

proceedings of the
national consultation on

SUHAKAM: *After 2 Years*

*"How Has The Commission Played a Role in Promoting
and Protecting Human Rights in Malaysia?"*

Sept 7, 2002, Heritage Hotel, Ipoh, Perak



*Proceedings of The Forum
was supported by:*

Friedrich Naumann
Stiftung



Asean Mechanism

Organised By:



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



PERAK Consumers Association

**National Consultation on
SUHAKAM
After 2 Years:**

*‘How Has The Commission
Played a Role in
Promoting and Protecting
Human Rights
in Malaysia?’*

September 7, 2002

Heritage Hotel, Ipoh, Perak



ERA CONSUMER MALAYSIA

(Education and Research Association for Consumers, Malaysia)

ERA CONSUMER is a voluntary, non-political and non-profit organization. ERA focuses on issues ranging from food security, human rights, environment, consumer rights to women's rights for a socially just and equitable society.

contents

Programme	1
Welcome Address	3
By Mr Marimuthu Nadason President, ERA Consumer Malaysia	
Keynote Address : The Role and Challenges of SUHAKAM in Promoting and Protecting Human Rights	7
By Prof Chiam Heng Keng	
Legitimacy & Effectiveness: Putting the Paris Principles for National Human Rights Commissions into Practice in Asia-Pacific	19
By Nicholas Howen Regional Representative for Asia-Pacific United Nations High Commission for Human Rights	
Questions and Answer Session with Prof Chiam	27
Session Chairman: Dato' Param Cumaraswamy	
Session II: Panel Presentation on SUHAKAM	34
Evaluation of SUHAKAM	34
By Ramdas Tikamdas President, HAKAM	
Press freedom: Three things SUHAKAM can do	44
By Steven Gan Editor-in-Chief, Malaysiakini.com	
SUHAKAM Report Review: Civil and Political Rights	49
By Irene Fernandez	
Student's View on SUHAKAM	54
By Chang Lih Kang	
SUHAKAM and ESC Rights	57
By Abdul Rahman Said Alli President, Perak Consumers Association	
Session II : Questions and Answers	61

Foreword

ERA Consumer Malaysia took its Second National Consultation to evaluate the performance of SUHAKAM, the Malaysian Human Rights Commission, by civil society to the city of Ipoh in Perak this year.

This is in keeping with our aim of creating greater awareness of human rights, human rights issues and about the work of SUHAKAM among all Malaysians. It is our intention to hold this annual assessment of SUHAKAM in all major towns and cities of the country, so that the ordinary citizen is better educated about human rights and the work of a national human rights commission.

SUHAKAM certainly did perform better in the year 2001 than it did as a fledgling the previous year, when it was established. It has done good work in several areas, and chief among them is its holding of an open inquiry into the ugly Kesas Highway incident, and its welcome recommendations on a crucial right for citizens: freedom of assembly.

Nevertheless, there have also been several shortcomings and one among these that concerns civil society is the apparent “bureaucratisation” of the commission: It is the staff that now receive complaints and petitions from members of the public, no longer the Commissioners.

Civil society decided at this consultation that a Memorandum should be presented to SUHAKAM, citing our praises and our criticisms of the Commission, in the hope that it can do more for the satisfaction of the citizens, and also prioritise its work, since there is only so much that it can do in one year. A draft of this Memorandum has been included at the end of this report.

SUHAKAM does not have to have any worries about civil society. We will always be there to help and support it in its work. All that we ask for is that it does not become another “government agency” and that it remains transparent and accountable in its work.

A handwritten signature in black ink, appearing to read 'Marimuthu Nadason', written over a horizontal line.

MARIMUTHU NADASON
President
ERA Consumer Malaysia

Programme

- 8.00am Registration
- 9.00am Welcome Address
Mr Marimuthu Nadason
President of ERA Consumer, Malaysia
- 9.10am Keynote Speech: The Role and Challenges of SUHAKAM in Promoting and Protecting Human Rights
Prof Chiam Heng Keng
Commissioner of SUHAKAM
- 9.40am “Legitimacy & Effectiveness: Putting the Paris Principles for National Human Rights Commissions into Practice in Asia-Pacific”
Mr Nicholas Howen
Regional Representative for Asia-Pacific
United Nations High Commissioner for Human Rights
- 10.00am Q & A Session
- 10.15am Official Launch of Bahasa Malaysia version of the Convention on Torture:
Konvensyen Anti Penyeksaan, Kekejaman, Perlakuan atau Hukuman yang tidak Berperikemansiaan
- 10.20am Tea Break

10.30am Panel Presentation

I Evaluation of SUHAKAM

*Mr Ramdas Tikamdas
President of HAKAM*

II SUHAKAM and the Media

*Mr Steven Gan
Editor-in-Chief, Malaysiakini*

III SUHAKAM and Civil & Political Rights

*Ms Irene Fernandez
President of Tenaganita*

IV Students' views of SUHAKAM

*Mr Chang Lih Kang
Student Activist (DEMA)*

VI SUHAKAM and ESC Rights

*Mr Abdul Rahman Said Alli
President, Perak Consumers Association*

Session Chairman

Dato' Param Cumaraswamy

*UN Special Rapporteur on the Independence
and Impartiality of the Judiciary*

12.15 pm Q & A Session

1.30 p.m Programme ends, followed by lunch

Welcome Address

By Mr Marimuthu Nadason
President, ERA Consumer Malaysia

Marimuthu Nadason is also Secretary-General and Chief Executive Officer of the Federation of Malaysian Consumer Associations.

It is a great pleasure for me to welcome the United Nations Regional Representative for Asia and the Pacific of the UN High Commissioner for Human Rights, Mr Nicholas Howen, UN Special Rappourteur for the Independence and Impartiality of the Judiciary, Dato' Param Cumaraswamy, SUHAKAM Commissioner Prof Chiam Heng Keng, distinguished panelists, friends and all participants to the Second National Consultation on SUHAKAM on the theme "How has the Commission Played a Major Role in Promoting and Protecting Human Rights in Malaysia?" I would also like to take this opportunity to express my gratitude to the Perak Consumers Association for agreeing to be the local host for this event.

Ladies and gentlemen: ERA Consumer Malaysia every year organises an annual consultation on SUHAKAM, discussing the various aspects of human rights in the Malaysian context. ERA Consumer is a member of SUHAKAM's Education Working Group and we have been closely monitoring SUHAKAM since its establishment in 1999.

This is the first time we have moved the venue of our national consultation out of Kuala Lumpur, with the aim of reaching out to all Malaysians across the nation. We plan to hold these annual consultations throughout Malaysia, to give various groups from different states an opportunity to participate in this event.



Mr Marimuthu Nadason

The purpose of this event is to create room for the civil society, professionals and fellow NGOs in the human rights field to analyse as well as evaluate the performance and progress of SUHAKAM over the past two years. Today, at the consultation, we will hear opinions and feedback from experts pertaining to SUHAKAM's

performance and the role it has played to promote and protect human rights in the country.

As much as we would like everyone in a fairly educated population like ours to know what basic human rights are and how they can go about ensuring that these rights are not infringed, we have to accept the fact that to many Malaysians, both rural and urban folk, human rights is a term that is not important to them. Most people view the term human rights with great awe, assuming that these are special rights.

As for people like us who are in the field of human rights, who are trying to educate the masses that everyone has the same right by virtue of being born as a person, we now face the uphill task of ensuring that people at large also understand the concept of human rights. The term human rights may connote different things to different people, according to their station in life. Human rights may and will continue to be viewed differently by political parties, both ruling and opposition, and members of the public as compared with people who are actually in the field of human rights work, like SUHAKAM, ERA Consumer Malaysia and the other related NGOs.

The new millennium was said to be a beginning of so many new issues and trends – but what is not being talked about is the fact that this millennium is also the dawn of awakening and struggle for all those whose rights are infringed and those who are fighting for justice.

The world at large, and in the local front as well, has not been the same since the tragic Sept 11 terrorist attacks in the United States last year. That tragedy has, overnight, changed the cause of human rights for us NGOs and for SUHAKAM too, in that it has opened our perceptions to the issue of human rights violations in various perspectives.

As for the governments, that incident caused many to tighten their laws against those who are deemed a potential threat to their national security and well being. In so doing, innocent



people and groups, including NGO leaders and civilians, have been subjected to draconian laws that are now described as the best method to handle terrorists.

While actions supposedly to be in the best interest of all the people are being taken, the affected party – that is the persons being accused – are being continuously denied their human rights and we wonder, who will question these policies and mistreatment?

On the local front, SUHAKAM was formed with the perceived belief that it will be THE institution to safeguard our human rights from being infringed. However, it has to be said that in the past two years, the journey has not been smooth.

As with us NGOs, SUHAKAM is still struggling to cope with the high expectations of the people – and it also has to cope with the mounting criticisms thrown its way.

The new leadership of SUHAKAM has also come under much attack, and there seems to be a lack of a link between the objective of the previous SUHAKAM team and the current team.

Among the important issues that come to mind is the fact that at the end of 2000, 40 people remain detained under the Internal Security Act for various alleged crimes, including involvement in the Al Ma'unah group.

The 2000 SUHAKAM Annual Report states that SUHAKAM will examine laws that go against the grain of human rights and recommend appropriate action for their repeal or amendment". However, the 2001 Annual Report, states that the number of ISA detainees had risen to 78 by end of 2001. The question that begs to be answered is whether an increased number of ISA detainees augur well for SUHAKAM?

In the same light, under the previous leadership of SUHAKAM, the Commission recommended that the government ratifies certain international conventions, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention Against Torture.

Unfortunately, SUHAKAM, in its 2001 Annual Report, states that it is "unable to report if and when" these international treaties will be ratified.

Similar to what has been cited above, many of these irregularities and many other

questions linger in mind with relation to the performance of SUHAKAM on the enhancement of human rights values.

The absence of exposure to and the teaching of human rights values and issues to the people at large is another issue that needs to be answered. Going by the present situation, many, if not all of us, who want to voice our concerns and speak in terms of equality in all aspects are living with fears – fear of the police, fear of the judicial system and fear of the authorities and all of the powers. This situation causes the violator or perpetrator to take advantage of members of society who are weak and helpless.

It cannot be denied that NGOs in the country have been in the forefront of activities concerning education and dissemination of information on human rights. We have long been undertaking activities and programmes related to human rights advocacy and awareness-raising.

A proof of this claim is the fact that an increasing number of people actually come forward to speak of violations that happen to them through NGOs, which then bring these matters to the attention of SUHAKAM.

Does SUHAKAM listen to pleas and cries of those affected? What is being done? Is there anything else that SUHAKAM can do, given its restrictions and limitations as specified under the HRC Act?

This consultation is the most apt platform for you to raise, discuss and debate on all the issues and questions brought up. Let us hope that this will be a fruitful discussion which will open more doors, rather than be just a discussion of problems.

Finally, ERA Consumer Malaysia would like to take this opportunity to call on the government to ratify the International Criminal Court, which has been established by the United Nations, as well. As part of our on-going activities towards the protection and promotion of human rights in the country, we will also carry out appropriate steps to lobby the government to ratify the ICC.

With that, I thank you all once again for your presence here and I look forward a fruitful outcome of this year's National Consultation on SUHAKAM.

Keynote Address

The Role and Challenges of SUHAKAM in Promoting and Protecting Human Rights By Prof Chiam Heng Keng

Prof Chiam Heng Keng holds the Chair of Social Psychology in Education at the University of Malaya and is recognised, both nationally and internationally, as the foremost authority on child and adolescent development in Malaysia. She is a consultant to several agencies, government, non-government and private, and has authored several academic articles and books on various aspects of child and adolescent development. In April 2002, Prof Chiam was reappointed to a second two-year term as SUHAKAM Commissioner. She chairs the Commission's Education Working Group.

The primary role of SUHAKAM as a national human rights institution is to promote and protect the human rights of all Malaysians. All of the functions as stated in 4(1) of the Malaysian Human Rights Commission Act 1999 (Act 597), in particular 4(1)(a) and 4(1)(d) are pertinent to SUHAKAM's role of promoting and protecting human rights. Section 4(1) of the Act reads:

In furtherance of the protection and promotion of human rights in Malaysia, the functions of the Commission shall be:

- To promote awareness of and provide education in relation to human rights;
- To advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;
- To recommend to the Government with regard to the subscription or accession of treaties and other international instruments in the field of human rights; and
- To inquire into complaints regarding infringements of human rights referred to in section 12.



Prof Chiam Heng Keng

To carry out these functions, the HRC Act also provides the Commission with the following powers:

- a) To promote awareness of human rights and to undertake research by conducting programmes, seminars, and workshops and to disseminate and distribute the results of such research;
- b) To advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities the appropriate measures to be taken;
- c) To study and verify any infringement of human rights in accordance with the provisions of the Act;
- d) To visit places of detention in accordance with procedures as prescribed by the laws relating to the places of detention and to make necessary recommendations;
- e) To issue public statements on human rights as and when necessary; and
- f) To undertake any other appropriate activities as are necessary in accordance with the written laws in force, if any, in relation to such activities.

In accordance to the functions and powers enacted in the Act, SUHAKAM carried out the following activities in 2002:

Education Working Group

1. Promoting Awareness of Human Rights through Informal Education

(a) Malaysian Human Rights Day

SUHAKAM is of the opinion that a day dedicated to human rights will highlight the importance of human rights and will be an effective means of bringing awareness to the public. Hence in 2001, Sept 9 was declared by SUHAKAM as the Malaysian Human Rights Day. The theme of the Conference held in conjunction with the First Malaysian Human Rights Day was "Rights of the Disadvantaged". This year, SUHAKAM focuses on human rights education. To encourage participation, members of the public were invited to submit papers for presentation at this conference. However the response was poor – only four submissions were received.

We therefore had to identify and invite speakers for the various sub-themes of the conference. We are indeed very pleased with the overwhelming response for participation. We targeted for 200 participants, but up to Sept 6, we received 367 registrations. Since human rights should be disseminated to as many people as possible, we accepted everyone, even though the deadline for registration had long been over. However, owing to the seating capacity, we did have to limit the number of participants who registered later.

(b) Workshops

At the forum and workshop held in conjunction with the First Malaysian Human Rights Day, the human rights of six disadvantaged groups, namely the indigenous people, women, the disabled, children, special groups and workers were discussed. After studying the reports, the Education Working Group decided that for the year 2002, SUHAKAM will focus its attention on the indigenous people and children.

SUHAKAM organised three workshops – one in Sarawak, Sabah and Peninsular Malaysia – to discuss with the indigenous people the rights that they would like to be addressed and to prioritise them. At each workshop, the people were asked to nominate those who could be appointed as “Friends of SUHAKAM” so that they could be trained to work with indigenous people at the grassroot level. The first such workshop was held in Miri, Sarawak, and the next workshop will be in Kota Kinabalu on Oct 12.

A committee, comprising two Commissioners and NGOs whose core function is the welfare of children, was formed in May 2002 to discuss how the Convention of the Rights of the Child could be ratified. A seminar will be held on Oct 28, 2002 to discuss what needs to be done to protect children.

The following are the other workshops conducted by SUHAKAM the past year:

No	Date & Workshop
1.	11 & 12 June 2002 Human Rights Workshop for Police
2.	13 July 2002 Human Rights Workshop for Indigenous People (Sarawak)
3.	28 September 2002 Workshop on the Convention on the Rights of the Child
4.	12 October 2002 Human Rights Workshop for Indigenous People (Sabah)
5.	2 November 2002 Human Rights Workshop for Indigenous People (Peninsular Malaysia)

c) World Human Rights Day Celebrations (Dec 10 of every year).

We are planning to celebrate World Human Rights Day by holding a competition on messages on human rights. This competition will be open to all primary and secondary school children.

2. *Promoting Awareness of Human Rights Through Formal Education*

(a) Introduction of Human Rights Education in Schools

SUHAKAM met with the Minister of Education, who is quite responsive to the suggestion that human rights be introduced to schools by integrating human rights education into the existing curriculum. A committee comprising Commissioners, representatives from the relevant departments, sections and units of the ministry and academicians is to be established. This Committee will be chaired by the Head of the Education Working Group of SUHAKAM. The representatives have not been identified.

SUHAKAM has mapped out the syllabi of all the subjects to identify areas in which the subject of human rights can be integrated without difficulty, and has set aside some funds for research to be done in schools.

(b) Introduction of Human Rights Education for Police Officers

The curriculum has been drawn up and the police have approved the curriculum. A seminar on human rights for police officers was held on June 12 and 13.

Law Reform Working Group

1. *Consultation and Research*

No.	Research
1.	Human Rights Commission of Malaysia Act 1999
2.	Internal Security Act 1960

Although the Human Rights Commission of Malaysia Act 1999 has been reviewed and recommendations for changes to it have been sent to the Foreign Ministry, it continues to be reviewed by the present Commission.

The review of the Internal Security Act 1960 is constantly discussed at the monthly meetings of the Commission and is also being studied by the Law Reform Committee headed by Dato' K.C. Vohrah

2. Other Activities

No.	Date & Activities
1.	27.7.2002 - Dialogue with the Judiciary on the Report on the Rights of Remand Prisoners

The dialogue session was headed by Tan Sri Harun Mahmud Hashim. The Judiciary was headed by Tan Sri Ahmad Sheikh Abdul Halim. The issues raised in the Reform Report on the Rights of Remand Prisoners, especially in regard to remand proceedings, were discussed. The outcome was very encouraging as the Judiciary was responsive to all the issues raised by SUHAKAM that was within its jurisdiction. One key outcome of this was a specific request from the Judiciary to keep it informed of instances of magistrates not carrying out their duty conscientiously in relation to remand proceedings.

SUHAKAM will also send a letter to the Bar Council for its cooperation in this matter. Previous memorandum sent by the Bar Council and the KL Bar Committee on remand proceedings and the rights of remand prisoners will be studied further to ensure that all issues raised in relation to the jurisdiction of the Judiciary in this matter are exhaustively dealt with.

It was also decided that the Law Reform Working Group will hold a meeting with the police on the issues raised in the Reform Report on the Rights of Remand Prisoners.

Treaties and International Instruments Working Group

1. *Research*

No.	Research
1.	Comparative Table between Universal Declaration of Human Rights and domestic legislation
2.	Comparative Table between International Covenant on Economic, Social and Cultural Rights and domestic legislation
3.	Comparative Table between International Covenant on Civil and Political Rights and domestic legislation
4.	Comparative Table between Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and domestic legislation

The comparative table reports on these four international instruments undertaken by SUHAKAM have been sent to the Ministry of Foreign Affairs to urge the Government to sign and ratify these conventions

2. *Other Activities*

No.	Date	Activities
1.	27.8.2002 & 28.8.2002	Training for the Judiciary by ILKAP Seminar Undang-Undang Hak Asasi Manusia: Perspektif Perlembagaan dan Antarabangsa

Tan Sri Harun Hashim and Dato' Mahadev Shankar took part in the Training for the Judiciary by ILAP Seminar Undang-Undang Hak Asasi Manusia: Perspektif Perlembagaan dan Antarabangsa

Complaints and Inquiries Working Group

1. Handling Complaints (including memoranda)

As of August 2002, SUHAKAM received 148 complaints.

(a) Complaints According to Year

Year	2001	2002 (Jan-Aug 2002)
Local Complaints	319	149
Foreign Complaints	4,687	1,951
TOTAL	5006	2100

(b) Breakdown of Local Complaints by Categories

Year	2001	2002 (Jan-Aug 2002)
<i>Complaints Relating to Government Sector</i>	174	132
<i>Complaints Relating to Private Sector</i>	46	9
<i>Complaints Relating to Individuals</i>	72	5
<i>Public Statements</i>	27	3
Total	319	149

(c) Actions Taken by SUHAKAM

Year	2001	2002 (Jan - August 2002)
Settled	24	45
No further action	101	-
Pending	194	104
Total	319	149

Every complaint sent to SUHAKAM is processed immediately and the report is tabled at the monthly SUHAKAM meeting. Not all complaints pertain to human

rights. Those that do not infringe upon human rights are sent to the necessary agencies or authority and the complainants are informed about this.

2. *Visitation to Places of Detention*

Date	Place of Detention
21.1.2002	Visit to the Immigration Detention Centre, Pekan Nanas Johor
10.4.2002	Visit to the Ampang Police Lock-Up, Selangor
13.4.2002	Visit to the Kamunting Detention Centre as a result of the "hunger strike" by detainees
19.4.2002	Visit to the Semenyih Detention Camp, Selangor
7.5.2002	Visit to Tengku Budriah Home, Cheras, Kuala Lumpur
9.7.2002	Visit to Putrajaya Hospital
11.7.2002	Visit to Hospital Permai, Johor
	Visit to Universiti Teknologi Malaysia, Skudai, Johor
16.7.2002	Visit to the Kuala Kubu Baru Home for the Chronically III, Sungai Buloh, Selangor
10.8.2002	Visit to the Simpang Renggam Detention Centre, Johor
	Visit to the Muar Prison, Johor
27.8.2002	Visit to Brickfields Police Lock-Up
29.8.2002	Visit to Putrajaya Police Lock-Up

SUHAKAM acknowledges that the need to inform the relevant authorities is a problem. Among the recommendations made to the Act is for SUHAKAM to be empowered to visit places of detention without notification.

3. *Workshops*

Date	Workshop
1.8.2002	Workshop on Press Freedom

4. *ISA Inquiry*

No.	Date	Inquiry
1.	18 & 19 June 2002	Open Inquiry on the ISA in Taiping
2.	5 August	Open Inquiry on the ISA in Kuala Lumpur

5. *Dialogues*

No.	Date	Dialogue
1.	21.8.2002	Dialogue with the police

6. *Issues in Focus*

No.	Issue in Focus
1.	Death in Police Custody
2.	Reform of the Police Lock-Ups
3.	Prisons Reform
4.	Right to Housing
5.	Emergency (Public Order and Prevention of Crime) Ordinance 1969

SUHAKAM – Other Activities

1. *Dialogues*

No	Date	Dialogue
1.		SUHAKAM and the Bar Council
2.	6.8.2002	SUHAKAM and NGOs
3.	23.8.2002	SUHAKAM and Abolish the ISA Movement (more popularly known as AIM or GMI)

2. *Inter-Religious Dialogues (IRD)*

No	Date
First IRD	8.4.2002
Second IRD	26.8.2002

SUHAKAM has decided to recommend to the government that an Inter-Religious Council be established

3. *Road Shows*

No.	Date	Dialogue
1.	25.7.2002	Nabawan, Sabah
2.	6.8.2002	Air Keroh, Melaka
3.	12.9.2002	Papar, Sabah
4.	14.9.2002	Tuaran dan Tamparuh, Sabah
5.	31.10.2002	Ranau, Sabah

SUHAKAM has decided to take human rights to the grassroots and Tan Sri Simon Sipaun and Dato' Prof Hamdan Adnan held a dialogue with the leaders and people of the district of Papar. It was attended by approximately 150 people and was a success.

4. *National Plan of Action on Human Rights in Malaysia*

The Plan of Action that was prepared by the first Commission was sent to the Ministry of Foreign Affairs in late April 2002.

5. *Press Statements*

No.	Date	Title
1.	8.8.2002	Press Release on Rights of the Disabled
2.	1.8.2002	Press Statement on the Workshop on Press Freedom
3.	19.6.2002	Release of Report on the Visits to Henry Gurney School, Malacca and the Moral Rehabilitation Centre, Batu Gajah, Perak
4.	24.6.2002	Press Statement on ISA, Show-cause Letter to 15 UTM Students, The Kampung Medan Case, Freedom of the Press, the Second Malaysian Human Rights Day, Dialogue with SUHAKAM
5.	19.4.2002	Press Statement on the ISA
6.	15.4.2002	Press Statement on the ISA
7.	9.4.2002	Press Statement on the Inter-Religious Dialogue held on 8.4.2002
8.	18.2.2002	Statement on the Ban on Public Ceramah
9.	5.2.2002	Release of the Reports on the Visits to Tun H.S. Lee police station lock-up and the Kamunting Detention Centre

SUHAKAM Reports in the Process of Publication

1. Rights of Remand Prisoners
2. Reports on the Workshop of the Rights of Young Prisoners
3. Report on the Rights of Indigenous People in Sarawak
4. Individual Visitorial Reports on Places of Detention

SUHAKAM REPORTS – IN PROGRESS

1. Compilation of SUHAKAM's Visitorial Reports
2. Report on the Forum on the Rights of the Disadvantaged
3. The Internal Security Act 1960
4. The Inquiry on the Internal Security Act 1960
5. Report on the Workshop on the Freedom of the Media
6. Annual Report 2002

It would be difficult to evaluate the successes of SUHAKAM because the authorities do not state that positive changes made, if any, as a result of the recommendations made by SUHAKAM. But, SUHAKAM notes the following:

- Amendment to Article 8(2) of the Federal Constitution to include "gender" as a prohibited ground for discrimination – this is in line with SUHAKAM's Annual Report 2000.
- Increased financial allocation to improve the conditions at police lock-ups is in line with SUHAKAM's Visitorial Reports on Police Lock-Ups.
- Development in the Petaling Jaya magistrate courts where remand orders under section 117 of the Criminal Procedure Code may be obtained on public holidays and weekends – is also in line with the Rights of Remand Prisoners Report.
- Improved conditions at detention centres and separation of juvenile prisoners from adult prisoners – in line with SUHAKAM's Visitorial Reports on Places of Detention and the Workshop on Young Prisoners.

- Continuing steps taken to address the rights of disadvantaged groups in society – in line with SUHAKAM’s Forum on the Rights of the Disadvantaged.
- Improved treatment of ISA detainees – in line with SUHAKAM’s Visitorial Reports.
- The general public appears to be more aware of basic human rights, judging from the fact that the Commission receives all sorts of complaints, from the refusal of government authorities to issue permits to the abuse of police powers.

Conclusion

SUHAKAM is established by an Act of Parliament. The functions and powers are clearly stated in the Human Rights Commission Act 1999. We therefore have to act in line with the functions and powers enacted in the Act.

SUHAKAM has to act independently and does not dance to the tune of neither the Government nor the NGOs. Until changes are made to Act 597, the indicators of SUHAKAM’s success in promoting and protecting human rights have to be made against the four functions stated in Act 597.

Legitimacy & Effectiveness: Putting the Paris Principles

for National Human Rights Commissions into Practice in Asia-Pacific

By Nicholas Howen

Regional Representative for Asia-Pacific

United Nations High Commission for Human Rights

Nicholas Howen is an Australian international human rights lawyer with degrees in Law and Political Science/History from the University of New South Wales, Sydney, and has lived and worked in Asia, Africa and Europe. He took up his present position in January 2002 and is based in Bangkok. Howen has researched, written and advised on a range of issues including international justice, international law-making, capacity-building of civil society, human rights in development, humanitarian assistance and post-conflict peace-building and corporate social responsibility.

“The lighthouse”

An effective national human rights commission is like a lonely lighthouse clinging to rocks on the edge of the land, its beacon shining out 24 hours a day. It is not of the sea, but without the sea it would not exist. It is built on land but it is not of the land, it is for the sea. It stands between the sea and the land.

In the same way, a national human rights commission stands between the state and civil society. It is created by the state but is not of the state – it must be independent of the government. National human rights commissions usually report to the parliament and are subject to the laws of the land, but they are independent of parliament. They provide remedies for victims of human rights violations, but they do not replace the courts. Human rights commissions are also not part of civil society and in fact, they would not be needed if they merely had the same characteristics of NGOs. Their official position gives them a special role.



Nicholas Howen

Just as a lighthouse should be built and operate to suit the particular stretch of sea, so a national human rights commission should be created and operate in a way that it is most appropriate to the political, constitutional, social and cultural traditions of the country. It cannot be merely an imported model imposed from outside.

Independence, effectiveness and legitimacy

A national human rights commission should be appropriate to the country, but subject to three conditions.

First, in the end a national human rights commission can only be said to be effective and appropriate if it helps to change the human rights situation of individuals and groups in society for the better. This is the ultimate test of effectiveness.

Secondly, all national human rights commissions must abide by the internationally accepted minimum standards. The most important are set out in the Paris Principles¹, which were drawn up by experts meeting in Paris in 1991 and adopted by all member states of the United Nations – including Malaysia – in a resolution of the United Nations general Assembly in 1993. The Paris Principles say that commissions should have a broad mandate, be independent, have adequate funding and that their membership should reflect the diversity of society.

Thirdly, over the last 10 years we have accumulated a huge body of “best practices” in how more commissions around the world have struggled with putting the Paris Principles into practice. I strongly urge SUHAKAM to learn from the experiences of fellow human rights commissions – the 12 that operate in the Asia Pacific² region and those in the other continents.

What I will do today is explore how a commission can put into practice the most fundamental principles underlying the Paris Principles: independence, effectiveness and legitimacy. The mandate, membership, term of office and funding established by law will of course help or hinder a commission achieving these ideals. But today, I want to go beyond structure and law.

1 *Paris Principles Relating to the Status of National Institutions*, Commission on Human Rights Resolution 1992/54 of March 3, 1992, approved by the UN General Assembly Resolution 48/134 of Dec 20, 1993.

2 Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, South Korea, Sri Lanka and Thailand.

Experience has shown that commissions with apparently flawed legal foundations can do a tremendous job if the commissioners have commitment, integrity, knowledge and courage. Conversely, some commissions with strong mandates and legal independence have shown themselves to be weak in practice. Today I want to pose seven questions that I want to ask myself if I am a human rights commissioner seeking to evaluate the independence, effectiveness and legitimacy of my commission. I will not critique SUHAKAM itself, but rather set out questions that could be asked of any commission.

The Seven Questions

1. Vulnerable groups and minorities

Is the commission adequately addressing the human rights problems of the most vulnerable groups in society?

So often human rights work is about minority or other groups in society that may be marginalised, discriminated against, voiceless and perhaps also hidden victims. It could be indigenous peoples, ethnic or religious minorities, the poor, migrant workers, refugees, internally displaced, people with disabilities, people living with HIV/AIDS or detainees. Women and children may also be groups needing special attention.

A commission may start by publicly drawing attention to a particular vulnerable group, perhaps through a well-publicised conference. But this can only be the beginning. A special inquiry may be necessary. What are the patterns of human rights violations suffered by the group? What are they discriminated against, and why do they have no voice? What do the members of the group themselves say should change? How should the government change the law, policy and allocation of resources to address the problems? Do law enforcement agencies, the bureaucracy and the institutions of the state discriminate against these groups?

And so often it is the most vulnerable in society who are the least likely to lodge complaints with a national human rights commission or the courts. They may lack knowledge of procedures or confidence to complain, or may just feel that the system will not protect them.

Human rights education is often needed. It should be targeted at communities of vulnerable groups to explain to them their rights under the law and to encourage them to exercise their rights. Education should also be targeted to those in power

locally and nationally, to break down prejudices and stereotypes and to ensure that the rights of the marginalised are respected.

A commission will need to simplify its procedures so that vulnerable groups or those working on their behalf can access complaints procedures. In some countries, commissions accept verbal complaints. Offices in diplomatic or business areas will usually be too intimidating and distant. The best is often to work through community-based organisations that might be closer to the communities themselves.

2. *Entrenched human rights problems and legitimate space*

Is the commission addressing entrenched, difficult human rights issues, opening up legitimate space for debate and action on these issues in civil society and government circles?

A commission should use its privileged position as an official body of the state to go further than others can in legitimising debate and action on human rights. It can project a vision of the future society by dealing with taboo subjects such as racism, or working to change perceptions, attitudes and laws towards hidden groups such as foreign migrant domestic workers.

After a commission has worked for some time, we should ask: is there more space for civil society to act because of the protective umbrella of the commission?

3. *Relationship with the government*

Is the commission developing a balanced relationship with the government that uses both working relationships of trust and stronger public advocacy to achieve changes?

A commission's relationship with the government is probably the most difficult but the most important relationship to manage. A commission is the creature of the state, but is independent of the executive, as well as the judiciary and parliament.

A commission has privileged access to government ministries and agencies. This can be a strength. It should use its official status to develop trust and collaborative working relations with the government. It should use this closeness to create space in the bureaucracy to work on human rights issues, to obtain access to places that are often otherwise restricted (such as places of detention).

However, friendly working relations are not an end in themselves, but a means to achieve change, to help bring justice to society and to bring about changes in law, policy and practice.

So, the commissioners will always have to be courageous and be ready to disagree, chide criticise and if necessary, speak out publicly. It will be especially necessary to speak out if there has been serious wrongdoing by government agencies. For example, if a law enforcement agency has committed a serious human rights violation which amounts to a criminal offence, the commission will have to push for those responsible to be brought to justice, not merely to make a report with general recommendations. A commission will also have to speak out publicly if the collaborative working relations behind the scenes have not produced results.

A mark of an effective commission is also whether it follows up on its recommendations and is not just silent if the executive or legislature fails to respond to its findings. Excellent findings of inquiries or on individual complaints are fatally weakened if they stop there and remain ageing words on a dusty shelf.

In sum, the relationship between a commission and the government should be characterised by both collaboration and a level of tension – tension because any commission will always have to make recommendations or push for changes that are not popular with some in government.

4. *Relationship with non-governmental organisations*

Is the commission developing a balanced relationship with civil society, which is constructive, supports the legitimate role of human rights defenders and also recognises the independence of both civil society and the commission?

A constructive relationship with civil society is often a barometer of the autonomy and credibility of a commission (this of course cuts both ways as NGOs need to be constructive with the commission as well, recognising the progress where it has occurred). But a commission is not an NGO, and it is independent of NGOs.

The Paris Principles encourage commissions to develop working relations with NGOs. Why is this? First, the most vulnerable in society will often approach NGOs or community-based organisations, but not a commission. Secondly, NGOs are a source of skills and expertise about the human rights situation in a country and about how law and practice should change. Thirdly, NGOs can help raise the profile

and understanding of a commission among the public and target groups. Fourthly, NGOs will at times be ready to be implementing partners for a commission, especially in areas such as human rights education.

It has been said that a commission should act as a conduit through which the grievances of civil society are brought to the attention of the government and acted upon.

5. *Human rights education and promotion*

Is the commission using human rights education and promotion as a means to help transform relationships in society and to further the protection of human rights?

Human rights education is not an end in itself, it is a means to help transform relationships in society: relationships between the government or state institutions and the people and relationships between each and every one of us, between communities, between individuals and between countries. I believe human rights education has at least four purposes.

First, it should give people knowledge about their rights and about ways to enforce their rights – that is, it helps people exercise their rights, to prevent abuses beforehand or to seek remedies afterwards. Secondly, human rights education should break down the prejudices and stereotypes that divide people and that lead to human rights violations. Over a generation or more, it should result in people treating one another – especially those in other groups – with dignity and respect and to celebrate diversity. Thirdly, human rights education should ensure that all public officials understand and act in accordance with human rights principles in national and international law. Fourthly, it should encourage people to take action on human rights issues and defend the rights of others.

All activities of a commission should have value as human rights education, whether it is the way a report is widely disseminated in the media or the way in which an inquiry holds public meetings around the country.

One of the most encouraging developments in Asia Pacific has been the leading role taken by national human rights commissions in developing human rights education programmes and national plans. They should use their privileged position to bring together all actors from government, civil society, educational institutions, state

institutions such as law enforcement agencies, the judiciary and parliament to build a human rights education plan for the country. Commissions can play a role as a catalyst, as a coordinator, as a persuader and as a facilitator to encourage all the actors to play their own role in human rights education.

6. *Individual complaints*

Is the commission responding to the expressed needs of the people by dealing effectively with individual complaints?

No matter how effective a commission is in areas such as human rights education or general policy advice to the government, its legitimacy will often rest on how it handles complaints from individuals or groups.

National human rights commissions are set up partly as a low-cost alternative to the courts for people seeking a remedy for human rights violations. It is true that people normally have too high expectations about the powers of a commission to provide a remedy. A commission is not a court and cannot enforce its findings in the same way.

Nevertheless, it can seek to handle individual complaints by:

- Being accessible to the most vulnerable groups;
- Being creative in making recommendations to state agencies that will bring redress to individuals and doggedly following through to ensure that the agencies act on the recommendations;
- Using individual complaints to understand the broader problems or patterns of human rights violations that they reflect and then addressing these more systemic problems, not just putting out the fires of individual complaints; and
- Resolving complaints in a way that help to educate victims and those in power about future similar situations.

7. *Transparency and accountability*

I have left perhaps the most important to the last: *Is the commission transparent about its plans and priorities, is it open and accessible to the public and ready to be accountable to the people as well as the state?*

A commission is formally accountable to an institution of the state, such as the parliament. But it is also accountable to the people, the people whose human rights it is seeking to improve.

Any commission needs to ensure confidentiality in areas such as dealing with individual complaints (to protect victims and witnesses). But apart from such exceptions, the rule should be maximum openness, including publishing plans indicating the priority the commission will give to different issues and vulnerable groups. Commissioners should be open to the media as this is the main way that the public will be able to make its own assessment of the commission's performance. If a commission is transparent and accountable, the checks and balances in society will themselves work to support and guide the commission in its work.

A final word

In the end, a commission will be most effective if it is one part of an interlocking network of institutions that seek to protect human rights. An effective commission needs an effective executive, legislature, judiciary, civil society and media. But a truly independent, effective and legitimate commission can still go a long way in shining its powerful light into all corners of the wild sea.

This session ends with the launching of an ERA Consumer Malaysia publication in Bahasa Malaysia, *Konvensyen Anti Penyeksaan, Kekejaman, Perlakuan atau Hukuman yang tidak Berperikemanusiaan*. (Convention on Torture) by Howen, followed by tea break.

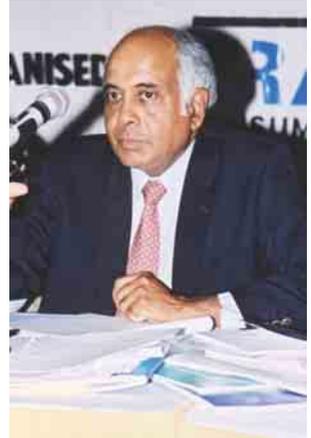


Official Launch of Bahasa Malaysia version of the Convention on Torture: Konvensyen Anti Penyeksaan, Kekejaman, Perlakuan atau Hukuman yang tidak Berperikemanusiaan

Questions and Answer Session with Prof Chiam

Session Chairman: Dato' Param Cumaraswamy

A practising lawyer since 1967, Dato' Param Cumaraswamy has been running his own firm from 1998, after resigning as Chief Executive of a major law firm. He is a former chairman of the Bar Council of Malaya and has since 1989 been a member of the Advisory Board of the Geneva-based Centre for the Independence of Judges and Lawyers and since 1991, a Commissioner of the International Commission of Jurists. He was appointed United Nations Special Rapporteur on the Independence and Impartiality of the Judiciary by the UN Commission on Human Rights. Among other posts he holds in national, regional and international bodies, Dato' Param is vice-president of Transparency International, Malaysia Chapter.



Dato' Param Cumaraswamy

FAN YEW TENG (Author and ex-ISA detainee): Why isn't SUHAKAM Chairman Tan Sri Abu Talib Othman here, although he was invited long ago for this very important occasion? In fact, I am surprised that only one Commissioner is present today, for such an important event as a national consultation on SUHAKAM. In fact, all the Commissioners should be here. My comment is this, is it any coincidence that men of distinction have been appointed to chair SUHAKAM? The first appointed Chairman of SUHAKAM, Tan Sri Musa Hitam, had the distinction of, when he was Deputy Prime Minister and Minister of Home Affairs in 1985, ordering the police to shoot unarmed villagers in Memali in Kedah. Now, the second Chairman, Tan Sri Abu Talib, also has several distinctions. Number 1: He has the distinction of being instrumental in getting rid of Lord President Tan Sri Salleh Abbas in 1988. As Attorney-General then, Abu Talib



Fan Yew Teng

was the key man in the tribunal that sacked Salleh Abbas. Number 2: Abu Talib also has the distinction of, in 1990 or 1991, ordering the police, in his capacity as Attorney-General, to destroy evidence against D.P. Vijandran who was then Deputy Speaker of Parliament, with regard to some 11 sex video tapes and more than 1,000 photographs and negatives. This is my comment. Is it a coincidence, a tragic coincidence? But coming back to the question: I want to know why the Chairman and the other Commissioners are absent today.

PROF CHIAM: I will answer your second question first. The reason is that we didn't realise that all the Commissioners are invited. We thought only the Chairman was invited, to make the keynote address. So, perhaps in the future, we have to make clear to our members. Now as to the reason why Tan Sri Talib is not here, actually I do not really know the reason. The reason why I am here is that I was told that I grew up with SUHAKAM because I was in the first group and if there are questions, perhaps, I will be able to answer. I am not too sure. I shall try my best. I am afraid that's all that I can say to answer your question that way.

PARAM: I think, just to add to Fan Yew Teng's comments on Musa Hitam and Abu Talib. The point is, there is an assumption, or presumption, that they have since been rehabilitated. Now, however, this is a thought that went through my mind as I was travelling to Ipoh. It may be useful that in future, if not all, at least as many Commissioners as possible should be present at this kind of consultation as it is an annual consultation. It is good for the Commissioners to participate in such a consultation with civil society, which all of you are representing. In fact, I think we should send a message to the chairman and members of the Commission that they should be present here, or at least as many of them as possible.

VICTOR SANKEY (Ipoh Ratepayers and Taxpayers Association – IRATA): I came here this morning thinking that I will be enlightened. Looking at the theme, "How has the Human Rights Commission Played a Role in Promoting and Protecting Human Rights in Malaysia" – I must say Prof Chiam, I am rather disappointed. After having listened to your talk and your comments, I am far more confused than before I left my house this morning. All that we have had from you, and I don't mean to be personal, but except for sheer verbosity on figures and your visits to Sarawak and Malacca, you have not told us anything on the accountability or the transparency aspect of the Human Rights Commission. And if I might say, at the end of your prologue, all that I had was one silver lining in your entire speech: "We do not dance to the tune of the Government or of the NGOs." I don't know what that means. Perhaps you would enlighten us what that statement means. Thank you.

CHIAM: Thank you very much for your feedback. The title that we have is, “the role and challenges of SUHAKAM in promoting and protecting human rights”, and I explained how SUHAKAM goes about protecting as well as promoting human rights. If you have not understood that, I am sorry.

For your second question, you talk about the silver lining, and ask for explanation. As I have already said, we are an independent body, in that SUHAKAM’s programmes, its functions, activities and plans are not to meet the demands of the government, or that of the NGOs.

PARAM: I think, Mr Victor Sankey, in all fairness to Prof Chiam, we should accept her presentation this morning as supplementary to what is in this report, and address ourselves to what is in this report. Also, of course, to the outline she gave as to SUHAKAM’s functions and activities.

ANTHONY THANASAYAN: Mr Chairman, excuse me for not standing. I represent an organisation for the disabled called Bivai’s Special Dogs. It is a dog training programme for people with disabilities, and may I just make a very quick observation before I put my question across.



Anthony Thanasayan

Today is also a day of history for service dogs here in Malaysia. Many of you may not realise, but there is a Golden Retriever under my table, who is a service dog. I think we are very, very happy that it should coincide with this great occasion where SUHAKAM is speaking. The organisation that we would like to thank for this is ERA Consumer Malaysia and Mr Marimuthu, for making this happen. I would also like to thank the Heritage Hotel for this.

Now, for my question to Prof Chiam: Our group here, my friends here, are also from Independent Living. We were very let down by your talk just now, for we came here with very high hopes regarding the disabled.

Last year we were at the national consultation as well. This was the first time that anyone ever saw us as a human rights thing, rather than as a charity case. So when SUHAKAM actually took up our issue and had a very big function, a very grand

scale thing and called us all, we all had very high thoughts about it. We thought that things were finally going to change, after 45 years of independence.

But right now in your speech you just made a very brief mention of the disabled. I do not know if I misunderstood you, but it seems that SUHAKAM has forgotten the



disabled. I do not understand why the plight of the disabled was also not taken up. When you talk about children and the indigenous people, in every group there always are disabled people there. Sometimes this kind of categorising can have a very bad effect. It just marginalises us further.

Just before you had this function, there was a lot of media coverage where Dato' Lee Lam Thye was speaking so much for the disabled. For a time it looked as if things were really going to change, but since then, there has not been a single whisper. So, please tell us, what is going to happen? We are very concerned about this.

CHIAM: In the case of disadvantaged groups, at the moment the Education Working Group does not have enough staff. Actually, we are focusing this year on the children and the indigenous groups. Also this year, we have actually been doing behind-the-scenes work, and one of the focuses this year is to make the schools disabled-friendly. The other issue we have worked on, and this is my pet project, is on the pre-schools. We are actually lobbying, so that the disabled children will be placed in the mainstream in the pre-school. In fact, we just had a discussion on this with the pre-school people, when I was in Malacca. If we try to highlight too many things, then we are not focusing. We are actually working group by group.

N. GOBALAKRISHNAN (Parti Keadilan Nasional): I am an ex-ISA detainee. I am addressing this to Sister Chiam. I was detained for 51 days. I was stripped naked, I was handcuffed and assaulted. They did everything to me. And I think after 30 days, I was blindfolded and taken to the police headquarters, where the SUHAKAM Commissioners were waiting for us.

When I went in, Sister Chiam, the police officer who assaulted me was just next to me. And the Commissioners, their hands were tied, and they were deaf. When I told them that I was assaulted, they said, “we only want to know, are you getting proper food?”

Actually, Sister Chiam, actually, what happened was the Commissioners, Prof Hamdan and Mehrun Siraj, were singing to the tune of the Special Branch director who was also there. Actually, my 51 days detention did not hurt me as much as SUHAKAM did. SUHAKAM really hurt me. So I hope ... actually, you are not sitting in the slaughter house today. You are not the lamb. You are actually the caretaker. And we are all here to forward to you, and we hope, and I hope, that you should come up with workshops. You should start with the judges and the magistrates who issue the remand orders. You should conduct workshops for these people.

I have been placed under remand many times, and not even once was I able to defend myself. The judges, I think they don't know the law. I hope Sister Chiam, as caretakers of the Human Rights Commission; I hope that you all will display maximum openness, which will lead to maximum legitimacy.

CHIAM: Thank you very much. I will take back your comments to SUHAKAM and I think this feedback is very important for us. I will also take up very seriously the suggestion about the workshop for judges, because I think it has merit.

PARAM: Just a very quick comment on human rights education. Human rights education is not something just for schools, police officers, immigration officers and so on. Human rights education is also needed for judges and judicial officers.

I will tell you something that the Chief Justice of England told me. When the United Kingdom incorporated the European Convention on Human Rights, the question was whether all the judges in England were well acquainted with the legislation. That was the question I asked the Chief Justice, at that time Lord Bingham.

Lord Bingham told me immediately, “You know, we are going to send all of them back to school, including the judges in the Appellate Courts in England.”

Similarly, judges everywhere should remember that just because they have gone on to the Bench, they stop learning, that they know everything. They need to be continually educated on all the latest developments, and particularly in the area of human rights which is developing very fast all over the world.

NGEH KOO HAM (Perak DAP Chairman): We have heard quite some negative comments about SUHAKAM this morning. In fact, I also have one. I am just wondering if SUHAKAM can also inform us about the problems it faces and may be the people should lobby for more financing, and for SUHAKAM to be endowed with more powers.

I personally went to SUHAKAM to complain about the arbitrary arrest of DAP members and leaders with regard to our “No to 929” campaign. To us, this is upholding the Federal Constitution, preserving Malaysia as a secular state, and we would also like SUHAKAM to uphold our Federal Constitution.

Our two complaints were met with total inaction, until today. As a lawyer, I am very sure that we have not committed any offence. Firstly, the police said that we need a permit to distribute our leaflets. I have not seen any law anywhere that requires us to have a permit to distribute our leaflets.

Secondly, they said that the content of our “No to 929” leaflet is seditious, which in my humble opinion, is not true. It is an explanation of the consequences of the declaration of our Prime Minister (Datuk Seri) Dr Mahathir (Mohamad) on Sept 29 last year that Malaysia is an Islamic state, which we all oppose.

In view of that, the police have been arresting us so many times. The last round was the fifth time, around the country, and they have not charged us. I believe that the matter has been referred to the A-G’s Chambers, and they have not found any case against us under any section of the law. Yet, the police continue to arrest us, to repeatedly arrest us. I think SUHAKAM must come out with a statement that the police must charge us, if we have committed a wrong. If not, they cannot repeatedly harass and arrest us, and cause many people even to fear receiving our leaflets. This creation of fear is bad for Malaysian society.

In order for democracy to thrive, Malaysians must be given the opportunity to express themselves and be able to read what the opposition has to say. If the Commission can explain why there is inaction, maybe you have limitations, maybe we should lobby for SUHAKAM to be given more power and more funds.

CHIAM: It is not correct to say that SUHAKAM was inactive. When you sent us a memorandum and asked us to send an observer to Bentong, we did it. But of course, we did not identify ourselves, because we did not just want to go there and be stopped by the police. We actually had a discussion with the police, in fact with Datuk Musa. The police assured us that they had given instructions to their men at

the different places not to arrest the DAP members, and it seems that the message went down. But you know, sometimes at the district level, they feel they have the authority, when they do not. They get the message, but don't really hear it.

About your first comment, of course SUHAKAM, as far as possible, wants to work with the people and we are thinking of setting up "Friends of SUHAKAM" and so forth. We have to do a lot of ground work. That also involves changes to the law, the SUHAKAM Act. We discussed the arrests with the police and Datuk Musa assured us that he gave the instructions to the police not to arrest. And the third thing, just to inform you, we actually have met with the media, we sent a report with recommendations for the review of all the laws which are related to the freedom of the press. That will definitely come under the freedom of the press because it involves printed material and so forth.

PARAM: Just very quickly, I think we have to wind up this particular session.

RONALD BENJAMIN (Amnesty International): I would like to address this question to Prof Chiam. Does SUHAKAM address the issue of ethnic discrimination, especially in the private sector? This also is a human rights matter, I would say, because in the private sector there are sometimes certain ethnic groups that discriminate against other ethnic groups in terms of promotion and salary and so forth. So far I have not heard of any such work undertaken by SUHAKAM. Can you please enlighten me on this issue?

CHIAM: SUHAKAM will act if there is a complaint on ethnic discrimination. We will definitely act on it. We will also act collectively if we know there are plenty of complaints on this. But if we are unaware of it, then we will not be able to take any action. If there are incidents of ethnic discrimination, please send us the complaint and we will act.

PARAM: Well ladies and gentlemen with that note I will have to bring this particular session to conclusion before tea break. May I thank both Prof Chiam and Nicholas Howen for their presentations this morning? No doubt, from the way the questions were targeted, Prof Chiam was the most popular. There were no takers for Nicholas. Well, thank you so much. I hope that both of you will remain with us for the rest of the session. You will be quite free to ask any further questions but if you can direct some to Nicholas Howen, because some of the points you raised are very, very pertinent for the effectiveness of the Commission. So we could address some of the

questions to him as how we could improve and call upon the Commission here to try to comply with the Paris Principles. Nicholas would be able to give us more insight in the next session, when we have the questions and answers. With that note, can I call everyone to thank the speakers in the usual manner?

Session II: Panel Presentation on SUHAKAM

This session was chaired by Dato' Param. The six speakers made their presentations, followed by a question-and-answer session with the panelists and SUHAKAM Commissioner Prof Chiam Heng Keng.



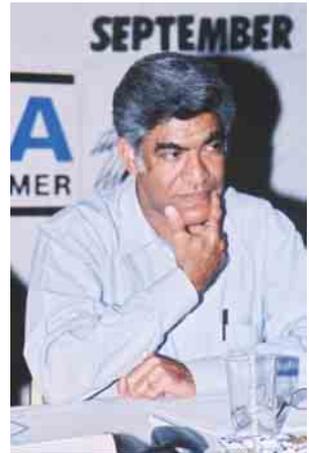
Evaluation of SUHAKAM

By Ramdas Tikamdas
President, HAKAM

Mr Ramdas Tikamdas started his career teaching History and English and became actively involved in NGO work during this time, becoming Education Director of the Pahang Consumers Association in 1976. He later read law and started his practice as an advocate and solicitor in 1983. He is currently legal adviser to FOMCA, adviser to ERA Consumer and an active member of the Bar Council Human Rights Committee. Ramdas also serves on a voluntary basis with the Education Working Group of SUHAKAM.

1. Introduction

When the Human Rights Commission of Malaysia Bill was presented in Parliament by the Minister of Foreign Affairs, he declared that this “*should be regarded as a positive development towards protecting the interest and realising the aspirations of our people*”. The Act established SUHAKAM and charged it with the duty to protect and promote human rights in Malaysia. SUHAKAM held its inaugural meeting on April 24, 2000. Now, after two years, the question arises to what extent SUHAKAM has protected the interest and realised the aspirations of the people in relation to human rights.



Mr Ramdas Tikamdas

2. Criteria for Evaluation

Any evaluation of the role and performance of SUHAKAM since its formation must necessarily take into account the following questions:

- (1) What are the “human rights” which SUHAKAM must protect and promote?
- (2) What are the recommendations of SUHAKAM or activities undertaken in respect of these human rights issues?
- (3) Have these recommendations or activities led to the promotion and protection of human rights in Malaysia?

- (4) Does the administrative structure and organisation of SUHAKAM facilitate the discharge of its duty to protect and promote human rights, in particular:
- (i) is it accessible to the public, and particularly to victims of infringements of human rights?
 - (ii) is it responsive to complainants who report infringements and violations of human rights?
 - (iii) is it transparent in its proceedings?
 - (iv) is it accountable in its judgements and findings?
 - (v) is it proactive in its investigations and activities?

It is proposed that the role and performance of SUHAKAM be evaluated based on the above criteria. Ultimately, any assessment of the role of SUHAKAM would include the question whether, since its establishment, the state of human rights in the country has improved, remained unchanged or in fact has further deteriorated.

3. What are the “Human Rights” that SUHAKAM Must Protect and Promote?

The Act defines “human rights” in Section 2 as “fundamental liberties as enshrined in Part II of the Federal Constitution” and Section 4 (4), which prescribes the functions and powers of SUHAKAM, states that:

“For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution”.

To its credit, SUHAKAM has, from the outset, taken a liberal interpretation of this provision and in its *Annual Report 2000*, it took the approach that “*whatever rights and liberties not mentioned in Part II but referred to in the UDHR must be considered, provided that there is no conflict with the Constitution*” (See Page 6). Further, the Act itself, in Section 4 (1)(c), imposes a duty on SUHAKAM to recommend to the Government with regard to the ratification of international instruments in the field of human rights, thus clearly referring to human rights according to international standards.

These rights encompass not just civil and political rights but also social, cultural and economic rights, including “the right to development, to education, to health care, to work, to shelter, to be free from poverty and hunger and to practise one’s choice of religion” (Pg 11). Indeed, human rights cover a wide and comprehensive field and are universal, indivisible and interdependent.

However, at page 35 of *Annual Report 2000*, SUHAKAM puts on record what are the human rights issues which it has identified as deserving its priority attention:

“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”.

4. *What are the Recommendations of Suhakam or Activities Undertaken in Respect of these Human Rights Issues?*

4.1 Freedom of Assembly

The Kesas Highway Inquiry is a good illustration of SUHAKAM’s concern for the protection and promotion of the right to freedom of assembly. It also marks the first time SUHAKAM “on its own motion” inquired into an infringement of human rights. The Freedom of Assembly Report is also SUHAKAM’s commendable work to promote this right.

In contrast to this, SUHAKAM did not react with the same commitment and firmness at the high-handed and aggressive dispersal of this year’s May Day march and the resulting arrest of 17 peaceful demonstrators by the police.

Further the May Day episode should alert SUHAKAM that its Kesas Highway Inquiry and recommendations in the Freedom of Assembly Report have been largely ignored by the police and the Executive.

4.2 Freedom of Expression

No specific recommendation has been made in the *Annual Reports 2000 and 2001* in respect of the issue of freedom of expression. It is hoped that the Workshop on Press Freedom organised by SUHAKAM will lead to long overdue recommendations in this field of human rights. There is an urgent need for SUHAKAM to inquire into and investigate persistent abuse of *sedition law* to stifle legitimate dissenting opinion on issues of public interest and concern. A recent example of such abuse of power is the arrest of DAP Chairman Lim Kit Siang and other leaders for distributing leaflets relating to the issue of the “Merdeka Constitution” and the “Islamic State”.

Although it is understood that SUHAKAM has been liaising diplomatically with the police on the issue, the public still awaits SUHAKAM’s official stand on the matter as to whether there has been an infringement of human rights and abuse of power by the police. SUHAKAM was also silent when there were threats by the Executive to invoke the ISA against groups who expressed their disagreement with the Ministry of Education’s new policy to use English as a medium of instruction for all primary schools for the teaching of mathematics and science. SUHAKAM ought to also investigate the abuse and misuse of the *Official Secrets Act* and the *Printing Presses and Publications Act*, which curtail the right of free speech and expression.

4.3 Freedom of Religion

(i) In respect of the issue of freedom of religion, no specific recommendation has been made in the *Annual Reports 2000 and 2001*.

(ii) On Sept 25, 2000, 29 persons professing the religion of Islam filed a complaint with SUHAKAM that the proposed Restoration of Faith Bill and setting up of Faith Rehabilitation Centres constituted an infringement of their right to profess and practice their religious



beliefs according to their faith and conscience. They also sought protection of their fundamental liberties pursuant to Article 11(1) of the Constitution and Article 18 of UDHR. To date, there has been no response by SUHAKAM to the complaint.

- (iii) On May 22, 2001 the Action Committee of Shia Community in Malaysia filed a complaint with SUHAKAM, endorsed by 22 NGOs, contending that since 1997, various persons of the Shia faith have been detained under the ISA. They also sought protection under Article 11 of the Constitution and Article 18 of UDHR. In respect of this complaint also, there has been no response by SUHAKAM.
- (iv) The Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism (Inter-Religious Council) submitted a memorandum dated April 4, 2002 highlighting various problems faced by non-Muslims in freely professing and practicing their respective religions. The issues range from converts to Islam not being able to convert back to their former religion, problems with the National Registration Department, marriage, death and burial rites, divorce, custody of children, places of worship and issue of the Islamic State. It is not known what the response and recommendations of SUHAKAM have been.
- (v) While it is true that some issues of human rights have to be approached based on the sensitivities of the groups concerned, it is undoubtedly SUHAKAM's moral and statutory duty to take the lead in such matters.

4.4 Detention Without Trial

In the *Annual Report 2000*, SUHAKAM's position was that detention without trial constitutes an infringement of the UDHR. It also reported that at the end of 2000, there were 40 persons detained under the ISA. The statistics for detentions under The Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the Dangerous Drugs (Special Prevention Measures) Act 1985 were not given.

In the *Annual Report 2001*, the number of detainees under the ISA had increased to 78. They included 21 who were detained for allegedly smuggling illegal

immigrants, 5 Reformasi activists and 13 alleged members of Kumpulan Militan Malaysia (KMM).

In its Press Statement on April 11, 2001 SUHAKAM stated unequivocally its position that detention without trial constitutes a fundamental human rights violation and it urged the Government to charge all detainees in open court or release them.

Since then, after the Sept 11 terrorist attacks, SUHAKAM's statements are less categorical. In the Press Statement on May 24, 2002 SUHAKAM announced it *"has begun a review of the Internal Security Act 1960 (Act 82) to ensure that both national security and human rights can be promoted and protected. The review will include a study of safeguards such as judicial review, access to counsel, incommunicado detention, right to challenge all the evidence used to determine whether a person is a "national security risk" and a specific time limit to the period of detention to ensure that a detainee will be freed or charged in open court. The review will also include a study on the proposal to repeal the Act"*. The review is still pending.

In the meantime it is hoped that SUHAKAM will continue to openly call for those detained to be either charged in open court or released. Surely, more than sufficient time has passed for investigations to be completed and if there is any credible evidence against the detainees, they should be charged in court. If to date no evidence has been discovered which can be credibly adduced in court, it merely confirms the dangers and injustice of preventive detention.

4.5 The Continuous State Of Emergency

In the *Annual Report 2000*, SUHAKAM expressed its concern that since independence, four states of emergency have been proclaimed under Article 150 of the Constitution and to date, none of those proclamations have been annulled by Parliament. This *"perpetual state of emergency enables the Government to promulgate emergency regulations even though both Houses of Parliament are sitting and the events that occasioned the states of emergency had come to pass"* (Pg 14). SUHAKAM announced in its report that it will review the matter and make the appropriate recommendations.

However, in the *Annual Report 2001*, the issue seems to have been dropped. SUHAKAM should make clear recommendations in this regard because obviously this “*perpetual state of emergency*” is a blot on our system of parliamentary democracy.

4.6 Discrimination Against Women

In the *Annual Report 2000* at Page 37, SUHAKAM recommended that Article 8 (2) of the Constitution be amended to include “sex” as a prohibited ground for discrimination. This recommendation has been adopted by the Government and the Constitution has since been amended accordingly.

4.7 Native Customary Rights

In its *Report 2001*, SUHAKAM reported on the visit by a team of three Commissioners to the Penan settlements and Bakun Dam site in Sarawak. SUHAKAM has also prepared a report on Native Customary Rights and the land issue. SUHAKAM’s position is that the claims by natives for their livelihood and practice of their customs is a basic human right and has offered itself as the mediator between the natives and the State Government.

4.8 Ratification of International Instruments

In the *Report 2000*, SUHAKAM’s recommendation was that the Government should ratify as soon as possible: (Pg 37)

- (i) The International Covenant on Civil and Political Rights.
- (ii) The International Covenant on Economic, Social and Cultural Rights
- (iii) The Convention Against Torture.

In the *Report 2001*, SUHAKAM states that it is unable to report if and when the international instruments will be ratified.

SUHAKAM has, however, rightly pointed out in its Report that “*The Human Rights track record of a nation is usually measured by the extent to which its domestic legislation has incorporated the International Bill of Human Rights promulgated by the United Nations*”.

It also suggested that after 45 years of independence, and given our multi-ethnic, multi-cultural and multi-religious heritage, the time has come to also ratify *The International Convention on the Elimination of All Forms of Racial Discrimination* (CERD). As at April 1, 1999 a total of 153 member countries of the UN have ratified this Convention, out of 195 members. Malaysia should not remain in the small gallery of non-ratifiers.

In fact in the *Report 2000*, SUHAKAM has identified this Convention as “*crucial to the protection of human rights*” but unfortunately, SUHAKAM has not made a clear recommendation for ratification (Pg 28).

4.9 The Omissions

In the *Report 2000 and 2001* SUHAKAM has not considered, inquired into or made recommendations in respect of issues such as the number of deaths in police shootings, deaths in police custody, credible reports of psychological and physical torture while in custody and the Kampung Medan incident and which resulted in six deaths and about a hundred injured.

In the Press Statement issued by the coalition of 32 NGOs on Aug 2, 2002, the position taken by civil society is that SUHAKAM’s failure or neglect or refusal to hold an inquiry into the Kampung Medan incident reflects its lack of courage and conviction to confront “difficult” human rights issues.

5. ***Have the Recommendations or Activities led to the Promotion and Protection of Human Rights in Malaysia?***

Apart from SUHAKAM’s specific recommendation of amendment to Article 8 (2) of the Constitution being accepted by the government, it would appear that the other recommendations are, by and large, ignored.

There has been no official response from the Government to the *Annual Report 2000* and at the last sitting of Parliament on June 19, 2002 Parliament rejected two motions from parliamentarians to debate human rights issues arising from the *Annual Report 2001*. There has also been no response by the government to the Kesas Highway Inquiry Report and the Report on Freedom of Assembly.

On May 4, 2002 the coalition of 32 NGOs issued a joint statement that over the last two years the state of human rights in the country has deteriorated, with increasing numbers detained without trial, with blanket police ban on assemblies, with restrictions on the right of free speech and expression and with the recent restrictive amendments to the election laws passed by Parliament, all of which have further denied our democratic space. Since that statement was issued, further issues have arisen, such as the May Day incident, selective use of sedition law to stop legitimate public discussion of the Constitution and deaths in police custody. This is not a culture that respects and promotes human rights.

In the *Report 2001*, SUHAKAM was satisfied that “*there is now greater awareness and respect for human rights by society at large and the Government as a whole*”. While the former part of the statement is true, the latter part is not borne out by realities on the ground.

6. Does the Administrative Structure and Organisation of SUHAKAM Facilitate the Discharge of its Duty to Protect and Promote Human Rights?

SUHAKAM has established four working groups and has assigned Commissioners to the various groups. The groups are:

- (i) Education Working Group,
- (ii) Law Reform Working Group,
- (iii) Treaties and International Instruments Working Group, and
- (iv) Complaints and Inquiries Working Group.

Branch offices have been set up in Sabah and Sarawak. Steps should also be taken to decentralise to the other states and SUHAKAM should establish a network of “Friends of SUHAKAM” to gather facts on the ground in respect of human rights abuses.

The Commissioners themselves should continue to receive complaints directly and stop the recent practice of lodgment of the complaints with the secretariat. SUHAKAM must be mindful not to establish a bureaucracy in its administration.

There should be regular press releases on human rights issues and activities of SUHAKAM. Complaints inquired into, the infringements of human rights disclosed

and recommendations made should be publicised on a regular basis. In this regard the website www.humanrights.com.my is useful. The e-mail address at humanrights@humanrights.com.my can also be used for improved networking.

CONCLUSION

Ultimately SUHAKAM will be judged by the condition of human rights in the country. If public perception is that there is improvement in the state of human rights, then SUHAKAM would be seen to have discharged its duty and purpose. The ultimate criterion for evaluation of SUHAKAM is: have human rights improved?



Press freedom: Three things SUHAKAM can do

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

Mr Steven Gan obtained his Economics degree from an Australian university and spent four years in Hong Kong as a freelance journalist, travelling extensively around Asia and covering the Gulf War from Baghdad. He was appointed Special issues Editor of The Sun in 1994 and the following year, helped to break a story on the deaths of 59 inmates at the Semenyih immigration detention camp, and provided the information to human rights activist Irene Fernandez when The Sun refused to publish the story. Gan quit The Sun in protest over its continued spiking of his writings and joined The Nation in Bangkok for two years before co-founding the Internet news site Malaysiakini.com.

I was recently asked at a forum to spell out what SUHAKAM has accomplished on press freedom since its inception two years ago.

My answer was three things – nothing, nothing and nothing.

SUHAKAM Commissioner Mahadev Shankar, who was not present during my speech, later pulled me up. “I heard that you criticised SUHAKAM again,” he said. “If I was there, I’d have said, ‘I agree’.”



Mr Steven Gan

Now if you asked me the question again, my answer would be ‘one thing’ – last month, SUHAKAM organised a press freedom workshop involving journalists, government officials and academics.

As a result of this ground-breaking workshop, I expected SUHAKAM to recommend to Parliament that laws which have so far kept our media in shackles to be either repealed or revised.

It is unlikely though for the Government, given its track record, to accede to such requests. After all, SUHAKAM's recommendation last year for the Government to respect the right of citizens to hold public rallies was blatantly ignored.

That, I believe, is SUHAKAM's greatest failure. SUHAKAM cannot remain silent when its recommendations are treated with contempt by the Government. More so, when Parliament refuses to even discuss its annual report. So, how can SUHAKAM defend human rights when it cannot even defend its own annual report?

There is, however, one consolation. Press freedom is like toothpaste – once it is out, it's difficult to put it back in. And I think we have finally managed to squeeze a blob of press freedom out from the tube.

Still, there are those who continue to argue that the media should be kept on a tight leash. Any relaxation of the restrictive printing law, so they say, will lead to anarchy. And cutting the media loose will bring racial riots.

According to these apologists, media practitioners who clamour for press freedom are mere stooges of Western imperialism, or in the words of Information Ministry's parliamentary secretary Zainuddin Maidin, 'fake' journalists.

Conveniently forgotten is that more and more of our neighbours – Thailand, Indonesia and the Philippines – are embracing press freedom. And if they are indeed mentioned, it will be in the vain that these countries are beholden to the West.

So it was hardly surprising that Zainuddin, better known as Zam, and Deputy Home Minister Chor Chee Heung revisited these same themes at the SUHAKAM press freedom workshop.

Both government representatives lamented, time and again, that press freedom would lead to social anarchy and a re-colonisation of our country.

Let this be made clear – national security and social stability are not issues which journalists take lightly. After all, freedom comes with responsibility. The journalists' code of ethics and an independent press council will go some way in ensuring that press freedom is not abused.

What worries us is that the government's clampdown on the media is not really to ensure national security or to prevent racial riots, but to keep the ruling parties in

power, to shield politicians from public criticism, and to guard against any revelation of corruption.

Examples of such an insurance policy against inquisitive journalists are too long to list. Perhaps this one would suffice.

Three months ago, state-owned RTM decided at the eleventh hour to scrap a TV feature on the controversial takeover of two Chinese language newspapers by the MCA.

The documentary was produced to coincide with the first anniversary of MCA's buyout of Nanyang Press – publisher of *Nanyang Siang Pau* and *China Press*.

Apparently, the axed programme featured, among others, a number of media watchers and former *Nanyang* journalists discussing the impact of the takeover on the Chinese media.

RTM's TV2, during its May 30 Mandarin news bulletin, announced that the channel would begin airing the documentary in a three-part series starting June 1.

However, a phone call from a key politician resulted in the feature – which was already in the final stage of editing – ending up on the cutting floor.

Surely, airing the documentary does not jeopardise our national security. Nor will it create social anarchy. What have Zam and Chor got to say about this – given that the politician who made the phone call came from Chor's political party, and that RTM is directly under Zam's watch?

Similarly, the Official Secrets Act – which was virulently opposed by journalists in 1988 when it was amended to include tough new measures – is used to protect ruling politicians.

Only last month, Keadilan Youth chief Mohd Ezam Mohd Nor was sentenced to two years in jail for releasing documents on the corruption probe of two key politicians.

The documents contained recommendations to the government for International Trade and Industry Minister Rafidah Aziz and former Malacca Chief Minister Abdul Rahim Thamby Chik be charged in court for corrupt practices.

This followed a lengthy investigation by the Anti-Corruption Agency which found evidence of wrongdoing by the two. The report ended up on Dr Mahathir Mohamad's desk. However, no action was taken against Rafidah and Rahim, both of whom are close to the Prime Minister.

But action was instead taken against Ezam for seeking to expose the truth. Indeed, the Government did not challenge the authenticity of the documents when the case was brought to court.

How could Ezam's action in exposing the documents be "prejudicial to the safety or interests of Malaysia"?

Thankfully, both Zam, Chor and their ilk are finding it increasingly harder to defend their views. Journalists no longer accept them. Nor will SUHAKAM and a growing number of Malaysians.

The Government claims that it is serious about combating corruption. And journalists are often told that their task is to help stem the rot. Instead, they find themselves in a dark room with a broom – they can smell the stench and feel the grime.

But if we are really serious in rooting out corruption, someone should turn on the lights. Clearly, the restrictive press and secrecy laws – contrary to what Chor and Zam contend – are there to ensure that journalists will not find the switch, and that Malaysians will remain in the dark.

So what can SUHAKAM do? Yes, three things.

One is to call for the abolition of the Printing Presses and Publications Act.

Two, examine all existing laws which impinge on press freedom.

The only advantage *Malaysiakini* has over the traditional media is that we need not apply for a publication licence. However, there are indeed many other restrictive laws that keep both the traditional media and news websites in check.

The number of such laws – which directly and indirectly impinge on press freedom in Malaysia – is, not five or 10, but 35.

Such a study can be done by the Commission's Law Reform Working Group.



And three, recommend Parliament to pass a Freedom of Information Act. This will ensure that citizens have the right to know. With such an Act, the Government can no longer operate like a secret society.

The press is really like a canary in the mine. When the canary is dead, it is a warning that other terrible things might happen.

Our job – that of journalists, non-government organisations and SUHAKAM Commissioners – is to ensure that press freedom is alive and well.

SUHAKAM Report Review

Civil and Political Rights

By Irene Fernandez

Human rights activist Ms Irene Fernandez is Director of Tenaganita and Deputy Head of the Women's Wing of Parti Keadilan Nasional, a Supreme Council member of the party and Chairman of CARAM-Asia. She was presented with the Human Rights Award in 1996 by Human Rights Watch and was one of 28 people recognised by Amnesty International for human rights work on the occasion of its 50th anniversary celebration. She had also been awarded an honorary doctorate by the University of Amsterdam.

I would like to first of all congratulate ERA Consumer Malaysia for organising this national consultation on SUHAKAM once again, and for bringing this session to Perak. I would also like to thank all of you for participating. This means that we now have more than 200 human rights defenders in Perak, and I look forward to working with all of you.

I think one of the best things that happened to me is my arrest, because if you get arrested, you feel liberated. You know that you are now empowered to move further, and this is what I think we should work towards, that is, towards empowering the people.

My area is in terms of the civil and political rights of the report. The way I want to look at it is really to develop a critique of not just the report, but the interventions and directions of SUHAKAM. Within this critique, I hope to strengthen the human rights perspective, the interventions and the collaboration of civil society with SUHAKAM to push forward the human rights agenda in the country. It is with this objective that I am speaking.



Ms Irene Fernandez

The first thing that I would like to share with you is, with what perspective do we approach the situation? When we talk about civil and political rights, it must be seen with a holistic approach and manner. It cannot be divided and seen separate, which Prime Minister Dr Mahathir loves to do, telling us that we must sacrifice civil

and political rights for economic development. In no way can we accept this, because we are human beings, as a whole person all the time. We cannot be divided. This is very important to recognise.

I would like therefore to go back to the Vienna Declaration, on which we worked very, very hard in 1993 to reinforce the fact that the civil and political rights, and the economic, social and cultural rights, are indivisible, interdependent and universal. Therefore, there is no such thing as Western rights and Eastern rights or Asian values and Western values. It is with this perspective that I evaluate the SUHAKAM report.

My second point is that we cannot compromise on human rights, because human rights are about life and dignity. If we value life, there cannot be a compromise. This is very fundamental.

The protection of human rights starts with the realities that we live in, with the violations that we experience within a historical context, within what is happening today in our country. Therefore, we look at both state and non-state actors, which is one element that came through also in Vienna. The role of civil society is to prevent violations, to empower people and in that process, to institutionalise the rights within instruments, legislations and mechanism.

If we look at the report, I will only take up three areas that come through, in terms of the interventions, detention without trial, freedom of assembly and rights of prisoners. These are the three main things that came out clearly in the report.

Detention without trial: My colleague Gopalakrishnan put it aptly and beautifully, when he described what happened to him and what the response from the SUHAKAM Commissioners was. In that process, although attempts were made to visit the detainees, it took a lot of push. I want to show that part of it, which doesn't come in the report.

The wives of the detainees had to go continuously to SUHAKAM and say, "Now, 60 days is a very long time. Please see what is happening. We are not having access. And we know that the SUHAKAM Act allows access."

There was a lot of frustration. Even when the visit was made by the SUHAKAM Commissioners, it was like following the conditions stipulated by the police and by the investigators, or rather the perpetrators of the violence that all the detainees

faced while being held under the ISA. So how can SUHAKAM assure us that the safety mechanisms come through if we follow the conditions set by the police? This is the conflict that arises.

In terms of detention without trial, my concern is that there are some recommendations in the SUHAKAM report in terms of the time, the space, the allowance for the visits, etc. However, detention without trial itself is a clear violation of human rights. There is no question about it. At the last dialogue that we had with SUHAKAM, the Commission's position was that "we will try and make amendments to the Act, and not push for repeal, because of the issue of security". This is the post-Sept 11 syndrome which is now used as an excuse, rather than the protection and promotion of human rights. I think this compromising position taken by SUHAKAM is very worrying. It is a setback.

The recommendations that they put forward at the dialogue are that "don't interrogate at night, only until 6pm". That is not so much the issue. What is the protective mechanism, so that the person detained will not be tortured? What do you need 60 days? Yesterday's judgment too is very worrying. They agreed that detention is unlawful, but then one has to file a new habeas corpus for the two years of additional detention. That is another compromise of the judiciary, not the independence of the judiciary. Unfortunately, this is flowing through into SUHAKAM, and that is very, very, worrying because our country is not in that kind of tense, security situation. The security of those in power, maybe, but not that of the people. That is a difference that we have to recognise.

Freedom of assembly: A lot has been said. The best investigation so far has been the Kemas Highway Inquiry Report which involved the arrest and assault of many, many people at that time. The way the inquiry was conducted was very good. It was open, it provided space for people to voice out and it came through with positive recommendations.

However, in the recommendations, SUHAKAM says that the police have the right to approve or not to approve an assembly of citizens. Why should that be? The freedom of assembly I knew when I was small was that the police are there to ensure that no untoward incidents occur and that the rally or the assembly goes on. Why should the police have the right to decide whether you should have the assembly or not? It's for the people to decide. That does not come through in the recommendations. It gives recommendations of a simple form, easy management, easy way of approval,

but the decision is still with the police. That actually contravenes the right to freedom of assembly.

Law reform and human rights education are two strategies used by SUHAKAM. In terms of law reform, there are proposals, such as on freedom of assembly. However, my concern is with the area of prisoners, and with visits to detention centres. There has to be a greater and better strategy with regard to visits to detention centres. When you have to give prior information about a visit, you give them time to clean up. They know that when the Commissioners get back, they will give a press statement that conditions are fine. Now, to me, this is a disaster. If you don't make a press statement on that, at least I would have tolerated it. But if you do, and say conditions are fine? In Semeniyh? In Pekan Nenas, where I am working with former detainees?

Today, you read about the rape that has taken place in a detention centre. Our children are beaten up, in the camps in Tawau, Sandakan, in Nunukan. How can you say that the conditions in detention centres are fine? The process of investigation has to change. You have to document more and more from former detainees, other mechanisms have to be used and only then can you talk about change in the detention centres.

You have also to see how much of monitoring mechanism is established within those who are managing these centres, the prison lock-ups, for instance. What is the complaints procedure? If we have a complaints procedure where a 13-year-old girl has to fly back from the Philippines to talk to the police investigation team after she has gone through the trauma of rape, then that is not a mechanism that is effective in correcting the violations that have taken place in a detention centre. Documented evidence from ISA detainees should be enough to tell you what the conditions are. The habeas corpus applications state very clearly what happens in the detention centres, and that mechanism is not used.

The change in process of dialogue is also worrying. We were told at the dialogue that from now, people who are complaining to SUHAKAM about the violation of their rights will no longer be able to meet the Commissioners. The Commissioners will no longer receive these complaints, but the full-time staff. Why is this departure taking place? It is worrying because when the Commissioners meet the affected parties, it creates a confidence with the people. When it is given to a full-time staff, it creates bureaucracy, and the Commissioners become distant to the community, which is what Nicholas Howen was trying to share with us.

This departure from the previous procedure is indeed very worrying, and it reduces transparency. For me, it will also weaken the perspective of the Commissioners. It is only when you meet the affected groups will you become sensitised. That is human rights work. This is a major concern for me.

What we look for in the future is very crucial as well. In this aspect, I would say that the whole complaints handling and investigations policy has to change. There must be direct access of the people to the SUHAKAM Commissioners. There has to be a different strategy of investigation for prisons, the ISA has to be repealed, and there can be no compromise on this. This is what the people want. What is the use of all these dialogues with academicians and what not? A violation is a violation, and laws that violate human rights have to go.

Finally, there has to be this confidence building with the civil society. With the current leadership of civil society, there is a low confidence where SUHAKAM is concerned. How do we correct this? It has to come from constant dialogue, and taking on the recommendations that have been made by the civil society.



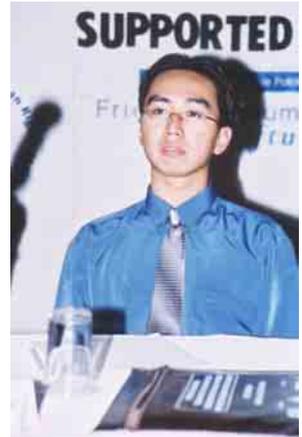
Student's View on SUHAKAM

By Chang Lih Kang

Mr Chang Lih Kang is a third year Civil Engineering student at University Putra Malaysia in Serdang, Selangor. He is a student leader active in campus student programmes and a leader of the Malaysia Youth and Student Democratic Movement or DEMA.

When SUHAKAM was established in 1999, the public had great expectations that it would improve the human rights conditions in Malaysia, especially the students, who had been manacled by the University and University Colleges Act (UUCA) since the 70s. UUCA was enacted in 1971 and was amended in 1975, imposing more stringent restrictions on students' rights!

Among all the others, students are the most vulnerable group, with a special but ridiculous Act binding them. As adults and citizens, we see the UUCA as a discriminative law that is applied to the undergraduates. Although students are above 21 and have the right to vote like other citizens, their right to freedom of expression, freedom of assembly, freedom of association and so on are denied by the UUCA.



Mr Chang Lih Kang

The Act's restrictions on students served an effective deterrent from the mid-1970s, with student involvement in the national politics declining precipitously. By the 1990s, the majority of students appeared to have disengaged from public debate of political and social issues that might be regarded as controversial or merely unapproved by the ruling coalition. Below are some of the latest cases of the violation of students' rights:

Case 1: In June 2001, Rafzan, a UiTM student was expelled from the university because he was arrested by the police in a peaceful assembly at the National Mosque, where undergraduates protested, calling for unlawful Internal Security Act (ISA) to be abolished.

Case 2: In July 2001, the authorities detained two student activists, Khairul Anuar Ahmad Zainuddin and Mohamad Fuad Mohamad Ikhwan (who is also the President of the University Malaya Student Representative Council), under the ISA. The former was held for 23 days and the latter for 10 days.

Case 3: In May 2002, the President of USM Chinese Language Society, Lee Yen Ting and the Secretary-General, Choo Chon Kai were fined RM200 each for giving statements to the press without an official permission from Vice-Chancellor, and later, disciplinary action was taken against members of the USM Chinese Language Society. They were charged with attending a debate competition in Singapore without the permission of the Deputy Vice-Chancellor. [SUHAKAM 2001 Annual Report, pg 59, (v)]

Case 4: In May 2002, 18 students from UTM were charged with various “offences”, including the submission of a memorandum to SUHAKAM concerning their grouses over last year’s campus elections. Students felt helpless when their rights as citizens to submit memorandum or to air their grievances to SUHAKAM were also forbidden by the authorities.

Unfortunately, our society is not paying adequate attention to the human rights violations that students face. In the SUHAKAM 2001 Annual Report, there are just three short paragraphs about students’ rights [pg 59, (v) + pg 24, no.7 + pg 59, (iv)].

Although we understand that many matters are beyond the jurisdiction and powers of SUHAKAM, nevertheless, from our point of view, we believe that SUHAKAM can and should play a more crucial role to become the arbitrator between the university authorities and the students.

Without SUHAKAM stepping in, disciplinary action can be easily taken against students because the university authorities are given absolute power under the UUCA. They act as prosecutors and also judges in the University Senate, which is actually a “kangaroo court”. This university “court” gives students no benefit of doubt. Students have to defend their innocence instead of the prosecutor providing evidence of guilt. The whole procedure goes against the basic principles of common law.

As far as I am concerned, I think SUHAKAM should be proactive. Besides taking up complaints, SUHAKAM as a commission to protect and improve the human rights conditions in Malaysia should act on its own initiative. Early this year the

Government enforced a policy requiring all civil servants, academicians and undergraduates to sign the “Pledge of Good Conduct” or “Surat Aku Janji”. During that period, the public did not see any stand taken by SUHAKAM on this issue, nor did it express any opinion on it.

We students formed a coalition to voice out our objections. We sent in a memorandum to SUHAKAM in May 2002, and we were able to meet with one of the Commissioners, Tan Sri Ramon – but only after a long while urging and pleading with SUHAKAM. We were told that a meeting of the SUHAKAM Commissioners had come out with a stand on the “Pledge of Good Conduct” issue. SUHAKAM believes since no disciplinary action had been taken against any student for not signing the pledge, no violation of human rights had taken place.

Beyond that, SUHAKAM applied a new policy beginning July, where members of the public can no longer meet with the Commissioners. SUHAKAM staff will take over the task to meet with public. In my opinion, this policy may create doubts of SUHAKAM’s credibility to protect human rights. The Commissioners were appointed to deal with important human rights issues and so we expect SUHAKAM to perform and deliver results. So, SUHAKAM should not develop as another bureaucratic administration to stop the people from meeting with Commissioners.

We are glad to see that there’s recommendation from SUHAKAM to amend the UUCA. Disciplinary actions on flimsy grounds are still being taken against students. So, we think SUHAKAM’s recommendations should be done within a democratic process by obtaining consensus on its proposals from the campus community. SUHAKAM should create a level playing field between the authorities and students so that its recommendations won’t end up like a dog barking at the train.

SUHAKAM and ESC Rights

By Abdul Rahman Said Alli

President, Perak Consumers Association

Mr Abdul Rahman Said Alli is a former senior civil servant who quit government service in 1982 to set up his own tax consultancy in Ipoh, Perak. He is a council member of FOMCA and possesses wide and varied experience in NGO and community work. Abdul Rahman led a nationwide campaign against the privatisation of the sewerage services to Indah Water Konsortium. He is an active official in sports and athletics associations and is currently working with local people and indigenous communities to save the unique environment and biodiversity of Kledang Hill in Ipoh and the Gopeng foothills of the Main Range.

Article 22 of the Universal Declaration of Human Rights provides that “Everyone has the right to social security and to economic social and cultural rights”. The International Covenant on Economic, Social and Cultural Rights (ESCR) was so adopted and opened for signature on Dec 16, 1966. Malaysia is not one of the countries that have ratified the covenant. The document has five parts consisting of 31 Articles.

States or Governments that become signatories to this document profess to abide by and promote such universal values: “In no case may a person be deprived of its own means of subsistence”, “ without discrimination of any kind, sex, language, political or other opinion, national or social origin, property, birth or other status”, “equal rights of men and women”, “promoting general welfare in a democratic society;”, “recognise the right to work... he freely chooses or accepts”, “ a decent living...”, “ safe and healthy working conditions”, “Rest, leisure... and periodic holidays with pay”, “right of everyone to form trade unions...”, “right of everyone to social insurance”, “widest possible protection and assistance to the family unit;”, “special protection to mothers....children”, “Right to health, education, minimum wages”, etc.



Mr Abdul Rahman Said Alli

You will notice that the State cannot run away from all these responsibilities. It is up to us, the rakyat of Malaysia, to judge how the present Government is faring on all these counts.

In the record of proceedings of the National Consultation on “Suhakam: After One Year” (held on May 5, 2001), compiled by ERA Consumer Malaysia, it was very interesting to reflect on what Tan Sri Harun Hashim said in his presentation. Allow me to quote a portion of a paragraph:

“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”.

Did he imply that we need not be overly concerned about ESC rights in Malaysia? Did he mean to say that SUHAKAM need not really look at this aspect of human rights because we are “okay”?

What do you think? Can we accept that position and allow SUHAKAM not to bother about our ESC rights? I, for one will not agree with the former judge because of the following reasons:

1. Colin Nicholas of the Centre for Orang Asli Concerns made his call loud and clear: “... 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”.
2. Dato’ Param Cumaraswamy concluded, at the same forum, by saying: “I think it is very important for SUHAKAM to see that human rights remain 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, there is going to be a compromise. We cannot allow our rights to be compromised.”

Malaysia has yet to ratify the International Covenant on ESC Rights. There is a separate Working Group of SUHAKAM to pursue this objective to get the government to ratify the three covenants on 1) civil and political rights; 2) ESC rights and 3) Convention Against Torture. In SUHAKAM’s report for the year 2000, the Commission calls on the Government to ratify these crucial treaties “as soon as possible”. We all

know what this means, in the context of time. Therefore, it is not too far fetched to say that our continued demand for ESC rights will actually assist SUHAKAM in its work to get the attention of the Government to accede to our rightful demands.

Allow me to list out some areas (and these probably are not exhaustive), where ESC rights are compromised in Malaysia:

- a) Our infrastructure does not take into account the special needs of the physically disadvantaged group. What we do is some charity work to feel good about or some politician uses it as vote-getting exercise.
- b) We read many a time appeals for donations for medical treatment, though we boast that our delivery system of medical services is comparable with the best in the world.
- c) Corruption, cronyism and nepotism is so pervasive that it has become part of Malaysian culture. The complainant is charged and the culprit rides high and mighty. Some local economists even go as far as to say the Government “socialises losses and privatises profits”.
- d) The estate sector has been demanding for fixed monthly wages for decades but yet the policy makers want to promote indentured labour as practised by our former colonial masters.
- e) The income disparity between the poor and rich has been widening recently in Malaysia. These findings are based on UNDP studies.
- f) The land rights and the socio-economic well-being of indigenous people of Malaysia is in dire need on improvement.
- g) Recently, the free choice given to Malaysians to prefer their own mother-tongue languages as medium of instruction for their children was taken away.
- h) Many a stateless people (who are born in Malaysia) live in Malaysia without proper papers – i.e. birth certificates, identity cards and citizenship status. The authorities do not take any positive actions but pounce to penalize them.

It is proposed that SUHAKAM do the following:-

- 1) SUHAKAM should write what it has done about the ESC rights aspect in its future annual reports to Parliament. If it were not to have done anything, then it should state “Nil” in the column meant for ESC rights.

- 2) The Education Working Group should increase its “educating the public” aspect by including the ESC rights in its syllabus. SUHAKAM should be reminded that this Working Group also has the responsibility to promote human rights culture, which encourages action to defend human rights and prevent violations. It is time that the members of judiciary are exposed to human rights education so that their judgements take into account the human rights perspective. This exercise is not unthinkable because judges in United Kingdom are already on to it.

- 2) The Commissioners of SUHAKAM should be aware that it is no longer acceptable for SUHAKAM to say “give us time to study and consider”. SUHAKAM should attempt to get the force of people on to its side (as a position of strength) to get the authorities to accept its recommendations. It is time for SUHAKAM to think and strategies itself to provide redress mechanisms instead of just using words such as “perhaps”, “hoped” and “feels” which are used many times in the 2001 Annual Report.



Session II : Questions and Answers

Dato Param continued to chair this session which followed the presentations by the speakers/paper presenters. Questions were addressed to the speakers as well as Commissioner Chiam. Since there continued to be many questions put to SUHAKAM, these questions were taken together, to be answered at the end.

PRABAKARAN N NAIR (Vice-President of Kinta Consumer Association): What is human rights? The public is not aware of human rights. You seek is an offence. You walk is an offence. You speak is an offence in this country. Could SUHAKAM come out with a guideline on this matter? Thank you.

REDZAWAN BIN MOHAMMAD (Tuition teacher): I note that we have many questions to raise and comments to make to SUHAKAM today. I think many of us here do not really know much about SUHAKAM, or all the truth about it. For example, how are the Commissioners selected? It looks to me like they are appointed by an authority that reports to the Government. That is as good as the Government appointing them.



Redzawan bin Mohammad

Further, if the appointees are civil servants and former civil servants, it is quite certain that they would not want to upset their rice bowl. It is because of this situation that many of us feel that SUHAKAM is not acting justly in the interests of human rights – because the Commissioners do not want to bite the hand that feeds them. If we as citizens try to put pressure on them, if we make very strong demands, then I'm afraid we cannot get far with them. I sympathise with Prof Chiam, who is taking a lot of heat here today.

Another point I would like to make here is that we have been very critical of our judiciary. This is despite all of us being aware who appoints these judges. The appointments are made on the advice of the Prime Minister. Without the Prime Minister's advice, there will be no judge, no Chief Judge. This is quite clear. The judges themselves have to toe the invisible line. They too will have to take care of their rice bowls.

The issue of human rights in Malaysia is on a very high platform, so much so that it has become abstract to the common man. How does SUHAKAM see human rights? We should do more to bring the human rights to the common man. Human rights must be understood by the man in the street.

PARAM: I think we have enough questions so far as SUHAKAM is concerned, for the time being at least.

CHIAM: I just want to thank you all, I thank the panel. This session has been very constructive and you have raised many, many issues and many, many points which I think would be very useful for SUHAKAM to consider. And I want to thank every one of you for that. Because I think sometimes we do have blind spots. And the first question which was raised both by Irene and by our student who I must commend for speaking very clearly and to the point. As for the commissioners not receiving the memoranda of complaints, actually, there is no real bar on the commissioners from receiving complaints. What happens is in Malaysia the Commissioners are unfortunately part-time and sometimes they are not around, but our full time staff are around. And so we find it much easier for the full time staff to receive the complaints, for otherwise the people will have to go and look for the commissioners. Now after the meeting that we had with the NGOs, we came up with the agreement that the Commissioners will receive the complaints and the memoranda as far as possible. But if there is no one there, the staff will do it. As long as we can, we will receive the complaints and memoranda.

The question about what is SUHAKAM's definition of human rights. Our definition is enshrined in the Universal Declaration of Human Rights (UDHR). There is no question about that. If people want to know how SUHAKAM defines human rights, please refer to the 30 articles in the UDHR. We don't have any difference from what other countries or most countries perceive as what human rights are. Now regarding the economic, social and cultural rights, as you all have already represented, this is one of the covenants that we are urging the Ministry of Foreign Affairs to sign and ratify, giving the justification why we should.

The very first group that we worked with is the indigenous people. This definitely demonstrates that this is our concern and we are not pushing aside these rights. We are not ignoring any rights. Of course, as I mentioned earlier, we have to prioritise, because Rome wasn't built in a day. We are only two-and-half years old, so we cannot give attention to everything.

If you all feel that there are certain aspects of human rights that are being infringed and SUHAKAM needs to pay attention to these immediately, we will. We listen very carefully to the people because we exist for the well-being of the people. We are concerned with the human rights of the individual, so if you have concerns, please let us know and we will look into them.

As for the issues brought up by the university students, the reason that SUHAKAM feels it is better for us to talk with the Vice-Chancellor first is actually to establish a relationship before we have a dialogue. We have initiated discussions, and when the students at USM were barred from sitting for their exams, we intervened, and they were allowed to sit for the exam.

There are a lot of things that we have done on the quiet. For certain things, we feel that it is better not to shout them out, because we are afraid that the university or some government agencies will not meet us. So it is sometimes better to negotiate quietly. In our judgement, it is better not to claim credit for that, so we are silent on some of the things that we do. We will certainly look into the complaints against the University and University Colleges Act.

To the question on why the SUHAKAM Commissioners met the political detainees in the presence of the police. Well, the thing is that when we asked the police to leave, they refused. There was nothing that we could do, other than physically throw them out ... and if we do this, then SUHAKAM will be accused of using violence. This thing is actually beyond our control.

As for setting up branches, yes, we have actually set up two branches, one in Sabah and the other in Sarawak. We did think about setting up branches in the different states, but we have to think about finances and all that, and for the moment, we do not have any such plan.

On the question of whether we do not have enough Commissioners in SUHAKAM, well, in the case of the Philippines, they have only five Commissioners, and we actually have 14 now. In some of the issues, the Commissioners need not be present. We need more of support staff. In Indonesia, they can have 30 Commissioners, but they are able to cope with 17. I think it is not a matter of quantity, but of quality.

PARAM: We still have some more time. There was this question asked earlier, whether SUHAKAM has outlived its usefulness. I would like to call upon Mr Ramdas to comment on this.

RAMDAS: Speaking for HAKAM, and I also think that this is the consensus of civil society, SUHAKAM is an extremely important and useful statutory vehicle for human rights in this country. Prior to the enactment of the Human Rights Commission of Malaysia Act, human rights was a dirty word. The word human rights does not appear in our Constitution, and it does not appear in any statute. For the first time in 1999, human rights became a statutory word and was given definition in the law. SUHAKAM was born with the duty to protect and promote human rights.

I agree with Prof Chiam that Rome wasn't built in a day. Although we have a lot of criticism about the way in which SUHAKAM has to date performed its functions, it still has to some extent elevated human rights and made it a legitimate advocacy instrument in the country. People can now stand up and call for human rights, which was something that they couldn't do before. People can demand that this statutory body created by Parliament discharges its duty. Civil society, as you know, disengaged with SUHAKAM for 100 days and our assessment was that that was the maximum period for disengagement, if human rights is to be promoted and protected in this country.

Now, we have given our commitment to work with SUHAKAM and to cooperate with SUHAKAM for the promotion and protection of human rights. But we reserve our right to monitor SUHAKAM in the discharge of its duties, and that will go on. This is why we have this National Consultation, so that we can iron out our problems and move ahead. This is good for human rights, and SUHAKAM needs our support, needs our protection from the government.

A lot of our complaints about SUHAKAM have been that, it is being ignored by the government. The Kemas Highway Report has been ignored, and the freedom of assembly report has been ignored. The two annual reports of SUHAKAM, for 2000 and 2001, have not received official sanction from the government. So we should also address our criticism to the government. At the end of the day, the more we criticise SUHAKAM, the more we work with SUHAKAM in moving the course of human rights in the country.

ABDUL RAHMAN: The question of whether SUHAKAM has outlived its purpose has also to be looked at from a different direction. In the struggle for human rights, it is a matter of setting the correct direction, not merely trying to reach a particular destination, because the destination can change ... we may reach one, but we may not reach one more.

For instance, what I see sorely lacking in SUHAKAM is that it is not getting the citizens behind it as its strength. Most of the Commissioners are part-timers, and as someone once said, “part-timers are no-timers”. I believe the Chairman is a full-timer, but he is not doing his job full-time. For example, why isn’t he here? This is quite a sore point.

K. KORIS (Penang Consumer Protection Association): My question to Prof Chiam pertains to the Kampung Medan issue. Until today, 30 complaints have been filed with SUHAKAM, but the Commission has not done anything. This is one of the worst incidents in Malaysia in recent times, in which about six people have died and 17 people injured. SUHAKAM has not shown any concern about this because it concerns a minority race. I think SUHAKAM also practices racial discrimination. This is a very sad state of affairs, because some of the people concerned with the Kampung Medan racial disturbances have taken SUHAKAM to court.

PARAM: May I say in all fairness that since the matter is with the courts, it will not be fair to call upon SUHAKAM to make any comments here, for there could be some kind of prejudice with regard to the matter. Let us respect the process of fair trial.

T.S. NATHAN (Perak Consumers Association): My question to Abdul Rahman is on the matter of frequent appeals in the newspapers for donations to the people to help pay for costly medical treatments or surgeries. I heard in the news this morning that Health Minister Datuk Chua Jui Meng has expressed surprise about one case involving a prominent personality. He said government hospitals are ready to handle this kind of treatment, and he does not understand why there are so many appeals of this nature.

My other question is to Howen: I would like you to elaborate on your talk earlier about “collaborative tension”. Could you please explain what you mean by “collaborative tension”. Is this tension between the NGOs and SUHAKAM or the friendly tension between NGOs and the Government?

ABDUL RAHMAN: The point I was trying to make is that if there are people in need of medical attention and if they are not given that medical attention, we feel that it is a basic human right denied to them. The Government and the minister say that we have one of the best medical services in the world. If there are people desperately in need of life-threatening medical care and they have to appeal to the public for donations to meet the cost of this care, such as hole-in-the-heart surgeries for children, my question is that with all the facilities we have at the National heart Institute, why

do people still have to go around asking for donations? Isn't there something wrong? That is what I am trying to address.

HOWEN: What I was trying to explain was that any human rights commission should use its official position as a creation of the state to develop close and trusted working relationships with institutions of the state in a way that NGOs often cannot, because the commission is a part of the state, and it can use that position to be able to persuade and encourage and cajole from within, to a certain extent.

This can be very effective, for the types of discussions that take place, behind the scenes in the corridors of power, can work to create a change. At the same time, the commission must be independent of the state and therefore if there is silence from the executive in response to recommendations in the commission's reports, and if there are difficult issues of justice or accountability, then the fact that the commission is part of the state must not prevent it, from acting.

On the contrary, the commission has a duty to be more conflictive, confrontational at times to be able to persuade and cajole in public and to take positions of principle that will not change. It must express its independence by being strong and courageous, which means that it will be seen not to agree with the government sometimes, and that may actually be quite a strong position. So it is the dilemma or the paradox of being both within the state and being independent of the government. I think this puts it in the position to be able to take advantage of both. That is what I mean by being both collaborative and but maintaining a tension with the institutions of the state. I think it applies to a certain extent with civil society. However the relationship is different, for the aim is not to cajole civil society into taking certain action but to be a conduit for the expression of grievances by civil society.

PARAM: A point was raised earlier about the appointments of our commissioners. So long as the appointments are left in the hands of the chief executive of the government, the Malaysian Commission will never be perceived as independent. I think this is where we need to really pressure for amendments to the legislation. Also, I would like to say something with regard to the qualifications of the commissioners. Without any disrespect to Prof Chiam, I think qualifications too are important because we need commissioners who are well versed, and have a very good background knowledge of human rights and not just prominent persons, as the legislation provides.

These are some of the issues we can deal with in the coming years to pressure for changes to the legislation.

MURUGAPPAN (Penang Consumer Protection Association): I am very happy to hear from Prof Chiam about SUHAKAM identifying certain priority groups to target for human rights protection, for example the indigenous people. However, sometimes this kind of prioritisation actually divides the people instead of bringing them together, and does not allow for the treating of human rights in a holistic manner. For example, you should look at the basic human needs of equal access to housing, education and health care, if necessary, at public cost.

This is of grave concern to me because the Government is pushing ahead with privatisation of almost every sector. In the event SUHAKAM is looking into this issue, I would like the Commission to look at it in a holistic way, so that everybody in Malaysia benefits, regardless of whether they are a priority group. So long as the need is there, that need must be addressed.

I notice that very often all over the world, including Malaysia, the emphasis is on discrimination against women. There are also instances of discrimination against men, and this has altogether been disregarded. If you take public sector employees in this country who retire, women get their pension at the age of 45, but men still get pension only at the age of 50. Will SUHAKAM also rectify this?

PARAM: I will take that question as a comment, so as not to put Prof Chiam in a spot here, since that is Government policy.

FAN YEW TENG: We should not forget that there is a provision in the HRC Act about the disqualification of Commissioners. The Prime Minister has the power not only on the appointment but also on the disqualification of Commissioners and a lot of Malaysians suspect that some of the Commissioners who have been disqualified or their term of office was not renewed because of political considerations, or for lax human rights considerations.

The other thing is why, after two years, SUHAKAM is still getting this yearly allowance from the allocation to the Foreign Ministry. It should get a direct allocation from Parliament every year, something like at least RM100 million. After all, what is RM100 million to protect the human rights of 24 million Malaysians a year, when the government can build the tallest building, the longest this and the fattest that?

PARAM: If you look at the report, they seemed to have got some money out of the Foreign Ministry to handle it themselves. That goes a little towards SUHAKAM's own financial independence now.

DR D. JEYAKUMAR (Parti Sosialis Malaysia): Our topic is promoting and protecting human rights and we are focusing on SUHAKAM. We agree that SUHAKAM has an important role to play in this whole thing. But my question to the panel is what is the role of civil society, what is the role of the people here, for example, the middle class? Don't we also have a role and are we playing that role adequately, or are we in a state of stupor or submission, or caught up with our own lives that we are just not involved in the process? So my question is, what does the panel think? Can we just contract out the whole human rights protection to SUHAKAM? Then, we can have SUHAKAM-bashing sessions. What is the role of civil society itself in the whole process?

IRENE FERNANDEZ: I think the whole meaning of SUHAKAM can only be realised if we use that mechanism. *Tak kenal, maka tak cinta*. Unless we experience it, we won't know. Which means that we have to express the rights violations. If we keep quiet, then SUHAKAM becomes meaningless. That is very clear. We become conscious of what our rights are, and for that I think there is space for human rights education programmes. And how many of us do participate? That is why I said there are 200 of us here who can be human rights defenders.

There are a lot of violations. Sometimes we also self-censor ourselves. We dare not go to an assembly because we may be arrested. We dare not go for a gathering. We dare not go and listen to what is happening, and that itself becomes a problem. We have these kinds of fear. It's only when we begin to experience, and file complaints on human rights violations, and find out what is happening that we learn about the various and various ways in which our rights are violated. We cannot have an assembly without a police permit. All the political parties have been denied permission to have any kind of meeting even.

Even in my house if I have a meeting and there are people outside the gate, the police will come. We get surrounded not just by the policemen but also by the riot police. We have to experience that. If we believe in democracy, if we want to know the truth of what is happening, we have to seek the facts. Today, Malaysiakini is unable to manage itself financially, yet we want it to exist as an independent Net news source. Yet how many of us would subscribe to it? How many of us would defend it?

We must be able to use the human rights commission to our advantage. The Indonesians and the Filipinos have been able to use their HR commissions to their advantage. We must also be able to. You have to get the different SUHAKAM committees to come and sit with us. We can make the difference if we can use SUHAKAM properly.

In terms of settling things on the quiet, as Prof Chiam said earlier: If that is the way that SUHAKAM has done so in a number of concerns, it must at the same time express to the people what its limitations are, what are the problems it is confronted with, why it has to continuously use this strategy. I think that is very important in this process of dialogue.

STEVEN GAN: There have been expressions of disappointment all round, among us too. There had been hope three or four years ago, but in the last two years, we have seen civil rights and press freedom rolled back. I think we should just continue doing what we are doing. In regard to SUHAKAM, we should continue to put pressure on SUHAKAM. In regard to our own work, we should continue doing whatever we are doing. When things change, they will come very quickly. Look at how things changed in our neighbouring countries. We should work towards that. We can never predict when change will come: when it comes, it comes, whether it takes one year, five years or 10 years. We should keep slogging on. When it comes, it is a bonus.

CHANG: I definitely agree with what Steven said. When dealing with the question of human rights, we cannot just rely or depend on SUHAKAM. We should work on our own initiative. We should continue with our work.

PARAM: Ladies and gentlemen, we have come to an end of our National Consultation. On the role of civil society, may I refer you to the 1998 United Nations General Assembly Declaration of Human Rights Defenders? If you look at this declaration, every citizen is expected to be a human rights defender. The same declaration provides for certain obligations on the part of the state to protect these human rights defenders. You may be individuals, or you may be doing it collectively, but this declaration is extremely important as it imposes certain obligations on the state to protect these defenders.

N. SAKTIVEL: I am a concerned citizen, and I just want to make an observation. Today's session has raised a lot of issues. So, once we have our lunch and go back,

is it all over? I would like to pose this to the organisers: Are you doing a post-mortem of this session, and coming out with some recommendations to send to SUHAKAM? Only one Commissioner turned up and with due respect to her, some of the questions raised were not answered satisfactorily. Maybe the organisers can compile a post-mortem of this session and send it to SUHAKAM so that we can get some more complete answers before the next session.

PARAM: You obviously have been reading my thoughts. May I say in conclusion, after seeing how interested you all are in the work of human rights? I have not discussed this with the organisers, but I am sure they will agree that we should get together and with the assistance of the panelists, prepare a memorandum to be sent to SUHAKAM as to the outcome of this particular consultation.

I think it will be a useful document. I think it is extremely important that we ourselves take up the issues that have come out of this consultation, take into consideration all the views expressed by the panelists and by all of you and submit a comprehensive memorandum on the positive and negative aspects of SUHAKAM and what it should be doing. In fact, we can outline some of the priorities we think that SUHAKAM should be looking into. In fairness to the commission, it cannot be doing everything in one year. We can prioritise some things for them. If we can all agree, then we will do that. Do you all agree?

Marimuthu is in agreement, and there is an all round eye.

Thank you ladies and gentlemen. We will try to get this job done with the expertise of the panelists, within the next few weeks.

With that, ladies and gentlemen, I would like to thank the organisers for this very, very productive session, especially on a Saturday when everybody is thinking of rest and relaxation. Many of you took time to come here so early and to be with us right through the day and be involved in this very important process. I also hope that next year's consultation will be held in another city in the country. We should go to the length and breadth of the country to create greater awareness about human rights and the work of SUHAKAM. We are all defenders of human rights, and we cannot leave everything to SUHAKAM. We can pressure SUHAKAM to do better.

With this, the session ends with thanks to the panelists and the Chair.

Date: 10 December 2002

MEMORANDUM FROM CIVIL SOCIETY TO THE HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM) AND THE GOVERNMENT OF MALAYSIA

We, the undersigned, for and on behalf of the 250 grassroots leaders from civil society, workers' organisations and political parties that attended the "National Consultation on SUHAKAM After Two Years: How Has the Commission Played a Role in Promoting and Protecting Human Rights in Malaysia" held in Ipoh, Perak, on Sept 7, 2002 respectfully submit this Memorandum to SUHAKAM and to the Government of Malaysia for your kind attention, consideration and action.

The content of this memorandum arises from the praises and criticisms made on the work of SUHAKAM during the course of the past year, as reflected in its Annual Report 2001 and from the keynote address of SUHAKAM Commissioner Prof Chiam Heng Keng, as well as from comments and suggestions made at the aforementioned National Consultation.

It is our belief that human rights are indivisible and that civil, political, economic, social and cultural rights should be granted to all citizens and residents of the country, without any reservation or compromise. It is based on this premise that we base the observations and recommendations that follow.

THE POSITIVE ASPECTS

SUHAKAM's 2001 Annual Report is definitely an improvement over the 2000 Annual Report, which we note covered a period of eight months only, since the Commission was only constituted in April 2000.

Over the period between 2000 and 2001, there has been much improvement in SUHAKAM's organisational structure, in that the Commission had more access to funds, increased staff strength and eventually, obtained office premises of its own.

There were more activities, press statements and commendable positions taken on

some of the crucial issues concerning human rights for all in the country and these actions of SUHAKAM will certainly serve to build faith and confidence in the Commission among Malaysians and other residents of the country.

We welcome and congratulate SUHAKAM on the following actions:

1. **Freedom of Assembly:** SUHAKAM has taken the right step in protesting the blanket ban on political *ceramah* in the country and in calling on the government to seriously consider lifting the ban. The SUHAKAM study into this issue of Freedom of Assembly came out with welcome recommendations to the Government on the people's right to peaceful assembly.

In particular, we welcome the recommendations for short-term measures on the grant of police permits for peaceful assemblies, the guidelines for organisers, the establishment of a line of communication between the police and the organisers and the guidelines for dispersal of an assembly. These measures, if implemented, will go a long way in ensuring that the people are given the right to voice dissenting opinions in a peaceful manner

We also welcome the long-term measures suggested, in particular SUHAKAM's call for the Government to review the Public Order (Preservation) Act 1958. The Commission has put this contentious issue in the right perspective by stating that "peaceful assemblies do not necessarily disrupt peace and stability and need not cause any public disorder if all persons involved – the public and the authorities alike – conduct themselves with propriety".

2. **The Kesas Highway Inquiry:** This was the major highlight of SUHAKAM's work in 2001 and this open inquiry brought into wide public focus the existence of a Malaysian Human Rights Commission and its role. It also showed the Malaysian public how antagonistic Government authorities, particularly the police, can be towards SUHAKAM.

The report also reaffirmed as a fact what Malaysians, especially those in political parties and non-governmental organisations that hold open, public functions, have known for a long time: That the police practice double standards in the granting of permits for peaceful assemblies when it comes to

opposition political parties and other groups that are not affiliated to the Government.

We note the unbiased and constructive recommendations made by SUHAKAM following the findings of this inquiry and it is our fervent hope that the authorities, will study the report and accept and implement the recommendations.

3. **Rights of ISA Detainees:** Again, we welcome the recommendations made in the SUHAKAM Annual Report 2001, which resulted from two visits by the Commission's Visitation Sub-Working Group to the Kamunting Detention Camp in Taiping, Perak.
4. **Rights of Remand Prisoners, Young Prisoners and Other Prisoners:** Also during the past year, SUHAKAM has done a commendable study into the problems that have for long plagued the prison system in the country. It is fundamental that individuals detained or imprisoned should be treated with respect and human dignity.

SUHAKAM is perfectly correct in upholding the fundamental and non-derogable key principles of human right that no person should be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

It is the hope of civil society that the recommendations made by SUHAKAM to the authorities, particularly with respect to this provision of information of the arrest of young persons and access to them by their families, remand of the young in prisons, lock-up rules and the ill-treatment of detainees in lock-ups, people with special needs such as pregnant women and nursing mothers and the plight of foreign prisoners awaiting deportation be urgently looked into.

5. **Native Customary Rights and Rights of the Indigenous Peoples:** These are also long-standing issues in Malaysia which are often glossed-over by the authorities. The situation in Sarawak has been of particular concern, where clashes have occurred between native people protecting their lands from loggers.

The findings of the visits of the Commissioners to native settlements in Sarawak indicate that there is much cause for concern for the welfare and well-being of the native populations of that state.

While SUHAKAM's recommendations are welcome in the short-term, those responsible, including the Federal Government, should be honouring the rights of all native peoples of Malaysia, and implement long-term strategies to protect and uphold the rights of these peoples.

6. **Rights of the Disadvantaged:** It was indeed a fitting tribute from SUHAKAM to mark the first Malaysian Human Rights Day on Sept 9, 2001 with the theme "Rights of the Disadvantaged". We note that several government agencies and more than 140 civil society organisations attended a public forum on this theme held on that day.

Very serious problems, some of them long-standing ones, were addressed at the forum, including the rights of the indigenous peoples of the peninsula, the disabled, the problems of Malaysians without birth certificates or identity cards, problems faced by women, issues concerning children and child abuse and neglect and problems encountered by plantation workers and migrant workers.

Again, we welcome the sound and realistic recommendations made by SUHAKAM which we believe are easily achievable, given the political will to act in the interest of humanity.

7. **Educational activities:** SUHAKAM's formal and informal human rights awareness and education activities are commendable and what is particularly praiseworthy is that the Commission has been successful in the introduction of human rights education in the police force institutes. Civil society welcomes this positive development.

Also commendable is the move to introduce human rights education into schools. It is important that the young be exposed to human rights education, if we are to build a caring society where the rights of all human beings to live in dignity are respected.

8. **Gender Equality:** SUHAKAM deserves praise for its efforts which led to the removal of discrimination against women contained in the Federal Constitution. It is something that civil society, particularly women's groups, have been working on for a long time and that added impetus from SUHAKAM brought about the amendment, which came into force on Sept 28, 2001.
9. **Preventive Detention:** The work of SUHAKAM's Law Reform Working Group is another positive improvement in SUHAKAM's activities in 2001. It is notable that the issue of preventive detention is being given focus by this Group, and that it wants the Government to review all laws that provide for this specifically, the Internal Security Act 1960, the Prevention of Crime Act 1959, the Emergency (Public Order and Prevention of Crime) Ordinance 1959, the Essential (Security Cases) Regulations 1975 and the Dangerous Drugs (Special Preventive Powers) Act 1985.
10. **Ratification of International Instruments:** The work of the Treaties and International Instruments Working Group of SUHAKAM also deserves mention for the good work that it has done. We welcome the call for the Government to ratify the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Optional Protocol to the Convention for the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as well as the Optional Protocol on the Involvement of Children in Armed Conflict.

As SUHAKAM has rightfully noted, international human rights jurisprudence has become a highly specialised subject in terms of content and procedure. Civil society supports the Commission in its call to the Government to introduce suitable courses in International Law, with a human rights dimension in local universities and to make courses in human rights law mandatory for the judiciary and for all law enforcement officers.

SUHAKAM's continued support for an ASEAN regional mechanism is welcome. In this regard its commitment to interact with existing national human rights institutions within ASEAN is a step forward towards realising such a mechanism..

THE NEGATIVE ASPECTS

Civil society organisations also see a number of negative aspects in the performance of SUHAKAM in the promotion and protection of human rights in the country over the past year. Many of these concerns were raised at the National Consultation and among them are:

1. Change in Complaints Handling Procedure:

SUHAKAM's new procedure of receiving complaints from the public a cause of concern. People wanting to file a complaint with SUHAKAM about the violation of their rights are no longer able to meet the Commissioners as this job has been transferred to SUHAKAM's full-time staff. We are of the view that when the Commissioners meet the affected parties, it creates a confidence with the people and sensitises the Commissioners to important trends and issues. This departure from the previous procedure also reduces transparency, and will weaken the perspective of the Commissioners. When the task is given to the staff, it creates bureaucracy and distances the Commissioner from the community. Civil society would welcome a more detailed explanation for this change in procedure.

We recommend that SUHAKAM revert back to giving the people direct access to its Commissioners, for no matter how effective the Commission is in areas such as human rights education or general policy advice to the government, its legitimacy will rest to a large degree on how it handles and responds to complaints from individuals or groups.

2. Confidence Building with Civil Society:

Unfortunately, want of confidence in SUHAKAM among the current leadership is a source of concern. One way this can be improved is through constant dialogue, and taking on of the recommendations that have been made by the civil society. Civil society would appreciate being informed, through regular dialogues, about SUHAKAM's actions in response to this Memorandum and to other issues of concern that have been and are being raised.

The Commission should not just be accountable to Parliament, but also to the people. Apart from confidentiality when dealing with individual complaints in order to

protect victims and witnesses, the commission should practice maximum openness, and keep the citizens informed about its priorities and work programme.

We also note with regret that recently SUHAKAM's public posture on human rights, as seen in its recent press statements, appears to be significantly weaker than what has been set out in the annual reports.

For these and the other reasons listed in this Memorandum, we call upon SUHAKAM to hold regular dialogues with civil society in the country. At least half the number of SUHAKAM Commissioners should be present at these dialogue sessions, which ideally may be held once every two months, or a minimum of six sessions in a year, with additional ones called as and when the urgency arises.

We recommend that SUHAKAM should also produce a monthly or at least a quarterly bulletin and circulate this to the NGOs. Preferably, this bulletin should outline the work that SUHAKAM is doing and provide progress and status reports of its actions/recommendations to government. SUHAKAM now has the staff and the funds to be able to do this. Many HR Commissions, including those in India and South Africa, are doing this.

3. Restrictive and Oppressive Laws:

There are some 35 laws in the country that impose significant restrictions on basic human rights, including the right to peaceful assembly, and the right to information in the form of the highly unpopular Printing Presses and Publications Act.

We regret to note that SUHAKAM, failed to make specific recommendation in its Annual Reports of 2000 and 2001 on freedom of expression. Civil society would appreciate a more proactive position from SUHAKAM on issues concerning freedom of assembly and freedom of expression, such as in the instances of arrest of DAP Chairman Lim Kit Siang and other leaders for distributing leaflets relating to the issue of the "Merdeka Constitution" and the "Islamic State", and in the numerous threats by the Executive to invoke the ISA and sedition laws against groups expressing their disagreement with the Ministry of Education's new policy to use English as a medium of instruction for all primary schools for the teaching of mathematics and science.

The torture and ill-treatment of people detained under the Internal Security Act is

well documented. Police shootings to kill and the alarming number of instances of torture and death of detainees in police lock-ups appear to be the reason why the government has not ratified the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There has been a groundswell of opposition to the ISA and SUHAKAM should respond to this and proactively lobby for the repeal at this draconian law.

In its 2002 Annual Report, SUHAKAM's position was that detention without trial constitutes an infringement of the UDHR. It reported that at end of 2000, there were 40 persons detained under the ISA. The statistics for detentions under The Emergency (Public Order and Prevention of Crime) Ordinance 1969 and The Dangerous Drugs (Special Prevention Measures) Act 1985 were not given. In the 2001 Annual Report, the number of detainees under the ISA had increased to 78 and among them were 21 persons detained for allegedly smuggling illegal immigrants, 5 Reformasi activists and 13 alleged members of Kumpulan Militan Malaysia (KMM). Civil society is concerned about the increased use of the practice of preventative detention and the increased risk of the commission of other violations of human rights that this entails.

The detention and torture of Parti Keadilan Nasional official N. Gobalakrishnan is a good example. When the two SUHAKAM Commissioners went to see him to check on his conditions of detention, they were only allowed to see him in the presence of top Special Branch officers and the officer who allegedly assaulted him. In circumstances where the Government cannot gather sufficient evidence to bring an individual before a court, the individual must be released. Detention without trial is a clear violation of human rights. We are concerned that SUHAKAM has changed its position on the ISA post September 11, now saying that it will try to propose "amendments to the Act, and not push for repeal, because of the issue of security". We recommend that SUHAKAM more actively lobby the Government for the repeal of the ISA.

The other repressive laws that SUHAKAM should give priority to reviewing for repeal are the Official Secrets Act and the Sedition Act, and the four proclamations of States of Emergency that are still in force in the country until today.

4. Open Inquiries:

Civil society organisations also note with regret that SUHAKAM has not opened inquiries into or investigated a number of complaints that have been filed. Chief

among these is the Kampung Medan racial clashes of October 2001, on which some 30 complaints have been filed (*more examples are given below*).

The impact of SUHAKAM's interventions lies in how it addresses violations and develops initiatives to make the perpetrators of the violations accountable. Thus, SUHAKAM's effectiveness can be felt by how it strengthens its perspective and skills in investigation and its link with both civil society and with the affected communities.

5. Specific, Minority and Marginalised Groups:

Although SUHAKAM has given some attention to the cries and concerns of the indigenous groups in Sarawak and Sabah, this is not seen to be sufficient. A strategy must be developed to address the core concerns of specific and marginalised groups like the Orang Asli, migrant workers, minority groups and people of all religions. SUHAKAM needs to be more proactive in addressing the concerns and violations of the rights of women, especially now that gender equality has been recognised under the Federal Constitution.

For example, on Sept 25, 2000, 29 Muslims filed a complaint with SUHAKAM, that the proposed Restoration of Faith Bill and setting up of Faith Rehabilitation Centres constituted an infringement of their right to profess and practice their religious beliefs according to their faith and conscience. They also sought protection of their fundamental liberties under Article 11(1) of the Constitution and Article 18 of the Universal Declaration of Human Rights (UDHR). SUHAKAM has so far not responded to this complaint.

On May 22, 2001, the Action Committee of the Shia Community in Malaysia filed a complaint with SUHAKAM, endorsed by 22 NGOs, contending that since 1997, various persons of the Shia faith have been detained under the ISA. They also sought protection under Article 11 of the Constitution and Article 18 of UDHR. There has been no further information on this complaint.

On April 4, 2002, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism (Inter-Religious Council) submitted a memorandum highlighting various problems faced by non-Muslims in freely professing and practising their respective religions. The issues range from converts to Islam not being able to convert back to their former religion, to problems with the National

Registration Department, marriage, death and burial rites, divorce, custody of children, places of worship and issue of the Islamic State. SUHAKAM has not responded to this complaint.

Given Malaysia's multi-ethnic, multi-cultural and multi-religious heritage, it is important that we ratify the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). As at April 1, 1999 a total of 153 out of 195 member countries of the UN have ratified this Convention and there is no reason for Malaysia to remain in the small gallery of non-ratifiers. It must be noted that SUHAKAM in its 2000 Annual Report identified this Convention as "*crucial to the protection of human rights*" but unfortunately, it did not make a clear recommendation for ratification.

While it is true that some issues of human rights have to be approached based on the sensitivities of the groups concerned, civil society feels that it is undoubtedly SUHAKAM's moral and statutory duty to take the lead in these matters.

Human rights in Malaysia should not be sidelined by the events and the situation in the United States or the United Kingdom. There is no relevance in making comparisons between Malaysia and the United States.

PRIORITIES FOR SUHAKAM

In light of the huge volume of work that SUHAKAM is faced with in the promotion and protection of human rights in Malaysia, civil society organisations would like to suggest the following list of priorities for SUHAKAM's consideration. This can be worked on along a year-to-year basis.

1. A Follow-up Mechanism:

SUHAKAM should establish a follow-up mechanism to routinely liaise with the Government on what is being done to act on or implement the recommendations that it has made. This is crucial if SUHAKAM is going to be systematic, efficient and effective in its work.

2. Year for Ratification:

Declare the year 2003 as the "Year for Ratification" and work hard at convincing the Government to ratify not just the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination but also the other major instruments among the 25 listed in the United Nations Chart, including the First Optional Protocol

3. National Consultation:

SUHAKAM should send its Chairman and all its Commissioners to the annual National Consultation with NGOs, so that we can have a proper dialogue. For the regular dialogues that civil society has requested, it would be meaningful if the Chairman and at least half the number of Commissioners can be present.

4. Pay heed to national development:

As the guardian of human rights in the country, SUHAKAM should take it upon itself to suggest to the government that a basic needs approach to development should be taken, with greater public expenditure on housing, primary and secondary school education, health, facilities for disadvantaged groups like the disabled and for the amenable resettlement of communities, including indigenous communities, dislocated by development. Through such efforts, it will also ensure the recognition of economic, social and cultural rights.

5. Educate the MPs:

The Commission has to go beyond its political mandate and do what is right and necessary by being the vehicle and motivator for change towards a more humane Malaysia. In this respect, SUHAKAM should formulate more focussed programmes of human rights education in catalytic areas, such as in the Parliament.

PLEDGE FROM CIVIL SOCIETY

We from the civil society believe in working closely with SUHAKAM. We are mindful of the fact that the Government established SUHAKAM because of pressures from all around, and that the Commission is just a recommendatory body which has to work within the laws of the country which are not conducive for a human rights regime.

We believe that the Human Rights Commission Act of Malaysia, although recently enacted needs to be reviewed. We will campaign for this, but in the meantime, we wish to forge a closer working relationship with SUHAKAM and we are all ready to

offer all the expertise that we have, and that which we can muster, to help SUHAKAM in its work.

The participants present expressed their grave concern at the government's negative response to SUHAKAM's recommendations from the Keras Highway Incident Inquiry Report and the Freedom of Assembly Report. Regret that the government is antagonistic to SUHAKAM and that it has not seen it fit to act on or implement the recommendations made by SUHAKAM.

RECOMMENDATIONS TO THE GOVERNMENT

We the members of civil society organisations that attended the above 2nd National Consultation on SUHAKAM, are concerned that though the Government by an Act of Parliament established SUHAKAM, the Government and its lawmakers (the MPs) are not giving due respect and recognition to the role and functions of SUHAKAM, nor giving the due attention and consideration to the reports and recommendations of the Commission.

We note with particular concern the fact that hardly any attention was paid to the Annual Reports of SUHAKAM for the years 2000 and 2001 which were presented to the Parliament of Malaysia. In fact, we are concerned that apparently the MPs on the Government Bench did not even consider the reports worthy of debate. This we see as gross irresponsibility on the part of the MPs because the issue here is the basic rights of the citizens of Malaysia.

In light of this, we make the following specific recommendations to the Government of Malaysia for its consideration and action:

1. Take Heed of Global Trend:

The Government of Malaysia has to take heed of the trend at the international level, to ratify international treaties and conventions, especially those pertaining to human rights and racial discrimination, with many of them putting these into practice through their national laws. Malaysia, which was recently described by the Prime Minister as the most developed of the developing countries, should be comparing its performance with the developed world, not with repressive regimes in the developing world and the situation in under-developed countries.

2. Review Outdated Laws:

If the Government truly wants to play an effective role in the international community, especially with the provisions of the World Trade Organisation taking effect, and as a member of UN commission on human rights, then it should begin now by reviewing all the nation's laws to ensure that they are in harmony with international laws.

3. Implement the recommendations of SUHAKAM

The Government should implement the recommendations of SUHAKAM. If, for any reason, it is unable to implement, in accordance with the principles of governmental accountability and transparency it must give its reasons publicly, and within a reasonable time, as to why the recommendations cannot be implemented.

4. Amend the Human Rights Commission Act:

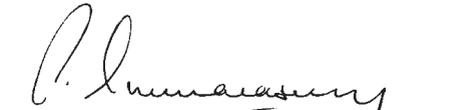
The Act as it stands leaves much to be desired. We therefore call for:

- Commissioners of highest calibre only to be appointed.
- The process of selection of the Commissioners should not be in the hands of the Executive. Ideally, an independent panel should be established to recommend to the King those candidates who are suitable for the task.
- Two years is too short a time for a HR Commissioner to effectively carry out his or her work. An international experience the minimum term of office should be at least five years full-time and non-renewable, so as to maintain the independence of the commissioners.
- Those who file complaints with SUHAKAM, and witnesses in the Commission's investigations and inquiries, should be given immunity from any form of reprisals.

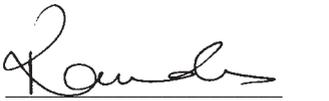
Signed by (2nd National Consultation on SUHAKAM Session Chairman and Paper Presenters):



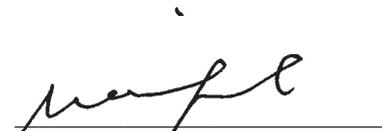
MARIMUTHU NADASON
President
ERA Consumer Malaysia



DATO' PARAM CUMARASWAMY
Session Chairman
2nd National Consultation on SUHAKAM



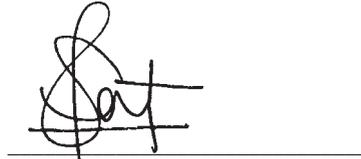
RAMDAS TIKAMDAS
President
Persatuan Hak Asasi Manusia
(HAKAM)



IRENE FERNANDEZ
President
Tenaganita



ABDUL RAHMAN SAID ALI
President
Perak Consumers Association



STEVEN GAN
Editor-in-Chief
Malaysiakini.com



CHANG LIH KANG
Malaysian Youth and Student Democratic Movement (DEMA)

(Footnote: This copy was prepared by ERA Consumer Malaysia and submitted to the Session Chairman for their endorsement. The Memorandum was submitted to SUHAKAM on International Human Rights Day which falls on Dec 10 every year.)

About ERA Consumer

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

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

Published by:

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

No 24, Jalan SS1/22A

47300 Petaling Jaya

Selangor Darul Ehsan

Tel (603) 7877 4741, 7876 4648

Fax (603) 7873 0636

Email eracons@po.jaring.my

Website www.eraconsumer.org

ISBN : 983-40038-9-7

Edition : April 2003

Printed by : Syarikat Asas Jaya

ISBN 983-40038-9-7



9 789834 003890