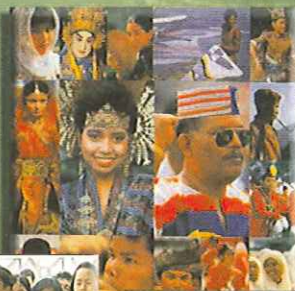


The Vital Role of **Malaysian Parliamentarians** in **Strengthening Human Rights and Democracy** in Malaysia



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**Proceedings of the seminar on the
Vital Role
of Parliamentarians
in Strengthening
Human Rights
and Democracy
in Malaysia**

Session I:

Workshop with the Democratic Action Party (DAP)

Session II:

Workshop with the Malaysian Indian Congress (MIC)

Edited by Dr S. Nagarajan



ERA CONSUMER MALAYSIA

(Education and Research Association for Consumers, Malaysia)

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

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Introduction

Parliamentarians represent the voice of the citizens and inevitably play a crucial role in the democratic life of the nation. They have the people's mandate to institute changes for the benefit of society at the highest decision making bodies of the land.

Civil society organisations do not have the popular mandate and operate as specialised pressure groups at different levels of society. But, as the eyes and ears of the grassroots, NGOs share the same goals: to champion the people's causes and struggle for the betterment of society.

Yet there is little interaction between the elected representatives and civil society. It is important to build a partnership between them to strengthen the democratic process in Malaysia. Such a partnership will also facilitate an exchange of ideas and promote good governance, transparency and accountability. For instance, much development has taken place in the international arena but international law and human rights principles hardly figure in national parliamentary debates and discussions.

ERA Consumer Malaysia has taken the initiative to bridge the gaps by hosting a seminar on the role of parliamentarians in strengthening human rights and democracy in Malaysia. The seminar was organised in two sessions. The first session was held in Petaling Jaya for elected representatives from the opposition parties. The second session was held in Kuala Lumpur for elected representatives from the ruling coalition.

Session I: March 2005, Petaling Jaya

Welcome Address

Indrani Thuraisingham

Secretary General, ERA Consumer Malaysia

Democracy is defined as government by the people or their elected representatives. Therefore, the role of parliamentarians in a democratic nation is, undeniably, an important one. Parliamentarians represent the voice of the citizens and are therefore empowered by the people to make decisions that will benefit one and all.



Good governance, transparency and accountability are, without doubt, the benchmark of a legitimate democratic process. It is, thus, prudent for non-governmental organisations to engage with parliamentarians to further understand and partake in the democratic process of the nation.

ERA Consumer Malaysia has been having dialogues with political parties at the grassroots level since 1998 through our human rights training programme. We have decided to further expand this interaction with members of political parties by organising a seminar on the impacts of international law mechanisms and other international human rights treaties on the Malaysian situation.

In recent times, international law obligations have indeed influenced the local context and affected domestic legislation. Nevertheless, parliamentary debates and discussions rarely use international law and human rights principles. Many nations find it difficult to strike a balance between domestic sovereignty and a nation's obligation to the international community. We hope that this seminar will be the starting block of which we lay the foundation to strengthen the knowledge base of Malaysian parliamentarians on the potential use and the impacts of international law and human rights mechanisms.

Currently, there is minimal interaction between civil society and Malaysian parliamentarians. It is time to strengthen this relationship to facilitate an exchange of ideas and encourage partnerships that will support good governance, transparency and accountability. Smart partnerships between civil society and parliamentarians will enhance the Malaysian democratic environment. We at ERA Consumer hope that this workshop will enable participants to tap these ideas and knowledge and make a difference in your community or constituency.

Keynote Address: Parliamentary Reforms and Modernisation

Lim Kit Siang

Chairman, DAP

Leader of the Opposition in Parliament



Firstly, I wish to thank ERA Consumer Malaysia for hosting this seminar on the role of parliamentarians in strengthening human rights and democracy in Malaysia and pioneering the interaction between parliamentarians and civil society.

The last few months, I suppose, were exciting times for parliamentary reforms and modernisation. We have a new prime minister who has, in his first official speech in parliament on Nov 3, 2003, stated the commitment to uphold the doctrine of separation of powers. To be meaningful, it must mean the restoration of the proper role and place of parliament and the judiciary, distinct and separate from the executive after decades of erosion of power.

There were high hopes that the new prime minister will initiate wide ranging parliamentary reforms and modernisation to enable parliament to play an effective and efficient role. This will ensure that the voice of the people is heard in the highest chamber of the land and the government is held accountable.

It is now some 17 months since Datuk Seri Abdullah Ahmad Badawi has taken over the mantle of the prime ministership. Just like his other promises for a clean, incorruptible, efficient, trustworthy and people-oriented government, the promise of parliamentary reforms and modernisation is more rhetoric than reality. This is a disappointment. A year has passed since the March 2004 general election when Abdullah won the unprecedented 92 per cent parliamentary mandate. This was an opportunity for him to bring institutional changes and stamp the imprint of his personality

on the system of governance in the country.

Before the opening of the 11th Parliament on May 17, 2005, I met the prime minister to discuss parliamentary reforms. After one year, it may be worthwhile to see how far some proposals discussed with the prime minister have gone.

One of the issues discussed was to have live telecast of parliamentary proceedings. There is a loud "NO" from the administration to this proposal, probably for fear that some Members of Parliament may be caught napping or may not have conducted themselves responsibly. The prime minister said recently that MPs must use proper language. Actually, the people who are not using proper language are MPs from his party.

The second proposal was to have a two-hour question time daily because this is the most important parliamentary device to get the government to account for its actions. Currently, only six to eight questions are answered a day even though the order paper may have 40 to 60 questions. The minister in the Prime Minister's Department has initially considered the two-hour question time proposal favourably but one year has passed and nothing has been done. There is no inkling that there would be any change.

In fact, there must be further reform in this area. Under the current standing orders, sometimes an MP has to give three to four-month notice before a question can be answered. For example, last year's budget session started on Sept 1. Questions had to be submitted by early August. The last day of meeting of the budget session was in December. Thus, questions raised in early August could be only answered in December. It is no more contemporary or topical and becomes a historical exercise. I believe this is the only parliament in the world with such archaic provisions.

The original parliamentary standing orders were amended over time not to make parliament more meaningful or to give MPs more space to voice the people's views. Basically, the amendments in the 1980s requiring 28-day notice were to suit the administrative convenience of the powers that be. The argument at that time was the government would come to a halt if it had to spend most of its time answering parliamentary questions. So the

government wanted a full period of notice. As a result, we have the ridiculous situation where questions have to be submitted three to four months earlier, which renders them completely irrelevant. In other countries, their parliamentarians are suggesting 5 to 10-day notice. In the United Kingdom, they have to give 10-day notice and they are proposing to reduce the period further to five days. I think this will make the questions topical, relevant and contemporary.

The third proposal was to have the prime minister's question time twice a week. As the leader of the house and government, he should be in parliament to set an example. Currently, there is a truancy problem because many ministers and MPs do not come to parliament. That is why we sometimes have this problem of marshalling a quorum. The required quorum is at least 26 of the 219 MPs must be present. So, the prime minister can set an example by coming to parliament to answer questions at least twice a week as in other Commonwealth countries. It will put parliament in its proper pedestal and will be an important step to restore the doctrine of separation of powers. Again, this does not seem likely. In fact, I cannot remember seeing the prime minister in parliament to answer our questions in the last parliamentary meeting. The prime minister's presence is becoming even scarcer.

Another proposal was to have some 30 specialist parliamentary select committees – one for each ministry. About 25 years ago, the United Kingdom introduced the departmental select committee so that MPs specialise to shadow each ministry's development – its planning, implementation, policies and programmes. We do not seem to be prepared to emulate such examples.

It was also proposed that about 10 general parliamentary select committees be set up to produce annual reports on the progress, trends and recommendations on IT, the women's agenda, environment, mass media, corruption, etc. Again, this seems to be quite alien to the whole notion. After 47 years of parliamentary history, we have only four standing committees – Public Accounts Committee, Committee of Privileges, Standing Orders Committee and House Committee. The Standing Orders Committee is very important if there is going to be far reaching

parliamentary reforms and modernisation. A year has passed, but the Standing Orders Committee has not met even once.

There was a promise that the committee would be very diligent. But what is the use when the committee has yet to meet? The second year of parliament begins on March 21. How can there be parliamentary reforms if we do not review parliamentary procedures and practices.

It is the same situation with the House Committee, which is supposed to be responsible for facilities and improve the working conditions of MPs in terms of research and providing support staff and infrastructure. The committee has not met even once although some RM70 million was spent to renovate the Parliament House.

However, not all has been negative. Of course, there have been some improvements. For example, two parliamentary select committees have been formed. One committee will look into the Penal Code and the Criminal Procedure Code and the other is for national unity. We forwarded the two proposals to the prime minister last year. There is some change although it is very limited. It is a good beginning but it appears that there is no full commitment to move beyond the two parliamentary select committees.

During the special debate on the Constitution Amendment Bill on water federalisation and privatisation, we pressed for a parliamentary select committee to be formed to look into two water bills that will be presented as part of the programme. Energy, Water and Communication Minister Datuk Seri Dr Lim Keng Yaik agreed to take the matter to the cabinet meeting the following day. After the cabinet meeting, Minister in the Prime Minister's Department Datuk Seri Nazri Mohamed Abdul Aziz announced that the cabinet has decided to form a parliamentary select committee on the two water bills. Of course, we welcomed the decision but then, unfortunately, the *Sin Chew* reported a few days ago that the cabinet has reversed its decision. The government believed it was not necessary to have a parliamentary select committee on the two water bills because it would take a long time, over one year. Apparently, the water companies could not wait anymore; they were getting very impatient at the very slow process of water privatisation, which can turn water into blue gold.

The other proposals were for research and constituency staff for MPs, opposition deputy speaker, modernisation and democratisation of standing orders, code of ethics for MPs and ministers, and parliamentary code of conduct. As I mentioned earlier, there is no overall commitment to bring about meaningful parliamentary reforms and modernisation. I hope that the prime minister will take note of these proposals. There is still time for him to introduce meaningful changes for parliamentary reforms and modernisation.

Without these changes, it will be very difficult for parliament to make a difference in the system of governance of our country. It will become an executive driven parliament rather than being driven by MPs. The parliamentary business must be set by MPs and not by the executive. Otherwise, the doctrine of separation of powers will just be an empty one and we will have problems of getting the government to account. For instance, although motions were introduced in parliament to debate Suhakam's Annual Report, we could not find time. Unless MPs get to set the pace in parliament, it will be difficult for an effective and meaningful parliamentary democracy to take root.

We have introduced a parliamentary caucus in the last one year. The parliamentary caucus on democracy in Myanmar has been quite active and successful in initiating proposals, in particular an ASEAN Inter Parliamentary Caucus on Myanmar. Apart from the Malaysian parliamentary caucus on Myanmar, a similar caucus is being formed in Indonesia, Thailand and the Philippines. However, this is not a formal parliamentary committee. It is a coming together of MPs in their individual capacities because there was no way to get a parliamentary resolution to form a parliamentary caucus on Myanmar. We had to go around on an informal basis. It is not a very satisfactory arrangement because there is a problem of infrastructure and back up. However, by doing this, we are pushing in that direction. In fact, we have formed three such parliamentary caucuses. Apart from the parliamentary caucus on Myanmar, we have a parliament caucus on human rights and another on south Thailand. However, I am not sure how they are going to operate because they were formed informally.

Whatever the difficulty, we hope that parliamentary reforms and modernisation will take off. They can take place only with government support. There can be no parliamentary reforms and modernisation without government support. This is the reality and reforms can only come about if the government is confident of its position in parliament. I don't see why the prime minister should lack confidence about the position and authority of the government in parliament when it has a 92 per cent majority. We hope that our discussion today will also help to expedite the process of parliamentary reforms and modernisation so that parliament can play a more meaningful role.

International Law and Human Rights: Relevance to Malaysian Politics

Datuk Param Cumaraswamy¹
President, Transparency International

In recent years, there has been an increased focus by the international community on the importance of democracy to maintain international peace and security, development and respect for human rights. In fact, it is now recognised that the promotion of democracy, or the process of democratisation, is a primary means of achieving the objectives and principles set in the Charter of the United Nations. Recent developments in Eastern Europe and West Asia are cases in point.



Democracy, at its most basic level, is defined simply as “government by the people or their elected representatives”. In a 1997 declaration, the Inter-Parliamentary Union (IPU) stated that “It is founded on the right of everyone to take part in the management of public affairs; it therefore requires the existence of representative institutions at all levels and, in particular, a parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action”. A freely elected parliament and an independent judiciary are basic attributes of a democratic state.

The opposition in parliament is a necessary and indispensable component of democracy. For it to be effective, however, the government and society at large must accept the essentials of parliamentary democracy. The primary function of the opposition is to offer a credible alternative to the

1 Datuk Param Cumaraswamy is also the chairman of the Malaysian Working Group for ASEAN Human Rights Mechanism. He was formerly UN Special Rapporteur on the Independence of Judges and Lawyers.

majority in power. Moreover, by overseeing and criticising the action of the government, it works to ensure transparency, integrity and efficiency in the conduct of public affairs and to prevent abuses by the authorities and individuals, thereby ensuring the defence of public interest. Indeed, the opposition contributes to the promotion and defence of human rights and fundamental freedoms, thus helping to ensure that democracy functions properly.

International law is the body of rules, which are legally binding on states in their intercourse with each other. These rules are primarily those which govern the relations of states, but states are not the only subjects of international law. International organisations and, to some extent, individuals also maybe subject of rights conferred and duties imposed by international law. The General Convention on the Privileges and Immunities of the United Nations is an example. That part of international law that is binding on all states, the greater part of customary law, may be called universal customary international law, in contradiction to particular international law which is binding on only two or a few states.

The sources of international law generally are international treaties ratified by the governments of sovereign states. However, often in many jurisdictions, particularly those in the Commonwealth, ratifications do not automatically incorporate the treaty provisions into the domestic law of the state. For domestic application, such treaties must be legislated into the domestic stream by the national legislature.

Since the Universal Declaration of Human Rights in 1948, the international community has witnessed the gradual, but steady advancement in the direction of the internationalisation of human rights. First, this development is seen in the increasing awareness, with an international dimension that human rights must be respected and protected whichever nationality one may have, wherever one may live, and whatever status one may hold. This is awareness of the universal nature of human rights. It has now been made clear that human rights are matters of legitimate concern of the international community.

Secondly, this advancement has been taking place in the form of

codification, namely drafting and adopting various international human rights instruments. At present, a large number of international human rights instruments embody the common understanding of human rights by the international community. Thirdly, and this is the most difficult aspect, advancement has been seen in the establishment of an international machinery to monitor human rights situations in various parts of the world to ensure that human rights are protected as stipulated in the international instruments.

Almost all the states of the then world community in 1948 voted in favour of adopting the Universal Declaration at the UN General Assembly. It was subsequently endorsed by other states, including those that emerged later, in other international instruments and at international conferences. Such a consensus justifies the expectation that this international expression of the political will to accept the Universal Declaration as a "common standard of achievement" would be translated domestically into legislative and administrative measures. Though the Universal Declaration may be legally non-binding, this has never proved a hindrance to it being considered binding or impaired its scope of application or effectiveness. There is today a school of thought that the Universal Declaration is now entrenched as customary international law.

Among the several international treaties on human rights, 12 principal treaties have committees of experts, known in UN language as treaty-bodies, to monitor their implementation by member states that had ratified them. The UN Human Rights Commission monitors generally worldwide application and identifies states or non-state actors violating human rights. In addition to the Universal Declaration of Human Rights, four of the 12 principal treaties form what is called the International Bill of Human Rights. They are the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Optional Protocol to the ICCPR, and Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

Modern constitutions expressly provide for a Bill of Rights entrenching most of the civil, political, economic, social and cultural rights contained in these international instruments. Some even provide that human rights

treaties and agreements approved and ratified by the government have precedence over domestic laws. Chapter 2 of the South African Constitution provides a long list of rights described as “a cornerstone of democracy in South Africa”. It further provides “when interpreting the Bill of Rights, a court, tribunal or forum – (a) must promote the values that undertake an open and democratic society based on human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law.

The Malaysian Constitution provides a chapter on fundamental liberties, yet it is not an entrenched Bill of Rights. It does not provide for consideration of international law. With regard to implementation of international treaties entered into by the government, Article 76 provides for incorporation only by legislative process as a domestic law. By virtue of Article 169, any treaty, agreement or convention entered into by the United Kingdom government before 1957 on behalf of the then Federation of Malaya shall be decreed to be a treaty, agreement or convention binding on Malaysia.

Save for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child, Malaysia has not ratified any of the principal treaties on human rights. The two main Covenants of 1966 on Civil and Political Rights and Economic, Social and Cultural Rights are still not ratified. The Convention against Torture has not been ratified. Even Saudi Arabia has ratified this convention. China has ratified many of the principal treaties. After 47 years of independence, being a near developed nation, seeking and sitting on, sometimes taking the chair, of international organisations on human rights, this is a dismal track record of Malaysia in its respect for international human rights laws.

Malaysia's scant regard for international human rights law and the Universal Declaration is further reflected in the Human Rights Commission of Malaysia Act 1999. In this Act, human rights is given a very parochial definition. In the interpretation section, it is defined as the “fundamental liberties as enshrined in Part 11 of the Federal Constitution”. Then under the section on Functions and Powers of the Commission, it says, “For the purpose of this Act, regard shall be had to the Universal Declaration of

Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution”.

Soon after the opening of the 61st Session of the UN Human Rights Commission early March this year, Foreign Minister Datuk Seri Syed Hamid Albar took the podium and delivered Malaysia’s statement. He said *inter alia*:

Malaysia regards the heightened interest on human rights in the world today as positive development. However, it is a matter of concern to us that certain countries exploit the issue to promote these narrow agenda. We cannot be selective on which human rights to promote and protect or target particular countries for alleged violation of human rights while allowing others to act with impunity.

The international community has accepted in Vienna in 1993 that all human rights are universal, indivisible and interdependent and interrelated – that political, civil cultural, economic and social human rights have to be practised in their entirety. Accordingly we have to develop comprehensive and innovative approaches, through dialogue and cooperation, to assist one another to meet the high standards we have adopted. We should at all times avoid sanctimonious and confrontational approaches.

On March 16, the *Herald Tribune* reported the opening of the 61st Session and identified Malaysia as one of the countries next to Pakistan and China that will “oppose all individual country resolutions”.

In response to the foreign minister’s reference to the Vienna Declaration of Programme of Action 1993, the opposition in parliament may wish to refer him to a paragraph in the same Declaration. The paragraph strongly reminds member states, which have not ratified international human rights treaties, “that a concerted effort be made” to ratify. The minister should not be seen and heard as being selective in the application of the Declaration, which was freely adopted by 171 member states, including

Malaysia.

What are the reasons underlying the reluctance of the Malaysian government to ratify these international instruments? One reason may be that its domestic laws and policies are inconsistent with these conventions. There is no political will to embark on a scheme to amend the domestic laws to conform to the conventions. Veneration for human rights, particularly civil and political rights, has been seen as detrimental to economic growth.

Another reason is the periodic reporting procedures to the respective committees monitoring state compliance with the conventions and the consequential oral examination of the states by the committees. This process requires transparency. The Malaysian government generally is wanting in transparency. It resents scrutiny by outside bodies.

This want of transparency is also evident from the fact that there is no freedom of information legislation in Malaysia. Sometimes the Official Secrets Act, meant for the protection of state defences, is used to resist flow of information on public administration.

Another drawback is that there is no regional mechanism in Asia to promote and protect human rights. Even Africa has an African Commission on Human and People's Rights established under the African Charter on Human and People's Rights. Europe and the Americas have regional courts while Africa too is about to set up a regional court on human rights. But Asia has been resisting such institutions on the grounds of diversity in the region.

In this regard, soon after the Vienna Declaration and Programme of Action in 1993, ASEAN foreign ministers met in Singapore at the 26th ASEAN Ministerial Meeting in July the same year. In their joint communiqué, they welcomed the Vienna Declaration and agreed "ASEAN should also consider the establishment of an appropriate regional mechanism on human rights".

Following this bold joint commitment, a regional group of representatives

of national NGOs was formed to pursue the setting of such a mechanism. For the last nine years, this group has been in dialogue with ASEAN member states. While Indonesia, the Philippines and Thailand have shown positive responses, others, particularly Malaysia and Singapore, have been difficult.

While we hear great deal of rhetoric from government leaders about Malaysia's respect for human rights, in reality its track record speaks otherwise. It is not in tandem with the trend in other developed and near developed countries. As we have achieved a good level of economic development, there is no reason why Malaysians should not enjoy civil and political rights as provided in the Universal Declaration and the subsequent international treaties on human rights. As our foreign minister acknowledged last week, "all human rights are universal, indivisible and interdependent and interrelated – that political, civil, cultural, economic and social rights have to be practised in their entirety". The state of civilization of a country is often measured by the extent and quality of the freedoms afforded to its people.

Parliament certainly has a pivotal role to spearhead a culture of respect for international human rights law. It is in that forum where the government must be made to account for its default in this aspect. Like-minded government and opposition members should form a parliamentary committee to actively pursue this cause.

Panel Discussion:

**Human Rights and Good Governance –
Strengthening the Partnership of Civil Society and
Elected Representatives in Upholding Principles of
Human Rights in Malaysia**



Lawyer and Member of Parliament for Ipoh Barat, M. Kula Segaran, chaired the panel discussion. The panelists were Teresa Kok, Member of Parliament for Seputeh and DAP publicity secretary, Malik Intiaz Sawar, deputy president of the National Human Rights Society (HAKAM) and the chairman of the steering committee of the National Conference on the Initiative Towards the Formation of the Interfaith Commission of Malaysia, and Edmund Bon, Advocate & Solicitor, High Court in Malaya.

Teresa Kok: In a democratic society, non-governmental organisations or civil societies are seen and recognised as pressure groups. These groups are important as they play a vital role in pushing for social reforms and changes in the political system.

Civil societies and political parties, although sharing the same goals, for example fighting for the betterment of society and championing causes

which they believe are necessary, operate at different levels.

The main differences between civil society and political parties are:

- i) Political parties strive to make changes by getting a mandate from the masses so that they can represent the people in the highest decision-making bodies, i.e. parliament and/or the state assemblies. In a more democratic environment, unlike what we have here, grassroots politics at its purest could be seen when the public have the right to vote for their own town councillors, district health board representatives etc. On the other hand, civil society organisations have the luxury of not having to go through the painful process of securing a mandate through the ballot boxes to push a cause.
- ii) Political parties and elected representatives are generally “Jacks of all trades, masters of none” as they have to attend to, and handle, all sorts of complaints from their constituents. NGOs, on the other hand, are generally more focused: most concentrate on a particular field and/or subject, for example: women’s rights, environment, human rights, police watch etc. NGO activists also have the expertise to specialise in a particular field. Most elected representatives are not career politicians and, thus, few have specialist knowledge.
- iii) Political parties have a structure, a fairly large membership, and a hierarchy. Leaders and elected representatives of political parties have to spend lots of energy and time handling organisational matters. They are also sometimes forced into internal politicking to canvass for support as political parties operate on the principle of consensus. NGO activists are largely free from such hassles, as they do not have mass membership and complicated structures. This allows them more time to concentrate on the issues they are pursuing. In other words, NGO activists can be more freely motivated by universally worthy ideals rather than be restricted by standing party policy subjected to political correctness in varying degree.

- iv) Politicians and their parties have to resort to various means to raise fund for the parties or their service centres. Opposition parties, unfortunately, do not have the patronage of wealthy donors. Unlike some countries where there is central funding for parties – whether in power or the opposition – based on membership and/or number of elected representatives, there is no such system here. In Malaysia, receiving donations from foreign funding agencies could easily lead to accusations of being foreign stooges, agents and moles. NGOs need not worry about such labels, as they need not contest for the hearts and minds of voters.
- v) Politicians have to be seen as politically correct while NGOs specialise in the promotion of various causes, that when viewed in a single dimension, could be misinterpreted as politically incorrect. NGOs can also serve as a reminder that the truth of a matter is not always confined within the common paradigm of the political correctness of the day alone but perhaps beyond it.

Before I was first elected to parliament in 1999, I was an NGO activist. I now see myself as being a little of both. I have my responsibilities to my constituents yet the fire of activism still burns in me. As an elected representative, I can voice the people's concerns and plights at the highest law-making domain, parliament, and be an effective public watchdog; question cabinet ministers face to face; obtain official data and information which are of importance to NGOs, the media and the public; be in a better position to communicate with official channels, agencies and departments; and hold the government of the day accountable. As merely an NGO activist, I cannot perform such functions.

The DAP was, perhaps, the first to recognise the importance of having a close working relationship with NGOs that share some common ground with our party's objectives. It is worth noting that unexpected events such as the detention of our leaders and elected representatives, and the gang rape of human rights during *Operasi Lalang* in 1987 resulted in the initial cooperation between us. The government then saw the DAP and some NGOs as common enemies. We, however, saw that our destiny was the

same as we have quite a lot in common. The government took that chance to cripple us. We took that chance to be born again in a special relationship that grows stronger by the day.

The DAP's appreciation of NGO activists is also reflected in invitations to trade unionist Ahmad Nor as well as Chinese educationists like Dr Kua Kia Soong and Lee Ban Chen to join the party and contest in the general elections. In 1996, the DAP cast that relationship in stone by establishing the NGO Affairs Bureau.

Our working relationship with various NGOs has had some degree of success. Our MPs, working closely with NGOs, have been actively debating issues ranging from children's rights to oppression in Myanmar. Among our achievements thus far are our MPs have whole-heartedly supported NGO-initiated issues in parliament such as the Domestic Violence Bill, which was successfully lobbied by women's groups. The Domestic Violence Act was passed by Parliament in 1994. Similar cooperation was also evident in the debate on the Child Act, freedom for East Timor and the rights and dignity of migrant workers.

We hope NGOs understand the problems we face. As parliamentarians, we have an obligation to work across a broad spectrum of social-economic issues. While NGOs have specific interests, we deal with all the issues raised by civil society *and* hundreds of other issues, which are not adopted by any NGO. Frustrations do arise when certain NGOs expect more attention than others. We hope they understand that while our goals are



unlimited, our resources are limited. Everyone knows that there is an acute shortage of medical professionals in the country, but how many actually stand up to say we are also facing an acute shortage of quality Members of Parliament? You have to stand by us for us to work with you. Getting more of us elected means having additional resources to fight causes dear to your heart and ours as well.

I hope some NGO activists can face realpolitik. They may mean well, but this is Malaysia, and we have to approach and deal with issues in ways that are perceived to be acceptable by the public. The roadmaps to democracy, justice and freedom are different for different societies. What may be common and acceptable in South Korea, Indonesia, New Zealand, Australia and the Philippines may not be the same here. Tactics adopted by some NGO activists actually backfire. The Malaysian public is not into loud mass demonstrations, but it may be necessary at times to prove a point.

This sums up the strength and limitations of being either an NGO or a political party. In summary, their continued existence and relevance are dictated by their ability to scratch each other's back to perpetuate the success of any cause, issue or agenda.

In short, in a democratic environment both must co-exist, as neither could be effective without the cooperation of the other.

Malik Imtiaz Sarwar: Human rights activists will argue that international norms are applicable as a matter of course. We know of these international norms and can see how far they go towards addressing the issues of governance, putting in place a human rights approach and giving emphasis to genuine civil society participation.

The legal realities in particular countries are different. Malaysia is no exception. International legal principles are applicable only if they are made to be so by law. As such, without an enabling law, or without the particular guarantees being codified as law domestically, they are simply not law. For example, Malaysia has ratified the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of

Discrimination Against Women (CEDAW), albeit with heavy and obstructive reservations. While Malaysia may have ratified a convention, it remains just as a representation by the government of its willingness to commit to the ideals set out in the instrument, unless they are brought into play by domestic or municipal legislation.

The same could be said of the adoption of declarations, which governments seem to be more willing to do as the perception appears to be that there is little or no consequence in their doing so. Again, the Malaysian government is no exception. We have adopted the Vienna Declaration, for instance, containing as it does a comprehensive scheme of human rights. Similarly we have adopted several declarations on governance.

However, there is room for lawyers to argue that by reason of these representations, Malaysians have a legitimate expectation that the government and its agencies cannot act inconsistently with those representations. The point has been tested in other jurisdictions to growing success. Here, the point remains undecided although it has been raised at the Federal Court in at least one prominent case, that of the four Malays who renounced the Islamic faith, in the context of freedom of religion.

Furthermore, the Bangalore Principles – adopted by a conference of heads of Commonwealth judiciaries, including Malaysia, in the late 80s – favours the persuasive force of international norms. Judges are expected to have regard to the international norm where there is no domestic law or the domestic law is ambiguous. There is at least one decision where the court has taken this approach. The case involves the Orang Asli in Sepang.

The term “civil society” is subject to much debate. There are differing views on the nature of the relationship and the dividing line between civil society and the state. There is no real agreement as to the content of civil society i.e. the types of organisations that fall within the category. There is however agreement that civil society has an essential role to play, rooted as it is in an idea that links civil responsibility (citizen engagement) and community service. In this regard, civil society uses NGOs to fill the gaps that governments cannot adequately reach, and is a source of information about what is happening at the grassroots level.

Parliamentarians have a critical role to play in good governance as elected representatives. Parliamentarians are the 'trustees' of public mandate, given periodically. The expectation, quite correctly, is that parliamentarians will uphold the national and public interests over other narrow and self-serving interests.

Parliamentarians are the link between civil society and government. Members of Parliament, as elected representatives, have to be in contact with their constituencies in order to understand their needs and to encourage citizen participation. Civil society is a valuable conduit in ensuring this. They further strengthen social forces, which provide a balance and counterweight to the powers of the state.

Mutual self-respect between parliamentarians and civil society is essential to ensure transparency, accountability and participation. However, the relationship between parliamentarians and NGOs appears to be ambiguous and weak, particularly where government parliamentarians are concerned. This stems largely from the perception that civil society organisations are 'anti-government', adversaries or are motivated by collateral agendas. Civil society organisations on the other hand are quite understandably mistrustful of the priorities of parliamentarians and do not necessarily see them as agents of change. Where there is little trust, the vital connection between government and civil society is obstructed.

It is crucial to note however that with their dynamism, sense of innovation and focus on the grassroots level, civil society organisations can play a significant part in raising the effectiveness and integrity of public institutions. They can also be effective change agents.

The foregoing is intended only to establish several points. Firstly, that the vital role of civil society in governance is indisputable as is the need for strong relationships between parliamentarians and civil society organisations. Secondly, mistrust is double-edged, affecting not only the interests of parliamentarians but also those of the civil society organisations.

This gives rise to several possible steps that may be taken. These suggestions are stated broadly and may already be in play. Forgive me for having

presumed to have restated them here:

1. As a start, it is crucial to address this mistrust and to re-evaluate perceptions. Parliamentarians and civil society organisations must re-educate themselves about their *own* roles and that of the other. It appears obvious that parliamentarians are not about to start this process themselves and, as such, it is vital that civil society takes the lead. Seminars such as this one are useful. Other such initiatives must be undertaken. Outreach programmes should be devised. As an adjunct, perhaps we should also begin to accept that we might never get the 'ideal' parliamentarian. If this is the case, civil society may have to consider how to work around the fact of vested interests.
2. Further to the above, parliamentarians must be involved in civil society initiatives. Civil society organisations can only go so far but they must ensure that all reasonable steps are taken. The tendency now is for organisations to invite those they are familiar with or those who are seen to be supportive of the initiative in issue. As far as possible, invitations must be made across the board so as to show that the effort is 'inclusive' and not exclusive. This not only serves to educate the parliamentarians but also dispels any notions of hidden motives.
3. Civil society organisations must consider how to address the perception that they are 'anti-government' or 'subversive'. While this perception may be unfounded, there is no harm in reconsidering methodologies and strategies with a view to undermining this perception. We have seen some achievements, particularly where women's rights are concerned, resulting from cooperation. Perhaps these instances have lessons to offer.
4. Such organisations must also take steps to ensure that they are fully transparent, accountable and are responsive to constituencies towards strengthening their positions, and further be seen to be such. Criticism almost always is based on suggestions to the contrary. It is axiomatic that where parliamentarians have no reason to fear or are in a position to meet reprisals, they will be more willing to involve themselves.

5. Networking amongst civil society organisations must also be strengthened. This not only amplifies the support base the particular initiative has but is also a means to show the actual grassroots support that these organisations have.
6. It is also crucial to consider how to 'educate' parliamentarians. It cannot be assumed that these individuals have a basic understanding of the context of a particular initiative. This is most often true in matters relating to human rights where an appreciation of the human rights framework and its inter-relationship with matters of governance is sadly absent. We must accept that quite often rejections of ideas or initiatives are the result of a lack of understanding.

In concluding, I would emphasise that the link between civil society and parliamentarians is vital for appropriate governance. I thank ERA Consumer Malaysia for having taken the initiative to organise this seminar to underscore the significance of that relationship.

Edmund Bon: State actors are the principal violators of human rights around the world. The irony is human rights protection cannot subsist without state participation. It is then obvious that lawmakers play a vital role in protecting and promoting human rights through legislation and democratic practices.

It is unfortunate that Members of Parliament in Malaysia do not do enough for the cause of human rights. This state of affairs is discouraging.

Since its inception, the National Human Rights Commission (Suhakam) has actively carried out its mandate culminating in no less than 15 reports. It has also submitted all its annual reports to parliament but they have neither been tabled nor debated in the Dewan Rakyat. The government appears to be reluctant to discuss the findings and recommendations in the reports. No formal reason has been given why time has not been allocated to debate these reports. This points to the government's lack of respect for Suhakam. It also impairs Suhakam's right to defend human rights and represents an abdication of responsibility by the government.

At a dialogue hosted by the Bar Council on Feb 17, 2005 between Minister in the Prime Minister's Department Datuk Seri Nazri Mohamed Abdul Aziz and members of the Malaysian Bar, the minister was asked why Suhakam's reports have not been debated in parliament. He replied that many MPs were not lawyers and, thus, they would not be able to understand the legal points in the reports and debate them. Nazri also said it would be pointless to debate the reports in parliament as the Barisan Nasional formed the majority and any vote would be in its favour. Further, he said it is not mandatory to accept Suhakam's recommendations. Nazri heads the Parliamentary Human Rights Caucus and is the minister overseeing parliamentary affairs.

Many MPs are not aware of basic human rights principles, and partisan political interests usually cloud any genuine desire to uphold human rights norms. After the cabinet meeting on March 2, 2005, Home Minister Datuk Azmi Khalid said that "bonafide refugees, as well as those who had applied for refugee status, would not be targeted during the current *Ops Tegas* against illegal immigrants." This decision was welcomed as it represented an open acknowledgement of the principle of non-refoulment, which forms the core content of the Convention Relating to the Status of Refugees, 1951.

However, the following day, Deputy Prime Minister Datuk Seri Najib Razak reversed the government's position and said: "We will take action against anyone who is here illegally. There is no exemption on this including those who are carrying letters, genuine or otherwise, from the UNHCR." It is high time for Suhakam to start conducting human rights training programmes for MPs.

At the international level, Malaysia has been defensive of its human rights record and continually deflects genuine attempts to improve the human rights monitoring mechanism promoted by the United Nations. Recently, Malaysia resisted the recommendation of the United Nations to prepare an annual report on the situation of human rights worldwide in view "of the varying human rights perspectives and different political, historical, social, religious, cultural and developmental characteristics".¹ Yet, in the same breath, Malaysia maintained that not enough is being done to address

poverty, underdevelopment, marginalisation and instability as “the universality and indivisibility of all human rights have been accepted as far back as 1993, at the Vienna World Conference on Human Rights.”²

The problem is endemic. Contradictory public statements such as the one quoted in part are not isolated incidents. They display a genuine deficiency on the part of MPs in understanding what the human rights struggle really means. It renders other useful statements on the commitment to human rights mere lip service.

But to criticise MPs is not enough. We must make an attempt to understand them and where they are coming from. It is not difficult for NGOs and human rights activists to take altruistic human rights positions, as they must. MPs however, while purportedly representing the voice of the people, are constrained by the political realities of the day. MPs are elected and sustained by the power of numbers. It is the numbers they must sustain to hold on to power. Human rights transcend the power and numbers game. Hence, the dilemma. How does one incorporate the human rights struggle as part of the game without compromising the core values?

There is no easy answer. Battles have been won, and Datuk Azmi’s statement on March 2 is one of them. It was a battle fought and won by a combination of unrelenting and tireless NGOs, human rights activists and the office of the United Nations High Commissioner for Refugees.

Yet, as the struggle continues, the feeling on the ground is that MPs cannot be counted on with regards to human rights issues. Human rights is a concept based on certain norms but yet is fluid enough to be applied across borders to people and nations very different from each other. The perception is that MPs tout human rights causes to suit their needs, and have a hidden agenda. Be that as it may, in reality, MPs are indispensable to the process of furthering the cause effectively.

1 Foreign Minister Datuk Seri Syed Hamid Albar’s statement at the 61st Session of the United Nations Commission on Human Rights in Geneva on March 14, 2005.

2 Ibid.

The focus must now be to re-educate and re-democratise our country. There must be a concerted agenda for MPs to pursue in terms of human rights protection and promotion.

It must be on the political plate at every election to be canvassed by the candidates, along with other issues. Almost every issue in an election can some way or another be articulated in the language of human rights. The promotion of human rights issues must then be shaped in appropriate forms to reach out to different sectors of the electorate – the poor, the disabled, the middle-class, the rich, the educated et al.

As long as the opposition continues to be fragmented and disorganised, there can be no effective challenge to the ruling party. Exercises in excess of power will continue. The baggage, which PAS brought to the opposition, was probably the major factor in the overwhelming majority voting for the Barisan Nasional. Despite PAS' stated commitment to human rights, its basic ideology and *raison d'être* does not sit well with international rights norms. The way PAS has ruled Kelantan and Terengganu bears testimony to that fact.

There must be a concerted human rights agenda based on clear policies (at the macro and micro level) of a shadow or alternative government for the electorate to choose from. The human rights cause cannot be fought on a piecemeal basis. It must be advanced as a whole in every aspect of the administration and management of a country.

Question and Answer Session

Datuk Param Cumaraswamy: When ERA Consumer contacted me about this programme some time ago, I was informed that there would be two separate sessions, one for the opposition and another for the ruling coalition. I queried the rationale, when we are talking about international law and human rights, why should there be a separation between the party in power and the opposition? I was then told that certain quarters did not want to be seen together with the opposition. It speaks a great deal for international law and human rights.



I was interested when Opposition Leader in Parliament Lim Kit Siang earlier spoke about the 10 proposals for parliamentary reforms he submitted to the prime minister. The first one – live telecast of parliamentary debates – is a very sore point in this country. I recall my visit to New Delhi many years ago when Mrs Indira Gandhi was the prime minister. I had the opportunity to listen to a parliamentary debate in the Lok Sabha (lower house of the Indian parliament). It was interesting to observe the relationship between the speaker and the MPs. In one instance, I observed the speaker addressing an MP who just walked into the house. He said, "Hello Mr Chakravathy, it is nice to see you back in this house again." Mr Chakravathy replied, "Mr Speaker sir, I have always been here but you never took notice of me." Then at 12 noon, all the hands were up. That was supposed to be zero hour or question time when the speaker would only invite one member to put in a question. Mrs Gandhi had just walked in. The speaker just pointed out one woman MP and all the others had to bring their hands down. All the others, the disgruntled MPs, disappointed that their hands were not noticed walked out slowly one by one. As they walked past the speaker's chair, they just showed all sorts of signs at the speaker. In response, the speaker just waved back at them to get out and treated them like animals. That is the kind of debates you will see. Televisise these fellows on TV and we can sit and watch them from our homes.

Chow Kon Yeow (Member of Parliament for Tanjong): What has the Working Group for ASEAN Human Rights Mechanism achieved?

Param Kumaraswamy: It began as a regional working group under the auspices of Law Asia in 1995. We had our first meeting in Manila and felt that this matter should be worked within the ASEAN caucus. So, we invited NGOs from each ASEAN countries. At that time we had representatives from Indonesia, Thailand, Malaysia and the Philippines. We had some difficulties with Singapore but we managed to identify working groups. They are the focal points for these countries to sit with us and come out with a programme for consideration by the ASEAN states. Simultaneously, we developed links with the ASEAN Secretary General and through this secretariat we had regular meetings every year in conjunction with the foreign ministers' meetings in the various cities. In Malaysia, we have formed informal working groups and do not have a formal structure. Most of the working groups are informal structures operated by NGOs in their respective countries. The important thing is they are the focal points. We came out with a regional agreement for member states to consider and adopt. However, it was a little too heavy for these governments because some of them are not at the comfort level yet. For example, Vietnam, Brunei, Laos and Myanmar are in different situations. The idea was to get at least the five senior ASEAN members to start the ball rolling. So far, we have received positive responses from only three countries. The foreign ministers from Indonesia, Thailand and the Philippines have been very responsive but Malaysia has been lukewarm and Singapore has been quiet. Then we suggested that we could start with certain common issues in the regions such as trafficking in women, children and migrant workers' problems. There was some consensus from governments but again there was resistance towards having a formal structure. We are still at it and some funding came from foundations but the going is tough. We must take into consideration that ASEAN was formed in 1967 as an economic caucus and it would not be easy to break into human rights issues. We wanted to approach the issue from their own commitment in 1993 when they said that they would consider a similar appropriate mechanism for ASEAN. So, we are still at the dialogue stage.

Dr Tan Seng Giaw (Member of Parliament for Kepong): What is your view on the Malaysian government or rather Tun Dr Mahathir Mohamad's comment that the Universal Declaration on Human Rights is outdated and ought to be amended? What is your view on the Chinese government's plan to issue annual report on the human rights situation in the United States and vice-versa? Each country claims that its human rights situation is better than others.

Param Kumaraswamy: It is really interesting to see the political row that goes on at the UN Human Rights Commission session for six weeks in Geneva. There will always be a US draft resolution on the human rights situation in China in circulation and the leader of the Chinese delegation will be going around lobbying to oppose the resolution. The other is the row between Cuba and the United States, every time the US delegate says something, the Cuban representative will stand up and say "point of order, sir". Similarly, the US will oppose Cuba's proposals. It is often a comical circus.

However, China was quite right to expect some monitoring of the US human rights situation. There should be an annual report on the US situation, considering the developments since 9/11, the kind of atrocities we have seen and heard and the outcry in Guantanamo Bay. But we must also give credit to the free press in the United States, which highlights all these US atrocities. The US civil liberty groups are also given the space to highlight these issues in the media regularly.

As for the comment that the UDHR is outdated, it was not Dr Mahathir who started the debate. It was former Finance Minister Tun Daim Zainuddin in his speech when receiving an honorary award. I cannot imagine Daim, who does not have any background on human rights whatsoever, delivering a speech that UDHR adopted in 1948 is completely out-of-date because many countries including Malaysia were then not part of the United Nations. The ill informed Daim opened the floodgates and Dr Mahathir and Li Peng then said we must do something about it. It is true that the world was different when the UDHR was adopted. Not many countries were independent then. But Daim was badly advised because in 1993, 171 countries revisited and endorsed the UDHR. Malaysia was a party to

it. Since 1948, a lot of codification has been done to the UDHR. Malaysia was a party to some of this codification in the UN General Assembly. Anyway, the UDHR is today considered a customary international law as many governments have rallied around it.

Ronnie Liu: Our human rights record is poor. Yet, why do the Malaysian representatives in the United Nations and other international organisations always lobby for positions in human rights bodies? On March 1, 2005, six DAP leaders were arrested just for launching the campaign to restore local government elections. This morning, the police used water canons against demonstrators who protested against the war in Iraq. Also, five students who had been detained under the ISA are not allowed to further their studies. These are happening at a time when new Prime Minister Datuk Seri Abdullah Ahmad Badawi is supposed to be liberal. What are your views?

Lim Kit Siang: With reference to parliamentary reforms and modernisation, I have already listed the areas where the new prime minister has failed to institute changes. As for the other areas such as respect for human rights, strengthening of government institutions and battle against corruption, I think the record has been very disappointing. However, I think the civil society and the people are still hoping that the new prime minister will be able to deliver. There is still a lot of good will for Datuk Seri Abdullah despite the recent contrary trends on certain issues such as mother tongue education. These are negative signals and do not indicate that any positive changes are forthcoming in terms of respect for human rights and democracy in the country. This is where the civil society together with parliamentarians and outspoken Malaysians could make their voice heard loud and strong for changes. I would also like to forward two questions to Datuk Param. After having served as an UN Special Rapporteur on the Independence of Judges and Lawyers for nine years, what is your assessment of the Malaysian judiciary? Two, is there a proper ranking on judicial independence and integrity on an annual basis?

Param Kumaraswamy: On the question raised earlier, why does Malaysia love being visible in the international forums on human rights when its track record here is so bad, it is simply to camouflage Malaysia's own

position so that the country would not be identified.

The *Herald Tribune* reported last week that the UN Human Rights Commission has again come under a lot of criticism. Its membership comes from the various states on a rotation basis. Who are the members? This time we have countries such as Sudan and Zimbabwe monitoring the human rights situation around the world. These countries want to be in the commission to know what is happening against them. They are not really interested in human rights worldwide. For example, when there is a general report, Malaysia will quickly look at the Malaysian chapter. They are just there to protect their own interests. That's how the commission functions and it has come under a lot of criticism.



I once recommended that there must be a qualification exercise, that is countries with a good human rights record that have ratified human rights treaties and applied such treaties in a proper way should be classified and records should be kept. Only these countries should be in the commission. But this is being opposed. UN Secretary-General Kofi Annan's latest report suggested something to that effect. The report also suggested that governments should send only qualified people as members of their delegation to sit on the commission. Even this is also being opposed.

In response to Kit Siang's query, there is no international index ranking on the judiciary. It is difficult to measure judiciaries on such basis, which are good or bad and put them on a list. It generally comes under the human rights index. The Freedom House in New York prepares such a list and it takes into consideration the state of the judiciary, which is an important component of human rights in any country.

In Malaysia, we had a lot of problems since 1988 when the independent judiciary was emasculated. Since then things have been improving but we have not really recovered. Now, the plus point is the two recent appointments – the Court of Appeal judge and the Chief Justice of Malaya – have been good. But all this would not go to the extent of putting back Malaysia where it was before 1988. The only way out of this is to have a structure, procedures and proper mechanism for judicial selection and recommendations. Under the Malaysian Constitution, judges are appointed by the King on the advice of the prime minister, who in turn receives recommendations from the chief justice. This is not working well at all. Many Commonwealth countries have these provisions but they are now trying to amend them to have independent commissions to select judges.

After the Marcos period, the Philippines came out with a new constitution because of what the people suffered under Marcos. They entrenched practically everything; even civil society groups are protected under the constitution. One mechanism provided in the constitution is the judicial bar council for appointments to the higher judiciary. It is a five-man committee including the chief justice as the chair, the justice minister, representatives from the integrated Bar association and academia and another layperson. They sit every Friday and their proceedings are transparent. The committee advertises for judicial appointments, vets the applications and shortlists them. It will advertise again if there are any objections from the people over the short-listed candidates. For every vacancy in the high judiciary, this committee will recommend to the president three names. The president has the right to select one among the three and he or she cannot pick someone from outside. This is a useful mechanism to consider. This needs to be discussed at length in the Malaysian parliament, which can bring about some constitutional reforms.

In any democracy, if the judiciary is put in the right perspective then all the other institutions will fall in line. It is because the judiciary can set the standards. Ultimately, the judges are the people who will set the standards for others because they monitor through judicial review and so on. But until then we will have difficulties.

Parliament should consider having a Conduct of Conduct for all in the public administration, including parliamentarians. Originally there was one in Tanzania but it was never applied. Papua New Guinea borrowed the idea and entrenched the code in its constitution when the country got its independence from Australia. The Ombudsman Commission enforces the code. Whenever there is an allegation of corruption or breach of the code, the Ombudsman will investigate. He has the power to freeze bank accounts. The Ombudsman enquires and passes the evidence to the public prosecutor, who will then inform the chief justice to set up a special leadership tribunal to prosecute. Once, the labour minister faced 74 charges of corruption. In the course of that trial, the finance minister was implicated and hauled up, followed by the prime minister. So, the government fell. The Members of Parliament became very worried about the powers of the Ombudsman. However, the Ombudsman came out with a book to educate the people about MPs etc. The parliamentarians were offended and wanted to charge the Ombudsman for contempt of parliament. When the people heard about it, they protested in front of parliament, with banners such as "Don't you ever touch our Ombudsman". The MPs backed off. The Ombudsman Commission is still enforcing the code. In the index of Ombudsman in the Commonwealth, the Papua New Guinea Ombudsman is the most effective and powerful. This code is worthwhile considering in Malaysia. Our MPs should also consider including themselves in the list.

Lim Guan Eng (DAP secretary general): There is something wrong with the way the Anti-Corruption Agency accepts reports. For instance, when we lodge a report at the ACA, are we not suppose to sign something to record that it is an official corruption report lodged? But every time I go to the ACA office, they take the report, sign on it and quickly usher me out of the door. They do not ask me to sign anything and I do not know if I have actually lodged a report. They have never recorded my statement. I do not think that the ACA is functioning anymore. Is there any provision under

the law to lodge a report against the ACA director for failure to take action? This is not provided for under the ACA Act. Is there anyway for the ordinary folk to seek redress when the ACA refuses to act?

Param Cumaraswamy: If you can give me a short note on some of your encounters with the ACA, maybe I can follow up. This is clearly a question of procedures. We need to see if the current procedures are consistent with the various modules to fight corruption. Currently, our institutions are not geared towards this. Even though the ACA claims it acts independently but is it perceived to be an independent body?

Nga Hock Cheh: Which were the main groups that opposed the proposed Interfaith Commission of Malaysia?

Malik Imtiaz: It is difficult to answer this question specifically. On a broad level, within the committee itself, RECOI and ACCIN were causing a lot of obstructions. In fact, they were the ones lobbying among other Muslim groups against the proposed commission. Generally, Islamic groups comprise three categories. There are those – such as PUM, RECOI and ACCIN – that are opposed to the commission for their own reasons. I do not want to interfere with their right to object as that is their entitlement. There are also a fair number of organisations in the middle – the silent group that does not want to say anything. These groups do not want to take a position and this is quiet common in Malaysia. Unfortunately, it is also linked to ethnicity. I suppose everybody wants to be able to go for Friday prayers without being harassed or whatever. At the other end, some groups and individuals openly support the proposal such as Sisters in Islam, Datuk Anwar Fazal and Datuk Raja Aziz. But these are at the NGO level. At the government level, Culture, Arts and Heritage Minister Datuk Dr Rais Yatim opened the dialogue as a member of the cabinet and delivered a strong paper in support of the discussions. Deputy Prime Minister Datuk Najib Tun Razak then said this is dangerous and we need to push it back. But he did not completely reject it. Prime Minister Datuk Seri Abdullah Ahmad Badawi said, “put it on hold”.

The newspapers reported the issue differently. The Malay press was quite rabid and told lies. They were not interested in reporting the truth. Even

when the reporters from these papers asked us questions, they were aimed at a particular answer. After a while, I felt it was no use talking to them if they just want to repeat their statement and report that I said it. While the PM and the DPM have taken a middle ground, a minister in the Prime Minister's Department was opposed to the proposal. I was quiet taken back by his vehement reaction against the proposed commission because he had not read the document and did not know what was happening at the dialogue. And yet he took a very absolute position and was supportive of ACCIN. However, I think the door is still open for further discussions to set up the commission.

Fong Po Kuan (Member of Parliament for Batu Gajah): What has the steering committee done so far to the proposal to set up an Interfaith Commission? Has it submitted a private members Bill to parliament? What is the next move to clear the misunderstanding among the people in the light of the controversy generated by the opponents of the proposed commission?

Malik Imtiaz: At the end of the conference on Feb 25, 2005, there was a plenary statement. A task force has just been set up to deal with the controversy that has come up. We did not foresee a controversy of such intensity. The first thing we have done is we have sent copies of the plenary statement and the proposed Bill to the prime minister, the deputy prime minister, the attorney-general, all the ministers in the Prime Minister's Department and other ministers as well. We also wrote a letter explaining why the misconception has risen and reiterated our position that there is no intention to undermine any faith. We are also seeking face-to-face appointments with the ministers and the A-G to explain the issues. The task force will also compile the proceedings of the conference into a book with translations and disseminate to the people. Apart from that, the task force is in the process of setting up a colloquium with political parties. The next step is to disseminate the Bill to every MP. This is a long-term venture but I am positive about the outcome.

Session II: June 2005, Kuala Lumpur

Welcome Address

Marimuthu Nadason

President, ERA Consumer Malaysia

Welcome to the seminar on the Vital Role of Malaysian Parliamentarians in Strengthening Human Rights and Democracy. It is with great pleasure that we at ERA Consumer Malaysia have the opportunity to engage with Members of Parliament, Members of State Assemblies, senators and party members in a discussion on human rights and democracy. Although we are aware of international obligations, it is apparent that many are still ignorant of the implications of international human rights laws and treaties on Malaysian laws and situation.



Democracy is defined, as “government by the people or their elected representatives” and thus, the role of Members of Parliament and state assemblymen in a democratic nation is undeniably an important one. These elected men and women represent the voice of the citizens and are, therefore, empowered to make decisions that will benefit one and all.

The practice of good governance, transparency and accountability is without doubt the benchmark towards a legitimate democratic process. The ruling coalition received a strong mandate to govern in the 11th General Election last year. Since then, there have been indications that the government is emphasising on, what we know as, the pillars of democracy: freedom, equality, transparency and responsibility.

It is therefore prudent for NGOs like ERA Consumer to engage with elected representatives to participate in and further enhance the democratic

process. Hence, ERA Consumer undertook this initiative to organise a seminar with the MIC.

We appreciate MIC president and Works Minister Datuk Seri S. Samy Vellu's presence here today together with other top MIC leaders, which strongly indicates the willingness and commitment of his party to engage with civil society organisations on issues relating to human rights and democracy.

For many countries, it has been difficult to strike a balance that ensures the effect of international law and a nation's obligation to the international community does not jeopardise its sovereignty. In recent times, the effect of international law obligations has indeed been felt in domestic legislation and situations. Nevertheless, we seldom see the use of international law and international human rights principles in parliamentary debates and discussions.

We hope that this seminar will be the starting block of a foundation to expand the knowledge base of Malaysian elected representatives on the potential use and the impacts of international law and international human rights mechanisms in strengthening democracy and human rights in Malaysia.

Currently, there is minimal interaction between civil society and elected representatives. It is therefore time for this relationship to be strengthened to facilitate an exchange of ideas and encourage partnerships that will support the government's intention to promote good governance, transparency and accountability. Smart partnerships between civil society and elected representatives will enhance the democratic environment in Malaysia.

ERA Consumer has been engaging with political parties at the grassroots level as part of our human rights training programme since 1998. We are pleased to say that the MIC and ERA Consumer have a collaborative relationship these past few years, wherein we have facilitated linkages between MIC leaders and political foundations abroad which have exposed them to European and American governance, electoral systems and

political party processes.

Currently, ERA Consumer is coordinating the Malaysian programme of a regional initiative by the Indonesian-based National Endowment for Democracy on "Strengthening Women Political Leaders in Southeast Asia". Under the programme, women leaders from MIC, UMNO, Gerakan, MCA, DAP, Keadilan and PAS were provided skills training to be effective candidates and successful elected representatives.

These women leaders, including Wanita and Puteri MIC representatives who attended the training last month, will be conducting follow up trainings for the women members in their respective parties. We are happy to note that these two representatives are present here today.

Further, we are also continuously collaborating with MIC leaders at the local community level through ERA Consumer's Community Centres for the Empowerment of Indian Women. The 10 centres – in Sungai Petani and Lunas in Kedah, Sitiawan, Taiping and Slim River in Perak, Rawang, Dengkil, Semenyih and Kapar in Selangor and Rasah Jaya in Negri Sembilan – have been set up with the support of the European Union. Since 2003, we have organised various activities at the community centres and policy seminars at the national level on issues concerning Indian women such as lack of legal documentation, challenges facing single mothers, domestic violence, suicide etc. We hope that this collaboration will continue to ensure the betterment of the women in our community.

We at ERA Consumer hope that at the end of today's seminar, elected representatives and party leaders will be able to use this knowledge to make a difference in your community or respective constituencies. I wish all of you a fruitful discussion.

Once again, I would like to thank Datuk Seri Samy Vellu for his presence here today despite his busy schedule. My thanks also goes to the MIC leaders, elected representatives, senators, our distinguished panel of speakers and moderator and the MIC headquarters staff who facilitated the attendance of the participants. Lastly, I thank ERA Consumer's staff and volunteers.

Keynote Address

Datuk Seri S. Samy Vellu

Works Minister and

President of the Malaysian Indian Congress



At the outset, I wish to thank the Education and Research Association for Consumers, Malaysia for inviting me this afternoon to officiate this seminar on "The Vital Role of Malaysian Parliamentarians in Strengthening Human Rights and Democracy in Malaysia". I must congratulate ERA Consumer Malaysia, in particular its president, Mr Marimuthu Nadason, for organising this workshop for MIC elected representatives and senators.

Democracy, representative government, human rights, the rule of law, the independence of the judiciary, and a just and honest government are at the heart of Malaysia's fundamental political values. Political empowerment of the people is one of the guarantees of democracy. Democracy and human rights guarantee the participation of our citizens in political life, and the elimination of all forms of gender discrimination, promote good governance and the harmonisation of national legislation.

We can proudly say that democracy is very much alive in Malaysia. The Malaysian government has also relentlessly pursued the founding instrument of today's international human rights, i.e. the Universal Declaration of Human Rights adopted in 1948. The formation of the National Human Rights Commission (Suhakam) bears testimony to our government's strong commitment in defending human rights. Transparency, accountability and integrity have been the cornerstone of our government's pursuit of a legitimate democratic process. Our Prime Minister, Datuk Seri Abdullah Ahmad Badawi, has made the promotion of good governance and ethical values as well as the fight against corruption as the central pillars of his administration. Towards this end, the government established the Integrity Institute of Malaysia and adopted the National Integrity Plan.

Governments come under greater pressure from their citizens for more transparency in operations and accountability in dealings. Citizens demand more immediate democracy and sometimes more direct democracy. The demographics of nations have been changed by improved health and education with even greater emphasis on the delivery of basic and extended services in these areas. There is an increased emphasis on human rights with the term itself widened in ways unforeseen at the end of the Second World War. And parallel with this, there has been an increased emphasis on the responsibilities of the legislature and the executive, on the ethics of elected officials and on the need to improve the way the public perceives them.

All these challenges have created the demand for fresh responses from parliaments and parliamentarians. The sophisticated nature of issues in the 21st century require that more and more complex information be made available to parliaments and will imply increased capabilities on the part of the legislatures to interpret and use this information. In response to citizens' demands for increased transparency and accountability, parliaments must create improved mechanisms aided by, and using the better information available on programme outputs and effectiveness. The demands of citizens for more immediate and direct democracy, and for greater involvement in the policy process, will require parliaments to develop new mechanisms to better assess the views of the citizens, and to involve them more fully in parliamentary activities.

The first role to consider is that of interest articulation and policy initiation. In the 21st century, the parliamentarians are faced with a broad array of interest groups armed with technological capabilities and making greater demands for policy formulation through private member initiatives. Thus, the individual member will require greater technical knowledge and possibly, increased access to a range of outside expertise to meet this challenge. Parliamentarians will require a deeper understanding of the history and principles of representative democracy if they are to maintain the parliamentary institution as a representative democracy.

In addition to possessing the characteristics of being a professional, a knowledge-based parliamentarian must also be a lifelong learner. He or

she must base action on knowledge, practise transparency and accountability, open a two-way communication with constituents, maintain image and credibility, aim for excellence in performance, use ICT as an enabling tool where applicable and continue to be passionate about knowledge and excellence in performing the duties of a parliamentarian.

As parliamentarians, you should meet human rights commissioners regularly to discuss matters of mutual interest. You should ensure that sufficient time is given to consideration of the work of human right groups and ensure that your constituents are made aware of the work of these groups. You should also ensure that part of the mandate of a human rights commissioner is to advise you on the conformity or otherwise of any legislation that may effect the enjoyment of human rights in the country. There should be more effective relationship between parliamentarians and human rights groups.

On the other hand, human rights groups should inform parliamentarians of the research on human rights issues being undertaken. They should also hold regular human rights seminars and conferences with parliamentarians similar to today's workshop.

As a Member of Parliament, I do not just accept legislation as they come. As and when I encounter any new legislation, I used to consult my very close and experienced lawyer friends to find out whether whatever decisions I have to make would be acceptable to the public. So, I feel that all MPs, senators, members of the state legislative assemblies as well as state executive councillors should be open minded and be more aware of what is to come. Many new laws are being introduced nowadays. These laws may be favourable to some but may not be so for others. As elected representatives, we have to find a solution. We have to tell the government what is acceptable and what is not and how do we move in a direction which is acceptable to all.

I request all MPs to take an active part in parliamentary debates. Actually, only two MPs from the MIC – Mr S.K. Devamany and Tan Sri Dr K.S. Nijar – are backbenchers who can raise issues in parliament. The other MPs from the MIC are in the frontbenches. However, even frontbenchers have

a lot of opportunities to tell the government what we can accept and what we cannot accept. I want our people to feel that it is their right to scrutinise all legislation being considered rather just accepting them. I will never allow any legislation, even when I am sitting at a cabinet meeting, to go through until I am thorough with the facts and know what is to be done.

There is also a pressing need for our parliamentarians to undertake to promote knowledge of international laws and international human rights conventions at the national level. Seminars and workshops should be organised for elected representatives on these issues with the cooperation of competent organisations.

Once it was said that the law followed the flag. Now, international law is everywhere. Respect for human rights and fundamental freedoms and indeed respect for humanitarian laws, has now become a matter of growing international concern. We cannot be citizens of this country without also being citizens of this world. Therefore, at times when our welfare and obligations as global citizens are more pressing than those at home, international covenants may take on an unmistakable importance.

As international law grows in quantity, subject matter and importance, it is both inevitable and proper that national legislatures will seek that they have a more effective say in the consideration of ratification and in their impact of domestic law. The task of reconciling the growing body of international law with the domestic legal system remains an important and acute one. In the process of reconciliation, the three branches of government have their respective functions to perform.

The reality is that there will always be competing interests and points of view. It is the government's role to understand and accommodate these differences. And it is our role to then make decisions that are in the best interests of the nation and its people. Invariably this means that some points of view will not be entirely accommodated. It means showing leadership and governing in the best interests of the country. The reality is that human rights do not exist in a vacuum. They do not exist in isolation from events in the real world. To be fully observed and enjoyed, they need the support of both the community and government.

As legislators, you have a key role to play in safeguarding democracy and human rights. Your role is to strengthen the concept of institutional democracy to ensure justice and peace for all. I am happy to note that the MIC elected representatives and senators have constantly voiced the people's aspirations and problems in parliament and state assemblies.

However, there is always room for improvements. I meet about 2,500 people every month. I have an open house every Tuesday where I have direct contact with ordinary people. I have fallen ill several times because I sat next to sick visitors and listened to their problems. I am citing this example because I feel that all elected representatives should adopt similar methods. You must have a regular session with the people. You must give them the opportunity to tell you their problems.

I am confident that this seminar will be able to accomplish its mission and objectives. I wish to once again thank Mr Marimuthu for giving double opportunities. I say double opportunities because in the past politicians do not see eye to eye with the NGOs. Both groups felt that they were competing with each other to be popular among the people. I see it differently because the politicians and NGOs have a lot of things in common. The civil society organisations can be good friends of politicians because the latter can act on issues brought to their attention by the NGOs. At the same time, politicians can also ask the NGOs to act on their behalf on matters that concern the public. I am happy that Mr Marimuthu has made this understanding to work. I hope there will be more meetings and workshops of this kind not only for politicians but also for the younger generation. Many in the younger generation have to be put back on track. We have to conduct workshops of this kind to remind the young that they need to abide by the law or they may have to face other difficulties.

With that, I wish to conclude my speech by quoting the words of former US President Gerald Ford who said, "History will judge this Conference not by what we say here today, but by what we do tomorrow, not by the promises we make, but by the promises we keep."

International Law and Human Rights Relevance to Malaysian Politics

Ramdas Tikamdas

Immediate former president

National Human Rights Society (HAKAM)

Let me first thank ERA Consumer Malaysia and the MIC for inviting me and for enabling us to share our views on this very important topic of human rights and role of parliament in the context of democracy.

Before I start my presentation, let me briefly outline the history of the National Human Rights Society or HAKAM. On Dec 10, 1988, at the Bar Council seminar in commemoration of the World Human Rights Day, the country's first Prime Minister, Tunku Abdul Rahman, mooted the idea of setting up a national human rights society. It came into being as HAKAM, the Malay acronym for *Hak Asasi Manusia*. We can recollect that it was a period of turmoil in the history of human rights in the country. In 1987, there was *Operasi Lalang* when 106 people – who were not terrorists or communists but, in the words of the Tunku, ordinary citizens of this country – were arrested and detained under the Internal Security Act. In 1988, we witnessed Mayday for justice and the sacking of the Lord President. This created alarm among a large cross-section of Malaysians, including eminent leaders such as the Tunku and, hence, the call for human rights. After Tunku Abdul Rahman, Tun Hussein Onn took the chair of HAKAM, another former prime minister of this country. So we can see immediately that former prime ministers have a great affinity with the civil society movement and NGOs.



Former prime ministers have provided leadership to the human rights movement in Malaysia. Therefore, it is definitely an essential value system for our society as we move forward towards developed nation status and

national integration. The mark of democracy must be in tandem with development as we aspire to attain developed status.

In recent years there has been an international consensus that the concepts of democracy, human rights and good governance are inter-related. In fact, the test for a functional democracy and good governance is the degree to which there is respect for human rights in the context of civil, political, economic, social and cultural rights. Ultimately, it is the nation's compliance with human rights standards which is the yardstick for the progress and development of a society.

The History of Human Rights

The "human rights" concept in modern history can be traced to the United Nation's Charter which provided for *"promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion"*.

The historical watershed was the Universal Declaration of Human Rights (UDHR) adopted by the United Nations on Dec 10, 1948. Almost all the states of the then world community voted in favour of adopting the UDHR at the United Nations General Assembly.

It was subsequently endorsed by other states, including states that emerged later, in other international instruments and at international conferences. Although legally non-binding, the UDHR is generally recognised as part of customary international law. It has been accepted as a common standard of achievement for all peoples and all nations and a common yardstick by which to measure a nation's commitment to and respect for human rights.

The *Preamble* to the UDHR itself states that it is the duty of every individual, organ of society and the government to promote respect for these rights and freedoms by *teaching and education* with a view to securing their universal and effective recognition and observance.

The Essence of Human Rights

What are human rights? The late Senator Jose Diokno of the Philippines in declaring that no cause is more worthy than the cause of human rights, said that *"Human Rights are more than legal concepts: They are the essence of man. They are what makes us human. That is why they are called human rights: deny them and you deny man's humanity"*.

This essence of human rights is properly captured in the UDHR and that is what gives the UDHR its universal acceptance and recognition. That essence is the principle of equality and non-discrimination. This is captured by Article 1 which proclaims: *"All human beings are born free and equal in dignity and rights"*.

The Scheme of the UDHR

Although the UDHR can be divided into two parts, the first relating to civil and political rights and the second relating to economic, social and cultural rights, it is important to recognise that these rights are universal, indivisible and interdependent. This universality and indivisibility of human rights was recognised by consensus by the member countries of the United Nations, including Malaysia, at the Vienna World Conference 1993.

Bearing this in mind, it can be said that the scheme of the UDHR is in two parts.

Articles 3 to 21 essentially refer to the right to life, liberty and security of persons forming the basis for civil and political rights. The rights include:

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5);
- All are equal before the law and are entitled without any discrimination to equal protection of the law (Article 7);
- No one shall be subjected to arbitrary arrest, detention or exile (Article 9);

- Everyone is entitled in full equality to a fair and public hearing for any criminal charge against him (Article 10);
- Everyone charged with a penal offence has a right to be presumed innocent until proved guilty according to law in a public trial (Article 11);
- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation (Article 12);
- Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family (Article 16);
- Everyone has the right to freedom of thought, conscience and religion: this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance (Article 18);
- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19); and
- Everyone has the right to freedom of peaceful assembly and association (Article 20).

The second part of the UDHR consists of Articles 22 – 27 which upholds the right of every citizen in society to the right to work, the right to a standard of living adequate for the well being of the family including food, clothing, housing, the right to health, the right to education, the right to social security, and the right to rest, leisure and culture. This is referred to generally as economic, social and cultural rights.

Incorporation of the UDHR in Malaysian Law

The Federal Constitution does not refer to the words “human rights” but guarantees “fundamental liberties” as enshrined in Part II. These

“fundamental liberties” are “subject to the law”.

Even so, the essence and the concept of human rights can be said to be incorporated in the Federal Constitution by the *Proclamation of Independence* declared by the first Prime Minister, Tunku Abdul Rahman, on Independence Day on Aug 31, 1957: “...*This Nation shall be founded upon the principle of liberty and justice and ever seeking the welfare and happiness of the people.*”

The first part of the Proclamation can be said to incorporate civil and political rights whereas the second part refers to socio-economic and cultural rights. It is therefore the duty of every elected government and all organs of society and law enforcement agencies to fulfill the promise of the Proclamation.

Apart from the Proclamation, *human rights* is expressly referred to for the first time in our laws in the Human Rights Commission of Malaysia Act 1999. The Act established Suhakam whose duty is to protect and promote human rights in Malaysia.

The Act defines human rights as “*fundamental liberties as enshrined in Part II of the Federal Constitution*”. S.4(4) of the Act states that “*For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution*”.

Suhakam has taken a liberal interpretation of this provision. In the Annual Report 2000, it took the approach that “Whatever rights and liberties not mentioned in Part 11 but referred to in the UDHR must be considered provided that there is no conflict with the Constitution”.

Further the Act itself in S.4(1)(c) imposes a duty on it to recommend to the government with regard to the ratification of international instruments in the field of human rights, thus clearly referring to human rights according to international standards, as propounded in the UDHR and the international conventions.

The International Bill of Human Rights

The rights referred to in the UDHR are dealt with in more detail in the international conventions, namely the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The UDHR and the two international covenants are generally considered to be the International Bill of Human Rights. Another important international convention is the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Malaysia's Track Record

Suhakam in its Annual Report 2001 states that *"The Human Rights track record of a nation is usually measured by the extent to which its domestic legislation has incorporated the International Bill of Human Rights promulgated by the United Nations. The International Bill of Human Rights is made up of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights"*.

These international covenants were adopted by the UN General Assembly on Dec 19, 1966 and came into force in 1976. As of April 1999, Suhakam's Annual Report 2000 states that 144 nations had ratified the ICCPR and 141 had ratified the ICESCR. A total of 113 nations had ratified CAT.

Suhakam recommended in its Annual Report that the government, in conformity with its international obligations and the aims and purposes of the Act, should ratify the international covenants *"as soon as possible"*. Despite the recommendation, this has yet to be done.

It is also suggested that after 47 years of independence, and given our multi-ethnic, multi-cultural and multi-religious heritage, the time has come to also ratify the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). As at April 1, 1999, 153 of the 195 UN member states have ratified this convention. Malaysia should not remain

in the small gallery of “non-ratifiers”.

In fact, in the Annual Report 2000 (p. 28), Suhakam has identified this convention as “crucial to the protection of human rights”. Unfortunately, Suhakam has not made a clear recommendation for ratification.

Save for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), Malaysia has not ratified any of the principal treaties on human rights.

Further, both ratifications are heavily qualified by reservations which have made the ratifications meaningless and which run counter to the purpose and spirit of the instruments.

Being a near developed nation, seeking and sitting on, and sometimes taking the chair, of international organisations on human rights, this is a dismal track record for Malaysia in its respect for and commitment for international human rights laws.

What are the reasons which underlie the reluctance of the government to ratify these international instruments? One reason may be that its domestic laws and policies are inconsistent with these conventions. There is no political will to embark on a scheme to amend the domestic laws to conform with the conventions.

Role of Parliament

All the annual reports of Suhakam, which have been submitted to parliament pursuant to the Human Rights Commission Act, have not been tabled and debated in parliament.

It is crucial for parliament to take bold steps to bring the domestic laws in tandem with international standards as there are disturbing trends that indicate that the Merdeka secular social contract and nation-building efforts are being derailed, and increasingly the ethnic and religious divides are getting wider. Instead of celebrating our plural and cosmopolitan heritage,

demagogues are openly calling our nation an Islamic state.

For example, the government's response to a request by Suhakam for clarification as to the status of the nation as an 'Islamic state' met with an amazing response, which was reproduced in Suhakam's Annual Report 2003 (p. 285-286). The government responded that Malaysia is an Islamic state because:

- a) the nation was founded by Muslims;
- (b) the Head of the Nation is a, and the government is in the hands of, Muslim(s);
- (c) the majority of its citizenry are Muslims and most of their cultural and social elements are influenced by the culture of Islam;
- (d) the Islamic umah (in Malaysia) are free to abide by Islamic Law (*Syariat Islam*), and are even supported in this regard by the government;
- (e) systems to increase religious observance of *munakahat* (religious rules pertaining to marriage) and *muamalat* (rules pertaining to societal issues) are implemented all over the nation;
- (f) Islamic education is taught from primary school to institutions of tertiary education level and its quality is continuously being improved;
- (g) The existence of Syariah courts and Syariah laws; and
- (h) The existence of other Islamic institutions which expand the greatness of Islam.

Besides the above, Malaysia satisfies several other criteria that show it is an Islamic state, namely:

- (i) provision in the Federal Constitution which provides that the religion of Islam is the religion of the Federation [Article 3 (1)], Head of State as Head of the religion of Islam [Article 3 (2), (3) and (5)] and administration of Islamic matters being the responsibility of the state government and

federal government [Article 74];

(j) global recognition of Malaysia as an Islamic state; and

(k) most of the provisions in the Constitution are not contrary to Islam.

If parliament does not set right this gross distortion of history and protect the fabric of the Merdeka Constitution and our system of constitutional democracy, history and our children will one day judge us harshly, and we would have to hang our heads in shame for mortgaging the legitimate rights and interests of our people and our future generations.

Our greatest support is human rights based on international law. It will also fulfill the promise of our Proclamation of Independence, which is the fountain-head of the Merdeka Constitution that: *"This nation shall be founded upon the principle of liberty and justice, and ever seeking the welfare and happiness of the people"*.



Question and Answer Session

T. Rajasekaran (legal bureau chairman, MIC Youth): How do you reconcile the rights of one with the rights of the many in the light of the 9/11 terrorist attacks in New York and the recent bombings in London? A developed country like the United States, which has ratified international human rights conventions, has abused the rights of al-Qaeda and Iraqi prisoners in order to facilitate investigations. Don't you think that this is necessary to facilitate investigations to prevent further bombings in other parts of the world? Thirdly, unfettered freedom in a multiracial country like Malaysia may lead to unnecessary tensions and riots. Don't you think there need to be some supervision by law to curb the misuse of the freedom of expression?

Ramdas Tikamdas: Firstly, in the context of human rights, it is important to remember that fundamental liberties refer to the rights of the individual person and does not depend on the majority. The concept of majority is related to democracy and the right to govern. The concept of human rights is the right of the individual person. If we go by the principle of democracy and majority rule, this means everyone must only believe in the majority religion. Everyone in society must only speak the majority opinion. By referring to human rights, we are talking about certain inalienable and inherent rights of man which no majority can take away. This is the first principle.

Terrorism is the biggest modern day challenge to human rights and democracy. The human rights movement is not soft to anti-terrorism. Terrorists must be dealt with firmly in accordance with the law. Before we can have human rights and democracy, there must be national security and public order. But there cannot be an abuse of process. In this country, we have had a history of the ISA in circumstances not envisaged by the Act and in respect of events which had nothing to do with the communist insurgency or terrorism. With respect to al-Qaeda, al-Maunnah and KMM, these are genuine challenges the security forces have to deal with. But there is no excuse to ignore fundamental principles of democracy and human rights. If we do that, then the terrorists have won. These terrorists

cannot live in a free society with liberty, and they want to impose their views on all. So if we surrender without even waiting for the last bomb to go away, we would have given the terrorists a victory on a silver platter.

In the context of a multiracial society, will individual rights compromise public order and national security? All international conventions are subject to certain specific restrictions. The restrictions are based on public order, national security, public health and morals and the rights and reputations of others. These are the only legitimate restrictions on the principle of human rights. But in our laws, the restrictions have nothing to do with these permissible restrictions under international law. For example, when Irene Fernandez sent the memorandum on the abuse of migrant workers, how had her action gone against public order, national security, public health or morals and the rights and reputations of others? Yet, she was charged under the Printing Presses and Publications Act and sentenced to one year in prison. Her appeal against the court decision is ongoing. Lim Guan Eng made a press statement in respect to the purported outrage of the modesty of a minor girl. How did this breach public order and national security? If it had infringed the name and reputation of others, then it was for the private individual to sue under our defamation law. When an individual citizen exposes an act of corruption, how does it breach national security and public order? Instead the Official Secrets Act was used against him and he was sentenced to imprisonment. So, we have to be careful when talking about fetters to the principles of human rights. There are permissible restrictions which are clearly defined under international law. If you go beyond these restrictions, then it becomes an abuse and misuse of the law. That is when the so called superficial democracy degenerates into an autocracy.

P. Komala Devi (Wanita MIC, Member of Parliament for Kapar): You mentioned that Malaysia is not a signatory to the International Convention on the Elimination of all Forms of Racial Discrimination. By promoting policies such as the NEP and the NDP to correct economic imbalances and to eliminate the identification of race with economic functions,



would that exclude Malaysia from ratifying CERD? Could an individual be arrested under the Internal Security Act for speaking out on issues such as “special rights” and affirmative action policies on the grounds that he or she is inciting racial hatred or promoting violence?

Ramdas: Affirmative action is a legitimate social engineering programme under international law for the underprivileged and minority groups. Some countries have affirmative action programmes for the majority. In this country, affirmative action is for the majority with political patronage. While it is part of the law and recognised and justified in international law, naturally one has to be careful when implementing affirmative action in the context of a majority population with political patronage.

What is the connection between affirmative action and racism? Affirmative action has nothing to do with racism. A nation can fully adopt and implement an affirmative action programme in society and at the same time put in place safeguards against racial discrimination. When you have a social engineering programme which underlines affirmative action, all the more so, it is important to have safeguards to ensure there is no discrimination. There is no conflict at all because affirmative action is a programme of social engineering for a group of people who need assistance because of history or particular social circumstances. Whereas anti-racism is a different concept because affirmative action is based on needs. Affirmative action can never be based on ethnicity. It is a misnomer.

Can we be charged if we go around saying there is racism? The answer is definitely yes because we have the Sedition Act. In the civil rights movement, when we talk about the right to free speech, we are always very conscious of the three pincers directed towards our necks – the Sedition Act, the Printing Presses and Publications Act and the Official Secrets Act. These three pincers actually have snuffed out and rendered illusory whatever rights of freedom of expression we have under Part II of the Federal Constitution. These laws are actually an abuse of the legal processes because they are not meant to be there. They are being implemented for purposes never contemplated by the constitution. In the constitution and also under international law, the only permissible restrictions and fetters on fundamental and human rights are national

security, public order, public health and morals and the rights and reputations of others. In respect of the right and reputations of others, the state does not intervene. It is for the individual to use the judicial process to restore and set right his or her credibility and name. But how is the Universities and University Colleges Act in tandem with this? Our students cannot even get a speaker for a seminar without getting the permission of the vice chancellor. We have to look at international principles and see if we have over done it. These laws may have been necessary during a particular period in our history because of the communist threat and the emergency. But that threat was over after the Bangkok peace agreement in 1989. Some state governments in Malaysia have declared that they have attained developed status. We make unilateral proclamations about having achieved developed status, and yet we are still resorting to laws imposed on us by the colonialists in the pre-independence era. The Sedition Act, the Official Secrets Ordinance and the Printing Act were all formulated in 1948. As we can see, our obnoxious laws were formulated by our colonial masters and we are now using these laws against ourselves. There is a mismatch between our aspirations to attain developed status and our laws which impinge on democracy and human rights.



On whether we can go out of this hall and say “hei, you are racist”, well, don’t say that. We say, “Ratify the International Convention on the Elimination of All Forms of Discrimination”. It is legitimate advocacy and we must do it. Otherwise, we will remain in the rogues gallery. So, it is a question of how we do the advocacy. We can always do it the right way. NGOs and civil society groups are very used to it. Many of our people have gone behind bars.

Rajeev Saigal (National MIC Youth): How do you introduce such reforms or get rid of bad laws hindering democracy when the society is not ready for such changes? Do you think, perhaps, we should focus on educating the society first?

Ramdas: Who is not ready? The nation's first Prime Minister, Tunku Abdul Rahman, said most of us are ready. Tun Hussein Onn said we are ready. The civil society is moving ahead. We just have to create a critical mass and awareness of these rights. We must stand up as Malaysians and stand for our rights. I don't think I have anything more to say on this.

Ivy Josiah (Women's Aid Organisation): I just want to respond to the question on affirmative action. A lot of people think that affirmative action is racism. Even in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), there is a provision where international law recognises past discrimination. In other words, we recognise that particular groups of people – they can be women or ethnic communities such as Malays, Indians or Chinese – have suffered past discrimination and they require some sort of assistance. But the key word is “temporary”. Affirmation action is supposed to be a temporary measure to set things right. But somewhere along the line we have lost direction and affirmative action has become almost permanent.



Komala Devi: In relation to the special rights of the child, what is your comment on the 10,000 children in Sabah without legal documents?

Ramdas: Apart from the 10,000 stateless children in Sabah, there are, according to unofficial estimates by some NGOs, about 20,000 stateless citizens in Peninsular Malaysia. Many families in remote plantations do not have legal status. The parents do not have marriage certificates and their children do not have birth certificates. These are Malaysians citizens who don't have an identity or name. Under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the most fundamental and inalienable right is the right to identity. Even when you want to rare a pet dog, they will ask you to register and get a licence. The main point is having an identity. It is an extremely serious problem. These are stateless citizens. Their forefathers were here long ago, they were born in this country and have worked here but have no

name or nationality. They cannot go to school or seek treatment in hospitals.

On the main question on the rights of the child, all human rights instruments pay special and particular focus on the child. If some injustices have been done to adults, we can seek recourse and move on to the other dimension. But we have to be very careful with our future generation and it is our responsibility to protect them. That is why international instruments are preoccupied with this issue. It is our duty to identify the issues and protect our children. In the context of Barisan's rainbow coalition, conciliation and give-and-take policies, we can give up some things. But we ought not to and cannot give up the fundamental rights of our children, in particular, the right to an equitable education and the right to basic inherent dignity. This is our responsibility to our future generation.

Murugesan (MIC Youth): Laws are passed by a majority in parliament. Unless and until the majority takes steps to amend an unjust law, what can the minority do? Secondly, you said certain laws are not in line with the intentions of the constitution and therefore they should not be there. If they are not in line with constitution, why are these laws not challenged in court?

Ramdas: On the first question, whether a prescribed law passes the test of the law, you must remember that every act of Hitler was done according to the law. So we have in international law and constitutional law, the concept of the rule of the law. Every law must pass the test of the principles of natural justice and equity. Can parliament pass a law that Petaling Jaya residents cannot apply for scholarships? Certainly, parliament can pass it but it is an irrational and obnoxious law not worthy of compliance. That is why, to give an extreme example, there have been rebellions in history. So a law must pass the test of equity, justice and rationality. Just because there is an act of parliament, it does not mean we must all bow in obeisance to the law. Of course, at first glance we must because it was passed by parliament. However, if any parliament passes a totally irrational and ridiculous law, such as what Hitler did during his time, then people ought not to pay homage or loyalty to that legislation, unless they want to become robots.

On the second point, what does the minority do if the majority passes an unjust law or infringes on the minority's rights? Throughout history, the only remedy for the minority has been to speak out. Some have paid a heavy price for speaking out but if you want a remedy, you have to speak up. Even Members of Parliament have had to pay a heavy price for speaking up but they get honour and credibility. That's a price one has to pay for one's right. Otherwise, one might as well remain a slave and obey orders. But we are human beings. The right to life is not a right to animal existence. The right to life is the right to human dignity. No law can deny human dignity and the human spirit.

Panel Discussion:

Human Rights and Good Governance

**Strengthening the Partnership of Civil Society and
Elected Representatives in Upholding Human
Rights in Malaysia**



Suhakam commissioner Datuk N. Siva Subramaniam chaired the panel discussion. The panelists were Ivy Josiah, executive director of the Women's Aid Organisation, S.K. Devamany, Member of Parliament for Cameron Highlands, and Datuk Dr Sothi Rachagan, vice president (academic affairs) Nilai International College and honorary advisor to Consumers International Regional Office, Asia Pacific.

Datuk N. Siva Subramaniam: There is no doubt that this panel discussion will be very interesting. The first speaker is Ivy Josiah, executive director of the Women's Aid Organisation. She has been involved in programmes to assist single mothers to be financially independent and has facilitated their children to get scholarships. A long time advocate of human and women's rights, Ivy has sat in national, regional and international committees, including at the United Nations, and has been involved in

initiatives to curb violence against women. In February 2004, she was appointed as a member of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police. Without much ado, I invite Ivy Josiah to give her presentation.

Ivy Josiah: Thank you for the kind introduction and ERA Consumer Malaysia for giving me the opportunity to speak today. I will talk on how parliamentarians can work with civil society. Members of Parliament and NGOs must have a common understanding of democracy and human rights in order to have a working relationship or to jointly address various issues.

A fundamental element of democracy is the freedom of expression. It is extremely important that one is able to speak up and not be punished for doing so. Earlier, a participant said that 'if there is too much freedom to speak up, it may cause a problem'. Yes, of course. If you abuse the freedom of expression or incite hatred, you will be punished. In fact, there should be laws to make sure that you are punished for such actions. However, one has to be careful when deciding which actions incite hatred. Who is to judge on such matters? When groups gather, say, to talk about corruption, they should be able to speak up freely. The police should be there to facilitate the groups to speak freely and ensure that there is no threat of violence, hatred or any attempt to silence them.

I emphasise that the first right any democratic country or community should have is the right to speak up. Therefore, we need a human rights framework to have this democratic space. We need to recognise that the right to life, the right to speak up, the right to an open and fair trial and the right to liberty are fundamental human rights. It is our government's responsibility to ensure that we are able to exercise these rights. Obviously, as elected MPs from the ruling coalition, you form the government. We have elected you to make sure that these rights are in place. Thus, it is your responsibility to ensure that these basic human rights are enshrined in the constitution, in policies and in laws. We must also understand that no matter how good our intentions are, human rights can be abused through bad laws. So, there must be checks and balances to make sure that these rights are being delivered.

Malaysia has joined the global community and said, "Yes, we are Malaysians, we are a good country, we are democratic, we uphold human rights and, therefore, we will ratify international conventions. We agree that the rights of children and women are important". Coincidentally, the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are the only two international instruments Malaysia has signed. Perhaps, Malaysia signed these two conventions because it could easily deliver children's and women's rights. However, Malaysia is reluctant to sign other conventions such as on civil and political rights and economic, social and cultural rights.

There is opportunity for MPs and civil society organisations to get the provisions in CRC and CEDAW embedded as economic, social and political rights. Once we start talking in terms of human rights, the language changes. It is no longer an issue of "women need protection" because the new language is "a woman has a right to be free from violence". In other words, a woman can say, "I have a right to be protected. I have a right to have a home. I have a right to an education. I have a right to vote". The point I am making is we must claim these rights in this kind of language. We must bear in mind that it is a right. We should not accept responses such as "we will think about it or we will give it to you". It is not a question of the government giving us these rights in a charitable way. It is the government's responsibility and duty to ensure that the rights are put in place. We as citizens must say, "This is what we demand of you, this is what we want".

Therefore, what is the role of parliamentarians? As Mr Ramdas pointed out earlier, one of their functions is to speak up in parliament for our rights. It is extremely important for MPs to defend and uphold the human rights of everyone, even those whose ideas one does not share. Let's take the Ayah Pin case. A group of people attempted to burn down his commune because Ayah Pin is seen as a cult leader. We may not necessarily agree with Ayah Pin's principles or beliefs. In fact, I do not understand what a giant teapot is doing in the centre of his *kampung*. However, Ayah Pin and his followers have a right to say, "I am sorry, I do not believe in this set of religious thought, I believe in something else". We feel very strongly that

he has the right to hold on to his beliefs as long as he does not harm anyone. Even though one may not agree with his faith or in what he preachers, we should make sure that he is able to exercise his right to his religious beliefs. Imagine if someone comes and tells us that we cannot be Buddhists, Christians, Hindus or Sikhs any longer. Religious beliefs are very personal. I should even be able to say "I don't believe in God" freely. I should not be told that "you are very dangerous for holding such beliefs and you should be detained under the ISA".

So, this is the ethics of defending human rights. Of course in parliament, MPs are assured of immunity when speaking up on various issues or disagreeing with particular government policies. For instance, they should be able to insist that the 10,000 stateless children in Sabah must be given an education even though the authorities are saying the issue is not the government's problem.

There is an obvious need for parliamentary reforms and assurance that one would not be punished for speaking up. Generally, most people are reluctant to speak up because there is a lot fear that they would be locked up just for voicing their concerns. But this is what governments rely on. People in power tend to create a climate of fear. As long as there is such fear, there will be self-censorship and life goes on as usual. It is interesting to see the newspaper reports today on the Approved Permits (AP) controversy. I find that Umno Youth, i.e. the men, are making very critical comments about International Trade and Industry Minister Datuk Seri Rafidah Aziz. The women in the party are not saying anything openly about Rafidah. The men have decided to speak up on the AP issue but the women, who have mostly been followers, have been a lot quieter. Perhaps, the women are speaking up or doing their work behind closed doors. But whatever the reason, when I see the papers today, I wonder why the men are speaking up and not the women.

Now, I would like to talk on two issues that concern us. Within parliament, the MPs can participate in several committees. The human rights caucus in parliament has 20 members, but there is no MIC representative in it. We need to find out why. I know that the select committee has a MIC member, who is very vocal and ask all the right questions. I am glad that

the MP from Cameron Highlands is in this committee because he has been very encouraging when NGOs give their feedback.

The select committee is especially important because it seeks the people's views before parliament changes any law. For instance in South Africa, every national report that the government submits to an international body is discussed in parliament. Quite a number of parliaments around the world discuss such reports. Unfortunately, the Malaysian parliament does not even discuss Suhakam's annual reports.

It is also important for us to look at Malaysia's role in the international arena. We need to know the various international instruments and mechanism. Malaysia is a member of the UN Human Rights Commission. Signatory states, including Malaysia, meet every year in Geneva to deliberate on the human rights situation in the world. We need to find out what our government says at the Geneva meetings. In fact, Malaysia has been playing a major role in the commission though it may not be very supportive of international human rights instruments. The commission has created different mechanisms and we need to be aware of them. For instance, there are special rapporteurs on torture and arbitrary detentions and summary killings.

I now come to an area of concern where Members of Parliament must speak up. For example, a Bangladeshi national sent a letter to the Malaysian government in 2003, asking why three young men died in detention. Not many of us knew about this communication. I came to know about it later when I was reading up on some other issue. This is why freedom of information is important because the press must be free to publicise these issues. In other words, MPs need to seriously consider repealing the Printing Presses and Publications Act.

In another instance, the special rapporteur on torture has sent a communication to the Malaysian government on July 30, 2003 in relation to three deaths in police custody. The special rapporteur enquired why M. Ragupathy, aged 22, who was arrested in July 2002 for suspected involvement in robbery died in custody at the Sepang police station. M. Uthayamaran, aged 33, was arrested on Aug 26, 2002 and detained for

77 days in several police stations in Kuala Lumpur, Kuantan, Rawang, Ipoh and Kajang, where he allegedly died. According to a post-mortem report, he died of a heart-related disease. However, his wife said he never had any cardiovascular problem before. Vivashanu Pillai, aged 24, was found dead in the Klang River near Bangsar on Aug 4, 2002. He was reportedly arrested on Aug 1 2002 and detained at the Dang Wangi police station from where, according to the police, he allegedly escaped the following day. Concerns were expressed that he might have died in police custody before his body was thrown in the river.

The point I am making is there are international mechanisms to monitor such situations and detect wrong doings. Special rapporteurs monitor the human rights situation regularly and get information from civil society organisations. When they detect discrepancies, they write to the Malaysian government to seek clarifications. Of course, the Malaysian government clarified by saying, 'Well, according to the autopsy reports, they died of this and that'. These clarifications do not tally with the police commission's findings on deaths in police custody. Though 80 deaths in custody were recorded between 2000 and 2004, there were only six inquests. So, is the response an inaccurate statement or a lie? Thus, MPs need to be aware of such developments. Our MPs need to accompany the Malaysian delegation to Geneva and observe our government's responses at the UN Human Rights Commission's meetings.

The second concerns women's rights. Malaysia has signed CEDAW, a very good international instrument which simply says we need to eliminate all forms of discrimination against women. Certainly, Malaysia is relatively far better with regards to women's rights. However, this does not mean all is good. Women still face discrimination in several areas. For example, when a Malaysian woman marries a foreigner, she is asked to follow her husband to his country because he is not conferred citizenship rights here. Basically, women do not have equal rights as men when it comes to nationality and citizenship issues. It is also not easy for Muslim women to get a divorce.

In the Women's Aid Organisation, we consider the rights of all women and we do not restrict to any particular ethnic group. So, we look into all

forms of discrimination against women. We have the Domestic Violence Act but it is not effective. For example, a woman made six police reports against her husband's abusive behaviour. The husband made one police report. Guess, who was charged? It was the woman! So, this case exposes the discrimination women face even though the government has agreed to uphold their human rights and has signed the international treaty. Now, what do we do about it? NGOs come up with a shadow or alternative report and distribute it to all MPs. The shadow report makes recommendations to the government to amend the law for better implementation.

In South Africa, every government report that is to be sent to international organisations, mostly UN bodies, is first debated in parliament. This is a practice Malaysian parliamentarians need to consider when instituting parliamentary reforms.

Every year, opposition MPs approach civil society organisations to gather feedback. They often consult NGOs on issues and questions that need to be raised in parliament in order to help them to do their job better. This is one way of forging a partnership between parliamentarians and NGOs. Another way is for NGOs to provide training and share our experiences and expertise. Of course, parliamentarians also have to tell us how we can help you.

To summarise, I talked about the need to be aware of and to tap into international instruments and mechanisms that are already in place to protect human rights. I have also dealt with women's rights and the need to ensure that the provisions in CEDAW are implemented effectively.

I would also like now to respond to the question raised in the earlier session: What would happen if there was a riot after people speak up? It is extremely important for us to understand that we are not creating trouble by just speaking up. By speaking up perhaps we may make some people feel very uncomfortable but there will be checks and balances. If all of us live in fear, we cannot continue with our work. It is the duty of MPs, as representatives, to speak on behalf of us and articulate our issues and problems. It is important that MPs are more fearless than anyone else.

A long time ago, someone asked me this question: "How can you criticise the police, politicians and political parties? Are you not afraid?" Of course, I am afraid and I am always wondering whether I will be taken away and locked up. When a woman comes to me and says that she has been beaten by her husband, I tell her, "No, this is not right. It is your right to be free of violence. You have the right to get a divorce and be with your children. We will help you in whatever way we can". So, when the government says I do not have the right to speak up, I feel like I am a battered women too, living in fear of the awful laws that can put me away. That's when I realised that I do not have the right to give such advice to battered women, if I do not speak up against unjust laws or governments that may be oppressive.

I end on this personal note that I have the right to speak on something that I feel is very important and not to live in fear. If you get into trouble just for speaking up, we will be there to help you. That is what we in the NGOs do.

Siva Subramaniam: The next panel speaker is S.K. Devamany, the MP for Cameron Highlands. He is also a member of the parliamentary Special Select Committee on the Penal and Criminal Procedure Code, a member of the parliamentary Rights and Freedom Committee, committee member of the Commonwealth Parliamentary Association of Malaysia, committee member of the Asian Parliamentarians Association, committee member of the Barisan Nasional Backbenchers Club, and a member of the Malaysian delegation to the 59th UN General Assembly in New York. With great pride, I invite Mr Devamany to make his presentation.

S.K. Devamany: I thank all the respected speakers and participants for their presence. I will go straight to the points because of time constraints. Mr Ramdas has already discussed clearly the expectations in the context of human rights and good governance. So, I will not go into the details of these issues.

With regards to the Universal Declaration of Human Rights, the UNDP propagates human rights when implementing its socio-economic development programmes. The international NGOs are also showing

greater concern and urgency in ensuring that the UDHR is implemented in the developing countries. From my experience at the UN session last November, the various committees are having intense discussions on these themes. A lot of questions are being asked on legislative reforms, environmental protection, strengthening women's rights, underprivileged children, the disabled, the poor, and, most importantly, minority groups.

I specifically mentioned minority groups because Indians are a minority in this country. And we are now addressing the people who represent – politically, economically or socially – this minority group in parliament, state assemblies and other institutions. We need to discuss today how we can play our role as parliamentarians and elected representatives within this context.

I believe parliamentary reforms are a global phenomenon. We can see from our prime minister's actions in recent months that we are also moving towards legislative reforms. It is clear and prevalent and I can see it happening in parliament. The government is definitely moving towards this end. However, we must also understand that reforms cannot come about in a revolutionary manner. They have to be evolutionary, preserving what we have and at the same time moving in an envisaged direction.

With regards to the role of parliamentarians in the political process, we need to deal with three constraints. One, there is decreasing awareness of the democratic process among our citizens. Many do not even know the constitution and that parliament is the highest law making body in the country. It is not the executive but the legislature, which is the law making institution. It is important to reemphasise this because parliament is now being seen as a rubber stamp. Many MPs themselves believe that parliament is just a rubber stamp because bills will definitely be passed after a debate in the house. However, there was an interesting development recently. For the first time in Malaysian parliamentary history, the Dewan Negara rejected two bills, though for very trivial reasons. Though this may not be well received by the Dewan Rakyat, it strengthens democracy. It has jolted the MPs in the Dewan Rakyat and there is a suggestion to form a joint committee to reach a consensus. Joint committees will enhance the legislative process and ensure that justice and equality

prevail.

The second constraint is the weak capacity in terms of human and financial resources in this country. A good law may not be implemented and may get totally distorted. This will affect the minority because of the many discrepancies on the ground. Some good government policies are not being implemented at the grassroots level. For instance, the equity share of the Indians was supposed to be 3 per cent but at the implementation stage it is only 1.5 per cent. The MIC is taking steps to have a monitoring mechanism to ensure that policies are implemented. I believe the prime minister is supportive of the idea.

The third constraint is the executive branch of government is reluctant to allow greater legislative involvement in its management. For example, the Attorney-General's Chamber never gets parliament involved in drafting amendments to the law. Actually, according to the Westminster model, it is the parliamentarians who make, amend or ratify the laws. But this is not happening in Malaysia. We are now in the process of drafting recommendations to be forward to the prime minister to have a permanent select committee, a joint select committee and a permanent law reforms committee. They will be based on the Australian and New Zealand model where a cabinet minister can be summoned to explain the budget or policies. We can also invite experts, who are not parliamentarians, to assist the committees or in formulating reforms. This is good for the democratic process but I do not know if the recommendations will be accepted.

Coming back to the role of parliamentarians, state assemblymen and local councillors, I believe they should use public hearings to reinforce civil society. Secondly, they should establish formal links between the standing committees in different sectors. Parliament can in certain circumstances review the quality of the participatory process to get more people involved.

On implementation, public awareness is crucial. The people must know what is happening and the laws and policies that are being formulated. At the grassroots, many do not know or understand these processes. We must bridge this gap and ensure consistency between legislation and the budget.

Governmental and statutory bodies spend a lot of money but we do not know the corresponding benefits for the grassroots. Though parliament receives stacks of reports everyday, very few of us go through them. It is important that we go into the details to see that government policies are being implemented and that the money spent actually benefits the grassroots. When I was seen with these reports once, an MP asked me why I was carrying all these junk. Some parliamentarians appear to see these reports as a burden. They just take part at the formulation stage and do not monitor the implementation. In reality, parliament has the power to summon the executive to explain discrepancies, if any is detected. For example, the Public Accounts Committee has the power to investigate any body that is funded by the government. Thus, parliamentarians have an important role to play.

Parliamentarians can also find out why specific projects or programmes meant to assist minorities such as the Indian community are not being implemented. We can raise these issues with the relevant authorities through the proper channel. As a Barisan Nasional backbencher, I can raise these issues in parliament but we need information from the ground. So, you must provide us the information.

Parliament also has audit functions. MPs must try to get into these audit committees, especially those monitoring the funding mechanisms.

As I mentioned earlier, the human rights challenges in Malaysia are between the executive and the legislature and we get sidelined in the process. That is why the select committees are vital to strike a balance between the executive and legislature. Hopefully, parliamentary reforms will bring some results. I believe reforms will come because our prime minister is willing to listen.

There has been a great hue and cry over 14 statutes that are said to infringe human rights. As Mr Ramdas elaborated earlier, they range from public order laws to the Dangerous Drugs Act. These laws were part of a process of the nation's history and they were necessary to maintain social order. I do not know whether they are still relevant or not, but there must be a mechanism to prevent abuse. As Mr Ramdass said, we must be vocal in

putting forward this point. There must also be a balance in the role of the legislation and executive in nation building, which is not the situation currently. The executive has taken over and this is our complaint or drawback. How do we reform this? That is what we at the Barisan Nasional Backbenchers Club (BNBC) are discussing currently. Vibrant debates are taking place among the 100-odd BNBC members. From the intensity of parliamentary debates, we can see that the BNBC members are even more vocal than the opposition MPs. I feel that the democratic process is on track.

The point I am making is as elected representatives we must monitor the execution of policies, the delivery system, abuses and corruption and the infringement of human rights on the ground. In order to be effective, we must be in contact with the government departments and find out about approved plans, on-going projects and how much money has been spent. So we must be very knowledgeable. If we do not keep ourselves well informed, then we will face difficulties. The government officers may not give you all the information. Currently, I am doing a survey of the government departments in Cameron Highlands with the help of research assistants but the civil servants do not want to cooperate because they believe we are going to investigate them. In fact, I explained to them that I am only preparing a profile of my constituency, including the planned projects for the next two years and the proposals made for the Ninth Malaysia Plan.

You will be surprised to know the amount of funds allocated for development programmes for the different ethnic communities. We must get involved in the process because the Economic Planning Unit will chart out development programmes based on feedback from the ground. The EPU will plan according to the current situation and not because we pressured it in parliament or we got lucky. Recently, Datuk Mustapa Mohamad, Minister in the Prime Minister's Department, informed us that we are given till the end of this month to put forward our own proposals. We suggested that 10 per cent of the Ninth Malaysia Plan's budget be allocated for parliamentary request. The allocation can be used in critical areas such as for human development and to help single mothers. We want such allocations because we feel that implementation is not very effective.

The new leadership is geared towards reforms. Its human rights policies and the setting up of the police commission are good developments. Parliamentary reforms are on track. In the last 47 years, only two select committees had been formed. Then a select committee was formed last year and another one this year. They are on the civil code and national unity. I believe many more are to come because the new administration wants people to participate in law making. This will strengthen the role of parliamentarians and we are lobbying to make it a permanent system. Further, PAC's role is being strengthened. There is also greater transparency and emphasis on corporate governance. We also have the national integrity policy and plans to enhance the delivery system and human capital development. I believe more good things will be coming.

I think there is going to be a major policy on human capital development. This human capital development component is very important for the Indian community and we must participate strongly within the framework. We as elected representatives must ensure that this filters down to the grassroots. One of the problems facing many in the community is lack of knowledge, education and awareness. They must know their constitutional rights. We must play our role and create awareness.

I will now touch on the MIC, which is a political representation. The advocacy of equality, human rights and good governance is primarily through politics. A lot of things can be done through political means. We have got to enhance our participation and be vocal wherever we are as representatives. MIC's representation in the federal government is very important and our minister and deputy ministers are doing a good job.

With regards to the Ninth Malaysia Plan, we must play a major role in ensuring that our community's interest is taken care of. We must make sure that Indian Malaysians are plugging into the system. If we ignore that, we will face difficulties.

The protection of minority rights vis-à-vis the constitution and Barisan Nasional consensus must be always adhered to. We must make sure that religious, cultural, language and educational rights are protected. There are bound to be executive abuses and so checks and balances are

necessary. The Tamil school condition, admissions into public universities, the derecognition of the Crimea State Medical University, police abuses, deaths in police custody and extended detentions under continuous remand orders are some of the serious issues. Certain provisions in law are now being amended to prevent police abuses and brutality. There are moves to reduce the remand period from 14 to seven days but I have been lobbying to bring it down to three days. It is tough because I am lobbying in a big committee but we are on the right course to prevent police abuses.

Of course, it is also important to have representations at the local councils and state governments. Land issues, squatters, temples, business licences and a lot of other matters are dealt with at these levels.

The MIC has also taken a socio-economic approach in addressing Indian problems. Compared to the Chinese and Malays, the Indians are in a difficult situation. Chinese political leaders represent the Chinese in the political process but the community by itself is independent in terms of development. The Chinese guilds and organisations are playing a pivotal role in the socio-economic development of the Chinese community. The political process is in favour of the Malays and, thus, they receive assistance from the government sector. As for the Indians, we do not have a strong base of institutions that can enhance the community's socio-economic development. So, the MIC has to play not only a political role but also has to adopt a holistic approach in the development of the Indian community.

MIC president Datuk Seri S. Samy Vellu has taken the initiative to develop self-help programmes for the community. Self-help means not asking for peanuts but giving the community the tools for development. This is taking shape through the YSS (Strategic Social Foundation) which has received a RM2.8 million grant with the help of Datuk G. Palanivel (Deputy Women, Family and Community Development Minister) to initiate programmes at the grassroots. NGOs are also allotted funds to initiate programmes in places where Indians are concentrated. Of course, the MIC is playing a crucial role in all these. AIMST is also blooming and hopefully will assist good students who are in dilemma after failing to gain admission in public universities.

As Datuk Seri Samy Vellu explained, working with NGOs will be the future culture of MIC. This is a good development and we are already working with the Malaysia Hindu Sangam, SMC and other local NGOs.

To conclude, as MPs and elected representatives, we must be knowledgeable. We need to have sound knowledge of the country's law, our rights, policies, development plans, the implementation process and mechanism and, finally, the people. We must have a continuous monitoring mechanism and provide feedback to the authorities at the top of what is happening on the ground. We must also build networks with people who can enhance our role in bringing about community development and change.

Siva Subaramaniam: Thank you Mr Devamany. The last panel speaker today is Dr Sothi Rachagan, currently vice president of academic affairs in Nilai International College. He was formerly a regional director of Consumers International, Asia Pacific, and he continues to serve as an adviser to the organisation. Dr Sothi was a professor and dean of the law faculty at the University of Malaya before retiring in 2000. His area of specialisation is consumer protection and environmental law.



Dr Sothi Rachagan: I wish to compliment ERA Consumer Malaysia for organising this dialogue and the Malaysian Indian Congress for agreeing to participate in it. It is not often that political parties in government have the humility to accept a briefing on human rights from a non-governmental organisation. This augurs well for human rights in this country. I hope that other parties in the ruling coalition will emulate this precedent set by the MIC.



This presentation focuses on what may be termed the "need for a culture of human rights". My focus is on the need for us to have the human rights

ideal inform and influence our day-to-day lives. The examples I will draw on will be those I gleaned from my involvement with the national and international consumer movement.

We often talk about human rights without being familiar with the many agreements that spell out these rights in detail. The Universal Declaration of Human Rights is just simply the fountain from which came at least 60 international documents dealing in detail with a wide array of human rights. So, whatever area you choose to specialise in – whether involving the police, women, children, education, racial discrimination, etc. – there are often specific and detailed international documents dealing with the issue. The UN Human Rights Commission maintains a website and all of us need to familiarise ourselves with it so that we can access the documents whenever necessary. I believe that greater familiarity with the agreed rights and reliance on them in our discussions will lead to their greater observance.

Let me now make a few observations that deal with what I call the culture of human rights. There is a disjunction between our often-stated respect for and advocacy of human rights and our day-to-day practices. For human rights to become a reality we have to move away from a feudal structure and the very feudal way in which we relate to each other and move towards a more equality-based model in our day-to-day relationships. Take the way we relate with our leaders as an example. It is very Asian to show respect for our leaders and that is a trait worth sustaining. Respect however does not mean that we have to compete with each other as to the extent to which we supplicate to our leaders.

One of the best indicators of development status is the amount of formality and indeed ceremony that attends to opening and closing ceremonies of events and the extent to which leaders are fawned upon at these occasions. The greater the level of development, the lesser the formality and fewer the people who hang around the dignitaries. That correlation established, it is perhaps a matter for debate as to which, lack of development or unequal relationships, is the cause and which is the effect. I would venture to suggest that they are mutually reinforcing.

We have to ask ourselves whether the manner in which we relate with our leaders in fact detracts from the culture of human rights that we want to enact in this country. Are we in fact reinforcing feudal structures and conduct or are we moving towards a model in which we can relate to people on an equal basis? Equality and respect for each other is the fundamental basis, the culture in which human rights thrives. It is impossible to have respect for human rights if one relates as in a feudal society.

For there to be respect for human rights we have to also move towards a system of clear rules and away from one that endows our leaders with powers to exercise discretion in an arbitrary manner. Let me use an example to make the point clear.

We are familiar with the recent press reports, bitterness and rancor over the award of scholarships to those who had done brilliantly in the SPM examination. This is of course not the first time that we have had this unseemly debate. Indeed it is part of the Malaysian press calendar each year to focus on this issue after the release of the examination results and scholarship awards. Each year, deserving students are denied a scholarship and their plight highlighted by the media. The complaint is that they have been denied scholarships or have been denied entry to preferred courses. What happens each year is that the media reports for a few days, a few students are then awarded scholarships for the courses of their choice and the matter let to rest till it is resurrected again the following year. We have even been told, "a government scholarship is not an entitlement, scholars become eligible on securing a distinction in all subjects but the grant of a scholarship is a discretion vested in the Ministry of Education". To me this represents a violation of human rights. Is it indeed difficult to clearly specify the criteria for the award of scholarships based upon examination performance and those based upon grounds of financial need? It is reasonable for the state to award scholarships on the basis of the manpower needs of the nation but is it not possible for this to be determined and specified even before the examination results are published?

A state may not be able to afford the grant of state scholarships. That would be unfortunate. But when a state does grant scholarships to its scholars but denies applicants a fair and transparent process in granting the scholarships,

it is a violation of human rights. Fortunately, this year the prime minister himself intervened and the rights of the affected students were finally respected.

Pertinent to our discussion is the discretion that officials and leaders wield in the process. Human rights can only thrive when a principle-based system is operated in a transparent and objective manner. We need a fair system that is based on clear principles to determine whether the students qualify for a scholarship. Students who score straight 'As' should not have to depend on someone's discretion and charity to get scholarships and loans.

The system is wasteful in more ways than one. We need our young to feel there is fairness in the process and a genuine place for them under the Malaysian sun. And when they do, they will grow into adults free of prejudice and respectful of the rights of others.

Human rights thrive in a system that is transparent and accountable. We have in Malaysia an Official Secrets Act but not a Freedom of Information Act. Our constitution was written and indeed this country came into being during an emergency – that was declared in 1948 at the height of the communist insurgency. The fundamental liberties provisions in the constitution are consequently very circumscribed. Law may curtail almost all of the fundamental liberties provisions and parliament has repeatedly curtailed our fundamental liberties on the grounds that our unique communal composition is an explosive brew that calls for restraint. It is not my intention here to deal with all the laws that curtail our fundamental liberties. I merely wish to reiterate that the Official Secrets Act prevents the exercise of our human rights in that it inhibits the flow of vital information that is necessary for the enforcement of our rights and to bring to justice those who violate the rights. It also means that we are not able to bring to justice the corrupt and those who abuse power. A Freedom of Information Act is crucial to develop a culture respectful of human rights.

It is also important to clarify that the Freedom of Information Act must not just provide that information may be obtained but makes provisions for information to be routinely made available. The basis on which it operates

should not be “if you ask, we will oblige” but rather “if it is not available, we will explain”. We need to have a culture of sharing information. It is something we must see as a right of citizenship not a privilege extended by the executive at its discretion. The information and communication technology revolution that has enabled information to be routinely made available in a timely and cost effective manner needs to be tapped to serve human rights and democracy. This must become one of the objectives of e-government. For a start, proposed laws can be posted on the web for feedback and public comment.

Unless we have the requisite information it will not be possible to meaningfully exercise our freedom of expression. And on a related matter, freedom of speech is important but it can be encouraged only when those in power observe the etiquette of discussion. Unless we accommodate alternative views and desist from treating those with differing views callously, we will not create an environment conducive to nurture a culture of human rights.

Human rights considerations are important to all matters dealt with in parliament, the state legislative assemblies and the local authorities. It is particularly important in the process of law making.

Let me digress a bit to establish the premise for my assertions in this area. Our Members of Parliament are generally excellent constituency MPs. They do spend much time in their constituencies and maintain their own service centres. Whenever there are disasters such as floods or a fire, we see people knocking on the MPs’ doors. The MP is expected to provide relief and marshal resources to address at least the short-term implications of such unfortunate incidents. This aspect of the job is indeed a difficult task but one that our MPs undertake to great effect.

It is however my contention that our MPs are not particularly effective as lawmakers. I am aware that this generalisation will be challenged, but I believe that it holds much truth. The failure of our parliamentarians to be effective lawmakers is to a large extent because they do not have the necessary staff who can research and provide the expert support for MPs debating proposed legislation.

Let me now return to the point I wish to make. I believe that the deficit in lawmaking occasioned by the lack of staffer-support for our MPs can be overcome if our parliamentarians strike a partnership with civil society. Many of these groups consider proposed legislation and raise critical issues facing society. Many civil society groups are backed by experts in the fields they specialise in and it is possible for MPs to tap this reservoir of talent. By linking up with civil society, MPs can reduce their deficit in lawmaking.

An example will serve to emphasise the point being made. The exclusions provision of the Consumer Protection Act states that it does not apply to electronic transactions or e-commerce. What this means is that when I buy a product by personally visiting a shop, the transaction would be covered by the Act but not so when I buy the same product from the same seller by way of e-commerce. The absurdity of this provision was missed, several MPs have since claimed that they were not aware of its inclusion in the Act. Yet, consumer leaders criticised the provision even when the Bill was being considered, though the press did not report their criticism. Civil society can recount many such instances. A partnership between MPs and civil society will make for better laws. I believe it will also lead to a better appreciation of human rights.

I also believe that our MPs should be relieved of their heavy duties in the constituencies. What we need is a citizens' bureau in each district to which people can go to get advice on how to resolve their problems and grievances and, very importantly, be informed of their entitlements. The less privileged are also often the least informed and consequently do not access their entitlements. The constituency offices of our MPs serve to fill the void but in doing so they perpetuate the myth that the entitlements were obtained as a consequence of the largesse of the MP rather than as an entitlement of citizenship. In any event, it should be the function of MPs to address flaws in our system and not be involved in the routine delivery of welfare.

Let me conclude this presentation by asking you to focus on a particularly important human rights issue that you can help resolve to the benefit of all Malaysians. Privatisation of essential services such as healthcare and

education without the requisite safety nets will violate the right to access these services. The right to such access is a basic tenet of human rights law.

Malaysia had one of the best public healthcare systems in the world. Sure, there is a need to improve aspects of our current public healthcare system. Unfortunately, industry wants to dismantle the present healthcare system and have it privatised. Privatised healthcare systems lead to a misallocation of healthcare resources such that it benefits those who are most wealthy to the detriment of the poor. A privatised system will only benefit the dealers and suppliers of healthcare services rather than individual citizens. I urge you as politicians of a party in power to address the human rights implication of the changes to our healthcare system. Indeed, there is a need to examine our provision of healthcare, housing, education and the utilities (water, electricity, etc) as human rights issues. In many countries, access to basic goods and services such as water, electricity and telecommunication services, is seen as a human right and special laws are in force to ensure that no disconnection is made without due process.

Consider the implication of disconnecting access to a utility such as electricity or water. A child may be studying for an examination or an elderly person may be ill in that home. Would it be correct for a society respectful of human rights to permit the disconnection of the utility service? We are now moving to a system of prepayments for utility services. It is already being tested for electricity. What are the implications of using prepaid cards in this area of service provision? It means that the moment the credit amount is used up, the electricity or water supply will be automatically terminated. Is that respectful of the human rights of people?

Our society has seen rapid economic growth but the benefits of that growth are not uniformly available. It never is in any society, but a society respectful of human rights assures that the weaker sections of its people are not denied access to their basic goods and services.

I thank the organisers for having invited me to participate in this important initiative and hope that my presentation serves to enhance your commitment to the human rights cause.

Siva Subramaniam: Thank you Dr Sothi. At the end of the day, you would have realised that the government and civil society should work together as a team instead of being confrontational. After all, the NGOs possess many attractive qualities such as mobility, flexibility, grassroots experiences and an effective monitoring system. Elected representatives must act as servants of the people and not as masters. This is the message conveyed by our three panel members. With these comments, I now invite questions from the floor.

P. Komala Devi (Wanita MIC, Member of Parliament for Kapar): Firstly, I would like to thank ERA Consumer Malaysia for organising this seminar. In the 25 years I have been in MIC, I did not have much opportunity to interact with NGOs. My question is directed at Dr Sothi. In the United Kingdom, for example, when a person gets bitten by a dog, the MP will not be visiting the victim, going to the hospital or donating some money for medical treatment. In fact, the MP will be busy in parliament trying to introduce a law to solve the problem of stray dogs and to prevent such incidents in future. Do you think Malaysians need to be educated or made aware of the actual role of parliamentarians? As Members of Parliament, we definitely have a duty to our constituents. But we also have another duty, as pointed out by my colleague Devamany. We have to make or change laws in parliament. How do we change the mindset of people? Secondly, how vocal are Malaysians? Why do we have such a silent majority? Do they want to be more politically correct than politicians?

Siva Subramaniam: We will take all the questions before the panelists sum up, it will be easier. The second question, please.

Mala Doraisamy (Puteri MIC, Pahang): Is the lack of human rights progress due to certain norms or is the situation due to a failure in implementing existing laws? Isn't it important to ensure gender equality in the promotion and protection of human rights in this country?

Dr Vigna Kumaran (MIC Youth): Basically, I would like to exercise my freedom of speech today. Dr Sothi spoke about faulty laws. The point is clear. After 47 years of independence, we are still talking about strengthening human rights and democracy in Malaysia. This basically indicates a weakness in the system. My question is, who failed and why?

Is it due to the failure of the parliamentarians, executive, HAKAM or Suhakam?

Dr S. Subramaniam (Member of Parliament for Segamat): All the speakers approached the topic in a holistic and humanist way, except for my friend Devamany who took up ethnic elements relevant to Malaysian politics. We are living in an ethnically plural society. While we are having this meeting here today, the dominant political party in Malaysia is having its general assembly in its headquarters. If we were to listen to the talk of some of the delegates there, they would send shivers down our spines. Likewise, if you were to listen to the talk at the general assemblies of the other ethnic-based political parties, you would also get a similar feeling. These components are in a marriage of convenience to govern the country. We need to see if this arrangement has been successful. I think Dr Sothi has alluded to the fact that we have one of the best health systems in the world and I totally agree with him. Likewise, we have a very good education system, at least at the school level which is free for every child. These key indicators show that the marriage has worked although there are some problems in other areas. The vast majority of Malaysians have a fairly comfortable lifestyle while certain thorny issues need to be addressed. How do parliamentarians and those in government address these issues when everybody is ethnically conscious? As Komala pointed out, the NGOs should educate the public about the role of parliamentarians, state assemblymen or town councillors. We are doing the job of a postman half the time. We take an application from one place and deliver it to the other side. I agree that we should be spending such time in making laws and formulating policies for the benefit of the nation. But that is how most members of the public are. The problems are created by the public and not by the leaders or parliamentarians. Public perceptions have to change. Maybe NGOs have a strong role to play in changing public attitudes and in educating the people how to exercise their political right.

Mugilan (MIC Youth): MP Devamany said that human rights have to come about in an evolutionary way and not in a revolutionary manner. Malaysia became an independent nation in 1957. Are 47 years not enough for the evolutionary process to take place with regard to human rights? Human rights cannot be given in installments.

Manickam (volunteer social worker, YSS): Why has Suhakam failed to conduct a public inquiry into the Kampung Medan ethnic violence? It is a serious issue because six people were killed in the incident. Instead, Suhakam was more keen in holding a public inquiry on a demonstration in Jalan Kebun over the Anwar Ibrahim issue. Which is a serious matter? Why the discrepancy? Doesn't Suhakam have any power? Or is the National Human Rights Commission controlled by the government? I believe the panelists here are in a position to answer these questions.

Dr Sothi Rachagan: I cannot possibly address the whole range of issues raised but I will try to answer the main questions. The public is not to be blamed. People build an appetite for the kind of things they are fed with. I believe the toughest job falls on the MPs from the MIC. People from all ethnic groups approach the MPs for assistance. From the ethnic composition of your constituency, you will know the nature of the problems and the kind of service that is expected of you. The MPs are expected to perform constituency and party work in addition to being a parliamentarian. I believe many MPs feel quite imperfect in the political arena. In fact, it is a very peculiar situation. I do not know of any other country where a political party sets up a university and provides that kind of services. It is a great service but I believe it comes from a failure to be able to obtain such things through the political arena. Thus, they have to provide the service from outside and take on additional tasks. The MPs are forced to serve the people from outside the parliamentary system when they are not able to get their voice across.

Secondly, why do the other MPs do it? They do it because it is a great way of connecting with the people. It is part of the patronage system we have created which is now self-perpetuating. We have built such a culture. I do not think MPs are prepared to stop such practices because it is their way of connecting with the people and show proof that they are serving their constituents. Unless you extricate yourself from such practices, the problem cannot be solved. It is also partly because we have not built the supportive mechanism for our MPs to be freed of such practices. For example, if we have citizens' bureau in each constituency or mukim to provide such services, then MPs do not have to act as postmen.

There is a fundamental flaw in the system when civil servants do not provide the information members of the public need. For example, the earlier speaker, Devamany, said officials in government departments did not want to give him the data he sought, even though he was performing his job as an MP. The civil servants are not doing us a favour. It is the public's right to get such information. If an MP cannot get such information, how are NGOs and ordinary citizens going to exercise their rights. So, the system has to be changed and supporting mechanism must be put in place. People are performing tasks that the government and civil servants should be doing. As it stands now, MPs have to represent their constituents in parliament and make laws. In addition, they have to attend to individual complaints or problems of their constituents. Then they have also to raise funds to run a service centre or to provide scholarships to poor children. How much can individual MPs do? Unless the systemic flaws are addressed, this will perpetuate.

Very briefly on the other comments, yes, we do have successes in several areas. But the successes are also somethings we inherited – the best roads, the best education system and the best health system – at the time of independence. We were already leaders in these systems in this part of Asia. So they were not created all of a sudden because of our leaders' efforts. But we have to be thankful to our leaders for not damaging the systems even more than they already have. However, they are in the process of dismantling a good healthcare system and I hope they would not be allowed to do that. For instance, they did that with our education system and research institutions. There is now a major shift in research that used to be conducted by institutes such as the Institute of Medical Research and the Rubber Research Institute. These institutes used to do some excellent research and their interest was to propagate the findings to the people. Now research is being done by private corporations which then use that patented right to sell the information to the people. The point is we should be proud of our achievements but at the same time we should be cautious about taking the credit from somebody else.

Finally, evolution and revolution are nice words but I think we have a deficit in human rights in this country. We should seriously address this issue. I do not believe you can say that human rights should evolve. Are

we saying it should be like Darwin's theory where an amoeba evolves into what we are today? There must be a timeframe. Is 50 years of peace not enough? We keep pointing to an incident in Kuala Lumpur and punish the whole country for the rest of the time. Let's not forget that what happened on May 13, 1969 was only an incident in Kuala Lumpur. The rest of the country was peaceful. I do not see why the poor Sabahans or Sarawakians should be imposed with your paranoia with May 13 and denial of human rights. So, let's set a timeframe and move on with it. Let's not give excuses.

Ivy Josiah: The May 13 incident is a good example of how we are constantly told that if we go out and say something sensitive, we are going to have a riot. I was watching on television the anti-war protest in London some time ago. About a million people marched on the streets of London asking the British government not to join the United States in invading Iraq. There was no commotion or riot because the police were there to make sure that the protesters were able to exercise their right to express themselves and march peacefully. In fact, the police would remove anyone who was a threat to the marchers. Therefore, it is important for us to understand that there should be a mechanism to ensure we have the right.

I avoided the issue of race because I have a vision of the Malaysia of Malaysians. Of course, I have a problem when we are divided by ethnicity and politics revolves around ethnic-based parties. We in the NGOs worry a lot about this ethnic division. By the year 2020, Malays will make up 80 per cent of the population. What happens after that? So, we want to push further for the right to be different and ensure that the very poor are looked after. People who are socially and economically advantaged should be given the right to education. It should be opened to everybody based on needs. It should not be based on ethnicity. These are issues we face at the WAO, even when we take a disadvantaged woman who needs a pair of glasses. She has a right to a pair of glasses but the implementation is very poor. Actually an eligible person should be able to go to the Welfare Department and request specific assistance. But if you are from a particular ethnic group, the officials are not going to be helpful. I consider this racism because you have a right to the assistance but the implementation is poor for lack of education. Is it a problem of implementation or is something wrong with the law? I think it is both. We have some very good laws and

policies but implementation is poor because there is so much racism, sexism and a terrible attitude problem. If you are a woman, it makes it bad. If you are a woman with a dark complexion, it is worse. All these come into question, depending on what you are and who you are talking to. So, these are problems of implementation. But there are also some very bad laws such as the Official Secrets Act. We need a Freedom of Information Act. For example, I hope the cabinet papers would be released because we have a right to know how the Approved Permits were given out. It involves public funds.

Gender equality is very important in terms of women's and human rights. That is why we came out with a tag to remind everyone that women's rights are human rights. For a very long time, human rights were seen through the male eyes because the leaders and the people who drafted the UDHR were men. By the 1960s and 70s, women started articulating in terms of women's rights and human rights. It is fine to talk about 30 per cent representation for women in the decision making process. But I hope it is only temporary. Actually, it should be 50-50 representation. More than anything else, we have to remember that women make up half the population of the world. So, gender equality is extremely important.

Devamany: Definitely there is a need to enhance the role of parliamentarians. Right now MPs have to serve their constituents and also play their role in formulating laws in parliament. Those who hold federal executive positions also have to represent the government. Parliamentarians face a lot of constraints in terms of time and resources. I agree that the role of parliament is not very clear. How do you ensure that everything falls in place? That is the challenge.

I was not referring to Darwin's theory of evolution which will take centuries. We are talking about a timeframe of a decade or even less for reforms to take shape. I am referring to specific changes. For example, we have requested for three research assistants and a service centre to be set



up for parliamentarians in each constituency. The centre is to be funded by the government and managed by a permanent officer, who will attend to constituency work. The parliamentarian will only act as a bridge between the executive and the problem itself. We have also requested for an office. Currently, MPs do not have an office in parliament. We just sit in any available space and do our work. In Australia, there are 20 people behind a parliamentarian. The Australian MPs have a well equipped resource centre which provides everything, ranging from cabinet papers to any other information they require.

For parliamentarians to become effective lawmakers, we must first be equipped with all the resources necessary to perform our job. As human beings, we have our constraints. Definitely change has to take place but we must distinguish between pragmatism and idealism. Pragmatism means we must have the political will to bring about the change. As to whether we are daring enough and how far we can go, I think these issues must be addressed by individual MPs themselves.

Siva Subramaniam: On the last question as to why Suhakam did not hold any inquiry on the Kampung Medan violence, I believe there should have been an inquiry. It should have been held not to find fault but to enhance racial unity. The government would have got a good document on how to strengthen racial unity. It would also have provided the government feedback on how to assist the Indian community. With that comment I bring the panel session to a close.

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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