

proceedings of the  
national consultation on  
**SUHAKAM:**  
After 4 Years

**Changing the  
Human Rights  
Paradigm  
in Malaysia**



Organised by



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

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# **Proceedings of the National Consultation on SUHAKAM: After 4 Years**

**“Changing the Human  
Rights Paradigm  
in Malaysia”**

**27th September 2004**

**Subang Jaya**

*Edited by: S. Nagarajan*



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

# Welcome Address

*Marimuthu Nadason*  
*President, ERA Consumer Malaysia*

We are here again to take stock of what our National Human Rights Commission (Suhakam) has achieved in the past year and how effective it has been in furthering the cause of human rights in Malaysia. We will be evaluating the commission's performance based on its Annual Report 2003 that was submitted to Parliament recently and cases of human rights violation in the country in the past year.



ERA Consumer Malaysia has been organising this annual national consultation consistently for the last six years beginning from 1999 when the Government announced its proposal to set up Suhakam. The second consultation was in 2000 to assess the Human Rights Commission of Malaysia Act 1999, followed by evaluations of Suhakam's performance annually for four years.

After four years, I suppose many would ask whether the commission has made a difference in promoting and defending human rights in Malaysia. Many participants may wonder if Suhakam is truly an independent body. Another question that may be running through our minds is whether it was established merely to appease various groups that queried the state of human rights in the country.

Suhakam's Annual Report 2003 can be used to gauge the human rights situation. The problems highlighted in the report include trafficking of women and children, freedom of the media, rights of people with disabilities, police abuses and others. The panelists will be elaborating on these issues later.

The year 2003 and the first half of 2004 have been somewhat turbulent for human rights in Malaysia. We have seen extreme cases such as the abuse of Nirmala Bonat. Pictures of the abuse the young Indonesian maid went through are still fresh in our minds. The Shamala case, where two young children were put on trial all in the name of what was fair in religion, has been highlighted in the media recently. It

is very disheartening to note that Suhakam did not make a stand on this issue when the rights of an individual were obviously being violated.

The commission has the ability to engage the government in creating a better platform for the advancement of human rights. Suhakam has an annual budget that most non-governmental organisations can only dream of getting. It has the resources, both monetary and manpower, to make a real difference. Although organising conferences and seminars to raise awareness is important, one would think that it is even more vital for Suhakam to champion the rights of the people who go to the commission with hopes of assistance.

It is also disturbing to note that only limited copies of the annual report are printed and distributed. As many of you may be aware, since the 2001 consultation, ERA Consumer prints an additional 500 copies of every year's report with permission from Suhakam to be distributed to the public. Participants will see copies of the report in the seminar kit.

ERA Consumer wonders why Suhakam has never published its annual reports in Bahasa Malaysia and distributed to the public if its mission is to reach out and promote a better understanding of human rights among the people.

That is why ERA Consumer continuously conducts programmes and activities to educate different groups of people, be it students, teachers, politicians, NGOs or sectoral community groups such as women's and consumers' organisations. There is definitely a need to reach out to different levels of society, far more than what Suhakam has achieved so far.

It is indeed disappointing that only two Suhakam commissioners are attending today's consultation even though ERA Consumer has sent personal invitations to all of them. By holding the consultation in the Klang Valley, one would have thought that more commissioners would come to participate. However, even a letter sent to Suhakam chairman a few days before this consultation to express our disappointment on the level of Suhakam commissioners' commitment had no effect.

Suhakam commissioners are paid exorbitantly well and their fringe benefits would shame even the private sector. But what is their level of commitment? Most of them function as part-timers and tend to treat the post of a commissioner as a status symbol. They do not appear to take their job seriously. If they indeed took it seriously,

wouldn't they have attended this consultation where Malaysians from all walks of life are participating? People have come from as far as Penang to take part in today's consultation.

Suhakam has faithfully submitted its annual reports to Parliament since the commission's inception four years ago. The fact that Parliament has not debated nor referred to the annual reports indicates the Government is not taking Suhakam seriously. The view that Suhakam was set up merely to appease certain quarters seems to be holding water. If ERA Consumer does not conduct this consultation on Suhakam's annual report every year, is there a mechanism to audit the commission's performance? Do parliamentarians refer to the annual reports in their debates? Except for attempts by opposition MPs to debate the report, it has hardly caused a ripple in Parliament.

Much needs to be done in terms of human rights education and advocacy. Human rights awareness is still in its infancy in Malaysia. Rural folk are not aware of their rights and many just accept their situation. It is no better in the urban areas. Many urban Malaysians are either too complacent with life or view human rights as a western concept that cannot be applied to Asians. Organisations such as Suhakam should strive harder to further educate Malaysians on the fundamentals of human rights and its universality. They should come forward and support NGO initiatives on human rights and be vocal against activities that impinge on the rights of the people.

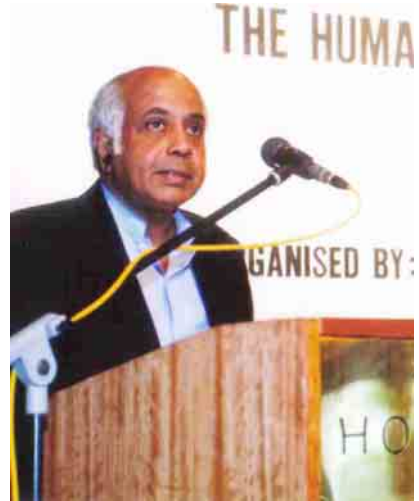
In an effort to enhance its position and gain credibility, Suhakam should collaborate with its Asean counterparts in furthering its role and function. Suhakam should begin by working with the Malaysian Working Group on the Asean Human Rights Mechanism of which Datuk Param Cumaraswamy is the chairman and ERA Consumer acts as the secretariat.

I end by thanking the speakers who are with us today to share their perspectives on ways to promote human rights in Malaysia. I would also like to thank all the participants who have gathered here to suggest ways to improve the human rights situation in the country and the national consultation processes.

# Opening Address: Need for Full-time Commissioners

*Datuk Param Cumaraswamy*  
*Chairman*  
*Malaysian Working Group for*  
*an Asean Human Rights Mechanism*

May I warmly congratulate ERA Consumer Malaysia for taking the initiative once again in organising this national consultation on the performance of Suhakam in the last year, i.e. its fourth year since formation. I also thank the Embassy of Finland for its financial support for this exercise.



This consistent annual evaluation of the performance of the National Human Rights Commission by civil society, represented by NGOs and other interested individuals, should be applauded. In a democracy not one single public institution should be free from scrutiny. Space for public scrutiny of these institutions is essential for the promotion of transparency and accountability. The institutions themselves should welcome such scrutiny.

This evaluation is done in association with the Regional Working Group for an Asean Human Rights Mechanism. The group, which has been working for the last eight years, is involved in programmes in the Asean region. It conducts meetings in Asean capitals in conjunction with the annual meetings of the Asean Foreign Ministers. Workshops have been held in Jakarta, Manila and Bangkok in the last four years. Another workshop was held in Jakarta in April this year. In fact, the respective governments, in association with the group and the national human rights commissions, organised these workshops. At the Jakarta workshop in June 2004, the Indonesian Foreign Minister said in his keynote address:

The key is how to make the urgency of this matter really understood by our leaders. It is reasonable if some of us feel a bit uncomfortable with



the notion of an Asean-wide human rights mechanism. It is also reasonable that our closer cooperation in this area should be taken in a step by step approach. We may start from establishing a network among the mechanisms already existing in some countries. We may already embark upon cooperation in education and public awareness. We may also converge on such immediate problems as the protection of women, children, people with disabilities and migrant workers.

But at the end of the day, a regional mechanism would provide a common standard and, thus, a better human rights protection for our people. In this regard, we have to admit that Asean is far behind other regions like Europe, the Americas and even Africa – where there are already established regional human rights systems.

A step forward is the commitment to have the four national commissions on human rights – in Indonesia, the Philippines, Thailand and Malaysia – to interact and network. These commissions have been participating in the regional workshops. At the Jakarta workshop, their representatives agreed to a meeting of the four commissions possibly in Bangkok this year.

Hopefully, the Malaysian Government in association with Suhakam and the Malaysian Working Group, will host the next regional workshop.

Suhakam sent four commissioners to participate in the third consultation in Penang last year, which we thought was an encouraging sign. I am disappointed to learn that we have with us only two commissioners this year, with one representing the chairman. I hope this is not a sign of just a token gesture from the commission. I understand that ERA Consumer sent personal invitations to all the commissioners including the chairman. We are pleased to have Prof Chiam Heng Keng as the representative of the chairman and Tan Sri Ramon Navaratnam. Prof Chiam is one of our very courageous commissioners who dare come to our meetings. The other commissioners could have accepted the invitation to participate in today's consultation. Maybe they are all too busy with their other interests. Except for a few, I understand that the others never bothered to even reply to the invitation. Suhakam must realise that no human rights institution can successfully discharge its duties and achieve its objectives without respect for and the co-operation, goodwill and support of NGOs committed to the cause. These NGOs are the eyes and ears of the grassroots, which can give lively feedback and enhance the effectiveness of the commission.

In our deliberations this morning, let us address both the positive and negative aspects of Suhakam's performance. I wish to take this opportunity to make some observations on the structure of the commission and its accounts.

Earlier this year, Deputy Prime Minister Datuk Seri Najib Razak said more commissioners would be appointed to Suhakam. True enough, last week we read of the appointment of three new commissioners. The legislation provides for up to 20 commissioners. Today we have 17. Do we need that many commissioners?

What Suhakam needs is not more commissioners but a few full-time commissioners selected and appointed for their proven record of commitment and dedication to the cause of human rights. Part-time commissioners, however prominent they may be, with other remunerative full-time interests should be done away with. In countries like India, Sri Lanka, the Philippines and Indonesia, the number of commissioners is smaller but all are fulltime and they are not permitted to be in any other employment. These commissioners are paid less than what the part-timers in Suhakam are paid. In Australia, there are six full-time commissioners including the president. They have a five-year renewable tenure and they cannot hold any other employment during this period. In New Zealand, the commission consists of a full-time chief commissioner for human rights and another full-time chief commissioner for race relations. The two chief commissioners cannot hold any other employment. They are supported by five part-time commissioners and they all have a five-year renewable tenure.

The audited account in Suhakam's Annual Report 2003 shows a staggering RM3.22 million in professional fees and hospitality expenditure. The figure makes up about 50 per cent of the annual grant for 2003. I understand this includes the remuneration and allowances paid to the commissioners. However, the breakdown of the remuneration and allowances is not disclosed. I hope Suhakam would be more transparent when presenting this year's accounts.

Under fixed assets as at Dec 31, 2003, Suhakam's motor vehicles were valued at RM2.163 million. There was no such provision as at January 2002. It implies that about RM2.1 million of Suhakam's grant was used to buy the motor vehicles sometime in 2002. It tallies with the entry of RM2.672 million as "purchase of fixed assets" in the statement of accounts for 2002. This means that every commissioner is provided a motor vehicle. The question to ask is whether it is proper for part-time commissioners to be provided with cars? As these commissioners are prominent

personalities and have other sources of income, I am sure they have their own cars. In some cases, the corporations or organisations where they are employed provide them with vehicles. With respect to all the commissioners, I find this most disturbing. It maybe perceived as an abuse of public funds. I am conscious of the fact that the Auditor General has certified these accounts. Surely, the fair and proper procedure would be to pay reasonable allowances for travel on Suhakam business and not to provide them with cars. An interesting point to note is that the commissioners did not find the need for this luxury in the first two years.

The new government under Datuk Abdullah Ahmad Badawi took office with a firm commitment to combat corruption. Indeed, in its election manifesto earlier this year, the Barisan Nasional, among others, promised to “continue to promote a culture of zero-tolerance for corruption”. Promotion of a corruption free society is interrelated to promotion and protection of human rights. A culture of respect for human rights will pave the way for greater awareness of the evils of corruption, leading to minimising, if not eradicating, this cancer of society.

The fight against corruption and promotion of greater respect for human rights cannot be fought and addressed by the government alone. The government needs partners. The most important being an independent and impartial judiciary, a free press, and independent mechanisms like the anti-corruption agency and human rights commission and respect for the voices of civil society organisations. Only when such mechanisms and institutions are set in place and respect shown can the government command confidence of the people. Today, I am afraid these are not in place.

For all the faults and criticisms of the Bush and Blair administrations for misleading the world that Saddam Hussein had weapons of mass destruction, we must give credit to the free media in the United States and Britain. If it was not for their investigative journalism supported by the right to information from public authorities in these countries, we may not have learnt about institutional blunders, flawed intelligence reports and what happened in Guantanamo Bay and the Abu Ghraib prison. Open and public inquiries aired live on the electronic media where leading government figures are grilled for their alleged misconduct are aspects of democracy at its highest watermark.

The US Supreme Court’s judgments on June 28, 2004 on due process for those detained administratively in Guantanamo Bay and the administrative classification

of an enemy combatant are useful reminders on the need for an independent judiciary to remain as a check on executive excesses. In one of the majority opinions, the court said: “We have long since made clear that a state war is not a blank cheque for the President when it comes to the rights of the nation’s citizens”.

In conclusion, I repeat what I have said earlier. If Malaysia seriously wishes to realise its vision 2020 and achieve developed status by that year, it must now begin to change course and improve the civil and political rights of its people. A developed nation will be measured not just by its economic advancement but more so by the quality of the freedoms its citizens enjoy.

Our institutions should be restructured to enable them to discharge their rightful roles. The media must be made free. A freedom of information legislation should be enacted. Consequently, the Official Secrets Act must be amended to limit its scope to the protection of national security and defence matters. The International Covenants on Civil and Political Rights and Economic Social and Cultural Rights must be ratified, and as far as possible be incorporated into our domestic law. It is sad to note that the Government has yet to ratify the Convention against Torture, while 12 Asian nations have ratified this convention. Even Saudi Arabia has ratified it. Why is Malaysia shying away? Is it because our laws and practices are inconsistent with this convention? Wouldn’t that be the irresistible inference if Malaysia continues to be indifferent to international conventions adopted by the United Nations? Malaysia is an active member of the United Nations and it held the Presidency of the UN General Assembly for a year, a seat in the Security Council and the Chair of the UN Human Rights Commission for a year. No doubt Suhakam has addressed some of these issues in the past four years without much positive response from the Government.

# Overview of Suhakam's Annual Report 2003

*Prof Chiam Heng Keng  
Commissioner, Suhakam*



Suhakam's Annual Report 2003 comprises 12 chapters. I will not be able to go into the details of all the chapters because of time constraints. So, I will just discuss some issues, which may be interesting to participants at this consultation.

Suhakam faces three major challenges. One is to clear the misconceptions of the Government and the public on Suhakam's roles and responsibilities. On one hand, the Government perceives Suhakam as being anti-government and the National Human Rights Commission has been accused of acting like an NGO. On the other hand, the NGOs are complaining that Suhakam is not doing enough. Some NGOs have accused Suhakam of being a mouthpiece of the Government. It must be understood that Suhakam has to function according to the terms spelled out in the Human Rights Commission of Malaysia Act 1999. Thus, Suhakam has its limitations and it hopes to clear the misconception on what it can really do.

The second challenge is to persuade the public and private sectors to institutionalise human rights in their daily practices. The third challenge is in the drafting of legislation. It is very important that Suhakam takes part in the drafting process or is consulted. So far, draft legislation has never been referred to Suhakam for advice. Although we are pleased that the Government is now more open and welcomes feedback and comments from the public, Suhakam believes it should also be consulted before drafting legislation.

On the status of human rights, Suhakam is still very concerned about the limitations on freedom of assembly. Civil society should be allowed the right to peaceful assembly. Suhakam is continuing its efforts to persuade the Government to allow civil society this right.

On accessibility of basic needs, priority should be given to poverty eradication programmes for marginalised groups. The poor must be able to enjoy basic rights and needs such as housing and adequate clean water. Suhakam has formed a new working group to pursue this goal.

A perennial problem is of course detentions without trial under the Internal Security Act. Suhakam has called for the ISA to be repealed and is very concerned that the Government has not acted on this recommendation. Nonetheless, the Government has passed the Penal Code (Amendment) Act 2003. While Suhakam appreciates this, it feels the Government has not done enough because people are still being detained without trial.

On law enforcement, Suhakam is concerned about three aspects: police inaction, consecutive remand orders and deaths in custody. There have been complaints that the police often did not act on reports or were very slow in taking action. Consecutive remand order or “road show”, the term used by an NGO, refers to the moving of a suspect from one district to another by the police in order to extend the remand. Death in custody is a serious concern. Actually, such incidents are taking place frequently in detention centres. Suhakam has made its recommendations on the three issues to the Royal Malaysia Police. It hopes the police would accept the recommendations.

On the administration of justice, a concern is the delay in disposal of court cases. Justice delayed is an injustice because it affects the lives of people. The other perennial problem is with regards to freedom of the press.

Suhakam has identified two vulnerable groups – people with disabilities and women and children – to work with in 2003. Suhakam is concerned about many issues related to people with disabilities but the two main ones are the right to education and the right to freedom of movement. The Education Ministry is now working with Suhakam and the NGOs to improve the quality and access to education for these people. We are also working on providing greater freedom of movement. We will be having a roundtable discussion on this issue soon.

We had a roundtable discussion on the problem of trafficking of women and children. We will be looking into this problem in more detail in 2004.

Suhakam has are four working groups: Human rights education and promotion (EWG),

law reform and international treaties (LRITWG), complaints and inquiries (CIWG), and economic, social and cultural rights (ECOSOC).

EWG continues to work with the police on human rights education for their personnel. It works with the Education Ministry to promote awareness of human rights in schools, in particular on education for the disabled. The working group also collaborates with the Government and the NGOs to enlighten people with disabilities and indigenous people of their rights.

EWG's activities include human rights education in schools. Its four strategies are human rights education through curriculum, human rights awareness through art competition, research on human rights awareness and practices in school and collaboration with the media.

EWG has published a report of the 2002 workshops for indigenous people. It has also conducted workshops for core trainers on the rights of the child. These workshops are important and one is currently being conducted in Terengganu. EWG has had six dialogues with the government and NGOs to obtain feedback on the rights of people with disabilities and make recommendations. Suhakam branch offices have organised 15 road shows in Sabah and Sarawak to inform the grassroots of their rights.

The Malaysian Human Rights Day is an important event to promote awareness among Malaysians and make them feel that human rights are crucial for their well being. EWG also conducts in-house training for all Suhakam staff to be cognizant of the various human rights instruments. Suhakam is in the process of setting up a library with the best collection of human rights materials in Malaysia. This library will be opened to the public during office hours.

The LRITWG reviews domestic legislation to ensure that they conform to human rights. It also recommends ratification or accession to international human rights instruments that are vital for the well being of Malaysians. It also monitors the implementation of instruments ratified or acceded to by Malaysia. On the review of laws related to personal liberty, the LRITWG has looked into the Dangerous Drugs (Special Preventive Measures) Act 1985 and the Prevention of Crime Act 1959. It is also studying the draft of the Persons With Disabilities Bill and has made recommendations to the drafting committee. The LRITWG tries to pool the resources of the Government, Suhakam and civil society to facilitate the ratification of the

treaties. Suhakam is currently looking at the International Labour Organisation Convention 087 (Freedom of Association and Protection of the Right to Organise Convention, 1948).

The LRITWG also takes proactive steps to encourage cooperation between the Government, civil society and Suhakam to ensure that provisions in conventions ratified by Malaysia are translated into domestic law. Among them are the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

Suhakam received 269 complaints in 2003, a 23.49 per cent increase over the previous year. The main complaints were over abuse of power by government authorities, inaction of the bureaucracy and other government agencies, and infringement of rights of individuals, particularly in relation to native land rights and customary law.

However, 48.3 per cent of the complaints have nothing to do with violation of human rights. Suhakam cannot act on these complaints but it channels them to the relevant authorities.

The CIWG has visited 25 detention centres at Suhakam's initiative and not because of complaints. The working group monitors the complaints, conducts dialogue sessions with the relevant authorities and organises workshops to educate law enforcement officers.

The CIWG has investigated and resolved 72 (26.8 per cent) cases and forwarded 12 (4.5 per cent) cases to the relevant government agencies for action. No further action was recommended for 130 (48.3 per cent) cases because, as mentioned earlier, they have nothing to do with human rights. However, 55 (20.4 per cent) cases are pending because the complaints have been referred to the relevant government agencies. No action can be taken until Suhakam receives responses from the agencies. The CIWG has received 24 memoranda and most of these are objections to the Internal Security Act 1960.

The ECOSOC working group has conducted a seminar on accessibility to basic needs. Its purpose is to identify issues pertaining to accessibility to basic needs at all levels of society and to discuss the effective promotion and protection of these rights. It is also meant to address these problems, provide solutions and make policy recommendations. ECOSOC will be Suhakam's research group. It has held a



roundtable discussion on the trafficking of women and children and interviewed people who were in prison.

This group has also invited individuals and experts to brief Suhakam officers on the different perspectives of economic, social and culture rights. It is also collating data on economic, social and cultural rights, focusing on Malaysia's achievements vis-à-vis the United Nations Millennium Development Goals.

Suhakam believes that children are the best agents for change. However, a human rights culture must be developed before the change can take place. Education is the key and, thus, it is important to get base data to plan human rights curriculum. Suhakam has carried out research in schools to assess the knowledge among students, teachers and school administrators on human rights. The survey was also to identify practices in schools that violate human rights.

This research involved seven academicians from five public universities. They designed the data-collecting instruments and carried out the research in 40 schools in Peninsular Malaysia, Sabah and Sarawak. The study covered 5,754 students, 2,628 teachers and 142 administrators (headmasters, senior assistants and afternoon supervisors).

Some of the findings are worrying. More than 60 per cent of the students and 50 per cent of the teachers claimed that discrimination occurs in their schools. About 12.9 per cent of the students and 5.7 per cent of the teachers marked "always" in response to a question on the occurrence of discrimination in their schools. The grounds of discrimination included ethnicity, ability and even physical appearance. For example, those who are chosen as prefects are good looking and are big in size so that they can instill fear in the students. Suhakam is concerned because 28.8 per cent of teachers and 14.1 per cent of school administrators felt it is all right to ridicule students – such as "you're stupid" or something like that – as long as the intention is to motivate them to study. Another more frightening finding is that an even higher number of students (40 per cent) agreed that it was not wrong for teachers to ridicule students to motivate them to study.

More than 50 per cent of the students indicated caning is a normal practice in their schools. The vast majority of the teachers (80 per cent) and administrators (70 per cent) feel that the school should cane students for indiscipline. In fact, teachers, administrators and officers who took part in the human rights education programme

at Suhakam's headquarters this year were a little annoyed with Suhakam for drawing attention to the issue of canning in schools. While Suhakam does not question the need to discipline students, it would like to point out that any punishment that is cruel, inhumane and unjustified infringes Article 5 of the UDHR and Article 37 of the CRC.

The pleasing aspect is the review of moral education syllabus for Forms Two and Four in 2003 has resulted in a broader coverage of human rights. The textbooks also mention Suhakam and its functions. A visit to Suhakam is one of the recommended activities for Form Four students.

Suhakam believes that the young are the best agents to bring about a generation of caring Malaysians who know their rights and respect the rights of others. It is most appreciative of the Education Ministry's cooperation in promoting human rights among students and teaching them their responsibilities as good citizens.

The positive highlights for 2003 from the human rights perspective are:

- The Election Commission's announcement in September to allow political parties to conduct open-air rallies during general election campaigning, provided they obtain police permits.
- The Mid-Term Review of the Eighth Malaysian Plan, released in October, showed that general hardcore poverty among Malaysians has decreased.
- The Government's announcement in December that controversial laws such as the ISA that are "lacking in human rights aspects" will be improved from time to time to make them more humane.
- The establishment of a Royal Commission to Enhance the Operations and Management of the Royal Malaysia Police.

However, there were also negative aspects in 2003. Among them were complaints of police inaction, inadequate attention given to the rights of vulnerable groups such as persons with disabilities and the police's initial refusal to grant a women's NGO a permit to organise a rally against rape and violence against women in Kuala Lumpur.

Several recommendations were made to the Government regarding accessibility to basic needs and to overcome human rights violations. It is recommended that the Government consider consulting stakeholders further on the various needs. Among them are the rights to healthcare, education, in particular for the disabled, information,

adequate housing and a healthy environment, and the right of people with disabilities to education and employment.

On the right to healthcare, the recommendations are to improve the public and private healthcare financing system, to reform geriatric-care, and to extend nationwide investigations into the status of water supply in villages with a view to ascertaining the need to upgrade water facilities. The other recommendations are to undertake joint studies with plantation companies on facilities in estate hospitals and clinics, and to conduct more programmes to educate women on the importance of healthcare and nutrition for their families, in particular for their children.

On education, among the recommendations are to improve teacher-training programmes and teacher development and to consider the viability of using rural schools as community access points to ICT. On the right to information, the recommendations are to intensify efforts to encourage the public and private sectors to provide information in Bahasa Malaysia, and to conduct further training programmes for civil servants to handle feedback from the public.

Suhakam's recommendations for housing are to intensify awareness campaigns to educate the public, especially those in the lower income groups, on their rights as house buyers, to simplify laws and guidelines that regulate the housing industry, and to be more proactive in supervising projects and enforcing laws to ensure that the rights of house buyers are protected. Suhakam is very concerned that house buyers are made to pay before the houses are built. Malaysia is one of the few countries that impose such a condition on house buyers.

On the rights of people with disabilities, the recommendations are to make buildings more accessible for them and to provide disabled friendly transportation. It was also recommended that employers and society be educated to appreciate the capabilities of persons with disabilities and to understand that providing employment opportunities would make them independent. On the right of people with disabilities to education, training and employment, Suhakam is concerned that trained teachers are transferred to schools where their services are not needed. Furthermore, without access to buildings, a friendly transport system, and adequate healthcare, people with disabilities would not be able to exercise their right to work.

To eliminate trafficking in women and children, Suhakam recommended that the

Government strengthen enforcement and consider ratification of the Palermo Protocol.

As a result of Suhakam's conference on human rights and administrative of law, it recommended training for members of the judiciary and to consider separating the Judicial and Legal Service Commission into two bodies – a Judicial Service Commission and a Legal Service Commission – through a consultation process.

On the issue of continuous or “road show” remand, it was recommended that magistrates should make necessary inquiries and carefully scrutinise each application. They must be fully satisfied that there is sufficient justification for the detention and not merely grant the remand order at the request of the investigating officers. The police should not apply for a remand order to detain a suspect unless they definitely cannot carry out investigations if the person is not in custody. Suhakam is concerned about the “road show” remand because it could lead to an injustice. For example in the Norrita murder case, many people were placed under remand and released later. Suhakam's believes suspects should be placed in remand only when there are very good reasons.

I think that's all I can cover in this short briefing. I have not covered all the recommendations, which are given in detail in the annual report.



# Government's Response to Suhakam Reports and Recommendations to Protect and Promote Human Rights

*Ramdas Tikandas*

*Executive Committee Member, HAKAM*

Suhakam has submitted its Annual Report 2003 to Parliament in compliance with its statutory duty pursuant to Section 21 (2) of the Human Rights Commission of Malaysia Act. Regrettably, as in the case of three earlier annual reports, its latest recommendations have yet again been deemed not important enough to be tabled and debated in Parliament.



However, the Annual Report 2003 is significantly different from the earlier reports in that it contains the response of the Government to Suhakam's 2000, 2001 and 2002 Annual Reports and specific reports, including on the Freedom of Assembly and Kesas Highway Inquiry. This paper will highlight the key government responses to five issues: Unilateral declaration that Malaysia is an Islamic state; National Human Rights Plan of Action; Freedom of Assembly Report; Kesas Highway Inquiry Report; and Ratification of International Covenants.

The responses reflect the underlying government policy and its commitment to protect and promote human rights in Malaysia. They also reflect the Government's perception of the role and responsibility of the National Human Rights Commission and the degree of seriousness or lack of it, with which it considers Suhakam's recommendations.

## **Declaration that Malaysia is an Islamic State**

Suhakam stated in the Annual Report 2002 (page 15) that it had written to the Chief Secretary to the Government for clearer explanation on the declaration (by then

Prime Minister Tun Dr Mahathir Mohamad) that Malaysia is an Islamic State because various groups have expressed concern over the announcement.

This is not merely an academic issue as fundamental liberties and freedoms enshrined in the Constitution can only be translated in the context of the fabric and substratum of the Constitution. Further, as will be seen, unilateral proclamations by political leaders affect bureaucratic and individual postures and expectations and the dynamics of social relations, especially in the context of our multi-religious and multi-cultural population.

The Government's response set out on pages 285-286 of Annual Report 2003 is:

Malaysia is an Islamic state because of the following reasons:

- i. The Malaysian Nation was established by Muslims;
- ii. The Head of State and the Government is in the hands of Muslims;
- iii. The majority of Malaysian citizens are Muslims and most of their cultural and social elements are influenced by Islamic culture;
- iv. The Islamic umah are free to abide by Islamic law ("syariat Islam"), and are even supported in this regard by the Government.
- v. Systems to increase religious observance of "munakahat" (religious rules pertaining to marriage) and "muamalat" (rules pertaining to societal issues) are implemented all over the nation;
- vi. Islamic education is taught from primary schools to tertiary institutions and its quality is always being enhanced;
- vii. The existence of Syariah courts and Syariah laws; and
- viii. The existence of other Islamic institutions which promote Islamic precepts.

Besides this, Malaysia also satisfies several specific criteria which show it is an Islamic state, namely:

- i. The Federal Constitution establishes Islam as the religion of the Federation [(Article 3(1)], the Head of State as Head of Islam [(Article 3(2), (3) and (5)] and the administration of Islamic affairs being the responsibility of the State Government and Federal Government [Article 7 (74)];
- ii. The world has recognised that Malaysia is an Islamic state; and
- iii. Most of the provisions in the Constitution are not contrary to Islam.

It is indeed shocking that the Government can officially respond to Suhakam stating “*Malaysia adalah sebuah negara Islam*” (Malaysia is an Islamic state) when the matter has not been tabled and debated in Parliament. Not only is the response totally divorced from the history of the birth of this nation, it also is totally inconsistent with and contrary to the decisions on the matter by the highest courts of the land.

In *Teoh Eng Huat v Kadhi, Pasir Mas (1990) 2 MLJ 301*, the Supreme Court ascertained “what purpose the founding fathers of our Constitution had in mind when our constitutional laws were drafted” and held that:

The Malaysian Constitution was not the product of overnight thought but the brainchild of constitutional and administrative experts from UK, Australia, India and West Pakistan, known commonly as the Reid Commission following the name of the Rt-Hon Lord Reid, LLD, FRSE, a Lord of Appeal in the Ordinary. Prior to the finding of the Commission, there were negotiations, discussions and consensus between the British Government, the Malay Rulers and the Alliance Party representing various racial and religious groups. On religion the Commission submitted:

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

‘the religion of Malaysia shall be Islam. **The observance of this principle shall not impose any disability on non-Muslim nationals professing and practicing their own religions and shall not imply the State is not a secular State**’. There is nothing in the draft Constitution to affect the continuance of the present position in the States with regard to recognition of Islam or to prevent the recognition of Islam in the Federation by legislation or otherwise in any respect which does not prejudice the civil rights of individual non-Muslims. The majority of us think that it is best to leave the matter on this basis, looking to the fact that counsel for the Rulers said to us ‘**it is Their Highnesses’ considered view that it would not be desirable to insert some declaration such as has been suggested that the**

**Muslim faith or Islamic faith be the established religion of the Federation. Their Highnesses are not in favour of such a declaration being inserted...”**

It was on the above basis that our Constitution was drafted and promulgated.

We are also mindful of Art 3 of the Constitution which says that Islam is the religion of the Federation, but other religions shall be practiced in peace and harmony in any part of the Federation (emphasis mine).

In *Che Omar Bin Che Soh v Public Prosecutor (1988) 2 MLJ 55 at page 57*, the Supreme Court in interpreting Article 3 (1) of the Constitution held that “the law in this country is still what it is today, secular law, where morality not accepted by law is not enjoying the status of law”.

It would appear therefore that the Executive’s response to Suhakam on the unilateral declaration by Dr Mahathir that Malaysia is an Islamic state, apart from being a blatant distortion of the history of this country, also contradicts and openly clashes with the determination by the judicial branch of Government. Suhakam in the discharge of its statutory duties under the Act cannot let the matter rest there. It must publicly announce whether it agrees with the Government’s response or otherwise.

It must be remembered that in 1988, Attorney General Tan Sri Abu Talib Othman – who is now the Chairman of Suhakam and who sought clarification in the Annual Report 2002 in respect of the Islamic state declaration – had framed inter alia, the charge against then Supreme Court Lord President Tun Mohamed Salleh Abas who was brought before the Tribunal appointed under Article 125 (3) of the Federal Constitution by the King upon the representation of the Prime Minister with a view to remove him on the ground of misbehaviour. The charge read:

“Whereas His Majesty Seri Paduka Baginda Yang Di Pertuan Agong has been pleased to establish a Tribunal to investigate and obtain its report under Article 125 (3) of the Federal Constitution”

Particulars for the allegation for removing you as Lord President are as follows:

At the launching of the book, *Malaysian Law and Law, Justice and the Judiciary: Transnational Trends* on 12 January, 1988, in your speech which is at Annexure “B”, you made several statements



discrediting the Government and thereby sought to undermine public confidence in the Government's administration of this country in accordance with law. The short allegations against you are these: ... In the same speech you made special reference to the interpretative role of judges and advocated the acceptance of the Islamic legal system not only in the interpretation of the Civil Law of Malaysia but in its general application.

In particular you advocated thus:

“This system consists mostly of the Quran and the Hadith (traditions of Prophet Muhammad, S.A.W.) The interpretation of these two sources of law is done according to the established and accepted methodology. Volumes of literature have been written as commentaries and exegesis of the Quranic Law and Prophet Muhammad's Hadith or tradition. In this situation, not only is the Judiciary bound by Islamic Law as propounded by jurisconsult (muftis, who give legal rulings in particular matters), but Parliament and the Executive, too, are certainly bound by these rulings. **Your attempt to restate the law generally along Islamic legal principles ignores the character of Malaysian society as one which is multi-religious and multi-racial with deep cultural differences. No responsible Government can allow the postulation of such views by the head of the Judiciary without causing fear and consternation among its non-Muslim population. Furthermore your statement violates established principles of judicial interpretation widely accepted in the courts in Malaysia and in the Commonwealth**”<sup>1</sup>.

Based on the submission by the Attorney General, the Tribunal in its findings held that:

Lastly, it must be borne in mind that the Constitution is the supreme law of the Federation and any law passed after Merdeka day which is inconsistent with the Constitution shall be void to the extent of such inconsistency. Therefore it was ill-advised of the respondent as head of the Judiciary to make an authoritative statement that ‘Islamic laws bind not only the Judiciary but Parliament and the Executive also.’<sup>2</sup>

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<sup>1</sup> Tun Salleh Abas with Das, K. (1989). *May Day For Justice*, Kuala Lumpur: Magnus Books, p. 175-176.

<sup>2</sup> Salleh (1989), p. 294.

Quite apart from the contention by Salleh Abas that the finding was “proof that the whole Tribunal hearing was only a stunt in the political circus into which (he) was suddenly thrust on 27 May 1988”<sup>3</sup> the question which now begs for an answer in one of the gravest twists of ironies of our times is: What is Suhakam’s position in respect of the Government’s response to its request for clarification about the declaration by then Prime Minister Dr Mahathir that Malaysia is an Islamic state?

Of course the mother of all ironies is that the former Lord President subsequently became a member of the State Executive Council and the Terengganu State Assembly, which enacted the Hudud and Qisas Enactment.

And what of the “*non-Muslim population*” who were the subject of so much concern in the charge framed in 1988 and who needed to be protected from the “*postulation of such views*” that would cause them “*fear and consternation*”?

Unilateral proclamations and declarations by politicians inevitably affect individual human rights as is illustrative of a circular letter dated 14 July 2004 issued by the headmaster of a primary school in Kuala Lumpur to the pupils’ parents. It reads:

### **Ban on Bringing non-Halal Food to School**

This is an announcement that non-Muslim pupils are banned from bringing non-halal food to school, are also not allowed to use canteen utensils such as spoons/forks and to throw food in the rubbish bins.

This matter is given serious attention so as to respect Islam as the official religion of Malaysia and also to respect the School Canteen Operator.

Your cooperation is very much appreciated<sup>4</sup>.

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<sup>3</sup> Salleh (1989), p. 294.

<sup>4</sup> The circular letter was written in Bahasa Malaysia. The translation to English was done by the author.

According to *The Star, Education Section* (July 4, 2004), the Malaysian Christian Schools Council has also complained that some school heads do not respect the ethos and character of mission schools and have indiscriminately removed crosses, and unilaterally changed school logos, mottos and colours which are central to the identity of these schools.

These are trends which if not checked urgently will inevitably undermine our plural democracy and impede national integration. No amount of political rhetoric and platitudes about mutual understanding and tolerance will guarantee fundamental liberties if there is no political will to enforce such rights and violators are not sanctioned accordingly and the rights violated restored and victims compensated.

## **National Human Rights Plan of Action**

Another significant government response, which demonstrates its lukewarm commitment to human rights, is the cursory dismissal of Suhakam's proposal for the National Human Rights Plan of Action, which it submitted to the Government<sup>5</sup> on Feb 25, 2002. The Government's surprising and incomprehensible response<sup>5</sup> is: "Malaysia does not need the National Human Rights Plan of Action since human rights are guaranteed under the Federal Constitution and existing laws in Malaysia".

This dismissive attitude by the Government is most regrettable as it completely ignores the value of a concerted plan of action for the protection and promotion of human rights in the country according to international standards and especially the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on June 25, 1993. Paragraph 71 of the Declaration recommends, "Each state consider the desirability of drawing up a national action plan identifying steps whereby the state would improve the promotion and protection of human rights".

In this case the Government has not only dismissed international standards and obligations which it has subscribed to, it has also paid scant respect for its own Human Rights Commission which is supposed to give expert advice to the Government on such matters.

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<sup>5</sup> Annual Report 2003, p. 282.

## **Freedom of Assembly Report**

In respect of Suhakam's Freedom of Assembly Report that police permits for assemblies should as a general rule be approved particularly in static premises, and a liberal approach be adopted by the police, the Government's response<sup>6</sup> is for Suhakam to refer to Article 10 (2b) of the Constitution which restricts the right to peaceful assembly on the grounds therein; as if Suhakam needs an education on the provisions of the Constitution. Further the Government assures<sup>7</sup> Suhakam that "the Government will at all times ensure that its actions are according to the laws and will earnestly defend human rights".

So much for the protection and promotion of human rights. No mention is made of the Universal Declaration of Human Rights (UDHR). In fact, the Government reminds<sup>8</sup> Suhakam that "UDHR is only declaratory and does not function as a convention".

This government response openly challenges universal acceptance that the principles of UDHR are part of international customary law and also is contemptuous of Suhakam's own position as expressed in the Annual Report 2000 (page 30) that: "By Section 4 (4) of the Human Rights Commission Act there is already a mandatory duty to have regard to the Universal Declaration of Human Rights."

## **Kesas Highway Inquiry**

Suhakam's findings in respect of the Kesas Highway Inquiry were inter alia as follows:

- (i) The police had acted heavy-handedly;
- (ii) The police created the massive traffic jam, which inconvenienced people not involved in the Kesas gathering;
- (iii) The police had exercised double standards in dealing with demonstrations;
- (iv) The police had treated detainees inhumanely, taking advantage of the situation to secure confessions and incriminating evidence;

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<sup>6</sup> Ibid., p. 183.

<sup>7</sup> Ibid., p. 186.

<sup>8</sup> Ibid., p. 290.

- (v) One man suffered a fractured skull on the head by a tear gas canister that was aimed at the car Wan Azizah was in;
- (vi) One witness had tear gas sprayed into his eyes, resulting in temporary blindness and hospitalisation for nine days;
- (vii) Several others suffered injuries and there was delay in providing treatment to them; in some cases, medication was not given although doctors had prescribed them;
- (viii) A female detainee was ordered to strip and do to knee squats.
- (ix) A 17-year-old student, due to sit for her SPM examinations about a week from the day she was detained, was not released despite assurances to the magistrate that she would be released soon.<sup>9</sup>

The government response<sup>10</sup> is that a Committee headed by the Minister in the Prime Minister's Department, Datuk Seri Utama Dr Rais Yatim concluded that: "The action taken by the police is correct. The Committee also found that Suhakam's report on the incident does not portray the real situation and is biased".

It is also a notorious fact that the two eminent and respected Suhakam commissioners who were on the panel of inquiry and who prepared the report, ignominiously did not have their term of office renewed, Paris Principles notwithstanding.

## Ratification of the International Covenants

Suhakam had proposed that Malaysia ratify *as soon as possible* three instruments: The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, (ICESCR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Government's response<sup>11</sup> is at best equivocal:

The discussions to consider whether Malaysia can ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

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<sup>9</sup> See *Aliran*, 2001: 21(7), p. 22-23.

<sup>10</sup> Annual Report 2003, p. 92-93.

<sup>11</sup> *Ibid.*, p. 283.

Punishment have reached the final stages. Based on these discussions, it is clear that there are various provisions in these three instruments which are not in line with the provisions of Federal Constitution and Syariah laws. Considering that this problem has arisen in respect of the provisions which form the basis of these instruments, it would appear to be difficult for Malaysia to make reservations to these provisions because it would be in contravention with the Vienna Law of Treaties.

The Government's response also covers other fundamental human rights issues such as the Internal Security Act and press freedom but generally they are a replication of the existing law without regard to international standards. Generally the response can be characterised as dismissive of Suhakam's proposals and recommendations. In some instances, such as the response to the Kesas Highway Report, the Government sternly rejected the finding and even accused Suhakam of bias. What then is Suhakam's own response to this? It can best be described as bewildering:

Suhakam is (actually) pleased to note that in 2003, it received two substantial responses from the Government in relation to Suhakam's 2000-2002 Annual Reports and specific reports released as of the end of 2003.

Suhakam welcomes the effort by various government agencies, co-ordinated by the Ministry of Foreign Affairs, to respond to the many recommendations and reports submitted. While some agencies are more specific and meticulous in their responses to issues raised by Suhakam – such as the Ministry of Education, the Prisons Department and the Judiciary – others tend to list existing laws as response to issues such as restrictions on freedom of assembly and media freedom.

Suhakam hopes that Government agencies will become more sensitive to human rights issues in keeping with the new administration's policy of more openness, accountability and transparency, and that their future responses to Suhakam recommendations and issues of concern will be more specific and aimed at finding solutions to long-standing problems. Suhakam is happy to work with Government agencies to further sensitise their officials to human rights issues"<sup>12</sup>

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<sup>12</sup> Ibid., p. 22.

<sup>13</sup> Ibid., p. 12.

In the Annual Report 2003, Suhakam tries to grapple with itself and to find its bearings in the throes of a dilemma into which it is thrust, between the Government on the one hand and civil society on the other. Both are portrayed as unreasonable. Suhakam laments that many in civil society regard it “as ineffective and nothing more than a public relations exercise of the Government. On the other hand, many in Government regard Suhakam with hostility accusing it of acting like a non-governmental organisation (NGO)”.<sup>13</sup>

It is suggested that Suhakam should find its true identity and purpose in the context of the Paris Principles and the Universal Declaration of Human Rights. It should consciously try to serve or please no master, be it the Government or NGOs. Its mandate and only source of legitimacy and self-respect is human rights and justice beyond the shackles of unjust laws or just laws applied unjustly. Why else the need for Suhakam?



# Rights of Women and Children

*Maria Chin Abdullah*  
*Executive Director*  
*Women's Development Collective*

My paper was supposed to be on the rights of women and children but I would rather not mix the two issues. Children have rights and this is readily recognised. That is why we have the Convention on the Rights of the Child. They cannot be lumped together with women's rights because children have very special needs, concerns and interest. They have to be treated quite distinctly and separately.



Therefore, my paper will focus on women's rights, which are of a particular importance in relation to human rights. This question was raised at a consultation between women's organisations and Suhakam: What is the connection between human rights and women's rights? I think they are very much interrelated and interconnected. For example, we often talk about the right to information and freedom of speech. Without these rights, women's rights issues will not be heard. When people are detained without a fair trial, denied the right of a lawyer and so forth, women's rights will also be violated if they happen to be detainees. In this context, we have to focus on linking women's rights with human rights, and not to see them as separate issues.

Looking at Suhakam's annual report, I think a fair bit has been done on women's rights in Malaysia. It is heartening to know that Suhakam has initiated the Roundtable Discussion on Rights and Obligations under CEDAW (Convention on the Elimination of all Forms of Discrimination against Women). However, it is important to know what has happened to the recommendations made after the roundtable discussion. It is good to note that the consultation focused on CEDAW, the only convention that Malaysia has signed in relation to women's rights. Since the roundtable discussion, I do not know the progress at Parliament.

The second point I would like to highlight is that while we want Parliament to adopt



the CEDAW provisions and amend discriminatory laws, let us not just concentrate on legal reforms. What is most important is the implementation of these laws. Suhakam needs to focus on this. I feel that the discussion relies too much on legal reforms and getting Parliament to adopt the CEDAW provisions.

It is important that discriminatory laws are reviewed and amended. It is good in a way because it challenges the fundamentals of patriarchal bias in our current laws. For example, marital rape is still not recognised as a crime. It is somehow allowed under the penal code. We are concerned about this because women are still seen as properties of their husbands and they have to submit to male sexual desires even though they do not consent to it. These are the kind of issues we want Suhakam to take up.

However, legal reforms and adoption of the CEDAW provisions cannot be effective without the participation of women. There is little consultation with the NGOs or the broader civil society as to what exactly are pertinent women's issues. Suhakam has not considered an important aspect of CEDAW, that is the optional protocol. The process allows individuals or groups to make human rights complaints directly to the CEDAW Committee that sits at the United Nations in New York. This is an important process especially when there is gross violation of human rights in the country. The optional protocol should go hand-in-hand with the recommendation for the adoption of the CEDAW. Without the optional protocol, we are only getting half of the human rights.

An important issue that Suhakam's report overlooked is political participation of women. The joint action group formed to end violence against women has consistently said that women must be adequately represented in the decision making process at all levels. At least 30 of the representatives in these bodies must be women. However, it is telling when we look at the ratio of Suhakam's commissioners. It is more disheartening when we consider this year's general election where the total number of parliamentary constituencies has increased from 193 to 219. The number of women Members of Parliament went up from 20 to 23, that is a mere 0.1 per cent increase. At the State Assembly, the number of assemblywomen increased from 23 to 32, representing only a 1 per cent rise.

Why is it important that women take up 30 per cent of these positions? It is essential because it will ensure that women's issues are voiced out through these representatives in Parliament and state assemblies. Of course, it is also important

that these representatives are aware of and are sensitive to women's issues. Only then can they make the difference and bring about changes.

Actually, women's voice has made an impact in Malaysian history and effected changes in the political landscape. Since 1985, women's groups have brought up issues such as rape, domestic violence and sexual harassment at the national level. Previously, they were not widely discussed and considered to be private or women's issues. Now, these issues are taking centre stage at the national level. Therefore, Suhakam needs to look into the issue of women's political participation. Without women's participation, their rights issues will not be adequately represented.

Of course there are many other issues that are of concern to women's groups. While it is good that Suhakam accepts reports, we do not know what happens to them after that. For example, we submitted a report to Suhakam after the police denied women's groups a permit to hold a rally. But after a year or so we do not know what is happening to our report. We are still faced with the fact that NGOs cannot organise a public rally. While we appreciate Suhakam's willingness to listen to our complaints and accept our reports, we also want some kind of action.

Women's groups are also disappointed that Suhakam remained silent over Malaysian Airline System's discriminatory terms of employment for female cabin crew. MAS expects female cabin crew to retire between the ages of 40 and 45 while males can continue working till they are 55. When they are pregnant, they get maternity benefits only for two months. They are on their own for the next seven months. The pregnant cabin crew members are not even given alternative employment in the other departments of MAS. A female cabin crew member is allowed to have only one child. There were also reports that air stewardesses had to go for abortions or had to resign because they were pregnant with a second child. These issues have still not been resolved. It appears that the MAS management is not willing to end these discriminatory practices. The question is what did Suhakam do when this issue came up?

The other long-standing issue is the non-unionisation of workers in the electronics industry. This has been an issue since the 1970s when Malaysia began its industrialisation programme. The workers are predominantly women and they are allowed to form only in-house unions, which do not really represent their interest. These long-standing issues can and should be taken up. I think Suhakam should not just wait for reports to be made before taking action. The human rights situation

should be viewed as a whole. Suhakam needs to place women as workers, as housewives and as being part of the communities and look at their issues and concerns. It needs to intervene wherever and whenever their rights are violated.

The other aspects are the health and safety of women workers. The Women's Development Collective is currently conducting a study on the service industry. There are about 50,000 nurses employed in our healthcare institutions. Our study found that a high percentage of these nurses are suffering from acute back injury or chronic back pain. In a survey of 146 nurses in the Kuala Lumpur Hospital, we found that 50.7 of them suffered back pain at least three or four times in a year due to the nature of their work. Their work includes lifting heavy instrument or equipment, standing for long hours and bending repeatedly. Why am I highlighting these issues? I think a human rights commission also needs to look out of the box and consider these issues where there may be violations. There are also other outstanding issues that can be taken up by the human rights commission.

The plight of women workers is a major concern. Of course, it is a difficult issue to resolve because it not only challenges the state but also private corporations. But we have to make a stand. Do we just want to make reports or do we actually do the advocacy work ourselves? When looking at human rights issues, it is important that Suhakam considers various aspects besides, of course, looking at gender inequality and discrimination. One of them is women's full participation. Are women included at all levels of decision making? Are they making a difference? The not-so-mainstream issues also need to be addressed. There is always a tendency to just look at legal reforms and issues such as violence against women. Let us not forget that other outstanding issues have also been lingering for many years. At the same time, demands must be made to the Government to fulfill its responsibilities. It must have the political will to provide opportunities for women to exercise their rights.

It is disturbing that no time-frame is set in Suhakam's report as to when it should get a response for it to follow up. The time-frame is important for effective evaluation and monitoring of the state of the human and women's rights in Malaysia. At the end of the day, it is not merely about Suhakam listening and compiling reports. It must also make things happen. With that, I end my presentation.

# Freedom of the Media

*Rehman Rashid*  
*Associate Editor*  
*New Straits Times*

This presentation is going to be a carbon copy of what I spoke at last year's World Press Freedom Day because not only has the situation not really changed very much, neither have we. I suppose as long as my career holds, I will be invited to such forums once or twice every year to restate the case I have been making all these years. The issue is what do you mean by freedom of the media.



We are practitioners of “mainstream journalism” as opposed to alternative journalism. After having spent my career on either side of this divide, I have never and still do not change my position. In this business of the media, we journalists are not here to change the world, we are not here to state what we think, and we are not here to pick up cudgels on anybody's behalf. We serve the interest of our respective media owners and publishers and their interest is to make money.

The only honesty in this business is that we cannot make money unless the people buy our products. If you recall, about 20 years ago then Prime Minister Tun Dr Mahathir Mohamad challenged the senior editors in the country to answer these questions: “Who elected you? Who elected you to speak on the people's behalf? Who elected you to take up this position? Who elected you to take up these issues?” The response of my bosses at that time, which I thought was quite relevant and pertinent, was: “Every time somebody pays a ringgit for the paper, he is electing us.” As I now represent a paper which has lost a few thousand readers in the last five years, we can see that we are not doing too well. However, that is only us, one newspaper.

In the next ten minutes, I am going to change hats quite freely, between speaking to you as the associate editor of the *New Straits Times* and as a professional practitioner of journalism. These are two different things.

As associate editor of the *New Straits Times*, I serve my newspaper's agenda. I serve my newspaper's publishers and owners. A political party in the Barisan Nasional owns the newspaper. The newspaper makes absolutely no secret and no bones about its support for the ruling coalition. The philosophical justification for its stand is the same justification by which any administration takes office in this country. It is voted in.

We support the political leadership that receives the support of the people. That is the bedrock on which I stand when I speak to you as an editor of the *New Straits Times*. The role that I then perform is as a servant of both my company and the profession of journalism. Our role is to articulate and express the position of that ownership structure.

As for my ideal with regards to journalism in this country: each and every journal, perhaps even each and every journalist, has his or her own bedrock principle. We as individuals are obliged to uphold and articulate our own principles. Any person of malleable principles should not belong to this profession. Generally, the profession tends to weed out those weather vanes: those who can swing, those who can argue on one side and then cross over to the opposite side and argue their case with as much conviction. People without principles tend to be filtered out of the profession quite quickly because it's sort of a crucible. It's a hot kitchen and not all that many people can take the heat.

I contend that freedom of the media cannot be expressed in any individual journal any more than the totalitarian truth can be expressed by any individual person. I believe that freedom of the media is, if I may paraphrase, ironically, Chairman Mao Tze Tung, "to let a hundred flowers bloom". There are always as many positions and perspectives on an issue as there are weaknesses. Six people in front of the same event will give you six different versions.

In terms of advances in media freedom, I would like you to consider that there were more media start-ups in the years between 1981 and 1994. More licences were issued for newspapers, magazines and television and radio stations compared to the years earlier. When the *The Sun* appeared on our newsstands in 1993, it was the first new newspaper in the country since *The Star* was launched in 1975. So, this is as much as any government can be asked to do. Issue these licences, allow groups to set up newspapers and give people a chance to say their piece. If you recall, this was one of the hallmarks of the first three years of the Mahathir administration. It

said it was going to be liberal with the media. It said it was going to issue more licences for new magazines, newspapers, TV stations and even for satellite television. More than 30 years ago, satellite television was seen as the gate to hell. Now Astro's transmission reaches everywhere and we have got problems with *Baywatch* and even *Nickelodeon*. We are also contending with the problem of subversive cartoons on television. We let a hundred flowers bloom. Then came the Internet in the early 1990s. Suddenly it wasn't a question of the government allowing it, it was happening! A hundred thousand flowers were blooming. Some of them were rafflesia and some even stank. So we witnessed the opening of the floodgates of expression and were also able to participate. Freedom of speech and opinion innovated our society and nation in the mid-90s.

More than 30 years before that, people were complaining. "The problem with Malaysia is that we have controlled media. We have only three newspapers and two television channels. We are stifled. We cannot express ourselves. We don't know ourselves," they said. These criticisms of controlled media were valid. But what happened when the dam burst and it was a free-for-all? We realised that people needed to speak. As they say in Malay, they needed to *meluah*, *buang stim*, *lepas geram*. They started letting off steam and screamed: "This man, bad! This man, good! Up with this, down with that." We had a dam burst of opinion. Who needs opinion? I have some very graphic, verbal acrobatics when it comes to opinions. I say that everyone has an opinion and an asshole and people can't tell which side is which sometimes. Sorry about that. The fact is everyone has an opinion. But what is the point of an opinion if it is not founded on fact, on information?

In my business, it's all so very simple. There are three aspects to journalism. Everything you read in the newspaper, see on television or pick up from the media fall into only three categories. Reportage is the be all and end all. Reportage means, again very simply, the five "Ws" and sometimes one "H": who, what, where, when, why and how. We tend to make fun of it. We call it the five wives and a husband and the husband asks, "how?" It is very simple: get the facts. We have to get the facts and let you know. That's our job. If we just give that, we are fulfilling all moral, ethical and principle covenants that we have with the readers, the market and the people who own our newspaper. We fulfill all our obligations simply by collecting the facts of every story and letting you see all sides of all stories. It is for you to decide what is right and wrong. That's all.

On top of reportage comes the next level: analysis. It is just to give you a bit of

added value. The reportage gives you the facts. I can give the same wheelbarrow load of bricks to three bricklayers. They can take the same bricks and make a variety of structures. Similarly, I can take the same facts and give you three or four different alternatives. We all know that. So, the facts are bent themselves. It is hardly gospel. For example, the Barisan Nasional won 93.2 per cent of the seats in Parliament this year. This is a fact. But what does it mean? So you may want to push them and tell you not just the facts. The facts provide the content. During the Internet boom, there was the cliché “content is king”. When people were trying to sell you bells and whistles and nobody was buying, they said, “Content is king”. My position at that time, when I was then involved in alternative journalism during the Internet boom, was if content is king, then context is god. Analysis provides context. It puts facts where they are and sets them in the continuum of time. Analysis tells you what the facts mean. We presume to tell you what these facts mean through analysis.

The third is opinion, which comes only after analysis. So, as a professional journalist I have certain standards to maintain and certain codes to live by. Individuals with access to the Internet can broadcast their opinions all over the world. They do not have to abide by these journalistic codes. If you have an opinion, you have a right to say it. You can just go ahead and say it. But I cannot do it. I must first provide you the facts on which my opinion is based. I must provide you the context in which those facts form a reality. Only then can I give you my commentary and my opinion.

Reportage, analysis and opinion: these are the three things journalists are supposed to give you. The media is to be criticised when it does not do these jobs well. It is not to be criticised for not calling for the repeal of the ISA, for not calling for probes into police brutality or for not speaking up for women’s rights, human rights, children’s rights or everybody’s rights. In fact, we also have to take a very judicious stand and be just as firm in upholding what Dr Mahathir wanted us to uphold. That is there are no rights, only privileges. I ask you to consider this. Let’s not easily forget this.

There’s another thing we journalists have to do. We have to make sure people do not forget. We are supposed to just put things on the record. Remember it was one of Dr Mahathir’s repartees: “Not grateful. You people are not grateful. Not enough gratitude here.” What does he want? You want “thank you thank you thank you”. Well yes, because there is a school of thought that says, looking at our history, looking at the way the world is, looking at the way the world could be, we just let it be. It believes you do not have the right to vote because there are millions of people

in this world who don't have this right. You do not even have the right to fresh air. You don't have the right to pipe water. You don't have the right to electricity. All of these things have to be created. You have to recognise that. I am not saying I subscribe to this view. I am being a devil's advocate and giving you all sides to the argument. According to this argument, there are no rights but only privileges. The difference with this is if you believe you have the right to something, then you have the right to protest when you don't have it. But if you can see that your very life is a gift, is a privilege, there has to be the recognition that you owe this life to someone. If you don't want it to be the Prime Minister, then let it be your God.

What I'm trying to say is even the idea of human rights is debatable what more with human privileges. The right to vote is not a right but a privilege. If you abandon that, it is gone forever. You have got to preserve it not for yourself, but for the children, the next generation. The only obligation we have is to see that the rights we cherish are passed on to the next generation. We have the right to fight for that.

The only obligation of newspapers and journalists is to ensure what you say is out there, adding to the discourse. When we don't do that, we are failing in one of the basic three things I mentioned earlier. We are not giving you the full facts. The problem we face in this country is not the strictures on freedom of speech or expression. The problems are harder than that and they are more easily quantified. It's related to a lack of freedom of information. We do not have enough information.

We have had to labour on things as mundane as general orders to those as arcane and deep as the Official Secrets Act. At both ends, there are levels of which we are not supposed to know. Well, that is part of the daily struggle to get the facts and information. Do not expect us to advocate, as we are not the flame at the end of the torch. We only uphold the flame. You, the NGOs, are the flame, as is alternative media and civil society. You must say what you want. You must provide us the facts. We are only conduits of information. We mediate and that is why we are known as the media. We take messages from one place and pass them to another place in space, in society, in demographics and a space in time. We are simply messenger boys. We are not heroes or villains. It is wrong for you to look at us as either one. However, within the profession, we ask: How best can we serve our society? My response is there needs to be more of us. I cannot do more than what I am doing now. There is the limit of my ability and I work to my limitations. Can I tell you what it's like to be a woman? Can I speak for you? No, certainly. My role is not to speak



for you. But can I give adequate coverage on women's issues in the newspaper? Yes, of course.

Whenever I write, personally now, we must be absolutely clear where we are coming from. For example, this is an article on the present Malaysian administration in the *New Straits Times*, which is owned by the ruling party. Therefore, do not expect this paper to throw rotten eggs at its owner. But do expect and demand that this journal, which presumes to speak for this side of the political divide, does it well. This means no pulling the wool over your eyes, no glossing over facts, no hiding something and don't simply accentuate the positive without examining the negative. How can you tell positive from negative if you don't have both of them?

We reach our limit as a journal when we depend on others. There are conscientious journalists within the industry, such as those behind Malaysiakini. There are also others who declare in their titles freeanwar.com. You have to admire these people. They are not lying to you, they are not bluffing you as the Russian newspaper *Truth* once did. At least they tell you where they are coming from and you must decipher the facts from fiction.

We have had remarkable advancements in this regard in the country in the past 10 years. The spectrum of opinion and information available to you has broadened tremendously over the past 10 to 15 years, compared to 20 or 30 years ago. It has not deepened. It is a thin shallow layer, parts of it are as thin as spit on stone. The best lesson we have gained from the boom is that this alone is not enough or satisfactory. The answer is not so much in the number of voices that are allowed. It is what those voices have to say. The quality of what those voices have to say is tied directly to what they know. So, just as I tell our reporters, analysts and columnists in particular, stop telling us what you think. It is about what you know. The newspaper column or the personal byline is important not because you have such a great idea. Everybody can have an opinion. It is not about what you think. It is about telling us what you know. And if you don't know, then please shut-up.

# Deaths in Police Custody

*R.N. Rajah*

*Chairman*

*Police Watch and Human Rights Committee*



I believe the loss of a life in police custody is one of the most serious human rights violations. Suhakam has not held any inquiry into such deaths. However, Suhakam held an inquiry on some minor complaints against the police in Sabah recently. I do not understand why Suhakam refuses or fails to hold an open inquiry into deaths in police custody. Does Suhakam conduct selective inquiry?

This is the standard reply I received from Suhakam for two different complaints: “The Malaysian Human Rights Commission has received your complaint. The issue you raised will be given appropriate attention.” That’s all about the complaints and I have not received anything else from Suhakam since then.

It is the same with situation with the Kampung Medan violence. Suhakam failed to play its role as a human rights commission. Is Suhakam a human rights commission or a human rights omission? It is no different from the police.

The affected people come to us to complain about abuses of power by the police and seek our assistance. We take them to Suhakam. What is the role of Suhakam? As what Prof Chiam mentioned earlier, “Suhakam is very concerned”. That is all we hear from Suhakam and it does not move from there. What is the concern all about? Has Suhakam played its part as a human rights commission? Has it built interest and the confidence of the public to go to Suhakam? Does it assist the complainant to see what has gone wrong or why the police were acting in such a manner? I do not think Suhakam has done anything on these issues.

The police cell is supposed to be the safest place on earth. I believe so and I guess all of you also share this view. Therefore, when somebody dies in police custody that is the worst form of human rights violation. What are we doing about it? What is Suhakam doing about it? Shouldn’t Suhakam query the police as to why such

incidents are happening? Do they beat up detainees to get confessions?

Malaysian society is known to be a caring one. We also talk a lot about human rights abuses all over the world. So, I really hope Suhakam will play its role as a human rights commission without fear or favour. It should either do its part or just “close shop”.

Some people are now asking why we are wasting time going to Suhakam. We may need to look for other alternatives to get to the bottom of things and tell the truth to the people. At times, the complainants become the victims. I myself have been harassed by the police. For example, the police asked me to go to the police station to make a statement after a report was lodged. I wanted to know the nature of the report before making any statement. The police replied that it was confidential. If it's confidential, why do they want my report? So, I refused to give any statement.

These are some of the issues that need to be addressed. We are not asking too much from Suhakam. We just want a reasonable time frame to be set for action. Suhakam should play its role without fear or favour and bring justice to a vulnerable group of people who were beaten to death. I reassert our stand that a death in police custody is one of the worst forms of human rights violation. And I request Suhakam to stand up and do its part.



# Question and Answer Session: Responses from Panelists and Suhakam Commissioners

*The session was chaired by Datuk Param Cumaraswamy*

**Datuk Param Cumaraswamy:** There is no doubt that custodial assaults and deaths immediately put a burden on the authorities who are responsible for the maintenance of custodial stations. All of us remember what happened to former Deputy Prime Minister Datuk Seri Anwar Ibrahim and how he was brutalised in the police lock up. Without conducting any inquiry, then Prime Minister and Home Minister Tun Dr Mahathir Mohamad suggested that the injuries on Anwar could have been self-inflicted. In any other democracy, the Home Minister would have resigned because he was in charge of police lock-ups. But it can never happen in this country. It took a Royal Commission of Inquiry to probe the truth of the matter. That is how custodial assaults are investigated in this country.

Let's move on to an interactive dialogue with the speakers and members of the floor. Please pose your questions, comments or suggestions on the subject matter and avoid being personal. We ought to be very objective about what we are here to discuss. As we have done after the earlier consultations, we will submit a memorandum to Suhakam based on today's deliberations.

**Lum Kin Tuck** (President of the National Council of Senior Citizens Organisations of Malaysia): I have heard a lot about Suhakam and its activities. I congratulate Suhakam for the good work it has done. However, I wonder why senior citizens are neglected. There are 1.8 million senior citizens in Malaysia and many of them are living up to 80 or 90 years. The Government and society do not give much thought to their needs. I think Suhakam should deal with issues affecting senior citizens. I believe Suhakam, with all the intellectuals and its collective wisdom, can come out with a charter of rights for the elderly in Malaysia. With such a charter, we would know about the rights of the senior citizens and how we can get the Government to implement a policy to benefit the elderly. Most Malaysians are made to retire at 55. I retired at 55 and I am now 87 years old. How was I supposed to live in the 32

years after retirement? How is society going to keep the old people active? How are you going to keep them productive? I am not talking about producing children. What I mean is the old people must have something beneficial to do. This is very important. After retirement, was I supposed to be confined to the home for 32 years and quarrel with my wife? How am I going to spend my time? How am I going to make my wife spend her time so that she won't quarrel with me? She can go out and do something else. I can go out and do something else so that the family continues to live in harmony. I think Suhakam should look into this issue and see how senior citizens can play their role.

Though Suhakam is doing a good job, I think it does not make use of the NGOs. The NGOs can play a major role in lobbying the Government to do something for human rights. The NGOs cannot play a part if Suhakam neglects them. Some NGOs are very vocal and the politicians and the Government will have to listen. Otherwise, they won't get elected in the next general election. I think Suhakam should do something for senior citizens at least by this year.

How many of us know about the Universal Declaration of Human Rights? Most do not understand its goals or know the details. If we do not understand, how are we going to advocate and ask the Government to do something about human rights? So, it is important for Suhakam to educate people about human rights and what we must know. Only then we can fight for our rights. If we do not know our rights, we cannot fight for them.

Regarding freedom of the press, can we trust journalists? We know that the newspaper companies, which are mostly controlled by political parties, pay journalists. For instance, the MCA controls *The Star* and *Nanyang* and UMNO controls the *New Straits Times* group and *Utusan Malaysia*. The journalists have to toe the line of the political parties. If they don't, they will lose their bowls of rice the following month. So, we cannot give the journalists all the freedom. Sometimes we cannot trust the journalists but many of them think they must have the freedom. If we have too much freedom, I think Malaysia will have a revolution. The journalists give importance only to politicians, magnifying the news of what they are supposedly doing for the country. According to a Chinese saying, a politician has two mouths. One mouth will tell you something while the other will say something else. We cannot rely on the politicians. So, the journalists should not rely too much on the politicians.

Many senior citizens are women. The *New Straits Times* reported three days ago that NASCOM, the senior citizens' organisation, started an old folk's home for the elderly poor. You find that most people in NASCOM's old folk's home are women with nobody to support them. NASCOM raises the money to support them. The NGOs should work together to do something for the elderly women.



You might be thinking why Lum Kin Tuck, a man, is talking about a women's issue? It is because I love women. These are the few points for consideration and thank you very much for giving me the opportunity to speak.

**Datuk Param:** Thank you Mr Lum. I think the suggestions about senior citizens would be useful. We would like to hear from Prof Chiam about what Suhakam is doing on this issue.

**Prof Chiam:** Suhakam's conference on the rights of the disadvantaged and vulnerable groups held in 2001 included the elderly. Other than that we have not organised any substantial programme for the elderly. However, Suhakam included geriatric care in its recommendations on the accessibility to basic needs and the right to healthcare. Of course, we also need to make recommendations on other aspects for the elderly. I will forward Mr Lum suggestions to Suhakam.

**Datuk Param:** Mr Lum, I think you were very vocal and articulate. I think you should go into politics and consider joining a political party.

**B. Chandran** (Police Watch and Human Rights Committee): From Prof Chiam's presentation just now, we learnt that Suhakam has been conducting human rights training for police officers since 2001. However, looking at the current situation, the question arises whether the police are ready to protect or abuse human rights. We do not see any positive response from the police. In the past three years, there appear to be more human rights abuses rather than protection from police officers. What is Suhakam doing to ensure that lessons learnt during the courses are put to good use? Or are the police officers attending the courses just for the sake of showing the public that they too have undergone human rights training and they can

do whatever they want after that?

**Prof Chiam:** Well, I think we can see improvements. For example, the police are now more careful when accepting reports from the public. Of course, on the other hand we get complaints of abuses. As to whether human rights education for the police is effective, I would have to inform all of you that Suhakam is currently drawing up a module. At this stage, Suhakam is providing human rights education for only police officers and we have not gone down to the lower levels yet. Suhakam is trying to put in place a module first. So, perhaps one of the reasons for some abuses is because human rights education has not reached the police at the lower levels. Perhaps, we need to look into this aspect.

**Edmund Bon:** I come from a small group of lawyers interested in human rights. After four years of Suhakam and human rights advocacy, we should look at three critical areas. The first level is definitely awareness, which is to educate people on the various aspects of human rights. The second level is advocacy. Once we have created awareness among the people, then human rights activists and others will lobby the Government to amend laws to protect human rights in a better way. Of course, the third level is action, whereby the Government will consider these recommendations and implements them such as passing laws and reforming police practices and philosophies. After four years, Suhakam has definitely achieved the first level of awareness in a very good way. Considering the various Suhakam reports and the way people mention human rights, it's quite encouraging. We now urge Suhakam to move to the next level. Suhakam has come out with excellent reports and recommendations. Of course, we get brick-stone responses from the Government. The Government continues to reason that the national laws are enough, we are an Islamic state etc. The Government just says, "no, no, no". Suhakam can submit good reports to Parliament but nobody is going to take up the issues. We have this problem. What are Suhakam's aims and action plans? Is it going to continue getting this brick-stone response for the next 10 years? Without an action plan it is not going to be effective. We are not going to take our human rights activism to the second level. Without this, we cannot take it to the third level. We have seen some progress at the third level such as the ratification of CEDAW and CRC. The two instruments the Government ratified are basically not very political. However, we have not seen law reforms in terms of protecting human rights. We hope that Suhakam has thought about this action plan to take it to a different level. In terms of awareness, I think Suhakam is now seen more as an institution that protects human rights more than the judiciary. The judiciary is near hopeless now in protecting human rights. The

judiciary believes that it is doing the right thing as long as the laws are applied. I think the picture has to change because many laws do not protect human rights. In fact, they violate human rights. So has Suhakam thought these aspects? Is it planning to take human rights activism to the second level? Seminars, reports and recommendations are good but they by themselves would not be as effective as what human right activists would want.

**Datuk Param:** Thank you, Edmund Bon. That is a very concerned lawyer's perception. We would like Tan Sri Ramon Navaratnam to give his comments on some of these questions?

**Tan Sri Ramon Navaratnam** (Suhakam commissioner): This is exactly the dilemma of Suhakam. As Prof Chiam and the others have alluded to it, we are really caught in between. We have an expert to write a report on Suhakam and how we can improve. He compared human rights commission all over the world to lighthouses. Sometimes they get attacked from the land and sometimes from the sea. But we try to do our best. It's commendable that ERA Consumer has taken this initiative. Suhakam is open to criticisms and scrutiny. The feedback we are getting will enlighten us and help us do our jobs better. Now, this question is very relevant. Where do we go from here? Firstly, let me say that Suhakam is only four years old. Secondly, human rights are such a new experience in a formal sense in our country's system. It is not easy to deal with the Government, as the report clearly says. Regarding Mr Bon's comments on awareness, advocacy and action, I think we have passed the awareness stage in four years. Suhakam is now a household word. People may not





agree with what Suhakam is doing but they know what it is suppose to do. I think we have also done advocacy in terms of making recommendations to the Government. However, there is a long way to go with action. However, I must add that there is a lot of misunderstanding of Suhakam's role. Suhakam is purely an advisory body and it has no executive authority. Suhakam can only make recommendations to the Government. If the Government does not act on the recommendations, there is little that Suhakam can do. I know it's frustrating. I can only speak for myself as a commissioner and it's frustrating for me. I am sure Prof Chiam and many others share my concern, or rather, my frustrations. We work hard to get the report to Parliament and it's not debated.

Now, this is where the action is lacking. Mr Chairman, I am suggesting, maybe the panel can give us some advise on what we can realistically do. The Government and MPs will respond only if the people, let by NGOs, take the initiative to make the elected representatives accountable. We have over 200 MPs but none of them thinks it fit to raise this issue in Parliament. What are the government backbenchers doing? They may lack initiative but what about the opposition MPs? We elected these representatives to represent us. There is no point saying that the Government does not take initiative in debating the report. Well, the law says Suhakam must submit the report to Parliament. That is being done every year. What else can Suhakam do? Can we go around and demonstrate and shout? That is not our work. So, in terms of action, what is the follow-up? What are the MPs doing? What are the NGOs doing to put pressure on MPs to debate the report? As for action, Suhakam has serious limitations. It cannot do it alone. The action should come from you. My final point is please do not regard Suhakam as your adversary or something on the other side. We all have the same goals, which are to have a better life, better welfare and better human rights standards for all our people. We are just one small group. It's up to you to judge whether we are doing well or not. I believe we are doing our best under the constraints. We need your help. Some of you compliment Suhakam while others criticise us, which is fair enough. However, I wish more of us would work together. We can achieve a lot if we have the right influence on our MPs and the Government.

**Datuk Param:** MP Teresa Kok is here with us. Maybe she will want to let us know what she can do in Parliament.

**Nurjanah** (Faculty of Law, University of Malaya): I note with surprise and concern that Suhakam is struggling to play its role. It faces pressure from both sides. Perhaps

the Government tends to ignore Suhakam and does not give it due recognition. On the other hand, the NGOs have high expectations of Suhakam. I urge Suhakam commissioners to go back and look at the Act. What is the mandate? What is it that we need to do? With due respect to all the commissioners, Suhakam's work and actions will be judged by the general public. The fact that there are only two commissioners here today is a very poor reflection of Suhakam's commitment. Yes, Suhakam has done a lot but there is so much more that can be done. Some observers are saying, "my goodness, they can do this, they can do that, yet they are sitting on it". It may not be a fair comment. Tan Sri Ramon is right when he said the actions should come from the right parties and we should work together. Earlier, Mr Rajah showed his frustration after making reports. He complained that all we get are acknowledgments of receiving the complaints. What happened to communication? Why can't the complainant be informed of the progress of the reports? With regards to human rights education for police officers, it will take time to change as we are dealing with human attitude and not law. We are dealing with police officers who have been trained in a certain way. But it is a good start and a step in the right direction.

**Rathi (ARROW):** How are Suhakam commissioners elected? I agree with Maria Chin that women should make up at least 30 per cent of the commissioners. The women should also be from NGOs just to make sure that our gender issues are articulated. Secondly, Suhakam should address the issue of reproductive rights. This may be quite a new area but we are prepared to provide information. We are very concerned that controversial issues regarding reproductive health are not being taken up.

**Datuk Param:** Thank you. To answer the first question, Suhakam commissioners are not elected. The Government appoints them.

**Rathi:** Is the nomination process transparent? Perhaps, we should make a recommendation on this matter to the Government.

**Datuk Param:** There is no transparency in the nomination process. If there is any, we don't know about it. Any amendment to the nomination process can only be done through Parliament. We have this problem. After the recent appointment of Suhakam commissioners was reported in the press, I asked a human rights personality why he was not in the list. He said in jest, "I have not retired yet".

**Prof Chiam:** As for reproductive rights, Suhakam is now looking into the right to healthcare. We will take your suggestion on reproductive rights into consideration.

**Ramdas Tikamdas:** We acknowledge that the Act does not give enforcement power to Suhakam. But the Act does give Suhakam the power to make recommendations to the Government in respect of violations of human rights. I would like to suggest that rather than making general suggestions in respect to laws and systems to the Government, Suhakam should consider making specific recommendations in its future reports for specific violations. For example, if it is held that a police officer has wrongfully coerced a prisoner to clean excreta from the toilet, it is no point coming up with a recommendation that this is a violation of a right. We all know that. But what is the specific recommendation? It can be, one, compensation to the victim, two, disciplining of the violator, three, systematic recommendations for the future. If for example, a cross has been removed from a classroom of a particular school, one, identify the school, two, what is the violation and Suhakam's recommendation. It could be a specific instruction for the reinstatement of the cross in the classroom and then systematic recommendations for the future. Of course the Government can still ignore these specific recommendations. But it will be very clear that the Government is disallowing specific recommendations from its own statutory body. We would then know where the Government stands. As it is now, the recommendations are very general. It talks about rectification and amendments of laws. However, the Government will respond that the time is not right or it has to review the matter. This will just go on. In the meantime, specific violations are taking place every day. Actually, the Act implies that Suhakam should protect individual victims. Although Suhakam cannot order the Inspector General Police to pay a compensation of RM10 to a person who was slapped, for example, it can recommend to the relevant ministry and the IGP that the salary of the police officer who abused the person should be cut by RM10. Suhakam can also recommend that the person who was slapped should be paid RM50. Why can't such recommendations be made pursuant to the Act? If the Government does not comply or ignores the recommendation, we will know its position on the protection of human rights in this country. This is just a suggestion. We can discuss how best this can be done, in a cooperative spirit.

**Josie Fernandez** (consumer activist): I would like to go back to the Suhakam report on the trafficking of women and children. Firstly, I was very disappointed that Prof Chiam has glossed over a very serious issue, not only in Malaysia but also in the region. So I would like to make recommendations rather than commenting further

on the report. In recognition of the seriousness of the problem, which is linked to syndicates and corruption, I think more resources should be put into research so we can have data on the trafficking of women and children. Another recommendation I would like to make is to get the involvement of NGOs, which have dealt with cases of trafficking in women and children. Perhaps Maria Chin could provide more information on this. There were also some cases where women who might have been victims of trafficking were sent to detention camps rather than deporting them to their countries immediately. If they are sent to detention camps, the fear is further abuse may take place.

Secondly, in relation to rights of children, I think child labour has crept back into our society. Last month, I interviewed no less than nine children who have been working at different times of the day. These children, aged between 9 and 13 years, were hired to put junk mail in the letterboxes of homes. The Employment Act says that children below 16 years should not be working. They should be in school. I think the issue of child labour has been neglected. It is not right to assume that there is no child labour at this point in time.

I would also like to thank Mr Rehman Rashid for enlightening us on the need for a Freedom of Information Act. A number of NGOs, including FOMCA, have been lobbying for such an Act since the 1980s. However, the Government has not responded. When we don't have the information, it is difficult to provide the analysis. For example, NGOs need the facts from the relevant government agencies to assess a particular situation and make analytical press statements. I feel that Malaysian society is in a state of comatose when it comes to information. Take air-pollution as an example. The whole country was recently covered in a permanent haze and the women organisations requested the Government to make the Air Pollution Index public. Unfortunately, it has not been made public until today. In other developing countries such as the Philippines and Sri Lanka, such information on air quality and pollution are available on a daily basis. This Freedom of Information Act is absolutely important if we want to move forward as a nation. I hope there is more discussion on the need for the Act.

**Prof Chiam:** With regard to the trafficking of women and children, Suhakam has just begun compiling the report. So, the bulk of the discussions and recommendations will be in this year's Annual Report. What Ms Josie suggested is already being included in this year's report. Regarding child labour, could you please give us the information you have gathered? If you can send us some kind of information, then

Suhakam can follow up. Right now we do not have the information on child labour.

**Koris** (president, Penang Consumer Protection Association): We have presented a memorandum on water to Suhakam. There is nothing in this report about the memorandum. I think the right to water is an important matter. The state government is planning to privatise water. Why was this issue not mentioned in the report or is being discussed now?

**Tan Sri Ramon:** I appreciate the raising of the water issue. It's a pity that right through this morning nobody mentioned about the second prong of the Declaration of Human Rights. We are so concerned about political and human rights and we do not realise that there are economical, social and cultural rights as well. Water is a basic need and it is so essential for the right to live. I give you this assurance that with your help, we will organise a seminar on water to get recommendations and submit them to the Government. Malaysia is one of the most advanced developing countries and we have problems of drinking water, even in Kuala Lumpur. What more outside the Klang Valley and in many rural areas? I am glad you raised the issue. We certainly will take note of it as we are already planning something.

**Koris:** We would like to apply for a grant from Suhakam to organise the biggest water conference in Penang.

**Tan Sri Ramon:** Suhakam is not in a position to give grants. However, it can organise the conference and interested groups can participate.

**Cynthia Gabriel** (Suaram): Firstly, I would like to thank ERA Consumer for giving us this space to air our views. I have attended the annual consultations several times. I am concerned that this would just disintegrate into an annual talk-shop. Basically, it is not the fault of ERA Consumer. I think its initiative is very important but I would like to urge all the participants today to use this consultation as a point of self-examination. After four years, we seem to be talking about many of the same issues. We are also talking to many of the same people. This is a very serious point for us to deliberate and consider because we have to move on. Some participants said that it has been only four years but I beg to differ. The four years of Suhakam's existence is a long time. I think this meeting has to be converted into something more meaningful. An annual consultation can only do so much. It can raise issues and provide the space for us to present our views but it cannot bring about any kind of meaningful evaluation of Suhakam. I would really like to urge and also take up

the request by Tan Sri Ramon that we strategise and pool our resources and ideas. I think some human rights organisation have been working with Suhakam on a continuous basis by offering our resources, expertise and knowledge. We can work together in areas such as fact-finding, monitoring human rights violations and education to raise awareness, to bring democracy to a higher level, and so on. I am sure we are here today not to attack or dismiss Suhakam even though a lot of things are not satisfactory. What is more important is to think about how we can play our roles and maximise our presence no matter how small it is. Civil society in Malaysia is generally weak because of the political climate and the general environment in which we operate. Nonetheless, it is very important for us to think long term. We should have a plan of action for furthering human rights. We need to think about how we can work together and not just hope to see each other again next year.

**Datuk Param:** I would now like to call upon Ms Teresa Kok, the MP for Seputeh, to say a few words about how this issue can be raised in Parliament and what she can do.

**Teresa Kok (DAP MP):** With regard to the comment this morning on the MPs' role in debating Suhakam's report and so on, I think Tan Sri Ramon should know that it is only the opposition MPs who have been approaching Suhakam all these years. I remember that we went to Suhakam many times over Anwar Ibrahim's issue. Suhakam was impressive in its early years when Tan Sri Musa Hitam was its chairman compared to now. As a former Deputy Prime Minister, Musa was able to make critical statements, which at times appeared to be confrontational with the Government. Nobody attempted to silence him because he commanded a certain kind of respect. This is important. Generally, the government backbenchers dare not say much in Parliament. However, during Musa's term as Suhakam chairman, some of these backbenchers would quote his statements on certain issues and question the Government. The opposition parties would then follow up on Suhakam's statements and keep pressing on certain issues. This kind of public statements on issues from Suhakam is important. If I'm not mistaken, so far only Prof Chiam had held a press conference on the public whipping of students in campus. This is one of the rare press conferences to inform the public of pressing issues. Maybe this is what Suhakam should be doing often.

Secondly, everybody knows that MPs don't know everything and, at times, anything. From remarks made in the House that humiliate women, you should know that a lot of our male MPs need to go for gender sensitisation courses. A few years ago, the

Barisan Nasional MPs were rather uncomfortable with the public statements made by Musa. They made a lot of noise and questioned the role of Suhakam. At that time, Foreign Minister Syed Hamid Albar conducted a special session for BN backbenchers to brief them on the importance of having a human rights commission. Though the meeting was only for the backbenchers, at least this session was conducted to familiarise the Barisan MPs on Suhakam's role. Since then, no such briefings have been held. I suggest that Suhakam takes the initiative and conducts a dialogue session with MPs on human rights.

On the lack of debate on Suhakam reports in Parliament, opposition MPs have consistently raised the issue every year. Although our motion to debate Suhakam's reports has never been allowed, we always also try to find opportunities to raise human rights issues in Parliament. For example, opposition MPs cite from Suhakam's reports during the debate on the Royal Address or the budget session.

**Prof Chiam:** I have been attending this consultation for four years and it has been a very enriching experience for me. The points raised are very educational and I will forward the observations and suggestions to Suhakam. Just to inform MP Teresa Kok, Suhakam is planning to have a dialogue session with BN backbenchers but we overlooked the opposition MPs. Maybe we will now consider holding the session for both the backbenchers and opposition MPs. I would also like to inform everyone that the Malaysian human rights theme for this year is "Human Rights and Good Governance" and one of the keynote speakers is the Opposition Leader in Parliament, Mr Lim Kit Siang. We hope to attract many MPs to the conference.

**Sham Rahayu** (research student and lecturer, International Islamic University): It was alleged in the newspaper reports that the treatment of ISA detainees is worse than what is happening at the Abu Ghraib prison in Iraq. What steps has Suhakam taken to investigate this? My second question is what is Suhakam doing for victims of crime? Say for example, a father was stabbed to death. What will happen to the children? Are there any forms of monetary or other support for them? Are the rights of these victims of criminals being considered? I am also surprised by the admission of Ms Teresa Kok that our MPs have little knowledge of the human rights situation in Malaysia and that they are not aware of their role in maintaining and protecting human rights. The provisions in Article 5 and Article 13 of the Federal Constitution clearly stipulate the human rights which should be protected. I also recall that the Dewan Rakyat Speaker rejected Mr Lim Kit Siang's motion to discuss Suhakam's report in the public interest, using the standing orders.

Regarding restrictions to freedom, the Universal Declaration of Human Rights 1948 only provides the general provisions for human rights. So, there are no restrictions, correct me if I'm wrong. But the decisions of the European courts on human rights could be relied upon for our discussion here. For example, the court can rule that it is the right of the state to impose restrictions on human rights. So it all depends on a particular state whether it wants to have restrictions to human rights. What we can suggest is that the restrictions with regards to human rights should be reasonable.

**Ramdas:** The restrictions in respect of rights are very clearly set out in the international covenant on civil and political rights. These restrictions are also set out in our Constitution. Basically these restrictions are one, national security, two, public order, three, public health, and four, morals. These are the permissible restrictions in respect to freedom of expression, freedom of assembly and other fundamental liberties enshrined in our Constitution. Civil society complains that often the authorities misuse these restrictions. I give you a specific example, which is the Lim Guan Eng case. How did his statement offend national security, public order, public morals and public health? He was imprisoned for 18 months and lost his status as an MP because of his statement. This is an abuse of power and the law. Let's take the case of Irene Fernandez, how did her memorandum on the treatment of migrant workers offend national security and public order? How did Ezam's disclosure of corrupt practices offend these four principles? Our complaint is that there is a continuous and systematic misuse and abuse of power. Has the detention of Anis under the Internal Security Act anything to do with national security? He was charged over sexual behaviour. Even Anwar was first arrested under the CPC over a sexual offence in the middle of the night. It was subsequently converted into an ISA detention. We now know that he was detained under the ISA because he was there down in his own slime and blood. Under the Constitution, the authorities have to produce him before the magistrate the next day. But the authorities said they need not produce him before the magistrate if he was an ISA detainee. These are just examples of the misuse and abuse of the law and the frequent abusive interpretation of what amounts to internal security, public order, public morals and public health.

**Member from the floor:** Mr Chairman, I have two points to raise. The first one is a simple suggestion to Suhakam, which seems to bring it upon itself to educate the police force on human rights. Perhaps it would be much simpler if the police force were to institutionalise human rights education as part of its training programme. We know that police officers and personnel go for training and retraining programmes. My second comment is with regard to Mr Rehman Rashid's view on the freedom of



press. He says the Government has allowed a thousand flowers to bloom. This is not seen in practice. The Government has allowed some alternative media to come up but it has also imposed restrictions. The Government does not allow these publications to be distributed freely, for example *Harakah* and *The Rocket*. In case of *Aliran Monthly*, the Government has refused to allow it to be published in Bahasa Malaysia, even though it is the national language. So, it is not enough to allow a hundred flowers to bloom. They must all be assessable to the masses. The Government is not too worried about the urban middle class reading alternative news. It actually wants to restrict the flow of the information to the rural areas because that is where most of the votes lie.

**Rehman Rashid:** I take your point. But as someone who has spent quite a bit of my life in the rural areas, I would say that it would be offensive to the rural folk to suggest that they do not know what is going on. In fact, in the rural areas, they have a lot more time to read newspapers and to discuss issues. We have one of the most politicised societies in Southeast Asia, if not in the world. We have one of the most informed people. Surprisingly, a lot of the choices in our society are made consciously. We have much less of a blind rural mass or “a bunch of country sheep” that we urban intelligentsia have to be responsible for. However, I do take your point. We must remind ourselves that it is not in the interest of the powers that be to undermine their position by allowing a free reign. So, they do impose restrictions and they do not make it easy. It is part of our role as individual journalist and organised journalists, as well to disseminate the information. Of course, once again, the democracy of your one-ringgit coin still comes into play. The readers will reject the newspaper that does not give them what they want.

In agreeing with you and taking your point, the only thing that I would throw out as a caveat, perhaps, is not to assume that the wolves are pulling the wool over the population of the rural areas. They are a lot more informed, a lot more up to date and a lot more politicised than you might think. So, I think the playing field is more or less still level. Certainly, I can’t get this message out. Although the playing field is now more or less level compared to 25 years ago, maybe we should be raising the bar a little bit more and not make assumptions on the activities of the ignorance.

**Datuk Param:** Thank you and now may I bring this consultation to a conclusion. It’s very clear that we cannot expect everything from Suhakam. It has its own limitations and it must function within the parameters of the Act. However, it is for us, the civil society groups, to give meaning to Suhakam. It is for us to call upon the

powers that be to respond effectively to the recommendations of Suhakam. Many years ago when President Suharto set up the human rights commission by decree, there were a lot of apprehensions as to its effectiveness. But the civil society groups in Indonesia hoped to give sufficient support to the commission to make it come alive. Similarly, it is for us to act. I think we expect Suhakam to respond to the NGOs. Suhakam should not treat the NGOs as its foes but should instead regard them as its partners. Without the NGOs, as I said this morning, there is no hope for Suhakam to be effective in protecting human rights in Malaysia. Ladies and gentlemen, with that note we conclude this session. We will prepare a memorandum comprising all our views, including those expressed by the panelists and members from the floor. We are seeking a meeting with Suhakam chairman to discuss our concerns. May I ask all of you to thank the panelists, in particular Prof Chiam and Tan Sri Ramon – the only two Suhakam commissioners who are here with us today. Lastly, I would like to thank Mr Marimuthu of ERA Consumer for organising this event and all of us who are here for this consultation.





## About **ERA Consumer Malaysia**

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

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

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