



**Proceedings
of Forum on**

**Understanding
the
Human Rights
Commission
Act 1999**

**May 27, 2000
Kuala Lumpur**

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Organised By:

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

FORUM ON
***“UNDERSTANDING
THE HUMAN RIGHTS
COMMISSION ACT 1999”***

May 27, 2000

Pearl International Hotel
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ERA CONSUMER MALAYSIA
(Education and Research Association for Consumers, Malaysia)

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ERA CONSUMER MALAYSIA

(Education and Research Association for Consumers, Malaysia)

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

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- *The Working Group for an ASEAN Human Rights Mechanism*

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- *The Resource Persons:*
 - ❖ Tan Sri Anuar Zainal Abidin, retired Federal Court judge and member, Human Rights Commission of Malaysia, or SUHAKAM, as it is called locally by its Malay acronym.
 - ❖ Prof Dr Shad Saleem Faruqi, Lecturer in law, University Teknologi Mara
 - ❖ Dato’ Param Cumaraswamy, former Bar Council chairman and Special Rapporteur on the Independence of Judges and Lawyers, United Nations.
 - ❖ Elizabeth Wong, HAKAM
 - ❖ Irene Fernandez, TENAGANITA
 - ❖ Prof Mehrun Siraj, SUHAKAM Commissioner
 - ❖ Prof Chiam Heng Keng, SUHAKAM Commissioner
- *The Moderators:*
 - ❖ Salbiah Ahmad
 - ❖ Anis Yusoff

As well as to all of those who attended, whose active participation ensured the success of the programme.

Introduction

The Human Rights Commission (HRC) Act was passed in July 1999 by the Parliament of Malaysia and the Commissioners were named on 3rd April 2000. However, not much effort was taken by either the government or any other party to further promote the established Commission or the HRC Act. Most Malaysians therefore do not know the role or function of the Commission, as they are not even aware of its existence. The citizens need to be exposed to the Commission and guided on how to fully utilise this institution. Thus, having this in mind, ERA Consumer Malaysia organised this forum.

Objectives and Goals of the Forum

Based on past experiences and in light of the current situation, the forum was organised with the objective of creating and raising awareness among the grassroots and vulnerable communities to:

- Understand the role and function of the Commission;
- Understand the power of the Commission;
- Provide guidance on lodging a complaint with the Commission; and
- Make it known that the existing Commission needs changes in order to strengthen its role and better perform its allotted functions.

Publication

This publication aims to share the results and the experiences of the Forum with the public, in the hope that it will serve as a useful resource for anyone interested in the work of national human rights institutions, and in particular, to help them understand the HRC Act and the role of SUHAKAM.

This publication mainly comprises papers presented during the forum and therefore may contain information which may not be relevant at the time of publication.

Acronyms

ALIRAN	Aliran Kesedaran Nasional
CAT	Convention Against Torture
HAKAM	Persatuan Hak Asasi Kebangsaan (<i>National Human Rights Society</i>)
HRC	Human Rights Commission
HRE	Human Rights Education
ICCPR	International Covenant on Civil & Political Rights
ICESCR	International Covenant on Economic, Social & Cultural Rights
IRA	Industrial Relations Act
ISA	Internal Security Act
NGO	Non-Governmental Organisations
NHRC	National Human Rights Commission
OSA	Official Secrets Act
PPPA	Printing Presses and Publications Act
SUHAKAM	Suruhanjaya Hak Asasi Manusia (<i>Malaysian Commission on Human Rights</i>)
UUCA	University and University Colleges Act
UDHR	Universal Declaration of Human Rights
UN	United Nations

Organising and Supporter Organisations

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

- ❖ **The Friedrich Naumann Foundation (FNF)** is a German-based foundation that provides support to developing market economies all over the world in establishing economic structures and helps its partner organisations in their project countries in finding individual solutions to their problems. As a foundation for liberal policy, the Friedrich Naumann Foundation is committed to freedom - freedom of opinion and action - in all walks of life and all over the world. Thus with their partners in more than 80 countries, encompassing the regions of South America; South, Southeast and East Asia; Africa; Central, South and Eastern Europe and the Mediterranean, FNF is working to change people's awareness and their patterns of behaviour. FNF believes that only those who understand political contexts can effectively work to change them. And only they who know what freedom means can take up the cause of liberalism and democracy.

- ❖ **The Working Group for an ASEAN Human Rights Mechanism** is an informal coalition of individuals and groups within the region who are working with government institutions and NGOs in the field of human rights. Its primary objective is the establishment of an inter-governmental human rights mechanism in Southeast Asia. It is organised into national working groups in the ASEAN states which are composed of representatives of government institutions, parliamentary human rights committees, the academe, and NGOs. The Working Group follows a step-by-step, constructive and consultative approach involving governments, parliamentary committees, academe and NGOs. Since 1996, the Working Group has been meeting with ASEAN ministers/senior officials and with civil society groups throughout the region. It has organised conferences on human rights issues of common concern. At the same time, parallel activities are also being undertaken by national working groups at the state level.

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

1. **G. Umakanthan**
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FORUM ON
***“UNDERSTANDING
THE HUMAN RIGHTS
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ACT 1999”***

Welcome Address

Marimuthu Nadason
President, ERA Consumer, Malaysia

We take pride in welcoming our Guest-of-Honour, Tan Sri Anuar Zainal Abidin, the Commissioner of HRC, Malaysia, and distinguished participants like Dato' Param Cumaraswamy (Special Rapporteur on the Independence of Judges and Lawyers), Prof Mehrun Siraj and Prof Chiam Heng Keng who are Commissioners of HRC, Malaysia, Your Excellencies, honourable guests, comrades, friends, ladies and gentlemen.

Welcome to this Forum entitled "*Understanding Human Rights Commission Act 1999*". ERA Consumer Malaysia has taken the opportunity to organise this forum in line with the developments in HRC Malaysia, especially after the appointment of its members.

We feel that there should be a programme on the Human Rights Commission, especially to create awareness among our citizens. The people should understand the Human Rights Commission Act in order to appreciate the role and function of the Commission and how it is going to benefit them. The people must also know how to utilise the Commission.

ERA Consumer has been conducting a series of human rights education programmes in Malaysia since 1998, particularly in the outskirts and rural areas, in order to provide basic human rights education to the people. Last year we incorporated a session on HRC in the training programmes – and we found out that most people outside of the major towns are not even aware of the existence of the HRC.

Many of you here may still remember that in June last year, ERA Consumer, together with SUARAM and HAKAM, organised a forum entitled *National Human Rights Institution: An ASEAN Experience* as the first public programme after the announcement to set up the HRC of Malaysia was made by the Minister of Foreign Affairs Dato' Seri Syed Hamid Albar.

I feel that many more programmes should be organised on the Human Rights Commission so that the people fully understand the role and function of

SUHAKAM and how it can benefit them. I am looking forward to organising similar programmes in Sabah and Sarawak and also in the northern and southern parts of the peninsula. I hope that SUHAKAM will give its cooperation to us to



ensure the success of these programmes. We are glad that we have three Commissioners with us today to address the forum and I hope that more Commissioners will come forward to take part in future programmes.

The establishment of the HRC is a positive development in this country and I hope that SUHAKAM will play its role efficiently to promote and protect human rights. Although there are some weaknesses in the Commission, I sincerely hope that the Commission will be independent, progressive and efficient in championing human rights issues in Malaysia.

For most people “human rights” as an issue seems distant and remote, that is until their own basic rights are violated or when it happens to someone they know. When that does occur, they often feel helpless and do not know exactly what to do. Under the economic and political crisis that has been plaguing the country, the civil society is at a loss as how to protect and ensure that the rights of the citizens are not violated. Unfortunately, most people do not know their rights – or how to protect themselves – because the civil society in Malaysia is hardly exposed to basic human rights.

The crisis has contributed to the emergence of certain groups among civil society demanding for their rights and demanding for changes in the political and judicial systems, as well as questioning the abuse of power by the police. Street demonstrations and protests, which were rarely ever seen before in Malaysia, have now taken place in Kuala Lumpur.

The Malaysian Human Rights Commission, also known as SUHAKAM, was established at the height of the crisis, when many Malaysians started to lose their confidence in the institutions which were supposed to ensure justice in

the country. Thus, the establishment of SUHAKAM has given civil society a new hope in the struggle to defend the rights of the people and to fight for justice. The establishment of the Human Rights Commission should follow through with positive development in human rights issues. SUHAKAM should not end up as another one of those institutions in the country that have failed in their role. The role and function played by the Commission and the action it will take towards promoting and protecting human rights is therefore crucial.

I also wish to like to take this opportunity to urge the Commissioners present to take into consideration all the concerns raised by the community-based organisations today at this Forum, in order to improve and strengthen the Commission. We have raised our concerns at an earlier stage through a memorandum submitted to the Foreign Affairs Minister, and for the second time at a meeting with the Commissioners a few weeks ago. I hope that all the suggestions given by us will be taken in good faith and will be looked at positively. This is important because the suggestions put forth are derived from our long experience of working with civil society.

The Commissioners should always make it a point to consult with the people and to get feedback from them from time-to-time for first-hand information. They must work with the people and also with the community-based organisations. There should be a mechanism or a formal channel for these parties to share and exchange ideas, in order to bring about positive developments in the Human Rights Commission of Malaysia.

One very vital element is that the Human Rights Commission must build trust and win the confidence of the people. It must help regain the trust that people have lost in certain institutions that are supposed to promote and protect human rights, and to ensure that justice prevails. The processes or procedures created by the Commission should be people-oriented and easy to comprehend for the layman, without involving a lot of red tape. In other words, the Commission should be seen as people-friendly.

The Commission should also review several sectors which have been neglected for a long time and need immediate attention. These include issues involving the disabled and the indigenous community. These groups have been struggling for a long time, but their voices are not heard by anyone and no concerted action has been taken on their behalf.

Therefore, SUHAKAM and the Commissioners who have been now appointed for the first time have some very important and long overdue responsibilities to deal with.

With this said, I would like to wish the Commissioners all the best for the good work that they are going to do. I would like to stress that we, the community-based organisations, are always willing to work with you.

Finally, I would like to thank all the parties present today for their commitment to ensure the success of this programme. I also would like to thank all the panelists and the human rights Commissioners for their valuable contribution to this forum.

I hope everyone will utilise this forum to the maximum. We from ERA Consumer hope the forum will provide a platform which will prove to be both fruitful and beneficial to every participant.

Once again, thank you very much.

Keynote Speech:
**“HRC of Malaysia: Challenges Ahead for
Human Rights in Malaysia”**

Tan Sri Anuar Zainal Abidin
SUHAKAM

Ladies and gentlemen,

I wish to thank ERA Consumer, Malaysia, for allowing me to stand before you today in place of Yang Berbahagia Tan Sri Musa Hitam, the Chairman of the Human Rights Commission.

It is indeed the first time that the HRC, which was just set up in April 2000, has been invited to address such a knowledgeable audience. As such, the HRC has decided to use this opportunity to inform and to educate the public as to the Commission’s aims.

First of all, we have to ask, “what are human rights?” The concept of human rights is practical in Asia. Its aim is to maintain social harmony by ensuring justice, peace and equality. In an endeavour to achieve this task, the United Nations (UN) drafted the text of the Universal Declaration of Human Rights in 1948. The idea of human rights is certainly enshrined in the notion of common humanity, and it has to apply to all human beings equally if it is to achieve its aim of ensuring peace and social harmony.

It is universally recognised that human rights contribute to the well being of life in general. The human rights concepts can be found in the basic precepts of most of the major religions of the world. They emphasise the importance of morality, social equality and justice.

Ideally, the human rights agenda should encompass all economic, civil, social and political rights without the imposition of any restrictions. It is not a special



right granted to a particular person or group. It belongs to an individual by virtue of his or her being a member of the world community and therefore a part of the human family.

But questions about what human rights are, what their main emphasis should be, and how far their general applicability works still evoke different responses from different quarters. There are people who have different interpretations of human rights. There are others who have different ideas of what human rights should be. Take for instance the authority, the government, which will have certain ideas of what human rights mean. On the other hand, the citizens will also have their own ideas of what human rights are.

Unfortunately, we live in a less than perfect world. Hence, we are faced with the problem of inconsistent practices being adopted in our administration. We believe that the expression of human rights cannot and should not be restricted. It should not be capable of being molded into anybody's agenda or plan. But in reality, the chosen concept is often the one that is more favourable to the conditions of the particular society in question. As a result, freedom of expression and freedom of association are readily denounced by the authority on the excuse of promoting social harmony. We believe that no society in the world should condone social discrimination or infringements of writers' and artists' freedom of creativity on the grounds that it is against tradition and culture. This means that we should believe in universal human rights.

Any such discrimination or infringement is bound to invite criticism and recrimination from the international community. In the last century, we have accepted the practice of governing our country by ourselves, within the boundaries of our territory. However there is a new trend in the international arena. More and more people have now begun to accept that human rights violations have implications beyond national boundaries, and that man has a moral duty towards his fellow man that transcends all barriers.

The Human Rights Commission Act (1999)

We now have a new Act of Parliament that was formulated in 1999, which is the reason we are here today. The Human Rights Commission of Malaysia Act 1999, which came into effect in April 2000, does not give a clear definition of the expression "human rights". Under Section 2 of the Act, it merely states

that “human rights refer to fundamental liberties as enshrined in Part II of the Federal Constitution”. This brief definition or interpretation of the term human rights has received a mixed reaction from the public. Many feel that it is too restrictive in view of the fact that provisions under Part II of the Constitution (*See Appendix I*) have been restricted by various Acts of Parliament. However, as the law stands, there is no restriction imposed on the Commission to inquire into the justification of any restrictive law enacted in respect of the right to fundamental liberties as enshrined in the Constitution.

Restrictive laws may have been enacted. This does not mean we should not give our opinion of the inquiries, of whether this particular law is against human rights or not. Of course we cannot do anything to enforce our view or opinion, but nevertheless the least we can do is to express as strongly as possible that such laws should not have been enacted and should not exist. As you can see, that is the direction that we are moving in. We hope to be able to do what is necessary, but it is still too early for us to come to any definitive conclusion on this matter.

The Human Rights Commission of Malaysia Act 1999 came into force in April 2000. The members of the Commission were appointed by the Yang di-Pertuan Agong on the same date. At present there are 13 members, including the Chairman, Tan Sri Musa Hitam. The Commission has started operation temporarily at the premises of the Ministry of Foreign Affairs. So we are there only as squatters. But even though we are squatters, no one seems to be anxious to remove us from our illegal occupation. However, we do hope that we will soon be able to have our own premises, which will be open to the public.

The idea to set up this Commission was put forth by Tan Sri Musa in 1993, when he personally urged the Prime Minister to establish such a body, realising how important it is for Malaysia to have its own Human Rights Commission. As you all can imagine, it was not an easy task. However the matter was brought back to the Cabinet, and happily the Cabinet agreed to the idea. In 1996 the matter was put under the charge of the Ministry of Foreign Affairs, and finally it was passed by Parliament in 1999.

The government then put up a list of names to be appointed as members of the Commission. Credit must be given to Tan Sri Musa for disagreeing with the names suggested by the government. He himself then suggested 12 names

which fortunately, or unfortunately for me, were accepted by the government.

The Commission is now known as SUHAKAM. It is the Malay acronym for Suruhanjaya Hak Asasi Manusia. Being a new establishment, SUHAKAM recognises the importance of interaction with established organisations that share the same vision and aim. The first dialogue was held on May 15, 2000, with Aliran, HAKAM and SUARAM. There will be more such meetings with other organisations and political parties in the future as these dialogues are certainly informative and useful to SUHAKAM in carrying out its functions.

So far SUHAKAM has set up four working groups which deal with:

1. Education and Information
2. Law and Procedure
3. International Treaties and Participation
4. Inquiries

We hope that these four working groups will come up with plans and programmes in the future targeting Malaysians. I am not able to say what challenges we can expect to face in the future. But on the more optimistic view, I can see Malaysia with the existence of the Human Rights Commission, which I can ensure you is an independent organisation. The future of human rights will improve from what they are today.

***The Role of the HRC in the
Promotion and Protection of
Human Rights in Malaysia***

A Constitutional Perspective

*Prof Dr Shad Saleem Faruqi
Professor of Law
Universiti Teknologi Mara*

It is my privilege to be with you today to give you a constitutional perspective on the Human Rights Commission of Malaysia. However, before I comment on the HRC Act of 1999, I wish to make a few preliminary remarks.



Between the might of the state and the rights of the citizens, there is always and everywhere an irreconcilable conflict. The need to balance the interests of individuals with the interests of the community, the need to ensure that liberty is exercised with responsibility, and that freedom and order go hand in hand are some of the greatest challenges of the government here and everywhere. Order, stability and economic prosperity are indeed the foundations on which human dignity can be allowed to flourish; liberty must be allowed to blossom; freedom must be allowed to ring. A fair balance between state power and individual rights is what is needed. At different stages in a nation's history the fulcrum may shift a little bit. But a just equilibrium must always exist.

In Malaysia over the last 42 years, the emphasis was on nation-building and economic prosperity. Human rights were not really a matter of significant concern. However, surely that has now changed.

How to reconcile the irreconcilable is the challenge and responsibility of government. On the success of this endeavour depends the quality of our civilisation.

Human rights are not a destination but a direction. The quest for human rights is a continuing journey. This is due to the fact that new and newer needs,

demands and expectations come to the fore. New threats emerge. Remedies created to provide solutions rarely succeed in their entirety. Undesired and undesirable consequences emerge to which newer solutions are applied. The cycle continues.

Rights alone are not enough. Remedies are needed. Rights without remedies are like lights that do not shine and fires that do not glow. Effective, expeditious, inexpensive and informal means of seeking redress should be at the heart of the human rights programme.

In an Asian context with low levels of legal literacy and with legal aid in a state of infancy, not much reliance should be placed on court processes for alleviation of injustices. Non-legal and informal institutions and techniques may prove more fruitful. It is for this reason that the creation of the Human Rights Commission is most welcome.

The Commission can play a dynamic and pro-active role to disseminate knowledge of human rights; to advise the government on necessary measures to protect human rights; to recommend subscription or accession to international treaties; to inquire into complaints; to verify any infringements of human rights; to visit places of detention; and to undertake any other appropriate activities in accordance with the laws of Malaysia.

The Commission is not like the courts of law, which unfortunately can only act when someone knocks on the doors of justice. In contrast, the Commission can act on its own initiative or on a complaint. Public interest petitions are a distinct possibility because a complaint need not be made by the aggrieved party. He/she may be acting on behalf of someone else.

The public has direct access to the Commission. There is no filter through which the People have to go.

The Commission has powers similar to those of a court of law in the matter of discovery of documents and attendance of witnesses. Its power to admit evidence is even larger.

The Commission has links with Parliament and to me this is a most welcome feature. This will help Parliament to improve its institutional advocacy. I hope that the creation of the Commission will lead to the eventual establishment of

a Parliamentary Committee on human rights.

However, from the constitutional perspective, a number of unsatisfactory features exist in the Human Rights Commission Act 1999 and these deserve mention.

The Act in Section 2 defines human rights to refer to fundamental liberties as enshrined in Articles 5 to 13 of the Federal Constitution. This is an incredibly restrictive view of human rights because it excludes:

- Human rights in other parts of the Constitution, such as citizens' rights, electoral rights, native rights, and a number of other similar rights.
- Human rights in ordinary legislation like the Industrial Relations Act, the Employment Act, the Criminal Procedure Code, the Trade Union Act, the Domestic Violence Act and so on. All these are very important to the human rights quest because social and economic rights are as important as civil and political rights. Food is as important as freedom. And bread is as important as the ballot box. Food and freedom have to go together. So social and economic rights, such as the rights of the workers, are just as important as personal liberty. There can be no meaningful enjoyment of human rights if poverty is pervasive, and hunger and disease stalk the population.
- Non-textual human rights that are not enumerated in any legislation but are nevertheless implicit in the Constitution's promise of liberty and equality. An implied and enumerated right deserves protection because it partakes of the same basic nature and character as an enumerated right.

The definition of human rights in Act 597 conflicts with Malaysia's international posture on what this concept means. Malaysia has, up to now, rightly articulated a composite and holistic view of human rights as encompassing not only political and civil liberties, but also socio-economic and cultural rights.

Section 4(4) of the enabling law permits the Commission to have regard to the Universal Declaration of Human Rights 1948. This is admirable. But despite this provision, the enforceability in national courts of the international law on human rights remains problematic for the following reasons:

- International law is not part of the definition of 'law' in Article 160(2) of the Federal Constitution. In this article law is defined into written and common law, and only to that extent is recognised in custom and usage.
- International treaties are not law *per se* for national purposes, unless they have been ratified by the national government.
- Even if ratified by the executive, treaties do not become part of the law of Malaysia until they are converted into an Act of Parliament by the legislature. As in the U.K., Malaysian courts of law are not obliged to take note of the international law on human rights unless it is incorporated into the *corpus juris* of Malaysia.

The Commission was not established under the Constitution but under an ordinary law which is open to amendment by ordinary legislative process. It would have been more fitting if the positions of the chairman and members of the Commission are on par with the position of the Auditor-General and the Chairman of the Election Commission.

The Commission has no powers to reverse any decision, to prosecute a wrongdoer, or to order any compensation for the victim of a violation. Perhaps it could adopt the practice of the Parliamentary Commissioner for Administration in the UK by recommending *ex-gratia* payments, i.e. payments that are not mandatory.

Tasks for the Future

1. A more expansive view of what constitutes a human right needs to be adopted.
2. There is a need to highlight those core values on which unflinching loyalty must be demanded by all nations, irrespective of cultural, religious and historical differences. But outside the core, the role of culture, religion, history, state of economic development, etc. should be taken into consideration.
3. A new and broader definition of 'law' under Article 160(2) of the Constitution to recognise international law. Alternatively, an amendment to the Interpretation Act to create a rule of statutory construction that national legislation must be interpreted in conformity with international obligations.

4. In its educational role the Commission needs to emphasise not only rights but also duties.
5. Structural issues that contribute to poverty and exploitation need to be examined. It has to be recognised that there cannot be meaningful enjoyment of human rights if poverty is pervasive and hunger stalks the land.
6. The concept of 'development' needs to be viewed afresh. Does strengthening of human rights contribute to 'development'? Who must benefit from development and who must pay the price of development? Does development encompass generation of wealth for the rich or development of wealth for the poor? Is equitable distribution of wealth better than record rises of GNP? Is the trickle-down theory of economics consistent with human rights jurisprudence?
7. Do threats to human rights come only from government agencies? Or are private centres of power, local as well as international, as much of a threat?
8. The effect of globalisation on socio-economic rights of the weaker sections of society needs to be examined.
9. The desirability of creating a Parliamentary committee on Human Rights and an independent Police Complaints Authority should be examined.

Thank you.

The NGO Perspective

Elizabeth Wong
HAKAM

First of all, I would like to share my experience with you. I have been travelling quite a bit this year and every time I met NGOs, government officials, or diplomats, there were always two questions consistently asked:

- i) Do you think your HRC is independent?
- ii) What do you think the HRC will do regarding the former Deputy Prime Minister Anwar Ibrahim?

So, this shows two things:

1. Everyone in the world, especially governments and human rights organisations, knows that there is a National Human Rights Commission (NHRC) in Malaysia;
2. These individuals have some questions concerning what the HRC can do for victims of human rights violations in Malaysia

I am not going to answer these questions right now, but probably by the end of the day you will be able to answer these questions yourselves.

The NGO's quest for a HRC, and I note an independent HRC, was a somewhat long struggle. We have in fact pushed for it for about 10 years in almost every forum in Malaysia and in the region. We have always demanded an *independent* HRC. For most NGOs that work in Malaysia, human rights violations did not only begin in September 1998. They have been around for a long time. Many draconian laws, such as the ISA, existed even before independence.



Of course there has been some effort outside of the NGOs, especially by Tan Sri Musa Hitam, to bring about the NHRC. Tan Sri Musa tried very hard to push for the Commission to be announced in time for the 50th Anniversary of the Universal Declaration of Human Rights.

At first we were very worried that the HRC was being formed simply to whitewash human rights violations. Malaysia has a very bad reputation abroad, especially since what happened in September 1998. It is something that we do not want the NHRC to be because it is something that we have struggled for all this while, and as Prof Shad Faruqi mentioned, there are still serious fundamental problems with the Commission. Nevertheless, we welcome the NHRC in principle because we understand what it can potentially do for human rights.

In a context where social justice has somewhat been pushed aside, the NHRC is another institution for NGOs and victims of human rights violations to bank on. A Commission that can fight for human rights and that can seek redress for victims – I think this is what most people expect the NHRC to do. We do not expect things to get better overnight. However, we do expect the HRC, especially the Commissioners themselves, to stand up without fear or favour, to state that they are pro-human rights, and, most importantly, that they are pro-victims of human rights violations.

You can push aside all the legal or constitutional aspects, but this is something very simple and it can be easily understood. Sadly, since April, we have not heard anything more from the HRC, particularly pertaining to the April 15 demonstration. In fact some of the NGOs even came up to ask why there is this conspiracy of silence. So, it is an uphill task for the Commissioners.

We previously had a dialogue with SUHAKAM where three NGOs were represented – SUARAM, HAKAM and Aliran. There were 11 of us and 11 Commissioners. We had quite a long meeting which lasted for two-and-half hours. After the meeting, we walked out of the room, feeling a bit lost and not sure of where we stood. We all felt very frustrated with the dialogue. There were a lot of things that could have been decided. At least we expected some indications from the Commissioners to have further dialogues. You cannot have a two-and-half hour meeting and expect to move on from there. There

are fundamental issues that have not been resolved.

After the dialogue we presented the HRC with a seven-page memorandum, endorsed by more than 30 NGOs. We still do not know what is going to happen. We feel that it is necessary to continue having dialogues with the Commissioners, to continue to give feedback. We are giving the HRC a honeymoon period of six months. We are willing to co-operate with the HRC, i.e. if it needs materials on human rights education, we are more than happy to abide. If the Commissioners want to know how to construct the form to document human rights violations, we can provide that. If they want legal justifications or constitutional justifications, or all sorts of justifications to repeal every single draconian law in Malaysia, we can provide that. All of us have decades of experience. There is no point in trying to start from the beginning, to reinvent the wheel, when all of us have experience and we are more than willing to work with the Commission.

So, we will monitor very closely for next six months and if the Commissioners need any assistance we are more than ready to provide it.

Now, going back to the HRC, especially the definition. Although Prof Shad Faruqi has already mentioned quite a lot about it, I want to very briefly go through it again, especially pertaining to the memorandum that we sent to the Commission. We have stated from the start, specifically last year in our first memorandum, that we have serious doubts if the Commission is to function solely based on fundamental liberties (Part II of the Federal Constitution). We believe by having this definition we are contradicting the universally accepted definition of human rights, which are set out in the four main international treaties: the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention Against Torture.

What we are concerned about is that by sticking to these definitions, it will undoubtedly mean that the draconian laws, i.e. the ISA, the Sedition Act, the OSA, the PPPA, the Police Act and the UUCA will continue to undermine our fundamental liberties. If these laws are going to co-exist with a HRC that is said to be pro-human rights, then I cannot see that happening. You have 10,000 people in jail detained under the ISA over the last 40 years. If they walked out

one day to the HRC and asked where is justice, I think the Commissioners would find it very difficult to answer. These are people detained without trial.

These draconian laws are against human rights and there is no need to explain why they should be repealed. It is not necessary for anyone to review or to research why they need to be repealed. If you are pro-human rights and you know what human rights are, then you know that a person should have the right to a trial, to not be beaten up by the police, the right of freedom of expression, the right to disseminate information, and so on. Otherwise the effort would just be stuck like the so-called research on plantation workers' minimum wages and housing. That has been going on for more than three years. We do not want the same thing to happen again here. So I will emphasise once again that we are more than willing to assist the Commission to justify or to help in any way to show why these Acts have to be repealed.

Besides the definition, we are also very concerned that the Human Rights Commission is co-existing under the shadow of four states of emergency. This is something members of the public do not know. There have been four states of emergencies proclaimed in the years 1948, 1966, 1969 and 1977. Aside from ratifying the international covenants and the Convention Against Torture, we are also calling on the Commission to recommend to the government, without any debate, to annul all four of these emergencies. A democratic society cannot simultaneously exist with four states of emergencies that have been in existence for decades.

We want SUHAKAM to have as broad a mandate as possible, in line with the UN General Assembly's Paris Principles, which are the guidelines for the establishment of a NHRC. We are proposing that SUHAKAM recommends to the Parliament amendment without delay to the HRC Act 1999, to bring the Malaysian definition of human rights in line with internationally recognised human rights standards. Malaysia should also ratify the ICCPR and the ICESCR. We had a dialogue with the Foreign Affairs Ministry last year. We were told that the government was ready to ratify these covenants. It is high time they did this.

The Commission has a lot of work to do ahead. There are other issues that NGOs are concerned about, particularly transparency and resources. We want the Commission to have as much resources as it will need to properly carry

out the assigned duties, so that SUHAKAM will not be dependent upon the government. We would like the HRC to have more staff and investigators, such as they do the Philippines where there are more than 200 personnel carrying out human rights investigation work. Another issue is self-determination (Section 12 of the HRC Act). We raised this matter during our dialogue where we expressed our concern if, for example, something happened to one of us and we filed a complaint immediately with the HRC. What the police can do to block the investigation is to charge the person and take him to court. Then SUHAKAM will have to immediately cease its investigation. Of course this is hypothetical, but if you have a clause like that, it invites abuse.

In conclusion, I would say that the human rights situation in Malaysia has deteriorated, especially in the past two years. One can argue that these violations already existed, but that they were suddenly forced into the spotlight. The intent of the executive to implement rule by law, as opposed to rule of law, has resulted in the very liberal use of draconian laws, besides brutal actions to check public dissent, public criticism, and the Opposition.

Thus, before we can go on to saying how SUHAKAM can promote and protect human rights, SUHAKAM must stand up, be seen by the people, especially by the victims of human rights violations. We do not expect SUHAKAM to stand up for NGOs. We definitely do not want to see SUHAKAM stand up for the government. We want SUHAKAM to stand for human rights with the people. We will expect no less of SUHAKAM than to act without fear or favour, and with vigour to defend our human rights.

Thank you.

Gender and NGO Perspective

*Irene Fernandez
Tenaganita*

First of all, let me congratulate Tan Sri Musa Hitam and his 12 Commissioners for their appointment. We look forward to their important mission that will determine the future human rights situation in Malaysia. I want to congratulate the people's movement, the indigenous people, the urban settlers, the *reformasi* movement and the defenders of human rights who have brought about this need for a Human Rights Commission in the country. It is them, as well as all the people internationally, who made it possible for the involvement of the Human Rights Commission in Malaysia. That is a crucial factor for us to recognise because for us, the definition of human rights comes from the struggles of the people. It *cannot* be the definition of Dr Mahathir Mohamad.

If we look back, Dr Mahathir tends to look at human rights from the position of values. The Asian values debate has been going on for a very long time, and it is Dr Mahathir who brought it to the international level. Asian values become something subjective and relative. It is something completely different from human rights because human rights are something that we inherit when we are born, therefore culture cannot define it. We have these rights because we are human beings, and these have to be sustained and developed.



It is also Dr Mahathir who brought this great dichotomy of civil and political rights, as against economic, social and cultural rights. He has always said that fundamental liberties and civil liberties are a Western concept, and that the right to economic aid must come first. However, in the formation of the Human Rights Commission, we have a contradiction. The Human Rights Commission Act depends on the definitions of human rights as stated in the Federal Constitution, which refer only to civil liberties and ignore economic, social and cultural rights.

It is important for us to look at the universality and indivisibility of human rights. This concept must always be sustained because as human beings, we are holistic. You cannot separate a human being. The holistic approach is very fundamental and this is where the conflict comes with the UDHR, which encompasses economic, social and cultural rights and also includes civil and political rights, as was ascertained at the Vienna conference. So the challenge to the Commission is that it cannot confine itself to only the Federal Constitution.

This is very fundamental because our final reference must go beyond fundamental liberties. In terms of the area of indivisibility, it is very crucial because as we look in the areas of labour rights and women's rights, these factors come back again and again.

Moving on from there, if you look also at part nine of the Federal Constitution, that is where the whole concept of separation and security is used as a way to justify all that Elizabeth Wong has stated. About the concept of security, whose security does this mean? Security of the elite? Security of the ruling party? Or is it the security of the people? Aung San Suu Kyi of Burma said in a recent statement that you know when a dictator is in power, because he always talks about the security of the nation. It also reflects the insecurity of those in power. That is what is happening today in Malaysia, where oppressive laws are being used over and over again. If you look at the number of cases that we have in court on Sedition, on the OSA, on the Printing Presses and Publications Act, particularly in the past two years, it is quite clear that some individuals are so insecure that the security of the people in the grassroots has been threatened. That concept has really been brought into the Federal Constitution and has taken our rights away. So the Federal Constitution itself is very problematic. That will be the first challenge to the HRC: it has to move away from that definition. I also hope that the HRC will be independent enough to say that the point of reference for human rights comes from the indivisibility and universality of rights. And as a member of the United Nations, we should make the UDHR and the Covenants as the point of reference.

As Elizabeth Wong has very aptly put it, if we look at Section 12 of the HRC Act, it says that once a case goes to court, then the Commission cannot further investigate that particular case. If you look at the pattern and the strategy of Dr Mahathir, it is to push everything into court. This is exactly what Tan Sri Musa said. He said that if I were to present my case to the Human Rights Commission (HRC), at this time he was the Chair in the HRC in Geneva, he would say, "Let the due process work". I do not think it will work in a country where we do not

have the independence of the judiciary. We do not. It has been made very clear. If there had been independence of the judiciary, then the kind of judgments that we have had would have been very different.

If we want to have any hope or faith in the Commission, it must show that it is independent by saying, "We will investigate". So if we look at the Human Rights Commission of Indonesia, they did still investigate, even though my case was in court at the time, and that will be the challenge for us here today. One must be clear what concepts of justice are coming from the fundamental principles and rights, and what are coming from the process of the courts.

The courts in our country are now less and less becoming in the process of claiming justice. A simple example is that of my trial. There were deaths in the detention camps and we made an application accordingly under Section 51 to say that we wanted the post-mortem reports. The decision given was that it was the prosecution's case and so therefore it was up to the prosecution to produce whatever evidence it wanted. Actually, as a judge, one must ask for all the evidence available before making an independent judgment and not to simply say that it is the prosecution's case. Otherwise how do you evaluate the case? The fundamental issue was custodial deaths and I cannot produce these post-mortem reports if the court does not demand for them. If I do not have access to the post-mortem reports, how can I expect justice in that court? In my own trial, I could see what was relevant three years ago when my court trial started and what is relevant today, after the Anwar Ibrahim judgment. It has become very clear and so we cannot rely on the court judicial system.

Secondly if we look at the judicial system, we cannot even criticise the judgment of the courts. When did this happen? It was in the post-1998 period and after the dismissal of the judges. So now do judges become lords, that we cannot even criticise them? These are some of the fundamental rights we need to claim. How do we do that if we do not have the independence of the Human Rights Commission?

Another problem is the definition of discrimination. Discrimination is described as based on race, religion, etc, but there is no mention of sex. Gender-based discrimination is not inscribed in the Constitution. And that itself is a limitation and it is a weakness. Many have argued that this was an issue previously raised, but the reply is that it is already assumed that there is equality. So the concept of equality is a major concern in the women's rights struggle. How it will be defended

by the Human Rights Commission is very crucial.

One example is the Domestic Violence Act, for which many women's groups have been struggling. However, for the Domestic Violence Act, the concept and the definition of domestic violence cannot be independently defined, thus it cannot be an independent Act. It has to also be a daughter's Act through the Penal Code, because within the Act there are areas covering personal law and the two jurisdictions of syariah and civil law. So, there will be conflicts if it becomes an independent Act. Because it is defined under the Penal Code, it has created major setbacks and will be very weak when dealing with the issue of domestic violence.

It is important for us to evaluate whether we are talking about faith in God, or faith in men. Are we talking about male dominance or are we talking about faith in God? This is where the concept of equality comes in and how religion and culture can be used. In India, women were burnt as a result of the dowry system and it was seen as part of the culture of the patriarchal family system, where the man has the right to do anything. The same thing is happening here, for the women's movement cannot make any changes to the occurrence of sexual violence in marriage (marital rape).

Sexual violence in marriage is so widespread, going by the number of cases we are handling at Tenaganita. There is no recourse for justice because sexual violence is not recognised as a crime. Does marriage give licence to violence because women are deemed to be the property of men? How will this concept of women's rights be understood and defined? It is very important how the Commission handles these issues and concerns in Malaysia of women's rights. If we believe in the concept of equality and justice, the reservations have to go. These types of discriminating practices may occur through the issue of culture and through the use of religion. The amendment of the Constitution has also brought about an uncertainty, for example, when a man converts to Islam. What happens to the children? Who gets custody? Where will be the concept of equality? These issues have not yet been answered.

It is important for us to go through this type of debate. If we are going to talk about Human Rights Education, then we need to determine what kind of HRE concept we are going to bring to the community if we are not able to deal with these series of conflicts that surround the issue of equality.

Migrant Workers

Now let us look at the position of people who are not citizens of this country in the context of investigation and redress of human rights violations. What rights do migrant workers have? There have been a lot of cases of migrant workers being cheated when they are brought into this country for work. They are often locked up and do not have visas so they are not properly documented. We took some of these migrant workers to the Immigration Department because these people wanted to tell their stories of how they were trafficked into Malaysia. However, the department subsequently arrested them because their visas had expired and they did not have proper documentation.

The position of immigration is what we call the “ADD” position: arrest, detain and deport. If that is done, then what happens to the traffickers? Aren't you supporting the traffickers? It is the same when women are trafficked, arrested, detained and deported. How do we deal with this crime? If they are not arrested, then they have to pay a fine of RM30 for each day that they were in the country with a maximum of RM3, 000 if they stay for a month. So where illegally, do they get RM3, 000 to pay to go home? This is the conflict that arises. If we do not deal with the traffickers, then we are just supporting this crime. How will the HRC act? It is an important question. Do migrant workers have a place in this?

The HRC has the power to visit the detention centres. The question is whether the HRC will inform the detention centres of their visit before they arrive, or if the Commissioners will conduct a surprise check? If they give prior warning, then it will be the same as when the court visited the Semenyih Camp, where I could see my face reflected from the floor of the toilet. Therefore, in its inquiries and investigations, the issue is how public the HRC will go. The HRC is not owned by the Foreign Ministry, or by the government of the day. So it has to be accountable to the people. It is our hope that SUHAKAM will become the conscience of the nation in bringing about changes to promote and protect human rights. That can only happen if there is a continuous relationship between SUHAKAM and the people and NGOs, to try to regularly get feedback. It cannot be a one-way traffic. It has to come from the HRC responding to this dual process where we will see a change coming.

Thank you.

Global Perspective

Dato' Param Cumaraswamy

UN Special Rapporteur on the Independence of Judges and Lawyers

Since the Universal Declaration of Human Rights in 1948 the United Nations' General Assembly and its various agencies have been actively involved in the formulation of norms and standard setting for the promotion and protection of human rights. There are today no less than 30 international instruments on human rights which member states have been urged to ratify or accede to. In addition, international NGOs have also been involved in standard setting to supplement the inter-governmental standards of the United Nations.

By the various General Assembly and Commission on Human Rights Resolutions, member states have been encouraged to set up national and regional institutions for the promotion and protection of human rights. Such institutions can take the form of Commissions, Ombudsman, Public Defenders, etc, all with the same objective – to promote and protect human rights. Some of these institutions are constitutional creatures, while others are created by simple legislation.

For uniformity and effectiveness of these national institutions, in October 1991 at the conclusion of a workshop on *National Institutions for the Promotion and Protection of*

Human Rights in Paris, a set of Principles now known as the "Paris Principles" were adopted as the minimum standard needed for the effectiveness of such institutions. The Paris Principles were endorsed by the Commission on Human Rights Resolution 1992/54 and subsequently by the General Assembly by its Resolution 48/134 in 1993. The Paris Principles are today applied as the minimum criteria to measure the effectiveness of national institutions for the promotion and protection of human rights. These principles provide for the competence and responsibilities of the institution; the composition and



guarantee of independence and pluralism; methods of operation, etc.

The Vienna Declaration and Programme of Action (1993) reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular, in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and education in human rights. The World Conference encouraged the establishment and strengthening of national institutions having regard to the Paris Principles and recognising that it is the right of each state to choose the framework which is best suited to its particular needs at the national level in order to promote human rights in accordance with international human rights standards.

The office of the UN High Commissioner for Human Rights in Geneva has placed a high priority on encouraging member states that have not already set up such national institutions to do so, and for those that have already set up such a body to assist in strengthening them. While the criteria applied in her work in this area is guided by the Paris Principles, the High Commissioner has also agreed to programmes designed to strengthen and support such institutions which do not fully comply with these principles but are willing to strengthen the independence and enhance their effectiveness. The High Commissioner's assistance varies from advice in legislation for establishment of institutions to technical assistance in strengthening and capacity-building. In this task, she is assisted by a Special Adviser and a separate unit in her office.

While the setting up of a national institution for the promotion and protection of human rights in a country should be seen as a step in the right direction, it should not be seen as reflective of immediate improvement in the human rights situation. That would be a false notion. Having set up such an institution, any assertion by government leaders that human rights would be interpreted its own way would be seen as undermining the very independence expected of the institution.

At the second *International Workshop on National Institutions for the Promotion and Protection of Human Rights* in Tunis in 1993, a decision was taken to establish an International Coordinating Committee of National Institutions. This decision was endorsed by the Commission on Human Rights Resolution 1994/

54. This Committee works closely with the office of the High Commissioner as its secretariat is located in that office. At the moment it has a membership of 35 members. It is currently chaired by the Indian Human Rights Commission Chairman Justice Verma, a former Chief Justice of India. It has its own credentials committee which was set up four years ago. Among the functions of this credentials committee is to evaluate institutional applications to determine whether such institutions meet the minimum criteria, i.e. the Paris Principles. Thirty-five institutions have so far been accredited, some with reservations attached in that they still have to work on certain issues in order to fully comply with the Paris Principles. Among these 35 members, 11 are from the Africa region, 10 are from the America region, seven are from the Asia-Pacific region and seven are from the European region. A function of the main Committee is to assist governments and national institutions, when requested, to follow up on relevant resolutions and recommendations concerning the strengthening of national institutions. The seven members from the Asia-Pacific region are the institutions of Australia, Fiji, India, Indonesia, New Zealand, Philippines and Sri Lanka.

Strengthening of regional cooperation among national institutions is encouraged. In this regard, periodic meetings of the Asia-Pacific Forum, Conference of African National Institutions, the European National Institutions, and the National Institutions in the Americas have been found to be invaluable. The Asia-Pacific Forum meets annually in one of the Asian cities. The next meeting will be in August of this year and will be held in Rotorua, New Zealand.

Just this month the Asia Pacific Forum held a regional workshop in Suva, Fiji, on *The Role of National Human Rights Institutions in Advancing the International Human Rights of Women*. In the concluding Statement and Recommendations, participants expressed, inter alia, “deep regret and concerns of the reports of the increasing incidence of violence against women and children within the region”.

International workshops are periodically held. The Fifth International Workshop was held in Rabat, Morocco, in April this year. Its Declaration noted, inter alia, the significant growth since the last workshop in 1997 in the number of national institutions in all regions of the world.

The Vienna Declaration also highlighted how regional arrangements play a fundamental role in promoting and protecting human rights. The Declaration encourages the establishment of regional and sub-regional arrangements for the promotion and protection of human rights.

We have all heard of the Council of Europe, the Organisation of American States, the Organisation of African Unity, and the Organisation for Security and Co-operation in Europe (OSCE). The Joint Communique issued by the 26th ASEAN Ministers' Meeting in Singapore in July 1993 supported the Vienna Declaration and agreed that ASEAN should also consider the establishment of an appropriate regional mechanism on human rights. Thus, a group of non-governmental organisations in ASEAN, together with leaders of national human rights institutions in the Philippines and Indonesia, formed the Regional Working Group to work towards an ASEAN Human Rights Mechanism for the sub-region. The initiative and work of this group is recognised by ASEAN governments and progress is being made.

From this brief outline it will be noted that considerable strides are being made in the international scene to encourage governments to establish and strengthen national human rights institutions. However, the effectiveness and success of any such institution ultimately will rest with the independence, courage and determination of those appointed to the institution and the enthusiasm of civil society, voiced through committed NGOs, and a free and independent press. A free and responsible press enabled with the tools for investigative journalism could be the best ally of an effective national human rights institution, or for that matter, any enforcement agency. Just to give an example, in 1997 a thoroughly investigated report on corruption in the Philippines' judiciary was widely reported in three national newspapers, in three parts. A young woman journalist from the Center for Investigative Journalism in the Philippines conducted the investigation. This report shook the nation. Upon the retirement of the then Chief Justice, a new Chief Justice was appointed in 1998. Chief Justice Davide Hilariq moved swiftly and firmly and produced a plan of action which he called "Davide Watch" to cleanse the justice system. Within 20 months, more than 30 judges were dismissed for violations of the Anti-Graft and Corrupt Practice Act. Several more cases are under investigation.

In February this year, a blueprint containing a five-year plan to increase

integrity, accountability, independence, knowledge-based adjudication, fairness, efficiency and accessibility to the courts was launched by the Supreme Court of the Philippines. It was a free press that triggered these changes.

It may be of interest to this Forum to note a very recent development in the international promotion and protection of human rights. The General Assembly on Dec 9, 1998 by Resolution 53/144 adopted the Declaration on the Right and Responsibility of Individual Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights Defenders (*See Appendix III*). Work on this Declaration began more than 13 years ago in March 1984. The adoption in 1998 was seen as a milestone.

One of the most significant provisions of this Declaration is found in Article 12. While further defining existing norms concerning the right to participate in peaceful activities against violations of human rights and fundamental freedoms, it obligates the states to:

“take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”.

This provision is supplemented by article 12 (3) which entitles everyone, individually and in association with others, to effective protection under domestic law in cases where he or she, through peaceful means, reacts against or opposes acts or omissions attributable to the state that result in human rights violations or, equally, violent acts carried out by groups or individuals that affect enjoyment of human rights.

As a sequel to this important Declaration, the Commission on Human Rights last month adopted a resolution requesting the UN Secretary-General to appoint a Special Representative to monitor the implementation of the Declaration. The mandate of the Special Representative would be, inter alia, to report annually to the General Assembly and the Commission on Human Rights on the situation of human rights defenders in all parts of the world. This is another milestone and gives some protection to human rights defenders, either individuals or non-governmental organisations, all over the world

against harassment, intimidation, persecutions, etc. This development was seen as the most significant one in the 56th Session of the Human Rights Commission this year. While human rights defenders are expected to work closely with national institutions for the promotion and protection of human rights in their respective countries, equally these national institutions are expected to give cover and protect these valiant defenders when they are attacked by the government or non-state actors.

In conclusion, the second half of the last century should be seen as the period of norms formulation and standard setting for the promotion and protection of human rights. Today there are sufficient norms and standards. Let the first half of this century be seen as the period dedicated to vigorous implementation of these norms and standards for a better world. This will be the challenge for the national and regional human rights institutions. These institutions should strive to create a human rights friendly environment in the countries where the governments and their organs are respectful of individual rights and the people mindful of their societal responsibilities.

Thank you.

***How Can the HRC Help Me ?
The Role of Working Groups***

Education Working Group of SUHAKAM: Its Role in Human Rights Education

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The functions of the Human Rights Commission (HRC) of Malaysia are stated in Article 4 of the Human Rights Act passed in 1999. The function pertaining to education tops this list and it states in 4(1):

- (a) to promote awareness of and provide education in relation to human rights.

Section 4(2), which provides the HRC the power to discharge these functions, states that:

- (a) to promote awareness of human rights and to undertake research by conducting programmes, seminars and workshops and to disseminate and distribute the results of such research.



The Education Working Committee, taking into account the function contained in 4(1), as well as the Universal Declaration of Human Rights, has formulated four objectives, which have been accepted by the HRC of Malaysia. These are:

- (i) To promote respect for and protection of human rights through educational activities for all members of society;
- (ii) To assess needs and formulate strategies for the furtherance of human rights education;
- (iii) To co-ordinate the development of effective human rights education materials; and
- (iv) To foster learning environments to encourage participation and the development of a caring personality that upholds the dignity of human

rights with values such as friendship, understanding, tolerance and equality.

The Education Working Group agrees that the promotion and provision of education in human rights must be viewed from the perspective of knowledge, the development of values, beliefs and attitudes; and action.

- Knowledge: all strata of society must be provided with information on human rights and on existing mechanisms to protect those rights.
- Development of values, beliefs and attitudes: knowledge by itself is insufficient. For knowledge to be translated into action, values, beliefs and attitudes towards upholding the dignity of human rights must be instilled in individuals.
- Action: when knowledge is internalised in individuals as beliefs, values and attitudes, then they are more likely to act to uphold their rights and those of others. For instance, if a girl knows that she has the right over her body, she will act to defend it against violation, even if the perpetrator is her own father, for example. However, we also recognise that programmes have to be also provided to encourage individuals to respect human rights and prevent abuses of those rights.

The HRC of Malaysia sees its functions in terms of long-term, short-term and recurring goals. Education is definitely a long-term goal, although some of the programmes of the Education Working Group are short-term in their intent. For instance, to promote awareness of human rights, the Working Group plans to organise talks and seminars for the public and for specific vulnerable groups, such as the Orang Asli and the Disabled.

The objective of the Education Working Group to develop a caring personality is probably the most important, because when individuals possess such a personality, the society of which he or she is a part will uphold the human rights of others. I believe that teaching individuals to uphold their rights and those of others will make the society more effective in the long run in promoting human rights, rather than aggressive campaigning. For instance, if children are taught to know their own rights and those of others, the incidence of bullying and assault in schools will be greatly reduced. When these children become adults, they will be less likely to abuse the rights of others than those

who do not possess this knowledge and belief in upholding human dignity.

Many human rights are not found in the Universal Declaration of Human Rights (UDHR), such as the right over one's body or the rights of the disabled. Often we forget that we are talking about human rights and not just humane rights. I believe that the basic rights of human beings are much more critical to the well-being of the individual than are the political ones. But unfortunately, political rights hog the limelight and garner a more high media profile. This consequently gives many citizens an incorrect perception of the function of the HRC. The narrow perception of human rights issues has resulted in many citizens having the notion that human rights issues are of no relevance to them and are only pursued by socially-conscious NGOs or social activists. They are not only uninvolved but many are also alienated by the constant contention between NGOs and the government.

While acknowledging that cruelty, violence and other forms of offensive violations of human rights should not be ignored, I nevertheless believe that the HRC should focus on individuals, particularly on educating them about their rights and about respecting the rights of others. This advocacy of focusing on individuals is congruent with the view of Eleanor Roosevelt who was responsible for the UDHR. As cited in *Human Rights, USA Pamphlet* which is published by the Human Rights USA Resource Centre in Minnesota, Eleanor Roosevelt says:

In small places, close to homes, so close that they cannot be seen on any maps of the world. Yet, they are the world of the individual person, the neighbourhood he lives in, the school or college he attends, the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal opportunities, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the large world.

Let me briefly discuss the places where individuals seek dignity, justice and equal opportunity and acquire values, beliefs and attitudes towards human dignity.

The Home

The home, the smallest unit in society, is where basic values, beliefs and attitudes are imbued in children. Parents are children's first and foremost socialising agent; that is, children learn from parents what is right and wrong and what is approved and disapproved by society. Children acquire values and beliefs, and adopt certain behaviour and practices either through direct teaching or through observation and modeling. For instance, parents who respect each other by listening carefully to the viewpoint of the other parent convey a different message of human rights to children from those who rebuke the other partner with reprimands such as "don't be stupid". Parents who respect the law by not throwing concrete rubbish on the street but who get rid of the rubbish by dumping it into the neighbour's backyard are teaching their children to obey the law only if the compliance benefits them, but to disregard those that do not. Even more confusing to young children is when their parents display blatant contradictions. For example, while campaigning aggressively for the right of illegal immigrants to stay in the host country, some parents may display no qualms in evicting their own parents out of their home because there is no space for them. Or while fighting for equity and for everyone to have the right to an adequate standard of living, parents show great reluctance to contribute towards the maintenance of their own aged parents.

Children learn more from observing their parents' behaviour than from their preaching. Unfortunately, most parents are unaware of the impact that their behaviour - verbal or physical - has on their children. They tend to inform their children, directly or indirectly, "to do as I do". Parents have therefore to be aware of the impact their unconscious or automatic action has on their children's behaviour. If parents want their children to have compassion and to respect others, then they have to demonstrate these attributes in their relationships at home.

Educational Institutions

We consider schools and institutions of higher learning as important agents of socialisation, including the development of values, beliefs and attitudes toward upholding the rights of oneself and of others. Schools are empowered by society and parents to educate children by equipping them with knowledge and skills, including socially approved beliefs, values and attitudes, and by providing

them with opportunities to acquire social competence (in particular the ability to work cooperatively with others). For young children, the last-mentioned function of the school is of uttermost importance because within the home they interact with people who are already in a hierarchical order, but in school they are able to interact with peers of similar age. In addition, in school they interact with people who are not bonded to them by relational ties. Hence, in school they can learn to respect the rights of those who are not emotionally bonded to them.

The cooperation of the Ministry of Education is therefore vital if the conscience of individuals is to be brought up to a higher level. Programmes for teaching students human rights have to be carefully designed and tested so that it is not just head knowledge that children acquire, but also knowledge that will be translated into action. In other words, it is not just the contents that the designer of the curriculum has to contend with but also the teaching strategies. Knowledge of human rights should be translated into behaviour such as respect for the rights of their peers, ability to work cooperatively with others, empathy for the less-abled and the unfortunate, intolerance towards injustice, and abhorrence towards violence. When these characteristics are developed in students, the incidence of bullying, assault, vandalism and other acts of violence will be curtailed in schools and in society.

The Neighbourhood

The neighbourhood is made up of people who are known to us. If we cannot demonstrate kindness, thoughtfulness, generosity and sympathy to our neighbours, then it will be difficult to act kindly, generously and sensitively to strangers. Justice must be meaningful in our daily transactions. Yet extensive noise, inconsiderate disposal of rubbish, and thoughtless parking of vehicles along the roads are only some of the examples of intrusions into the rights of our neighbours. In contrast, there are neighbours who are adamant in maintaining their rights under all circumstances. They refuse to waive and accommodate a certain degree of violation of their rights, such as to allow a higher volume of noise on account of a celebration party of their neighbour.

Another well-known example of injustice in the neighbourhood is the refusal of certain families to be rostered for duties for neighbourhood nightwatch. People need to be involved and participate in carrying out human rights. If

they are unable to practice the concept of justice and equality on a small scale, it is not only improbable but also meaningless, even if they participate.

Education on human rights has therefore to begin at home and in the neighbourhood. If a person's belief in human rights is not manifested in his/her daily activities, participation at any other level is hypocritical. Learning how to be a good neighbour is probably one of the best places for adults to practice human rights.

The Working Place

Society has to protect its weaker members. Workers are weaker than their employers in terms of power. There must therefore be laws and regulations to protect workers. However, workers must also know their rights so that they know what their entitlements are. This knowledge will reduce the probability of their employers taking advantage of them. Knowing that workers can be vulnerable to abuse, the UDHR sets down the rights of workers in Articles 22, 23 and 24:

- *Article 22* states that everyone has the rights to social security and to economic, social and cultural rights;
- *Article 23* states that everyone has the right to work in reasonable conditions for a fair wage and to belong to a trade union; and
- *Article 24* states that everyone has the right to rest and leisure and holiday from work.

While the vast majority of workers are knowledgeable of the rights enunciated in Articles 22, 23 and 24, some of them are unable to defend these rights when their employers violate them. The infringement of these rights is not due to ignorance of the employers but rather is due to their attitudes towards the workers. This violation clearly demonstrates the importance of providing human rights education to the citizenry at a young age so that correct values, beliefs and attitudes can be developed.

It is not uncommon for the harshness of employers to be induced by fear, ignorance and past experiences. Fear of workers taking advantage of them or of indiscipline has propelled many employers to be austere. Some of these

fears may not be unfounded if they are brought about by past experiences. Harmonious employer-employee relationships that are developed through mutual respect for each other's rights are a better guarantee of employers upholding the employee's rights than are rules and regulations.

Therefore, besides making workers cognisant of their rights, workers should also be informed of their employer's rights. Workers who act responsibly at work by displaying loyalty towards their employers, such as making proper use of the company's time and resources, are likely to achieve productivity and generate goodwill. Except for a few hard, mean or even cruel individuals, the majority of employers are likely to reward good workers and treat them well. Hence, human rights education for workers should not only focus on workers' rights but also on their responsibilities and the rights of their employers.

Human rights education should also be disseminated to employers. Besides knowing the rules and regulations of employment, employers should also understand human relationships and acquire social competence skills, in particular the skills to relate to their workers. In short, knowing rules and regulations alone is not a sufficient criterion of humane treatment of workers because those who are unsympathetic will look for loopholes or attempt to meet only the minimum requirements.

Mutual respect and loyalty towards each other will create an environment of goodwill which will enhance respect for human rights in the workplace. Therefore, human rights education in the workplace that emphasises rules and regulations will limit the scope of the benefits that both employees and employers can attain. Without reciprocal goodwill, human rights can easily be dishonoured.

The Community at Large

For human rights to be honoured in a society, everyone must be involved. Even very young children should be included. If toddlers and preschool children refrain from hurting other children because they know that such an act is wrong, then violence is reduced. Furthermore, when these children grow into adults, they are less likely to engage in violent or barbarous acts.

If everyone, young or old, plays his/her part in respecting the rights of others, no matter how small the act may be, then the society will have a greater likelihood of being a just society. Even a small act such as taking one's turn in a queue can go a long way towards promoting respect for human rights.

If we take consumers' rights seriously, then there will be less abuse by the manufacturers and retailers. Owing to the difficulty in lodging complaints, many of us simply give up the pursuit. However, if we are committed to justice, we will pursue the matter despite the obstacles.

Our right to live in a safe and healthy environment can be protected if every one of us does our part by making sure that garbage is properly disposed. Although it is the government's job to ensure that the garbage is collected on a regular basis and that the workers employed for this task are not shirking their responsibilities, everyone must cooperate by obeying rules and regulations and displaying civic-mindedness. The carting away of household rubbish by the city council will not remove the stench if people continue to dump leftovers into drains, leave garbage bins uncovered and turn a blind eye to those who litter the streets.

Conclusion

The government is empowered to pass laws to protect human rights. However, legislation and enforcement of laws are not synonymous. Laws can be passed to protect human rights but to what extent human rights are upheld depends on the people. Each one of us can do his/her bit by making sure that in our daily lives we uphold our rights while respecting those of others. If in our daily activities, i.e. in our decisions and actions, we do not violate the rights of others, our society has a good chance of protecting our own rights and those of others. The importance of individuals doing their parts was acknowledged by Eleanor Roosevelt when she called for the dignity of human beings being upheld by individuals in the home, in the neighbourhood, in educational institutions, at the workplace and in the community at large. I subscribe to her viewpoint, that is, the need to begin with the individual.

For programmes on human rights for students to succeed, adults must take the lead and show the way. The programmes will have little credibility if adults and the government flout or violate human rights. It is easy to promote human

rights in seminars and conventions but it is much more difficult to internalise this belief in human rights for all and to manifest it in our day to day activities.

Promoting awareness and supplying education on human rights to the grassroots and the vulnerable groups can only be effective if we are not only cognisant of their needs but also are able to work with all parties whose participation is critical. The Education Working Group of SUHAKAM therefore needs the collaboration and cooperation of all agencies - both governmental and non-governmental - as well as that of individuals.

The Role of the Working Group on Complaints Regarding Infringements of Human Rights

Prof Mehrun Siraj
SUHAKAM

What the Commission *Can* Do:

The HRC can inquire into complaints of infringement of human rights. If the inquiry discloses that an infringement has taken place, the HRC can refer the matter to the relevant authority or person with the necessary recommendations.

[Human rights have been defined in the Human Rights Commission of Malaysia Act as “fundamental liberties as enshrined in Part II of the Federal Constitution” (section 200)]

The HRC can visit places of detention and make necessary recommendations.

What the Commission *Cannot* Do:

The HRC cannot inquire into any allegations that are the subject matter of proceedings pending in any court.

[The rationale for this rule is that there should be no interference with judicial process. As such, the cases of those arrested and charged in the “Black 14” incident cannot be investigated but any allegation of police brutality in relation to those arrests can be investigated as the rationale for the provision would not apply to that situation]



The HRC must cease investigation if the allegation becomes the subject matter of a court case.

The HRC cannot or should not investigate matters that come within the jurisdiction of another agency or amounts to duplication of the work of another body.

The HRC is not an enforcement agency.

The Complaint Procedure

[This procedure has not yet been discussed by the HRC. This is only a proposal. If it is approved by the HRC, it should be printed in the four main languages and distributed throughout the country as it is intended as a guide for the public]

A : SUBMISSION OF COMPLAINTS

1. *Who can submit complaints of human rights violations?*
 - (i) An aggrieved person (or victim)
 - (ii) A group of aggrieved persons (or victims)
 - (iii) A person acting on behalf of (i) or (ii) above

2. *How can the complaint be made?*
 - (i) In writing
 - (ii) In person at the office of the HRC

3. *In what language should the complaint be made?*

The complaint may be made in any language, but preferably in Bahasa Malaysia or English (to avoid the need for translation)

4. *What should the complaint set out?*
 - (i) *What rights are being or were infringed?*
 - (ii) *Whose rights are being or were infringed?*
 - (iii) *Who is infringing the rights?*
 - (iv) *How are the rights being infringed or how were the rights infringed?*

- (v) *When* did the infringement take place?
- (vi) *Where* did the infringement take place?

B : ADMISSIBILITY OF COMPLAINTS

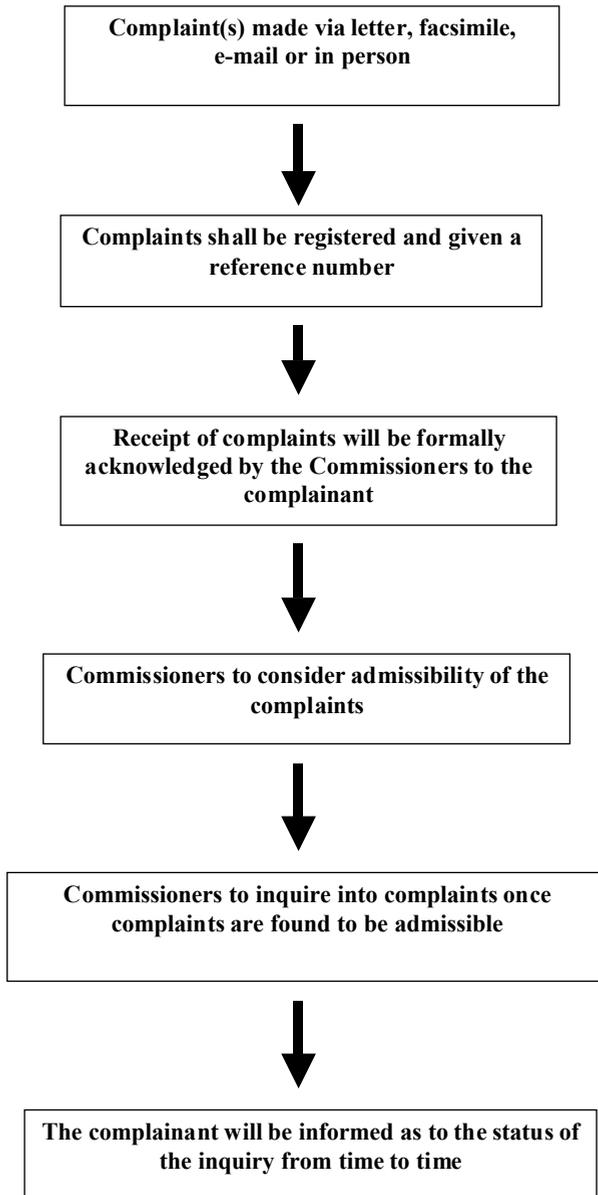
1. A complaint is admissible if on the face of it, it shows that there is or has been an infringement of human rights.
2. The Commissioners may request for further information in order to determine whether a complaint is admissible.
3. A complaint may not be admissible if it is found to be too trivial a matter or the complaint is beyond the jurisdiction or powers of the HRC.
4. The admissibility of the complaint must be established as soon as possible. The complainant must be notified of the admissibility or otherwise of the complaint.
5. If the complaint is not admissible, the HRC should advise alternative remedies, if available.

C : THE INQUIRY

1. If the complaint is admissible, an inquiry shall be conducted in the manner prescribed by the HRC. (For this purpose, regulations may be made under section 22 of the Act)
2. The HRC shall inform the complainant from time to time of the status of the inquiry.

When the inquiry is completed, the HRC shall inform the complainant of the outcome of the inquiry.

Flowchart Of The Complaint Procedure



Annexes

Appendix I
– Federal Constitution Part II,
Sections 5 to 13

Article 5

Life and Liberty of the Person

- (1) No person shall be deprived of his life or personal liberty save in accordance with law.
- (2) Where a complaint is made to a High Court or any judge thereof that a person is being unlawfully detained, the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.
- (3) Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.
- (4) Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority:

Provided that this Clause shall not apply to the arrest or detention of any person under the existing law relating to restricted residence, and all the provisions of this Clause shall be deemed to have been an integral part of this Article as from Merdeka Day.

- (5) Clauses (3) and (4) do not apply to an enemy alien.

Article 6

Prohibition of Slavery and Forced Labour

- (1) No person shall be held in slavery.
- (2) All forms of forced labour are prohibited, but Parliament may by law provide for compulsory service for national purposes.
- (3) Work incidental to the serving of a sentence of imprisonment imposed by a court of law shall not be taken to be forced labour within the meaning of this Article.
- (4) Where by any written law the whole or any part of the functions of any public authority is to be carried on by another public authority, for the purpose of enabling those functions to be performed the employees of the first mentioned public authority bound to serve the second mentioned public authority shall not be taken to be forced labour within the meaning of this Article, and no such employee shall be entitled to demand any right from either the first mentioned or the second mentioned public authority by reason of the transfer of his employment.

Article 7

Protection against Retrospective Criminal and Repeated Trials

- (1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.
- (2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted.

Article 8

Equality

- (1) All persons are equal before the law and entitled to the equal protection of the law.
- (2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
- (3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of the State.
- (4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.
- (5) This Article does not invalidate or prohibit -
 - (a) any provision regulating personal law;
 - (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;
 - (c) any provision for the protection, wellbeing or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;
 - (d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;
 - (e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;
 - (f) any provision restricting enlistment in the Malay Regiment to Malays.

Article 9

Prohibition of Banishment and Freedom of Movement

- (1) No citizen shall be banished or excluded from the Federation.
- (2) Subject to Clause (3) and to any law relating to the security of the Federation or any part thereof, public order, public health, or the punishment of offenders, every citizen has the right to move freely throughout the Federation and to reside in any part thereof.
- (3) So long as under this Constitution any other State is in a special position as compared with the States of Malaya, Parliament may by law impose restrictions, as between that State and other States, on the rights conferred by Clause (2) in respect of movement and residence.

Article 10

Freedom of Speech, Assembly and Association

- (1) Subject to Clauses (2), (3) and (4) -
 - (a) every citizen has the right to freedom of speech and expression;
 - (b) all citizens have the right to assemble peaceably and without arms;
 - (c) all citizens have the right to form associations.
- (2) Parliament may by law impose -
 - (a) on the rights conferred by paragraph (a) of Clause (1) such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;
 - (b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, or public order;
 - (c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of

the security of the Federation or any part thereof, public order or morality.

- (3) Restrictions on the right to form associations conferred by paragraph (c) of Clause (1) may also be imposed by any law relating to labour or education.
- (4) In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2) (a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.

Article 11

Freedom of Religion

- (1) Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.
- (2) No person shall be compelled to pay any tax, the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.
- (3) Every religious group has the right -
 - (a) to manage its own religious affairs;
 - (b) to establish and maintain institutions for religious or charitable purposes; and
 - (c) to acquire and own property and hold and administer it in accordance with law.
- (4) State law and in respect of the Federal Territories of Kuala Lumpur and Labuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.
- (5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.

Article 12

Right to Education

- (1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth -
 - (a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or
 - (b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).
- (2) Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose.
- (3) No person shall be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own.
- (4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

Article 13

Right to Property

- (1) No person shall be deprived of property save in accordance with law.
- (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

Appendix II
***Universal Declaration
of Human Rights***

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of

achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.

- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same

social protection.

Article 26

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

Article 29

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only

to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix III
*Declaration on
Human Rights Defenders*

Human Rights Instruments:

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)

Source: Office of the United Nations High Commissioner for Human Rights

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Taking note of Commission on Human Rights Resolution 1998/7 of April 3, 1998 as per the *Official Records of the Economic and Social Council, 1998, Supplement No. 3 (E/1998/23)*, chap. II, section A. in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms.

Taking note also of Economic and Social Council Resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption, *Conscious* of the importance of the adoption of the draft declaration in the context of the 50th anniversary of the Universal Declaration of Human Rights, Resolution 217 A (III).

1. *Adopts* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, annexed to the present resolution;
2. *Invites* governments, agencies and organisations of the United Nations system and intergovernmental and non-governmental organisations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of *Human Rights: A Compilation of International Instruments*.

85th Plenary Meeting
Dec 9, 1998

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights Resolution 2200 A (XXI), annexure as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognise the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognising the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the state,

Recognising the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each state has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
2. Each state shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the state in the field of human rights and

fundamental freedoms is the judicial framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realisation of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organisations, associations or groups;
- (c) To communicate with non-governmental or inter-governmental organisations.

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental

freedoms;

- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorised representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and

competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:
 - (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the state, which should render their decision on the complaint without undue delay;
 - (b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
 - (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The state shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to states that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit,

receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with Article 3 of the present Declaration.

Article 14

1. The state has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil political, economic, social and cultural rights.
2. Such measures shall include, *inter alia*:
 - (a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;
 - (b) Full and equal access to international documents in the field of human rights, including the periodic reports by the state to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.
3. The state shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territories under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions.

Article 15

The state has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programmes.

Article 16

Individuals, non-governmental organisations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organisations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realised.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any state, the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting states to support and promote activities of individuals, groups of individuals, institutions or non-governmental organisations contrary to the provisions of the Charter of the United Nations.

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