

SUHAKAM **After 5 years:** **State of Human Rights** **in Malaysia**



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SUHAKAM

After 5 Years:

State of Human Rights in Malaysia

Edited by

S. Nagarajan

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Malaysia*

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ERA CONSUMER MALAYSIA

(Education and Research Association for Consumers, Malaysia)

ERA Consumer Malaysia is a voluntary, non-political and non-profit organisation working towards a just and equitable society. ERA Consumer focuses on critical issues ranging from consumer, human and women’s rights to the environment and food security.

Foreword

There was much excitement and expectations among Malaysians when the government announced its plan to set up a national human rights commission on April 25, 1999. But disappointment set in almost immediately as the government did not make public the draft bill to set up the commission that was to be tabled in parliament in July 1999. Concerned over the lack of public participation, 33 non-governmental organisations called on the government to have consultations with civil society and relevant government departments on the draft bill. The NGOs pointed out that the secrecy over the draft bill contradicted the very essence and spirit of a human rights oriented transparent and consultative process. Despite the lobbying, the draft bill was not made public until it was tabled in the Dewan Rakyat in July 1999.

Nonetheless, ERA Consumer Malaysia, the National Human Rights Society (HAKAM), Suara Rakyat Malaysia (Suaram, Voice of Malaysians) and the Working Group for an Asean Human Rights Mechanism organised a public forum on the proposed human rights commission on July 3-4, 1999 to discuss the experiences of neighbouring countries and to formulate a human rights framework that would meet the aspirations of Malaysians. Welcoming the proposed human rights commission in principle, the forum urged parliament to refer the bill to a parliamentary select committee to facilitate public consultations. The government ignored the requests and parliament passed the bill without any amendments. The Malaysian Human Rights Commission Act 1999 was gazetted on Sept 9, 1999 and the commissioners were appointed in early 2000.

Undeterred by the snub, civil society undertook the task of creating awareness among citizens of the newly formed National Human Rights Commission (Suhakam) and educating them how to access the institution through a series of forums and workshops. As part of this programme, ERA Consumer Malaysia organised a forum on Understanding the Human Rights Commission Act 1999 on May 27, 2000. The forum sought to enable grassroots and vulnerable communities to understand the role, function and power of the commission and to educate them on the process of lodging complaints of human rights abuses to Suhakam.

ERA Consumer Malaysia has since been organising national consultations on Suhakam every year after the commission submits its annual report to parliament. The four annual consultations (2001 to 2004) were to review Suhakam's performance

and provide feedback to the commission and the government to enhance the human rights environment.

However, by the fifth year, fatigue and scepticism have set in. Malaysians, civil society in particular, are beginning to lose confidence in Suhakam and realise that it is indeed a public relation exercise by the government. The NGOs are troubled by a few developments. Though Suhakam has submitted its annual report every year, parliament has yet to debate these reports, reflecting the government's dismissive attitude towards the commission. Further, the government's callous or ill-informed responses to Suhakam's recommendations reinforce the belief that it does not take the commission seriously. Moreover, the appointment of commissioners is non-transparent and flawed. The selection process has been arbitrary and non-consultative and appears to be motivated by political considerations. Civil society has long been calling for a transparent and meaningful selection process based on candidates' proven human rights track record, expertise, experience and contributions.

Despite the flaws, civil society still hopes that Suhakam will live up to its stated objective, i.e. to promote and protect the human rights of Malaysians. Thus, ERA Consumer Malaysia has once again taken the initiative to organise the national consultation on Suhakam's performance. It has put together an expert panel of grassroots and social activists to review Suhakam's Annual Report 2004, the state of human rights in Malaysia and the commission's overall performance in the first five years of its existence.

The nine papers in this booklet cover a wide range of human rights issues including those related to women, children, indigenous people, undocumented citizens and statelessness, migrant workers and people with disabilities. The comments, feedback and recommendations from civil society will be submitted to Suhakam, parliament and the Prime Minister's Department to lobby for positive changes. Hopefully, this civil society initiative will contribute towards creating a better human rights environment for everyone.

MARIMUTHU NADASON

President

ERA CONSUMER MALAYSIA

Malaysia's commitment to international human rights instruments and mechanisms: A review of Suhakam's roles, approaches and impact

Rashid Kang

This paper looks at the performance of the Human Rights Commission of Malaysia from the perspective of a regional human rights organisation, which has been engaging Suhakam at regional and international forums. It was originally written for the period of 2001-2004 but has been expanded to include year 2005 as Suhakam's Annual Report 2005 was released when this paper was being finalised.

As there are excellent reviews by human rights practitioners on the impact of Suhakam at the national level, this paper will focus on assessing the commission's roles, approaches and accountability at regional and international platforms, where national NGOs usually find it difficult to monitor due to geographical and financial constraints.

It seeks to provide a general picture of the activities of the Malaysian government and Suhakam at the regional and international levels which are inter-linked in many ways and could be of strategic value for human rights advocates in designing their campaigns. It also suggests some ways forward and a new context for advocacy.

It stresses the importance of human rights, as the concerns for the larger humanity go beyond state sovereignty and citizenship. Malaysia is an active member of the United Nations and had held the UN presidency for a year and a seat in the UN Security Council. It was also the Chair of the UN Commission on Human Rights for a year. Thus, Malaysia's responsibility is not merely for its citizen but also for a wider humanity. In the post-Anwar Ibrahim era, the Malaysian government is less defensive in its international relationship and is becoming more proactive in playing its regional and international roles. Suhakam needs to proactively keep pace with the government's steps as well.

Ratification of human rights treaties

One of Suhakam's four mandates is to recommend to the government the

subscription or accession of treaties and other international human rights instruments. Since its establishment on April 24, 2000, has Suhakam succeeded in bringing substantive improvement to Malaysia's commitment to the international human rights instruments and mechanisms?

Ratification has no meaning if it is not translated into or harmonised with national laws and policies affecting the everyday life of the ordinary citizen. Another mandate of Suhakam can be broadly interpreted as to advise the government in formulating legislation in compatibility with international obligations and standards. In this regard, Suhakam was visionary in its decision in 2003 to restructure its institutional setup to enable it to engage the government in a more effective manner. This was done by merging the Law Reform Working Group with the Treaties and International Instruments Working Group to form the Law Reform and International Treaties Working Group (LRITWG).

In brief, Malaysia's position remains the same six years after Suhakam was established. Out of the seven core human rights instruments,¹ the Malaysian government has signed only two. They are CEDAW and CRC ratified in 1995 when Tan Sri Musa Hitam was the chairman of the 52nd session of the UN Commission on Human Rights (CHR) in Geneva. Malaysia has yet to ratify the other instruments including five relevant provisions of the human rights treaties or optional protocols,² which will allow Malaysian citizens to file individual complaints on human rights abuses should local remedies be exhausted, as well as three other specific optional protocols. The specific optional protocols are for abolishment of death penalty, sale of children, child prostitution and child pornography and involvement of child in arm conflict. Malaysia has also yet to ratify the 1951 Convention on the Status of Refugees and its 1967 Protocol and the two ILO Conventions on migrant workers (Conventions 97 and 143).

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- 1 International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).
 - 2 First Optional Protocol to the ICCPR (individual communication); Declaration under Article 14 of CERD (individual communication); Optional Protocol to CEDAW (individual communication); Declaration under Article 22 of CAT (individual communication); Article 77 of the Migrant Workers Convention (individual communication).

Suhakam has been adopting a more focused approach (instead of going for universal ratification) in its lobbying with the government. Suhakam has been reiterating its recommendations that ICCPR, ICESCR, CAT and the two Optional Protocols to the CRC be ratified/acceded to by the government without further delay. The non-governmental organisations, however, request that this list be expanded to include ICERD which is considered very crucial for a multiethnic country like Malaysia.

The NGOs which participated in the 2002 National Consultation on Suhakam had declared 2003 as the year of ratification and expressed their hopes that the commission would spearhead the process. Unfortunately, there was not much headway in this campaign in 2003, which came 10 years after the World Conference on Human Rights and the follow up to the Vienna Declaration and Programme of Action (1993).

At the 2003 National Consultation on Suhakam, then commission vice-chairman Tan Sri Harun Hashim informed the participants that the Foreign Ministry had given an assurance that the government was in the final stage of preparing a paper for consideration of the cabinet on Malaysia's accession to the ICPR and ICESCR. However, there was no mention of any follow-up in the subsequent annual reports of Suhakam, i.e. 2004 and 2005.

Suhakam had a meeting with the Foreign Ministry in 2004. According to Suhakam Annual Report 2005, the Foreign Ministry had indicated that the study for possible ratification of the Optional Protocol to the CRC on the involvement of children in armed conflicts was in its final stages; while the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography was in its early stages.

Reservations on human rights treaties

Malaysia has entered one of the highest numbers of reservations on international conventions it has acceded to when compared to other countries in Asia. Malaysia ratified CEDAW and CRC in 1995 with 24 reservations. In 1998, it removed six reservations from CEDAW but eight still remain. Malaysia still retains its 10 reservations to CRC and ironically they are the less controversial ones. A total of 18 reservations are still there on the two conventions. The large numbers of reservations on the two treaties almost render the ratification meaningless as these articles incorporate the core values of the instruments. This is one of the reasons

why the United Nations has called for the reform of the UN treaties body system.

Suhakam organised a forum on Malaysia's reservations on the CRC in September 2004. The participants felt that CRC reservations would reinforce rather than resolve problems. Thus, they recommended³ that most of the reservations should be withdrawn. Nevertheless, Suhakam has yet to adopt this as its official stand.

With regards to Malaysia's reservations to CEDAW, Suhakam recommended the withdrawal of the reservation to Articles 5(a), 7(b) and 9(2). The proposal was submitted to the Women, Family and Community Development Ministry in July 2004. Suhakam has adopted a careful stand on the remaining reservations on CEDAW articles which were said to be linked to Islamic laws and practices. It is currently conducting further research on these areas.

Other indicators

There are also other important indicators to assess the Malaysian government's commitment to international human rights instruments and mechanisms but Suhakam has yet to assert its role in these areas.

First, Malaysia's reporting record is not very encouraging. Nine years after ratifying CEDAW, Malaysia combined its first and second reporting, which were due in 1996 and 2000 respectively, and submitted them to the UN monitors in March 2004. This report will be examined by the CEDAW committee only in July 2006. The Malaysian government has yet to submit its CRC report though it ratified the convention 11 years ago.

Second, the Malaysian government's cooperation with UN mandate holders such as special rapporteurs and working groups needs to be further improved. Currently, three requests from UN special rapporteurs – on human rights, indigenous people and rights of migrants – to visit Malaysia are pending. The Malaysian government has yet to respond officially to these outstanding requests. However, Malaysia had allowed the official visits of the Special Rapporteur on the Rights to Freedom of Opinion and Expression⁴ in 1998 and the Independent Expert on the Right to Development⁵ in 2001.

3 See Suhakam Annual Report 2005.

4 Report of the SR on the Rights to Freedom of Opinion and Expression to Malaysia E/CN.4/1999/64/Add.1.

Nevertheless, judging from the challenges to freedom of expression as well as the concentration of media ownership in a few corporate entities aligned to the ruling coalition, Suhakam and concerned NGOs may need to revisit the recommendations made by the Special Rapporteur on the Rights to Freedom of Opinion and Expression to the Malaysian government in 1998. There is a need to lobby for a follow-up visit by the special rapporteur. On a positive note, Malaysia is scheduled to receive the Special Rapporteur on Rights to Education soon and the NGOs should make use of this opportunity to address the relevant issues.

Third, the Malaysian government has expressed its commitment to regional cooperation for the promotion and protection of human rights in the Asia-Pacific region under the umbrella of the Office of the United Nations High Commissioner for Human Rights (OHCHR). In 1998, governments from Asia Pacific, including Malaysia, adopted a framework for cooperation at regional level, known as the “Tehran Framework”, based on step by step approaches with four “building blocks” to develop. They are i) national human rights institutions, such as the national human rights commission; ii) national human rights action plans; iii) human rights education; and iv) realisation of economic, social and cultural rights and right to development. Since 1998, these governments have been meeting yearly at the Annual Workshop of the Asia-Pacific Framework to report on the progress in the four areas.

Thus, it was shocking to learn that the Malaysian government summarily dismissed Suhakam’s proposal for a national human rights plan of action submitted on Feb 25, 2002. In its response to Suhakam on March 27, 2003, the government stated that “Malaysia does not need the National Human Rights Plan of action since human rights are guaranteed under the Federal Constitution and existing laws in Malaysia”.⁶ The Malaysian government’s stands at the international and national level are contradictory due to the lack of a mechanism to interlink both.

Moreover, the participating Asia-Pacific governments reached a consensus that national human rights institutions were considered the most developed pillar of the four building blocks agreed under the Tehran Framework. The governments

5 No official report is available for this visit.

6 Suhakam Annual Report 2003, p. 282, cited by Ramdas Tikamdas (2005). Government’s response to Suhakam reports and recommendations to protect and promote human rights, *Proceeding of the National Consultation on Suhakam: After 4 Years*, Petaling Jaya: ERA Consumer Malaysia, p. 23.

have pledged their full support to its implementation.

Such promises do not translate into national reality as seen from the way the Malaysian parliament, which is controlled by the Barisan Nasional coalition, treated Suhakam's reports. Suhakam's annual reports have yet to be debated in parliament though the commission has been submitting its reports for six consecutive years. The parliament does not appear to give any importance or attention to Suhakam's reports.

Fourth, at the global level, Malaysia is an active member of the Like-minded Group (LMG) in the UN Commission on Human Rights. NGOs see the LMG as a club of countries with poor human rights record, which has been playing a notorious role in undermining the UN human rights protection and monitoring mechanisms. Malaysian NGOs rely on these UN mechanisms due to the ineffective national protection instruments which sometimes include the judiciary. The LMG is made up of Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Vietnam and Zimbabwe.

Fifth, the Malaysian chapter at the ASEAN level plays a positive role with regards to human rights. This is because Malaysia plays a leading role in mediating the democracy deadlock in Myanmar as well as in ASEAN damage control resulting from the hardline decisions of the Myanmar military junta. At the 11th ASEAN Summit in Kuala Lumpur in December 2005, Malaysia was instrumental in initiating an Eminent Person Group (EPG) process⁷ to consult with the wider ASEAN community to prepare a report on the principle of an ASEAN Charter. It is to be submitted at the coming 12th ASEAN Summit to be held in the Philippines this year. Malaysia has also nominated former Suhakam chairman Tan Sri Musa Hitam as its EPG member as well as to head the group.

Malaysia was also instrumental in pushing for direct engagement between NGOs and ASEAN heads of government at the 11th ASEAN Summit. As a result, ASEAN civil society interacted with the ASEAN heads of government on Dec 12, 2005 and presented the conclusions of their deliberations to the summit. It is learned that the Philippines, which will be hosting the 12th ASEAN Summit, will continue with the engagement.

7 The ASEAN secretariat website for the Terms of Reference of the Eminent Persons Group (EPG) on the ASEAN Charter is at <http://www.aseansec.org/18060.htm>

Suhakam at the national level

The National Human Rights Commission is regarded as a bridge between the government and civil society. In general, this would mean that the commission needs to develop a balanced relationship with the government. It would then use the trust and stronger public advocacy to achieve changes as well as to develop 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.

Suhakam's perspective on this was best reflected in the keynote speech by its commissioner, Prof Chiam Heng Keng, at the National Consultation on Suhakam in 2002. Prof Chiam ended her speech by reiterating that "Suhakam has to act independently and does not dance to the tune of neither the government nor the NGOs." Nevertheless, in implementation, such a total neutrality principle is difficult to achieve.

Suhakam's approaches with its three key stakeholders in the past six years can be summarised as:

- i. Suhakam and government: Could be interpreted as operating on a fine line. Suhakam is either resorting to low profile constructive engagement with the government or it is applying censorship. Government has sent two block responses to Suhakam's reports so far.⁸ Half of these responses could be considered as lectures to Suhakam.
- ii. Suhakam and NGOs: Annual consultations in the last five years were initiated by the NGOs. The Suhakam chairman has never attended the annual consultations with NGOs. Less than 10 per cent of Suhakam commissioners attended these annual consultations. This was again the case at the 2004 consultation despite personal invitation letters and follow-up reminders sent to all commissioners.
- iii. Suhakam and parliament: The Malaysian parliament has failed to debate Suhakam's annual reports for the fifth consecutive year. Suhakam has submitted its annual reports to parliament every year as stipulated in the Human Rights Commission of Malaysia Act 1999. Though Suhakam has

⁸ The government sent its response to Suhakam Annual Report 2001 and 2002 and other specific reports on March 17, 2003. On Jan 17, 2005, the government sent its response to Suhakam Annual Report 2003.

expressed unhappiness over parliament's neglect of the reports, its mild reaction gives the impression that the commission can live with such snub and injustice.

Suhakam at regional and international forums

National NGOs will normally find it difficult to monitor human rights issues at regional and international platforms due to geographical and financial constraints. Thus, having the official mandate, how Suhakam presents its country's human rights situation at these platforms will help shape the international community's views on Malaysia. This will in turn have an impact on the NGOs' activities at the grassroots. As seen from the history of social movements, information and contextual gaps hinder the international community from making timely and informed decisions. Any actor that actively functions at this level to act as a bridge will have plenty of leverage in helping to shape the international community's views.

In recent years, Suhakam has taken an active part at three important regional and international meetings – the annual sessions of the UN Commission on Human Rights (Geneva), the annual workshop of the Asia Pacific Forum (APF) on National Human Rights Institutions, and cooperation among four national human rights institutions in the ASEAN region.

Suhakam at the UN Commission on Human Rights

Suhakam intervened at the UN Commission on Human Rights for two consecutive years, i.e. in 2003 and 2004. It ceased this activity in 2005 when Malaysia was elected as a member of the UN commission. Though it kept a low profile in 2005, Suhakam's delegation did attend the UN commission's sessions. It is not known whether the Malaysian government had influenced Suhakam to keep a low profile.

In general, Suhakam's past intervention at the UN commission's sessions, which were attended by government officials, experts, UN specialised agencies, donors and regional NGOs, tended to be very narrative and technocratic. It generally focused on its activities and outreach, and less on articulating substantive controversial issues as case studies or lessons for the purposes of dialogues and experiences sharing with other key stakeholders. Its report appeared to be cautiously optimistic and portrayed the Malaysian human rights landscape as acceptable.

The questions are: Is such an approach paying off in terms of government acceptance at international level? Is it working towards the improvement of the protection and promotion of human rights?

Few indicators can be explored to study the trends:

- i. Year 2001: Malaysia made the first official mention of Suhakam at the UN Commission on Human Rights. Foreign Minister Datuk Seri Syed Hamid Albar informed the 57th session of the UN Commission on Human Rights, in front of representatives from 191 member states and UN experts, on March 20, 2001 that:

“...the establishment in 1999 of the Malaysian National Commission on Human Rights, or Suhakam, reflected the government’s commitment to strengthening human rights standards in the country. Suhakam sought to increase awareness of human rights issues and investigate allegations of human rights violations. Malaysia believed that only through a rational, realistic and pragmatic approach could human rights problems be solved, and it would continue to advocate that human rights should be dealt with comprehensively, that democracy should be productive and that capitalism should be humane.”⁹

- ii. Between 2002 and 2004: In its annual session, the UN Commission on Human Rights allocated a specific agenda under item 18 b) National institutions and regional arrangements, to allow national human rights institutions to engage with their governments on the effective functioning of human rights mechanisms. Suhakam had made oral intervention under item 18 b) for the years 2003 and 2004. Unfortunately, in these three years, Suhakam was not mentioned nor referred to in any of the Malaysian government’s intervention and statements to the UN commission.
- iii. Year 2005: Malaysia was re-elected as a member of the UN Commission on Human Rights. The same year, Suhakam ceased making its oral intervention

9 Summary record of the 2nd meeting held at the Palais des Nations, Geneva, on March 20 2001, E/CN.4/2001/SR.2.

under item 18 b). Syed Hamid came to Geneva again to address at the high level segment of the 61st session of the UN commission on March 14, 2005 with a five-page statement. This time he made no reference to Suhakam's roles or activities.

He said, *“Human Rights in Malaysia are explicitly protected in the Constitution and legislation as well as the policies and measures of the government. This approach is aimed at promoting racial harmony and equitable socio-economic development. The rights of individual are ensured without compromising the rights of the majority as well as the security and wellbeing of the nation. It is within these broad parameters that we advance human rights in our country.... Malaysia's commitment to the protection and promotion of human rights of our people has been reflected in the consistent and concerted efforts by the government to advance the wellbeing and welfare of Malaysians.”*

In addition, Syed Hamid's statement also referred to a recommendation by other member states on the proposed designation of prominent and experienced human rights figures as heads of delegation to the UN commission. The Malaysian government's reply was *“...we take the view that this issue does not arise as we have always been represented by qualified representatives.”* Unfortunately, there was no mention of the potential human rights expertise of the Suhakam commissioners.

How Suhakam framed its working relationship with NGOs at international forums is also worthwhile to study. Suhakam's oral intervention at the 60th session of the UN Commission on Human Rights on April 14, 2005 ended with the following remark:

“Mr Chairman, Suhakam looks forward to the continued support of the government towards the activities initiated by Suhakam and also to the continued discourse by civil society with Suhakam.”

The words “continued support” were used in reference to government while “continued discourse” were preferred when referring to NGOs. In the millennium, the United Nations and member states have been discussing openly about enhancing interaction with civil society organisations and recognise their contributions as seen from the deliberations of UN Secretary-General Kofi Annan's Panel of Eminent Persons on Civil Society and UN Relationships since 2002. In this

context, Suhakam's careful choosing of the words "continued discourse" to describe its working relationship with NGOs is worthwhile to be studied by grassroots human rights practitioners.

Suhakam at the Asia-Pacific level

At the Asia-Pacific level, Suhakam is an active member of the Asia Pacific Forum for National Human Rights Institutions (APF). APF was established in 1996 after the first regional meeting of national human rights institutions from Asia Pacific. It comprised independent national human rights institutions established in compliance with the fundamental criteria set by the UN General Assembly endorsed 'Principles relating to the Status of National Institutions' (more commonly known as the Paris Principles). The forum meetings provide observer status for governments, UN agencies and human rights NGOs. In recent years, there is growing recognition among the international community of APF as a network of reliable national human rights institutions in the Asia-Pacific region. Hence, speaking as an APF member will give more legitimacy and wider recognition to Suhakam's statements and position.

As a full member of APF, Suhakam is required to submit its report annually. Experts, donors and representatives from national human rights institutions, governments, UN specialised agencies and regional NGOs attend APF's annual meetings. Suhakam's reports to the annual meetings of APF¹⁰ are very narrative and technocratic and are much longer than its statements to the UN commission. The reports focus on Suhakam's activities and outreach and not on substantive issues.

It should be noted that Suhakam became a full member of APF in November 2002, barely two months after 32 Malaysian NGOs ended their 100 days of disengagement with Suhakam. The NGOs had boycotted Suhakam in protest against the appointment of former Attorney-General Tan Sri Abu Talib Othman as its chairman and the dropping of some progressive commissioners. This incident reflects the delay in communication between the national movement and the international community where the latter was not able to make timely and informed decision.

10 Suhakam's reports submitted to the annual meetings of the Asia Pacific Forum for National Human Rights Institutions can be viewed at <http://www.asiapacificforum.net/>

The United Nations wants APF to upgrade its mandate to serve as a quasi inter-regional mechanism for human rights due to the failure of Asia-Pacific governments to come up with an effective mechanism after more than 20 years of “deliberations”. However, the UN proposal received cold respond from most APF members. They see it as highly risky and could put them in direct confrontation with governments, thus jeopardising the good working relationship they have developed for a long time. As a stakeholder in the larger human rights community in the Asia-Pacific region, Suhakam’s position on this is not clear.

Suhakam at the ASEAN level

ASEAN had declared its willingness to set up a human rights mechanism at the 16th ASEAN Ministerial Meeting in Singapore on July 23-24, 1993. In line with this spirit, Suhakam, which is one of the four national human rights institutions in the region, has taken the initiative to bridge the gap between the government sector and civil society, in the absence of an effective regional human rights mechanism. The co-operation of the national human rights commissions of Indonesia, Malaysia, the Philippines and Thailand is pivotal to the development of such an inter-governmental mechanism.

Suhakam hosted the second meeting of the ASEAN National Human Rights Institution’s Consultation Mechanism in Kuala Lumpur from March 15-17, 2006. The meeting focused on five thematic areas of common interest: migrant workers; human trafficking; terrorism and the rule of law; economic, social and cultural rights; and human rights education. The four commissions also discussed the development of a draft memorandum of understanding to establish the basis for future cooperation.

Unfortunately, this meeting was organised in a rather exclusive manner. Hopefully, the four national human rights institutions will open up the process soon to enable a wider NGO engagement. It is not clear how Suhakam is planning to use this platform to bridge the gap between the government sector and the civil society in Malaysia and ASEAN in general, in the absence of an effective regional human rights mechanism.

Challenges and the way forward

Compared to the NGOs, Suhakam is obviously in a more advantageous position as it has the resources, opportunities, and well perceived official mandates to sensitise the international community on the Malaysian human rights situation. Hence, Suhakam can continue to navigate and strengthen many unexplored spaces and opportunities while discharging its mandate. But is Suhakam doing it? Does it have the will to meet these expectation and challenges? If Suhakam is consciously or sub-consciously manipulating these advantages, what will be the check and balance mechanism?

First, Suhakam is still struggling to balance its position with regards to two important stakeholders – the government and the NGOs – even though it has been functioning for six years. This positioning of power relationship will determine Suhakam’s accountability, mode of engagement and the impact of its outreaches.

Unfortunately, Suhakam’s current mode of engagement with the NGOs is not proportionate to the recognition it has received from the international community, the views it offered to the international community on Malaysia human rights situation and the roles it is playing at the regional and international forums. Till today, there is no institutional mechanism to allow NGOs to comment on Suhakam’s positions which it can present at various UN forums or at the annual meeting of APF. There is a growing trend for progressive governments and national human rights institutions to consult the NGOs prior to their appearances at important human rights forums. However, this is not the case with Suhakam.

For a start, Suhakam could formalise its channel such as including human rights NGO representatives in its working groups and subcommittees. Suhakam should also organise regular consultations with NGOs before stating its positions at important international forums. Suhakam could also conduct regular consultations with the Malaysian government and to assert its position before going on official missions abroad. A wide range of Malaysians should also be kept informed through the media.

Second, human rights are the concerns for the larger humanity, which goes beyond state sovereignty and citizenship. Just as Malaysia is an active member of the United Nations, its responsibility is not merely to its citizen but also to humanity as a whole. Thus, Suhakam’s mandate can be interpreted in a broader sense to include

making recommendations, advising and assisting the Malaysian government with regards to human rights issues at regional and international level. At the institutional level, Suhakam could push for regular dialogues with the Malaysian government on its foreign policy on human rights as well as its position to be adopted at regional and international forums.

Undoubtedly, human rights are best implemented by national mechanisms. However, this requires strengthening of the national mechanisms. Suhakam and Malaysian NGOs will have to ponder on this question: By developing an effective strategy to hold the Malaysian government accountable at the international and regional levels, would not there be a spill over impact at the national level?

Third, Suhakam needs to rethink its philosophy and strategy of “constructive engagement” with the government. Constructive engagement does not necessarily mean Suhakam has to act “harmless”, “toothless” or “polite” all the time.

Drawing from the brief history of Suhakam’s engagement at the UN Commission on Human Rights, we can see that when Suhakam failed to contribute any substantive input or “bite” at the international level, the Malaysian government immediately ignored the organisation. Similar things could have happened at the national level.

Thus, Suhakam needs to rethink two fundamental issues: i) The need to maintain a balance and effective working relationship with its constituencies, including the government and the NGOs; ii) The necessity to negotiate with strengths and to assert pressure at the right time rather than merely using polite meaningless words.

Fourth, a few coming events and processes could serve as window of opportunities for Suhakam as well as NGOs in engaging the government for better protection and promotion of human rights.

- i. **Malaysia candidacy in the new UN Human Rights Council (2006):** With the adoption of UN General Assembly resolution to abolish the Commission on Human Rights and to replace it with the new Human Rights Council on June 19, 2006, member states which wish to stand for election are now required to make their pledges. Malaysia is one of the Asian countries which have officially declared their intention to stand for election.

At the time of writing this paper, Malaysia has yet to release its voluntary pledges in the promotion and protection of human rights ahead of the May 9 election in New York. Whether or not there will be any substantive pledges that will have better impact on the works of Suhakam and NGOs at the national level, this will be a good time for them to engage with the Malaysian government in improving its pledges on human rights as well to monitor their implementations after the election.¹¹

- ii. **Drafting of an ASEAN Charter:** The current ASEAN initiative to shift from a consensus-based to a rule-based inter-governmental body, by setting up an Eminent Persons Group, with the mandate to examine and provide practical recommendations on the directions and nature of the ASEAN Charter relevant to the ASEAN community as envisaged in the Bali Concord II and beyond, is another potential timing entry point for Suhakam and NGOs to engage. They can integrate their relevant campaigns and advocacies with the Malaysian government at the national level. As ASEAN is scheduled to celebrate its 40th anniversary next year, campaigns that need to bank on grand feeling can be designed to capitalise on the momentum.

- iii. **60th anniversary of the UDHR:** Another global event that could be exploited is the 60th anniversary of the Universal Declaration of Human Rights (UDHR), which will fall on Dec 10, 2007. Suhakam and NGOs could effectively promote joint action to achieve a common goal while engaging with the government for meaningful changes in policies and laws for better enjoyment of human rights.

Rashid Kang is advocacy programme coordinator at the Asian Forum for Human Rights and Development (Forum-Asia). The writer can be contacted at rashid@forum-asia.org

11 FORUM-ASIA, together with its national members and partners, has created a website to monitor and assess the Asian candidates' suitability which include Malaysia as potential members of the Council against these criteria.

The site is at <http://www.forum-asia.org/hrc/>

Evaluation of government responses to Suhakam reports

Jeyaseelen Anthony

It is indeed sad to note that Suhakam Annual Report 2004 has suffered the same fate as the commission's four earlier annual reports as it is yet to be tabled and debated in parliament.

Suhakam has submitted its annual reports to parliament as required under Section 21(2) of the Human Rights Commission Act 1999.¹ The question that begs to be answered is, why have such a requirement when the very parliament that passed the Act has yet to debate Suhakam's reports? The rationale to include Section 21(2) in the Act must have been for parliament to scrutinise and debate the aspirations and grievances of the people with regards to the state of human rights in the country.

The government's refusal to table the reports in parliament strikes at the very role of Suhakam as the "protector and promoter of human rights" in Malaysia. Further, the failure of parliament to debate Suhakam's reports would leave questions on the minds of people as to whether the government is truly committed to promoting and protecting human rights. Suhakam itself has emphasised the importance of debating its reports in parliament. It stated in its Annual Report 2002:

Advocacy on human rights for Parliamentarians and policy makers is an area which requires attention by the Commission as it is only when government authorities and Parliamentarians have a better realization of human rights can they be more willing to accept and implement the Commission's recommendation and can we expect the Commission's reports to be debated in Parliament.²

More recently, Suhakam has again expressed its disappointment that its annual reports have not been debated in parliament.³

1 According to Section 21(2) of the Human Rights Act 1999, "The report shall contain a list of all matters referred to it, and the action taken in respect of them together with the recommendations of the commission in respect of each matter".

2 Suhakam Annual Report 2002, p. 110.

3 Suhakam commissioner Datuk Ranita Mohd Hussein's comments in the *New Straits Times* (April 20, 2006).

The government's response to Suhakam Annual Report 2003⁴ was included in the commission's Annual Report 2004. The main issues raised in the 2003 report⁵ were freedom of assembly, detention without trial, law enforcement and freedom of the press.

Freedom of assembly

Suhakam's main concern with regards to the freedom of assembly is that non-governmental organisations continue to face problems in exercising their right to assemble to discuss issues of public interest. One such incident was when the police rejected the All Women's Action Society's (AWAM) application for a permit to hold a peaceful assembly in Bangsar, Kuala Lumpur. However, AWAM went ahead and held the assembly without a permit. Nevertheless, the police exercised restraint and did not forcefully disperse the crowd on the grounds that it was an unlawful assembly. Although the police's action is admirable, there is still room for improvement.

The police should not have rejected AWAM's application for a permit solely on the grounds of traffic congestion and public order without assessing the situation properly. Firstly, the proposed gathering was to increase public awareness on rape and violence against women, which are public interest issues. One way to increase public awareness on a particular issue is to have a gathering at an open area where there is a concentration of people from all walks of life, for example near a popular shopping complex or restaurant. It would defeat the purpose of raising public interest issues if such a gathering is held in a closed area, as suggested by the police. How are ordinary people expected to be aware of the issue if the campaign is restricted to a closed area? One certainly would not be able to convey the message to a broad cross section of society under such circumstances.

Suhakam recommended in its Annual Report 2001⁶ that the police identify public places of different sizes or any "*ruang luar binaan*" at various locations for public assemblies. Suhakam suggested that the police maintain a discreet presence, concentrating on minimising disruption to traffic, commercial life and business and

4 Annual Report 2004, p. 244.

5 Annual Report 2003, pp. 17-22.

6 Suhakam Annual Report 2001, p. 10. See also Suhakam's recommendation in the Annual Report 2003, p. 183.

ensuring free movement of other users of public space. Suhakam's recommendations were not accepted. Instead, the police identified a closed space. They also refused to consider that if discreet police presence is maintained, their main concerns, as contained in the government's response, could have been tackled.⁷

Secondly, the police should appreciate and understand the issue at hand before deciding to reject an application for permit. The issues are rape and violence against women. It is difficult to understand how discussing such issues could lead to public disorder or disturbances. The issues raised by AWAM were certainly not a threat to national security. Thus, the police's reasons to reject the permit are indeed mind-boggling. The government's response⁸ was lukewarm and merely 'rubber stamped' whatever the police seek to do. The government did not see it important to at least comment on Suhakam's recommendations, linking it to police findings and then responding objectively whether there were any excesses in not granting AWAM the permit.

Detention without trial

Detention without trial continues to be a thorny issue in Malaysia. Suhakam has reiterated several times that detention without trial is an infringement of human rights and inconsistent with the Universal Declaration of Human Rights (UDHR). Although Suhakam has recommended that the Internal Security Act 1960 (ISA) be repealed and replaced with a more comprehensive legislation that balances the exigent needs of the state to quell threats to national security and at the same time is consistent with current human rights standards that protect civil society from abuses and excesses of executive power, the government has not taken any positive step. At the very least, Suhakam suggested that the ISA should be reviewed but the government has not been forthcoming.

The government has been defensive in its response to Suhakam's observations in Annual Report 2003, implying that the detainees' complaints are baseless.⁹ The least the government could have done was to investigate each complaint to determine whether there was any abuse of power by the detaining authority. The

7 Suhakam Annual Report 2004, p. 246.

8 Ibid. p. 247.

9 Suhakam Annual Report 2004, pp. 251-254.

details and outcome of the investigations could have been itemised in the government's response. This information could have presented a broader picture of the issues involved, thus enabling civil society to have a better understanding and to make its own judgment. More importantly, it would promote transparency on the part of the detaining authority and the government.

Besides being defensive, the government's response only restated the policies of the Prisons Department and referred Suhakam to the Internal Security (Detained Persons) Rules 1960 as though the commission needs to be re-educated on the provisions. One consolation is that the detaining authority has now increased the duration for family visits from 30 to 45 minutes although no amendment has been made to the Lock-Up Rules 1960.¹⁰ With regards to the complaint about unreasonable prices of food sold in the detention centre's canteen, there was no response from the government.

With the recent decision of the Federal Court in *Mohd Ezam bin Mohd Noor v Ketua Polis Negara & Other Appeals*,¹¹ Suhakam can breathe a sigh of relief as the celebrated decision has put in place the important principle of check and balance in preventive detentions. The court held that although it would not question the decision of the government as to what constitutes national security, it would nevertheless examine whether the decision to detain is based on national security concerns. The court held that the appellant's detention was *mala fide* as it was made with an ulterior motive, which had nothing to do with national security. This decision might have prompted the release of four '*reformasi*' activists in June 2003 and 19 ISA detainees in November 2003.¹²

It is hoped that Suhakam will continue to pressure the government to replace the ISA with a balanced legislation that is consistent with human rights standards.

Law enforcement

Continuing Remand Order: Suhakam had expressed concern over "roadshow

10 Suhakam Annual Report 2002, p. 29.

11 [2002] 4 MLJ 449

12 In a press release on Sept 17, 2002, Suhakam recommended that the government should review the detention orders of four others held under the ISA following the decision of the Federal Court (Annual Report 2002, p. 114).

remands”, i.e. the practice of remanding a suspect in police lock-ups continuously in different jurisdictions purportedly to assist investigations into alleged criminal acts.¹³ Firstly, the response from the Office of the Chief Registrar of the Federal Court is lauded. The Chief Justice issued a practice directive to all magistrates hearing remand applications, outlining the steps that must be followed before granting remand orders to the police. More importantly, the practice directive also listed the procedures the police must observe before applying for a remand order. The practice directive is pivotal and timely since it promotes accountability on the part of the police and the legal services.

It is hoped that the practice directive will prevent the ‘blind’ issuance of remand orders. However, it must be noted that under the Criminal Procedure Code¹⁴ it is compulsory for the investigation officer to hand over his/her investigation diary to the magistrate for scrutiny at a remand hearing. The magistrates often ignore this statutory requirement at remand proceedings. The importance of this requirement is also not reflected in the response by the Chief Registrar. ‘Road show remands’ will be eliminated if this requirement is faithfully adhered to.

Deaths in police custody: The Home Ministry’s response is shocking and incredulous. Suhakam had expressed its concern that the number of people dying in police custody was on the rise, i.e. 425 detainees died under detention between October 2002 and July 2003. The ministry responded that there were only 38 reported cases of death under police custody between 2002 and 2003.¹⁵ The ministry saw it fit to say that “the deaths had nothing to do with the police”.

When a person is in the custody of the police, it is often believed that he/she is in ‘safe hands’. But with the number of people dying when in police custody in recent years, this impression is no longer true. The ministry stated that 29 detainees died as result of illnesses. It did not specify the illnesses and whether there was any attempt made by the police to send the detainees for treatment.

Any police officer would know that signs of any illness would appear very much earlier. This information can be gathered from the detainees themselves when they complaint to the police officer in charge of the lock-up about the illness or from their family members. The fact is detainees do not just drop dead soon after they

13 Ibid., pp. 19-20.

14 Section 117(1) of the Criminal Procedure Code.

15 Suhakam Annual Report 2004, p. 255.

are put in the lock-up. As such, the ministry should not absolve the police of any wrong doing by merely stating the police were not connected to these deaths. The deceased were in police custody at the time of death and the police personnel should be answerable for any act of abuse or omission.

Suhakam has made some suggestions about improving the Lock-Up Rules 1953.¹⁶ Among others, it recommended that every prisoner be allowed to wear his own clothing or be provided with clothes suitable for the climate and adequate to keep him in good health. It was found that male detainees were dressed only in their underwear in police lock-ups. Suhakam also observed that the detainees were not provided with blankets and mattresses. This is contrary to Rule 13 of the Lock-Up Rules that requires every prisoner to be supplied with bedding.

These recommendations by Suhakam are intended to ensure that a detainee is in good health while in detention. Therefore, if a detainee dies when in police custody, is it not correct to assume that these simple measures as suggested by Suhakam was not followed or put into place? For example, if a detainee with a history of bronchial asthma (a common illness) is kept in the lock-up only in his underwear and forced to sleep on the cold cement floor without a mattress and blanket, this can trigger an asthmatic attack depending on the severity of the detainee's condition. The lock-up conditions can also contribute as precipitant factors for asthma attack which can be fatal. The factors are cold air and allergens (dust and mites) in the lock-up.

It is not known how often the Health Ministry's officers inspect the police lock-ups to see whether the space, light, ventilation, hygiene and sanitary facilities are adequate for detaining people. Regular health inspection is necessary. For example, if there is overcrowding, certain contagious diseases like tuberculosis, pneumonia, fungal infections and scabies can be easily transmitted from one detainee to another. If ventilation is poor due to overcrowding in the lock-up, it can precipitate suffocation especially for detainees who are asthmatic. Poor sanitation can lead to urinary tract infections and worm infestations.

It is suggested that the police should collect information on the medical history of every detainee from the detainee himself and his family members before placing him in the lock-up. Security should also be increased to prevent fighting in the

¹⁶ Suhakam Annual Report 2002, pp. 38-39.

lock-ups. Overcrowding in the lock-ups can lead to fights among detainees and possible deaths. Suicides in the lock-ups are a cause for concern. Have the police taken adequate measures to prevent self-harm in the lock-ups? Do they have experienced officers to deal with detainees who display suicidal tendencies? Again, the ministry's responses to these issues were not satisfactory. The ministry cannot say that the police are completely blameless for these unfortunate incidences in their own lock-ups.

It is not known how many of the 29 detainees who allegedly died of diseases had asthma or other chronic illnesses. The analogy and examples given earlier seek to show how important it is to ensure that the conditions in the lock-up are safe and healthy. We do not know whether the Home Ministry had taken these issues into account before concluding that the police are not connected to the deaths of the 29 detainees. If it had, the ministry's conclusion might have been very different. It is incumbent on Suhakam to pursue the matter intensely and seek some answers from the police and the ministry.

Freedom of the press

Press freedom continues to be a controversial issue. Repressive laws like the Sedition Act 1948, Official Secrets Act 1972 (OSA) and the Printing Presses and Publication Act 1984 (PPPA) are still being used to curtail the right to free speech and a free press. There is an urgent need for Suhakam to call for the repeal of the Sedition Act 1948 since there is an alternative provision in the Penal Code to deal with racial disturbances as a result of irresponsible or inflammatory speech or writings.¹⁷

It is clear that the Act has been used to stifle legitimate criticisms against the government on important public interest issues. Examples of such abuses are the raiding of the office of the online news website Malaysiakini.com in January 2003 for publishing a letter which was alleged to be seditious, the arrest of a prominent opposition leader for allegedly distributing seditious material concerning the 'Merdeka Constitution' and the 'Islamic State', and more recently the threat by Minister in the Prime Minister's Department Datuk Seri Nazri Aziz that the Sedition Act would be used against non-Muslims who made comments that might be construed as "interfering" in matters concerning Islam. The non-Muslims were in

17 See Section 505 (b) & (c) of the Penal Code (Act 574)

fact expressing concern over a number of recent developments – such as the M. Moorthy case and the requirement that non-Muslim women police officers must also wear the headscarves during official parades – that intruded into their rights.

Suhakam merely emphasised the importance of freedom of speech and the press. In reality, such incidents continue unabated. These repressive laws have created a ‘culture of fear’ among Malaysians, especially in civil society, that they would be incarcerated if they spoke their mind on any issue. Despite using such laws which severely restricted the freedom of speech and the press, and the raid on Malaysiakini’s office, the Home Ministry responded to Suhakam that the government has never restricted press freedom in Malaysia.¹⁸ This is indeed shocking.

There is clearly no attempt to review the PPPA and the OSA or to enact a Freedom of Information Act. Suhakam and civil society¹⁹ have repeatedly called for the enactment of the Act. In the final analysis, it is ‘status quo’ for the freedom of press and speech.

Freedom of religion

It is regrettable that Suhakam did not highlight the issue of freedom of religion in its Annual Report 2003. This is a perennial problem, which has affected Malaysians from all walks of life. The government’s response in Suhakam’s Annual Report 2003 appears to confirm that Malaysia is indeed an Islamic state.²⁰ It based its conclusion on two main considerations. Firstly, that Malaysia was formed by Muslims and secondly the positions of Head of State and head of government are held and controlled by Muslims. These comments show its ignorance of the provisions of the Federal Constitution, the circumstances that led to the drafting of the *Merdeka* constitution and the decision of the Supreme Court in *Teoh Eng Huat v Kadhi, Pasir Mas* where it held:

The Malaysian Constitution was not the product of overnight thought but the brainchild from U.K, Australia, India and West Pakistan, known commonly as the Reid Commission. Prior to the finding of the Commission, there were negotiations, discussions and consensus between the **British Government,**

18 Suhakam Annual Report 2004, p. 257.

19 For example, see ERA Consumer Malaysia president N. Marimuthu’s opening remarks at the Proceedings of the National Consultation on Suhakam on May 5, 2001.

20 Suhakam Annual Report 2003, p. 285.

Malay Rulers and the Alliance Party representing various racial and religious groups. On religion the Commission submitted:

169. We have considered the question whether there should be any statement in the Constitution to the effect that Islam should be the State religion. There was universal agreement that if any such provision was inserted it must be made clear that it would not in any way affect the civil rights of non-Muslims. In the memorandum submitted by the Alliance it was stated:

“...the religion of Malaysia shall be Islam. The observance of this principle shall not impose any disability on non-Muslim nationals professing and practicing their own religion and shall not imply the State is not a secular state.....The majority of us think that it is best to leave the matter on this basis, looking to the fact that counsel for the Rulers said to us ‘ it is Their Highnesses’ considered view that it would not be desirable to insert some declaration such as has been suggested that the Muslim faith or Islamic faith be the established religion of the Federation. Their Highnesses are not in favor of such a declaration being inserted...”

Further, it is important to bear in mind that the position as mentioned above was reached after careful negotiations behind the scenes between the constituent parties of the Alliance²¹ and can be described as a *social contract*.²²

It is therefore important for Suhakam, as the promoter and protector of human rights of the Malaysian people, to put the record straight by impressing on and reminding the government that our constitution is a secular one and that the nation was formed mainly due to the efforts of all ethnic groups in the country. The Alliance Party representing the main ethnic groups in the country had successfully negotiated and concluded the Alliance memorandum which contained important proposals pertaining to religion of the federation and Malay special privileges to the Constitutional Conference in London which ultimately led to the independence of Malaya and the creation of the Malaysian Federal Constitution. The negotiations between the component parties of the Alliance which led to the creation of the Alliance Memorandum “became in effect the cornerstone of nation and the Merdeka

21 A coalition of political parties representing the interest of the Malays (UMNO), Chinese (MCA) and Indians (MIC) formed before Malaya attained its independence in 1957.

22 Harding, Andrew (1996). Law, Government and the Constitution in Malaysia, *Malayan Law Journal*, p. 29.

constitution”.²³ Thus, it is important that the *social contract* is respected and safeguarded.

Conclusion

Many of the responses by the government are far from satisfactory. Suhakam should not just sit back. There have been no significant change in the situation of human rights in the country. What we have seen are merely cosmetic changes. Suhakam needs to do more for human rights in the country.

Jeyaseelen Anthony is a council member of ERA Consumer Malaysia and the legal advisor to the Federation of Malaysian Consumer Associations (FOMCA).

23 Ibid., p. 29.

Civil and political rights after five years of Suhakam

Seah Li Ling

This paper evaluates Suhakam's performance in the five years after its establishment with regards to the development of civil and political rights in Malaysia. The first part looks at Suhakam's views, position and recommendations on major issues involving civil and political rights. The second part will examine the commission's performance and efficiency to see if it has achieved its objective to promote human rights in Malaysia. Based on these observations, the third part will briefly discuss the challenges confronting Suhakam in upholding human rights principles and justice.

Detention without trial

The government has absolute powers to detain individuals without bringing them to court under these laws: the Internal Security Act 1960 (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EO) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA). Under the three laws, suspects can be detained for an initial 60 days, ostensibly for purpose of investigation. The authorities are not required to obtain a judicial order for the detention. After the "interrogation" period, the Internal Security Minister has the discretion to issue a two-year detention order which can be renewed indefinitely.

According to official statistics, 10,663 people were arrested and 4,327 detention orders were issued under the ISA between 1960 and May 2005. As of Dec 31, 2005, a total of 107 were held under the ISA in the Kamunting Detention Centre. Although not as widely-known, the number of EO and DDA detainees is in fact more than those held under the ISA. From 1998 to May 2005, the authorities arrested 3,019 individuals under the EO and 1,511 detention orders were issued. As for the DDA, 15,153 people were arrested and 4,902 detention orders were issued from 1998 to February 2005.

While acknowledging the role of the state in maintaining national security and protecting people from violent criminals, Suhakam has repeatedly stressed that

detention without trial is a violation of human rights. The commission holds that detention without trial denies individuals the right to personal liberty, the right to a fair trial and the right to be presumed innocent until proven guilty. It also noted that detaining individuals in undisclosed places and without access to the outside world poses the inherent danger of abuse of power, including the use of torture or other cruel, inhuman, or degrading treatment during interrogations.

Suhakam recommends that ISA be replaced with a new comprehensive law which addresses threats to national security, including terrorism, without jeopardising international human rights norms. It is recommended that under the new law, *inter alia*, offences be specifically defined; detentions for investigative purposes be limited to 29 days and remand orders must be approved by a high court judge. In addition, interim amendments to the ISA had also been proposed which included a clear definition of the criteria for detention, allowing judicial review of detention orders, and reducing the detention period to three months after which a detainee must be charged or released.

Suhakam Annual Report 2004 recorded mixed developments pertaining to the ISA. Negative developments included the increase in the number ISA detainees (113 people were detained under the ISA as of Dec 15, 2004 compared to 97 as of Dec 31, 2003) and new cases of persons being detained for allegedly forging documents. The report also highlighted the transferring of some detainees to an unknown place allegedly for the purpose of being “turned over” and brainwashed. On a positive note, Suhakam applauded the government’s undertaking that intermittent amendments would be made to the ISA to make it “friendlier” and more “transparent.”

Nevertheless, Suhakam’s position on preventive detention has not always been consistent. At the Malaysian Human Rights Day Conference in September 2004, Suhakam chairman Tan Sri Abu Talib Othman, citing Article 29(2) of the Universal Declaration of Human Rights (UDHR),¹ said the commission was not against preventive detention but recommended that detainees be charged and allowed to present their cases in court.

1 Article 29(2) of the UDHR stipulates that “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Police brutality

Abuse of power and brutality of enforcement agencies remain a critical issue in Malaysia. Over the years, there has been an increase in complaints over deaths in police custody, abuses in lockup and other forms of police violence. In recent years, abuse of power by personnel from other enforcement agencies – including RELA and religious and immigration departments – has become alarming.

Suhakam indicated that complaints against police, including the abuse of power, police inaction and police violence, topped the list of complaints it received in 2004. Out of the 614 complaints Suhakam received in 2004, 98 cases were against the police. To address the issue, the commission proposed that an independent tribunal be set up to probe allegations of human rights abuses against the police. In addition to mandates to investigate and make recommendations, Suhakam also suggested that the tribunal should be granted powers to monitor the implementation of its recommendations with regards to police misconduct and neglect of duty.

Suhakam saw the establishment of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police as a timely move. In June 2004, Suhakam submitted a memorandum to the Royal Commission, highlighting issues such as deaths in police custody, deaths by police shooting, police brutality, abuse of remand procedure, rights of minors in detention, freedom of assembly and code of ethics of police personnel. Suhakam's particular concerns were police disrespect for child rights and degrading treatment of children in detention. It urged the police to abide by international human rights standards in handling child detainees. Suhakam also recommended that minor detainees should be granted police bail; the authorities are obliged to notify parents or guardians of the child immediately upon the arrests; and specialised police officials and unit should be designated to handle minor offenders.

On the Criminal Procedure Code (CPC), Suhakam proposed an amendment to the legislation for mandatory inquiry into every case of death in custody and from police shooting. In addition, the commission announced in December 2005 that it would hold a public inquiry into every custodial death. Also of Suhakam's concern is "chain-smoking" remand by abusing Section 117 of the CPC. By taking suspects to magistrate's courts in different districts to obtain consecutive remand orders, the police have detained numerous persons for excessively long periods. As a remedy, Suhakam recommended to the government to amend the clause to ensure

that a remand order is made only upon sufficient justification linking the detainee to the offence being investigated.

Freedom of speech and expression

In its report titled “A Case for Media Freedom,” which was released in August 2003, Suhakam recommended that the Printing Presses and Publications Act 1984 (PPPA) and the Official Secrets Act 1972 (OSA) be reviewed. It also called for the repeal of provisions in these Acts used by the government to restrict press freedom, particularly the Home Minister’s absolute discretion in approving printing and publishing licences. In April 2005, Suhakam chairman Tan Sri Abu Talib Othman reiterated that the PPPA was outdated and was not appropriate at a time when press freedom was internationally acknowledged as a fundamental human right. In addition, the commission also proposed the enactment of a freedom of information law given “transparency and accountability are the hallmarks of a truly democratic society.”²

The government, on the contrary, held that printing and publishing permits are granted as privileges and not as rights.³ It also argued that press freedom is not an absolute right and none of the countries in the world, including the developed ones, practise absolute press freedom.⁴

Furthermore, Suhakam recommended the establishment of a media council to enforce professional standards on media workers. While various stakeholders have yet to reach a consensus on the proposal,⁵ Suhakam unilaterally announced in August 2004 the establishment of a media complaints committee to investigate and act on complaints of unethical media practices. The move came under fire from media practitioners for failing to consult interested parties and participants of a consultation held in January the same year. The commission stressed that the committee is only meant to act as a mediator between the complainant and media organisation.

2 Suhakam Annual Report 2004.

3 Suhakam Annual Report 2003.

4 Suhakam Annual Report 2004.

5 In particular, whether the media council should be a statutory body or self-regulated mechanism.

Law and the judiciary

On Aug 20, 2005, Suhakam made a submission to the Parliamentary Select Committee on the proposed amendments to the Penal Code (Amendment) Bill 2004 and the Criminal Procedure Code (Amendment) Bill 2004. The commission pointed out that under the proposed amendments to the CPC, the definition of “terrorism offence” as a “terrorist act or terrorism financing offence” is imprecise. The ambiguity of the definition renders the effects of words “terrorist act” and “terrorism financing offence” in the Penal Code too broad.

In April 2005, Suhakam organised a forum on “The Right to an Expedious and Fair Trial.” Abu Talib said at the forum that the appointment of judges was one of Suhakam’s main focuses in the endeavour to improve the people’s right to speedy and fair trials. While acknowledging complaints and glitches over the process of judicial appointments, Abu Talib stressed that he did not mean current judges were incompetent.

In July 2005, Suhakam released a report on “The Right to an Expedious and Fair Trial.” Suhakam recommended that an independent judicial commission (IJC) be set up to appoint members of the judiciary, as well as to audit and renew judicial appointments. Suhakam’s position is that an independent statutory body would facilitate transparency and accountability in judicial appointments, which in turn would enhance the public’s confidence in the integrity of the judiciary. Currently, the chief justice discreetly consults the Bar Council and Attorney-General’s Chambers before making recommendations to the prime minister.

Indigenous rights

In February 2004, Suhakam released its report on “The Human Rights of Orang Asli” and called for the Federal Constitution to be amended to recognise Orang Asli as *bumiputera*. The term Orang Asli refers to all indigenous people in Malaysia (including Sabah and Sarawak), whereas Orang Asli specifically means the indigenous people of Peninsular Malaysia. Section 153(1) of the Constitution only accords *bumiputera* status to Malays and indigenous peoples of Sabah and Sarawak.

Suhakam also recommended an urgent review of the National Land Code, the Sarawak Land Code, and the Sabah Land Ordinance to ensure proper recognition

of right to native customary land. In addition, the commission proposed amendments to the Orang Asli Act 1954 so that the indigenous peoples are granted permanent land titles instead of 99-year leases.

Suhakam's other suggestions were a minister be designated to handle Orang Asli affairs; a department in charge of affairs of Orang Asli in Sabah and Sarawak be established and manned by the indigenous people; political representation for native communities; consultation with the communities on land development projects and issue of resettlement; right to choose and practise religion of their own choice; acknowledgement of Orang Asli culture as an aspect of national culture; improved access to free health and education; and more systematic registration of their birth and citizenship documents.

In May 2005, following a visit to Orang Asli villages in Pahang, Suhakam chastised the Department of Orang Asli Affairs (JHEOA), the National Registration Department (NRD) and the welfare department for their failure to take care of the Orang Asli's basic needs including medical care. It highlighted a number of acute problems facing the community, including poor transportation, access and finances. The Suhakam delegation revealed that 4,000 Orang Asli children in the state did not have birth certificates. Without valid documents, the status of these children bordered on statelessness and they were deprived of basic rights of citizens such as education. Although some children were registered later and allowed to go to school, the absence of an appropriate mechanism to accommodate late learners has resulted in high drop-out rates. Under the current education system, children are placed in classes based on their age rather than their educational attainment.

Suhakam's report on the Human Rights Approach to the Millennium Development Goals (MDGs) (released in October 2005) further revealed that the Orang Asli community recorded the highest incidence of hardcore poverty in the country. Based on a 1997 census, 81.45 per cent of the 18,234 Orang Asli families were categorised as poor, while 48.85 per cent were hardcore poor. Furthermore, 49.4 per cent of the Orang Asli did not receive electricity supply while 53 per cent did not have access to clean water supply.

Trafficked persons

Suhakam released its 159-page report on trafficked victims in January 2005. The report recorded real-life accounts of women who were lured to Malaysia with

promises of jobs but ended up being forced into prostitution. It also revealed that many women who had escaped from their captors were held in detention centres for not possessing valid travel documents. According to the statistics from the Internal Security Ministry, 16,425 foreign women were detained on suspicion of prostitution between 2002 and 2004.

Sadly, existing laws and judicial practices do not provide necessary protection and channel to seek redress for this vulnerable group. Specific trafficking laws are absent. Many victims are detained in the prison for years as witnesses against their traffickers pending court proceedings. Slow and delayed case disposal aggravated their ordeals. Worse, many traffickers have been acquitted thanks to skewed interpretations of the law by public prosecutors and the courts.

Suhakam calls for the enactment of specific legislation to address the issue. It also proposed that those who frequent prostitutes be penalised to discourage trafficking of women into the country. Existing law only stipulates punishment for victims and not patrons of prostitution. Suhakam recommended that traffickers, their agents and owners of entertainment premises which are involved in prostitution be prosecuted as well. Even though the Foreign Ministry acknowledged Suhakam's recommendation to sign the Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air, it stated that a thorough study should be made before committing to the protocol.

Major setbacks

(i) Legislative limitation

Lack of enforcement power has been a vital setback for the commission. The Human Rights Commission Act 1999 stipulates that Suhakam is a purely advisory body and the government has no obligation to accept its recommendations. Every year, the commission submits an annual report to parliament. Invariably, the opposition's motion to debate these reports has been dismissed over the past few years. The government's indifference to the commission is evident again in its failure to respond to Suhakam Annual Report 2004.⁶

6 Contrary to earlier practices, the government's response to Suhakam's previous year's report is not included in Suhakam Annual Report 2005. It is learned that the government has not given its response.

The commission has repeatedly called for a review of the Act to grant more power to Suhakam to enforce the observance of human rights principles. In December 2005, commissioner Prof Datuk Hamdan Adnan reportedly said Suhakam would propose amendments to the legislation to accord it quasi-judicial powers. However, none of the calls was taken seriously by the government. On the contrary, in March 2006, Minister in the Prime Minister's Department, who is *de facto* law minister, Datuk Seri Nazri Abdul Aziz blatantly proclaimed in his parliamentary reply that "(t)he Government has never suggested that Suhakam be given any teeth⁷".

Without any enforcement power, Suhakam's advisories are almost always ignored. For example, the police refused to release the result of a DNA test to the family of Francis Udayapan, a detainee who died under controversial circumstances, despite the commission's call. Neither have the police taken heed to the commission's recommendations with regards to freedom of assembly. Suhakam's report on Freedom of Assembly in 2001 clearly states its recommendations to the police on appropriate methods to use to disperse crowds at demonstrations or gatherings. Suhakam suggested that water cannons should be used with restraint; orders to disperse should be given three times at 10-minute intervals; and the crowd should be given time to disperse. The guidelines have rarely been followed. Instead, the police continued to use highhanded methods to break up peaceful assemblies.

(ii) Modus operandi – non-confrontational

Despite its stances on some difficult civil and political rights issues, Suhakam's preference for a non-confrontational approach to many controversial questions is evident. The commission prefers to work within the government's bureaucratic framework instead of going against the will of the Malaysian authorities. Indeed, Suhakam chairman Abu Talib's proclamation in May 2004 that the commission would begin to focus even more on public education and economic, social and cultural rights clearly vindicated this view.

In practice, Suhakam seems to put in much more effort in organising workshops, consultations, forums and conferences than direct intervention into actual human rights violations. Further, the commission has also placed its priority on less controversial issues such as native customary rights, rights of disabled and marginalised groups, housing rights, conditions of detention, human rights education and training for police.

7 "Suhakam never meant to have teeth," *The Star*, March 28, 2006.

Indisputably, proper and adequate attention must be given to all these issues. However, it should not be a pretext to shy away from most fundamental human rights issues including right to justice, freedom of expression and freedom of assembly and association. Indeed, the commission needs to be aware that without rectifying the situation of basic political and civil rights, improvement of other aspects of human rights could be illusive.

(iii) Resistance and non-cooperation of the government

Over the years, Suhakam's initiatives to promote human rights have been marred by resistance from the government and its agencies. As Abu Talib conceded at the Malaysian Human Rights Day Conference in September 2004, the commission rarely got to meet with government decision-makers. Instead, officers without any binding powers are sent to take notes and to report back on the meeting. In January 2005, Suhakam even considered taking legal action to ensure that government agencies attended its workshops. This further vindicated the fact that Suhakam has not been taken seriously.

In September 2005, Suhakam's request to monitor elections in public universities was again turned down, though not directly. Only 10 of the 17 universities invited sent their representatives to the meeting held by the commission in August. Yet, the commission did not seem to be put off by the response. It announced after the meeting that a majority of the public universities had "no objection" in allowing the commission to monitor campus elections. The reality, however, was the contrary. Suhakam's written request to the Ministry of Higher Education seeking permission for the election monitoring was not answered until the eleventh hour, i.e. two days prior to the campus elections. No permission was granted after all. Credible source also revealed that Suhakam officers who went to monitor the election in Universiti Kebangsaan Malaysia (UKM) were turned away by the university authorities.

(iv) Lack of human rights perspective

Under the Human Rights Commission of Malaysia Act 1999, commissioners are appointed by the Yang di-Pertuan Agong (King) on the recommendation of the Prime Minister.⁸ The process of selection and appointment is far from transparent and credible, resulting in unpromising composition of the commission. This, in

8 Section 5(2) of the Human Rights Commission of Malaysia Act 1999.

turn, substantiates the perception that the establishment of Suhakam was essentially a window dressing.

Among other things, civil society strongly objected to the appointment of Abu Talib as Suhakam chairman in 2002, considering his role in drafting laws and defending cases that violated human rights principles during his tenure as the Attorney-General. At the same time, the terms of respected commissioners Tan Sri Anuar Zainal Abidin and Mehrun Siraj were not renewed. Similarly, the term of Prof Hamdan Adnan, who has been widely acknowledged as the most diligent commissioner, was not extended this year. On the contrary, former civil servants with little or no background in human rights advocacy were appointed and commissioners who have barely been seen or heard during their tenure were retained.

Generally, civil society has been criticising that Suhakam commissioners and officers do not have adequate human rights knowledge and perspective. One salient instance was the commission invited former Prime Minister Tun Dr Mahathir Mohamad to deliver a keynote address at its Malaysian Human Rights Day Conference on Sept 9, 2005 despite the numerous human rights violations during his 22-year tenure.

Often the commission failed to look into issues from a broader human rights perspective. Many complaints were simply categorised as not violations of human rights. For example, only 721 of 1,342 complaints Suhakam received in 2005 were considered as cases involving human rights violations. Suhakam tends to examine complaints/issues solely from a legal perspective. Furthermore, it refrains from investigating cases that were taken to court without considering if they involve any other form of violation. For instance, a group of former plantation workers had accused the police and local authorities of using excessive force to evict them and demolish their houses. Suhakam declined to probe the complaint on the ground that the complainants pursued their housing right in the court.

Another example was the commission's inaction on a complaint lodged by followers of self-styled spiritual leader Ayah Pin. The government has labelled Ayah Pin and his followers as members of a "deviant" group. The authorities raided their commune in Besut, Terengganu, arrested dozens of the villagers and eventually demolished the structures in the commune. Ayah Pin's followers took their plight to the commission's attention, seeking investigation into alleged human rights violations by the authorities. Suhakam took no action and neither did it visit the commune. The commission initially claimed that information provided by the complainants

was inadequate. Later, it said no action would be taken because the case has been referred to the court and all the replicas were built without permission from the authorities.

(v) Inefficiency and slow response

In general, Suhakam is slow in responding to human rights violations. In many cases, the commission does not respond at all or only reacts when urged by civil society. Suhakam typically claims that commissioners need time to discuss the matter further. In reality, the commissioners meet only once a month. Though the commissioners are paid RM7,000 plus allowances a month, they serve in Suhakam only on a part-time basis. Often, only few, if any, commissioners could be seen in Suhakam's office. An extreme case was no commissioner was found in the Suhakam office for several days after the Deepavali holiday to receive a report over a hunger strike launched by EO and DDA detainees in Simpang Renggam Detention Centre in November 2004.

Another example of Suhakam's inefficiency was the delay of its annual report for the year 2004. Under the law, the commission is required to submit its annual report no later than the first meeting of parliament of the following year.⁹ The first parliamentary meeting of the year 2005 was from March 21 to April 28. The report was only tabled in parliament in June 2005 – a delay of two months. The commission claimed that it had submitted the report to parliament on April 6 and had no idea why it was not tabled. The fact is Suhakam had failed to complete and submit the report within the designated period.

Challenges

Overall, there has not been any significant improvement in the human rights situation in Malaysia even five years after the establishment of Suhakam. Major deficiencies, particularly the government's reluctance to implement Suhakam's recommendations as well as the incompetence of the commission itself continued to hinder Suhakam from effecting weighty and actual changes.

All setbacks need to be rectified to improve Suhakam's performance. Above all,

9 Section 21(1) of the Human Rights Commission of Malaysia Act 1999.

two imperatives require serious attention from the commission, as well as the civil society. Both involve the amendment of the Human Rights Commission of Malaysia Act 1999.

Firstly, a transparent process of appointment needs to be implemented in lieu of the current practice. Consultation with the civil society and right groups is crucial to ensure that only credible candidates with adequate experience and knowledge in human rights are selected.

The second pressing task is to lobby to amend the Act to accord Suhakam enforcement and prosecution power. It is apparent that without such power, it is almost impossible for the commission to move its agenda and hold the government and its agencies binding to Suhakam's recommendations.

It is precisely due to the difficult situation in Malaysia that persistent efforts and initiative are needed from Suhakam to address the major obstacles it is facing.

Seah Li Ling is the documentation and monitoring coordinator of Suara Rakyat Malaysia (Suaram).

A review of the Economic, Social and Cultural Rights Working Group's report

S. Arutchelvan

Suhakam's functions include undertaking research on economic, social and cultural rights, disseminating the findings, and conducting programmes, seminars and workshops. Its purpose is also to highlight the plight of vulnerable groups vis-à-vis their economic and social rights such as the right to adequate housing, healthcare and education. Vulnerable groups include the poor, single mothers, the elderly and people suffering from mental illness.

Suhakam has been carrying out these activities through a working committee called the Economic Social and Cultural Rights (ECOSOC) Working Group. Its functions include promoting higher standards of living and economic and social progress, and identifying solutions to national cultural and emerging issues.

The working committee was headed by Tan Sri Ramon Navaratnam and since May 2004, the number of members has increased from the initial four to six. The other commissioners in the committee were Dr Mohammad Hirman Ritom Abdullah, Datuk Dr Raj Abdul Karim, Tunku Nazirah Tunku Mohamed Rus, Datuk Choo Siew Kioh and Datuk Dr Sharifah Hapsah.

Lately, Suhakam has been focusing on more issues involving economic, social and cultural rights. This is a positive development as long as it is not a form of escapism to divert attention from the more sensitive civil and political rights issues.

Civil and political rights (CPR) and economic, social and cultural rights (ECOSOC) are the two pillars of the Universal Declaration of Human Rights. Neither is more important than the other. The ideal of human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy economic, social and cultural rights, as well as civil and political rights.

There has been some concern because the ECOSOC working committee chairman has stated several times that ECOSOC rights are more fundamental than CPR. He

reasoned that ECOSOC rights addressed the issue of food and poverty which was seen as more fundamental and important than issues such as individual freedom and rights to expression. This is a dangerous line to take especially because both these rights – ECOSOC and CPR – complement each other at every level. Similarly, the Malaysian government has used this argument to restrict CPR, asserting that there is a need for development rather than human rights.

Background of Suhakam's ECOSOC report

The ECOSOC Working Group's activities are featured in Chapter 7 of Suhakam's Annual Report 2004, covering nine pages. Other ECOSOC activities are mentioned in Chapter 2 (two pages) and in Chapter 3 (less than 20 pages). In total, the activities of this working group, based on paper value, covered about 30 pages or less than 20 per cent of the total activity of Suhakam. This is a fairly good coverage but the ECOSOC committee can play a much more important role as its functions and task portray. Since the working committee is mandated to cover a vast area, one cannot appreciate the fact that it has coordinated only three important tasks for the whole of 2004.

Universal mandates

Going by the United Nations standards, one would assume that this working group has been set up to specifically look into the rights under the Universal Declaration of Human Rights, especially on issues pertaining to the International Covenant on Economic, Social and Cultural Rights.

Thus, this working committee should ideally look into five important and critical areas: right to work, right to adequate standard of living, rights to adequate healthcare, right to education and right to culture.

This is a broad mandate and if we break down these rights further, one would expect Suhakam's working group to look into these specific areas:

Broad Areas	Specific Areas
Right to Work	<ul style="list-style-type: none"> • Rights to vocational training; • Just and favourable conditions of work; • Fair wages and equal remuneration; • Equal value of work without distinction of any kind; • Decent homes for workers; • Safe and healthy working conditions; • Equal opportunity for everyone to be promoted; • Rest, leisure and reasonable limitation of working hours, periodic holidays with pay, as well as remuneration for public holidays; • The right to form trade unions and join the trade union of choice; • Right to strike; • Right to social security, including social insurance; • Rights of working mothers; • Protection for child labour.
Right to Adequate Standard of Living	<ul style="list-style-type: none"> • Rights to housing; • Rights to clothing; • Rights to food – food distribution; • Environment.
Rights to Adequate Healthcare	<ul style="list-style-type: none"> • Highest attainable standard of physical and mental health; • Health accessibility for all.
Right to Education	<ul style="list-style-type: none"> • Compulsory and free primary education; • Higher education equally accessible to all; • Fundamental education shall be encouraged; • Improve school systems; • Improve material conditions of teaching staff; • Availability of technical and vocational secondary education.
Right to Culture	<ul style="list-style-type: none"> • To take part in cultural life; • To enjoy benefits of scientific progress; • Conservation, the development and the diffusion of science and culture.

Suhakam's activities

It is disappointing to note that Suhakam's working committee focused on only three activities in 2004: organising a seminar on right to adequate housing; a forum on trafficking of women and children; and a conference on Millennium Development Goals.

However, since most issues under ECOSOC rights are covered by the Millennium Development Goals (MDG), the working committee appears to be pursuing this strategy. It has set MDG goals, which are consistent with the Covenant on ESCR, as targets Malaysians should aspire to achieve.

In addition to the three activities, the working committee also indicated that it had held numerous talks and discussion on ECOSOC rights with government representatives and NGOs to create awareness.

Out of the 36 memorandums Suhakam received in 2004, only 14 touched on ECOSOC rights (38.8 per cent), while the rest focused on CPR.

Most memorandums on ECOSOC issues were handled by the Complaints and Inquiries Working Group rather than the ECOSOC committee. It is important and useful for the ECOSOC Working Group to deal directly with these issues as this will enable the committee to arrange meetings as well as organise relevant forums. Then there will be clear division of work. It appears that this working committee is not pro-active in pursuing the ECOSOC rights issues which come to Suhakam's doorsteps. One can learn the real problems and complications only by engaging directly in issues. Organising forums *per se* would be able to address the real issues faced by the vulnerable groups.

Housing rights

Suhakam held a one-day seminar on adequate housing as a basic right on Jan 15. Based on the deliberations, Suhakam published a comprehensive report on 'Adequate Housing – A Human Right', with a number of observations and recommendations. The report was circulated to the relevant government agencies with the hope that policy makers would implement the rights of the most vulnerable groups.

Among the recommendations were to simplify laws, policies and guidelines, supervise the implementation of housing laws, update lists of buyers eligible for low-cost housing, reduce the cost of labour, materials and infrastructure, hold dialogues on resettlement of squatters, formulate a national housing policy and instill awareness of a healthy environment. In summary, Suhakam called for the authorities to bear in mind that adequate housing should encompass security of tenure, accessibility to essential services, affordability, habitability, accessibility to all including persons with disabilities, location and cultural adequacy.

It is clear that the recommendations were not based on a rights perspective and some were mainly to protect the interest of house builders. Most speakers at the seminar spoke on issues which were not fundamental such as on problems faced by developers, house design and security features. The problems confronting the squatters, urban poor, transit house dwellers and other vulnerable groups were only discussed at the final session, giving an impression that these issues were either too sensitive to discuss in earlier sessions or they were not as important.

The most important issues a housing rights forum need to address are whether housing is a right and the challenges in fulfilling the right. The conference had too many things on the plate and key issues were watered down. Some key issues such as the failure in government housing planning, corruption and political interference in the allocation of low-cost houses were not addressed.

Most of the people who attended the forum were not really affected by the housing issues and were just filling the seats. Most groups directly affected by the housing issues did not take part in the forum or were not represented. A smaller meeting with the affected groups – such as urban settlers, the plantation workers, the longhouse transit dwellers, the poor staying under TNB power lines or along railway lines – would have been a worthwhile forum to resolve the more pressing issues faced by these communities. The forum also did not take a strong stand against some draconian laws used to evict the poor such as the Emergency Ordinance on Clearance of Squatters Act.

In fact, 2004 was a critical year with the government, especially the Selangor government, using high-handed methods to achieve the zero-squatter target by 2005. Even though enough houses were not built for the poor, the authorities pursued forced eviction strongly. The right to housing should have been a strong rallying point for Suhakam but it seems that it did not want to take on the government on critical or sensitive issues.

There was also no follow-up on the housing rights issues by the working committee. As stated in the report, the working committee had hoped the authorities would take into account several issues but there was no clear systematic campaign to ensure the rights to housing were protected. The other major shortcoming is Suhakam's reports are not debated in parliament and, thus, its actions are very academic. It is important for Suhakam to assert its rights and ensure that its recommendations are taken seriously and implemented by the government.

Trafficking of women and children

As a follow-up from its activity in 2003, Suhakam held dialogues with the police anti-vice unit, resulting in a forum on 'Trafficking of Women and Children – A Cross-Border and Regional Perspective', held in Kuala Lumpur on April 13-14, 2004. The forum was well-attended by government and NGOs representatives working on various aspects of trafficking such as migration, criminal justice, gender and human rights. The second task of the forum was to establish a network with people concerned with the issue of trafficking in women and children in the Asian region. A research was also conducted and based on interviews with trafficked women, Suhakam published a report on 'Trafficking of Women and Children' on Jan 27, 2005.

Suhakam, to its credit, made a wide range of recommendations. Among them was a proposal to set up a regional 'Trafficking in Persons' Information Centre to share information as well as build cooperation between government agencies and NGOs. There were also suggestions to set up a National Programme of Action and a National Task Force on Trafficking to draw up measures to create a trafficking-free environment. Another recommendations was for the government to ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (especially women and children), 2000.

There were also recommendations on actions which needed to be taken to ensure the safe return of the trafficked women and children and a voluntary repatriation programme where those rescued should be treated as victims of crime and not as criminals. Suhakam also called for stronger punishment for traffickers and their agents.

This working committee should also be credited for its efforts since 2003 in following

up and creating awareness on the issues. Among its achievements were to lobby the government to sign the Asean Declaration Against Trafficking in Persons, particularly women and children, on Nov 29, 2004. Also in line with Suhakam's recommendation, the government has gazetted five shelters for abused women in Selangor, Malacca, Pahang, Kelantan and Sabah. The centre in Selangor is mainly used to shelter foreign women, especially victims of human trafficking and others who have been forced into the sex trade.

The committee's success in this area was due to its constant follow-up actions. It is important for the working committee to have long-term planning and target rather than addressing issues on a piece-meal basis.

Although the NGOs generally think there is a lack of will, Suhakam's efforts has made some authorities to become more conscious of the need to differentiate between trafficking and prostitution. Suhakam has also been trying hard to persuade the government to ratify the UN protocol. Suhakam's success has been its ability to convince some authorities to re-look issues of trafficking. By publishing case studies, Suhakam has performed its duty well though real reform on the issue is still slow.

Millennium Development Goals

Millennium Development Goals were adopted by the United Nations General Assembly as part of the millennium declaration of September 2000. The MDG concepts encompass the values of freedom, equality, solidarity, tolerance, respect for nature and shared responsibility.

Suhakam's ECOSOC Working Group organised a conference on 'Human Rights and the Millennium Development Goals' in Kuching on Oct 12-13, 2004, which attracted the participation of representatives from the academia, government agencies and NGOs.

In reality, the eight Millennium Development Goals are good yard sticks and indicators. The goals are inter-related and could be used by the working group as a minimum standard to be achieved. It was also a good decision to hold the MDG conference in Sarawak as some of the issues raised are critical to the state.

The first goal is to eradicate extreme poverty and hunger. The second goal relates to the attainment of primary education for all children. The third goal is equal opportunities between men and women. Goals four and five are concerned with primary healthcare, in particular the reduction of child mortality and improvement of maternal health. The sixth goal is to curb the spread of diseases, in particular HIV/AIDS and malaria. Goal seven concerns environmental sustainability and goal eight gives importance to international relationships in development.

These goals can be seen as minimum standards but it is important to reflect on them together with the ECOSOC rights. Though Suhakam's working committee might have been excited to pursue the MDGs, there appears to be no long-term plans to improve ECOSOC rights in Malaysia. Since Suhakam commissioners' terms are limited to two years, it would be difficult to monitor beyond the period. The ECOSOC Working Group has to find ways to ensure continuity so that programmes started by a commissioner do not end when his or her term ends.

As a newly developed country, Malaysia can set higher standards than the MDGs in some areas. The working committee has identified several issues from the deliberations at the conference. Among them were inadequate social and economic facilities; severe malnutrition among children below the age of five; lack of awareness of health issues; outdated definition of official poverty line; deprivation of rights of native people in respect of customary land; higher dropout rate among male students; rural residents not aware of the importance of education; poverty among families living in interior regions; high maternal and child mortality rates among the Orang Asal; inadequate healthcare services in interior areas; inadequate care and nutrition for mothers and children; rise in the number of intravenous drug users, prejudice and discrimination towards people living with HIV/AIDS; high incidence of malaria in rural areas; influx of workers into agriculture areas; late diagnosis of diseases like tuberculosis in rural areas; use of dangerous toxic chemicals by industries; and land clearings were adversely affecting the ecological system.

Considering the magnitude of the complaints, one wonders how the ECOSOC working group is going to address all these issues.

Conclusion

Though ECOSOC rights cover a wide range of issues, Suhakam's working group seems to confine itself to a few areas. There is no proper planning and the committee has failed to address several important issues such as the right to work, education and health. Perhaps, these rights are covered by other working groups or as part of the MDGs.

The ECOSOC working group does limited work in comparison to the wide range of issues it covers. Its modus operandi appears to be same: organising forums and coming out with recommendations. After making the recommendations, there is little follow-up except for its lobbying against trafficking in women and children. It is also hesitant to take up pressing issues which are deemed sensitive to the state, as seen in the housing rights affair.

Some recommendations are impressive. But without real powers to implement them or to get parliament to debate them, these recommendations remain as an academic exercise. There needs to be long-term planning to achieve the MDGs. The working group's current strategies are just impressive indicators without real values.

S. Arutchelvan is a founder member of the Community Development Centre and the Plantation Workers Support Committee. He is also secretariat member of Suara Rakyat Malaysia (Suaram) on rights to justice and pro tem secretary general of Parti Sosialis Malaysia.

Rights of Persons with Disabilities – Accessibility to Basic Needs

Anthony Thanasayan

When the Human Rights Commission of Malaysia (Suhakam) was established by parliament in April 2000, the news did not only grab the attention of human rights campaigners throughout the country. Disabled activists – as well as ordinary people with various types of handicapping conditions – also sat up and took notice.

When I say “disabled,” I do not only refer to a group of handicapped citizens who have been affected by polio, spinal injuries, the deaf, blind and so on. I am also talking about those who became disabled later in life such as the elderly with Parkinson’s disease or patients who suffer from Alzheimer’s or arthritis, diabetes and a host of other physical or neurological conditions and problems. They are another group of disabled people that society frequently forgets when they say “disabled”. In many instances, they are seen as “non persons” and neglected in our society.

Then, there are also those who are profoundly disabled and sometimes have several handicapping conditions to deal with. These citizens and others across the nation rarely have the opportunity to come out and mingle with the rest of the public, whether they are kept in an institution or care centre, or they live with their families. They continue to stay virtually imprisoned in a society that seems to care more about tall buildings, high tech gadgets and high speed race courses than in providing simple and basic facilities to raise the quality of lives of such citizens.

Liberator of the handicapped

Against such a background, when Suhakam was set up five years ago it was no surprise that many of us had hoped it would be “the messiah” organisation that disabled Malaysians have been waiting and longing for to liberate them since the nation got its independence in 1957. After all, handicapped groups realised that Suhakam has the status as a fully government funded organisation. Should Suhakam

wish to give us a lending hand, it could rely on the full force of the government to give it the backing that it needed. Fact or fallacy, this was what we believed when Suhakam emerged on the scene.

In the early days of Suhakam's inception, issues such as medical attention for Datuk Seri Anwar Ibrahim, freedom of assembly, the Internal Security Act, and other mainstream topics took centre-stage. With Suhakam almost immediately tackling those heavyweight subjects, the disabled community figured it would take a while before the human rights commission would get down to discussing their issues.

However, to our surprise, it did not take too long when disabled groups were invited by Suhakam to share our thoughts with the organisation. These discussions (the two or three that I attended over the five years) were generally well conducted. I recall attending one session where a full day was given for disabled people to submit their views.

However, a few grassroots disabled activists did express their unhappiness, complaining that some Suhakam commissioners lacked tact and sensitivity because they cut them short when the disabled participants were trying to put a point across. Since disabled people rarely get a chance to voice their opinion on matters affecting them, it was not surprising that some disabled participants felt they should have been given more time to speak at the meetings.

No access for service dogs

The only occasion when I had a problem with Suhakam was when I wanted to take my service dog along to a meeting I was invited to. I tried explaining to the Suhakam commissioners about the need to have my animal assistant with me. Regretfully, I was never able to take my dog with me into the meeting room. I was told that Suhakam's building rules prohibited the presence of "pets". For me, it was a huge let down because Suhakam did not even seem to have the power to decide access rights for service animals even into its own building!

The only success I had in taking my service dog with me to a Suhakam-linked function was to the National Consultation on Suhakam organised by ERA Consumer Malaysia in a hotel in Ipoh on Sept 7, 2002. In fact, I found that it was easier for me

to engage in dialogues on disabled issues with Suhakam commissioners at ERA Consumer's yearly national consultation sessions on Suhakam where my disabled friends and I could put forward our questions to the commission without fear, compared to the events organised by Suhakam itself.

Other than these few encounters with Suhakam, I never had any dealings with the organisation again.

Is Suhakam a champion of the disabled?

When ERA Consumer requested me to write this report, I was very hesitant about the task. The reason being that I knew very little about what Suhakam was and is doing for the disabled – if it is doing anything substantial towards our cause at all!

This is such an irony because never does a day go by when there isn't a disabled cause for me and my disabled chums to fight for. Yet, none of us have the faintest idea about what Suhakam has been doing for the disabled.

Since I have been writing a weekly column on disability in a major national newspaper, now in its 10th year, one would think that our paths would cross often with me going to Suhakam for stories on its work with the disabled, and its commissioners seeking my views on disability issues. But it doesn't happen, folk!

Flipping over Suhakam's Annual Report 2004, I am very impressed with what the commission has done and the coverage it gave to disability issues since the organisation started. From definitions of disability to access to public transportation and the right to vote just like any other citizen, it appears that Suhakam has got it all right – on paper at least!

However, the challenge for the organisation now is, and should be, how it can best translate all those wonderful words into meaningful action for the disabled in Malaysia. A good example of what I mean is a recent incident that drew national and international attention when a local council slapped a warrant of arrest on a disabled woman for not paying her parking summonses. The council offered to reduce the fines but the disabled woman insisted that it had no right to charge her in the first place as the local authority had failed to provide a disabled friendly parking lot.

The woman subsequently won the battle. But not before the media had highlighted her plight which got the notice of several Members of Parliament who raised an outrage in the Dewan Rakyat. One of those at the forefront in denouncing the action of the local council was Women, Family and Community Development Minister Datuk Shahrizat Abdul Jalil, who demanded that “the disabled be treated with more dignity.”

Although a Suhakam commissioner had also expressed his disgust of the local council’s behaviour in the media, I was disappointed that the commission did not make any initiative to contact the victim and lend her support even though its latest “progress report” on the rights of persons with disabilities covers the topic of equality and non-discrimination.

It is also interesting to note that no women or human rights groups came forward to express their support for her which underscores the fact that disabled people are not only marginalised in society but also within the local human rights circle.

Personally, I would like Suhakam to include information on international documents on the disabled in its report in order to have an impact on its commissioners. Only then can the disabled realistically expect changes to come in society with the help of Suhakam. This will, of course, have to start with a change in mindset and by discarding negative views that the Suhakam commissioners might themselves unknowingly harbour towards persons with disabilities. We do not even know if every commissioner has personal knowledge and understanding of disabilities and the struggles the handicapped have to overcome. Never mind the fact that Suhakam has come up with thick and impressive files and manuals on disability over the five years. They are no good if whatever is written does not reach out to the masses.

Rather than relying on text book knowledge on disabilities and the pertinent issues, what is more important is Suhakam commissioners should make it a practice to meet disabled people personally or visit them in their homes, offices or hospitals regularly in order to get a first hand feel and understanding of what life is like in their shoes.

As a way forward in achieving this, I would like to recommend that Suhakam commissioners and others who wish to help the disabled should go on outings with the disabled to public areas. By doing so they will have an insight on the problems we face, ranging from inconsiderate Malaysians to lack of disabled friendly

and accessible features.

Suhakam should also set up a special permanent task force to look into the needs of the disabled. The task force should be headed by a disabled person, employed full time, so as to ensure continuity and comprehensiveness in the job.

Recommendations

These are some recommendations for Suhakam to consider in order to become more relevant to the grassroots disabled people and their families. The suggestions are made by leaders from various organisations for the disabled.

1. Chong Tuck Meng, 44, is president of Perwira K9 Malaysia, a Kuala Lumpur-based association for the physically disabled which has a membership of more than 100. Chong, who became a tetraplegic in 1982, helped form the organisation in 2003. For the last 23 years, he has been going in and out of hospitals due to his spinal cord injury and other medical complications. His observations and recommendations are:

- **Rehabilitation institute:** There is an urgent need to set up a proper rehabilitation centre for persons with spinal injuries to get medical support. The facilities for such patients are currently very poor. The rehab K9 ward in Hospital Kuala Lumpur is the only spinal ward in the country. The small ward, strictly for males (where do the females go to when they need care?) is crowded with 15 inmates. There is a small gym for physiotherapy activities.

The hospital staff are admirable though, trying to make the best of the limited facility. Chong urges Suhakam commissioners to make a trip to the K9 ward to see things for themselves.

Pressure sores and urinary infections are life threatening problems. Pressure sores takes a long time to heal and many have died because of the condition. Patients are sometimes not admitted because of the lack of beds in the ward whilst others are sent home even though they have not been fully cured in order to take in other emergency cases.

Sometimes they have to literally fight for their rights to get in. According to Chong, his friends who are less educated were denied treatment and some have even died due to pressure sores. Those who require surgery have often been placed on a waiting list because there were not enough surgeons.

The establishment of a rehabilitation institute would ensure that patients with spinal cord injuries would be properly cared for without having to have repeat admissions because of the lack of services for their conditions.

- **Supportive group homes for the profoundly paralysed:** Imagine the plight of Malaysians who have lost complete control of both their upper and lower limbs after an accident or illness and now have to depend on other people to do things for them for the rest of their lives! Many would rather die than to live such an existence. What is the future of persons in such conditions when their elderly parents pass away?

This is a human rights issue for disabled people who are profoundly handicapped. Supportive group homes with a couple of able-bodied caregivers that are enabled by the government can help people in such a predicament. Such systems are well developed in other countries and are supported by their governments.

- **Socio-economic issues of the disabled community:** When the petrol prices rose steeply recently, nobody gave a thought to how disabled people would have to cope with the situation.

Disabled people who want to drive have to buy their own cars before they can go for driving lessons. Driving schools do not provide cars that are adapted to the handicapped. The majority of disabled Malaysians have no jobs. The physically disabled cannot have jobs because public transport is inaccessible to them. When they do buy cars, they have to use their life savings (if they have any) or get financial help from their family and friends.

The recent budget gave some attention to the elderly and widows by increasing their monthly welfare allowances. What about the disabled

community? Most disabled members do not get any financial aid from the government – and they are the ones needing it most. Can Suhakam help in making the public and the corporate sector to be more mindful of their social responsibilities to vulnerable groups like the disabled?

Perwira K9 Malaysia certainly hopes that Suhakam will look into these aspects when considering Malaysians with disabilities.

2. Kathleen Muna Othman, 65, is president of the Contact Support Group for the Visually Impaired in Malaysia. Formed in November last year, the Kuala Lumpur-based organisation aims to reach out to the blind as well as other disabled Malaysians throughout the nation. Kathleen’s observations and suggestions are:

- **Set up a warden controlled housing for the blind:** Similar to Perwira K9’s requests, these flats are for the blind, who are above 50 years old, to help them live independently. Each flat should be equipped with “panic buttons” where the blind who are living alone can ring in an emergency.
- **Establish resident schools for the blind:** Parents prefer such schools because they ensure that blind students get proper attention and care. In integrated schools, a mixed class (with the sighted) has more than 30 students per teacher. In a residential setting, each class will have about 10 blind students per teacher where there is a better quality of learning and interaction between them. These residential schools give the opportunity for blind students to return home during the weekends.
- **Take action against cheats:** The Contact Support Group also urges Suhakam to help the blind to find well-paying jobs in offices, as well as to take action against taxi drivers who cheat the blind by charging extra fares.

3. Roxanna Lim, 52, a single mother of 21-year old Wong Lee Foong who has a profound disability diagnosed as “spastic quadriplegia”. Lim adopted Wong when she was 4½ years old as her natural mother could no longer look after her due to extremely poor finances. Wong requires 24-hour care and attention. They both reside in Klang, Selangor.
 - **Right to continue education in school:** Wong had to stop her education in a special school after reaching the age of 18. Arguing that Wong only has the mental age of 4, Lim feels that people like her daughter should be allowed to continue with her special living skill education in class. Lim also feels that the government should give more financial assistance to parents of the disabled as special aids for the profoundly disabled are extremely costly. More opportunities should be given to the severely disabled to go out on normal outings like camping, beach visits and others.

Anthony Thanasayan is director of Bivai Special Dogs, a dog training programme for physically disabled people. An active campaigner for the rights of people with disabilities, he writes a weekly column “Wheel Power” in The Star, a national daily.

Statelessness in Malaysia

Latheefa Beebi Koya

Malaysia appears to have no comprehensive policy to deal with immigrants and/or people who are considered stateless, though the police and the immigration department conduct regular operations to arrest and deport those found to have contravened immigration laws.¹

Thus, human rights concerns include abuses against refugees and illegal immigrants. With tougher implementation of immigration laws since August 2002, illegal immigrants can be jailed up to five years, fined up to RM10,000 and whipped up to six strokes.² They can also be held in detention centres³ until they can be deported.

Malaysia has yet to sign the 1954 Convention Relating to the Status of Stateless Persons, 1961 Convention on the Reduction of Statelessness and the 1951 Convention Relating to the Status of Refugee.

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- 1 For examples, see “Malaysia’s policy of deporting Burmese to Thailand slammed,” Malaysiakini.com, June 15, 2002; “Malaysia: Stop Deportations of Acehnese Refugees, Policy of Forcible Returns Puts Acehnese Refugees at Risk,” Human Rights Watch, April 1, 2004; “Malaysia: Mass Expulsion Puts Migrants at Risk,” Human Rights Watch, Nov 23, 2004. In 2002, a mass expulsion campaign saw 600,000 workers crowding into ports across Malaysia to leave before the end of the amnesty period. Thereafter, those arrested were held in detention camps under appalling conditions, resulting in a number of deaths due to illnesses. In one incident, at least 66 people reportedly died in camps in the Indonesian border town of Nunukan, across Tawau in Sabah. See also Suaram Report 2002, p. 34 and “More migrant workers die in Indonesian border town,” Malaysiakini.com, Sept 2, 2002.
 - 2 Section 6 (1) c of the Immigration Act 1959. Many were also arrested for ‘illegal assembly’ when they held demonstrations over their situation. For example see, “50 Burmese arrested for ‘illegal’ demo,” Malaysiakini.com, June 16, 2005.
 - 3 Human rights organisations have frequently criticised the appalling conditions at the detention centres for undocumented people. The centres were overcrowded with poor amenities and sanitation. The food served and healthcare provided were of poor quality. There were also allegations of corrupt practices and verbal and physical abuses of detainees, even resulting in deaths. See Suaram’s *Human Rights Report 2003*, p.192-194 and Tenaganita’s 1995 report, “Abuse, Torture and Dehumanised Treatment of Migrant Workers at Detention Camps”.

However, Malaysia has signed the Convention for the Rights of Child (CRC) and Convention for the Elimination of Discrimination Against Women (CEDAW), albeit with some reservations.

According to the Federal Constitution, a child born in the country becomes a citizen by operation of law only if one parent is a citizen or permanently resides in Malaysia at the time of his or her birth or if he or she “is not born a citizen of any country.”

Article 14 of the Federal Constitution, Second Schedule, Part II, reads:

Citizenship by operation of law of persons born on or after Malaysia Day, (1) (a) “every person born within the Federation of whose parents one at least is at the time of the birth either a citizen or permanently resident in the Federation,” (e) “every person born within the Federation who is not born a citizen of any country.”

Stateless or undocumented people in Malaysia can be categorised into four groups: undocumented Indians, undocumented indigenous peoples in the Peninsula and Sabah and Sarawak, undocumented people of Filipino and Indonesian origins in Sabah and ethnic Rohingyas from Myanmar.

Undocumented Indians

Many Indians in Malaysia are descendants of indentured labourers brought from south India by the British colonial government in the late 19th and early 20th centuries to work in the plantations. These people have lived in the plantations, mainly rubber estates, for several generations with very basic housing, amenities and healthcare facilities. They have been exploited by the plantation owners, earned low wages, lacked opportunities and had no skills other than tapping rubber.

The Tamil primary schools in the estates were also in dilapidated conditions and their children never had the opportunity for proper education. These estate communities lived in isolation and faced social problems. The plantation owners had also made alcohol (toddy) available cheaply to the workers.

The cycle kept repeating where both parents worked in the rubber estates, and their children invariably became rubber tappers when they grew up. The majority

of Indians in this environment continued to be poorly paid, received little education and skills training and remained “trapped” in the plantations. They have been conditioned to see the plantations as the only “suitable” environment that that they can survive in.⁴

As a consequence of their isolation in the plantations, a significant number of Indian children born in these estates have not been properly registered after birth. Without birth certificates, they cannot apply for their identity cards when they reach 12 years of age. The parents did not register their children for various reasons. Among them were ignorance, apathy, procrastination, poverty, births at home, unregistered marriages, parents themselves were not properly documented and their citizenship status was uncertain. They also have a poor command of the national language and, thus, lack confidence in dealing with the bureaucracy and fear the authorities. There are also cases of abandoned children, who cannot be registered as their guardians have no knowledge of the birth details.

The delay in registration is sometimes due to cultural or religious practices such as waiting for an auspicious time to name a child or naming in consultation with Hindu priests.⁵ The parents have difficulty explaining the delay to the authorities or paying the fines and meeting the cost of making copies of supporting documents.

Many rubber estate workers and their families have been forced to migrate to urban and suburban areas in search of housing and work in recent years due to the sale of the plantations for various development projects. They were forced to live in squalid conditions in temporary housing areas and low-cost flats with very little amenities.

Although these undocumented Indians are not denounced as non-citizens or targeted by the authorities in operations against illegal foreign migrant workers, they are nonetheless in a “quasi stateless” situation as they would not be able to prove their citizenship status with ease and enjoy fully the accompanying rights. They do not move about freely because they fear arrests during raids against

4 “Descendants of indentured labourers see little change,” *Malaysiakini.com*, Nov 22, 2001; “The forgotten community,” *Malaysiakini.com*, Oct 20, 2005.

5 “Living without an identity,” *Malaysiakini.com*, May 14, 2004; “Suffering in silence without proper documents,” *Malaysiakini.com*, May 14, 2004; “System blind to the plight of ‘invisible’ Malaysians,” *Malaysiakini.com*, May 19, 2004; “No IC problem could be bigger than thought,” *Malaysiakini.com*, May 31, 2004.

illegal foreign migrant workers as the authorities may mistake them for Indian nationals who are working in the country illegally.

These undocumented Indians encounter difficulties in areas of education, healthcare, employment, housing, free movement and voting rights. They also cannot apply for passports or licences to go into small businesses. In short, they are denied their basic rights or equal treatment as citizens of the country. This has led to serious problems for these poor Indians and the cycle of “quasi statelessness” repeats itself after their children grow up and start families.

Concerned non-governmental organisations and religious bodies are trying to minimise the problem by raising awareness among the community of the importance of applying for birth certificates early and assisting these undocumented Indians to apply for their identity documents.

In September 2005, it was estimated that 20,000 Indian women did not have birth certificates, ICs or marriage certificates. The figure was based on data collated up to May 2003 at ERA Consumer Malaysia’s community centres in Kedah, Perak, Selangor and Negeri Sembilan. These centres received about 100 such cases every month.

The government has yet to make a concerted effort to register these undocumented Indians. So far no special effort has been made to resolve the problem comprehensively. Currently, the National Registration Department (NRD) deals with the late applications on a case by case basis.

Indeed, there are procedures for late registration of births. Normally, the parents or guardians, two witnesses and the midwife (if the child was born at home) would be required to provide evidence when applying for the birth certificates late. Fines are imposed for late registrations and applicants are required to provide additional supporting documents. However, difficulties arise for the children without birth certificates if the parents have died or cannot be traced. At times, the parents themselves are undocumented. In addition, bureaucratic red tape and delays also hamper the registration process.

Indigenous people

A large proportion of the Orang Asli⁶ in Peninsular Malaysia and Orang Asal in Sabah and Sarawak live in remote settlements and in the interior of jungles. They are guaranteed customary native land rights and privileges over and above other citizens under the Federal Constitution. In reality, these people have been neglected and exploited.⁷ These indigenous people are undocumented due to poverty, poor transportation links and infrastructure, government neglect, and lack of access to government provisions and services. They live in a “quasi-stateless” situation as they are unable to prove with ease their indigenous status and enjoy fully their accompanying rights. No concerted effort has been made to register them, thus depriving them of their rights to basic healthcare, education, employment, vote and official assistance linked to native privileges.

According to the Human Rights Commission of Malaysia (Suhakam), there were at least 4,000 Orang Asli children who were without birth certificates in May 2005 in Pahang alone.⁸ Due to their unregistered status, they were denied access to education, healthcare and employment, thus perpetuating their already poor condition. The Department of Orang Asli Affairs (JHEOA), tasked by the government to protect and promote the welfare of these people, appeared to have failed to do so.⁹ Suhakam and various concerned groups have urged the NRD to conduct the registration of the Orang Asli in their settlements.

According to Sahabat Alam Malaysia, about 50 per cent of the 12,000 Penans¹⁰ in Sarawak did not have proper documents such as birth certificates and ICs. This has affected their ability to prevent encroachment on their native customary rights land and their rights to education, healthcare, public services and provisions and

6 The Orang Asli are made up of three main tribal groups, namely the Senois (population 49,440), Proto-Malays (40,117) and Negritos (2,972). They are further divided into various sub-groups. Source: Department of Orang Asli Affairs, www.jheoa.gov.my

7 *Hak Asasi Orang Asal* (Basic Rights of Orang Asal), Suhakam, February 2004; *Hak Masyarakat Asli Sarawak* (Rights of the Indigenous People of Sarawak), Suhakam, June 2002.

8 “Suhakam appalled by conditions for Orang Asli in Pahang”, Malaysiakini.com, May 30, 2005.

9 “Govt slammed for snubbing Orang Asli meet,” Malaysiakini.com, Oct 26, 2005; *Hak Asasi Orang Asal* (Basic Rights of Orang Asal), Suhakam, February 2004.

10 The Penans are the smallest indigenous group in Sarawak. Originally nomadic, the Penans now live in settled and semi-settled conditions in remote areas of the state.

official benefits linked to native privileges. Consequently, they remained confined in their settlements for fear of being arrested as undocumented persons. Previous registration exercises failed because the official teams did not give adequate notice of their visits leading to poor turnout. Another deterrent was the compound fine levied for late registration of births. At RM10 per year, the fine could add up to RM400 for someone who is now about 40 years old.¹¹

The Indigenous People Development Centre (IPDC), an indigenous rights NGO, said in 2004 that about 600 Kenyah people in central Sarawak did not have identity cards or other official identification papers and consequently live in fear of being mistaken as foreigners.¹² Similarly, some 500 Muruts living in villages in Nabawan, Keningau district, Sabah, were reported to be without birth certificates.¹³

The stateless in Sabah

There are two large groups of stateless people in Sabah. One group comprises descendants of refugees who fled the separatist war in the Mindanao region of southern Philippines in the 1970s and the second is children of undocumented immigrants from Indonesia and the Philippines.

In September 2005, the government announced its intention to carry out a survey to determine the exact number of stateless people in Sabah; the estimated figure ranges from 50,000 to 300,000.¹⁴ Home Ministry Secretary-General Aseh Che Mat said those born in the country would be issued birth certificates. The government has yet to decide if they would be granted citizenship or permanent resident status but their parents would be classified as stateless.

The Malaysian government granted refugee status to Filipinos who arrived in Sabah mostly from 1972 to 1984. Officially, they were granted refugee status on “humanitarian grounds” but commentators have pointed towards other socio-economic and political considerations. The immigration authorities issued IMM13

11 “Double bind for Penans without personal documents”, Malaysiakini.com, April 20, 2005.

12 “Orang Ulu appeal for identity cards,” Malaysiakini.com, May 24, 2004; “About 15,000 people in Kinabatangan without identity cards,” Bernama, Jan 22, 2006.

13 “Some 500 Muruts in Nabawan ‘stateless’,” *Daily Express News*, Oct 28, 2005.

14 “A step closer to helping the stateless”, *The Star*; Sept 29, 2005.

social visit passes to these Filipinos (above the age of 12), which allowed them to remain legally in the country. The passes must be renewed annually. In 2004, Deputy Home Minister Tan Chai Ho said there are 68,558 refugees in Sabah.

Sabahans began to view the refugees as illegal economic migrants and eventually regarded all foreigners in the state as a security threat. The local people, including the politicians, increasingly opposed the refugees' presence and questioned their status. The refugees are now being demonised and perceived as a liability. This has led to further deterioration of their well being and affected available protection.

The refugees have become victims of changes in ruling parties' policies and are now left to fend for themselves. They face various problems, including lack of access to basic amenities, housing, education, healthcare and job opportunities, and are trapped in a cycle of poverty.¹⁵

These refugees have settled with their families in Sabah for more than three decades. Their children were born in the state. Some have also married Sabahans. Many children in the refugee resettlements do not have birth certificates due to several factors: parents not having marriage certificates, uncertain legal status of their parents, apathy, poverty and fear of the authorities.

Many have joined the ranks of the street children. An estimate 10,000 stateless children are roaming the streets of Sabah. They survive by working as shoe shiners and baggage carriers or by selling newspapers and four-digit lottery result slips.¹⁶

These children – who may be of Malaysian, Filipino or Indonesian origin – are considered illegal immigrants due to the lack of documentation. In fact, a number of them have been detained and deported to either Indonesia or the Philippines. In a deportation exercise carried out by the immigration authorities in May/June 2005, it was reported that 30 per cent of 1,200 deportees registered by the Zamboanga authorities in the Philippines were under the age of 17. Most of these children were

15 The details were summarised from Azizah Kassim (2005). Filipino Refugees in Sabah: Ambiguous Position, Uncertain Future, paper presented at the UNHCR roundtable discussion in July.

16 United Chinese Women Associations (2005). Stateless Children – The Sabah Experience, paper presented at the forum on Reducing Violence Among Children, Sept 26-27, 2005. See also "Bomb ticking on Sabah streets," *Malaysiakini.com*, Sept 28, 2005; "Stateless children: Where do they belong?" *The Malay Mail*, July 17, 2005.

born in Sabah but were deported along with one of their undocumented parents or none at all.¹⁷

In April 2003, Suhakam confirmed that there were cases of Malaysians mistakenly deported due to the failure to produce their identity cards or birth certificates. Suhakam related a case of a father and son, who were in the process of acquiring documentation, deported twice in 2004 – first to Indonesia and then to the Philippines. In response to the incident, NRD director-general Azizan Ayob said in April 2003 that the department had set up offices in each district of the state to provide easier access to register births and deaths and to apply for identity cards. However, the department also cautioned that there were cases of lack of evidence of citizenship and even fraud.¹⁸

The state and federal governments are obliged to find ways to resolve the complex problem of stateless people in Sabah.¹⁹ In November 2005, Sabah Chief Minister Musa Annan said he would discuss with the Immigration Department and the NRD on how to resolve the problems of the stateless children.²⁰

Ethnic Rohingyas from Myanmar

The mainly Muslim Rohingyas fled their homeland in Myanmar's northern Rakhine state due to persecution. Myanmar's military regime deprived them of citizenship and rendered them stateless. The expulsion of the Rohingyas from their home state has been ascribed to their religion Islam, and their failed attempt to gain independence after World War II. In November 2003, Foreign Minister Datuk Seri Syed Hamid Albar said:

The Rohingyas are definitely, as far as we are concerned, from Myanmar and they should be sent back to Myanmar... but since the Myanmar government is not willing to accept them, they will remain until such a time that this matter can be sorted out.²¹

17 "Death of Filipino child deportee hushed up", Malaysiakini.com, June 28, 2005. See also "Suhakam: Verify status of detained kids quickly," Malaysiakini.com, Sept 24, 2004.

18 "NRD: Only one mistaken case in Sabah", Malaysiakini.com, April 1, 2003.

19 "Stateless/Undocumented Children in Sabah", Fact Finding Mission Report presented at the Seminar on Stateless Children, Nov 16-18, 2005.

20 "Musa awaits rule on the stateless", *The Star*, Nov 14, 2005.

21 Suaram (2003). *Human Rights Report 2003*, p.186.

However, the Myanmar Embassy in Malaysia denied that the Rohingyas were from Myanmar. It insisted that they were from Bangladesh and had crossed into the Myanmar Rakhine state in the 1970s.

As of 2005, more than 11,000 Rohingyas are registered with the United Nations High Commission for Refugees (UNHCR). However, the refugees estimate their population to be around 35,000.²² Most of the Rohingyas in Malaysia arrived undocumented in the early 1980s.

Due to years of neglect and denial of basic rights, both in Myanmar and Malaysia, the Rohingyas are poor, uneducated and have limited work and language skills. Most practise polygamy and have large families. Their chance of resettlement to a third country is slim because of these socially problematic characteristics. Third countries, usually North America, Europe, Australia or New Zealand, prefer those with fewer social complications.²³ As a result, the Rohingyas remain in Malaysia in poor living conditions and face an uncertain future because of a lack of clear government policies on their status.

Due to their vulnerable circumstance, the Rohingyas are exploited. Employing foreign workers without work permits is a criminal offence punishable up to a year's jail and a maximum fine of RM 50,000 for each illegal worker in their employment. Those hiring more than five illegal workers are also liable to be jailed up to five years and whipped up to six strokes.²⁴ Thus, work for undocumented people is scarce. Invariably, the Rohingyas are able to work only for short periods, most of the time as daily wage earners. They do the work that the locals avoid, i.e. jobs that are termed the "3 Ds" – dangerous, dirty and difficult – and are lowly paid. Many work at night to avoid arrest; usually in night markets and as garbage collectors. The Rohingya women, almost all of whom are uneducated and without any skills, often end up being street beggars together with their children.

Suhakam noted the views of a Rohingya representative that the high unemployment rate and financial hardship would make it possible for criminal elements to infiltrate the community and desperate Rohingyas were likely to resort to petty crimes.²⁵

22 "Refugees reap rewards from labor shortage", Asia Times, April 30, 2005.

23 Suaram (2003). *Human Rights Report 2003*, p.187.

24 Section 55B (1) of the Immigration Act 1959/63.

25 Suhakam Annual Report 2002, p.52.

Since late 2004, the government's policy announcements on the Rohingyas have not been consistent. In October 2004, Minister in the Prime Minister's Department Datuk Seri Mohd Nazri AbdulAziz announced the government's "firm decision" to implement policies that will recognise Rohingyas as refugees.²⁶ He said some form of identification would be issued to enable them to work and for their children to have access to government schools. However, Home Minister Datuk Seri Azmi Khalid said later that no final decision has been made on the issue.²⁷ This only created confusion and great apprehension among the community facing a nationwide crackdown on illegal immigrants in early 2005.²⁸ Deputy Prime Minister Datuk Seri Najib Tun Razak caused further concern when he said that no illegal immigrants would be exempted from the crackdown including those with protection letters from UNHCR.²⁹ This contradicted the Home Minister's assurance that those with protection letters from UNHCR would be excluded from the crackdown.³⁰ In April 2005, the government announced that work permits would be issued to the Rohingyas to allow them to work legally. The Home Minister acknowledged that they should be absorbed into the labour force. Azmi said "they are already here and it would be a waste if we don't recognise them or give them work opportunities."³¹

In August 2005, the Attorney General's Chamber said that all "persons of concern" of the UNHCR would not be further prosecuted for immigration offences.³² In May 2005, UNHCR revealed that 42 child refugees were being detained together with their parents in immigration detention centres.³³ Among them were four Rohingya

26 "Refugee status and IDs for Rohingyas", Malaysiakini.com, Oct 29, 2004; "Confirmed - Rohingya have refugee status", Malaysiakini.com, Nov 2, 2004.

27 "Azmi: No decision yet on Rohingya refugee status," Malaysiakini.com, Dec 6, 2004; "Nazri: Govt will grant Rohingya refugee status," Malaysiakini.com, Dec 10, 2004.

28 "Govt agencies: No directive to spare refugees in 2005 dragnet," Malaysiakini.com, Dec 15, 2004; "Massive crackdown on migrants sparks rights fears," Malaysiakini.com, Jan 31, 2005.

29 "Najib's remark: Asylum seekers, refugees hit panic button," Malaysiakini.com, March 4, 2005.

30 "Crackdown against illegals to intensify: Azmi," Malaysiakini.com, March 3, 2005.

31 "Minister: Rohingya will be absorbed into local workforce," Malaysiakini.com, April 8, 2005; "Stateless clan finally gets right to work", Malaysiakini.com, April 30, 2005; "Malaysia recognizes a stateless clan," *International Herald Tribune*, April 23, 2005.

32 This directive has been in force since August 2005, applying to all asylum seekers who were registered *before* arrest. Many other asylum seekers who were registered with the UNHCR after arrest were still being detained and charged under Section 6 (1) (c) of the Immigration Act.

33 "42 Child refugees in Malaysian detention camps", Malaysiakini.com, May 27, 2005.

children including a child less than three years old. In April 2005, the Rohingya Information Centre, a community-based group in Malaysia, said about 100 Rohingyas have been arrested since the crackdown on illegal immigrants began in March 2005.³⁴

The Rohingyas' uncertain status, the on-going maltreatment, and confusing government rhetoric are certainly deplorable. There is also no legal reason why the constitutional provisions that grant citizenship to persons born in Malaysia who are not born as citizens of any other country cannot be applied to the Rohingyas, since the Myanmar government has excluded them from citizenship.

Suhakam's stance on the stateless people

Suhakam has issued sporadic statements on the various stateless groups. These were pronouncements and general observations of the social conditions, status and treatment of the stateless. However, there has been no real acknowledgement that these people's "stateless" status is the main cause of their vulnerability.

Suhakam must be commended for lobbying strongly for the CRC. It has also been advocating that the government should revoke its reservations to the CRC and fully implement the convention.

However, Suhakam has failed to conduct a comprehensive study on the issue of statelessness in Malaysia. It has also not made any substantial recommendation to address this issue from a human rights perspective. Most observations made by Suhakam were purely on humanitarian ground and not on the basis of right to nationality etc.

Since its inception, Suhakam's Annual Reports have not taken to task government agencies such as the Immigration Department and the NRD for their failure to ensure that the stateless people were not subjected to wrongful treatment.

In its capacity as the only recognised human rights adviser to the government, Suhakam is strongly urged to recommend to the government to:

- a. Conduct a special registration exercise through the NRD to issue ICs to

34 "Govt decision on Rohingya lauded", Malaysiakini.com, April 11, 2005.

Malaysian citizens, especially to the undocumented Indians and indigenous people. The exercise must be sensitive to the many problems faced by the various groups.

- b. Respect without discrimination, the right of all individuals to have a nationality, and its accompanying rights and duties.
- c. Accede to and implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.
- d. Respect the principle of *non-refoulement*.
- e. Release all stateless (and/or persons of concern of UNHCR) and undocumented people of Filipino and Indonesian origin detained for immigration related offences, and cease all related criminal prosecutions.
- f. Legalise the status of the Rohingyas and the undocumented Filipinos and Indonesians (with a genuine and effective link to Malaysia) and facilitate their integration into society with access to employment, healthcare, education, housing and other basic rights.

Latheefa Beebi Koya is a lawyer and human rights activist. She is also the chief information officer of Parti Keadilan Rakyat's youth wing.

Suhakam's role in furthering women's rights

Angela M. Kuga Thas

Established by Parliament on Sept 9, 1999 under the Human Rights Commission of Malaysia Act 1999, Suhakam's main functions are to:

- promote awareness of and provide education in relation to human rights;
- advise and assist the government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;
- recommend to the government with regards to the subscription or accession of treaties and other international human rights instruments; and
- inquire into complaints on infringements of human rights.

In addition, Section 4(4) of the Act emphasises the role of Suhakam to give due and serious consideration to examining the nation's compliance to the Universal Declaration of Human Rights 1948 (UDHR), as long as the fundamental liberties contained in the UDHR are not in conflict with the Federal Constitution. This means that every right and freedom specified in the UDHR but which may not be listed in Part II of the Federal Constitution on Fundamental Liberties must still be weighed as long as it is not in conflict with the spirit and intention of the Federal Constitution. Suhakam is therefore obligated to carry out its duties as specified by parliament, immaterial of how uncomfortable this may be for the government.

Review methodology

This review of Suhakam's role in furthering women's rights begins with the re-examination of the commission's overall mandate and functions and an analysis of its annual reports from 2001 to 2004. The review also takes into account the positive expressions and criticisms of Suhakam's role and actions by other organisations such as Aliran, the Centre for Independent Journalism (CIJ), the DAP, etc. The review would be remiss if it did not also take into account the responses of the government to Suhakam's recommendations and the general attitude of Members of Parliament towards the human rights commission.

Concept and issues

The global campaign on “women’s rights as human rights” gained momentum in 1993. It aims to promote and bring to a higher-level of consciousness the idea and reality that women are not being treated as equal to men in many socio-cultural, economic and political contexts.

Suhakam’s first attempt to ensure that women’s rights are viewed fully as human rights was its recommendation in 2000 to include “gender” as a prohibited ground for discrimination in the Federal Constitution. This was of course included in 2001, under Article 8 of the Federal Constitution, but the government did not make further efforts to streamline the other articles to reflect the same spirit. Since then, Suhakam has proposed a more legally refined articulation of Article 8 to include the definition of discrimination as follows:

Article 8(2) of the Federal Constitution be amended to define discrimination in terms of Article 1 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) which recognises that any action which has the effect (not just the intention) of discriminating on the basis of gender constitutes an act of discrimination.¹

The report also recommended that the government takes steps to incorporate this constitutional principle of equality and non-discrimination into specific laws and other appropriate mechanisms to enable women to benefit from them; and to incorporate its international commitments to CEDAW into domestic law.

Further, Suhakam made specific recommendations in 2003 for Malaysia’s ratification of new international human rights instruments (e.g. International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of all Forms of Racial Discrimination). It also recommended the withdrawal of reservations to international human rights instruments already ratified or acceded to by Malaysia and to implement all these instruments.

These recommendations support a more enabling environment for women’s human rights, even if these conventions and international human rights instruments may be silent on their differentiating impact on women vis-à-vis men. Over the past five

1 Suhakam Annual Report 2001, p.51.

years, however, the most critical and important questions raised by Suhakam through its recommendations concern the equality of Muslim women in Malaysian society and the protection and promotion of equality of all peoples immaterial of religious beliefs. These recommendations by Suhakam rightly raise the issue of “equality before the law, but which law?”

Equality before which law?

The Federal Constitution is recognised as the highest law in any country. However, recent events in Malaysia have shown beguiling attempts to project the Syariah law as one that is parallel to the Federal Constitution. Misleading messages to appease non-Muslims – their dissatisfaction arising from M. Moorthy’s case – that they can seek justice in Syariah courts only adds fuel to the fire. Non-Muslims, especially women, are fully aware that Syariah courts have a poor record of protecting and promoting the rights of even Muslim women, let alone non-Muslims.

The Attorney General’s Chambers has, in the government’s response to Suhakam’s recommendation number 15 in its Annual Report 2003, fortunately confirmed that the Federal Constitution is the highest law in the country and any other law that is opposed to the Federal Constitution is considered invalid to the extent that it opposes the Federal Constitution. Although this was in part a response to Suhakam’s recommendations to review and amend existing laws so that they are aligned with Article 8(2) of the Federal Constitution, the response should be the basis for all other arguments put forward by Suhakam to further women’s rights – both non-Muslim and Muslim.

Even though Article 121 (1A) of the Federal Constitution specifies the primacy of Syariah courts on any matter relating to Islam and mandates that their decisions cannot be questioned by any civil court, it remains important to bear in mind that the Syariah law cannot be in conflict with the Federal Constitution – i.e. any other law that is opposed to the Federal Constitution is considered invalid to the extent that it opposes the Federal Constitution. This is in line with the reasoning for Suhakam’s considerations of all fundamental freedoms contained in the UDHR which may not be articulated in the Federal Constitution.

The Federal Government’s move to “interpret” this existing constitutional provision on the place of Islam in December 2005 has not only left a majority of non-Muslims

suspicious of the government's intentions, but reduced avenues for the pursuit of justice, especially for women, when issues have an inter-religious element. It also creates ambiguity and raises the serious question as to whether the Syariah law is above the UDHR and the Federal Constitution. Hence, Suhakam's recommendation that Article 8(2) of the Federal Constitution must apply equally to all – Muslims as well as citizens of other faiths, must be seriously considered and protected by the government.

Suhakam's role, accountability and transparency

Suhakam's Annual Report 2001 begins on a positive note, but encapsulates the organisation's ongoing challenges as the human rights commission "with no teeth", Former critics who had doubted Suhakam's independence felt that it had gained credibility by making recommendations that were aimed at promoting human rights in Malaysia and preventing recurrences of human rights violations. Some government leaders, however, expressed disapproval at what they considered to be biased recommendations that ignored national security considerations. One even commented that Suhakam was going beyond its jurisdiction and questioned its need to take a stand on issues such as freedom of assembly and detention without trial as these matters were regulated by law.

Suhakam has indeed made critical recommendations in a number of areas, primarily on civil and political rights. Some vital recommendations on CEDAW are also in its Annual Report 2003 (pp. 52–53). Among these were the calls for:

- The review of the interpretation of Syariah law;
- The re-examination of reservations to CEDAW;
- The enactment of an Act of Parliament to grant women all rights enshrined in CEDAW and that the provisions of CEDAW be translated into domestic law;
- The review of discriminatory laws, policies and practices;
- A holistic approach to gender mainstreaming;
- The collection and analysis of gender disaggregated data; and
- The involvement of stakeholders in formulating Malaysia's CEDAW report.

Suhakam's recommendations on CEDAW and issues of violence against women were much weaker in its Annual Report 2004. There was inadequate follow-up from

its 2003 recommendations, except for the one to “make sexual abuse and violence within marriage an offence”. The other recommendations in the Annual Report 2004 give little thought to make them stronger and more comprehensive. For example, the recommendation to “increase the penalty for incest so as to reflect the gravity of the crime” is dangerously open-ended. The difference in the quality of recommendations on women’s rights issues between 2003 and 2004 may reflect the difference in composition and capacities of the individual human rights commissioners. This therefore points to the need to review the appointment of commissioners and to have a more representative and inclusive process for the purpose. It is also disappointing to note that not all government leaders are appreciative of the soundness of Suhakam’s recommendations.

Reviewing the annual reports, it is clear that a more descriptive rather than analytical perspective is put forward on Suhakam’s role and actions in each year. Reflections of Suhakam’s performance for the year, which is usually in the first chapter entitled “Challenges” (years 2001 to 2003), prove to be the main guiding chapter on Suhakam’s self-assessment. In 2004, these insights for the reader (and the public) disappear as this chapter has been replaced by a weak, non-reflective chapter on “Composition”. Only in 2003 there was a chapter clearly titled as “Moving Forward” rather than “Conclusion”. This has also disappeared in 2004. The narrative on how Suhakam has spent public funds for the year is also not available in 2004.

It is also interesting to note the lack of analysis in the 2003 and 2004 Annual Reports on the governments’ responses and their implications on the protection and promotion of human rights in the country, especially the rights of disempowered groups in various socio-economic, cultural and political contexts (e.g. women, indigenous peoples, people with disabilities, elderly-headed households, girls and women who have been trafficked, migrant women workers, etc.). For example, the government has deemed it unnecessary in its response to Suhakam’s recommendation for the setting up of an inter-religious council. The government also explained that Malaysia is an Islamic state because Malaysia has been established by “*orang Islam*” (Muslims), implying that the other ethnic groups had played no part in country’s independence (“*Negara Malaysia telah ditubuhkan oleh orang Islam*”) and that the government is “held” by “*orang Islam*”, again implying not by the multi-ethnic ruling coalition that we understand it to be.²

2 Annual Report 2003, pp. 284–285.

No reference was made to the fact that the Federal Constitution describes Malaysia as multi-ethnic and multi-religious. Suhakam needs to do more than just print the government's responses to its recommendations in its Annual Reports. As part of its mandate, role and function, it is Suhakam's responsibility to analyse these responses vis-à-vis its implications on the state of human rights in the country and to also put forth recommendations to other key actors who could play a complementary role in keeping the government accountable. This should be part and parcel of Suhakam's public education role. For example, the government's response to the issue of trafficking of women and girls shows little understanding of how these people can easily contract HIV/AIDS and little consideration is given in terms of healthcare services that they can access. Instead, the government's emphasis is on "raiding establishments" and sending the women and girls back to their countries of origin, immaterial of the kind of stigmatisation they may face in the process and at home. The government's emphasis is also on differentiating those who are "really trafficked" and those "who allow themselves to be trafficked". Such an emphasis in the government's response shows no compassion and little understanding of the economic push factors that affect women in poverty, including the fact that some fathers and husbands were willing to sell women and girls (wives, daughters, etc.) under their care to traffickers. It also shows that Malaysia has yet to grasp the concept that human rights is for all, immaterial of citizenship status.

Challenges faced

Suhakam's main focus of work in the first few years until 2003 seemed to centre on civil and political rights. In 2003, greater effort was made to examine the country's implementation of the CEDAW convention. However, the government's response to these recommendations have often been mixed, to the point of confusing. For example in 2003, the government said it was reviewing all laws so that these are aligned and not in conflict with Article 8(2) of the Federal Constitution.³ However, in 2004, the government responded that Article 8(2) was sufficient and implied that the review of laws was deemed unnecessary.⁴

In Suhakam's report, "Forums on CEDAW in Sarawak and Sabah, 30 March 2004 and 2 April 2004," the then vice-chairman acknowledged that a main obstacle the

3 Annual Report 2003, p.238.

4 Annual Report 2004, p. 312.

commission faced in promoting legislation on women's rights as human rights is the very nature of Suhakam itself. The Human Rights Commission of Malaysia Act 1999 merely confers advisory powers on Suhakam. Hence, the non-binding nature of Suhakam's recommendations means that ultimately, it is the government that decides whether to accept or reject them. The vice-chairman said although Suhakam is charged with the responsibility to advise the government on laws before they are passed in Parliament, no draft bill has been referred to the commission for its opinion and advice. However, he added that Suhakam has made comments and recommendations to the government on existing legislation. As regards the promotion and protection of women's rights, there is no specific legislation. Should a bill of this nature come about, the vice-chairman expressed his hope that it would be referred to Suhakam and other women's groups for their input and advice before the bill becomes law.

The non-binding nature of Suhakam's recommendations has been well elaborated in the commission's attempt in 2001 at improving the environment for the protection and promotion of human rights in the country. Its two major proposals for the government to consider in 2001 were:

1. A report containing recommendations for amendments to the Human Rights Commission of Malaysia Act 1999. In the course of its work, Suhakam has noted the limitations of the existing law and is of the view that there is a need for these to be overcome. Clarifying ambiguous provisions will make application of the law less problematic. In Suhakam's Annual Report 2002, a complete review of the Act and the findings were presented.⁵
2. A recommendation for the government to start developing a National Human Rights Plan of Action⁶, which would ensure improvement in human rights standards in the context of public policy.

Key recommendations (way forward)

The government needs to respond positively to and act on Suhakam's recommendations to review the Human Rights Commission of Malaysia Act.

5 Suhakam Annual Report, pp. 46 to 48.

6 This forms part of the recommendations of the Handbook on National Human Rights Plans of Action by the United Nations Office of the High Commissioner for Human Rights.

Agreeing to Suhakam's recommendations will help to enhance the commission's role and accountability in promoting and protecting human rights in the country.

Suhakam needs to do more than just print the government's responses to its recommendations in its annual reports. As part of its mandate, role and function, it is Suhakam's responsibility to analyse these responses vis-à-vis its implications on the state of human rights in the country and to also put forth recommendations to other key actors who could play a complementary role in keeping the government accountable. This should be part and parcel of Suhakam's public education role. It should also focus on reaching out to and educating political parties and staff in ministries and other government agencies, including JAKIM, the Royal Malaysia Police, the Prisons Department and the Immigration Department.

Suhakam in cooperation with the government may also want to consider organising public televised debates in Bahasa Melayu (and preferably with simultaneous translation in Mandarin, Tamil and English) on human rights issues in the country. Suhakam could focus on previous unresolved issues (as contained in the chapter on "Issues in Focus" in every Annual Report). These televised sessions should also receive comments and questions from the public. The issues and questions raised could also be covered in all print and electronic media. Such a move will help educate the people and generate greater public interest in human rights issues. It will also help build confidence that the government is indeed committed towards promoting and protecting human rights for all in the country, irrespective of gender, religious beliefs and ethnicity.

Suhakam should also strengthen its ties with Members of Parliament, including from the opposition parties, and the media in ensuring the commission's reports are widely read and used to keep the government accountable. On its own, Suhakam will not be able to change or ensure better human rights legislation and protection. While Suhakam can continue to play a leading role, other critical actors and key stakeholders, including the general public, need to play their part as well. With little public outcry, the significant and sometimes very critical recommendations of Suhakam can easily be ignored by the government or receive an official response that provides no further avenue for change or improvement. The only way Suhakam is going to grow some baby teeth, is for others to effectively complement its role and use the commission's reports for lobbying and advocacy work.

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Angela M. Kuga Thas is a board member of the Association for Women's Rights in Development (AWID), a global network of people and organisations dedicated to achieving gender equality, sustainable development and women's rights. She is also on the Advisory Council of the Global Fund for Women.

A review of Suhakam's report on migrant workers

Irene Fernandez

Malaysia is the largest receiving country of migrant labour in Asia. Its foreign labour recruitment began to increase from the late 1980s, peaking in the 1990s. After relying on migrant labour for more than 20 years, the country just cannot do without them to maintain its economic growth. When the government organised a massive crackdown of undocumented migrant workers in 2002, work in the plantation and construction sectors came to a halt. The two sectors employed high numbers of undocumented workers. In 2004, the government launched another operation against illegal foreign workers using RELA, the People's Volunteer Corps. This operation again hurt the plantation sector as well as the small and medium industries, which are the engines of economic growth after petroleum and palm oil.

As Malaysia's workforce comprise largely of women, especially in the middle management and professional sectors, many rely on maids to do their household chores and baby-sit their children. It is therefore not surprising that there are more than 320,000 domestic workers¹ in the country who work and live in isolated conditions.

In most "cost-benefit" equations of migration, the one voice that is silent, the one figure that is absent, is the migrant herself. Yet, the everyday reality for many migrants all around the world remains a bleak one. Vilified by politicians and the popular media, often subjected to discrimination and human rights violations, many migrants live on the margins of societies unwilling or unable to accept or integrate them fully. Malaysia is a classic example of such a reality.

Generally, migrants are vulnerable because they live and work in a country to which they lack the bond of nationality. This vulnerability is exacerbated in the case of "irregular" or "undocumented" migrants. There is a high demand, emanating from governments and societies in many diverse regions of the world, for cheap and flexible labour. This demand is often filled by recruiting migrant workers in the

1 "For the maids' sake", *New Straits Times*, May 27, 200, p. 6.

informal sector of the economy; these migrant workers and members of their families are “irregular”.

In Malaysia, for every documented migrant worker there is another who is undocumented. The Home Ministry’s lack of transparency in the recruitment of migrant workers and in issuing of letters of demand to recruiters has led to hundreds, or maybe thousands, of workers being left stranded at airports and in the cities without jobs. The large numbers of Indian migrant workers often camping outside the Indian High Commission in Kuala Lumpur with no shelter is a reflection of this reality.

In 2004, Tenaganita handled more than 1,300 cases of human rights violations involving migrant workers of various nationalities. These cases involve over 5,000 human rights violations. The top five violations were unpaid wages, unfair dismissal, cheated by recruitment agents, fraud in renewal of work permits, violence and abuse retention of passports by employers.

The Immigration Department continues to deny the workers the right to stay and work in the country while waiting for their cases to be decided in the courts. The workers have to pay RM100 every month to renew their special passes but are not allowed to work. This policy violates the workers’ right to redress. By doing so, the Immigration Department condones abuse and exploitation. There is a lack of dialogue and discussion with the Human Resources Ministry to respect the court processes.

After struggling for six years, 127 Bangladeshi workers from Chong Wah Plastics won a legal battle in 2004. The Court of Appeal ruled that they must be treated equal to local workers and each of them were awarded about RM20,000. The landmark judgement now ensures equal treatment for migrant workers and gives them the right to join unions.

However, during the struggle, many of the workers were arrested and deported as their visas were not renewed. But 30 workers went through the storm and remained in the country. They also went to Suhakam three times with their complaint.

The migrant workers’ human rights violations are indeed varied and cover all aspects. The government’s policies and regulations also violate the fundamental rights of migrant workers with impunity. Corruption is also prevalent. Migrant workers have often complained that the officers from the enforcement agencies harassed them for money. They alleged that they were stripped and beaten up if they did not

comply.

Suhakam Annual Report 2004 has addressed the issues affecting migrant workers. The fact that migrant workers' issues have found space in the report is indeed a positive development. Serious attention has been given in three key areas: the arrests and detention of migrant workers, the trafficking of women and children, and the position of stateless and undocumented children, refugees and asylum seekers.

This review will look at these areas of focus and their impact. There are about three million migrant workers in Malaysia. It is a very significant group in a population of 25 million where one out of every three worker is a migrant. The repercussions are serious on our communities and society as a whole as the migrants' vulnerability increases. Other than blaming the migrant workers for the increase in crime, social problems and infectious diseases, we should look more critically at the violations of their rights as people. In this context, this review will also see how proactive Suhakam has been in bringing change and getting the authorities to recognise migrant rights.

In the 2004 report, Suhakam included migrants or immigrants under "vulnerable groups". The report especially stated:

However, it has come to Suhakam's attention that action by some enforcement agencies still falls short of the basic articles of the CRC, particularly in the area of child protection. An example of such negligence was observed in cases involving children of foreign immigrants.

During visits to the immigration detention facility in Menggatal, Sabah, on Sept 15, a Suhakam delegation discovered the presence of 43 foreign children of uncertain status and national origin. They were being detained together with adults, almost none of whom were their relatives or guardians. The children had been removed from the streets, where they had been seeking means of survival without the comfort and protection to which most Malaysian children have grown accustomed. These children, ranging in age from 4 to 15 years, were separated from the adults, following swift intervention from Sabah Chief Minister Dato' Seri Musa Aman. Eventually many of the children were reunited with their parents.²

2 Annual Report 2004, Human Rights Commission of Malaysia, p. 19.

The report also elaborated on Suhakam's intervention with regards to the conditions in detention centres:

(c) Immigrants and asylum seekers

Detainees at the Semenyih immigration detention camp mounted a hunger-strike in early September. This was reportedly motivated by conditions of detention, as well as delays in resettlement of United Nations High Commissioner for Refugees (UNHCR) certified refugees to third countries. The hunger-strike was eventually halted upon the intervention of various parties, including Suhakam, which visited the camp on Sept 7.³

This form of intervention is commendable as it was able to stop further rioting and adverse counteraction from the authorities. The report went further to state the various visits made to the detention centres and regularly raising the issue of over crowdedness and problems related to sanitation and protection of women and children.

Suhakam found that the participants were aware that detention facilities must meet the requirements of the United Nations Standard Minimum Rules on the Treatment of Prisoners. Prisoners and detainees, including expectant mothers, should have access to doctors and nurses stationed in the prison complexes. Those who are ill must be treated quickly. Suhakam also conducted a workshop for various relevant agencies and to obtain feedback from them.

Suhakam was informed that officers have experienced problems repatriating foreign detainees. Documentation is a laborious process, compounding the acute overcrowding. After the illegal immigrants have served their prison sentences, they are transferred to immigration detention centres, which exacerbate overcrowding. These detainees (also called *Banduan Dagang*) often refuse to divulge personal information, as many fear that deportation would lead to another prison sentence in their country of origin. This has delayed efforts by immigration officials to repatriate them.

Suhakam has taken a positive step by developing training programmes for enforcement agencies to respect and uphold the rights of detainees and the need to keep up to international standards. In ensuring that the rights of migrant detainees

3 Ibid., p. 19.

are protected, Suhakam's challenge is in changing the mindset of enforcement agencies and reforming current laws. The enforcement agencies view migrant labour, especially undocumented workers, as a threat to national security.

Despite taking these measures, Suhakam was not able to stop the massive crackdown on undocumented workers using "vigilante corps" RELA in 2004. The authorities had not defined refugees and no official recognition was given to the UNHCR recognition. They were treated as "illegals" and many were arrested and imprisoned.

Local and international organisations protested strongly against the exercise because of the adverse effects it would have on the migrants, refugees and asylum seekers. These organisations conducted awareness sessions on the rights of a detainee, distributing pamphlets and pasting posters all over the country. The crackdown was postponed to March 2005 due to the effects of the tsunami disaster in neighbouring countries.

Suhakam could have been more proactive in influencing the Home Ministry and in its monitoring exercise, especially since the government insisted in using RELA in the crackdown.

In many situations documented by Amnesty International, it appears that the "irregularity" of these migrant workers and their families has led policy makers to the conclusion that these people do not have fundamental human rights even though they make substantial social and economic contributions to the communities they reside in. Many are treated as less than human. States threaten to arbitrarily expel them from their territory, leading to severe human rights abuses, including torture. They are routinely denied access to basic human rights such as the right to employment, adequate healthcare and housing.

Undocumented migrant workers are among the most vulnerable in terms of abuses and violence, labour rights violations and health problems in Malaysia. Irregular migration is exacerbated by the absence of regular migration channels, unreasonable deployment bans, unregulated operation of labour recruiters/brokers, and complicated, extortionate and corrupt processes.

Abuses, including deaths, torture and rape of migrants, have been reported during the detection process and in the detention camps. The prisons, lock ups and

detention centres are overcrowded. This has created poor health conditions and tension among the detainees. In some cases, this has led to riots.

Generally, there was no major improvement in the conditions at the detention camps. Overcrowding is still a problem at the prisons and immigration depots. Suhakam also visited certain prisons to ensure provision of a place for worship.

In 2004, all matters concerning immigration detention depots nationwide were transferred to the jurisdiction of the Prisons Department. The Immigration Department remained involved in matters relating to documentation of the detainees before they were sent back to their home or a third country.

The Immigration Department was applauded for its efforts to return foreign detainees quickly to their respective countries, and for ensuring better treatment and care of those involved. The police were commended for promoting a culture of expeditious and efficient investigations

In July 2004, Home Minister Azmi Khalid announced plans to expel more than one million ‘illegal immigrants’, many of whom were undocumented migrant workers, from the country by the end of 2005. In August, Deputy Prime Minister Datuk Seri Najib Razak said the government would prosecute all arrested undocumented migrants under the Immigration Act prior to deportation. Those convicted under the Act are liable to imprisonment and caning.

The government deployed RELA, an organisation of uniformed part-time volunteers with some policing powers, to assist the regular police and immigration officials in the mass detention operations. Preparations were also underway to introduce biometric identification cards to enhance the long-term regulation of the entry and exit of migrant workers. Although the government announced an ‘amnesty period’ between Oct 29 and Nov 14, 2004 during which ‘illegal immigrants’ could return to their home country without facing penalty, the Home Minister confirmed in October that “a large-scale deportation exercise would begin in January”.

Amnesty International expressed concern that the government’s mass deportation plans might result in serious human rights violations. As part of continuing efforts to regulate migration flows, Malaysia has periodically implemented “special operation” mass expulsions within specified time frames. In March 2002, the government ordered an estimated 600,000 undocumented migrant

workers to leave Malaysia by August 2002, after which harsher penalties were to be imposed under the newly amended Immigration Act, including sentences of up to five years imprisonment and six strokes of the cane. Over 300,000 migrant workers left Malaysia during the crackdown and severe overcrowding was reported at departure ports, during transportation and in many of the country's immigration detention centres, especially in Sabah.

In apparent contravention of international standards on the treatment of detainees, unsanitary conditions and inadequate provision of food, clean water and healthcare during the deportation process were reported to have contributed to the deaths of some deportees, including at least three children. They were believed to have died from various treatable illnesses. Given the scale of the proposed 2005 detentions and deportations, Amnesty International feared that similar violations of the rights of detainees might re-occur.

Amnesty International recognised the Malaysian government's sovereign right to control its borders. However, given that Malaysia is not party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the organisation feared the intended arrest and deportation of over one million 'illegal immigrants' would also target persons who were in fact refugees or would otherwise be at risk of being subjected to serious human rights violations if returned to their country of origin. The forcible return of an individual to a territory where s/he would be at risk of serious human rights violations constitutes *refoulement* and is strictly prohibited under international law.

Immigration laws were used to detain immigrants. The detainees were not accorded any administrative or judicial hearing and were released only after their employers proved their legal status. Those who produced legal documents normally were released immediately; those who were unable to prove their legal status often were held for extended periods before deportation. Illegal immigrants were kept in detention camps that were separate from prisons. No codified legal distinction is made between illegal workers, refugees, and trafficking victims.

In 2003, the police arrested over 240 Acehnese asylum seekers outside the UNHCR office in Kuala Lumpur. Following the arrests, then Prime Minister Datuk Seri Dr Mahathir Mohamad warned that they would not be allowed to seek political asylum and would be deported. However, many of those arrested subsequently were resettled to other countries. In July, the government arrested 40 asylum seekers

holding UNHCR temporary protection papers. International organisations and a number of human rights NGOs protested. During the year, the government continued to deport some asylum seekers and refugees but has also allowed certain asylum seekers and persons of concern to remain pending resettlement to other countries. Reportedly the government had decided to accord some 10,000 Rohingyas (Muslims from Myanmar) refugee status.

The UNHCR reiterated its call for Malaysia to consider recognising persons who carry UNHCR-issued refugee cards and/or papers indicating their status as 'refugees', as well as their rights to healthcare, employment and education as provided under the 1951 Convention relating to the Status of Refugees.

There was a general view among the government officials that all asylum seekers (*bona fide* refugees) deserved due and proper consideration in light of expiry of an amnesty period on Dec 31 and the planned start of full enforcement operations against all illegal immigrants from Jan 1, 2005. They, however, called on the UNHCR and NGOs to understand Malaysia's position, as the large number of illegal immigrants (and asylum seekers among them) has become a security concern for the government.

The NGOs argued that illegal immigrants were a source of cheap labour for unscrupulous Malaysian employers, although to a large extent, the wages were being remitted to home countries. They said the Foreign Ministry must play a leading role in concert with other agencies to come up with an acceptable definition of 'refugee'. This would indicate greater commitment to resolve the issue of protection for asylum seekers and refugees, although the national concern was to flush out and deport all illegal immigrants. The participants welcomed any Malaysian initiative on common standards on training and screening with regard to Refugee Status Determination (RSD). The government officials, on their part, welcomed any measure that would assist them to differentiate asylum seekers from illegal or economic immigrants.

The plight of Rohingyas received the most attention during the discussion, as their nationality was not accepted by the Myanmar government. The Rohingya representatives pointed out that the Acehnese and Moro were considered nationals by their respective governments. The Rohingyas, unlike the Chin, were not recognised as Myanmar nationals. As stateless persons, their chances of gaining acceptance as asylum seekers by third countries in Europe, North America and

Australia/New Zealand were further diminished.

In 2003, Suhakam called on the government to reconsider caning as a penalty for illegal immigrants alleging that it amounted to cruel and inhumane treatment. The new immigration law, in effect since 2002, provides for six months in prison and up to six strokes of the cane for immigration violations. In practice, due to delays in processing travel documents, many illegal immigrants were detained in camps for over a year.

The government did not distinguish between asylum seekers and illegal immigrants, and detained them in the same camps. Detention facilities were overcrowded and lacked medical facilities. Local human rights NGOs alleged that detainees were provided inadequate food and sometimes were abused.

On Dec 10, the Minister in the Prime Minister's Department, Datuk Seri Mohd Nazri Abdul Aziz, announced the government's intention to provide protection for the Rohingya community in Malaysia. Such protection will go a long way towards alleviating the situation of the *de facto* stateless Rohingyas, many of whom have been residing illegally in the country for over 20 years. Though there were announcements for registration of Rohingyas under IMM13, this process has been postponed again. The reasons for the postponement were not clear.

Health and safety

Migrant workers, especially in Malaysia, are particularly vulnerable to violations of their right to health. Labour migration is fraught with dangers, abuses and oppressions, including dangerous living and working conditions, physical and sexual abuses, harassment by government and police authorities, social discrimination, alienation and loneliness, years of forced separation from their families and loved ones, and barriers to the access of health services. All these impact negatively on migrants' health and quality of life.

The particular nature of the migrants' jobs makes them specifically vulnerable to many occupational, sexual/reproductive, infectious and psycho-emotional health problems. Government control measures against the spread of infections (e.g. SARS, AIDS, bird flu, dengue and malaria) tend to unfairly target or discriminate against migrants, reinforcing stereotypes that migrants spread diseases, and thus a threat

to society.

The principle that health is a basic human right must be ensured for all, especially the marginalised and more vulnerable members of society like migrants, women and children. Health information and services were not available in the languages of the migrants. Sick migrants were not provided appropriate healthcare, treatment and services.

There was coordination between sending and receiving countries on the question of health, especially in cases of repatriating migrant workers. Migrant workers were charged exorbitant fees even in government hospitals. They paid first class fees but received third class treatment. Yet they paid the highest tax in the form of levy in the country. These unjust or discriminatory health policies and practices that predispose migrants to health problems – especially violence against women, unhealthy working and living conditions, mass deportation, mandatory testing (pregnancy, HIV/AIDS), denial of migrants' family rights, etc. – must stop. All migrants, regardless of status, need to be included in health insurance and basic healthcare, treatment and support.

Suhakam's report is extremely weak with regards to the health rights of people and communities. It does not surface under ECOSOC rights as well. There is no mention of even decent living conditions for migrant workers. The section on housing does not address the needs of proper housing, sanitation and conditions free from infectious diseases for migrant workers. Suhakam needs to give some thought and direction to health issues, especially with diseases like avian or bird flu, SARS, foot-and-mouth disease etc. Many migrant workers are working in very vulnerable conditions in chicken farms and other hazardous agriculture activities. Yet, they are not protected. Instead, they are deported without treatment or compensation when they do get infected.

Significant number of contract workers, including illegal immigrants, worked on plantations and in other sectors. According to the National Union of Plantation Workers (NUPW), foreign workers made up 50 per cent of the plantation workforce. However, the actual number may be even higher since illegal immigrants were not counted. Working conditions for these labourers compared poorly with those of direct-hire plantation workers, many of whom are NUPW members.

Work related accidents were especially high in the plantation sector. According to

the Human Resources Ministry, 14 per cent of all reported industrial accidents during the year occurred on plantations.

Foreign workers in the construction and other sectors, particularly if they were illegal migrants, generally did not have access to the system of labour adjudication. In 2002, government investigations into this problem resulted in a number of steps to eliminate the abuse of contract labour. For example, in addition to expanding programmes to regularise the status of immigrant workers during the year, the government investigated complaints of abuses, attempted to inform workers of their rights, encouraged workers to come forward with their complaints, and warned employers to end abuses. Like other employers, labour contractors may be prosecuted for violating the labour laws.

Trafficking in persons

There is no law that specifically and comprehensively criminalises trafficking in persons. However, the Child Act prohibits all forms of trafficking of children under 18, and the Penal Code comprehensively addresses trafficking for the purpose of prostitution. The government also uses other laws, such as the Immigration Act, the Restricted Residence Act, and the Internal Security Act to prosecute traffickers.

The country was a source, transit, and destination for trafficking in women and girls for sexual exploitation. Women and girls from Thailand and the Philippines were trafficked through the country to destinations such as Australia, Canada, Japan, South Korea and the United States. Young women primarily from Indonesia, China, Thailand, and the Philippines were trafficked into the country for sexual exploitation. These women often worked as karaoke hostesses, “guest relations officers,” and masseuses. Some foreign women and girls employed as domestic servants were held in conditions that amounted to forced labour.

In 2003, the police arrested 5,584 foreign prostitutes. According to the police, the Bar Council and Suhakam, many foreigners found to be involved in prostitution were possible victims. There were allegations of corruption among law enforcement personnel since some trafficking victims were known to pass through two or more ports of entry without travel documents. One NGO alleged that high level business and political officials were involved in trafficking. In 2003, the police eliminated a human smuggling syndicate allegedly including airlines and airport officials.

Some Malaysian women and girls were trafficked for sexual purposes, mostly to Singapore, Macau, Hong Kong, and Taiwan, but also to Japan, Australia, Canada, and the United States. According to the police and Chinese community leaders, female citizens who were victims of trafficking were usually ethnic Chinese, although ethnic Malay and ethnic Indian women worked as prostitutes domestically. Police and NGOs believed that criminal syndicates were behind most of the trafficking.

Trafficking victims were kept compliant through involuntary confinement, confiscation of travel documents, debt bondage and physical abuse. During the year, there were a number of reports of foreign women escaping from apartments where they were held and forced to serve as unwilling prostitutes. According to news reports, these women were lured to the country by promises of legitimate employment and were then forced into prostitution.

In 2003, the police prosecuted 24 cases under a trafficking statute, charged and tried 10 persons and convicted seven. There were 145 trafficking victims involved in these prosecutions. Additionally, in 2003, 49 suspected traffickers were arrested under the Prevention of Crime Ordinance, and 70 cases of suspected trafficking were prosecuted under the Immigration Act. In March, the police arrested two of the country's top criminals alleged to be involved in trafficking and sent them to detention camps for two years under the Prevention of Crime Ordinance.

The government assisted some underage prostitutes and rescued some trafficked women and girls during the year. In 2002, 97 underage prostitutes were sent to rehabilitation centres. The Malaysian Chinese Association⁴ reported that in 2003, it assisted 73 trafficking victims in escaping from vice syndicates. However, police have no comprehensive policy to protect victims of trafficking. Police often arrested or deported possible trafficking victims for immigration offences. The police and the Bar Council legal aid bureau advised that this was the fastest way to expedite victims' return to their home countries. Trafficking victims who exhibit signs of physical abuse may be sent to a women's shelter instead of being detained by the police. However, permission from the police to allow victims to reside in a shelter was sometimes difficult to obtain.

The Restricted Residence Act allows the Internal Security Minister to place criminal suspects under restricted residence in a remote district away from their homes for

4 MCA is the largest ethnic Chinese political party in the ruling Barisan Nasional (National Front) coalition.

two years. The ministry is authorised to issue the restricted residence orders without any judicial or administrative hearings. The government continued to justify the act as a necessary tool to remove suspects from the area where undesirable activities were being conducted. During the year, three organised crime figures allegedly involved in prostitution and human trafficking were detained under the Restricted Residence Act. In September, the Deputy Internal Security Minister told the press that 140 persons had been placed on restriction during the year under this Act.

Report on trafficking of women and children

Based on ECOSOC Working Group's research on the trafficking of women and children, interviews with 29 trafficked women, and various dialogues that culminated in a forum, Suhakam published a report on Jan 27, 2005 on 'Trafficking of Women and Children'. Dialogues were held with enforcement agencies – in particular the police – relevant diplomatic missions and NGOs throughout the year.

The first was an informal meeting with high-ranking personnel from the police anti-vice unit. Police, immigration and prisons personnel and officials from the Foreign Ministry and Women, Family and Community Development Ministry attended the forum, as did human rights practitioners and representatives of NGOs, Bar Council, academia and diplomatic missions of the United States, Russia, Thailand, Cambodia and the Philippines.

The dialogue also took into account the standards set in the UN Protocol and regional initiatives against trafficking.

Suhakam has taken an initiative to move forward in addressing the issue of trafficking in women and children arising from its visits to detention centres and its interviews with 29 women. It has come out with a report and held dialogue and regional workshops. The commission has also made various recommendations including the development of an anti-trafficking legislation.

But the report's focus was limited to addressing the trafficking of women to prostitution. The report failed to address the other aspects of trafficking and of smuggling of persons into the country.

One major set back in the report was on the issue of bonded or forced labour. The current practice of employment and placement of domestic workers creates a

situation where they are like bonded labour. The Indonesian domestic workers do not have any off days. The employer holds their passports and they are confined to the house. Their wages are completely deducted for six months or more. Quite often, wages are not paid.

In 2004, Tenaganita established a DW Action line to rescue abused domestic workers with the help of the police. It received over 45 cases with 123 human rights violations. The violations constitute bonded labour.

Human Rights Watch research in 2004 focused on conditions faced by Indonesian women and girls who work as domestic workers in Malaysia. They typically work 16 to 18 hour days, seven days a week, without any holidays, and often are forbidden from leaving the houses where they work, even when not on duty. Some workers confront physical, verbal, and sexual abuse from employers and labour agents.

Indonesian domestic workers earn US\$93-105 per month, less than half the amount that Filipina domestic workers and other low-wage workers earn. Employers often fail to make complete payments or to pay at all. In the worst cases, deceived about the conditions and type of work, confined at the workplace, and receiving no salary, Indonesian women are victims of trafficking and forced labour.

The Malaysian government's inadequate monitoring of workplace conditions and profit-motivated labour agencies prevent many domestic workers from reporting abuses or seeking redress through the justice system. Labour agencies do not uniformly provide domestic workers with information about their rights or, in cases of abuse, access to Malaysian and Indonesian authorities who could assist them with legal, health, and other support services. In many cases, labour agents are guilty of abuses themselves or actively obstruct domestic workers' access to information or help.

Indonesian domestic workers are excluded from several legal protections guaranteed other workers by Malaysia's employment laws and previous bilateral labour agreements with Indonesia. For example, they are excluded from section XII of Malaysia's Employment Act of 1955, which would otherwise entitle them to one day of rest per week, and limit work hours to eight hours per day and 48 hours per week. Malaysia's immigration laws and policies often prevent domestic workers from escaping abusive situations or seeking help from Malaysian authorities. Domestic workers who escape from abusive situations lose their legal status once

they have left their employer's home, and may be classified as illegal immigrants, detained, and deported.

Prohibition of forced labour

The constitution prohibits forced or compulsory labour, and the government generally enforced this prohibition. Certain laws allow the use of imprisonment with compulsory labour as punishment for persons who express views opposed to the established order or who participate in strikes. However, these laws were not applied and appear to be constitutionally prohibited.

Some of the estimated 320,000 foreign women employed as household workers have been subjected to physical abuse and forced to work under harsh conditions.

The government prohibits forced and compulsory labour by children, and there were no reports that such practices occurred in the formal sector. However, some child domestics were found to be working in conditions amounting to forced labour.³

According to the government, foreign domestic workers are protected under the Employment Act, particularly as regards wages and contract termination. However, employers sometimes failed to honour the terms of employment and abused their domestic servants. The terms of the contract for Indonesian domestic workers are vague and open to abuse. The contract provides for a monthly salary of US\$100 (about RM380), but does not specify the number of working hours per day.

Human Rights Watch and local NGOs reported that many Indonesian domestic workers were required to work 14-18 hours a day, seven days a week. The contract for Filipina domestic workers included more comprehensive protections. The government is currently negotiating a new memorandum of understanding with Indonesia to provide better protections for domestic workers. Some workers alleged that their employers subjected them to inhuman living conditions, withheld their salaries, and physically assaulted them.

In May, there was wide media publicity of the case of an Indonesian domestic worker who was allegedly beaten and abused by her employer. The employer was

3 Tenaganita files.

arrested and charged on four counts of causing grievous hurt, which carry a maximum sentence of 67 years. In August, Human Rights Watch reported that such cases were common and that the government failed to protect Indonesian household workers. However, local NGOs advised that workers have the right to take legal action against abusive employers. According to NGOs, the courts generally have sided with employees and ruled that employers must pay back all salary and compensate plaintiffs for injuries.

Conclusion

Though Suhakam has begun to address some aspects of migration especially on the issues of trafficking in women and children and conditions at detention centres, the measures are grossly insufficient. The wide range of human rights violations that affects almost three million people definitely needs not only recognition but also commitment. The commission needs to move away from its ad hoc position to one that is proactive. It needs to set up a special committee on migrant workers that will encompass addressing human rights violations, legal reforms, arbitrary arrest, abuse and violence by the state and development of dialogue with sending countries.

Irene Fernandez is a human rights activist and director of Tenaganita, which promotes the cause of migrant workers..

Police abuses, shootings and deaths in custody

Alexis Diana

The police force has come under public scrutiny in recent years with a string of complaints. Among them are shoddy police investigations, long delays, alleged abuse of power and excessive use of force. A better informed public is now more vocal in its criticism of the police. Several cases of alleged human rights abuses were resolved without a public inquiry much to the displeasure of the victims, their families, non-governmental organisations and human rights activists. This review gives an overview of the human rights issues addressed by Suhakam in the context of complaints against the police including on alleged abuses, shootings and deaths in custody.

It is encouraging to note that Suhakam has conducted public inquiries on allegations of human rights violations or abuse of power. Suhakam held an inquiry in response to a memorandum submitted by 18 villagers in Kundasang, Sabah, alleging human rights violations by a private company and the police. The villagers claimed they were held in remand after they resisted eviction from their land.

Suhakam found that although the police had to use force to pull away villager Milah Bangaloi because she was resisting, disproportionate force was used. Suhakam recommended that the police should take steps not to give the perception that they are partial in their actions, however misconceived the perceptions may be. Suhakam recommended that women police personnel be included in all cases where police assistance is requested by the court, especially when it is anticipated that women will be among those to be evicted.

On complaints that the villagers were prevented from lodging a police report relating to hurt caused to them, Suhakam found that a senior police officer had interfered with the right of a person to make a police report. It recommended that police officers who resorted to such practices should be disciplined.¹

With regards to villagers' complaints on remand and detention conditions, Suhakam

1 Suhakam Annual Report 2004, pp. 40-45.

found that most provisions in the Lock-Up Rules 1953, which governs lock-up conditions and the welfare of the detainees, were not complied with. It also said the police were not familiar with basic principles governing the humane treatment of prisoners and there was little concern or knowledge of the human rights of the detainees. Suhakam recommended that police personnel should be made aware of the lock-up rules and various international instruments on humane treatment of detainees.

In spite of Suhakam's observations and recommendations, the police have not shown sensitivity as seen in the cases of women who were stripped searched or forced to perform "nude squat" in police lockups. Such practices are humiliating for the women and a violation of human rights.

In several cases involving domestic violence and other family matters, police personnel have continued to dissuade complainants from lodging police reports. It is a common grievance of women complainants that police personnel either refuse or discourage them from making police reports. In such instances, the police personnel tend to turn complainants away by advising them to reconcile with their spouses and live amicably. The police seem reluctant to go into the details of such cases.

As enforcers of the law, it is important that police act immediately by making the necessary and relevant investigations. In this way, the complainant would be more confident and willing to approach the police in cases of emergency rather than take matters into their own hands. In this aspect, Suhakam's recommendation that "any police officer who refuses to allow an informant to make a report should be disciplined" is pertinent. In fact, Suhakam should have gone further and suggested that information on the right of every citizen to make a police report should be displayed prominently in the police station in all the main languages.

Besides being made aware of the lock-up rules and international instruments providing for humane treatment of detainees, police personnel should also be informed of the repercussions in the form of disciplinary actions if these regulations are not observed. All police personnel should be required to attend a human rights training sessions on a regular basis as part of their curriculum. In this way, a more caring force could be developed and people will feel less intimidated when dealing with the police.

A re-examination of procedures is necessary at the highest level to correct defects in management. Unfortunately, top ranking officials have often denied defects in the management of the police. There was a lot of opposition from the police when the Bar Council requested for a police inquiries commission to be set up to look into police excesses.

It is noteworthy that Suhakam had submitted a memorandum to the Royal Commission to Enhance the Operations and Management of the Royal Malaysia Police on areas of concern including on deaths in police custody and as a result of shootings. Suhakam observed that victims of custodial deaths have generally been young men, whose family members had attested to the victim's good health at the time of detention.

On deaths by shooting, the typical police response has been that it was an act of self-defence or that the victims were dangerous criminals who were armed. Suhakam also expressed concern over the abuse of remand procedures where suspects have been detained for excessively long periods, some as long as 143 days. It pointed out that the police should discard "the misconception that the promotion and protection of human rights is unrelated to police work. As protectors of society, their respect for human rights must run parallel with their duties to preserve peace and security. The true test of police work is to enforce and uphold human rights at all times."²

The Royal Commission had made crucial recommendations to the government to enhance the performance of the police force, including the setting up of the Independent Police Complaints and Misconduct Commission (IPCMC). However, the police and some vested interests have been opposing the IPCMC proposal. Inspector General of Police Tan Sri Mohd Bakri Omar has openly said the police rejected 24 of the 125 recommendations by the Royal Commission, including the IPCMC.

Former Chief Justice Tun Mohamed Dzaiddin Abdullah, who headed the Royal Commission and later a five-member inquiry body to look into the ear squat video clip scandal, pointed that the police may not be facing so many complaints if the IPCMC had been set up.

2 Suhakam Annual Report 2004, p. 89.

Human rights groups such as Suaram and the Police Watch and Human Rights Committee backed the call for the setting up of IPCMC, citing serious complaints such as custodial deaths against the police which need to be investigated by an independent body. Amnesty International also recommended that a statutory body be set up to conduct external investigations independently of the police if the government were to regain public confidence and enhance the force's image.

While Suhakam's Annual Report clearly stated that the abuse of remand procedures is a violation of a person's right to liberty and freedom from arbitrary detention guaranteed in Article 5(1) of the Federal Constitution and made recommendations to end the offending practices, it must be noted that such abuses are continuing.

Overall, Suhakam has identified police excesses and made recommendations to the government to curb such abuses. However, it is important that Suhakam set a time frame for the police to follow up on its recommendations. Without a time frame, it will be difficult to ensure respect for human rights practices within the police force. Otherwise, Suhakam may be seen as an agency merely to listen to complaints and compile reports and not to bring positive and constructive changes.

Alexis Diana is an Advocate and Solicitor at the High Court of Malaya and is an active volunteer at the Bar Council Legal Aid Centre.

About ERA Consumer Malaysia

The Education and Research Association for Consumers, Malaysia (ERA Consumer Malaysia) was founded as a voluntary, non-profit and non-political organisation in Ipoh, Perak, in 1985. It is a membership organisation registered under the Malaysian Societies Act of 1966 to develop critical consciousness on people-related issues arising from the larger socio-economic environment

ERA Consumer aims to create awareness among the people on issues affecting their lives through research and educational programmes. It consistently responds to the needs of the people and develops its services based on independent and balanced research. ERA Consumer focuses on consumer and human rights education, food, trade and economic issues. It carries out public education projects, makes policy recommendations to the government and international institutions and builds solidarity among NGOs and society. It also endeavours to increase South-South relations and North-South understanding.

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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

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