list of all complaints referred to it, and the action taken in respect of them, together with recommendations of the Commission in respect of each matter”.

In this context, the statement in *The Star* of April 21, 2001, attributed to Foreign Affairs Minister Syed Hamid that SUHAKAM should not give its recommendations but only a narration of its activities for the year (as if it is a social club) is not a correct interpretation of SUHAKAM’s statutory duties pursuant to the Act.

### **a) SUHAKAM’s Recommendation for Detention Without Trial**

On page 36 of the report SUHAKAM notes that the Internal Security Act 1960, the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the Dangerous Drugs (Special Prevention Measures) Act 1985, which provide for detention without trial, are an infringement of the UDHR.

However, unfortunately the recommendation in the report at pages 35-36 is that these laws “need to be reviewed and examined in detail” and at page 13 that SUHAKAM “will examine these laws and recommend appropriate action for their repeal or amendments to restrict their scope”.

This recommendation does not have the urgency required by the grave situation. While a review may be necessary for a whole gamut of laws which impede or restrict fundamental liberties and democracy, laws such as the ISA have been repeatedly abused and misused by the executive against legitimate democratic dissent and invoked for purposes that have nothing to do with communist

insurgency, terrorist activity, national security or public order.

The report itself states that at the end of 2000, 40 people remained detained under the ISA. Unfortunately, since the submission of the SUHAKAM report to Parliament, the number of ISA detainees has increased to 50. This is a tragic and bleak backdrop of the state of human rights in the country.

HAKAM calls for the immediate release of all the ISA detainees and the repeal of this lawless law. This dangerous relic of another age and deadly arsenal of the executive should be buried once and for all.

### **b) SUHAKAM's Recommendation in Respect of the Emergency Proclamations**

SUHAKAM in its report on page 14 notes that none of the four proclamations of emergency made in 1964, 1966, 1969 and 1977 have been revoked and that this "perpetual state of emergency" continues although the events that occasioned them have come to pass. Having noted that, it is strange for SUHAKAM to state that it "will review the matter and make the appropriate recommendations".

HAKAM calls upon SUHAKAM to immediately call for the government to annul these proclamations and the regulations under them, which are a blot on our system of parliamentary democracy.

### **c) SUHAKAM's Recommendation in Respect to Freedom of Assembly**

The administrative procedures recommended to govern public gatherings are a step in the right direction, but they can only be meaningful so long as permits are issued by the police as a right, subject to the administrative procedures recommended. Based on past practise of double standards and arbitrary denial of permits, NGOs and opposition parties have called for a system of prior notification of planned assemblies, rather than the requirement for permits.

### **d) SUHAKAM's Recommendation for Constitutional Amendment in Respect of "Right to Equality"**

This recommendation to promote gender equality promotes human rights.

### **e) SUHAKAM's Recommendation in Respect of Legislative Process**

The recommendation that Bills of Parliament be debated by interest groups and be drafted in consultation with public interest groups promotes a more open and transparent democracy.

### **f) Freedom of Religion**

There is no recommendation in the report.

### **g) Native Customary Rights**

There is no recommendation in the report.

### **h) SUHAKAM's Recommendation in Respect to Ratification of International Human Rights Instruments**

The recommendation that Malaysia ratifies the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture is in my view the most important recommendation. It is the act of ratification that will demonstrate Malaysia's respect for and commitment to the principles enshrined in the UDHR.

However, the report calls for Malaysia to ratify these instruments "as soon as possible", which in the political context would mean an indeterminate period. Why not ratify immediately? What reason would Malaysia have to continue to delay ratifying the Convention Against Torture, unless it wants to reserve for itself the right to torture? As of Sept 30, 1999 144 nations had ratified the ICCPR and 141 nations had ratified the ICESCR. There is no pride in remaining in the notorious small club of non-ratifiers.

SUHAKAM, with its eminent group of experienced statesmen, legislators, judges, social scientists and professionals, should be able to assess the social backdrop of the country and recommend a definite timeframe for ratification.

HAKAM's stand is that the time is long overdue and this is a precondition for the evolution of a human rights culture, which would also guarantee our peace and prosperity with justice.

### **3) The Way Ahead**

SUHAKAM is an important statutory vehicle for the protection and promotion of human rights in the country and can count on the continuing support of the people.

SUHAKAM itself must demonstrate courage and conviction of purpose. Further, to demonstrate SUHAKAM's belief in universal human rights standards, it should make an immediate application to be a member of the Asia-Pacific Forum of National Human Rights Institutions which currently comprises the Human Rights Commissions of Australia, Fiji, India, Indonesia, Nepal, New Zealand, the Philippines and Sri Lanka.

SUHAKAM's membership in this regional human rights group will also ensure continued commitment and compliance with the Paris Principles of independence, autonomy from government, pluralism, a broad mandate based on universal human rights standards, adequate powers of investigation and sufficient resources.

This should not pose a problem because the Minister of Foreign Affairs, when presenting the Bill in Parliament, gave an assurance that the "Paris Principles was used as a guideline for the proposed Human Rights Commission of Malaysia".

That being so, SUHAKAM must do its statutory duty and invoke and apply the universal human rights standards.

In the continued discharge of its statutory duty, SUHAKAM can continue to count on the full support and co-operation of civil society.

Thank you.

# *Significance of SUHAKAM to Grassroots People and Organisations*

*Irene Xavier  
People's Manifesto Initiative*

## **Significance of SUHAKAM to grassroots people and organisations**

The democratic space for grassroots people is very small in Malaysia. There are many laws that make it difficult for ordinary people to get information and to give information. For example there are no laws that deal with land rights of pioneer settlers. Thus, when there is an instance of forced eviction and the police use excessive force against people, what can they do? It is unlikely that the people will get newspaper or television coverage. They can make police reports but it is also unlikely that the police will act against their own personnel. Many sectors of Malaysian society face this problem. The workers in the country face this problem. The majority of them, more than 90%, are not in trade unions. Where do they go? The government does not allow some workers, such as the electronics sector workers, to form a trade union of their choice. Besides that, there is very little encouragement in Malaysia for workers to join trade unions. So when the workers have a problem, they need to deal with it personally, which is difficult for most workers.



There are also issues in the country that are difficult to deal with again because of the lack of legal space for open discussion. One such issue is race relations. To discuss this, one needs an open legal forum. SUHAKAM is able to provide that space.

There are many other groups and communities that face similar problems. SUHAKAM offers a window of hope for these people. In this evaluation, I want to stress that SUHAKAM has a significant role to play in this country for people like

these. The role it plays goes far beyond civil and political rights. Grassroots people face socio-economic and cultural discrimination and oppression as well. SUHAKAM needs to work out how it can begin to address this array of issues.

### **Direct Experiences with SUHAKAM by Members of the People's Manifesto Initiative**

#### *a) Pemantau NGO*

Pemantau NGO (PNGO) was established by the People's Manifesto Initiative (PMI) on Aug 1, 2000, the 40th anniversary of the draconian ISA. This organisation was formed in the hope that greater pressure could be put on the police and government as regards respect for the people's right to assemble peacefully.

Areas where SUHAKAM responded positively to this initiative:

- a) SUHAKAM has provided NGOs like PNGO an avenue to forward findings such as the various instances of intimidation and violation by the police force during the people's assemblies. These violations were recorded at the many people's assemblies that were held by the citizens.
- b) SUHAKAM has allowed PNGO to approach it at informal and formal levels. It has not created any protocols or hierarchy in the discussions with us.
- c) SUHAKAM has given us a listening ear, which no other governmental entity has. Most governmental bodies have been antagonistic toward NGOs that have a human rights agenda.
- d) Because of SUHAKAM's link to the government, it seems to legitimise the human rights cause that various NGOs and political bodies have struggled for. These causes include the right to assemble and associate (UDHR Article 20) and the freedom of expression and opinion (Article 19).
- e) SUHAKAM has taken some bold steps and interpreted its role in monitoring the human rights situation in this country in an open and creative manner. This was seen when three SUHAKAM members took the bold step of personally monitoring the people's assembly on Aug 8, 2000, the judgment day of Anwar Ibrahim's trial. This was held in the vicinity of the High Court in Kuala Lumpur.

## **Issue of race relations raised with SUHAKAM by the Group of Concerned Citizens**

The Group of Concerned Citizens has asked SUHAKAM for a public inquiry into the Kampung Medan ethnic violence. In this instance, the response of SUHAKAM has been disappointing. SUHAKAM said that this complaint is of a criminal nature and should be dealt with by the police. We feel that the whole issue of ethnic violence in Kampung Medan has many disturbing aspects that can only be dealt with by an open and free public inquiry. The only body that has the authority to do it, in a credible manner at this time, is SUHAKAM. Thus we are unhappy with the response of SUHAKAM and we hope that it will reconsider this position.

In conclusion, I would like to say that SUHAKAM has started off well. We hope that it will continue with even greater determination to address the human rights violations in this country, particularly the issues concerning the marginalised communities.

Thank you.

## Question and Answer Section on Panel Presentations

### Question

Balakrishnan (Tenaga Nasional)

- a) Addressed to: *Dato' Param Cumaraswamy*

"Being a Special Rapporteur, what is your concern and observation on SUHAKAM?"



*MS. CYNTHIA GABRIEL  
Conclusion Session*

- b) Addressed to: *Irene Xavier*

"You have given the outline of the incidents that recently took place and the so-called police brutality. Please give recommendations to any party concerned."

### Answer

- a) **Param:**

Let me tell you the history of SUHAKAM. Tan Sri Harun Hashim has mentioned, and it is also in the report, that SUHAKAM was first thought of by the government when Tan Sri Musa Hitam was leading the Malaysian delegation in the UN Human Rights Commission and then became the chairman of the Commission in 1995. It was during this period when Tan Sri Musa was chairing the session that I made my first presentation to the Human Rights Commission. As soon as I came down from the platform, Tan Sri Razali Ismail happened to be there as he was then the Permanent Representative to the United Nations. In New York we had a discussion together and that's the time when Tan Sri Razali told me that the Malaysian government was interested in forming such a Commission. I welcomed that and I will give my moral support as long as it is a genuine Commission. Now, no doubt, there is truth to the fact that this was thought of way back before, but then something happened. We do not know what exactly happened. It was supposed to be brought into force much earlier. There was

a delay for one reason or another and there were also some obstacles. Hence it was put on hold. Hence the rumour or the talk that it was actually just a PR exercise as the result of the Anwar Ibrahim and the “Black Eye Saga” and thereafter. However, it took five long years to actually form the Commission and that is why it was held up until 2000.

Nevertheless, when it was formed, I was one of the first to support it. In fact, I had a meeting with Tan Sri Musa and had a long discussion with him. He told me exactly how it was going to happen. The same afternoon, I sent a note to Mary Robinson in Geneva to give all the support from her office to see that the HRC works in line with the Paris Principles.

Give SUHAKAM two years. SUHAKAM can only be effective as long as civil society gives it support. No Human Rights Commission can really be effective unless civil society is fully behind it. I also suggested that SUHAKAM must be subjected to evaluation by the Malaysian NGO community, just as the HRC in the UN is subjected to the international NGO community’s evaluation after every session. SUHAKAM too must be subjected to national-level evaluation by the NGO community. That is why I fully supported this particular meeting because it is so opportune. That so soon after the report was published that the NGO community, which has the ears of the people at the grassroots level, evaluates and reports its views through the media.

I hope the media will cooperate fully with the NGO community to properly report on SUHAKAM’s performance. This is the only way to ensure that the pressure is kept on SUHAKAM to do more. In the next report I am sure all of us expect something more concrete, something more specific on recommendations for and evaluation of the human rights situation in the country.

b) **Irene Xavier:**

We have actually asked SUHAKAM to hold a public inquiry into the Kampung Medan incident. SUHAKAM seems to have some difficulties with that, but we are still trying to pressure it to hold this public inquiry so that we get the truth about what happened in Kampung Medan.

## Question

1) *Johnson Chong (Parti Rakyat Malaysia)*

Addressed to: *Irene Fernandez*

- a) "I think you meant neutrality in the sense of us upholding justice and promoting and protecting human rights neutrally, but I think that was used to indicate that SUHAKAM should side with one or the other. We must remember that we are not arguing about who is right and who is wrong but rather what is right and what is wrong. Could you clarify the matter?"

Addressed to: *Dr Mohd Nasir Hashim*

- b) "Another issue that raised concern, which was mentioned by Dr Nasir, is that in the struggle for human rights, we must recognise who is the enemy in this struggle, but at the same time preserve and reclaim our humanity and dignity of the human person. I think we have to be careful not to be dehumanised by our enemy."

Answer

a) **Irene:**

I think you are right in what have you said. It is not the question of who but what. I was stating in terms of human rights, how you interpret and understand the issue in the human rights context. In that context, I was very concerned about how freedom of expression is translated when you talk about law reform. How that reform should take place comes from the question of how the right is interpreted. If you need a permit, then where the permit comes from and what is the basis for it will tell you what is the position you are taking and I find it quite a neutral position. Similarly in terms of ISA, it is very clear that detention without trial cannot exist. But when you can have some protective measure and maybe a reform of ISA, then there is a compromising situation, it is trying to be neutral. That trend is rather worrying. So it is really difficult to talk about whether it should be "who" or "what" that one should refer to. But "what" will determine where you are. It has to be in terms of whose rights get violated, and if you look clearly in terms of the communities, they are asserting their rights which get violated.

b) **Nasir**

Basically, when we are fighting for our rights, whether it is workers' or squatters' rights, we get bashed up. How do we try to fight for the rights?

In this kind of concept, we are talking about some kind of dialectical relationship, where we negotiate on the basis of strength. We demonstrate because we want to negotiate. If you just go and negotiate, you are begging. That is why we are saying that when people stand behind SUHAKAM, SUHAKAM will become very powerful. I also say that the courts are acting (in the habeas corpus and Rahim Noor assault cases) because they now sense the people's feelings much more compared to our time under ISA, where the family will be harassed by the Special Branch. Now, people come out even if they are threatened they will be detained. So this must be kept in mind when we talk about our human rights. They won't give us our rights simply because we are questioning them. But they are sucking the juices out of us and becoming rich and we have to do something about it.

## Observation

2) *Carol Yong (Centre for Orang Asli Concerns)*

Addressed to: **SUHAKAM**

- a) "A comment on the SUHAKAM complaint procedures at Appendix VII (submissions on a case-to-case basis). When we talk in terms of cases of violations of human rights, especially against the indigenous people and community-based groups, it is very difficult to file such cases on a case-by-case basis. This is because often the state itself is the violator of the rights, for example in terms of the indigenous community where it is the state that imposes the laws, the forest ordinance and land codes. So, if the state itself is the violator, it is not so effective if the community files on a case-by-case basis because SUHAKAM will then have thousands and thousands of cases of the same nature.

"In this case, SUHAKAM should take the stand in favour of the abolition for example, of the land laws, forest codes, etc, rather than the community having to have each of its representatives coming forward to highlight their individual cases."

## Question

3) *Kong Chee Seng (Democratic Action Party)*

Addressed to: **SUHAKAM**

a) "I would like to ask if they (the Commissioners) also exercised their rights as gazetted in the Act, which states that they are empowered to delegate and appoint groups to assist them, under section 16(2) and section 17. In fact, last year I had a dialogue with SUHAKAM, where we specifically requested that certain regulations be made by SUHAKAM to give official sanction to particular groups to be official observers for certain events. We are still waiting for the answer. The other matter is, with the permission of the human rights activists and distinguished panellists here today, may I suggest that we should insist that for any gathering, we should not be made to wait for official permission. Instead, we should only need to inform them two or three days beforehand that we are carrying out this particular gathering. I think this has been practised in Indonesia and the Philippines. The reason being is that the police are there to protect this group of people against outsiders who may try to sabotage the gathering.

"We also need to take a stand to insist that at a gathering, members of the Special Branch or agent provocateurs should not be directly alongside the crowd. They should also identify themselves and should stay away from the crowd. Then the organisers of the entire event, until and unless this is done, will take full responsibility for whatever the outcome is."

## Question

4) *Leiw Sau Ting (Malaysian Child Resource Institute)*

Addressed to: **SUHAKAM**

a) "I noticed on page 25 that you have mentioned that one of the major instruments is the International Convention on the Rights of the Child (CRC). I noticed in the activities that you have conducted that there is only one activity where one of the Commissioners spoke about CRC. What is SUHAKAM going to do about monitoring this Convention on the Rights of

the Child which the Malaysian government has actually signed and ratified? What is the good in having the CRC if the majority of children do not know about it?"

## Answer

*Prof Hamdan Adnan, SUHAKAM Commissioner:*

- a) "We are very concerned about the CRC and it is something we are looking into. I think the Bar Council did in fact deal with some of the remand cases where these children were not charged but were kept together in the adults' prison. Anyway, I am looking into it and trying to work out the guidelines and in fact, we are actually seeking the assistance of the Bar Council to draw up the guidelines for this.

"On the other matter raised, there is a misconception about whether you need to ask for permission to have a peaceful assembly. In fact, we have made the recommendation that the police and the local authority need to be only informed prior to the holding of an assembly.

"On the question raised by Irene Xavier about Kampung Medan, it is not that we do not want to inquire, but we can't make any promises because there is still one pending inquiry that we have to finish first. If there is a need to do so, then we will of course do it after discussing the matter with all the other Commissioners. Please continue to come to us, we will be more than happy to meet all of you. We need all your support."

## Question

- a) *Param*

Addressed to: *Hamdan*

- a) "There is a certain area in human rights, which is very specialised, where you need expertise. How do you go about looking for expertise to advise you and assist you all?"

## Answer

*Hamdan:*

“We work with other experts. For example, we would like to get the help of the Bar Council to visit all of the prisons and lock-up areas. You have mentioned the relevant section in the Act. We have to make sure our committees have that in mind all the time. For example, for the indigenous people, it is basically a class problem. We are fully aware that it is a very critical issue that needs to be resolved as soon as possible. We will work with experts from the universities and with NGOs that have been working on these issues for a long time.”

## Question/Observation

6) *Sivananthan (Malaysian Trades Union Congress)*

Addressed to: **SUHAKAM**

a) “I share the view expressed by Irene Xavier. There was a complaint about the rights and conditions of work brought by foreign workers who were forced to resign without any payment. Basically, MTUC represents labour and our issues refer more to the Labour Convention. Here we are talking about core labour standards, especially No 87 of the Convention, which talks about freedom of association.

“It was rightly pointed out by Irene Xavier that the workers in the electronics industry are not given the right to organise into unions of their choice. They are only allowed in-house unions. So if SUHAKAM works in close relationship with MTUC, we can go about pressing the government to ratify the Labour Convention, and also to remove the bar on the electronics workers that restricts them to only forming in-house unions. Once unions are formed then the collective bargaining process will take place, a situation that may then bring about balance and the use of instruments for bargaining for their rights and to improve their standards of living. So basically we are talking about something being done towards the ratification of the Labour Convention. I am surprised, coming from a labour organisation, that we are totally absent in the report even though we play a big role. So here we are telling SUHAKAM that we must define our roles very clearly.

“Having defined our role, we are ready to co-operate for the rights of workers because, as Irene Xavier rightly pointed out, the grassroots and nearly 90% of the workforce in our country are not organised. I think we have to look into this. Coming from MTUC, I think we will give all of our support to SUHAKAM because we are hoping that through it, we can also concentrate on core labour standards to bring about better working conditions, health and safety aspects, women’s issues, etc.”

## Question/Observation

7) *Sham (Urban Governance Initiative)*

Addressed to: **SUHAKAM**

- a) “Does SUHAKAM make public by what procedures it makes decisions on what cases to take and what cases it does? Because if SUHAKAM remains but the Commissioners change every two years, then there is no way that the public can hold it accountable to the activities it is supposed to carry out. We need to know what the guidelines are that it has agreed on.
  
- b) “To support what Dr Nasir said, despite SUHAKAM trying to be independent, its independence will always be in question because the members are appointed by the government. Irene Xavier says that the government couldn’t give us back what it had no right to take away in the first place. So the people still have to do a lot of work and should not depend on any institution, including SUHAKAM.”

## Question

Addressed to: *Panelists*

8) *Mr Lee (Penang Consumer Protection Association)*

- a) “The government’s strategy and emphasis to the public is that public assemblies and demonstrations are not suitable, as it has a track record of violence – sometimes it talks about the May 13 incident and so on. So what is the panel’s view on a strategy to counter these tactics of the government?”

## Observation

9) *Anthony (Independent Living Home)*

Addressed to: **SUHAKAM**

- a) “With all the recent troubles that have been happening in this country, we are actually surprised that SUHAKAM made mention of us (the disabled) in the report, despite other bigger issues around, like the ISA. There are so many other issues relating to human rights, but we were very pleased because SUHAKAM recently came out with an interesting statement encouraging full access, I believe, for the disabled at public places. Which is very unusual for it to say, as usually people are more interested in giving away wheelchairs or something based on charity.

“As we all know, the disabled are the lowest in the ladder of human rights. Many people see us and they tend to feel sorry for us, but they don’t see our rights. The moment we start coming out making our demands, people tend to think we are ungrateful. They see that they doing something good for us but they don’t see our rights. Have things improved for disabled rights one year after SUHAKAM was set up? The answer is clearly no. We can only hope that with the influence of certain key people like Prof Hamdan and Datuk Lee Lam Thye, things will begin to change.”

## Question

10) *Rasamani*

Addressed to: **SUHAKAM**

- a) “What steps has SUHAKAM taken to check the violation of the right to practice religion? It appears to be enshrined in the Federal Constitution, but it also one’s own appears to be just lip service. What steps have been done to see that this right is not violated?”

## Question

11) *Mohd Sha'ani Abdullah (FOMCA)*

Addressed to: **SUHAKAM**

- a) “We have been talking about human rights and freedom of assembly. Parts of the recommendations by SUHAKAM actually suggest ways for the holding of an assembly. Unfortunately, I doubt whether some of the people really understand human rights. If you refer to some of the abstracts from the press referring to the March 5 Bernama report, it quotes one of the Commissioners as saying that street demonstrations are not a suitable option to remove any government, though it was elected by the people through democratic process. What do we do about such Commissioners who don't actually understand the principles of human rights?”

**Recommendation** (written)

12) *Ronnie Liu (Democratic Action Party)*

Addressed to: **SUHAKAM**

- a) SUHAKAM needs to make sure that all ISA detainees are allowed to meet with their families immediately.
- b) SUHAKAM should adopt public hearings as a part of its investigation into the processes of complaints.

## Final Observations by the Panelists:

1) **Irene Xavier:**

I would support the call expressed by MTUC. We have to look into workers' rights in this country because 90% of workers are not members of trade unions. Trade unions themselves have a great deal of restrictions which should be removed, allowing them to operate in a way that will best serve the interests of the workers.

As to the question about the freedom of assembly and how you can get the

government to agree to people assembling. Perhaps one way would be to assemble anyway, regardless of whether you have permission or not.

**2) Colin Nicholas:**

Indigenous people in Malaysia are a minority. It is very difficult to get indigenous people to be involved in every sector of civil society in Malaysia. We have expressed this at many different platforms. We had a national conference on bio-diversity about a month ago, but then just last week the government organised a conference talking about the same topic of bio-diversity and forestry resources. The indigenous people were never invited. We cannot depend a lot on SUHAKAM. We know its limitations because we ourselves experience such limitations. Thus, we require a lot support from various NGOs, organisations and other bodies.

**3) Ramdas Tikamdas:**

I just wish to touch briefly on police brutality. This refers to three or four aspects. The report mentioned concern for police brutality, but it does not make any recommendations regarding this matter. The first issue of police brutality is the number of people killed in police shootings. Based on the statistics provided in the 1999 session of Parliament through the Deputy Minister of Home Affairs, over the preceding 10 years 635 people have been killed in police shootings. This is an alarming figure in times of peace. Another statistic which was carried in a Bar Council resolution is that since that period, the number of shootings has not declined. Another issue is death in custody. This is not mentioned in the SUHAKAM report. Then the third problem is torture in various degrees, ranging from cruel, inhuman or degrading treatment to physical abuse and mental and physiological trauma.

There are other issues of excessive use of force in dispersing peaceful assemblies. These are all in different categories of abuse of police power, pursuant to the Police Act. This has not been addressed in the SUHAKAM report. These are serious concerns for civil society, which we must continue to bring to SUHAKAM

**4) Dr Nasir Hashim:**

From my experience in following demonstrations, the violations are actually caused by police (but not uniformed police). Because of my experience in

moving around the squatter and estate communities, I sometimes recognise them. Basically all this while, people have not even used a stick or stone, but they still get stitches. Just recently, during May Day celebrations at the Twin Towers, there was a group that tried to do the same thing. We were able to identify them, took pictures of them and we were able to isolate them because our group had team leaders to make sure we were in control of our crowd. We communicate with them, we do not take instructions from anybody else. By doing that, we were able to identify the outsiders who tried to provoke the crowd. But it could happen elsewhere, just like April 14 incident. But it was good, we sat down and there was no violence.

Another example was at the National Mosque. There was a man on a motorcycle who slapped a young man and the young man wanted to react, but his friend managed to hold him. When we tried to question the man, he took his motorcycle and went to the FRU. If the young man had reacted, the FRU was waiting to go in and they would say that the people started it. That is why we have to be very careful.

**5) Irene Fernandez:**

It is very clear where violence comes from. I was having a ceramah in Malau and Kubang Pasu and a few thousand people were coming to attend. Meanwhile the FRU was starting to surround us with water canons. The village people wondered what it was for and they asked the FRU, which said it was in case there was a fire. The moment the first speaker took the mike to speak, the water canons starting shooting and the people just ran. We have the right to know what is happening in this country and we will come together. We must continue to assert our rights. The solution is not SUHAKAM. SUHAKAM is the mechanism and that is why the challenge is really now left to MTUC to see how effectively it pickets and assert that right.

**Conclusion by Dato' Param Cumaraswamy:**

As I mentioned earlier, this is a great step forward for human rights promotion and protection in this country. We have been able to gather here and evaluate the performance of SUHAKAM for the last eight months. Whatever may be the shortcomings pointed out this morning, there is one thing we must give credit to

SUHAKAM for: in the last eight months there has been greater human rights awareness in the country.

The media has been able to speak up a little more about human rights, though it was voicing SUHAKAM's statements and responses from others. One thing is clear, that there has been greater awareness of human rights in the country. This is SUHAKAM again, though it was expected to do more. With regard to ISA, it came very boldly to express its stand and we were quite surprised with some of the responses from the government ministers. However, SUHAKAM stood up and we would like to see that the next report of SUHAKAM is more forthright. No more saying that we are studying this and that, but be more specific and to the point. There are certain matters where the inquiry of investigations have been completed and the reports are being prepared, so a kind of preliminary report can be given by SUHAKAM to the people as the initial thoughts of their findings.



Finally, with regard to human rights education, we have been hearing certain rumours that SUHAKAM is a little apprehensive, that it has some reservations with regard to the civil and political rights in the educational curriculum for the schools. I hope this rumour is not true. I think it is very important for SUHAKAM to see that human rights remains indivisible, that both civil and political rights and economic, social and cultural rights are given the same status when this is taught in schools. If there is going to be some form of reservation, then as Irene Fernandez mentioned very clearly, there is going to be a compromise. We cannot allow our rights to be compromised.

# Workshop Session

*Chaired by: Bishan Singh*

## Groups 1 and 2

Objective: *Review the Annual Report of SUHAKAM*

## Findings

### Group 1

a) Is it acceptable?

- *It's a good start but there is still ample room for improvement*

b) What is lacking?

- *The vision, goal and mission are not mentioned in the introduction page. Anyone who reads the report sees that it is an overview of what SUHAKAM has done.*
- *The definition of human rights is not clearly stated.*
- *There is no mention of repealing sections 12 (2) (a), (b) and 12 (3) which tie the Commissioners' hands in investigations or inquiries.*
- *Under Chapter 3, no organisational structure has been clearly mentioned.*
- *There is a lack of manpower planning, so we also suggest that the Commissioners exercise their rights as specified in the Act, where they can appoint and delegate functions down the line to specific groups, for example NGOs, the Bar Council or related bodies.*
- *There is no mention of the laws that are prejudicial to disabled groups. The Commissioners should focus on issues relating to the disabled groups.*

c) What should be included in the report?

- *Under Chapter 5, we suggest that SUHAKAM should also recommend creating a separate group with regard to education. In particular, there should be an appointed group which can help to come out with curriculum for the development of human rights awareness in the schools at all levels.*

- *Must have education for judges, the Attorney-General, MPs, state assemblymen and all the other relevant government bodies.*
- *To follow-up with the official recommendations so that government ministries, Parliament and the Cabinet will consider what is written in the report (as one of the ministers previously said, this is solely a report and not a recommendation to the statutory bodies).*
- *Should incorporate within the report the evidence/findings collected over the past year, for example videos, photos and tapes of specific incidents.*
- *The review of the Act should be in line with the UDHR/Paris Principles. The government said that there are certain Paris Principles which are not suitable in our local context. But we believe they should not deviate from where basic human rights are violated, even if we have this particular Act*

## **Group 2**

- a) Is the Annual Report of SUHAKAM acceptable?
- *For a start, it is a good report but it can be improved upon.*
- b) What is lacking in the Report?
- *The appointment of SUHAKAM Commissioners must not be the prerogative of the Prime Minister. SUHAKAM should recommend or push to get its own candidates appointed and not simply have the Prime Minister make the recommendations.*
  - *The citizens or NGOs should have a voice in the appointments to SUHAKAM.*

Five issues that are unacceptable from the report:

- i) The report didn't touch on sex and gender equality;
- ii) It did not recommend revoking the proclamations of the states of Emergency;
- ii) Should have recommended the repeal of the ISA;
- iv) Public assemblies which are peaceful should be allowed;
- v) Should have recommended the ratification of the International Covenants.

Acceptable things from the report:

- i) Suggestion that the passing of bills in Parliament should go through a task force so that delays in passing a bill will not happen;
  - ii) The mention of educating the layman on matters regarding human rights.
- c) What should be included in future reports?
- *SUHAKAM should include workers' rights in the coming reports.*
  - *Should be independent of the government in terms of hiring of staff for SUHAKAM. It should not have to wait for the Public Service Department to hire staff or give approval for them.*
  - *SUHAKAM should pay equal attention to social and economic rights.*
  - *SUHAKAM should look into the discriminatory educational practices in the country.*

### Group 3

Objective: *Review the Role of SUHAKAM in the Past Year*

#### Findings

We went through two big aspects, the present situation and the future. First of all, we would like to mention that in the past, we saw the breakthrough that has been made by SUHAKAM. It was a moment in history and its existence is commendable and it should be continued.

Our findings on SUHAKAM's performance and its activities:

- Moving to new premises is a good step.
- Making police compliant to requests by SUHAKAM in the KESAS highway inquiry was another good breakthrough.
- In the future we believe that SUHAKAM can do better in educating the public. It has the culture of public education, including what had been said by Tan Sri Harun Hashim about the education in schools on human rights.
- University students should also be introduced to human rights issues, especially law students because they are the future lawyers and judges. We want the room for improvement and the assertiveness by SUHAKAM to be improved upon, for example, when SUHAKAM contacts the people

responsible for certain questionable arrests/detentions. If these people don't come forward with their reports, we feel that SUHAKAM should physically go to their offices and also highlight such cases in the mass media.

- SUHAKAM should remind the judiciary to be more sensitive towards protecting human rights. We are aware that there are judges who are not particularly sensitive towards human rights.
- The members of the Commission need to be committed. The present Commissioners are now quite committed but we are worried about the future.
- We also want to remind SUHAKAM that the other human rights issues like the rights of disabled citizens are very much lacking and leave a lot to be desired in Malaysia. Particularly such areas as taxis, toilets, etc, that don't cater to our disabled citizens.

## **Groups 4 and 5**

Question: *How to Strengthen Human Rights Advocacy in Malaysia*

### **Findings**

- 1) Awareness and education are extremely important in the process of strengthening human rights advocacy in the country.
  - *People should know their rights:*
    - i) Political rights
    - ii) Social rights
    - iii) Economic rights
- 2) How to strengthen human rights advocacy in Malaysia:  
*By promoting awareness among people:*
  - *giving talks*
  - *exhibitions*
  - *video shows*

- *skits (having people participate as much as possible, i.e. not only talking)*
  - *buttons*
  - *postcards*
  - *case study exercises*
  - *outings – exposure programmes*
- 3) Target Groups should include:
- *Educators*
  - *NGOs*
  - *Medical Professionals*
  - *Health Service Providers*
  - *Trade Unions*
  - *Media*
  - *Police*
  - *Welfare Department*
  - *Community Leaders*
  - *Religious Institutions*
  - *Lawmakers*
  - *Transnational capital interests*
- 4) Positive critiques or constructive criticism from the ground are very important in order for SUHAKAM to work in the best interests of the civil society.
- 5) To increase the awareness on:
- The existence of SUHAKAM
  - The purpose of SUHAKAM

## **Groups 6 and 7**

Question: *How to Improve and Enhance SUHAKAM to be More Effective*

### **Findings**

Why SUHAKAM is not good enough:

- i) it apparently does not have enough power;
- ii) not enough staff,
- iii) the Act is weak,
- iv) not enough commitment by the Commissioners.

### **To improve:**

- 1) We have looked at the composition of the Human Rights Commission and there is not enough representation from labour, women, and Orang Asli;
- 2) The mechanism of the appointment of HRC members should be independent from the executive;
- 3) To amend the HRC Act in order to provide more power to the SUHAKAM;
- 4) Education and awareness on HRC Act to all members of society;
- 5) Creative management and operation of HRC (for example SUHAKAM must summon the detainees);
- 6) Commitment by the Commissioners;
- 7) Deputise HRC observers.

# ***APPENDIX 1-***

## **RESOLUTION BY THE 105 NGOs DURING THE NATIONAL CONSULTATION ON “SUHAKAM AFTER ONE YEAR: HAS THE STATE OF HUMAN RIGHTS IMPROVED IN MALAYSIA?”**

We call upon the National Human Rights Commission of Malaysia (SUHAKAM) as the defender of human rights to enforce the Act to the fullest in the discharge of the duty to protect and promote the human rights of Malaysians. The 105 NGOs gathered here today at the National Conference on “SUHAKAM After One Year: Has the State of Human Rights Improved in Malaysia?” held at Pearl International Hotel give our full support and confidence to SUHAKAM. We also call upon SUHAKAM to take all necessary steps and exercise its full powers to visit the detention centres and gain access to and see all the ISA detainees immediately and ensure their safety.

*May 5, 2001  
Kuala Lumpur*

*Poem by Dr Nasir Hashim*

## *I See Democracy*

I see the birth of democracy ... the child of all conscience  
I see the utterance of democracy ... the mother of all constitution  
I see democracy propositioned ... the marriage of all tolerance

But  
In these changing and troubled times

I see democracy sagging its head  
Balancing on this lonely thread  
of worn-out realities

I see democracy crying out in pain and in vain  
Trapped in the growing maze  
of human definitions

I see democracy sucked into  
the whirlpool of damnations  
To vomit generations of exploiters  
And the rape of humanity

I see with sadness in the hearts of hearts  
Democracy sprawled by the wayside  
Trying to embrace Truth  
Frozen by the spectral chains of oppressions  
And the dire lust for profits

I see with knotted feelings  
Democracy simmering ... withering away  
In the caresses of its sponsors



Who desperately cling to power  
And the coloured symbols of arrogance

I see democracy faltering ... dying  
In the arms of its children and grandchildren  
Yet they do not understand  
Yet they dare not understand  
The compassion ... that sparks the souls

But  
In the world where people hold supreme

I see with sheer reverence  
Democracy nurtured with tender loving care  
Ushered with self-discipline  
By those who cherish freedom

I see with sheer joy  
Democracy moving freely ... serene to reality  
Harnessing the vehicles of consciousness  
Negating the era of exploitation

I see with total anticipation  
Democracy intrinsically alive to the pulsating beings  
So to glorify further ... is to relish in redundancy

I see people in total participation  
Democracy congealing into a mighty force  
Portraying its spectral hues of unity against tyranny  
The catalysts of today ... and the hopes of tomorrow  
The essence of humanity ... as one Universal Spirit



---

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

Fax (603) 7873 0636

Email eracons@po.jaring.my

**ISBN : 983-40038-9-7**

---

ISBN 983-40038-9-7



9 789834 003890