

Understanding **Economic, Social and Cultural Rights**



A Publication of

ERA
CONSUMER
MALAYSIA

**Education and Research Association
for Consumers Malaysia**

Workshop on

**Understanding Economic
Social & Cultural
Rights in the
Human Rights
Discourse**

July 26 - 30, 2001

Organised by:

ERA Consumer Malaysia

Supported by

Civitas International

Edited by

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Organised by:

ERA CONSUMER MALAYSIA

(Education and Research Association for Consumers, Malaysia)

Supported by:

Forum Asia

and

Civitas International

Foreword

As a result of various historical, political and economic circumstances, economic, social and cultural rights – the rights that form the basic principles for civilised human living – have never been accorded their due recognition, whether by communities or by governments, particularly by those of the developing countries.

Economic, social and cultural rights, as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of the United Nations, which have been ratified by at least 145 countries around the world, are as important, if not more than, civil and political rights.

Despite this, ESC rights remain an underdeveloped area of work among many NGOs. However, these rights have been gaining wider attention in the developing nations in recent years because of the threats to the rights of the people of these nations in various forms – as a result of globalisation and World Trade Organisation (WTO) dictates.

Doubts and questions regarding ESC rights arise from a lack of information and understanding. ERA Consumer Malaysia therefore organised a training programme on the subject for NGO leaders and concerned individuals in the country as the first of a series.

The proceedings of this session are published here and it is our hope that this will, even if in a small way, lead to greater attention and focus on ESC rights in our country. For a start, Malaysia must join the league of nations that have ratified the ICESCR.

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

MARIMUTHU NADASON

President

ERA Consumer Malaysia

Organising and Supporting Organisations

❖ **Education and Research Association for Consumers Malaysia**

(*ERA CONSUMER*, www.eraconsumer.org)

is a voluntary, non-political and non-profit organisation. ERA focuses on a wide array of issues, including food security, human rights, the environment, consumers' rights and women's rights for a socially just and equitable society. ERA has been mandated to act as the National Coordinator for the Human Rights Education Programme in Malaysia through a consultation of National Civil Society Organisations held in 1999. The Human Rights (HR) Division of ERA conducts various activities and programmes in order to promote human rights education in Malaysia, including human rights training programmes and educational programmes and consultations on the Malaysian National Human Rights Commission (SUHAKAM). ERA has been working closely together with SUHAKAM on a number of issues, particularly in relation to education as ERA is a member of the SUHAKAM Sub-committee on the Working Group for Education.

❖ **Asian Forum for Human Rights and Development**

(*FORUM ASIA*, www.forumasia.org/)

was launched in December 1991 to facilitate collaboration among human rights organisations in Asia so as to develop a regional response among NGOs on the promotion of human rights and democracy. Collaboration between members of Forum Asia is based on the understanding that human rights and fundamental freedoms are indivisible and interdependent. They include not only civil, political, economic, social and cultural rights but also the rights of peoples to pursue freely their economic, social and cultural development. Forum Asia works for the promotion and protection of human rights in Asia through collaboration and cooperation among human rights organisations in the region.

❖ **Civitas International**

(www.civnet.org/)

is a world-wide non-governmental organisation for civic education, working to strengthen effective education for informed and responsible citizenship in new and established democracies around the world. Civitas International is composed of individuals, non-governmental associations and governmental institutions from many countries as well as international organisations. Civitas International works to maintain a worldwide network, using all available resources, including computer networking and international exchanges, to bring the knowledge, skills and the experience of education for democracy to bear on the momentous tasks that confront today's democracies.

Training Programme on Economic, Social and Cultural Rights for NGOs

Day 1 : Thursday, July 26, 2001

- | | |
|------|--|
| 1430 | Depart ERA Consumer for Costa Rica Hotel, Port Dickson |
| 1630 | Arrival at the Resort and Registration |
| 1800 | Introduction and Ice-breaking |

Day 2 : Friday, July 27, 2001

- | | |
|-------------|--|
| 0700 – 0900 | Breakfast |
| 0900 – 1000 | Adoption of Agenda |
| 1000 – 1100 | Participants' Views on ESC Rights |
| 1100 – 1115 | Tea break |
| 1115 – 1245 | Overview of ESC Rights in Malaysia |
| 1245 – 1400 | Lunch |
| 1400 – 1630 | Developing a Rights Perspective or A Rights-based Approach |
| 1630 – 1700 | Break |
| 1700 – 1730 | Evaluation and End of Session |
| 1930 | Dinner |

Day 3 : Saturday, July 28, 2001

0700 – 0900	Breakfast
0900 – 1030	Understanding the Concept of Obligations: State and Non-State Actors
1030 – 1045	Tea break
1045 – 1245	Understanding the Concept of Obligations: State and Non-State Actors (continued)
1245 – 1400	Lunch
1400 – 1530	An Overview of National and International Standards (Group Discussion led by R. Geetha)
1530 – 1545	Break
1545 – 1745	Understanding Specific Rights in the Malaysian Context (Group Work)
1745 – 1800	Evaluation and End of Session
1930	Dinner

Day 4 : Sunday, July 29, 2001

0700 – 0900	Breakfast
0900 – 1030	Group Presentation on Specific Rights
1030 – 1045	Tea break
1045 – 1245	Monitoring and Assessing ESC Rights ● Collecting Primary Data
1245 – 1400	Lunch

Day 4 : Sunday, July 29, 2001 (continued)

1400 – 1530	Budget Monitoring
1530 – 1545	Break
1545 – 1745	Strategies at the National Level ● Role of National Human Rights Commissions (Group Discussion)
1745 – 1800	Evaluation and End of Session
1930	Dinner
2030 – 2215	Video Presentation: A United Nations ESC Rights Committee production

Day 5: Monday, July 30, 2001

0700 – 0900	Breakfast
0900 – 1030	Strategies at the National Level: Domestic Applications of ESC Rights: The Courts and the Law
1030 – 1045	Tea break
1045 – 1245	Strategies at the National Level: Domestic Applications of ESC Rights: The Courts and the Law (continued)
1245 – 1400	Lunch
1400 – 1530	Planning and Follow-up
1530 – 1600	Break
1600 – 1745	Understanding Specific Rights in the Malaysian Context (Group Work)
1745 – 1800	Evaluation and End of Training Programme

Introduction

The understanding of their rights by a people or a society has long been limited to civil and political rights. Similarly, many vested interests consider the economic, social and cultural rights to be unacceptable constraints or limitations on their own freedoms. In the process, what has been forgotten is the plight of individuals and groups who have little or no access to food, shelter or education. The ESC rights are equally important as civil and political rights and yet these rights remain an underdeveloped area in the work of most, if not all, NGOs. It is now increasingly important that ESC rights be given their due recognition, in this day of globalisation and international trade.

The importance of developing a practical response to guaranteeing economic, social and cultural rights has been recognised at many levels, including the United Nations, by Asian governments, the Asia-Pacific Forum on National Human Rights Institutions and by NGOs within the region. Yet, there is not much substantial work being done on ESC rights, and thus there is a sore need to bring about greater awareness on these issues, especially among the NGOs in Malaysia.

Despite pervasive social and economic problems in virtually all regions of the world, the human rights movement has predominantly been dominated by concerns about violations of civil and political rights. With this in mind, ERA Consumer Malaysia and Forum-Asia decided to organise an in-depth training programme in Malaysia on ESC rights so as to help enhance the level of activism for these rights. It is the belief of the organisers that the NGO community in Malaysia, as well as in the countries in the surrounding region, must begin to incorporate ESC rights into all of their work that concerns the promotion and protecting of basic human rights. Thus the three primary objectives of the training programme were to:

- Examine and explore organisational and programme strategies for the promotion and protection of ESC rights;
- Identify the role of NGOs in human rights issues and trends in the country, particularly with a focus on ESC rights; and
- Encourage the development of work on ESC rights among NGOs and the National Human Rights Commission (SUHAKAM) in Malaysia.

Workshop Sessions

Participants' Views on ESC Rights

(Conducted by D.J. Ravindran)

Each participant was asked to draw a picture depicting a person who is facing or has faced ESC issues or problems. The participants were instructed to think of someone from real life and personally known to them. The participants then displayed their pictures and explained about the person and the problem he or she faced.

Ravindran summarised the issues raised, which covered problems such as individuals who do not possess citizenship or identity papers, orphaned children, senior citizens, women who were victims of violence, urban poor faced with evictions from the land they are living on and/or living without proper shelter, indigenous people, plantation workers and migrant workers. Thus, the exercise provided an opportunity for the participants to share their understanding of ESC rights issues or problems that they considered important.

Outcome of the session

G. Umakanthan spoke about a friend, the child of Malaysians who was born in Sri Lanka during an extended visit there by his mother. He had problems getting admission into school because he had been issued with a red identity card, which is issued to permanent residents who are not given citizenship. He never got a permanent job even though he tried every year. This destroyed his life, for he could not pursue higher education or take up a career. No political party he approached for help could assist him. He has since left Petaling Jaya.

K. Koris had a similar case – about a friend who was in India for one year with his father, a citizen of Malaysia. However, until today he carries an Indian passport. He has passed all the necessary examinations set by the Home Ministry for one to be granted citizenship. In Malaysia, citizenship is a favour granted to a person by the government, not his or her birthright. So every month, this person has to go to the Immigration Department to renew his visa and till today, he is still being denied his citizenship.

Rahman described a man who was born in Malaysia, now 42 years old but has no identity card, and therefore could not attend school, the result of which he is not able to get a permanent job. He lives on the streets, doing odd jobs or

begging for food.

T. Ramdas told a very sad story indeed, about a young girl and her sister, who were visiting an aunt and decided to stay back for the night because it was getting late. The next day, the sisters were not taken home but to their uncle's home, and the following day, to their grandmother's house, where they waited until two coffins were brought there – that of their parents. A group of armed men, some in uniforms, had come to their house the night they had been with their aunt and had shot dead their parents and other people who were in the house.

All of a sudden, Ramdas said, these two little girls had suddenly been made orphans. They now live with their grandmother. They have lost their family support, there is no welfare support for their upbringing and having lost their parents so prematurely, they are not able to decide on the kind of future that they want.

N. Marimuthu told the story of a man in Taiping, Perak, over the age of 70, who helped to draft the Federal Constitution of the country and who is now is paralysed, without a pension to live on. He believes the man is deliberately being denied his pension.

Wathsalah told the story of a 49-year-old with seven siblings, four brothers and three sisters. As the oldest female in the family, she had been denied education from an early age, but all her brothers were given a proper education. This woman was married at the age of 18 and her husband abused her emotionally. Psychological abuse turned into physical abuse and this went on for 18 years. Once, the husband even tried to strangle her with a telephone cord and she went to her family members for help, but they all turned her away, saying it is a “family matter”. Finally, she went to WAO for shelter, saying that she felt faceless, nameless and worthless. Her husband did not want to give her access to her children, saying that she left home because she was involved with another man. What is her right to protection?

Florida told about a man with a bag of clothes and a passport who came to Malaysia to earn a livelihood to support his poverty-stricken family. His salary was never paid on time, and soon, his employer started to abuse him and finally dismissed him and chased him out of the lodgings the employer had taken for his foreign workers. With some help, this man tried to file a case with the Labour Department, but the department refused to open a file because he did not have his passport, which was retained by the employer. After he went to the Labour Department, his employer lodged a police report against him, that he stole an

air conditioner compressor. He was then arrested, and beaten up in the police station. There was no case, so he was released to the employer, who still refused to pay his salary. He went to the Labour Department again, and this time, he was arrested for being in the country illegally.

Jibe of Thailand spoke about a person named Mijon who belongs to a poor rural community that has been living in Thailand for generations, but did not take up citizenship because the authorities always demanded money to process her papers. She had no healthcare, nor education. People who live in the forests cannot find jobs because they have no education or skills to make a living. Many of Mijon's friends became beggars and prostitutes. Mijon finally raised her plight with an NGO and questioned why the animals in the forests can have protection, but not the human beings who also dwell there.

Parames told the story of a community of urban settlers with housing problems. They have been living in the locality for 20 years and suddenly were given notice to vacate the area and to move to transitional longhouses in another slum area. They were promised that they would be given low-cost flats to live in, in two years, but until today, 10 years after being forced out of their land, they continue to live in their temporary homes, without any development on the promise of proper housing. Their temporary houses are in a dilapidated state now, and all their appeals to the authorities have fallen on deaf ears.

Shaa'ni spoke about his brother, a lawyer, who is defending the urban settlers in Batu Tiga and was arrested. Cynthia highlighted a situation in Kampung Penaga, Old Klang Road, where commercial development and the building of highways are threatening to destroy the whole community.

Aru highlighted the plight of the workers of Prang Besar Estate, which was taken over to build the federal administrative centre, Putrajaya. The estate workers lived in deplorable conditions and without any facilities for education, their children too were forced to become estate workers. They were all displaced after the estate owners sold the land to the government. There was one person, a trade unionist by the name of Muniandy, who tried to help, but he suddenly "disappeared". The families there were exploited because they do not know their basic rights and the trade union that is supposed to help them neglected them.

M. Kula spoke about the dilemma of stateless people. He gave the example of Muniammah, who has three brothers who she has not seen she was a little girl. Her parents, estate workers, were alcoholics. She does not know her age – for she does not have a birth certificate or identity card. She was born in a plantation

and her parents, now dead, never registered her birth. All attempts by various parties to get her an identity card have been in vain. Although Malaysia is progressing rapidly towards becoming an industrialised nation, there are many people who are Malaysians but are being denied their right of citizenship. The number of stateless people in Malaysia is large, and all of them are non-Malays.

Sirisak spoke about Nelson Mandela, who had been sent to prison not because he committed a crime but because he fought for the equality of the people of his country and because he opposed the abuse of human rights by the South African regime.

Deverajan, like Florida, also brought up the problems faced by migrant workers. He spoke about a worker who was forced to work for long hours, and had not been paid his wages for three months. He questioned whether employers in this country have been given the right to abuse foreign workers and to deny them their basic rights.

Ann of Thailand said that almost every child in her country is poor. Many sell flowers on the streets so that they can go to school. Nurhalida spoke about a boy who was forced to live as a fisherman. This is the problem of not implementing ESC rights and how is he going to support his family? Pajan Singh said that there is no proper food for the indigenous in Cameron Highlands. Although they are the natural bumiputras there, they have no control over food. Even their natural habitat – the forest – has been taken away from them to build highways. What is the government going to do about the indigenous people?

Jerald Gomez spoke about a friend of his, Meor Abdul Razak, who did not do well in the secondary school public examination, SPM. He then learnt tailoring and showed great skills in fashioning clothes. He excelled over a period of 10 years and became a famous tailor in the country. One day, the police detained him, accusing him of complicity in matters involving “important people”. His shop was closed and things were taken away from his shop when he was held in custody. He was accused of being a homosexual, and because homosexuality is not accepted in Malaysian culture, he was ostracised. His business dropped after he was released, he could not pay his rent, or his housing loan, and has become financially crippled. He has not recovered until today.

Bruno spoke about the family of Sadia, whose children are faceless because they have Hindu names and she is a Muslim. The children go to school but cannot sit for public examinations. The children are now adults and doing odd jobs. They have no birth certificates. He also told about his friend who is very skinny and his love for this country has no bounds, but still, this person was arrested

under the Internal Security Act and through no formal charge was laid, he was accused of treason.

Sam Hui highlighted a tragic story about a middle class Chinese family with six members who were born during the World War II era. At one time, the parents could not support the family, as the cost of living was very high. The children's educational rights were denied, but they still worked hard and managed to get into university despite the quota system. Siti of IIUM said that her biggest obstacle was to deliver lectures in English. She said that the standard of English in Malaysia is dropping, even in our primary and secondary schools. This problem should be tackled soon as English is a language that is used internationally.

Khong highlighted the story of an 83-year-old woman living with her son-in-law and grandchild. She has to pay rent to the landowner and also pay the Kuala Lumpur City Council for urban services. A big flood in April 2001 caused severe damage to the locality off Old Klang Road, after which many people in the area built retaining walls to keep flood waters out. The old woman was drowned during this flood – who is responsible for her death? The authorities, because of the poor state of the environment in the locality? Khong also said local councils must give land for squatter areas to be improved with proper housing, sanitation and drainage. Yusof spoke about a friend named Bakri who was born in India. He entered Malaysia as a child, on his mother's passport, which was subsequently lost. Since then, the immigration authorities have refused to issue a replacement. Bakri is now an adult. His mother has since died and Bakri remains a stateless person.

After the participants had spoken about the people they drew in their pictures and spoke about their overall understanding of the issues involved, the main issues that emerged were:

- Children in plantations are deprived of their rights
- The people continue to face problems connected with old age, housing and pensions
- Women continue to suffer in silence as victims of abuse and violence
- Migrant workers face numerous problems in Malaysia
- Indigenous people see their rights denied
- Urban poor, settlers, squatters, who are they and what are their rights?
- Health and education
- Poverty, lack of awareness of basic rights
- Mixed marriages
- Loss of land, lack of food, and
- Pollution of water

Overview of ESC Rights in Malaysia

Presented by S. Arutchelvan, SUARAM

The ESC Situation in Malaysia

Dr Mahathir Mohamad's argument has always been that priority should be given to economic development over civil and political rights. This, he says, is an important sacrifice in order for everyone to enjoy a better future. In recent years, the Prime Minister has taken an extra step by saying that "sometimes, we even need good dictators".

A few questions arise from this view. Does this then mean that Malaysians enjoy better economic, social and cultural rights over civil and political rights? Malaysia's civil and political rights record has been sliding downwards as we move towards becoming a fully industrialised country in 2020. There seems to be less argument on this but what about our economic, social and cultural (ESC) rights? Have the people been "sacrificed" in the government's push for modernisation and development?

Two important policies, or rather ideologies, have to be considered when we discuss the ESC situation in Malaysia. Both these policies play an important part in determining how ESC is viewed by the authorities.

- i. ESC policies are racially divided and politically motivated
- ii. Globalisation and capitalism dictate our future.

ESC policies are racially divided and politically motivated

When a Malay is asked to discuss the country's economy, he would probably say something along the lines of, "the non-Malays are rich whereas we Malays are still poor and lacking in a lot of areas". An Indian would probably say "the Chinese are very rich, and the Malays do not have anything to worry as the government provides them with everything they want". Whereas the Chinese might say "we Chinese have to work very hard because we have to provide for our future generations, not like the Malays who can take life easy because the state provides them with everything". So, basically, the Malaysian of each ethnic group views the other ethnic groups with suspicion and as a likely contender for a larger share of the so-called economic cake.

In reality, ownership of share capital in the last 10 years has been that the share capital ownership of the bumiputras has remained stagnant at 19.3% while that

of the non-bumiputras dropped by 6.5% from 46.8% to 40.3%. The share capital of the Chinese dropped 7.4%, from 45.5% to 37.9% while the stake of the foreigners increased 7.3%, from 25.4% to 32.7%. So it looks like foreigners are now gaining more control of the country, while we Malaysians bicker among ourselves.

Our economic and social situation is such that each race has to compete against the other, and each always says that the race is being deprived, so as to be able to enjoy more economic and social aid. Politicians are continually arguing that their racial grouping is lagging behind, in order for that race to get more state help and attention. This is how economics and politics are conducted in Malaysia. Socio-political analyst Dr Kua Kia Soong in his paper, *Racial Eyesore on the Malaysian Landscape*, has rightfully stated that racism and racial discrimination have been part of the Malaysian political, economic, social and cultural realities ever since colonial times. Race is the key factor that determines business activities, educational policy, social policy, cultural policy, entry into institutions of higher learning, discounts for the purchase of houses and many more crucial issues.

Racism, which has its origins in the colonial divide-and-rule strategy, has continued to be used as a main pillar of our economic planning. The New Economic Policy (NEP, 1970-90) and the New Development Policy (NDP, 1991-2000), as well as Dr Mahathir's Vision 2020 are all national development plans that are based on the foundation of the racial set-up in the country. One cannot deny that racism is an integral part of the Malaysian socio-economic and political system. What can we expect, since the powers that determine these policies are in the hands of racially defined political parties? While there is the rhetoric of "national unity", our whole system is actually based on "national disunity", which determines every manner of government policy, especially economic, social and cultural.

Globalisation and Capitalism Dictate our Future

Vision 2020 – Malaysia's blueprint for development into an industrialised nation – was unveiled by Prime Minister Mahathir in a speech to the business sector in 1991. The vision talks about a single, united and prosperous Malaysia by the year 2020. In our pursuit of this goal, we have actually gone many steps backwards. For example:

- We have the highest income disparity in Asia. Wealth is concentrated in the hands of a select few;
- Serious environmental crisis, especially deteriorating air and water quality, have become the norm; and

- The standards of health and social benefits are declining rapidly.

While Malaysia may hold its head proudly in the international arena by dismissing International Monetary Fund (IMF) programmes and imposing currency control, the reality is that Malaysia continues to believe in the ideology and ethos of the IMF and World Bank, which are essentially to privatise and corporatise public services and to pass the responsibility for education, healthcare and other social services to the individual. Malaysia's policy is consistent with the international capitalist agenda, which when fully implemented, will ensure that large multinationals will control and rule the world.

While Malaysia continues to argue about the inequalities between the developed and developing nations of the world, its domestic situation is just the other way around. It was reported that prior to the 1997 economic crisis, between 30 to 40 families exerted control over the local economy. Today, this figure has been reduced to only five to 10 families. The crisis has resulted in a greater concentration of wealth in the hands of a fewer families and their cronies.

As we move towards 2020, we leave behind a large segment of the population that has been deprived, not only of their civil and political rights, but also their economic, social and cultural rights. As we pursue the rewards of globalisation and capitalism, we leave millions of Malaysians behind. While every race has produced its own millionaires, like Halim Saad, Eric Chia and T. Anandakrishnan for the Malay, Chinese and Indian communities, there are millions of others from all ethnic groups and indigenous people who are trying to survive in a country that is being developed for the survival of the few at the expense of the masses.

We appear to have reduced poverty drastically. The Seventh Malaysian Plan states that the incidence of poverty dropped from 20.7% in 1985 to 6.8% in 1997. However, the official poverty line today that 4.6% of the population is living on a monthly income of RM425 is a ridiculous figure to use as a measure. Thus, many academicians as well as community and labour groups have challenged this contrived poverty line.

Income disparity is a major concern. There are some instances where 80% of the Orang Asli live below the poverty line, compared with the national rate of 6.8%, and 50% of them are defined as hardcore poor, compared to only 2.5% for the general population. In the mid-80s, the top 40 shareholders in the country owned 63% of the shares in public companies and a mere 4.4% of investors in the national trust fund Amanah Saham Nasional (ASN) had savings amounting

to 70% of ASN's total investments. Based on the mean gross household income and income share by income group in 1999, the top 20% owned a 50% share of the national income while the bottom 40% owned only 14%.

Income Share of Asian Countries 1981 - 1993

Countries	Lowest 40% of the households (%)	Ratio of the highest 20% to the lowest 20%
Hong Kong	16.2	8.7
Rep. of Korea	15.0	5.7
Singapore	19.7	9.6
Thailand	15.5	8.3
Malaysia	12.9	11.7
Sri Lanka	22.0	4.4
Philippines	16.6	7.4
Indonesia	20.8	4.9
China	17.4	6.5
Vietnam	19.2	5.6
India	21.3	4.7
Bangladesh	22.9	4.1

– *Human Development Report 1996*

Another interesting comparison is that of the ever-increasing number of golf courses in Malaysia. An 18-hole golf course takes up 50-90 hectares of land and we currently have around 200 golf courses in the country. If we build 40 low-cost houses or 120-130 flats per hectare, all of Malaysia's poor can be housed on the land used by golf courses. These golf courses cater primarily for foreigners, but in recent years, the government has started giving golf club membership to top government servants because it is felt that a lot of important discussions and decisions take place at golf courses.

Therefore, with all these disparities, it is only natural that our economic, social and cultural policies are designed for the well being of a few. The use of public funds from the Employees Provident Fund (EPF), the Social Security Organisation (SOCSO) and the Pilgrims Fund Board, Tabung Haji, to bail out ailing and crony companies has a direct effect on public policy. This trend is a clear indicator that public policy on the economy, education, health and development will be implemented only to protect the interests and the wealth of the powerful. The ESC rights, as they currently exist, mean the dominance of the rich over the poor.

The Question of Class

It is very crucial for us to discuss the make-up of “Malaysian society” and to see if the people have attained a satisfactory level of ESC rights. If we take the occupational structure of Malaysia in the year 2000, professional, technical, administrative and managerial workers made up around 20% of the total workforce, while the remaining are the production, agricultural and service-oriented workers.

It is therefore important to see how the majority of Malaysians fared in relation to their ESC rights and entitlements. It is important to look at Malaysian society based on class lines rather than racial lines. Only then can we truly identify the level of attainment of ESC rights.

Equal rights for men and women (Article 3 of the Federal Consitution)

- Men make up 83.4% of the workforce compared to 44.2% for women (excluding the informal sector), and women fill 80% of the jobs in the electronics industry of the manufacturing sector.
- Women continue to fill the lower positions in the job hierarchy and are normally given jobs that are repetitive, tedious and labour-intensive.
- The specific needs of women workers, such as childcare centres, are not provided for by employers or by the state.
- There is a current trend to employ women workers in home-based manufacturing work, to do unskilled or semi-skilled work between their household chores for a very low wage.
- Women foreign domestic workers are subject to verbal, physical and sexual abuse.

Thus, women are often discriminated against because of their gender, as well as their race and class.

Right to Work (Article 6 of the Federal Constitution)

- In 1998, more than 83,865 workers were retrenched, of whom 53.8% were from the manufacturing sector.
- In 2000, government statistics show that 23,963 workers were retrenched in Peninsular Malaysia and 1,096 in Sarawak (however, the trade union federation MTUC puts the figure as much higher).
- As a result of the current the US economic slowdown, around 1,000 to 2,000 workers are being retrenched on a monthly basis. This year alone,

more than 10,000 workers have been retrenched and 80% of these workers were from the manufacturing sector.

- The MTUC has been pleading with the government the last five years to set up a special retrenchment fund, which employers vehemently oppose, and so this continuing plea is falling on deaf ears.
- Another major problem is when a company closes down and the workers are left in the lurch. The Companies Act considers workers as “unsecured creditors” and only gives priority to unpaid wages. Most of the time these workers lose out on their bonuses and retirement benefits.

Other side effects:

- Workers are threatened and brow-beaten to become more disciplined, docile and obedient.
- Freezes in overtime pay, bonuses and annual increments are made, with the threat that “otherwise, we will have to retrench to downsize”.
- Forced pay cuts and the freezing of bonuses have been abused by employers.

Fair Wages (Article 7 of the Federal Constitution)

- There is currently no national minimum wage, though the MTUC has argued that a minimum wage is an essential prerequisite to a productivity-related wage system.
- A study of 165 companies undertaken by MTUC showed that 46.2% of the companies pay salaries of less than RM400 a month, while 15.4% of the companies pay more than RM500 a month.
- MTUC is seeking a minimum monthly wage of RM900, which is justified as below:

Subsistence	RM450
Accommodation	RM135
Transport	RM130
EPF	RM99
SOCSSO	RM4
Others	RM82
Total	RM900

- Prime Minister Mahathir was more generous: he suggested RM1,200. However, the Malaysian Employers Federation (MEF) is opposed to even RM900, and the government has not shown any political will to proceed with this issue.

- The GNP increased by 8%, but only professional and white collar workers got double digit salary increases and most general workers, less than 5%. In 1997, Malaysia had the highest income disparity in all of Asia.
- The monthly wage of the plantation worker is another long-standing grouse. The newly-concluded wage talks described as “historical” by the National Union of Plantation Workers because it provided for a “monthly wage” for these workers who have been daily-rated since the colonial days, was dismissed by the Plantation Workers Support Committee (PWSC) as the nation’s “biggest industrial scandal”. The wages remain at a daily rate and the amount of RM325 a month remains much below the official poverty line. There is also no annual increment or bonus in the plantation wage system.
- Promotion for workers is based on race and political affiliation.
- Most workers have sacrificed their rest and leisure hours because they need more money to survive. Most workers do overtime and take on a second job to meet the high cost of living or to maintain their lifestyles.
- It is common for workers to work for 12 hours at a stretch. Amendments have been made to the law to do away with restrictions on shift work and the configure downwards the calculation of hours of work.

Right to Form a Trade Union (Article 8 of the Federal Constitution)

- The Emergency Ordinance 1948, the Trade Union Act 1959 and the Industrial Relations Act 1967 give absolute powers to the director-general of the Department of Trade Unions to determine as well as to terminate the right to register a trade union and this right cannot be challenged in court.
- Unions are further restricted from involvement in politics.
- Today, we have a labour force of 9.6 million, of which only 8% is unionised. In 1945, 67% of the workers in the country were unionised.

Year	1992	1993	1994	1995	1996	2000
Union members	680,007	693,581	699,373	706,253	728,246	734,525
Total employment	7,096,000	7,396,200	7,618,400	7,915,400	8,180,800	8,920,000
% unionised	9.6	9.4	9.2	8.9	8.9	8.2

- Today there are 563 trade unions and the total union membership is 734,037. Based on 1999 figures, there are more male than female members, with male at 63.7% and females at 36.3%.
- Unions have been over-regulated and made tame. From being general

trade unions, they have been converted to industry-based national union and now in-house or company-based trade unions are encouraged, especially for the electronics workers.

- A major grouse of the MTUC raised over the years is the granting of recognition for trade unions. Under section 9 of the IR Act, union recognition claims should be settled within 21 days but in practice, it takes as long as 12 to 18 months. It seems that the Human Resources Minister, who is given all the powers required under Section 9(5), is just sitting on these cases. There are some 184 unions still waiting to be granted recognition.
- The government has extensive powers to register or refuse to register a trade union, to decide on the scope of its membership and to suspend or to deregister a union.
- Management-labour collaboration and intense competition has resulted in managements preferring in-house cooperation rather than the more confrontational national unions. The Japanese were the first to introduce in-house unions and pursue this actively in Malaysia.

The Right to Strike (Article 8 of the Federal Constitution)

- Though the right to strike is a fundamental right, the labour laws make it practically impossible for a trade union to carry out a strike.
- A secret ballot under stringent rules has to be carried out among members if a trade union wants to strike, and the dispute with the employer has to be clearly spelt out in the ballot paper. Then, the union must give a 90-day notice of its intention to strike with a formal notice to the minister using the prescribed government forms. During this period, the ministry will arrange conciliation meetings between the employer and the union to try avert the strike. If the government is adamant about not allowing the strike to proceed, then it can refer the dispute to the Industrial Court, and this action will render any form of industrial action illegal.
- Most strikes nowadays are wildcat strikes.
- In 2000, there were only 11 incidents of strikes reported and the amount of total man days lost was 6,068. In 1946, 372,341 man days were lost in strikes and at the time of independence the figure was 46,699 man days lost. So now, it has whittled down to just 6,068 man days.

Right to Social Security and Social Insurance (Article 9 of the Federal Constitution)

- There is a very high incidence of industrial accidents in Malaysian workplaces. The Department of Occupational Health and Safety reports

301 industrial accidents a day, 12.5 accidents every hour and three deaths a day.

- In 2000, a total of 110,030 accidents took place in the workplace.
- SOCSO is inefficient in processing claims by injured workers or by the next-of-kin of those killed, and it said recently that it does not have much money left.
- Complaints about mismanagement by the EPF from workers, trade unions and from members of the provident fund have been legion.

The Employees Provident Fund, a fund for the old age of workers, has been reliable until very recently. Several decisions of the management of its funds taken by the EPF of late have raised a lot of questions. The EPF is a national social security organisation which has a big role to play, but today it looks like just another badly run crony company trying to make business and political deals instead of serving the interests of the workers.

Some major issues of concern about the EPF have been:

- i. Privatisation of a retirement fund scheme for workers (or annuity scheme) using the savings of the members in the EPF.
- ii. A drastic reduction in the death and incapacitation benefits paid to members.
- iii. The payment of low dividends and the funds involvement in crony company rescue missions.
- iv. Government decision to reduce the amount of workers contributions to the EPF in order to help business.
- v. EPF withdrawal scheme for the purchase of computers and to meet medical bills.

i) Privatisation of workers retirement scheme (Annuity Scheme)

The biggest scandal is how the government tried to privatise the retirement benefits by introducing annuity scheme run by the insurance industry. Today, we see huge amounts of money being spent and the active lobbying of the government by the insurance industry to re-start the annuity scheme that was rejected by workers and trade unions. The MTUC does not actually oppose the annuity scheme: it just wants the scheme to be run by the EPF itself.

The chairman of the large insurance firm MAA Holdings was quoted by the press as saying that “with the volume of sales that we expect to achieve, the

funds inflow will completely change the insurance industry landscape”. The MAA chief executive officer was also quoted as saying that MAA Holdings Bhd expects to rake in RM9 billion from the EPF annuity scheme in the next three years.

Under the EPF, the interest on the savings may be enjoyed forever, instead of just for 10 years, as insurance companies permitted to run the annuity scheme guarantee the annuity holder.

ii) Drastic reduction of death and incapacitation benefits

With effect from July 1, 2000 the EPF reduced the death and incapacitation benefits payable to members from a minimum of RM1,000 and a maximum of RM30,000 to a flat rate of RM2,000.

This is how the new benefit is worked out:

If Simon has been contributing to the EPF since the age of 18 and if he dies or is incapacitated to the extent that he is permanently disabled at the age of 35 when he has an EPF credit of RM 10,000, he or his next-of-kin is entitled to receive RM4,716 in the case of death or if incapacitated, a sum of RM13,899. Under the present entitlement, he will only receive RM 2,000.

The EPF reasoning for reducing the payment is that only those who earn high salaries will benefit from the scheme. This clearly demonstrates how the EPF has become an inconsiderate and uncaring organisation.

Age when becoming an EPF member: 18 years.

Death/Incapacitation at the age 35

EPF Credit	Entitlement upon death (previously)	Upon incapacitation (previously)	Present entitlement
RM20,000	RM9,434	RM27,778	RM2,000
RM10,000	RM4,716	RM13,889	RM2,000
RM 5,000	RM2,358	RM 6,944	RM2,000

Age when becoming an EPF member: 18 years.

Death/Incapacitation at the age 25

EPF Credit	Entitlement upon death (previously)	Upon incapacitation (previously)	Present entitlement
RM10,000	RM15,217	RM43,750 <i>(maximum fixed at RM30,000)</i>	RM2,000
RM5,000	RM7,608	RM21,875	RM2,000
RM3,000	RM4,565	RM13,125	RM2,000
RM2,000	RM3,043	RM8,750	RM2,000

iii) Low dividend and EPF's involvement in rescue missions

Of late, the rate of dividend declared by the EPF has reducing annually. Why is this so when during the economic recession of 1987, the EPF still managed to pay a dividend of 8.5%? The low dividend has been attributed to losses incurred by EPF, through its bad investment decisions such as buying the ailing Time Dotcom and in other rescue missions such as bailing out the Bakun hydro-electric power project, crony company United Engineers Bhd (taking a 11% stake), the scandalous national steel corporation Perwaja Bhd (RM710 million) and the KL International Airport (KLIA, RM1 billion) are some of the reasons for the low dividend payouts. The EPF has forgotten that it is accountable to the members.

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Dividend	8%	8%	8%	8%	7.5%	7.7%	6.7%	6.7%	6.84%	6%

iv) Government decision to reduce the employee's contribution to the EPF to help businesses

The decision early in 2001 to reduce the contribution by workers from 11% to 9% was done purely in the interest of boosting the interests of the business class by encouraging greater spending by the people. Though most of the workers were unhappy with this reduction, EPF maintained its position and it was only after much protests that workers were allowed choose to maintain their contribution at 11%. To be able to do this, the workers had to complete a *Form 17A* issued by the EPF and return it.

v) EPF withdrawal for computers and health

Recent decisions like allowing contributors to withdraw money to pay their medical bills and to buy personal computers, though popular, make a mockery of the social security scheme. Health and education are the responsibilities of the state. It was said that the decision on computer purchase withdrawal would benefit companies belonging to Finance Minister Tun Daim Zainuddin. It is therefore questionable whether the decision to allow members to withdraw funds to have a computer at home is indeed a move for a computer-literate society – or, as has been borne out, a shady scheme to allow people to take out money and spend in order to boost businesses and the privatisation of hospitals.

Protecting Children and Young Persons from Economic and Social Exploitation – Article 10 of the Constitution

- The 1980 census recorded that there were 43,000 children who were working for a living.
- The figure from the International Confederation of Free Trade Unions (ICFTU) stated that in 1993, a total of 75,000 Malaysian children were employed.
- The current estimate of working children in the country ranges from 100,000 to 200,000 – or 8% of the nation's child population.
- Child labour seen not as an issue of concern, and so the problem is of low priority for the government. However, the figures are becoming alarming.

Standard of Living (Article 11)

1. Housing

- Permanent housing will continue to be a major problem. There is a serious shortage of low-cost houses.
- In the absence of the permanent relocation of squatters and well-planned houses, low socio-economic standards will further create more chaos, like the recent Kampung Medan racial clashes.
- Almost 20% of the people who live in the Federal Territory of Kuala Lumpur (or one-fifth of the population) are squatters. The migrant population has also caused an increase in squatter settlements. There are approximately 423,000 people living in official squatter settlements in the Klang Valley, making up 19% of the population of Kuala Lumpur and 17% of the Petaling Jaya population. In the Sabah capital of Kota Kinabalu, the squatter population makes up 23% of the population.
- Temporary longhouses built to settle communities moved out as a result

of development have become permanent homes for many poor people. Many have been living in these transitional units for as long as 10 or 15 years. The longhouses, made of timber, are in deplorable condition. There is limited space, while sanitary and drainage facilities are grossly inadequate.

- Another group of people who are facing hardship are the residents of new villages. Most of these new villages, especially those around which the towns and cities have grown, are in very a bad condition. There are around 450 new villages in the country.
- The government has never been serious about building houses for the poor. This can be seen from the fact that government targets to build low-cost houses have never been met. At best, only 40% of the public low-cost housing construction target for a year is met.
- Current low-cost houses and flats are small, cramped and of low quality.
- Corruption and political alliance continue to determine who gets low-cost houses
- The increase in the prices of low-cost houses from between RM20,000 and RM25,000 to between RM25,000 and RM42,000 has put the chance, as well as means of buying a low-cost house, out of the reach of many urban poor, especially the displaced plantation workers.
- As for the housing in the plantations, most of the dingy quarters date back to the 1930s and 1940s, and are in a deplorable condition. Many of these units do not have a kitchen or a bathroom. A study by the Malaysian Medical Association (MMA) in 1994 revealed that the water supplied to many plantation quarters is not treated (42% of the quarters), whereas 24% of these houses do not get chlorinated water. Further, 40% of the toilet facilities checked in 1998 were said to be far below the average standard.
- As for the much-touted Workers House Ownership scheme, less than 5% of the plantations have implemented the scheme. The government continues to refuse to compel plantation owners to built permanent houses for their workers.
- Houses built by the government for the orang asli community also lack a lot of basic amenities. Only 46.4% of the orang asli households have some form of piped water. A 1991 census showed that one-third of orang asli communities depend on streams and rivers for their water needs. Toilet facilities are also lacking in 47% of the homes of the orang asli.
- The land title claims of orang asli communities around the country are also an unresolved, long-standing problem.

2. Forced Evictions

- Forced evictions of communities in the name of development continue to hound the poor. Forced evictions have destroyed many communities overnight.
- Uniformed gangsters (like the police and company security guards) and gangsters have been used extensively to evict the poor.
- Urban settler communities in the cities like Kuala Lumpur, Ipoh and Johor Baru, who were at one time responsible for developing the cities, have today become the enemies of the state and have been labelled as illegal settlers.
- In Selangor, the state government has vowed to make the state squatter-free by the year 2005.
- Indigenous people are uprooted from their traditional homelands and put in ill-planned resettlement schemes to make way for dams, plantations and other industrial projects. Native customary land rights demands are ignored and even suppressed.
- The Bakun Dam Project has resulted in the displacement of 10,000 indigenous people. Their relocation to the Asap resettlement scheme has been riddled with mishaps, manipulations and the giving of false hopes.
- Many plantation communities around the country have been evicted to make way for huge projects, such as the new federal administrative capital of Putrajaya, the KL International Airport and the high-tech Sungai Buloh Prison.
- Besides the Bakun Dam project, indigenous communities have also been forcefully evicted in other parts of the country. The Selangor Dam project has displaced 360 orang asli. In Sarawak, the conflict is even more acute and in one serious incident, 19 Iban villagers in Ulu Niah have been charged with murder after clashes broke out between them and timber loggers and workers from an oil palm plantation company who encroached into their traditional land in 1999, resulting in four deaths.
- The Danga Bay Project which will cost RM15 billion will result in the eviction of more than 1,000 urban settler families and 50 Orang Seletar indigenous people. Activists estimate that it will take only RM600 million to build low-cost houses for the 55 urban settler communities in Johor Baru and the other parts of the country who are being moved away in the name of development.
- In Penang, the repeal of the Rent Control Act has affected around 8,000 people. As a result of this, as many as 10,000 people will be forced to move out of George Town. According to SOS, the NGO working with these displaced people, some of them have been forced to join the ranks

of the homeless people and sleep on five-foot ways.

3. Adequate food, clothing and housing

- Development has threatened the livelihood of many indigenous communities around the country and created massive problems for them.
- The Penans of Ulu Baram, Sarawak, today see their their Native Customary Land blatantly trespassed by logging companies, developers, the state government and by other segments of the private sector. Logging on Penan land since 1987 has made it difficult for them to hunt for food or do fishing. Similar problems are faced by a community in Keningau, Sabah, where logging activities in a large water catchment area have disrupted their livelihood.
- In Perak, farmers who have been cultivating agricultural land for the last 60 years have lately been issued with eviction notices. Similar eviction notices have been issued to communities in six areas in the state over the last one year.

4. Food distribution

- The issue of food security is a serious problem and appropriate measures need to be taken to avoid a food crisis.
- Malaysia's food imports have increased over the years, from RM4.6 million in 1990 to RM10.5 million in 1998.
- Our agricultural policies also emphasise cash crops rather than food crops.
- In the last three years, country's food import bill has increased to more than RM10 million. Malaysia is no more self sufficient in food production.
- The agricultural sector has moved towards privatisation, commercialisation and is market-driven.

Health (Article 12)

- Malaysia boasts of having a very good healthcare system. Since the country was granted independence by Great Britain in 1957, Malaya has been the role model in the provision of healthcare for many developing countries.
- The 1995 demographic indicators were: Life expectancy – males – 69 years; females 73.9 years. Infant mortality rate for 1995 was 10.4 per thousand while toddler mortality rate was 0.8 per thousand population.
- Corporatisation and privatisation of the health system is something new in our corridors. The process of privatisation has been taken place in stages and the future does not look bright. The recent privatisation of the General Medical Store to a subsidiary of Renong (Southern Task Sdn Bhd) has increased the prices of medicines at government hospital by up

to 230%. The price of morphine has increased by 10 times more.

- The privatisation of five medical/healthcare supporting services to prominent companies whose chief executives have close links to the government – Mediserve, Radicare and Tongkah – in 1997 has increased the costs of these services to the government from RM140 million in 1996 to RM450 million in 1997.
- Taking the National Heart Institute (IJN) as an example of a corporatised hospital, several alarming findings have been made. There are separate waiting lists for paying and non-paying patients, with, of course, the paying patients getting faster treatment. What would happen if the entire healthcare system is corporatised?
- In recent times also, our national health system has been shocked with several disease outbreaks of epidemic proportions. The Nipah virus attacked Bukit Pelandok, in negeri Sembilan and within a short period by the end of October 1998, it had already killed 100 people. Coxsackie was another virus epidemic which hit Sarawak, resulting in the deaths of many children.
- Another worrying revelation, made recently, was a Health Ministry report of a study conducted (in 1999) in the state of Malacca which revealed that 28% of the children aged five years and below who visited a government clinic for the first time were found to be malnourished. Malacca is fairly urban state. What could be the findings, if such a study is done in Kelantan, Terengganu or in the East Malaysian states of Sabah and Sarawak?
- The standard of health among the orang asli populations is very poor. A report on child delivery in 1994 revealed that orang asli mothers are 119 times more likely to die during childbirth, compared with the average Malaysian mother. It was reported that out of the 42 women in Peninsular Malaysia who died during childbirth in government hospitals in 1994, 60% were orang asli mothers. The orang asli community also records a higher infant mortality rate, at 51.7 deaths per thousand, compared with the general population's 16.3 per thousand (1984-87). Life expectancy is also lower – at 42 years for females and 54 for males.
- Other glaring and disturbing statistics of the orang asli community, in comparison with the national statistics, are that almost 80% (79.2%) of the 7,752 people struck by the mosquito-carrying malaria disease in 1995 were orang asli. As for tuberculosis, the orang asli have a five to seven times higher rate of contracting the disease than the other people of the country. Malnutrition among orang asli children is also high.
- The system of healthcare in the rubber and oil palm plantations of the country has often been described as extremely poor. Conditions are very bad and the existing facilities inadequate.

- The health wellness of plantation communities has been placed in the hands of the profit-orientated plantation owners. Water, sanitation and “housing lines” are poorly maintained. Health problems that are extremely rare in a modern country like Malaysia – such as worm infestation, gastro-intestinal diseases, water- and vector-borne diseases which are a direct result of poor environmental sanitation, unhygienic conditions and unclean water – are rampant in the so-called “labour lines” of plantations.
- Worm infection in the plantation populations are more than 50%, and in some plantations, 100% of the children have been found to be infected with parasites. The average height and weight of plantation children are inferior, if compared with children from Malay villages or even from urban squatter settlements. Estate children have also been found to have the highest rate of protein energy malnutrition, if compared with the other communities in Malaysia, whether urban or rural.

Education (Article 13)

- There is no compulsory education policy though number of children going to school at primary level is high
- Education system stills racial sensitive. The issue of mother tongue language as well as vision school has been controversial issue. As for the quota system –90% loans for polytechnic, 90% scholarship for diploma of education courses, 90% loans for degree courses, almost all scholarship and loans fir decree courses overseas are given to Bumiputra. 95% of residential schools are bumiputra whereas for MARA lower Science College, it is almost 100%.
- Certain communities like the orang asli communities and the plantation communities have poor educational facilities as well as high drop out rates. While the Government talks about special schools to cater for smart children, a lot of schools lack basic amenities.
- The dropout rate among the orang asli at primary level between 1976 till 1995 averages to more than 50%. In 1995 itself, 2, 361 students dropout of 5,505 students enrolled bringing it to 42.9% dropout rates. JHEOA statistics found that on average 94.4% of orang asli children registered in Primary one never reached the end secondary schooling. 1991 census revealed that 37.8% per cent had at least primary education, 7.8% reached lower secondary and only 2.4% reached upper secondary.
- Conditions of schools in the plantation are also in a deplorable condition. All plantation schools are not fully government aided. Most of these schools lack basic amenities. Dropout among plantation children are very high.
- As for educational attainment of the labour force for the year 2000, 58.7%

have attained lower and middle secondary, 27.4% with primary education and the remaining 13.9% in tertiary education.

We need to build the forces to oppose

It is very clear that the state is slowly and surely washing off its economic and social responsibility. Income disparity has been increasing and wealth is concentrated in the hands of the few. The gap between the rich and poor has widened at a level never before experienced.

Workers continue to suffer, most workers not unionised, no minimum wage, housing needs have not been met while break world records on other infrastructure. Displacement and forced eviction of communities. Social security and Health standards have declined over the years. The privatisation of the EPF and environmental crisis.

Why is all this happening? The absence and the declining of the left forces have left us vulnerable to the whims and fancies of the capitalist orientated world order. Internationally, globalization has become a great threat, more serious after the demise and the disintegration of the Soviet Union and the Eastern Block. In Malaysia, best social order, health care and workers welfare was well protected when we had a strong left movement in the fifties. With the weakening of the left forces; politics, economics and social well being has been identified in the narrow and religious perspective.

It is time, not only to balance the development trend overriding us, it is time to fight back. We need to create an alliance amongst the progressive movements in society to provide a cohesive force to counter the on going exploitative capitalist system that perpetuate dependency and destruction. The marginalised, those affected by this uneven development, the settlers, the farmers, the Indigenous communities, the workers have all need to unite and define what kind of development do we need. It is also utmost critical that we think on class lines because the enemy is after all united as a class to continue to disrupt our well being, economically, socially and culturally.

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Developing A Rights Perspective or Rights-Based Approach

*Conducted by D.J. Ravindran,
Chair, International Human Rights Internship Programme*

The participants were divided into three groups for this session. Each group was given a picture and asked questions based on that picture.

Group 1

Case study: If someone comes to you seeking alms, what would you do?

Give him/her a fishing rod, because this will mean:

- empowering that person
- educating
- skills to equip him/herself
- it means no pampering
- it provides for a long-term solution

Positive implications:

- you are helping this person in his/her right to live a fulfilling life
- right to participate in economic activities – by empowering them to decide for themselves
- freedom of choice should be granted

Negative implications of this action:

- denial of rights in a critical situation
- inadequate state system – not enough income

Comments:

Critical and non-critical situation

Non-critical situation: The abuse of women. Shelter has to be provided.

Empowerment: They have to be educated with the skills required to enable them to be independent.

Group 2

Indonesia's hungry

(Reported by Ramdas)

What does the person in the picture need: Welfare or rights?

What was happening in the various countries of Southeast Asia when the Asian currency crisis hit the region towards the close of the 1990s was that:

The poorest among the poor people were hit the worst. People even starved to death in countries like Indonesia and some parts of the Philippines.

The situation in Indonesia was described as both a calamity and a catastrophe.

In Korea, manufacturing companies were still getting contracts from other countries.

In Malaysia, people were having enough food (and even to waste), and were continuing to go to the pubs despite the higher prices.

Why was Indonesia hit by the widespread hunger, despite the fact that it had vast natural resources – petroleum included? The country was financially and politically unstable.

Promoting self-reliance, creating conditions for individuals to get jobs, education and health and the granting of basic rights to the people were luxuries. When the crisis hit Indonesia, it was a generalisation that Indonesia did not have a stable government.

The picture shows the fall of human dignity. There will never be social stability if the people of a country suffer from the want of basic needs.

Article 4 of the ICESCR: Welfare does not mean giving alms to beggars but promoting self-reliance and creating conditions to provide the people facilities to meet their food, shelter, health, education and other basic needs that they require.

The basic needs approach should be adopted by governments to provide their peoples with all their needs and to have the regulations that will promote the meeting of these needs.

Article 5: Humankind and dignity

Group 3

(Report presented by Abdul Rahman)

Problem: An illegal squatter situation in Kampung Medan

The group does not agree with the term “squatters”. These families should be called “urban settlers”. The use of the term “charity” is also most disagreeable to the group. It is not a suitable word because all citizens of a country have the basic right to demand:

- a. their right to life
- b. their right to basic shelter

On the Selangor state government’s policy of having a “zero squatter” situation in the Klang Valley by the year 2005, it should mean that:

- All people deemed squatters should be given adequate housing
- All people evicted under this policy should be provided with alternative, adequate housing
- The state should examine carefully its push for industrial development in a scenario where urban settlers are absent
- All states have to recognise the fact that state lands belong to the people.

SUMMARY

The social issues faced by the people require positive intervention, otherwise they will fester into problems.

Human rights activists should develop arguments as to why these rights ought to be recognised and adopted. They should reason out why economic, social and cultural rights are required.

What about economic and social poverty? It is important to note that development will bring more development to an area. One important point to remember in the welfare approach is the unwillingness of the people to change the situation.

Special Presentation: A Brief Session on the World Trade Organisation (WTO) and its Implications on Nations and Communities

Presented by Indrani Thuraisingam

All countries under the WTO were encouraged to take the development approach

Industrial development

- social problems arose
- remains the basis of development planning
- colonialism – poverty
- post-colonialism

1960–1970

Development approach and its various stages

Population issues came in the development trust policy.

Rural development is to increase production and productivity

Divides the world into the haves and the have-nots.

Feminisation of poverty took hold

The 1990s

Breaking the development consensus

The state had a certain role to play

Privatisation and nationalisation became the paths for economic growth

Globalisation – the process of corporatisation took hold

The economy was not integrated as much as it is now

The role of the multinationals widened and became pervasive

MNCs moved in search of labour and raw materials

Welfare policy-national action

World Trade Organisation

- covers a wide range of subjects
- GATT applies at a country's border
- ESC Rights come to play
- The "Hormone Beef" dispute between the United States and Europe
- There was no preventive action
- Absence of scientific studies
- TRIPs Agreement came into force
- The Canadian Generic Medicines Case: providing low-cost medicines to consumers as soon as possible
- Gerber vs Guatemala: the case of baby food packaging and the question of freedom to trade

Impact of trade agreements on food

- WTO is the biggest challenge for all of us
- Sanctions are imposed – so governments have to comply and can't say no
- Governments have sold all our rights, especially so in the case of the developing countries
- The Agreement on Agriculture (AOA) opened up the markets of developing countries and there were surpluses in the market. But this did not go to feed the poor.
- Under the AOA, the government has to stop providing subsidies to the farmers.
- Waiver of tariffs on imported food – last year on 400 food items.
- GMO and biotechnology, the policy of having a zero-squatter problem in the Klang Valley by the year 2005: what is being done to give the people adequate housing?
- Malaysia is also going towards commercial agriculture

Rights-based approach

- entitlement
- linked to the capability of a person
- value for the human being
- intrinsic value in the human capability

An Overview of National & International Standards

Presented by Geetha Ramaseshan

There are 15 articles that define the rights

Committee's general comments

Two concepts which the committee looks into

- minimum core obligations
- basic primary healthcare, education
- financial restraints comply for many states
- obligation towards ESC rights – provide to the most vulnerable members of the society

Progressive realisation

- Obligation to respect, protect and to fulfil – independent of the financial resources.
- All the rights must be made available to the people
- UN documents – not possible to grant the rights immediately to the people
- Deliberate retrogressive measures

Individual rights are spelt out – in Articles 6, 7, 8 and 15 of the ICESCR

Article 6 – The right to work, provides for the right

- For one to earn one's living
- Women's work done at home is not taken into account as "work"
- There is a vast area of work that is not taken into account as work for the payment of wages
- There has to be a minimum guarantee that work is freely chosen – no discrimination
- Work done outside the market sector – common sector – such as taking care of the old, sick – is unpaid work and is causing stress in the home.

7 – The right to work encompasses

- Equal pay for equal work
- Certain programmes in some countries where the state pays for the programmes through funding and through the work of the NGOs
- A certain minimum wage is paid for any kind of work

8 – The right to form trade unions

- Workers have the right to form trade unions
- The state guarantees this right and no restrictions should be imposed on this right
- prescribes certain methods, structures
- restrictions – come only when questions of national security, public order and the protection of the right of others arise
- following limitations – right to strike
- conformity with the law of the particular country
- “lock-outs”

Article 9 – The right to social security

- Social insurance
- Payment made on a certain principle
- Social assistance
 - virtually nil in many areas
 - unless there is an emergency – such as earthquake that causes massive damage,
 - states must address Article 9
 - there is a lack of political commitment, or a lack of funds
 - 0.3% of GNP spent on assistance to the poor in a country like India will be sufficient to tackle the issue of poverty in that country.

Article 10 – The right to food

- The problem in many developing countries is insufficient production of food for the local population
- Lack of access of food supplies to people
- The state must make use of available resources – without discrimination – in order to take the steps to alleviate hunger

Article 11 – The right to housing

- Appropriate measures should be taken to ensure that everyone has access to housing
- The houses and neighbourhood should be improved, rather than damaged or destroyed for being considered “unsightly”
- The use of force on people to evict them from the land they have been living on must be justified through law
- Housing is a very crucial right for people, and therefore their right to adequate housing must be protected

- A serious problem in Asian societies is that governments provide housing schemes for the poor, but units are provided only to households headed by men. However, it is usually the women in the house who pay the housing loan – and households headed by women are denied this facility of house ownership.

Article 12 – The right to health

- This is one of the basic rights that the state has to provide for its citizens
- In a country like Nepal, it is an offence to have an abortion – one who does is sent to jail
- The provision of basic healthcare should be free of charge
- Right to a clean environment
- We all recognise the right to good environment – case of Bhopal
- There must be a public complaints mechanism, where people can complain about the environment
- People blame each other for the violation of the environment

Article 15 : Right to education:

- Many developing countries are now providing free secondary education, with technical and vocational subjects
- The dropout rate became a big problem in many parts of the world – in Bangladesh, parents do not want to send their girls to school with male teachers
- Very high dropout rate in Madras - free noon meal scheme was introduced, which encouraged parents to send the children to school – this has reduced the dropout rate.
- A percentage of the seats are reserved for girls so as to encourage more of them to attend.

Q & A session

1. Reproductive rights of women

in India – law that legalises abortion – requires the permission of one doctor

- abortion is not an absolute right
- poverty, failure of contraceptives are problems
- minors who want to have abortion must have the permission of the guardian as well

2. Right to work, get work and to form trade unions

The International Labour Organisation prescribes more specific standards on this than the ICESCR.

3. Basic healthcare for which a charge is levied

- not possible for the state provide funds for surgeries
- good health is tied to affordability

Right to strike

- in Malaysia there is a law on strike action, but there is also a law that takes away the right to strike



National Standards in ESC Rights

Presented by Ramdas Tikamdas

- Malaysia has never ratified the ESC rights. There is no mention of human rights in the Malaysian Constitution. Fundamental liberties are covered in Part 2 of the constitution. Human rights are only mentioned in one legislation – that which resulted in the establishment of the Human Rights Commission of Malaysia or SUHAKAM.
- SUHAKAM – in its annual report called on the government to ratify the ICESCR.
- In assessing the social and political frame of Malaysia, we see that many Malaysian laws are against international laws, e.g. ISA, the right to assemble in peace.
- There are four situations of emergency in existence in the country: and are still not nullified by Parliament. Emergency period has passed, but emergency legislations still exist. Therefore, the Executive rules in a perpetual state of emergency.
- Malaysian courts have gone beyond livelihood to human dignity – the rights issue has followed the Indian precedence.
- Even Thailand, the Philippines and China have ratified the ESC rights.

What are the national standards in respect of ESC Rights?

- even the words “human rights” are not found in the Federal Constitution
- what are the laws on the fundamental liberties.
- only statute that we have that defines HR – is to apply the principle of universal declaration in our constitution
- HR standards that we are talking about – legitimate perspective to be protected
- Provision in the document that could be looked through – adequate food, clothing, housing, the right to enjoyment of health

Article 5(1) – Liberty of a person

No person shall be deprived of his life save in accordance with law

- the right to live with human dignity
- poverty line is challenged by civil society
- Malaysia has the capacity to fulfill international standards
- Primary education shall be compulsory to all

Poverty dropped from 27% to 18% – but this is misleading. Poverty line is RM450

a month. In the plantation sector, a rubber tapper earns just RM325 a month.

Article 12

There shall be no discrimination against any citizen – but there remains problems in the admission of students into public universities and even in the public funding of projects.

Article 8

No obligation on the part of the state to provide compulsory education
No standards of application, budgeting, planning

Malaysian charter on HR – drawn up in 1993 by the NGOs

- was revised on May 9, 1999 and adopted by 49 NGOs.
- It was a local by-product, encompassing a holistic approach that also considered political/social/economic/cultural issues. It also called for the:
- Repeal of ISA, ratification of the conventions against torture, on migrant workers;
- Repeal of constitutional provisions, on statutes pertaining to all emergency legislation, for democracy cannot exist alongside such legislation.

A total of 144 countries ratified the covenant on political rights while 141 rectified the ICESCR

The right to development and right to democracy call for immediate action by the government to repeal the emergency ordinances and the other anti-human rights laws like the ISA.

NGOs have to keep campaigning the Executive. Once the ICESCR is ratified, Malaysia has to comply. SUHAKAM recommends that this be done “as soon as possible” – which is a political term, not a demand.

Affirmative policy – acceptable – and is recognised as legitimate, unlike taking the race line or class line

Allocation of national wealth – not been fair. Indians left out of large segments of the economy and one glaring example is the poor conditions of the Tamil primary schools.

People’s right to reliable information is vital, but the government maintains the policy of “development first, democracy later”. ESC rights are more welcome over civil/political rights. It will be harder for the government not to ratify the

ICESCR. Also, while the government depends on the NGOs for a lot of things, it constantly and openly brands them as anti-establishment.

Q & A

Sirisak

- Various provision in the Malaysian Constitution appear to be contradictory
- The right to assemble can only be exercised with a licence from the police
- Malaysians must call for repeal of contradictory laws, and continue to campaign for the ratification of international treaties and covenants.

Koris

- There is no discrimination against any citizen
- There are conflicting matters in the entire Constitution, however, the implementation of affirmative action should never discriminate against any race.



Understanding the Concept of Obligations

– State & Non-state Actors

Presented by Mario Gomez

- State obligations and non-state obligations-interaction with the participants
- International instruments on different rights
- Multiple violation of human rights – different categories of rights
- Right to education – social, civil, cultural?
- Rights of different dimension
- Being educated, one can demand other rights
- Rights that do not fall in the right compartment – discriminate against women in Africa
- Different ways of looking into a right
- Shame and change the situation
- Outraged – 3 ways of using human rights
- The advantage of saying that we have rights
 - right not to be tortured in the police station
 - to live a life
 - an obligation on government
 - justifying our demands
 - my own rights – from the constitution
 - upbringing
- Obligation to respect the right
- Protect
- Promote
- Fulfill
- Are these classifications being used to understand the right to housing?
- What are the obligations imposed on the government?
- Pre-plan before an action is taken – alternative
- Educate the people about the structured plans
 - share information
 - participation and consultation with the people
 - alternatives that are equally effective

Article 2

- Recognise the right, then enjoy it
- Rights are constantly changing
- Concern about the rights, understanding the rights
- Core concept and core obligations
- Right to first aid, emergency treatment.

Concept of obligations – whom this obligations lie-process and participation – approach which is favoured is the Human Rights approach

Why a rights based approach?

Obligations to fulfill rights

Idea of discrimination – Article 2 (2)

The example of South Africa

Mario's presentation was followed by a group discussion, with the participants keeping to their earlier groups. Each group was given a case study and to analyse, based on the Concept of Obligations – state and non-state actors.

Case Study 1: Sita's Request for Kidney Dialysis

Sita suffers from a serious kidney disease which requires regular kidney dialysis treatment for her survival. If she is not given treatment she will die. Sita approaches the National Hospital, a government hospital, for dialysis treatment. The hospital refuses to treat her because dialysis treatment is very expensive and it has limited resources to provide such treatment. The hospital says that she does not meet its criteria for treatment.

The hospital only has a limited number of kidney dialysis machines. The hospital's policy states that patients suffering from irreversible chronic kidney disease will only qualify for dialysis if the patient is a good candidate for a kidney transplant. However, in order to be eligible for a transplant the patient must not have other significant diseases. Unfortunately Sita suffers from other significant diseases.

Sita then approaches the New World Hospital, a private hospital owned and operated by a group of doctors. The private hospital agrees to provide Sita with regular kidney dialysis treatment only on the condition that she pays for the treatment. However, Sita cannot afford to pay for the treatment.

Sita brings an application in the Supreme Court for an order directing the

National Hospital or the New World Hospital to provide dialysis treatment for her. She bases her application on the following provisions of the Constitution:

1. (a) Everyone has an inherent right to life and a person shall not be arbitrarily deprived of life.

(b) No restriction shall be placed on the rights declared and recognized by this Article.
2. (1) Every citizen has the right to have access to health care services including emergency medical treatment

(2) The State shall take reasonable legislative and other measures within its available resources with a view to achieving the progressive realization of these rights.
3. The rights in this section apply to all persons within the territory of the Republic, state and non state persons, natural persons and corporate persons.
4. When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

Both the National Hospital and the New World Hospital oppose the application

You are members of a public interest group and the Court seeks your assistance in resolving the issue. The Court requests you to present a submission and to consider:

1. Whether any rights have been violated, if so, what these rights are.
2. The nature of the obligations of the state in this context. Has the state discharged its obligations? Are there obligations on any other person?
3. Whether there are any international standards on the subject that could be used by the Court in deciding the issue?
4. Whether you would have decided in favour of Sita? What remedy would you have given her?

Case Study 2: Mercy's Request for Housing

Mercy and a group of 652 other people lived in an informal squatter settlement. The group included 200 children and 230 single women. Many of the single women had lost their husbands as a result of an insurgency. An insurgent group has been waging war against the government about 100 kilometres north of the squatter settlement.

The conditions under which most of the residents lived were lamentable. A quarter of the households had no income at all, and more than two thirds earned less than 500 rupees per month. The entire population lived in shacks. They had no water, sewage or refuse removal services and only 5% of the shacks had electricity. Mercy lived with her family and her sister's family in a shack about twenty metres square.

Many had applied for subsidised low cost housing from the municipality and had been on the waiting list for as long as seven years. Despite numerous enquiries from the municipality no definite answer was given. Clearly it was going to be a long wait. Faced with the prospect of remaining in intolerable conditions indefinitely, the respondents began to move out of the squatter settlement. They put up their shacks and shelters on vacant land that was privately owned and had been earmarked for low cost housing.

They did not have the consent of the owner and he obtained an eviction order against them in the magistrate's court. Mercy and the others had nowhere else to go: their former sites had been filled by others.

At the beginning of winter, Mercy and the others were forcibly evicted at the municipality's expense. Their homes were bulldozed and burnt and their possessions destroyed. Many of the residents who were not there could not even salvage their personal belongings.

Mercy and the other residents then took shelter in a nearby sports field under such temporary structures as they could muster. Within a week the winter rains started and the plastic sheeting they had erected afforded scant protection. The next day Mercy got a lawyer friend to write to the municipality describing the intolerable conditions under which they were living and demanded that the municipality meet its constitutional obligations and provide temporary accommodation to them. Mercy was not satisfied with the response of the municipality and launched an urgent application in the Supreme Court.

Mercy and the other residents base their application on the following provisions of the Constitution:

1. (1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
2. Every child has the right to basic nutrition, shelter, basic health care services and social services
3. The state must not unfairly discriminate directly or indirectly against anyone on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, age, disability, religion or culture.
4. When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

You are members of a public interest group and the Court seeks your assistance in resolving the issue. The Court requests you to present a submission and to consider:

1. Whether any rights have been violated, if so, what these rights are.
2. The nature of the obligations of the state in this context. Has the state discharged its obligations? Are there obligations on any other person?
3. Whether there are any international standards on the subject that could be used by the Court in deciding the issue?
4. Whether you would have decided in favour of Mercy and the other residents? What remedy would you have given her and the others?

Case Study 3: Carlos and Phosphate Mining in Taprobane

In 1971, scientists discovered a substantial deposit of rock phosphate in the state of Taprobane. Initially this mineral deposit was exploited for the production of phosphate fertilizer on a small scale by a government owned company.

In 1992 proposals were invited worldwide for the establishment of a joint-venture company. Out of six proposals that were received, the Cabinet of Taprobane approved the proposal of Superpower Resource Partners of the United States, on the basis that it was one of the 'leading phosphate fertiliser firms in the world'. Superpower Resource Partners has been involved in phosphate mining for several years and has set up 32 associate companies in different parts of the world.

A negotiating committee comprising a team of government officials conducted several rounds of negotiations which led to Superpower submitting a draft Mineral Investment Agreement.

In terms of the Mineral Investment Agreement the project would involve 30 years of high intensity mining. Most of the phosphate that was to be mined would be exported. Approximately 2,600 families and 12,000 persons would be displaced as a result of the project.

Of the 12, 000 persons who would be displaced were approximately 600 women who were involved in the craft of weaving. They were part of a small ethnic community in Taprobane that for generations had been involved in the weaving of mats, baskets and other items. The raw material for their weaving came from a reed that grew in large quantities in the area that was to be mined.

A project company, Taprobane Resources was established with Superpower owning ninety per cent of the shares, and the government of Taprobane owning the remaining ten per cent.

In the face of mounting public controversy and opposition from the residents of the area, the Minister of Science and Technology called for a report from the National Science Foundation and the National Academy of Sciences.

Both the National Science Foundation and the National Academy of Sciences were critical of the project, commenting adversely on the economically disadvantageous nature of the project and the highly adverse environmental impacts that would result.

Among their objections was the fact that the size and quality of the deposit had yet to be properly established. The National Academy of Sciences noted:

The proposed project in its present form is premature as some of the vital data relating to the actual size and quality of the mineral deposit have not been adequately surveyed and established. The feasibility of the project can be comprehensively appraised only when this vital data are available. Accordingly we request that the project be deferred until a comprehensive appraisal is undertaken.

The National Academy of Sciences was the highest multi-disciplinary scientific organisation in Taprobane.

When newspaper reports suggested that the government was nevertheless going ahead with the project, the Human Rights Commission of Taprobane decided to hold a public inquiry on the matter.

Carlos, a human rights activist in the area, writes to the Human Rights Commission on behalf of himself and the 2,600 families and 12,000 persons who would be displaced as a result of the project. He claims that they were in danger of being arbitrarily deprived of their lands and livelihood due to this project which he said was not in the public interest.

According to the Constitution, the Human Rights Commission can request the government to halt a project if it can be shown that any of the fundamental rights in Taprobane's constitution have been or are likely to be, violated.

Among the rights that are guaranteed by Taprobane's constitution are the following:

1. Everyone has the right to life.
2. Everyone has the right to choose their trade, occupation, or profession freely.
3. (1) No one may be arbitrarily deprived of property.

(2) Property may be expropriated only for a public purpose or in the public interest.
4. The state must take reasonable legislative and other measures within its

available resources to foster conditions which enable citizens to gain access to land on an equitable basis.

5. Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development.
6. The state must not unfairly discriminate directly or indirectly against anyone on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, age, disability, religion or culture.
7. When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

The government on the other hand claimed it was the ‘trustee’ of the natural resources. So long as the government acts correctly the Human Rights Commission should not put itself into the shoes of the government. If the government has correctly acted as trustee the Commission should not interfere.

Taprobane has ratified the International Covenant on Economic, Social and Cultural Rights.

Carlos then receives a letter from the Human Rights Commission requesting him to come before the Commission and clarify the issues raised in his letter. He seeks your help in structuring his presentation. He asks you specifically to help him establish that:

1. The fundamental rights in the constitution have been violated.
2. The state was not fulfilling its obligations under the constitution.
3. There are international standards or other comparative standards that the Human Rights Commission should use in interpreting the constitution.
4. The Commission should advise the government to stop the project.

Group 1: Mercy's request for housing

Introduction

1. There is a clear violation of rights
 - the right to adequate housing;
 - the right to a peaceable livelihood
 2. No! All are obligations of the state
 3. The ICESCR can be the standard for use by the courts
 4. Yes. An immediate remedy would be an interim stay order from the court and the provision of a temporary shelter
- Minimum core obligations of the State should be to provide a temporary shelter.
 - Anyone in this situation will be entitled to his or her basic needs
 - The State should have a plan to end the housing problem: When should the state or a non-state actor be allowed to evict and dislocate people in the name of development?
 - There should also be an independent body to review government policies in such instances.

Group 2: Taprobane's mining project

Violation of rights under the constitution

1. The dislocation of people's livelihood
2. Their choice of trade
3. Project not equitable as only 10% of the citizens stand to benefit.
4. Economically not advantageous to the public interest
5. Environmental protection will be a problem

Fulfilment of obligations to the people

Deprived access of the citizens

The initial standard to rely on would be Part 1 of Article 2 of the ICESCR

The scientific and academic commissions should pressure the government to stop the project. There has also not been any transparency in the awarding of the project.

Group 3: Sita's kidney problem

1. Rights that have been violated
right to life – minimum core obligation
 - Obligation of the state to provide affordable healthcare
 - Right to medical treatment
2. Article 12 (2) d of ICESCR
3. Article 12 can be used by the court
4. Yes.

It is a basic human duty to provide treatment. There are also the fundamental issues in human rights – health, education, for example.

Four broad features of the HR approach: Respect for minority rights, changing nature of human rights; the real life case in South Africa – hospital was reasonable in the case – justified in having this criteria.

The resource person summarised the main points and clarified the concept of obligation. He also explained the terms protect, promote, fulfil and respect based on the concept of obligation. Mario also stressed the importance of non-discrimination, the process of defining rights, corresponding obligations and the evolving nature of rights.

Understanding Specific Rights in the Malaysian Context

Conducted by D.J. Ravindran

This session was a group discussion. The participants worked in groups to apply the notion of rights and obligations in the context of Malaysia. Four groups discussed the rights to health, employment, housing and education. In addition, two other groups examined the rights of indigenous people and women respectively.

The main areas the groups had to look into are to identify the problems in the sector and define the content of the economic, social and cultural rights that have been violated. They will also have to identify the strategies that can be adopted for the attainment of these rights.

Group 1 – Housing

Issues

- The development paradigm is questionable
- The housing policies are poor
- There is no empowerment of the people
- Access to land is limited
- There is also a shifting of the obligations of the government to provide proper housing to the people to the private sector
- Other problems are the government's monopoly on land alienation; the payment of compensation for land acquired; the improper conditions of transitional housing given to urban settler communities moved out for development and the ignoring of the rights of indigenous people to adequate housing.

Right to housing

- Everyone has the right to affordable and adequate housing
- To continuously house the people, there has to be proper housing planning

Obligations

- The state has to prioritise the problem of housing
- It has to respect the right of the people to adequate housing for their needs; it has to promote this right and also to help fulfil this right.

- Actors
- Government
- Developers
- People

Strategies for the attainment of this right

- Proper planning and enforcement
- Special housing schemes for the poor and underprivileged
- The creation of a bank to cater to the housing industry
- The levy of a small interest only on loans for housing
- A housing complaints tribunal has to be established
- Housing development can also be carried out along FELDA-like schemes
- Empty/unoccupied buildings should be converted for housing
- A Malaysian human rights charter should be drawn up and housing for the people should be one of the key rights in this charter.

Questions/Comments and Responses from the Group

Koris: The 1926 Rent Control Act was to be in force for 50 years, but was extended for a much longer period. Rentals have been kept artificially low during this period. The people who benefited from the Rent Control Act were the chief tenants of rent controlled buildings, which abounded in the old city of George Town in Penang.

Marimuthu: The invasion of empty buildings by the homeless is an extreme suggestion. There should instead be a central monitoring scheme on the construction of public housing. We should be looking at what is already in existence, and look at the alternatives.

Srisak: There is a bank for housing in Thailand, which gives a certain amount from its funds to people from the lower income sector for the purchase of housing. These people are able to get the houses at a rate that is lower than the market price. The repayment of the loan is also over a period that is longer than the normal housing loan period in Thailand.

Group 2 – Health

The group went by the World Health Organisation definition of health for all as the complete physical, mental and social well being of the people and not merely the absence of disease.

The issues

Health in Malaysia is treated as a “commodity”, and so the consequences for the people have been:

- a. privatisation of public sector medical and health facilities
- b. the result is the more expensive cost of healthcare
- c. the increasingly mercenary behaviour of the medical profession
- d. healthcare is becoming more reactive than preventive
- e. health education is given less priority
- f. it is becoming more technology-friendly than people-friendly
- g. there is less emphasis on research and development
- h. there is now less government allocation for healthcare
- i. healthcare is becoming more urban-centred

Obligations

It is the duty of the state to provide adequate health facilities for all its citizens. Every citizen has the right to the availability of medical facilities for his needs.

Strategies

1. The government has first of all to ratify the ICESCR
2. It has to increase allocations for public health expenditure
3. It must maintain and improve the public healthcare services
4. It must hold more public consultations on health care policies
5. The Federal Constitution has to be amended to comply to Article 12 of the ICESCR

Questions/Comments and Responses from the Group

Jerald Gomez: The government of Malaysia has always been slow in the ratification of international covenants and treaties related to human rights.

Prof Hamdan: The outcome of any development in medical and healthcare should be the improvement in the services; not a matter of whether the citizen is paying for it in cash or by credit card.

Watsahlah: Women's accessibility to health facilities has always been a problem. How many women have access to adequate health facilities? Men are the decision-makers and women have to wait for the husband's permission because of the norms of the social culture we live in. There should be opportunities and access to health facilities for women.

Hamdan: The gender perspective is always taken in any rights discussion.

Koris: Some 50% of the facilities provided by public hospitals have been privatised.

The problem we have to also consider now is the bringing into Malaysia of diseases once eradicated by migrant workers, for example tuberculosis. Malaysia was once recognised by the World Health Organisation for the good health of its people – but no longer because diseases that have been eradicated are surfacing again.

Group 3 – Education

Empowerment of the people through education is the means through which Malaysians can achieve and understand their rights.

Primary education is free in Malaysia. Although education is not compulsory, 95% of the children in the country attend primary school at least. Government schools are fully aided while the Chinese and Tamil schools are partially-aided.

There are also private religious-based schools run by the state as well as by various Islamic groups.

Suggestions

- Mother-tongue education should be introduced as a compulsory subject instead of being an optional subject.
- The Malaysian education system is in sore need of refinement.
- The teaching of moral and universal values should be made part of the primary and secondary education curriculum
- The government should build more schools and train more teachers in order to promote single session schools.

Secondary school education in Malaysia is considered to be of international standard. This education is also widely available and accessible, and operates along a similar system as primary level education. The fees are low and book aid is also provided.

- Residential schools should be opened to the other races as well (and not solely for the Malays) and selection should be based on merit and on need.
- Greater recognition should be given to technical and vocational education.
- Sports should play a greater role in schools in order to promote excellence and to increase professionalism, since mental and physical health is very important. Sports will also promote discipline.

Tertiary-level

A minimum requirement should be imposed on those wishing to pursue tertiary-level education:

- All those who have the capacity to fulfil the minimum requirements must be given access to university education
- The student's choice of the course of study should be given priority
- Scholarships given should be based on needs and merits
- Racial integration in hostels and other activities should be encouraged
- Students should be given the freedom to form cultural and religious societies.
- There should be academic freedom as well: The University and University Colleges Act should be repealed.

Questions/Comments and Responses

- The minimum household income level for free textbooks should be raised.
- Single session schools should be introduced for both primary and secondary education.
- Pre-school education should be made compulsory.

Group 4 – Rights of indigenous peoples

Issues

Land

Culture – the Orang Asli Affairs Department seems to be working for the Malays and not for the indigenous races.

Education is a problem for the orang asli. Often, the people are moved out to make way for development projects, such as the building of dams and highways.

Health facilities for them remain a big problem. Those who refused to move to make way for the Bakun Dam in Sarawak were denied all health facilities.

There is also the forced assimilation of indigenous peoples into mainstream economy and culture.

Rights

- The rights of the orang asli that have been violated and have been constantly under threat are their right to a livelihood of their choice; their right to their customary land; their right to basic social services and their cultural rights.

Strategies

- Empower the orang asli by educating them on their rights.
- Concerned groups/NGOs should lobby Parliament to come out with a policy on the indigenous peoples
- Land reform that recognises the right of the indigenous people to their customary rights over land should be carried out.
- Rethink the model of development
- Build solidarity and link up with other indigenous groups overseas.

Obligations

- The state must not ignore its responsibilities to the native peoples
- It should respect their rights, beliefs, culture, needs and demands
- It should provide them with all the facilities they require for their progress at their own pace.
- The state should also facilitate and promote the participation of indigenous peoples/communities in development.

Non-state actors, such as timber loggers and developers should not be allowed to exploit the indigenous races.

Group 5 – Gender and employment

Lack of equal opportunities for women workers in the various fields of employment, whether in the profession, technical or non-professional sectors

- recruitment is often gender-biased
- pay/salary is often lower for women workers, even if the law does not allow this
- bonus/increment
- shift work

Lack of appreciation of work values

Patriarchal/stereotypical belief

- men remain the decision makers and women are relegated to the position of “followers”
- women are more often preferred to be homemakers, and considered to be of no economic value

Job security: Women are

- the last to be hired, first to be fired
- retired at an earlier age or on grounds of sickness
- associations and trade unions of workers are not gender-sensitive.

Health and safety

- safe working environment more important to women
- gender division labour is practised
- sexual harassment continues to remain a serious problem in the workplace

Govt policy: Not enough attention is being given to

- budget allocation for issues concerning women workers
- the reproductive rights of women
- maternity leave
- childcare facilities

Rights Violated

1. Right to no discrimination in the workplace
2. Right to work
3. Right to equal opportunities
4. Right to physical and mental health
5. Right to paid leave

State/non-state obligations

Amend Article 8 (2) of the Federal Constitution NOW.

Policies & Planning

- must be gender sensitive
- training/education to consider needs of women workers
- equal representation in decision making, whether in the workplace or within the trade union.

- joint consultations
- awareness
- ratify the ICESCR
- higher allocation in the national budget for women's activities and needs
- flexible hours for women workers
- provide childcare facilities in the workplace



Monitoring and Assessing the Enjoyment of ESC Rights

Presented by Charles Santiago

This session reviewed strategies and tools that can be used to monitor and assess, from different perspectives, the enjoyment of ESC rights by individuals and groups.

“Monitoring” means the process of systematically tracking the actions by institutions, organisations or governmental bodies. “Assessing” involves analysing the information gathered, and comparing it to domestic and international standards related to human rights to determine what the information says about the extent of a government’s compliance with its obligations.

Purpose of Monitoring

When an organisation decides to monitor ESC rights compliance, it is essential that it first be clear about its own purpose, strategies and objectives. All monitoring and assessing should be undertaken within this framework, and should be designed to further the organization’s purpose, strategies and objectives. Monitoring and assessing governments’ actions to determine the extent of enjoyment of ESC rights can, in some cases, be simple. More often, however, it will be quite complex, for a number of reasons.

Development and Use of Indicators

An indicator is a tool that shows the direction of something or serves as a sign or symptom. Indicators are very useful for analysis, even without a consensus definition of their content. The precise and systematic use of indicators can contribute in several ways to the realisation of ESC rights. Indicators

- Evaluate advances made in the progressive application of rights,
- Reveal difficulties encountered, and
- Help develop basic content and establish a “minimum starting point”

Human rights indicators should not be limited to compilations of statistical data. In addition to numerical data, “it is equally important to develop criteria, principles and estimates of the realisation that ESC rights. That can be convertible into indicators.

The following distinction between “outcome” or “results” indicators and

“process” indicators provides for two substantial ways to develop human rights indicators. One way focuses on the content of the right, the other looks at implementation by the state:

- **Results indicators:** Results indicators refer to the core content of the right and make it possible to gauge the status of the right. For example, with respect to the right to health, the proportion of children who have suffered mortality or morbidity from childhood diseases preventable by immunization is a results indicator.
- **Process indicators:** Process indicators are constructed based on the respective state’s obligations. They make it possible to measure the degree to which the state is complying with its general obligations. For example, the extent to which universal coverage of basic immunizations has been accomplished, measured as the proportion of children completely immunized against childhood disease, is a process indicator.

In other words, while process indicators help assess and monitor a government’s fulfilment of its obligations of conduct, results indicators help assess fulfilment of its obligation of result with respect to ESC rights.

At the same time, the indicators should facilitate a quantitative and qualitative analysis of the performance of the general obligations of the state (legislative recognition, adoption of measures to the maximum of available resources) as well as of the specific obligations attaching to each right.

Quantitative indicators are made up of numerical data. Qualitative indicators allow for an evaluation of the quality of enjoyment of the right. This includes assessing the performance by the state both in adopting measures and in terms of its programmatic positions, as well as analyzing non-quantifiable aspects of public policies.

Benchmarks

Benchmarks as used in human rights parlance are, in essence targets established by governments, on the basis of appropriately consultative processes, in relation to each of the ESC rights obligations that apply in the state concerned. Those targets will be partly quantitative and partly qualitative. They will be linked to specific time frames, and they will provide a basis upon which “progressive realisation,” as mandated in the ICESCR, can be measured. Benchmarks will initially differ significantly from one country to another, reflecting both the “available resources” and the priority concerns in each country. Over time,

however, one would expect a gradual coming together of the approaches.

Benchmarking is a very useful approach to overcoming a lack of action at the national level in relation to ESC rights. Establishing benchmarks for the realization of ESC rights serves to emphasize some aspects of the interrelationship that exists between these rights and civil and political rights. A program, to begin moving towards the realization of the right to food, the right to education or the right to housing, cannot be envisioned solely in terms of technical, bureaucratic or even economic solutions. The civil and political dimensions are vital. Individuals must be empowered to participate in decision on the steps to be taken towards meeting those rights and must be given the opportunity to contribute to the monitoring and evaluation processes. In this sense, civil and political rights can be seen not only as ends in themselves, but also as a vital means by which to facilitate the realisation of ESC rights.

While governments might be reluctant to involve individuals and groups in the broader political process relating to ESC rights, it is clear that there are significant advantages, particularly in situations in which resources are scarce and difficult decisions must be made as to priorities. Community involvement carries with it the potential to make such decisions more palatable, more equitable and more sustainable.



Budget Monitoring to Respect, Protect and Fulfil the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Presented by Lim Guan Eng

Budgets are basically plans expressed quantitatively, especially in monetary terms. A budget should be viewed as the financial expression of a pre-existing plan of action of planned expenditure, expected revenue collections and intended borrowings supporting the mission and values of the entity. A budget should not be seen as a limitation on resources but as an efficient allocation of scarce resources.

A budget can be viewed as an economic process (resource allocation), political process (competition among various lobbies for limited resources); and a human rights process (funding in compliance with state obligations of ESC rights). For national budget to succeed, 2 elements are crucial – planning and control.

For economic, social and cultural (ESC) rights to be realized, budget monitoring must be effective. This is important as traditional national social income accounting indicators like Gross National Product (GNP) gives a false picture of the success of budgets. GNP is a measure basically in sales terms of the nation's productivity. But an increase of GNP solely in profit terms does not indicate a betterment or progress in the state of affairs as other indicators like amount of crime, health, environment, education employment and working conditions may deteriorate. In fact the opposite is often true.

To respect, protect and fulfil ESC rights, budget monitoring involves three levels:-

- Acquiring access to state budgets and details of actual experience;
- Understanding and analyzing this information; and
- Making this analysis available to decision-makers and community activists, encouraging them to follow up on the results and lobby on the principals involved to vary the budget to realize ESC rights.

Stable and Unstable Equilibrium

I must mention that 'creative' accounting cannot hide the malpractices or wasteful expenditure due to the inherent axiom of accounting – balancing. In physics as in economics, there is a term known as stable and unstable equilibrium. An unstable equilibrium is a state of equilibrium that is only temporary due to its

inherent instability. There would be a quick decent into chaos before attaining another state of unstable equilibrium and the whole cycle would continue relentlessly until a state of equilibrium that is stable is achieved.

The self-balancing nature evident in accounting and budgeting will force irregularities to be made known no matter how well disguised. Such balanced accounts are unstable equilibrium waiting to explode. A good example is the 1993 Malaysian Central Bank foreign exchange (forex) losses scandal of more than RM10 billion ringgit.

Capturing Corruption

As a brief aside, huge capital expenditure may not necessarily help in promoting a country's economic growth – the reverse may be true if corruption is prevalent. The “golden rule” by economists that only current expenditure needs to be covered by government revenue and that capital spending is main determinant of economic growth. This provides a blank cheque in allowing a fiscal deficit (borrowings) to cover capital expenditure.

Bearing in mind that most current spending by governments reflects previous commitments – such as pensions, interest payments on public debt, salaries and subsidies – politicians have, relatively speaking, limited discretion. But such discretion becomes absolute on new capital projects, opening vast opportunities for kickbacks.

A relevant example is the Malacca State Government's 2001 budget whose total deficit increased by almost 500% from RM500 million last year to RM242 million. This works out to almost RM400 for each of Malacca's 600,000 residents. With a state GNP of RM4,000 million, this deficit is 6% of the GNP, exceeding the 5% GNP deficit limit. The reason for this sudden rise in deficits is due to huge public works capital expenditure programme, especially the construction of a RM500 million dam.

Monitoring Budgets: How much allocation is set aside for the development of ESC Rights?

In realising ESC rights, the following international guidelines were set:

- World Health Organisation has set a goal target that encourages states to spend at least 5% of their Gross National Product on health.
- The United Nations Development Programme recommended that states

devote 5% of their GNP or 20% of their national budget on human priority expenditures (basic education, health, water, family planning and nutrition).

- The 1995 UN World Summit on Social Development adopted the 20/20 initiative which directs developed countries to devote 20% of their official development assistance and developing states to devote 20% of their national budget on basic social services.

From 1995-7, the Malaysian government claims to have spent on average 21.2% of the national budget on education. However when compared with the latest Human Development Report 2001, it is only 15.4%. Which figures do we rely on? The answer is self-evident.

Following up on the rights-based approach towards budget monitoring
The RM500 million Malacca dam controversy is a good local example of how the rights-based approach towards budget monitoring is effective. After the announcement of a 'negotiated tender' of RM 500 million was made at the end of 2000, all past information was collected.

A first step was past pronouncements on the subject. Thanks to the Internet, it was disclosed that in the previous Malacca State Assembly sitting on Sept 8, 1999, the construction cost was announced as RM161 million. A public campaign was carried out demanding full transparency and accountability as well as detailing how much the difference of RM339 million can be utilised for social services.

When the state government could not explain the quantum leap of 300% in one year from RM161 million to RM500 million, a public tender was called. The government claimed that the RM339 million increase was caused by additional specifications.

Upon examining 16 volumes of tender documents, there were differences but insignificant. Under the new tender, the dam's height of 30 metres is taller by 1.5 metres from the old tender's dam height of 28.5 meters or a 5% increase. The crest length of the new tender of 1,300 metres is also longer by 400 metres compared to the old one of 900 metres or a 44% increase. With size increases of only 5-44%, how can the cost of the dam go up by 300%?

Finally, the state government buckled under and awarded the tender for the dam at RM118 million – RM 382 million lower than the original proposed cost of RM500 million! Such savings of RM382 million were translated immediately

to maintaining water rates at the same levels for the next five years. At a time, when almost every state in Malaysia were increasing water rates, Malacca did not do so and yet ensured adequate water resources.

Internal control and systemic audit management

Such budget analysis and monitoring is time consuming, tedious and expensive. Substantial research and risks associated with collecting information is involved. An alternative approach would be to go for an institutional approach of internal control and systemic audit management that would facilitate budget monitoring to realise ESC rights. For instance if all the checks and balances are in place, it would be much simpler and easier to identify failures and regressions in budgets. Some of budgeting methodology would be:

- Zero-based budgeting,
- Incremental line-item budgeting; and
- PPBS or planning, programme budgeting system.

Zero-based budgeting requires that a programme be justified from the ground up each fiscal year or two. The process of preparing an operating plan or budget that starts with no authorised funds. In zero-based budget, each activity to be funded must be justified every time a new budget is prepared. The problem with zero-based budgeting is that it:

- Does not recognise budget history or commitments
- Requires a great deal of time and paperwork
- Draws attention away from institutional goals
- Assumes sufficient revenues will exist

Zero-based budgeting can be applied to certain sectors whose expenditure demands congruent to national objectives are not well-defined and cannot be assessed objectively, such as defence. However to save cost, it should not be applied yearly but once every two or three years.

Incremental line-item budgeting:

- Previous year base increment by sums associated with a particular line item of expenditure
- Attention focused on additions, not base funds;
- Encourages maximizing expenditures and minimizing conflict.

However, it is also politicises efforts to reallocate resources among units.

Planning, programming budgeting systems (PPBS) should be adopted by government departments to ensure “value for money” for all public projects and expenditures. Apart from ensuring competent budgeting administration, PPBS would encourage democratic principles by encouraging government departments during the budgeting process to consult, allow participation in decision-making and provide transparency. PPBS comprise four stages:

- Review organisational objectives
- Identifying programmes to achieve objectives
- Identify and evaluate alternative ways of achieving each specific programme; and
- On the basis of cost-benefit principles, select appropriate programme.

Conclusion

Budget monitoring can identify patterns, revealing the extent to which a government’s promises are carried out, identifying discrepancies between what is promised and what is done.

It can also help to identify material differences in the money being spent on different geographical areas and social groups, providing the basis for ensuring a more equal distribution of resources that recognises the equal rights of all citizens.

Budget monitoring thus contributes towards equality in opportunity as opposed to equality in outcome in two important ways:

- It encourages a transparent and accountable budgeting process; and
- It furnishes empirical information by which to understand government behaviour in relation to citizens’ rights and needs, and a “common language” in which to discuss government performance and identify concrete ways to make measurable improvements.

This will facilitate the main guiding principle in the search for the full realisation of the ESC rights and right to development:

- That the denial of civil, cultural, economic, political or social rights constitutes the major obstacles to development,
- That the human person is the central subject of the development process,
- That development policy should therefore make the human being the main participant and beneficiary of development,
- That while people must be responsible for their own development, the

state remains accountable for the respect, protection and fulfilment of human rights; and

- The international development actors also have an obligation to strive for the realisation of human rights.

“The rights-based approach to development describes situations not simply in terms of human needs, or of development requirements, but in terms of society’s obligation to respond to the inalienable rights of individuals. It empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed.”

*- Kofi Annan, Secretary-General of the United Nations
(in the Annual Report on the Work of the Organisation)*



Strategies at the National Level: Role of the National Human Rights Commission (Group Discussions)

Sirisak

Human rights have been recognised in Thailand. The political environment that time was not promising. NGOs underwent a great deal of struggle towards emphasising human rights. They proposed to the National Assembly the policies, one of which is to promote education in human rights and to prepare an annual report on the state of the human rights in Thailand.

- The HR Commission of Thailand has 25 members & various experts
- The idea of HR remains conservative in Thailand
- The adoption of human rights has brought about a great deal of controversy. Nevertheless, the independence, accountability, accessibility and transparency of the HR Commission is closely monitored.

The procedure is that the commission is part of the government administration. It recruits its own staff, and the government provides the funds it needs. The commissioners must be people of good character and work full time. The commissioners themselves need some protection. They do not have absolute power to decide on issues: they only report their investigations to the National Assembly.

Prof Hamdan

The HR Commission of Malaysia or SUHAKAM has 13 members. The chairman was a former UN HR Commissioner. SUHAKAM is now 15 months old and its commissioners are appointed for a term of two years

It has to far established a complaints and inquiry department, and has commissioned a law review of all Malaysian laws affecting human rights, which is being carried out by Prof Kairul.

SUHAKAM issues a lot of press statements in order to create awareness about its existence among the public and also to build greater awareness about human rights. It needs all the help and support of the NGOs.

SUHAKAM commissioners work full time and also part-time. It ensures that there is a commissioner present on duty at its office every working day.

Discussion

Khong: We have requested numerous times to SUHAKAM to delegate power to other NGOs in specific circumstances to carry out investigations on human rights violations on the ground, but SUHAKAM has not responded to this. There should be continuous empowering of the people by SUHAKAM and the monitoring of abuses should be done on the spot and on the initiative of the commissioners, who should not just wait for complaints.

Cynthia: Suaram and other NGOs can refer to a legitimate body like SUHAKAM, and some of the complaints are very urgent. Some of these complaints have not been resolved. Victims of human rights violations require assurances of their personal safety and security from SUHAKAM. NGOs are willing to help in the security concern and also, to help monitor human rights abuses.

Rama: SUHAKAM has not settled a complaint for three to four months. No investigation was done and the investigation is supposed to be open to the public. SUHAKAM has to call for the police investigation reports and look into the matter seriously because it is a racial issue. There may be some qualms about holding an open inquiry but it is very critical to the question of racial harmony in Malaysia.

Marimuthu: NGOs can go through certain procedures to work with SUHAKAM to educate the people on human rights. They should also go to the ground to have a clearer observation and understanding of the issues.

Geetha: Do HR commissioners have the power to file a case in their names?

Thailand: The commissioners do not have such powers. However, the commissioner has the power to report his findings in an issue to the public.

Malaysia: The commissioners have the power to carry out a public inquiry, and this has been done before. However, the HR body does not have the powers of a court.

Charles Santiago: How come there is no open inquiry into the Kampung Medan racial clashes in which six people were killed? This is a national tragedy. SUHAKAM officials have spoken to numerous people and have finally decided to hold a closed inquiry. We hope SUHAKAM is not having a closed mind on the complaint.

Koris: It is sad to see what goes on behind the police lock-up. It is also difficult to visit a person being held in a detention camp without being formally charged with any offence or being tried in a court of law. SUHAKAM should not beg to be allowed to visit lock-ups and detention camps. The commissioners should make the visits without informing the authorities ... they have the right to do so, but are not exercising this right.

Ramdas: Has SUHAKAM required a closed-door meeting on the Kampung Medan affair? We have not been informed yet on this. In India, there is a national human rights body and it also operates at the state level. The commissioners can also take up cases independently.

Francis: The problem of children being used as labourers and prostitutes appears to be of no concern to HR activists, even in Thailand. In Malaysia, if children become victim of sexual abuse, the police treat them like adults.



Strategies at National Level Domestic Application – Law & the Courts

Presented by Geetha Ramasheshan

Those pursuing the violations of rights through the courts should also look at related judgements given by the courts and also the judgements in other countries, especially those of the European Court of Human Rights.

It is the obligation of the government to provide a person charged with a criminal offence with a lawyer, but this practice is not carried out in a number of countries.

With reference to UK, the courts which have judicial review powers can extend this into administrative decisions of the government as well. This will make the court scenario a lot easier.

Using the tool of litigation to win a case will help create an awareness of rights. In the Indian Constitution, the right to life is considered to include the right to health. There was a case on this issue, filed directly with the Supreme Court, in which a man took up the denial of a certain medical service as a violation of his right to life.

In this case, the court heard the matter and sought the advice of a panel of experts to make its decision. In the end it decided that the right to good health is part and parcel of the right to life.

In instances where non-state actors have filed cases against corporations, these have

- not really been seen as violations of human rights
- there is an obligation to protect the rights – preventing companies from violating the laws
- the governments are equally responsible as the multinationals
- criminal law can only punish, can't empower

Q & A

In the filing of cases of public interest in the Malaysian context against the government, the

- law has not kept pace with global developments
- no locus standi is given to a concerned party to file a case

- one cannot claim right of ownership to land based on how long one has been staying there
- Bakun Dam project should be stopped – but under environmental law
- In terms of ESC rights, the courts in Malaysia have not been proactive at all

Marimuthu: In Malaysia, there are large numbers of lawyers joining NGOs. Some of them have their own interests for doing so. Nevertheless, we need legal support from the universities – academicians trained in law who can help with research into legal matters.

Khong: We do need more lawyers to come through and join the NGOs. For example, there is a lot of work to be done on housing. It is time that we established a commission on housing. Do you have a Commission on Housing in India?
(Answer: No)

Planning and Follow-up

This session included a brainstorming session on how to follow-up on the workshop. The participants made several suggestions for consideration. Some of the suggestions are:

Cynthia suggested that this group should follow-up with more meetings to build up consensus on issues. She also suggested that ERA should take up the initiative to monitor the situation from here and work towards setting up a mechanism that will lead to the adoption of the ICESCR by Malaysia.

It was a good workshop and it gave a wider understanding on ESC Rights for Watsahlah. She also requested to look into more women issues.

Siti requested the group to propose to the Ministry of Education the suggestions made during the discussion on the national education system. It is a very good start and Training for Trainers should be held as a next step. Francis also wanted a memorandum to be sent to the government on the ESC Rights. Umakanthan said networking on ESC rights among the various groups and individuals present should be continued, and perhaps smaller working groups could be established informally to work on problems associated with the different rights so as to build cases for the ICESCR to be ratified by Malaysia.

Yusof requested that the organising committee provides a full report on the

training session, together with the details of the participants, to all participants. Koris raised a question on whether there will be a meeting with individual ministries on the findings from the workshop. Environmental issues should also be looked into, said Sam, while Pajan wanted ERA to help with the problems faced by the indigenous people.

This training was very beneficial in helping Ruzian understand ESC Rights. She said that International Law should be made a compulsory subject in universities and she wanted a follow-up training on ESC rights for university students. Prof Hamdan asked ERA to continue doing the good work, even though there is not much recognition for its efforts. Ramdas asked the NGOs to send in a memorandum to SUHAKAM with specific and formal complaints in it, on the government's non-compliance with human and ESC rights.

ERA president Marimuthu said ERA will examine the issues presented and even consider the possibility of taking up a case with the courts not only for the sake of justice but also to build greater awareness of economic, social and cultural rights among Malaysians.

ERA will also consider making representations at the committee level at the United Nations. In his closing remarks, Marimuthu also thanked Mr Chiew, Forum Asia and Prof Hamdan for their support and contributions to making the workshop and training sessions a success.

Also thanking participants for their suggestions, he said that ERA needs the support of committed people with skills in various fields to carry its work further. With people, ERA can create products. He also said that a contact list of participants will be circulated soon, and that ERA is translating *Circle of Rights* into Malay.

The Speakers/Trainers

Mario Gomez (LL.B, LL.M, Ph.D) teaches public law, human rights, and feminist legal studies in the University of Colombo. He was the Founding Director of the University's Legal Aid Centre. He is a member of the Law Commission of Sri Lanka. He has designed and taught human rights programmes for judges, activists, human rights commissions and members of the Sri Lankan armed forces. He works as a consultant with the Law & Society Trust and the Asia Foundation and edits the LST Review, a monthly publication of the Law and Society Trust which contains case analyses, commentaries on developments in human rights and law and related public interest issues.

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About ERA Consumer

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

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

The other programmes of ERA Consumer include setting up local and international networks to facilitate the exchange of ideas, information and technical know-how. ERA Consumer is a member of the regional network AsiaDhrra (Asian Partnership for Development of Human Resources in Rural Areas), a network of NGOs in 10 countries in Asia working with the poorest of the poor. In Malaysia, ERA Consumer currently anchors the Dhrra Network. ERA is also a member of the Southeast Asian Council for Food Security and Fair Trade (SEA Council), which advocates sustainable agriculture and looks at the impact of multilateral agreements on food producers in the region. Currently, ERA Consumer hosts the Secretariat of the SEA Council in Malaysia. ERA Consumer is also a member of the Asia Pacific Research Network (APRN), which is based in Philippines.

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